

Fort Collins City Council Agenda

Regular Meeting

6:00 p.m. Tuesday, March 21, 2023

City Council Chambers at City Hall, 300 Laporte Ave, Fort Collins, CO 80521

Zoom Webinar link: <https://zoom.us/j/98241416497>

NOTICE:

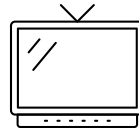
Regular meetings of the City Council are held on the 1st and 3rd Tuesdays of each month in the City Council Chambers. Meetings are conducted in a hybrid format, with a Zoom webinar in addition to the in person meeting in Council Chambers.

City Council members may participate in this meeting via electronic means pursuant to their adopted policies and protocol.

How to view this Meeting:



Meetings are open to the public and can be attended in person by anyone.



Meetings are televised live on Channels 14 & 881 on cable television.



Meetings are available through the Zoom platform, electronically or by phone.



Meetings are livestreamed on the City's website, fcgov.com/fctv

Upon request, the City of Fort Collins will provide language access services for individuals who have limited English proficiency, or auxiliary aids and services for individuals with disabilities, to access City services, programs and activities. Contact 970.221.6515 (V/TDD: Dial 711 for Relay Colorado) for assistance. Please provide advance notice. Requests for interpretation at a meeting should be made by noon the day before.

A solicitud, la Ciudad de Fort Collins proporcionará servicios de acceso a idiomas para personas que no dominan el idioma inglés, o ayudas y servicios auxiliares para personas con discapacidad, para que puedan acceder a los servicios, programas y actividades de la Ciudad. Para asistencia, llame al 970.221.6515 (V/TDD: Marque 711 para Relay Colorado). Por favor proporcione aviso previo. Las solicitudes de interpretación en una reunión deben realizarse antes del mediodía del día anterior.



There are in person and remote options for members of the public who would like to participate in Council meetings:

Comment in real time:

During the public comment portion of the meeting and discussion items:



In person attendees can address the Council in the Chambers. The public can join the Zoom webinar and comment from the remote meeting, joining online or via phone.



All speakers are required to sign up to speak using the online sign up system available at www.fcgov.com/agendas. Staff is also available outside of Chambers prior to meetings to assist with the sign up process for in person attendees.

Full instructions for online participation are available at fcgov.com/councilcomments.

Join the online meeting using the link in this agenda to log in on an internet-enabled smartphone, laptop or computer with a speaker and microphone. Using earphones with a microphone will greatly improve audio experience.

To be recognized to speak during public participation portions of the meeting, click the 'Raise Hand' button.

Participate via phone using this call in number and meeting ID:

Call in number: 720 928 9299

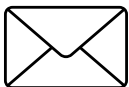
Meeting ID: 982 4141 6497

During public participation opportunities in the meeting, press *9 to indicate a desire to speak.

Submit written comments:



Email comments about any item on the agenda to cityleaders@fcgov.com



Written comments can be mailed or dropped off at the City Manager's Office at City Hall, at 300 Laporte Ave, Fort Collins, CO 80521

Documents to Share during public participation: Persons wishing to display presentation materials using the City's display equipment under the Public Participation portion of a meeting or during discussion of any Council item must provide any such materials to the City Clerk in a form or format readily usable on the City's display technology no later than two (2) hours prior to the beginning of the meeting at which the materials are to be presented.

NOTE: All presentation materials for appeals, addition of permitted use applications or protests related to election matters must be provided to the City Clerk no later than noon on the day of the meeting at which the item will be considered. See Council Rules of Conduct in Meetings for details.



March 21, 2023 at 6:00 PM

Jeni Arndt, Mayor
Emily Francis, District 6, Mayor Pro Tem
Susan Gutowsky, District 1
Julie Pignataro, District 2
Tricia Canonico, District 3
Shirley Peel, District 4
Kelly Ohlson, District 5

City Council Chambers
300 Laporte Avenue, Fort Collins
& via Zoom at
https://zoom.us/j/98241416497
Cablecast on FCTV
Channel 14 on Connexion
Channel 14 and 881 on Xfinity

Carrie Daggett
City Attorney

Kelly DiMartino
City Manager

Anissa Hollingshead
City Clerk

PROCLAMATIONS & PRESENTATIONS
5:00 PM

A) PROCLAMATIONS AND PRESENTATIONS

PP 1. Proclaiming March 2023 as Women's History Month.

REGULAR MEETING
6:00 PM

B) CALL MEETING TO ORDER

C) PLEDGE OF ALLEGIANCE

D) ROLL CALL

E) CITY MANAGER'S AGENDA REVIEW

•City Manager Review of Agenda

•Consent Calendar Review, including removal of items from Consent Calendar for individual discussion.

F) COMMUNITY REPORTS

None.

G) PUBLIC COMMENT ON ANY TOPICS OR ITEMS OR COMMUNITY EVENTS

(Including requests for removal of items from Consent Calendar for individual discussion.)

Individuals may comment regarding any topics of concern, whether or not included on this agenda. Comments regarding land use projects for which a development application has been filed should be submitted in the development review process** and not to Council.

- Those who wish to speak are required to sign up using the online sign-up system available at www.fcgov.com/council-meeting-participation-signup/
- Each speaker will be allowed to speak one time during public comment. If a speaker comments on a particular agenda item during general public comment, that speaker will not also be entitled to speak during discussion on the same agenda item.
- All speakers will be called to speak by the presiding officer from the list of those signed up. After everyone signed up is called on, the presiding officer may ask others wishing to speak to identify themselves by raising their hand (in person or using the Raise Hand option on Zoom), and if in person then will be asked to move to one of the two lines of speakers (or to a seat nearby, for those who are not able to stand while waiting).
- The presiding officer will determine and announce the length of time allowed for each speaker.
- Each speaker will be asked to state his or her name and general address for the record, and, if their comments relate to a particular agenda item, to identify the agenda item number. Any written comments or materials intended for the Council should be provided to the City Clerk.
- A timer will beep one time and turn yellow to indicate that 30 seconds of speaking time remain and will beep again and turn red when a speaker's time has ended.

[**For questions about the development review process or the status of any particular development, consult the Development Review Center page on the city's website at <https://www.fcgov.com/developmentreview/>, or contact the Development Review Center at 970.221.6760.]

H) PUBLIC COMMENT FOLLOW-UP

I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

CONSENT CALENDAR

The Consent Calendar is intended to allow Council to spend its time and energy on the important items on a lengthy agenda. Staff recommends approval of the Consent Calendar. Agenda items pulled from the Consent Calendar by either Council or the City Manager will be considered separately under their own Section, titled "Consideration of Items Removed from Consent Calendar for Individual Discussion." Items remaining on the Consent Calendar will be approved by Council with one vote. The Consent Calendar consists of:

- Ordinances on First Reading that are routine;
- Ordinances on Second Reading that are routine;
- Those of no perceived controversy;
- Routine administrative actions.

1. Consideration and Approval of the Minutes of the January 17, February 7, February 21 and March 7, 2023 Regular Council Meetings.

The purpose of this item is to approve the minutes of the January 17, February 7, February 21 and March 7, 2023 regular Council meetings.

2. Second Reading of Ordinance No. 032, 2023, Authorizing the Release of Restrictive Covenants on Property at 1947 Phia Way Developed by Fort Collins Habitat for Humanity.

This Ordinance, unanimously adopted on First Reading on March 7, 2023, obtains authorization from Council to release the Agreement of Restrictive Covenants Affecting Real Property on the single-family home located at 1947 Phia Way, which was developed by Fort Collins Habitat for Humanity. The development of this home was initially assisted with funding from the Department of Housing and Urban Development (HUD). At the time of completion, the project no longer met the HUD requirements, triggering a HUD mandated repayment of the funds and cancellation of the project.

3. Second Reading of Ordinance No. 033, 2023, Extending the Moratorium on Certain Activities of State Interest Designated in Ordinance No. 122, 2021.

This Ordinance, unanimously adopted on First Reading on March 7, 2023, extends the length of a moratorium previously imposed through Ordinance No. 122, 2021, and further extended with Ordinance No. 139, 2022, on two designated activities of state interest. The proposed Ordinance extends the length of the existing moratorium for three months beyond March 31, 2022, or until City Council adopts guidelines for the administration of the two designated activities. Extending the moratorium allows staff to reengage with stakeholders and develop policy decision points for Council's consideration along with first reading of the version-three 1041 regulations, May 2, 2023.

4. Second Reading of Ordinance No. 034, 2023, Making Supplemental Appropriations from the Colorado Water Conservation Board Grant and Water Fund Reserves and Authorizing Transfers of Appropriations for the Water Efficiency Plan Update.

This Ordinance, unanimously adopted on First Reading on March 7, 2023, updates the City's Water Efficiency Plan by end of 2024 by:

- Appropriating \$160,000 of unanticipated grant revenue, awarded by the Colorado Water Conservation Board, to the Water Fund
- Appropriating \$65,795 from the Water Fund reserves
- Utilizing matching funds in the amount of \$126,705 from existing 2023 appropriations into this new grant project

5. Second Reading of Ordinance No. 035, 2023, Authorizing the City Manager to Execute Agreements, Conveyances, and Other Documents to Incorporate the Spring Cañon Waste Way Ditch.

This Ordinance, unanimously adopted on First Reading on March 7, 2023, approves the City's conveyance of its 2/12ths fractional ownership of the Spring Cañon Waste Way Ditch (Ditch) to a newly formed and incorporated Spring Cañon Wasteway Ditch Company (Ditch Company), and thereby receive 2/12ths share of the Ditch Company. This item would also authorize the City Manager to execute related agreements needed to form the Ditch Company. This administrative restructuring of the Ditch and water right ownership will allow for a variety of efficiencies including easier shareholder transfers, providing a single point of contact, and improving coordination of Ditch maintenance.

6. First Reading of Ordinance No. 036, 2023 Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations in Multiple Utility Funds for the Purchase of Vendor Services to Support a Major Upgrade to the Utilities Billing System.

The purpose of this item is to approve an appropriation from reserves in the Light & Power, Water, Wastewater and Stormwater enterprise funds. The use of these reserves is necessary to implement a modern Utility Customer Information System – Customer Self Service Portal (CIS-CX) Solution. These funds are being requested to maintain project momentum as the City completes the selection of a solution partner and prepares to contract for professional services. This proposed appropriation will allow the City to secure CIS-CX project management and solution quality assurance services through go-live, provide legal review of professional services contracts, and provide funding to hire contractual staff throughout the implementation.

The total amount being recommended for appropriation is as follows:

Implementation Project Management and Quality Assurance	\$1,500,000
Contract Review and Counsel	\$100,000
Contractual Implementation Staffing	<u>\$2,650,000</u>
Total	\$4,250,000

Once the full solution scope with the City’s preferred vendor is negotiated, another appropriation will be requested for the direct solution costs including licensing and hardware.

7. First Reading of Ordinance No. 037, 2023, Appropriating Prior Year Reserves in the General Fund for Cultural Development and Programming Activities, Tourism Programming, and Convention and Visitor Program Services.

The purpose of this item is to appropriate \$598,668 of which \$261,527 is proposed for Cultural Development and Programming Activities (Fort Fund), \$169,624 is proposed for Tourism Programming (Fort Fund), and \$167,517 is proposed for Convention and Visitors Bureau from a combination of 2022 Lodging Tax collections and Prior Year Reserves (unspent appropriations) in the General Fund Lodging Tax Reserves.

Lodging taxes are annually collected by the City of Fort Collins for Cultural Development and Tourism programming activities. Anticipated revenue is projected through each Budgeting for Outcomes (BFO) cycle and then adjusted annually as needed based on final actual collections. For 2022, total Lodging Tax revenues collected came in \$239,310 above projected collections.

8. First Reading of Ordinance No. 038, 2023, Authorizing the City Manager to Accept a Grant Award and Comply with the Terms of the Grant and Making Supplemental Appropriations and Authorizing Transfers for the Xeriscape Incentive Program.

The purpose of this item is to support businesses, homeowner associations (“HOAs”) and other commercial properties pursuing costly landscape projects that reduce water use long-term through the Xeriscape Incentive Program by utilizing (1) \$75,000 in grant funds from the Bureau of Reclamation and (2) \$75,000 in matching funds from existing 2023 appropriations. This item would also authorize the City Manager or their designee to accept the grant award and comply with the terms of the grant application and award.

9. Items Relating to the Timberline Mulberry Lincoln Intersection Project.

A. Resolution 2023-025 Authorizing the Execution of an Intergovernmental Agreement Between the City of Fort Collins and the State of Colorado Department of Transportation for the Timberline Mulberry Lincoln Intersection Project.

B. First Reading of Ordinance No. 039, 2023, Making Supplemental Appropriations, Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations for the Timberline Mulberry Lincoln Intersection Project and Related Art in Public Places.

The purpose of this item is to enable the City to receive and expend Colorado Department of Transportation (CDOT) funds and to appropriate development payment-in-lieu funds for the Timberline Mulberry Lincoln Intersection Project (the Project). The funds will be used for design, right-of-way acquisition, and construction of improvements at the intersection of Timberline Road, Mulberry Street, and Lincoln Avenue. If approved, the item will: (1) authorize the Mayor to execute an Intergovernmental Agreement for the Project with CDOT; (2) appropriate \$1,523,915 of Highway Safety Improvement Program (HSIP) grant funds for the Project; (3) appropriate \$23,651 from the Capital Funds Reserve received in 2020 as a development payment-in-lieu contributed to this Project by an adjacent development; and (4) appropriate \$237 (1% of the development payment-in-lieu amount) to the Art in Public Places Program.

10. First Reading of Ordinance No. 040, 2023, Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations for the Childcare Space Modifications at the Northside Aztlan Community Center and Related Art in Public Places.

The purpose of this item is to appropriate \$260,000 from the Recreation Reserve to close the funding gap on the Childcare Space Modifications at Northside Aztlan Community Center and transfer 1% of the applicable construction costs to Art in Public Places.

11. First Reading of Ordinance No. 041, 2023, Reappropriating Funds Previously Appropriated in 2022 But Not Expended and Not Encumbered in 2022.

The purpose of this item is to reappropriate monies in 2023 that were previously authorized by City Council for expenditure in 2022 for various purposes. The authorized expenditures were not spent or could not be encumbered in 2022 because:

- There was not sufficient time to complete bidding in 2022 and therefore, there was no known vendor or binding contract as required to expend or encumber the monies; or
- The project for which the dollars were originally appropriated by Council could not be completed during 2022 and reappropriation of those dollars is necessary for completion of the project in 2023.

Additionally, there may have been sufficient unspent dollars previously appropriated in 2022 to carry on programs, services, and facility improvements in 2023 for those specific purposes.

In the above circumstances, the unexpended and/or unencumbered monies lapsed into individual fund balances at the end of 2022 and reflect no change in Council policies.

12. Resolution 2023-026 Adopting Findings of Fact in Support of the City Council’s Decision on Appeal to Uphold the Planning and Zoning Commission Approval with Conditions of the Castle Ridge Group Home.

The purpose of this item is to make findings of fact and conclusions regarding City Council’s decision at the March 7, 2023, appeal hearing to uphold the Planning & Zoning Commission decision to conditionally approve the Castle Ridge Group Home Final Development Plan.

13. Resolution 2023-027 Expressing the Official Intent of the City to be Reimbursed for Expenditures Relating to the Construction of Improvements to the City’s Broadband System Through the Issuance of Bonds.

The purpose of this item is to declare the City’s official intent to reimburse itself for the capital costs it has incurred or will incur for Connexion with the proceeds it will receive from the future issuance of bonds to further fund Connexion capital costs.

14. Resolution 2023-028 Approving Participation in the Settlements with Five Additional Opioid Defendants and Related Waivers of Claim.

The purpose of this item is to seek approval of a Resolution to allow the City to participate in the Colorado Opioids Settlement by granting approval to sign additional waivers of claims for opioid-related damages.

15. Resolution 2023-029 Ratifying the Reappointment of Matt Schild and the Appointment of Hilary Herrmann and Joshua Fudge to the Poudre River Library District Board of Trustees, and Designating Evelyn Peterson as an Alternate.

The purpose of this item is to fill vacancies on the Poudre River Library District Board of Trustees.

16. Resolution 2023-030 Making Appointments to the Historic Preservation Commission.

The purpose of this item is to fill vacancies on the Historic Preservation Commission.

END OF CONSENT CALENDAR

J) ADOPTION OF CONSENT CALENDAR

K) CONSENT CALENDAR FOLLOW-UP *(This is an opportunity for Councilmembers to comment on items adopted or approved on the Consent Calendar.)*

L) STAFF REPORTS

None.

M) COUNCILMEMBER REPORTS

N) CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT CALENDAR FOR INDIVIDUAL DISCUSSION

O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION

The method of debate for discussion items is as follows:

- Mayor introduced the item number and subject; asks if formal presentation will be made by staff
- Staff presentation (optional)
- Mayor requests public comment on the item
- Council questions of staff on the item
- Council motion on the item
- Council discussion
- Final Council comments
- Council vote on the item

Note: Time limits for individual agenda items may be revised, at the discretion of the Mayor, to ensure all have an opportunity to speak. The timer will buzz when there are 30 seconds left and the light will turn yellow. It will buzz again at the end of the speaker's time.

17. First Reading of Ordinance No. 042, 2023, Making Supplemental Appropriations from Lease Financing Proceeds and Appropriating Prior Year Reserves for the Purchase of Vacant Land at the Former Hughes Stadium Site.

The purpose of this item is to consider an appropriation to purchase the land of the former Hughes Stadium.

18. First Reading of Ordinance No. 043, 2023, Adopting the Vision Zero Action Plan as a Component of City Plan.

The purpose of this item is to consider adoption of the Vision Zero Action Plan.

19. Items Related to Election Code Changes.

A. First Reading of Ordinance No. 044, 2023, Amending Chapter 7 of the Code of the City of Fort Collins Relating to the Conduct of the City's Regular Municipal Election.

B. First Reading of Ordinance No. 045, 2023, Amending Chapter 7 of the Code of the City of Fort Collins Relating to Candidacy in a Municipal Election.

C. First Reading of Ordinance No. 046, 2023, Amending Chapter 7 of the Code of the City of Fort Collins Relating to Financial Disclosure Requirements.

The purpose of this item is to consider adopting changes to City Code required by the approval of Fort Collins voters to move the City's regular municipal election from April to November in odd-numbered years.

Specific changes proposed include: clarifying election administration provisions applying to City run elections and the applicability of State law to coordinated elections, establishing that regular municipal elections will be coordinated with the County unless the Council provides otherwise, adapting deadlines for filing for office to align with the requirements of the Uniform Election Code, and updating the timing for filing financial disclosures to align with the timing of regular municipal elections.

P) OTHER BUSINESS

OB 1. Possible consideration of the initiation of new ordinances and/or resolutions by Councilmembers.

(Three or more individual Councilmembers may direct the City Manager and City Attorney to initiate and move forward with development and preparation of resolutions and ordinances not originating from the Council's Policy Agenda or initiated by staff.)

OB 2. Possible Consideration of a Motion to Enter into an Executive Session to Discuss Water Issues.

"I move that the City Council go into executive session pursuant to:

- City Charter Article Roman Numeral Two, Section 11(2),
- City Code Section 2-31(a)(2) and
- Colorado Revised Statutes Section 24-6-402(4)(b),

for the purpose of discussing with the City's attorneys and appropriate management staff the following items:

1. Specific legal questions related to potential litigation regarding the Northern Integrated Supply Project or the Halligan Reservoir Project; and
2. The manner in which the particular policies, practices or regulations of the City related to the City's water supply or the Halligan Reservoir Project may be affected by existing or proposed provisions of federal, state or local law."

Q) ADJOURNMENT

Every regular Council meeting will end no later than midnight, except that: (1) any item of business commenced before midnight may be concluded before the meeting is adjourned and (2) the Council may, at any time prior to adjournment, by majority vote, extend a meeting beyond midnight for the purpose of considering additional items of business. Any matter that has been commenced and is still pending at the conclusion of the Council meeting, and all matters for consideration at the meeting that have not yet been considered by the Council, will be deemed continued to the next regular Council meeting, unless Council determines otherwise.

Upon request, the City of Fort Collins will provide language access services for individuals who have limited English proficiency, or auxiliary aids and services for individuals with disabilities, to access City services, programs and activities. Contact 970.221.6515 (V/TDD: Dial 711 for Relay Colorado) for assistance. Please provide advance notice. Requests for interpretation at a meeting should be made by noon the day before.

A solicitud, la Ciudad de Fort Collins proporcionará servicios de acceso a idiomas para personas que no dominan el idioma inglés, o ayudas y servicios auxiliares para personas con discapacidad, para que puedan acceder a los servicios, programas y actividades de la Ciudad. Para asistencia, llame al 970.221.6515 (V/TDD: Marque 711 para Relay Colorado). Por favor proporcione aviso previo cuando sea posible. Las solicitudes de interpretación en una reunión deben realizarse antes del mediodía del día anterior.



PROCLAMATION

WHEREAS, American women of every race, class, and ethnic background have made historic contributions to the growth and strength of our Nation in countless recorded and unrecorded ways; including women who have served our country courageously in the military and

WHEREAS, American women have played and continue to play critical economic, cultural, and social roles in every sphere of the life of the Nation by constituting a significant portion of the labor force working inside and outside of the home; including volunteering and

WHEREAS, American women of every race, class, and ethnic background served as early leaders in the forefront of every major progressive social change movement; and

WHEREAS, American women have been leaders, not only in securing their own rights of suffrage and equal opportunity, but also in the following movements: abolitionist, the emancipation, industrial labor movement, the civil rights, the women’s rights and other movements, especially the peace movement which created a more fair and just society for all; and

WHEREAS, Despite these contributions, the role of American women in history has been consistently overlooked and undervalued, in the sciences, literature, teaching, study of American history as well as in their contributions in areas listed above; and

WHEREAS, Living Her Legacy, is a local nonprofit who is Recognizing Women. Inspiring Girls. This Historic public art/education exhibition is creating a generation of change makers who will impact their communities and the girls who come behind them with their women’s public art exhibition and education program for girls.

NOW, THEREFORE, I, Jeni Arndt, Mayor of the City of Fort Collins, do hereby proclaim the month of March, 2023 as

WOMEN’S HISTORY MONTH

and calls upon the community members of Fort Collins to celebrate March as Women’s History Month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 21st day of March, 2023.

Mayor

ATTEST:

City Clerk



AGENDA ITEM SUMMARY

City Council

STAFF

Anissa N. Hollingshead, City Clerk

SUBJECT

Consideration and Approval of the Minutes of the January 17, February 7, February 21, and March 7, 2023 Regular Council Meetings.

EXECUTIVE SUMMARY

The purpose of this item is to approve the minutes of the January 17, February 7, February 21, and March 7, 2023 regular Council meetings.

ATTACHMENTS

1. Draft Minutes, January 17, 2023
2. Draft Minutes, February 7, 2023
3. Draft Minutes, February 21, 2023
4. Draft Minutes, March 7, 2023

January 17, 2023

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

PROCLAMATIONS & PRESENTATIONS

5:00 PM

A) PROCLAMATIONS AND PRESENTATIONS

There were no proclamations.

REGULAR MEETING

6:00 PM

B) CALL MEETING TO ORDER

Mayor Jeni Arndt called the meeting to order at 6:00 p.m. in the City Council Chambers at 300 Laporte Avenue, Fort Collins, Colorado, with hybrid participation available via the City’s Zoom platform.

C) PLEDGE OF ALLEGIANCE

Mayor Jeni Arndt led the Pledge of Allegiance to the American Flag.

D) ROLL CALL

PRESENT

- Mayor Jeni Arndt
- Mayor Pro Tem Emily Francis
- Councilmember Susan Gutowsky
- Councilmember Julie Pignataro
- Councilmember Tricia Canonico
- Councilmember Shirley Peel
- Councilmember Kelly Ohlson

STAFF PRESENT

- City Manager Kelly DiMartino
- City Attorney Carrie Daggett
- City Clerk Anissa Hollingshead

E) CITY MANAGER'S AGENDA REVIEW

City Manager Kelly DiMartino provided an overview of the agenda, including:

- There were no changes to the published agenda.
- All items on the consent agenda were recommended for approval.

F) COMMUNITY REPORTS

None.

G) PUBLIC COMMENT ON ANY TOPICS OR ITEMS OR COMMUNITY EVENTS
(Including requests for removal of items from Consent Calendar for individual discussion.)

Jason Knebel, Fort Collins resident, spoke about the experience residents had during the Hughes Stadium development process and poor treatment from elected officials at that time. He requested Councilmember Francis recuse herself from any further actions on Ordinance No. 114, 2022, due to a conflict of interest because of her work with FoCo Forward and urged Council to listen to their constituents.

Abigail Feuka, Fort Collins resident, spoke in support of the Land Development Code adopted in Ordinance No. 114, 2022, sharing her experiences as a resident in obtaining housing in the community.

Tom Tucker, Fort Collins resident, spoke as a renter and property manager in Fort Collins and requested the proposed rental program be postponed or denied outright.

Hanna McCaslin, Fort Collins resident, spoke in support of the Land Development Code and its measures supportive of increasing housing availability and affordability, sharing experience as a grad student and challenges faced in the CSU community.

Christy Vattano, property manager, spoke in opposition to the proposed rental housing program.

Matthew Behunin, Fort Collins resident, spoke about prior neighbors who decided to move out of state due to the cost of living and his support for the adopted Land Development Code.

Sophia Babb spoke in support of the Land Development Code and shared her story moving to Fort Collins in 2019, and concerns from her extended family not being able to live in Fort Collins due to price.

Izze Babb spoke as a special education teacher at Fort Collins High School and as a person of color, noting the lack of Black people in Fort Collins is not an accident and has been planned throughout the history of the city's development. She shared support for the provisions of the Land Development Code in adding housing options to help rectify this situation.

Joel McGuire shared as a happiness researcher that there is clear evidence that some places are happier places than others to live, and Fort Collins is one of those places. He spoke in support of increasing accessibility in housing through the Land Development Code.

Adam Eggleston, Fort Collins resident, spoke on the upcoming discussion on occupancy limits in support of eliminating the existing occupancy ordinances that historically were implemented to counteract fair housing requirements.

Jenna Parker, Fort Collins resident, spoke in support of housing options through the provisions of the new Land Development Code.

Jenny Bramhall, Fort Collins resident, spoke in support of the new land use code as an Old Town resident.

Mary Alice Grant, Fort Collins resident, spoke about finding the Land Development Code a challenge, and the need to take into consideration the need to support diversity in housing needs and desires.

She noted people have moved here for specific reasons and those reasons should be honored, speaking in support of repealing the current ordinance and convening an inclusive dialogue.

Chris Conway, Fort Collins resident and high school teacher, noted as someone who grew up here returning to the community was a big awakening in realizing the challenges around housing, noting as a teacher he can tell how long his colleagues have worked at the school based upon where they live. He shared his support for the adopted Land Development Code.

Brannan Davis, property manager and rental owner in Fort Collins, spoke against the proposed rental licensing and inspection program.

Dolores Williams, Fort Collins resident, spoke regarding the rental housing program and its proposed annual budget, asking what the opportunity costs are by funding this program.

Jackson Wagner, Fort Collins resident, spoke in support of measures to increase affordable housing.

David Roy, Fort Collins resident, spoke in support of repealing Ordinance No. 114, 2022, and instead pursuing a collaborative path towards a new land use code with robust public involvement.

Kate Conley, Fort Collins resident, spoke in support of the Land Development Code and the supply problem leading to the housing crisis as an architect who reviewed the provisions prior to its adoption and is truly excited for its potential.

Erin Brandt, Fort Collins resident and property manager, spoke to request the rental housing program be delayed or eliminated, noting many measures are already in place to keep rental properties safe.

Julie Sutter, Fort Collins resident, spoke in support of the Land Development Code.

Marcus Valdez, Fort Collins resident, spoke about the proposed rental housing program, sharing his support for safe housing for all renters while stating his belief the estimated costs of the program and inspection costs being far too low for actual costs experienced in other communities.

Mark Paschke, Fort Collins resident, spoke in support of the new Land Development Code and his belief it is a good plan that looks forward.

Dawn Putney, Fort Collins resident, spoke as an owner of both a for-profit and non-profit business in support of the Land Development Code and the importance of an inclusive and equitable opportunity for housing.

Angela Milewski, Fort Collins resident, shared her experience as a landscape architect and her involvement in a stakeholder group to garner feedback on the code, and spoke in support of the new Land Development Code.

Carrie Gillis, a business owner and landlord in the community since 1985, shared she was part of the rental housing task force which never heard the cost estimates staff has now presented. She also pointed to the experiences Denver is having in implementing a rental licensing and inspection program and the high level of costs that are not being recouped as expected.

Lou Sharpe, Fort Collins resident, spoke in support of the new Land Development Code and the pursuit of option 1 to repeal the ordinance and keep as much of it as possible. He also stated support for an equitable approach to zoning, with common zoning across the community. He shared his experiences as a resident of Boulder as a student in the late 70s when plans to build a denser more inclusive city were fought by residents who were successful in stopping those changes.

RB Stewart, Fort Collins resident, spoke about the Land Development Code and his view it has few mandates for affordable housing and a lot of room for unintended consequences.

Jack Paschke, Fort Collins resident, thanked staff and the Council for their hard work on the new Land Development Code and spoke in support of it.

Lorye McLeod, Fort Collins resident, spoke as the president of a nonprofit organization working with older adults in support of repeal and replacement of the Land Development Code that retains a focus on the need for missing middle housing.

Eric Sutherland, Fort Collins resident, shared a suggestion of how the City can pursue affordable housing, sharing photos of a stalled project that has remained as a shell that could be developed with tax increment financing as workforce housing.

Casey Setash, Fort Collins resident, spoke in support of the Land Development Code and increasing affordable housing, noting how the lack of housing detracts from the ability to bring in researchers and students to our top-notch research institution.

Deb Bobowski, Fort Collins resident, spoke as a retired real estate researcher and economic development specialist in support of the Land Development Code and its focus on affordable housing.

Greg Vogel, Fort Collins resident in Old Town as a renter, homeowner and landowner, spoke to request the suspension of the proposed rental registration program. He requested the issues driving this be quantified.

Laura Michelle MacWaters, Fort Collins resident, spoke in support of the adding provisions to City code against discrimination to match existing state law and include protections for gender identity and expression. He also spoke in support of more high density housing options in the community.

Tandena Wagner, Fort Collins resident, spoke as a CSU graduate and now employee in support of the new Land Development Code.

Yazmin Juneau, Fort Collins resident, spoke as a graduate of CSU for a bachelor's as well as a MSW, in support of repealing and passing a new Land Development Code before June to help support a range of residents in the community.

Amy Hoeven, Fort Collins resident, spoke in support of the new Land Development Code, and shared her observations as a fourth generation Coloradan, seeing the changes in housing challenges people are facing, leading to losing people in our community.

Darcy McClure, Fort Collins resident, spoke as an affordable housing developer and member of the CARE Housing Board about the extreme benefits of addressing housing affordability and ensuring diverse housing. She spoke in support of repealing and updating the Land Development Code by Summer 2023.

Luke Hammons, Fort Collins resident, spoke on behalf of a neighbor with a fear of public speaking in support of the new Land Development Code and the need for more housing options. On his own behalf, he spoke of his experience as a teacher who is now a student success coach and the challenges he has as a homeowner in maintaining his home while watching his friends leave Fort Collins.

Anthony Smith, Fort Collins resident and landlord in the community, spoke in opposition to the rental licensing program, due to the sham survey that was sent out as well as the high level of the estimated costs that appear to be underestimated.

Donald Silar, Fort Collins resident, spoke as the owner of one rental unit and business consultant in opposition to the proposed rental licensing program.

Anna Wright, Fort Collins resident, shared her experience as a renter moving here as a graduate student, noting it doesn't make financial sense to stay in a city like Fort Collins, while the new Land Development Code provides hope that the City recognizes these challenges and is taking steps to change this.

Sarah Albright, Fort Collins resident, shared support as a graduate student for the new Land Development Code.

Laura Olive, Fort Collins resident, spoke about the complexity of the Land Development Code and the challenges of putting it in front of voters for a referendum, noting the impact on proposed projects of a code in flux, and encouraged the Council to retain an expansive vision for what the city can be through the preservation of the new Land Development Code.

Clerk's Note: Mayor Arndt called for a ten-minute recess at 7:30 p.m. The meeting resumed at 7:42 p.m.

Mikko Jiminez, Fort Collins resident, spoke in support of the Land Development Code adopted last November, sharing his experience as a graduate student, noting how widespread his experiences are. He also shared his professional and research experience in green spaces and urbanization and how residents of urban areas experience wildlife and nature. He also spoke about misconceptions about renters in the community.

Stefanie Berganini, Fort Collins resident, spoke as a member of and on behalf of the Affordable Housing Board in support of the Land Development Code and its work towards furthering housing choice and affordability. She spoke in support of repealing and replacing the ordinance enacting the Land Development Code as quickly as possible.

Steve Kuehneman, Fort Collins resident and executive director of CARE Housing, spoke in support of the Land Development Code as adopted last November.

Sister Mary Alice Murphy, Fort Collins resident who has worked for affordable housing for over 30 years, spoke in support of housing needed for low income and working-class people so there is room for all the people who work here, and encouraged timely action on ensuring an effective code can be put in place quickly.

Kathy Maloney, Fort Collins resident, spoke regarding what it means to reside some place and thanked Council and staff for efforts to update the Land Development Code that allows more people like herself to live here.

Molly Gutilla, Fort Collins resident, spoke in support of the new Land Development Code, making clear as someone with a doctoral degree in public health that housing and health are deeply tied. Gutilla also dittoed comments about land use codes historically having equity impacts.

Alex Woodchek, Fort Collins resident, shared experiences with trying to find housing in Fort Collins while making ends meet by violating U+2 provisions and spoke in support of the newly adopted Land Development Code.

James Burtis, Fort Collins resident, noted he is a researcher and homeowner but would not have been able to own that home if he had moved here just a year later. He shared support for the Land Development Code and repealing the current ordinance to allow the topic to come back to Council

with robust public participation. He suggested the engagement approach used for the active modes plan be used for this work going forward to solicit ideas that might help in improving the code.

Joe Rowan, Fort Collins resident, spoke about the playbook of electoral politics that creates a message dependent upon deception and lies so that people hear that message from a range of sources and start believing it, leading to a great deal of confusion.

Rachel Vanausdall, Fort Collins resident and graduate student at CSU, spoke in support of the Land Development Code and repealing and revising the current ordinance as quickly as possible to create more housing options in a range of places.

Steve Sunderman, Fort Collins Resident, spoke against the new Land Development Code.

Troy Jones, Fort Collins resident, spoke as an architect and land planner regarding affordable housing, noting he is happy to see the Land Development Code take shape from some of the discussions the Affordable Housing Board had previously while he served on that board a few years ago. He spoke to the things that are possible in the toolbox of affordable housing and the importance of increasing those tools.

Kelly Evans, Fort Collins resident, spoke in support of the Land Development Code and the democratic process involved in its development. She requested the Council repeal and replace the ordinance.

Simon Cecil spoke as a Fort Collins native who is unable to return to the city and live close to his family in support of the Land Development Code.

Martha Hedrick, Fort Collins resident, spoke about affordable housing and how it relates to registering rentals as a landlord and homeowner, speaking against a rental housing registration program.

Vickie Reinke spoke as a rental property owner in opposition to a rental registration program, noting 30% of her rental income currently goes towards property taxes, insurance and property management fees. She noted the impact of cost increases on the availability of affordable housing.

Curtis Reinke spoke as a rental property owner in the city in opposition to a rental registration program.

Ann Hutchison, Fort Collins resident and President and CEO of the Fort Collins Area Chamber of Commerce, spoke in support of the Land Development Code, encouraging the current ordinance be repealed with a commitment to extensive engagement to put in place a new ordinance that takes advantage of every tool to increase affordable housing.

Mike Vogel spoke as a rental property owner noting he has not heard anyone speak in support of the rental registration program. He spoke about the supply of rental housing in the community, owned by landlords like himself, noting increasing regulation increases costs that will be passed on to tenants.

Noah Munson, Fort Collins resident, spoke as a hydrologist about the need for more affordable housing in support of the Land Development Code.

Richard Cavendish, Fort Collins resident in Old Town, spoke about his small lot, with an adjacent duplex, and the efforts he tried to take to build an ADU in his backyard which was not permitted under the land use code.

Alex Krausz, Fort Collins resident, spoke to encourage the Council to rescind the Land Development Code and take more time to ensure all residents' voices are heard in developing new provisions.

Christophe Attard, Fort Collins resident, spoke regarding the proposal for rental housing inspections, sharing the adage a good landlord makes a good tenant, stating his opposition to the proposed program noting it is government interference.

Phil Stout, Fort Collins resident, spoke as a rental property owner in opposition to the rental housing registration program.

Bob Pawlikowski, Fort Collins resident, spoke as a member of the Affordable Housing Board in support of the new Land Development Code.

Nick DeSalvo, Fort Collins resident and speaker of the CSU Student Senate, spoke in support of the Land Development Code and the need for affordable housing policies. He noted the proposal to increase CSU tuition coupled with housing costs is forcing students to leave CSU.

Jerry Gavaldon, Fort Collins resident, spoke about the bold Land Development Code but stated it will not help reduce issues around affordable housing because the market dictates affordability. He also stated his opposition to the proposed rental licensing program.

Kathleen Attridge, Fort Collins resident, spoke as a landlord and property management company owner in opposition to the proposed rental licensing program, noting there are a lot of holes in the information available about that program.

Kristin Candlla, Fort Collins resident and president of Habitat for Humanity in Fort Collins, spoke in support of the Land Development Code and shared about how the Fair Housing Act was passed in 1968 immediately after the assassination of Martin Luther King Jr., noting the second part of dismantling housing discrimination is affirmatively working to create housing options.

Sabrina Herrick, Fort Collins resident, spoke about the City's handling of services for homeless people, noting an expectation the City hire people with expertise in service delivery for unhoused residents.

Gemma Inguanta, Fort Collins resident, spoke in support of Ordinance No. 152, 2022, regarding nondiscrimination definitions in the City Code.

Jorge (no last name given), spoke as a student at CSU, former student representative, and current director of housing at CSU, spoke about the struggles of students relating to housing and the importance of housing affordability.

Clint Anders, Fort Collins resident, spoke in support of the newly adopted Land Development Code with its focus on housing options and affordability, sharing his experience in a diverse and affordable neighborhood in a home he wouldn't be able to afford to buy today if he had to.

Sarah (no last name given), spoke as a rental housing investor in opposition to the rental registration program and in support of an easy-to-use portal for complaints.

Jessica Hazlet, Fort Collins resident, spoke in support of the new Land Development Code.

Brian Kelly, Fort Collins resident and rental property manager, spoke against the proposed rental property registration program, noting the money he saves tenants by taking on much of the maintenance work himself for his properties to keep rents low.

Diana Murphy, Fort Collins resident, spoke as a petition circulator against the Land Development Code.

Louis Pentowski, Fort Collins resident, spoke against the Land Development Code.

Glen Colton, Fort Collins resident, spoke as a former member of the Planning and Zoning board that helped develop the first City Plan, who now helped collect petition signatures that neighbors were anxious to sign. He stated it is not the City's job to create more housing even if there isn't housing for everyone.

Trudy Haines spoke to encourage the Council to repeal the Land Development Code and start over or put it up to a vote.

Matt Peters, Fort Collins resident, spoke about affordable housing and noted any increase in supply will be immediately snapped up by people moving from out of state or big investors.

Deirdre Sullivan, Fort Collins resident and President of the United Way of Larimer County, spoke in support of the updated Land Development Code, encouraging the current ordinance be repealed and replaced as quickly as possible. She also spoke to the work of the revised code in undoing redlining and other issues.

Kristin Fritz, Fort Collins resident and chief real estate officer at Housing Catalyst, shared her support for the work done in the revised Land Development Code, recapping the range of comments in support.

Katherine Dubiel, Fort Collins resident, commented on item 7 on the consent item about the sale of 945 East Prospect, and if that property has a potential higher use in its zone district if the Council is really invested in making good choices for increasing housing options.

Christina Larson, Fort Collins resident, spoke regarding the Land Development Code, asking what is affordable.

Roger Hooper, an area property owner, spoke about the need for density that supports transit and in support for the changes being made in the adopted Land Development Code.

Lisa Northern spoke about the lack of amenities on the south end of town, including lack of bus service. There is a high density of new housing coming in. If things are going to be nicer and easier and better, there must be a way to help people move in and keep traffic flowing, by not just trying to change things without improving them as well.

Margaret Zemle, Fort Collins resident, renter, homeowner and landlord, spoke against the rental licensing program.

Jeff Gantmen, Fort Collins resident, spoke as someone who moved to Fort Collins 9 months ago in support of repealing the Land Development Code and replacing it with a code with some changes, including looking at how vacant lots are utilized.

H) PUBLIC COMMENT FOLLOW-UP

Councilmember Francis noted the question on consent item number 7 and asked if there was staff available to respond to that concern raised. Kai Kleer, the staff planner working on that project, shared the project has been approved at this point subject to the City's sale of the property, and provided details of the challenges the site presents for a development such as a multifamily development. The subject property also contains a building that has been designated as a historic resource that must be preserved as part of the Kum n Go development.

Councilmember Gutowsky shared her understanding that housing CSU students in the Best Western is the result of a lack of dorm space rather than a lack of affordable housing.

I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

None.

J) CONSENT CALENDAR

- 1. Second Reading of Ordinance No. 150, 2022, Amending Ordinance No. 084, 2022 to Amend the Effective Date of the 2022 Council District-Precinct Map.**

This Ordinance adopted 6-0 on December 20, 2022, amends Ordinance No. 084, 2022, Amending the City of Fort Collins District-Precinct Map, adopted on second reading on July 19, 2022, in order to move forward clarification and amendment of the District-Precinct Map in order to eliminate confusion and practical impacts and inconsistencies in Councilmember districts.

Adopted on Second Reading.

- 2. Second Reading of Ordinance No. 152, 2022, Amending the Definition of Discrimination in City Code Chapter 13 to Prohibit Discrimination on the Bases of Sexual Orientation, Gender Identity and Gender Expression.**

This Ordinance, adopted 6-0 on December 20, 2022, modifies anti-discrimination language in City Code Chapter 13, Article II, to prohibit discrimination on the bases of "sexual orientation, gender identity and gender expression." Absent this new language, our residents in these classes feel unprotected from discrimination, resulting in not including "all" in our growing community. The amendment advances the City of Fort Collins' vision to be a safe and welcoming community for all.

Adopted on Second Reading.

- 3. Second Reading of Ordinance No. 153, 2022, Amending Section 2-569 of the Code of the City of Fort Collins to Update and Clarify the Process for Review of Ethics Complaints.**

This Ordinance, adopted 6-0 on December 20, 2022, updates the Code provisions describing the ethics complaint process and establishing a new process for screening and investigation of complaints alleging ethics violations by Councilmembers. The Ethics Review Board met in November 2021, January 2022, May 2022, and October to discuss options for improvements to the ethics complaint screening and review process. The Ethics Review Board recommended the changes in the Ordinance for adoption.

Adopted on Second Reading.

- 4. First Reading of Ordinance No. 001, 2023, Appropriating Funds in the General Fund for 2023 Increases in Salary Compensation for the Mayor and Councilmembers as Approved by the City of Fort Collins Voters on November 8, 2022, by the Amendment of Section 3 in Article II of the City Charter.**

The purpose of this item is for a General Fund supplemental appropriation to fund 2023-2024 Budget Offer 28.12 - City Council Voter Approved Pay Increase but only for fiscal year 2023. This budget request was not funded in the 2023 annual appropriation since the election results of the 2022 City-Initiated Charter Amendment No. 1 (Council Compensation) ballot initiative would not be known until after First Reading of the City's annual appropriation ordinance for 2023. The initiative was approved by Fort Collins voters and this action is to appropriate the increased spending in the General Fund to implement the ballot initiative for the salary increases in 2023.

Adopted on First Reading.

5. **First Reading of Ordinance No. 002, 2023, Appropriating Philanthropic Revenue Received Through City Give for the Acquisition of a Community Soundstage in the Parks Department.**

The purpose of this item is to request appropriation of \$250,000.00 in philanthropic revenue received by City Give for Parks for the purchase and acquisition of a community soundstage.

In 2019, City Give, a formalized enterprise-wide initiative was launched to create a transparent, non-partisan governance structure for the acceptance and appropriations of charitable gifts.

Adopted on First Reading.

6. **First Reading of Ordinance No. 003, 2023, Declaring a Portion of City-Owned Property at 835 Wood Street as Right-of-Way.**

The purpose of this item is to declare a strip of property owned by the City as road right-of-way (ROW) via the proposed plat for the Fort Collins Fleet Maintenance Subdivision. City staff recently discovered that a portion of the City's property at 835 Wood Street is being used for public street purposes, but was never dedicated or declared to be public ROW. This Ordinance establishes this portion of the property as ROW for Wood Street and authorizes the City Manager to dedicate such ROW through execution of the plat.

Adopted on First Reading.

7. **First Reading of Ordinance No. 004, 2023, Authorizing the Sale of the Real Property Located at 945 East Prospect Road to Kum & Go, L.C.**

The purpose of this item is to authorize the sale of the City-owned property located at 945 East Prospect Road to Kum & Go, L.C., an Iowa limited liability company (Kum & Go), for \$403,000. The sales price was determined by an appraisal by CBRE Valuation and Advisory Services, which provides on-call property appraisals for the City. A purchase and sale agreement was executed by Kum & Go and the City Manager on November 3, 2022. Completion of the purchase is contingent on City Council's approval of the sale by its final adoption of this Ordinance in accordance with Section 23-111 of the City Code, and approval of the final development plans by the City's Director of Community Services and Neighborhood Development.

Adopted on First Reading.

8. **First Reading of Ordinance No. 005, 2023, Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations for the 215 North Mason Municipal Court 15-Year Buildout Design and Related Art in Public Places.**

The purpose of this item is to receive Council approval for an appropriation for Design of the 215 North Mason Municipal Court 15-year build-out using Capital Expansion Fees.

Adopted on First Reading.

9. **First Reading of Ordinance No. 006, 2023, Appropriating Prior Year Reserves in the Transportation Capital Expansion Fee Fund for Eligible Reimbursement to the Northfield Developer for the Construction of Suniga Road Improvements.**

The purpose of this item is to appropriate \$2,081,548 of Transportation Capital Expansion Fee (TCEF) Funds for expenditure from the Transportation Capital Expansion Fee Program Budget to reimburse the Northfield developer for its oversizing construction of Suniga Road. The Northfield developer has constructed Suniga Road as a four-lane arterial to City standards as part of its development requirements. Per Section 24-112 of the City Code, the developer is eligible for reimbursement from Transportation Capital Expansion Fee (TCEF) funds for the oversized, non-local portion of Suniga Road not attributed to the local portion obligation.

Adopted on First Reading.

10. **Resolution 2023-001 Authorizing an Intergovernmental Agreement Between the Cities of Fort Collins, Greeley and Loveland for the Exchange of Judicial Services, and Appointing Temporary Judges.**

The purpose of this item is to authorize an intergovernmental agreement (IGA) with the Cities of Greeley and Loveland for judicial services to be used in the event that a conflict of interest or other circumstance prevents the Municipal Judge and assistant judges from hearing a particular Municipal Court case. This agreement is intended to replace an existing 2020 IGA between Fort Collins, Loveland, and Greeley. This agreement is updated to include all current, eligible judges from each jurisdiction.

Adopted.

11. **Items Relating to the Appointment of Assistant Municipal Judges.**

A. Resolution 2023-002 Reappointing Kristin Brown as an Assistant Municipal Judge of the Fort Collins Municipal Court and Authorizing the Execution of an Employment Agreement.

B. Resolution 2023-003 Reappointing Vicki Cirbo as an Assistant Municipal Judge of the Fort Collins Municipal Court and Authorizing the Execution of an Employment Agreement.

C. Resolution 2023-004 Reappointing Michelle Kline as an Assistant Municipal Judge of the Fort Collins Municipal Court and Authorizing the Execution of an Employment Agreement.

D. Resolution 2023-005 Reappointing Brandi Nieto as an Assistant Municipal Judge of the Fort Collins Municipal Court and Authorizing the Execution of an Employment Agreement.

E. Resolution 2023-006 Reappointing Courtney Patterson as an Assistant Municipal Judge of the Fort Collins Municipal Court and Authorizing the Execution of an Employment Agreement.

F. Resolution 2023-007 Appointing Sarah Simchowicz as an Assistant Municipal Judge of the Fort Collins Municipal Court and Authorizing the Execution of an Employment Agreement.

The purpose of this item is to reappoint all current Assistant Municipal Judges for a term of two years and to appoint Sarah Simchowicz to her first two year term. The City Charter provides for the appointment of judges of the Municipal Court for two (2) year terms. Chief Judge Jill A. Hueser recommends that all current Assistant Municipal Judges be reappointed, to serve in the absence of the Chief Judge.

Adopted All Resolutions.

12. **Resolution 2023-008 Authorizing the Execution of an Intergovernmental Agreement Between the City of Fort Collins and the Fort Collins Downtown Development Authority Regarding the Renovation and Redevelopment of Olive Street Alley, Harper Goff Alley and East Myrtle Street Alley.**

The purpose of this item is to authorize the execution of an Intergovernmental Agreement (the "IGA") between the City and the Downtown Development Authority (the "DDA") for renovation and redevelopment of Olive Street, Harper Goff and East Myrtle Street Alleys. The alley names listed are temporary and are designated as such only for the purpose of identification in the IGA and during design and construction. These alleys will be named in the future after consideration of the City's practice of naming downtown alleys to honor exemplary individuals who reflect the historic and cultural geography of the downtown area.

Adopted.

13. **Resolution 2023-009 Adopting Findings of Fact in Support of the City Council's Decision to Remand to the Historic Preservation Commission for Rehearing the Determination of Eligibility for Landmark Designation of the Service Station Located at 825 North College Avenue.**

The purpose of this item is to adopt findings of fact in support of City Council's decision to remand back to the Historic Preservation Commission ("HPC") the Landowner's application and appeal concerning the service station located at 825 North College Avenue. The HPC's decision, which was appealed to Council, found that the service stations is a historic resource for the purposes of development review under Land Use Code Section 3.4.7 and, therefore, is eligible for Landmark Designation. Council heard the Landowner's appeal on December 20, 2022, and denied the claim that the HPC conducted an unfair hearing, but remanded the matter to the HPC for consideration of additional evidence in determining eligibility for designation.

Adopted.

14. **Resolution 2023-010 Approving an Intergovernmental Agreement Between the City of Fort Collins and the United States Drug Enforcement Administration to Staff an Anti-Narcotics Trafficking Taskforce.**

The purpose of this item is to obtain approval for an Intergovernmental Agreement between the City and the United States Drug Enforcement Administration (DEA) to station one Fort Collins Police Services (FCPS) police officer with a DEA anti-narcotics trafficking taskforce headquartered in Denver.

Adopted.

15. **Resolution 2023-011 Authorizing Amendment One to the Intergovernmental Agreement Regarding Larimer County Regional Opioid Settlement Implementation.**

The purpose of this item is to approve an amendment to Regional Intergovernmental Agreement approved in Resolution 2022-055 adopted by Council in May 2022 to add the Town of Estes Park as a participating local government. Current participants include Larimer County, City of Fort Collins, City of Loveland, and Town of Wellington. The amendment adds an Estes Park representative to the Regional Opioid Abatement Council that oversees funding received by the Larimer County Region from the national settlements reached with opioid distributors and manufacturers.

Adopted.

16. **Resolution 2023-012 Appointing Daniel Benton and Carl Pratt to the Fort Collins Tourism Improvement District Board of Directors.**

The purpose of this item is to appoint Daniel Benton and Carl Pratt to the Fort Collins Tourism Improvement District (District) Board of Directors. Daniel Benton will serve a second term representing large lodging establishments and Carl Pratt will serve as an at-large director. The terms for both directors will begin January 17, 2023, and end January 17, 2026. The District Board has adopted resolutions nominating both directors in 2022.

Adopted.

17. **Resolution 2023-013 Repealing Resolution 2001-120, Establishing Criteria for Arterial Intersection Analysis.**

The purpose of this item is to consider repealing Resolution 2001-120. This resolution established that:

- *An intersection alternatives analysis must be completed for any major improvement at arterial/arterial and arterial/collector intersections to assist transportation staff in determining the most appropriate improvements for the intersection.*
- *The analysis shall include evaluation of a roundabout and traditional intersection improvements.*
- *The City Manager shall submit proposals for roundabouts to City Council for a final determination. This is not required if a roundabout is not selected as the preferred alternative.*

Very few modern roundabouts were in use in the Front Range in the early 2000's and this resolution was a tool to help encourage their implementation. Roundabouts have become much more common since then, and several have been successfully constructed in Fort Collins and surrounding communities. In general, roundabouts have proven to be an efficient and safe intersection control type for certain intersections. Additionally, Fort Collins adopted the Master Street Plan, which identified many intersections throughout the community as potential locations for roundabouts.

Alternatives outside of traditional intersection controls and roundabouts should also be considered as we move forward to better align with the vision and priorities of our community and allow Fort Collins to remain nimble to innovations in traffic engineering and design.

Repealing this resolution will:

- *Allow the City to evolve and improve our intersection alternatives criteria to reflect the vision, priorities and conditions of our community at the time.*
- *Allow additional intersection alternatives to be considered beyond roundabouts and traditional intersections.*
- *Change authority on the final determination of roundabouts from City Council's authority to City staff.*

Adopted.

END OF CONSENT CALENDAR

Councilmember Francis moved, seconded by Councilmember Peel, to approve the recommended actions on items 1-17 on the consent calendar.

The motion carried 7-0.

K) CONSENT CALENDAR FOLLOW-UP *(This is an opportunity for Councilmembers to comment on items adopted or approved on the Consent Calendar.)*

Councilmember Pignataro requested more information about the costs associated with architectural services on item 8. Brian Hergott responded, noting costs of approximately 10% of total project costs is in line with industry standards.

Mayor Arndt congratulated those appointed as Assistant Municipal Judges, and noted the municipal court is one of the pillars of municipal government that is sometimes unsung.

Councilmember Ohlson noted the Art in Public Places piece in the court building didn't work within a month of its installation and was never fixed. He suggested the funding allocated in the renovation for Art in Public Places be used to get the original art operational again. On the DDA item relating to alleys, he noted the reference to no City dollars being used does not acknowledge the forty years of tax increment that has gone to support the DDA and work like this.

Councilmember Peel drew attention to item 5, noting her amazement at how the Fort Collins community stands up and donates when things are needed.

Mayor Arndt announced the staff report scheduled for tonight has been postponed due to weather.

Clerk's Note: Mayor Arndt called for a 10-minute recess at 9:30 p.m. The meeting resumed at 9:43 p.m.

L) STAFF REPORTS

Volunteer Services Program.

The planned staff report relating to the Volunteer Service Program was postponed due to inclement weather.

M) COUNCILMEMBER REPORTS

None

N) CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT CALENDAR FOR INDIVIDUAL DISCUSSION

None.

O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION

18. Reconsideration of Ordinance No. 114, 2022, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Land Development Code and Separately Codifying the 1997 Land Use Code as "2022 Transitional Land Use Regulations", Following a Successful Referendum Petition.

The purpose of this item is to provide Council with the options available for action following the presentation of a petition certified as sufficient for referendum. These options include:

• **OPTION 1: Repealing the Ordinance subject to the referendum petition;**

A. *First Reading of Ordinance No. 007, 2023, Repealing Ordinance No. 114, 2022, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Land Development Code and Separately Codifying the 1997 Land Use Code as “2022 Transitional Land Use Regulations”.*

If this option is approved, Council may choose to discuss next steps regarding any future shifts to the current Land Use Code.

Or

• **OPTION 2A: Referring the Ordinance to a vote of the registered electors of the City. Such referral can be to the next regular or special election called for any other purpose or can be to a special election called for that specific purpose:**

B. *Resolution 2023-014, Referring Ordinance No. 114, 2022, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Land Development Code and Separately Codifying the 1997 Land Use Code as “2022 Transitional Land Use Regulations” to a Vote of the Registered Electors of the City at the Next Municipal Election.*

And, if desired, OPTION 2B:

C. *First Reading of Ordinance No. 008, 2023, Calling a Special Municipal Election for the Purpose of Submitting to the Registered Electors a Citizen Referendum of Ordinance No. 114, 2022, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Land Development Code and Separately Codifying the 1997 Land use Code as “2022 Transitional Land Use Regulations”.*

Anissa Hollingshead, City Clerk, provided a brief verbal presentation reviewing the options before the Council tonight as part of the reconsideration of this ordinance.

PUBLIC COMMENT

Britt Kronkosky, Fort Collins resident, acknowledged the problems that are sought to be addressed are real while the big bang approach of doing so is a problem. He encouraged the ordinance be repealed and the public engagement process be reimaged, with outreach to homeowners associations (HOAs) and other stakeholders, and suggested a pilot program to try out any suggested changes.

Adam Eggleston, Fort Collins resident, encouraged the City to implement a temporary land use code and then look to readopt the Land Development Code in late spring or early summer. He encouraged increasing the affordable housing density in the next iteration of the code.

David Quigley, Fort Collins resident, shared his personal history as someone born in affordable housing in Denver and his first placement after graduating with an MSW from CSU was in affordable housing. He noted he and his wife own a rental property that they rent significantly below market because of their commitment to affordable housing and would like to be involved in the work that continues on this topic with reconsideration of the code. He stated support for affordable housing that does not override HOA rights and that includes neighborhood comments.

Eric Hamrick, Fort Collins resident and board member of Preserve Fort Collins, stated support for the repeal of the ordinance based on the fatally flawed public engagement process. He stated support for robust engagement and the inclusion of neighborhood notification and comments. He

noted any attempt to bring back only cosmetic changes to the code will result in another petition effort.

Lori Pivonka, Fort Collins resident, spoke about City Plan and its adoption in 2016. The plan discusses where to focus efforts for change, and noted areas of focus should be closest to jobs and access to transit. In discussing mixed neighborhoods and degree of change, it talks about a high degree of change only being in play in limited areas which is not what the Land Development Code allows.

Joe Rowan, Fort Collins resident, reiterated support for repealing the Land Development Code and coming back this spring with a revised code. He noted it is a misconception the Land Development Code creates affordability. It can facilitate development but it does not create affordability. It is necessary to talk about all the costs that go into living in Fort Collins. He noted it is state law that overrides HOAs not the Land Development Code.

Jean Ruecker, Fort Collins resident, noted she signed the petition to repeal the Land Development Code after reading the code. She stated support for mixed housing in a thoughtful approach.

Nicole Swan, Fort Collins resident, spoke in support of the changes made by the Land Development Code for equity and affordability.

Paul Patterson, requested more information about how these measures in the LDC support affordability.

Tim Johnson, Fort Collins resident, encouraged Council to repeal the ordinance and bring it forward in chunks to allow more in-depth consideration and separating out items that are not controversial.

Ross Cunniff, Fort Collins resident, spoke on his own behalf and on behalf of Preserve Fort Collins, noting more signatures were obtained on the petition than any councilmember received in their last election. He noted the memo on Proposition 123 does not say the Land Development Code must be adopted for the City to have eligibility to participate. It could be done straightforwardly with intentional effort. He encouraged repeal without a hurry to reenact to allow time to work through these issues.

Lief Youngs dittoed the comments of Ross and others. He noted in southern portions of Fort Collins there is a lack of other resources in the sea of houses. There is an opportunity for a focus on 15 minute cities throughout all of Fort Collins.

Brian Tracy, resident of Old Town East, spoke about features of the LDC that are objectionable, including big multi-unit rentals that could be plopped into the middle of single family neighborhoods, noting his objection is to the change in character of areas, not the people who will live there. The return on investment is too big to deter significant development throughout neighborhoods.

Tom Farnsworth, Fort Collins resident, spoke against the Land Development Code, sharing the concerns he heard from residents who signed the petition sections he helped circulate and concerns about reducing the rights of citizens around development in their communities.

Sandy Lee, Fort Collins resident, spoke about the gentleman who helped start the Peace Corps in Fort Collins, noting her parents had to move out of Fort Collins when they could not afford it many decades ago. She asked why we need to make it possible for everyone to live here instead of concentrating on the issues we already have while preserving the city we all love.

COUNCIL DISCUSSION

Mayor Arndt noted a big document and action like this is not going to be perfect but it was a significant process. It was also a significant public process that brought us here to this point tonight. She stated her support for option 1 and shared comments about the public perception around the lack of engagement and awareness around this work that has led her to support an intentional and focused approach to considering the right approach for making shifts to the land use code.

Councilmember Ohlson shared he hadn't intended to speak a lot but wanted to respond to some specific things. He noted while he doesn't agree with Mayor Arndt, he does believe that she believes an approach with more engagement will be successful. He also clarified that he has not been a part of the Preserve Fort Collins group and did not encourage anyone to initiate any particular action although he acknowledged he does believe they did good work. He stated his support for sending this ordinance to a vote of the people to convey to the Council the strength of sentiment across the community to take a fully different approach to changes to the land use code. Regarding perceived misconceptions, he stated he does not see where the LDC supports affordable housing. He views it as an investor and developer bill of rights rather than anything to do with affordable housing. He also reiterated the adoption of the LDC is not necessary to be part of Proposition 123.

Councilmember Gutowsky stated support for option 1 and a robust engagement process. She also shared support for changing the name back to the Land Use Code. She also agreed with a need to define affordability. In creating more density, we need to be looking at parking as well as support for infrastructure in neighborhoods. The public needs to be brought back into the mix in all this work.

Councilmember Francis shared support for the Mayor's comments around repealing and revising the Land Development Code, and working on engagement in the process and addressing the tensions we are seeing around the tradeoffs we are willing to make as a community. She stated support for a lengthy engagement process. While the document says we could increase density by 53%, it also says we could increase deed restricted affordable housing by 100%. The Land Development Code is a foundational document that says what we can do but it is not solely responsible for creating affordable housing. It is also notable our Land Development Code was created to support other adopted plans, including the Air Quality Plan and Transportation Plan and others. There are areas of overlap where people do agree and we do not need to start over. She shared interest in an approach of bringing things forward more piecemeal to allow a thoughtful approach to finding consensus.

Councilmember Pignataro shared her support for option 1 and ensuring everyone who wants to be included in the conversation. When the Council had its strategic weekend almost two years ago, she was excited because she knew this Council was going to get things done. All the things Council has done has been able to move forward at a quick pace with the base in place from prior Councils. Unfortunately, not everyone got to come along at that pace, so this is an opportunity to continue with terms that have now been extended with the shift to November elections to work on this with the community. This also allows a discussion in parts of these different pieces.

Councilmember Peel also thanked everyone for participating in tonight's meeting even in bad weather. She stated she does believe staff did the best they could on outreach with what they have available and Council has had some deep conversations about how to fix and improve outreach processes and information dissemination to the public. She noted in talking with residents and hearing feedback, most of it has been positive but not exclusively and she encouraged everyone to keep things civil. She stated support for option 1 and her desire to get this right.

Councilmember Canonico thanked everyone for getting involved. She also reminded everyone of all the ways to follow along with what the Council and the City is working on through different mediums and forums. There are things from both sides that there is agreement on. Things like making the code easier to use are also part of the revised code that was originally adopted that remain as goals going forward. She shared her agreement with breaking this up and looking at the things that aren't so controversial and then tackling the harder topics with thorough engagement, with support for option 1.

Councilmember Ohlson shared he has not previously liked flippers, but tonight he is prepared to be a double flipper and now will support option 1 so there is unanimity. Regarding HOAs, he also noted there cannot be one code for part of town but a different code for other parts of town. The City is not going to take over basic HOA responsibilities, but basic zoning and land use code must apply citywide. He shared concerns that the wording used in many instances is not always clear, such as with provisions in the LDC that essentially eliminate single family zoning. He made a formal request to ensure if the desire is to eliminate the occupancy regulations that should be done in an upfront manner and not via backdoor means through the allowance of ADUs. He also noted he does not want to see things brought in too much of a piecemeal manner that makes it more difficult to utilize the referendum process. It is not a government's job to make it possible for anyone that wants to move somewhere and be able to afford it, but that doesn't mean that we don't have a role in supporting affordable housing. He reiterated a May deadline is not necessary to meet the requirements for Proposition 123.

Councilmember Francis asked if Fort Collins would qualify for Proposition 123 with our current code and policies. Meaghan Overton, Housing Manager, noted the two main requirements for eligibility are a fast-track approval process for an affordable housing development and a commitment to increase affordable units by 3% a year. It would be challenging to meet the 90 day approval time line with our current land use code. As we learn more about how that 3% will be calculated, we will have a better sense of what that will require. Councilmember Francis noted it may be needed to adopt some measures during a more thoughtful process. She also clarified that U+2 is not changed in the land use code in phase one of the Land Development Code that was adopted in November of 2022 and is now before the Council for reconsideration.

Councilmember Canonico asked for clarification on how much funding will be available through Proposition 123 and asked if Denver has indicated they would not be participating in the first year. Housing Manager Overton noted she is not able to speak to what Denver may or may not have indicated their plans for participation are. In terms of funding levels, there is \$300 million available annually across the state.

Councilmember Pignataro noted she signed up to get agendas many years ago but cannot find that link right now. She requested perhaps adding a spotlight to the home page given tonight's discussion to highlight these. City Manager DiMartino noted staff will look at that and consolidating where to find those sorts of signups.

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to adopt Ordinance No. 007, 2023, on first reading.

The motion carried 7-0.

19. Items Relating to Rental Housing Program.

A. First Reading of Ordinance No. 009, 2023, Adopting a Rental Housing Program as an Implementation Action of the Housing Strategic Plan and the Our Climate Future Plan.

B. First Reading of Ordinance No. 010, 2023, Appropriating Prior Year Reserves in the General Fund for the Start Up Phase of the Rental Housing Program.

The purpose of this item is to consider the adoption of a Rental Housing Program. Ordinance No. 009, 2023 would amend the City Code to create the regulations for a Rental Housing Program that includes registration and proactive rental inspections and relocate and add new definitions within Article VI of Chapter 5. Ordinance No. 010, 2023, would approve an off-cycle general fund appropriation in the amount of \$750,000 to support the start-up phase of the proposed program in 2023. An additional \$850,000 will be requested to complete the start-up phase in 2024.

The development of a Rental Housing Program implements policy direction in both the Housing Strategic Plan (2021) and the Our Climate Future Plan (2021):

- Housing Strategic Plan, Strategy 20 – Explore the option of a mandated rental license/registry program for long-term rentals and pair with best practice rental regulations*
- Our Climate Future Plan, Strategy HAH6 – Explore the option of mandated rental licensing/rental registry with minimum standards for health, safety, stability, and efficiency*

If adopted by City Council, staff recommends that the proposed Rental Housing Program commence the start-up phase in October 2023. The time period between adoption and start-up will be used to hire and train staff, implement new software, and conduct education and outreach with landlords, tenants, property managers, and others impacted by the Rental Housing Program.

Caryn Champine, PDT Director, introduced this item and the team presenting the program for consideration. Meaghan Overton, Housing Manager, and Marcy Yoder, Senior Manager, Neighborhood Services, led the staff presentation on this item as set forth in the PowerPoint in the agenda packet.

PUBLIC COMMENT

Adam Eggleston, Fort Collins resident, spoke in opposition to the proposed program, noting he is unable to find another community where there is a benefit to this sort of program while cost estimates are consistently much lower than what is realistic.

Joe Rowan, Fort Collins resident, noted this proposal is not for a licensing program but rather a registration program and that makes sense, while the inspection piece does not.

Amber Kelly, Fort Collins property owner, shared the rental licensing task force recommended not establishing a licensing program at this time. The consensus regarding inspections across the board was that they were only necessary in response to complaints.

Joliann Beck, Fort Collins property owner, spoke against the proposed program noting it breaches citizen's rights and spoke in support instead of enhancing complaint forums in a more public manner.

Matthew Beck, Fort Collins resident, spoke against the proposed program and in support of capitalism.

Curt Schrier, Fort Collins resident and Realtor and property management company owned, spoke against the proposed program and noted his management company will need to raise charges to property owners for government regulations. He spoke in support of focusing resources on violators rather than those taking care of their properties.

Suzanne Murray, Fort Collins resident, spoke against the proposed program and provided input from a landlord LLC group she is part of, requesting consideration of adding a clause if a property is being rented by someone receiving food stamps or other income assistance that the inspection fee be waived for the landlord and consideration of creating a repair fund from some inspection fees. She also asked if short term rentals will be subject to registration and inspection as well.

Stefanie Berganini, Fort Collins resident, spoke in support of the proposed program and indicated the support of the Affordable Housing Board.

Emily Gallichotte, Fort Collins resident, noted she served on the rental housing task force as a renter, and was joined by other task force members representing renters, homeowners, property owners, etc. The majority recommendation to Council of the task force was for a mandatory rental registration program and she supports that recommendation as well.

Jason Knebel, Fort Collins resident, spoke in opposition to the rental registration program, stating it appears to be a matter of pandering to college students at CSU at the expense of the property owners of Fort Collins.

COUNCIL DISCUSSION

Councilmember Ohlson thanked staff for their work and thanked everyone who came out to speak. This topic was first discussed in the 1970s in Fort Collins and is something he views as a basic City service.

Mayor Arndt thanked everyone again for their participation tonight. In listening to the task force, she stated she was willing to follow their recommendation for a mandatory registration program despite her questions. She does not support full licensure at this point.

Mayor Pro Tem Francis shared concerns that a complaint-based system will not capture the scope of a problem and doesn't know how to do that without inspections. She shared her belief this is the responsibility of a City to reinforce a warrant of habitability and to address rental stability and the health of our housing.

Councilmember Peel stated she does not support inspections but does support registration. She shared interest in a landlord portal to provide resources for landlords and to provide information to tenants about landlords and prior complaints and issues.

Councilmember Canonico thanked staff for all the great work that went into this. She stated her agreement there is an imbalance of power between tenants and landlords, and the prevalence of underreporting tenant complaints. She also expressed concerns about the costs for starting this and starting up new programs while asking the public to support tax increases for sustainable funding work. More work needs to be done on the cost side.

Councilmember Pignataro shared she has been struggling with this topic, noting there is a need for something, given power dynamics and other concerns. There are a lot of good landlords who may have better ideas for us to possibly reduce the cost of the program. Consistency of inspections is also a concern for her. It seems like everyone hasn't been brought along yet on this item and would love to hear more ideas.

Councilmember Gutowsky asked if there is a database that tracks complaints and identifies repeat offenders. Neighborhood Services Senior Manager Marcy Yoder responded and indicated the current software platform used for complaints does not adequately track these sorts of trends across property owners. Councilmember Gutowsky asked how we make people register and what we do if they don't. She also asked about property managers and their liability. Marcy Yoder provided information about certifications available for property managers, which is a component that could be considered. Councilmember Gutowsky shared her understanding there may be a need for a registration to make it easier to contact a property owner, if necessary, particularly when there is an LLC, while expressing the concerns that remain as unknowns.

Councilmember Ohlson noted almost anything worth doing in public policy is met with opposition. Rental properties are a business and regulating business is a proper role for government. It's not possible to get any leaner than \$19 a property per year. He noted he is unsure what additional information isn't available now that would help as this is a fully baked proposal.

Councilmember Canonico asked the costs of the software upgrades needed. Staff indicated it would be \$50,000. Councilmembers Canonico asked if it would be possible to implement a registration program with the implementation of the software updates to allow time to do some better tracking over time. Marcy Yoder provided information about a scaled recommendation from staff to look at a program focused on registration without additional inspections but asking property owners to provide current inspections being done for other purposes already, as well as still including robust education information and building out the current complaint based system. The number of inspectors could be reduced by 3 to still leave some capacity for inspectors to address complaints and could reduce costs to about \$410,000 in the first year. A registration fee would need to be recalibrated to cover not having both a registration and inspection fee.

Mayor Arndt thanked staff for that scaled option as something that helps better meet the various concerns being raised. She also stated support for a midyear appropriation for the needed software update. She requested seeing a write up of the scaled option.

Mayor Pro Tem Francis would like to keep this item going and provide time for more conversation and information about the scaled option. She stated she will remain concerned about a complaint-based system.

Councilmember Pignataro asked about the timing on work going forward if inspections are added later. Marcy Yoder indicated the difference between building inspectors and housing inspectors is a factor as things get up to speed and could lead to some efficiencies in moving towards implementing inspections later. While there would be some operational efficiencies, there would still be a need for full engagement and outreach in sharing out program changes.

Councilmember Ohlson stated this isn't about the money and taxes. More regulations are needed when you get bigger. There are units that are illegal and those do need to be inspected to uncover that.

Councilmember Gutowsky stated she would like to understand the strategy to make sure that everyone registers. Marcy Yoder noted staff would use the county assessor database to identify landlords in the community as a staff function within the rental housing team, as well as utility data through a data check and cross reference.

There was consensus for support for a registration program and perhaps scheduling a work session and bringing this item back.

Councilmember Ohlson stated support for sending this to a work session before coming back for first reading again.

Mayor Arndt stated interest in some of the ideas in a modified proposal and her desire to move in that direction.

Councilmember Peel shared her concern is if we know the problem we are trying to solve and the community has not heard and understood the extent of that problem. She would like to revisit the \$50,000 software so we have a clearer understanding of the issues that arise without the registration program.

Councilmember Pignataro mentioned the issue of scheduling given the current packed schedule.

City Manager Kelly DiMartino suggested reporting back publicly in 2 weeks with a proposed timeline.

Mayor Pro Tem Francis moved, seconded by Councilmember Peel, to postpone first reading of Ordinance No. 009, 2023 indefinitely.

The motion carried 6-1.

Ayes: Mayor Arndt, Mayor Pro Tem Francis, Councilmembers Gutowsky, Pignataro, Canonico, Peel.

Nays: Councilmember Ohlson.

Mayor Pro Tem Francis moved, seconded by Councilmember Peel, to postpone first reading of Ordinance No. 010, 2023 indefinitely.

The motion carried 6-1.

Ayes: Mayor Arndt, Mayor Pro Tem Francis, Councilmembers Gutowsky, Pignataro, Canonico, Peel.

Nays: Councilmember Ohlson.

Mayor Pro Tem moved to extend the meeting past midnight, seconded by Councilmember Peel.

The motion carried 6-1.

Ayes: Mayor Arndt, Councilmember Ohlson, Councilmembers Gutowsky, Pignataro, Canonico, Peel.

Nays: Mayor Pro Tem Francis.

20. Items Related to Code Amendments to Update and Align Wireless Communication Facility Regulations with the Wireless Telecommunications Master Plan

A. First Reading of Ordinance No. 011, 2023, Amending the Fort Collins Land Use Code to Update Standards for Wireless Communications Facilities Consistent with the Wireless Telecommunications Master Plan.

B. First Reading of Ordinance No. 012, 2023, Amending the Code of the City of Fort Collins to Update Standards for Wireless Communications Facilities in Public Highways Consistent with the Wireless Telecommunications Master Plan.

The purpose of the update to the Wireless Communication section of the Land Use Code and corresponding revisions to the City Code is to ensure City standards and requirements for

wireless communication development proposals align with the goals, policies, and implementation strategies of the recently adopted Wireless Telecommunications Master Plan and current state and federal regulatory standards. Doing so will enable the City to fully exercise its regulatory authority during the review and siting of new wireless communication infrastructure throughout the community. The Planning and Zoning Commission has reviewed and recommended approval of the revised City Code and Land Use Code language.

There was no staff report and no public comment.

Councilmember Ohlson asked if there was anything weakened since the Council last saw this. Staff indicated there was not.

Councilmember Peel spoke about challenges to cell service in the city and indicated we are in moving in the right direction.

Mayor Pro Tem Francis moved, seconded by Councilmember Peel, to adopt on first reading Ordinance No. 011, 2023

The motion carried 7-0.

Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, to adopt on first reading Ordinance No. 012, 2023.

The motion carried 7-0.

Q) OTHER BUSINESS

A. Possible consideration of the initiation of new ordinances and/or resolutions by Councilmembers.

(Three or more individual Councilmembers may direct the City Manager and City Attorney to initiate and move forward with development and preparation of resolutions and ordinances not originating from the Council's Policy Agenda or initiated by staff.)

None.

R) ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at 1:50 a.m.

Mayor

ATTEST:

City Clerk

February 7, 2023

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

PROCLAMATIONS & PRESENTATIONS

5:00 PM

A) PROCLAMATIONS AND PRESENTATIONS

PP 1. Proclaiming February 19-25, 2023 as National Engineers Week.

Mayor Jeni Arndt presented the above proclamation at 5:00 p.m.

REGULAR MEETING

6:00 PM

B) CALL MEETING TO ORDER

Mayor Jeni Arndt called the meeting to order at 6:00 p.m. in the City Council Chambers at 300 Laporte Avenue, Fort Collins, Colorado, with hybrid participation available via the City’s Zoom platform.

C) PLEDGE OF ALLEGIANCE

Mayor Jeni Arndt led the Pledge of Allegiance to the American Flag.

D) ROLL CALL

PRESENT

- Mayor Jeni Arndt
- Mayor Pro Tem Emily Francis
- Councilmember Susan Gutowsky
- Councilmember Julie Pignataro
- Councilmember Tricia Canonico (arrived at 6:26 p.m.)
- Councilmember Shirley Peel
- Councilmember Kelly Ohlson

STAFF PRESENT

- City Manager Kelly DiMartino
- City Attorney Carrie Daggett
- City Clerk Anissa Hollingshead

E) CITY MANAGER'S AGENDA REVIEW

City Manager Kelly DiMartino provided an overview of the agenda, including:

- There were no changes to the published agenda.
- All items on the consent agenda were recommended for approval.

F) COMMUNITY REPORTS

None.

G) PUBLIC COMMENT ON ANY TOPICS OR ITEMS OR COMMUNITY EVENTS
(Including requests for removal of items from Consent Calendar for individual discussion.)

Adam Eggleston, Fort Collins resident, spoke regarding a few items, including housing related items. Relating to the Land Development Code, he urged finding common ground to move forward including taking related changes quickly around occupancy regulations. He also suggested looking at impact fees and how restructuring them could incentivize smaller housing units to help increase more housing options as well. He also expressed support for the Victim Services Grants on tonight's agenda.

Stacy Lynne, investigative journalist, spoke regarding John Feyen being sworn in as Larimer County Sheriff and a recent district court ruling against Feyen regarding his conduct when he was with Fort Collins Police. She shared her experience having a tracking device placed on her vehicle by Feyen without a warrant when he was previously with the Larimer County Sheriff's Office.

Jerry Gavaldon, Fort Collins resident, spoke regarding the proposed trash contract with Republic Services and his concerns regarding the potential for a monopoly and the elimination of choice for residents.

Dennis Gatlin, Fort Collins resident, spoke as the chair of the Boxelder Sanitation District Board regarding the proposed 1041 regulations under consideration. He spoke regarding the duplication of existing sewer regulations at other levels of government and how they would result in additional costs for sanitation district customers.

H) PUBLIC COMMENT FOLLOW-UP

Mayor Jeni Arndt requested written follow up about impact fees and how they incentivize larger homes.

I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

Councilmember Ohlson requested to pull item 12 from the consent calendar.

J) CONSENT CALENDAR

1. **Consideration and Approval of the Minutes of the December 6, 2022 and December 20, 2022, Regular Council Meetings.**

The purpose of this item is to approve the minutes of the December 6, 2022 and December 20, 2022 regular Council meetings.

Adopted.

2. **Second Reading of Ordinance No. 001, 2023, Appropriating Funds in the General Fund for 2023 Increases in Salary Compensation for the Mayor and Councilmembers as Approved**

by the City of Fort Collins Voters on November 8, 2022, by the Amendment of Section 3 in Article II of the City Charter.

The purpose of this Ordinance, unanimously adopted on First Reading on January 17, 2023, is a General Fund supplemental appropriation to fund 2023-2024 Budget Offer 28.12 - City Council Voter Approved Pay Increase but only for fiscal year 2023. This budget request was not funded in the 2023 annual appropriation since the election results of the 2022 City-Initiated Charter Amendment No. 1 (Council Compensation) ballot initiative would not be known until after First Reading of the City's annual appropriation ordinance for 2023. The initiative was approved by Fort Collins voters and this action is to appropriate the increased spending in the General Fund to implement the ballot initiative for the salary increases in 2023.

Adopted on Second Reading.

3. **Second Reading of Ordinance No. 002, 2023, Appropriating Philanthropic Revenue Received Through City Give for the Acquisition of a Community Soundstage in the Parks Department.**

This Ordinance, unanimously adopted on First Reading on January 17, 2023, requests appropriation of \$250,000.00 in philanthropic revenue received by City Give for Parks for the purchase and acquisition of a community soundstage.

In 2019, City Give, a formalized enterprise-wide initiative was launched to create a transparent, non-partisan governance structure for the acceptance and appropriations of charitable gifts.

Adopted on Second Reading.

4. **Second Reading of Ordinance No. 003, 2023, Declaring a Portion of City-Owned Property at 835 Wood Street as Right-of-Way.**

The purpose of this item is to declare a strip of property owned by the City as road right-of-way (ROW) via the proposed plat for the Fort Collins Fleet Maintenance Subdivision. City staff recently discovered that a portion of the City's property at 835 Wood Street is being used for public street purposes, but was never dedicated or declared to be public ROW. This Ordinance, which was unanimously adopted on First Reading on January 17, 2023, establishes this portion of the property as ROW for Wood Street and authorizes the City Manager to dedicate such ROW through execution of the plat.

Adopted on Second Reading.

5. **Second Reading of Ordinance No. 004, 2023, Authorizing the Sale of the Real Property Located at 945 East Prospect Road to Kum & Go, L.C.**

The purpose of this item, which was unanimously adopted on First Reading on January 17, 2023, is to authorize the sale of the City-owned property located at 945 East Prospect Road to Kum & Go, L.C., an Iowa limited liability company (Kum & Go), for \$403,000. The sales price was determined by an appraisal by CBRE Valuation and Advisory Services, which provides on-call property appraisals for the City. A purchase and sale agreement was executed by Kum & Go and the City Manager on November 3, 2022. Completion of the purchase is contingent on City Council's approval of the sale by its final adoption of this Ordinance in accordance with Section 23-111 of the City Code, and approval of the final development plans by the City's Director of Community Services and Neighborhood Development.

Adopted on Second Reading.

6. **Second Reading of Ordinance No. 005, 2023, Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations for the 215 North Mason Municipal Court 15-Year Buildout Design and Related Art in Public Places.**

The purpose of this item is to receive Council approval for an appropriation for Design of the 215 North Mason Municipal Court 15-year build-out using Capital Expansion Fees. This Ordinance was unanimously adopted on First Reading on January 17, 2023.

Adopted on Second Reading.

7. **Second Reading of Ordinance No. 006, 2023, Appropriating Prior Year Reserves in the Transportation Capital Expansion Fee Fund for Eligible Reimbursement to the Northfield Developer for the Construction of Suniga Road Improvements.**

The purpose of this item is to appropriate \$2,081,548 of Transportation Capital Expansion Fee (TCEF) Funds for expenditure from the Transportation Capital Expansion Fee Program Budget to reimburse the Northfield developer for its oversizing construction of Suniga Road. The Northfield developer has constructed Suniga Road as a four-lane arterial to City standards as part of its development requirements. Per Section 24-112 of the City Code, the developer is eligible for reimbursement from Transportation Capital Expansion Fee (TCEF) funds for the oversized, non-local portion of Suniga Road not attributed to the local portion obligation. This Ordinance was unanimously adopted on First Reading on January 17, 2023.

Adopted on Second Reading.

8. **Second Reading of Ordinance No. 007, 2023, Repealing Ordinance No. 114, 2022, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Land Development Code and Separately Codifying the 1997 Land Use Code as “2022 Transitional Land Use Regulations”.**

On January 17, 2023, Council unanimously adopted this Ordinance on First Reading from the options available to it upon the presentation of a petition certified as sufficient for referendum.

Adopted on Second Reading.

9. **Items Related to Code Amendments to Update and Align Wireless Communication Facility Regulations with the Wireless Telecommunications Master Plan**

A. Second Reading of Ordinance No. 011, 2023, Amending the Fort Collins Land Use Code to Update Standards for Wireless Communications Facilities Consistent with the Wireless Telecommunications Master Plan.

B. Second Reading of Ordinance No. 012, 2023, Amending the Code of the City of Fort Collins to Update Standards for Wireless Communications Facilities in Public Highways Consistent with the Wireless Telecommunications Master Plan.

The purpose of the update to the Wireless Communication section of the Land Use Code and corresponding revisions to the City Code is to ensure City standards and requirements for wireless communication development proposals align with the goals, policies, and implementation strategies of the recently adopted Wireless Telecommunications Master Plan and current state and federal regulatory standards. Doing so will enable the City to fully exercise its regulatory authority during the review and siting of new wireless communication infrastructure throughout the community. The Planning and Zoning Commission has reviewed and

recommended approval of the revised City Code and Land Use Code language. These Ordinances were unanimously adopted on First Reading on January 17, 2023.

To avoid confusion with the Codifier in accurately updating the Land Use Code, a new Section 47 has been added to Ordinance No. 011, 2023, to specifically state that the definitions of “Wireless telecommunication equipment”, “Wireless telecommunication facility” and “Wireless telecommunication services” are deleted from Section 5.1.2 of the Land Use Code. This is not a substantial change to the Code language Council approved on First Reading.

Adopted Both Ordinances on Second Reading.

10. **First Reading of Ordinance No. 013, 2023, Appropriating Unanticipated Grant Revenue From the Colorado Community Revitalization Grant Program in the Cultural Services & Facilities Fund for the Renovation of the Carnegie Center for Creativity and Approving the Associated Grant Agreement.**

The purpose of this item is to appropriate unanticipated grant revenue in the Cultural Services & Facilities Fund for the renovation of the Carnegie Center for Creativity. This appropriation includes \$2,400,000 of supplemental grant revenues awarded on November 25, 2022, provided by the State of Colorado through the Colorado Creative Industries Office.

Adopted on First Reading.

11. **First Reading of Ordinance No. 014, 2023, Appropriating Philanthropic Revenue Received by City Give for Tree Planting in the Forestry Department.**

The purpose of this item is to request appropriation of \$50,000.00 in philanthropic revenue received by City Give for Forestry, Community Services.

In 2019, City Give, a formalized enterprise-wide initiative was launched to create a transparent, non-partisan governance structure for the acceptance and appropriations of charitable gifts.

Adopted on First Reading.

12. **First Reading of Ordinance No. 015, 2023, Appropriating Philanthropic Revenue By City Give and Conservation Trust Funds for the Construction of the 9/11 Memorial at Spring Park and Related Art in Public Places.**

The purpose of this item is to request appropriation of \$480,765.00 for the designated purpose toward the construction of the 9/11 Memorial at Spring Park, 2100 Mathews Steet, Fort Collins, CO.

A partnership between the City of Fort Collins and Poudre Fire Authority, the 9/11 Memorial will be located in midtown Fort Collins, and will honor firefighters, emergency medical technicians, law enforcement officers, and nearly 3,000 others who lost their lives on September 11, 2001.

Pulled from Consent Calendar to Allow for Discussion

13. **Items Relating to the 2023 City Classified Employee Pay Plan as Provided in the Collective Bargaining Agreement with the Fraternal Order of Police.**
- A. First Reading of Ordinance No. 016, 2023, Adopting the 2023 Amended City Classified Employee Pay Plan to Update Classified Positions as Provided in the Collective Bargaining Agreement with the Fraternal Order of Police.**
 - B. First Reading of Ordinance No. 017, 2023, Appropriating Prior Year Reserves in the General Fund for the Cost of Police Services Salary and Benefit Increases as Provided in the Collective Bargaining Agreement with the Fraternal Order of Police.**

The purpose of this item is to recommend changes to the 2023 City Classified Employee Pay Plan based on an annual market analysis conducted as agreed upon through the 2022-2024 Collective Bargaining Agreement (the "Agreement") with the Northern Colorado Lodge #3 of the Fraternal Order of Police ("FOP"). The Agreement was approved by Council by Resolution on December 7, 2021. The Agreement specifies a salary data collection method and evaluation process that includes market data as of early January. This data has been collected and analyzed, resulting in the revised 2023 City Classified Employee Pay Plan.

Adopted Both Ordinances on First Reading.

14. **Items Relating to The Landing at Lemay Plan Amendment to the City Structure Plan Map and Rezoning.**
- A. First Reading of Ordinance No. 018, 2023 Amending the City's Structure Plan Map.**
 - B. Public Hearing and First Reading of Ordinance No. 019, 2023 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification of that Certain Property Known as The Landing at Lemay Rezoning.**

The purpose of this item is to amend the City's Structure Plan Map, which is part of City Plan, to change the place type land use designation of approximately 17 acres of land east of the Lemay Avenue and Duff Drive intersection from the Industrial Place Type to the Mixed Neighborhood Place Type and to rezone the property from the Industrial (I) District to the Medium Density Mixed Use Neighborhood (MMN) District.

In order to approve a Structure Plan Map change, Council must determine that the Structure Plan Map is in need of the proposed amendment, and that the proposed amendment will promote the public welfare and will be consistent with the vision, goals, principles, and policies of City Plan and its elements.

The rezoning request is subject to criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Commission, which voted 5-1 at their December 2022 hearing to recommend approval of the request with two conditions as recommended in the staff report and with agreement from the petitioner.

The rezoning is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 2(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2022-068. The Structure Plan Map amendment is a legislative matter.

Adopted Both Ordinances on First Reading.

15. Items Relating to Victim Services Grants.

- A. First Reading of Ordinance No. 020, 2023, Making Supplemental Appropriation from the Eighth Judicial District Victim Assistance and Law Enforcement Board for the Fort Collins Police Services Victim Services Unit.**
- B. First Reading of Ordinance No. 021, 2023, Making Supplemental Appropriation from the Colorado Division of Criminal Justice under the Federal Victim of Crime Act for the Fort Collins Police Services Victim Services Unit.**

The purpose of these items is to help fund the Victim Services Unit of Fort Collins Police Services for victim advocacy services which are required under the Colorado Victim Rights Amendment for victims of crime and their family members.

The Victim Services Unit has been awarded a \$70,000 VALE grant for the period from January 1, 2023, to December 31, 2023. The VALE grant is awarded through the Eighth Judicial District Victim Assistance and Law Enforcement (VALE) Board to help fund services provided by the Victim Services team. This grant will fund one part-time victim advocate, as well as 65% of the salary of a contractual 40-hour per week victim advocate.

The Victim Services Unit has also been awarded a 24-month grant in the amount of \$47,959 for the period from January 1, 2023, to December 31, 2024, by the Colorado Division of Criminal Justice under the Federal Victim of Crime Act (VOCA). The amount to be received in 2023 is \$23,979 with the remaining amount to be received in 2024. This grant will help fund services provided by the Victim Services Unit. These funds will be used to pay 35% of the salary for the victim advocate who provides crisis intervention services for sexual assault victims between the school ages of kindergarten through 12th grade.

Adopted Both Ordinances on First Reading.

16. First Reading of Ordinance No. 022, 2023, Making Supplemental Appropriations and Authorizing Transfers for the Environmental Services Radon Program.

The purpose of this item is to appropriate unanticipated grant revenue in the General Fund for the Environmental Services Radon Program. This appropriation includes \$9,000 of grant revenues provided by the Colorado Department of Public Health and Environment (CDPHE) to support radon testing and mitigation programs. The grant directly supports radon activities identified in the Environmental Services Department's core budget offer and requires a local match of \$6,000. Matching funds are appropriated and unexpended in the 2023 Environmental Services operating budget and will be transferred to the Environmental Services Radon Program.

Adopted Ordinance on First Reading.

17. Resolution 2023-015 Making an Appointment to the Youth Advisory Board.

The purpose of this item is to fill a vacancy on the Youth Advisory Board.

Adopted.

18. Resolution 2023-016 Authorizing the Initiation of Exclusion Proceedings of Annexed Properties Within the Territory of the Poudre Valley Fire Protection District and Authorizing an Intergovernmental Agreement with Said District.

The purpose of this item is to authorize the City Attorney to file a petition in Larimer County District Court to exclude properties annexed into the City in 2022 from the Poudre Valley Fire Protection District (the "District") in accordance with state law. The properties affected by this Resolution are the Peakview Annexation Number One and the Timber Lark Annexation. Colorado Revised Statutes Section 32-1-502 requires an order of exclusion from the District Court to remove these annexed properties from special district territories. The properties have been receiving fire protection services from the Poudre Fire Authority and will continue to do so. The City Attorney's Office files the petition in Larimer County District Court each year seeking exclusion for all properties annexed in the previous year that should be removed from the District to avoid double taxation.

Adopted.

19. Resolution 2023-017 Adopting Amendments to the City's Financial Management Policies.

The purpose of this item is to update three of the internal Financial Management Policies:

Policy 5 – Fund Balance

Policy 7 – Debt

Policy 8 – Investment

The policies are reviewed on a three-year rolling schedule. The recommended changes have been presented to the Council Finance Committee which supported the changes recommended.

Adopted.

END OF CONSENT CALENDAR

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to approve the recommended actions on items 1-11 and 13-19 on the consent calendar.

The motion carried 6-0.

Absent: Councilmember Canonico.

K) CONSENT CALENDAR FOLLOW-UP (This is an opportunity for Councilmembers to comment on items adopted or approved on the Consent Calendar.)

Councilmember Ohlson requested follow up before second reading on item 10, which is an ordinance appropriating unanticipated grant revenue for the renovation of the Carnegie Center for Creativity. He requested more details about the nature of the whole project and the total dollars and sources involved in the renovation.

L) STAFF REPORTS

Multicultural Business and Entrepreneur Center (MBEC) Update.

SeonAh Kendall, Economic Health Director, and Edgar Ramos, Business Connector, provided the update as set forth in the presentation slide deck in the agenda packet.

Mayor Pro Tem Francis asked about the biggest barriers seen in starting a business in Fort Collins. The staff team shared one common trend is not being able to find information, which is compounded by language challenges. Confusion is also an issue at some levels, such as the requirements in some grant programs to have a business license, which in Fort Collins is handled as a sales tax license which is not always required for service businesses. Mayor Pro Tem Francis requested future follow up on the impacts of the program.

Clerk's Note: Councilmember Canonico arrived at 6:26 p.m.

M) COUNCILMEMBER REPORTS

Councilmember Julie Pignataro

- A targeted listening session focused on renters will be held next week.

Councilmember Susan Gutowsky

- A listening session will be held this week which will be focused on thoughts around the Land Use Code moving forward.
- Attended Municipal Judge Jill Hueser's Right Track Docket Program focused on allowing offenders to work through issues.
- Attended the recent Fort Collins Police Services Award ceremony, celebrating the excellent work of our police employees and community members.
- Attended the grand opening of Animal Friends Alliance's new facility caring for dogs and cats.
- Attended the Women Give luncheon held by the United Way in support of their work in providing child care for women returning to the work force.
- Attended the Chinese New Year at Early Colleges which included a wonderful show.

Councilmember Shirley Peel

- Had the opportunity to visit with Claire Brossard at the Care Initiative and shared information about community grants being offered with applications open through the end of February.
- Mill City Church held a Giving Sunday in December and raised over \$127,000 to give money to several housing initiatives as well as providing support for Lincoln Middle School.

Mayor Jeni Arndt

- Reminded everyone Friday is Bike to Work (or Anywhere) day.

N) CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT CALENDAR FOR INDIVIDUAL DISCUSSION

12. **First Reading of Ordinance No. 015, 2023, Appropriating Philanthropic Revenue By City Give and Conservation Trust Funds for the Construction of the 9/11 Memorial at Spring Park and Related Art in Public Places.**

The purpose of this item is to request appropriation of \$480,765.00 for the designated purpose toward the construction of the 9/11 Memorial at Spring Park, 2100 Mathews Steet, Fort Collins, CO.

A partnership between the City of Fort Collins and Poudre Fire Authority, the 9/11 Memorial will be located in midtown Fort Collins, and will honor firefighters, emergency medical technicians, law enforcement officers, and nearly 3,000 others who lost their lives on September 11, 2001.

Councilmember Ohlson noted he supports the memorial but objects to the way things were handled with this item, as originally it was slated to involve no public dollars which has now shifted and is using conservation trust fund dollars rather than general fund dollars.

Councilmember Pignataro asked about the eligible purposes for Conservation Trust Fund dollars. City Manager Kelly DiMartino provided some general guidelines as those eligibility parameters which City Give Director Nina Bodenhamer expanded upon. Councilmember Pignataro spoke regarding some degree of confusion for what open space means, and requested a definition. Community Services Interim Director Dean Klingner responded, noting it can mean many different things.

Councilmember Gutowsky shared her excitement for this memorial as a member of the Poudre Fire Authority Board, including providing information about the location for the memorial in Spring Park.

Councilmember Ohlson reiterated his support for the memorial and emphasized his concern with how it is funded.

Mayor Pro Tem Francis moved, seconded by Councilmember Peel, to adopt on first reading Ordinance No. 015, 2023.

The motion carried 6-1.

Ayes: Councilmembers Canonico, Pignataro, Gutowsky, Peel, Mayor Arndt, Mayor Pro Tem Francis.

Nays: Councilmember Ohlson.

Clerk's Note: Mayor Arndt called for a 5-minute break at 7:00 p.m. The meeting resumed at 7:10 p.m.

O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION

20. First Reading of Ordinance No. 023, 2023, Amending the Land Use Code to Include Regulations for Areas and Activities of State Interest.

The purpose of this ordinance is to amend the Fort Collins Land Use Code to include regulations for reviewing and permitting designated areas and activities of statewide interest - a new 1041 permit process for major domestic water, sewage treatment and highway projects. 1041 powers give local governments the ability to regulate particular development projects occurring within their jurisdiction, even when the project has broader impacts.

If Council wishes to provide additional time for review and consideration of the Ordinance, a postponement by motion to a date certain would be appropriate or providing additional time between first and second reading. Regardless, staff recommends Council use February 7th for discussion and further clarifications. If there will not be a hearing on February 21st, a new notice will need to be published in a newspaper of general circulation at least 30 days prior to the hearing.

Paul Sizemore, Community Development and Neighborhood Services Director, introduced the item. Senior Environmental Planner Kirk Longstein led the presentation as set forth in the slide deck in the agenda packet.

PUBLIC COMMENT

Windsor Mayor Paul Rennemeyer spoke regarding the importance to Windsor and the region for NISP (Northern Integrated Supply Project) and a secure water supply.

Barry Wilson, Mayor Pro Tem in Windsor, spoke regarding the impacts to Windsor and other areas throughout the region of the decision to be made by Council, and emphasized the importance of proactive water projects including NISP.

Shane Hale, Windsor Town Manager, shared his belief the regulations in front of the Council go further than may be intended and spoke to the collaborative work done by Windsor in the realm of water use and encouraged Fort Collins' participation in ongoing collaboration.

Jordan Radin, Fort Collins resident and chair of the Fort Collins Water Commission, noted the Commission has not yet had the opportunity to review the latest version of the proposed ordinances and requested on behalf of the commission to have that opportunity before action by the Council.

Chris Fletcher, Fort Collins Loveland Water District General Manager, spoke on behalf of the water provider for part of the city and requested an opportunity to review the current version of the ordinance before any action is taken.

Kevin Jones, Fort Collins resident and Fort Collins Area Chamber of Commerce director, spoke in support of delaying action on this ordinance until Council can better articulate why stricter regulations are required and more time is made available for review of the current proposal. On behalf of the Chamber, he formally requested that Council reject these proposed regulations.

Stefanie Furman, Finance Director of the Town of Erie, spoke on behalf of the Town with concerns about the regulations and its impact on other communities. The Town requested a limit to the scope of the regulations to be adopted by the City.

Mike Scheid, Executive Director of the ELCO Water District providing service to Fort Collins residents, spoke about the need for additional time for stakeholders to continue conversations with City staff to ensure full understanding of the impact of regulations on others.

Gary Wockner commented on behalf of the Save the Poudre organization to speak in support of the City moving forward with 1041 regulations, including considering changes to extend regulations to projects outside of the city with impacts inside the city.

Brad Wynn, Manager of Northern Water for NISP, commented about the importance for collaborative action around water needs in the region.

Joe Rowan, Fort Collins resident, spoke about the why behind moving forward and his belief it is connected to NISP which should be explicit.

Brian Zick, District Manager of Boxelder Wastewater District, spoke about how he sees these regulations coming into practice and concerns with cost implications.

COUNCIL DISCUSSION

Mayor Arndt asked staff what would be desired if Council chose to delay action tonight. Senior Environmental Planner Longstein asked for clarity on what kind of changes Council would like to see prior to the item returning to Council.

Councilmember Gutowsky shared her desire to pass this on first reading and delay second reading to see an opportunity to utilize the advice of some commenters, including Save the Poudre, for more robust environmental regulations.

Councilmember Ohlson stated support for passing this item on first reading and delaying second reading while staying within the moratorium. He shared his concern with using a pipeline through natural areas as the path of least resistance and a desire to see that practice end. Stakeholders involve more than water utilities and waste water utilities. Staff has requested direction on what Council would like to see and for him it is for other stakeholders to get the same level of consideration as the utilities. He also stated his support for the City having to follow its own rules and for these regulations to impact us as well as other providers.

Councilmember Peel shared appreciation for all the work of staff while noting she is not yet ready to vote yes on this, with several areas of concern, including around cost and the timing of this moving forward.

Mayor Arndt shared her questions and concerns with what constitutes a matter of statewide interest and its scope. She also requested a legal read on staff's recommendation not to explore regulations on projects outside of the City. Senior Assistant City Attorney Brad Yatabe responded it was not our interpretation that the specific criteria exceeds the authority granted under the statute. Mayor Arndt offered her support for the staff recommendation and a desire to see a requirement of Council to provide reasons for its findings related to a 1041 permit application. Mayor Arndt inquired if ditches were included under the permitting process. Senior Environmental Planner Kirk Longstein indicated they would not be included if a facility is in support of stormwater or irrigation.

Mayor Pro Tem Francis stated her support for postponing the item entirely rather than adopting on first reading and then postponing second reading. She reiterated support for the three recommendations made by the Planning and Zoning Commission. She asked for more information about the impacts in other municipalities that have implemented 1041 regulations.

Councilmember Pignataro shared her support for postponing action at this point. Finding middle ground compromise will not leave everyone happy but is necessary.

Councilmember Canonico thanked staff for their work and stated her support for delaying first reading. She asked if Larimer County is using a 12" diameter sewer collector for wastewater projects as well. Longstein noted it was 15" which is what the City is looking at as well. She indicated she would like to see more pairing with Larimer County to create more predictability.

Councilmember Ohlson asked if stormwater was eliminated from day one. Longstein noted stormwater is not a matter of state interest. Are we choosing to allow existing easements? Are we exempting all easements and are we required to do so? Longstein indicated that was a compromise in conversations with community partners and is consistent with SPAR (site plan advisory review) process. From a planning perspective, it is preferred that these projects are incentivized to work within existing easements rather than creating or expanding existing easements and rights-of-way. Ohlson stated his concern with compromises because they don't usually support the environment. He also reiterated his encouragement to consider equally the input of Save the Poudre, the Land Conservation and Stewardship Board (LCSB), Sierra Club, and the Fort Collins Sustainability Group, in addition to the utilities. He concurred with Council delaying first reading as long as the moratorium is respected.

Mayor Pro Tem Francis suggested Council may need another work session on this topic before an ordinance comes back.

There was discussion around working from the current version, seeking additional outreach and input to inform the development of alternatives as part of a work session, and ultimately a presentation of potential amendments that clearly delineate the tradeoffs involved in various options. Staff requested more time to review potential amendments similar to what was provided with the Land Development Code which will require an extension of the current moratorium. Staff will bring the moratorium extension to a meeting prior to the expiration of the moratorium. Councilmember Ohlson suggested the term tolerable ground versus middle ground. He also requested more time for Council to review the alternatives than was provided for the Land Development Code discussion.

Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, to postpone first reading of the ordinance to May 2, 2023.

The motion carried 7-0.

Q) OTHER BUSINESS

A. Possible consideration of the initiation of new ordinances and/or resolutions by Councilmembers.

(Three or more individual Councilmembers may direct the City Manager and City Attorney to initiate and move forward with development and preparation of resolutions and ordinances not originating from the Council's Policy Agenda or initiated by staff.)

R) ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at 8:53 p.m.

Mayor

ATTEST:

City Clerk

February 21, 2023

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

PROCLAMATIONS & PRESENTATIONS

5:00 PM

A) PROCLAMATIONS AND PRESENTATIONS

There were no proclamations.

REGULAR MEETING

6:00 PM

B) CALL MEETING TO ORDER

Mayor Jeni Arndt called the meeting to order at 6:00 p.m. in the City Council Chambers at 300 Laporte Avenue, Fort Collins, Colorado, with hybrid participation available via the City’s Zoom platform.

C) PLEDGE OF ALLEGIANCE

Mayor Jeni Arndt led the Pledge of Allegiance to the American Flag.

D) ROLL CALL

PRESENT

- Mayor Jeni Arndt
- Councilmember Susan Gutowsky
- Councilmember Julie Pignataro
- Councilmember Tricia Canonico
- Councilmember Shirley Peel
- Councilmember Kelly Ohlson

EXCUSED

- Mayor Pro Tem Emily Francis

STAFF PRESENT

- City Manager Kelly DiMartino
- City Attorney Carrie Daggett
- City Clerk Anissa Hollingshead

E) CITY MANAGER'S AGENDA REVIEW

City Manager Kelly DiMartino provided an overview of the agenda, including:

- There were no changes to the published agenda.
- All items on the consent agenda were recommended for approval.

F) COMMUNITY REPORTS

None.

G) PUBLIC COMMENT ON ANY TOPICS OR ITEMS OR COMMUNITY EVENTS
(Including requests for removal of items from Consent Calendar for individual discussion.)

George Hansen, Fort Collins resident, spoke regarding concerns about a parking ticket and related court fees. He also stated his preferences for weekly recycling service.

Ayleesa Stirzel, resident of the growth management area (GMA), spoke regarding the residential solid waste collection item, stating her support for the waste proposal while sharing her concerns as a resident of the GMA and limits to choices in trash services due to companies leaving the market in the city and beyond. She requested consideration of offering service through the City's contract in GMA areas.

Adam Eggleston, Fort Collins resident, thanked staff for the follow up and dialogue on capital improvement fees and ideas that have come up from that discussion that are possible for the City. He also spoke against any proactive inspections as part of a rental licensing program.

Brannan Davis, Fort Collins resident, spoke as a property manager regarding the proposed rental licensing program in opposition to the program in its current form.

Kim Miller, Fort Collins resident, spoke in support of the waste collection program and asked if it was possible to reuse the existing bins from Republic/Gallegos.

Adam Miller, Fort Collins resident, spoke regarding the business at 6024 South College Avenue that is storing trash on a public easement, stating he has brought this up to the City previously over the last several months and has not seen a resolution.

Jason Knebel, Fort Collins resident, reiterated a request for his Councilmember, Emily Francis, to recuse herself from any action on the Land Use Code given her involvement with the FoCo Forward organization in support of the Land Development Code.

Ray Martinez, Fort Collins resident, spoke against trash hauling districting, stating the opt out fee is a tax and needs to go to the voters.

H) PUBLIC COMMENT FOLLOW-UP

Councilmember Ohlson requested staff follow ups including:

- Explanation of costs for protesting a parking ticket exceeding the cost of the ticket.
- Information on whether the issue brought up by Adam Miller is a code enforcement issue.

Councilmember Pignataro thanked everyone for coming out to the meeting. Relating to the comments on the trash issue, information will be shared on that item about the rationale and data that has been compiled on the topic.

Mayor Arndt noted the trash discussion will also include questions to address the issues brought up with the GMA, reuse of existing cans and education on what goes in the recycling cans. She thanked those commenting tonight, including Mr. Eggleston for his ongoing follow up and communication about potential issues.

I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

Councilmember Ohlson requested to pull item number 9 for discussion .

J) CONSENT CALENDAR

1. **Second Reading of Ordinance No. 013, 2023, Appropriating Unanticipated Grant Revenue From the Colorado Community Revitalization Grant Program in the Cultural Services & Facilities Fund for the Renovation of the Carnegie Center for Creativity and Approving the Associated Grant Agreement.**

The purpose of this item is to appropriate unanticipated grant revenue in the Cultural Services & Facilities Fund for the renovation of the Carnegie Center for Creativity. This appropriation includes \$2,400,000 of supplemental grant revenues awarded on November 25, 2022, provided by the State of Colorado through the Colorado Creative Industries Office. This Ordinance was unanimously adopted on First Reading on February 7, 2023.

Adopted on Second Reading.

2. **Second Reading of Ordinance No. 014, 2023, Appropriating Philanthropic Revenue Received by City Give for Tree Planting in the Forestry Department.**

This Ordinance, which was unanimously adopted on First Reading on February 7, 2023, requests appropriation of \$50,000.00 in philanthropic revenue received by City Give for Forestry, Community Services.

In 2019, City Give, a formalized enterprise-wide initiative was launched to create a transparent, non-partisan governance structure for the acceptance and appropriations of charitable gifts.

Adopted on Second Reading.

3. **Items Relating to the 2023 City Classified Employee Pay Plan as Provided in the Collective Bargaining Agreement with the Fraternal Order of Police.**

A. Second Reading of Ordinance No. 016, 2023, Adopting the 2023 Amended City Classified Employee Pay Plan to Update Classified Positions as Provided in the Collective Bargaining Agreement with the Fraternal Order of Police.

B. Second Reading of Ordinance No. 017, 2023, Appropriating Prior Year Reserves in the General Fund for the Cost of Police Services Salary and Benefit Increases as Provided in the Collective Bargaining Agreement with the Fraternal Order of Police.

The purpose of this item is to recommend changes to the 2023 City Classified Employee Pay Plan based on an annual market analysis conducted as agreed upon through the 2022-2024 Collective Bargaining Agreement (the "Agreement") with the Northern Colorado Lodge #3 of the Fraternal Order of Police ("FOP"). The Agreement was approved by Council by Resolution on December 7, 2021. The Agreement specifies a salary data collection method and evaluation process that includes market data as of early January. This data has been collected and analyzed,

resulting in the revised 2023 City Classified Employee Pay Plan. These Ordinances were unanimously adopted on First Reading on February 7, 2023.

Adopted on Second Reading.

4. Items Relating to The Landing at Lemay Plan Amendment to the City Structure Plan Map and Rezoning.

A. Second Reading of Ordinance No. 018, 2023 Amending the City's Structure Plan Map.

B. Second Reading of Ordinance No. 019, 2023 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification of that Certain Property Known as The Landing at Lemay Rezoning.

The purpose of this item is to amend the City's Structure Plan Map, which is part of City Plan, to change the place type land use designation of approximately 17 acres of land east of the Lemay Avenue and Duff Drive intersection from the Industrial Place Type to the Mixed Neighborhood Place Type and to rezone the property from the Industrial (I) District to the Medium Density Mixed Use Neighborhood (MMN) District.

In order to approve a Structure Plan Map change, Council must determine that the Structure Plan Map is in need of the proposed amendment, and that the proposed amendment will promote the public welfare and will be consistent with the vision, goals, principles, and policies of City Plan and its elements.

The rezoning request is subject to criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Commission, which voted 5-1 at their December 2022 hearing to recommend approval of the request with two conditions as recommended in the staff report and with agreement from the petitioner.

These Ordinances were unanimously adopted on First Reading on February 7, 2023.

The rezoning is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 2(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2022-068. The Structure Plan Map amendment is a legislative matter.

Adopted on Second Reading.

5. Items Relating to Victim Services Grants.

A. Second Reading of Ordinance No. 020, 2023, Making Supplemental Appropriation from the Eighth Judicial District Victim Assistance and Law Enforcement Board for the Fort Collins Police Services Victim Services Unit.

B. Second Reading of Ordinance No. 021, 2023, Making Supplemental Appropriation from the Colorado Division of Criminal Justice under the Federal Victim of Crime Act for the Fort Collins Police Services Victim Services Unit.

These Ordinances, unanimously adopted on First Reading on February 7, 2023, help fund the Victim Services Unit of Fort Collins Police Services for victim advocacy services which are required under the Colorado Victim Rights Amendment for victims of crime and their family members.

The Victim Services Unit has been awarded a \$70,000 VALE grant for the period from January 1, 2023, to December 31, 2023. The VALE grant is awarded through the Eighth Judicial District Victim Assistance and Law Enforcement (VALE) Board to help fund services provided by the Victim Services team. This grant will fund one part-time victim advocate, as well as 65% of the salary of a contractual 40-hour per week victim advocate.

The Victim Services Unit has also been awarded a 24-month grant in the amount of \$47,959 for the period from January 1, 2023, to December 31, 2024, by the Colorado Division of Criminal Justice under the Federal Victim of Crime Act (VOCA). The amount to be received in 2023 is \$23,979 with the remaining amount to be received in 2024. This grant will help fund services provided by the Victim Services Unit. These funds will be used to pay 35% of the salary for the victim advocate who provides crisis intervention services for sexual assault victims between the school ages of kindergarten through 12th grade.

Adopted on Second Reading.

6. Second Reading of Ordinance No. 022, 2023, Making Supplemental Appropriations and Authorizing Transfers for the Environmental Services Radon Program.

This Ordinance, unanimously adopted on First Reading on February 7, 2023, appropriates unanticipated grant revenue in the General Fund for the Environmental Services Radon Program. This appropriation includes \$9,000 of grant revenues provided by the Colorado Department of Public Health and Environment (CDPHE) to support radon testing and mitigation programs. The grant directly supports radon activities identified in the Environmental Services Department's core budget offer and requires a local match of \$6,000. Matching funds are appropriated and unexpended in the 2023 Environmental Services operating budget and will be transferred to the Environmental Services Radon Program.

Adopted on Second Reading.

7. First Reading of Ordinance No. 024, 2023, Appropriating Philanthropic Revenue Received By City Give for Fort Collins Police Services for the Safe Futures Initiative.

The purpose of this item is to request appropriation of \$86,000.00 in philanthropic revenue received by City Give for Fort Collins Police Services for the Safe Futures initiative.

In 2019, City Give, a formalized enterprise-wide initiative was launched to create a transparent, non-partisan governance structure for the acceptance and appropriations of charitable gifts.

Adopted on First Reading.

8. First Reading of Ordinance No. 025, 2023, Appropriating Prior Year Reserves and Unanticipated Revenue from Philanthropic Donations Received Through City Give for Various Programs and Services as Designated by the Donors.

The purpose of this item is to request appropriation of \$19,692 in philanthropic revenue received through City Give. These miscellaneous gifts to various City service areas and departments support a variety of programs and services and are aligned with both the City's strategic priorities and the respective donors' designation.

In 2019, City Give, a formalized enterprise-wide initiative was launched to create a transparent, non-partisan governance structure for the acceptance and appropriations of charitable gifts.

Adopted on First Reading.

9. **First Reading of Ordinance No. 026, 2023, Appropriating Philanthropic Revenue Received Through City Give for The Gardens on Spring Creek for General Operations as Designated by the Donor.**

The purpose of this item is to request appropriation of \$100,000 in philanthropic revenue received through City Give for The Gardens on Spring Creek for general operations as designated by the donor.

In 2019, City Give, a formalized enterprise-wide initiative was launched to create a transparent, non-partisan governance structure for the acceptance and appropriations of charitable gifts.

Pulled from Consent to Allow for Discussion.

10. **Resolution 2023-018 Making Appointments to the Air Quality Advisory Board.**

The purpose of this item is to fill vacancies on the Air Quality Advisory Board.

Adopted.

11. **Resolution 2023- 019 Approving Fort Fund Grant Disbursements – Project Support II Category.**

The purpose of this item is to approve Fort Fund grants from the Cultural Development and Programming Account and the Tourism Programming Account for the selected community events in the Project Support II category, based upon the recommendations of the Cultural Resources Board.

Adopted.

12. **Resolution 2023-020 Approving an Exception to the Use of a Competitive Process for an Enterprise License Agreement with ESRI for GIS Software.**

A request for an exception to the use of a competitive bid process for the purchase of a three-year Enterprise License Agreement (ELA) with an option to renew for two additional years from ESRI is being brought forward for consideration. The alternative is contrary to the City's best interests for the following reasons:

- ESRI's suite of Geographic Information System (GIS) software solution is used throughout the City by many departments and partner agencies to deliver map services to the public and to help City Council and Staff to make informed decisions.*
- The ESRI solution is integrated and highly integral to various other software solutions used by the City. Moving away from the ESRI solution would be a multi-year project with high cost, the potential loss of functionality, and great impact to the City and the public.*
- ESRI's software is proprietary and is only available for purchase directly from ESRI; they do not partner with third party resellers.*
- ESRI holds the market share in GIS software making it easy to hire and maintain highly qualified staff.*
- The ELA is a cost-effective approach which allows for an unlimited number of staff to make use of this software. It also provides access to future updates and upgrades which allows for growth and sustainability of the GIS environment.*

Exception to the Competitive Bid or Proposal Rationale:

Section 8-161(d)(1)b. Although there exists more than one (1) responsible source a competitive process cannot reasonably be used or, if used, will result in a substantially higher cost to the City, will otherwise injure the City's financial interest, or will substantially impede the City's administrative functions or the delivery of services to the public.

Adopted.

13. Resolution 2023-021 Finding Substantial Compliance and Initiating Annexation Proceedings for the Thompson Thrift Spaulding Addition Annexation.

The purpose of this item is to determine substantial compliance and initiate annexation proceedings for the Thompson Thrift Spaulding Addition Annexation, located at 423 Spaulding Lane. The Applicant has submitted a written petition requesting the annexation and proposed zoning. The Thompson Thrift Spaulding Addition Annexation totals 3.743-acres and is located off Terry Lake Road/Highway 1 on Spaulding Lane, closest to the Spaulding Lane and Valley View Lane intersection.

The requested zoning for this annexation is Low Density Mixed Use (L-M-N), which is in alignment with the City of Fort Collins Structure Plan designation for this area. No project development plan proposal was submitted in conjunction with the annexation application.

This annexation request is in conformance with the State of Colorado Revised Statutes as they relate to annexations, the City of Fort Collins City Plan, and the Larimer County and City of Fort Collins Intergovernmental Agreement Regarding Growth Management.

Adopted.

END OF CONSENT CALENDAR

Councilmember Pignataro moved, seconded by Councilmember Peel, to approve the recommended actions on items 1-8 and 10-13 on the consent calendar.

The motion carried 6-0.

Excused: Mayor Pro Tem Francis.

K) CONSENT CALENDAR FOLLOW-UP (This is an opportunity for Councilmembers to comment on items adopted or approved on the Consent Calendar.)

Councilmember Peel drew attention to the donations being received in items 7 through 9. She also noted item 8 included several donors to several different City departments.

L) STAFF REPORTS

None.

M) COUNCILMEMBER REPORTS

Councilmember Susan Gutowsky

- Attended an excellent conference called Saving Places in Denver recently dealing with historic preservation, learning the different interpretations of historic preservation. The takeaway from the conference was intangible preservation is essential.

- Attended the Empty Bowls event held by the Larimer County Food Bank.

Councilmember Shirley Peel

- Attended the recent promotional ceremony for Police Services.

N) CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT CALENDAR FOR INDIVIDUAL DISCUSSION

9. **First Reading of Ordinance No. 026, 2023, Appropriating Philanthropic Revenue Received Through City Give for The Gardens on Spring Creek for General Operations as Designated by the Donor.**

The purpose of this item is to request appropriation of \$100,000 in philanthropic revenue received through City Give for The Gardens on Spring Creek for general operations as designated by the donor.

In 2019, City Give, a formalized enterprise-wide initiative was launched to create a transparent, non-partisan governance structure for the acceptance and appropriations of charitable gifts.

There was no staff report and no public comment.

Councilmember Ohlson noted his opposition as stated at the prior meeting, not to the project but rather to the process for where the funds are being sourced from.

Councilmember Pignataro moved, seconded by Councilmember Gutowsky, to adopt on first reading Ordinance No. 026, 2023.

The motion carried 5-1.

Ayes: Councilmembers Gutowsky, Pignataro, Canonico, Peel, and Mayor Arndt.

Nays: Council Member Ohlson.

Excused: Mayor Pro Tem Francis.

O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION

14. **Second Reading of Ordinance No. 015, 2023, Appropriating Philanthropic Revenue By City Give and Conservation Trust Funds for the Construction of the 9/11 Memorial at Spring Park and Related Art in Public Places.**

The purpose of this item is to request appropriation of \$480,765.00 for the designated purpose toward the construction of the 9/11 Memorial at Spring Park, 2100 Mathews Steet, Fort Collins, CO. This Ordinance was adopted 6-1 (Nay: Ohlson) on First Reading on February 7, 2023.

A partnership between the City of Fort Collins and Poudre Fire Authority, the 9/11 Memorial will be located in midtown Fort Collins, and will honor firefighters, emergency medical technicians, law enforcement officers, and nearly 3,000 others who lost their lives on September 11, 2001.

There was no staff report and no public comment.

Councilmember Ohlson stated he supports the memorial but does not support the way it is funded.

Councilmember Pignataro moved, seconded by Councilmember Canonico, to adopt on second reading Ordinance No. 015, 2023.

The motion carried 5-1.

Ayes: Councilmembers Gutowsky, Pignataro, Canonico, Peel, and Mayor Arndt.

Nays: Council Member Ohlson.

Excused: Mayor Pro Tem Francis.

15. Items Related to Residential Solid Waste Collection.

A. First Reading of Ordinance No. 027, 2023, Amending Chapter 12, Article II and Chapter 15, Article XV of the Code of the City of Fort Collins to Allow for the Establishment of a City Waste Collection Program and Generally Updating Provisions of the Code Governing Waste Collection Within the City.

B. First Reading of Ordinance No. 028, 2023, Authorizing the City Manager to Enter Into a Contract for the Provision of Residential Waste Collection Services.

C. First Reading of Ordinance No. 029, 2023, Appropriating Prior Year Reserves for Start-up Costs to Create a Contracted Residential Waste Collection Program.

The purpose of this item is to consider the adoption of a contracted residential waste and recycling program, which includes three separate Ordinances and one policy question:

1. Ordinance No. 027, 2023, would amend the City Code to enable the contracted hauling program and establish the City Administrative Fee to fund the City's role in the program.

2. Ordinance No. 028, 2023, would adopt the contract with Republic Services.

3. Ordinance No. 029, 2023, would approve an off-cycle general fund appropriation in the amount of \$107,251 to support the start-up phase of the proposed program.

4. Policy question: Do Councilmembers prefer the weekly or every-other-week recycling collection option?

This program aligns with the Council Priority to Explore a Districted System for Garbage, Recycling and Compost.

The proposed program includes the following benefits:

- Trash, recycling as well as yard trimmings and two bulky item collections per year for a cost similar to what most residents paid in 2022 for only trash and recycling*
- A more affordable way to increase the collection of yard trimmings from residents*
- Cost-effective, predictable pricing*
- Opportunity to ensure a high level of customer service with penalties to the hauler and service credits to customers in the event of a missed pickup etc.*
- Fewer trucks on residential roads helps to improve neighborhood safety, quality of life, reduces emissions, also reduces road wear and tear*

• *Additional yard trimmings composted (78% - 130% increase) and additional materials recycled if Councilmembers select the weekly recycling policy option (9% - 27% increase). Additional yard trimmings and recycling combined would achieve 3.7% - 6.7% of the progress needed to meet the zero waste goal.*

Lindsay Ex, Environmental Sustainability Director, introduced this item for consideration and the team presenting. Caroline Mitchell, Environmental Sustainability Manager, led the staff presentation on this item as set forth in the PowerPoint in the agenda packet.

PUBLIC COMMENT

Jim Hutchinson with Republic Services provided information about Republic's commitment to sustainability it shares with the City and how this contract helps get to the goals they have set in terms of sustainability as well, including noting the natural gas fleet Republic is planning to bring on board to service this contract. He noted Republic Services is an environmental services company, not a waste company.

Mary Smith, Fort Collins resident, thanked the Council for their consideration of these ordinances and complemented staff for their thorough research and work on this topic, stating it is about time the City takes this action.

Jason Knebel, Fort Collins resident, spoke in opposition to these ordinances.

Elizabeth Chapman, Fort Collins resident, applauded the Council and staff for the work on this topic and spoke in support of the ordinances as well as every week recycling service.

Holli McElwee, municipal sales manager at Republic Services, thanked the Council and staff for their consideration of Republic and stated Republic's support for partnering in sustainability efforts. She also spoke to Republic's challenges last year in transitioning to new systems as well as the reasons for recent pricing increases. She noted the density in service provisions in this contract allow for lower pricing.

Brittany Fields noted she is a junior at CSU and spoke in support of the proposed ordinances for their impact on sustainability goals. She also spoke in support of adding a compost service to trash services.

Carrie (no last name given) stated her support for the proposed ordinances and noted the most important thing to her is weekly pick up for recycling.

COUNCIL DISCUSSION

Councilmember Peel:

- Questioned the accuracy of online service reviews, specifically relating to Republic, and how widespread service issues are. Staff spoke to conversations with other communities who have contracted with Republic and have had satisfactory service and chosen to renew services. Republic staff also addressed customer reviews.
- Inquired whether the liquidated damages provisions of the contract are at enough to ensure quality service. Staff noted there are liquidated damages provisions as well as performance standards measured over a monthly basis that City compliance staff will be reviewing on an ongoing basis.
- Requested an explanation of the variance provisions. Staff explained the two variances in the contract, one for extra-large users and one for shared service for very minimal trash generators, and how households would be able to apply for one of those variances.

Councilmember Canonico:

- Requested options for residents in the GMA. Staff noted they reached out to Golden staff involved at the initiation of their program and noted they have not seen any changes in the pricing in the surrounding areas outside of the City limits. There is also an element in the contract that would allow other local governments to leverage Fort Collins competitive purchasing process the City has negotiated. The contract would allow Larimer County to opt in to the competitive purchasing process Fort Collins has already negotiated.
- Inquired whether HOAs would be able to opt in when existing contracts may expire with current providers. Staff noted if this program is implemented, in the initial step of its implementation, City staff will work with HOAs to evaluate their current services and whether they match the requirements of the program. At any point during that process, an HOA can opt into the contract. Once services start, there are provisions in the contract allowing HOAs to later choose to opt in on a mutually agreed upon timeline with Republic.
- Inquired about pursuing composting options. Staff noted food scraps are not included in the contract currently but the potential to reconsider this in the future has been discussed with Republic. The food scraps composting infrastructure is currently not available but there could be a potential to shift and add that service to the yard waste bin but would be subject to further discussion.
- Inquired about the potential for reuse of bins. Staff noted one of the reasons for requiring all new bins is to support the competitive purchasing process by not giving an advantage to any haulers that may already have carts in the community. Republic bins will be collected and those still in usable shape will be redeployed to other service areas and those not in usable shape will be recycled. City carts also continue to support future competitive purchasing processes.
- Asked if there is a sense of how many residents might opt out and how the fee level was set. The price point was based on peer community feedback and is set at the lowest level of offered services. In a community that set a lower opt out fee, opt outs were significantly higher and pricing was not sustainable over time.
- Inquired about competition for future contracts. Staff noted peer communities have received competitive proposals after the initial contract term and in some instances have switched providers.
- Inquired how the service provider checks on service level standards regarding contamination. Republic representatives indicated this is typically done via visual examination but also anticipates rolling out artificial intelligence technology in 2024 for this purpose.
- Inquired about extra charges for excess materials for recycling. Staff noted trends are toward automated collection for greater efficiency and driver safety, which is not supported by materials outside of bins. This is a matter that is in Republic's discretion in the current contract based on the prevalence of issues. It was also noted it may be impacted on whether recycling is selected weekly or biweekly.

Councilmember Gutowsky:

- Inquired how trucks are powered by methane from landfills. Republic representatives provided details on how they procure and harness this landfill gas for fueling vehicles. The local facility will be upgraded to capture these gases as well.
- Inquired how yard waste will be disposed. Staff responded that residents would have the option to put their yard waste in separate collection bins specifically for yard waste. Gutowsky also indicated she would like weekly recycling service.
- Inquired how Republic customer service staff will be able to service Fort Collins residents without knowing the community and neighborhoods. Staff noted this was an area of significant conversation and while the contract does not include requirements for where staff is answering calls from, it does include expectations for the knowledge base of those engaged in that work.

- Indicated she will be supporting the Ordinances because of how this work aligns with Council priorities and existing climate goals.

Councilmember Pignataro:

- Requested clarification on the 20% number on slide 5 of the presentation. Staff explained the 20% is not based on the number of homes but the market share by revenue. Of all the trash and recycling service in Fort Collins, 20% of it is represented by this contract. Staff anticipates 40-45,000 homes will be serviced by this contract.
- Inquired about the small bin cost of 1-3% which goes to the hauler not the City. Staff explained the administrative fee up to \$1.35 which funds the City's role in the program. The opt out fee revenue goes to the hauler because of the baseline calculation for pricing. Neighbors who opt to share service are not required to be next to each other.
- Inquired if we opt for weekly recycling service, is there an option to return to bi-weekly if we see unanticipated consequences. Staff indicated the contract does not prevent a return to bi-weekly.
- Inquired about cancellation fees. Staff indicated cancellation fees are not permitted by Ordinance.

Mayor Arndt indicated support for the contract but would like to revisit composting as new technology options open.

Councilmember Ohlson thanked staff and management for their great work and supports the measure including the shift to weekly recycling.

Councilmember Canonico discussed the anaerobic digester for composting and federal funds available for a program. She would like to see Council explore that option as well.

Councilmember Pignataro moved, seconded by Councilmember Ohlson, to adopt on first reading of Ordinance No. 027, 2023.

The motion carried 6-0.

Excused: Mayor Pro Tem Francis.

Councilmember Pignataro moved, seconded by Councilmember Gutowsky, to adopt on first reading of Ordinance No. 028, 2023.

The motion carried 6-0.

Excused: Mayor Pro Tem Francis.

Councilmember Pignataro moved, seconded by Councilmember Canonico, to adopt on first reading of Ordinance No. 029, 2023.

The motion carried 6-0.

Excused: Mayor Pro Tem Francis.

Clerk's Note: Mayor Arndt called for a break at 8:18 until 8:30 p.m. The meeting resumed at 8:33 p.m.

16. First Reading of Ordinance No. 031, 2023 Appropriating Prior Year Reserves for a Conditional Capital Contribution of \$1,000,000 for Construction of a New Public Terminal Facility at the Northern Colorado Regional Airport.

The purpose of this item is for Council to consider a public position of support by appropriating an anticipated \$1,000,000 conditional capital contribution for the construction of a new public terminal facility (Project) at the Northern Colorado Regional Airport (Airport). Total Project costs are estimated to be \$25,000,000, and this Ordinance's adoption by the end of February helps to secure the anticipated \$21,000,000 of federal funding. At the suggestion of the Council Finance Committee, staff has developed a series of performance indicators to use as terms and conditions of the City contribution.

Chief Financial Officer Travis Storin and Northern Colorado Regional Airport Executive Director Jason Licon presented as set forth in the slide deck on the agenda packet.

There was no public comment.

Council discussion focused on the proposed metrics and performance indicators.

Mayor Arndt inquired how we share half of ownership and require the other owner to pay us back if certain metrics are not met. Also requested was a review of the governance model due to growth and the necessary changes in how we do business now.

Councilmember Peel inquired if the metrics would only be suggestions and the funds would not be contingent on the metrics.

Councilmember Pignataro asked if Loveland's appropriation is committed and staff confirmed it was a clean appropriation ordinance. City Manager Kelly DiMartino confirmed the Loveland ordinance was contingent on Fort Collins appropriating \$1M.

Councilmember Pignataro requested confirmation that airport administration is provided by the City of Loveland. Airport Director Jason Licon indicated Fort Collins input on performance metrics would come from the Fort Collins Mayor and City Manager who sit on the Airport Commission.

Councilmember Canonico indicated agreement with previous comments.

Councilmember Ohlson stated he would not support this measure and agreed a new governance model needs to be addressed.

Councilmember Pignataro asked about changing the language so refunding the money would not be the goal but more about performance metrics.

City Attorney Carrie Daggett made suggestions that would not make the City's funding contingent:

- Eliminate the word conditional in several places in the title, section 2, and any other places it appears in the Ordinance.
- In the 5th Whereas clause: remove the end of recital that states 'to be used as conditions for the City's capital contributions' and include 'for the project.'
- Remove the 7th recital and add 'Whereas this Ordinance directs the City Manager to negotiate and execute an IGA with Loveland for this capital contribution that addresses the performance indicators but leaves to the City Manager the discretion as to how they will be addressed with the goal being the timely funding of the project.'
- Combine sections 3 and 4 with revised language: "That the City Manager is directed to negotiate an intergovernmental agreement with Loveland for this capital contribution and is

authorized to enter into and sign on the City's behalf. The City Manager is further authorized to enter into the agreement on such terms and conditions concerning the Performance Indicators as the City Manager determines are in the best interest of the City for the timely funding of the Project."

There was Council support for these changes.

Councilmember Pignataro moved, seconded by Councilmember Gutowsky, to adopt on first reading Ordinance No. 031, 2023 with amendments as read into the record by the City Attorney.

The motion carried 5-1.

Ayes: Councilmembers Gutowsky, Pignataro, Canonico, Peel, and Mayor Arndt.

Nays: Councilmember Ohlson.

Excused: Mayor Pro Tem Francis.

17. First Reading of Ordinance No. 030, 2023, Adopting the North College MAX BRT Plan as a Component of City Plan.

The purpose of this agenda item is for City Council to consider adoption of the North College Max Plan. The North College MAX BRT Plan is the result of approximately 18 months of community engagement, information analysis, and concept refinement. The plan provides recommendations for Bus Rapid Transit, local transit routes, bicycle and pedestrian facilities, future development, and affordability.

Drew Brooks, interim PDT Deputy Director, introduced this item for consideration. Seth Lorson, Transit Planner, led the staff presentation on this item as set forth in the presentation in the agenda packet.

There was no public comment on this item.

There was discussion by the Council and questions to staff on some of the particulars included in the plan.

Councilmember Ohlson:

- Requested definitions for near-term, mid-term and long-term in years. Staff indicated the measurement is based on the area's actual growth. Until certain changes are met, the City is not eligible for certain federal grants. Staff explained the timeline of the project indicating 10-12 years for the final buildout. Staff also indicated the long-term could be 20 years.
- Inquired about adjusting the architectural standards. Lorson provided examples of where the architectural standards could be lessened to address affordability.
- Requested clarification on interlining with MAX, clarification that the reference is related to route operations.
- Requested clarification about the \$27 million which staff indicated is the total share.

Councilmember Pignataro:

- Inquired whether Vision Zero was incorporated in the Plan. Staff responded that all design is based on safety measures and provided examples.

Councilmember Canonico stated support for the project and appreciation for the considerations around affordability and gentrification.

Councilmember Ohlson asked about attention to South College. Staff indicated that North College is the natural progression of the MAX and is the area of robust ridership.

Councilmember Pignataro moved, seconded by Councilmember Canonico, to adopt on first reading Ordinance No. 030, 2023.

The motion carried 6-0.

Excused: Mayor Pro Tem Francis.

Clerk's Note: Mayor Arndt called for a 5-minute recess at 9:27 p.m. The meeting resumed at 9:35 p.m.

18. **Hearing and Determination of Standing for the Appeal of the Historic Preservation Commission Determination that 1901 and 1925 Hull Street are not Eligible for Landmark Designation and Consideration of Resolution 2023-023 Adopting Findings of Fact and Conclusions of Law Regarding the Determination of Standing.**

The purpose of this item is to consider the standing of James Sack to file an appeal of the Historic Preservation Commission's (HPC) Decision on December 14, 2022, determining that the properties at 1901 and 1925 Hull Street, historically the Hull and Shankula properties respectively, are not eligible as Fort Collins landmarks and are not subject to the provisions of Land Use Code 3.4.7.

The appeals process in Code Section 2-54(c) allows for the Mayor to establish a separate period of time in advance of arguments on the merits of the appeal to consider procedural issues. The Council is tasked with determining if Mr. Sack is a "party-in-interest" with standing to bring the appeal as defined in Municipal Code 2-46. Council may only proceed with hearing the issues raised in the notice of appeal at a future meeting if Mr. Sack qualifies as a party-in-interest Mr. Sack filed his notice of appeal on December 27, 2022. The Council may make its determination of standing by adopting Resolution 2023-023 with the correct option to state that determination.

City Attorney Carrie Daggett provided a brief overview of the process for this hearing.

Paul Sizemore, CDNS Director, provided a brief staff explanation of the Historic Preservation Commission on appeal, an explanation of the nature of the standing issue, and a staff report as set forth in the slide deck in the agenda packet.

No Councilmembers disclosed any potential conflict of interest issues or other possible reasons for recusal.

Parties present included James Sack, the appellant, and Calleigh Olson, attorney representing True Life Companies, and Zell Cantrell, project manager with the True Life Companies as the property owners.

Mayor Arndt announced the following time allocations:

- 10 minutes total for Mr. Sack and any parties-in-interest supporting a finding of standing.
- 10 minutes total for the property owner and any other parties-in-interest opposed to a finding of standing.
- 5 minutes total for rebuttal for Mr. Sack and any parties-in-interest supporting a finding of standing.
- 5 minutes total for rebuttal for the owner and any other parties-in-interest opposed to a finding of standing.

PROCEDURAL ISSUES

City Attorney Daggett noted it would be helpful to ask the parties about any new evidence they would like to have considered tonight. Mr. Sack noted he submitted some photos of the signs posted on the site as well as some additional emails that were exchanged with City staff in addition to the items submitted earlier and provided in the packet. The representatives for the property owner requested the photos be provided to them.

Council took a 5-minute recess to allow counsel for the property owner to review the new materials provided by the appellant today. The property owner's representative did not object to most of the materials provided, except for the lengthy email chain a City planner in January, after the date of the hearing. Mayor Arndt ruled the items apart from the email exchange would be admitted into the record.

PRESENTATIONS

James Sack provided a verbal presentation relating to the appeal and how he asserts he meets the requirements for standing as a party in interest based on submitting written comments. He explained he first emailed City staff on December 13 after seeing a posted sign at the property about a potential historic review action. He then called the number on the sign, which reached the Building Services offices, and was advised to also email the Development Review comments email, which he did on December 14.

Caleigh Olson, attorney representing the property owner, True Life Companies, provided a verbal presentation, noting the comments made by the appellant were not specific to the project, were not sent to the correct staff, and were not directed to the Commission.

On rebuttal, Mr. Sack spoke to the issue of a question versus a comment, noting the language in the Code is very broad and should construe that question as a comment about the project. The phone number on the sign goes to the Building Services Department. He stated he called that number on Monday, December 12, and left a message. After not receiving a response the next day, he called the Planning Department and reached someone who could not find the address to identify the project. That staff person suggested emailing Development Review comments. He reached Em Myler who also could not find the address after providing three associated addresses due to issues with the website. He also chronicled subsequent communications with planning staff about the challenges with keeping the website up to date.

Attorney Olson on rebuttal asserted the objective of written comments being submitted to the Historic Preservation Commission is so the body can consider those comments when making a decision. Even if Mr. Sack had reached the appropriate staff, he did not provide comments for the commission to review. Olson objected to Mr. Sack reading into the record the email that was not admitted into new evidence.

City Attorney Daggett advised Council to not consider the content of the email read aloud by the appellant unless it is subsequently admitted into the record.

QUESTIONS

Councilmember Ohlson asked if the City Attorney has an interpretation of what constitutes providing comments. City Attorney Daggett noted the Code does generally contemplate comments provided to the Commission for its consideration in its decision-making process.

Councilmember Peel asked staff about the yellow development review sign. Jim Bertolini noted the sign was posted two weeks in advance and is a Historic Review sign. He stated the signs are old and include the phone number for Building Services.

Councilmember Peel asked Mr. Sack what his objective was in trying to reach out after seeing the posted historic review signs. City Attorney Daggett advised caution in the line of questioning about what the intent of something was when the Code only contemplates what was done.

The photo of the sign provided by Mr. Sack and admitted into evidence was displayed, showing it indicates: Historic Review Underway. He also spoke to the sign and the difficulty in reaching someone for further information.

Councilmember Gutowsky wondered if what Councilmember Peel was asking was if the appellant had received a timelier response, would he have then been able to submit more appropriate comments to the HPC. Councilmember Peel confirmed that was her question.

There being no further questions, Mayor Arndt closed the hearing at 10:37 p.m. to allow Council discussion.

Councilmember Ohlson provided comments on the challenges with reaching City staff via phone.

Councilmember Peel shared Councilmember Ohlson's frustrations around not being able to get ahold of anyone as well as not being able to do what needs to be done because of challenges with the City website. She also commented on concerns with the appeal process broadly. She shared her belief that his intent was to make appropriate comments to the Commission and would have occurred if he had been able to reach the appropriate staff.

Mayor Arndt noted she is reaching a different conclusion based on what the Code provides for. She stated her agreement that Mr. Sack cannot be faulted for challenges with reaching the appropriate City staff, but his comments were an inquiry rather than substantive comments.

Councilmember Pignataro noted if the comment had reached the appropriate staff, it still was not substantive enough to reach the Commission. She also commented regarding what could be considered adequate time for response. In this instance, there was not enough time for staff to appropriately respond and allow time for Mr. Sack to participate in the hearing.

Councilmember Canonico stated she does not find the comments provided would have had any impact on the hearing.

Councilmember Gutowsky asked how a question would have to be worded to qualify to be part of the record that would go to the Commission. Councilmember Pignataro provided an example of a question with slightly more substance, but indicated this message did not include any other details aside from an inquiry.

Councilmember Ohlson stated he can see both viewpoints on this issue clearly. He noted there have been too many glitches in the organization, particularly on responsiveness.

Councilmember Pignataro moved, seconded by Councilmember Canonico, to adopt Resolution 2023-023, with Option A which reads as follows:

Section 2. That, based on the evidence in the record and presented at the Initial Hearing, the Council finds that James Sack does not have standing to appeal the Decision of the Historic Preservation Commission, because he does not meet any of the conditions to be considered a party-in-interest under Municipal Code Section 2-46.

Section 3. That the Appeal is dismissed.

Section 4. That adoption of this Resolution shall constitute the final action of the City Council on the Appeal, in accordance with City Code Section 2-56(c).

The motion carried 4-2.

Ayes: Councilmembers Gutowsky, Pignataro, Canonico, and Mayor Arndt.

Nays: Councilmembers Peel and Ohlson.

Excused: Mayor Pro Tem Francis.

Q) OTHER BUSINESS

A. Possible consideration of the initiation of new ordinances and/or resolutions by Councilmembers.

(Three or more individual Councilmembers may direct the City Manager and City Attorney to initiate and move forward with development and preparation of resolutions and ordinances not originating from the Council's Policy Agenda or initiated by staff.)

None.

R) ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at 10:54 p.m.

Mayor

ATTEST:

City Clerk

March 7, 2023

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

PROCLAMATIONS & PRESENTATIONS

5:00 PM

A) PROCLAMATIONS AND PRESENTATIONS

PP 1. **Proclaiming March 20-26, 2023, as Fix a Leak Week.**

Mayor Jeni Arndt presented the above proclamation at 5:00 p.m.

REGULAR MEETING

6:00 PM

B) CALL MEETING TO ORDER

Mayor Jeni Arndt called the regular meeting to order at 6:00 p.m. in the City Council Chambers at 300 Laporte Avenue, Fort Collins, Colorado, with hybrid participation available via the City’s Zoom platform.

C) PLEDGE OF ALLEGIANCE

Mayor Jeni Arndt led the Pledge of Allegiance to the American Flag.

D) ROLL CALL

PRESENT

- Mayor Jeni Arndt
- Mayor Pro Tem Emily Francis
- Councilmember Susan Gutowsky
- Councilmember Julie Pignataro
- Councilmember Tricia Canonico
- Councilmember Shirley Peel
- Councilmember Kelly Ohlson

STAFF PRESENT

- City Manager Kelly DiMartino
- City Attorney Carrie Daggett
- City Clerk Anissa Hollingshead

E) CITY MANAGER'S AGENDA REVIEW

City Manager Kelly DiMartino provided an overview of the agenda, including:

- There were no changes to the published agenda.
- All items on the consent agenda were recommended for approval.

F) COMMUNITY REPORTS

None.

G) PUBLIC COMMENT ON ANY TOPICS OR ITEMS OR COMMUNITY EVENTS
(Including requests for removal of items from Consent Calendar for individual discussion.)

Andy Clark, Fort Collins resident, spoke regarding the former Hughes Stadium site to request a portion of the space be utilized for a mountain bike park.

Kenny Bearden, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Kevin Krause, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Cameron Krause, a seven-year-old Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Alaina Smith, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Emma O'Dell, a nine-year-old Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Ian Long, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Benjamin Brown, Fort Collins resident in 7th grade, spoke in support of a mountain bike park at the former Hughes Stadium site.

Taylor Calmus, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Tristan West, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Lisa Butler, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Brittney Slightom, Fort Collins resident, spoke about Morgellons Disease to request recognition of the real nature of this rare disease and the need for awareness and recognition of this disease, reduced stigma, and increased research.

Natalie Reimers, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Trace Fondy, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Ty Fulcher, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Ed Behan, Fort Collins resident, spoke regarding concerns with the level of engagement done by City staff in drafting proposed oil and gas regulations.

Cameron Dreyer, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Patricia Babbitt, Fort Collins resident, spoke as an avid cyclist with concerns about a mountain bike park at the former Hughes Stadium site due to the potential impact on wildlife in that area.

Olivia Brown, Fort Collins resident in 5th grade, spoke in support of a mountain bike park at the former Hughes Stadium site.

Chris McCullough, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Shari Due, Fort Collins resident, spoke regarding oil and gas regulations and the known impact of drilling activities on ozone damage.

Madeline Blair, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Kevin Caffrey, Fort Collins resident, spoke regarding concerns about oil and gas regulations and the need to keep this town clean and protect air quality by limiting drilling. He also expressed support for a bike path at the Hughes stadium site.

Dr. Cory D. Carroll, Fort Collins resident, spoke about oil and gas regulations and the need to protect residents from the pollution of drilling and in support of continuous monitoring, more robust oversight, and enforceable penalties for bad actors.

Ben Zukowski, an 11-year-old Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Meghan Highland, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Andrew Klooster, Fort Collins resident, spoke about his work in monitoring emissions that could violate air quality regulations, noting Fort Collins has a frequent offender in Prospect Energy around odors and emissions.

John McDonagh, Fort Collins resident, spoke as a mountain biker against the development of bike park at the Hughes Stadium site due to the impacts to wildlife in favor of low impact activities for the site.

Theodore A. Rogers, Fort Collins resident, spoke against providing an appropriation to the Northern Colorado airport for a terminal expansion due to a lack of need and support for increased flights.

Rick Casey, Fort Collins resident, spoke about oil and gas regulations on behalf of the Fort Collins Sustainability Group regarding the proposed regulations and key topics yet to be addressed by staff.

Krista Piepenbrink, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Brad Bishop, Fort Collins resident, spoke in support of including a designed cross country course at the former Hughes Stadium site as compatible with many other uses at the space, including a bike park and a natural area.

Doug Henderson, Fort Collins resident, spoke on behalf of the Larimer Alliance regarding oil and gas regulations and the need to manage oil and gas in a manner that protects residents through revised regulations.

Lucy Porter, Fort Collins resident in 7th grade, spoke in support of a mountain bike park at the former Hughes Stadium site.

Mike Weber, Fort Collins resident, spoke about concerns with using the Hughes Stadium site for a natural area given the amount of money that needs to be spent for the acquisition, stating support for making this a recreation area.

Mary Steiner, Fort Collins resident, spoke as a mountain biker in opposition to a mountain bike park at the former Hughes Stadium site due to the potential for large crowds and lack of alignment with the intent of the ballot question that was approved by City voters.

Chris Stockburger, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Lucas Currell, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Adrian Macdonald, Fort Collins resident, spoke in support of a cross country course at the former Hughes Stadium site.

Adam Eggleston, Fort Collins resident, spoke in opposition to a rental registration program with proactive inspections.

Jonathan Guerdrum, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Quinn McConnell and two other CSU cross country team members spoke in support of a cross country course at the former Hughes Stadium site.

Barbara Krupnik-Goldman, Fort Collins resident, spoke about oil and gas proposed regulations to encourage strengthening those proposed regulations to include the recommendations that were forwarded for consideration in a letter from a number of concerned organizations. In addition she requested adding a clause that after a certain date the City would ban any further oil and gas facilities.

Dan Porter, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Zach, no last name given, spoke as a member of the CSU cross country team in support of a cross country course at the former Hughes Stadium site.

Christina Cooley, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Clerk's Note: Mayor Arndt called for a 10-minute recess at 7:30 p.m. The meeting resumed at 7:42 p.m.

Zach Watkins, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Mary Alice Grant, Fort Collins resident, spoke in support of a mountain bike park but not at the former Hughes Stadium site.

Hannah Casey, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Alistair Clark, Fort Collins resident, spoke in support of a cross country course at the former Hughes Stadium site.

Susan Huse, Fort Collins resident, spoke in support of a mountain bike park but not at the former Hughes Stadium site.

Michelle Haefele, Fort Collins resident, spoke regarding proposed oil and gas regulations to encourage Council to take full advantage of this delay to ensure more protections are included in the final regulations.

Jason Knebel, Fort Collins resident, requested the Councilmember from district 6 recuse herself from any further matters regarding the Land Use Code.

Warren Snyder, Fort Collins resident, spoke in opposition of a mountain bike park at the former Hughes Stadium site in favor of only low impact activities and preservation as a natural area.

Noelle Bauman-Stucky, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Lindsay Morgan, Fort Collins resident, spoke in opposition of a mountain bike park at the former Hughes Stadium site due to the impact to the natural areas.

Steve McClintock, Fort Collins resident, spoke in opposition to a funding appropriation for a new terminal at the Northern Colorado Regional Airport.

Justine Wagner spoke about the need for revisions to the Land Use Code to include protection of historic resources and maintaining resident engagement in those considerations.

Mike Beckstead, Fort Collins resident, spoke as a resident of the Hearthfire tank farm development area and concerns about what those residents can do to maintain safety, including implementing 24-7 air quality monitoring.

Beth Benschmidt, Fort Collins resident, spoke about the need to protect the treasure that is the former Hughes Stadium site by maintaining it as an open natural area.

Tom Farnsworth, Fort Collins resident, spoke about overwhelming resident support for maintaining the former Hughes Stadium site as an open natural area.

Mary Alyce, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Cade Shortridge, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Mary Frissell Smith, Fort Collins resident, spoke in support of the trash contracting proposal and Ordinances being considered for second reading.

Adam Miller spoke about a code violation at 6024 South College and the way the company parks semis blocking traffic for loading and unloading.

Barbara Denny, Fort Collins resident, spoke in opposition to a bike park at the former Hughes Stadium site and the need to preserve that open space, natural area and dark sky.

Owen Diehl, Fort Collins resident, spoke in support of a mountain bike park at the former Hughes Stadium site.

Dawson Gordon spoke in support of a mountain bike park at the former Hughes Stadium site.

Michela Dunbar, Fort Collins resident, spoke in support of using the former Hughes Stadium site for wildlife rehabilitation alongside other low impact uses.

Danni Cook, Fort Collins resident and cross country coach at Fossil Ridge High School, spoke on behalf of a cross country facility in Fort Collins.

Michael (last name unclear), 17 year old Fort Collins resident) spoke in support of a bike and recreation area at the former Hughes Stadium site.

Jasper Gordon, rides for SendTown Bike Club, spoke in support of a bike park at the former Hughes Stadium site.

Brandon Fix, Fort Collins resident, spoke in support of a bike park at the former Hughes Stadium site.

Joe (no last name given), spoke in support of a bike park at the former Hughes Stadium site.

Tim Gosar, Fort Collins resident, spoke in support of increased oil and gas regulations.

Tim Walthrop, Fort Collins resident, spoke in support of maintaining the former Hughes Stadium site as a natural area.

Ethan Cooley, Fort Collins resident and junior at Fort Collins High School, spoke in support of a bike park at the former Hughes Stadium site as well as for use for Nordic skiing.

Melissa Rosas, Fort Collins resident, spoke against the idea of large scale tourist destination bike park at the former Hughes Stadium site.

Nate Rogue spoke in support of a bike park at the former Hughes Stadium site.

Tallon Nightwalker, Fort Collins resident, spoke about the importance of protecting the Hughes site as open space as an essential area for wildlife to thrive.

Addie (no last name given) spoke about collecting signatures during the pandemic to protect Hughes as open space as was intended by the petition.

Tamra Meurer, Fort Collins resident, noted she also was part of collecting signatures in the petition effort focused on maintaining the Hughes area as open space.

Public comment concluded at 8:51 p.m.

H) PUBLIC COMMENT FOLLOW-UP

Mayor Pro Tem Francis thanked everyone for coming out and speaking tonight, including all the young people who spoke tonight. She noted there will be a work session on the Hughes Stadium site next Tuesday as part of the beginning stages of the process around the use of this site. Regarding Oil and Gas, she noted second reading was delayed to get feedback to incorporate into the proposed regulations. City Manager DiMartino shared Council can expect a memo on March 20 about how this might come forward in the best way for Council to consider potential changes at second reading.

Councilmember Ohlson thanked everyone for coming out and speaking tonight, especially the young people. He also asked about the oil and gas regulations, noting a big gap was placed between first and second reading and as a result would like to see a menu of potential changes that Council can choose from when the item returns for second reading. Regarding the issue of trash accumulation previously and on truck traffic tonight at a property on South College, requested follow up on this topic. City Manager DiMartino noted a follow up will be provided.

Councilmember Gutowsky noted she did hear several requests to have an open session or meeting prior to second reading of the oil and gas regulations and asked if this is something that is being considered. Lindsay Ex, Environmental Services Director, and Paul Sizemore, CDNS Director, responded, noting there are staff out on leave right now that may make it difficult to schedule additional engagement opportunities before the scheduled second reading date beyond a forum planned for later this week on the topic. It was noted that if staff needs more time, Council could consider a further delay.

Councilmember Pignataro thanked everyone for coming out tonight, especially those speaking for the first time. She also reiterated the Hughes site will be discussed at next week's work session. In addition, she apologized to a resident for providing incorrect information about oil and gas regulations. Also noted the site on South College that Adam Miller referred to definitely needs attention based on the satellite imagery.

I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

Councilmember Gutowsky noted she would like to pull item number 3 from the consent calendar for additional discussion.

J) CONSENT CALENDAR**1. Second Reading of Ordinance No. 024, 2023, Appropriating Philanthropic Revenue Received By City Give for Fort Collins Police Services for the Safe Futures Initiative.**

The purpose of this Ordinance, unanimously adopted (6-0) on First Reading on February 21, 2023, is to request appropriation of \$86,000.00 in philanthropic revenue received by City Give for Fort Collins Police Services for the Safe Futures initiative.

In 2019, City Give, a formalized enterprise-wide initiative was launched to create a transparent, non-partisan governance structure for the acceptance and appropriations of charitable gifts.

Adopted on Second Reading.

2. **Second Reading of Ordinance No. 025, 2023, Appropriating Prior Year Reserves and Unanticipated Revenue from Philanthropic Donations Received Through City Give for Various Programs and Services as Designated by the Donors.**

The purpose of this Ordinance, which was unanimously adopted (6-0) on First Reading on February 21, 2023, is to request appropriation of \$19,692 in philanthropic revenue received through City Give. These miscellaneous gifts to various City service areas and departments support a variety of programs and services and are aligned with both the City's strategic priorities and the respective donors' designation.

In 2019, City Give, a formalized enterprise-wide initiative was launched to create a transparent, non-partisan governance structure for the acceptance and appropriations of charitable gifts.

Adopted on Second Reading.

3. **Items Related to Residential Solid Waste Collection.**

A. Second Reading of Ordinance No. 027, 2023, Amending Chapter 12, Article II and Chapter 15, Article XV of the Code of the City of Fort Collins to Allow for the Establishment of a City Waste Collection Program and Generally Updating Provisions of the Code Governing Waste Collection Within the City.

B. Second Reading of Ordinance No. 028, 2023, Authorizing the City Manager to Enter Into a Contract for the Provision of Residential Waste Collection Services.

C. Second Reading of Ordinance No. 029, 2023, Appropriating Prior Year Reserves for Start-up Costs to Create a Contracted Residential Waste Collection Program.

The purpose of this item is to consider the adoption of a contracted residential waste and recycling program, which includes three separate Ordinances and one policy question:

- 1. Ordinance No. 027, 2023, would amend the City Code to enable the contracted hauling program and establish the City Administrative Fee to fund the City's role in the program.*
- 2. Ordinance No. 028, 2023, would adopt the contract with Republic Services.*
- 3. Ordinance No. 029, 2023, would approve an off-cycle general fund appropriation in the amount of \$107,251 to support the start-up phase of the proposed program.*
- 4. Policy question: Do Councilmembers prefer the weekly or every-other-week recycling collection option?*

This program aligns with the Council Priority to Explore a Districted System for Garbage, Recycling and Compost.

The proposed program includes the following benefits:

- Trash, recycling as well as yard trimmings and two bulky item collections per year for a cost similar to what most residents paid in 2022 for only trash and recycling*
- A more affordable way to increase the collection of yard trimmings from residents*
- Cost-effective, predictable pricing*

- *Opportunity to ensure a high level of customer service with penalties to the hauler and service credits to customers in the event of a missed pickup etc.*
- *Fewer trucks on residential roads helps to improve neighborhood safety, quality of life, reduces emissions, also reduces road wear and tear*
- *Additional yard trimmings composted (78% - 130% increase) and additional materials recycled if Councilmembers select the weekly recycling policy option (9% - 27% increase). Additional yard trimmings and recycling combined would achieve 3.7% - 6.7% of the progress needed to meet the zero waste goal.*

All three Ordinances were unanimously adopted (6-0) on First Reading on February 21, 2023.

Between First and Second Reading, staff has revised the Review Version of the contract with Republic Services and the proposed Code changes contained in Ordinance No. 027. Here are summaries of those changes:

- *Staff revised the frequency of the Recyclable Materials Service from every-other-week to weekly within the contract, added a new provision to address the City's right to change from weekly to every-other-week Recyclable Materials Service during the Agreement term subject to the party's good faith negotiations to determine the timing and impact to pricing of such change, and updated the Pricing Sheet accordingly. (See attached Contract Revision #1). Staff also updated the Pricing Sheet to reflect the selection of weekly Recyclable Materials Service (See attached Contract Revision #2). Additionally, staff incorporated a Cooperative Purchase provision to allow other governmental entities within the state of Colorado to use the City's competitive purchasing process as the basis to negotiate a contract with Republic Services for similar services, subject to such governmental entities' governing laws, rules, and regulations. (See attached Contract Revision #3).*
- *Staff also revised the Code changes to make various technical updates, including correcting the use of certain defined terms, removing unnecessary language, and correcting typographical errors. Staff moved a subsection from existing Section 15-413(d) to new Section 15-412(h) and clarified communication requirements for collectors in that same subsection. Additionally, staff clarified yard trimmings collection requirements within Section 15-414. All amendments from the First Reading version of Ordinance No.0 27 are shown within the Second Reading version of Ordinance No. 027.*

Pulled from Consent to Allow Discussion.

4. *Second Reading of Ordinance No. 030, 2023, Adopting the North College MAX BRT Plan as a Component of City Plan.*

The purpose of this Ordinance, unanimously adopted (6-0) on First Reading on February 21, 2023, is to consider adoption of the North College Max Plan. The North College MAX BRT Plan is the result of approximately 18 months of community engagement, information analysis, and concept refinement. The plan provides recommendations for Bus Rapid Transit, local transit routes, bicycle and pedestrian facilities, future development, and affordability.

Adopted on Second Reading.

5. **First Reading of Ordinance No. 032, 2023, Authorizing the Release of Restrictive Covenants on Property at 1947 Phia Way Developed by Fort Collins Habitat for Humanity.**

The purpose of this item is to obtain authorization from Council to release the Agreement of Restrictive Covenants Affecting Real Property on the single-family home located at 1947 Phia Way, which was developed by Fort Collins Habitat for Humanity. The development of this home was initially assisted with funding from the Department of Housing and Urban Development (HUD). At the time of completion, the project no longer met the HUD requirements, triggering a HUD mandated repayment of the funds and cancellation of the project.

Adopted on First Reading.

6. **First Reading of Ordinance 033, 2023, Extending the Moratorium on Certain Activities of State Interest Designated in Ordinance No. 122, 2021.**

The purpose of this item is the First Reading of an ordinance that extends the length of a moratorium previously imposed through Ordinance No. 122, 2021, and further extended with Ordinance No. 139, 2022, on two designated activities of state interest. The proposed Ordinance extends the length of the existing moratorium for three months beyond March 31, 2022, or until City Council adopts guidelines for the administration of the two designated activities. Extending the moratorium allows staff to reengage with stakeholders and develop policy decision points for Council's consideration along with first reading of the version-three 1041 regulations, May 2, 2023.

Adopted on First Reading.

7. **First Reading of Ordinance No. 034, 2023, Making Supplemental Appropriations from the Colorado Water Conservation Board Grant and Water Fund Reserves and Authorizing Transfers of Appropriations for the Water Efficiency Plan Update.**

The purpose of this item is to support updating the City's Water Efficiency Plan by end of 2024 by:

- *Appropriating \$160,000 of unanticipated grant revenue, awarded by the Colorado Water Conservation Board, to the Water Fund*
- *Appropriating \$65,795 from the Water Fund reserves*
- *Utilizing matching funds in the amount of \$126,705 from existing 2023 appropriations into this new grant project*

Adopted on First Reading.

8. **First Reading of Ordinance No. 035, 2023, Authorizing the City Manager to Execute Agreements, Conveyances, and Other Documents to Incorporate the Spring Cañon Waste Way Ditch.**

The purpose of this item is to approve the City's conveyance of its 2/12ths fractional ownership of the Spring Cañon Waste Way Ditch (Ditch) to a newly formed and incorporated Spring Cañon Wasteway Ditch Company (Ditch Company), and thereby receive 2/12ths share of the Ditch Company. This item would also authorize the City Manager to execute related agreements needed to form the Ditch Company. This administrative restructuring of the Ditch and water right ownership will allow for a variety of efficiencies including easier shareholder transfers, providing a single point of contact, and improving coordination of Ditch maintenance.

Adopted on First Reading.

9. **Resolution 2023-024 Adopting the Water Quality Management Policy for City-Owned Lakes and Stormwater Basins in the Growth Management Area.**

The lakes and stormwater basins (together, “urban lakes”) that the City owns are important resources that provide a range of benefits to the Fort Collins community. There are significant challenges associated with managing water quality in the City’s urban lakes. A project team has been working over the last two years to address these challenges by developing the City of Fort Collins Urban Lakes Water Quality Management Policy (“Policy”) and associated Guidance Document (“Guidance”). The Policy provides a framework for the City’s water quality operational and management decisions for its urban lakes and the Guidance provides technical resources to assist City staff with implementing the Policy. Development of the Policy and Guidance were informed by feedback received as part of an extensive stakeholder engagement process, and the Water Commission, Land Conservation and Stewardship Board, Natural Resources Advisory Board, and Parks and Recreation Board have formally recommended that City Council adopt the Policy.

Adopted.

END OF CONSENT CALENDAR

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to approve the recommended actions on items 1-2 and 4-9 on the Consent Calendar.

The motion carried 7-0.

K) CONSENT CALENDAR FOLLOW-UP *(This is an opportunity for Councilmembers to comment on items adopted or approved on the Consent Calendar.)*

None.

L) STAFF REPORTS

None.

M) COUNCILMEMBER REPORTS

Councilmember Peel noted a listening session will be held on March 11 at the Harmony Library. She also noted she attended the annual Poudre River Forum, where Fort Collins was well represented by several staff.

Councilmember Canonico shared she has attended recent events including the Rocky Mountain Raptor Gala, Leadership Northern Colorado to share perspectives of elected officials in the area, and a climate discussion with Vice President Harris in Denver. She also attended a Human Library program put on by the Human Relations Commission at the Museum of Discovery and thanked the community for such an amazing event.

Mayor Arndt noted she spent last week with Deputy City Manager Tyler Marr as representatives of the only US City attending a Net Zero conference organized by ICLEI as well as the U7 (Urban 7) consortium feeding advice up to the G7.

Councilmember Gutowsky provided information about participating in Holocaust week recognitions at CSU last week, as well as the grand opening for the Oak 140 Building as a partnership between Housing Catalyst, the DDA and the City of Fort Collins among other partners.

N) CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT CALENDAR FOR INDIVIDUAL DISCUSSION

3. Items Related to Residential Solid Waste Collection.

A. Second Reading of Ordinance No. 027, 2023, Amending Chapter 12, Article II and Chapter 15, Article XV of the Code of the City of Fort Collins to Allow for the Establishment of a City Waste Collection Program and Generally Updating Provisions of the Code Governing Waste Collection Within the City.

B. Second Reading of Ordinance No. 028, 2023, Authorizing the City Manager to Enter Into a Contract for the Provision of Residential Waste Collection Services.

C. Second Reading of Ordinance No. 029, 2023, Appropriating Prior Year Reserves for Start-up Costs to Create a Contracted Residential Waste Collection Program.

The purpose of this item is to consider the adoption of a contracted residential waste and recycling program, which includes three separate Ordinances and one policy question:

- 1. Ordinance No. 027, 2023, would amend the City Code to enable the contracted hauling program and establish the City Administrative Fee to fund the City's role in the program.*
- 2. Ordinance No. 028, 2023, would adopt the contract with Republic Services.*
- 3. Ordinance No. 029, 2023, would approve an off-cycle general fund appropriation in the amount of \$107,251 to support the start-up phase of the proposed program.*
- 4. Policy question: Do Councilmembers prefer the weekly or every-other-week recycling collection option?*

This program aligns with the Council Priority to Explore a Districted System for Garbage, Recycling and Compost.

The proposed program includes the following benefits:

- Trash, recycling as well as yard trimmings and two bulky item collections per year for a cost similar to what most residents paid in 2022 for only trash and recycling*
- A more affordable way to increase the collection of yard trimmings from residents*
- Cost-effective, predictable pricing*
- Opportunity to ensure a high level of customer service with penalties to the hauler and service credits to customers in the event of a missed pickup etc.*
- Fewer trucks on residential roads helps to improve neighborhood safety, quality of life, reduces emissions, also reduces road wear and tear*
- Additional yard trimmings composted (78% - 130% increase) and additional materials recycled if Councilmembers select the weekly recycling policy option (9% - 27% increase). Additional yard trimmings and recycling combined would achieve 3.7% - 6.7% of the progress needed to meet the zero waste goal.*

All three Ordinances were unanimously adopted (6-0) on First Reading on February 21, 2023.

Between First and Second Reading, staff has revised the Review Version of the contract with Republic Services and the proposed Code changes contained in Ordinance No. 027. Here are summaries of those changes:

- *Staff revised the frequency of the Recyclable Materials Service from every-other-week to weekly within the contract, added a new provision to address the City's right to change from weekly to every-other-week Recyclable Materials Service during the Agreement term subject to the party's good faith negotiations to determine the timing and impact to pricing of such change, and updated the Pricing Sheet accordingly. (See attached Contract Revision #1). Staff also updated the Pricing Sheet to reflect the selection of weekly Recyclable Materials Service (See attached Contract Revision #2). Additionally, staff incorporated a Cooperative Purchase provision to allow other governmental entities within the state of Colorado to use the City's competitive purchasing process as the basis to negotiate a contract with Republic Services for similar services, subject to such governmental entities' governing laws, rules, and regulations. (See attached Contract Revision #3).*
- *Staff also revised the Code changes to make various technical updates, including correcting the use of certain defined terms, removing unnecessary language, and correcting typographical errors. Staff moved a subsection from existing Section 15-413(d) to new Section 15-412(h) and clarified communication requirements for collectors in that same subsection. Additionally, staff clarified yard trimmings collection requirements within Section 15-414. All amendments from the First Reading version of Ordinance No.0 27 are shown within the Second Reading version of Ordinance No. 027.*

This item was removed from the consent agenda to allow for discussion. There was no staff report and no public comment.

Councilmember Gutowsky noted she would still be supporting these actions because of the good work included in this towards several goals, but there are some groups of residents who will not benefit from this action. She stated a desire to see a variance for residents who haul their own trash. She also shared her belief the lack of choice for residents who wish to use another hauler is problematic, even while understanding an opt out fee is necessary for the success of the program.

Councilmember Pignataro requested a clarification from staff regarding variances and whether, if we chose to add a variance for residents who haul their own trash, that would need to be considered now or if it could be changed later in the implementation process. Caroline Mitchell noted there are two variances currently identified in the code language before the Council tonight. City Attorney Daggett noted it would be necessary to consider further code changes in the future if additional variances are desired. For follow up, it was requested to obtain the costs incurred for self-hauling. Prior to the end of considerations of this item, staff confirmed current costs are set at \$15 per car load, \$25 per pick up load, and \$12 per cubic yard for trailers.

Councilmember Ohlson spoke to this process being more than 37 years in the making. He also noted staff and management fully understand HOAs need to have legitimate pay-as-you-throw system that matches our regulations. Staff indicated it is one of the first steps they will be addressing.

Councilmember Peel noted she does struggle with this, wanting to be a voice for her district and advocating for residents. She thanked staff for coming up with a reasonable compromise.

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to adopt on second reading Ordinance No. 027, 2023.

The motion carried 7-0.

Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, to adopt on second reading Ordinance No. 028, 2023.

The motion carried 7-0.

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to adopt on second reading Ordinance No. 029, 2023.

The motion carried 7-0.

O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION

- 10. Second Reading of Ordinance No. 026, 2023, Appropriating Philanthropic Revenue Received Through City Give for The Gardens on Spring Creek for General Operations as Designated by the Donor.**

The purpose of this Ordinance, adopted 5-1 (Nay: Ohlson) on First Reading on February 21, 2023, is to request appropriation of \$100,000 in philanthropic revenue received through City Give for The Gardens on Spring Creek for general operations as designated by the donor.

In 2019, City Give, a formalized enterprise-wide initiative was launched to create a transparent, non-partisan governance structure for the acceptance and appropriations of charitable gifts.

There was no staff report and no public comment.

Councilmember Ohlson spoke regarding his concerns about the historic emphasis on corporate advertising at the Gardens, and shared he has received assurances from staff we will be accepting and acknowledging philanthropic revenue more appropriately going forward.

Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, to adopt on second reading Ordinance No. 026, 2023.

The motion carried 6-1.

Ayes: Councilmembers Gutowsky, Pignataro, Canonico, Peel, Mayor Pro Tem Francis, and Mayor Arndt.

Nays: Councilmember Ohlson.

- 11. Second Reading of Ordinance No. 031, 2023 Appropriating Prior Year Reserves for a Capital Contribution of \$1,000,000 for Construction of a New Public Terminal Facility at the Northern Colorado Regional Airport.**

The purpose of this Ordinance, adopted 5-1 (Nay: Ohlson) on First Reading on February 21, 2023, is to appropriate an anticipated \$1,000,000 capital contribution for the construction of a new public terminal facility (Project) at the Northern Colorado Regional Airport (Airport). Total Project costs are estimated to be \$25,000,000, and this Ordinance's adoption by the end of February helps to secure the anticipated \$21,000,000 of federal funding. At the suggestion of the Council Finance Committee, staff has developed a series of performance indicators to use as terms and conditions of the City contribution.

The Ordinance has been revised between first and second reading to add a new sixth recital listing the performance indicators for the Project that City staff identified. These indicators were not explicitly included in the changes to the Ordinance read into the record at first reading and approved by Council. These performance indicators are: (i) the Project achieve LEED Silver building certification; (ii) the Project include a public art commitment at 1% of the non-federal funding; (iii) the terminal's carbon footprint be no greater than 198 metric tons of carbon dioxide equivalent; (iv) the terminal have enhanced accessibility; and (v) the Airport achieve by 2028 no less than 33,000 bus or air passengers annually utilizing the terminal.

There was no staff report.

PUBLIC COMMENT

Joe Rowan, Fort Collins resident, spoke in support of the appropriation for the airport as part of the overall transportation strategy supported by the Fort Collins Area Chamber of Commerce.

Mike Fassi, a major with the Colorado Civil Air Patrol, shared the air patrol is one of the entities that will be kicked out of the hangars currently at the airport. He noted their largest customer is FEMA and they will no longer have a place for their aircraft to support their emergency response ability. He requested Council take a step back and consider how to do right by the entities that have been supporting the airport for the last 30 years.

COUNCIL DISCUSSION

Councilmember Ohlson noted he voted no on this item and still is not in support of this appropriation. He asked about the necessity for discussing the demolition of the hangars in executive session. City Manager DiMartino noted she would be able to pull up that information.

Mayor Pro Tem Francis asked Airport Director Jason Licon about the article in the Coloradoan referenced by a speaker tonight about the hangars. Licon noted the buildings were built on property subject to long term land leases that have subsequently expired. The subject properties are part of areas that have been identified in the Airport's master plans that have been approved by the City for other uses. It was noted the financial impact to the airport is the loss of \$175,000 in revenue from the lease of those parcels.

City Manager DiMartino shared in follow up the two items identified for an executive session justification included discussing leases as well as to obtain legal advice.

Councilmember Pignataro asked for clarification about whether the termination of the leases is separate from this appropriation. Licon confirmed that it is.

Councilmember Gutowsky asked about the plan to reconstruct new hangars in the future. Licon noted the involved cities have not historically provided funding for building and constructing hangars. That funding has come through the private sector. Currently, there are two construction projects building new hangars at the airport.

Mayor Arndt asked if there is a plan for the future of the Civil Air Patrol. Licon noted the current structures are not structurally sound and there is not yet a plan for addressing this issue. Mayor Arndt expressed concern for that service going away. She also asked about the 2018 Strategic Plan and what the plan is for 2023 and beyond. Licon provided details about the master plan the airport relies on for planning purposes, while noting the Strategic Plan for 2023 does include these topics. Regarding the \$175,000 revenue annually that will be missing, the structures were found unsustainable since first reading and now we are investing heavily in a non-revenue source. We need a new building there, whether it's a terminal or a transit hub and leveraging federal dollars

is a good idea. She asked if O&M costs are included in ongoing budgeting. Licon indicated they are part of that planning. The revenue source for that includes the Landline Company currently using the terminal building. The airport does receive a per passenger fee from the service. Mayor Arndt shared concerns about the sunk costs of testing a remote control tower. The local system has been driven by the FAA, with all funding coming from the state or the FAA. She noted questions about viability of attracting a carrier by a tower if the remote tower is not certified. Licon indicated they are working on getting the FAA's changing requirements met. In response to a question of whether there is funding for demolition of the hangars, Licon indicated options are being explored for the demolition including potential reuse of the materials.

Ohlson asked for clarification on the cities providing free hangar space for the Civil Air Patrol and how that worked when the private sector had ownership of hangars. Licon noted the hangar that has been used by the Civil Air Patrol was the oldest of the hangars and has been owned by the cities for some time, providing free space for the Civil Air Patrol since at least 2008 according to records.

Mayor Pro Tem Francis stated she will not be able to support this item given her concerns about not seeing desired outcomes, including the inclusion of a transit hub. There are too many concerns about the airport being able to become the hub desired.

Mayor Arndt noted she will be supporting tonight's action but does want to see some of the concerns she has brought up tonight addressed going forward, as well as reconsidering the governance structure.

Councilmember Peel stated she sees what the airport can be but believes it is not functioning well right now. She stated she would support the current appropriation but wants to see a change to the governance structure and will not support any additional funding without a better strategic plan as well.

Councilmember Gutowsky asked again to clarify the funding for the terminal is separate from the other issues raised tonight. That was confirmed. She did state she would support this action tonight.

Councilmember Pignataro noted her agreement with the statements of Councilmember Peel and Mayor Arndt.

Councilmember Canonico noted she would be supporting this appropriation with the same caveats mentioned by others.

Councilmember Pignataro moved, seconded by Councilmember Peel, to adopt on second reading Ordinance No. 031, 2023.

The motion carried 5-2.

Ayes: Mayor Arndt and Councilmembers Gutowsky, Pignataro, Canonico, and Peel.

Nays: Mayor Pro Tem Francis and Councilmember Ohlson.

Clerk's Note: Mayor Arndt called for a 15-minute break at 9:55 p.m. The meeting resumed at 10:10 p.m.

12. Appeal of Planning and Zoning Commission Approval of 636 Castle Ridge Court Group Home Project Development Plan/Final Development Plan.

The purpose of this quasi-judicial item is to consider an appeal of the Planning and Zoning Commission's decision on December 15, 2022, approving the Castle Ridge Group Home combined Project Development Plan/Final Development Plan (#FDP220013 or "FDP") located at 636 Castle Ridge Court. Two Notices of Appeal were filed, the first on December 21, 2022, and second on December 28, 2022, alleging that the Planning and Zoning Commission failed to properly interpret and apply relevant provisions of the Land Use Code and failed to conduct a fair hearing.

City Attorney Carrie Daggett provided a brief overview of the process for this hearing.

STAFF EXPLANATION

Paul Sizemore, CDNS Director, presented a staff overview as set forth in the slide deck in the agenda packet.

CONFLICTS

No Councilmembers disclosed any potential conflict of interest issues or other possible reasons for recusal.

SITE VISITS

Councilmember Gutowsky noted she attended the site visit to gain a better understanding of the spatial areas involved.

Councilmember Peel also attended the visit and was able to look at the street and driveway, including how the house is positioned on the street.

PARTIES PRESENT

Parties present included:

- Appellants: Dr. Steve Sunderman; Mr. Kurt Johnson representing the other 11 appellants
- Opposed to the appeal: Michelle Pinkowski, attorney for the applicants

TIME ALLOCATIONS

Mayor Arndt announced the following time allocations:

- 20 minutes total for Dr. Sunderman in support of that appeal
- 20 minutes total for Mr. Johnson's group in support of that appeal.
- 40 minutes total for the applicant and any other parties-in-interest opposed to the appeal.
- 10 minutes for rebuttal for each appeal and any parties-in-interest supporting the appeals.
- 10 minutes total for rebuttal for the applicant and any other parties-in-interest opposed to the appeal.

PROCEDURAL ISSUES

Issue 1: Michelle Pinkowski brought up an issue relating to the site visit and the need to offer new evidence regarding a coordinated effort on the part of neighbors to manufacture parking issues on the street.

City Attorney Daggett noted the information provided is the new evidence that is being offered, and Council may wish to ask if the appellants object to this new evidence being offered and also whether this information is relevant to the consideration of the provisions of the Land Use Code.

Harmon Zuckerman, attorney representing Kurt Johnson, offered an objection to the introduction of new evidence.

Mayor Arndt ruled the new evidence would not be permitted.

Issue 2: Pinkowski objected to any argument that is beyond the scope of this appeal as outlined in the Land Use Code, including whether there are 8 or 10 residents in the group home. Arguing against the reasonable accommodation procedures calls into question a separate process.

Issue 3: Any argument group homes should not be allowed at all should be stricken as this is an allowed use in this zoning district. The Land Use Code has already determined this is an allowed use and the scope of the Planning and Zoning Commission is to set conditions.

Item 4: Mr. Johnson's written statement submitted after his notice of appeal. The grounds under which he filed the appeal do not allow for submission of new evidence and therefore no further written statements should have been allowed.

PRESENTATIONS

Appeal 1

Dr. Steve Sunderman presented the first appeal of the 636 Castle Ridge project. He spoke to the reasons set forth for the appeal, noting the use of the property enriches one homeowner at the expense of all other property owners on the street and speaking to concerns about traffic and parking on the narrow private street. A video was shown that was displayed during the Planning and Zoning Commission hearing demonstrating the street layout with vehicles parked on both sides. He spoke to the plans for the development established in 1995 that are now being violated, including provisions of the HOA. He spoke to concerns about falsehoods in the applications filed by the applicants. He continued speaking to the violations identified in the notice of appeal, including broken promises from City staff on process issues and how he has been silenced by City staff repeatedly through this process. Also presented was information about the limitations on donated time for speaking at the Planning and Zoning Commission. A video clip from the Planning and Zoning Commission hearing about the denial of the use of donated time.

Appeal 2

Kurt Johnson began the presentation in support of the second appeal on the matter, presenting as set forth in the presentation in the record. Mr. Johnson outlined the parameters of the appeal, the issues at hand relating to the Planning and Zoning Commission failing to apply conditions appropriate to the project, how the code was applied and requested Council apply conditions and implement a staged approach to the optimal number of residents.

Tracey Stefanon, 642 Castle Ridge, continued the presentation, showing an overview of the area.

Harmon Zuckerman continued the presentation, noting the municipal code does allow the Council to apply conditions at the time of considering an appeal. He provided information about the desired conditions being requested in this appeal.

Johnson then resumed the presentation, continuing discussion of proposed conditions.

Applicant

Michelle Pinkowski presented on behalf of the applicant. Prior to beginning the presentation as set forth in the slide deck in the record, Pinkowski addressed the arguments made by Dr. Sunderman about several matters, including regarding the conduct of a fair hearing. She noted the first claim was not actually a fair hearing issue. On the second claim, what was brought up was the actions of City staff but not the commission which is what is at subject here. All of Dr. Sunderman's evidence was presented and he was allowed 18 minutes to present at the hearing, of which he only used 12 minutes. Regarding the third claim made, she stated Dr. Sunderman made substantially gross and misleading statements. She also addressed perceived falsities shared about Eric Schulte and his status as a medical doctor. He has completed medical school and through his own choice is not practicing medicine. She noted no evidence has been provided that the parking information provided is false or misleading. Dr. Sunderman spoke at community meetings as well. All emails are provided. His position has been well stated multiple times. There is no evidence in the record that there was a failure to conduct a fair hearing because the Commission was biased.

Pinkowski then introduced the applicant team present and began presenting as set forth in the slide deck in the record. She noted the presentation is focused on the people who are being served by the project. Under CRS 24-3-101, the applicants are and can care for two residents now. She also spoke to the Fair Housing Act and how it defines protected class and how it extends to cover the applicants in this situation.

REBUTTALS

Appeal 1

Dr. Sunderman spoke regarding comments about working with and helping people with disabilities, implying the neighbors in this neighborhood are not willing to make room for this type of home. He spoke to the prior property owners which included residents with disabilities that the neighborhood supported and provided assistance. In this instance, the property owners are using people with disabilities for their own benefit and profit.

He also spoke of how the home is ideal for disabled people, which is accurate, but only to the extent it is for 1-2 people and not 10 people. Regarding parking issues, there are 17 other neighbors who act like normal neighbors and who may have parties or other events, but not constantly. The rest of the neighborhood lives under the same rules that are being abused by this home based on the disability status of residents. He stated it is obvious there are certain City staff members who are just trying to push this through.

Appeal 2

Harmon Zuckerman stated he has collegial respect for the applicant's attorney. He offered a rebuttal to the point the code makes a predetermination of compatibility. He stated what the code says is they go through a process and P&Z can apply conditions to ensure the group home meets all the requirements. The appellants have provided suggested conditions to assist the Council in making decisions.

Kurt Johnson noted the appeal is based on land use, not the residents of the property. He also noted if all statements made by the applicant's representative are accurate then meeting the suggested conditions should not be an issue. He also noted concerns the elevation shown with landscaping is not accurate. It is a large home at 6,400 square feet but you have to subtract the unfinished basement. There is only a single egress in and out on the street, which is different from

other group homes in the city. The argument about the number of residents being a financial issue does not appear accurate as it has been raised previously and overcome.

Tracey Stefanon offered comments related to the statement from the Poudre Fire Authority (PFA). When the PFA came, they recommended striping one entire side of the street prohibiting parking. Ms. Pinkowski then sent a letter that it was highly unlikely there would be parking on both sides of the street so PFA only required striping along the fire hydrant. They are grossly understating the amount of traffic and visitors, providing the example of her own family and the number of children who visit regularly for extended visits.

Barbara Schwerin spoke as a party in interest as a neighbor who received notice. She stated concerns with zoning and the fact this neighborhood is not zoned for a profit business.

Applicant

On the financial side, Mr. Johnson is correct, there was a financial argument made under two different scenarios. Many homes this size only have one caregiver during the day. When asking for more residents that meant more staff. When P&Z denied the application the first time, they looked at what could be changed. The ratio of caregivers to residents must be 5-1. Everything has gone up in prices. That ratio is needed to make it work financially, which included shifting from 3 caregivers to 2 caregivers now. Also, we had to take out the affordability element when going down to 10 residents.

With respect to visiting, they are seeing the time for visits and the number of visitors is lower.

In conclusion, the applicant's representative requested that Council please not overturn the hard work of the Planning & Zoning Commission and of the staff just based on fear and speculation, noting staff was meticulous in applying the code.

COUNCIL QUESTIONS

Councilmember Pignataro asked staff to explain how PFA comes up with its recommendations that were referred to in the rebuttal. Is it a normal procedure for PFA to take the word of an applicant to change its determination? Kai Kleer stated PFA applied International Fire Code to make its determination. They looked to mitigate potential safety impacts by recommending striping along the fire hydrant for an existing condition that cannot be mitigated to current standards.

For the applicant, Pignataro asked about the conditions one of the appellants is requesting and that it appears the applicants are willing to meet all conditions except limiting deliveries to certain hours Tuesday through Thursday. The applicant would agree to that but over five weekdays instead. Another condition requests deliveries only occur in the driveway or garage, which the applicant is willing to attempt but cannot guarantee and is also concerned about equal standards. The proposed condition to limit parking only in front of the house may be an issue if someone else has parked in the front of the home already. They are willing to educate families and employees to ensure parking is aligned with these expectations as much as possible. It is not possible to guarantee the actions of others. Three residential trash receptacles is acceptable but they should also have a recycling receptacle. On the fifth condition for all loading to occur in the driveway, they are fine with that. On the sixth requirement for providing five parking spaces, that is not possible without the reconfiguration the neighbors do not support. On condition seven, she supports no van or bus permanent parking.

Councilmember Gutowsky asked staff to clarify the appellant's concern about being silenced and also the decision being predetermined. CDNS Director Sizemore spoke to the context that may have contributed to the reasons Dr. Sunderman felt silenced. The first instance was because

pooled time can only be used if the time donated is from another in person attendee. Regarding the sense the decision was predetermined, when staff was attempting to broker an additional meeting between the applicants and Dr. Sunderman, it did not come together which may contribute to why he felt that staff was siding with the applicant. Dr. Sunderman also responded, indicating he was silenced when there was a remote meeting and the moderator stopped his comments saying they would get to them later but then could not. Kai Kleer admitted Dr. Sunderman got cut off and was not allowed to speak. The promise for another didn't happen. Chair Katz communicated multiple times before that meeting with Em and Kai that he could have time donated to him from several neighbors which was confirmed. Chair Katz did everything he could to keep him from speaking.

Councilmember Peel asked about no high traffic vehicles. Pinkowski responded she was unclear about that but did address the HOA covenants. These covenants do have an occupancy limit. The HOA process was not part of the P&Z meeting and therefore is not part of the appeal, but for clarity Pinkowski noted she made a reasonable accommodation request to the HOA as well and they did agree to the increase to 10 residents. Peel asked how staff considers the traffic report on this type of project. Sizemore indicated the report is compiled by a contractor hired by the applicant and then reviewed by the City's traffic staff. If necessary, City staff raises any objections to the data provided. No such objection was noted in this instance.

Mayor Arndt asked about the PFA determination about the striping around the fire hydrant and if it would apply to all 17 homes in the area. The determination to use the International Fire Code and the fact it was an existing nonconformity is acceptable and would also be applicable to other properties for maintaining access. This home has not been singled out as particularly problematic for providing fire and emergency service.

Councilmember Gutowsky asked if the original prohibition of businesses was overridden by the Fair Housing Act. Pinkowski noted that is addressed in both the legislative history for the Fair Housing Act and also when courts have interpreted the Act. Courts have said there is a business because there needs to be a structure for providing the care, but this is a residential use. This is where the residents live and make their home on an ongoing basis.

There being no further questions, Mayor Arndt closed the hearing at 12:49 a.m. to allow Council discussion.

COUNCIL DISCUSSION

Mayor Arndt noted the purpose of the hearing is not deciding whether we do or do not like group homes but a review of the decision of the Planning and Zoning Commission based on the Land Use Code.

Councilmember Peel noted she did read all the materials and did watch the Commission hearing. She stated it was interesting watching the Planning and Zoning Commission, where they got stuck on the parking. After hearing the arguments and answers to Council's questions, she finds they did conduct a fair hearing and did correctly interpret the Land Use Code.

Councilmember Canonico stated agreement with Councilmember Peel. There was ample evidence it was a fair hearing.

Mayor Arndt noted she also found the Planning and Zoning Commission conducted a fair hearing. On the issue of compatibility, she finds the Commission appropriately applied the Land Use Code and placed appropriate conditions on the applicant and is reticent to place more restrictive conditions.

Councilmember Gutowsky noted she does find the Planning and Zoning Commission conducted a fair hearing. She stated support for the additional conditions proposed in the second appeal.

Mayor Pro Tem Francis stated she found the Planning and Zoning Commission conducted a fair hearing and does not see the need for additional conditions.

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to deny Appeal 1 filed by Steve Sunderman.

The motion carried 7-0.

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to deny Appeal 2 filed by Steve Sunderman and Kurt Johnson et al.

The motion carried 7-0.

Q) OTHER BUSINESS

A. Possible consideration of the initiation of new ordinances and/or resolutions by Councilmembers.

(Three or more individual Councilmembers may direct the City Manager and City Attorney to initiate and move forward with development and preparation of resolutions and ordinances not originating from the Council's Policy Agenda or initiated by staff.)

None.

R) ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at 12:58 a.m.

Mayor

ATTEST:

City Clerk



AGENDA ITEM SUMMARY

City Council

STAFF

Beth Rosen, Grants Compliance and Policy Manager
Ingrid Decker, Legal

SUBJECT

Second Reading of Ordinance No. 032, 2023, Authorizing the Release of Restrictive Covenants on Property at 1947 Phia Way Developed by Fort Collins Habitat for Humanity.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on March 7, 2023, obtains authorization from Council to release the Agreement of Restrictive Covenants Affecting Real Property on the single-family home located at 1947 Phia Way, which was developed by Fort Collins Habitat for Humanity. The development of this home was initially assisted with funding from the Department of Housing and Urban Development (HUD). At the time of completion, the project no longer met the HUD requirements, triggering a HUD mandated repayment of the funds and cancellation of the project.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

On September 1, 2020, the City of Fort Collins entered into a Development Contract for HOME Investment Partnership (HOME) funding with Fort Collins Habitat for Humanity. The contract provided \$80,000 in HOME funding to support the construction costs of a single-family home built in partnership with the Geometry in Construction program at Poudre High School (PHS). The contract funding was secured by a Promissory Note, Deed of Trust and Agreement of Restrictive Covenants ensuring the home would be transferred to an income eligible buyer and remain affordable for a period of 20 years.

At the time of contracting, an income eligible homeowner had been selected through Habitat’s rigorous selection process. The buyer began working with Habitat to complete the necessary sweat equity hours required by Habitat’s program. Unfortunately, construction on the home was delayed for the 2020/2021 school year due to the Covid pandemic. PHS students resumed work on the home when they returned to school in the Fall of 2021. It was moved to a permanent foundation at Harmony Cottages in the summer of 2022 where the selected homeowner worked alongside volunteers to complete the home on site. In October of 2021, the City paid \$75,000 of the contracted funds towards eligible construction related costs. The \$5,000 balance was retained until unit completion and final verification of occupancy by the HOME-eligible buyer.

The home was eventually completed in January 2023 and Habitat updated the income verification of the buyer as required by HUD. At that time, the household no longer met the HOME program income

Item 2.

requirements (although the household income is still below the area median income). This triggered the mandatory repayment of the \$75,000 to the City's line of credit with HUD and a cancellation of the project. The Deed of Trust was released upon repayment of the funds. The Release of the Agreement of Restrictive Covenants is the final outstanding item related to the cancellation the project.

CITY FINANCIAL IMPACTS

The \$75,000 in repaid HOME funds will go into the Spring 2023 Competitive Process to be re-allocated to another affordable housing project. Habitat for Humanity continues to build affordable home ownership units and has submitted an application requesting funding to support the development of 4 new units at Harmony Cottages.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Ordinance for Consideration

ORDINANCE NO. 032, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE RELEASE OF RESTRICTIVE COVENANTS ON PROPERTY
AT 1947 PHIA WAY DEVELOPED BY FORT COLLINS HABITAT FOR HUMANITY

WHEREAS, on September 1, 2020, the City entered into a Development Contract with Fort Collins Habitat for Humanity (“Habitat”), through which Habitat received from the City a loan of \$80,000 in HOME Investment Partnership (HOME) funding from the federal Department of Housing and Urban Development (HUD) to support the cost of constructing a single-family home (the “Project”) at 1947 Phia Way in Fort Collins (the “Property”) for an income-eligible homeowner; and

WHEREAS, the HOME funding was secured by a promissory note, deed of trust, and an Agreement of Restrict Covenants on the Property ensuring the home would be transferred to an income-eligible buyer and remain affordable for 20 years (the “Covenant”); and

WHEREAS, Habitat constructed the project in partnership with the Geometry in Construction program at Poudre High School, which began work on the project offsite, but construction was delayed for the 2020-21 school year because of the Covid pandemic; and

WHEREAS, the home was moved to the Property in the summer of 2022 and the selected homeowner and volunteers worked to complete the home on site; and

WHEREAS, by the time the home was completed in January 2023 the homeowner no longer met HUD’s HOME income requirements, which triggered a mandatory repayment of the HOME funds by Habitat to the City, which has been completed; and

WHEREAS, the City will add the repaid HOME funding to the funds distributed through the Social Sustainability’s annual competitive process; and

WHEREAS, with the funding repaid the City has no reason to burden the Property with the Covenant, and staff has requested that the City Council authorize release of the Covenant; and

WHEREAS, the City’s right under the Covenant to restrict the use of the Property constitutes an interest in real property owned by the City that the City would be giving up by releasing the Covenant; and

WHEREAS, Section 23-111(a) of the City Code states that the City Council is authorized to sell, convey or otherwise dispose of any interest in real property owned by the City, provided that the City Council first finds, by ordinance, that such sale or other disposition is in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby finds that releasing the Covenant on the Property on the terms and conditions described herein is in the best interests of the City.

Section 3. That the City Council hereby authorizes the City Manager to execute such documents as are necessary to release the Property from the Covenant on terms and conditions consistent with this Ordinance, along with such other terms and conditions as the City Manager, in consultation with the City Attorney, determines are necessary and appropriate to protect the interests of the City or effectuate the purposes of this Ordinance.

Introduced, considered favorably on first reading, and ordered published this 7th day of March, 2023 and to be presented for final passage on the 21st day of March, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on this 21st day of March, 2023.

Mayor

ATTEST:

City Clerk



AGENDA ITEM SUMMARY

City Council

STAFF

Paul S. Sizemore, Director of Community Development & Neighborhood Services
Brad Yatabe, Legal

SUBJECT

Second Reading of Ordinance No. 033, 2023, Extending the Moratorium on Certain Activities of State Interest Designated in Ordinance No. 122, 2021.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on March 7, 2023, extends the length of a moratorium previously imposed through Ordinance No. 122, 2021, and further extended with Ordinance No. 139, 2022, on two designated activities of state interest. The proposed Ordinance extends the length of the existing moratorium for three months beyond March 31, 2022, or until City Council adopts guidelines for the administration of the two designated activities. Extending the moratorium allows staff to reengage with stakeholders and develop policy decision points for Council’s consideration along with first reading of the version-three 1041 regulations, May 2, 2023.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

During the Council meeting on February 7, 2023, the Council unanimously adopted a motion to postpone first reading of the 1041 regulations until May 2, 2023. This continuation by Council requires an extension of the Moratorium, and by extending the moratorium for three months through the end of June 30, 2023, staff has additional time to reengage stakeholders on the current version-three of the draft 1041 regulations. The City has received numerous requests from public entities that may be subject to the proposed 1041 regulations for additional time to review and comment on the regulations, including requests made at the January 25 Planning and Zoning Commission meeting and the Council February 7 meeting.

Procedure for the Designation of Areas and Activities and Adoption of Guidelines

In order to exercise 1041 powers, the Colorado Revised Statutes require the City to designate the areas and activities to be regulated and adopt guidelines to administer the designated areas and activities. The designation of areas and activities may occur only after a noticed public hearing where Council must consider, at a minimum, the intensity of current and foreseeable development pressures. Council must specify the boundaries of any designated area, why the designated area or activity is of state interest, the dangers from uncontrolled development of the area or conduct of such activity, and the advantages of developing such area or activity in a coordinated manner. The City may adopt guidelines, and regulations for carrying out such guidelines, for administering designated areas and activities that are more stringent than the criteria listed in the applicable state statutes.

Once the City holds a public hearing and initially designates an area or activity to be of state interest, no person may engage in development within the designated area or conduct the designated activity until the City has finally determined the designation and guidelines. In other words, a moratorium goes into effect on development within the initially designated area or on the initially designated activity until the City makes a final determination on the designation and the applicable guidelines.

To the extent a person proposes to engage in development in an area of state interest or conduct and activity of state interest that the City has not previously designated and for which guidelines have not been adopted, the City is authorized to hold a public hearing to designate such area or activity and to adopt guidelines under which to review the proposal. In other words, the City has an opportunity to exercise 1041 powers over proposals for areas and activities not previously anticipated as requiring regulations.

Alignment with Citywide Policy

In terms of policy alignment, both City Plan and the Strategic Plan identify policies and objectives that aim to direct development in a way that ensures compatibility between adjacent land uses, minimize infrastructure and resource needs, and protect historic and natural resources. Currently, the City's Land Use Code provides a limited local review process for public agency projects. As such, adopting 1041 regulations would offer the City greater authority over public development projects that qualify as areas or activities of statewide interest per House Bill 74-1041 and help the City achieve its stated policy objectives.

CITY FINANCIAL IMPACTS

There are no financial impacts to City resources.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

During the Council meeting on February 7, 2023, the Council unanimously adopted a motion to postpone first reading of the 1041 regulations until May 2, 2023.

During the Planning and Zoning Commission hearing on January 25, 2023, the Commission unanimously adopted the recommendation:

The Planning and Zoning Commission recommend that City Council NOT ADOPT the proposed 1041 regulations until the public has sufficient time to review staff's Version 3 and to comment fully on its impact. The Planning and Zoning Commission believes the proposed regulation is directionally correct; however, additional input is needed by affected parties on at least the following areas:

- *Potential consequences of the proposed regulation, as currently written*
- *The extent to which the regulation could legally extend to impacts created by components of the project outside the jurisdictions but that affect the natural resources and natural areas of Fort Collins*
- *Whether the scope of projects to be regulated is appropriate, relative to what would be considered material in the scope of such projects.*

This recommendation could require that more time be allowed between first and second readings, or that the current moratorium be extended, if necessary. This decision is based upon the agenda materials, the information and materials presented during the work session and this hearing, and the Commission discussion on this item.

PUBLIC OUTREACH

Staff will implement an engagement plan with stakeholders during the three-month extension.

ATTACHMENTS

1. Ordinance for Consideration

ORDINANCE NO. 033, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
EXTENDING THE MORATORIUM ON CERTAIN ACTIVITIES OF
STATE INTEREST DESIGNATED IN ORDINANCE NO. 122, 2021

WHEREAS, pursuant to Colorado Revised Statutes (“C.R.S.”) Section 24-65.1-101 et seq., City Council adopted Ordinance No. 122, 2021, designating two activities of state interest: (1) the site selection and construction of major new domestic water and sewage treatment systems and major extensions of existing domestic water and sewage treatment systems; and (2) the site selection of arterial highways and interchanges and collector highways (the two designated activities hereafter referred to as the “Designated Activities”); and

WHEREAS, pursuant to C.R.S. Section 24-65.1-404(4) and the City’s power to impose a moratorium on development activity pursuant to its home rule powers granted under Article XX of the Colorado Constitution, City Council imposed a moratorium with certain exceptions (the “Moratorium”) on conducting the Designated Activities until December 31, 2022, or until City Council has finally determined and adopted guidelines for the administration of the Designated Activities; and

WHEREAS, to provide additional time for the drafting and consideration of guidelines for the administration of the Designated Activities, City Council thereafter extended the Moratorium for a three-month period through the end of March 31, 2022, pursuant to Ordinance No. 139, 2022; and

WHEREAS, City Council has received significant public input from entities that may be subject to the City’s proposed 1041 regulations requesting that the City allow for additional time for such entities to review and comment on the regulations; and

WHEREAS, to provide additional time for the drafting and consideration of guidelines for the administration of the Designated Activities, City Council finds it is in the best interest of the City to extend the Moratorium for a three-month period through the end of June 30, 2023, or until City Council has finally determined and adopted guidelines for the administration of the Designated Activities.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby extends the Moratorium on the same terms as set forth in Ordinance No. 122, 2021, for an additional three-month period through the end of June 30, 2023, or until City Council has finally determined and adopted guidelines for the administration of the Designated Activities.

Introduced, considered favorably on first reading and ordered published this 7th day of March, 2023, and to be presented for final passage on the 21st day of March, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 21st day of March, 2023.

Mayor

ATTEST:

City Clerk



AGENDA ITEM SUMMARY

City Council

STAFF

Maribel Miller, Water Conservation Manager
Kerri Ishmael, Senior Analyst, Grant Administration
Eric Potyondy, Legal

SUBJECT

Second Reading of Ordinance No. 034, 2023, Making Supplemental Appropriations from the Colorado Water Conservation Board Grant and Water Fund Reserves and Authorizing Transfers of Appropriations for the Water Efficiency Plan Update.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on March 7, 2023, updates the City’s Water Efficiency Plan by end of 2024 by:

- Appropriating \$160,000 of unanticipated grant revenue, awarded by the Colorado Water Conservation Board, to the Water Fund
- Appropriating \$65,795 from the Water Fund reserves
- Utilizing matching funds in the amount of \$126,705 from existing 2023 appropriations into this new grant project

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

The State requires Fort Collins Utilities and other water providers to update a Water Efficiency Plan every seven years. Fort Collins Utilities adopted the 2015 Water Efficiency Plan in 2016 (Attachment 2), which requires an update in 2023. Staff received approval from the State to extend the update to allow for more time to complete the plan. In preparation for this update, staff requested a one-time, two-year enhancement offer pursuant to Budget Offer 1.42 (Attachment 3). Council approved this offer as part of the 2023-2024 Adopted Budget, with \$100,000 being appropriated as part of the current 2023 fiscal year budget (and \$150,000 as part of the 2024 budget). Implications to year two of Offer 1.42 will be addressed during the 2024 Budget Revision process.

The Colorado Water Conservation Board (CWCB) recently awarded a Water Plan Grant to Fort Collins Utilities (Board’s approval is reflected in meeting minutes in Attachment 4) to support updating the required Water Efficiency Plan by 2024. The award was based on total project costs of \$352,500, with the CWCB providing \$160,000 in funds and the remaining \$192,500 being provided by Fort Collins Utilities as grant match. The details of Utilities’ grant match (Water Fund) over the projected two-year period are as follows:

Item 4.

- \$144,965 for consultant costs as cash match.
- \$47,535 for personnel costs as in-kind match.

This is \$105,035 less than requested from Budget Offer 1.42, over the two-year period.

The Water Efficiency Plan update will improve the existing plan. Grant funds will primarily be used to pay for consultants to help develop new plan elements, including the following:

- Model climate and water savings – evaluate potential for water savings under a range of current and potential conditions, including climate, population, and population density.
- Facilitate focus groups and meetings to identify One Water strategies – identify demand management strategies, further advance cross-departmental collaboration, and gather input on meaningful water demand goal(s) by engaging with internal City staff who influence the way water is used and/or work in the water field.
- Work with community partners on inclusive public engagement – identify demand management strategies, gather public input on meaningful water demand goal(s), and develop relationships with engaged community members to facilitate understanding and opportunities between the Utilities Water Conservation team and our community, especially marginalized communities.
- Analyze demand management strategies for equity – Perform equity gap analysis of current and potential water demand management strategies, to identify gaps or barriers to water efficiency opportunities, so that equity can be considered along with water savings efficacy and cost when prioritizing demand management strategies.

As presented in Attachment 5, Budget and Schedule for the Water Plan Grant, as approved by the CWCB, both the CWCB and Fort Collins Utilities will share costs for Task 1 through Task 4 on a cost share basis of 52.47/47.53%, respectively. These costs are for third-party consultant costs. In addition, Fort Collins Utilities will provide personnel time as described in Task 5. Costs for personnel time will be covered 100% by Fort Collins Utilities.

CITY FINANCIAL IMPACTS

This item appropriates \$225,795 in project costs for updating the 2024 Water Efficiency Plan from:

- \$160,000 in unanticipated grant revenue
- \$65,795 in Water Fund reserves to be used towards the required matching funds

Additionally, required matching funds in the amount of \$126,705 have already been appropriated in the 2023 Water Fund in the Water Conservation operating budget. The total project cost is \$352,500.

This grant from CWCB is a reimbursement type grant, meaning Water Fund expenses will be reimbursed up to \$160,000.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

N/A

PUBLIC OUTREACH

N/A

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 034, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING SUPPLEMENTAL APPROPRIATIONS FROM THE COLORADO
WATER CONSERVATION BOARD GRANT AND WATER FUND RESERVES
AND AUTHORIZING TRANSFERS OF APPROPRIATIONS
FOR THE WATER EFFICIENCY PLAN UPDATE

WHEREAS, the City owns and operates Fort Collins Utilities (“Utilities”), which includes a water utility that provides water to customers in its service area; and

WHEREAS, water conservation and efficiency is a tool Utilities uses, primarily through the Utilities Water Conservation Division, to manage and reduce the demand for water service by Utilities customers, which is beneficial to the City, the water utility, and its ratepayers by, among other reasons, helping to ensure that the demand for water does not exceed supplies; and

WHEREAS, in 2016, pursuant to the Colorado Water Conservation Act of 2004 (“Act”), Utilities adopted the 2015 Water Efficiency Plan (“Plan”) as an update to the City’s 2010 Water Conservation Plan; and

WHEREAS, the Act requires the City to update its State approved water efficiency plan and required minimum plan elements every seven years, however, the Colorado Water Conservation Board (“CWCB”) recently granted the City an extension to update the City’s Plan in 2024; and

WHEREAS, in anticipation of updating the Plan, Utilities requested a one-time two-year budget enhancement of \$250,000 (Offer 1.42) (\$100,000 in 2023 and \$150,000 in 2024), which Council adopted as part of the City’s 2023-24 Approved Budget; and

WHEREAS, after Council adopted the 2023-24 Budget, the City received a Water Plan Grant from CWCB in support of updating the Plan by 2024; and

WHEREAS, CWCB awarded said grant in the amount of \$160,000 based on a total project cost of \$352,500 and pursuant to certain terms and conditions, including a local match requirement, memorialized in a purchase order issued by the State of Colorado; and

WHEREAS, said \$160,000 grant funds will provide funding to support third-party consultant expenses in 2023 and 2024; and

WHEREAS, said local match requirement is \$192,500 and includes \$144,965 for third-party consultant expenses and \$47,535 for personnel costs in 2023 and 2024; and

WHEREAS, City staff recommends that Council appropriate from new revenue or other funds in the Water Fund the sum of \$160,000 to be expended in the Water Fund for the Water Efficiency Plan Update project; and

WHEREAS, City staff recommends that Council approve transfer of unexpended and unencumbered appropriated amounts of \$126,705 from the Water Conservation operating budget in the Water Fund to the Water Efficiency Plan Update Project in the Water Fund therein to be expended for the plan update; and

WHEREAS, City staff recommends that Council appropriate from prior year reserves in the Water Fund the sum of \$65,795 in the Water Fund for the Water Efficiency Plan Update project; and

WHEREAS, these appropriations totaling \$225,795 and transfer of funds totaling \$126,705 benefit public health, safety and welfare of the citizens of Fort Collins, the water utility, and its ratepayers, and serves the public purpose of helping to ensure that monies in the Water Fund are efficiently applied to manage the demand for water within allocated supplies, which will reduce shortages and other adverse impacts; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon recommendation of the City Manager, to make a supplemental appropriation by ordinance at any time during the fiscal year, provided that the total amount of such supplemental appropriation, in combination with all previous appropriations for that fiscal year, do not exceed the current estimate of actual and anticipated revenues and all other funds to be received during the fiscal year; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Water Fund and will not cause the total amount appropriated in the Water Fund to exceed the current estimate of actual and anticipated revenues and all other funds to be received in this Fund during this fiscal year; and

WHEREAS, Article V, Section 10 of the City Charter authorizes the City Council, upon recommendation by the City Manager, to transfer by ordinance any unexpended and unencumbered appropriated amount or portion thereof from one fund or capital project to another fund or capital project, provided that the purpose for which the transferred funds are to be expended remains unchanged, the purpose for which the funds were initially appropriated no longer exists, or the proposed transfer is from a fund or capital project in which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance; and

WHEREAS, the City Manager has recommended the transfer of \$126,705 from the Water Conservation operating budget in the Water Fund to the Water Efficiency Plan Update Project in the Water Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon the recommendation of the City Manager, to make supplemental appropriations by ordinance at any time during the fiscal year such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Water Fund and will not cause the total amount appropriated in the Water Fund to exceed the current estimate of actual and anticipated revenues and all other funds to be received in this Fund during this fiscal year; and

WHEREAS, Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds for a federal, state or private grant, that such appropriation shall not lapse at the end of the fiscal year in which the appropriation is made, but continue until the earlier of the expiration of the federal, state or private grant or the City's expenditure of all funds received from such grant; and

WHEREAS, the City Council wishes to designate the appropriation herein for the Colorado Water Conservation Board grant as an appropriation that shall not lapse until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from new revenue or other funds in the Water Fund the sum of ONE HUNDRED SIXTY THOUSAND DOLLARS (\$160,000) to be expended in the Water Fund for the Water Efficiency Plan Update project.

Section 3. That the unexpended and unencumbered appropriated amount of ONE HUNDRED TWENTY-SIX THOUSAND SEVEN HUNDRED FIVE DOLLARS (\$126,705) is authorized for transfer from the Water Conservation operating budget in the Water Fund to the Water Efficiency Plan Update project in the Water Fund and appropriated therein to be expended for the plan update.

Section 4. That there is hereby appropriated from prior year reserves in the Water Fund the sum of SIXTY-FIVE THOUSAND SEVEN HUNDRED NINETY-FIVE DOLLARS (\$65,795) to be expended in the Water Fund for the Water Efficiency Plan Update project.

Section 5. That the appropriation herein for the Colorado Water Conservation Board grant is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

Introduced, considered favorably on first reading, and ordered published this 7th day of March, 2023, and to be presented for final passage on the 21st day of March, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 21st day of March, 2023.

Mayor

ATTEST:

City Clerk

AGENDA ITEM SUMMARY

City Council



STAFF

Katie Donahue, Natural Areas Director
Matt Parker, Natural Areas Sr. Supervisor
Eric Potyondy, Legal

SUBJECT

Second Reading of Ordinance No. 035, 2023, Authorizing the City Manager to Execute Agreements, Conveyances, and Other Documents to Incorporate the Spring Cañon Waste Way Ditch.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on March 7, 2023, approves the City's conveyance of its 2/12ths fractional ownership of the Spring Cañon Waste Way Ditch (Ditch) to a newly formed and incorporated Spring Cañon Wasteway Ditch Company (Ditch Company), and thereby receive 2/12ths share of the Ditch Company. This item would also authorize the City Manager to execute related agreements needed to form the Ditch Company. This administrative restructuring of the Ditch and water right ownership will allow for a variety of efficiencies including easier shareholder transfers, providing a single point of contact, and improving coordination of Ditch maintenance.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

The Natural Areas Department became a 2/12th owner of the Ditch and its water right with the acquisition of Eagle View Natural Area in 2002. The other 10/12ths are owned by four others along the Ditch. This Ditch and its water right are not part of Fort Collins Utilities' water supply system. The Ditch begins diverting seepage and other water near Zach Elementary and continues to the east along Eagle View Natural Area south of Fossil Creek Reservoir, later passing under I-25.

Unlike most ditches in the region, this Ditch is not "incorporated." This means that its owners own fractional interests of the Ditch and water right. This makes coordination for work on the Ditch cumbersome because work on the Ditch must generally be approved by all of the owners. Even simple projects can thus confront a need for more and more complicated paperwork and agreements. Further, the unincorporated nature of the Ditch makes it more difficult to protect the City's and other owners' interest in the Ditch. When outside entities desire to do a project that could affect the Ditch, there is no single clear point of contact for the owners. For instance, it is difficult for outside entities to pursue mutually beneficial arrangements with the Ditch because there are so many decisionmakers involved. This can also result in projects proceeding without needed approvals.

There are a few recent projects that have become particularly challenging due to the Ditch's unincorporated status. For instance, routine maintenance work has been slowed by the need for numerous approvals from the various owners. Also, a developer is developing land east of I-25 (east of the City's GMA) that has historically been served by the Ditch. The developer desires to modify the Ditch and convey its interests to the other owners (including the City), all of which is far more complex due to the current ownership structure.

By contrast, most ditches in the region are incorporated. This means that the ditches and water rights are held by a ditch company for the benefit of the shareholders, which own the company. Ditch companies are governed by a board of directors and benefit from well-established legal and governance principles, thus providing internal organization for the owners and a single point of contact for non-owners. Ditch companies are basically a common and beneficial way that ditch owners organize themselves.

The recent challenges facing the Ditch have prompted conversations for the Ditch owners to pursue incorporation. This would involve each of the owners conveying their ownership interest in the Ditch and water right to the Ditch Company that will be formed for this purpose, in exchange for shares in the Ditch Company. Because this would involve the conveyance of City-owned property, City Council approval is required. However, this would be a unique transaction because, although there would be a conveyance, the City would still own the same amount of the Ditch and its water right; it would just be structured differently. Consequently, the City would receive a value in an amount equal to or greater than the fair market value of the Ditch and its water right because the City will retain the same proportional ownership, with the added benefits discussed above.

CITY FINANCIAL IMPACTS

Staff expect minimal financial impacts to the City associated with increased administrative duties. Staff will attend and/or conduct an annual shareholder meeting, with potential board responsibilities.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

On February 8, 2023, the Land Conservation and Stewardship Board voted unanimously to recommend City Council's approval of the Ordinance. An excerpt from the meeting minutes is attached.

PUBLIC OUTREACH

No public outreach accompanied this administrative pursuit.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 035, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS,
CONVEYANCES, AND OTHER DOCUMENTS TO INCORPORATE
THE SPRING CAÑON WASTE WAY DITCH

WHEREAS, the Spring Cañon Waste Way Ditch, a.k.a. Spring Cañon Waste Way Ditch (“Ditch”) is located in southeast Fort Collins, diverting water from a draw in the NE1/4 of Section 1, Township 6 North, Range 68 West of the 6th P.M., just south of Zach Elementary School, and continuing in a southeasterly direction; and

WHEREAS, a water right with an appropriation date of July 22, 1875, was decreed to the Ditch by the Larimer County District Court in Civil Action 2031 in the decree dated April 22, 1922 (“Water Right”); and

WHEREAS, the Ditch, Water Right, and associated structures and property and other legal rights, including easements (together, “Ditch Rights”) have historically been owned by various persons and entities as fractional interests, without these Ditch Rights being held by a mutual ditch company, which is a more common ownership model in this region; and

WHEREAS, as part of the City’s 2002 acquisition of the land and other property that became Eagle View Natural Area, the City acquired a 2/12th interest in the Ditch Rights; and

WHEREAS, the City currently uses the Water Right and water from the Ditch to irrigate Eagle View Natural Area; and

WHEREAS, the City’s portion of the Ditch Rights are not associated with the City’s water utility; and

WHEREAS, the City and the other fractional owners of the Ditch Rights (“Co-Owners”) periodically need to coordinate with respect to internal and external matters, including: maintenance of the Ditch, including paying for such maintenance; actions to protect the Ditch and Water Right; and consideration and execution of potential arrangements related to the Ditch and Water Right; and

WHEREAS, the historical and current fractional ownership model for the Ditch Rights makes this internal and external coordination among the City and the Co-Owners difficult for various reasons, including a lack of structure for decision making; and a lack of established principles related to ditch matters; and

WHEREAS, changing the ownership structure of the Ditch Rights from the historical and current fractional ownership model to a mutual ditch company model would benefit the City and the Co-Owners in various ways, including: providing internal organization among the City and the Co-Owners; a financial structure for maintenance and other costs; an established body of law (*see, e.g., Colorado Revised Statute Section 7-42-101 et seq.; Jacobucci v. Dist. Court, 541 P.2d 667,*

189 Colo. 380 (1975) (summarizing mutual ditch company law)); and a single point of contact for external matters; and

WHEREAS, the City and the Co-Owners desire to pursue the creation of a mutual ditch company to hold title to the Ditch Rights, which would require the City and the Co-Owners to execute agreements and other documents to establish the company and conveyances and associated agreements to convey their ownership interests in the Ditch Rights to the newly-formed mutual ditch company in exchange for shares of stock in the company that represent the City’s and the Co-Owners’ current proportional ownership interest in the Ditch Rights (“Incorporation Documents”); and

WHEREAS, Section 23-111(a) of the City Code authorizes City Council to sell, convey, or otherwise dispose of any interest in real property owned by the City, provided that City Council first finds, by ordinance, that such sale or other disposition is in the best interests of the City; and

WHEREAS, the execution of Incorporation Documents is in the best interest of the City because of the benefits described above; and

WHEREAS, the execution of Incorporation Documents will result in the City receiving a value in an amount equal to or greater than the fair market value of the Ditch Rights because the City will retain the same proportional ownership of the Ditch Rights, with the added benefits described above.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That City Council finds, pursuant to Section 23-111(a) of the City Code, that the execution of Incorporation Documents and conveyance of the City’s interest in the Ditch Rights to a newly-formed mutual ditch company to hold title to the Ditch Rights is in the best interests of the City.

Section 3. That City Council finds, pursuant to Section 23-114 of the City Code, that the execution of Incorporation Documents will result in the City receiving stock of equal or greater value than the fair market value of the property interests conveyed.

Section 4. That City Council authorizes the City Manager to execute Incorporation Documents as described in this Ordinance and such other documents as may be necessary to carry out the transactions contemplated by this Ordinance, on terms and conditions consistent with this Ordinance, together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines are necessary or appropriate to protect the interests of the City.

Introduced, considered favorably on first reading and ordered published this 7th day of March, 2023, and to be presented for final passage on the 21st day of March, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 21st day of March, 2023.

Mayor

ATTEST:

City Clerk



AGENDA ITEM SUMMARY

City Council

STAFF

Lance Smith, Sr. Director of Finance for Utilities
Gretchen Stanford, Utilities Deputy Director - Customer Connections
Cyril Vidergar, Legal

SUBJECT

First Reading of Ordinance No. 036, 2023 Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations in Multiple Utility Funds for the Purchase of Vendor Services to Support a Major Upgrade to the Utilities Billing System.

EXECUTIVE SUMMARY

The purpose of this item is to approve an appropriation from reserves in the Light & Power, Water, Wastewater and Stormwater enterprise funds. The use of these reserves is necessary to implement a modern Utility Customer Information System – Customer Self Service Portal (CIS-CX) Solution. These funds are being requested to maintain project momentum as the City completes the selection of a solution partner and prepares to contract for professional services. This proposed appropriation will allow the City to secure CIS-CX project management and solution quality assurance services through go-live, provide legal review of professional services contracts, and provide funding to hire contractual staff throughout the implementation.

The total amount being recommended for appropriation is as follows:

Implementation Project Management and Quality Assurance	\$1,500,000
Contract Review and Counsel	\$100,000
Contractual Implementation Staffing	\$2,650,000
Total	<u>\$4,250,000</u>

Once the full solution scope with the City's preferred vendor is negotiated, another appropriation will be requested for the direct solution costs including licensing and hardware.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Replacing Fort Collins Utilities 22-year-old billing system is essential to providing our customers the safest and the best customer experience in interacting with their community owned utilities. Our priority is to provide accurate and convenient billing solutions; and comprehensive, real time customer data that enhances our customers' understanding of how they use energy and water and how much it costs. Our goals are to:

- Improve billing and operations functionality for existing utility services.
- Enhance the online customer self-service portal capability with single sign on functionality.
- Incorporate flexible user interfaces with process workflows that increase employee efficiency and billing accuracy.
- Have the ability to manage complex rates such as net metering and time of use.
- Add a library of standard and user generated reports, including financials, customer transactions, key performance indicators and exceptions.

A team of staff from Utilities (billing, customers service and metering), IT and Purchasing are contributing to the selection of the solution. As of today, Fort Collins Utilities is in the process of conducting five weeks of onsite product demonstrations as the final review of proposals received for a modern Utility Customer Information System – Customer Self Service Portal (CIS-CX) Solution. The proposals were received after a deliberate 12-month process. The process focused on identifying solution requirements, scrutinizing and rating every proposal received, performing reference checks of each solution provider with other utilities that have implemented the proposed solutions, planning the solution implementation schedule, staffing needs and quality assurance milestones, and having employees involved in the solution selection throughout the process and asking questions of the solution providers. This due diligence and deliberation are necessary to ensure that the selected solution partner and their CIS-CX will serve our community and support the evolution of how we serve our ratepayers while enhancing their customer experience.

By Q3 2023, a solution partner or vendor of choice will be selected, at which time a second appropriation will be proposed Council before the 24-month solution implementation can begin. It is anticipated that the City will successfully implement the new CIS-CX within 24 months, at which point, the existing 22 year old system will be retired. The Capital Improvement Plans presented to Council ahead of the 2023-24 Budgeting for Outcomes included up to \$15M for this capital investment including the licensing and hardware.

This appropriation is being brought forward to maintain the continuity of the implementation schedule and to ensure that pricing reflected in recent vendor proposals remain current and complete. Momentum for this implementation is building, as staff is valuating the options and benefits to modernizing and enhancing our customer's experiences, focusing on simplifying the architecture and processes behind the ultimate customer interface, to provide a stable, upgradable platform.

There are three categories of funding in this next phase of the CIS-CX modernization.

I. Professional Quality Assurance and Project Management Services

While many existing City employees have worked for decades with the current customer information and billing system, operating such a system requires a different skill set than upgrading or implementing an existing system into a new system. The new system may be hosted "in the cloud" or a more traditional in-house physical solution with different hardware requirements and interfaces. It may include different modules for a customer portal, social media, bill printing, etc. To effectively implement these new features and ensure that the City is receiving the functionality it is expecting, professional software implementation project management and quality assurance are required.

A scope of work has been developed for these services with a maximum fee through the implementation and go-live of the new solution. Because most of this work will be done remotely, travel expenses have been excluded from the not-to-exceed price for these services. Estimating some travel will nevertheless be necessary, raising the amount being requested for these services to \$1,500,000.

II. Contract Review and Counsel

Prior to the City entering into a binding services agreement with the solution provider, specialized outside legal counsel will be retained as needed to ensure the terms of the final agreement are in the best interest of the City and ratepayers. It is requested that an amount of \$100,000 be appropriated for this purpose to cover these funds and related expenses.

III. Contract Staffing

Many of the City’s employees who work in and with the current customer information system will be involved in the implementation of the new solution. This is a best practice to ensure that the proposed solution is consistent with customer expectations and operational requirements. To have these employees available to focus on the implementation, staff will be augmented by contractual staff throughout the implementation, and post go-live quality assurance and testing. Based on the staffing plan developed for the solution implementation, the following contractual positions are needed before implementation:

4 Customer Service Providers	\$288,000 / year
1 Customer Experience Provider	\$64,000 / year
1 Billing & Accounts Receivable Specialist	\$80,000 / year
1 Field Service Lead	\$100,000 / year
5 Information Technology Solution Providers	<u>\$575,000 / year</u>
	\$1,107,000 / year (approx.)

Throughout the 24-month implementation, there is a need to retain some staff earlier in the project and retain others later in the project, depending on their respective scope of work. This anticipated work would total almost 2.5 years of augmentation:

Contractual Staffing Appropriation = \$2,650,000

In addition, there will be a need for additional staffing for the duration of the project to focus on leading solution testing, developing and engaging in training Utilities employees, implementing organizational change management, reviewing existing business processes, and developing business analytics for the future solution. Even though this additional support is not needed immediately, it is important to note that a request for additional staffing will be included in the later implementation appropriation after a solution partner is selected.

Appropriation by Enterprise Fund

As the customer information and billing system is needed by each City-owned utility (except FC Connexion) to generate monthly operating revenues, each utility should contribute to the upgrade or replacement of the system. While some rates are more complicated than others and some require meter consumption data to assess, billing for each utility requires much of the same information. Because electric monthly charges are more complicated than flat stormwater rates and unmetered wastewater use, there are additional billing components for billing electric customers. As such, it is appropriate to attribute more of the shared costs to Light & Power, and a similar argument applies to Water. The proposed annual subscription costs for this system are therefore divided between the four utilities as follows:

Light & Power	50.0%
Water	25.0%
Wastewater	12.5%
Stormwater	12.5%

Item 6.

This same cost sharing ratio is proposed for the implementation costs.

Light & Power	\$2,125,000
Water	\$1,062,500
Wastewater	\$531,250
Stormwater	\$531,250
	<hr/>
	\$4,250,000

CITY FINANCIAL IMPACTS

The Capital Improvement Plans included in the 2023 utility rate ordinances discussions assumed up to \$15M would be needed for this investment. As such, the financial impact of this investment is already included in the 10-year rate and debt issuance forecasts Council reviewed in 2023. The ongoing annual licensing and maintenance expenses associated with this solution are expected to be comparable to what the current solution costs. The funds being requested for appropriation herein would come from existing reserves of each utility. These funds are above and beyond funds set aside within the reserves to meet minimum fund balance requirements under the City Charter and any previous appropriations made but not yet spent. As the table below shows, each enterprise fund has sufficient available reserves for both anticipated appropriations related to modernizing the CIS-CX solution.

	Light & Power	Water	Wastewater	Stormwater
Available Reserves EOY 2021	\$41.4	\$41.3	\$19.1	\$14.5
Mid-year 2022 Appropriations	(\$26.1)	\$0.0	\$0.0	\$0.0
2023-24 BFO Use	(\$1.0)	(\$29.3)	(\$7.7)	(\$2.3)
2022 Revenues Above Budget	\$11.2	\$3.5	\$1.2	\$0.2
2022 Expenses Below Budget	\$1.9	\$7.4	\$1.8	\$2.2
Estimated Available Reserves	\$27.4	\$22.9	\$14.4	\$14.6
Amount Being Requested	(\$2.1)	(\$1.1)	(\$0.5)	(\$0.5)
Remaining Available Reserves (\$M)	\$25.3	\$21.8	\$13.9	\$14.1

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

This appropriation was presented to the Water Commission on March 9 and will be presented to the Energy Board on March 16, 2023, before First Reading but after the agenda materials are published. The meeting minutes will be included in the materials submitted for Second Reading.

This Ordinance was presented to the Council Finance Committee on March 2, 2023. The Committee had a full discussion of the proposal and supported bringing this appropriation forward for the full City Council’s consideration.

PUBLIC OUTREACH

Public outreach and a solid communications plan focused on the customer experience will be forthcoming. There are many enhancements we expect to see for our customers including a potential chat bot, better ways to educate and make informed decisions on consumption, a streamlined and more robust online billing portal, single sign on solutions and more. The intention is to rollout new functionality as it is available which may be before the full CIS-CX implementation is complete. Once we pick a vendor, we will work with them to include outreach, communications and change management to offer a good experience to our customers.

ATTACHMENTS

1. Ordinance for Consideration

ORDINANCE NO. 036, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES AND AUTHORIZING TRANSFERS OF
APPROPRIATIONS IN MULTIPLE UTILITY FUNDS FOR THE PURCHASE OF VENDOR
SERVICES TO SUPPORT A MAJOR UPGRADE TO THE UTILITIES BILLING SYSTEM

WHEREAS, twenty-two years ago, the City began implementation and operation of the current Banner software based customer information and billing system (CIS) to manage City Utility customer billing and account services; and

WHEREAS, since implementing the Banner CIS, Utilities staff have identified functionality and capabilities that are needed to modernize operations, improve billing accuracy, and better manage City rate and efficiency programs and services, including greater online customer access and tools to evaluate account information; and

WHEREAS, during 2021 and 2022, the City engaged TMG Utility Advisory Services, Inc., (“TMG”) to assist Utilities’ staff to prepare for the end of the useful life of the current CIS, and a 12-month process to identify the specific design scope and functionality for a replacement CIS solution; and

WHEREAS, in October 2022, the City issued RFP # 9659- Customer Information System, Related Systems, and Implementation Services, to solicit proposals for a new Customer Information System – Customer Self Service Portal (“CIS-CX”) solution, the proposal submission period for which closed on December 2, 2022; and

WHEREAS, as the City’s selection team, consisting of Utilities (Billing, Customer Service, and Metering), IT and Purchasing staff and TMG consultants, began reviewing RFP responses and selecting a CIS-CX solution provider, the costs to implement a replacement system became better understood; and

WHEREAS, during the 2023 Budgeting For Outcomes process, in preparation for an anticipated 24-month CIS-CX solution implementation, Utilities staff presented Capital Improvement Plans for a project cost of \$15,000,000, and staff has since identified the initial portion of which amount exceeds existing appropriations in the adopted 2023 Budget; and

WHEREAS, Utilities and Purchasing staff have identified a total of \$4,250,000 recommended for supplemental appropriation to address costs in the first phase of the CIS-CX development and implementation, including \$1,500,000 for project management and quality assurance, \$100,000 for contract review and specialized legal services, and \$2,650,000 for contract personnel services; and

WHEREAS, this proposed appropriation will benefit the public health, safety and welfare of the residents of Fort Collins and serve the utility purpose of enhancing the accuracy, functionality, and convenience of Utility ratepayer billing, as well as improve ratepayer access to consumption records, building utility utilization data, and customer service; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon the recommendation of the City Manager, to make supplemental appropriations by ordinance at any time during the fiscal year such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Light & Power Fund, Water Fund, Wastewater Fund, and the Stormwater Fund and will not cause the total amount appropriated in the Light & Power Fund, Water Fund, Wastewater Fund, or the Stormwater Fund, as applicable, to exceed the current estimate of actual and anticipated revenues and all other funds to be received in these funds during this fiscal year; and

WHEREAS, Article V, Section 10 of the City Charter authorizes the City Council, upon recommendation by the City Manager, to transfer by ordinance any unexpended and unencumbered appropriated amount or portion thereof from one fund or capital project to another fund or capital project, provided that the purpose for which the transferred funds are to be expended remains unchanged, the purpose for which the funds were initially appropriated no longer exists, or the proposed transfer is from a fund or capital project in which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance; and

WHEREAS, the City Manager has recommended the transfer of \$2,125,000 from the Electric Utility (aka "Light & Power") Enterprise Fund, \$1,062,500 from the Water Fund, \$531,250 from the Wastewater Fund, and \$531,250 from the Stormwater Fund to the Customer Service and Administration Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

WHEREAS, Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds for a project, that such appropriation shall not lapse at the end of the fiscal year in which the appropriation is made, but continue until the completion of the project; and

WHEREAS, the City Council wishes to designate the appropriation herein for the purchase of vendor services to support the upgrade of the Utilities CIS as an appropriation that shall not lapse until the completion of the project.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from prior year reserves in the Light & Power Fund the sum of TWO MILLION ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$2,125,000) to be expended in the Light & Power Fund for transfer to the Customer Service and Administration Fund and appropriated therein for expenditure toward the purchase of

vendor services supporting an upgrade to the Utilities customer information and billing system (CIS).

Section 3. That there is hereby appropriated from prior year reserves in the Water Fund the sum of ONE MILLION SIXTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$1,062,500) to be expended in the Water Fund for transfer to the Customer Service and Administration Fund and appropriated therein for expenditure toward the purchase of vendor services supporting an upgrade to the Utilities CIS.

Section 4. That there is hereby appropriated from prior year reserves in the Wastewater Fund the sum of FIVE HUNDRED THIRTY-ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$531,250) to be expended in the Wastewater Fund for transfer to the Customer Service and Administration Fund and appropriated therein for expenditure toward the purchase of vendor services supporting an upgrade to the Utilities CIS.

Section 5. That there is hereby appropriated from prior year reserves in the Stormwater Fund the sum of FIVE HUNDRED THIRTY-ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$531,250) to be expended in the Stormwater Fund for transfer to the Customer Service and Administration Fund and appropriated therein for expenditure toward the purchase of vendor services supporting an upgrade to the Utilities CIS.

Section 6. That the appropriation herein for the purchase of vendor services to support the upgrade of the Utilities CIS is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the completion of the project.

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk



AGENDA ITEM SUMMARY

City Council

STAFF

Amanda King, Communications/Public Involvement Director
James McDonald, Cultural Services and Facility Director
Chris Martinez, IES Financial Planning and Analysis Manager
Ted Hewitt, Legal

SUBJECT

First Reading of Ordinance No. 037, 2023, Appropriating Prior Year Reserves in the General Fund for Cultural Development and Programming Activities, Tourism Programming, and Convention and Visitor Program Services.

EXECUTIVE SUMMARY

The purpose of this item is to appropriate \$598,668 of which \$261,527 is proposed for Cultural Development and Programming Activities (Fort Fund), \$169,624 is proposed for Tourism Programming (Fort Fund), and \$167,517 is proposed for Convention and Visitors Bureau from a combination of 2022 Lodging Tax collections and Prior Year Reserves (unspent appropriations) in the General Fund Lodging Tax Reserves.

Lodging taxes are annually collected by the City of Fort Collins for Cultural Development and Tourism programming activities. Anticipated revenue is projected through each Budgeting for Outcomes (BFO) cycle and then adjusted annually as needed based on final actual collections. For 2022, total Lodging Tax revenues collected came in \$239,310 above projected collections.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Section 25-244 of the City Code requires that 75% of the total lodging tax receipts be used for the promotion of convention and visitor activities in the City and 25% of receipts be used for cultural development and programming activities in the City. Actual revenue collected is appropriated based on this allocation formula and any excess revenue and budget savings are reserved for these activities in the General Fund.

Pursuant to a contract with the Fort Collins Convention and Visitors Bureau (FCCVB), the City has paid a portion of lodging tax receipts to the FCCVB since 2011 for delivery of convention and visitors programming services in furtherance of the City Code requirement. The amount due for convention and visitors programming is appropriated based on prior year receipts and paid annually to FCCVB after the close of the prior tax year.

Item 7.

When actual Lodging Tax receipts exceed the anticipated amount appropriated for cultural development and programming activities, the City also appropriates additional funds and adjusts the amount allocated for those activities in the year following the year in which the tax is collected. Appropriated Lodging Tax revenues remaining unspent at the end of the tax year lapse into the General Fund and may be appropriated the following year for the same purposes as they were originally appropriated.

The actual tax revenue collected during the 2022 tax year, as determined March 2023, was \$239,310 more than the Lodging Tax revenue anticipated and appropriated for expenditure in 2023. Accordingly, upward adjustments to the 2023 appropriations under Section 25-244 of the City Code are required. In addition, Budget staff has recommended unspent appropriations for convention and visitor activities and cultural development and programming activities that lapsed into the General Fund in 2022 be re-appropriated in 2023 for the same purposes as originally appropriated. These appropriation adjustments are described below.

CITY FINANCIAL IMPACTS

2023 LODGING TAX CLARIFICATION				
	75%		25%	
Section 25-44 of the City Code:	Promote Convention & Visitor Activities		Promote Cultural Development & Programming	
	503200	503202	503201	
Lodging Tax	Convention & Visitors Bureau 70%	Fort Fund (Tourism Programming) 5%	Fort Fund (Cultural Development & Programming) 25%	Total
Unanticipated Lodging Tax	\$ 167,517	\$ 11,966	\$ 59,827	\$ 239,310
Unspent Appropriations	\$ -	\$ 157,658	\$ 201,700	\$ 359,358
Total of Unanticipated Lodging Tax and Unspent Appropriations Available for 2023	\$ 167,517	\$ 169,624	\$ 261,527	\$ 598,668

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

N/A

PUBLIC OUTREACH

N/A

ATTACHMENTS

1. Ordinance for Consideration

ORDINANCE NO. 037, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES IN THE GENERAL FUND
FOR CULTURAL DEVELOPMENT AND PROGRAMMING ACTIVITIES,
TOURISM PROGRAMMING, AND CONVENTION AND VISITOR PROGRAM SERVICES

WHEREAS, Section 25-244 of the City Code requires that lodging tax revenue is to be allocated as follows: 75% for the promotion of convention and visitor activities and 25% for cultural development and programming activities; and

WHEREAS, Lodging Tax revenue was estimated at \$1,800,000 for 2022 and appropriated; however, actual Lodging Tax receipts were greater than projected; and

WHEREAS, at the end of 2022, a total of \$2,039,310 in Lodging Tax revenues had been collected and the unspent portions lapsed into the General Fund Reserves for Lodging Tax programs and activities; and

WHEREAS, unanticipated Lodging Tax revenue in the amount of \$239,310 held in the General Fund Reserves is to be appropriated for each of the Lodging Tax programs and activities as follows:

- Cultural Development and Programming \$59,827
- Tourism Programming \$11,966
- Fort Collins Convention and Visitors Bureau \$167,517

; and

WHEREAS, unexpended 2022 appropriations of Lodging Tax revenue in the amount of \$359,358 have lapsed and were returned to the General Fund, and are to be appropriated for Lodging Tax programs and activates based on the use specified when they were first appropriated, as follows:

- Cultural Development and Programming \$201,700
- Tourism Programming \$157,658

; and

WHEREAS, these additional funds will help support a future Fort Fund grant process; and

WHEREAS, this appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of promoting visitor activity and cultural development and programming activities; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon the recommendation of the City Manager, to make supplemental appropriations by ordinance at any time during the fiscal year such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the General Fund and will not cause the total amount appropriated in the General Fund to exceed the current estimate of actual and anticipated revenues and all other funds to be received in this Fund during this fiscal year; and

WHEREAS, the City wishes to appropriate funds allocated for Cultural Development and Programming and Tourism Programming.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated for prior year reserves in the General Fund the sum of TWO HUNDRED SIXTY-ONE THOUSAND FIVE HUNDRED TWENTY-SEVEN DOLLARS (\$261,527) to be expended in the General Fund for Cultural Development and Programming activities.

Section 3. That there is hereby appropriated from prior year reserves in the General Fund the sum of ONE HUNDRED SIXTY-NINE THOUSAND SIX HUNDRED TWENTY-FOUR DOLLARS (\$169,624) to be expended in the General Fund for the Tourism Programming.

Section 4. That there is hereby appropriated from prior year reserves in the General Fund the sum of ONE HUNDRED SIXTY-SEVEN THOUSAND FIVE HUNDRED SEVENTEEN DOLLARS (\$167,517) to be expended in the General Fund for the Convention and Visitors Bureau.

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

AGENDA ITEM SUMMARY

City Council



STAFF

Katie Collins, Water Conservation Specialist
Kerri Ishmael, Senior Analyst, Grant Administration
Eric Potyondy, Legal

SUBJECT

First Reading of Ordinance No. 038, 2023, Authorizing the City Manager to Accept a Grant Award and Comply with the Terms of the Grant and Making Supplemental Appropriations and Authorizing Transfers for the Xeriscape Incentive Program.

EXECUTIVE SUMMARY

The purpose of this item is to support businesses, homeowner associations (“HOAs”) and other commercial properties pursuing costly landscape projects that reduce water use long-term through the Xeriscape Incentive Program by utilizing (1) \$75,000 in grant funds from the Bureau of Reclamation and (2) \$75,000 in matching funds from existing 2023 appropriations. This item would also authorize the City Manager or their designee to accept the grant award and comply with the terms of the grant application and award.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The Xeriscape Incentive Program (XIP) supports Fort Collins Utilities (Utilities) water customers by providing funding for landscape retrofit projects that reduce outdoor water use long-term. The typical existing commercial landscape in Fort Collins is made up mostly of bluegrass, which, on average, requires 15-18 gallons of supplemental irrigation water per square foot of area, per growing season. Reducing the total amount of bluegrass on a property along with reconfiguring irrigation systems may cut a property’s landscape water requirement by 30% or more, but retrofit projects are costly. XIP is one tool to help reduce barriers to landscape conversions, providing \$1.50 per square foot of area converted from high- to low-water landscape. More information about the Xeriscape Incentive Program can be found at fcgov.com: Xeriscape Incentive Program (XIP) - City of Fort Collins

Reducing outdoor water use is one of several effective water demand management tools. Since 2020, when Utilities started offering XIP funding for commercial water customers, XIP has funded 24 projects across HOAs, businesses and county properties. In total, 18 acres of bluegrass have been replaced with low-water landscape. The water savings potential for the 24 completed projects is estimated at 10.6 million gallons per year compared to pre-project water use. Based on the data, actual water savings for all XIP projects is expected to exceed initial estimates. Funding for XIP has historically been through grant funds awarded by, among others, the Bureau of Reclamation (BOR), and City Council-approved budget offers for required matching funds. In support of the continued success of XIP, staff requested a continuing

Item 8.

enhancement offer pursuant to Budget Offer 1.41 (Attachment 2). Council approved this offer as part of the 2023-2024 Adopted Budget, with \$75,000 being appropriated as part of the current 2023 fiscal year budget (and \$75,000 as part of the 2024 budget). Implications to year two of Offer 1.41 will be addressed during the 2024 Budget Revision process.

In support of XIP, BOR awarded a grant of \$75,000 in 2022 for Commercial XIP projects. The award requires a 50% match by Utilities. As discussed above, the required matching funds in the amount of \$75,000 have already been appropriated in the 2023 Water Fund, as part of the operating budget for Water Conservation.

The grant award does not require execution of a post-award agreement. In this type of grant, the City would need to comply with the terms of the grant application and award upon accepting the grant and drawing the grant funds. City staff recommends that City Council authorize the City Manager or their designee to accept the grant and comply with the terms of the grant application and award.

With the grant and matching funds, BOR and Utilities will fund a total of \$150,000 in rebates issued by commercial property owners under XIP, with BOR and Fort Collins Utilities splitting rebates on a 50/50 cost share basis.

CITY FINANCIAL IMPACTS

This item approves transfer of \$75,000 in unexpended and unencumbered appropriations from the Water Conservation operating budget in the Water Fund to the XIP program.

This grant from BOR is a reimbursement type grant, meaning Water Fund expenses will be reimbursed up to \$75,000.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

N/A

PUBLIC OUTREACH

N/A

ATTACHMENTS

- 1. Ordinance for Consideration
- 2. Ordinance Exhibit A
- 3. Offer 1.41 – Utilities Xeriscape Program for HOAs and Commercial Properties

ORDINANCE NO. 038, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT AWARD AND
COMPLY WITH THE TERMS OF THE GRANT AND MAKING SUPPLEMENTAL
APPROPRIATIONS AND AUTHORIZING TRANSFERS FOR THE
XERISCAPE INCENTIVE PROGRAM

WHEREAS, the City owns and operates Fort Collins Utilities (“Utilities”), which includes a water utility that provides water to customers in its service area; and

WHEREAS, water conservation and efficiency is a tool Utilities uses, primarily through the Utilities Water Conservation Division, to manage and reduce the demand for water service by Utilities customers, which is beneficial to the City, the water utility, and its ratepayers by, among other reasons, reducing demand on water supplies and helping to ensure that the demand for water does not exceed supplies; and

WHEREAS, Utilities has developed the Xeriscape Incentive Program (“Program”) to support customers seeking to transform their largescale landscapes to use less water from Utilities, such as those of homeowners’ associations and commercial customers; and

WHEREAS, the United States Department of the Interior, Bureau of Reclamation has a Water SMART (Sustain and Manage America’s Resources for Tomorrow) Program that provides grants to water conservation programs; and

WHEREAS, such grants can provide significant funding for the Program, allowing it to expand beyond the scale that would otherwise be supported; and

WHEREAS, the Bureau of Reclamation awarded Utilities such a grant for \$75,000 for the Program, with said grant award, as amended, attached as Exhibit “A”; and

WHEREAS, the grant award requires \$75,000 in matching funds from the City, which have been appropriated and are available in the Water Fund for this purpose; and

WHEREAS, the grant award does not require execution of a post-award agreement and City staff recommends that City Council authorize the City Manager or their designee to accept the grant and comply with the terms of the grant application and award; and

WHEREAS, this appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of water conservation and efficiency, as discussed above; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon recommendation of the City Manager, to make a supplemental appropriation by ordinance at any time during the fiscal year, provided that the total amount of such supplemental appropriation, in combination with all previous appropriations for that fiscal year, do not exceed the current estimate of actual and anticipated revenues and all other funds to be received during the fiscal year; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Water Fund and will not cause the total amount appropriated in the Water Fund to exceed the current estimate of actual and anticipated revenues and all other funds to be received in this Fund during this fiscal year; and

WHEREAS, Article V, Section 10 of the City Charter authorizes the City Council, upon recommendation by the City Manager, to transfer by ordinance any unexpended and unencumbered appropriated amount or portion thereof from one fund or capital project to another fund or capital project, provided that the purpose for which the transferred funds are to be expended remains unchanged, the purpose for which the funds were initially appropriated no longer exists, or the proposed transfer is from a fund or capital project in which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance; and

WHEREAS, the City Manager has recommended the transfer of \$75,000 from the Water Conservation operating budget in the Water Fund to the Xeriscape Incentive Program in the Water Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

WHEREAS, Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds for a federal, state or private grant, that such appropriation shall not lapse at the end of the fiscal year in which the appropriation is made, but continue until the earlier of the expiration of the federal, state or private grant or the City's expenditure of all funds received from such grant; and

WHEREAS, the City Council wishes to designate the appropriation herein from the Bureau of Reclamation grant as an appropriation that shall not lapse until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from new revenue or other funds in the Water Fund the sum of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000) to be expended in the Water Fund for the Xeriscape Incentive Program.

Section 3. That the unexpended and unencumbered appropriated amount of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000) is authorized for transfer from the Water Conservation operating budget in the Water Fund to the Xeriscape Incentive Program in the Water Fund and appropriated therein to be expended for water conservation grants under the Xeriscape Incentive Program.

Section 4. That the appropriation herein from the Bureau of Reclamation grant is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the earlier of the expiration of the grant or the City’s expenditure of all funds received from such grant.

Section 5. That the City Council authorizes the City Manager or their designee to accept the grant and comply with the terms of the grant application and award.

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

EXHIBIT A

NOTICE OF AWARD



AUTHORIZATION (Legislation/Regulations)

P.L. 111-11 Section 9504(a) Water Management Improvement of the Omnibus Lands Management Act of 2009

Item 8. SUEB MM/DD/YYYY 022
1a. SUPERSEDES AWARD NOTICE dated 022
 except that any additions or restrictions previously imposed remain in effect unless specifically rescinded

2. CFDA NO.
 15.507 - WaterSMART (Sustain and Manage America's Resources for Tomorrow)

3. ASSISTANCE TYPE Project Grant

4. GRANT NO. R22AP00103-00
Originating MCA #

5. TYPE OF AWARD
 Other

4a. FAIN R22AP00103
5a. ACTION TYPE New

6. PROJECT PERIOD MM/DD/YYYY
From 03/09/2022
Through 06/30/2023

7. BUDGET PERIOD MM/DD/YYYY
From 03/09/2022
Through 06/30/2023

8. TITLE OF PROJECT (OR PROGRAM)
 Xeriscape Incentive Program

9a. GRANTEE NAME AND ADDRESS
 Fort Collins, City Of
 300 LA PORTE AVE
 FORT COLLINS, CO 80521

9b. GRANTEE PROJECT DIRECTOR
 Katie Collins
 300 Laporte Ave
 Water Conservation
 Fort Collins, CO 80521-2719
 Phone: [NO PHONE RECORD]

10a. GRANTEE AUTHORIZING OFFICIAL
 Ms. Theresa Connor
 300 Laporte Ave
 Water Conservation
 Fort Collins, CO 80521-2719
 Phone: 970-224-0074

10b. FEDERAL PROJECT OFFICER
 Nicole McCann
 Bureau of Reclamation Main Interior Building
 1849 C Street NW
 Washington, DC 20240-1000
 Phone: 7196619412

ALL AMOUNTS ARE SHOWN IN USD

11. APPROVED BUDGET (Excludes Direct Assistance)		12. AWARD COMPUTATION	
I Financial Assistance from the Federal Awarding Agency Only		a. Amount of Federal Financial Assistance (from item 11m)	\$ 75,000.00
II Total project costs including grant funds and all other financial participation		b. Less Unobligated Balance From Prior Budget Periods	\$ 0.00
a. Salaries and Wages	\$ 29,580.00	c. Less Cumulative Prior Award(s) This Budget Period	\$ 0.00
b. Fringe Benefits	\$ 0.00	d. AMOUNT OF FINANCIAL ASSISTANCE THIS ACTION	\$ 75,000.00
c. Total Personnel Costs	\$ 29,580.00	13. Total Federal Funds Awarded to Date for Project Period	\$ 75,000.00
d. Equipment	\$ 0.00	14. RECOMMENDED FUTURE SUPPORT (Subject to the availability of funds and satisfactory progress of the project):	
e. Supplies	\$ 0.00	YEAR	TOTAL DIRECT COSTS
f. Travel	\$ 0.00	a. 2	\$
g. Construction	\$ 0.00	b. 3	\$
h. Other	\$ 140,000.00	c. 4	\$
i. Contractual	\$ 0.00	d. 5	\$
j. TOTAL DIRECT COSTS	\$ 169,580.00	e. 6	\$
k. INDIRECT COSTS	\$ 0.00	f. 7	\$
l. TOTAL APPROVED BUDGET	\$ 169,580.00	15. PROGRAM INCOME SHALL BE USED IN ACCORD WITH ONE OF THE FOLLOWING ALTERNATIVES:	
m. Federal Share	\$ 75,000.00	a. DEDUCTION b. ADDITIONAL COSTS c. MATCHING d. OTHER RESEARCH (Add / Deduct Option) e. OTHER (See REMARKS)	
n. Non-Federal Share	\$ 94,580.00	e	
REMARKS (Other Terms and Conditions Attached - <input checked="" type="radio"/> Yes <input type="radio"/> No) See next page		16. THIS AWARD IS BASED ON AN APPLICATION SUBMITTED TO, AND AS APPROVED BY, THE FEDERAL AWARING AGENCY ON THE ABOVE TITLED PROJECT AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:	
		a. The grant program legislation b. The grant program regulations. c. This award notice including terms and conditions, if any, noted below under REMARKS. d. Federal administrative requirements, cost principles and audit requirements applicable to this grant.	
		In the event there are conflicting or otherwise inconsistent policies applicable to the grant, the above order of precedence shall prevail. Acceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn or otherwise obtained from the grant payment system.	

GRANTS MANAGEMENT OFFICIAL:

Beverly Nelson, Chief Grants Officer
 Denver Federal Center,
 6th & Kipling (84-27130)
 Denver, CO 80225
 Phone: 303-445-2762

BEVERLY NELSON Digitally signed by BEVERLY NELSON
 Date: 2022.03.09 13:48:11 -08'00'

17. VENDOR CODE	0071330135	18a. UEI	18b. DUNS	078362597	19. CONG. DIST.	02
LINE#	FINANCIAL ACCT	AMT OF FIN ASST	START DATE	END DATE	TAS ACCT	PO LINE DESCRIPTION
1	0051017650-00010	\$75,000.00	03/09/2022	06/30/2023	0680	R-DO-2021-000376 SWEP City of Ft. Collin

Item 8.

NOTICE OF AWARD (Continuation Sheet)

PAGE 2 of 3

DATE ISSUED
03/09/2022

GRANT NO. R22AP00103-00

REMARKS:

No program income authorized.

Recipients are NOT required to sign the Notice of Award or any other award document. Recipients indicate their acceptance of an award, including award terms and conditions, by starting work, drawing down funds, or accepting the award via electronic means. Recipient acceptance of an award carries with it the responsibility to be aware of and comply with all terms and conditions applicable to the award. Recipients are responsible for ensuring that their subrecipients and contractors are aware of and comply with applicable award statutes, regulations, and terms and conditions. Recipient failure to comply with award terms and conditions can result in Reclamation taking one or more of the remedies and actions described in 2 CFR 200.339343.

Item 8.

NOTICE OF AWARD (Continuation Sheet)

PAGE 3 of 3

DATE ISSUED
03/09/2022

GRANT NO. R22AP00103-00

Federal Financial Report Cycle

Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
03/09/2022	09/30/2022	Annual	12/29/2022
10/01/2022	06/30/2023	Final	10/28/2023

Performance Progress Report Cycle

Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
03/09/2022	09/30/2022	Annual	12/29/2022
10/01/2022	06/30/2023	Final	10/28/2023

Item 8.

AWARD ATTACHMENTS

FORT COLLINS, CITY OF

R22AP00103-00

1. R22AP00103 Agreement

UNITED STATES DEPARTMENT OF THE INTERIOR

ASSISTANCE AGREEMENT

R22AP00103

**Between
Bureau of Reclamation
And
City of Fort Collins
For
Xeriscape Incentive Program**

TABLE OF CONTENTS

I. OVERVIEW AND SCHEDULE.....	4
1. AUTHORITY	4
2. PUBLIC PURPOSE OF SUPPORT OR STIMULATION	5
3. BACKGROUND AND OBJECTIVES	5
4. PERIOD OF PERFORMANCE AND FUNDS AVAILABILITY	6
5. SCOPE OF WORK AND MILESTONES	6
6. RESPONSIBILITY OF THE PARTIES	7
7. BUDGET	8
8. KEY PERSONNEL	10
9. LIMITATION OF AUTHORITIES	10
10. REPORTING REQUIREMENTS AND DISTRIBUTION.....	11
11. REGULATORY COMPLIANCE	14
II. RECLAMATION STANDARD TERMS AND CONDITIONS.....	15
1. REGULATIONS.....	15
2. PAYMENT	15
3. PROCUREMENT STANDARDS (2 CFR 200.317 through 200.327).....	19
4. EQUIPMENT (2 CFR 200.313)	30
5. SUPPLIES (2 CFR 200.314)	32
6. INSPECTION	32
7. AUDIT REQUIREMENTS (2 CFR 200.501).....	33
8. REMEDIES FOR NONCOMPLIANCE (2 CFR 200.339).....	34
9. TERMINATION (2 CFR 200.340).....	34
10. DEBARMENT AND SUSPENSION (2 CFR 1400)	35
11. DRUG-FREE WORKPLACE (2 CFR 182 and 1401)	35
12. ASSURANCES AND CERTIFICATIONS INCORPORATED BY REFERENCE	35
13. COVENANT AGAINST CONTINGENT FEES.....	36
14. TRAFFICKING VICTIMS PROTECTION ACT OF 2000 (2 CFR 175.15)	36
15. NEW RESTRICTIONS ON LOBBYING (43 CFR 18).....	38
16. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (URA) (42 USC 4601 <i>et seq.</i>).....	39

17. SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER
 REQUIREMENTS (2 CFR 25, APPENDIX A) 40

18. PROHIBITION ON TEXT MESSAGING AND USING ELECTRONIC EQUIPMENT
 SUPPLIED BY THE GOVERNMENT WHILE DRIVING 41

19. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (2 CFR 170
 APPENDIX A)..... 41

20. RECIPIENT EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO
 INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013) 44

21. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND
 PERFORMANCE (APPENDIX XII to 2 CFR Part 200) 44

22. CONFLICTS OF INTEREST..... 46

23. DATA AVAILABILITY 47

24. PROHIBITION ON PROVIDING FUNDS TO THE ENEMY 48

25. ADDITIONAL ACCESS TO RECIPIENT RECORDS..... 48

26. PROHIBITION ON CERTAIN TELECOMMUNICATION AND VIDEO
 SURVEILLANCE SERVICES OR EQUIPMENT 49

**III. DEPARTMENT OF THE INTERIOR STANDARD AWARD TERMS AND
 CONDITIONS..... 50**

**Financial Assistance Agreement
Between
Bureau of Reclamation
And
City of Fort Collins
For
Xeriscape Incentive Program**

I. OVERVIEW AND SCHEDULE

1. AUTHORITY

This Financial Assistance Agreement (Agreement) is entered into between the United States of America, acting through the Department of the Interior, Bureau of Reclamation (Reclamation) and City of Fort Collins (Recipient), pursuant to Section 9504(a) of the SECURE WATER ACT, Subtitle F of Title IX of the OMNIBUS PUBLIC LAND MANAGEMENT ACT OF 2009, Public Law 111-11 (42 U.S.C. 10364) (the “Act”). The following section, provided in full text, authorizes Reclamation to award this financial assistance agreement:

SEC. 9504. WATER MANAGEMENT IMPROVEMENT.

(a) Authorization of grants and cooperative agreements.

(1) Authority of Secretary. The Secretary may provide any grant to, or enter into an agreement with, any eligible applicant to assist the eligible applicant in planning, designing, or constructing any improvement or carrying out any activity—

(A) to conserve water;

(B) to increase water use efficiency;

(C) to facilitate water markets;

(D) to enhance water management, including increasing the use of renewable energy in the management and delivery of water;

(E) to accelerate the adoption and use of advanced water treatment technologies to increase water supply;

(F) to assist States and water users in complying with interstate compacts or reducing basin water supply-demand imbalances;

(G) to achieve the prevention of the decline of species that the United States Fish and Wildlife Service and National Marine Fisheries Service have proposed for listing under the Endangered Species Act of 1973 ([16 U.S.C. 1531](#) et seq.) (or candidate species that are being considered by those agencies for such listing but are not yet the subject of a proposed rule);

(H) to achieve the acceleration of the recovery of threatened species, endangered species, and designated critical habitats that are adversely affected by Federal reclamation projects or are subject to a recovery plan or conservation plan under the Endangered Species Act of 1973 ([16 U.S.C. 1531](#) et seq.) under which the Commissioner of Reclamation has implementation responsibilities;

(I) to improve the condition of a natural feature; or

(J) to carry out any other activity—

(i) to address any climate-related impact to the water supply of the United States that increases ecological resiliency to the impacts of climate change;

(ii) to prevent any water-related crisis or conflict at any watershed that has a nexus to a Federal reclamation project located in a service area; or

(iii) to plan for or address the impacts of drought.

2. PUBLIC PURPOSE OF SUPPORT OR STIMULATION

The proposed **Xeriscape Incentive Program** (Project) will increase the reliability of water supplies, conserve water, and improve water management.

3. BACKGROUND AND OBJECTIVES

The U.S. Department of the Interior’s (Department) WaterSMART (Sustain and Manage America’s Resources for Tomorrow) Program provides a framework for Federal leadership and assistance to stretch and secure water supplies for future generations in support of the Department’s priorities. Through WaterSMART, the Reclamation leverages Federal and non-Federal funding to work cooperatively with States, Tribes, and local entities as they plan for and implement actions to increase water supply sustainability through investments in existing infrastructure and attention to local water conflicts. Small-Scale Water Efficiency Projects provide support for priorities identified in Presidential Executive Order (E.O.) 14008: *Tackling the Climate Crisis at Home and Abroad* (E.O. 14008) and aligned with other priorities, such as those identified in Presidential Executive Order 13985: *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (E.O. 13985). Small-Scale Water Efficiency projects also support the goals of the Interagency Drought Relief Working Group established in March 2021 and the National Drought Resiliency Partnership.

Drought conditions across the West impact a wide range of communities and sectors, including agriculture, cities, Tribes, the environment, recreation, hydropower producers, and others. The western United States is experiencing its worst drought this century—historic in both duration and severity - threatening to kill crops, spark wildfires, and harm public health. As of July, the U.S. Drought Monitor indicates that more than 93% of the land in nine of the Western states is in drought conditions, and nearly 60% of the area is experiencing extreme or exceptional drought. Through WaterSMART, Reclamation provides financial assistance to water managers for projects that seek to conserve and use water more efficiently and accomplish other benefits that contribute to sustainability in the Western United States.

Through Small-Scale Water Efficiency Projects, Reclamation provides assistance to States, Tribes, irrigation districts, water districts, and other entities with water or power delivery authority to undertake small-scale water efficiency projects that have been prioritized through planning efforts led by the applicant. These projects conserve and use water more efficiently; mitigate conflict risk in areas at a high risk of future water conflict; and accomplish other benefits that contribute to water supply reliability in the western United States.

The City of Fort Collins, located in northern Colorado, will continue to offer their Xeriscape Incentive Program to commercial and homeowner association landscaping. This project will help the City reduce overall water demand through conversions to low water use landscaping and hardscaping. This project is supported by the City's 2016 Water Efficiency Plan.

4. PERIOD OF PERFORMANCE AND FUNDS AVAILABILITY

This Agreement becomes effective on the date shown in block 1 of the United States of America, Department of the Interior, Notice of Award (NOA). The Agreement shall remain in effect through the date shown in block 6 of the NOA. The project period for this Agreement may only be changed through written amendment of the Agreement by a Reclamation Grants Officer (GO).

No legal liability on the part of the Government for any payment may arise until funds are made available, in writing, to the Recipient by a Reclamation GO. The total estimated project cost for this Agreement is **\$169,580.00** and the total estimated amount of federal funding is **\$75,000.00**. The initial amount of federal funds available is limited to **\$75,000.00** as indicated by "Amount of Financial Assistance This Action" within block 12 of the NOA. Subject to the availability of Congressional appropriations, subsequent funds will be made available for payment through written amendments to this Agreement by a Reclamation GO.

5. SCOPE OF WORK AND MILESTONES

Under this Agreement, the Recipient shall provide rebates in the amount of \$1.50 per square foot of area converted from high- to low-water use landscape. Project management, completion and invoice payment will be completed by each rebate awardee. The rebate maximum per customer is \$15,000. The Recipient shall provide approximately \$70,000 in rebates under this Agreement, an amount that will be matched by rebate awardees.

Landscape conversions will take place within the Fort Collins Utilities service area boundaries. The project latitude is 40°35'N and the longitude is 105°5'W. The Recipient shall include in its records the locations of the landscape conversions carried out under this Agreement, in particular to ensure that those locations are distinct from the locations of landscape conversions carried out with WaterSMART Small-Scale Water Efficiency Projects funding under Agreement R19AP00169.

6. RESPONSIBILITY OF THE PARTIES

6.1 Recipient Responsibilities

6.1.1 The Recipient shall carry out the Scope of Work (SOW) in accordance with the terms and conditions stated herein. The Recipient shall adhere to Federal, state, and local laws, regulations, and codes, as applicable, and shall obtain all required approvals and permits. If the SOW contains construction activities, the Recipient is responsible for construction inspection, oversight, and acceptance. If applicable, the Recipient shall also coordinate and obtain approvals from site owners and operators.

6.1.2 Interim Performance Reports. The Recipient shall prepare and submit to Reclamation interim Project performance reports (Interim Performance Reports) as required by Section I.10 of this Agreement. Each Interim Performance Report will include (but is not limited to) the information identified in paragraph I.10.3 and will discuss the following:

- A comparison of actual accomplishments to the milestones established by the financial assistance agreement for the reporting period
- The reasons why established milestones were not met, if applicable
- The status of milestones from the previous reporting period that were not met, if applicable
- Whether the Project is on schedule and within the original cost estimate
- Any additional pertinent information or issues related to the status of the Project

6.1.3 Final Project Report. The Recipient shall prepare and submit to Reclamation a final Project performance report (Final Project Report) as required by Section I.10 of this Agreement. The Final Project Report will include (but is not limited to) the information identified in paragraph I.10.3 and will discuss the following:

- Whether the Project objectives and goals were met
- The benefits to the recipient's water supply delivery system
- Other benefits achieved through the project. Consider the following:
 - Whether the project has or will complement work done in collaboration with NRCS
 - The benefits to overall water supply reliability in the area

Photographs documenting the project are also appreciated. Recipient understands that Reclamation may print photos with appropriate credit to Recipient. Recipient also understands that the Final Project Report is a public document and may be made available on Reclamation's website, www.usbr.gov/watersmart/.

6.2 Reclamation Responsibilities

6.2.1 Reclamation will monitor and provide Federal oversight of activities performed under this Agreement. Monitoring and oversight includes review and approval of financial status and performance reports, payment requests, and any other deliverables identified as part of the SOW. Additional monitoring activities may include site visits, conference calls, and other on-site and off-site monitoring activities. At the Recipient's request, Reclamation may also provide technical assistance to the Recipient in support of the SOW and objectives of this Agreement.

7. BUDGET

7.1 Budget Estimate. The following is the estimated budget for this Agreement. As Federal financial assistance agreements are cost-reimbursable, the budget provided is for estimation purposes only. Final costs incurred under the budget categories listed may be either higher or lower than the estimated costs. All costs incurred by the Recipient under this Agreement must be in accordance with any pre-award clarifications conducted between the Recipient and Reclamation, as well as with the terms and conditions of this Agreement. Final determination of the allowability, allocability, or reasonableness of costs incurred under this Agreement is the responsibility of the GO. Recipients are encouraged to direct any questions regarding allowability, allocability or reasonableness of costs to the GO for review prior to incurrence of the costs in question.

BUDGET ITEM DESCRIPTION	TOTAL COST
SALARIES, WAGES, FRINGE BENEFITS	
All Salaries and Wages	\$29,580
OTHER	
Rebates	\$140,000
TOTAL DIRECT COSTS	\$169,580
INDIRECT COSTS	
NA	\$0
TOTAL ESTIMATED PROJECT COST	\$169,580

7.2 Cost Sharing Requirement

At least 50% non-Federal cost share is required for costs incurred under this Agreement. Based on the budget estimate reflected in Section 7.1 above, the estimated Federal share of allowable costs is **44% (\$75,000.00)** and the Recipient's estimated non-Federal cost share is **56% (\$94,580.00)**. The Federal share of allowable costs shall not be expended in advance of the Recipient's non-Federal share. It is expected that expenditure of Federal and non-Federal funds based upon the cost share percentage above shall occur concurrently.

If a bona fide need arises which requires the expenditure of Federal funds in advance of the Recipient share, then the Recipient must request written approval from the GO prior to the

expenditure. Recipient's may expend their agreed upon share of costs in advance of the expenditure of Federal funds without prior written approval.

7.3 Pre-Award Incurrence of Costs

The Recipient is not authorized to incur costs prior to the award of this Agreement. Costs incurred prior to the award of this Agreement are not allowable.

7.4 Allowable Costs

Costs incurred for the performance of this Agreement must be allowable, allocable to the project, and reasonable. The following regulations, codified within the Code of Federal Regulations (CFR), governs the allowability of costs for Federal financial assistance:

2 CFR 200 Subpart E, "Cost Principles"

Expenditures for the performance of this Agreement must conform to the requirements within this CFR. The Recipient must maintain sufficient documentation to support these expenditures. Questions on the allowability of costs should be directed to the GO responsible for this Agreement.

The Recipient shall not incur costs or obligate funds for any purpose pertaining to operation of the program or activities beyond the expiration date stated in the Agreement. The only costs which are authorized for a period of up to 120 days following the project period are those strictly associated with closeout activities for preparation of the final reports.

7.5 Revision of Budget and Program Plans

In accordance with 2 CFR 200.308(h) the recipient must request prior written approval for any of the following changes:

- (a) A change in the approved scope of work or associated tasks, even if there is no associated budget revisions.
- (b) Revisions which require additional Federal funds to complete the project.
- (c) Revisions which involve specific costs for which prior written approval requirements may be imposed consistent with OMB cost principles listed in 2 CFR 200 Subpart E "Cost Principles".

7.6 Amendments

Any changes to this Agreement shall be made by means of a written amendment. Reclamation may make changes to the Agreement by means of a unilateral amendment to address changes in address, no-cost time extensions, changes to Key Personnel, the addition of previously agreed upon funding, or administrative corrections which do not impact the terms and conditions of this agreement. Additionally, a unilateral amendment may be utilized by Reclamation if it should become necessary to suspend or terminate the Agreement in accordance with 2 CFR 200.340.

All other changes shall be made by means of a bilateral amendment to the Agreement. No oral statement made by any person, or written statement by any person other than the GO, shall be allowed in any manner or degree to amend, modify or otherwise effect the terms of the Agreement.

All requests for amendment of the Agreement shall be made in writing, provide a full description of the reason for the request, and be sent to the attention of the GO. Any request for project period extension shall be made at least 45 days prior to the end of the project period of the Agreement or the project period date of any extension that may have been previously granted. Any determination to extend the project period or to provide follow-on funding for continuation of a project is solely at the discretion of Reclamation.

8. KEY PERSONNEL

The Recipient's Project Manager for this Agreement shall be:

Katie Collins
 Water Conservation Coordinator
 300 Laporte Ave
 Fort Collins, CO 80521
 970-416-4378
 kcollins@fcgov.com

9. LIMITATION OF AUTHORITIES

9.1 Grants Officer (GO).

The Reclamation GO is the only official with legal delegated authority to represent Reclamation. The Reclamation GO's responsibilities include, but are not limited to, the following:

- (a) Formally obligate Reclamation to expend funds or change the funding level of the Agreement;
- (b) Approve through formal amendment changes in the scope of work and/or budget;
- (c) Approve through formal amendment any increase or decrease in the period of performance of the Agreement;
- (d) Approve through formal amendment changes in any of the expressed terms, conditions, or specifications of the Agreement;
- (e) Be responsible for the overall administration, management, and other non-programmatic aspects of the Agreement including, but not limited to, interpretation of financial assistance statutes, regulations, circulars, policies, and terms of the Agreement; Where applicable, ensures that Reclamation complies with the administrative requirements required by statutes, regulations, circulars, policies, and terms of the Agreement.

9.2 Grants Management Specialist (GMS).

The Reclamation Grants Management Specialist (GMS) is the primary administrative point of contact for this agreement and should be contacted regarding issues related to the day-to-day management of the agreement. Requests for approval regarding the terms and conditions of the agreement, including but not limited to amendments and prior approval, may only be granted, in writing, by a Reclamation GO. Please note that for some agreements, the Reclamation GO and the Reclamation GMS may be the same individual.

10. REPORTING REQUIREMENTS AND DISTRIBUTION

10.1 Noncompliance. Failure to comply with the reporting requirements contained in this Agreement may be considered a material noncompliance with the terms and conditions of the award. Noncompliance may result in withholding of payments pending receipt of required reports, denying both the use of funds and matching credit for all or part of the cost of the activity or action not in compliance, whole or partial suspension or termination of the Agreement, recovery of funds paid under the Agreement, withholding of future awards, or other legal remedies in accordance with 2 CFR 200.340.

10.2 Financial Reports. Federal Financial Reports shall be submitted by means of the SF-425 and shall be submitted according to the Report Frequency and Distribution schedule below. All financial reports shall be signed by an Authorized Certifying Official for the Recipient's organization.

10.3 Monitoring and Reporting Program Performance.

- (a) Monitoring by the non-Federal entity. The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also 2 CFR 200.332 Requirements for pass-through entities.
- (b) Non-construction performance reports. The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).
 - (1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding

agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 120 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.

- (2) The non-Federal entity must submit performance reports using OMB-approved governmentwide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:
- (i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.
 - (ii) The reasons why established goals were not met, if appropriate.
 - (iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
- (c) Construction performance reports. For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.
- (d) Significant developments. Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:
- (1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
 - (2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

Reclamation requires Performance reporting for all financial assistance awards, both Construction and non-Construction. Performance reports for Construction agreements shall meet the same minimum requirements outlined in paragraph (b)(2) above.

10.4 Report Frequency and Distribution. The following table sets forth the reporting requirements for this Agreement. Please note the first report due date listed for each type of report.

Required Reports	Interim Reports	Final Report
Performance Report		
Format	No specific format required. See content requirements within Section 10.3 and any program specific reporting requirements identified in Section 6.1 of this Agreement.	Summary of activities completed during the entire period of performance is required. See content requirements within Section 10.3 and any program specific reporting requirements identified in Section 6.1 of this Agreement.
Reporting Frequency	Annual	Final Report due within 120 days after the end of the period of performance.
Reporting Period	The Federal Fiscal Year, October 1 through September 30.	Entire period of performance
Due Date	For Annual Reporting: Within 90 days after the end of the Reporting Period.	Final Report due within 120 days after the end of the period of performance or completion of the project.
First Report Due Date	The first performance report is due for reporting period ending <i>September 30, 2022</i>	N/A
Submit to:	sha-dro-faoperations@usbr.gov or GrantSolutions	sha-dro-faoperations@usbr.gov or GrantSolutions
Federal Financial Report		
Format	SF-425 (all sections must be completed)	SF-425(all sections must be completed)
Reporting Frequency	Annual	Final Report due within 120 days after the end of the period of performance or completion of the project.
Reporting Period	The Federal Fiscal Year, October 1 through September 30.	Entire period of performance
Due Date	For Annual Reporting: Within 90 days after the end of the Reporting Period.	Final Report due within 120 days after the end of the period of performance or completion of project.
First Report Due Date	The first Federal financial report is due for reporting period ending September 30, 2022	N/A
Submit to:	sha-dro-faoperations@usbr.gov or GrantSolutions	sha-dro-faoperations@usbr.gov or GrantSolutions

11. REGULATORY COMPLIANCE

The Recipient agrees to comply or assist Reclamation with all regulatory compliance requirements and all applicable state, Federal, and local environmental and cultural and paleontological resource protection laws and regulations as applicable to this project. These may include, but are not limited to, the National Environmental Policy Act (NEPA), including the Council on Environmental Quality and Department of the Interior regulations implementing NEPA, the Clean Water Act, the Endangered Species Act, consultation with potentially affected Tribes, and consultation with the State Historic Preservation Office. If the Recipient begins project activities that require environmental or other regulatory compliance approval prior to receipt of written notice from a Reclamation GO that all such clearances have been obtained, then Reclamation reserves the right to initiate remedies for non-compliance as defined by 2 CFR 200.340 up to and including unilateral termination of this agreement.

II. RECLAMATION STANDARD TERMS AND CONDITIONS

1. REGULATIONS

The regulations at [2 CFR Subtitle A, Chapter II, Part 200](#) “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, are hereby incorporated by reference as though set forth in full text. Failure of a Recipient to comply with any applicable regulation or circular may be the basis for withholding payments for proper charges made by the Recipient and/or for termination of support.

2. PAYMENT

2.1 Payment (2 CFR 200.305).

(a) For states, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR part 205 and Treasury Financial Manual (TFM) 4A-2000, “Overall Disbursing Rules for All Federal Agencies”.

(b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also §200.302(b)(6). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved, governmentwide information collection requests to request payment.

- (1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.
- (2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the recipient.
 - (i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.
 - (ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used,

and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).

- (3) Reimbursement is the preferred method when the requirements in this paragraph (b) cannot be met, when the Federal awarding agency sets a specific condition per §200.208, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.
- (4) If the non-Federal entity cannot meet the criteria for advance payments and the Federal awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the Federal awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.
- (5) To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.
- (6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of §200.208, subpart D of this part, including §200.339, or one or more of the following applies:
 - (i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.
 - (ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Circular A-129, "Policies for Federal Credit Programs and Non-Tax Receivables." Under such conditions, the Federal awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for financial obligations incurred after a specified

date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

- (iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with §200.343.
 - (iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.
- (7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows.
- (i) The Federal awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for funds received, obligated, and expended.
 - (ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.
- (8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply:
- (i) The non-Federal entity receives less than \$250,000 in Federal awards per year.
 - (ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.
 - (iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.
 - (iv) A foreign government or banking system prohibits or precludes interest-bearing accounts.
- (9) Interest earned amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment.
- (i) For returning interest on Federal awards paid through PMS, the refund should:
 - (A) Provide an explanation stating that the refund is for interest;
 - (B) List the PMS Payee Account Number(s) (PANs);

- (C) List the Federal award number(s) for which the interest was earned; and
 - (D) Make returns payable to: Department of Health and Human Services.
- (ii) For returning interest on Federal awards not paid through PMS, the refund should:
- (A) Provide an explanation stating that the refund is for interest;
 - (B) Include the name of the awarding agency;
 - (C) List the Federal award number(s) for which the interest was earned; and
 - (D) Make returns payable to: Department of Health and Human Services.
- (10) Funds, principal, and excess cash returns must be directed to the original Federal agency payment system. The non-Federal entity should review instructions from the original Federal agency payment system. Returns should include the following information:
- (i) Payee Account Number (PAN), if the payment originated from PMS, or Agency information to indicate whom to credit the funding if the payment originated from ASAP, NSF, or another Federal agency payment system.
 - (ii) PMS document number and subaccount(s), if the payment originated from PMS, or relevant account numbers if the payment originated from another Federal agency payment system.
 - (iii) The reason for the return (e.g., excess cash, funds not spent, interest, part interest part other, etc.)
- (11) When returning funds or interest to PMS you must include the following as applicable:
- (i) For ACH Returns:
Routing Number: 051036706
Account number: 303000
Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN
 - (ii) For Fedwire Returns¹:
Routing Number: 021030004
Account number: 75010501
Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer Division New York, NY
- ¹Please note that the organization initiating payment is likely to incur a charge from their Financial Institution for this type of payment.
- (iii) For International ACH Returns:
Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS)
Bank: Citibank N.A. (New York)
Swift Code: CITIUS33
Account Number: 36838868
Bank Address: 388 Greenwich Street, New York, NY 10013 USA
Payment Details (Line 70): Agency Locator Code (ALC): 75010501
Name (abbreviated when possible) and ALC Agency POC

- (iv) For recipients that do not have electronic remittance capability, please make check² payable to: “The Department of Health and Human Services.”
Mail Check to Treasury approved lockbox:
HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353-0231
- ²Please allow 4-6 weeks for processing of a payment by check to be applied to the appropriate PMS account.
- (v) Questions can be directed to PMS at 877-614-5533 or PMSSupport@psc.hhs.gov.

2.2 Payment Method.

Recipients must utilize the Department of Treasury Automated Standard Application for Payments (ASAP) payment system to request advance or reimbursement payments. ASAP is a Recipient-initiated payment and information system designed to provide a single point of contact for the request and delivery of Federal funds. ASAP is the only allowable method for request and receipt of payment. Recipient procedures must minimize the time elapsing between the drawdown of Federal funds and the disbursement for agreement purposes.

In accordance with 2 CFR 25.200(b)(2) the Recipient shall “Maintain an active SAM registration with current information, including information on a recipient's immediate and highest level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract or grant within the last three years, if applicable, at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. If the Recipient allows their SAM registration to lapse, the Recipient’s accounts within ASAP will be automatically suspended by Reclamation until such time as the Recipient renews their SAM registration.

3. PROCUREMENT STANDARDS (2 CFR 200.317 through 200.327)

§200.317 Procurements by States.

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by §200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§200.318 through 200.327.

§200.318 General procurement standards.

- (a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.
- (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

- (c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.
- (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

- (h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also 200.212 Suspension and debarment.
- (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- (j) (1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:
- (i) The actual cost of materials; and
 - (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
- (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- (k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

§200.319 Competition.

- (a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and §200.320.
- (b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing

for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
 - (2) Requiring unnecessary experience and excessive bonding;
 - (3) Noncompetitive pricing practices between firms or between affiliated companies;
 - (4) Noncompetitive contracts to consultants that are on retainer contracts;
 - (5) Organizational conflicts of interest;
 - (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
 - (7) Any arbitrary action in the procurement process.
- (c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- (d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
 - (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- (e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with §200.320(c).

§200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

- (a) Informal procurement methods. When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold (SAT), as defined in §200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:
- (1) Micro-purchases—(i) Distribution. The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of micro-purchase in §200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.
 - (ii) Micro-purchase awards. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.
 - (iii) Micro-purchase thresholds. The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.
 - (iv) Non-Federal entity increase to the micro-purchase threshold up to \$50,000. Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with §200.334. The self-

certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

- (A) A qualification as a low-risk auditee, in accordance with the criteria in §200.520 for the most recent audit;
 - (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
 - (C) For public institutions, a higher threshold consistent with State law.
- (v) Non-Federal entity increase to the micro-purchase threshold over \$50,000. Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.
- (2) Small purchases—(i) Small purchase procedures. The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.
- (ii) Simplified acquisition thresholds. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.
- (b) Formal procurement methods. When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with §200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:
- (1) Sealed bids. A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for

bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

- (i) In order for sealed bidding to be feasible, the following conditions should be present:
 - (A) A complete, adequate, and realistic specification or purchase description is available;
 - (B) Two or more responsible bidders are willing and able to compete effectively for the business; and
 - (C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- (ii) If sealed bids are used, the following requirements apply:
 - (A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
 - (B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - (C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
 - (D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - (E) Any or all bids may be rejected if there is a sound documented reason.
- (2) Proposals. A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:
 - (i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - (ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

- (iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and
 - (iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.
- (c) Noncompetitive procurement. There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:
- (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);
 - (2) The item is available only from a single source;
 - (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
 - (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
 - (5) After solicitation of a number of sources, competition is determined inadequate.

§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

- (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

§200.322 Domestic preferences for procurements.

- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- (b) For purposes of this section:
 - (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

§200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§200.324 Contract cost and price.

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract amendments. The method and degree of analysis is dependent on the facts surrounding

the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

- (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§200.325 Federal awarding agency or pass-through entity review.

- (a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- (b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
 - (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
 - (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
 - (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

- (5) A proposed contract amendment changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- (c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
- (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
- (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§200.326 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in [appendix II](#) to this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014, and 85 FR 49506]

4. EQUIPMENT (2 CFR 200.313)

See also 200.439 Equipment and other capital expenditures.

- (a) Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further obligation to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:
- (1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.
 - (2) Not encumber the property without approval of the Federal awarding agency or pass-through entity.
 - (3) Use and dispose of the property in accordance with paragraphs (b), (c) and (e) of this section.
- (b) A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.
- (c) Use.
- (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:
 - (i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then
 - (ii) Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.
 - (2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other

programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.

- (3) Notwithstanding the encouragement in 200.307 Program income to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.
 - (4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.
- (d) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:
- (1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
 - (2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
 - (3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
 - (4) Adequate maintenance procedures must be developed to keep the property in good condition.
 - (5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- (e) Disposition. When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:
- (1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.
 - (2) Except as provided in 200.312 Federally-owned and exempt property, paragraph (b), or if the Federal awarding agency fails to provide requested disposition instructions within

120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

- (3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.
- (4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75884, Dec. 19, 2014]

5. SUPPLIES (2 CFR 200.314)

See also 200.453 Materials and supplies costs, including costs of computing devices.

- (a) Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. See 200.313 Equipment, paragraph (e)(2) for the calculation methodology.
- (b) As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

6. INSPECTION

Reclamation has the right to inspect and evaluate the work performed or being performed under this Agreement, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If Reclamation performs inspection or evaluation on the premises of the Recipient or a sub-Recipient, the Recipient shall furnish and shall require sub-recipients to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

7. AUDIT REQUIREMENTS (2 CFR 200.501)

- (a) Audit required. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.
- (b) Single audit. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with 200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.
- (c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with 200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.
- (d) Exemption when Federal awards expended are less than \$750,000. A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).
- (e) Federally Funded Research and Development Centers (FFRDC). Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.
- (f) Subrecipients and Contractors. An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section 200.331 Subrecipient and contractor determinations sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.
- (g) Compliance responsibility for contractors. In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

- (h) For-profit subrecipient. Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also 200.332 Requirements for pass-through entities.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49571, Aug. 13, 2020]

8. REMEDIES FOR NONCOMPLIANCE (2 CFR 200.339)

200.339 Remedies for noncompliance.

If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in 200.207 Specific conditions. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances.

- (a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.
- (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- (c) Wholly or partly suspend or terminate the Federal award.
- (d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
- (e) Withhold further Federal awards for the project or program.
- (f) Take other remedies that may be legally available.

9. TERMINATION (2 CFR 200.340)

- (a) The Federal award may be terminated in whole or in part as follows:
 - (1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;
 - (2) By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
 - (3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;

- (4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety; or
- (5) By the Federal awarding agency or pass-through entity pursuant to termination provisions included in the Federal award.
- (b) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in 200.344 Closeout and 200.345 Post-closeout adjustments and continuing responsibilities.

10. DEBARMENT AND SUSPENSION (2 CFR 1400)

The Department of the Interior regulations at 2 CFR 1400—Governmentwide Debarment and Suspension (Nonprocurement), which adopt the common rule for the governmentwide system of debarment and suspension for nonprocurement activities, are hereby incorporated by reference and made a part of this Agreement. By entering into this grant or cooperative Agreement with the Bureau of Reclamation, the Recipient agrees to comply with 2 CFR 1400, Subpart C, and agrees to include a similar term or condition in all lower-tier covered transactions. These regulations are available at <http://www.gpoaccess.gov/ecfr/>.

11. DRUG-FREE WORKPLACE (2 CFR 182 and 1401)

The Department of the Interior regulations at 2 CFR 1401—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), which adopt the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq, as amended) applicable to grants and cooperative agreements, are hereby incorporated by reference and made a part of this agreement. By entering into this grant or cooperative agreement with the Bureau of Reclamation, the Recipient agrees to comply with 2 CFR 182.

12. ASSURANCES AND CERTIFICATIONS INCORPORATED BY REFERENCE

The provisions of the Assurances, SF 424B or SF 424D as applicable, executed by the Recipient in connection with this Agreement shall apply with full force and effect to this Agreement. All anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, and cooperative Agreements, loans, and other forms of Federal assistance. The Recipient shall comply with Title VI or the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and any program-specific statutes with anti-discrimination requirements. The Recipient shall comply with civil rights laws

including, but not limited to, the Fair Housing Act, the Fair Credit Reporting Act, the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act.

Such Assurances also include, but are not limited to, the promise to comply with all applicable Federal statutes and orders relating to nondiscrimination in employment, assistance, and housing; the Hatch Act; Federal wage and hour laws and regulations and work place safety standards; Federal environmental laws and regulations and the Endangered Species Act; and Federal protection of rivers and waterways and historic and archeological preservation.

13. COVENANT AGAINST CONTINGENT FEES

The Recipient warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide offices established and maintained by the Recipient for the purpose of securing Agreements or business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement amount, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

14. TRAFFICKING VICTIMS PROTECTION ACT OF 2000 (2 CFR 175.15)

Trafficking in persons.

- (a) *Provisions applicable to a recipient that is a private entity.* You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not
- (1) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (2) Procure a commercial sex act during the period of time that the award is in effect; or
 - (3) Use forced labor in the performance of the award or subawards under the award.
- (b) We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
- (1) Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - (2) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either:
 - (i) Associated with performance under this award; or
 - (ii) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR part 1400.

(c) *Provision applicable to a recipient other than a private entity.* We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

- (1) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
- (2) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either:
 - (i) Associated with performance under this award; or
 - (ii) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR part 1400.

(d) *Provisions applicable to any recipient.*

- (1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
- (2) Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - (i) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - (ii) Is in addition to all other remedies for noncompliance that are available to us under this award.
- (3) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

(e) *Definitions.* For purposes of this award term:

- (1) “Employee” means either:
 - (i) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - (ii) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- (2) “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

- (3) “Private entity”:
- (i) Means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - (ii) Includes:
 - (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - (B) A for-profit organization.
- (4) “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

15. NEW RESTRICTIONS ON LOBBYING (43 CFR 18)

The Recipient agrees to comply with 43 CFR 18, New Restrictions on Lobbying, including the following certification:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or amendment of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying” in accordance with its instructions.
- (c) The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

16. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (URA) (42 USC 4601 *et seq.*)

- (a) The Uniform Relocation Assistance Act (URA), 42 U.S.C. 4601 *et seq.*, as amended, requires certain assurances for Reclamation funded land acquisition projects conducted by a Recipient that cause the displacement of persons, businesses, or farm operations. Because Reclamation funds only support acquisition of property or interests in property from willing sellers, it is not anticipated that Reclamation funds will result in any “displaced persons,” as defined under the URA.
- (b) However, if Reclamation funds are used for the acquisition of real property that results in displacement, the URA requires Recipients to ensure that reasonable relocation payments and other remedies will be provided to any displaced person. Further, when acquiring real property, Recipients must be guided, to the greatest extent practicable, by the land acquisition policies in 42 U.S.C. 4651.
- (c) Exemptions to the URA and 49 CFR Part 24
- (1) The URA provides for an exemption to the appraisal, review and certification rules for those land acquisitions classified as “voluntary transactions.” Such “voluntary transactions” are classified as those that do not involve an exercise of eminent domain authority on behalf of a Recipient, and must meet the conditions specified at 49 CFR 24.101(b)(1)(i)-(iv).
- (2) For any land acquisition undertaken by a Recipient that receives Reclamation funds, but does not have authority to acquire the real property by eminent domain, to be exempt from the requirements of 49 CFR Part 24 the Recipient must:
- (i) provide written notification to the owner that it will not acquire the property in the event negotiations fail to result in an amicable agreement, and;
 - (ii) inform the owner in writing of what it believes to be the market value of the property
- (d) Review of Land Acquisition Appraisals. Reclamation reserves the right to review any land appraisal whether or not such review is required under the URA or 49 CFR 24.104. Such reviews may be conducted by the Department of the Interior’s Appraisal Services Directorate or a Reclamation authorized designee. When Reclamation determines that a review of the original appraisal is necessary, Reclamation will notify the Recipient and provide an estimated completion date of the initial appraisal review.

17. SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS (2 CFR 25, APPENDIX A)

A. Requirement for System for Award Management

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain current information in the SAM. This includes information on your immediate and highest level owner and subsidiaries, as well as on all of your predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until you submit the final financial report required under this Federal award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another Federal award term.

B. Requirement for unique entity identifier

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its unique entity identifier to you.
2. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier to you. Subrecipients are not required to obtain an active SAM registration, but must obtain a Unique Entity Identifier.

C. Definitions

For purposes of this award term:

1. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <http://www.sam.gov>).
2. Unique entity identifier means the identifier required for SAM registration to uniquely identify business entities.
3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
 - a. A Governmental organization, which is a State, local government, or Indian Tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization; and
 - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward has the meaning given in 2 CFR 200.1.
5. Subrecipient has the meaning given in 2 CFR 200.1.

18. PROHIBITION ON TEXT MESSAGING AND USING ELECTRONIC EQUIPMENT SUPPLIED BY THE GOVERNMENT WHILE DRIVING

Executive Order 13513, *Federal Leadership On Reducing Text Messaging While Driving*, was signed by President Barack Obama on October 1, 2009 (ref: <http://edocket.access.gpo.gov/2009/pdf/E9-24203.pdf>). This Executive Order introduces a Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment. Additional guidance enforcing the ban will be issued at a later date. In the meantime, please adopt and enforce policies that immediately ban text messaging while driving company-owned or rented vehicles, government-owned or leased vehicles, or while driving privately owned vehicles when on official government business or when performing any work for or on behalf of the government.

19. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (2 CFR 170 APPENDIX A)

- I. Reporting Subawards and Executive Compensation.
 - a. Reporting of first-tier subawards.
 1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph e. of this award term).
 2. Where and when to report.
 - i. The non-Federal entity or Federal agency must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
 3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.
 - b. Reporting total compensation of recipient executives for non-Federal entities.
 1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
 - i. The total Federal funding authorized to date under this Federal award equals or exceeds \$30,000 as defined in 2 CFR 170.320;

- ii. in the preceding fiscal year, you received—
 - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards), and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:
- i. As part of your registration profile at <https://www.sam.gov>.
 - ii. By the end of the month following the month in which this award is made, and annually thereafter.
- c. Reporting of Total Compensation of Subrecipient Executives.
- 1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier non-Federal entity subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
 - i. in the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards) and,
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:
 - i. To the recipient.
 - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions.

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
 - ii. The total compensation of the five most highly compensated executives of any subrecipient.
- e. Definitions. For purposes of this award term:
1. Federal Agency means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).
 2. Non-Federal entity means all of the following, as defined in 2 CFR part 25:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization; and,
 - iv. A domestic or foreign for-profit organization
 3. Executive means officers, managing partners, or any other employees in management positions.
 4. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.331).
 - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
 5. Subrecipient means a non-Federal entity or Federal agency that:
 - i. Receives a subaward from you (the recipient) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.

6. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)).

[85 FR 49526, Aug. 13, 2020]

20. RECIPIENT EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)

- (a) This award and employees working on this financial assistance agreement will be subject to the whistleblower rights and remedies in the pilot program on Award Recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub.L. 112-239).
- (b) The Award Recipient shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C 4712.
- (c) The Award Recipient shall insert the substance of this clause, including this paragraph (c), in all subawards or subcontracts over the simplified acquisition threshold. 48 CFR 52.203-17 (as referenced in 48 CFR 3.908-9).

21. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE (APPENDIX XII to 2 CFR Part 200)

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five-year period; and
- c. Is one of the following:

- (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
- (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
- (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
- (4) Any other criminal, civil, or administrative proceeding if:
 - (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
 - (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

- a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

- b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 - (1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 - (2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

[80 FR 43310, July 22, 2015, as amended at 85 FR 49582, Aug. 13, 2020]

22. CONFLICTS OF INTEREST

(a) Applicability.

- (1) This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
- (2) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.318 apply.

(b) Requirements.

- (1) Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.
- (2) In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or subrecipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or subrecipient or in development of the requirement leading to the funding announcement.
- (3) No actual or prospective recipient or subrecipient may solicit, obtain, or use non-public information regarding the evaluation, award, or administration of an award to that recipient or subrecipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or subrecipient.

(c) Notification.

- (1) Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of Interest.

- (2) Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients.
- (d) **Restrictions on Lobbying.** Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR Part 18 and 31 USC 1352.
- (e) **Review Procedures.** The Financial Assistance Officer will examine each conflict-of-interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.
- (f) **Enforcement.** Failure to resolve conflicts of interest in a manner that satisfies the Government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR 200.338, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR Part 180).

23. DATA AVAILABILITY

- (a) **Applicability.** The Department of the Interior is committed to basing its decisions on the best available science and providing the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department to inform its decisions.
- (b) **Use of Data.** The regulations at 2 CFR 200.315 apply to data produced under a Federal award, including the provision that the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award as well as authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- (c) **Availability of Data.** The recipient shall make the data produced under this award and any subaward(s) available to the Government for public release, consistent with applicable law, to allow meaningful third party evaluation and reproduction of the following:
- (i) The scientific data relied upon;
 - (ii) The analysis relied upon; and
 - (iii) The methodology, including models, used to gather and analyze data.

24. PROHIBITION ON PROVIDING FUNDS TO THE ENEMY

- (a) The recipient must—
- (1) Exercise due diligence to ensure that none of the funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through [2 CFR 180.300](#) prior to issuing a subaward or contract and;
 - (2) Terminate or void in whole or in part any subaward or contract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subaward or contract.
- (b) The recipient may include the substance of this clause, including paragraph (a) of this clause, in subawards under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.
- (c) The Federal awarding agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal awarding agency becomes aware that the recipient failed to exercise due diligence as required by paragraph (a) of this clause or if the Federal awarding agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

25. ADDITIONAL ACCESS TO RECIPIENT RECORDS

- (a) In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017 that will be performed in the United States Central Command (USCENTCOM) theater of operations.
- (b) The substance of this clause, including this paragraph (b), is required to be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

26. PROHIBITION ON CERTAIN TELECOMMUNICATION AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Federal award recipients are prohibited from using government funds to enter contracts (or extend or renew contracts) with entities that use covered telecommunications equipment or services as described in section 889 of the 2019 National Defense Authorization Act. This prohibition applies even if the contract is not intended to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services.

III. DEPARTMENT OF THE INTERIOR STANDARD AWARD TERMS AND CONDITIONS

The Department of the Interior (DOI) Standard Award Terms and Conditions found at <https://www.doi.gov/sites/doi.gov/files/uploads/doi-standard-award-terms-and-conditions-effective-december-2-2019-revised-june-19-2020.pdf> are hereby incorporated by reference as though set forth in full text. These terms and conditions are in addition to the assurances and certifications made as part of the award and terms, conditions or restrictions reflected on this Agreement. Recipient acceptance of this Agreement carries with it the responsibility to be aware of and comply with all DOI terms and conditions applicable to this Agreement. The Recipient is responsible for ensuring their subrecipients and contractors are aware of and comply with applicable statutes, regulations, and agency requirements.

Recipient and subrecipient failure to comply with the general terms and conditions outlined below and those directly reflected in this Agreement can result in the DOI taking one or more of remedies described in 2 Code of Federal Regulations parts 200.338 and 200.339. The DOI will notify the recipient whenever terms and conditions are updated to accommodate instances in the passage of a regulation or statute that requires compliance. Also, DOI will inform the Recipient of revised terms and conditions in the action of an Agreement amendment adding additional Federal funds. Reclamation will make such changes by issuing a Notice of Award amendment that describes the change and provides the effective date. Revised terms and conditions do not apply to the Recipient's expenditures of funds or activities the Recipient carries out before the effective date of the revised DOI terms and conditions.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

AMENDMENT 01

TO

ASSISTANCE AGREEMENT R22AP00103

A. PURPOSE OF THIS AMENDMENT:

The purpose of this amendment is to remove personnel costs from the budget, and to add rebate dollars to the budget. The Recipient cost share changes. Additionally, this amendment changes the Grantee Authorizing Official.

All other terms and conditions remain unchanged.

B. ADJUSTMENT OF AGREEMENT BUDGET AND COST SHARE:

As a result of this amendment, section 7.1 Budget Estimate is revised as follows, and as shown in the budget table below. Salary and wages of \$29,580 are removed. Rebates are increased from \$140,000 to \$150,000.

BUDGET ITEM DESCRIPTION	TOTAL COST
SALARIES, WAGES, FRINGE BENEFITS	
All Salaries and Wages	\$ 0.00
OTHER	
Rebates	\$150,000
TOTAL DIRECT COSTS	\$150,000
INDIRECT COSTS	
NA	\$0
TOTAL ESTIMATED PROJECT COST	\$169,580

As a result of this amendment, section 7.2 Cost Sharing Requirement is changed to the following.

At least 50% non-Federal cost share is required for costs incurred under this Agreement. Based on the budget estimate reflected in Section 7.1 above, the estimated Federal share of allowable costs is 50% (\$75,000.00) and the Recipient's estimated non-Federal cost share is 50% (\$75,000.00). The Federal share of allowable costs shall not be expended in advance of the Recipient's non-Federal share. It is expected that expenditure of Federal and non-Federal funds based upon the cost share percentage above shall occur concurrently.

If a bona fide need arises which requires the expenditure of Federal funds in advance of the Recipient share, then the Recipient must request written approval from the GO prior to the expenditure. Recipient's may expend their agreed upon share of costs in advance of the expenditure of Federal funds without prior written approval.

C. ADDITION OF KEY PERSONNEL:

As a result of this amendment, the Recipient's Grantee Authorizing Official is added as follows.

The Recipient's Authorizing Official for this Agreement shall be:

Kelly DiMartino
Interim City Manager
300 Laporte Ave
Fort Collins, CO 80521
970-416-2028
kdimartino@fcgov.com

Additionally, the Recipient's Project Manager Katie Collins' phone number is corrected from 970-416-4378 to 970-413-3775.



City of Fort Collins

2023 - 2024 Offer Narratives

Environmental Health



Offer 1.41: Utilities: Xeriscape Incentive Program for HOAs and Commercial Properties

Offer Type: Continuing Enhancement

2023: \$75,000 and 0.00 FTE (excluding hourly staffing)

2024: \$75,000 and 0.00 FTE (excluding hourly staffing)

Offer Summary

This offer supports Council Priorities 14 and 19 and the Xeriscape Incentive Program (XIP), and extends the 2022 Enhancement Offer 1.29. Through this program, Utilities water customers are provided funding for landscape projects that reduce water use long term. This offer permanently expands the residential Xeriscape Incentive Program (XIP) to serve commercial water customers.

This offer helps businesses, HOAs and other commercial properties pursue costly landscape projects that require technical assistance like landscape and irrigation designs and professional installation. Since 2020, the majority of funding has been provided by third party grants totaling \$145,000, all of which has been divided among the customers who have converted more than 600,000 square feet of landscape across 19 commercial properties. This year, 12 projects have been awarded with funding. Commercial XIP projects were awarded a third grant for \$75,000 to be used for funding 2023 projects.

The future holds variable snowpack and precipitation, hotter summers and more water shortages. Most existing landscapes grow plant material with significantly higher water needs than natural precipitation provides. While turf grass is necessary for sports, pets, aesthetics and more, re/building landscapes to be more appropriate to local climate is necessary for the future of our water. XIP landscapes leverage materials and practices well adapted to our changing climate, including low water plants and turf type grasses, mulches, and efficient irrigation equipment and schedules. Compared to traditional turf heavy landscapes, which require an average 15 gallons per square foot per season, water wise landscapes may cut landscape water requirements by 30% or more. Based on actual water use analysis, XIP projects save 8 gallons per square foot of area converted and commercial XIP projects have already saved over 4.7 million gallons since 2020.



Offer 1.41: Utilities: Xeriscape Incentive Program for HOAs and Commercial Properties

Offer Type: Continuing Enhancement

This Offer supports the following Strategic Objectives (*the primary objective is marked with a ✓*):

- ✓ ENV 4.4 - Provide a resilient, reliable, and high-quality water supply.
- ENV 4.1 - Intensify efforts to meet 2030 climate, energy and 100% renewable electricity goals that are centered in equity and improve community resilience.
- HPG 7.3 - Engage the community more effectively with enhanced inclusion of diverse identities, languages and needs.

Additional Information

- Staff was awarded grant funds in 2020, 2021 and 2022 totaling \$220k. The grantors - Colorado Water Conservation Board and Bureau of Reclamation - recognize the importance of this work to meet community, state and federal goals. Grant applications and grant management take hours of staff time while funding is never guaranteed. The continued success of XIP relies on sustained, secure funding.
- The grants XIP has received require match-funding- a barrier for customers interested in making a change without the resources to do it. With sustained funding, staff is interested in offering zero match grants to qualified customers to better assist underserved groups and provide seed money to navigate what are often time-consuming and technical projects.
- Between 2020 and 2021, 19 commercial XIP projects reduced total annual water use by 4.7 million gallons at \$0.03 per gallon saved. Of 51 applications to date, only 31 have been funded, due to lack of sufficient program funds. Water wise landscape projects serve as examples of what resilient landscapes look like in Fort Collins. Well-done projects spark additional change in neighborhoods overtime.
- 96% of this Offer will be returned to the community to get landscapes in the ground, which is a boost to the economy. In the last two years, commercial XIP participants have spent over \$600k on projects. In this budget cycle, staff plans to use interpretation services and the Economic Health department to engage minority-owned landscape businesses to seek out and bid on XIP projects.
- XIP supports: customers properly engaging in the development review process; protection of our urban forest; alignment with Nature in the City; projects that are better adapted to an increasingly hot, dry climate; alignment with Our Climate Future Big Move 3 and Next Move CRC3: "Expand and enhance water efficiency programs and incentives," and Fort Collins' Water Efficiency Plan.



Offer 1.41: Utilities: Xeriscape Incentive Program for HOAs and Commercial Properties

Offer Type: Continuing Enhancement

Impact to Ongoing Expenses

Funding this Offer will increase future ongoing expenses by an estimated annual amount of: \$75,000

Ongoing Cost Description:

Funding this offer will increase future ongoing expenses by an annual amount of \$75,000. \$72,000 of ongoing cost to directly support commercial customers pursuing qualifying water-wise landscape projects. \$3,000 is for administrative costs such as the fee to operate the program's application portal and marketing efforts.

Scalability and explanation

Not funding this Offer limits a cost-effective water demand tool. Left unfunded, Water Conservation has approximately \$57,000 annually available for residential and commercial customers pursuing water-wise landscapes. The residential portion of the program alone issued \$55,000 in rebates in 2021.

XIP grants are offered at \$1.50/ft². Scaling the Offer up or down directly impacts potential water savings and the dollars we give back to the community to make landscapes water-wise.

Links to Further Details:

- www.fcgov.com/XIPXL: This is the website for the Xeriscape Incentive Program for commercial customers. It lists current program requirements, deadlines and provides helpful internal and external resources.
- www.fcgov.com/water-efficiency: In addition to XIP, Water Conservation offers a variety of programs for our commercial and multifamily customers including: rebates, water budgets, water reports and indoor water audits. Combined, these programs saved 77 million gallons in 2021.
- www.fcgov.com/water-efficiency-plan: The Council approved Water Efficiency Plan outlines guidelines and goals for the water conservation team. This plan is a requirement of the State and compliments other city documents. The plan is required to be updated by 2023/2024 and must include integrated water and land use planning strategies, one of which is landscape rebates.

Linkage to Strategic Objectives

(the primary objective is marked with a ✓)

- ✓ ENV 4.4 - Provide a resilient, reliable, and high-quality water supply.: In the face of a growing population, changing climate and the increasing cost of water, water conservation is one of the most cost-effective strategies to protect our current water supply and help ensure future water demands can be met responsibly. XIP projects have saved 4.7 million gallons at the cost of \$31 per 1000 gallons saved compared to \$209 per 1000 gallons to acquire more water.



Offer 1.41: Utilities: Xeriscape Incentive Program for HOAs and Commercial Properties

Offer Type: Continuing Enhancement

- ENV 4.1 - Intensify efforts to meet 2030 climate, energy and 100% renewable electricity goals that are centered in equity and improve community resilience.: The future holds variable snowpack and precipitation, more wildfires and, as a result, more water shortages. The impacts of climate change will continue to disproportionately impact low-income communities and racial and ethnic minorities. Accessible water conservation programs can help achieve water-related climate goals in all types of communities.
- HPG 7.3 - Engage the community more effectively with enhanced inclusion of diverse identities, languages and needs.: Staff is eager to serve a more diverse group of XIP participants. Historically, participants who have completed projects through XIP need capital to get started. With sustained funding, staff is interested in offering zero match grants to qualified customers to better assist underserved groups and provide seed money to navigate what are often time-consuming and technical projects.

Performance Metrics

- ENV 147. Community Water Use per Capita

<https://publish.clearpointstrategy.com/594/Measures/scorecardId=6344&object=measure&objectId=772400.html>

Performance Measure Reason: ENV 147 depicts community gallons per capita per day by quarter. 2021 data show some quarters increasing and other decreasing, compared to historic averages. There is a downward trend compared to the five-year historic average. Fluctuations during the year are most likely due to impacts from the pandemic and weather. Landscape projects may fluctuate overtime with weather both overall reduce use.

- ENV 158. Commercial XIP

<https://publish.clearpointstrategy.com/594/Measures/scorecardId=105089&object=measure&objectId=824355.html>

Performance Measure Reason: Funding this program increases the amount of water wise, resilient landscaping on commercial properties in Fort Collins that have been completed successfully and professionally.

- A performance measure has not yet been created, see explanation below for the proposed metric, if this Enhancement offer is funded.

<https://publish.clearpointstrategy.com/594/Measures/scorecardId=83532&object=measure&objectId=893586.html>

Performance Measure Reason: New measures to evaluate progress toward equitable outcomes could include tracking of demographics of Water Conservation program participants to evaluate under and overrepresented populations. XIP participation in residential and commercial sectors would be tracked and included.

Differences from Prior Budget Cycles

- Not applicable

Explanation of Any Adjustments to Personnel Costs using object 519999



Offer 1.41: Utilities: Xeriscape Incentive Program for HOAs and Commercial Properties

Offer Type: Continuing Enhancement

- none

Offer Profile

Offer Owner: KCollins

Financial Lead: lasmith

Lead Department: Utilities Strategic Planning



1.41: Utilities: Xeriscape Incentive Program for HOAs and Commercial Properties

Offer Type: Continuing Enhancement
Enhancement to Programs and Services

	2023 Projected Budget	2024 Projected Budget	2023 to 2024 Change
Full Time Equivalent (FTE) Staffing	-	-	- %
Expenses			
573000 - Rebates & Incentives	75,000	75,000	- %
570000 - Other	75,000	75,000	- %
Total Expenses	75,000	75,000	- %
Funding Sources			
502-Water Fund: Ongoing Revenue Ongoing Restricted	75,000	75,000	- %
Funding Source Total	75,000	75,000	- %



AGENDA ITEM SUMMARY

City Council

STAFF

Mark Laken, Project Manager
Dana Hornkohl, Capital Projects Manager
Heather Jarvis, Legal

SUBJECT

Items Relating to the Timberline Mulberry Lincoln Intersection Project.

EXECUTIVE SUMMARY

A. Resolution 2023-025 Authorizing the Execution of an Intergovernmental Agreement Between the City of Fort Collins and the State of Colorado Department of Transportation for the Timberline Mulberry Lincoln Intersection Project.

B. First Reading of Ordinance No. 039, 2023, Making Supplemental Appropriations, Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations for the Timberline Mulberry Lincoln Intersection Project and Related Art in Public Places.

The purpose of this item is to enable the City to receive and expend Colorado Department of Transportation (CDOT) funds and to appropriate development payment-in-lieu funds for the Timberline Mulberry Lincoln Intersection Project (the Project). The funds will be used for design, right-of-way acquisition, and construction of improvements at the intersection of Timberline Road, Mulberry Street, and Lincoln Avenue. If approved, the item will: (1) authorize the Mayor to execute an Intergovernmental Agreement for the Project with CDOT; (2) appropriate \$1,523,915 of Highway Safety Improvement Program (HSIP) grant funds for the Project; (3) appropriate \$23,651 from the Capital Funds Reserve received in 2020 as a development payment-in-lieu contributed to this Project by an adjacent development; and (4) appropriate \$237 (1% of the development payment-in-lieu amount) to the Art in Public Places Program.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution and Ordinance on First Reading.

BACKGROUND / DISCUSSION

The intersection of Timberline Road, Mulberry Street, and Lincoln Avenue experiences significant congestion for northbound Timberline traffic turning onto westbound Lincoln. This congestion causes traffic to back up onto westbound Mulberry, east of Timberline. Southbound Timberline traffic also experiences congestion at the intersection with Mulberry that causes traffic to block the intersection with Lincoln. The proximity of these two intersections creates significant conflicts and crash problems. The intersection of Timberline and Lincoln is of particular concern as vehicles attempt to cross or turn from eastbound Lincoln through the congestion of queued vehicles on southbound Timberline with limited visibility of oncoming traffic. There have been 49 accidents reported from 2014 through April of 2019 at the intersection of Timberline and Lincoln.

The goal of the Project is to eliminate most of the conflicts that result in traffic accidents at this intersection. The proposed improvements will reconfigure medians on Timberline. The median modifications will create space for double left turn lanes for southbound Timberline onto eastbound Mulberry, as well as create space for a channelized “T intersection” at Timberline and Lincoln. The Project will also install an innovative “P-Turn” (also referred to as a “Michigan Left Turn”) on the northwest corner of the Timberline and Lincoln intersection. The P-Turn is necessary to accommodate westbound through traffic and northbound left turns at the Timberline and Lincoln intersection.

Community Capital Improvement Program (CCIP) Arterial Intersection Improvement funds were appropriated to this Project in 2018 (\$50,000) and in 2021 (\$176,349). A portion of this funding was used to complete a feasibility study and conceptual design. In 2020, the City sought and was awarded fiscal year 2023 HSIP funds through the North Front Range Metropolitan Planning Organization (NFRMPO) and CDOT for the design, right-of-way acquisition, and construction of the Project. Local development also contributed \$23,651 in 2020 via payment-in-lieu funds towards this Project. The Project was then placed on hold during a portion of the pandemic due to staffing issues.

The HSIP funding became available to the City in the State fiscal year 2023 (July 2022). HSIP funding involves a 90%/10% (Federal/Local) match. The funding split for this award is \$1,523,915 Federal and \$169,324 Local. The remaining CCIP Arterial Intersection Improvement funds and development payment-in-lieu funds will fulfill the City’s Local funding obligation for this HSIP award.

Per Chapter 23 of the City Code, Article XII (addressing Art in Public Places), Section 23-304, all appropriations for construction projects estimated to a total cost of over \$250,000 shall include an amount equal to one percent of eligible funds for works of art. This appropriation includes a contribution of \$237 to the Art in Public Places Program which is 1% of the development payment-in-lieu contribution of \$23,651. The HSIP grant funds appropriated via this action are ineligible for use toward public art and, as such, are not subject to the 1% set aside. The previously appropriated CCIP Arterial Intersection Improvement funds already have satisfied the required contribution to the Art in Public Places Program.

The Project will require additional right-of-way acquisition for construction of the Project. Federal HSIP funds require the City to follow the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, as amended (the Uniform Act) when acquiring right-of-way. Staff will bring a request before City Council seeking authorization for acquisition and the potential use of eminent domain, as required by the Uniform Act, once the Project design is finalized.

CITY FINANCIAL IMPACTS

The following is a summary of the funding anticipated for design, right-of-way acquisition, and construction for the Timberline Mulberry Lincoln Intersection Project:

Funds Appropriated in Prior Actions	
CCIP Arterial Intersection Improvement Funds (2018)	\$50,000.00
CCIP Arterial Intersection Improvement Funds (2021)	\$176,349.00
Total Appropriations in Prior Actions	\$226,349.00

Item 9.

Funds to be Appropriated with this Action	
Development Payment-In-Lieu	\$23,651.00
HSIP Grant Award	\$1,523,915.00
Total Appropriations with this Action	\$1,547,566.00
Transfer to Art in Public Places	(\$237.00)

The total fund amount projected for this Project is \$1,773,678.49, composed of funds appropriated with prior actions and with this action.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

City staff will present this project to the Transportation Board as well as the Bicycle Advisory Committee in 2023 as the plans are developed.

PUBLIC OUTREACH

City staff will seek public input and present Project details via open house meetings as the Project moves forward. City staff will develop a Project web page in conjunction with a comprehensive communication plan.

ATTACHMENTS

- 1. Resolution for Consideration
- 2. Resolution Exhibit A
- 3. Ordinance for Consideration
- 4. Vicinity Map

RESOLUTION 2023-025
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF FORT COLLINS AND THE
COLORADO DEPARTMENT OF TRANSPORTATION FOR THE
TIMBERLINE MULBERRY LINCOLN INTERSECTION PROJECT

WHEREAS, the intersection of Timberline Road, Mulberry Street, and Lincoln Avenue experiences significant congestion for northbound Timberline Road traffic turning onto westbound Lincoln Avenue, causing traffic to back up onto westbound Mulberry Street, east of Timberline Road; and

WHEREAS, southbound Timberline Road traffic also experiences congestion at the intersection with Mulberry Street that causes traffic to block the intersection with Lincoln Avenue; and

WHEREAS, the intersection of Timberline Road and Lincoln Avenue is of particular concern as vehicles attempt to cross or turn from eastbound Lincoln Avenue through the congestion of queued vehicles on southbound Timberline Road with limited visibility of oncoming traffic; and

WHEREAS, the proximity of these two intersections creates significant conflicts and safety concerns; and

WHEREAS, the Timberline Mulberry Lincoln Intersection Project (the Project) has been developed to address these safety concerns and eliminate most of the conflicts presented by this intersection; and

WHEREAS, the Project’s proposed improvements will reconfigure medians on Timberline Road to create space for double left turn lanes for southbound Timberline Road onto eastbound Mulberry Street, as well as create space for a channelized “T intersection” at Timberline Road and Lincoln Avenue; and

WHEREAS, the Project improvements include installation of an innovative “P-Turn” (also referred to as a “Michigan Left Turn”) on the northwest corner of the Timberline Road and Lincoln Avenue intersection to accommodate westbound through traffic and northbound left turns at the Timberline Road and Lincoln Avenue intersection; and

WHEREAS, in 2018 and 2021, the City appropriated Community Capital Improvement Program (CCIP) Arterial Intersection Improvement funds to this Project in the amount of \$50,000 in 2018 and in the amount of \$176,349 in 2021, with a portion of this CCIP funding used to complete a feasibility study and conceptual design for the Project; and

WHEREAS, in 2020, an adjacent development contributed \$23,651 in Capital Projects Fund Reserves to this Project by paying funds in lieu of land dedication pursuant to the development review process; and

WHEREAS, in 2020, the Project was placed on hold during a portion of the pandemic due to staffing issues; and

WHEREAS, in 2020, the City was awarded fiscal year 2023 Highway Safety Improvement Program (HSIP) grant funds totaling \$1,523,915 through the North Front Range Metropolitan Planning Organization (NFRMPO) and the Colorado Department of Transportation (CDOT) for the design, right-of-way acquisition, and construction of the Project; and

WHEREAS, the HSIP grant funding became available to the City in the State fiscal year 2023, which began July 2022 and requires the City to provide local matching funds totaling \$169,324; and

WHEREAS, the remaining CCIP Arterial Intersection Improvement funds from the prior appropriations in 2018 and 2021 and the development payment-in-lieu funds will fulfill the City’s local funding match obligation for this HSIP award; and

WHEREAS, CDOT has proposed an Intergovernmental Agreement (IGA) between CDOT and the City that outlines the terms and conditions of the use of the HSIP grant funds; and

WHEREAS, Colorado Revised Statutes Section 29-1-203 provides that governments may cooperate or contract with one another to provide certain services or facilities when the cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve; and

WHEREAS, City Charter Article II, Section 16 empowers the City Council, by ordinance or resolution, to enter into contracts with governmental bodies to furnish governmental services and make charges for such services, or enter into cooperative or joint activities with other governmental bodies; and

WHEREAS, Municipal Code Section 1-22 requires the City Council to approve intergovernmental agreements that require the City to make a direct, monetary payment over \$50,000, and the proposed IGA requires the City to provide matching funds in the amount of \$169,324; and

WHEREAS, the City Council has determined that the Project and the HSIP grant funding are in the best interests of the City and that the Mayor be authorized to execute the IGA between the City and CDOT in support thereof.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That City Council authorizes the Mayor to execute, on behalf of the City, the Intergovernmental Agreement with the Colorado Department of Transportation, in substantially the form attached hereto as Exhibit A, with additional or modified terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of March, 2023.

Mayor

ATTEST:

City Clerk

STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT
Signature and Cover Page

State Agency Department of Transportation			Agreement Routing Number 23-HA4-XC-00130
Local Agency CITY OF FORT COLLINS			Agreement Effective Date The later of the effective date or September 14, 2022
Agreement Description The purpose of this project is to design the Timberline Mulberry Lincoln Intersection.			Agreement Expiration Date September 13, 2032
Project # SHO M455- 137 (23896)	Region # 4	Contract Writer WMH	Agreement Maximum Amount \$1,693,239.00

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement and to bind the Party authorizing his or her signature.

LOCAL AGENCY CITY OF FORT COLLINS _____ Signature _____ By: (Print Name and Title) Date: _____	STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director _____ Stephen Harelson, P.E., Chief Engineer Date: _____
2nd State or Local Agency Signature if Needed _____ Signature _____ By: (Print Name and Title) Date: _____	LEGAL REVIEW Philip J. Weiser, Attorney General _____ Assistant Attorney General _____ By: (Print Name and Title) Date: _____
In accordance with §24-30-202 C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Department of Transportation Effective Date: _____	

TABLE OF CONTENTS

1. PARTIES2

2. TERM AND EFFECTIVE DATE2

3. AUTHORITY3

4. PURPOSE.....4

5. DEFINITIONS4

6. SCOPE OF WORK7

7. PAYMENTS.....11

8. REPORTING - NOTIFICATION15

9. LOCAL AGENCY RECORDS16

10. CONFIDENTIAL INFORMATION-STATE RECORDS17

11. CONFLICTS OF INTEREST.....18

12. INSURANCE18

13. BREACH.....20

14. REMEDIES20

15. DISPUTE RESOLUTION22

16. NOTICES AND REPRESENTATIVES22

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION23

18. GOVERNMENTAL IMMUNITY24

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM.....24

20. GENERAL PROVISIONS24

21. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)27

22. FEDERAL REQUIREMENTS29

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)29

- EXHIBIT A, SCOPE OF WORK
- EXHIBIT B, SAMPLE OPTION LETTER
- EXHIBIT C, FUNDING PROVISIONS (Budget)
- EXHIBIT D, LOCAL AGENCY RESOLUTION
- EXHIBIT E, LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST
- EXHIBIT F, CERTIFICATION FOR FEDERAL-AID AGREEMENTS
- EXHIBIT G, DISADVANTAGED BUSINESS ENTERPRISE
- EXHIBIT H, LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES
- EXHIBIT I, FEDERAL-AID AGREEMENT PROVISIONS FOR CONSTRUCTION AGREEMENTS
- EXHIBIT J, ADDITIONAL FEDERAL REQUIREMENTS
- EXHIBIT K, FFATA SUPPLEMENTAL FEDERAL PROVISIONS
- EXHIBIT L, SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM
- EXHIBIT M, OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS
- EXHIBIT N, FEDERAL TREASURY PROVISIONS
- EXHIBIT O, AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS
- EXHIBIT P, SLFRF SUBRECIPIENT QUARTERLY REPORT
- EXHIBIT Q, SLFRF REPORTING MODIFICATION FORM
- EXHIBIT R, APPLICABLE FEDERAL AWARDS
- EXHIBIT S, PII CERTIFICATION
- EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

1. PARTIES

This Agreement is entered into by and between Local Agency named on the Signature and Cover Page for this Agreement (“Local Agency”), and the STATE OF COLORADO acting by and through the State agency named on the Signature and Cover Page for this Agreement (the “State” or “CDOT”). Local Agency and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and Agreement Funds shall be expended within the dates shown in **Exhibit C** for each respective phase (“Phase Performance Period(s)”). The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Local Agency for any Work performed or expense incurred before 1) the Effective Date of this original Agreement; except as described in **§7.D**; 2) before the encumbering document for the respective phase *and* the official Notice to Proceed for the respective phase; or 3) after the Final Phase Performance End Date, as shown in **Exhibit C**. Additionally, the State shall have no obligation to pay Local Agency for any Work performed or expense incurred after the Agreement Expiration Date or after required billing deadline specified in **§7.B.i.e.**, or the expiration of “Special Funding” if applicable, whichever is sooner. The State’s obligation to pay Agreement Funds exclusive of Special Funding will continue until the Agreement Expiration Date. If Agreement Funds expire before the Agreement Expiration Date, then no payments will be made after expiration of Agreement Funds.

B. Initial Term and Extension

The Parties’ respective performances under this Agreement shall commence on the Agreement Effective Date shown on the Signature and Cover Page for this Agreement and shall terminate on September 13, 2032 as shown on the Signature and Cover Page for this Agreement, unless sooner terminated or further extended in accordance with the terms of this Agreement. Upon request of Local Agency, the State may, in its sole discretion, extend the term of this Agreement by Option Letter pursuant **§7.E.iv**. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in **Exhibit C**.

C. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, and this ARPA Award is not appropriated, or otherwise become unavailable to fund this ARPA Award the State, in its discretion, may terminate this Agreement in whole or in part. This subsection shall not apply to a termination of this Agreement by the State for breach by Local Agency, which shall be governed by **§14.A.i**.

i. Method and Content

The State shall notify Local Agency by providing written notice to Local Agency of the termination and be in accordance with **§16**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Local Agency shall be subject to **§14.A.i.a**

iii. Payments

If the State terminates this Agreement in the public interest, the State shall pay Local Agency an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the State, the State may reimburse Local Agency for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Local Agency which are directly attributable to the uncompleted portion of Local Agency’s obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Local Agency hereunder. This subsection shall not apply to a termination of this ARPA Award by the State for breach by Local Agency.

D. Local Agency Termination Under Federal Requirements

Local Agency may request termination of the ARPA Award by sending notice to the State, which includes the effective date of the termination. If this ARPA Award is terminated in this manner, then Local Agency shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. AUTHORITY

Authority to enter into this Agreement exists in the law as follows:

A. Federal Authority

Pursuant to Title I, Subtitle A, of the “Fixing America’s Surface Transportation Act” (FAST Act) of 2015, and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the “Federal Provisions”), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration (“FHWA”).

Pursuant to Title VI of the Social Security Act, Section 602 of the “Coronavirus State and Local Fiscal Recovery Funds”, a part of the American Rescue Plan, provides state, local and Tribal governments with the resources needed to respond to the pandemic and its economic effects and to build a stronger, more equitable economy during the recovery.

B. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-104.5.

4. PURPOSE

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT’s Stewardship Agreement with the FHWA and/or USDT as shown in **Exhibit C**.

5. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “**Agreement**” means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. “**Agreement Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- C. “**ARPA**” means American Rescue Plan Act, funded by the US Department of the Treasury (“USDT”). See “SLFRF” below.
- D. “**Award**” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- E. “**Budget**” means the budget for the Work described in **Exhibit C**.
- F. “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S..
- G. “**Chief Procurement Officer**” means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202 to procure or supervise the procurement of all supplies and services needed by the State.
- H. “**CJI**” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- I. “**Consultant**” means a professional engineer or designer hired by Local Agency to design the Work Product.
- J. “**Contractor**” means the general construction contractor hired by Local Agency to construct the Work.

- K. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.
- L. **“Effective Date”** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature and Cover Page for this Agreement.
- M. **“Evaluation”** means the process of examining Local Agency’s Work and rating it based on criteria established in §6, **Exhibit A** and **Exhibit E**.
- N. **“Exhibits”** means the following exhibits attached to this Agreement:
- i. **Exhibit A**, Scope of Work.
 - ii. **Exhibit B**, Sample Option Letter.
 - iii. **Exhibit C**, Funding Provisions
 - iv. **Exhibit D**, Local Agency Resolution
 - v. **Exhibit E**, Local Agency Contract Administration Checklist
 - vi. **Exhibit F**, Certification for Federal-Aid Contracts
 - vii. **Exhibit G**, Disadvantaged Business Enterprise
 - viii. **Exhibit H**, Local Agency Procedures for Consultant Services
 - ix. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts
 - x. **Exhibit J**, Additional Federal Requirements
 - xi. **Exhibit K**, The Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions
 - xii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form
 - xiii. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the “Uniform Guidance”)
 - xiv. **Exhibit N**, Federal Treasury Provisions
 - xv. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds
 - xvi. **Exhibit P**, SLFRF Subrecipient Quarterly Report
 - xvii. **Exhibit Q**, SLFRF Reporting Modification Form
 - xviii. **Exhibit R**, Applicable Federal Awards
 - xix. **Exhibit S**, PII Certification
 - xx. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source
- O. **“Expiration Date”** means the date on which this Agreement expires, as shown on the Signature and Cover Page for this Agreement.
- P. **“Extension Term”** means the period of time by which the ARPA Expiration Date is extended by the State through delivery of an updated ARPA Letter.
- Q. **“Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- R. **“Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. The US Department of the Treasury is the Federal Awarding Agency for the Federal Award, which may be the subject of this Agreement.
- S. **“FHWA”** means the Federal Highway Administration, which is one of the twelve administrations under the Office of the Secretary of Transportation at the U.S. Department of Transportation. FHWA provides stewardship over the construction, maintenance and preservation of the Nation’s highways and tunnels. FHWA is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.
- T. **“Goods”** means any movable material acquired, produced, or delivered by Local Agency as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Local Agency in connection with the Services.

- U. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- V. **“Initial Term”** means the time period defined in **§2.B**.
- W. **“Local Funds”** means the funds provided by the Local Agency as their obligated contribution to the federal and/or State Awards to receive the federal and/or State funding.
- X. **“Notice to Proceed”** means the letter issued by the State to the Local Agency stating the date the Local Agency can begin work subject to the conditions of this Agreement.
- Y. **“OMB”** means the Executive Office of the President, Office of Management and Budget.
- Z. **“Oversight”** means the term as it is defined in the Stewardship Agreement between CDOT and the FHWA.
- AA. **“Party”** means the State or Local Agency, and **“Parties”** means both the State and Local Agency.
- BB. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- CC. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- DD. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, et. seq., C.R.S.
- EE. **“Recipient”** means the Colorado Department of Transportation (CDOT) for this Federal Award.
- FF. **“Services”** means the services to be performed by Local Agency as set forth in this Agreement and shall include any services to be rendered by Local Agency in connection with the Goods.
- GG. **“SLFRF”** means State and Local Fiscal Recovery Funds, provided by ARPA, funded by the US Treasury Department.
- HH. **“Special Funding”** means an award by Federal agency or the State which may include but is not limited to one or a combination of Multimodal Transportation & Mitigation Options Funding, Revitalizing Main Streets, Safer Main Streets, Stimulus Funds, Coronavirus Response and Relief Supplemental Funds, ARPA, SLFRF, or COVID Relief.
- II. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII and State personnel records not subject to disclosure under CORA.
- JJ. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).
- KK. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- LL. **“State Purchasing Director”** means the position described in the Colorado Procurement Code and its implementing regulations.

- MM. “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- NN. “**Sub-Award**” means this Award by the State to Local Agency funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to this Sub-Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- OO. “**Subcontractor**” means third parties, if any, engaged by Local Agency to aid in performance of the Work.
- PP. “**Subrecipient**” means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency.
- QQ. “**Tax Information**” means Federal and State of Colorado tax information including, without limitation, Federal and State tax returns, return information, and such other tax-related information as may be protected by Federal and State law and regulation. Tax Information includes but is not limited to all information defined as Federal tax Information in Internal Revenue Service Publication 1075.
- RR. “**Uniform Guidance**” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.
- SS. “**USDT**” The United States Department of the Treasury (**USDT**) is the national treasury and finance department of the federal government of the United States where it serves as an executive department. The USDT funds ARPA.
- TT. “**Work**” means the delivery of the Goods and performance of the Services in compliance with CDOT’s Local Agency Manual described in this Agreement.
- UU. “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

6. SCOPE OF WORK

Local Agency shall complete the Work as described in this Agreement and in accordance with the provisions of **Exhibit A**, and the Local Agency Manual. The State shall have no liability to compensate Local Agency for the delivery of any Goods or the performance of any Services that are not specifically set forth in this Agreement. Work may be divided into multiple phases that have separate periods of performance. The State may not compensate for Work that Local Agency performs outside of its designated phase performance period. The performance period of phases, including, but not limited to Design, Construction, Right of Way, Utilities, or Environment phases, are identified in **Exhibit C**. The State may unilaterally modify **Exhibit C** from time to time, at its sole discretion, to extend the Agreement Expiration Date and/or to extend the period of performance for a phase of Work authorized under this Agreement. To exercise these options to extend the Agreement Expiration Date and/or to update the phase performance period extension option, the State will provide written notice to Local Agency in a form substantially equivalent to **Exhibit B**. The State’s unilateral extension of the Agreement Expiration Date and/or the phase performance periods will not amend or alter in any way the funding provisions or any other terms specified in this Agreement, notwithstanding the options listed under **§7.E**

A. Local Agency Commitments

i. Design

If the Work includes preliminary design, final design, design work sheets, or special provisions and estimates (collectively referred to as the “Plans”), Local Agency shall ensure that it and its Contractors comply with and are responsible for satisfying the following requirements:

- a. Perform or provide the Plans to the extent required by the nature of the Work.
 - b. Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.
 - c. Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
 - d. Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.
 - e. Stamp the Plans as produced by a Colorado registered professional engineer.
 - f. Provide final assembly of Plans and all other necessary documents.
 - g. Ensure the Plans are accurate and complete.
 - h. Make no further changes in the Plans following the award of the construction contract to Contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT, and when final, they will be deemed incorporated herein.
- ii. Local Agency Work
- a. Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA) 42 U.S.C. § 12101, et. seq., and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
 - b. Local Agency shall afford the State ample opportunity to review the Plans and shall make any changes in the Plans that are directed by the State to comply with FHWA requirements.
 - c. Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit H**. If Local Agency enters into a contract with a Consultant for the Work:
 - 1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, Local Agency shall not enter into such Consultant contract.
 - 2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.
 - 3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
 - 4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit H** to administer the Consultant contract.
 - 5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from Local Agency's attorney/authorized representative certifying compliance with **Exhibit H** and 23 C.F.R. 172.5(b) and (d).
 - 6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
 - (a) The design work under this Agreement shall be compatible with the requirements of the contract between Local Agency and the State (which is incorporated herein by this

reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.

- (b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.
- (c) The consultant shall review the construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.
- (d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

iii. Construction

If the Work includes construction, Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing construction Contractor claims; construction supervision; and meeting the quality control requirements of the FHWA/CDOT Stewardship Agreement, as described in **Exhibit E**.

- a. The State may, after providing written notice of the reason for the suspension to Local Agency, suspend the Work, wholly or in part, due to the failure of Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
- b. Local Agency shall be responsible for the following:
 - 1) Appointing a qualified professional engineer, licensed in the State of Colorado, as Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures, as defined in the CDOT Local Agency Manual (https://www.codot.gov/business/designsupport/bulletins_manuals/2006-local-agency-manual).
 - 2) For the construction Services, advertising the call for bids, following its approval by the State, and awarding the construction contract(s) to the lowest responsible bidder(s).
 - (a) All Local Agency's advertising and bid awards pursuant to this Agreement shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that Local Agency and its Contractor(s) incorporate Form 1273 (Exhibit I) in its entirety, verbatim, into any subcontract(s) for Services as terms and conditions thereof, as required by 23 C.F.R. 633.102(e).
 - (b) Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. Local Agency must accept or reject such bids within three (3) working days after they are publicly opened.
 - (c) If Local Agency accepts bids and makes awards that exceed the amount of available Agreement Funds, Local Agency shall provide the additional funds necessary to complete the Work or not award such bids.
 - (d) The requirements of **§6.A.iii.b.2** also apply to any advertising and bid awards made by the State.

(e) The State (and in some cases FHWA) must approve in advance all Force Account Construction, and Local Agency shall not initiate any such Services until the State issues a written Notice to Proceed.

iv. Right of Way (ROW) and Acquisition/Relocation

- a. If Local Agency purchases a ROW for a State highway, including areas of influence, Local Agency shall convey the ROW to CDOT promptly upon the completion of the project/construction.
- b. Any acquisition/relocation activities shall comply with all applicable federal and State statutes and regulations, including but not limited to, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, as amended (49 C.F.R. Part 24), CDOT’s Right of Way Manual, and CDOT’s Policy and Procedural Directives.
- c. The Parties’ respective responsibilities for ensuring compliance with acquisition, relocation and incidentals depend on the level of federal participation as detailed in CDOT’s Right of Way Manual (located at <http://www.codot.gov/business/manuals/right-of-way>); however, the State always retains oversight responsibilities.
- d. The Parties’ respective responsibilities at each level of federal participation in CDOT’s Right of Way Manual, and the State’s reimbursement of Local Agency costs will be determined pursuant the following categories:
 - 1) Right of way acquisition (3111) for federal participation and non-participation;
 - 2) Relocation activities, if applicable (3109);
 - 3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

v. Utilities

If necessary, Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company that may become involved in the Work. Prior to the Work being advertised for bids, Local Agency shall certify in writing to the State that all such clearances have been obtained.

vi. Railroads

If the Work involves modification of a railroad company’s facilities and such modification will be accomplished by the railroad company, Local Agency shall make timely application to the Public Utilities Commission (“PUC”) requesting its order providing for the installation of the proposed improvements. Local Agency shall not proceed with that part of the Work before obtaining the PUC’s order. Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities, and:

- a. Execute an agreement with the railroad company setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
- b. Obtain the railroad’s detailed estimate of the cost of the Work.
- c. Establish future maintenance responsibilities for the proposed installation.
- d. Proscribe in the agreement the future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- e. Establish future repair and/or replacement responsibilities, as between the railroad company and the Local Agency, in the event of accidental destruction or damage to the installation.

vii. Environmental Obligations

Local Agency shall perform all Work in accordance with the requirements of current federal and State environmental regulations, including the National Environmental Policy Act of 1969 (NEPA) as applicable.

viii. Maintenance Obligations

Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. Local Agency shall conduct such maintenance and operations in accordance with all applicable statutes, ordinances, and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

ix. Monitoring Obligations

Local Agency shall respond in a timely manner to and participate fully with the monitoring activities described in §7.F.vi.

B. State's Commitments

- i. The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.
- ii. Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any Work constituting major structures designed by, or that are the responsibility of, Local Agency, as identified in **Exhibit E**.

7. PAYMENTS

A. Maximum Amount

Payments to Local Agency are limited to the unpaid, obligated balance of the Agreement Funds set forth in **Exhibit C**. The State shall not pay Local Agency any amount under this Agreement that exceeds the Agreement Maximum set forth in **Exhibit C**.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Local Agency in the amounts and in accordance with conditions set forth in **Exhibit C**.
- b. Local Agency shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Local Agency and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Local Agency shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.
- e. If a project is funded in part with Federal or State special funding there may be an expiration date for the funds. The expiration date applies to grants and local funds used to match grants. To receive payment or credit for the match, Work must be completed or substantially completed, as outlined in the terms of the grant, prior to the expiration date of the special funding and invoiced in compliance with the rules outlined in the award of the funding. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.

ii. Interest

Amounts not paid by the State within 45 days after the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 46th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Local Agency shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Payment Disputes

If Local Agency disputes any calculation, determination, or amount of any payment, Local Agency shall notify the State in writing of its dispute within 30 days following the earlier to occur of Local Agency's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Local Agency and may make changes to its determination based on this review. The calculation, determination, or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

- a. The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Local Agency beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Agreement Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Agreement Funds, the State's obligation to pay Local Agency shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Agreement Funds, and the State's liability for such payments shall be limited to the amount remaining of such Agreement Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in **§2.C**.
- b. If the agreement funds are terminated, the State can terminate the contract early. Payment due for work done to the date of termination will be processed in a manner consistent with **§2.C**.

v. Erroneous Payments

The State may recover, at the State's discretion, payments made to Local Agency in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Local Agency. The State may recover such payments by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Local Agency, or by any other appropriate method for collecting debts owed to the State. The close out of a Federal Award does not affect the right of FHWA or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period (as defined below in **§9.A.**).

vi. Federal Recovery

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. Local Agency Funds

Local Agency shall provide their obligated contribution funds as outlined in **§7.A.** and **Exhibit C**. Local Agency shall have raised the full amount of their funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Local Agency and paid into Local Agency's treasury. Local Agency represents to the State that the amount designated "Local Agency Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. Local Agency may evidence such obligation by an appropriate ordinance/resolution or other authority letter expressly authorizing Local Agency to enter into this Agreement and to expend its match share of the Work. A copy of any such ordinance/resolution or authority letter is attached hereto as **Exhibit D** if applicable. Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of

Local Agency. Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes, or penalties of any nature, except as required by Local Agency's laws or policies.

D. Reimbursement of Local Agency Costs

The State shall reimburse Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and §7. However, any costs incurred by Local Agency prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. The State shall pay Local Agency for costs or expenses incurred or performance by the Local Agency prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules, and regulations applicable to the Work provide for such retroactive payments to the Local Agency. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement. The applicable principles described in 2 C.F.R. Part 200 shall govern the State's obligation to reimburse all costs incurred by Local Agency and submitted to the State for reimbursement hereunder, and Local Agency shall comply with all such principles. The State shall reimburse Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit C**. Local Agency costs for Work performed prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. Local Agency costs for Work performed after any Performance Period End Date for a respective phase of the Work, is not reimbursable. Allowable costs shall be:

- i. Reasonable and necessary to accomplish the Work and for the Goods and Services provided.
- ii. Actual net cost to Local Agency (i.e. the price paid minus any items of value received by Local Agency that reduce the cost actually incurred).

E. Unilateral Modification of Agreement Funds Budget by State Option Letter

The State may, at its discretion, issue an "Option Letter" to Local Agency to add or modify Work phases in the Work schedule in **Exhibit C** if such modifications do not increase total budgeted Agreement Funds. Such Option Letters shall amend and update **Exhibit C**, Sections 2 or 4 of the Table, and sub-sections B and C of the **Exhibit C**. Option Letters shall not be deemed valid until signed by the State Controller or an authorized delegate. **This is NOT a Notice to Proceed.** Modification of **Exhibit C** by unilateral Option Letter is permitted only in the specific scenarios listed below. The State will exercise such options by providing Local Agency a fully executed Option Letter, in a form substantially equivalent to **Exhibit B**. Such Option Letters will be incorporated into this Agreement. This applies to the entire Scope of Work.

i. Option to Begin a Phase and/or Increase or Decrease the Encumbrance Amount

The State may require by Option Letter that Local Agency begin a new Work phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous Work (but may not include Right of Way Acquisition/Relocation or Railroads) as detailed in **Exhibit A**. Such Option Letters may not modify the other terms and conditions stated in this Agreement and must decrease the amount budgeted and encumbered for one or more other Work phases so that the total amount of budgeted Agreement Funds remains the same. The State may also change the funding sources so long as the amount budgeted remains the same and the Local Agency contribution does not increase. The State may also issue a unilateral Option Letter to increase and/or decrease the total encumbrance amount of two or more existing Work phases, as long as the total amount of budgeted Agreement Funds remains the same, replacing the original Agreement Funding exhibit (**Exhibit C**) with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.).

ii. Option to Transfer Funds from One Phase to Another Phase.

The State may require or permit Local Agency to transfer Agreement Funds from one Work phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another phase as a result of changes to State, federal, and local match funding. In such case, the original funding exhibit (**Exhibit C**) will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The Agreement Funds transferred from one Work phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a

fully executed Option Letter to Local Agency within thirty (30) days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iii. Option to Exercise Options i and ii.

The State may require Local Agency to add a Work phase as detailed in **Exhibit A**, and encumber and transfer Agreement Funds from one Work phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The addition of a Work phase and encumbrance and transfer of Agreement Funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within 30 days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iv. Option to Extend Agreement/Phase Term and/or modify the OMB Uniform Guidance. The State, at its discretion, shall have the option to extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.). In order to exercise this option, the State shall provide written notice to the Local Agency in a form substantially equivalent to **Exhibit B**.

F. Accounting

Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

i. Local Agency Performing the Work

If Local Agency is performing the Work, it shall document all allowable costs, including any approved Services contributed by Local Agency or subcontractors, using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

ii. Local Agency-Checks or Draws

Checks issued or draws made by Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. Local Agency shall keep on file all checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents in the office of Local Agency, clearly identified, readily accessible, and to the extent feasible, separate and apart from all other Work documents.

iii. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. Local Agency shall reimburse the State for the costs of any such services from the budgeted Agreement Funds as provided for in **Exhibit C**. If FHWA Agreement Funds are or become unavailable, or if Local Agency terminates this Agreement prior to the Work being approved by the State or otherwise completed, then all actual incurred costs of such services and assistance provided by the State shall be reimbursed to the State by Local Agency at its sole expense.

iv. Local Agency-Invoices

Local Agency's invoices shall describe in detail the reimbursable costs incurred by Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and Local Agency shall not submit more than one invoice per month.

v. Invoicing Within 60 Days

The State shall not be liable to reimburse Local Agency for any costs invoiced more than 60 days after the date on which the costs were incurred, including costs included in Local Agency's final invoice. The State may withhold final payment to Local Agency at the State's sole discretion until completion of final audit. Any costs incurred by Local Agency that are not allowable under 2 C.F.R. Part 200 shall be Local Agency's responsibility, and the State will deduct such disallowed costs from any payments due to Local Agency. The State will not reimburse costs for Work performed after the Performance Period End Date for a respective Work phase. The State will not reimburse costs for Work performed prior to Performance

Period End Date, but for which an invoice is received more than 60 days after the Performance Period End Date.

vi. Risk Assessment & Monitoring

Pursuant to 2 C.F.R. 200.331(b), – CDOT will evaluate Local Agency’s risk of noncompliance with federal statutes, regulations, and terms and conditions of this Agreement. Local Agency shall complete a Risk Assessment Form (**Exhibit L**) when that may be requested by CDOT. The risk assessment is a quantitative and/or qualitative determination of the potential for Local Agency’s non-compliance with the requirements of the Federal Award. The risk assessment will evaluate some or all of the following factors:

- Experience: Factors associated with the experience and history of the Subrecipient with the same or similar Federal Awards or grants.
- Monitoring/Audit: Factors associated with the results of the Subrecipient’s previous audits or monitoring visits, including those performed by the Federal Awarding Agency, when the Subrecipient also receives direct federal funding. Include audit results if Subrecipient receives single audit, where the specific award being assessed was selected as a major program.
- Operation: Factors associated with the significant aspects of the Subrecipient’s operations, in which failure could impact the Subrecipient’s ability to perform and account for the contracted goods or services.
- Financial: Factors associated with the Subrecipient’s financial stability and ability to comply with financial requirements of the Federal Award.
- Internal Controls: Factors associated with safeguarding assets and resources, deterring and detecting errors, fraud and theft, ensuring accuracy and completeness of accounting data, producing reliable and timely financial and management information, and ensuring adherence to its policies and plans.
- Impact: Factors associated with the potential impact of a Subrecipient’s non-compliance to the overall success of the program objectives.
- Program Management: Factors associated with processes to manage critical personnel, approved written procedures, and knowledge of rules and regulations regarding federal-aid projects.

Following Local Agency’s completion of the Risk Assessment Tool (**Exhibit L**), CDOT will determine the level of monitoring it will apply to Local Agency’s performance of the Work. This risk assessment may be re-evaluated after CDOT begins performing monitoring activities.

G. Close Out

Local Agency shall close out this Award within 90 days after the Final Phase Performance End Date. If SLFRF Funds are used the Local Agency shall close out that portion of the Award within 45 days after the ARPA Award Expiration Date. Close out requires Local Agency’s submission to the State of all deliverables defined in this Agreement, and Local Agency’s final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If FHWA or US Treasury has not closed this Federal Award within one (1) year and 90 days after the Final Phase Performance End Date due to Local Agency’s failure to submit required documentation, then Local Agency may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

8. REPORTING - NOTIFICATION

A. Quarterly Reports

In addition to any reports required pursuant to §19 or pursuant to any exhibit, for any contract having a term longer than 3 months, Local Agency shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than ten (10) Business Days following the end of each calendar quarter or at such time as otherwise specified by the State. If SLFRF Funds are used the report must be in the format of **Exhibit P**.

B. Litigation Reporting

If Local Agency is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Local Agency’s ability to perform its obligations under this Agreement, Local Agency shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State’s principal representative identified in §16.

C. Performance and Final Status

Local Agency shall submit all financial, performance and other reports to the State no later than 60 calendar days after the Final Phase Performance End Date or sooner termination of this Agreement, containing an Evaluation of Subrecipient’s performance and the final status of Subrecipient’s obligations hereunder.

D. Violations Reporting

Local Agency must disclose, in a timely manner, in writing to the State and FHWA, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. Penalties for noncompliance may include suspension or debarment (2 CFR Part 180 and 31 U.S.C. 3321).

9. LOCAL AGENCY RECORDS

A. Maintenance

Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Local Agency shall maintain such records for a period (the “Record Retention Period”) pursuant to the requirements of the funding source and for a minimum of three (3) years following the date of submission to the State of the final expenditure report, whichever is longer, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Local Agency in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three (3) years following final disposition of such property.

B. Inspection

Records during the Record Retention Period. Local Agency shall make Local Agency Records available during normal business hours at Local Agency’s office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two (2) Business Days’ notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Local Agency’s performance of its obligations under this Agreement using procedures as determined by the State. The State shall monitor Local Agency’s performance in a manner that does not unduly interfere with Local Agency’s performance of the Work. Local Agency shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State’s risk analysis of Local Agency. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Local Agency’s performance in a manner that does not unduly interfere with Local Agency’s performance of the Work. If Local Agency enters into a subcontract with an entity that would also be considered a Subrecipient, then the subcontract entered into by Local Agency shall contain provisions permitting both Local Agency and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

D. Final Audit Report

Local Agency shall promptly submit to the State a copy of any final audit report of an audit performed on Local Agency’s records that relates to or affects this Agreement or the Work, whether the audit is conducted

by Local Agency or a third party. Additionally, if Local Agency is required to perform a single audit under 2 CFR 200.501, *et seq.*, then Local Agency shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Local Agency shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Local Agency for the sole and exclusive benefit of the State, unless those State Records are otherwise publicly available at the time of disclosure or are subject to disclosure by Local Agency under CORA. Local Agency shall not, without prior written approval of the State, use for Local Agency’s own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Agreement. Local Agency shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. Local Agency shall immediately forward any request or demand for State Records to the State’s principal representative. If Local Agency or any of its Subcontractors will or may receive the following types of data, Local Agency or its Subcontractors shall provide for the security of such data according to the following: (i) the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Award as an Exhibit, if applicable, (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and (iv) the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Award, if applicable. Local Agency shall immediately forward any request or demand for State Records to the State’s principal representative.

B. Other Entity Access and Nondisclosure Agreements

Local Agency may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. Local Agency shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements with provisions at least as protective as those in this Agreement, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Local Agency shall provide copies of those signed nondisclosure agreements to the State upon request.

C. Use, Security, and Retention

Local Agency shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Local Agency shall provide the State with access, subject to Local Agency’s reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Local Agency shall return State Records provided to Local Agency or destroy such State Records and certify to the State that it has done so, as directed by the State. If Local Agency is prevented by law or regulation from returning or destroying State Confidential Information, Local Agency warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Local Agency becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Local Agency can establish that none of Local Agency or any of its agents, employees, assigns, or Subcontractors are the cause or source of the Incident, Local Agency shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Local Agency shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which

may include, but is not limited to, developing, and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding Personally Identifying Information “PII”

If Local Agency or any of its Subcontracts will or may receive PII under this agreement, Local Agency shall provide for the security for such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Local Agency shall be a “Third Party Service Provider” as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 et seq., C.R.S. In addition, as set forth in § 24-74-102, et. seq., C.R.S., Contractor, including, but not limited to, Contractor’s employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Contractor is given direct access to any State databases containing PII, Contractor shall execute, on behalf of itself and its employees, the certification attached hereto as **Exhibit S** on an annual basis Contractor’s duty and obligation to certify as set forth in **Exhibit S** shall continue as long as Contractor has direct access to any State databases containing PII. If Contractor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Contractor shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Local Agency shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Local Agency under this Agreement. Such a conflict of interest would arise when a Local Agency or Subcontractor’s employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement. Officers, employees, and agents of Local Agency may neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.

B. Apparent Conflicts of Interest

Local Agency acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State’s interests. Absent the State’s prior written approval, Local Agency shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Local Agency’s obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Local Agency is uncertain whether a conflict or the appearance of a conflict has arisen, Local Agency shall submit to the State a disclosure statement setting forth the relevant details for the State’s consideration. Failure to promptly submit a disclosure statement or to follow the State’s direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

12. INSURANCE

Local Agency shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies with an AM Best rating of A-VIII or better.

A. Local Agency Insurance

Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the “GIA”) and shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

B. Subcontractor Requirements

Local Agency shall ensure that each Subcontractor that is a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA. Local Agency shall ensure that each Subcontractor that is not a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement all of the following insurance policies:

i. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Local Agency or Subcontractor employees acting within the course and scope of their employment.

ii. General Liability

Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;
- c. \$1,000,000 products and completed operations aggregate; and
- d. \$50,000 any 1 fire.

iii. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Protected Information

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$2,000,000 general aggregate.

v. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$1,000,000 general aggregate.

vi. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$1,000,000 general aggregate.

vii. Cyber/Network Security and Privacy Liability

Liability insurance covering all civil, regulatory and statutory damages, contractual damages, data breach management exposure, and any loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of breach, violation or infringement of right to privacy rights through improper use or disclosure of protect consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

- a. \$1,000,000 each occurrence; and

b. \$2,000,000 general aggregate.

C. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Local Agency and Subcontractors. In the event of cancellation of any commercial general liability policy, the carrier shall provide at least 10 days prior written notice to CDOT.

D. Primacy of Coverage

Coverage required of Local Agency and each Subcontractor shall be primary over any insurance or self-insurance program carried by Local Agency or the State.

E. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Local Agency and Local Agency shall forward such notice to the State in accordance with §16 within 7 days of Local Agency’s receipt of such notice.

F. Subrogation Waiver

All commercial insurance policies secured or maintained by Local Agency or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Local Agency or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

G. Certificates

For each commercial insurance plan provided by Local Agency under this Agreement, Local Agency shall provide to the State certificates evidencing Local Agency’s insurance coverage required in this Agreement within seven (7) Business Days following the Effective Date. Local Agency shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following the Effective Date, except that, if Local Agency’s subcontract is not in effect as of the Effective Date, Local Agency shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following Local Agency’s execution of the subcontract. No later than 15 days before the expiration date of Local Agency’s or any Subcontractor’s coverage, Local Agency shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Local Agency shall, within seven (7) Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §12.

13. BREACH

A. Defined

The failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner, shall be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization, or similar law, by or against Local Agency, or the appointment of a receiver or similar officer for Local Agency or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §14 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in the Agreement in order to protect the public interest of the State.

14. REMEDIES

A. State’s Remedies

If Local Agency is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in **§13.B**, shall have all of the remedies listed in this **§14.A**, in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Local Agency's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Local Agency shall not incur further obligations or render further performance past the effective date of such notice and shall terminate outstanding orders and subcontracts with third parties. However, Local Agency shall complete and deliver to the State all Work not canceled by the termination notice and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Local Agency shall assign to the State all of Local Agency's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Local Agency shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Local Agency but in which the State has an interest. At the State's request, Local Agency shall return materials owned by the State in Local Agency's possession at the time of any termination. Local Agency shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Local Agency for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Local Agency was not in breach or that Local Agency's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under **§2.C**.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Local Agency shall remain liable to the State for any damages sustained by the State in connection with any breach by Local Agency, and the State may withhold payment to Local Agency for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Local Agency is determined. The State may withhold any amount that may be due Local Agency as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Local Agency's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Local Agency to an adjustment in price or cost or an adjustment in the performance schedule. Local Agency shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Local Agency after the suspension of performance.

b. Withhold Payment

Withhold payment to Local Agency until Local Agency corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Local Agency's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal from the Work of any of Local Agency’s employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State’s best interest.

e. Intellectual Property

If any Work infringes a patent, copyright, trademark, trade secret, or other intellectual property right, Local Agency shall, as approved by the State (a) secure that right to use such Work for the State or Local Agency; (b) replace the Work with non infringing Work or modify the Work so that it becomes non infringing; or, (c) remove any infringing Work and refund the amount paid for such Work to the State.

B. Local Agency’s Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Local Agency, following the notice and cure period in §13.B and the dispute resolution process in §15 shall have all remedies available at law and equity.

15. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Local Agency for resolution.

B. Resolution of Controversies

If the initial resolution described in §15.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of CDOT as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, 24-109-101.1, 24-109-101.5, 24-109-106, 24-109-107, 24-109-201 through 24-109-206, and 24-109-501 through 24-109-505, C.R.S., (the “Resolution Statutes”), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor’s challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

C. Questions of Fact

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer’s decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

16. NOTICES AND REPRESENTATIVES

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) by hand with receipt required, (ii) by certified or registered mail to such Party’s principal representative at the address set forth below

or (iii) as an email with read receipt requested to the principal representative at the email address, if any, set forth below. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party’s principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §16 without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

For the State

Colorado Department of Transportation (CDOT)
Jake Oneal, EIT II
Region 4
10601 10th St.
Greeley, CO 80634
970-515-2731
jake.oneal@state.co.us

For the Local Agency

CITY OF FORT COLLINS
Mark Laken, Civil Engineer II
PO BOX 580
FORT COLLINS, CO 80522-0580
970-221-6770
mlaken@fcgov.com

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Local Agency hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Local Agency or any Subcontractors. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Local Agency is under contract with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Local Agency hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Local Agency cannot make any of the assignments required by this section, Local Agency hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Patents

In addition, Local Agency grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Local Agency that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

iii. Assignments and Assistance

Whether or not the Local Agency is under Agreement with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives, or other documents, drawings, models, materials, data, and information shall be the exclusive property of the State (collectively, "State Materials"). Local Agency shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Local Agency's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Local Agency shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Local Agency

Local Agency retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Local Agency including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Local Agency under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Local Agency Property"). Local Agency Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

18. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the GIA; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. The following applies through June 30, 2022: no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Local Agency under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this §19 shall apply. Local Agency agrees to be governed by and comply with the provisions of §24-106-103, §24-102-206, §24-106-106, and §24-106-107 C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Local Agency's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

20. GENERAL PROVISIONS

A. Assignment

Local Agency's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Local Agency's rights and obligations approved by the State shall be subject to the provisions of this Agreement

B. Subcontracts

Local Agency shall not enter into any subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Local Agency shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Local Agency in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement.

C. Binding Effect

Except as otherwise provided in **§20.A.** all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

H. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

I. Jurisdiction and Venue

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

J. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than contract amendments, shall conform to the policies promulgated by the Colorado State Controller.

K. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

L. Order of Precedence

In the event of a conflict or inconsistency between this Agreement and any exhibits or attachment such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- i. The provisions of the other sections of the main body of this Agreement.
- ii. **Exhibit N**, Federal Treasury Provisions.
- iii. **Exhibit F**, Certification for Federal-Aid Contracts.
- iv. **Exhibit G**, Disadvantaged Business Enterprise.
- v. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts.
- vi. **Exhibit J**, Additional Federal Requirements.
- vii. **Exhibit K**, Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions.
- viii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form.
- ix. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the “Uniform Guidance”).
- x. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds.
- xi. **Exhibit R**, Applicable Federal Awards.
- xii. Colorado Special Provisions in the main body of this Agreement.
- xiii. **Exhibit A**, Scope of Work.
- xiv. **Exhibit H**, Local Agency Procedures for Consultant Services.
- xv. **Exhibit B**, Sample Option Letter.
- xvi. **Exhibit C**, Funding Provisions.
- xvii. **Exhibit P**, SLFRF Subrecipient Quarterly Report.
- xviii. **Exhibit Q**, SLFRF Reporting Modification Form.
- xix. **Exhibit D**, Local Agency Resolution.
- xx. **Exhibit E**, Local Agency Contract Administration Checklist.
- xxi. **Exhibit S**, PII Certification.
- xxii. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source.
- xxiii. Other exhibits in descending order of their attachment.

M. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of the Agreement.

N. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of the Agreement shall survive the termination or expiration of the Agreement and shall be enforceable by the other Party.

O. Third Party Beneficiaries

Except for the Parties’ respective successors and assigns described in **§20.C**, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

P. Waiver

A Party’s failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107 C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Local Agency shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Local Agency's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations.

Local Agency shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

T. Compliance with State and Federal Law, Regulations, and Executive Orders

Local Agency shall comply with all State and Federal law, regulations, executive orders, State and Federal Awarding Agency policies, procedures, directives, and reporting requirements at all times during the term of this Agreement.

U. Accessibility

- i. Local Agency shall comply with and the Work Product provided under this Agreement shall be in compliance with all applicable provisions of §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability, as established by the Governor's Office of Information Technology (OIT), pursuant to Section §24-85-103 (2.5), C.R.S. Local Agency shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.
- ii. Each Party agrees to be responsible for its own liability incurred as a result of its participation in and performance under this Agreement. In the event any claim is litigated, each Party will be responsible for its own attorneys' fees, expenses of litigation, or other costs. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to either the Local Agency or the State by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. and Article XI of the Colorado Constitution. Nothing in the Agreement shall be construed as a waiver of any provision of the State Fiscal Rules.
- iii. The State may require Local Agency's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Local Agency's Work Product and software is in compliance with §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

V. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), et seq., C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Local Agency. Local Agency shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Local Agency may wish to have in place in connection with this Agreement.

21. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts. Contractor refers to Local Agency.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the Parties, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State’s risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor’s liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor’s liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

22. FEDERAL REQUIREMENTS

Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and State laws, and their implementing regulations, as they currently exist and may hereafter be amended. A summary of applicable federal provisions are attached hereto as **Exhibit F, Exhibit I, Exhibit J, Exhibit K, Exhibit M, Exhibit N** and **Exhibit O** are hereby incorporated by this reference.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Local Agency will comply with all requirements of **Exhibit G** and **Exhibit E**, Local Agency Contract Administration Checklist, regarding DBE requirements for the Work, except that if Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If Local Agency uses any State- approved DBE program for this Agreement, Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of Local Agency's DBE program does not waive or modify the sole responsibility of Local Agency for use of its program.

EXHIBIT A
SCOPE OF WORK

Name of Project: Timberline Mulberry Lincoln Intersection
Project Number: SHO M455-137
SubAccount #: 23896

The Colorado Department of Transportation (“CDOT”) will oversee the City of Fort Collins when City of Fort Collins designs the Timberline Mulberry Lincoln Intersection (Hereinafter referred to as “this work”). CDOT and the City of Fort Collins believe it will be beneficial to perform this work to improve intersection safety. The design will be completed in accordance with AASHTO design standards, the Americans with Disabilities Act, and all applicable state, federal and local rules and regulations. The design phase of the work will begin in the fall of 2022 and will identify more exact requirements, qualities, and attributes for this work (Herein after referred to as “the exact work”). The exact work shall be used to complete the construction phase of the project. The construction phase of the contract is anticipated to begin in 2024.

If ARPA funds are used all ARPA funds must be encumbered by December 31, 2024. All work funded by ARPA must be completed by December 31, 2026 and all bills must be submitted to CDOT for payment by January 31, 2027. These bills must be paid by CDOT by March 31, 2027.

If this project is funded with Multimodal Transportation & Mitigation Options Funding (MMOF) these funding expenditures must be invoiced by June 1st of the year they expire.

EXHIBIT B

SAMPLE IGA OPTION LETTER

Date	State Fiscal Year	Option Letter No.
Project Code	Original Agreement #	

Vendor Name:

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous and to update encumbrance amount(s).

Option to unilaterally transfer funds from one phase to another phase.

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous, to update encumbrance amount(s), and to unilaterally transfer funds from one phase to another phase.

Option to unilaterally extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify OMB Guidance.

Option A

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to authorize the Local Agency to add a phase and to encumber funds for the phase based on changes in funding availability and authorization. The total encumbrance is (or increased) by \$0.00. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option B

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to transfer funds based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option C

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to 1) release the Local Agency to begin a phase; 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from phases based on variance in actual phase costs and

original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option D

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. This is made part of the original Agreement and replaces the Expiration Date shown on the Signature and Cover Page. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2, C-3**, etc.).

The effective date of this option letter is upon approval of the State Controller or delegate.

STATE OF COLORADO
Jared S. Polis
Department of Transportation

By: _____
Stephen Harelson, P.E., Chief Engineer
(For) Shoshana M. Lew, Executive Director

Date: _____

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

STATE OF COLORADO
STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Colorado Department of Transportation

Date: _____

EXHIBIT C- FUNDING PROVISIONS

City of Fort Collins Project # SHO M455-137 (23896)

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work to be \$1,693,239.00, which is to be funded as follows:

1. FUNDING

SHO M455-137 (23896)

a. Federal Funds (90% of HSIP Award)	\$ 1,523,915.00
b. Local Agency Funds (10% of HSIP Award)	\$ 169,324.00

TOTAL FUNDS ALL SOURCES	\$ 1,693,239.00
--------------------------------	------------------------

2. OMB UNIFORM GUIDANCE

a. Federal Award Identification Number (FAIN):	TBD
b. Name of Federal Awarding Agency:	FHWA
c. Local Agency Unique Entity Identifier	TBD
d. Assistance Listing # Highway Planning and Construction	ALN 20.205
e. Is the Award for R&D?	No
f. Indirect Cost Rate (if applicable)	N/A
g. Amount of Federal Funds Obligated by this Action:	\$0.00
h. Amount of Federal Funds Obligated to Date (including this Action):	\$0.00

3. ESTIMATED PAYMENT TO LOCAL AGENCY

a. Federal Funds Budgeted	\$ 1,523,915.00
b. Less Estimated Federal Share of CDOT-Incurred Costs	\$ 0.00

TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY	90%	\$ 1,523,915.00
TOTAL ESTIMATED FUNDING BY LOCAL AGENCY	10%	\$ 169,324.00
TOTAL PROJECT ESTIMATED FUNDING	100.00%	\$ 1,693,239.00

4. FOR CDOT ENCUMBRANCE PURPOSES

Type of Fed Funds

a. Total Encumbrance Amount (Federal funds + Local Agency funds)	\$ 1,693,239.00
b. Less ROW Acquisition 3111 and/or ROW Relocation 3109	\$ 0.00

NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS	\$ 1,693,239.00
---	------------------------

Note: No funds are currently available. Design and Construction funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.

SHO M455-137 (23896)

WBS Element 23896.10.30	Performance Period Start*/End Date TBD-TBD	Design 3020	\$0.00
WBS Element 23896.20.10	Performance Period Start*/End Date TBD- TBD N/A- N/A	Const. 3301	\$0.00

* SHO M455-137 (23896) the Local Agency should not begin work until all three (3) of the following are in place: 1) Phase Performance Period Start Date; 2) the execution of the document encumbering funds for the respective phase; and 3) Local Agency receipt of the official Notice to Proceed. Any work performed before these three (3) milestones are achieved will not be reimbursable.

B. Funding Ratios

SHO M455-137 (23896)

The funding ratio for the federal funds for this Work is 90% federal funds to 10% Local Agency funds, and this ratio applies only to the \$1,693,239.00 that is eligible for federal funding. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$1,693,239.00, and additional federal funds are available for the Work, the Local Agency shall pay 10% of all such costs eligible for federal funding and 100% of all other costs. If additional federal funds are not available, the Local Agency shall pay all such excess costs. If the total cost of performance of the Work is less than \$1,693,239.00, then the amounts of Local Agency and federal funds will be decreased in accordance with the funding ratio described herein. **This applies to the entire scope of Work.**

C. Maximum Amount Payable

SHO M455-137 (23896)

The maximum amount payable to the Local Agency under this Agreement shall be \$1,523,915.00. For CDOT accounting purposes, the federal funds of \$1,523,915.00 and the Local Agency funds of \$169,324.00 will be encumbered for a total encumbrance of \$1,693,239.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the federal funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 7. E. of this contract. **This applies to the entire scope of Work.**

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving \$750,000 or more from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of 2 CFR part 200, subpart F (Audit Requirements) see also, 49 CFR 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. Expenditure less than \$750,000

If the Local Agency expends less than \$750,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure of \$750,000 or more-Highway Funds Only

If the Local Agency expends \$750,000 or more, in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure of \$750,000 or more-Multiple Funding Sources

If the Local Agency expends \$750,000 or more in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

EXHIBIT D

LOCAL AGENCY RESOLUTION (IF APPLICABLE)

Exhibit E

EXHIBIT A TO RESOLUTION 2023-025

Local Agency Contract Administration Checklist

Item 9.

COLORADO DEPARTMENT OF TRANSPORTATION			
LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. SHO M455-137	STIP No. SR46666.085	Project Code 23896	Region 4
Project Location Timberline Mulberry Lincoln Intersection			Date 7/18/2022
Project Description Intersection Improvements			
Local Agency City of Fort Collins		Local Agency Project Manager Mark Laken	
CDOT Resident Engineer Bryce Reeves		CDOT Project Manager Jake Oneal	
<p>INSTRUCTIONS: This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i>.</p> <p>The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.</p> <p>Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.</p> <p>The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.</p> <p>Note: Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.</p>			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2.1	Review Project to ensure it is consistent with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5.1	Prepare Design Data - CDOT Form 463	X	
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement <ul style="list-style-type: none"> • Project Development • Construction Contract Administration (including Fabrication Inspection Services) 	X	#
5.4	Conduct Design Scoping Review Meeting	X	#
5.5	Conduct Public Involvement	X	
5.6	Conduct Field Inspection Review (FIR)	X	#
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	#
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	#
5.9	Obtain Utility and Railroad Agreements	X	
5.10	Conduct Final Office Review (FOR)	X	#

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
5.11	Justify Force Account Work by the Local Agency	X	#
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	#
5.13	Document Design Exceptions - CDOT Form 464	X	#
5.14	Prepare Plans, Specifications, Construction Cost Estimates and Submittals	X	#
5.15	Ensure Authorization of Funds for Construction		X
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6.1	Set Disadvantaged Business Enterprise (DBE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist).		X
6.2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input checked="" type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Bryce Reeves 3/20/20 _____ CDOT Resident Engineer (Signature on File) Date		X
6.3	Set On-the-Job Training Goals (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances	X	
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks		X
7.2	Advertise for Bids	X	#
7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7.5	Open Bids	X	
7.6	Process Bids for Compliance		
	Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets DBE goals		X
	Evaluate CDOT Form 1416 - Good Faith Effort Report and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract	X	#
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor	X	#
8.2	Project Safety	X	
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B) • Fabrication Inspection Notifications	X	#
	Pre-survey • Construction staking • Monumentation	X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	X	#
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	#
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	#
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	

Item 9.

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
8.5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." <u>Mark Laken</u> <u>970-222-3546</u> Local Agency Professional Engineer or Phone number CDOT Resident Engineer	X	
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
	Fabrication Inspection and documentation	X	
8.6	Approve Shop Drawings	X	
8.7	Perform Traffic Control Inspections	X	#
8.8	Perform Construction Surveying	X	
8.9	Monument Right-of-Way	X	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates. Collect and review CDOT Form 1418 (or equivalent)		
	Provide the name and phone number of the person authorized for this task. <u>Mark Laken</u> <u>970-222-3546</u> Local Agency Representative Phone number	X	
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	
8.12	Prepare and Authorize Change Orders	X	#
8.13	Submit Change Order Package to CDOT	X	
8.14	Prepare Local Agency Reimbursement Requests	X	
8.15	Monitor Project Financial Status	X	
8.16	Prepare and Submit Monthly Progress Reports	X	
8.17	Resolve Contractor Claims and Disputes	X	
8.18	Conduct Routine and Random Project Reviews		
	Provide the name and phone number of the person responsible for this task. <u>Bryce Reeves</u> <u>970-350-2126</u> CDOT Resident Engineer Phone number		X
8.19	Ongoing Oversight of DBE Participation	X	
MATERIALS			
9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel	X	
9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	X X	X
9.3	Perform Project Acceptance Samples and Tests	X	
9.4	Perform Laboratory Verification Tests	X	
9.5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X	
9.6	Approve Sources of Materials	X	
9.7	Independent Assurance Testing (IAT), Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/> • Generate IAT schedule • Schedule and provide notification • Conduct IAT	X X	X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
9.8	Approve mix designs <ul style="list-style-type: none"> • Concrete • Hot mix asphalt 	X	#
9.9	Check Final Materials Documentation	X	#
9.10	Complete and Distribute Final Materials Documentation	X	#
CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	X	#
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	X	
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. <ul style="list-style-type: none"> • Complete CDOT Form 1337 – Contractor Commitment to Meet OJT Requirements. • Complete CDOT Form 838 – OJT Trainee / Apprentice Record. • Complete CDOT Form 200 - OJT Training Questionnaire 	X	
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	#
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
FINALS			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11.2	Write Final Project Acceptance Letter	X	
11.3	Advertise for Final Settlement	X	
11.4	Prepare and Distribute Final As-Constructed Plans	X	
11.5	Prepare EEO Certification and Collect EEO Forms	X	
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	#
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
11.8	Obtain CDOT Form 1419 from the Contractor and Submit to the CDOT Project Manager	X	
11.9	(FHWA Form 47 discontinued)		NA
11.10	Complete and Submit CDOT Form 1212 – Final Acceptance Report (by CDOT)		X
11.11	Process Final Payment	X	#
11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11.13	Retain Project Records for Six Years from Date of Project Closure	X	
11.14	Retain Final Version of Local Agency Contract Administration Checklist	X	

cc: CDOT Resident Engineer/Project Manager
CDOT Region Program Engineer
CDOT Region EEO/Civil Rights Specialist
CDOT Region Materials Engineer
CDOT Contracts and Market Analysis Branch
Local Agency Project Manager

EXHIBIT F
CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

EXHIBIT G
DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

SECTION 2. DBE Obligation.

The recipient or the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

SECTION 3 DBE Program.

The Local Agency (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the Local Agency

upon request: Business Programs Office

Colorado Department of Transportation

2829 West Howard Place Denver,

Colorado 80204

Phone: (303) 757-9007

REQUIRED BY 49 CFR
PART 26

EXHIBIT H**LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES**

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded Local Agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states “The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost” and according to 23 CFR 172.5 “Price shall not be used as a factor in the analysis and selection phase.” Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a Local Agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting Local Agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting Local Agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The Local Agency shall not advertise any federal aid contract without prior review by the CDOT Regional Civil Rights Office (RCRO) to determine whether the contract shall be subject to a DBE contract goal. If the RCRO determines a goal is necessary, then the Local Agency shall include the goal and the applicable provisions within the advertisement. The Local Agency shall not award a contract to any Contractor or Consultant without the confirmation by the CDOT Civil Rights and Business Resource Center that the Contractor or Consultant has demonstrated good faith efforts. The Local Agency shall work with the CDOT RCRO to ensure compliance with the established terms during the performance of the contract.
5. The Local Agency shall require that all contractors pay subcontractors for satisfactory performance of work no later than 30 days after the receipt of payment for that work from the contractor. For construction projects, this time period shall be reduced to seven days in accordance with Colorado Revised Statute 24-91-103(2). If the Local Agency withholds retainage from contractors and/or allows contractors to withhold retainage from subcontractors, such retainage provisions must comply with 49 CFR 26.29.
6. Payments to all Subconsultants shall be made within thirty days of receipt of payment from [the Local Agency] or no later than ninety days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify [the Local Agency] no later than the required date for payment. Such notification shall include the amount disputed and justification for the withholding. The Consultant shall maintain records of payment that show amounts paid to all Subconsultants. Good cause does not include the Consultant's failure to submit an invoice to the Local Agency or to deposit payments made.
7. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,

- b. Approach to the Work,
 - c. Ability to furnish professional services.
 - d. Anticipated design concepts, and
 - e. Alternative methods of approach for furnishing the professional services. Evaluation factors for final selection are the consultant's:
 - a. Abilities of their personnel,
 - b. Past performance,
 - c. Willingness to meet the time and budget requirement,
 - d. Location,
 - e. Current and projected work load,
 - f. Volume of previously awarded contracts, and
 - g. Involvement of minority consultants.
8. Once a consultant is selected, the Local Agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.
9. A qualified Local Agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the Local Agency prepares a performance evaluation (a CDOT form is available) on the consultant.

CRS §§24-30-1401 THROUGH 24-30-1408, 23 CFR PART 172, AND P.D. 400.1, PROVIDE ADDITIONAL DETAILS FOR COMPLYING WITH THE PRECEEDING EIGHT (8) STEPS.

EXHIBIT I

FEDERAL-AID CONTRACT PROVISIONS FOR CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Government wide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design- build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension/debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60- 1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

- a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.
- b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

- a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
- c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
- d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

- b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

- c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

- b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

- c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. **Training and Promotion:** The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

- a. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

- b. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

- c. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. **Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract.

The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non- minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non- minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt.

Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA- 1273 format and FHWA program requirements.

1. Minimum wages:

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account, assets for the meeting of obligations under the plan or program.

2. Withholding:

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements.

It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (i) That the payroll for the payroll period contains the information required to be provided under §5.5(a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5(a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices.

Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity.

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S.DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and

7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility:

- a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

- 1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
- 2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification– First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below.

The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph(a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESSROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXHIBIT J

ADDITIONAL FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or the Local Agencies).

Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

Clean Air Act

Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts more than \$100,000).

Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally assisted programs.

Nondiscrimination

The Local Agency shall not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color national origin, sex, age or disability. Prior to the receipt of any Federal financial assistance from CDOT, the Local Agency shall execute the attached Standard DOT Title VI assurance. As appropriate, the Local Agency shall include Appendix A, B, or C to the Standard DOT Title VI assurance in any contract utilizing federal funds, land, or other aid. The Local Agency shall also include the following in all contract advertisements:

The [Local Agency], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (79 Stat. 252, 42 US.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, DBEs will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for any award.

ADA

In any contract utilizing federal funds, land, or other federal aid, the Local Agency shall require the federal-aid recipient or contractor to provide a statement of written assurance that they will comply with Section 504 and not discriminate on the basis of disability.

Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees, and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions §22

The Contractor will include the provisions of this Exhibit J in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

SAMPLE

The United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination
Assurances for Local Agencies
DOT Order No. 1050.2A

The [Local Agency] (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Colorado Department of Transportation and the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including the FHWA, FTA, or FAA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FHWA, FTA, and FAA assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated or will be (with regard to a "facility") operated or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests for Proposals for work, or material subject to the Acts and the Regulations made in connection with all FHWA, FTA and FAA programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:
3. "The [Local Agency] in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity

4. to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."
5. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
6. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
7. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
8. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
9. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
10. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
11. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
12. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the [Local Agency] also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA, FTA, and FAA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by CDOT, FHWA, FTA, or FAA. You must keep records, reports, and submit the material for review

upon request to CDOT, FHWA, FTA, or FAA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

[Local Agency] gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FHWA, FTA, and FAA. This ASSURANCE is binding on [Local Agency], other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FHWA, FTA, and FAA funded programs. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

(Name of Recipient)

by _____
(Signature of Authorized Official)

DATED _____

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, FHWA, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the [Local Agency], CDOT or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the [Local Agency], CDOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the non-discrimination provisions of this contract, the [Local Agency] will impose such contract sanctions as it, CDOT or FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the [Local Agency], CDOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the [Local Agency] will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), the Regulations for the Administration of (*Name of Appropriate Program*), and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the [Local Agency] all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto [Local Agency] and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the [Local Agency] its successors and assigns.

The [Local Agency], in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the [Local Agency] will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [,] and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the [Local Agency] pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued. *
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the [Local Agency] will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the [Local Agency] and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE
ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by [Local Agency] pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non- discrimination covenants, [Local Agency] will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued. *
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will there upon revert to and vest in and become the absolute property of [Local Agency] of Transportation and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

EXHIBIT K**FFATA SUPPLEMENTAL FEDERAL PROVISIONS**

State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. “Award” means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

1.1.1. Grants;

1.1.2. Contracts;

1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);

1.1.4. Loans;

1.1.5. Loan Guarantees;

1.1.6. Subsidies;

1.1.7. Insurance;

1.1.8. Food commodities;

1.1.9. Direct appropriations;

1.1.10. Assessed and voluntary contributions; and

1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award *does not* include:

1.1.12. Technical assistance, which provides services in lieu of money;

1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;

1.1.14. Any award classified for security purposes; or

1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

1.2. “Contract” means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.

1.3. “Contractor” means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.

1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpartC;

1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;

1.5.2. A foreign public entity;

1.5.3. A domestic or foreign non-profit organization;

- 1.5.4. A domestic or foreign for-profit organization; and
- 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109- 282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
- 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 1.17 **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
 - 3.1. **SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
 - 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 4.2. In the preceding fiscal year, Contractor received:
 - 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

7.1 To SAM. A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

- 7.1.1** Subrecipient DUNS Number;
- 7.1.2** Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
- 7.1.3** Subrecipient Parent DUNS Number;
- 7.1.4** Subrecipient’s address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 7.1.5** Subrecipient’s top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 7.1.6** Subrecipient’s Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

7.2 To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following dataelements:


- 7.2.1** Subrecipient’s DUNS Number as registered in **SAM**.
- 7.2.2** Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

- 8.1.** These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 8.2** A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 8.3** Effective October 1, 2010, “Award” currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates “Award” may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.
- 8.4** There are no Transparency Act reporting requirements for Vendors.

Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

EXHIBIT L
SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT

	CDOT SUBRECIPIENT RISK ASSESSMENT	Date:	
Name of Entity (Subrecipient):			
Name of Project / Program:			
Estimated Award Period:			
Entity Executive Director or VP:			
Entity Chief Financial Officer:			
Entity Representative for this Self Assessment:			
Instructions: (See "Instructions" tab for more information)			
1. Check only one box for each question. All questions are required to be answered.			Yes
2. Utilize the "Comment" section below the last question for additional responses.			No
3. When complete, check the box at the bottom of the form to authorize.			N/A
EXPERIENCE ASSESSMENT			Yes No N/A
1	Is your entity new to operating or managing federal funds (has not done so within the past three years)?	<input type="checkbox"/>	<input type="checkbox"/>
2	Is this funding program new for your entity (managed for less than three years)? <i>Examples of funding programs include CMAQ, TAP, STP-M, etc.</i>	<input type="checkbox"/>	<input type="checkbox"/>
3	Does your staff assigned to the program have at least three full years of experience with this federal program?	<input type="checkbox"/>	<input type="checkbox"/>
MONITORING/AUDIT ASSESSMENT			Yes No N/A
4	Has your entity had an on-site project or grant review from an external entity (e.g., CDOT, FHWA) within the last three years?	<input type="checkbox"/>	<input type="checkbox"/>
5	a) Were there non-compliance issues in this prior review?	<input type="checkbox"/>	<input type="checkbox"/>
	b) What were the number and extent of issues in prior review?	<input type="checkbox"/> <i>1 to 2</i>	<input type="checkbox"/> <i>>3</i>
OPERATION ASSESSMENT			Yes No N/A
6	Does your entity have a time and effort reporting system in place to account for 100% of all employees' time, that can provide a breakdown of the actual time spent on each funded project? <i>If No, in the comment section please explain how you intend to document 100% of hours worked by employees and breakdown of time spent on each funding project.</i>	<input type="checkbox"/>	<input type="checkbox"/>
FINANCIAL ASSESSMENT			Yes No N/A
7	a) Does your entity have an indirect cost rate that is approved and current?	<input type="checkbox"/>	<input type="checkbox"/>
	b) If Yes, who approved the rate, and what date was it approved?		
8	Is this grant/award 10% or more of your entity's overall funding?	<input type="checkbox"/> <i>>10%</i>	<input type="checkbox"/> <i><10%</i>
9	Has your entity returned lapsed* funds? *Funds "lapse" when they are no longer available for obligation.	<input type="checkbox"/>	<input type="checkbox"/>
10	Has your entity had difficulty meeting local match requirements in the last three years?	<input type="checkbox"/>	<input type="checkbox"/>
11	What is the total federal funding your entity has been awarded for the last federal fiscal year, and what is your entity's fiscal year end?		

INTERNAL CONTROLS ASSESSMENT		Yes	No	N/A
12	Has your entity had any significant changes in key personnel or accounting system(s) in the last year? (e.g., Controller, Exec Director, Program Mgr, Accounting Mgr, etc.) If Yes, in the comment section, please identify the accounting system(s), and / or list personnel positions and identify any that are vacant.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13	Does your entity have financial procedures and controls in place to accommodate a federal-aid project?	<input type="checkbox"/>	<input type="checkbox"/>	
14	Does your accounting system identify the receipts and expenditures of program funds separately for each award?	<input type="checkbox"/>	<input type="checkbox"/>	
15	Will your accounting system provide for the recording of expenditures for each award by the budget cost categories shown in the approved budget?	<input type="checkbox"/>	<input type="checkbox"/>	
16	Does your agency have a review process for all expenditures that will ensure that all costs are reasonable, allowable and allocated correctly to each funding source? If Yes, in the comment section, please explain your current process for reviewing costs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17	How many total FTE perform accounting functions within your organization?	<input type="checkbox"/> ≥ 6	<input type="checkbox"/> 2 to 5	<input type="checkbox"/> < 2
IMPACT ASSESSMENT		Yes	No	N/A
18	For this upcoming federal award or in the immediate future, does your entity have any potential conflicts of interest* in accordance with applicable Federal awarding agency policy? If Yes, please disclose these conflicts in writing, along with supporting information, and submit with this form. (*Any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Subrecipient's obligations to the State.)	<input type="checkbox"/>	<input type="checkbox"/>	
19	For this award, has your entity disclosed to CDOT, in writing, violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award? Response options: YES = Check if have one or more violation(s) and have either disclosed previously to CDOT or as part of this form. In the comment section, list all violations with names of supporting documentation and submit with this form. NO = Check if have one or more violation(s) and have not disclosed previously or will not disclose as part of this form. Explain in the comment section. N/A = Check if have no violations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PROGRAM MANAGEMENT ASSESSMENT		Yes	No	N/A
20	Does your entity have a written process/procedure or certification statement approved by your governing board ensuring critical project personnel are capable of effectively managing Federal-aid projects? If Yes, please submit with this form.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21	Does your entity have written procurement policies or certification statement for consultant selection approved by your governing board in compliance with 23 CFR 172*? If Yes, please submit with this form. (*The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications, at a fair and reasonable price.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22	a) Is your staff familiar with the relevant CDOT manuals and federal program requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b) Does your entity have a written policy or a certification statement approved by your governing board assuring federal-aid projects will receive adequate inspections? If Yes, please submit with this form.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	c) Does your entity have a written process or a certification statement approved by your governing board assuring a contractor's work will be completed in conformance with approved plans and specifications? If Yes, please submit with this form.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>


d) Does your entity have a written policy or certification statement approved by your governing board assuring that materials installed on the projects are sampled and tested per approved processes. <i>If Yes, please submit with this form.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Does your entity have a written policy or certification statement approved by your governing board assuring that only US manufactured steel will be incorporated into the project (<i>Buy America requirements</i>)? <i>If Yes, please submit with this form.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments - As needed, include the question number and provide comments related to the above questions. Insert additional rows as needed.</p>			
<p><input type="checkbox"/> By checking this box, the Executive Director, VP or Chief Financial Officer of this entity certifies that all information provided on this form is true and correct.</p> <p style="text-align: right;"> Tool Version: v2.0 (081816)</p>			

EXHIBIT M**OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS**

**Subject to
The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and
Audit Requirements for Federal Awards (“Uniform Guidance”),
Federal Register, Vol. 78, No. 248, 78590**

The agreement to which these Uniform Guidance Supplemental Provisions are attached has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the agreement or any attachments or exhibits incorporated into and made a part of the agreement, the provisions of these Uniform Guidance Supplemental Provisions shall control. In the event of a conflict between the provisions of these Supplemental Provisions and the FFATA Supplemental Provisions, the FFATA Supplemental Provisions shall control.

- 1. Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.
- 1.1. “Award”** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise. 2 CFR §200.38
 - 1.2. “Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
 - 1.3. “Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. 2 CFR §200.37
 - 1.4. “FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
 - 1.5. “Grant” or “Grant Agreement”** means an agreement setting forth the terms and conditions of an Award. The term does not include an agreement that provides only direct Federal cash assistance to an individual, a subsidy, a loan, a loan guarantee, insurance, or acquires property or services for the direct benefit of use of the Federal Awarding Agency or Recipient. 2 CFR §200.51.
 - 1.6. “OMB”** means the Executive Office of the President, Office of Management and Budget.
 - 1.7. “Recipient”** means a Colorado State department, agency or institution of higher education that receives a Federal Award from a Federal Awarding Agency to carry out an activity under a Federal program. The term does not include Subrecipients. 2 CFR §200.86
 - 1.8. “State”** means the State of Colorado, acting by and through its departments, agencies and institutions of higher education.
 - 1.9. “Subrecipient”** means a non-Federal entity receiving an Award from a Recipient to carry out part of a Federal program. The term does not include an individual who is a beneficiary of such program.
 - 1.10. “Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

- 1.11. “Uniform Guidance Supplemental Provisions”** means these Supplemental Provisions for Federal Awards subject to the OMB Uniform Guidance, as may be revised pursuant to ongoing guidance from relevant Federal agencies or the Colorado State Controller.
- 2. Compliance.** Subrecipient shall comply with all applicable provisions of the Uniform Guidance, including but not limited to these Uniform Guidance Supplemental Provisions. Any revisions to such provisions automatically shall become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3. Procurement Standards.**
- 3.1 Procurement Procedures.** Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation,
§§200.318 through 200.326 thereof.
- 3.2 Procurement of Recovered Materials.** If Subrecipient is a State Agency or an agency of a political subdivision of a state, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 4. Access to Records.** Subrecipient shall permit Recipient and auditors to have access to Subrecipient’s records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).
- 5. Single Audit Requirements.** If Subrecipient expends \$750,000 or more in Federal Awards during Subrecipient’s fiscal year, Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
- 5.1 Election.** Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program’s statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 5.2 Exemption.** If Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government

Accountability Office.

5.3 Subrecipient Compliance Responsibility. Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

6. Contract Provisions for Subrecipient Contracts. Subrecipient shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Grant Agreement.

6.1 Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

“During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments

under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled,

terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

6.2 Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40

U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

6.3 Rights to Inventions Made Under a Contract or Agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

6.4 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251- 1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection

Agency (EPA).

6.5 Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAMExclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

6.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

7. Certifications. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

7.1 Event of Default. Failure to comply with these Uniform Guidance Supplemental Provisions shall constitute an event of default under the Grant Agreement (2 CFR §200.339) and the State may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

8. Effective Date. The effective date of the Uniform Guidance is December 26, 2013. 2 CFR §200.110. The procurement standards set forth in Uniform Guidance §§200.317-200.326 are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in Uniform Guidance Subpart F-Audit Requirements are applicable to audits of fiscal years beginning on or after December 26, 2014.

9. Performance Measurement. The Uniform Guidance requires completion of OMB-approved standard information collection forms (the PPR). The form focuses on outcomes, as related to the Federal Award Performance Goals that awarding Federal agencies are required to detail in the Awards.

Section 200.301 provides guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes.

The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones (200.210). Also, must require the recipient to relate financial data to performance accomplishments of the Federal award.

Exhibit N

Federal Treasury Provisions

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.
- 1.2. The State of Colorado is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's Final Rule, and reporting requirements, as applicable.
- 1.3. Additionally, any subrecipient that issues a subaward to another entity (2nd tier subrecipient), must hold the 2nd tier subrecipient accountable to these provisions and adhere to reporting requirements.
- 1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
 - 2.1.1. "Award" means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
 - 2.1.2. "Data Universal Numbering System (DUNS) Number" means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet's website may be found at: <http://fedgov.dnb.com/webform>.
 - 2.1.3. "Entity" means:
 - 2.1.3.1. a Non-Federal Entity;
 - 2.1.3.2. a foreign public entity;
 - 2.1.3.3. a foreign organization;
 - 2.1.3.4. a non-profit organization;
 - 2.1.3.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
 - 2.1.3.6. a foreign non-profit organization (only for 2 CFR part 170) only;

- 2.1.3.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
- 2.1.3.8. a foreign for-profit organization (for 2 CFR part 170 only).
- 2.1.4. “Executive” means an officer, managing partner or any other employee in a management position.
- 2.1.5. “Expenditure Category (EC)” means the category of eligible uses as defined by the US Department of Treasury in “Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds” report available at www.treasury.gov.
- 2.1.6. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
- 2.1.7. “Grant” means the Grant to which these Federal Provisions are attached.
- 2.1.8. “Grantee” means the party or parties identified as such in the Grant to which these Federal Provisions are attached.
- 2.1.9. “Non-Federal Entity means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
- 2.1.10. “Nonprofit Organization” means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
 - 2.1.10.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - 2.1.10.2. Is not organized primarily for profit; and
 - 2.1.10.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 2.1.11. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.12. “Pass-through Entity” means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 2.1.13. “Prime Recipient” means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.14. “Subaward” means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program.

- 2.1.15. “Subrecipient” or “Subgrantee” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.16. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:
- 2.1.16.1. Salary and bonus;
 - 2.1.16.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 2.1.16.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.16.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.16.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 2.1.16.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.17. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 2.1.18. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

3. COMPLIANCE.

- 3.1. Grantee shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all applicable provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado, at its discretion, may provide written notification to Grantee of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3.2. Per US Treasury Final Award requirements, grantee programs or services must not include a term or conditions that undermines efforts to stop COVID-19 or discourages compliance with recommendations and CDC guidelines.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REQUIREMENTS.

- 4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
- 4.2. DUNS. Grantee shall provide its DUNS number to its Prime Recipient, and shall update Grantee's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Grantee's information.

5. TOTAL COMPENSATION.

- 5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 5.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and
 - 5.1.2. In the preceding fiscal year, Grantee received:
 - 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 5.1.2.2. \$30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 5.1.2.3. 5.1.2.3 The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

- 6.1. If Grantee is a Subrecipient of the Award pursuant to the Transparency Act, Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements. If the total award is below \$30,000 no reporting required; if more than \$30,000 and less than \$50,000 then FFATA reporting is required; and, \$50,000 and above SLFRF reporting is required.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

- 8.1. Grantee shall report as set forth below.
- 8.1.1. Grantee shall use the SLFRF Subrecipient Quarterly Report Workbook as referenced in Exhibit P to report to the State Agency within ten (10) days following each quarter ended September, December, March and June. Additional information on specific requirements are detailed in the SLFRF Subrecipient Quarterly Report Workbooks and "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

EC 1 – Public Health**All Public Health Projects**

- a) Description of structure and objectives
- b) Description of relation to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification

- v. Labor reporting

COVID-19 Interventions and Mental Health (1.4, 1.11, 1.12, 1.13)

- a) Amount of total project used for evidence-based programs
- b) Evaluation plan description

COVID-19 Small Business Economic Assistance (1.8)

- a) Number of small businesses served

COVID-19 Assistance to Non-Profits (1.9)

- a) Number of non-profits served

COVID-19 Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (1.10)

- a) Sector of employer
- b) Purpose of funds

EC 2 – Negative Economic Impacts

All Negative Economic Impacts Projects

- a) Description of project structure and objectives
- b) Description of project’s response to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Amount of total project used for evidence-based programs and description of evaluation plan *(not required for 2.5, 2.8, 2.21-2.24, 2.27-2.29, 2.31, 2.34-2.36)*
- e) Number of workers enrolled in sectoral job training programs
- f) Number of workers completing sectoral job training programs
- g) Number of people participating in summer youth employment programs
- h) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

Household Assistance (2.1-2.8)

- a) Number of households served
- b) Number of people or households receiving eviction prevention services (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*
- c) Number of affordable housing units preserved or developed (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*

Healthy Childhood Environments (2.11-2.13)

- a) Number of children served by childcare and early learning *(Federal guidance may change this requirement in July 2022)*
- b) Number of families served by home visiting *(Federal guidance may change this requirement in July 2022)*

Education Assistance (2.14, 2.24-2.27)

- a) National Center for Education Statistics (“NCES”) School ID or NCES District ID
- b) Number of students participating in evidence-based programs (*Federal guidance may change this requirement in July 2022*)

Housing Support (2.15, 2.16, 2.18)

- a) Number of people or households receiving eviction prevention services (*Federal guidance may change this requirement in July 2022*)
- b) Number of affordable housing units preserved or developed (*Federal guidance may change this requirement in July 2022*)

Small Business Economic Assistance (2.29-2.33)

- a) Number of small businesses served

Assistance to Non-Profits (2.34)

- a) Number of non-profits served

Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (2.35-2.36)

- a) Sector of employer
- b) Purpose of funds
- c) If other than travel, tourism and hospitality (2.36) – description of hardship

EC 3 – Public Health – Negative Economic Impact: Public Sector Capacity

Payroll for Public Health and Safety Employees (EC 3.1)

- a) Number of government FTEs responding to COVID-19

Rehiring Public Sector Staff (EC 3.2)

- a) Number of FTEs rehired by governments

EC 4 – Premium Pay

All Premium Pay Projects

- a) List of sectors designated as critical by the chief executive of the jurisdiction, if beyond those listed in the final rule
- b) Numbers of workers served
- c) Employer sector for all subawards to third-party employers
- d) Written narrative justification of how premium pay is responsive to essential work during the public health emergency for non-exempt workers or those making over 150 percent of the state/county’s average annual wage
- e) Number of workers to be served with premium pay in K-12 schools

EC 5 – Infrastructure Projects

All Infrastructure Projects

- a) Projected/actual construction start date (month/year)
- b) Projected/actual initiation of operations date (month/year)
- c) Location (for broadband, geospatial data of locations to be served)
- d) Projects over \$10 million
 - i. Prevailing wage certification or detailed project employment and local impact report

- ii. Project labor agreement certification or project workforce continuity plan
- iii. Prioritization of local hires
- iv. Community benefit agreement description, if applicable

Water and sewer projects (EC 5.1-5.18)

- a) National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
- b) Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)
- c) Median Household Income of service area
- d) Lowest Quintile Income of the service area

Broadband projects (EC 5.19-5.21)

- a) Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
 - i. If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
 - ii. Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
- b) Additional programmatic data will be required for broadband projects and will be defined in a subsequent version of the US Treasury Reporting Guidance, including, but not limited to (*Federal guidance may change this requirement in July 2022*):
 - i. Number of households (broken out by households on Tribal lands and those not on Tribal lands) that have gained increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, with the number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download and number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
 - ii. Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) that have projected increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization, with the number of each type of institution with access to the minimum

- speed standard of reliable 100 Mbps symmetrical upload and download; and number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.
- iii. Narrative identifying speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering, technology to be deployed, miles of fiber, cost per mile, cost per passing, number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download, number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload, and number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization. Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

All Expenditure Categories

- a) Program income earned and expended to cover eligible project costs

8.1.2. A Subrecipient shall report the following data elements to Prime Recipient no later than five days after the end of the month following the month in which the Subaward was made.

- 8.1.2.1. Subrecipient DUNS Number;
- 8.1.2.2. Subrecipient DUNS Number if more than one electronic funds transfer (EFT) account;
- 8.1.2.3. Subrecipient parent’s organization DUNS Number;
- 8.1.2.4. Subrecipient’s address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 8.1.2.5. Subrecipient’s top 5 most highly compensated Executives if the criteria in §4 above are met; and

- 8.1.2.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.
- 8.1.3. To Prime Recipient. A Subrecipient shall report to its Prime Recipient, the following data elements:
- 8.1.3.1. Subrecipient's DUNS Number as registered in SAM.
- 8.1.3.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
- 8.1.3.3. Narrative identifying methodology for serving disadvantaged communities. See the "Project Demographic Distribution" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. This requirement is applicable to all projects in Expenditure Categories 1 and 2.
- 8.1.3.4. Narrative identifying funds allocated towards evidenced-based interventions and the evidence base. See the "Use of Evidence" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. See section 8.1.1 for relevant Expenditure Categories.
- 8.1.3.5. Narrative describing the structure and objectives of the assistance program and in what manner the aid responds to the public health and negative economic impacts of COVID-19. This requirement is applicable to Expenditure Categories 1 and 2. For aid to travel, tourism, and hospitality or other impacted industries (EC 2.11-2.12), also provide the sector of employer, purpose of funds, and if not travel, tourism and hospitality a description of the pandemic impact on the industry.
- 8.1.3.6. Narrative identifying the sector served and designated as critical to the health and well-being of residents by the chief executive of the jurisdiction and the number of workers expected to be served. For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county's average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is higher, OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions, include justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19 but should not include personally identifiable information. This requirement applies to EC 4.1, and 4.2.
- 8.1.3.7. For infrastructure projects (EC 5), or capital expenditures in any expenditure category, narrative identifying the projected construction start date (month/year), projected initiation of operations date (month/year), and

location (for broadband, geospatial location data). For projects over \$10 million:

- 8.1.3.8. Certification that all laborers and mechanics employed by Contractors and Subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the Agreement work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing (1) the number of employees of Contractors and sub-contractors working on the project; (2) the number of employees on the project hired directly and hired through a third party; (3) the wages and benefits of workers on the project by classification; and (4) whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.
 - 8.1.3.8.1. A Subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing: (1) how the Subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project; (2) how the Subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and (3) how the Subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; (4) whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and (5) whether the project has completed a project labor agreement.
 - 8.1.3.8.2. Whether the project prioritizes local hires.
 - 8.1.3.8.3. Whether the project has a Community Benefit Agreement, with a description of any such agreement.
- 8.1.4. Subrecipient also agrees to comply with any reporting requirements established by the US Treasury, Governor's Office and Office of the State Controller. The State of Colorado may need additional reporting requirements after this agreement is executed. If there are additional reporting requirements, the State will provide notice of such additional reporting requirements via Exhibit Q – SLFRF Reporting Modification Form.

9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
- 9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Agreements and purchase orders for work or products under this award.
- 9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS.

- 10.1. A Subrecipient shall permit Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

11. SINGLE AUDIT REQUIREMENTS.

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.

- 11.1.1. Election. A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance 2 CFR 200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with 2 CFR 200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2. Exemption. If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- 11.1.3. Subrecipient Compliance Responsibility. A Subrecipient shall procure or otherwise arrange for the audit required by Subpart F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with 2 CFR 200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Subpart F-Audit Requirements.

12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

- 12.1. In addition to other provisions required by the Federal Awarding Agency or the Prime Recipient, Grantees that are Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all Subcontractors entered into by it pursuant to this Grant.
 - 12.1.1. [Applicable to federally assisted construction Agreements.] Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all Agreements that meet the definition of "federally assisted construction Agreement" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.
 - 12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).

- 12.1.3. Rights to Inventions Made Under a grant or agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Prime Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreements and Cooperative Agreements,” and any implementing regulations issued by the Federal Awarding Agency.
- 12.1.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Agreements and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardees to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. Debarment and Suspension (Executive Orders 12549 and 12689). A Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 12.1.7. Never Agreement with the enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing “Never Agreement with the enemy” in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

- 12.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.
- 12.1.9. Title VI of the Civil Rights Act. The Subgrantee, Contractor, Subcontractor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S. C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CRF Part 22, and herein incorporated by reference and made part of this Agreement or agreement.

13. CERTIFICATIONS.

- 13.1. Subrecipient Certification. Subrecipient shall sign a "State of Colorado Agreement with Recipient of Federal Recovery Funds" Certification Form in Exhibit O and submit to State Agency with signed grant agreement.
- 13.2. Unless prohibited by Federal statutes or regulations, Prime Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Grantee with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

15. EVENT OF DEFAULT AND TERMINATION.

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

- 15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:
- 15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
 - 15.2.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
 - 15.2.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
 - 15.2.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or

By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

EXHIBIT O

AGREEMENT WITH SUBSUBRECIPIENT OF FEDERAL RECOVERY FUNDS

Section 602(b) of the Social Security Act (the Act), as added by section 9901 of the American Rescue Plan Act (ARPA), Pub. L. No. 117-2 (March 11, 2021), authorizes the Department of the Treasury (Treasury) to make payments to certain Subrecipients from the Coronavirus State Fiscal Recovery Fund. The State of Colorado has signed and certified a separate agreement with Treasury as a condition of receiving such payments from the Treasury. This agreement is between your organization and the State and your organization is signing and certifying the same terms and conditions included in the State’s separate agreement with Treasury. Your organization is referred to as a Subrecipient.

As a condition of your organization receiving federal recovery funds from the State, the authorized representative below hereby (i) certifies that your organization will carry out the activities listed in section 602(c) of the Act and (ii) agrees to the terms attached hereto. Your organization also agrees to use the federal recovery funds as specified in bills passed by the General Assembly and signed by the Governor.

Under penalty of perjury, the undersigned official certifies that the authorized representative has read and understood the organization’s obligations in the Assurances of Compliance and Civil Rights Requirements, that any information submitted in conjunction with this assurances document is accurate and complete, and that the organization is in compliance with the nondiscrimination requirements.

Subrecipient Name _____

Authorized Representative: _____

Title: _____

Signature: _____

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS
TERMS AND CONDITIONS

1. Use of Funds.
 - a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 602(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.
 - b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Subrecipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award. Subrecipient also agrees to comply with any reporting requirements established by the Governor's Office and Office of the State Controller.
4. Maintenance of and Access to Records
 - a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 602(c), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.
 - c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs. Subrecipient shall follow guidance on administrative costs issued by the Governor's Office and Office of the State Controller.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.
8. Conflicts of Interest. The State of Colorado understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy

is applicable to each activity funded under this award. Subrecipient and Contractors must disclose in writing to the Office of the State Controller or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112. The Office of the State Controller shall disclose such conflict to Treasury.

9. Compliance with Applicable Law and Regulations.

a. Subrecipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

b. Federal regulations applicable to this award include, without limitation, the following:

- i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
- ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (Agreements and Subcontractors described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
 - i. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - ii. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - iii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
- iv. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

- v. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
 - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
10. Remedial Actions. In the event of Subrecipient's noncompliance with section 602 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.
11. Hatch Act. Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or Agreements, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number SLFRF0126 awarded to the State of Colorado by the U.S. Department of the Treasury.”
14. Debts Owed the Federal Government.
- a. Any funds paid to the Subrecipient (1) in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.
 - b. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury’s initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.
15. Disclaimer.
- a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or Subcontractor under this award.
 - b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.
16. Protections for Whistleblowers.
- a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.
 - b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;

- iii. The Government Accountability Office;
 - iv. A Treasury employee responsible for Agreement or grant oversight or management;
 - v. An authorized official of the Department of Justice or other law enforcement agency;
 - vi. A court or grand jury; or
 - vii. A management official or other employee of Subrecipient, Contractor, or Subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.
17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its Contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
1. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees, Subrecipients, and Contractorsto adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and Agreements to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass Agreements of guarantee or insurance, regulated programs, licenses, procurement Agreements by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Subrecipient's program(s) and activity(ies), so long as any portion of the Subrecipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.
3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Subrecipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Contractors, Subcontractors, successors, transferees, and assignees:

The sub-grantee, Contractor, Subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.
7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.
9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of

discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub- Subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

EXHIBIT P

SLFRF SUBRECIPIENT QUARTERLY REPORT

1. SLFRF SUBRECIPIENT QUARTERLY REPORT WORKBOOK

1.1 The SLFRF Subrecipient Quarterly Report Workbook must be submitted to the State Agency within ten (10) days following each quarter ended September, December, March and June. The SLFRF Subrecipient Quarterly Report Workbook can be found at:

<https://osc.colorado.gov/american-rescue-plan-act> (see SLFRF Grant Agreement Templates tab)

EXHIBIT Q

SAMPLE SLFRF REPORTING MODIFICATION FORM

Local Agency:		Agreement No:	
Project Title:		Project No:	
Project Duration:	To:	From:	
State Agency:	CDOT		

This form serves as notification that there has been a change to the reporting requirements set forth in the original SLFRF Grant Agreement.

The following reporting requirements have been (add/ remove additional rows as necessary):

Updated Reporting Requirement (Add/Delete/Modify)	Project Number	Reporting Requirement

By signing this form, the Local Agency agrees to and acknowledges the changes to the reporting requirements set forth in the original SLFRF Grant Agreement. All other terms and conditions of the original SLFRF Grant Agreement, with any approved modifications, remain in full force and effect. Grantee shall submit this form to the State Agency within 10 business days of the date sent by that Agency.

 Local Agency

 Date

 CDOT Program Manager

 Date

EXHIBIT R

APPLICABLE FEDERAL AWARDS

FEDERAL AWARD(S) APPLICABLE TO THIS GRANT AWARD

Federal Awarding Office	US Department of the Treasury
Grant Program	Coronavirus State and Local Fiscal Recovery Funds
Assistance Listing Number	21.027
Federal Award Number	SLFRP0126
Federal Award Date *	May 18, 2021
Federal Award End Date	December 31, 2024
Federal Statutory Authority	Title VI of the Social Security Act, Section 602
Total Amount of Federal Award (this is <u>not</u> the amount of this grant agreement)	\$3,828,761,790

* Funds may not be available through the Federal Award End Date subject to the provisions in §2 and §5 below.

EXHIBIT S

PII Certification

STATE OF COLORADO

**LOCAL AGENCY CERTIFICATION FOR ACCESS TO PII THROUGH A
DATABASE OR AUTOMATED NETWORK**

Pursuant to § 24-74-105, C.R.S., I, _____, on behalf of _____ (legal name of Local Agency) (the “Local Agency”), hereby certify under the penalty of perjury that the Local Agency has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Local Agency.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Checklist for required exhibits due to funding sources. Required Exhibits are dependent on the source of funding. This is a guide to assist in the incorporation and completion of Exhibits in relation to funding sources.

Exhibit	Funding only from FHWA	Funding only from ARPA	FHWA and ARPA Funding
EXHIBIT A, SCOPE OF WORK	✓	✓	✓
EXHIBIT B, SAMPLE OPTION LETTER	✓	✓	✓
EXHIBIT C, FUNDING PROVISIONS	✓	✓	✓
EXHIBIT D, LOCAL AGENCY RESOLUTION (IF APPLICABLE)	✓	✓	✓
EXHIBIT E, LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST	✓	✓	✓
EXHIBIT F, CERTIFICATION FOR FEDERAL-AID AGREEMENTS	✓		✓
EXHIBIT G, DISADVANTAGED BUSINESS ENTERPRISE	✓		✓
EXHIBIT H, LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES	✓		✓
EXHIBIT I, FEDERAL-AID AGREEMENT PROVISIONS FOR CONSTRUCTION AGREEMENTS	✓		✓
EXHIBIT J, ADDITIONAL FEDERAL REQUIREMENTS	✓		✓
EXHIBIT K, FFATA SUPPLEMENTAL FEDERAL PROVISIONS	✓	✓	✓
EXHIBIT L, SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM	✓	✓	✓
EXHIBIT M, OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS	✓		✓

EXHIBIT N, FEDERAL TREASURY PROVISIONS		✓	✓
EXHIBIT O, AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS		✓	✓
EXHIBIT P, SLFRF SUBRECIPIENT QUARTERLY REPORT		✓	✓
EXHIBIT Q, SLFRF REPORTING MODIFICATION FORM		✓	✓
EXHIBIT R, APPLICABLE FEDERAL AWARDS		✓	✓
EXHIBIT S, PII CERTIFICATAION	✓	✓	✓
EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE	✓	✓	✓

ORDINANCE NO. 039, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING SUPPLEMENTAL APPROPRIATIONS, APPROPRIATING PRIOR YEAR
RESERVES AND AUTHORIZING TRANSFERS OF APPROPRIATIONS FOR THE
TIMBERLINE MULBERRY LINCOLN INTERSECTION PROJECT
AND RELATED ART IN PUBLIC PLACES

WHEREAS, the intersection of Timberline Road, Mulberry Street, and Lincoln Avenue experiences significant congestion for northbound Timberline Road traffic turning onto westbound Lincoln Avenue, causing traffic to back up onto westbound Mulberry Street, east of Timberline Road; and

WHEREAS, southbound Timberline Road traffic also experiences congestion at the intersection with Mulberry Street that causes traffic to block the intersection with Lincoln Avenue; and

WHEREAS, the intersection of Timberline Road and Lincoln Avenue is of particular concern as vehicles attempt to cross or turn from eastbound Lincoln Avenue through the congestion of queued vehicles on southbound Timberline Road with limited visibility of oncoming traffic; and

WHEREAS, the proximity of these two intersections creates significant conflicts and safety concerns; and

WHEREAS, the Timberline Mulberry Lincoln Intersection Project (the Project) has been developed to address these safety concerns eliminate most of the conflicts that result in traffic accidents at this intersection; and

WHEREAS, the Project’s proposed improvements will reconfigure medians on Timberline Road to create space for double left turn lanes for southbound Timberline Road onto eastbound Mulberry Street, as well as create space for a channelized “T intersection” at Timberline Road and Lincoln Avenue; and

WHEREAS, the Project improvements include installation of an innovative “P-Turn” (also referred to as a “Michigan Left Turn”) on the northwest corner of the Timberline Road and Lincoln Avenue intersection to accommodate westbound through traffic and northbound left turns at the Timberline Road and Lincoln Avenue intersection; and

WHEREAS, in 2018 and 2021, the City appropriated Community Capital Improvement Program (CCIP) Arterial Intersection Improvement funds to this Project in the amount of \$50,000 in 2018 and in the amount of \$176,349 in 2021, with a portion of this CCIP funding used to complete a feasibility study and conceptual design for the Project; and

WHEREAS, in 2020, an adjacent development contributed \$23,651 in Capital Projects Fund Reserves to this Project by paying funds in lieu of land dedication pursuant to the development review process; and

WHEREAS, in 2020, the Project was placed on hold during a portion of the pandemic due to staffing issues; and

WHEREAS, in 2020, the City was awarded fiscal year 2023 Highway Safety Improvement Program (HSIP) grant funds totaling \$1,523,915 through the North Front Range Metropolitan Planning Organization (NFRMPO) and the Colorado Department of Transportation (CDOT) for the design, right-of-way acquisition, and construction of the Project; and

WHEREAS, the HSIP grant funds for the Project are to be administered by CDOT with project delivery oversight pursuant to an Intergovernmental Agreement (IGA) with CDOT that requires the City to provide local matching funds of \$169,324; and

WHEREAS, the remaining CCIP Arterial Intersection Improvement funds from the prior appropriations in 2018 and 2021 and the development payment-in-lieu funds will fulfill the City's local matching funds obligation for the HSIP grant award; and

WHEREAS, the purpose of this Ordinance is to enable the City to receive and expend the \$1,523,915 in grant funds available, to appropriate those funds, the CCIP funds, and the Capital Projects Fund Reserves for the Project, and to appropriate Capital Projects Fund to satisfy the Art in Public Places program (APP Program) contribution requirement; and

WHEREAS, this Project involves construction estimated to cost more than \$250,000 and, as such, City Code Section 23-304 requires one percent of these appropriations to be transferred to the Cultural Services and Facilities Fund for a contribution to the APP Program; and

WHEREAS, the Project cost of \$226,349 contributed by the Community Capital Improvement Program Fund in prior appropriations has already satisfied the APP Program contribution; and

WHEREAS, the Project cost of \$23,651 in this Ordinance contributed by Capital Projects Fund Reserves is applicable for contribution to the APP Program; and

WHEREAS, a portion of the funds appropriated in this Ordinance for the Timberline Mulberry Lincoln Intersection Project are ineligible for use in the APP Program due to restrictions placed on them by the HSIP grant administered by the Colorado Department of Transportation; and

WHEREAS, the amount to be contributed by this Ordinance will be \$237; and

WHEREAS, this appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of improving transportation infrastructure within the City; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon recommendation of the City Manager, to make a supplemental appropriation by ordinance at any

time during the fiscal year, provided that the total amount of such supplemental appropriation, in combination with all previous appropriations for that fiscal year, do not exceed the current estimate of actual and anticipated revenues and all other funds to be received during the fiscal year; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon the recommendation of the City Manager, to make supplemental appropriations by ordinance at any time during the fiscal year such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated; and

WHEREAS, the City Manager has recommended the appropriations described herein and determined that these appropriations are available and previously unappropriated from the Capital Projects Fund and will not cause the total amount appropriated in the Capital Projects Fund to exceed the current estimate of actual and anticipated revenues and all other funds to be received in this Fund during this fiscal year; and

WHEREAS, Article V, Section 10 of the City Charter authorizes the City Council, upon recommendation by the City Manager, to transfer by ordinance any unexpended and unencumbered appropriated amount or portion thereof from one fund or capital project to another fund or capital project, provided that the purpose for which the transferred funds are to be expended remains unchanged, the purpose for which the funds were initially appropriated no longer exists, or the proposed transfer is from a fund or capital project in which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance; and

WHEREAS, the City Manager has recommended the transfer of \$237 from the Capital Projects Fund to the Cultural Services & Facilities Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

WHEREAS, Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds for a capital project that such appropriation shall not lapse at the end of the fiscal year in which the appropriation is made but continue until the completion of the capital project; and

WHEREAS, the City Council wishes to designate the appropriation herein from the HSIP grant as an appropriation that shall not lapse until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant; and

WHEREAS, the City Council wishes to designate the appropriation herein for the Project as an appropriation that shall not lapse until the completion of the Project.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from new revenue or other funds from the Highway Safety Improvement Program (HSIP) grant in the Capital Projects Fund the sum of ONE MILLION FIVE HUNDRED TWENTY-THREE THOUSAND NINE HUNDRED FIFTEEN DOLLARS (\$1,523,915) to be expended in the Capital Projects Fund for the Project.

Section 3. That there is hereby appropriated from prior year reserves in the Capital Projects Fund the sum of TWENTY-THREE THOUSAND SIX HUNDRED FIFTY-ONE DOLLARS (\$23,651) to be expended in the Capital Projects Fund for the Project and appropriated therein.

Section 4. That the unexpended and unencumbered appropriated amount of ONE HUNDRED EIGHTY-FIVE DOLLARS (\$185) in the Capital Projects Fund is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein to fund art projects under the APP Program.

Section 5. That the unexpended and unencumbered appropriated amount of FORTY-SEVEN DOLLARS (\$47) in the Capital Projects Fund is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the operation costs of the APP Program.

Section 6. That the unexpended and unencumbered appropriated amount of FIVE DOLLARS (\$5) in the Capital Projects Fund is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the maintenance costs of the APP Program.

Section 7. That the appropriation herein from the HSIP grant is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

Section 8. That the appropriation herein for the Project is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the completion of the Project.

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 4th day of April, 2023.

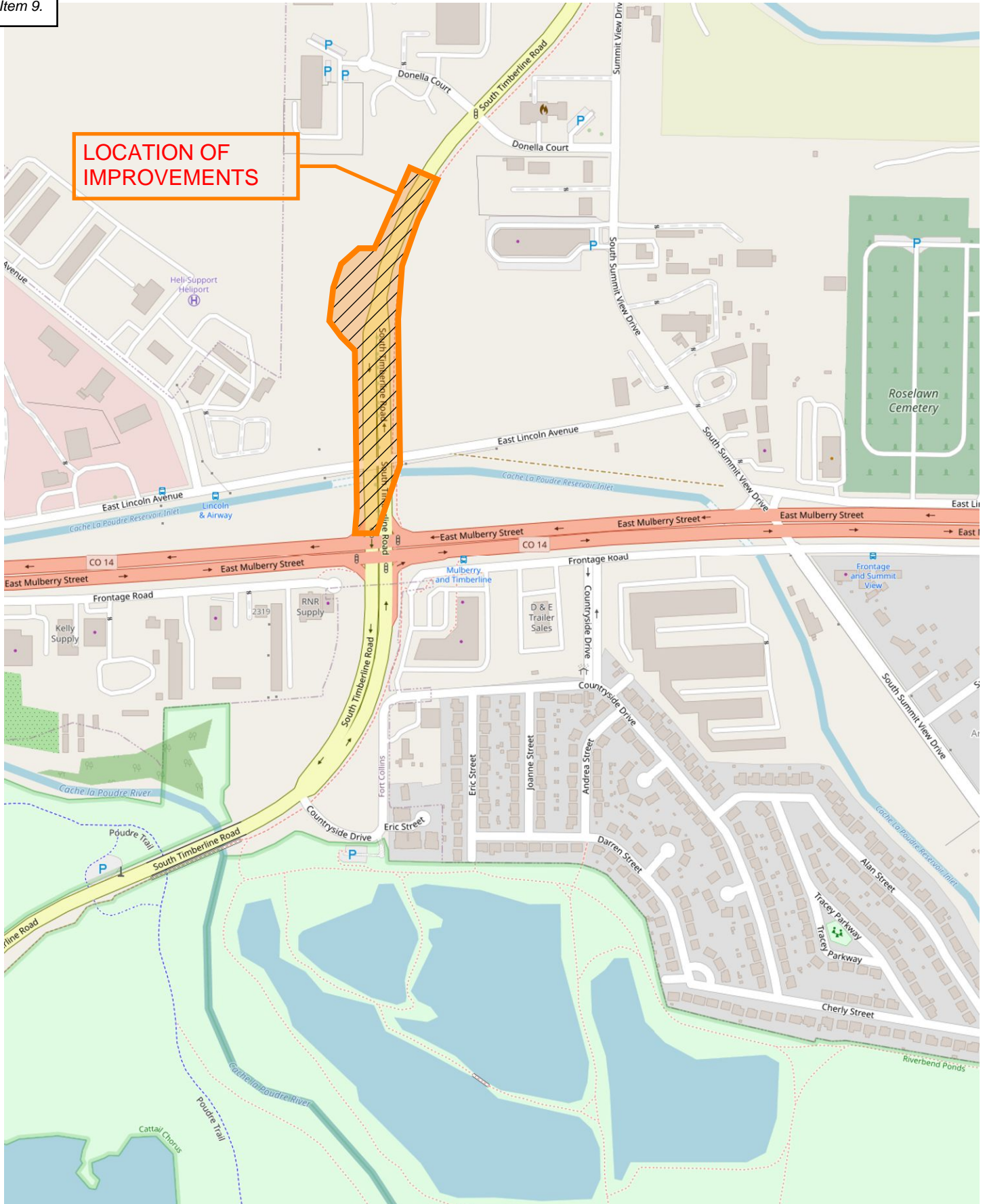
Mayor

ATTEST:

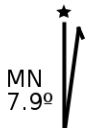
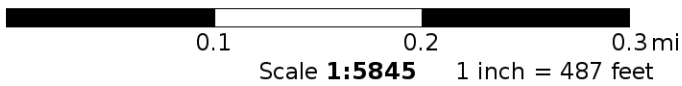
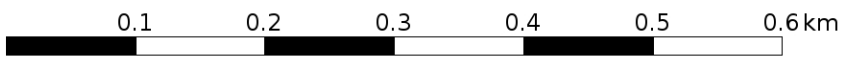
City Clerk

TIMBERLINE MULBERRY LINCOLN INTERSECTION PROJECT - VICINITY MAP

Item 9.



Mercator Projection
WGS84
UTM Zone 13T



AGENDA ITEM SUMMARY

City Council



STAFF

LeAnn Williams, Director, Recreation
 Tracy Ochsner, Director, Facilities & Fleet
 Ted Hewitt, Assistant City Attorney

SUBJECT

First Reading of Ordinance No. 040, 2023, Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations for the Childcare Space Modifications at the Northside Aztlan Community Center and Related Art in Public Places.

EXECUTIVE SUMMARY

The purpose of this item is to appropriate \$260,000 from the Recreation Reserve to close the funding gap on the Childcare Space Modifications at Northside Aztlan Community Center and transfer 1% of the applicable construction costs to Art in Public Places.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Budgeting for Outcomes Offer 43.23: ARPA Childcare Space Modifications at Northside Aztlan Community Center (NACC) was funded in 2023 for \$721,932. Recreation used 2022 year-end underspend to start the design process to ensure this project could be completed by September 2023.

After completion of the design, the RFP was released for construction. Operations Services projected the project to cost \$721,932 in spring 2022 and included cost escalation and contingency. The two proposals received came in approximately \$260,000 over the original construction estimate.

The childcare space modification project will address the numerous safety concerns at NACC. Specifically, the project will include three levels of security access control not found in the current facility. The project will also include emergency exit doors that are not currently available. Currently, all three childcare classrooms are accessible by the public, with no secure entry. Since January 2022, there were thirty-seven incidents recorded at NACC, including patrons bringing in weapons including a machete and an ax.

Impact if funding is not approved and project is delayed.

- Cost escalation
 - The construction of this project will continue to increase.
- Safety
 - Since October of 2022, there have been twenty-two misconduct related incidents reported. Of the twenty-two incidents, eight resulted in suspension, with five being arrested.

CITY FINANCIAL IMPACTS

Appropriating these funds will allow this project to move forward with current costs, prevent delay and potential further cost escalation.

Recreation Reserves as of March 2023	Contingency Funding for NACC Childcare Project	Recreation Reserves projection December 31, 2023
2,450,000	260,000	2,190,000

Staff is asking that any remaining ARPA funds at the end of 2023 be considered to replenish the Recreation Reserves appropriated with this ordinance since this was originally an ARPA funded project in the 2023-2024 budget.

This project will be contributing \$5,600 to Art in Public Places (APP). In the 2023-24 Offer #43.23, the \$300,000 that was used from the General Fund Reserves is applicable for the contribution and has not yet contributed, plus this additional \$260,000 from Recreation Reserves in this Ordinance, for a total of \$560,000. The contribution to APP is 1% of the total applicable amount.

The total amount to be appropriated from Recreation Fund Reserves is \$262,600 and the total amount to be appropriated from General Fund Reserves is \$3,000.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Because of the timing of board meetings, this need was not presented to the Parks and Recreation Board or to the City Council Finance Committee. They were very supportive of this project during the BFO process.

PUBLIC OUTREACH

N/A

ATTACHMENTS

- 1. Ordinance for Consideration

ORDINANCE NO. 040, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES AND AUTHORIZING TRANSFERS OF
APPROPRIATIONS FOR THE CHILDCARE SPACE MODIFICATIONS AT THE
NORTHSIDE AZTLAN COMMUNITY CENTER AND
RELATED ART IN PUBLIC PLACES

WHEREAS, the City Council appropriated \$721,932 for Childcare Space Modifications at the Northside Aztlan Community Center (the “Project”) for the 2023 fiscal year; and

WHEREAS, the City issued a Request for Proposals for the Project and the proposals received came in approximately \$260,000 over the original construction estimate; and

WHEREAS, the Recreation Fund currently contains sufficient reserves to fully fund the Project; and

WHEREAS, the Project is necessary to address safety concerns at the Northside Aztlan Community Center and delay in the Project will cause Project costs to continue to increase; and

WHEREAS, this appropriation benefits the public health, safety, and welfare of the residents of Fort Collins and serves the public purpose of making improvements to a public recreation center; and

WHEREAS, this Project involves construction estimated to cost more than \$250,000 and, as such, City Code Section 23-304 requires one percent of these appropriations to be transferred to the Cultural Services and Facilities Fund for a contribution to the Art in Public Places program (“APP Program”); and

WHEREAS, the project cost of \$421,932 contributed by the American Rescue Plan Act (ARPA) in the 2023-2024 Budget Offer #43.23 is not applicable for contribution to the APP Program due to the funding restrictions in place; and

WHEREAS, the project cost of \$300,000 contributed by General Fund Reserves in the 2023-2024 Budget Offer #43.23 is applicable for contribution to the APP Program and has not yet contributed; and

WHEREAS, the project cost of \$260,000 in this Ordinance contributed by Recreation Fund Reserves is applicable for contribution to the APP Program; and

WHEREAS, the total applicable project cost of \$560,000 has been used to calculate the contribution to the APP program; and

WHEREAS, the amount to be contributed in this Ordinance will be \$5,600; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon the recommendation of the City Manager, to make supplemental appropriations by ordinance at any

time during the fiscal year such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated; and

WHEREAS, the City Manager has recommended the appropriations described herein and determined that these appropriations are available and previously unappropriated from the Recreation Fund and the General Fund, as applicable, and will not cause the total amount appropriated in the Recreation Fund or the General Fund, as applicable, to exceed the current estimate of actual and anticipated revenues and all other funds to be received in these funds during this fiscal year; and

WHEREAS, Article V, Section 10 of the City Charter authorizes the City Council, upon recommendation by the City Manager, to transfer by ordinance any unexpended and unencumbered appropriated amount or portion thereof from one fund or capital project to another fund or capital project, provided that the purpose for which the transferred funds are to be expended remains unchanged, the purpose for which the funds were initially appropriated no longer exists, or the proposed transfer is from a fund or capital project in which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance; and

WHEREAS, the City Manager has recommended the transfer of \$3,000 from the General Fund to the Cultural Services & Facilities Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

WHEREAS, the City Manager has recommended the transfer of \$2,600 from the Recreation Fund to the Cultural Services & Facilities Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above

Section 2. That there is hereby appropriated from prior year reserves in the Recreation Fund the sum of TWO HUNDRED SIXTY-TWO THOUSAND SIX HUNDRED DOLLARS (\$262,600) to be expended in the Recreation Fund for the Childcare Space Modifications at the Northside Aztlan Community Center project.

Section 3. That there is hereby appropriated from prior year reserves in the General Fund the sum of TWO THOUSAND THREE HUNDRED FORTY DOLLARS (\$2,340) is hereby authorized to be expended in the General Fund for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein to fund art projects under the APP Program.

Section 4. That there is hereby appropriated from prior year reserves in the General Fund the sum of SIX HUNDRED FORTY DOLLARS (\$640) is hereby authorized to be expended

in the General Fund for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the operation costs of the APP Program.

Section 5. That there is hereby appropriated from prior year reserves in the General Fund the sum of SIXTY DOLLARS (\$60) is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the maintenance costs of the APP Program.

Section 6. That the unexpended and unencumbered appropriated amount of TWO THOUSAND TWENTY-EIGHT DOLLARS (\$2,028) in the Recreation Fund is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein to fund art projects under the APP Program.

Section 7. That the unexpended and unencumbered appropriated amount of FIVE HUNDRED TWENTY DOLLARS (\$520) in the Recreation Fund is authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the operation costs of the APP Program.

Section 8. That the unexpended and unencumbered appropriated amount of FIFTY-TWO DOLLARS (\$52) in the Recreation Fund is authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the maintenance costs of the APP Program.

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

AGENDA ITEM SUMMARY

City Council



STAFF

Lawrence Pollack, Budget Director
John Duval, Legal

SUBJECT

First Reading of Ordinance No. 041, 2023, Reappropriating Funds Previously Appropriated in 2022 But Not Expended and Not Encumbered in 2022.

EXECUTIVE SUMMARY

The purpose of this item is to reappropriate monies in 2023 that were previously authorized by City Council for expenditure in 2022 for various purposes. The authorized expenditures were not spent or could not be encumbered in 2022 because:

- There was not sufficient time to complete bidding in 2022 and therefore, there was no known vendor or binding contract as required to expend or encumber the monies; or
- The project for which the dollars were originally appropriated by Council could not be completed during 2022 and reappropriation of those dollars is necessary for completion of the project in 2023.

Additionally, there may have been sufficient unspent dollars previously appropriated in 2022 to carry on programs, services, and facility improvements in 2023 for those specific purposes.

In the above circumstances, the unexpended and/or unencumbered monies lapsed into individual fund balances at the end of 2022 and reflect no change in Council policies.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The Executive Team has reviewed the Reappropriation requests to ensure alignment with organization priorities and Budget staff reviewed the requests to verify that all met qualification requirements.

moneys reappropriated for each City fund by this Ordinance are:

General Fund	\$602,754
Transit Fund	55,750
Transportation Fund	100,000
Water Fund	52,500
Broadband Fund	4,361,774
Data & Communications Fund	86,000
UT Customer Service & Administration Fund	170,848
Total	\$5,429,626

The 2023 Reappropriation requests are as follows, by fund:

GENERAL FUND

Police Services

1) K9 Vests - \$3,520

Purpose for funds: \$3,520 was donated by a resident for the purpose of buying a protective vest for a K9. This has not yet been purchased and should be reappropriated according to the intent of the gift.

Reason funds not expensed in 2022: The reason that the gift was not expensed in 2022 was because the dog that it was intended for needed to be returned to the breeder because of behavioral issues. Another K9 has been purchased and the vest will be purchased later in the year when the dog is full grown.

2) Northern Colorado Regional Communication Network (NCRCN) - \$300,000

Purpose for funds: The funds are being drawn from NCRCN (Northern Colorado Regional Communication Network) reserves, a restricted portion of the General Fund. These funds were designated for the maintenance and replacement of the radio towers and equipment on top of the hospital and on Tower Road by Horsetooth Rock.

Reason funds not expensed in 2022: Because of the complexity of the scope of the project, and conflicting priorities with other projects, the Information Services Division in Police Services is still in the process of developing the RFP to bid out the work. This project will commence in 2023.

City Manager’s Office

3) Council High Performing Board - \$18,295

Purpose for funds: The previous City Council approved an offer for \$30,000 to support Council group and individual development. Strategies such as individual mentors/coaches and conferences are available with this funding. It can also be used for other training purposes, as well as participation with associations such as the Colorado Municipal League, National League of Cities, and Water Literate Leaders.

Reason funds not expensed in 2022: A portion of this funding was used in 2022, however, City Council did not fully utilize the available budget. A Council workshop in January of this year outlined further training and development needs for Council in 2023. These funds will be used towards those additional opportunities.

4) DEI Principles of Community - \$8,000

Purpose for funds: A key deliverable identified by Council to advance the Equity and Inclusion priority was

to develop Principles of Community for the organization to foster and enhance a sense of belonging for coworkers and the community we serve. This funding will create the principles of community which developed as a mission, vision, values refresh project. Work was partially completed in Q4 of 2022 after extensive staff engagement. The Communications Department is working on creating a new poster and communications to be shared City-wide in 2023.

Reason funds not expensed in 2022: Not all funds were expenses in 2022 as the City-wide roll out of the new Mission, Vision and Values (MVV) was planned for Q2 2023. Messaging and development of the outreach materials is still in progress and expected to be completed and ready for outreach by the end of Q2. These funds will be used to pay for the final printing of materials and promoting the new MVV across all departments in 2023.

5) Land Acknowledgement Funding - \$16,065

Purpose for funds: Land Acknowledgement funds have been used to build trust with the Fort Collins Native American community in a land-focused way. Having a strong relationship with a foundation of trust is a crucial first step before we can begin the process of creating a written land acknowledgement. For example, funds have been used to provide space for the Northern Colorado Intertribal Powwow Association (NCIPA) Powwow, space and supplies for NCIPA culture classes, and space and supplies for the NCIPA winter drive celebration.

Reason funds not expensed in 2022: It was crucial to establish a strong relationship of trust and reciprocity before beginning the process of creating a land acknowledgment. There was some hesitancy in the Native American community about creating a land acknowledgment without understanding the City's commitment to the Native community, to ensure that the land acknowledgment was not merely a performative action. Over the last year, we have established that relationship and we now have a solid basis to create a written land acknowledgement in 2023. Quarterly meetings have been set up with the Native American community for 2023, and we are also establishing a Native American Advisory Circle this year. These spaces will be the mechanism through which the land acknowledgment is created.

Parks

6) Park Planning & Development Special Project Support - \$5,600

Purpose for funds: Special project support funding was appropriated in 2020 for Park Planning & Development staff to conduct site planning and prepare cost estimates for potential donor funded projects, enabling donors to move forward with fundraising efforts. To date, multiple projects have been completed utilizing this funding source, including Veteran's Plaza improvements, Eastside Park improvements, Sugar Beet Park art "The Hand that Feeds", a cyclo-cross training course in Rossborough Park, site planning for a pickleball complex, and a pledge from the mountain bike community to fund a feasibility study for a bike park as part of a GOCO grant.

Reason funds not expensed in 2022: Funding partnerships with potential donors are unpredictable. This funding enables the City to be responsive to potential donors when fundraising opportunities arise. The remaining funds will be used to complete projects currently underway.

Community Development & Neighborhood Services

7) Mediation and Restorative Justice Services - \$4,526

Purpose for funds: These funds were all donations made to support the Mediation and Restorative Justice programs. The programs were founded 22 years ago and provide community-based services to support residents in constructively facing conflict. Community Mediation is used to address all types of conflicts and supports citizens in resolving conflicts collaboratively. Youth (10-22) in our community can be referred to the Restorative Justice programs to take responsibility for, and help repair the harm of, crimes they have committed. Our team of over 50 trained volunteers makes these services free or low-cost and available for our community.

Planned uses for these donated funds include additional training and conferences for staff and volunteers; diversifying the Mediation and RJ volunteer pool; funding the RePay program where youth in the RJ programs who owe victim restitution can do community service to help pay the restitution.

Reason funds not expensed in 2022: In January 2022, two of the 4-person MRJ team left the organization so efforts were focused on maintaining core services, rather than pursuing special projects. New staff was hired in May 2022 and training, onboarding continued throughout much of the rest of the year. It is expected that these funds will be expended in 2023.

Social Sustainability

8) EV Credits - \$238,000

Purpose for funds: These funds address the cost differential between current Colorado Housing and Finance Authority requirements and the updated Building Code requirements for Electric Vehicle (EV) infrastructure for affordable developments. The program provides cost-sharing of these additional infrastructure requirements by providing credits of flat fees calculated per project based on eligible parking spaces.

Reason funds not expensed in 2022: The City did not receive any requests for EV infrastructure credits from qualifying projects in 2022. The parking standards in the Building Code that will be in place starting 2023 will allow all affordable housing projects to qualify for this credit. Staff expects the first request for a credit to be submitted Q1 2023.

Natural Areas

9) West Nile Virus - \$8,748

Purpose for funds: The West Nile Virus Program provides proactive mosquito management and seeks to reduce the risk of human contraction of West Nile Virus. The majority of the monies fund two contracts: (1) a contract with Vector Disease Control International providing mosquito larvae control and mosquito trapping, and (2) a contract with Colorado State University providing for testing West Nile Virus presence. The remaining funds provide for community education through various forms of advertisement and outreach.

Reason funds not expensed in 2022: During the budget process of 2023-2024 full funding for the WNV Program was not restored, yet looking ahead, it became clear that the inflation-related contract costs for the fundamental, contracted elements of the program would significantly exceed the budgeted increase for 2023 and 2024. To plan for this short-fall, remaining outreach funds (approximately \$5000) were coupled with unanticipated reimbursement money from the Town of Berthoud (approximately \$3000) not spent with the intention to carry them over to address the 8% increase in contractor costs. Without carrying these funds forward, the contracted elements of the program are likely to exceed the total program budget by roughly \$2000.

TRANSIT FUND**Transfort/Dial-A-Ride****10) Poudre School District (PSD) & Transfort Collaboration Study - \$55,750**

Purpose for funds: This funding allows for a study to determine areas of better collaboration for student transportation between Transfort and Poudre School District (PSD).

Reason funds not expensed in 2022: Staffing issues, contractor availability, as well as purchasing department capacity led to delays for this project until late November 2022. Staff currently has all of the work in place to sign a contract and begin work as soon as 2023 funding is confirmed. Multiple staff will be actively monitoring and guiding this work in 2023.

TRANSPORTATION FUND**Traffic****11) Neighborhood Traffic Mitigation Program Project Construction - \$100,000**

Purpose for funds: Traffic in neighborhoods can affect the quality of life for residents, bicycles, pedestrians and drivers. The Neighborhood Traffic Mitigation Program is a collaborative effort between neighborhoods and City staff to implement traffic calming options. In 2022, Traffic received \$130,000 additional funding for medians and/or pedestrian refuge islands, sidewalk curb extensions and traffic diverters in order to achieve a more "complete streets" approach to traffic calming. The offer included funding for professional (consulting) services and funding for the construction of traffic mitigation devices on neighborhood streets. Traffic is requesting \$100,000 to be re-appropriated from the 2022 budget to construct these mitigation improvements.

Reason funds not expensed in 2022: In 2022, evaluation of locations and public outreach was completed. Due to staffing changes and consultant availability, design of the mitigation improvements for Whedbee and Oak was not started until fall. Survey and design will be completed in the Spring of 2023 and the construction will start in the summer/fall.

WATER FUND**Utility Water Resources Division****12) Northern Integrated Supply Project (NISP) Response & Engagement - \$52,500**

Purpose for funds: Since 2008, the City has developed and contributed science-based input to the various planning stages of the Northern Integrated Supply Project (NISP) project with the goal of minimizing adverse impacts on the Poudre River and the Fort Collins community. The City's efforts have resulted in positive changes to this project which are reflected in the NISP operations and mitigation plan. Funding from this 2022 offer is intended to provide technical consulting and engineering support to inform the City's engagement in future NISP planning efforts. Specifically, City staff will engage in NISP adaptive management and master planning stakeholder processes; however, additional technical and consulting support will be needed to achieve the desired outcomes. Funds from this offer would support: 1) water resources engineering and analysis to advise the NISP flow operations and ensure the proposed flow mitigation program is realized; 2) advisement for the development of NISP's proposed Master Plan and Adaptive Management Program; and 3) additional discipline-specific representation on technical advisory groups and input for project infrastructure proposed within the City limits.

Reason funds not expensed in 2022: The NISP project Record of Decision (ROD) was not issued until

late 2022, which was later than NISP project participants anticipated. Because of this permitting delay and because staff at Northern Water were heavily involved in post-fire recovery from the 2020 East Troublesome Fire, Northern Water elected to postpone the Adaptive Management and River Master Planning discussions with stakeholders until after the ROD was released. Northern Water initiated conversations with potential project stakeholders, including City of Fort Collins, about the intended start of these planning efforts in early 2023. Funds from this budget offer will be used for the original intended purpose of developing science-based input with the assistance from technical and engineering consultants, on how the NISP project impacts should be managed, mitigated and monitored.

BROADBAND FUND

Broadband

13) Re-Deploy of Broadband Working Capital - \$4,361,774

Purpose for funds: Offer 63.1 encompassed the ramp up of Connexion core operations as the network build out was expected to be essentially complete by year-end 2022, and customer acquisition, servicing and network maintenance approached full targeted operating levels. This offer was for all 2022 ongoing expenditures which include personnel, operating costs, cost of goods sold (primarily internet and video content) and debt servicing requirements. This request seeks to reappropriate \$4.4 million in unspent 2022 funds into 2023 for completion of the primary network buildout, access to customer premises and continued customer installations.

Reason funds not expensed in 2022: Construction of the network, accessing commercial and residential multiple dwelling unit (MDU) accounts, and ramp-up of customer base has taken longer than expected due to supply chain cost increases, build-out complexity and installation labor shortage issues. These conditions have required appropriation of additional capital expenditures for the project by City Council in September 2021 and April 2022 totaling \$28 million. An additional \$5.4 million in unanticipated working capital savings (primarily from operating cost containment and interest income from the original bond proceeds) was reserved and targeted for re-deployment as part of the updated financing efforts. \$1.0 million of this amount was spent in 2022 on network buildout. This request seeks to reappropriate the remaining \$4.4 million from the \$5.4 million re-deployed amount to meet the increased capital requirements. This does not represent an increase in the capital budget estimate, just the formal transfer of reserved funds.

DATA AND COMMUNICATIONS FUND

Information Technology

14) Staff Augmentation for Network and Voice Operational Support - \$86,000

Purpose for funds: This request will fund additional hardware support and staff augmentation for Network and Voice support that will assist with the Webex rollout, voice enterprise support, Police Wi-Fi upgrades, and other enterprise network tasks and demands. These funds will allow the Information Technology (IT) department to contract with an experienced vendor to help manage operational and project workload. This will also allow time for IT to hire new Network/Voice personnel and get them up to speed, while not losing traction on enterprise support needs, project rollouts, and maintaining a proper work-life balance with an already overextended Network staff.

Reason funds not expensed in 2022: These funds were not expensed due to workload capacity, vacant positions, and expertise issues in the midst of the transition of Network and Voice operations between Connexion and the IT department that occurred in mid-2022. Upon transferring ownership of the Network and Voice operations, IT began evaluation of the current status of the operation and prioritized what needed most attention, which was delayed lifecycle switch replacement, ARPA-funded initiatives, and voice strategy which pushed the aforementioned initiatives and operational tasks to late 2022 and into 2023. IT has evaluated, rescope, and is currently posting the vacant Network positions to better address the needs of the City's Network and Voice systems to keep up with service needs, project demands, upgrades, and expansion.

UTILITY CUSTOMER SERVICE AND ADMINISTRATION FUND

Utility Technology and Customer Service

15) Utilities Information Technology Minor Capital - \$170,848

Purpose for funds: The funds are requested for replacement of departmental firewalls for 1) the Customer Information System (CIS) Utility billing system hosted onsite at Platte River Power Authority (PRPA) and 2) the Utilities Advanced Meter Fort Collins (AMFC) system. The firewalls are currently end-of-life, and thus end-of-support, and need to be replaced.

Reason funds not expensed in 2022: The downside to the departmental firewalls is that they are discrete stand-alone installations built as a pair for redundancy. The number of these types of discrete firewall installs across the City creates a large management burden, as well as a large and potentially inefficient use of funds. IT was exploring a new concept in which these disparate firewalls could be combined into a single on-premise redundant virtual environment with the expectation that the new environment would be easier to manage, provide better redundancy, and ultimately be a more cost-effective solution. However, due to other work priorities, the research and analysis into this proposal was not able to be completed in 2022. The research into this new firewall architecture should be completed in 2023, and the funds for these firewalls could be applied towards this new firewall architecture. If the new firewall architecture proves to be unfeasible, the funds would still need to be applied to the purchase of discrete firewalls.

CITY FINANCIAL IMPACTS

This Ordinance increases 2023 appropriations by \$5,429,626. A total of \$602,754 is requested for reappropriation from the General Fund, \$4,361,774 is requested from the Broadband Fund, and \$465,098 from other funds. Reappropriation requests represent amounts budgeted in 2022 that could not be encumbered at year-end. The appropriations are from prior year reserves.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

City staff presented this reappropriation to the Council Finance Committee on March 2, 2023, and it was met with approval by the Committee.

PUBLIC OUTREACH

N/A

ATTACHMENTS

- 1. Ordinance for Consideration

ORDINANCE NO. 041, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
REAPPROPRIATING FUNDS PREVIOUSLY APPROPRIATED
IN 2022 BUT NOT EXPENDED AND NOT ENCUMBERED IN 2022

WHEREAS, City Council authorized expenditures in 2022 for various purposes in the General Fund, the Transit Fund, the Transportation Fund, the Water Fund, the Broadband Fund, the Data and Communications Fund, and the Utility Customer Service and Administration Fund, portions of which were not spent or encumbered in 2022; and

WHEREAS, Article V, Section 11 of the City Charter provides that all appropriations unexpended or unencumbered at the end of the fiscal year lapse to the applicable general or special fund, unless it is an appropriation for capital projects or for federal, state, or private grants or donations that has been previously designated by City Council as a non-lapsing appropriation; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon the recommendation of the City Manager, to make supplemental appropriations by ordinance at any time during the fiscal year of such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated; and

WHEREAS, the City Manager has recommended the appropriation described herein and has determined that the amounts to be appropriated as described herein are available and currently unappropriated and will not cause the total amount appropriated in the Funds as described herein to exceed the current estimate of actual and anticipated revenues and all other funds to be received in those Funds during this fiscal year; and

WHEREAS, it is in the best interests of the City and its residents to re-appropriate funds for the expenditures below, in furtherance of these expenditures and their respective public purposes authorized in 2022 for which such appropriated funds were not expended and not encumbered during 2022.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from prior year reserves in the General Fund the sum of SIX HUNDRED TWO THOUSAND SEVEN HUNDRED FIFTY-FOUR DOLLARS (\$602,754) to be expended in the General Fund for the following purposes:

K9 Vests	\$3,520
NCRCN (Northern Colorado Regional Communication Network)	\$300,000
Council High Performing Board	\$18,295
DEI Principles of Community	\$8,000
Land Acknowledgment Funding	\$16,065

Park Planning & Development Special Project Support	\$5,600
Mediation and Restorative Justice Services	\$4,526
EV Credits	\$238,000
West Nile Virus	\$8,748
GENERAL FUND TOTAL	\$602,754

Section 3. That there is hereby appropriated from prior year reserves in the Transit Fund the sum of FIFTY-FIVE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$55,750) to be expended in the Transit Fund for the following purpose:

PSD & Transfort Collaboration Study	\$55,750
TRANSIT FUND TOTAL	\$55,750

Section 4. That there is hereby appropriated from prior year reserves in the Transportation Fund the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000) to be expended in the Transportation Fund for the following purpose:

Neighborhood Traffic Mitigation Program Project Construction	\$100,000
TRANSPORTATION FUND TOTAL	\$100,000

Section 5. That there is hereby appropriated from prior year reserves in the Water Fund the sum of FIFTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$52,500) to be expended in the Water Fund for the following purpose:

Northern Integrated Supply Project (NISP) Response & Engagement	\$52,500
WATER FUND TOTAL	\$52,500

Section 6. That there is hereby appropriated from prior year reserves in the Broadband Fund the sum of FOUR MILLION THREE HUNDRED SIXTY-ONE THOUSAND SEVEN HUNDRED SEVENTY-FOUR DOLLARS (\$4,361,774) to be expended in the Broadband Fund for the following purpose:

Re-Deploy of Broadband Working Capital	\$4,361,774
BROADBAND FUND TOTAL	\$4,361,774

Section 7. That there is hereby appropriated from prior year reserves in the Data and Communications Fund the sum of EIGHTY-SIX THOUSAND DOLLARS (\$86,000) to be expended in the Data and Communications Fund for the following purpose:

Staff Augmentation for Network and Voice Operational Support	\$86,000
DATA & COMMUNICATIONS FUND TOTAL	\$86,000

Section 8. That there is hereby appropriated from prior year reserves in Utility Customer Service and Administration Fund the sum of ONE HUNDRED SEVENTY THOUSAND EIGHT HUNDRED FORTY-EIGHT DOLLARS (\$170,848) to be expended in the Utility Customer Service and Administration Fund for the following purpose:

Utilities IT Minor Cap	\$170,848
605 – UTILITY CUSTOMER SERVICE AND ADMINISTRATION	<u>\$170,848</u>

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

AGENDA ITEM SUMMARY

City Council



STAFF

Paul Sizemore, Director, Community Development & Neighborhood Services
Kai Klear, City Planner
Brad Yatabe, Legal

SUBJECT

Resolution 2023-026 Adopting Findings of Fact in Support of the City Council's Decision on Appeal to Uphold the Planning and Zoning Commission Approval with Conditions of the Castle Ridge Group Home.

EXECUTIVE SUMMARY

The purpose of this item is to make findings of fact and conclusions regarding City Council's decision at the March 7, 2023, appeal hearing to uphold the Planning & Zoning Commission decision to conditionally approve the Castle Ridge Group Home Final Development Plan.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

On December 15, 2022, the Planning and Zoning Commission considered an application for Castle Ridge Group Home Project Development Plan/Final Development Plan #FDP220013. The Commission approved the Project Development Plan/Final Development Plan with two conditions, the first condition to limit the hours for deliveries between 8:00 am and 6:00 pm Monday through Saturday and the second to require the project to designate a neighborhood point of contact who can be contacted 24/7 should any unforeseen issues arise. Two Notices of Appeal were filed, the first on December 21, 2022, and second on December 28, 2022, alleging that the Planning and Zoning Commission failed to properly interpret and apply relevant provisions of the Land Use Code and failed to conduct a fair hearing.

On March 7, 2023, Council considered the consolidated appeal allegations, the record on appeal and information presented at the hearing, and testimony from parties in interest and their representatives. After discussing the appeal allegations, Council denied both appeals and upheld the Planning and Zoning Commission decision, finding that the Planning and Zoning Commission did conduct a fair hearing and properly interpreted all applicable sections of the City's Land Use Code.

CITY FINANCIAL IMPACTS

N/A

Item 12.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

N/A

PUBLIC OUTREACH

N/A

ATTACHMENTS

1. Resolution for Consideration

RESOLUTION 2023-026
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ADOPTING FINDINGS OF FACT IN SUPPORT OF THE CITY COUNCIL’S DECISION ON
APPEAL TO UPHOLD THE PLANNING AND ZONING COMMISSION APPROVAL WITH
CONDITIONS OF THE CASTLE RIDGE GROUP HOME

WHEREAS, on December 15, 2022, the Planning and Zoning Commission (“P&Z”) approved with conditions the Castle Ridge Group Home Project Development Plan/Final Plan FDP220013 (“Castle Ridge Group Home”); and

WHEREAS, on December 21, 2022, Steve Sunderman filed a notice of appeal (“Sunderman Appeal”) asserting that P&Z failed to conduct a fair hearing because:

- (a) P&Z exceeded its authority or jurisdiction as contained in the Code or Charter
 - (b) P&Z substantially ignored its previously established rules of procedure;
 - (c) P&Z considered evidence relevant to its findings that was substantially false or grossly misleading; P&Z improperly failed to receive all relevant evidence offered by the appellant; and
 - (d) P&Z was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the decision maker’s independence of judgment
- ; and

WHEREAS, the Sunderman Appeal also asserted that P&Z failed to properly interpret and apply Fort Collins Land Use Code Sections 1.2.2, 1.2.5, and 1.3.4; and

WHEREAS, on December 28, 2022, Kurt Johnson and ten other people filed a notice of appeal (“Johnson Appeal”) asserting that P&Z failed to properly interpret and apply Fort Collins Land Use Code Section 3.5.1(J); and

WHEREAS, the people who filed the Sunderman Appeal and the Johnson Appeal qualify as parties-in-interest with standing to file a notice of appeal and the notices of appeal were timely filed; and

WHEREAS, on March 7, 2023, the City Council, after notice given in accordance with City Code Section 2-52, held a public hearing (“Hearing”) pursuant to City Code Section 2-54 to consider the consolidated allegations raised in the Sunderman Appeal and the Johnson Appeal; and

WHEREAS, at the Hearing the City Council considered the record on appeal; statements concerning physical characteristics of the subject property made by Councilmembers Peel and Gutowsky during the site inspection; testimony from City staff; statements and arguments by Steve Sunderman in support of the Sunderman Appeal; statements and arguments by Kurt Johnson, Tracy Stefanon, and legal counsel for Kurt Johnson, Harmon Zuckerman, in support of the Johnson Appeal; statements and argument by Barbara Suhrstedt, an additional party-in-interest in support of the Johnson Appeal but who did not sign the Johnson Appeal; and statements and arguments by

Michelle Pinkowski, legal counsel for the applicants for the Castle Ridge Group Home in opposition to the notices of appeal; and

WHEREAS, after discussion, the City Council found and concluded based on the evidence in the record and presentations made at the Hearing, that the fair hearing issues raised in the Sunderman Appeal were not established with competent evidence in the record by Steve Sunderman and, therefore, P&Z did not fail to conduct a fair hearing; and

WHEREAS, after discussion, City Council found and concluded based on the evidence in the record and presentations made at the Hearing, that the failure to properly interpret and apply the issue raised in the Sunderman Appeal regarding Land Use Code Section 1.3.4 was without merit because it was applicable to the Castle Ridge Group Home; and

WHEREAS, after discussion, City Council found and concluded based on the evidence in the record and presentations made at the Hearing, that the failure to properly interpret and apply issues raised in the Sunderman Appeal regarding Land Use Code Sections 1.2.2 and 1.2.5 were not established with competent evidence in the record by Steve Sunderman and, therefore, P&Z did not fail to properly interpret and apply Land Use Code Sections 1.2.2 and 1.2.5; and

WHEREAS, after discussion, City Council found and concluded based on the evidence in the record and presentations made at the Hearing, that the failure to properly interpret and apply the issue raised in the Johnson Appeal regarding Land Use Code Section 3.5.1(J) was not established with competent evidence in the record by Kurt Johnson, his attorney, or the other parties-in-interest in support of the Johnson Appeal and, therefore, P&Z did not fail to properly interpret and apply the Land Use Code Section 3.5.1(J); and

WHEREAS, City Code Section 2-56(c) provides that no later than the date of its next regular meeting after the hearing of an appeal, City Council shall adopt, by resolution, findings of fact in support of its decision on such appeal.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that, pursuant to Section 2-56(c) of the City Code, the City Council hereby makes and adopts the following findings of fact and conclusions:

1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.
2. That the allegations set forth in the Sunderman Appeal that P&Z failed to conduct a fair hearing and failed to properly interpret and apply the Land Use Code are without merit and the Sunderman Appeal is dismissed in its entirety.
3. That the allegation set forth in the Johnson Appeal that P&Z failed to properly interpret and apply the Land Use Code is without merit and the Johnson Appeal is dismissed in its entirety.

4. That the December 15, 2022, P&Z decision approving the Castle Ridge Group Home with conditions is hereby upheld.
5. That adoption of this Resolution shall constitute the final action of the City Council in accordance with City Code Section 2-56(c).

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of March, 2023.

Mayor

ATTEST:

City Clerk

AGENDA ITEM SUMMARY

City Council



STAFF

Blaine Dunn, Accounting Director
 Chad Crager, Broadband Executive Director
 John Duval, Legal

SUBJECT

Resolution 2023-027 Expressing the Official Intent of the City to be Reimbursed for Expenditures Relating to the Construction of Improvements to the City's Broadband System Through the Issuance of Bonds.

EXECUTIVE SUMMARY

The purpose of this item is to declare the City's official intent to reimburse itself for the capital costs it has incurred or will incur for Connexion with the proceeds it will receive from the future issuance of bonds to further fund Connexion capital costs.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

Both Light and Power and Connexion anticipate needing to borrow money through bond offerings in 2023. The projects for Light and Power and Connexion each have different timelines, so it is expected expenditures for Connexion will occur before the issuance of additional bonds, and exhaust currently available funds. Reimbursement of expenditures with bond proceeds is allowed for soft costs. However, in order to reimburse expenditures incurred for capital costs, an official declaration by Council must be made.

The maximum aggregate principal amount of future bonds issued for Connexion cannot exceed \$20,365,000 as provided in City Charter Article XII, Section 7(b).

Also, in order for the City to be able to use the proceeds from the issuance to reimburse Connexion for any capital expenditures prior to the bond issuance, and at the same time maintain the tax-exempt status of the bonds, the Internal Revenue Service (Treasury Regulation 26 C.F.R. §1.150-2) requires the City Council adopt this Resolution. This Resolution represents the City's declared official intent to reimburse the applicable City funds for such expenditures with the proceeds from the issuance of the bonds.

The declaration of official intent through the Resolution complies with federal regulations. It also provides more flexibility to the City so it can better manage the capital expenditures related to the Projects. With this Resolution, the City can make the capital expenditure prior to issuing the bonds and later reimburse the applicable City fund with the proceeds from the issuance of the bonds.

CITY FINANCIAL IMPACTS

The declaration of this official intent through the Resolution complies with federal regulations. It also provides more flexibility to the City so it can better manage the capital expenditures related to Connexion.

Staff presented updated financial projections for Connexion at the January 10, 2023, Work Session. In that meeting, the capital project estimate was updated, reflecting a need to access approximately \$16 million additional capital to complete the network build-out and customer ramp-up by the end of 2024. An additional \$3 – \$5 million for excess operating expenses was also estimated to be needed.

These estimates remain unchanged. The table below highlights the original Business Plan capital assumptions, approved spending updates, project spending to date and the current project estimate.

Description	Business Plan and Approved Updates	01/31/2023 LTD Spent	Current Project Estimate thru Dec 2024
Network (Primarily AEG)	\$84M	\$107M	\$110M
Installation (On Trac, boring)	\$13M	\$17M	\$36M
Equipment & All Other	<u>\$12M</u>	<u>\$18M</u>	<u>\$12M</u>
Subtotal Business Plan	\$109M		
Contingency & Re-deploy – Sept. 2021	\$13M		
L&P Reserves Appropriated – Apr. 2022	<u>\$20M</u>		
Total Capital Budget/Estimate	\$142M	\$136M	\$158M

Connexion’s maximum funding need is expected by December 2024, with 2025 expected to be breakeven before the generation of excess cashflows that will be able to service the L&P reserve usage payback plus new bonding commitments. To date, Connexion has issued \$129.6 million of the \$150 million voter approved amount to support Connexion’s build. This leaves over \$20 million available for additional funding needs.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

This topic was presented to Council Finance Committee on March 2, 2023, and the Committee supported this Resolution coming forward to the full Council.

PUBLIC OUTREACH

N/A

ATTACHMENTS

1. Resolution for Consideration
2. Presentation

RESOLUTION 2023-027
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS
EXPRESSING THE OFFICIAL INTENT OF THE CITY TO BE REIMBURSED FOR
EXPENDITURES RELATING TO THE CONSTRUCTION OF IMPROVEMENTS TO THE
CITY’S BROADBAND SYSTEM THROUGH THE ISSUANCE OF BONDS

WHEREAS, the City of Fort Collins, Colorado (the “City”) has incurred, and expects to incur after the date of this Resolution, costs for capital expenditures incurred in connection with funding the construction of improvements to the City’s broadband system providing telecommunication facilities and services to customers through Fort Collins Connexion (the “Project”); and

WHEREAS, the City intends to reimburse itself for such expenditures made to fund the Project with the proceeds derived from the issuance of bonds; and

WHEREAS, the maximum aggregate principal amount of the bonds issued for the Project is expected not to exceed \$20,365,000 (the “Bonds”).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT COLLINS, COLORADO, AS FOLLOWS:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

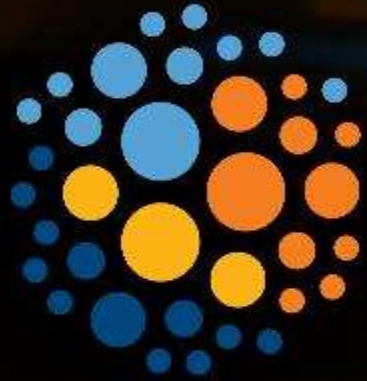
Section 2. That this Resolution declares the City’s “official intent,” within the meaning of Treasury Regulation 26 C.F.R. §1.150-2, to reimburse itself with the proceeds from the issuance of the Bonds for its expenditures to fund the Project made before issuing the Bonds.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of March, 2023.

Mayor

ATTEST:

City Clerk



FORT COLLINS
CONNEXION



Connexion - Capital Management

March 21, 2023

1. Timing of Funding Need
2. Resolution for Council
3. Questions

- At the January 10, 2023, Council Work Session, the need was identified for additional funding to complete the network buildout and customer ramp-up.
 - This outlook remains the same.
 - Approximately \$20 million additional funding is needed:
 - \$16 million for capital
 - \$4 million for operations
- December 2024 is timeframe for maximum need with 2025 projected as breakeven (revenues covering capital, operating expenses and debt payments).
 - Connexion will definitively exhaust the existing L&P reserve usage appropriation of \$20 million by June 2023 (and could be as early as April).
 - Timing of the Connexion needs prompts desire to act to preserve maximum flexibility with potential bond proceeds.

Description	Existing Connexion Bonds
Amount Issued	\$129.6 M *
Maturity - Year	2042
Payments	Semi-Annual in June and December
Rate / Yield-to-Maturity	4.1%
Avg. Annual Debt Service	\$6.7M
Max Annual Debt Service	\$10.2M
Earliest call date (Series A only: \$84.9M)	6/1/2028

*Current amount outstanding is \$128.4 M

- Connexion knows there will be an additional need for capital in the future
 - Current estimate is ~\$20M
- Light and Power will also need to issue debt later this year
 - Current estimate is ~\$40M
- Issuing Connexion and Light and Power debt at the same time is advantageous
 - Allows for cost of issuance savings
 - Larger issuance is more attractive in the market
 - Cuts down on recreating multiple documents for separate issuance

- Connexion will go negative before we are able to issue new debt
 - Connexion and Light and Power have different timelines for their needs
- Connexion can use debt proceeds to reimburse soft costs
- Adoption of resolution allows Connexion to also use proceeds to reimburse capital costs
 - Resolution declares official intent of the City to use proceeds for reimbursement
 - Allows Connexion to look back 60 days from adoption for reimbursement
 - Any capital costs after adoption can be reimbursed
 - Allows City to maintain tax exempt status on the issuance of bonds

Date*	Activity
Mar 21	Reimbursement Resolution to Council
Jun 1	Review bond ordinance with Council Finance Committee
Jun 20	First reading of bond ordinance
Jul 18	Second reading of bond ordinance
Aug 9 -11	Finalize ratings with Agencies
Aug 22	Receive ratings
Sep 8	Post POS
Sep 19	Sales of bonds
Sep 19	First reading of appropriation of bond proceeds
Oct 2	Receive funds from sale
Oct 3	Second reading of appropriation of bond proceeds

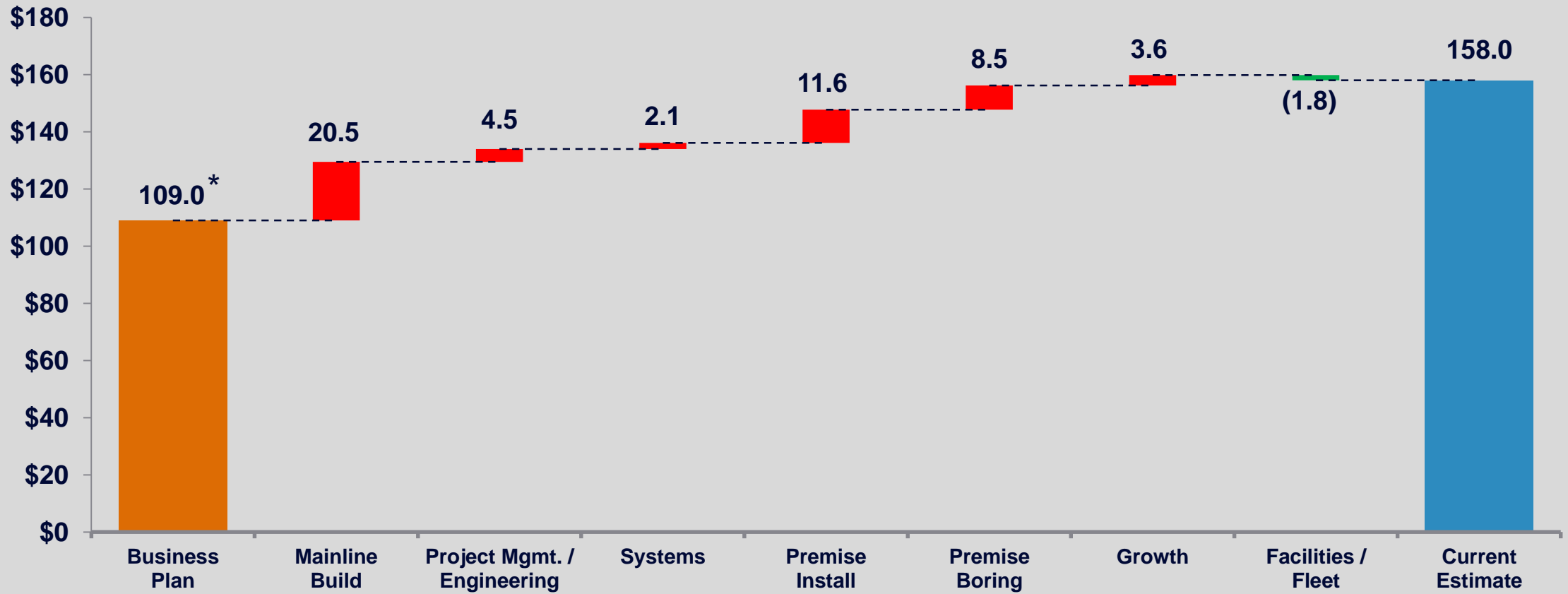
QUESTIONS?



Appendix

Business Plan vs. Current Project Estimates

Connexion Capital Project - \$M



* Does not include an additional \$18 million of contingency

Connexion - as of January 31, 2023 (\$M) - Preliminary, Unaudited

Inflows:		Outflows:	
Bond Proceeds	\$ 142.2	Debt/Interest Pymts	\$ (27.3)
L&P Reserve Draw	\$ 17.2		
Operating Revenue	\$ 20.5	Cost of Sales	\$ (2.9)
Interest	<u>\$ 6.9</u>	Operating Expenses	<u>\$ (19.0)</u>
Total Revenue	<u>\$ 27.4</u>	Total Expense	\$ (21.9)
		Capital Project	<u>\$ (136.3)</u>
Total Inflows	<u>\$ 186.8</u>	Total Outflows	<u>\$ (185.5)</u>

Description	Business Plan and Approved Updates	01/31/2023 LTD Spent	Current Project Estimate thru Dec 2024
Network (Primarily AEG)	\$84M	\$107M	\$110M
Installation (On Trac, boring)	\$13M	\$17M	\$36M
Equipment & All Other	<u>\$12M</u>	<u>\$18M</u>	<u>\$12M</u>
Subtotal Business Plan	\$109M		
Contingency & Re-deploy – Sept. 2021	\$13M		
L&P Reserves Appropriated – Apr. 2022	<u>\$20M</u>		
Total Capital Budget/Estimate	\$142M	\$136M	\$158M

2023/2024 Inflows / Outflows	Total *
Revenue	\$43.6 M
Reserve Draws plus New Bonds	<u>\$22.8 M</u>
Total Inflows	\$66.4 M
OPEX / Cost of Goods Sold	(\$22.3 M)
Debt Service – Existing Bonds	(\$18.8 M)
Debt Related - Draws & New Bonds	(\$2.6 M)
Capital Expenditure	<u>(\$21.3 M)</u>
Total Outflows	(\$64.9 M)
Net Surplus	\$1.5 M

* For 23 months February 2023 – December 2024



AGENDA ITEM SUMMARY

City Council

STAFF

Blaine Dunn, Accounting Director
Beth Yonce, Social Sustainability Director
Carrie Daggett, City Attorney

SUBJECT

Resolution 2023-028 Approving Participation in the Settlements with Five Additional Opioid Defendants and Related Waivers of Claim.

EXECUTIVE SUMMARY

The purpose of this item is to seek approval of a Resolution to allow the City to participate in the Colorado Opioids Settlement by granting approval to sign additional waivers of claims for opioid-related damages.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

Through extensive negotiations, local governments and the Colorado Attorney General's Office negotiated a Memorandum of Understanding ("MOU") to govern how opioid settlement funds will be allocated in Colorado, to maximize recovery from the variety of lawsuits filed by the state and local governments across the nation along with the Subdivision Settlement Participation Forms.

On December 7, 2021, the City Council approved Resolution 2021-113, approving participation in the Colorado Opioids Settlement and authorizing execution of related agreements.

On May 3, 2022, the City Council approved Resolution 2022-055, authorizing the execution of an intergovernmental agreement "IGA" regarding regional opioid settlement implementation and designating a City representative to the Larimer Regional Opioid Council.

Additional settlements by the State of Colorado and participating local governments have been negotiated with opioid defendants Teva, Allergan, Walmart, CVS and Walgreens, and the City may participate in these settlements and receive settlement payments by executing the Participation Form with each settling defendant, including an associated waiver of claims. The City desires to participate in these additional settlements to increase recoveries across Colorado governments.

CITY FINANCIAL IMPACTS

By approving the settlements from the additional five companies, the Larimer County region stands to receive up to \$11 million over the next 11 years. The City will have to wait to see what other communities participate to understand the full amount received.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

N/A

PUBLIC OUTREACH

N/A

ATTACHMENTS

- 1. Resolution for Consideration
- 2. Resolution Exhibit A
- 3. Resolution Exhibit B
- 4. Resolution Exhibit C
- 5. Resolution Exhibit D
- 6. Resolution Exhibit E

RESOLUTION 2023- 028
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING PARTICIPATION IN THE SETTLEMENTS
WITH FIVE ADDITIONAL OPIOID DEFENDANTS
AND RELATED WAIVERS OF CLAIMS

WHEREAS, communities throughout the State of Colorado, including the City of Fort Collins (“City), are suffering from an epidemic of opioid addiction; and

WHEREAS, the opioid epidemic has not only affected individuals and families across the country, but it has also burdened the local and state governments charged with providing the services needed to address the wave of addiction; and

WHEREAS, local and state governments across the nation, including in Colorado, have filed lawsuits against opioid manufacturers, distributors, and pharmacies for creating the opioid epidemic; and

WHEREAS, the parties to the various opioid lawsuits have been negotiating settlement agreements to resolve the litigation which include incentive payments for maximizing participation by local governments; and

WHEREAS, through extensive negotiations, local governments and the Colorado Attorney General’s Office negotiated a Memorandum of Understanding to govern how opioids settlement funds will be allocated in Colorado, to maximize recovery from the variety of lawsuits filed by the state and local governments across the nation (“MOU”), along with the Subdivision Settlement Participation Forms to address opioid defendants Johnson & Johnson, AmerisourceBergen, Cardinal Health, and McKesson; and

WHEREAS, on December 7, 2021, the City Council approved Resolution 2021-113, approving participation in the Colorado Opioids Settlement and authorizing execution of related agreements, which were signed and submitted to the Colorado Attorney General in December 2021; and

WHEREAS, on May 3, 2022, the City Council approved Resolution 2022-055, authorizing the execution of an intergovernmental agreement regarding regional opioid settlement implementation (“IGA”) and designating a City representative to the Larimer Regional Opioid Council; and

WHEREAS, the City entered into the IGA and it has since been amended to add participation by the Town of Estes Park, pursuant to City Council’s Resolution 2023-011, adopted on January 17, 2023; and

WHEREAS, additional settlements by the State of Colorado and participating local governments have been negotiated with opioid defendants Teva, Allergan, Walmart, CVS and Walgreens, and the City may participate in these settlements and receive settlement payments

by executing the Participation Form with each settling defendant, including an associated waiver of claims; and

WHEREAS, the City desires to participate in the Colorado opioids settlements to increase recoveries for Colorado government entities and so the City is eligible to receive settlement funds to be used for approved purposes to abate the opioid epidemic as defined in the MOU for the benefit of the residents of the City; and

WHEREAS, accordingly, the City Council desires to approve and authorize execution of the five Participation Forms attached to this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby approves the Participation Forms attached hereto as Exhibits A through E, incorporated herein by this reference.

Section 3. That the Mayor is hereby authorized and directed to execute on behalf of the City the attached Participation Forms.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of March, 2023.

Mayor

ATTEST:

City Clerk

Attachment A: Teva Settlement Participation Form

Exhibit K
Subdivision and Special District Settlement Participation Form

Governmental Entity:	State:
Authorized Signatory:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above (“*Governmental Entity*”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Agreement dated November 22, 2022 (“*Teva Settlement*”), and acting through the undersigned authorized official, hereby elects to participate in the Teva Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Teva Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Teva Settlement as provided therein.
2. Following the execution of this Settlement Participation Form, the Governmental Entity shall comply with Section III.B of the Teva Settlement regarding Cessation of Litigation Activities.
3. The Governmental Entity shall, within 14 days of the Reference Date and prior to the filing of the Consent Judgment, file a request to dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in In re National Prescription Opiate Litigation, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs’ Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal With Prejudice substantially in the form found at <https://nationalopioidsettlement.com>.
4. The Governmental Entity agrees to the terms of the Teva Settlement pertaining to Subdivisions as defined therein.
5. By agreeing to the terms of the Teva Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
6. The Governmental Entity agrees to use any monies it receives through the Teva Settlement solely for the purposes provided therein.
7. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity’s state where the Consent Judgment is filed for purposes limited to that court’s role as provided in, and for resolving disputes to the extent provided in, the Teva Settlement.



8. The Governmental Entity has the right to enforce the Teva Settlement as provided therein.
9. The Governmental Entity, as a Participating Subdivision or Participating Special District, hereby becomes a Releasor for all purposes in the Teva Settlement, including but not limited to all provisions of Section V (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Teva Settlement are intended by Released Entities and the Governmental Entity to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Teva Settlement shall be a complete bar to any Released Claim.
10. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision or Participating Special District as set forth in the Teva Settlement.
11. In connection with the releases provided for in the Teva Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Teva Settlement.

12. Nothing herein is intended to modify in any way the terms of the Teva Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Teva Settlement in any respect, the Teva Settlement controls.



I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____



EXHIBIT K
Subdivision and Special District Settlement Participation Form

Governmental Entity:	State:
Authorized Signatory:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above (“*Governmental Entity*”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Agreement dated November 22, 2022 (“*Allergan Settlement*”), and acting through the undersigned authorized official, hereby elects to participate in the Allergan Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Allergan Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Allergan Settlement as provided therein.
2. Following the execution of this Settlement Participation Form, the Governmental Entity shall comply with Section III.B of the Allergan Settlement regarding Cessation of Litigation Activities.
3. The Governmental Entity shall, within fourteen (14) days of the Reference Date and prior to the filing of the Consent Judgment, file a request to dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the MDL Plaintiffs’ Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal With Prejudice substantially in the form found at <https://nationalopiodsettlement.com>.
4. The Governmental Entity agrees to the terms of the Allergan Settlement pertaining to Subdivisions and Special Districts as defined therein.
5. By agreeing to the terms of the Allergan Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
6. The Governmental Entity agrees to use any monies it receives through the Allergan Settlement solely for the purposes provided therein.



7. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Allergan Settlement.
8. The Governmental Entity has the right to enforce the Allergan Settlement as provided therein.
9. The Governmental Entity, as a Participating Subdivision or Participating Special District, hereby becomes a Releasor for all purposes in the Allergan Settlement, including, but not limited to, all provisions of **Section V (Release)**, and along with all departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity whether elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist in bringing, or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Allergan Settlement are intended to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Allergan Settlement shall be a complete bar to any Released Claim.
10. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision or Participating Special District as set forth in the Allergan Settlement.
11. In connection with the releases provided for in the Allergan Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Allergan Settlement.
12. Nothing herein is intended to modify in any way the terms of the Allergan Settlement, to which the Governmental Entity hereby agrees. To the extent this Settlement Participation Form is interpreted differently from the Allergan Settlement in any respect, the Allergan Settlement controls.



I have all necessary power and authorization to execute this Settlement Participation Form on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____



EXHIBIT K
Subdivision Participation Form

Governmental Entity:	State:
Authorized Official:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above (“Governmental Entity”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated November 14, 2022 (“Walmart Settlement”), and acting through the undersigned authorized official, hereby elects to participate in the Walmart Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Walmart Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Walmart Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall promptly, and in any event within 14 days of the Effective Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in In re National Prescription Opiate Litigation, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs’ Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal With Prejudice substantially in the form found at <https://nationalopiodsettlement.com/>.
3. The Governmental Entity agrees to the terms of the Walmart Settlement pertaining to Subdivisions as defined therein.
4. By agreeing to the terms of the Walmart Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Walmart Settlement solely for the purposes provided therein.



6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Walmart Settlement.
7. The Governmental Entity has the right to enforce the Walmart Settlement as provided therein.
8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Walmart Settlement, including but not limited to all provisions of Section X (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Walmart Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Walmart Settlement shall be a complete bar to any Released Claim.
9. In connection with the releases provided for in the Walmart Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Walmart Settlement.

10. Nothing herein is intended to modify in any way the terms of the Walmart Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Walmart Settlement in any respect, the Walmart Settlement controls.



I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____



EXHIBIT K

Subdivision Participation and Release Form

Governmental Entity:	State:
Authorized Signatory:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above (“*Governmental Entity*”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated December 9, 2022 (“*CVS Settlement*”), and acting through the undersigned authorized official, hereby elects to participate in the CVS Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the CVS Settlement, understands that all terms in this Participation and Release Form have the meanings defined therein, and agrees that by executing this Participation and Release Form, the Governmental Entity elects to participate in the CVS Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall promptly, and in any event no later than 14 days after the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs’ Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal with Prejudice substantially in the form found at <https://nationalopioidsettlement.com>.
3. The Governmental Entity agrees to the terms of the CVS Settlement pertaining to Participating Subdivisions as defined therein.
4. By agreeing to the terms of the CVS Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the CVS Settlement solely for the purposes provided therein.



6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the CVS Settlement. The Governmental Entity likewise agrees to arbitrate before the National Arbitration Panel as provided in, and for resolving disputes to the extent otherwise provided in, the CVS Settlement.
7. The Governmental Entity has the right to enforce the CVS Settlement as provided therein.
8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the CVS Settlement, including without limitation all provisions of Section XI (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the CVS Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The CVS Settlement shall be a complete bar to any Released Claim.
9. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision as set forth in the CVS Settlement.
10. In connection with the releases provided for in the CVS Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the CVS Settlement.



11. Nothing herein is intended to modify in any way the terms of the CVS Settlement, to which Governmental Entity hereby agrees. To the extent this Participation and Release Form is interpreted differently from the CVS Settlement in any respect, the CVS Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____



EXHIBIT K

Subdivision Participation and Release Form

Governmental Entity:	State:
Authorized Signatory:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above (“*Governmental Entity*”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated December 9, 2022 (“*Walgreens Settlement*”), and acting through the undersigned authorized official, hereby elects to participate in the Walgreens Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Walgreens Settlement, understands that all terms in this Participation and Release Form have the meanings defined therein, and agrees that by executing this Participation and Release Form, the Governmental Entity elects to participate in the Walgreens Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall promptly, and in any event no later than 14 days after the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs’ Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal with Prejudice substantially in the form found at <https://nationalopioidsettlement.com>.
3. The Governmental Entity agrees to the terms of the Walgreens Settlement pertaining to Participating Subdivisions as defined therein.
4. By agreeing to the terms of the Walgreens Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Walgreens Settlement solely for the purposes provided therein.



6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Walgreens Settlement. The Governmental Entity likewise agrees to arbitrate before the National Arbitration Panel as provided in, and for resolving disputes to the extent otherwise provided in, the Walgreens Settlement.
7. The Governmental Entity has the right to enforce the Walgreens Settlement as provided therein.
8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Walgreens Settlement, including without limitation all provisions of Section XI (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Walgreens Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Walgreens Settlement shall be a complete bar to any Released Claim.
9. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision as set forth in the Walgreens Settlement.
10. In connection with the releases provided for in the Walgreens Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Walgreens Settlement.



11. Nothing herein is intended to modify in any way the terms of the Walgreens Settlement, to which Governmental Entity hereby agrees. To the extent this Participation and Release Form is interpreted differently from the Walgreens Settlement in any respect, the Walgreens Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____





AGENDA ITEM SUMMARY

City Council

STAFF

Anissa N. Hollingshead, City Clerk
Ingrid Decker, Legal

SUBJECT

Resolution 2023-029 Ratifying the Reappointment of Matt Schild and the Appointment of Hilary Herrmann and Joshua Fudge to the Poudre River Library District Board of Trustees, and Designating Evelyn Peterson as an Alternate.

EXECUTIVE SUMMARY

The purpose of this item is to fill vacancies on the Poudre River Library District Board of Trustees.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

In November 2006, voters approved the formation of Poudre River Public Library District. The City Council and County Commissioners established the initial seven-member Board of Trustees for the District.

The intergovernmental agreement between the City, County and District sets out the process for appointing Trustees. It provides that a committee comprised of two members of Council and two Commissioners will recommend a candidate for appointment who must be ratified by a two-thirds majority of both the full Council and the Commissioners.

The Committee, comprised of Mayor Pro Tem Emily Francis and Councilmember Julie Pignataro and Larimer County Commissioners John Kefalas and Kristen Stephens, met on March 7, 2023, and agreed to reappoint Trustee Matt Schild and appoint Hilary Herrmann each for four-year terms, and to appoint Joshua Fudge to fill a vacancy created by Joe Wise's resignation from the Board for the remaining one year of Mr. Wise's term. The Committee also interviewed Evelyn Peterson and designated her as an alternate to fill a vacancy on the Board if a trustee should leave the Board unexpectedly before the next recruitment process.

CITY FINANCIAL IMPACTS

None

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None

PUBLIC OUTREACH

None

ATTACHMENTS

1. Resolution for Consideration
2. Applications

RESOLUTION 2023-029
OF THE COUNCIL OF THE CITY OF FORT COLLINS
RATIFYING THE REAPPOINTMENT OF MATT SCHILD AND THE
APPOINTMENT OF HILARY HERRMANN AND JOSHUA FUDGE TO THE
POUDRE RIVER LIBRARY DISTRICT BOARD OF TRUSTEES, AND
DESIGNATING EVELYN PETERSON AS AN ALTERNATE

WHEREAS, on November 7, 2006, the voters approved a citizen initiative to establish and fund the Fort Collins Regional Library District, now called the Poudre River Public Library District (the “Library District”), pursuant to Colorado Revised Statutes Sections 24-90-101 to 606 (the “Library Law”); and

WHEREAS, the Library District is governed by a board of seven trustees appointed by the City Council and Larimer County Commissioners; and

WHEREAS, pursuant to the Library Law, the City Council and Larimer County Commissioners have each appointed two of their members to a committee (the “Committee”) to fill open seats on the board of trustees of the Library District (“Board”); and

WHEREAS, pursuant to the Bylaws of the Board, a trustee may serve no more than two consecutive four-year terms, which are staggered so that typically one or two trustees are appointed or reappointed every year, but any appointment to fill a vacancy with a remaining unexpired term shall be considered a completed term only if the unexpired term exceed 24 full months from the date the trustee takes their oath of office; and

WHEREAS, Matt Schild was first appointed to the Board in late 2017 pursuant to Resolution 2017-105 when a trustee resigned, to complete a term that expired February 28, 2019; and

WHEREAS, in January 2019 the City Council approved Resolution 2019-012 reappointing Mr. Schild for a second, four-year term that expired February 28, 2023; and

WHEREAS, there are three open seats on the Poudre River Library District Board of Trustees, one with one year remaining of a four-year term, and two for a four-year term; and

WHEREAS, because Mr. Schild’s first term was less than 24 months, he is eligible for reappointment for one additional four-year term; and

WHEREAS, Joe Wise recently resigned from the Board, leaving a vacancy for a term that would have expired February 29, 2024; and

WHEREAS, on March 7, 2023, the Committee met and unanimously agreed to reappoint Matt Schild and appoint Hilary Herrmann to serve four-year terms, and to appoint Joshua Fudge to fill the vacancy on the Board left by Joe Wise’s resignation; and

WHEREAS, the Committee also named Evelyn Peterson as the backup candidate approved to fill a vacancy should someone leave the Board unexpectedly before the next recruitment process; and

WHEREAS, Section 24-90-108(2)(c) of the Library Law requires that the Committee's trustee appointments be ratified by a two-thirds majority vote of the legislative body of each governmental unit participating in the District.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That pursuant to the requirements of the Colorado Library Law, the City Council, by a two-thirds majority vote of its members, hereby ratifies the Committee's reappointment of Matt Schild to fill a vacancy with a term beginning on April 10, 2023 and expiring March 8, 2027, the appointment of Hilary Herrmann to fill a vacancy with a term beginning on April 10, 2023 and expiring March 8, 2027, and the appointment of Joshua Fudge to fill the remainder of Joe Wise's term beginning on April 10, 2023 expiring on March 11, 2024, and ratifies the designation of Evelyn Peterson as an alternate should the Board need to fill a vacancy due to a Trustee resigning before the end of their term and prior to the next Board recruitment process; provided, however, that such action is contingent upon the Larimer County Commissioners taking similar action.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of March, 2023.

Mayor

ATTEST:

City Clerk

Joshua Fudge



FORT COLLINS, Colorado 80528

1. Length of residence in Library District service boundary:
7 years, 10 months
2. Current Occupation:
Director of Performance, Budget and Strategy
3. Employer:
Larimer County
4. Why do you want to become a member of the Library District Board of Trustees?
My family and I are avid readers and frequent library customers. I see our community growing significantly both in numbers and diversity and would like to be a part of helping the Library District grow with it effectively.
5. What do you consider to be the most important community needs? How can the Library District help meet these needs?
Connection seems to be the most important need as we all get back to normal from the pandemic. The Library District can help by being a public space and by sharing information.
6. What is your vision for the future of the Library District? What opportunities or challenges exist?
I think the Library District will need to expand with new facilities as the population grows, most likely to the north and to the southeast, but also online. The challenges will be determining new locations and financing improvements. Bricks and mortar are only part of the need - as the community diversifies, the District will to be responsive with new services and service delivery models.
7. Describe any relevant experience that would make you a fit for the Board. This can include, but is not limited to, work / professional experience, volunteer service, previous roles on boards or committees, unique skills or training, and special interests.
I presently work in budgeting a policy analysis for a unit of local government. I am familiar with the district as a customer and through my work, including partnerships with District staff on Tax Increment Financing projects and funding of projects through the American Rescue Plan Act.
8. Are you at least 18 years of age?
Yes

JOSHUA FUDGE



I am an experienced local government manager with 17+ years in budgeting, organizational improvement, and strategic planning.

EXPERIENCE

DECEMBER 2022 TO CURRENT

DIRECTOR OF PERFORMANCE, STRATEGY & BUDGET, LARIMER COUNTY COLORADO

MAY 2025 TO DECEMBER 2022

BUDGET DIRECTOR, LARIMER COUNTY COLORADO

- My role has recently been restructured to add responsibility for strategic planning, data analysis, and performance measurement.
- Responsible for assisting the County Manager and County Board of Supervisors with developing the annual County Budget which includes nearly \$650 million in expenditures and more than 2,000 FTE positions in 30+ budget units across all service areas.
- Manage the use of more than \$69 million in federal funding from the American Rescue Plan Act of 2021, including developing recommendations for funding to the Board of County Commissioners and ensuring compliance with use and reporting requirements. I had the same responsibilities for more than \$19 million in federal funds under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020.
- Led successful restructuring of internal service charges such as facility space rental and indirect overhead allocations to better reflect actual costs and improve budget accountability.
- Managed the overhaul of processes used to prioritize and fund information technology projects.

APRIL 2013 TO MAY 2015

BUDGET DIRECTOR – MILWAUKEE COUNTY WISCONSIN

- Managed an office of 8 budget analysts primarily responsible for assisting the elected County Executive with developing a recommended annual budget that included more than \$1 billion in expenditures and 5,000 FTE positions.
- Led development of a process improvement structure and information technology project governance process

JULY 2005 TO MARCH 2006, APRIL 2009 TO APRIL 2013

BUDGET ANALYST AND FISCAL AND STRATEGIC PLANNING COORDINATOR – MILWAUKEE COUNTY WISCONSIN

- Served as a budget analyst with steadily increasing responsibilities in the areas of public safety, public works, and strategic planning

MAY 2007 TO APRIL 2009

BUDGET MANAGER – MILWAUKEE COUNTY PARKS DEPARTMENT

- Worked with departmental management to develop annual departmental budget requests and to ensure positive year-end results

MARCH 2006 TO MAY 2007

SENIOR FINANCIAL ANALYST – WAUKESHA COUNTY WISCONSIN

- Served as an analyst in the County’s budget department primarily responsible for support services, public works, and economic development service areas

EDUCATION

DECEMBER 2004

MASTER OF PUBLIC ADMINISTRATION, GEORGE MASON UNIVERSITY, FAIRFAX VIRGINIA

- I served as intern with Transportation security administration where I produced an analysis of the impact of airline security fees on airline profitability.

DECEMBER 1998

BACHELOR OF ARTS IN POLITICAL SCIENCE AND INTERNATIONAL RELATIONS, UNIVERSITY OF WISCONSIN-MADISON, MADISON WISCONSIN

SKILLS

- Budgeting
- Organizational Improvement
- Reading!
- Policy Analysis
- Public Presentations

PROFESSIONAL MEMBERSHIPS

- Government Finance Officers Association (GFOA)

Hilary Herrmann

[Redacted]
[Redacted]
[Redacted]

Fort Collins , Colorado 80526

- 1. Length of residence in Library District service boundary:
23 year
- 2. Current Occupation:
Lead Teacher, Education Pathway, Futures Lab
- 3. Employer:
Poudre School District

4. Why do you want to become a member of the Library District Board of Trustees?
I am interested in sharing my time and expertise in a role that serves the larger community of Fort Collins. I want to use my skills and expertise to benefit the Poudre Library District and learn about the ins and outs of our Library District. As an avid reader I have been a fan of public libraries since an early age and I want to play a role in supporting the amazing work that the Library District does for and in our community. I am skilled at collaborating with a diverse set of partners and developing creative solutions to challenges, and this board is an exciting opportunity to use those skills. I've lived in this community since 2000, and every single time I see the posting for new board members I have considered applying.

5. What do you consider to be the most important community needs? How can the Library District help meet these needs?
The library is a keystone organization in our community. It provides services, information, opportunity for connection, entertainment and potentially life changing resources. Although I don't think of myself as an expert in all of the needs of our community, I consider the information that the library provides to our community to be the most important. The potential that the information available at the library has for changing perspectives and opening doors is enormous. Students become Boettcher scholars through the support of the library, people find new jobs, passions and skills everyday through the materials available. Humans make sense of their world through story. As communities grow and change, stories that reflect and expand understanding of how we fit into the world create positive change. Every individual of our community would/could/does benefit from the information and stories available in the library. The library can help meet these needs by continuing the great work that it is already doing and continue to grow and adapt with changing technology. A systematic approach to navigating these changes and ensuring that the whole system is flexible enough to successfully manage

change is key to maintaining content and delivery that will best meet the needs of the community. The Library District needs to be a high functioning organization with effective communication and shared vision for serving community needs. (I am submitting my application here with the mindset of a learner, so I too am approaching this board with flexibility and humility. I realize that the Library District meets multiple community needs that I might not be aware of because of my privilege and limited perspective.)

6. What is your vision for the future of the Library District? What opportunities or challenges exist?

My vision for the Library District would be that it is something that every single person in our community sees themselves in and actively engaged with. The opportunities that technology offers in terms of ease of access are mirrored in terms of challenges. The role of the Library District is multi-faceted and each of those facets comes with opportunities to provide services that benefit all and challenges to make those services accessible to all while maintaining safety and the integrity of the vision of the Library District. I look forward to refining my vision as I learn more as a board member. I also look forward to engaging in the flexible and creative thinking necessary to lead through opportunities and challenges.

7. Describe any relevant experience that would make you a fit for the Board. This can include, but is not limited to, work / professional experience, volunteer service, previous roles on boards or committees, unique skills or training, and special interests.

My early professional background includes experience working at public and college libraries supporting circulation, shelving and children's events. My experience supporting learning at all levels of the Poudre School District means that I have expertise in change management and systems change as well as insight into what students in our community experience and might need. My M.A. in Reading and professional background makes me uniquely situated to understand and advocate for the goals of Library District. My personal passion for social justice means that I bring my lens of equity and service to this board. The most important experience that I bring to this is that I am skilled at learning, listening, and asking questions.

8. Are you at least 18 years of age?

Yes

Evelyn Peterson

[Redacted]
[Redacted]
[Redacted]

Fort Collins, Colorado 80526

- 1. Length of residence in Library District service boundary:

10

- 2. Current Occupation:

Administrative Coordinator

- 3. Employer:

Colorado State University

- 4. Why do you want to become a member of the Library District Board of Trustees?

As a lifelong bookworm, libraries have been a source of invaluable connections to the world beyond my home and classroom. I have memories of returning multiple armloads of books to CSU’s Morgan and Poudre River Libraries in high school after completing research projects. When finishing my undergraduate work, I realized an underlying commitment to engaging with local communities. The opportunity to serve on the Library District Board of Trustees would allow me to participate in efforts on a local level to help support the institutions I so fondly valued as a child and well into adulthood.

- 5. What do you consider to be the most important community needs? How can the Library District help meet these needs?

It’s my belief that Generations X-Z are yearning for community connections. Previous generations had social clubs or groups (bowling groups, book clubs, etc.) to sustain their emotional well-being. Since the explosion of suburbs and technology-based social relationships, there is a deep need to re-engage people of all ages with others. I have attended crafts classes hosted by the Longmont library. Those somewhat ‘old school’ activities ended up being far more important to me as a way to build a social circle. The Library District has a great basis on which to act as a facilitator of social activities. As we continue to see our communities dissipate into their homes and the online world, the physical spaces of libraries that welcome all are critical places of opportunity to bring people together again.

- 6. What is your vision for the future of the Library District? What opportunities or challenges exist?

With my background in financial administration, I concern myself with issues of longevity. Given economic uncertainty, ensuring continued operational financial support and stability would be one of my primary concerns and challenge to address. While the City of Fort Collins certainly boasts ballooning tax base as the

population continues to grow, I would want to ensure that the Library District remains a financial priority for the City. In fact, as the population continues to grow and gentrification becomes a very real risk, the value of libraries becomes increasingly important. Maintaining long-term, universal access to the resources of the library is something we owe all citizens.

7. Describe any relevant experience that would make you a fit for the Board. This can include, but is not limited to, work / professional experience, volunteer service, previous roles on boards or committees, unique skills or training, and special interests.

I have been employed by Colorado State University since 2016. In that time, I've developed an understanding of state funding mechanisms from state agencies, grant funding, and private gifts. I've managed departmental operating budgets and provided forecasts to help predict revenues and potential shortfalls. This background is bolstered by a preference for working with numbers. Additionally, I've learned the valuable nature of reaching out and working with other parties to get information or resources. This skill set would enable me to work well with citizens, City officials, Library volunteers, and the Executive Director and other Board members.

Ultimately, though, my passion for local governance and citizen involvement in matters of personal importance is what drives me. In the past, I volunteered for the Eaton Area Historical Society and have missed that work greatly since moving back to Fort Collins. To have the opportunity to contribute to my local community while supporting the overarching mission of libraries would be of incredible value to me and one I'd put invaluable enthusiasm towards.

8. Are you at least 18 years of age?

Yes

Evelyn Peterson

Administrative Coordinator

Contact



[REDACTED]



[REDACTED]



[REDACTED]



LinkedIn:

evelyn-peterson-91855742

Skills

- ◇ Leadership & Mentoring
- ◇ Adaptability
- ◇ Change Management
- ◇ Collaboration
- ◇ Creative Problem Solving
- ◇ Communication

Education

B.A.

Leadership & Organization Studies

University of Denver

2018

About Me

As a seasoned administrator, I offer more than a decade of experience at various organizational levels with increasing responsibilities and professional development. With an extensive and diverse background in higher education administration I have developed skills in executive-level support, procedural efficiencies, communications and marketing, human resources, and budgeting.

Professional Experience

Administrative Coordinator

Center for the New Energy Economy

Colorado State University, July 2022 - Present

- Serve as Fiscal Officer for the Unit and manage department purchasing cards.
- Manage purchasing responsibilities for the department. Process all payments, requisitions, and purchase orders; manage documented quotes and/or requests for proposal processes for large purchases.
- Serve as HR Liaison, coordinate all search processes, and manages new hire procedures and onboarding for employees, including managing department information on relevant cloud-based sites.
- Manage all travel arrangements and reimbursements expenses and process all non-employee travel for Center business.
- Analyze budget data related to the Center's operations. Identify problematic areas as well as assists the Assistant Director in determining the best course of action in resolving identified issues.
- Maintain professional relationships with other CSU Departments and external partners.
- Implement procedures to facilitate and streamline grant proposal submission process in the appropriate systems, including sponsor grant portals and CSU systems.
 - Includes final assembly of proposals and budgets to meet sponsor submission formats, tracking grant deadlines, managing labor distributions and submitting grant reports and effort reporting certifications.
- Assist with preparations of grant requests and financial reporting requirements for numerous foundations which support the Center, CNEE staff, the Office of Sponsored Programs, and the CSU Foundation.
 - Assures compliance with University rules and regulations.
- Assist with annual CNEE programs and events
 - Includes securing appropriate vendor contracts and purchase orders, and meeting and logistic preparations
- Complete other duties and assignments as requested by the Assistant Director.

Program Assistant

Colorado State University, October 2016 - June 2022

- Provided primary administrative support to department chair
- Executed daily operations of the department and front office
- Supervised work study student
- Managed department and grant budgets in excess of \$2.5 million
 - Processed travel documents, internal financial documents, and external transactions
- Arranged travel for variety of individuals
- Oversaw P-Card transactions and statements according to university policies
- Forecasted tuition revenues to aid strategic planning
- Monitored use of funds for department operations, professional development, research projects, and student support initiatives
- Served as liaison to Human Resources department
 - Supported TT, CCA Faculty, AP, SC, GTAs, and undergraduate students
- Followed hiring processes based on guidelines from several other university units
- Coordinated faculty searches from launch through on-boarding
- Monitored hourly employee records and timesheets
- Coordinated annual evaluation cycle
- Provided support with sabbatical and tenure and promotion process
- Oversaw administration of graduate program, including PhD and MA tracks
- Orchestrated annual awards ceremony
- Provided advising to students declaring minor in department
- Managed course scheduling to ensure offerings aligned with student needs, department budget restraints, and potential revenue streams
- Improved record keeping methods and processes
- Aided in migration of department files to cloud-based storage systems

Senior Student Services Coordinator

IBMC College, April 2014 - July 2016

- Supported and assisted Regional Director of Student Services on short and long-term projects
- Evaluated cost-effective, budget friendly solutions for student engagement events
- Conducted research and built reports on behalf of Regional Director for Executive Committee
- Organized and executed student events, including bi-annual commencement ceremonies
- Served as a primary contact for Student Services Department questions and projects across all locations
- Completed administrative tasks to help faculty and Education department staff
- Trained satellite campus staff upon initial hire and continued mentoring staff
- Centralized department procedures and updated processes regularly
- Aided in transitioning all materials to cloud-based storage systems

Marketing Communications Coordinator

IBMC College, October 2014 - June 2015

- Supported department managers
- Prepared quarterly meetings
- Reconciled credit card transactions
- Developed evaluation tools to evaluate efficacy of marketing efforts
- Edited marketing materials and communications
- Audited college website
- Served as liaison with other departments
- Ensured that all materials reflect up-to-date and compliant information

Student Success Coach & Education Department Specialist

IBMC College, June 2011 - April 2014

- Conducted student advisement in accordance with compliance requirements
- Coordinated student support opportunities including Academic Support and Mentor Programs
- Developed procedures for returning students to promote successful retention
- Implemented student service projects
- Developed internal professional and personal development seminars

References Available Upon Request

Matt Schild

[REDACTED]
Ft. Collins CO 80521
[REDACTED]

Poudre River Library District Board of Trustees/IGA
301 E Olive St.
Ft. Collins CO 80524

Dear members of the Board of Trustees and representatives of the IGA,

I am writing to express my interest in extending my tenure on the Poudre River Library Board of Trustees for a second term. My current term expires March 2023.

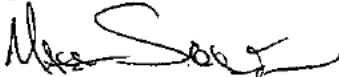
I wish to remain active on the Board for many reason. My belief that libraries serve an essential First Amendment purpose in facilitating the exchange of ideas and information remains as strong as ever. I'd like to continue to serve the District in the spirit of this vital civic duty.

As a corollary to its role facilitating the exchange of ideas, the Library District also must ensure that all viewpoints are well represented. As Fort Collins continues to grow, I believe it's important for the Library District to not only keep pace to provide services, but also to ensure that access to services and materials is available to everyone in our district. I want to work to ensure the District continues its excellent work in this field.

Finally, I'd like to continue to serve in order to maintain continuity as the board evolves. Truly understanding the finer points of library issues, the challenges we face and how our strategic plan addresses both takes time, and now that I have acquired that knowledge, would like to continue to put it to use.

Thank you for your consideration.

Regards,



Matt Schild

Matt Schild



Objective

To develop effective marketing and promotional communications combine print, online, public relations and other media into a singular, effective corporate identity

Skills

- **Behavioral email marketing strategies**
- **Art direction and campaign concepting**
- **PPC campaign development and administration**
- **Social media administration, listening and content**
- **Copywriting for web and print materials**
- **Familiar with WordPress, Joomla, Ruby and other CMS structures**

Education

Colorado State University

May 1998, B.A. Technical Journalism

- Worked as staff reporter, Campus Editor at *The Collegian*

Experience

Brand Specialist, Old Town Media

June 2016 – Present

Developed encompassing brands and stand-alone messaging for clients in Colorado and around the country. Coordinated projects between in-house graphic designers and digital marketing specialists, oversaw long-range brand development and strategy.

- Performed brand audits to assess strength and viability of current clients' existing brands
- Developed AdWords and social media marketing strategies
- Completed Google Analytics certification in November 2016
- Handled all marketing and communications for companies such as Harmony Gardens, Rancho Sahuraita (Arizona)
- Responsible for collaborative marketing with in-house marketing teams from organizations such as The Orthopedic Center of the Rockies and Cheba Hut

Creative Writer, AMG Creative

Aug. 2014– June 2016

Wrote advertising copy for online and print media, while creating and administering all new media campaigns, including content marketing, Google and Facebook PPC campaigns, social media.

- Created and developed behavioral marketing strategies using Act-On to track audience behavior on websites, achieving 20% open rates on tightly segmented email communications
- Administered 12 clients' social media presences, including developing interaction strategies and guidelines
- Developed customer-acquisition and retention strategies across print, online and social media

Freelance Journalist/Copywriter

July 1998-August 2014

Managed deadlines, style sheets and voice for multiple publications and corporate clients, writing for various demographics and editorial needs. Built a reputation on meeting deadlines with strong copy.

- Created marketing materials such as print, sales one-sheets, news releases and sponsored editorial content for Epitaph, Vagrant and Fat Wreck Chords
- Developed sales letters, promotional emails and print materials for advertising for both business-to-consumer and business-to-business clients
- Produced editorial content for *T. V. Guide*, *A. V. Club*, Gannett's *Military Times*, *The Denver Post*, *Westword*, *The Dallas Observer*, among others

Editor in Chief, Aversion Media

November 1998-October 2009

Founded online publication covering alternative music and culture, serving as a writer, graphic designer and assigning editor. Managed a copy editor, freelance writers and photographers while creating and publishing 45 to 60 features, news items and reviews weekly.

- Developed and maintained daily and weekly email news subscriber bases of more than 5,000 on each list, serving to drive traffic to the website
- Hand-coded all HTML markup in editorial, including building meta descriptions using keywords tailored to fit content
- Handled all marketing responsibilities, including development of Google PPC and print advertisements
- Leveraging a SEO strategy based on inbound linking, developed an audience that generate more than 1.3 million page views per month
- Maintained presence on Facebook and MySpace, including interacting with readership

Contract Copywriter, GoalQuest Inc.

May 2002-March 2007

Created online newsletter programs used by several colleges and universities' admissions, and marketing departments. Newsletters integrated into clients' existing marketing materials.

- Developed engagement strategies to drive potential students to client websites
- Reached expressed goals for enrollment, first-year retention, applications and reducing summer melt for all campaigns
- Generated content for token-based activity tracking software that tied to clients' existing CRM data sets

Item 15.

Library District Applicant Info

Name: Matt Schild

Street Address: [REDACTED]

Day Phone: [REDACTED] **Night Phone:** [REDACTED]

Email: [REDACTED]

Length of residence in Library District Boundary: 22 years

Current Occupation: Brand Specialist

Employer: Old Town Media

Volunteer Work	October 2016 - Developed Yes for Our Libraries website (yesforourlibraries.org) in support of Larimer County Ballot Issue 5F
Presently serving on a City or County board or commission?	Yes I served one term, from June 2014 to June 2015, on the Colorado Authors' League's board of director
Involvement with the existing Fort Collins Library Board or other library-related boards, commissions, or groups	Members of the Poudre Valley Friends of the Library gave my name to Nina Bodenhamer as a potential volunteer to help with the Yes on 5F campaign last fall. I developed a website with contributions from designers and copywriters who were working independently on the same goal.
Abilities, skills, licenses, certificates, specialized training, or interests applicable	In addition to my previous experience serving on a nonprofit's board of directors, I have almost 20 years of experience in communications, with a wide background that straddles writing and editing for commercial publications, web publishing and website administration, marketing and advertising, including copywriting and art direction and public relations.
Why do you want to become a member of the Library District Board of Trustees?	In addition to my previous experience serving on a nonprofit's board of directors, I have almost 20 years of experience in communications, with a wide background that straddles writing and editing for commercial publications, web publishing and website administration, marketing and advertising, including copywriting and art direction and public relations.
What do you believe is(are) the primary issue(s) facing the Library Board of Trustees?	As with any public entity, I believe funding for library services will always be a major concern for the board. Just as important as securing it and applying to a wide variety of programs that serve the broadest number of constituents as possible, is the ability to communicate the Library's efforts to the community to illustrate the value of its services. With changes in technology and demographic trends, the role of libraries is evolving. This is a really interesting time for libraries, as I feel they're expanding beyond traditional literacy to serve as a community hub for education and entertainment of all kinds. I think navigating these changes will be difficult, but ultimately can lead us to a place where literacy and research are just as important as programming and technology, as the Library can find ways to more effectively serve its constituents.

Item 15.

been convicted of a

No

Resume

[Matt Schild.pdf](#)

Reviewer Comments

Sarah Kane	Rating:
David Slivken	Rating: A His background in communications would be an excellent addition to the library board. He understands the changing role of libraries for the 21st century. i beleive he would be a great fit
Lew Gaiter	Rating: B
Steve Johnson	Rating: B
Cynthia Langren	Rating:
Gerry Horak	Rating: A Excellent background in communications.



AGENDA ITEM SUMMARY

City Council

STAFF

Anissa N. Hollingshead, City Clerk
Carrie M. Daggett, Legal

SUBJECT

Resolution 2023-030 Making Appointments to the Historic Preservation Commission.

EXECUTIVE SUMMARY

The purpose of this item is to fill vacancies on the Historic Preservation Commission.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

This Resolution appoints individuals to fill vacancies left from previous board members. These appointments will begin and expire as noted next to the recommended names shown below in the individual resolution.

Historic Preservation Commission

Appointments	Term Effective Date	Expiration of Term
David Woodlee (Seat C)	April 1, 2023	December 31, 2026
Andy Smith (Seat E)	April 1, 2023	December 31, 2026

CITY FINANCIAL IMPACTS

N/A

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

N/A

PUBLIC OUTREACH

Public outreach to seek applicants for boards and commissions included paid advertising in print publications, media releases for earned coverage in local media sources, and social media promotion of opportunities.

ATTACHMENTS

1. Resolution for Consideration
2. Applications

RESOLUTION 2023-030
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING APPOINTMENTS TO THE HISTORIC PRESERVATION COMMISSION

WHEREAS, the Historic Preservation Commission has vacancies due to the expiration of terms of certain members and the resignations of Eric Guenther and Meg Dunn; and

WHEREAS, Councilmembers interviewed candidates for this appointment on March 1, 2023; and

WHEREAS, the City Council desires to make appointments to fill these vacancies on the Historic Preservation Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the following named persons are hereby appointed to fill the open vacancies on the Historic Preservation Commission with a term to begin and expire as noted below next to each appointee’s name:

Historic Preservation Commission

Appointments	Term Effective Date	Expiration of Term
David Woodlee (Seat C)	April 1, 2023	December 31, 2026
Andy Smith (Seat E)	April 1, 2023	December 31, 2026

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of March, 2023.

Mayor

ATTEST:

City Clerk

VOLUNTEER APPLICATION

Andy Smith

2/22/2023 2:28 PM

Application: **HPC - Historic Preservation Commission**

Applicant Information

Birthdate: [REDACTED] Gender: Male Education Level: Bachelors degree

Address: [REDACTED] Phone: [REDACTED] <<

Volunteer Groups Applied For

Historic Preservation Commission

Job Description

I have read the job description

Questions

I acknowledge I am available when the Historic Preservation Commission meets: YES

Regular meetings are held on the 3rd Wednesday of each month.
Work Sessions are conducted on the 2nd Wednesday of each month.
All meetings are held at 5:30 p.m.

How many hours per month are you willing to put in (including research, work, and meeting time) as a commission member? 15-20

I acknowledge and understand it is recommended to apply for no more than (3) Board/Commission volunteer positions in any one recruitment cycle. YES

If applying for more than (1) board/commission please list all boards in order of preference (the most important board to you should be listed first). Please enter N/A if you have not applied to more than one board/commission. n/a

Which Council District do you live in? Please refer to the map at: <https://gisweb.fcgov.com/HTML5Vie> 5

Current Occupation: Commercial real estate consultant and broker

Current Employer: Old Town Colorado, LLC

Prior work experience (please include dates):
Aug 2023 - Current: Old Town Colorado Fort Collins, CO
Owner
> Operate small and mighty commercial real estate firm specializing in consulting and brokerage of historic commercial properties and complex infill/redevelopment scenarios.
> Celebrate Colorado's historic districts through storytelling and imagery.
> Provide technical assistance to clients on matters such as historic preservation tax credits and

grants, low-income housing tax credits, design, and other resources.

Sep 2014 -Jul 2023: NAI Affinity Fort Collins, CO
Advisor

- > Served as licensed commercial real estate broker primarily serving clients engaged in land development, affordable housing (LIHTC), and redevelopment.
- > Served as entitlement consultant, helping clients successfully navigate the government development review processes.

Oct 2011 - Jul 2013: Rocky Mountain Cyclery, Inc Loveland, CO
Chief Financial and Administrative Officer

- > Senior executive in e-commerce business with sales of \$3 million/year, 3 physical sites, and multiple online sales channels such as eBay, Amazon, and native websites.
- > Responsibilities included finance, accounting, human resources, legal matters, real estate management, and business administration.
- > Managed relationships with CPA, attorneys, banks, and vendors.
- > Operations functionally ceased after now-deceased CEO/Owner was diagnosed with Stage-IV cancer.

May 2008 - Jul 2012: ZoomGrants Fort Collins, CO
Vice President

- > Developed and led sales and business development programs for start-up tech venture providing online grant management services to local governments & private foundations.
- > Developed profitable niche market and program expertise working as pioneer in HUD grant programs such as CDBG and HOME.
- > Marketed to elected officials, City Managers, and Community Development Directors.

Jun 2008 - Jul 2009: Logistics Real Estate and Development Loveland, CO
Director of Redevelopment

- > Provided strategic management services to small commercial real estate firm.
- > Developed and directed community partnerships to undertake catalyst redevelopment project with historic Loveland Feed and Grain property.
- > Assisted with leasing, tenant relations,

property management, and business administration.
> Designed economic development incentive proposals including tax increment financing (TIF), fee waivers, grants, utility investments, etc.

Jul 2006 - May 2008: City of Loveland
Loveland, CO
Senior Planner – Downtown Revitalization
> Responsible for downtown redevelopment planning, with an emphasis on the development of community capacity and champions/partners.
> Formed and managed “Loveland Downtown Team”, a public/private advisory board to lead and coordinate an assortment of revitalization initiatives.
> Initiated and led strategic acquisition of a key downtown property, creating the assemblage for a “cultural corridor” between the museum and historic Rialto Theater.
> Co-managed parking study, streetscape design plan, General Improvement District (GID) budget, and assisted with Historic Preservation Commission and Urban Renewal Authority.
> Developed and gained City Council approval for Facade Improvement Grant Program.

Jan 2005 - Jul 2006: Larimer County
Workforce Center Fort Collins, CO
Economic Development Liaison
> Identified barriers to economic development, with focus on emerging alternatives in rural settings, such as food systems, heritage tourism, and Value Added agriculture.
> Developed and presented technical economic and industry training workshops for staff, clients, and economic development partners.
> Developed customized economic and labor trend reports for real estate site selectors.

City of Fort Collins
-Commissioner, Urban Renewal Authority: 2018-Current
-Chairman/Boardmember, Planning & Zoning Board: 2006 – 2013
-Member, CDBG Commission: 1997-1999
-Youth Sports Coach: 1997-2013

Paideia Classical Community
-Co-Founder & President, Board of Directors: 2015-Current

Volunteer experience (please include dates):

American Planning Association
-Member: 2006 – 2013

Colorado State University Rams Football Team
-Ball Crew Supervisor: 1998 – Current

Leadership Fort Collins
-Graduate, Class of 2000 / Instructor, 2001-2003

Have you applied for this commission before If yes, please explain.

No

Are you currently serving on a City board or Commission If so, which one

Yes;
URA Board

What is your personal interest and/or professional background in local history and historic preservation

I spend a significant amount of time engaged with Colorado history. As a 5th generation native with family roots dating back to the early 1870s, I spent much of my childhood visiting relatives, cemeteries, mining towns, and old neighborhoods. I grew up on an old family farmstead just upstream from the location of the first gold strike in Colorado and spent many days roaming the sidewalks and antique stores of Olde Town Arvada. I am proud of my family history in the mining town of Nevadaville, the Junction Ranch homestead in Golden Gate Canyon, historic Golden, Five Points, and the historic Cole neighborhood in Denver.

I have worked in and around historic districts and properties for nearly 20 years, and currently own a boutique commercial real estate firm that specializes in historic properties and resources. I am particularly proud of my work helping to save the Loveland Feed & Grain.

What individual perspectives and community interests would you bring to the HPC that might be missing or underrepresented on the existing Commission

Whether in my work life or on City Boards, I have been involved many times in the preservation of historic resources, often controversial. As such, I am a major proponent and practitioner of good public processes that starts with broad community engagement, well-defined decision criteria, informed deliberation, and then clear decisions. I hope to be remembered for my commitment to fair and transparent public processes.

Specify any activities which might create a serious conflict of interest if you are appointed:

None at this time, but I am fully aware of when and how to declare a conflict of interest and then recuse myself from discussions and decisions as appropriate.

How did you learn of a vacancy on this board or commission

Other (please specify);
Saw it advertised on the City website

Andy Smith

Fort Collins, Colorado

<http://www.linkedin.com/pub/andy-smith/20/322/8a2>

PROFESSIONAL EXPERIENCE

- Aug 2023 - Current: **Old Town Colorado** Fort Collins, CO
Owner
- Operate small and mighty commercial real estate firm specializing in consulting and brokerage of historic commercial properties and complex infill/redevelopment scenarios.
 - Celebrate Colorado's historic districts through storytelling and imagery.
 - Provide technical assistance to clients on matters such as historic preservation tax credits and grants, low income housing tax credits, design, and other resources.
- Sep 2014 -Jul 2023: **NAI Affinity** Fort Collins, CO
Advisor
- Served as licensed commercial real estate broker primarily serving clients engaged in land development, affordable housing (LIHTC), and redevelopment.
 - Served as entitlement consultant, helping clients successfully navigate the government development review processes.
- Oct 2011 - Jul 2013: **Rocky Mountain Cyclery, Inc** Loveland, CO
Chief Financial and Administrative Officer
- Senior executive in e-commerce business with sales of \$3+ million/year, 3 physical sites, and multiple online sales channels such as e-bay, Amazon, and native websites.
 - Responsibilities included finance, accounting, human resources, legal matters, real estate management, and business administration.
 - Managed relationships with CPA, attorneys, banks, and vendors.
 - Operations functionally ceased after now-deceased CEO/Owner was diagnosed with Stage-IV cancer.
- May 2008 - Jul 2012: **ZoomGrants** Fort Collins, CO
Vice President
- Developed and led sales and business development programs for start-up tech venture providing online grant management services to local governments & private foundations.
 - Developed profitable niche market and program expertise working as pioneer in HUD grant programs such as CDBG and HOME.
 - Marketed to elected officials, City Managers, and Community Development Directors.
- Jun 2008 - Jul 2009: **Logistics Real Estate and Development** Loveland, CO
Director of Redevelopment
- Provided strategic management services to small commercial real estate firm.
 - Developed and directed community partnerships to undertake catalyst redevelopment project with historic Loveland Feed and Grain property.

- Assisted with leasing, tenant relations, property management, and business administration.
- Designed economic development incentive proposals including tax increment financing (TIF), fee waivers, grants, utility investments, etc.

Jul 2006 - May 2008: **City of Loveland** Loveland, CO

Senior Planner – Downtown Revitalization

- Responsible for downtown redevelopment planning, with an emphasis on the development of community capacity and champions/partners.
- Formed and managed “Loveland Downtown Team”, a public/private advisory board to lead and coordinate an assortment of revitalization initiatives.
- Initiated and led strategic acquisition of a key downtown property, creating the assemblage for a “cultural corridor” between the museum and historic Rialto Theater.
- Co-managed parking study, streetscape design plan, General Improvement District (GID) budget, and assisted with Historic Preservation Commission and Urban Renewal Authority.
- Developed and gained City Council approval for Facade Improvement Grant Program.

Jan 2005 - Jul 2006: **Larimer County Workforce Center** Fort Collins, CO

Economic Development Liaison

- Identified barriers to economic development, with focus on emerging alternatives in rural settings, such as food systems, heritage tourism, and Value Added agriculture.
- Developed and presented technical economic and industry training workshops for staff, clients, and economic development partners.
- Developed customized economic and labor trend reports for real estate site selectors.

EDUCATION

Colorado State University:	Fort Collins, Colorado
BA: Economics	
Regis Jesuit High School:	Denver, Colorado
High School Diploma	

COMMUNITY INVOLVEMENT & PROFESSIONAL AFFILIATIONS

-
- City of Fort Collins**
 - Commissioner, Urban Renewal Authority: 2018-Current
 - Chairman/Boardmember, Planning & Zoning Board: 2006 – 2013
 - Member, CDBG Commission: 1997-1999
 - Youth Sports Coach: 1997-2013
 - Paideia Classical Community**
 - Co-Founder & President, Board of Directors: 2015-Current
 - American Planning Association**
 - Member: 2006 – 2013
 - Colorado State University Rams Football Team**
 - Ball Crew Supervisor: 1998 – Current
 - Leadership Fort Collins**
 - Graduate, Class of 2000 / Instructor, 2001-2003

VOLUNTEER APPLICATION

David Woodlee

2/8/2023 12:12 PM

Application: **HPC - Historic Preservation Commission**

Applicant Information

Birthdate: [REDACTED] Gender: Male Education Level: Bachelors degree

Address: [REDACTED] Phone: [REDACTED] <<

Volunteer Groups Applied For

Historic Preservation Commission

Job Description

I have read the job description

Questions

I acknowledge I am available when the Historic Preservation Commission meets: YES

Regular meetings are held on the 3rd Wednesday of each month.
Work Sessions are conducted on the 2nd Wednesday of each month.
All meetings are held at 5:30 p.m.

How many hours per month are you willing to put in (including research, work, and meeting time) as a commission member? 10

I acknowledge and understand it is recommended to apply for no more than (3) Board/Commission volunteer positions in any one recruitment cycle. YES

If applying for more than (1) board/commission please list all boards in order of preference (the most important board to you should be listed first). Please enter N/A if you have not applied to more than one board/commission. N/A

Which Council District do you live in? Please refer to the map at: <https://gisweb.fcgov.com/HTML5View> 3

Current Occupation: Refrigeration engineering

Current Employer: Fort Collins Heating and Air Conditioning

Prior work experience (please include dates): N/A

Volunteer experience (please include dates): N/A

Have you applied for this commission before? If yes, please explain. Yes—positions were open last year but another candidate was selected.

Are you currently serving on a City board or Commission? If so, which one? No; N/A

What is your personal interest and/or professional background in local history and historic preservation? Growing up in Gettysburg, Pennsylvania, I was exposed to many historical and culturally relevant preservation projects/ programs. These ranged from RR21 (rural road 21) being renamed after my family's last name of "WOODIE" being renamed to "Woodie Lane", to battlefield restoration



and preservation expansion projects that my family volunteered with. Subsequently, I have had a long standing interest and timely investment in participating and learning about historical sites.

What individual perspectives and community interests would you bring to the HPC that might be missing or underrepresented on the existing Commission

I have a pretty keen and educated eye for mechanical, structural, and aesthetic appliques that are of local and regional significance; I am also able to identify and explain to owners of prospective preservation opportunities the benefits of a site worthy of being deemed historical in the official record.

Specify any activities which might create a serious conflict of interest if you are appointed:

Nothing that I am aware of.

How did you learn of a vacancy on this board or commission

City News (Utility Bill Insert)



AGENDA ITEM SUMMARY

City Council

STAFF

Tyler Marr, Deputy City Manager
Blaine Dunn, Accounting Director
Ingrid Decker, Legal

SUBJECT

First Reading of Ordinance No. 042, 2023, Making Supplemental Appropriations from Lease Financing Proceeds and Appropriating Prior Year Reserves for the Purchase of Vacant Land at the Former Hughes Stadium Site.

EXECUTIVE SUMMARY

The purpose of this item is to consider an appropriation to purchase the land of the former Hughes Stadium.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Per a voter-approved ballot measure in April 2021, the former Hughes Stadium site was rezoned as open lands, and the City was directed to make a good-faith effort to purchase the 165-acre site from CSU within two years at fair market value. The City and the Board of Governors of the CSU System signed a contract on March 2, 2023, regarding the sale of the property to the City. The total cost of the purchase is \$12.7M; out of which \$2M each will come from the City’s General Fund and Natural Area fund, respectively, and the remaining \$8.7M will be secured through the 2023 Certificates of Participation (COPs). Costs will be allocated proportionally to corresponding funds once land use is determined for the Hughes Stadium land.

CITY FINANCIAL IMPACTS

This Ordinance will increase appropriations in the General Fund and Natural Areas Fund. The City has sold the 2023 COPS and will finalize their issuance before Second Reading of the Ordinance. The City will use a combination of reserves and proceeds from the issuance of the 2023 COPs to finance the project. The ordinance will appropriate a total of \$12,690,894. The source and use of the funds are as follows:

<u>Source of Funds</u>	
COPs	\$ 8,690,894
General Fund Reserves	2,000,000
Natural Area Reserves	2,000,000
Total	<u><u>\$ 12,690,894</u></u>

<u>Use of Funds</u>	
Payment to CSU	\$ 12,500,000
Closing Costs - Land	10,000
Closing Costs - COPs	180,894
Total	<u><u>\$ 12,690,894</u></u>

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

N/A

PUBLIC OUTREACH

N/A

ATTACHMENTS

- 1. Ordinance for Consideration
- 2. Presentation

ORDINANCE NO. 042, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING SUPPLEMENTAL APPROPRIATIONS FROM LEASE FINANCING PROCEEDS
AND APPROPRIATING PRIOR YEAR RESERVES FOR THE PURCHASE OF
VACANT LAND AT THE FORMER HUGHES STADIUM SITE

WHEREAS, Colorado State University (“CSU”) is the owner of a parcel of land on the west side of Fort Collins that is the site of the former Hughes Stadium (the “CSU Property”); and

WHEREAS, in April 2021 Fort Collins voters approved a citizen-initiated ballot measure requiring the City to zone the CSU Property as open lands, and to make a good-faith effort to purchase the land from CSU; and

WHEREAS, on March 2, 2023, the City and the Board of Governors of the CSU system executed a purchase and sale agreement by which the City agreed to buy the CSU Property from CSU for \$12.5 million, contingent on the City Council’s appropriation of funds sufficient and intended for such purpose; and

WHEREAS, the City has sold its 2023 Lease Certificates of Participation (“2023 COPs”) and will finalize completion of the 2023 COPs transaction prior to the effective date of this Ordinance, and the COPs proceeds will be deposited in the General Fund; and

WHEREAS, the total cost of the purchase, including closing costs and the costs related to the issuance of the 2023 COPs to finance the purchase, is \$12.7 million; and

WHEREAS, this appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of acquiring vacant land for public purposes as approved by the voters; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon recommendation of the City Manager, to make a supplemental appropriation by ordinance at any time during the fiscal year, provided that the total amount of such supplemental appropriation, in combination with all previous appropriations for that fiscal year, do not exceed the current estimate of actual and anticipated revenues and all other funds to be received during the fiscal year; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon the recommendation of the City Manager, to make supplemental appropriations by ordinance at any time during the fiscal year of such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated; and

WHEREAS, the City Manager has recommended the appropriations described herein and determined that these appropriations are available and previously unappropriated from the General Fund and the Natural Areas Fund, as applicable, and will not cause the total amount appropriated in the General Fund or the Natural Areas Fund, as applicable, to exceed the current estimate of actual and anticipated revenues and all other funds to be received in these funds during this fiscal year.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from new revenue or other funds in the General Fund the sum of EIGHT MILLION SIX HUNDRED NINETY THOUSAND EIGHT HUNDRED NINETY-FOUR DOLLARS (\$8,690,894) to be expended in the General Fund for the purchase of the vacant land at the former Hughes Stadium Site.

Section 3. That there is hereby appropriated from prior year reserves in the General Fund the sum of TWO MILLION DOLLARS (\$2,000,000) to be expended in the General Fund for the purchase of the vacant land at the former Hughes Stadium Site.

Section 4. That there is hereby appropriated from prior year reserves in the Natural Areas Fund the sum of TWO MILLION DOLLARS (\$2,000,000) to be expended in the Natural Areas Fund for the purchase of the vacant land at the former Hughes Stadium Site.

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

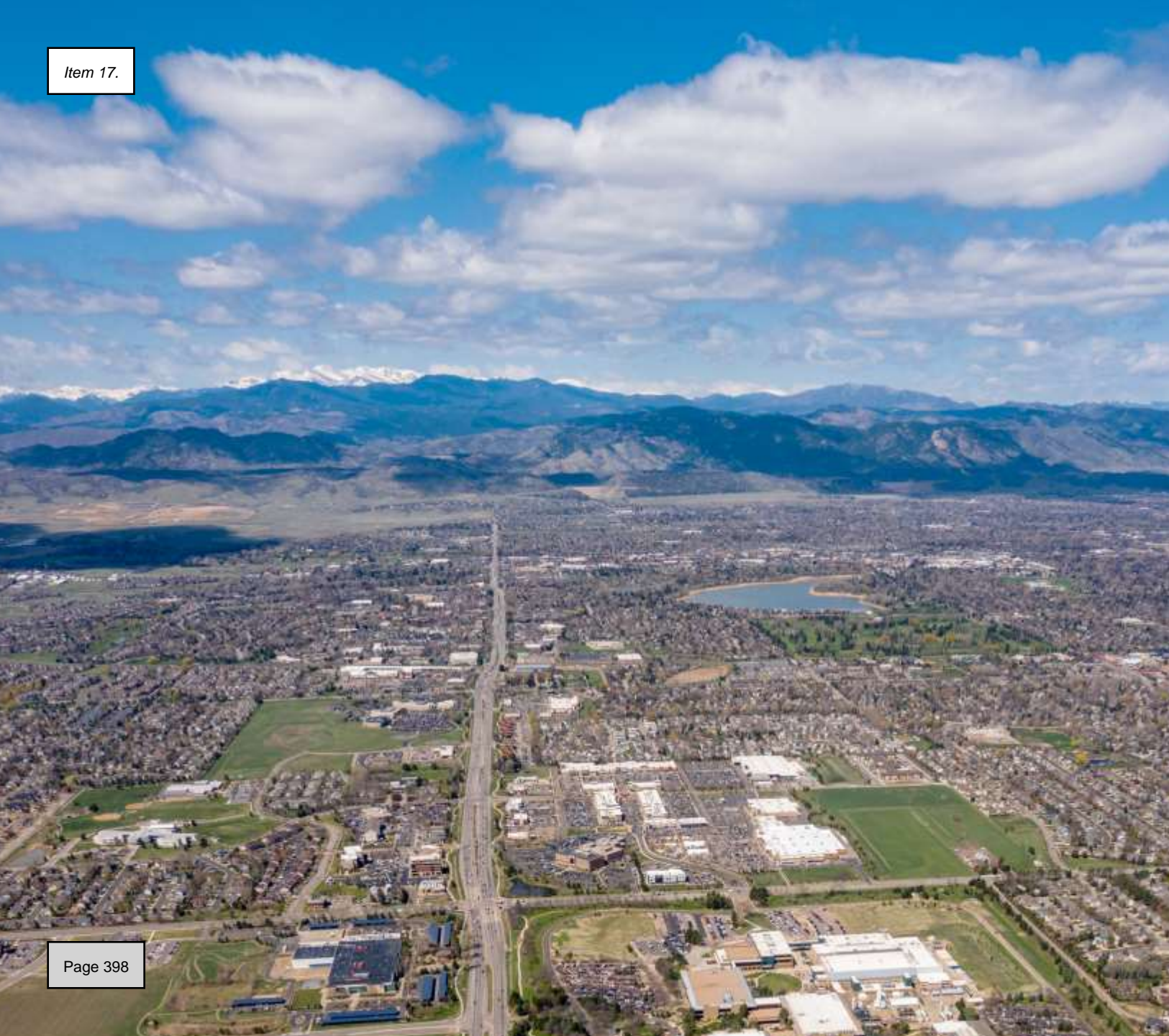
City Clerk

Passed and adopted on final reading this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk



03-21-2023

Hughes Land Purchase Appropriation

Tyler Marr

Deputy City Manager

Blaine Dunn

Accounting Director



Appropriation for purchase of former Hughes Stadium Land

- **Project Information**
- **Debt Structure**
- **Cost Share**



- **Voter-approved Ballot Measure**
 - To rezone Hughes stadium as open lands
 - Direct the City to purchase from CSU at fair market value
- **Total Cost: \$12.5M**
 - \$2M from General Fund
 - \$2M from Natural Area Fund
 - \$8.5M from COP financing
- **Costs will be retroactively allocated proportionally to corresponding funds once land use is determined**

- **Total Project Cost: \$12.5M**
- **Cash Payments: \$4.0M**
 - Hughes
 - Natural Areas Fund – \$2M
 - General Fund -- \$2M
- **Estimated Project Borrowing: \$8.5M**
- **10 Year Term**
- **Fixed interest rate**
- **Semiannual payments starting in June 2023**
- **Last payment December 2032**
- **Total Borrowing:**
 - Issue Costs \$ 0.2M
 - Project Amounts \$ 8.5M
 - Total \$ 8.7M

- **Total Cost \$12.5M**
- **Cash Payments:**
 - **General Fund - \$2M**
 - **Natural Areas Fund - \$2M**
- **Borrow \$8.5M**

Debt Share Allocation

Principal	\$8,500,000
Term	10 years
Interest	3.10%
Payment Share GF	\$500,625
Payment Share NA	\$500,625

Ordinance No. 062, 2022 – Appropriating funds for Purchase of former Hughes Stadium Land

QUESTIONS?



AGENDA ITEM SUMMARY

City Council



STAFF

Tyler Stamey, City Traffic Engineer
 Rachel Ruhlen, Transportation Planner
 Aaron Guin, Legal

SUBJECT

First Reading of Ordinance No. 043, 2023, Adopting the Vision Zero Action Plan as a Component of City Plan.

EXECUTIVE SUMMARY

The purpose of this item is to consider adoption of the Vision Zero Action Plan.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Vision Zero is a vision of zero traffic deaths and serious injuries by 2032. The Vision Zero Action Plan (the "Plan") is a new approach to roadway safety that expands existing efforts to improve traffic safety. The Plan identifies key opportunities to significantly improve and expand the City's traffic safety efforts. Staff presented a draft of the Plan to City Council for review at its Work Session on February 14, 2023. Additional information on the Plan vision, goals, and actions are available in staff's Agenda Item Summary for the Work Session on February 14.

The following changes have been incorporated into the Plan to address feedback received from Councilmembers:

- Expanded the goal "Support Mode Shift" to "Support Mode Shift to Reduce Motor Vehicle Trips".
- Clarified in the Implementation Notes of the Transformative Actions in the "Support Mode Shift to Reduce Motor Vehicle Trips" goal area that implementation of other plans identified as Transformative Actions does not affect how those plans are carried out.
- Language around equity in "An Equitable Approach" and actions in the "Center Equity" goal were revised to clarify the balance of safety and equity.
- Clarified in the Implementation Notes of Transformative Actions 4 and 5 that infrastructure and quick-build treatments can be used to retrofit existing roads.
- Clarified in Supporting Action 1.2 the prioritization of trail investments as alternative routes to roads that are on the High Injury Network.

- Clarified Supporting Action 3.2 that media reporting of traffic crashes should humanize the people involved.
- Clarified Supporting Action 3.7 that fully staffing the Traffic Enforcement Unit means filling existing positions.
- Added Supporting Action 4.7, “Incorporate growth projections and anticipated development into safety planning.”
- Removed “in place of in-person traffic enforcement” from Supporting Action 5.3.
- Added Supporting Action 5.4, “Provide opportunities for community input on Vision Zero initiatives.”
- In response to a public comment that restricting the Vision statement to “streets” is confusing, the Vision statement was revised.

CITY FINANCIAL IMPACTS

Adoption of this Ordinance does not commit dedicated funding for implementation. As with any plan, policy change, or new program, future City investments in implementing the Plan actions should follow standard budget processes.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Staff engaged with five City Boards, Commissions, and Committees throughout the planning process, with three of them providing specific feedback on the Plan:

- On November 16, 2022, the Transportation Board provided feedback on the Plan.
- On November 28, 2022, the Bicycle Advisory Committee provided feedback on the Plan.
- On December 14, 2022, the Senior Advisory Board submitted a memo approving the concept of the Plan.

PUBLIC OUTREACH

Development of the Plan drew from community input received on recent related efforts such as the Active Modes Plan (a Vision Zero visioning question was included during Active Modes Plan engagement) and the Transportation Capital Projects Prioritization Study, as well as 1,118 service requests received on neighborhood safety concerns/issues, new signals or pedestrian crossings, roadway safety concerns, or school safety concerns through Access Fort Collins. The Plan received 43 comments during the public input phase from December 9, 2022 – January 13, 2023.

ATTACHMENTS

1. Ordinance for Consideration
2. Ordinance Exhibit A
3. Senior Advisory Board Endorsement, December 14, 2022
4. Transportation Board Minutes, November 16, 2022 (excerpt)
5. Bicycle Advisory Committee Minutes, November 28, 2022 (excerpt)
6. Presentation

ORDINANCE NO. 043, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ADOPTING THE VISION ZERO ACTION PLAN AS A COMPONENT OF CITY PLAN

WHEREAS, the Mayor of the City of Fort Collins proclaimed on December 20, 2016, that the City of Fort Collins is a community committed to *Moving Towards Zero Deaths* and partnering with the Colorado Department of Transportation in its *Moving Towards Zero Deaths* initiative through the State's Strategic Highway Safety Plan; and

WHEREAS, the City's Traffic Operations Department, in partnership with Police Services, collects, compiles, analyzes, reports, utilizes and monitors crash data to support safety; and

WHEREAS, prioritizing transportation safety is a focus of City Plan and the City actively administers programs, conducts community outreach, and implements projects related to safety; and

WHEREAS, despite these efforts, people continue to suffer death and serious injury while traveling in Fort Collins, with 321 severe crashes occurring in 2021, including 11 fatalities; and

WHEREAS, eligibility for federal funding streams such as Safe Streets for All require communities to develop and adopt safety action plans; and

WHEREAS, the City's Comprehensive Plan, referred to as City Plan, was first adopted pursuant to Resolution 2019-048, was then subsequently ratified by Ordinance No. 040, 2020, and has since been updated to add plan elements as adopted by the City Council; and

WHEREAS, the Active Modes Plan adopted by City Council on December 20, 2022, committed to zero active modes deaths and serious injuries by the year 2032; and

WHEREAS, the Vision Zero Action Plan was developed after crash data analysis, public outreach, discussion and consideration of community needs and priorities; and

WHEREAS, the Vision Zero Action Plan identifies key opportunities to significantly improve traffic safety; and

WHEREAS, the Vision Zero Action Plan provides strategies for focusing efforts and funding towards building a safer transportation network; and

WHEREAS, at its work session on February 15, 2023, City Council reviewed the Vision Zero Action Plan and provided input that City staff incorporated, and a final version of the Vision Zero Action Plan reflecting the work session discussion is attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS, the City Council has determined that it is in the best interests of the residents of the City of Fort Collins to adopt formally the Vision Zero Action Plan as a component of City Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby adopts the Vision Zero Action Plan, attached hereto as Exhibit "A," as a component of City Plan.

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

FORT COLLINS VISION ZERO ACTION PLAN

March 21, 2023 |

Table of Contents

Executive Summary	2
Introduction	5
What is Vision Zero?	7
The Fort Collins Vision.....	7
Goals of the Fort Collins Vision Zero Action Plan.....	8
Understanding Safety Issues in Fort Collins.....	11
Current Efforts.....	11
Stakeholder and Community Engagement	12
Best Practices.....	14
Crash Trends	15
High-Injury Network (HIN)	19
How Fort Collins Will Achieve Vision Zero	21
An Equitable Approach.....	21
Transformative Actions and Supporting Actions.....	23
Countermeasures	33
Implementation	36

Executive Summary

Any traffic deaths or life-changing injuries in Fort Collins are unacceptable. In 2021, there were 332 crashes in Fort Collins that resulted in a fatality or injury. In that year, 11 people lost their lives while traveling on Fort Collins' streets. These events bring immeasurable personal loss and negative community impacts.

The City of Fort Collins is taking the Vision Zero approach to transportation safety to renew its commitment to creating safer streets where no one is at risk of losing their life or being seriously injured. Fort Collins' priorities and commitment to Vision Zero are centered on the understanding that even a single traffic fatality or serious injury is unacceptable.

Many communities have made a formal commitment to Vision Zero but fewer have achieved it. Those that have achieved at least one year of Vision Zero, such as Boulder, Arvada, and Centennial in Colorado, and other cities with population similar to Fort Collins, such as Oxnard CA, Lansing MI, and Allentown PA, and hundreds of other town and cities around the world, are an inspiration and a model for Fort Collins.

Fort Collins' vision is that:

By 2032, no one dies or has a serious injury while traveling in Fort Collins.

The Fort Collins Vision Zero Action Plan takes a data-driven approach to analyze crash trends and identify a High-Injury Network (HIN) where a disproportionate number of crashes led to fatalities and serious injuries. It outlines specific actions for the City to take in the next ten years to achieve Vision Zero. The actions in the Plan address safety issues in these crash trends and the HIN.

Developing the Action Plan

The Fort Collins Vision Zero Action Plan was developed collaboratively by City staff across multiple departments. A Technical Advisory Group that represents a diverse cross-section of the Fort Collins government and local and statewide organizations was formed to guide the development of the Plan and prioritization of action items.

Additionally, feedback from the larger Fort Collins community has guided the development of the Plan. This included presentations to and feedback from various City boards and committees, an online public review of this Action Plan, and outreach efforts for previous plans of the Fort Collins' transportation system. These previous plans include the Transportation Capital Projects Prioritization Study and the Fort Collins Active Modes Plan. The Fort Collins Vision Zero Action Plan is tied to the City's existing plans and policies and identifies ways to reprioritize existing efforts to achieve Vision Zero.

What is a Serious Injury?

The United States Department of Transportation defines a serious injury or suspected serious injury as any injury other than fatal that results in one or more of the following:

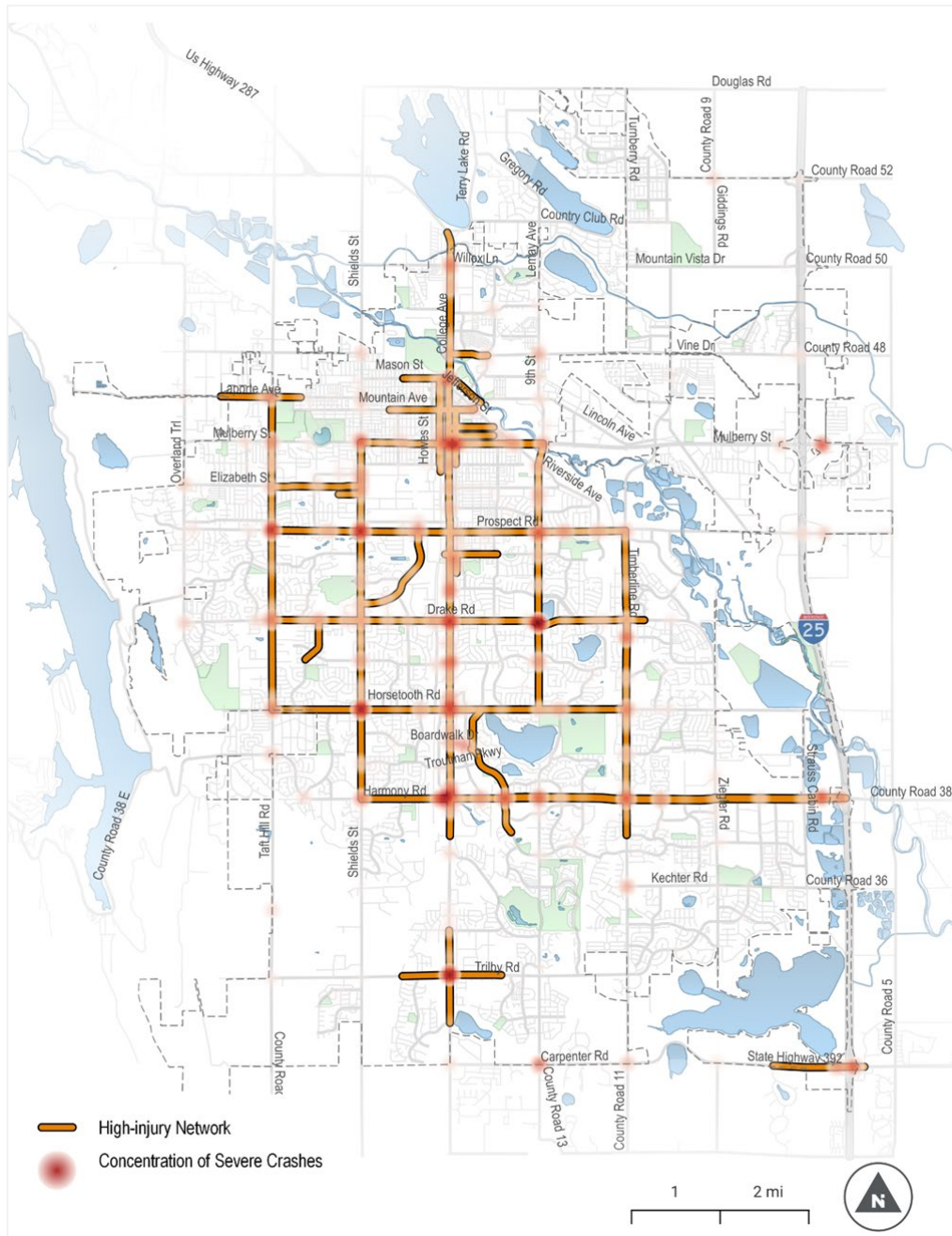
- Severe laceration resulting in exposure of underlying tissues/muscle/organs or resulting in significant loss of blood
- Broken or distorted extremity (arm or leg)
- Crush injuries
- Suspected skull, chest, or abdominal injury other than bruises or minor lacerations
- Significant burns (second and third degree burns over 10% or more of the body)
- Unconsciousness when taken from the crash scene
- Paralysis

Crashes that lead to fatal or serious injuries are referred in the Action Plan as "severe crashes"

EXHIBIT A

As part of the data-driven approach to develop the Fort Collins Vision Zero Action Plan, the street segments with the greatest share of severe crashes – those resulting in death or injury - were identified via a geospatial analysis of crash data.

These street segments make up the High-Injury Network (HIN) and are mapped below.



The HIN represents just eight percent (8%) of the streets in Fort Collins, however, those street segments account for sixty-three percent (63%) of all severe crashes in the city. Targeting safety investments to the HIN will have the greatest impact on reducing severe crashes.

Goals and Actions to Achieve Vision Zero

The goals in the Fort Collins Vision Zero Action Plan will guide the implementation of actions to achieve Vision Zero. The Action Plan establishes five individual goals plus one overarching goal for the City. Under each of the five individual goals are several action items to achieve that goal. Actions are categorized as Transformative – most impactful to help move Fort Collins towards achieving Vision Zero, or Supporting – less impactful actions that are important in complementing the transformative action items.

Focus on Vulnerable Users

The Action Plan has the overarching goal to focus on vulnerable road users as a fundamental part of making roads safer for all road users. Vulnerable road users are people using the transportation system outside of a motor vehicle. They may be riding a motorcycling, using a wheelchair, walking, bicycling, or using other micromobility devices. Making roads safer for vulnerable road users makes the roads safer for everyone.

Support Mode Shift to Reduce Motor Vehicle Trips

Promoting sustainable transportation such as walking, biking, and using public transit will help the Fort Collins community reduce dependency on motor vehicles. Motor vehicles are involved with nearly all severe traffic crashes; therefore, the development of safe multimodal street networks, and programs and policies that increase the use of sustainable modes and decrease the use of motor vehicles can help the community achieve Vision Zero.

Prioritize Safer Speeds and Multimodal Places

High motor vehicle speeds increase the risk of serious injury or death. Engineering solutions such as road diets, crossing improvements, and traffic signal optimization have been shown to slow speeds, create people-centric spaces, and reduce severe crashes.

Promote a Culture of Traffic Safety

Achieving zero traffic deaths and serious

injuries can only be successful if Fort Collins' street planners and designers, City leaders, and street users set priorities and make decisions that improve transportation safety and reduce severe crashes.

Increase Data Transparency and Partnerships

Improving the accuracy, timeliness, and quality of crash data helps planners, engineers, and policymakers make better decisions about resource allocation and facility design. Data on the locations of severe crashes will help in prioritizing, implementing, and evaluating projects that support Vision Zero.

Center Equity

A Vision Zero initiative is successful when everyone is safe using Fort Collins' streets. An equitable Vision Zero process helps ensure improvement projects and programs reduce harm without increasing the burden on historically underserved communities.

The proposed action items in the Plan are high-level and include a broad assessment of the high, medium, or low level of resources required. As the actions are developed, more specific cost estimates can be determined. Some actions can be accomplished with little to no additional expense or staff time while others require more funding. New federal funding streams that prioritize safety may help fund these actions, and the Vision Zero Action Plan and safety investments will be important for increasing Fort Collins' competitiveness to leverage this funding.

Introduction

The City of Fort Collins has taken safety seriously for decades. As the first public local entity to join the Colorado Department of Transportation (CDOT) Moving Towards Zero Deaths initiative to eliminate traffic-related deaths, the City of Fort Collins has developed a reputation for its dedication to traffic safety. Fort Collins has robust traffic enforcement, designs for traffic safety in road construction projects, and systemically encodes safety in traffic operations. City departments coordinate with each other and collaborate with outside agencies to promote traffic safety.

However, despite these efforts, traffic crashes continue to result in fatalities and serious injuries. An average of 285 crashes on Fort Collins' streets resulted in an injury or fatality every year from 2017 through 2021. Not only do these tragic events contribute to immeasurable personal loss, but they also put elevated pressure on the local emergency response, and the unsafe and uncomfortable environments that lead to severe crashes discourage the use of active modes, affecting communitywide health and mobility and our ability to meet climate goals.

Fort Collins needs a new approach to roadway safety, one that expands existing efforts to improve traffic safety. Therefore, the Fort Collins Vision Zero Action Plan builds on previous City plans and policies, and emphasizes:

- Making the existing road network **safer**
- Focusing on the safety of **all road users**
- Eliminating crashes that result in **fatalities and serious injuries**
- **Reducing conflicts** at intersections, along the high-injury network, and within historically underserved communities
- Planning for **ongoing evaluation** and monitoring of deployed strategies

Vision Zero is an opportunity to address traffic safety from a variety of angles and to guide City leadership in designing streets that emphasize safety, predictability, and comfort while recognizing the inevitability of human error.



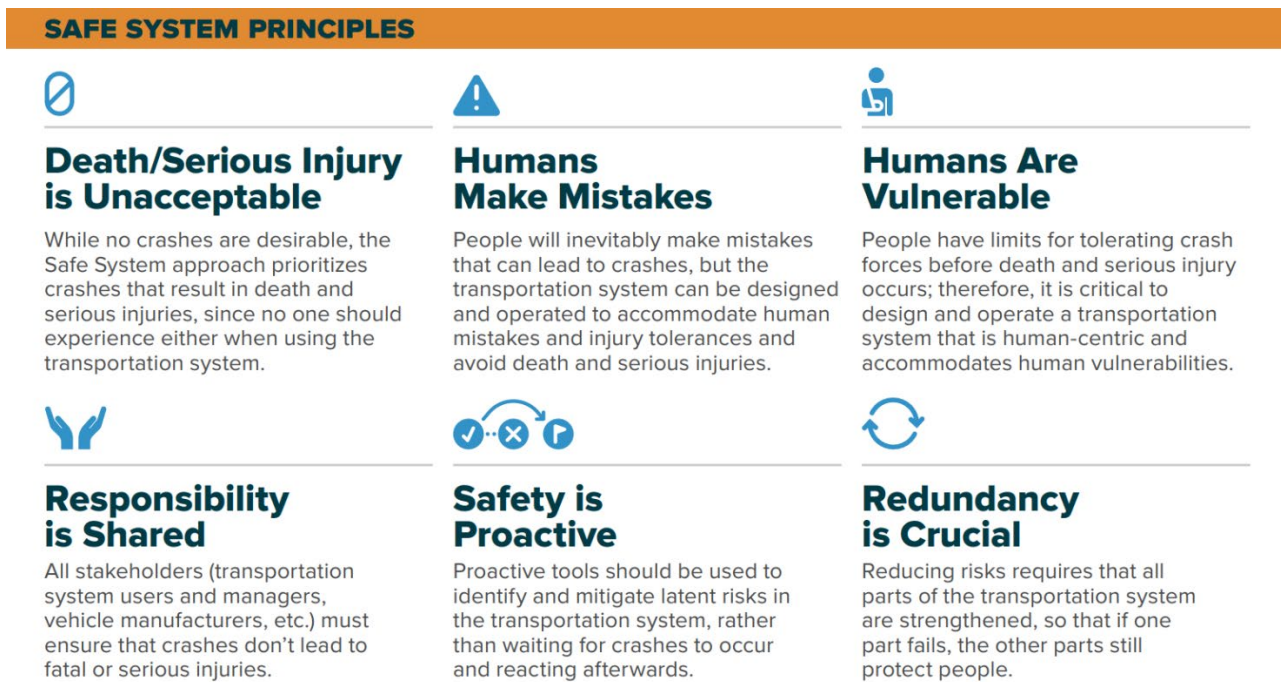
*A "ghost bike" marks the location where someone riding a bicycle was killed in a collision in 2021.
Source: City of Fort Collins*

What is Vision Zero?

Vision Zero is an approach to transportation safety that accepts no loss of life or serious injury on our transportation system. Vision Zero takes the *Safe System* approach to prioritize safety in decision-making processes. The *Safe System* approach is different from conventional ways of addressing traffic safety because it recognizes that while humans make mistakes when using our roads, death and serious injury are not acceptable outcomes. Responsibility for a safe road system should be shared, proactive, and redundant to prevent people from being killed or seriously injured on roadways. Under Vision Zero, City leadership, traffic engineers, transportation network designers, local enforcement, policymakers, and road users all have a shared responsibility to prevent fatal and serious injury crashes from occurring. The principle of redundancy recognizes that law enforcement cannot prevent all road user mistakes. Other layers of protection - in addition to law enforcement - are needed to prevent severe crashes.

The principles of the *Safe System* approach are outlined in Figure 1.

Figure 1: Principles of the *Safe System Approach*. Source: FHWA.



The Fort Collins Vision

Fort Collins' priorities and commitment to Vision Zero are centered on the understanding that even a single traffic fatality or serious injury is unacceptable. Fort Collins' vision for traffic safety is that: **By 2032, no one dies or has a serious injury while traveling in Fort Collins.**

Guided by this vision statement, Fort Collins created this Action Plan containing strategies to achieve Vision Zero. This vision statement supports and aligns with the *Active Modes Plan* vision horizon and statement, that the City will achieve 50 percent active mode share and eliminate active modes traffic fatalities and serious injuries by 2032.

Goals of the Fort Collins Vision Zero Action Plan

After initial stakeholder engagement, analysis of existing conditions and citywide goals, and a review of best practices in Vision Zero Action Plans from peer cities, six goals emerged.

Overarching Goal: Focus on Vulnerable Users

The overarching goal to focus on vulnerable road users is a fundamental part of making roads safer for all in Fort Collins. Vulnerable road users are people using the transportation system outside of a motor vehicle. They may be riding a motorcycle, using a wheelchair, walking, bicycling, or using other micromobility devices. People riding motorcycles, walking, or bicycling are disproportionately represented in severe crashes.

People with disabilities, young people, and the elderly face a high risk of traffic fatalities and injuries. People with disabilities and the elderly may walk or move more slowly, people in wheelchairs and children have a lower profile and are harder to see, and people with vision, hearing, or cognitive impairments may have difficulty accessing critical information on the transportation network.

A focus on vulnerable road users is embedded across all goals because measures to reduce severe crashes for vulnerable road users also reduce crashes for people in motor vehicles. However, measures to reduce severe crashes for people in motor vehicles do not necessarily reduce severe crashes for vulnerable road users. For example, seatbelts protect people in motor vehicles but do not protect people outside, while roundabouts protect people inside and outside of motor vehicles by reducing the number of conflict points and reducing motor vehicle speed.

Support Mode Shift to Reduce Motor Vehicle Trips

Promoting sustainable transportation such as walking, biking, and using public transit will help the Fort Collins community reduce dependency on motor vehicles. Motor vehicles are involved with nearly all severe traffic crashes; therefore, the development of safe multimodal street networks, and programs and policies that increase the use of sustainable modes and decrease the use of motor vehicles can help the community achieve Vision Zero.

Description

Historically, Fort Collins' transportation system has been built to prioritize the investment in movement of motor vehicles over all other modes, leading to an unbalanced transportation system and one that is potentially deadly for all road users. A continuation of efforts that direct funding towards improving efficiency for active modes users, increasing the frequency of transit, and supporting alternatives to driving will help Fort Collins reduce car use. Vulnerable road users directly benefit from strategies to reduce dependency on motor vehicles, and having fewer threats on the road benefits all road users.

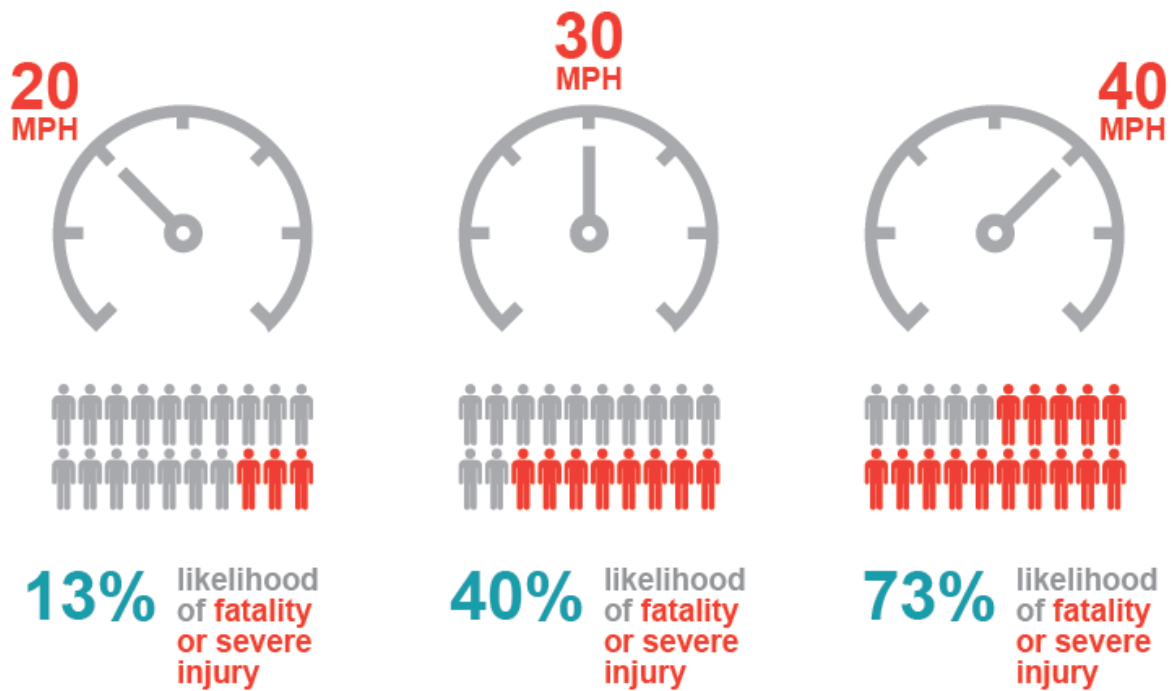
Prioritize Safer Speeds and Multimodal Places

High motor vehicle speeds increase the risk of serious injury or death. Engineering solutions such as road diets, crossing improvements, and traffic signal optimization have been shown to slow speeds, create people-centric spaces, and reduce severe crashes.

Description

Creating safe speeds involves designing streets to manage traffic speed. Slower speeds reduce the kinetic energy of crashes and result in a smaller chance of injury or death for people inside and outside of motor vehicles. National research indicates that the risk of death or severe injury (as defined in the report) increases for people walking when motorists' speed increases (Figure 2). Managing traffic speed through engineering improvements also makes streets safer and more inviting for people using active transportation.

Figure 2: Relation Between Motorist Speeds and Rate of Pedestrian Fatality or Severe Injury



Source: Tefft, B.C. (2011). *Impact Speed and a Pedestrian's Risk of Severe Injury or Death (Technical Report)*. Washington, D.C.: AAA Foundation for Traffic Safety.

Promote a Culture of Traffic Safety

Achieving zero traffic deaths and serious injuries can only be successful if Fort Collins' street planners and designers, City leaders, and street users set priorities and make decisions that improve transportation safety and reduce severe crashes.

Description

This goal includes shifting internal agency priorities and standards to the latest best practices to create and maintain safe roads, and community engagement so that there is an understanding of the dangers of unsafe streets and the need for roadway redesigns. It is a community-driven goal that requires buy-in and support from diverse stakeholders, the community, elected officials, interdepartmental agency staff, and the media. Vulnerable road users directly benefit from strategies to promote a culture of traffic safety because it establishes that vulnerable road users have a right to use the public right-of-way safely. People in motor vehicles benefit from a culture of traffic safety that results in fewer severe crashes.

Increase Data Transparency and Partnerships

Improving the accuracy, timeliness, and quality of crash data helps planners, engineers, and policymakers make better decisions about resource allocation and facility design. Data on the locations of severe crashes will help in prioritizing, implementing, and evaluating projects that support Vision Zero.

Description

Vision Zero is a data-driven effort that relies on up-to-date information to quickly identify areas that are high-risk, determine priorities, and mitigate risks before traffic fatalities and serious injuries can occur. Given limited City resources and funds to make improvements, it is important for the City to formulate a system for collecting, maintaining, sharing, and reviewing data to drive decision-making. Having consistent, publicly available, useable data is also critical for tracking progress, celebrating successes, and adjusting investments in Vision Zero projects. Severe crashes involving vulnerable road users are frequently unreported; additional data sources beyond police reports can fill in gaps.

Center Equity

A Vision Zero initiative is successful when everyone is safe using Fort Collins' streets. An equitable Vision Zero process helps ensure improvement projects and programs reduce harm without increasing the burden on historically underserved communities.

Description

National research shows that low-income communities and communities of color are disproportionately affected by traffic violence in their neighborhoods. Aiming for equitable implementation by providing more resources to historically underserved communities should be a priority. Vulnerable road users, especially those most reliant on walking and bicycling, are often people without access to motor vehicles, people with low income, and people with disabilities. People with low income, inside and outside of motor vehicles, can least bear the costs associated with severe crashes or the deaths of family members.

Understanding Safety Issues in Fort Collins

Vision Zero takes multiple approaches to understanding systemic factors behind traffic deaths and injuries. First, current efforts in the City of Fort Collins to promote traffic safety were reviewed. Second, in order to better understand community values and priorities around traffic safety and Vision Zero strategies, the City of Fort Collins conducted an extensive review of stakeholder and community feedback received from recent transportation-related planning efforts. Third, best practices from other cities with Vision Zero Action Plans were reviewed. Finally, successful Vision Zero programs are largely data-driven. Therefore, the City of Fort Collins also analyzed crash data to understand how and where people are killed or seriously injured while traveling on Fort Collins' streets. The locations, contributing factors, and demographic information will help Fort Collins target efforts to achieve Vision Zero.

Current Efforts

The City of Fort Collins' current efforts to promote traffic safety include robust traffic enforcement, designing safety in road construction projects, and systemically encoding safety in traffic operations. City departments coordinate and the City collaborates with other agencies to promote traffic safety.

The Fort Collins Police Department Traffic Enforcement Unit addresses the top road safety focus areas of speeding, red light and stop sign violations, following too closely, and distracted driving, issuing 7,550 traffic citations in 2021. Fort Collins has used automated enforcement since the first red light cameras in 1997. Today, there are four red light cameras and two camera radar vehicles. Revenue from automated enforcement is used for traffic calming and traffic enforcement equipment. Police Services has officers with specialized training and certification to conduct a commercial vehicle inspection. If a commercial vehicle is stopped and there are indications an inspection should be conducted, a trained certified inspector will conduct that inspection and may place the vehicle out of service until violations have been corrected. The Traffic Unit has not escaped the national shortage of police officers, however, and must be fully staffed for robust traffic enforcement.

Traffic safety is designed into road construction projects. Every ten years, the Transportation Capital Projects Prioritization Study ranks arterial intersection and corridor projects with safety as one of the highest criteria. Safety-specific funding opportunities are opportunities to implement projects with a safety focus sooner than others. One recent example of a safety-focused project is the addition of separated bicycle and pedestrian facilities at the Vine Drive and Lemay Avenue overpass, which has been a hot spot of severe crashes and had no sidewalks or bike lanes. Four capital projects with safety as the primary goal are currently underway at intersections around the city.

Traffic Operations Department systematically evaluates and adjusts operations to reduce crashes. For example, at College Avenue and Trilby Road, the city's top hot spot of severe crashes, the protected permissive left turn phase was changed to protected only left turns, with the result of a reduction in the number of crashes. Any intersection that has experienced at least three approach turn crashes is evaluated for changes to the left turn phasing, and signal timing through corridors is coordinated to reduce decision points that result in rear-end collisions.

Police and Traffic Operations departments coordinate to assess conditions leading to severe crashes. Police Services collects crash data and Traffic Operations has produced an annual analysis of crash data since 2015, "Safety in the City".

Other agencies in Northern Colorado are following Fort Collins' lead in Vision Zero. In 2019, after its first traffic death in twenty years, Colorado State University (CSU) made a commitment to Vision Zero, established the President's Vision Zero Task Force, and is developing a Vision Zero Action Plan parallel to the City's process.

Stakeholder and Community Engagement

To develop the Vision Zero Action Plan, Fort Collins engaged with a Vision Zero Technical Advisory Committee (TAC), met with select boards and commissions (the Youth Advisory Board, Senior Advisory Board, Disability Advisory Board, the Bicycle Advisory Committee, and the Transportation Board), held an online comment period for the community to review the draft Action Plan, and reviewed feedback from previous outreach efforts. Community input from a variety of past efforts and surveys that helped guide the goals and strategies of the Action Plan is summarized below.

Vision Zero Technical Advisory Committee (TAC)

The TAC was comprised of a group of stakeholders that represent a diverse cross-section of the Fort Collins government. The TAC included Fort Collins City staff from:

Community Development & Neighborhood Services, Economic Health Office, Engineering Department, FC Moves, Parking Services, Parks Department, Parks Planning & Development, Planning Department, Police Services, Streets Department, Traffic Operations, Transport, and Utilities Department

Local and statewide agencies and organizations that also were a part of the TAC included:

Bike Fort Collins, Colorado State University (CSU), Colorado Department of Transportation (CDOT), Larimer County, North Front Range Metropolitan Planning Organization (MPO), Poudre School District (PSD), Safe Kids Larimer County, and UC Health

During three TAC meetings, participants had in-depth discussions centered on:

Meeting #1: Existing conditions and vision, mission, and goals

Meeting #2: Draft Vision Zero strategies

Meeting #3: Prioritization of strategies

Transportation Capital Projects Prioritization Study (TCPPS)

The 2022 TCPPS, which analyzed safety and congestion data for intersections and arterial roadways in Fort Collins, consulted community members on their top traffic safety priorities and needs. Outreach activities revealed that crash reduction is the top priority for Fort Collins residents. The number of requests for traffic calming was far higher than the number of concerns regarding vehicle delays. The Fort Collins community expressed a desire for traffic calming measures along minor arterial roads to decrease crossing distances, reallocate lanes as bikeways and bus-only lanes, and better separation of motor vehicles and active modes users.

CDOT Region 4 Bicycle and Pedestrian Study

In 2021, CDOT released an online survey to understand what statewide pedestrian and bicycle improvements are needed on CDOT-owned roadways. In Fort Collins, CDOT found unsafe traffic conditions and crossings were a top concern, with many comments calling for more grade-separated crossings and better education for motorists.

Fort Collins Active Modes Plan (AMP)

To improve the environment for active modes users and encourage mode shift in Fort Collins, the 2022 AMP engaged the community on identifying current transportation patterns and needs. Results of outreach activities concluded that the community believes that to achieve Vision Zero, Fort Collins must manage traffic speed, focus on areas with many severe crashes, educate drivers and active modes users on safe practices, and make alternative modes easy and realistic options for everyday travel.

Fort Collins General Service Requests

More than three years of service requests submitted by Fort Collins residents were analyzed. Between January 2018 and March 2022, 1,118 service requests were received on neighborhood safety concerns/issues, new signals or pedestrian crossings, roadway safety concerns, or school safety concerns through Access Fort Collins. Over 900 of these requests were categorized by topic:

- 47% on vehicle speed concerns
- 15% on pedestrian traffic issues or crosswalks
- 14% signs and signals requests
- 8% traffic congestion concerns
- Other topics (<5% each) on parking in bike lanes, dangerous intersections, traffic violations, speed bump removal, restriping, line of sight, truck traffic, and noise



Asphalt Art projects are an opportunity to further engage the Fort Collins community in the design elements of the public right-of-way and can be implemented in the excess space created by safety treatments like bulb-outs and curb extensions. Source: City of Fort Collins.

Best Practices

The Vision Zero Network¹ guidelines for an effective Vision Zero Action Plan lays out two key components of a strong Action Plan: **foundational elements** and **actionable strategies**. These key components are underpinned by a process of continued community engagement and attention to equity.

Foundational elements are:

- Robust data framework
- Measurable goals with a clear timeline for implementation
- Accountability
- Transparency

Actionable strategies should:

- Prioritize roadway design
- Focus on speed management
- Utilize impactful education strategies
- Ensure enforcement is equitable.

Reviewing foundational elements and actionable strategies from other Colorado communities and national peer cities, including Boulder and Denver, as well as Ann Arbor MI, Austin TX, and Eugene OR, provided a strong starting point for understanding the strategies needed to address the safety issues in Fort Collins.



City and County of Denver has installed inexpensive treatments like bulb-outs and curb extensions using low-cost materials as part of its solutions to address roadway safety and help meet its Vision Zero goals.

¹ Vision Zero Network Guidelines for an Effective Vision Zero Action Plan https://visionzeronetwork.org/wp-content/uploads/2017/12/VZN_ActionPlan_FINAL.pdf

Crash Trends

Over the past five years (2017 through 2021), the total number of severe crashes that occur in Fort Collins has fluctuated. However, the number of fatal crashes has been on the rise since 2019 (see Figure 3). In *Safety in the City: Fort Collins 2021 Annual Roadway Safety Report*, crashes are categorized by severity. Severe crashes are those resulting in fatalities, minor or non-incapacitating injuries, and major or incapacitating injuries. The Fort Collins Vision Zero Action Plan focuses on severe crashes. Crash trends from the latest report are summarized below.

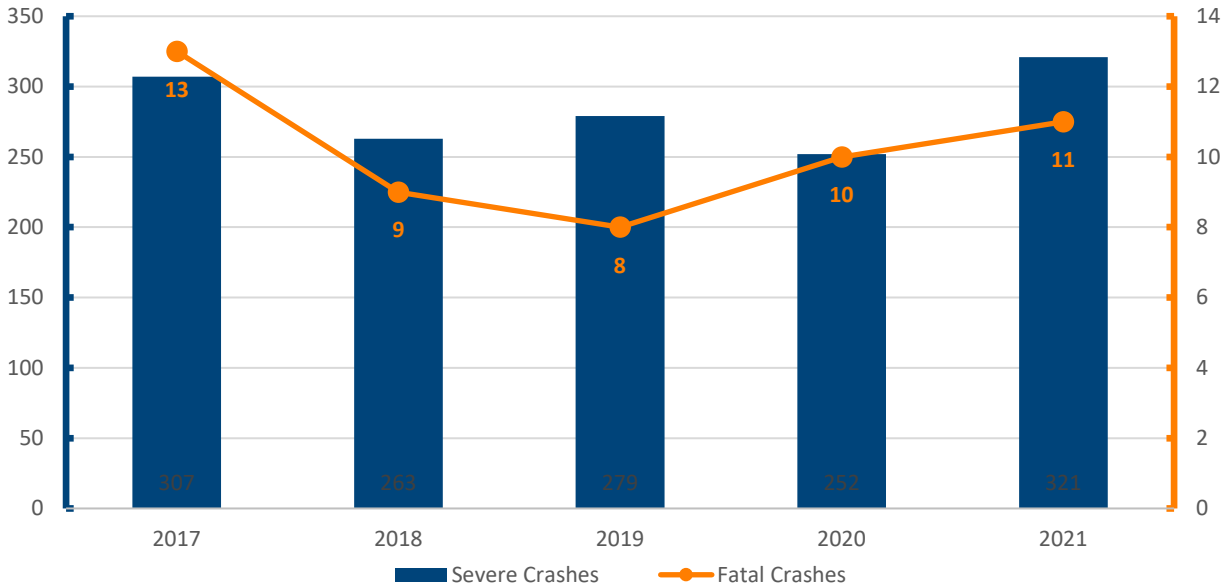


Figure 3: Severe Crashes and Fatal Crashes, 2017-2021.

Source: *Safety in the City: Fort Collins 2021 Annual Roadway Safety Report*, August 2022.

Crashes in Fort Collins Occur Most Frequently at Intersections

More than three in every four crashes, or 78 percent, occur at an intersection, driveway, or alley access in Fort Collins (see Figure 4).

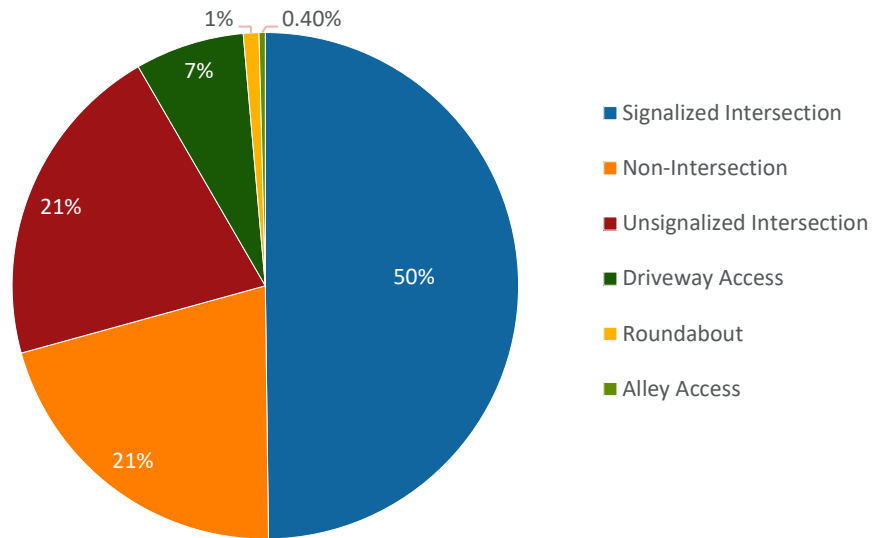


Figure 4: Crash Location Source: *Safety in the City: Fort Collins 2021 Annual Roadway Safety Report*, August 2022.

Vulnerable Road Users are Disproportionately Impacted by Severe Crashes

While most trips in Fort Collins are made in motor vehicles, travelers using other modes are at disproportionate risk of severe crashes. Crashes involving vulnerable road users account for only 6% of total crashes but make up 35% of all severe crashes and 47% of all fatal crashes (see Figure 5). When vulnerable road users are involved, crashes are more likely to be severe.

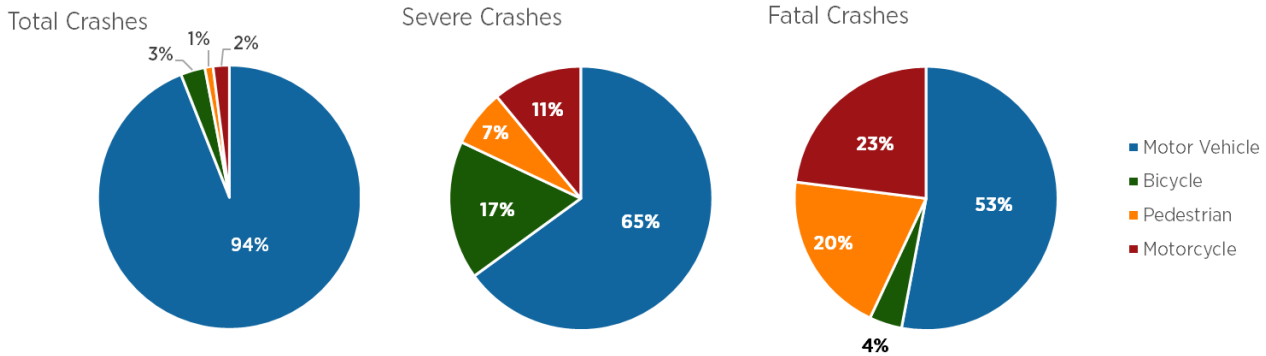


Figure 5: Severity Impact on Vulnerable Road Users.
 Source: *Safety in the City: Fort Collins 2021 Annual Roadway Safety Report*, August 2022.

Fatal Crashes in Fort Collins Increasing Recently

On average in the past five years, ten people have died in roadway crashes in Fort Collins annually. Overall, fatal crashes have increased steadily since 2019, with 10 total crashes occurring in Fort Collins in 2020 and 11 in 2021. Fatal crashes decreased from 2017 to 2019 but increased in 2020 and 2021, even while vehicle miles traveled (VMT), a measure of the amount of driving in a region, decreased in 2020 (see Figure 6).

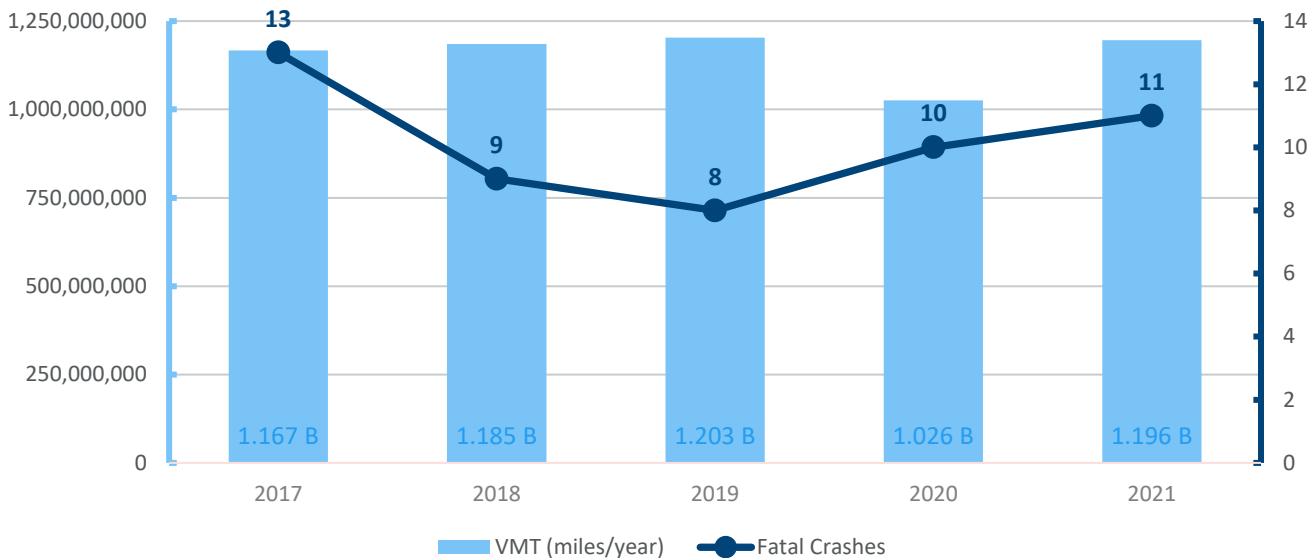


Figure 6: Fatal Crashes and Vehicle Miles Traveled Per Year (2017-2021) Crash Data Source: *Safety in the City: Fort Collins 2021 Annual Roadway Safety Report*, August 2022. VMT Data Source: Northern Front Range Metropolitan Planning Organization (NFRMPO).

The Rate of Fatal Crashes in Fort Collins is Similar to Other Places

Fort Collins’ fatal crash rate is just below average for cities of similar size in Colorado (see Figure 7). When compared to peer cities across the United States, Fort Collins’ fatal crash rate sits just above the average (see Figure 8). When it comes to traffic deaths and serious injuries, Fort Collins is doing about average. Fort Collins must do much better than average to achieve Vision Zero.

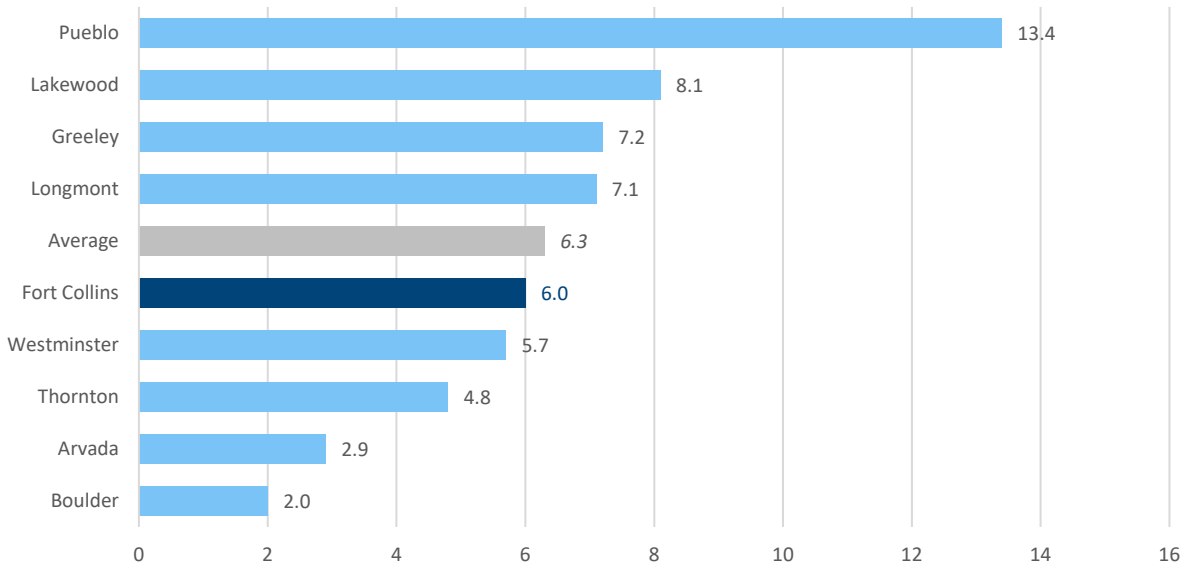


Figure 7: Fatal Crash Rate Comparison to Other Colorado Cities, based on 2017-2021 Data. Source: *Safety in the City: Fort Collins 2021 Annual Roadway Safety Report, August 2022.*

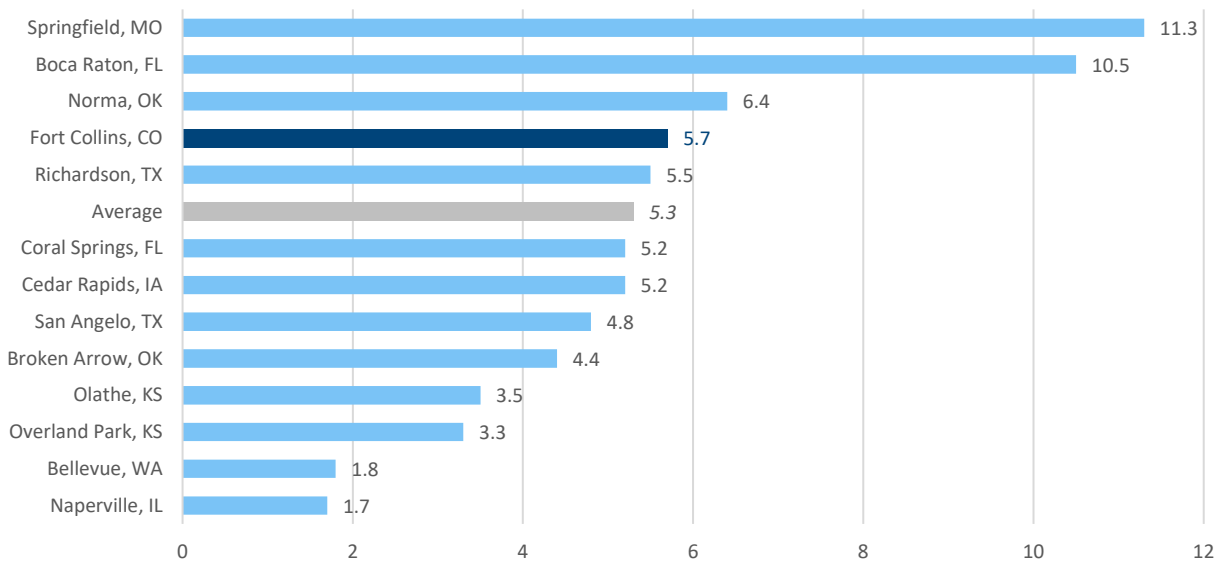


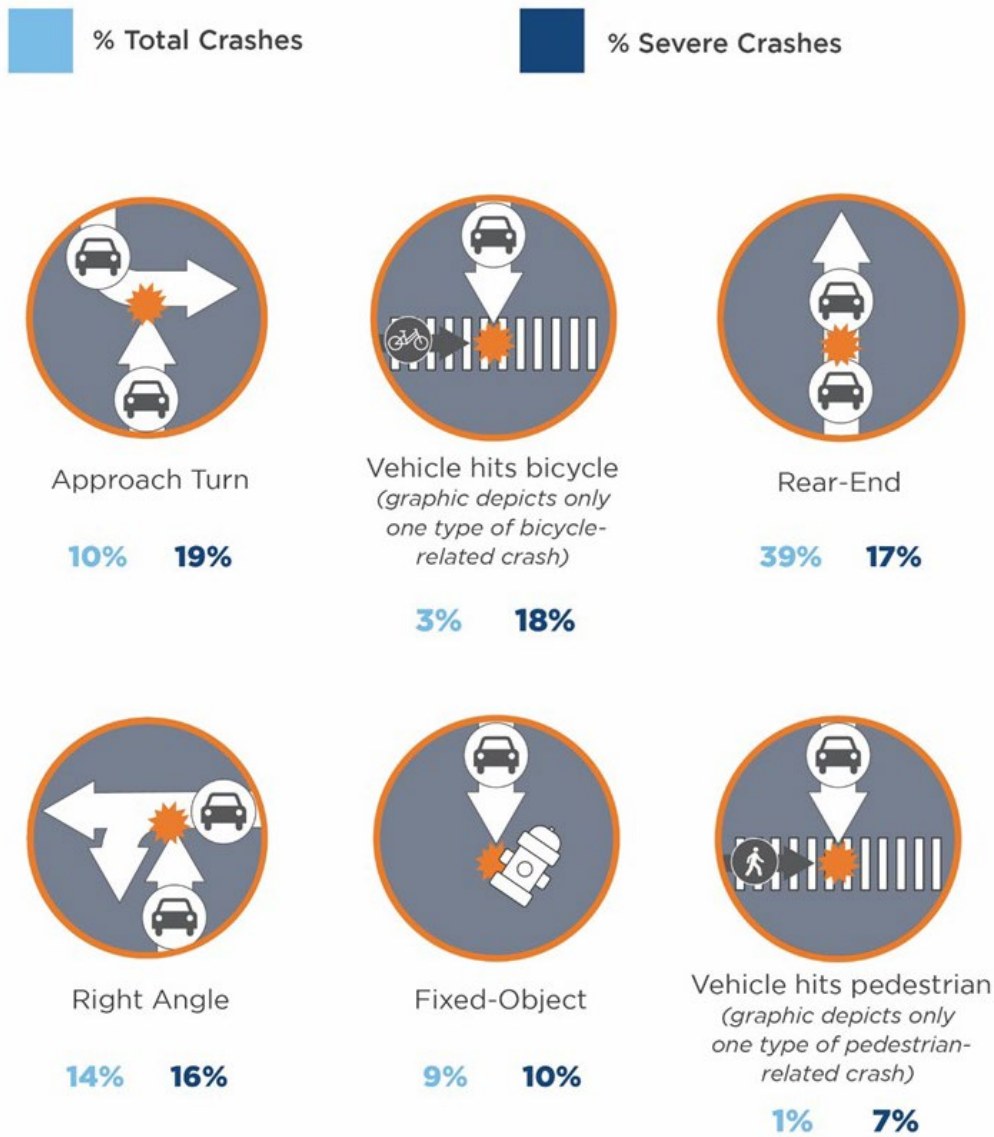
Figure 8: Fatal Crash Rate Comparison to Peer Cities, based on 2017-2020 Data (2021 data was not available for all peer cities). Source: *Safety in the City: Fort Collins 2021 Annual Roadway Safety Report, August 2022.*

Six Crash Types Make Up the Majority of Severe Crashes that Occur on Fort Collins' Roads

Six crash types comprise 87 percent of severe crashes. Figure 9 illustrates these crash types and the frequency of each crash type amongst all crashes and severe crashes. Countermeasures designed to address these crash types have the greatest potential for reduction in traffic deaths and serious injuries. The six prevalent crash types in severe crashes are:

- Approach Turn
- Bicycle-related
- Rear-end
- Right Angle
- Fixed-object
- Pedestrian-related

Figure 9: Top 6 Crash Types for Severe Crashes, 2019-2021



Source: Safety in the City: Fort Collins 2021 Annual Roadway Safety Report, August 2022.

High-Injury Network (HIN)

Looking for hot spots of severe crashes is limiting because severe crashes have a random element. For example, two intersections may share many of the same characteristics but only one of them has experienced severe crashes. If it is just chance that the severe crashes so far have happened at that intersection, severe crashes are likely to occur in the future at the intersection that has not yet experienced severe crashes. Countermeasures should be implemented at both intersections to prevent future severe crashes. The High-Injury Network (HIN) consists of the roads most likely to experience severe crashes based on, but not limited by, historical crash data.

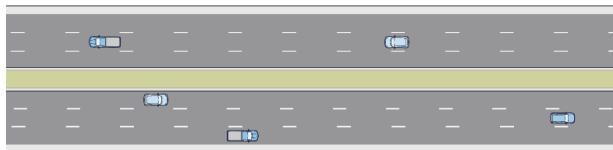
A geospatial crash analysis of the crash data from 2017 through 2021 was used to identify the HIN in Fort Collins—the street segments that had the greatest share of severe crashes.

Arterial roads represent 91 percent of the HIN, collector roads represent 6 percent, and local streets represent only 3 percent. The HIN includes just 8 percent of the roads in Fort Collins, however, those roads account for 63 percent of all severe crashes.

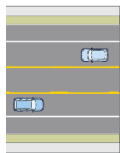
Map 1 on the next page shows the Fort Collins HIN. This is where the City should target Vision Zero strategies and countermeasures to reduce severe crashes.

Note, while the analysis does not indicate specific high-injury intersections, the analysis accounts for intersections with a high quantity of severe crashes because crashes at intersections are assigned to the roadway segments. More in-depth analysis of the HIN should be performed to identify countermeasures for specific locations.

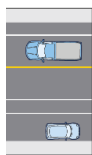
The HIN is Comprised of



91%
Arterials



6% Collectors



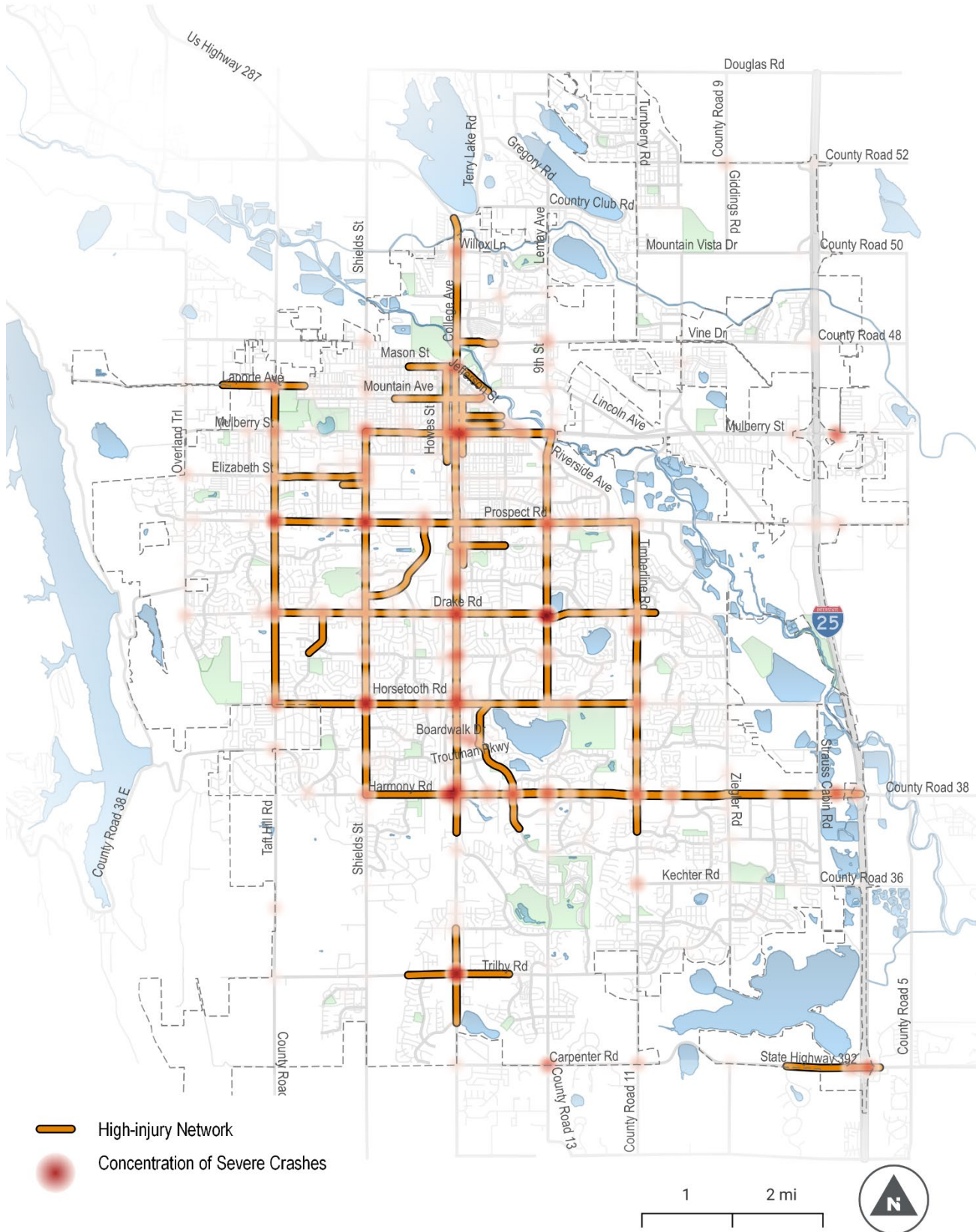
3% Local Roads

63% of all fatal and serious injury crashes



Occur on only **8%** of Fort Collins Road network

Map 1: Fort Collins High-injury Network (2017-2021)



How Fort Collins Will Achieve Vision Zero

An Equitable Approach

An equitable approach is woven throughout Fort Collins' goals and strategies to achieve Vision Zero. While there is a goal to Center Equity, the approach to achieving every goal will be equitable. This approach includes emphasizing historically underrepresented communities in prioritization of safety improvements and using equitable engagement and outreach efforts to reach people, particularly those from historically underrepresented communities, in decision-making.

The Larimer County Department of Health and Environment's Health Equity Index (HEI) was used to assess the relationship between traffic safety and social and environmental vulnerability. The HEI uses eight indicators linked to the determinants of health and demographics to spatially understand factors that contribute to an individual or household's potential vulnerability: Youth, Older adults, Racial and ethnic minorities, People with disabilities, Households without a vehicle, Poverty, Poor mental health, Low physical activity and High rates of obesity. The HEI is on a scale of 0 to 100, with 100 having the greatest proportion of population with these indicators. The map on the next page illustrates the HEI in relation to the HIN to assist emphasizing historically underrepresented communities in prioritization of safety improvements (Map 2).

Transformative Actions and Supporting Actions

The following actions were developed to guide Fort Collins' efforts towards achieving the goal of zero traffic deaths and serious injuries by 2032. These actions have been identified based on crash data analysis, stakeholder engagement, past community outreach, and guidance from City staff.

The Vision Zero actions are listed by the five goals and are broken into two categories:

- Transformative Actions and,
- Supporting Actions.

Transformative Actions

Transformative actions are identified to be the most impactful to move Fort Collins towards achieving Vision Zero. Work is already underway on some actions while others will require reorienting existing programs or allocating additional resources. Some actions can be accomplished with little to no additional expense or staff time while others require more funding. Several transformative actions may take some time to initiate, but all should be considered immediate actions and should be fully implemented by the timeline indicated.

Support Mode Shift to Reduce Motor Vehicle Trips

Support Mode Shift: Promoting sustainable transportation such as walking, biking, and using public transit will help the Fort Collins community reduce dependency on motor vehicles. Motor vehicles are involved with nearly all severe traffic crashes; therefore, the development of safe multimodal street networks, and programs and policies that increase the use of sustainable modes and decrease the use of motor vehicles can help the community achieve Vision Zero.

TRANSFORMATIVE ACTION 1 Increase transit frequency and make service improvements consistent with the actions for the Short-Term Transit Network in the Transit Master Plan	
Key Implementer(s):	Transfort
Resources:	<i>This will not require funding beyond what is necessary to carry out the Transit Master Plan.</i>
Timeline:	Near-term: 2023-2025
Implementation Notes:	<p>Relation to Vision Zero: Robust, frequent transit that is convenient and reliable enables people to travel without using motor vehicles.</p> <p>Inclusion of the Transit Master Plan elevates it as a key aspect of Vision Zero and does not require additional oversight or actions.</p>
Progress Metrics:	<ol style="list-style-type: none"> 1. Transit mode share. 2. The number of bus routes operating at a 15-minute frequency or better. 3. The number of transit service improvements implemented.

TRANSFORMATIVE ACTION 2	
Install or upgrade full pedestrian and bicycle networks and treatments consistent with the Active Modes Plan and Pedestrian Needs Assessment	
Key Implementer(s):	FC Moves Support: Traffic Operations, Streets Department, Engineering Department, Park Planning & Development Department
Resources:	<i>This will not require funding beyond what is necessary to carry out the Active Modes Plan.</i>
Timeline:	Long-term: 2030-2032
Implementation Notes	Relation to Vision Zero: Connected, low-stress active mode networks with reliable, safe crossings enable people to travel short distances without motor vehicles and access transit routes. Inclusion of the Active Modes Plan and Pedestrian Needs Assessment elevates them as a key aspect of Vision Zero and does not require additional oversight or actions.
Progress Metrics:	<ol style="list-style-type: none"> 1. Number of miles added to the low-stress bicycle network 2. Number of pedestrian and bicycle spot improvements completed along roadway and at intersections 3. Percent of miles of low-stress bicycle network or sidewalk on HIN 4. Pedestrian, bicycle, and micromobility mode share
TRANSFORMATIVE ACTION 3	
Promote alternatives to driving through the Shift Your Ride Program	
Key Implementer(s):	FC Moves Support: Environmental Services, Transfort, Community Development & Neighborhood Services
Resources:	<i>This will not require funding beyond what is necessary to carry out the Shift Your Ride program.</i>
Timeline:	Long-term: 2030-2032
Implementation Notes:	Relation to Vision Zero: The transportation demand management plan is in development. Encouraging and incentivizing alternatives to driving alone while discouraging and disincentivizing driving alone reduces the number of motor vehicles on the road. Inclusion of the Shift Your Ride program elevates it as a key aspect of Vision Zero and does not require additional oversight or actions.
Progress Metrics:	<ol style="list-style-type: none"> 1. Completion of the plan 2. Single-occupant vehicle mode share 3. Vehicle miles traveled

Prioritize Safer Speeds and Multimodal Places

Prioritize Safer Speeds and Multimodal Places: High motor vehicle speeds increase the risk of serious injury or death. Engineering solutions such as road diets, crossing improvements, and traffic signal optimization have been shown to slow speeds, create people-centric spaces, and reduce severe crashes.

TRANSFORMATIVE ACTION 4 Implement engineering countermeasures and design streets to manage traffic speeds	
Key Implementer(s):	FC Moves Support: Traffic Operations, Streets Department, Engineering Department, Emergency Responders
Resources:	\$-\$\$\$ <i>Will require additional or reallocation of staff resources.</i>
Timeline:	Ongoing
Implementation Notes:	<ul style="list-style-type: none"> Implement countermeasures on the HIN, especially intersections with excess crash costs (Safety in the City: 2021 Annual Safety Report, page 36). Beyond large capital investments and projects identified in the Transportation Capital Projects Prioritization Study, improvements can be as simple as installing markings for bike lanes, edge lines, or flush medians to narrow lane widths. Seek opportunities to include countermeasures into routine maintenance (repaving, etc.), capital projects, development, and other opportunities. Seek new federal funding grants and programs that prioritize traffic safety. Plan for maintenance so that new treatments function as intended.
Progress Metrics:	<ol style="list-style-type: none"> 1. Number of projects implemented on the HIN 2. Reduction of speed at project locations
TRANSFORMATIVE ACTION 5 Test solutions without a big time and cost commitment with temporary and quick-build treatments	
Key Implementer(s):	Traffic Operations Support: Engineering Department, FC Moves, Streets Department
Resources:	\$ <i>Will require additional or reallocation of staff resources.</i>
Timeline:	Ongoing
Implementation Notes:	<ul style="list-style-type: none"> Establish a framework for pilot projects with novel approaches. Plan for maintenance of quick-build treatments so that they function as intended. Temporary and quick-build treatments typically use lower cost materials like paint, rubber curbs, wheel stops, and planters to provide immediate safety benefits. Temporary treatments can provide proof-of-concept, test new designs, and build support for more permanent changes. They can also be used to implement systemic safety improvements across many locations in a cost-effective manner. They can be easily adjusted based on analysis and community feedback. They can be used to engage the community, for example through Asphalt Art. They can be used to retrofit existing roads.
Progress Metrics:	<ol style="list-style-type: none"> 1. Number of locations on the HIN receiving temporary and quick-build treatments 2. Collection of before/after data and public feedback to inform future decisions

Promote a Culture of Traffic Safety

Promote a Culture of Traffic Safety: Achieving zero traffic deaths and serious injuries can only be successful if Fort Collins' street planners and designers, City leaders, and street users set priorities and make decisions that improve transportation safety and reduce severe crashes.

TRANSFORMATIVE ACTION 6 Review and revise standards and policies that are roadblocks to Vision Zero goals	
Key Implementer(s):	FC Moves Support: Planning Department, Engineering Department, Traffic Operations
Resources:	\$ <i>Will require additional or reallocation of staff resources.</i>
Timeline:	Near-term: 2023-2025
Implementation Notes:	<ul style="list-style-type: none"> Identify and revise standards and policies that prioritize automobile capacity and speed, and ensure standards and policies prioritize safety for all users. Develop and adopt standards to replace guidance from the Manual on Uniform Traffic Control Devices that do not align with Vision Zero.
Progress Metrics:	<ol style="list-style-type: none"> Number of standards and policies reviewed Number of standards and policies revised
TRANSFORMATIVE ACTION 7 Include Vision Zero analysis as part of planning process for all infrastructure projects	
Key Implementer(s):	Engineering Department Support: FC Moves, Traffic Operations, Utilities, Park Planning and Development, Operations Services
Resources:	\$ <i>Will require additional or reallocation of staff resources.</i>
Timeline:	Ongoing
Implementation Notes:	<ul style="list-style-type: none"> Create a Vision Zero checklist to institutionalize prioritizing safety first in all stages of capital project planning and development, and project review. Hold quarterly workshops for design plans and retrospective review.
Progress Metrics:	<ol style="list-style-type: none"> Creation of a Vision Zero checklist Number of projects that include analysis of Vision Zero goals

Increase Data Transparency and Partnerships

Increase Data Transparency and Partnerships: Improving the accuracy, timeliness, and quality of crash data helps planners, engineers, and policymakers make better decisions about resource allocation and facility design. Data on the locations of severe crashes will help in prioritizing, implementing, and evaluating projects that support Vision Zero.

TRANSFORMATIVE ACTION 8

Create a Vision Zero program with dedicated staff who can apply a safety lens to all planning, design, and resource allocation decisions

Key Implementer(s):	Traffic Operations Support: FC Moves, Engineering Department
Resources:	\$\$ <i>Will require additional or reallocation of staff resources.</i>
Timeline:	Near-term: 2023-2025
Implementation Notes:	<ul style="list-style-type: none"> One full-time employee in Traffic Operations dedicated to Vision Zero and the equivalent of a full-time employee across multiple departments to coordinate the implementation, monitoring, and evaluation of the Vision Zero Action Plan. Grant funding could be sought for initial funding to establish program and staff. Dedicated staff should further develop the details of the Transformative and Supporting Actions and pursue implementation funding.
Progress Metrics:	<ol style="list-style-type: none"> 1. Programs, projects, and policies reviewed to incorporate Vision Zero safety approach 2. Number of equivalent full-time employees dedicated to Vision Zero

TRANSFORMATIVE ACTION 9

Perform annual analysis, before & after studies, and documentation on Vision Zero progress to celebrate successes and identify areas for improvement

Key Implementer(s):	Traffic Operations Support: FC Moves, Engineering Department
Resources:	\$ <i>Will require additional or reallocation of staff resources.</i>
Timeline:	Ongoing
Implementation Notes:	<ul style="list-style-type: none"> Collect data on conditions before countermeasures are implemented or deployed to compare to after conditions. Track projects and the implementation of countermeasures by developing a spatial database. Use this information to engage the community, local influencers, and media.
Progress Metrics:	<ol style="list-style-type: none"> 1. Number of before and after studies completed 2. Number of projects and types of countermeasures implemented 3. Number of community engagements and media stories

Center Equity

Center Equity: A Vision Zero initiative is successful when everyone is safe using Fort Collins' streets. An equitable Vision Zero process helps ensure improvement projects and programs reduce harm without increasing the burden on historically underserved communities.

TRANSFORMATIVE ACTION 10 Ensure HIN projects and routine maintenance are implemented in historically underserved communities, as well as the entire City, to create self-enforcing roadways and reduce reliance on in-person traffic enforcement	
Key Implementer(s):	Traffic Operations Support: FC Moves, Equity & Inclusion, Streets Department, Parks Department
Resources:	\$ <i>Will require additional or reallocation of staff resources.</i>
Timeline:	Near-term: 2023-2025
Implementation Notes:	<ul style="list-style-type: none"> • Use data to equitably direct funding and resources to eliminate crash disparities. • Increase maintenance staff dedicated to supporting the installation and maintenance of crosswalks, protected bike lanes, quick-build projects, and other safety improvements.
Progress Metrics:	<ol style="list-style-type: none"> 1. Percent of a two-year budget cycle of safety projects completed that benefit communities with a high Health Equity Index 2. Number of maintenance staff supporting safety improvements
TRANSFORMATIVE ACTION 11 Neighborhood/Community grants to fund infrastructure projects with community involvement and engage historically underserved communities	
Key Implementer(s):	FC Moves Support: Finance Department, Traffic Operations, Engineering Department
Resources:	\$ <i>Will require additional or reallocation of staff resources.</i>
Timeline:	Near-term: 2023-2025
Implementation Notes:	<ul style="list-style-type: none"> • Seek partnerships with community organizations to reach different groups
Progress Metrics:	<ol style="list-style-type: none"> 1. Number of people engaged 2. Number of people from historically underserved communities engaged

Supporting Actions

Complementing transformative actions are the supporting actions. While less impactful than the transformative actions, supporting actions will help reinforce the *Safe System* Approach and are vital to incrementally achieving Vision Zero over time. While some supporting actions may require additional funds, some do not require funding beyond what would be required for existing plans and programs, staff time, or a small amount of additional funding.

Supporting Action Description		Key Implementer(s) (lead in bold)
1 Support Mode Shift		
1.1	Continue fare-less transit services through Transfort and implement the Transit Master Plan	Transfort
1.2	Prioritize investments in trails that provide alternative routes to roads that are on the HIN	Park Planning & Development , Parks Department, Light & Power, Natural Areas, Traffic Operations
1.3	Evaluate night-time transit hours and transit stop amenities	Transfort , FC Moves
2 Prioritize Safer Speeds and Multimodal Places		
2.1	Implement geometric intersection treatments with proven safety benefits	Engineering Department , Traffic Operations
2.2	Implement signal and/or operational modifications that are proven to reduce severe crashes	Traffic Operations
2.3	Evaluate all bus stop locations for the installation of pedestrian crossings	Transfort , Traffic Operations, Engineering Department, FC Moves
3 Promote a Culture of Traffic Safety		
3.1	Work with a broad range of agencies and organizations to promote traffic safety, such as CSU, school resource officers, mental health organizations	FC Moves , Police Services
3.2	Work with the media to more accurately report traffic crashes and avoid victim-blaming, humanizing people who are involved in collisions	Communications & Public Involvement Office , FC Moves, Police Services
3.3	Pair roadway design changes with communication on why changes are needed, and include branded Vision Zero signage during project construction	FC Moves , Communications & Public Involvement Office, Engineering Department, Traffic Operations
3.4	Engage City staff in trainings and facilitated conversations to better understand Vision Zero goals, and roadblocks and opportunities for successful implementation	FC Moves , Traffic Operations, Police Services, Engineering Department, Streets Department, Transfort, Community Development & Neighborhood Services, Communication &

		Public Involvement Office, Poudre Fire Authority
3.5	Support the establishment of a victims' advocacy organization such as a local chapter of Families for Safe Streets	FC Moves, Bike Fort Collins
3.6	Incorporate safety features in City fleet vehicles and expand safe driver training and awareness among people who drive City fleet vehicles	FC Moves, Human Resources Department
3.7	Fill current vacancies to fully staff the Traffic Enforcement Unit	Police Services
4 Increase Data Transparency and Partnerships		
4.1	Expand current group of safety stakeholders into an interdisciplinary Vision Zero Task Force and continue regular meetings to review data and ongoing traffic safety performance and determine strategies for improvement	Traffic Operations, Police Services, FC Moves
4.2	Work with Colorado Department of Transportation (CDOT) and Larimer County to provide more timely statewide or region-wide crash data	Traffic Operations, Police Services, FC Moves, North Front Range Metropolitan Planning Organization, CDOT, Larimer County
4.3	Convene rapid response meetings after all severe crashes, investigate how roadway design contributed to the crashes, and implement near-term safety improvements as appropriate to subject location and locations with similar characteristics	Traffic Operations, Police Services, Engineering Department, FC Moves
4.4	Partner with medical and substance abuse organizations to share data and strategies	Social Sustainability, Police Services, Traffic Operations
4.5	Provide a dashboard with accessible data about traffic fatalities and serious injury crashes on the City's website and incorporate data and trends into the annual safety report	Police Services, Traffic Operations, Information Technology
4.6	Advocate for policies regulating automated vehicles that advance Vision Zero safety goals	City Manager's Office
4.7	Incorporate growth projections and anticipated development into safety planning	FC Moves, Community Development & Neighborhood Services
5 Center Equity		
5.1	Pilot a diversion program with education to encourage safe behaviors over more punitive measures such as fines	Police Services, FC Moves
5.2	Engage youth to raise awareness of Vision Zero and solicit their input on programs and street design projects	FC Moves

5.3	Expand use of automated traffic enforcement (speed, red-light cameras) and deploy throughout the HIN; any revenues received from fines should be used to improve traffic safety.	Police Services , Traffic Operations, FC Moves
5.4	Provide opportunities for community input on Vision Zero initiatives	FC Moves , Communication & Public Involvement Office

Countermeasures

Safety Countermeasures include street design treatments that address the top six severe crash types in Fort Collins. The majority of these countermeasures are included in the Federal Highway Administration Proven Safety Countermeasures Initiative and the Crash Modification Factor Clearing House (www.cmfclearinghouse.org). The crash modification factor (CMF) is used to compute the number of crashes expected after implementing a given countermeasure at a specific site. The CMF can help the City prioritize which countermeasures to prioritize for implementation. The table below alphabetically summarizes safety countermeasures that could help reduce the number of crashes in the top six severe crash types that occur in Fort Collins.

Safety Countermeasure	Description	Crash Type					
		Bicycle	Pedestrian	Approach Turn	Rear End	Right Angle	Fixed Object
Backplates with Retroreflective Borders	Backplates added to a traffic signal head improve the visibility of the illuminated face of the signal by introducing a controlled-contrast background and by framing it with a 1- to 3-inch yellow retroreflective border. Signal heads that have backplates equipped with retroreflective borders are more visible in both daytime and nighttime conditions.				X	X	
Bicycle Lanes	Providing bicycle facilities can mitigate or prevent interactions, conflicts, and crashes between bicyclists and motor vehicles, and create a network of safer roadways for bicycling. Dedicated facilities for the use of bicyclists along the roadway can take several forms, including separated bicycle lanes via curb, flex posts, or bollards.	X					
Bikeways at Intersections	The approaches to intersections should maintain continuity of bicycle facilities to the maximum extent possible and should allow visibility of all users, and separation of vulnerable roadway users. Continue the bike lane up to the intersection and provide bicycle signal detection. Where space is available, protected intersection elements should be installed to minimize conflicts. Where there are high volumes of turning movements by bicyclists, two-stage turn boxes can be installed.	X		X		X	
Chicanes and Pinch Points	Chicanes slow traffic by creating a serpentine travel path by alternating street features from one side of the street to the other. Curb extensions, on-street parking, or temporary materials such as planters and rubber speed bumps may be used to produce a chicane.	X	X		X	X	X
Corner Islands and Turn Wedges	A corner island is a raised area inside an intersection that decreases the corner radius and slows left or right turning movements for motor vehicles. These designs are typically constructed using concrete curbing. Turn wedges, on the other hand, can be constructed with low-cost materials such as paint, flex posts, and rubber speed cushions.	X	X	X		X	
Corridor Access Management	Access management refers to the design, application, and control of entry and exit points along a roadway. This includes intersections with other roads and driveways that serve adjacent properties. Thoughtful access management can simultaneously enhance safety for all modes, facilitate walking and biking, and reduce trip delay and congestion.	X	X	X	X	X	

Safety Countermeasure	Description	Crash Type					
		Bicycle	Pedestrian	Approach Turn	Rear End	Right Angle	Fixed Object
Crosswalk Lighting and Daylighting	Crosswalk lighting should illuminate with positive contrast to make it easier for a driver to visually identify pedestrians. This involves carefully placing the luminaires in forward locations to avoid a silhouette effect of the pedestrian. "Daylighting" restricts street parking in advance of intersections and crosswalk approaches to clear sight lines.	X	X	X		X	
Curb Extensions	Extending the curb beyond the sidewalk or buffer edge shortens crosswalk length and increases visibility of people walking and rolling, particularly where there is on-street parking. Curb extensions are also effective tools for narrowing streets or tightening intersections to reduce motor vehicle turning speeds.		X	X		X	
Hardened Centerlines	Hardened centerlines include vertical elements such as mountable curb or flex posts that force turning drivers to slow down when turning left. They can reduce motorist-pedestrian conflicts and reduce the speed of left-turning vehicles.	X	X	X			
Leading Pedestrian Interval	A leading pedestrian interval gives pedestrians the opportunity to enter the crosswalk at an intersection 3-7 seconds before vehicles are given a green indication. Pedestrians can better establish their presence in the crosswalk before vehicles begin turning right or left. Bicyclists may also use leading pedestrian intervals instead of waiting to move with vehicle traffic, which improves cyclist safety and mobility.	X	X				
Medians	Median barriers are longitudinal barriers that separate opposing traffic and can be designed to redirect vehicles striking either side of the barrier. Median barriers significantly reduce the number of cross-median crashes, and provide a refuge for pedestrians crossing. Accessible median refuges require a cut-through and tactile warning surfaces to accommodate people with disabilities.		X	X			X
No Turn on Red Restrictions	"No Turn on Red" signs are used to restrict motor vehicles from turning at signalized intersections during the red phase. Prohibiting turns on red helps prevent crashes where vehicles turning right on red collide with through vehicles on the cross street or with people walking. These should be considered at school crossings, intersections with high pedestrian volumes, skewed intersections, or intersections with inadequate sight distances.	X	X	X		X	
Pedestrian Hybrid Beacon	The pedestrian hybrid beacon is a traffic control device designed to help pedestrians safely cross higher-speed roadways at midblock crossings and uncontrolled intersections. The beacon head consists of two red lenses above a single yellow lens. The lenses remain "dark" until a pedestrian desiring to cross the street activates the beacon.	X	X				
Pedestrian Recall Signal Timing	Signals can be put in "recall" all the time or for key time periods of the day such as peak business hours or school drop-off /pick-up times. The "walk" signal would be displayed every signal cycle without prompting by a pedestrian push button.		X				

Safety Countermeasure	Description	Crash Type					
		Bicycle	Pedestrian	Approach Turn	Rear End	Right Angle	Fixed Object
Pedestrian Refuge Island	A pedestrian refuge island (or crossing area) is a median with a refuge area that is intended to help protect pedestrians who are crossing a road.	X	X				
Protected Turn Phase	Protected turns provide an exclusive phase for left- or right-turning vehicles to enter an intersection separate from conflicting vehicle or pedestrian movements.	X	X	X			
Raised Crossings and Intersections	Raised crossings and intersections are used to slow traffic and reduce conflicts between motorists and people walking, rolling, and biking on or across the street. These crossings are elevated to reduce or eliminate the vertical transition between the sidewalk and the street.	X	X				
Road Diet Roadway Reconfiguration	A Road Diet typically involves converting an existing four-lane undivided roadway to a three-lane roadway consisting of two through lanes and a center two-way left-turn lane, reducing lane widths, and addition of bicycle lanes and/or sidewalks.	X	X	X	X	X	X
Lane Narrowing	On roadways with speeding/speeding issues, where vehicle lane widths are greater than the recommended minimums, narrowing lane widths can help control speeding, shorten crossing distances, and improve safety for all users. Narrowing lanes can also create space to accommodate bicycle and pedestrian facilities.	X	X		X	X	X
Roundabouts	Roundabouts feature channelized, curved approaches that reduce vehicle speed, entry yield control that gives right-of-way to circulating traffic, and counterclockwise flow around a central island that minimizes conflict points. While roundabouts can reduce motorist speeds, which increases comfort and safety for people walking or bicycling, they can also increase crossing distances. Multilane roundabouts and roundabouts with slip lanes should be avoided. For high-traffic volume roundabouts, bicyclists should be provided a separate cycle track.			X		X	X
Speed Safety Cameras	Speed safety cameras are an effective and reliable technology to supplement more traditional methods of enforcement, engineering measures, and education to reduce motorist speeding. Speed safety cameras use measurement devices to detect speeding and capture photographic or video evidence of vehicles that are violating a set speed threshold. State law restricts the use of speed cameras in Colorado.	X	X		X	X	X
Traffic Signal Timing	Signals timed to a target limit can encourage motorists to drive at slower speeds because the signals are timed to maintain traffic flow.	X	X	X	X	X	X



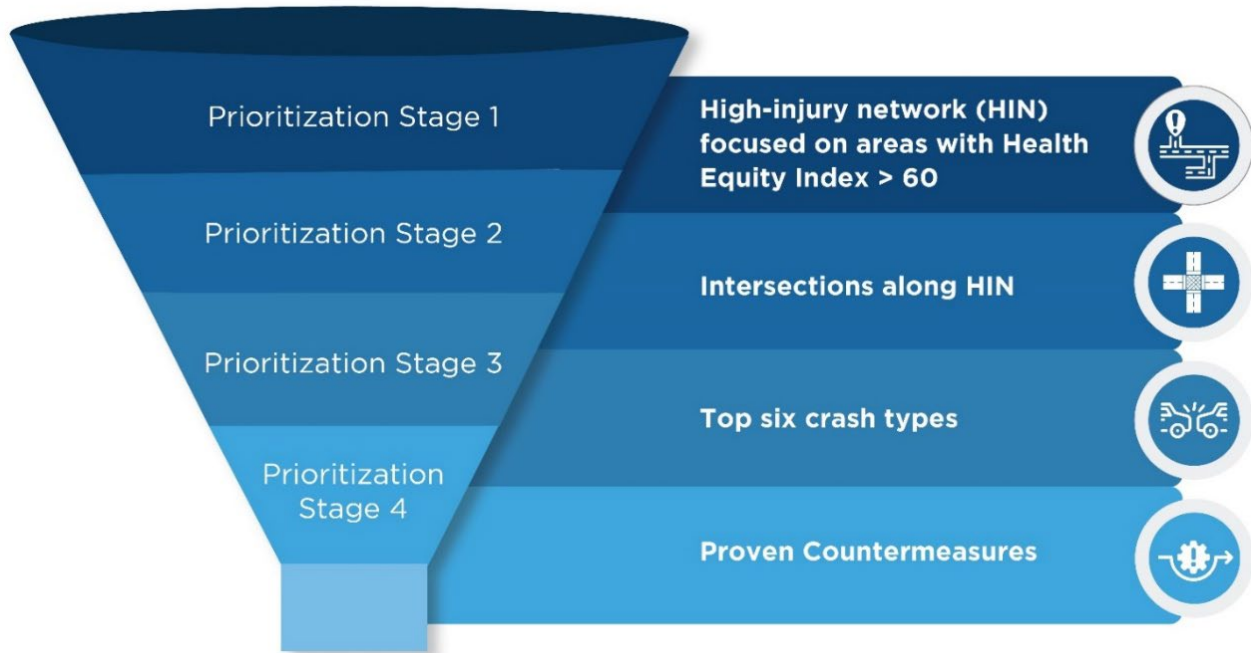
A bicycle roundabout created at CSU with rubber curbing and flexible bollards is an example of an innovative treatment using low-cost materials that are easily adjusted. Source: CSU.

Implementation

Implementing this Action Plan to achieve Vision Zero in Fort Collins will require a mechanism to prioritize roadway safety investments, funding to implement Vision Zero strategies, and regular evaluation and monitoring of progress.

Prioritization

A prioritization framework is needed as a decision-making guide to select where to first apply the limited resources available for implementing Vision Zero strategies and roadway safety countermeasures. The graphic summarizes the process that the City will take to prioritize roadway safety countermeasures. Through these prioritization stages, the City will identify the top locations along the HIN and crash types to address via proven countermeasures. Equity will be a focus by first prioritizing locations along the HIN in areas with Health Equity Index greater than 60.



Funding

Effective use of limited funding is a crucial requirement to implement the Fort Collins Vision Zero Action Plan. While some action items in the Plan may require additional funds, some do not require funding beyond what would be required for existing plans and programs, staff time, or a small amount of additional funding. For the action items that require additional funding, potential funding sources and strategies are outlined below, including leveraging new federal programs and grants to fund roadway safety projects. The Fort Collins Vision Zero Action Plan positions the City to prioritize its needs for roadway safety and seek funding from these sources.

One strategy to fund action items in this Action Plan is to create a dedicated and permanent program that funds new staff positions to coordinate the implementation of the Plan and fund large capital roadway investments. Dedicated Vision Zero staff should determine cost estimates (high level or detailed) and identify funding for actions in the Plan. In addition to the establishment of a dedicated funding program for Vision Zero, safety should be prioritized and embedded as the topmost need in already established local funding sources and programs. The reprioritization of funding in existing local sources and new federal funding streams that prioritize safety will support the success of the Plan. The Plan and local investments will be important for increasing Fort Collin’s competitiveness to leverage this funding.

The table below summarizes funding sources from local, state, federal, and non-traditional resources.

Funding Source	
<p>Local Funding</p> <p>Decision-making for use of local funding sources should put Vision Zero and roadway safety as top transportation factors.</p>	Budgeting for Outcomes: The City’s budgeting process, Budgeting for Outcomes (BFO), is designed to prioritize community goals, organized around seven Key Outcome Areas.
	Community Capital Improvement Program: A voter-approved quarter-cent sales tax renewal that includes dedicated funding for arterial intersection reconstruction, bicycle infrastructure expansion, and other multimodal improvements.
	Street Maintenance Program (SMP): The SMP has successfully implemented multimodal projects through regular maintenance and resurfacing projects, including striping bicycle lanes, repairing sidewalks and curbs, and reconstructing curb ramps for ADA compliance. Projects that can be implemented through regular operations and maintenance (e.g., lane diets and small concrete construction) may be good candidates to program via SMP.
<p>State Funding</p> <p>Funding programs primarily administered by CDOT.</p>	FASTER Transit Grants: These grants can be used to improve transit services, the rider experience, and for pedestrian and bicycle amenities or connections that support transit projects. These grants are administered by CDOT regional offices.
	FASTER Safety Program: To support construction, reconstruction, or maintenance of projects to enhance the safety of a state highway, county road, or city street. This program is administered by CDOT.
	Highway Safety Improvement Program (HSIP): The goal of this program is to achieve a significant reduction in severe crashes on all public roads. This is a federal program with a state allocation administered by CDOT.
	Revitalizing Main Streets: These grants can be used for safety and economic revitalization projects of state-owned roadways with dense commercial activities. This program is administered by CDOT.
	Multimodal Transportation and Mitigation Options Fund (MMOF): The goal of this program is a complete and integrated multimodal transportation system. This is a state program with allocation administered by the North Front Range Metropolitan Planning Organization.
<p>Federal Funding</p> <p>Programs administered by different federal administrations.</p>	Capital Investment Grant (CIG): This funding can be used for transit capital investments, including heavy rail, commuter rail, light rail, streetcars, and bus rapid transit. These grant funds can be used to improve active modes access to transit stations. This grant is administered by the Federal Transit Administration.
	Surface Transportation Block Grant (STBG) Program: This program funds projects that preserve and improve the conditions and performance on any Federal-aid highway, bridge and tunnel projects on any public road, pedestrian and bicycle infrastructure, and transit capital projects, including intercity bus terminals. In Larimer County, these funds are provided to CDOT and distributed through NFRMPO.
	Transportation Alternatives Program (TAP): TAP provides funding for programs and projects defined as transportation alternatives, including on- and off-road pedestrian and bicycle facilities, infrastructure projects for improving non-driver access to transit and enhanced mobility, community improvement activities, and environmental mitigation; recreational trail program projects; and projects for planning, designing, or constructing boulevards and other roadways. In Larimer County, these funds are provided to CDOT and distributed through NFRMPO.

Funding Source	
	Discretionary Grants: The US Department of Transportation administers several discretionary programs to fund local projects, such as the Safe Streets and Roads for All (SS4A), RAISE and INFRA grant programs.
Partnerships and Non-traditional Sources	Colorado State University Campus Projects: The university funds capital construction and maintenance of streets, sidewalks, and trails on campus, which includes many active modes routes.
	Development Review: Private developers provide both direct infrastructure investments and fees that support management of streets and right of way during the development review process.
	Larimer County Capital Improvement Plan: For projects falling outside City Limits but within the Growth Management Area, the City may partner with Larimer County to include projects in the County's five-year Capital Plan.
	Non-traditional Partnerships: There are other opportunities to seek funding for Vision Zero and roadway safety such as the Center for Disease Control (CDC) Active People, Healthy Nation program; and philanthropic organizations.

Evaluation

The Fort Collins Vision Zero Action Plan is focused on one key performance metric: reducing serious traffic injuries and deaths to zero by 2032. While this makes the success of Vision Zero fairly easy to measure, it is critically important for the City to continually evaluate the impact of various Vision Zero strategies over time, so that they can be refined, revised, and targeted for better outcomes.

The City will develop and publish a biannual report to summarize progress on Vision Zero activities. This report will draw on or amend the City's established Annual Roadway Safety Report to focus on trends in severe crashes, and report on the progress made towards each strategy based on the implementation progress metrics.

As part of the effort to implement this Action Plan, City staff will develop an evaluation framework to assess progress on Vision Zero and strive toward a balance of accountability and flexibility. The evaluation framework will be a guide to City staff to allow consistent and objective tracking of safety and safety-related actions within the City. The framework will include progress metrics such as:

- Metrics to track severe crashes
- Metrics to track street design projects to improve roadway safety
- Metrics to track the implementation of actions in the Plan

Vision Zero IS possible. Other nations and other cities have much lower rates of traffic injuries and fatalities overall, per capita, and per mile driven. Some have achieved zero and some are making progress. Any reduction in traffic deaths is a life saved; any reduction in traffic injuries is a person who walks away from a crash. With sufficient commitment, not just of resources, but commitment to a different way of approaching traffic safety, Fort Collins **can** achieve Vision Zero.

From: [Myles Crane](#)
To: [Susan Gutowsky](#); [Jeni Arndt](#); [Emily Francis](#); [Tricia Canonico](#); [Kelly Ohlson](#); [Shirley Peel](#); [Julie Pignataro](#); [Kelly DiMartino](#); [Carrie Daggett](#); [Sarah Kane](#)
Cc: [Dave](#); [Alicia Durand](#); [Jeanne Hoag](#); [Alan Kress](#); [Namcy Luttrupp](#); [Deanna O'Connell](#); [Gabriella Rivera](#); [mary@robertsrealtynoco.com](#); [Sarah Olear](#); [Lisa Hays](#); [Cortney Geary](#); [Rachel Ruhlen](#); [Cory Schmitt](#); [Lorye McLeod](#)
Subject: [EXTERNAL] Re. City Mobility Initiatives - Input for Mayor, Council and City Manager from Senior Advisory Board
Date: Wednesday, December 14, 2022 5:38:00 PM

During the past several months, City staff and associates delivered presentations to SAB for the initiatives below.

At its monthly meeting today, the Senior Advisory Board unanimously endorsed the following:

1. FC Moves/ 15 Minute City/Active Modes Plan

- SAB approves its listing in the full draft Active Modes Plan (AMP)
https://www.fcgov.com/fcmoves/files/draft-active-modes-plan-for-council-review-10.25.22_web.pdf?1666632452
- SAB members are engaged in an advisory capacity
- A key concern for SAB is "to identify and close barriers to pedestrian mobility" (AMP - page 54)
- Reference to Fort Collins Walkability Audit 2022 * (see below)

2. Vision Zero Action Plan <https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:2e04e809-740f-4845-8cac-ec18f8b9dfdf>

- Heads up for Council Work Session Feb. 14, 2023
- 2021 Safety in the City - helpful reference for Council
<https://www.fcgov.com/traffic/files/safety-in-the-city.pdf?1663208415>
- City's Zero Death Proclamation (Dec. 2016) <https://www.fcgov.com/traffic/files/moving-towards-zero-deaths-proclamation.pdf?1670274608>

commendable that FC was first municipality to follow the CDOT initiative

- SAB approves [in concept only](#) the Vision Zero Action Plan - Administrative Draft (12/9/22)
- SAB suggests that a BFO cost analysis for each of the Plan's multidisciplinary strategies be eventually provided to Council.

3. * Fort Collins Walkability Audit (June 2022) - North Front Range Metropolitan Planning Organization (NFRMPO) now offers walkability training for communities throughout Colorado. In Fort Collins, the report reflects the volunteer work done by city employees, community members and Partnership for Age-Friendly Communities coordinated with NFRMPO
<https://storymaps.arcgis.com/stories/2cc173482f484f47a8c69e1314ae10da>

Among its recommendations:

- Installation of pedestrian refuge islands along College, Monroe, and Foothills Parkway.
- Installation of high visibility crosswalks at intersections along the corridor.

- Installing more wayfinding signage throughout the entire district, with a key focus on directing pedestrians to existing amenities such as the tunnel underneath College Ave.

4. Current Bike Safety and Pedestrian Reporter - useful resource/tool for Council and community awareness

<https://nfrmpo.org/safety/>

Respectfully submitted on behalf of Senior Advisory Board by,

Myles

Myles Crane, SAB Chair

MINUTES

CITY OF FORT COLLINS • BOARDS AND COMMISSIONS



TRANSPORTATION BOARD

TYPE OF MEETING – REGULAR

November 16, 2022, 6:00 p.m.
Virtual Meeting Via Zoom

7. NEW BUSINESS

a. Vision Zero Plan – Rachel Ruhlen

Rachel Ruhlen, FC Moves, defined Vision Zero as being zero traffic fatalities and serious injuries and noted it differs from the more traditional safe systems approach and emphasizes safety prioritization in policies and designs. She discussed the crash data analysis which is in the Safety in the City report published annually by Traffic Operations. She noted vulnerable road users are disproportionately represented in severe crashes and stated ten percent of the roads in Fort Collins account for forty percent of all severe crashes.

Ruhlen noted the overarching goal for the Vision Zero Plan is to protect vulnerable road users. She outlined the proposed strategies to build redundancy into the system, including engineering and mode shift, and requested input on the proposed strategies.

Members commented on the 'centering equity' strategies, including related to involving youth in roadway design. York commented on trainings not being particularly effective and stated older leaders need to do things properly first.

Dyrdahl commented on using automated enforcement rather than in-person enforcement. She asked if red light cameras have shown to help with crashes at intersections. Ruhlen replied she will look into that.

Chair Hart commented on the importance of focusing on underserved communities and noted automatic traffic enforcement is already occurring and Vision Zero does not need to implement that.

Gavaldon concurred with prioritizing underserved communities, which he stated should occur regardless.

Owens asked about the extent of the existing automatic traffic enforcement and commented on advocacy for more automatic traffic enforcement as a way to reduce in-person bias in underserved communities. He also commented on a study that showed automatic traffic enforcement was disproportionately negatively impacting underserved communities due to infrastructure allowing for increased placement of those devices.

Chair Hart stated it seems anecdotally that red light cameras do little to improve safety.

Ruhlen requested input on the strategies related to increased data transparency and partnerships.

York stated the only way to get people to buy in to making changes is when data that it works can be shown.

MINUTES

CITY OF FORT COLLINS • BOARDS AND COMMISSIONS



TRANSPORTATION BOARD

TYPE OF MEETING – REGULAR

Gavaldon stated he would like to see data first, then recommendations and direction followed by after studies to show success or failure. He also stated rapid response meetings following fatal accidents should be a matter of course and information should be published.

Ruhlen requested input on the strategies related to promoting a culture of traffic safety.

Chair Hart stated promoting a culture of traffic safety should be how things are done.

Ruhlen requested input on the strategies related to testing solutions without a large time and cost commitment by using temporary and quick build treatments. She noted this relates to using things like tape, paint, flexible bollards, and other temporary treatments.

Ruhlen requested input regarding designing for safer speeds and multi-modal places strategies.

Gavaldon commented on the success of the asphalt art projects in traffic calming and suggested more of those projects could be beneficial.

Ruhlen requested input on the final category of supporting mode shift.

Chair Hart commented on the importance of engaging City staff in trainings and facilitated conversations to better understand Vision Zero goals and roadblocks.

Ruhlen outlined next steps for the draft action plan to be presented at a Council work session in February with adoption in the spring.

MINUTES

CITY OF FORT COLLINS • BOARDS AND COMMISSIONS



BICYCLE ADVISORY COMMITTEE

TYPE OF MEETING –REGULAR

November 28, 2022, 6:00 p.m.

Hybrid Meeting – Zoom and 281 North College Avenue, Fort Collins, CO

7. NEW BUSINESS

a. Vision Zero Action Plan – Rachel Ruhlen

Rachel Ruhlen, FC Moves, provided a summary of Vision Zero which aims for no traffic deaths or serious injuries via a safe systems approach that places responsibility on individual road users as well as on planners and policy makers to prioritize safety in designs and policies. She noted speeding is at the heart of Vision Zero. She also commented on the Safety in the City report which summarized crash and injury data in the city.

Ruhlen discussed the strategies utilized in the Vision Zero plan noting they are primarily focused on vulnerable road users. She noted redundancies are built into the strategies as the only layer of traffic safety currently is enforcement. She outlined the strategies prioritized by the technical advisory committee.

Dangerfield asked what entities were represented in the technical advisory committee. Geary replied Bike Fort Collins, Police Services, Safe Kids of Larimer County, Larimer County, CDOT, UC Health, Traffic Operations, and CSU were represented.

Ruhlen noted the prioritized strategies could still shift depending on input received from Boards and Commissions. She shared a Miro board with the members and outlined the strategies currently identified as being transformative, including review and revise standards and policies that are roadblocks to Vision Zero and include Vision Zero analysis as part of the planning process for all infrastructure projects.

Allison asked for an example of such a policy. Ruhlen replied there is a document called the Manual on Uniform Traffic Control Devices (MUTCD) that comes out at the federal level which is full of standards such as the number of people that must use an intersection before a crosswalk or pedestrian signal is installed, which is somewhat of a backward way of thinking. She noted that document is just guidance; however, it tends to be used as if it was the law.

Chair Williams asked about the current status of the input process. Ruhlen replied the Transportation Board has already weighed in and stated staff is fairly confident in the list of strategies and which ones are transformative; however, staff is still seeking feedback and there is room for additional strategies. She requested input prior to December 3rd and noted the hope is for plan adoption in the spring.

Krause suggested it may be worth calling out the MUTCD specifically given it is

MINUTES

CITY OF FORT COLLINS • BOARDS AND COMMISSIONS



BICYCLE ADVISORY COMMITTEE

TYPE OF MEETING – REGULAR

heavily relied upon.

Dixon stated the MUTCD recently went through a revision and updating process and noted the NoCo Bike and Ped Collaborative submitted feedback. He asked how often the document is revised and whether signage could be placed in the Colorado state supplement. Ruhlen replied there was more input received on the MUTCD revision than ever before and most pointed to its negative impact on safety. She stated it seems the update is going forward; however, there is recognition the manual needs to be fully revised. She stated it has been updated every ten years in the past.

Dixon commented on the MUTCD Colorado supplement which includes things like motorists must give cyclists three feet of clearance. He noted that item is not included in the federal document.

Ruhlen discussed the support mode shift goal and associated strategies, including increased transit frequency.

Chair Williams commented on prioritizing trail investments to promote trails for transportation as a complement to recreation-focused trails.

Boiarsky commented on prioritizing separation between motorized and non-motorized vehicles either with physical barriers or much more space. Ruhlen replied that is somewhat included in the design for safer speeds in multi-modal places category. She also noted the Active Modes Plan is part of that category.

Krause advocated for the Active Modes Plan to be included in both categories.

Allison asked if advocating for lower speeds is included. Ruhlen noted there is a category related to designing streets to target speeds. Geary noted the MUTCD sets out speed limit guidelines; however, many cities have adopted their own guidelines.

Ruhlen commented on the category related to testing solutions that do not have large cost or time commitments by using temporary and quick-build treatments such as paint and flexible bollards that can easily be changed. Peyronnin cited the example of using a quick solution at Remington and Stuart. Hansen commented on the use of quicker solutions for projects on campus.

Boiarsky asked if the emphasis is on non-infrastructure changes for this strategy. Ruhlen replied in the affirmative. Boiarsky suggested changing the language to read 'test temporary, inexpensive, non-infrastructure based changes.' Geary noted the item does reference infrastructure; however, it is temporary. Chair Williams suggested showing images of examples and noted having policies around quicker implementation could be important.

Ruhlen commented on the category related to increased data transparency and

MINUTES

CITY OF FORT COLLINS • BOARDS AND COMMISSIONS



BICYCLE ADVISORY COMMITTEE

TYPE OF MEETING – REGULAR

partnerships and associated transformative strategies including creating a Vision Zero program with designated staff to apply a safety lens to all planning, design, and resource allocation and developing an annual report analyzing fatal and serious injury crash data and provide dashboard data on the City's website, which is underway.

Boiarsky commented on the need for an associated push strategy that will help with attitude leaders and social change. He noted the publishing of the data is more of a pull strategy.

Chair Williams stated there have been struggles in the past with reporting near misses and near crashes versus the police report data. He commented on the North Front Range Metropolitan Planning Organization tool and Access Fort Collins that can be used to report those and stated the data needs to be compiled in a proactive rather than reactive manner.

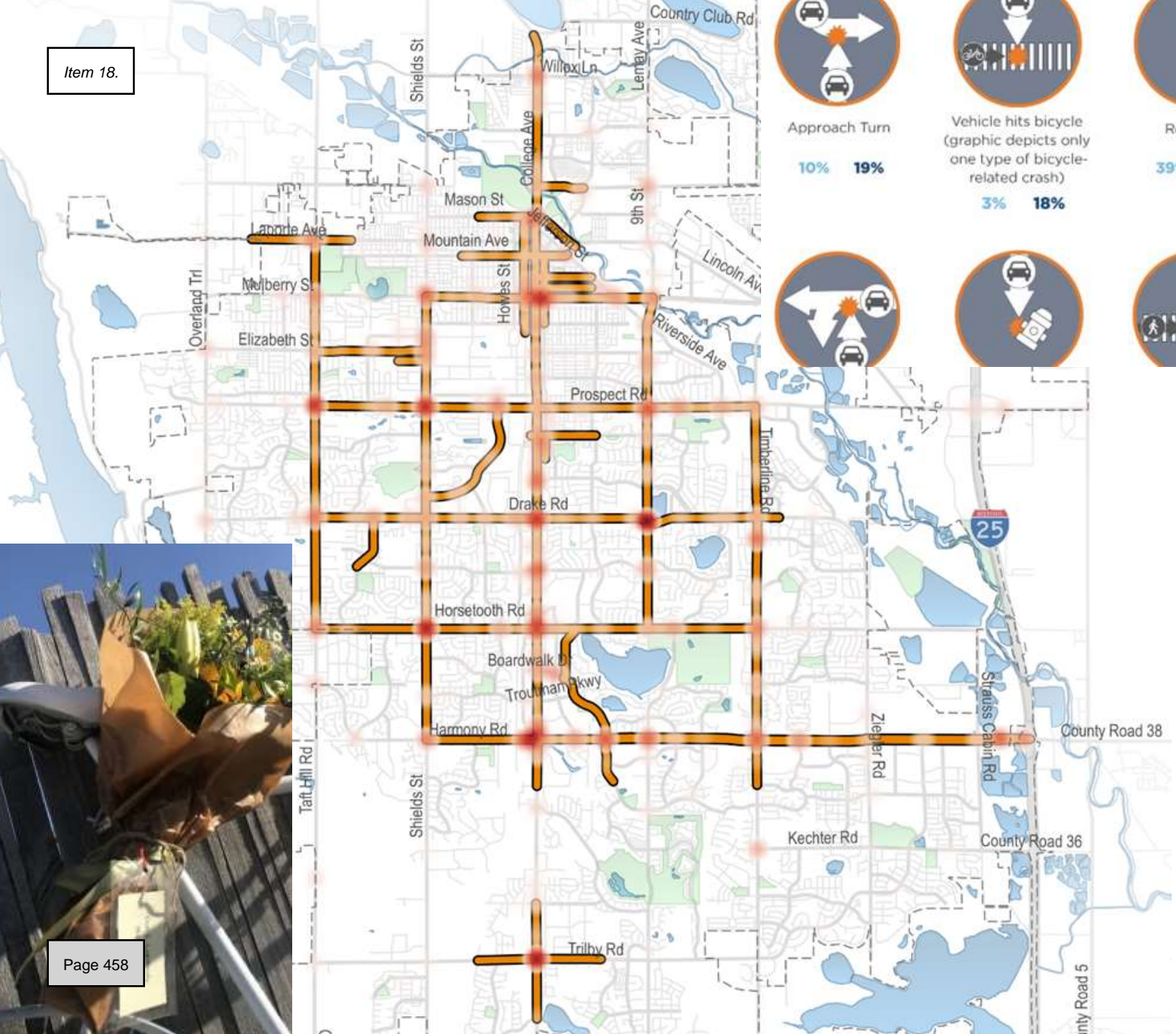
Krause commented on the possibility of a City staff realignment to create a long-term culture of embracing and supporting Vision Zero rather than having dedicated Vision Zero staff. Ruhlen commented on the assignment of key stakeholders, primarily City departments, to each strategy. She noted Traffic is the lead for most items and commented on the importance of interdepartmental collaboration.

Ruhlen discussed the last category related to centering on equity and its associated transformative strategies including prioritizing projects and routine maintenance in historically underserved communities and engaging historically underserved communities in participatory budgeting to determine infrastructure priorities. She discussed the strategy related to automated traffic enforcement noting Police Services expressed concern due to the limiting constraints of automated speed enforcement.

Chair Williams suggested pivoting that strategy more toward education. He cited the signs that indicate a driver's speed which seem to help lower speeds. He concurred with the strategies related to underserved communities but noted there are challenges in actually achieving those goals.

Chair Williams announced an upcoming Vision Zero webinar and recommended a book called *There Are No Accidents*.

Item 18.



March 21, 2023

Vision Zero Action Plan

Tyler Stamey

City Traffic Engineer

Rachel Ruhlen

Transportation Planner





+ Meetings with Technical Advisory Committee

TRANSPORTATION CAPITAL PROJECTS PRIORITIZATION STUDY



2021

Fort Collins Police Services



City of Fort Collins
Traffic Operations

SAFETY
IN THE CITY

2021 Annual
Roadway Safety Report

August 2022



ROADWAY SAFETY



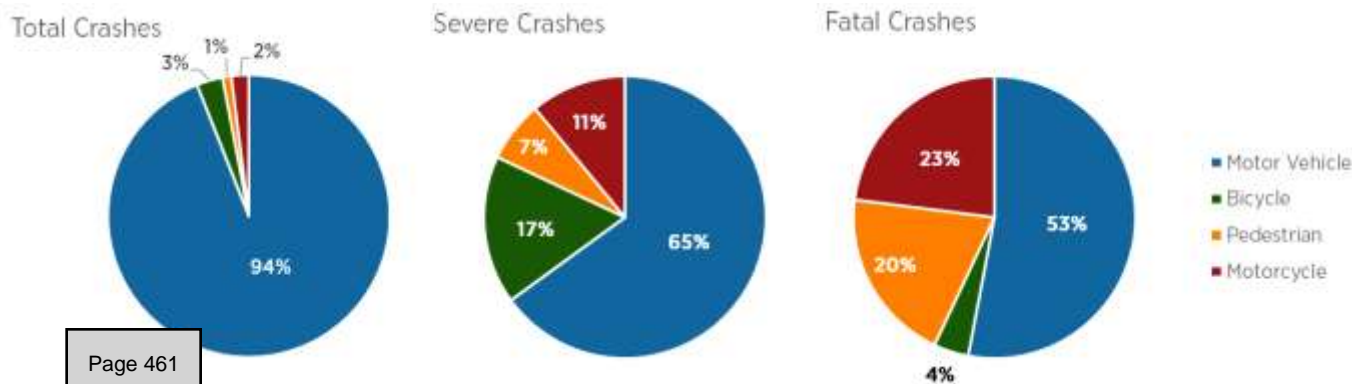
7,550 TOTAL TRAFFIC CITATIONS
85 COMMERCIAL MOTOR VEHICLE INSPECTIONS
11 FATAL TRAFFIC COLLISIONS

The Traffic Unit continued to address the top road safety focus areas: **speeding, red light and stop sign violations, following too closely & distracted driving.** Several units also worked together to address traffic safety, noise issues & modified exhaust/nuisance exhaust (rolling coal).



By 2032, no one dies or has a serious injury while traveling in Fort Collins

Focus on Vulnerable Road Users

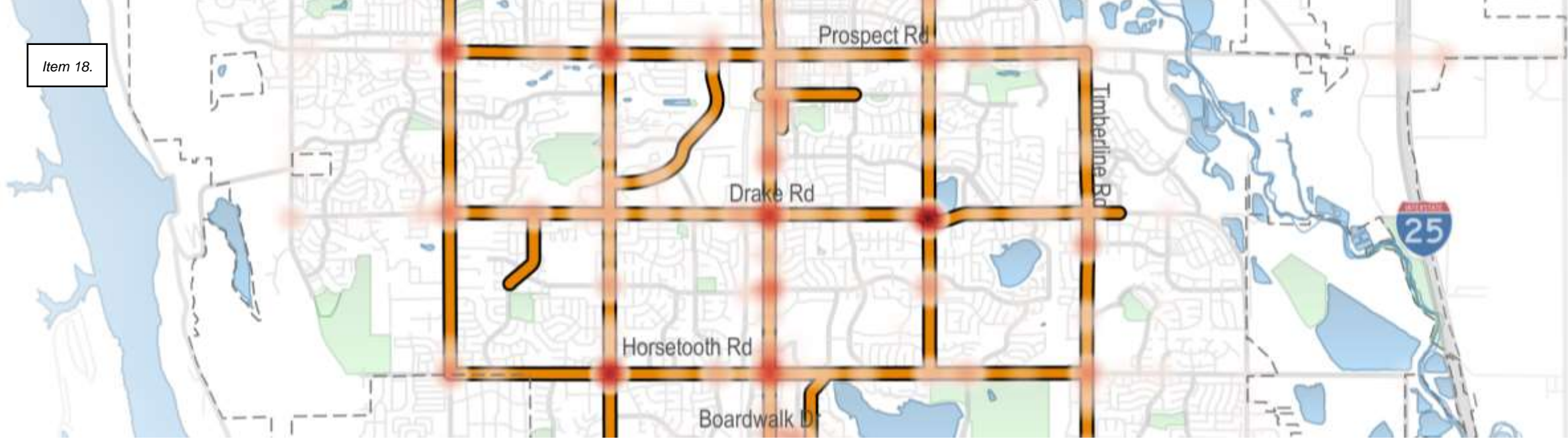


2017-2021 crash data

- Support Mode Shift to Reduce Motor Vehicle Trips
- Promote a Culture of Traffic Safety
- Prioritize Safer Speeds and Multimodal Places
- Increase Data Transparency and Partnerships
- Center Equity

- Expanded goal
 - “Support Mode Shift” to “Support Mode Shift to Reduce Motor Vehicle Trips”
- Clarifications
 - Interactions between plans that reference each other
 - Emphasizing historically underrepresented communities
 - Infrastructure and quick-build treatments to retrofit existing roads
 - Trail investments as alternative routes to HIN roads
 - Media reporting of traffic crashes to humanize people
 - Fully staffing the Traffic Enforcement Unit means fill existing positions
- Added
 - Supporting Action 4.7, Incorporate growth projections and anticipated development into safety planning
 - Supporting Action 5.4, Provide opportunities for community input on Vision Zero initiatives
- Reworded
 - Supporting Action 5.3, removed “in place of in-person traffic enforcement”

Item 18.



For Questions or Comments, Please Contact:

Rachel Ruhlen

rrehlen@fcgov.com



AGENDA ITEM SUMMARY

City Council



STAFF

Anissa Hollingshead, City Clerk
Rita Knoll, Chief Deputy City Clerk
Carrie Daggett, Legal

SUBJECT

Items Related to Election Code Changes.

EXECUTIVE SUMMARY

- A. First Reading of Ordinance No. 044, 2023, Amending Chapter 7 of the Code of the City of Fort Collins Relating to the Conduct of the City's Regular Municipal Election.
- B. First Reading of Ordinance No. 045, 2023, Amending Chapter 7 of the Code of the City of Fort Collins Relating to Candidacy in a Municipal Election.
- C. First Reading of Ordinance No. 046, 2023, Amending Chapter 7 of the Code of the City of Fort Collins Relating to Financial Disclosure Requirements.

The purpose of this item is to consider adopting changes to City Code required by the approval of Fort Collins voters to move the City's regular municipal election from April to November in odd-numbered years.

Specific changes proposed include: clarifying election administration provisions applying to City run elections and the applicability of State law to coordinated elections, establishing that regular municipal elections will be coordinated with the County unless the Council provides otherwise, adapting deadlines for filing for office to align with the requirements of the Uniform Election Code, and updating the timing for filing financial disclosures to align with the timing of regular municipal elections.

STAFF RECOMMENDATION

Staff recommends adoption of these Ordinances on First Reading.

BACKGROUND / DISCUSSION

Immediately following the passage last November of the ballot questions amending the City Charter relating to elections, staff began the process of evaluating what work would be necessary as a result of the approved Charter changes. Potential Code changes were identified needing Council action, including to candidate filing timelines and clarity on whether the regular November election would be conducted as a coordinated election with Larimer County or if the City would conduct its own election.

The Election Code Committee considered these topics at its January 13, 2023, meeting and made the determination to recommend that the 2023 municipal election should be coordinated with Larimer County. The Committee also expressed support for taking needed Code changes for the implementation of November elections coordinated with Larimer County forward to the full Council for consideration.

Coordinated Elections

In placing a ballot question before the voters to change the timing of regular municipal elections from April to November of odd-numbered years, Council moved forward in such a way that allows for making the determination of how the election is conducted separately from the timing of the election. There are potential advantages associated with both options. The Election Code Committee reviewed these advantages and determined relative to the 2023 municipal election coordinating made the most sense based upon its evaluation of which scenario provides the greatest benefits to Fort Collins voters. The review of these advantages is being provided to the full Council as it considers formalizing the recommendation of the Election Code Committee to ensure Council is fully informed regarding the decision being made, as well as the options that will exist in future election years if the Council wished to make a determination to have the City administer the regular municipal election in 2025 or thereafter.

Advantages of Coordinating Elections

- Registered voters will receive one November election ballot containing all contests and questions.
- Current ballot drop boxes have been designed to be used by both the County and the City for their elections, but not simultaneously. A coordinated election allows use of the same ballot drop boxes voters are accustomed to, without confusion or the need to determine protocols with Larimer County on how those drop boxes are accessed for picking up voted ballots and how ballots are distributed to the appropriate entities.
- Larimer County owns its own election equipment and has existing vendor relationships for supplies and system support centered around the November election timing. The City has rented equipment for its elections for several cycles, typically in April when demand from larger counties is not present. It is unknown at this time what type of equipment will be available for rental and what level of support from vendors is possible. As regular municipal elections are also conducted as mail ballot elections, the equipment typically used includes ballot tabulators and signature verification equipment. It is possible alternative vendors may need to be explored to avoid the need to hand count an election.
- Access to the statewide voter database is obtained through the County. Coordinating elections avoids challenges with navigating what that support can look like while the County is also administering an election simultaneously.
- Minimizes potential for voter confusion around which ballot needs to be returned to which jurisdiction, including keeping the correct ballot with the correct envelope and submitting to the correct jurisdiction via mail or drop box.
- Additional ballot contests, including school board races, can be an additional inducement to voters to participate in an election.

Advantages of City-run Elections

- The City currently pays for return postage on mail ballots to make it easier for voters who wish to mail their ballots back. Under the Uniform Election Code the County must follow in administering elections, it is not permitted for the County to pay return postage.
- Ability for the City to implement other measures it deems could assist in supporting voter participation.
- Ability for the City to establish parameters around the conduct of the election.
- Control over election costs and spending, with greater predictability possible of overall election-related costs in regular elections.

- City contests and questions are front and center on ballots, and the focus for voters leading up to and when voting is on City races.
- Once ranked-choice voting is implemented in 2025, ability to make determinations at the municipal level about ballot design, including number of rankings available to voters, how to interpret voter intent in a range of scenarios, and other implementation determinations.

Cost and Resource Considerations

Information about election costs was discussed by the Committee and the Council over the last year as potential ballot questions were considered. Despite its importance, this is a hard-to-define factor. There is not a lot of precision behind estimating costs because of the wide variances from election event to election event. For coordinated elections, costs are determined by Larimer County and split based on the cost sharing formula they have put in place without ability for participating jurisdictions to negotiate those levels. The County is authorized by state statute to pass election costs on to participating jurisdictions in coordinated elections and to develop any appropriate formulas for doing so. They apply these formulas to all jurisdictions that participate in a coordinated election. Because of the variabilities of both direct costs and what jurisdictions are participating in an election, it is not possible to estimate with a degree of accuracy what the cost of a future election will be.

High level, the biggest variances in the costs of coordinated elections include:

- Odd or even – even year elections have higher base costs because of higher requirements in Title 1 of the Uniform Election Code for more Voter Service Centers and other services mandated for state and federal elections; presidential years are also going to have higher administration costs for additional services and scope than other even years.
- In odd years, costs overall are less but will fluctuate most heavily based on whether either the State or Larimer County or both have questions on the ballot. If they do, costs will be significantly lower. If one or both do not, the City will pay the bulk of the costs for all election administration in those years as the largest jurisdiction participating in the election. The school districts do participate in odd years, which is a big help to sharing that cost, but other jurisdictions across the county are significantly smaller and will not pick up nearly as much of the costs. 2022 costs for the special election coordinated with Larimer County were substantially higher than initial estimates based on the City of Loveland not participating in that election.
- Any election with a City TABOR question will be substantially higher cost because of the additional TABOR requirements for the mailed notice, as those costs are not prorated but are passed on directly to involved jurisdictions.
- Starting in 2025, costs will also be significantly higher as all RCV related costs (staffing, equipment, software, supplies including the likely need for a second ballot card, voter education) will be passed on directly to Fort Collins.
- The other variable that is hard to start quantifying for is around rising supply costs. Supply chain issues combined with inflation combined with security and integrity concerns being promulgated around elections are creating a perfect storm of rapidly escalating prices for every part of the election process. 2022 county election costs far outpaced all prior years for similar election events. Vendors are raising prices rapidly to address their own constraints and needs. Additional legislative changes should be anticipated that continue placing more requirements around election administration, concurrently increasing costs. This factor will also impact City-administered election events.

The other aspect of resource considerations around election administration is in the opportunity costs for other activities and programs in the City Clerk's Office. Currently, the City Clerk and the Chief Deputy City Clerk are the primary individuals who work on elections-related needs year-round. There are 9 total FTEs now allotted to the Clerk's Office, with the addition in the 2023 budget of an Elections & Technology Analyst. These positions support five major program areas across the office, including Clerk to Council functions,

Elections, Records & Information Management, Regulatory Licensing, and central support for Boards & Commissions. Most of these programs have a single FTE allocated or parts of FTEs that also work in other programs. When an actual election event is underway, such as the recent referendum petition process or previously April Municipal Elections, the entire Clerk's Office shifts as much as possible to election-related work. The new Elections & Technology Analyst position is intended to both be a single point person for elections technology needs in particular, helping in that critical coordination for election events, as well as managing the City's robust campaign finance program that accompanies any election whether administered by the County or the City. That role has also been identified to play a primary role in the development and implementation of a major system in the Clerk's Office over the next year for agenda management as well. If the City administers an election in 2023, either for the regular November election or for any special election that may come up (which cannot be coordinated with Larimer County), there will be significant impacts to the possible work plans for all programs across the Clerk's Office because of the interdependencies involved.

Nomination Deadlines

Other potential Code changes in support of these transitions include changing the nomination deadlines for candidates for City Council in order to meet deadlines for submitting ballot content to the County if coordinated elections will be held, as well as other administration provisions.

Article VIII, Section 1 of the City Charter relating to Elections requires:

“The Council shall provide by ordinance for the manner of holding city elections. All ordinances regarding elections shall be consistent with the provisions of this Charter and the state Constitution. Any matter regarding elections not covered by the state Constitution, this Charter or ordinance of the Council shall be governed by the laws of the State of Colorado relating to municipal elections, or coordinated municipal elections, as applicable.”

In addition to establishing the Council's intent regarding the conduct of regular elections as coordinated elections with Larimer County, the most pressing potential shift needed in the City Code is to the timelines for filing for office. Under the provisions of the Charter, these timelines must be changed no later than 180 days prior to the election. Since the 2023 Regular Municipal Election will be on November 7, those changes must be in effect by May 11, 2023.

If the November election will be coordinated with Larimer County, the filing deadlines provided for in the Uniform Election Code and Municipal Election Code must be followed. Even if coordinated elections were not being held, it is still recommended to shift candidate filing timelines to mirror what is required for other November elections to minimize candidate confusion and ensure the City has enough time to prepare ballots in a busier season for election vendors.

The applicable provisions of the Uniform Election Code for the timing of filing by municipal candidates include:

C.R.S. 1-4-805. Petitions for nominating municipal candidates in coordinated elections. Any person who desires to be a candidate for a municipal office in a coordinated election shall, in lieu of the requirements of this article, comply with the nominating petition procedure set forth in the “Colorado Municipal Election Code of 1965”, article 10 of title 31, C.R.S.; except that part 11 or this article, concerning write-in candidate affidavits, shall apply in such municipal elections, and any nominating petition may be circulated and signed beginning on the ninety-first day prior to the election and shall be filed with the municipal clerk no later than the seventy-first day prior to the date of the election. The petition may be amended to correct or replace signatures that the clerk finds are not in apparent conformity with the requirements of the municipal election code at any time before the sixty-seventh day before the election.

C.R.S. 1-4-1101. Write-in candidate affidavit of intent. A person who wishes to be a write in candidate for an office in an election shall file an affidavit of intent stating that he or she desires the office and is qualified to assume its duties if elected. ... The affidavit shall be filed ... with the designated election official if it is for a local office.

C.R.S. 1-4-1102. Time of filing affidavit. (2) In a nonpartisan election, the affidavit of intent shall be filed by the close of business on the sixty-fourth day before the election. If the election is to be coordinated with the county clerk and recorder, the designated election official shall forward a copy of the affidavit of intent to the coordinated election official.

The following chart shows the differences between current City Code and provisions of Colorado Revised Statutes for these deadlines:

	Current City Code	State Statute
Earliest date to circulate nomination petitions	70 days before the election (Sec. 7-116)	91 days before the election (C.R.S. 1-4-805 & 31-10-302)
Deadline to submit nomination petitions	49 days before the election (Sec. 7-116)	71 days before the election (C.R.S. 1-4-805 & 31-10-302)
Deadline to submit amended nomination petitions	NA	67 days before the election (C.R.S. 1-4-805)
Deadline to withdraw from nomination for candidacy	42 days before the election (Sec. 7-116)	63 days before the election (C.R.S. 31-10-303)
Deadline for a write in candidate to submit an affidavit of intent to allow any votes to be counted	42 days before the election (Sec. 7-103)	64 days before the election (C.R.S. 1-4-1102)

Financial Disclosure Requirements

Currently, any candidate for office of Councilmember must file a written financial disclosure statement when accepting a nomination to run for office. Once elected, each member of Council must file another written disclosure statement following the election and annually thereafter. Previously, the date for this filing was set to be submitted no later than May 15 following their election in April, and then annually at the same time. With the shift to elections in November, it is recommended to shift this timing to be no later than January 10 to align with state law for other candidates elected in November elections.

CITY FINANCIAL IMPACTS

These changes are part of the required implementation of shifting from April to November regular municipal elections and do not have direct financial impacts on their own.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The Election Code Committee reviewed the nature of the shifts required to implement the timing shift to November regular elections and recommended proceeding with these changes, including the shift to coordinated elections with the ability for the Council to make a determination in the future if it decided not to a coordinate a regular election.

PUBLIC OUTREACH

N/A

ATTACHMENTS

1. Ordinance A for Consideration
2. Ordinance B for Consideration
3. Ordinance C for Consideration
4. Presentation

ORDINANCE NO. 044, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 7 OF THE CODE OF THE CITY OF FORT COLLINS
RELATING TO THE CONDUCT OF THE CITY’S REGULAR MUNICIPAL ELECTION

WHEREAS, on November 8, 2022, the voters of the city of Fort Collins approved Charter amendments revising the election provisions to move the City’s regular municipal election from April to November in odd-numbered years and to provide for the use of ranked voting methods beginning in 2025; and

WHEREAS, the shift of the City’s regular elections from April to November, at a time coinciding with the general election conducted by the Larimer County Clerk and Recorder, enables the City to coordinate with the Larimer County Clerk and Recorder in the conduct of regular City elections; and

WHEREAS, under Section 1 of Article VIII of the City Charter, the Council is to provide by ordinance for the manner of holding City elections; and

WHEREAS, Section 7.1 in Article I of Chapter 7 of the City Code provides if a City election is being conducted as a coordinated election, that election shall be governed by and conducted in accordance with the requirements and procedures of the Uniform Election Code of 1992, as amended, to the extent necessary for that election to be conducted as a coordinated election; and

WHEREAS, pursuant to the discussion of the Council Election Code Committee and the recommendation of staff, in order to formalize and enable planning for the manner in which City regular elections will be conducted, this Ordinance incorporates into the City Code an express provision that regular municipal elections shall be coordinated with the County unless otherwise provided by the Council by ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Chapter 7, Article II, Division 1 of the Code of the City of Fort Collins be amended by the addition of a new Section to read as follows:

Sec. 7-21. Administration of City-administered elections.

The provisions of this article apply to the administration of City-administered elections. Any election conducted as a coordinated election with the County is subject to the provisions of applicable state law.

Section 3. That Chapter 7, Article III, Division 1 of the Code of the City of Fort Collins be amended by the addition of a new Section to read as follows:

Sec. 7-56. Conduct of regular municipal election.

All regular municipal elections, held in November of odd-numbered years, shall be coordinated with the County, unless otherwise provided by the Council by ordinance prior to March 1 of the year in which the election is to be held.

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

ORDINANCE NO. 045, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 7 OF THE CODE OF THE CITY OF FORT COLLINS
RELATING TO CANDIDACY IN A MUNICIPAL ELECTION

WHEREAS, on November 8, 2022, the voters of the city of Fort Collins approved a Charter amendment moving the City's regular municipal election from April to November in odd-numbered years; and

WHEREAS, the City Code contains provisions relating to the nomination of candidates, withdrawal from candidacy, and write-in candidates; and

WHEREAS, the deadlines contained in the City Code for these matters make it challenging to prepare ballots for mailing by the appropriate deadline; and

WHEREAS, regardless of whether the November regular election is conducted by the City or as an election coordinated with Larimer County, staff recommends amending the deadlines to conform to the requirements of the Colorado Uniform Election Code of 1992 (Colorado Revised Statutes Title 1, Articles 1 through 13) (the "UEC"); and

WHEREAS, conforming to the deadlines contained in the UEC will provide consistency for all candidates for municipal office under the provisions of the UEC, the Colorado Municipal Election Code of 1965 (Colorado Revised Statutes Title 31, Article 10), or the Fort Collins City Code; and

WHEREAS, conforming to the deadlines contained in the UEC also provides adequate time to certify candidates and prepare ballots, regardless of whether the election is conducted by the City or Larimer County.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 7-103 of the Code of the City of Fort Collins be amended to read as follows:

Sec. 7-103. Write-in candidates.

No write-in vote for a candidate for City Council office shall be counted unless the person whose name appears as the write-in vote has filed an affidavit of intent with the City Clerk, no later than the close of business ~~forty-two (42)~~ **sixty-four (64)** days before the election, indicating that such person desires and is qualified for the office.

Section 3. That Section 7-116 of the Code of the City of Fort Collins be amended to read as follows:

Sec. 7-116. Nomination of candidates; withdrawal from candidacy.

(a) A nominating petition required pursuant to Article VIII of the Charter may not be circulated earlier than ~~seventy (70)~~ **ninety-one (91)** days before the election and must be filed with the City Clerk not later ~~forty-nine (49)~~ **seventy-one (71)** days before the election. **The petition may be amended to replace signatures that the City Clerk finds are not in apparent conformity with the requirements of the City Charter at any time no later than sixty-seven (67) days before the election.**

(b) A person who has been nominated may, not later than ~~forty-two (42)~~ **sixty-three (63)** days before the election, withdraw by filing with the City Clerk a request therefor in writing, and no name so withdrawn shall be placed upon the ballot.

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

ORDINANCE NO. 046, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 7 OF THE CODE OF THE CITY OF FORT COLLINS
RELATING TO FINANCIAL DISCLOSURE REQUIREMENTS

WHEREAS, on November 8, 2022, the voters of the city of Fort Collins approved Charter amendments revising the election provisions to move the City’s regular municipal election from April to November in odd-numbered years and to provide for the use of ranked voting methods beginning in 2025; and

WHEREAS, with the shift of the City’s regular elections from April to November, the date for swearing in of City officials has shifted to a special Council meeting to take place on the second Tuesday of January following the November election; and

WHEREAS, the City Code requires each member of the City Council who is elected, re-elected, appointed or retained in office to file a written financial disclosure no later than May 15 of the year of election, re-election, appointment or retention in office; and

WHEREAS, with the change in the timing of regular elections and swearing in of Councilmembers, the Council has determined it will be beneficial to modify the deadline for filing of financial disclosures to shift accordingly; and

WHEREAS, in light of the foregoing, the Council desires to amend Section 2-636 of the City Code as set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 2-636 of the Code of the City of Fort Collins be amended to read as follows:

Sec. 2-636. Financial disclosure Required.

Any candidate for the office of City Councilmember shall, at the time of filing ~~their~~^{his or her} acceptance of nomination with the City Clerk, file with the City Clerk a written disclosure statement that conforms to the requirements of § 2-637. Such a written disclosure statement shall also be filed with the City Clerk by the City Manager and the City Attorney not later than thirty (30) days after their appointment ~~or retention in office~~, **and then each subsequent year in office no later than January 10**. Each member of the City Council who is elected, re-elected, appointed or retained in office shall also file such a written disclosure statement with the City Clerk not later than ~~May 15~~ **January 10** ~~of the year in which~~ **next after** their election, re-election, ~~or~~ **or** appointment **and then each subsequent year in office no later than January 10** ~~or retention in office occurs~~. However, any City Councilmember who is elected or re-elected and who has, prior to said election

or re-election, filed a written disclosure statement within ten (10) days after filing acceptance of nomination, may file an amended statement with the City Clerk or notify the City Clerk in writing that there has been no change in the disclosures made therein, since the date of filing of the same.

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk



Election Code Changes



City Code Changes Needed to Implement the Shift to November Elections

Anissa Hollingshead, City Clerk

03/21/2023

Municipal Election Code (CRS Title 31)

- Applies to statutory municipalities – can choose by adopting an ordinance or resolution to follow Uniform Election Code and conduct coordinated regular elections
- Applies to Charter municipalities conducting their own municipal elections unless supplanted by municipal code or charter

Uniform Election Code (CRS Title 1)

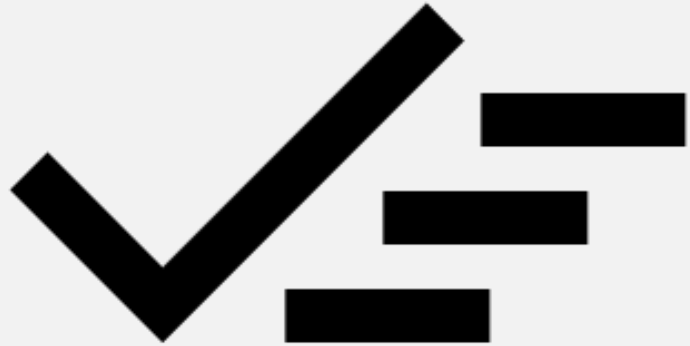
- Applies to coordinated elections conducted by a county or counties, which can include municipal contests

Fort Collins Home Rule Charter

- Article VIII prescribes the timing and conduct of municipal elections – shifting to November coordinated elections required voter approval to change

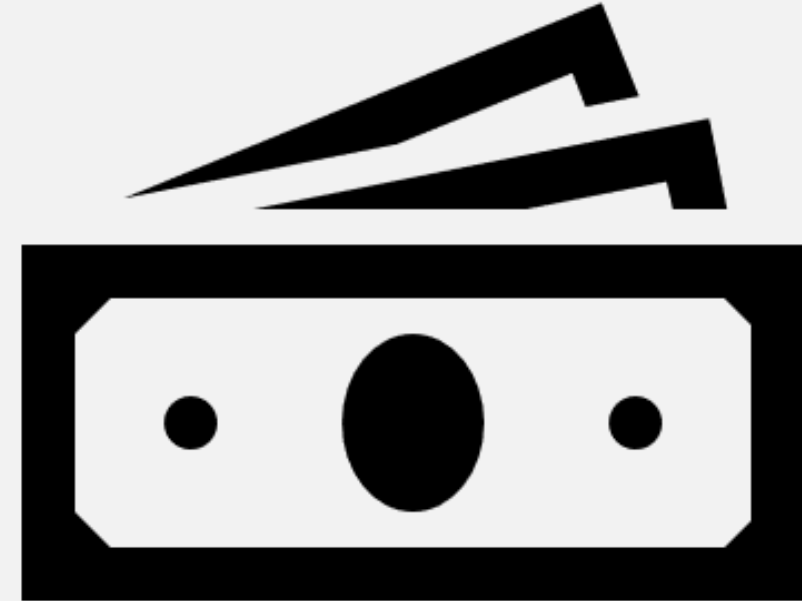
Fort Collins City Code

- Additional election administration provisions are found in Chapter 7 of the Fort Collins Code of Ordinances – these provisions supersede the Municipal Election Code for City-administered elections
- Some existing provisions conflict with requirements for coordinated regular elections



- **Candidacy Filing Dates**

Ord. No. 045, 2023 aligns filing dates with State law in the Uniform Election Code



- **Coordinating Regular Municipal Elections**

Ord. No. 044, 2023 provides for coordinating with Larimer County unless Council acts otherwise and clarifies City Code applies to City-administered elections



- **Financial Disclosure Statement Filing Deadlines**

Ord. No. 046, 2023 shifts timing to align the post election date with the deadline for other candidates in November elections and resets that as the date for subsequent annual filings



Step 1

Submit a candidate affidavit within 10 days of becoming a candidate (City Code Sec. 7-133)

Someone becomes a candidate for campaign finance purposes when: 1) publicly announcing their candidacy or intent to seek public office; and 2) receiving a contribution or making an expenditure in support of their campaign

Step 2

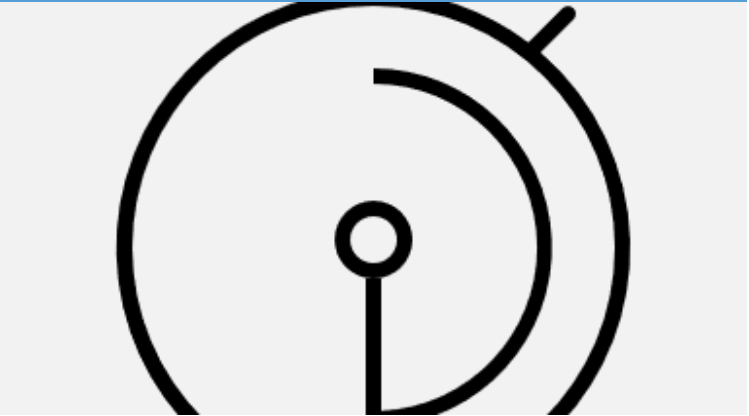
Circulate and submit a nominating petition during the designated time frame

Step 3

Accept nomination by completing a verified acceptance of the nomination certifying they meet candidate qualifications

	Current City Code	State Statute
Earliest date to circulate nomination petitions	70 days before the election (Sec. 7-116)	91 days before the election (C.R.S. 1-4-805 & 31-10-302)
Deadline to submit nomination petitions	49 days before the election (Sec. 7-116)	71 days before the election (C.R.S. 1-4-805 & 31-10-302)
Deadline to submit amended nomination petitions	NA	67 days before the election (C.R.S. 1-4-805)
Deadline to withdraw from nomination for candidacy	42 days before the election (Sec. 7-116)	63 days before the election (C.R.S. 31-10-303)
Deadline for a write in candidate to submit an affidavit of intent to allow any votes to be counted	42 days before the election (Sec. 7-103)	64 days before the election (C.R.S. 1-4-1102)

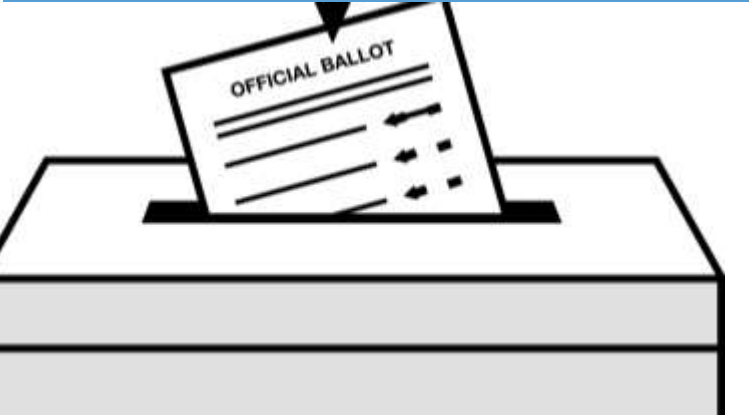
Nominating Petition Circulation Timing



Requirements for Nominating Petitions

Choice	Choice	Choice
<input checked="" type="checkbox"/> SINGLE CREEK PARK	<input type="checkbox"/> SINGLE CREEK PARK	<input type="checkbox"/> SINGLE CREEK PARK
<input type="checkbox"/> ARMATAGE PARK	<input type="checkbox"/> ARMATAGE PARK	<input type="checkbox"/> ARMATAGE PARK
<input type="checkbox"/> MARSHALL TERRACE PARK	<input type="checkbox"/> MARSHALL TERRACE PARK	<input type="checkbox"/> MARSHALL TERRACE PARK
<input checked="" type="checkbox"/> PERSHING PARK	<input type="checkbox"/> PERSHING PARK	<input type="checkbox"/> PERSHING PARK
<input type="checkbox"/> PEARL PARK	<input type="checkbox"/> PEARL PARK	<input type="checkbox"/> PEARL PARK
<input type="checkbox"/> POWDERHORN PARK	<input type="checkbox"/> POWDERHORN PARK	<input type="checkbox"/> POWDERHORN PARK
<input type="checkbox"/> NORTHEAST PARK	<input type="checkbox"/> NORTHEAST PARK	<input type="checkbox"/> NORTHEAST PARK
<input checked="" type="checkbox"/> LONGFELLOW PARK	<input type="checkbox"/> LONGFELLOW PARK	<input type="checkbox"/> LONGFELLOW PARK
<input type="checkbox"/> MATTHEWS PARK	<input type="checkbox"/> MATTHEWS PARK	<input type="checkbox"/> MATTHEWS PARK
<input type="checkbox"/> LYNDALE FARMSTEAD PARK	<input type="checkbox"/> LYNDALE FARMSTEAD PARK	<input type="checkbox"/> LYNDALE FARMSTEAD PARK
<input type="checkbox"/> THEODORE WIRTH PARK	<input type="checkbox"/> THEODORE WIRTH PARK	<input type="checkbox"/> THEODORE WIRTH PARK
<input type="checkbox"/> KENWOOD PARK	<input type="checkbox"/> KENWOOD PARK	<input type="checkbox"/> KENWOOD PARK
<input type="checkbox"/> ELLIOT PARK	<input type="checkbox"/> ELLIOT PARK	<input type="checkbox"/> ELLIOT PARK
<input type="checkbox"/> LORING PARK	<input type="checkbox"/> LORING PARK	<input type="checkbox"/> LORING PARK

Accepting a Nomination



- Can be circulated 91-71 days before the election (August 8-28, 2023)
- Petitions can be amended if necessary until September 1
- Candidates can withdraw after submitting a nomination petition until September 5

- Must be signed by 25 registered voters residing in the district being represented (citywide for Mayor)
- Voters can sign only one petition for each office they can vote on in November

- Requires completing a verified acceptance of the nomination
- Certifies they are not a candidate of a political party and that they meet the qualifications for office and will serve if elected

THANK YOU!

For Questions or Comments, Please Contact:

Anissa Hollingshead, City Clerk

ahollingshead@fcgov.com 970-416-2995

