

# Fort Collins City Council Agenda

Regular Meeting

6:00 p.m. Tuesday, September 5, 2023

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

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

## NOTICE:

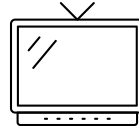
Regular meetings of the City Council are held on the 1st and 3rd Tuesdays of each month in the City Council Chambers. Meetings are conducted in a hybrid format, with a Zoom webinar in addition to the in person meeting in Council Chambers.

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](http://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.*

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## **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](http://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](http://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](mailto: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.



# City Council Regular Meeting Agenda

September 5, 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.](#) Declaring September 9, 2023 as Poudre Landmarks Foundation 39th Annual Historic Homes Tour Day.

## 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/](http://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 their 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 City's Development Review Center page 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 recommend 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 August 8, 2023 Special Meeting and the August 15, 2023 Regular Meeting.**

The purpose of this item is to approve the minutes of the August 8, 2023 special meeting and the August 15, 2023 regular meeting.

#### **2. Second Reading of Ordinance No. 104, 2023, Appropriating Unanticipated Revenue from Bond Proceeds from the Issuance of the Series 2023 Electric Utility Enterprise Revenue Bonds for Light and Power, Connexion, and the Art in Public Places Program.**

This Ordinance, unanimously adopted on First Reading on August 15, 2023, appropriates the funds received from the bond issuance in the Light and Power Fund. These proceeds will be used to fund capital projects needing to occur for both Light and Power and Connexion, as well as for

operating funds for Connexion, to pay issuance costs for the Series 2023 Revenue Bonds, and to transfer certain funds required by the Art in Public Places Program (APP Program) for the capital projects.

There was an error in the Ordinance on First Reading in Section 2. The appropriation amount expressed in words did not match the numerical value. The numerical value was correct and reflected throughout the Ordinance. The appropriation amount expressed in words has been updated to match the numerical value.

**3. Second Reading of Ordinance No. 105, 2023, Appropriating Prior Year Reserves in the General Fund to Continue the Encampment Site Cleanup Pilot Program.**

This Ordinance, unanimously adopted on First Reading on August 15, 2023, appropriates \$200,000 in additional funds to continue the encampment site cleanup pilot program. In Fall 2022, staff identified a backlog of site cleanups throughout the City and determined that cleanups needed to shift from twice a month to once per week. This was implemented towards the end of January 2023 with the recognition that additional funds would be needed if this pilot program achieved desired results.

**4. Second Reading of Ordinance No. 106, 2023, Making Supplemental Appropriations from the 2023 Colorado Opioid Settlement Funds for Use by the Municipal Court.**

This Ordinance, unanimously adopted on First Reading on August 15, 2023, appropriates \$75,000 of the City's share of 2023 funds from the Colorado Opioid Settlement to be used in the remainder of 2023 to work towards establishing a municipal drug court program for persons with opioid use disorder and co-occurring substance use or mental health issues. This is a permitted use for these funds under the Colorado Opioid Settlement Memorandum of Understanding ("MOU") between the City and the State of Colorado.

**5. Second Reading of Ordinance No. 107, 2023, Appropriating Prior Year Reserves Designated for Fire Protection Services in the Fire Protection Capital Expansion Fee Account within the Capital Expansion Fee Fund for Payment to the Poudre Fire Authority to be Used by it for a New Headquarters Building.**

This Ordinance, unanimously adopted on First Reading on August 15, 2023, appropriates funds from the reserves in the Fire Protection Capital Expansion Fee Account within the City's Capital Expansion Fee Fund ("CEF Fund") and payment of those funds to the Poudre Fire Authority ("PFA") for its purchase of a new Headquarters Building.

**6. Second Reading of Ordinance No. 108, 2023, Appropriating Prior Year Reserves in the General Fund for the Purchase of Police Radios.**

This Ordinance, unanimously adopted on First Reading on August 15, 2023, requests an appropriation in the amount of \$620,000 for the purchase of police handheld radios and approve the use of prior year reserves in the General Fund. There are currently 242 total handheld radios with 130 replaced in 2022. This leaves the remaining 112 radios needing to be replaced.

**7. Second Reading of Ordinance No. 109, 2023, Making a Supplemental Appropriation from the Colorado Division of Criminal Justice of Unanticipated Grant Revenue for Various Restorative Justice Services Programs.**

This Ordinance, unanimously adopted on First Reading on August 15, 2023, appropriates grant revenue to fund Restorative Justice Services within Community Development and Neighborhood Services. A grant in the amount of \$57,356 has been awarded from the Colorado Division of

Criminal Justice (DCJ) Juvenile Diversion Fund for the continued operation of Restorative Justice Services, which includes the RESTORE program for shoplifting offenses, and the Restorative Justice Conferencing Program (RJCP) and Reflect Program for all other offenses. No match is required and the grant period is July 1, 2023, to June 30, 2024.

**8. First Reading of Ordinance No. 110, 2023, Appropriating Prior Year Reserves and Philanthropic Revenue Received Through City Give for The Carnegie Center for Creativity as Designated by the Donors.**

The purpose of this item is to request appropriation of \$100,000 in philanthropic revenue received through City Give for The Carnegie Center for Creativity as designated by the donors.

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.

**9. Items Related to the Implementation of a Strengthening Mobility and Revolutionizing Transportation (SMART) Grid Electric Vehicle Charge Management Solution.**

A. Resolution 2023-077 Authorizing the Execution of an Intergovernmental Agreement Between the City of Fort Collins and the U.S. Department of Transportation for Implementation of a SMART Grid Electric Vehicle Charge Management Solution.

B. First Reading of Ordinance No. 111, 2023, Making a Supplemental Appropriation of Grant Funds from the U.S. Department of Transportation SMART Grants Program in Support of the City of Fort Collins Electric Vehicle Fleet.

The City successfully applied for \$1,059,037 under the U.S. Department of Transportation (USDOT) SMART Grants Program to support implementing a SMART Grid Electric Vehicle (EV) charge management solution to control usage of City owned EV chargers to reduce energy consumption (the SMART Grid Project).

The purpose of this item is to support this project by:

- Authorizing the Mayor to execute an Intergovernmental Agreement (IGA) with the USDOT for implementing the SMART Grid Project; and
- Appropriating \$1,059,037 of unanticipated grant revenue from USDOT.

**10. First Reading of Ordinance No. 112, 2023, Making Supplemental Appropriations and Authorizing Transfers for the “Planning to Implement Future Innovation Zones” Project.**

The purpose of this item is to develop the Innovation Zones Project Plan by:

- Appropriating \$50,000 of unanticipated grant revenue, awarded by the Colorado Department of Transportation’s Office of Innovative Mobility; and
- Utilizing matching funds in the amount of \$10,000 from existing 2023 appropriations into this new grant project.

**11. First Reading of Ordinance No. 113, 2023, Making Supplemental Appropriations and Authorizing Transfers for the City of Fort Collins Electric Vehicle Readiness Roadmap Update.**

The purpose of this item is to update the City's 2017 Electric Vehicle (EV) Readiness Roadmap by:

- Appropriating \$40,000 of unanticipated grant revenue, awarded by the Colorado Energy Office; and
- Utilizing matching funds in the amount of \$13,333 from existing 2023 appropriations into this new grant project.

**12. First Reading of Ordinance No. 114, 2023, Amending Various Sections of the Code of the City of Fort Collins to Correct References to the Building Review Board and to Correct References to Meeting Minutes Requirements.**

The purpose of this item is to amend various sections of City Code. During the work of the Ad Hoc Committee on Boards and Commissions, staff identified necessary edits to all reference to the Building Review Board. Those references should be changed to the Building Review Commission, which is in line with City Ordinance No. 049, 2021. Also, staff identified numerous incorrect references to the requirement for various bodies to record meeting minutes.

**13. First Reading of Ordinance No. 115, 2023, Authorizing Conveyance of a Permanent Non-Exclusive Utility Easement on Property Jointly Owned by the City and the City of Loveland at the Northern Colorado Regional Airport for the AeroFNL Development.**

The purpose of this item is to authorize a permanent non-exclusive utility easement over a portion of the Northern Colorado Regional Airport property owned jointly by the City of Fort Collins and the City of Loveland and leased by IC Loveland Investors, LLC, to allow for the installation and maintenance of electrical infrastructure for the new AeroFNL development.

**14. Resolution 2023-078 Approving the Execution of the Fifth Amended Intergovernmental Agreement Establishing the Larimer Emergency Telephone Authority.**

The purpose of this item is to approve an agreement to amend and supersede an intergovernmental agreement (IGA) establishing an "E911" Emergency Telephone Service. The City is a party to an Intergovernmental Agreement (the "E-911 IGA") dated November 14, 1990, which established a separate legal entity called the Larimer Emergency Telephone Authority ("LETA"). LETA is responsible for operating the emergency telephone service program (911) and defining how each of the parties will participate in the Authority. The LETA Board of Directors recently approved an amended E-911 IGA to expand services and representation in LETA operations into Jackson County. This Resolution approves execution of the Fifth Amended Intergovernmental Agreement for the Establishment of the Larimer County Emergency Telephone Authority.

**15. Resolution 2023-079 Amending the Existing Intergovernmental Agreement Between the City of Fort Collins and the Colorado Department of Transportation for the Reconstruction of the US 287 and Troutman Traffic Signal to Extend the Agreement's Expiration Date.**

The purpose of this item is to extend the expiration date of an existing Intergovernmental Agreement ("IGA") with the Colorado Department of Transportation ("CDOT") that is set to expire on September 11, 2023, to September 11, 2025. This date will allow for staff to complete the work and receive the full \$250,000 reimbursement amount identified in the IGA.

**16. Resolution 2023-080 Adopting Findings of Fact in Support of the City Council’s Decision on Appeal to Remand the Planning and Zoning Commission Approval of a Major Amendment to the Ziegler-Corbett Overall Development Plan.**

The purpose of this item is to make findings of fact and conclusions regarding Council's decision at the August 15, 2023, appeal hearing to remand the Planning and Zoning Commission decision to approve the Ziegler-Corbett Overall Development Plan Major Amendment back to the Planning and Zoning Commission for further consideration.

**17. Resolution 2023-081 Making an Appointment to the Human Relations Commission.**

The purpose of this item is to fill a vacancy on the Human Relations 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 (three minute limit for each person)*
- *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.*

**18. Items Relating to City Council’s Direction to Address Existing Occupancy Regulations.**

A. Possible Public Hearing and Motion(s) Regarding Protest(s) of Ballot Language.

B. Resolution 2023-082 Directing City Staff to Prepare and Present to Council Amendments to the City of Fort Collins Land Use Code Increasing Limits on Occupancy in Residential Dwellings.

C. Resolution 2023-083 Referring to the Registered Electors of the City of Fort Collins Resolution 2023-082, Concerning Amending the Fort Collins Land Use Code to Increase the Occupancy Allowed in Residential Dwellings.



Any protest of the proposed ballot language must be received no later than Tuesday, September 5, 2023, at noon. Protest(s) shall be heard, considered and resolved by the Council prior to adoption of the related Resolution. If protests are received, copies will be included in Council's "Read Before the Meeting" packet.

**19. First Reading of Ordinance No. 116, 2023, Amending the Land Use Code Regarding Buffering Between Buildings with Occupiable Space and Oil and Gas Facilities.**

Based on Council direction during the October 25, 2022, Work Session discussion and the April 2023 adoption of Ordinance No. 151, 2022 for new oil and gas well sittings, staff seek to update the reverse setback development standards (LUC 3.8.26) to reflect recent changes in the **Colorado Energy and Carbon Management Commission (ECMC)** regulations, recently adopted Ordinance No. 151, 2022 – AMENDING THE LAND USE CODE TO REGULATE OIL AND GAS FACILITIES AND PIPELINES, and lessons learned over the past 4 years, including:

- Apply reverse setback buffers to all occupiable buildings, not just residential uses; and
- Explicitly state required setback buffers, rather than refer generally to ECMC rules; and
- Create a more predictable pathway for abandoned/inactive well types; and
- Eliminate the buffer exemption for crossings of arterial roadways.

**20. Items Implementing Recommendations from the Ad Hoc Committee on Boards and Commissions.**

- A. First Reading of Ordinance No. 117, 2023, Amending Chapter 2, Article III, Division 1 of the Code of the City of Fort Collins to Add City Council Liaison Responsibilities.
- B. First Reading of Ordinance No. 118, 2023, Amending Chapter 2, Article III, Division 2 of the Code of the City of Fort Collins to Modify Type 1 Advisory Board Composition and Functions and Eliminate One-Year Terms.
- C. First Reading of Ordinance No. 119, 2023, Amending Chapter 2, Article III, Division 3 of the Code of the City of Fort Collins to Eliminate One-Year Terms of Type 2 Advisory Boards.
- D. First Reading of Ordinance No. 120, 2023, Reorganizing Chapter 2, Article VII, Divisions 1 and 2 of the Code of the City of Fort Collins to Consolidate the Ethical Rules of Conduct and Board of Ethics Sections with a Complaint Process for Violations of the Code of Conduct.
- E. Resolution 2023-084 Approving Amendments to the Respectful Workplace Policy and Renaming it the Anti-Discrimination and Anti-Harassment Policy.
- F. Resolution 2023-085 Approving a Code of Conduct for City Councilmembers and Board and Commission Members.
- G. Discussion and Direction to Staff Regarding Ex-officio Members.

The purpose of these items is to consider resolutions and amendments to various divisions of Chapter 2 of the Municipal Code to reflect the recommendations of the Ad Hoc Committee on Boards and Commissions.

**21. First Reading of Ordinance No. 121, 2023, Amending the Land Use Code to include Regulations for Making Water Adequacy Determinations.**

The purpose of this item is to adopt Land Use Code provisions to add specific regulations outlining how the City will make water adequacy determinations for development. The proposed regulations are divided into three different categories for: (1) established potable water supply entities; (2) new, or other potable water supply entities; and, (3) non-potable water supply entities. The goals of these changes include: complying with Colorado state statutory requirements (Section 29-20-301, et seq., C.R.S.); ensuring development has an adequate water supply; providing City staff with guidance to make these determinations and applicants with certainty on the requirements; and ensuring that growth and development in the City occur in a planned and coordinated manner. Other than minor, non-substantive clarifications, the proposed regulations are the same as those discussed at the June 6, 2023, Work Session. The Planning & Zoning Commission has recommended adoption of the proposed regulations (4-2 vote).

**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. Consideration of a motion to cancel the Tuesday, November 7, 2023, Regular Council meeting:**

"I move, pursuant to City Code Section 2-28(a), that Council cancel its regular meeting on Tuesday, November 7, 2023, due to the election that day."

**OB 3. Consideration of a motion to cancel the Tuesday, January 2, 2024, Regular Council meeting:**

"I move, pursuant to City Code Section 2-28(a), that Council cancel its regular meeting on Tuesday, January 2, 2024."

**OB 4. Motion to adjourn this meeting until after the completion of the Electric Utility Enterprise Board business:**

"I move that Council adjourn this meeting until after the completion of the Electric Utility Enterprise Board business."

**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.*

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## PROCLAMATION

**WHEREAS**, the Poudre Landmarks Foundation, Inc., was established in 1972 to administer the Avery House upon its acquisition by the City of Fort Collins in 1974; and

**WHEREAS**, the mission of the Poudre Landmarks Foundation is to preserve, restore, protect, and interpret the architectural and cultural heritage of the Fort Collins area; and

**WHEREAS**, the Annual Historic Homes Tour was established in 1985 as the major fund-raising event for the Poudre Landmarks Foundation, with all proceeds benefiting its preservation work; and

**WHEREAS**, the Historic Homes Tour is a community service event by volunteers of the Poudre Landmarks Foundation to raise awareness about historic preservation work and important historic places in Fort Collins; and

**WHEREAS**, 2023 marks the 140th anniversary of this community’s first public water works system, which is now maintained by the Poudre Landmarks Foundation and Friends of the Water Works as a local landmark that tour participants can visit on this year’s tour; and

**WHEREAS**, September 9, 2023, is the date of the 39th Annual Historic Homes Tour presented by the Poudre Landmarks Foundation and the City of Fort Collins.

**NOW, THEREFORE**, I, Jeni Arndt, Mayor of the City of Fort Collins, do hereby proclaim Saturday, September 9, 2023, as

### HISTORIC HOMES TOUR DAY

in the city of Fort Collins and call upon the community to join their fellow residents in recognizing and participating in this special observance.

**IN WITNESS WHEREOF**, I have hereunto set my hand and the seal of the City of Fort Collins this 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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



# AGENDA ITEM SUMMARY

City Council

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## STAFF

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Anissa N. Hollingshead, City Clerk

## SUBJECT

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**Consideration and Approval of the Minutes of the August 8, 2023 Special Meeting and the August 15, 2023 Regular Meeting.**

## EXECUTIVE SUMMARY

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The purpose of this item is to approve the minutes of the August 8, 2023 special meeting and the August 15, 2023 regular meeting.

## STAFF RECOMMENDATION

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Staff recommends approval of both sets of minutes.

## ATTACHMENTS

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1. Draft Minutes, August 8, 2023
2. Draft Minutes, August 15, 2023

August 8, 2023

**COUNCIL OF THE CITY OF FORT COLLINS, COLORADO**

**Council-Manager Form of Government**

**Special Meeting – Prior to the Scheduled Work Session – 6:00 PM**

**A) CALL MEETING TO ORDER**

Mayor Jeni Arndt called the meeting to order at 6:00 p.m. in the Colorado River Community Room at 222 Laporte Avenue, Fort Collins, Colorado.

**B) ROLL CALL**

**PRESENT**

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

**STAFF PRESENT**

City Manager Kelly DiMartino  
City Attorney Carrie Daggett  
Assistant City Clerk Ann Marie Sharratt

**C) ITEMS FOR DISCUSSION**

**1. Consideration of a motion to go into Executive Session for legal advice related to the Sanctuary on the Green litigation:**

“I move that the City Council go into executive session for the purpose of meeting with the City’s attorneys and City management staff to discuss the following matters as permitted under City Charter Article Two, Section Eleven (Two), City Code Section 2-31(a)(2) and Colorado Revised Statutes Section 24-6-402(4)(b):

1. Specific legal questions related to the Sanctuary on the Green litigation; and
2. The manner in which development review requirements for Sanctuary on the Green and other development applications may be affected by existing or proposed provisions of federal, state or local law.”

***Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to go into Executive Session, as permitted under Article Two, Section Eleven of the City Charter, Section 2-31(a)(1) of the City Code and Colorado Revised Statutes Section 24-6-402(4)(f)(roman numeral one), for legal advice related to the Sanctuary on the Green litigation.***

***The motion carried 7-0.***

**D) ADJOURNMENT**

There being no further business before the Council, the meeting was adjourned at 6:53 p.m.

\_\_\_\_\_  
Mayor

ATTEST:

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

DRAFT

August 15, 2023

**COUNCIL OF THE CITY OF FORT COLLINS, COLORADO**

**Council-Manager Form of Government**

**Regular Meeting – 6:00 PM**

**PROCLAMATIONS AND PRESENTATIONS  
5:00 PM**

**A) PROCLAMATIONS**

No proclamations scheduled.

**REGULAR MEETING  
6:00 PM**

**B) CALL MEETING TO ORDER**

Mayor Jeni Arndt called the regular meeting to order at 6:02 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 Tricia Canonico
- Councilmember Shirley Peel
- Councilmember Kelly Ohlson
- Councilmember Julie Pignataro

**STAFF PRESENT**

- City Manager Kelly DiMartino
- City Attorney Carrie Daggett
- Deputy City Clerk Heather Walls

**E) CITY MANAGER'S AGENDA REVIEW**

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

- Noting a motion was added under Other Business to adjourn the regular meeting to conduct the Electric Utility Enterprise Board business.
- All items on the consent agenda were recommended for approval.
- The items on the discussion agenda were reviewed.



**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.)

Erin Gray, Economics Advisory Board Member, stated she is interested in working with the City on climate change issues and low-carbon development transitions in concert with economic development plans. She stated the Economic Advisory Board is interested in having a more direct advisory connection with Council.

Ronald Hanser stated he lives in a low-density residential neighborhood with an HOA, and he purchased that home because of the predictability of an HOA community. He expressed concern about many of the proposed alternatives that are being considered related to the Land Use Code revisions. He stated the housing supply in Fort Collins is not the basic problem, the problem is demand and growth. Additionally, he stated the character of existing neighborhoods needs to be preserved and increased density development should only occur along transportation corridors and in new development.

Kate Conley supported placing housing of all types in all neighborhoods because the housing crisis should be shared collectively. She supported many of the proposed Land Use Code amendments and commended the public outreach efforts. Additionally, she urged Council to consider having no special exemptions for HOA neighborhoods and to consider not having an owner-occupancy requirement for ADUs. She stated U+2 is discriminatory and supported alternatives to the ordinance.

Matthew Behunin commented on the lack of housing affordability. He opposed the owner-occupancy requirement for ADUs and stated the parking requirements for ADUs are too costly. He also stated HOA neighborhoods should not be granted special rules.

Christopher Conway commended Council for taking steps forward with the Land Use Code but stated the details must be correct. He noted the AARP is one of the main proponents of ADUs in the country. He supported repealing the U+2 ordinance.

Ann Hutchison, Fort Collins Area Chamber of Commerce President/CEO, stated the Chamber sent a letter to Council expressing thoughts about items being referred to the November ballot. She congratulated Council on identifying priority issues of housing, parks, climate, and transit, but suggests not enough time has been spent on getting the final solutions correct for citizens to support the ballot measures. She specifically expressed concern about the status of the economy in Fort Collins, noting the cost of living is escalating. She encouraged Council to consider delaying the ballot measures.

Braxton Dietz, ASCSU Chief of Staff, supported the proposed ballot measure amending the U+2 ordinance.

Michael Strand, Kechter Farm HOA, expressed concern about how proposed Land Use Code changes would affect HOA covenants.

Michael Stella, ASCSU Director of Governmental Affairs, supported the proposed ballot measure amending the U+2 ordinance.

Evan Welch, ASCSU Deputy Director of Housing Security, supported the proposed ballot measure amending the U+2 ordinance.

Nick DeSalvo, ASCSU, supported the proposed ballot measure amending the U+2 ordinance and urged Council to allow voters to make decisions about their community.

Alayna Truxal, ASCSU Chief Justice, supported repealing the U+2 ordinance.

Marvin Paule commented on parking issues with homes that allowed more tenants prior to the U+2 ordinance. He stated home prices dropped to the point of affordability by families following the institution of the ordinance, and those homes have been fixed up and well-maintained. He expressed concern about infrastructure issues should the ordinance be repealed.

Haydyn Deason, ASCSU Director of Environmental Affairs, stated U+2 is discriminatory, encourages class divides, and actively pushes out students.

Kyle Hill, ASCSU, supported repealing U+2 to allow for equal housing opportunity for all.

William Chapman stated he bought into an HOA community to protect property values and his desired lifestyle. He stated the proposed changes should not apply to all residential areas and questioned how the regulations would impact historic districts.

Wayne Brothers stated it appears from the latest alternatives provided to Council by staff at the August 8 Work Session, Council has decided to delay any meaningful improvements to the development review process and focus solely on the social engineering proposals affecting housing. He proposed the three low-density zone districts: RL, NCL, and LMN, maintain their current zoning to preserve the character of the older, established neighborhoods. He stated this would allow for eight zones to have the increased densities, would treat all residents within a zone equally, maintain the benefits of established HOAs, and minimize potential litigation. He questioned the U+2 ballot item.

Denny Coleman, Economic Advisory Board Member, stated the Board Members would like to make themselves available to Council on a more consistent basis. He specifically commented on the importance of moving forward with the East Mulberry Annexation Plan.

Johanna Loury urged Council to retain current zoning and allow land uses for all established single-family neighborhoods and suggested utilizing undeveloped land in Fort Collins which is better suited for utilities required for denser development.

Adam Eggleston supported repealing or changing the U+2 ordinance and opposed the proposed three mill affordable housing property tax increase ballot measure. He also stated land use code or local regulations supersede HOA covenants per a 1993 state regulation.

Matthew Peters stated increasing density does not solve the issue of affordability. He stated the city has a lot to lose if it moves forward with Land Use Code changes and little to lose by waiting.

Peter Connelly stated family is what built Fort Collins and commented on the importance of real estate appreciation potential stating increased density would negatively impact existing single-family neighborhoods.

Tandena Wagner stated existing housing policies in Fort Collins make affordability difficult. She commented on the benefits of allowing for rental ADUs on rental properties.

Jackson Wagner commented on the benefits of allowing rental ADUs on rental properties.

Colleen Hoffman stated current zoning should remain for existing single-family neighborhoods. She stated any ADU deed restrictions should be enforced by the City but would, in reality, be citizen-complaint driven thereby pitting neighbors against one another. She also commented on the benefits of U+2 and suggested increased density does not necessarily impact affordability.

Glen Colton opposed dramatic upzoning and densification of existing neighborhoods in the proposed Land Use Code amendments.

Phil Soreide commented on a prison-style chain link fence that has been constructed by the Larimer and Weld Irrigation Company with minimal notification and no opportunity for public comment. He stated the Company must be required to respond to the impact of this action on the general public, including on the natural habitat and property values. He stated no environmental, economic, or engineering studies were conducted prior to the start of construction of the fence and the public deserves a forum to discuss the issue.

Jan Stallones expressed support for the funding appropriations described in Ordinance No. 105, 2023 and expressed support for the continued efforts of the City in addressing Fort Collins' unsheltered population. She also expressed support and appreciation for the new HOPE division of Fort Collins Police Services and for the plans for an expanded rescue mission.

Damian Ramirez commented on the need for a new indoor pool facility in Fort Collins, specifically citing the cramped high school practices at EPIC and system and safety issues at the Mulberry Pool, which should be closed.

Abigail Feuka supported changes to the Land Use Code that will result in more housing affordability and supported eliminating U+2.

James Burtis expressed support for many of the proposed Land Use Code changes, particularly the potential for higher density and lower parking requirements in the TOD overlay zone. However, he expressed concern there are no high-frequency bus routes operating in the Transfort system. He stated U+2 is very restrictive and supported allowing voters to weigh in on a less restrictive occupancy regulation.

Ken Christensen stated he is the Parks and Recreation Advisory Board Chair; however, he is speaking as a private citizen. He expressed support for the ballot language developed related to sustainable funding and commented on the \$10 million funding deficit that exists for parks and recreation infrastructure replacement.

Jamie Bailey commented on housing affordability and the need for housing options that would come from zoning changes.

Nick Armstrong, Parks and Recreation Advisory Board Vice Chair, supported the work on sustainable funding initiatives that would assist in funding existing maintenance obligations as well as in attaining some community-wide aspirational goals. He stated the Board recommends the sustainable funding ballot language that includes a half-cent sales tax increase with 50% dedicated for parks and recreation infrastructure. He stated funding for parks and recreation touches on all seven of the City's key outcome areas.

Rich Stave stated he is unclear how the money is to be repaid regarding Item No. 11, *First Reading of Ordinance No. 104, 2023, Appropriating Unanticipated Revenue from Bond Proceeds from the Issuance of the Series 2023 Electric Utility Enterprise Revenue Bonds for Light and Power, Connexion, and the Art in Public Places Program*. He commented on vehicles parking in rights-of-way.

John Parks, Economic Advisory Board Vice Chair, stated the Board welcomes any opportunities to engage with Council and encouraged Council to move forward with the 'reimagining Boards and Commissions' work more directly. He expressed support for the Land Use Code changes.

Public comment concluded at 7:20 p.m.

**PUBLIC COMMENT FOLLOW-UP**

Councilmember Shirley Peel thanked the Economic Advisory Board members for speaking and their interest in being more engaged with Council.

Councilmember Susan Gutowsky thanked Mr. Ramirez for his comments regarding the need for an additional pool facility.

Councilmember Julie Pignataro thanked the Boy Scouts who are in attendance and requested staff follow-up regarding the fence mentioned by Mr. Soreide. City Manager DiMartino stated the Building Compliance Department issued a stop work order due to the height of the fence being over six feet. She stated the only City area impacted is the Red Wing Marsh Natural Area, and a letter was sent to the Ditch Company letting them know they would need to apply for a permit to have a fence in that area. She also noted the County is investigating and there is ongoing coordination between the City and County to determine if there are any options to address the situation.

Councilmember Pignataro thanked the individuals who spoke on housing issues and noted next week's work session will focus on Land Use Code changes.

Councilmember Kelly Ohlson expressed support for Mr. Brothers' suggestion to look at Land Use Code changes by zone district. He also stated he would like staff to research whether the City is part owner of the Ditch Company. City Manager DiMartino replied the City has a very small ownership stake in this company and staff will provide a detailed breakdown.

Councilmember Ohlson encouraged individuals to contact the Poudre School District Board regarding funding for pools, noting there are no pools at any of its high schools.

Mayor Pro Tem Emily Francis requested follow-up to the questions related to the ownership requirements for financing ADUs and requested an answer to Mr. Stave's question regarding Item No. 11. Chad Crager, Connexion Executive Director, stated the payback for Item No. 11 will be revenue from Connexion customers.

Mayor Arndt also recognized the Boy Scouts in the audience and thanked the members of the Economic Advisory Board for their attendance and desire to be more involved with Council.

***Clerk's Note: Mayor Arndt called for a break at 7:28 p.m. The meeting resumed at 7:43 p.m.***

**I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION**

None.

**J) CONSENT CALENDAR****1. Consideration and Approval of the Minutes of the July 18, 2023 Regular Meeting.**

The purpose of this item is to approve the minutes of the July 18, 2023 regular meeting.

**Approved.**

**2. Second Reading of Ordinance No. 093, 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.**

This Ordinance, unanimously adopted on First Reading on July 18, 2023, requests an appropriation of \$56,974 in philanthropic revenue received through City Give in 2022 and 2023. These miscellaneous gifts to various City departments support a variety of programs and services

and are aligned with both the City's strategic priorities and as per 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. **Second Reading of Ordinance No. 094, 2023, Appropriating Philanthropic Revenue in the General Fund Through City Give for Neighborhood Services for Community Workshops and the Creation and Distribution of a Neighborhood Business Guide.**

This Ordinance, unanimously adopted on First Reading on July 18, 2023, appropriates \$20,000 in philanthropic revenue for Neighborhood Services within the Community Development and Neighborhood Services Department of the Planning and Transportation services area.

Neighborhood Services has been awarded a gift of \$20,000 through the 2023 American Association of Retired Persons (AARP) Community Challenge with the designated intent to support healthy outcomes for residents' homes and personal wellbeing through three one-day Homeowner Workshops, each at a different mobile home community in the City, including Skyline, North College, and Hickory Village. The gift funds also will be used to create and distribute a neighborhood business guide to residents.

***Adopted on Second Reading.***

4. **Second Reading of Ordinance No. 095, 2023, Authorizing Expenditure of American Rescue Plan Act Funds for Affordable Housing Fee Credits as Specified.**

This Ordinance, unanimously adopted on First Reading on July 18, 2023, appropriates American Rescue Plan Act (ARPA) funding for 5 units targeting forty percent (40%) Area Median Income (AMI) households at the Heartside Hill development. Council already appropriated \$350,000 of ARPA funding for affordable housing fee credits, and this funding must be fully committed by 2024. Affordable housing fee credits have been approved administratively for 20 units serving households at thirty percent (30%) AMI or below, including 8 units at Heartside Hill. There are no additional thirty percent (30%) AMI units expected before the ARPA deadline to commit funds in 2024. Though fee credits for units up to sixty-five percent (65%) AMI are a presumptive eligible use of ARPA funds, the City's fee credit policy as codified in City Code Article VIII, Section 7.5 requires Council approval for fee credits for any units serving income ranges above thirty percent (30%) AMI. This Council action would ensure that the remaining appropriated funds are used for their intended purpose as affordable housing fee credits.

***Adopted on Second Reading.***

5. **Second Reading of Ordinance No. 096, 2023, Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations in Multiple Utility Funds for the Purchase of Vendor Services to Support the Replacement of the City's Utilities Billing System.**

This Ordinance, unanimously adopted on First Reading on July 18, 2023, appropriates available reserves from the Light and Power, Water, Wastewater and Stormwater Enterprise Funds to implement a modern Utility Customer Information System – Customer Self Service Portal (CIS-CX) Solution. This appropriation request is the second, and final, request related to the new CIS-CX.

In March 2023, Ordinance No. 036, 2023, appropriated \$4,250,000 to begin the process of temporarily increasing staffing for the implementation while contract review and negotiations were being finalized. The City has now identified the Vendor of Choice, reviewed the functional

requirements in detail with that vendor and negotiated terms of the contract sufficient to determine the amount of investment needed to successfully deploy a new CIS-CX. This appropriation request of \$9,700,000 will provide the additional funding needed for all costs associated directly with the software deployment, software testing, training, and the organizational change management (OCM) associated with moving onto a modern CIS-CX. With this appropriation, the CIS-CX implementation will begin in October of this year and be fully operational by the end of 2025.

The total amount being requested for appropriation here is \$9,700,000 and is broken out as follows:

Software as Service Implementation \$3,250,000; Software Licensing through Implementation \$2,400,000; Organizational Change Management (OCM) \$1,500,000; Testing Protocol Development and Management \$900,000; Training Development and Initial Training \$900,000; and Business Process Analysis and Alignment \$750,000.

***Adopted on Second Reading.***

**6. Items Relating to Parking of Shared Mobility Devices and Electric Scooters.**

A. Second Reading of Ordinance No. 097, 2023, Amending Sections 2002, 2106 and 2108 of the Fort Collins Traffic Code to Address the Parking of Shared Mobility Devices and Electric Scooters.

B. Second Reading of Ordinance No. 098, 2023, Repealing Chapter 24, Article VI, Parking of Shared Mobility Devices, of the Code of the City.

These Ordinances, unanimously adopted on First Reading on July 18, 2023, amend the Fort Collins Traffic Code to add shared mobility devices and electric scooters regulations for parking of bicycles and electric bicycles, and repeal two sections of the City Code that separately relate only to parking of shared mobility devices and electric scooters.

***Both Ordinances Adopted on Second Reading.***

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

A. Second Reading of Ordinance No. 099, 2023, Amending the City's Structure Plan Map.

B. Second Reading of Ordinance No. 100, 2023, Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as The Landing at Lemay Two Rezoning.

These Ordinances, unanimously adopted on First Reading on July 18, 2023, amend the City Structure Plan Map to change the land use designation of approximately nine acres of land east of the Lemay Avenue overpass over Vine Drive from the Industrial Place Type to the Mixed Neighborhood Place Type and rezone the property from the Industrial (I) District to the Medium Density Mixed Use Neighborhood (MMN) District. The site is a remnant area of Industrial zoning resulting from the first Landing at Lemay Rezone which was approved in February 2023.

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 7-0 on their consent agenda to recommend approval of the request at their May 2023 hearing.

*This item 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.*

***Both Ordinances Adopted on Second Reading.***

8. **Second Reading of Ordinance No. 101, 2023, Designating the Emma Malaby Grocery Property, 313 North Meldrum Street, Fort Collins, Colorado, as a Fort Collins Landmark Pursuant to Chapter 14 of the Code of the City of Fort Collins.**

This Ordinance, unanimously adopted on First Reading on July 18, 2023, requests City Landmark designation for the Emma Malaby Grocery Property at 313 North Meldrum Street. In response to an application from the property owner, Historic Larimer County, City staff and the Historic Preservation Commission have determined the property to be eligible for designation under City Code Section 14-22, Standards 1 – Events, 2 – Persons/Groups, 3 – Design/Construction, and 4 – Information Potential. The owner is requesting designation to ensure protection of the property's buildings and features and to gain access to financial incentives for historic property owners.

***Adopted on Second Reading.***

9. **Second Reading of Ordinance No. 102, 2023, Submitting to a Vote of the Registered Electors of the City of Fort Collins Proposed Amendments to Sections 2 and 5 of Article X of the City Charter Relating to Referendum and Petition Requirements.**

This Ordinance, unanimously adopted on First Reading on July 18, 2023, sets ballot language regarding proposed amendments to Sections 2 and 5 of Article X of the City Charter relating to referendum and petition requirements.

Following work with the Election Code Committee and through a Work Session on May 9, 2023, Council directed staff to bring forward a potential ballot option to amend the City Charter to reconcile contradictions in the referendum process.

***Adopted on Second Reading.***

10. **Second Reading of Ordinance No. 103, 2023, Submitting to a Vote of the Registered Electors of the City of Fort Collins Proposed Amendments to Articles II and IV of the City Charter Concerning the Requirement that Certain Employees Live in or Near Fort Collins.**

This Ordinance, unanimously adopted on First Reading on July 18, 2023, sets ballot language regarding the requirement that certain employees live in or near Fort Collins.

Based on feedback from Councilmembers at the May 9, 2023, staff brings forward a potential ballot option to amend the City Charter to remove requirements that certain employment position types live in or near Fort Collins, allowing Council to establish any residency requirements by ordinance or by employment agreement for employees reporting directly to Council. Currently, a vote of the registered electorate is required to amend the Charter language that specifies City positions that must live in or near Fort Collins.

***Adopted on Second Reading.***

11. **First Reading of Ordinance No. 104, 2023, Appropriating Unanticipated Revenue from Bond Proceeds from the Issuance of the Series 2023 Electric Utility Enterprise Revenue Bonds for Light and Power, Connexion, and the Art in Public Places Program.**

The purpose of this item is to appropriate the funds received from the bond issuance in the Light and Power Fund. These proceeds will be used to fund capital projects needing to occur for both

Light and Power and Connexion, as well as for operating funds for Connexion, to pay issuance costs for the Series 2023 Revenue Bonds, and to transfer certain funds required by the Art in Public Places Program (APP Program) for the capital projects.

***Adopted on First Reading.***

**12. First Reading of Ordinance No. 105, 2023, Appropriating Prior Year Reserves in the General Fund to Continue the Encampment Site Cleanup Pilot Program.**

The purpose of this item is to appropriate \$200,000 in additional funds to continue the site cleanup pilot program. In Fall 2022, staff identified a backlog of site cleanups throughout the City and determined that cleanups needed to shift from twice a month to once per week. This was implemented towards the end of January 2023 with the recognition that additional funds would be needed if this pilot program achieved desired results.

***Adopted on First Reading.***

**13. First Reading of Ordinance No. 106, 2023, Making Supplemental Appropriations from the 2023 Colorado Opioid Settlement Funds for Use by the Municipal Court.**

The purpose of this item is to appropriate \$75,000 of the City's share of 2023 funds from the Colorado Opioid Settlement to be used in the remainder of 2023 to work towards establishing a municipal drug court program for persons with opioid use disorder and co-occurring substance use or mental health issues. This is a permitted use for these funds under the Colorado Opioid Settlement Memorandum of Understanding ("MOU") between the City and the State of Colorado.

***Adopted on First Reading.***

**14. First Reading of Ordinance No. 107, 2023, Appropriating Prior Year Reserves Designated for Fire Protection Services in the Fire Protection Capital Expansion Fee Account within the Capital Expansion Fee Fund for Payment to the Poudre Fire Authority to be Used by it for a New Headquarters Building.**

The purpose of this item is to appropriate funds from the reserves in the Fire Protection Capital Expansion Fee Account within the City's Capital Expansion Fee Fund ("CEF Fund") and payment of those funds to the Poudre Fire Authority ("PFA") for its purchase of a new Headquarters Building.

***Adopted on First Reading.***

**15. First Reading of Ordinance No. 108, 2023, Appropriating Prior Year Reserves in the General Fund for the Purchase of Police Radios.**

The purpose of this item is to request an appropriation in the amount of \$620,000 for the purchase of police handheld radios and approve the use of prior year reserves in the General Fund. There are currently 242 total handheld radios with 130 replaced in 2022. This leaves the remaining 112 radios needing to be replaced.

***Adopted on First Reading.***

**16. First Reading of Ordinance No. 109, 2023, Making a Supplemental Appropriation from the Colorado Division of Criminal Justice of Unanticipated Grant Revenue for Various Restorative Justice Services Programs.**

The purpose of this item is to appropriate grant revenue to fund Restorative Justice Services within Community Development and Neighborhood Services. A grant in the amount of \$57,356



has been awarded from the Colorado Division of Criminal Justice (DCJ) Juvenile Diversion Fund for the continued operation of Restorative Justice Services, which includes the RESTORE program for shoplifting offenses, and the Restorative Justice Conferencing Program (RJCP) and Reflect Program for all other offenses. No match is required and the grant period is July 1, 2023, to June 30, 2024.

***Adopted on First Reading.***

17. **Resolution 2023-070 Approving Expenditures from the Art in Public Places Light & Power, Wastewater, Stormwater and Water Utility Accounts to Commission an Artist to Create Art for the City's Utilities.**

The purpose of this item is to approve expenditures from the Art in Public Places (APP) Light & Power, Wastewater, Stormwater and Water Utility Accounts to commission an artist to create art for the City's Inaugural Utilities Artist-in-Residence Project. The expenditures of \$50,000 will be City of Fort Collins Page 7 of 10 for design development, materials, fabrication, delivery, mural installation, signage, additional illustration work, and contingency for Allie Ogg to create the artworks for the Artist in Residence Project.

***Adopted.***

18. **Resolution 2023-071 Approving an Exception to the Competitive Purchasing Process for the Purpose of Renewing the Contract with Nokia of America for Broadband Equipment, Software, Firmware, and Support Services.**

The current Supply and Services Agreement between the City of Fort Collins and Nokia of America Corporation (Nokia) for equipment, software, and firmware necessary to operate Fort Collins Connexion (Connexion) services expires in August 2023.

Connexion's network is built with hardware and software originally provided by Nokia and is an integral part of Connexion's high level of service. Although there may be other viable partners to provide similar hardware, software, and services, transiting from the current Nokia solution would be a multi-year resource intensive project that would be very disruptive to Connexion customers.

Based on the alignment of Nokia's goods and services with the operating requirements of Connexion, the Purchasing Agent has recommended an exception to the City's competitive purchasing process to continue the relationship with Nokia under a new agreement for up to five additional years.

***Adopted.***

19. **Resolution 2023-072 Authorizing the Sound Mitigation Project for Northern Colorado Law Enforcement Training Center Firing Range.**

The purpose of this item is to seek approval to use existing funds from the NCLETC capital budget in the amount of approximately \$136,632 to make necessary modifications to the sound noise abatement materials in the firing range.

***Adopted.***

**END OF CONSENT CALENDAR**

***Mayor Pro Tem Francis moved, seconded by Councilmember Gutowsky, to approve the recommended actions on items 1-19 on the Consent Calendar.***

***The motion carried 7-0.***

**CONSENT CALENDAR FOLLOW-UP**

No follow-up comments by Council.

**L) STAFF REPORTS**

None.

**M) COUNCILMEMBER REPORTS**

Councilmember Susan Gutowsky

- Participated in a ride along with the newly formed HOPE team to clean up an encampment.
- Participated in Neighborhood Night Out events on August 1<sup>st</sup>.
- Attended Mama Mia high school event.
- Announced Gardens on Spring Creek concerts.

Councilmember Tricia Canonico

- Attended the Women in Municipal Government conference.
- Announced her appointment to the EPA's Local Government Committee Work Group on Climate Mitigation.

Mayor Jeni Arndt

- Attended the People's Meeting, a new type of civic engagement opportunity.

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

None.

**O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION****20. Items Relating to City Initiated TABOR Questions (Sustainable Funding).**

*A. Possible Public Hearing and Motions Regarding Protest (s) of Ballot Language.*

*B. Resolution 2023-073 Submitting A Ballot Issue Question to the City's Registered Electors at the City's Regular Election on November 7, 2023, Asking Them to Authorize the City to Levy a Three Mill Property Tax to be Used Exclusively to Fund Affordable Housing.*

OR

*Resolution 2023-073 Submitting A Ballot Issue Question to the City's Registered Electors at the City's Regular Election on November 7, 2023, Asking Them to Authorize the City to Levy a Three Mill Property Tax to be Used Exclusively to Advance the City's Goals Under its 2021 Housing Strategic Plan.*

*C. Resolution 2023-074 Submitting a Ballot Issue Question to the City's Registered Electors at the City's Regular Election on November 7, 2023, Asking Them to Increase by .50% the City's Sales and Use Tax Rate to be Used Exclusively for Certain Specified Purposes. [WITH PERCENTAGES INSERTED]*

OR

*Resolution 2023-074 Submitting a Ballot Issue Question to the City's Registered Electors at the City's Regular Election on November 7, 2023, Asking Them to Increase by .50% the City's Sales and Use Tax Rate to be Used Exclusively for Certain Specified Purposes. [WITH BLANK PERCENTAGES]*

*The purpose of this item is to consider two resolutions and ballot language that reflect Councilmember feedback from the July 25, 2023, work session discussion. Two versions of each resolution are provided for consideration.*

*Any protest of the proposed ballot language must be received no later than Monday, August 14, 2023, at 12:00 p.m. Protest(s) shall be heard, considered, and resolved by the Council prior to adoption of the related Ordinance. If protests are received, copies will be included in Council's "Read Before the Meeting" packet.*

Travis Storin, Chief Financial Officer, stated this work is the product of eight Finance Committee meetings and four Council work sessions and the work has been prompted by some of the City's and community's highest priority master and strategic plans, including the Parks and Recreation Master Plan, the Transit Master Plan, Housing Strategic Plan, and the Our Climate Future Plan. He stated those plans indicate unsourced needs between \$40 and \$46 million.

Storin stated the work over the last 21 months has narrowed down the solution to the most conventional tools of sales and property taxes. He stated Council will be considering two resolutions, each with two options. One of the resolutions proposes a half-cent dedicated sales tax going toward parks and recreation, including aquatics, transit, and climate plans, which would raise a projected \$20 million with an average per-resident impact of \$62. The other resolution proposes a three mill increase, or \$1 for every \$1,000 of assessed value on a home, to be put toward affordable housing goals which would raise a projected \$11 million per year.

Regarding the sales tax resolution, option A would break up the percentage share equally between parks and recreation, climate goals, and transit, whereas option B would propose a one half share towards parks and recreation which would fully fund the new southeast aquatics center and a one half share towards climate and transit combined.

Storin noted the property tax would be a perpetual tax and option A is directed specifically toward affordable housing as defined by Council, whereas option B includes a wider array of eligible uses and references the Housing Strategic Plan.

#### CLARIFYING QUESTIONS

Councilmember Ohlson questioned the references to the property tax item generating \$11 million in one place and \$16 million in another. Storin replied the \$11 million figure is the amount collected; however, the TABOR language is scripted such that, if it happens that more than the amount on the ballot is collected, a refund is necessary. He stated state TABOR experts have provided guidance to make that number conservatively higher to avoid the risk of having to issue TABOR refunds.

City Attorney Carrie Daggett clarified there is a specific provision in TABOR regarding the first year estimate and obligations related thereto if more funds are collected.

#### PUBLIC COMMENT ON RESOLUTION 2023-073

Joe Rowan, One Voice for Housing, expressed appreciation for Council's work to address the overall cost of housing and stated those efforts should continue in earnest. He stated the organization is not currently comfortable with this item as it is written; however, it is supportive of an evergreen fund that supports housing.

Rich Stave opposed the item stating it represents double taxation.

#### COUNCIL DISCUSSION ON RESOLUTION 2023-073

Mayor Pro Tem Francis requested more detailed information on the differences between the two options. Storin replied the affordable housing specific item would address how to mitigate price escalation for housing impacts on disproportionately affected households. The Housing Strategic Plan item would include a broader set of eligible properties.

Josh Birks, Sustainability Services Deputy Director, stated the Housing Strategic Plan item is broad enough to include all the City's housing strategies, whereas the affordable housing specific item is focused just on that aspect of housing strategies.

Councilmember Ohlson asked if homelessness issues would be funded by the affordable housing option. Storin replied that costs such as encampment cleanup or the proposed 24/7 shelter on North College would not be seen as eligible uses of this tax. Birks clarified either option would include funding for permanent supportive funding.

Mayor Pro Tem Francis asked about the implementation difference between the two options. Birks replied the Housing Strategic Plan option would allow for a broader set of programs to be pursued that would not solely focus on addressing affordability issues.

Mayor Arndt stated she would prefer the broader option if Council opted to refer this issue to the ballot. She also reiterated this would be a perpetual tax.

Councilmember Tricia Canonico asked if home energy efficiency programs would fall under this item or under climate. Birks replied energy efficiency is mentioned in the Housing Strategic Plan and there could be some interplay between the two tax measures.

Mayor Pro Tem Francis stated that while it would be nice to fund everything in the Housing Strategic Plan, it seems affordable housing is what the community desires to fund; therefore, she stated she was leaning more toward the more specific option related to affordable housing. She stated housing seems too vague, though having that flexibility could be valuable.

Mayor Arndt noted the Housing Strategic Plan option would not preclude affordable housing dedicated funding through the BFO process.

Councilmember Pignataro stated she is leaning toward the more specific option related to affordable housing. She requested more information regarding the tax being in perpetuity. Storin replied there was some Council dialogue around lining up the tax sunset with the 2040 affordability goals; however, the thinking was that, by 2040, it is likely that a great deal of the housing stock that is built between now and then will need renovations; therefore, investments will still be needed, likely into perpetuity. He noted the tax could be repealed at the discretion of the Council in the future without an election.

Councilmember Canonico stated some concerns from the affordable housing development partners have been raised regarding being unprepared to utilize all these funds and she asked what would occur if extra dollars were present at the end of a budget cycle. Storin replied those funds would accumulate in reserves until such time a use that made sense to the City and Council came forward.

Mayor Arndt reiterated her desire to utilize the broader more flexible option given possible different future needs.

Mayor Pro Tem Francis stated not all housing needs will be able to be addressed with this property tax and she would prefer the dollars be used to focus on the biggest need of affordable housing.

Councilmember Peel thanked staff for their work on this topic and stated she is finding herself increasingly more uncomfortable referring these ballot initiatives because she is unsure the City has done its due diligence in terms of its budget to ensure best practices and best metrics are being used and fiscally sound policies are in place. She stated she does not believe a property tax increase tied to affordable housing will pass and the only ballot initiative she would be comfortable referring is the one tied to parks and recreation.

Councilmember Gutowsky noted the original discussion around utilizing property tax funding for affordable housing occurred prior to assessments showing many property values nearly doubling. She stated it would be difficult to ask the community to raise that even further and she stated she would not support referring either option to the ballot. Additionally, she stated placing both this resolution and Resolution 2023-074 on the ballot would jeopardize its passage.

Mayor Pro Tem Francis stated she would prefer to place the item on the ballot noting Land Use Code outreach efforts have shown that the community cares about affordable housing.

Councilmember Ohlson noted the City's share of property taxes has not increased since 1992 and 2/3 of that amount goes toward Poudre Fire Authority. However, he stated he would not support referring either item due to discontent with the City organization, though he believes Council has been careful and diligent in crafting these options for Fort Collins voters to consider.

Councilmember Canonico stated she has no strong opinion about either option but would like to see the item referred to the ballot.

***Mayor Pro Tem Francis made a motion to adopt Resolution 2023-073 submitting a ballot issue to the City's registered electors at the City's regular election on November 7, 2023, asking them to authorize the City to levy a three-mill property tax to be used exclusively to fund affordable housing and striking the word 'question' in each reference to 'ballot issue question.' Councilmember Pignataro seconded the motion.***

Mayor Pro Tem Francis stated having this dedicated funding stream would reflect the community's values.

***The vote on the motion was as follows: Yeas: Canonico, Pignataro, Arndt, and Francis. Nays: Ohlson, Peel, and Gutowsky.***

***THE MOTION CARRIED.***

**PUBLIC COMMENT ON RESOLUTION 2023-074**

Mark Morehouse commented on Councilmembers citing the need for public pools as an equity issue and because of the current deficit of pools in Fort Collins during the July work session. Additionally, he noted staff referenced the parks and recreation situation as a true budget deficit. He expressed support for the staff recommendation to allot the sales tax split of 50% to parks and recreation, 25% to transit, and 25% to climate goals. He stated he and others will continue to petition Poudre School District to partner with the City.

Rich Stave opposed this item stating it will not serve the best interests of Fort Collins residents. He stated increased taxes are not associated with increased economic activity. He suggested different choices could be made with the existing budget.

Kevin Cross, Fort Collins Sustainability Group, stated the Group feels it is important for the City to devote significant funding toward expanding local solar and battery storage capacity, preparing people, buildings, watersheds, and ecosystems for the threats brought on by climate change, and toward programs that will significantly reduce community greenhouse gases and pollutants. He

stated language in the resolution should explicitly reference those three issues and encouraged the language to reconcile spending percentages for parks and recreation, climate, and transit at the end of 2026 in addition to the other years specified in the resolution. He also stated the Group supports the even split of funding between the three entities.

Fred Kirsch, Fort Collins Community for Sustainable Energy, requested the language for the climate tax initiative include the following phrase: "the City's efforts to maximize solar generation." He commented on local solar being a key component of a network's distributed energy system.

Fred Arnold commented on the need for additional pool resources in Fort Collins and cited the importance of learning to swim for people of all backgrounds.

Kelly Holly expressed support for option B which would provide additional funding for aquatics.

#### COUNCIL DISCUSSION ON RESOLUTION 2023-074

Councilmember Gutowsky expressed support for option B and commented on the community's love of parks, particularly during the pandemic. She noted 50% of the community's playgrounds need to be refreshed and support of parks is a Council priority. She also noted there is a large gap in the amount of money available for asset replacement.

Councilmember Ohlson questioned whether the language relating to the School District's share of ongoing operations, periodic upgrades, and major renovations is clear and specific enough. Storin replied staff believes the language is sufficient to address both the capital operations and equipment replacement in terms of conveying Council's expectation.

Councilmember Ohlson questioned whether the language is strong enough to ensure a future Council cannot utilize the funds elsewhere. Deputy City Attorney John Duval replied the language as written is not intended to bind future Councils to spend the funds as intended by this Council, and part of the issue is that this is being presented as a resolution rather than an ordinance, which is the way both issues have been presented since their origination. He stated the language is the presentation of the ballot question, not the presentation of an ordinance that may have other requirements the voters would be approving.

Assistant City Manager Tyler Marr clarified a resolution that contains a proposed ordinance could be written should Council desire a more binding condition, though that would require the calling of a special meeting prior to the County's deadline for finalizing ballot issues.

City Manager DiMartino suggested eliminating the words "Council intends" to make the language more binding.

Mayor Pro Tem Francis asked if the intent of the language is to cover everything within Our Climate Future, or if it should be more specific per the suggestions of some of the speakers. Deputy City Attorney Duval replied the existing language around the climate action section is broadly written so the funds could be used for any programs or projects that advance greenhouse gas and air pollution reduction, the City's 2030 goal of 100% renewable energy, and the 2050 community-wide goal of carbon neutrality. He noted solar would fit into all three categories.

Councilmember Peel questioned whether combining climate, transit, and parks and recreation in one ballot measure is the best way to gain voter approval. Councilmember Ohlson replied having four separate tax questions, when including the housing item, could be a negative. He supported the use of both property and sales taxes.

Councilmember Ohlson expressed support for option B which would fund parks and recreation at 50%. Mayor Arndt concurred noting that option would fund additional lap lanes for the southwest

pool facility. Additionally, she stated climate and transit are somewhat intertwined which makes the other half of the funding for those items.

Councilmember Pignataro also expressed support for option B.

Councilmember Canonico asked if the ballot language would obligate expenditures on solar even if a better energy source were developed in the future. Birks replied the language is written to address 100% renewable energy and while solar is eligible, it is not limited to that.

Councilmember Canonico also expressed support for option B.

Councilmember Peel stated she wished the City was not in the place it is with parks and recreation funding. She stated she would rather not put additional costs on people at this time; however, she expressed support for option B.

***Clerk's Note: Mayor Arndt called for a break at 9:25 p.m. The meeting resumed at 9:30 p.m.***

City Manager DiMartino outlined the language changes that were made, including changing one of the whereas clauses to eliminate "The City Council intends" and to indicate that the amounts will be supplemented. Additionally, City sourced revenues were added to acknowledge there are many grant funds that come into play making things variable throughout a given year. There was also an addition to the ballot language that clarifies for voters that these funds will supplement and not replace the current City funding for those specified purposes. The word "full" was added to indicate the full cost of the pool lanes to be more explicit, and the word "energy" was changed to "electricity" to be more consistent with climate goals. City Manager DiMartino stated the language would be for 50% to parks, recreation, and pools, 25% for greenhouse gas and climate goals, and 25% for the transit system.

***Mayor Pro Tem Francis made a motion to adopt Resolution 2023-074 submitting a ballot issue question to the City's registered electors at the City's regular election on November 7, 2023, asking them to increase by 0.50% the City sales tax rate to be used exclusively for certain specified purposes with the changes read into the record by the City Manager. Councilmember Canonico seconded the motion.***

Councilmember Pignataro thanked staff for their work on this item.

***The vote on the motion was as follows: Yeas: Peel, Canonico, Pignataro, Gutowsky, Arndt and Francis. Nays: Ohlson.***

***THE MOTION CARRIED.***

## 21. Items Relating to City Council's Direction to Address Existing Occupancy Regulations.

*Possible Public Hearing and Motion(s) Regarding Protest(s) of Ballot Language.*

*A. Resolution 2023-075 Directing City Staff to Prepare and Present to Council Amendments to the City of Fort Collins Land Use Code Increasing Occupancy Allowed in Residential Dwellings.*

*B. Resolution 2023-076 Referring to the Registered Electors of the City of Fort Collins Resolution 2023-075, Concerning Amending the Fort Collins Land Use Code to Increase the Occupancy Allowed in Residential Dwellings.*

*Any protest of the proposed ballot language must be received no later than Monday, August 14, 2023, at 12:00 p.m. Protest(s) shall be heard, considered, and resolved by Council prior to adoption of the related Resolution. If protests are received, copies will be included in Council's "Read Before the Meeting" packet.*

Sylvia Tatman-Burruss, Sr. Project Manager, stated this item is in response to feedback from the July 18 meeting during which Council directed staff to prepare a resolution to refer the current occupancy ordinance to voters. She stated staff has prepared two options for consideration.

Tatman-Burruss outlined the existing occupancy ordinance which limits occupancy of residential dwellings to a family of any size plus one additional unrelated occupant, or no more than three unrelated occupants. She noted there is currently a process in place to allow for extra occupancy designation in certain zone districts and there is a host family permit option as well.

Tatman-Burruss stated both options provided for consideration eliminate the familial relatedness aspect and both allow for an increase in occupancy. She stated staff is recommending option 2 as it may allow for greater flexibility in choosing the appropriate mechanism for allowing an increase in occupancy while keeping neighborhood quality in mind.

#### PUBLIC COMMENT

Peter Erickson stated the existing occupancy ordinance affects residents of every age and background. He stated parking and noise should be regulated, not people, and he commended the residential parking permit program.

Rich Stave opposed this item stating CSU has had the opportunity to build additional on-campus housing but has opted out. He suggested increasing occupancy is not appropriate for all zones and stated the use of Neighborhood Services as the regulating agency would be misguided and ineffective.

Joe Rowan, One Voice for Housing, supported revisiting occupancy standards in the community and commended allowing some flexibility in how occupancy is defined according to how standards and definitions of family change over time.

#### COUNCIL DISCUSSION

Mayor Arndt requested additional detail regarding the difference between the two resolutions presented. City Attorney Daggett replied Resolution 2023-075 would allow Council to take an action to direct staff whereas Resolution 2023-076 would refer Resolution 2023-075 to the voters.

Mayor Arndt stated she had originally wanted this item to be referred to voters to ensure it was addressed; however, it is not mandatory that it be referred as Council has the purview to make a decision on its own and stated she would be willing to have Council consider a more detailed ordinance prior to the end of its term.

Councilmember Gutowsky stated she would support that idea.

Mayor Pro Tem Francis noted Council places items on the ballot it can undertake itself regularly and she expressed concern the necessary due diligence on solutions could occur by December. She stated she would prefer to have voters provide input.

Councilmember Pignataro noted Council assured the public occupancy would not be part of the Land Use Code changes and she expressed concern about doing that without garnering feedback from the electorate. She noted this is a contentious issue and she was contemplating proposing a longer study of perhaps a year to ensure time for adequate public outreach after a vote occurs.

City Attorney Daggett stated the language of the ballot question could contain a timeframe for the City to work on the issue if voters support adjusting the occupancy ordinance.

Councilmember Ohlson stated he would prefer Council to deal with this issue on its own in whatever timeframe is deemed appropriate. He commented on the changes in the community,



including deteriorating neighborhoods, that led to the necessity for the U+2 ordinance. He stated the positives of the ordinance outweigh any negatives by fifty times and include increased affordability for those who could not compete with large property investors. He commented on an email he received regarding the occupancy ordinance outlining a property that would technically allow 11 people without an ADU based on the number of bedrooms. He questioned how the definition of family would be limiting.

Councilmember Peel asked Councilmember Ohlson if he is willing to work on expanding the occupancy ordinance if it is not sent to the ballot. Councilmember Ohlson replied he would make every honest attempt at looking into changes to the current occupancy ordinance without making any promises. He stated property deterioration was always more of an issue than parking and noise. He also stated he believes the occupancy ordinance has helped affordability.

Councilmember Peel stated being open to making changes is different from committing to changing the ordinance. She expressed concern that changes made by Council that are disliked would be repealed.

Councilmember Ohlson stated his goal would be to develop something that would not be repealed. Additionally, he stated he would like the City to develop its own ordinance rather than have the state dictate the regulations.

Councilmember Peel expressed concern that this issue has been a topic of discussion for some time.

Mayor Arndt stated she believes this Council can address the topic by the end of its term and stated it could be placed on the ballot next year if a new ordinance were to be repealed.

Councilmember Peel stated she has heard from her constituents that they do not want changes to the occupancy ordinance; therefore, it is appealing to send the issue to the ballot to allow for the entire city to weigh in.

Mayor Arndt stated she is committed to revising the occupancy ordinance as there are open bedrooms in the community and people need housing.

Councilmember Pignataro stated she would like to get beyond anecdotal stories to a more concrete decision, and having feedback from the electorate would assist in that regard.

Mayor Pro Tem Francis questioned whether Council can deal with this issue by the end of the year given other business items and holidays. City Manager DiMartino replied it would require a follow-up discussion on reprioritizing items and on the expectations around public engagement.

Councilmember Canonico stated it is clear the community wants to be engaged in any decision the Council makes; therefore, it seems leaving it to Council to determine the outcome of this topic by December would not allow for adequate public outreach that is desired. Given that, she stated she would be more inclined to place the item on the ballot.

Mayor Arndt suggested Council could work on the ordinance over a year then send the resulting ordinance to the ballot next year which would allow for a more robust process.

Councilmember Gutowsky reiterated her support for having Council address the issue.

Councilmember Pignataro noted there are only three current Councilmembers who are guaranteed to have a seat on the next Council and getting an opinion from voters as to whether they want the next Council to address the topic or not could be valuable.

Councilmember Ohlson stated the ballot language as written would bind the next Council to consider the topic. He questioned what type of family is not currently covered by the occupancy ordinance. Tatman-Burruss replied the need to prove familial status can become difficult from an enforceability standpoint.

Councilmember Ohlson opposed the use of the phrase “expand housing efficiency” in the resolution language.

**Mayor Pro Tem Francis made a motion to adopt Resolution 2023-075 directing staff to prepare and present to Council amendments to the City of Fort Collins Land Use Code increasing the occupancy allowed in residential dwellings, option two. Councilmember Pignataro seconded the motion.**

City Attorney Daggett noted a date by which staff would bring options to Council would still need to be placed into the language.

Mayor Pro Tem Francis suggested a date of March 31, 2024. Councilmember Pignataro concurred.

Mayor Arndt clarified this resolution just directs staff to create a revised occupancy ordinance for Council consideration by March 31, 2024; the next resolution would place the item on the ballot.

City Manager DiMartino noted, if placed on the ballot and passed, staff would not be able to begin public outreach until after the election.

Mayor Pro Tem Francis made a friendly amendment to change the date to June 30, 2024. Councilmember Pignataro concurred.

City Manager DiMartino suggested taking the next couple weeks to flush out timelines and options given September 5 is the deadline for placing the item on the ballot.

Councilmember Ohlson commended the conversation on the topic and noted ballots get mailed in October; therefore, he stated it would not be good governance to place the item on the ballot with such a short timeframe. He also requested additional information regarding the familial status issue, particularly wherein an unmarried couple, each with their own children, are concerned.

Mayor Arndt stated she will oppose the motion as she would like to take more time to make the decision.

**The vote on the motion was as follows: Yeas: Pignataro and Francis. Nays: Canonico, Gutowsky, Arndt, Ohlson and Peel.**

**THE MOTION FAILED.**

**Clerk’s Note: Mayor Arndt called for a break at 10:52 p.m. The meeting resumed at 11:00 p.m.**

**Mayor Pro Tem Francis made a motion to extend the meeting past midnight. Mayor Arndt seconded the motion. Yeas: Gutowsky, Arndt, Francis, Ohlson, Peel, Canonico and Pignataro. Nays: none.**

**THE MOTION CARRIED.**

22. **Appeal of Planning and Zoning Commission Approval of the Ziegler-Corbett Overall Development Plan Major Amendment.**

*The purpose of this quasi-judicial item is to consider an appeal of the Planning and Zoning Commission's decision on March 23, 2023, approving the Ziegler-Corbett Overall Development Plan Major Amendment (#MJA220004 or "Major Amendment") located on the west side of Ziegler Road between Front Range Village and The English Ranch neighborhood.*

*Two Notices of Appeal were filed, both on April 5, 2023, alleging that the Planning and Zoning Commission failed to properly interpret and apply relevant provisions of the Land Use Code, City Code, and/or Charter. One of the appeals also alleges the Commission failed to conduct a fair hearing by ignoring previously established rules of procedure.*

Bob Choate introduced himself and Jason Sherrill of Landmark Homes, the applicant.

Craig Latzke and Lacey Joyal introduced themselves as appellants.

Mayor Arndt outlined the time allotments for presentations and rebuttals.

City Attorney Daggett outlined the appeals procedure.

Paul Sizemore, Community Development and Neighborhood Services Deputy Director, provided an overview of the Ziegler-Corbett Overall Development (ODP) Plan Major Amendment which incorporates one additional property into the ODP allowing the access to Ziegler to shift to the north and become a signalized intersection at Hidden Pond Drive. He noted the major amendment does not change the proposed land uses or intensity of development on the site.

Sizemore discussed the ODP and associated alternative compliance for a bicycle and pedestrian connection in lieu of a local street connection to the north that were approved in 2022. He noted a central issue to the ODP major amendment and the appeals is the location and type of access both to the site and to surrounding neighborhoods. Prior to 2011, the Master Street Plan showed Corbett Drive as a collector road running from Front Range Village, curving through the middle of this site, and connecting to Paddington Road. However, when Front Range Village was developed, many residents in English Ranch were opposed to that connection happening; therefore, in 2011, Council chose to remove the collector street connection from the Master Street Plan, though a local street connection was still a possibility in the future. When this ODP came forth, English Ranch residents still broadly objected to a street connection through the new development to Paddington; therefore, the developer proposed alternative compliance to provide a bicycle and pedestrian only connection rather than a street connection. At that time, the access onto Ziegler from the new development was to be a non-signalized channelized T intersection further south.

Sizemore stated feedback has been received from neighbors that a signalized intersection at Paddington and Ziegler is desired; however, the area that feeds Paddington is already built out and it is unlikely there will ever be enough traffic at the intersection to warrant a signal without a connection from Front Range Village through the ODP site to Paddington. He noted that when the major amendment was being considered in March of this year, the developer had worked out an arrangement to add a property allowing for the Ziegler access to shift north to align with Hidden Pond Drive, and a signal would be warranted there.

Sizemore noted the two appeals question the alternative compliance determination that allows the bicycle and pedestrian connection to Paddington rather than a full street connection in the hopes that a full street connection would result in enough traffic to warrant a signal at Ziegler and Paddington. He stated the two appeals contain a total of four allegations: failure to conduct a fair hearing on the basis that the Planning and Zoning Commission substantially ignored previously

established rules of procedure, and three allegations related to failure to properly apply and interpret the Land Use Code.

Regarding the failure to conduct a fair hearing allegation, Sizemore stated the Latzke appeal states the Planning and Zoning Commission allowed the applicant to address the Commission during a deliberation when considering a condition of approval after the Commission had made a statement there would be no further testimony considered. The second appeal allegation relates to whether the Commission failed to properly interpret and apply Sections 3.6.3(E) and 3.6.3(F) of the Land Use Code, which deal with connectivity standards and alternative compliance, specifically that the major amendment made changes to the original ODP to an extent that the previously approved alternative compliance would no longer be applicable, that the alternative compliance presents substantially different tradeoffs, considerations, and additional negative consequences, that staff and the Commission should have been aware that the decision by Council to remove Corbett Drive as a collector street could still result in a local street connection, that the additional acreage incorporated with the major amendment creates new traffic mobility considerations, and that the original alternative compliance should not have been continued.

Sizemore stated the third issue on appeal involves whether the Commission failed to properly interpret and apply Land Use Code Section 1.2.2(K), with the specific allegation being that the location of a traffic signal at Ziegler and Hidden Pond does not foster a rational or common sense pattern of development as a signalized intersection would typically occur at arterial and collector intersections. Sizemore noted this Section is part of the purpose statement of the Land Use Code, and at the time the project was reviewed, neither staff nor the Commission considered it to be a binding development regulation.

The fourth issue on appeal related to whether the Commission failed to properly interpret and apply what was referred to in the appeal as City Code Policy LIV 4.2, which is actually City Plan Policy LIV 4.2, with the specific allegation being that the major amendment does not continue established block patterns and streets to improve access to services. Sizemore noted that at the time this determination was made, Comprehensive Plans and Master Plans were advisory and not binding or regulatory.

Mayor Arndt stated one evidentiary issue raised by the Joyal/Burnside notice of appeal contained new evidence not in the record of the Planning and Zoning decision which was an equation ostensibly from the Federal Highway Administration for calculating the traffic queue length on page 9 of the notice and a map ostensibly depicting traffic patterns at the ODP site on page 10 of the notice. She noted Council does not in general consider new evidence and no other Councilmembers spoke in favor of considering this new evidence. Lacey Joyal, appellant, stated that information was from some online research, but it will not be part of her presentation.

#### APPELLANT PRESENTATION

Craig Latzke commended Landmark Homes and Jason Sherrill. He noted he has no concerns with the two non-controversial parts of the major amendment and stated the development is improved by changing its street to align with Hidden Pond Drive. He stated the appeal aims to get the streets correct and commented on the importance of local street connections within a square mile section stating the approved major amendment violates all provisions related to those connections. He stated full compliance with these provisions is readily feasible for the ODP by including a local connection; therefore, it was inappropriate for the Planning and Zoning Commission to approve the major amendment by relying on alternative compliance rather than actual compliance.

Mr. Latzke stated traffic signal placement on Ziegler is important to get correct and a signal in the area should be placed where it best serves adjacent neighborhoods as well as the new development, where it fits into existing street patterns, and where it will align with the low-stress

bicycle connection at Paddington Road. He detailed the desirable condition and noted it was spoken about favorably even by Commission members at the hearing. He stated it would provide the new residential development with important local connectivity to the north, would provide connectivity to the new development from existing neighborhoods, and would provide a long-planned signal for three sizable neighborhoods at the existing intersection of Ziegler and Paddington. Mr. Latzke stated the proposed signal location at Hidden Pond Drive would serve only the new development and a small existing 13-house neighborhood, and its placement would eliminate the possibility of ever having a signal at Paddington due to spacing issues.

Mr. Latzke stated that when the collector street connection was removed from the Master Street Plan in 2010, Council made it clear that a local street connection to Paddington would be required when this ODP parcel developed, though the ODP process seemed to misapply that intent and dropped the local connection to Paddington. He stated staff were unable to seek guidance from Council regarding the local connection for the ODP due to the need for policy decisions to happen at public hearings, and because Council cannot be involved in the ODP process in order to maintain impartiality as the decision-maker regarding any future appeals. Additionally, Mr. Latzke stated the Commission's discussion at the hearing revealed the members were not sure if they could vote to approve the major amendment while also attaching requirements like the local connection and a different signal location. He noted that of the six members present, four voted to approve the major amendment despite making statements that they desired a different outcome.

Mr. Latzke requested Council either modify the Planning and Zoning Commission's approval to include requirements for the local street connection and signal placement at Paddington or overturn the approval along with providing guidance about these matters. Additionally, he stated he would like to remove his allegation of an unfair hearing and he provided Council with a petition of 88 signatures in support of his appeal.

Lacey Joyal concurred with Mr. Latzke's comments related to Landmark Homes and Jason Sherrill. She stated the goal of the appeal is simply to get the signal placement correct and establish a connection between English Ranch and the ODP site. She stated moving the signal to Paddington is feasible with a street connection from English Ranch and noted the staff report specifically stated that feasibility. She stated the ODP should be fully compliant with connectivity standards and should not be allowed to rely on the alternative compliance for a bicycle and pedestrian only connection.

Ms. Joyal stated staff felt, absent updated Council guidance, a local street connection would duplicate a condition which stakeholders and Council had previously taken action to remove in 2010. She outlined some of the issues that were taken into consideration during the time of that decision and stated Council agreed that future developers would have connectivity into English Ranch and made a contractual agreement with Front Range Village that a connection from its development through the ODP site to English Ranch would occur in the future.

Ms. Joyal commented on the importance of connectivity in the area and specifically noted historically marginalized groups such as low-income households and seniors are suffering with extra driving distances, reduced connectivity to schools and parks, and reduced access to emergency services. She stated connecting the neighborhoods at Edmonds, as the Council intended in 2010, would correct these issues and allow for the correct placement of the signal at Paddington and Ziegler. She requested Council modify or remand the major amendment decision, require full compliance with connectivity standards, and allow the developer a variance if needed to place the signal at Paddington and Ziegler.

## APPLICANT PRESENTATION

Bob Choate stated he understands the desire of the Woodland Park residents to have a light; however, he stated it would be inappropriate to force that by granting the appeal and rejecting the approval provided by the Planning and Zoning Commission. Regarding the appeal related to Land Use Code Section 1.2.2(K), Mr. Choate noted that section is advisory rather than regulatory, per Sizemore's statement.

Mr. Choate addressed the appeal allegations regarding Section 3.6.3, which includes regulatory requirements related to connectivity. He stated the standards require a development plan that appropriately distributes traffic to local streets and require stub streets to adjacent developable parcels. He noted Landmark Homes is planning to build the street to the property line but cannot control what happens off the property.

Regarding the City Plan policy LIV 4.2 relating to compatibility of adjacent development, Mr. Choate stated the policy requires developments that share a property line with existing neighborhoods to promote compatibility by continued established block patterns and streets to improve access to services and amenities from the adjacent neighborhood, which is English Ranch, whose residents have been opposed to the street connection. He stated there was never a requirement for a local street connection or local vehicle access.

Mr. Choate stated the Landmark Homes development, Union Park, is in conformance with the City's goals for density and opening the connection would place a great deal of traffic into English Ranch on a local street sized roadway. He stated there is no established block or street pattern that requires a connection to Paddington. He suggested Council rely upon the expertise of the individuals it has appointed to serve on the Planning and Zoning Commission.

Jason Sherrill, Landmark Homes, stated he has met with the appellants to attempt to work out a solution; however, they were left with few options. He commented on the Union Park project and stated it will be a compliment to the fabric of Fort Collins. He noted the original ODP was approved with a channelized T intersection, which was not a favorite access design. Additionally, he stated they did not want to file for alternative compliance, but it was suggested by the City and seemed the appropriate thing to do as no English Ranch residents desired that full connection.

Mr. Sherrill commented on the acquisition of the Young property which created a better project by removing the channelized T intersection and aligning the project with Hidden Pond Drive. The associated traffic study for the amendment showed the need for a traffic signal at that intersection, which the development is committed to fully funding. He stated that while there could be better or equal value to a signal at Paddington, Code requires the light at Hidden Pond and the major amendment was approved by the Planning and Zoning Commission. He reiterated he has no control over Paddington or the Edmonds connection as they are not on his property and stated there is currently no signal warranted at Paddington though there is one warranted at Hidden Pond. He requested Council deny the appeal and allow the ODP to move forward noting any further delay will increase costs.

## APPELLANT REBUTTAL

Mr. Latzke stated part of the reason Paddington does not warrant a signal is due to the lack of connectivity between Kingsley and Corbett. He stated Land Use Code Section 3.6.3 is very specific in that it requires access to and from the proposed development from at least three arterial streets, and this development would not have access to a third arterial, Horsetooth, without connecting through English Ranch. Additionally, the Section requires multiple routes to existing neighborhood centers, parks, and schools without the use of arterial streets, which would not be the case without the Edmonds connection.

Mr. Latzke concurred Landmark Homes does not have control over off-site areas and stated he would support having the stub out on the Union Park site until the property develops that would make the full connection at Edmonds. He stated he is sensitive to the delay consideration and encouraged Council to use any options it has at its disposal that would give the applicant clarity sooner than others if it chooses to uphold the appeal. He reiterated the Planning and Zoning Commission did not seem to be comfortable with the decision noting Vice Chair Stackhouse stated she did not like the motion she made and she would prefer to see a connection from the ODP to Paddington.

Ms. Joyal stated she did not necessarily concur with Mr. Sherrill's comment that all the English Ranch residents oppose the connection noting she received unsolicited emails from residents of the neighborhood who also desire the signal at Paddington. She also noted the traffic study states the only way to alleviate the left-hand turn delays at Paddington is to install a signal.

#### APPLICANT REBUTTAL

Mr. Choate stated Landmark Homes has designed the connection on its property for vehicular access up to the property line. He suggested the Commission approve the major amendment notwithstanding stated concerns is because this is the best option for what is within control of the applicant.

#### COUNCIL QUESTIONS

Councilmember Pignataro asked if Council needs to act on the fair hearing issue Mr. Latzke withdrew. City Attorney Daggett replied it would be beneficial for Council to make a motion finding there was a fair hearing despite arguments on the topic not being presented.

***Mayor Pro Tem Francis made a motion that Council find that the Planning and Zoning Commission did conduct a fair hearing in its consideration of the Major Amendment to the Ziegler-Corbett Overall Development Plan. Councilmember Pignataro seconded the motion. Yeas: Arndt, Francis, Ohlson, Peel, Canonico, Pignataro and Gutowsky. Nays: none.***

#### ***THE MOTION CARRIED.***

Mayor Pro Tem Francis stated it makes the most sense to remand the decision back to the Planning and Zoning Commission with the direction to be in full compliance with connectivity standards and to disregard the alternative compliance. She stated connectivity between the neighborhoods is important.

Councilmember Peel questioned what the Commission could do with the signal if the issue is remanded. Tyler Stamey, City Traffic Engineer, stated current traffic volumes on Paddington do not warrant a signal; however, adding the connection from the ODP site would likely add enough traffic to the intersection of Paddington and Ziegler to meet that warrant.

Councilmember Ohlson asked staff if this motion provides enough direction. Ryan Mounce, City Planner, replied there is an intervening parcel and while this project could make the connection to the northern property boundary of its site, there is currently no public right-of-way to complete the connection to Edmonds at this time and that would lead to a discussion around when Paddington would potentially be signalized based on the timing of that connection. Additionally, there would be questions around the interim condition for Ziegler Road access and whether it remains full for this development.

Councilmember Ohlson stated he would like to see this project be considered swiftly without cutting out any appropriate process. Sizemore replied that would be staff's approach recognizing this has been an ongoing process.

Mayor Arndt concurred the connectivity standards should apply, and the Commission needed that direction from Council.

**Mayor Pro Tem Francis made a motion that City Council remand this matter for a Planning and Zoning Commission rehearing with the direction that on rehearing its approval of the Major Amendment to the Ziegler-Corbett Overall Development Plan, the Planning and Zoning Commission shall consider at minimum the following issues: coming into full compliance with connectivity standards and removing alternative compliance. The Planning and Zoning Commission shall make specific factual findings with respect to each of these issues. In light of this remand, she further moved to dismiss the two appeals filed by Lacey Joyal and Tamara Burnside together and by Craig Latzke with respect to any other issue not addressed in the remand to the Planning and Zoning Commission. Councilmember Canonico seconded the motion. Yeas: Arndt, Francis, Ohlson, Peel, Canonico, Pignataro and Gutowsky. Nays: none.**

**THE MOTION CARRIED.**

**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.)*

There was a consensus to bring the U+2 ballot question back to Council on September 5.

**OB 2. Motion to adjourn this meeting until after the completion of the Electric Utility Enterprise Board business:**

**Mayor Pro Tem Francis made a motion that Council adjourn this meeting until after the completion of the Electric Utility Enterprise Board business. Councilmember Peel seconded the motion. Yeas: Arndt, Francis, Ohlson, Peel, Canonico, Pignataro and Gutowsky. Nays: none.**

**THE MOTION CARRIED.**

**Q) ADJOURNMENT**

There being no further business before the Council, the meeting was adjourned at 12:47 a.m.

\_\_\_\_\_  
Mayor

ATTEST:

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





# AGENDA ITEM SUMMARY

City Council

## STAFF

Blaine Dunn, Accounting Director  
John Duval, Legal

## SUBJECT

**Second Reading of Ordinance No. 104, 2023, Appropriating Unanticipated Revenue from Bond Proceeds from the Issuance of the Series 2023 Electric Utility Enterprise Revenue Bonds for Light and Power, Connexion, and the Art in Public Places Program.**

## EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on August 15, 2023, appropriates the funds received from the bond issuance in the Light and Power Fund. These proceeds will be used to fund capital projects needing to occur for both Light and Power and Connexion, as well as for operating funds for Connexion, to pay issuance costs for the Series 2023 Revenue Bonds, and to transfer certain funds required by the Art in Public Places Program (APP Program) for the capital projects.

There was an error in the Ordinance on First Reading in Section 2. The appropriation amount expressed in words did not match the numerical value. The numerical value was correct and reflected throughout the Ordinance. The appropriation amount expressed in words has been updated to match the numerical value.

## STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

## BACKGROUND / DISCUSSION

### Overview

Both Light and Power and Connexion have additional capital needs in their systems. Staff are bringing forward two ordinances related to the issuance and appropriation of Electric and Telecommunication Enterprise revenue bonds.

### *Light and Power*

Through the continued capital improvement plan, the Light and Power team have identified several areas needing investment. The primary use of the funds will be to build a new electrical substation in the northeast part of town, help with additional costs due to supply chain issues with transformers, and help with additional annexation costs being faced by the utility. The light and power utility will also use some of these funds for additional work involving replacement of parts of the electrical system that need to be addressed throughout the system. In addition, some of the proceeds from the bond issuance might be used in the future, subject to future Council appropriation (but not in this appropriation), to prepay all or a portion of the

loan the City received in 2020 from Vectra Bank to fund Light and Power's EPIC loan program that provides owners of residential property with financing for energy efficiency improvements to their properties.

### *Connexion*

In March 2023, City Council authorized the reimbursement of capital expenditures through the issuance of bonds. Connexion has now exhausted all currently available funds. Staff presented updated financial projections for Connexion at Council's January 10, 2023, work session. In that meeting, the capital project estimate was updated, reflecting a need to access approximately \$16.0 million additional capital to complete the network build-out and customer ramp-up by the end of 2024. An additional \$3.0 – \$5.0 million for excess operating expenses was also estimated to be needed. The maximum aggregate principal amount of the bonds issued for Connexion cannot exceed \$20,365,000.

### **Structure**

The bond issuance and structure are summarized as follows:

- Funding \$63.7M of gross proceeds, of which the City will use:
  - \$40.5M for Light and Power capital project costs (to be appropriated in this Ordinance) and potential payment of bank loan for EPIC program (to be appropriated in the future as needed)
  - \$22.5M for Connexion capital project and other operating costs
    - \$18.0M for capital projects (to be appropriated in this Ordinance)
    - \$2.0M for operating costs (to be appropriated in this Ordinance)
    - \$2.5M for contingency (to be appropriated in the future as needed)
  - \$0.7M for issuance costs (to be appropriated in this Ordinance)

### **CITY FINANCIAL IMPACTS**

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The principal, interest, maturity, and price are subject to change upon pricing late September within the proposed Bond Ordinance's parameters. The parameters allow for reasonable range of market scenarios in the weeks that elapse between first and second readings and final pricing of the bonds.

### **Structure**

As currently structured, the bonds have a 21-year maturity. Each utility will repay their share of the principal amount being used for their respective projects. The bonds will fund \$66.1M of gross proceeds. Funds will be used as follows:

Sources:	Electric and Broadband Utility Revenue Bonds, Series 2023 (Light and Power)	Electric and Broadband Utility Revenue Bonds, Series 2023 (Connexion)	Total
Bond Proceeds:			
Par Amount	38,190,000.00	20,365,000.00	58,555,000.00
Premium	2,762,510.50	2,427,864.05	5,190,374.55
	<u>40,952,510.50</u>	<u>22,792,864.05</u>	<u>63,745,374.55</u>

Uses:	Electric and Broadband Utility Revenue Bonds, Series 2023 (Light and Power)	Electric and Broadband Utility Revenue Bonds, Series 2023 (Connexion)	Total
Project Fund Deposits:			
Light and Power Project Fund	40,500,000.00		40,500,000.00
Connexion Project Fund		22,553,178.38	22,553,178.38
	<u>40,500,000.00</u>	<u>22,553,178.38</u>	<u>63,053,178.38</u>
Delivery Date Expenses:			
Cost of Issuance	166,085.50	86,948.17	253,033.67
Underwriter's Discount	286,425.00	152,737.50	439,162.50
	<u>452,510.50</u>	<u>239,685.67</u>	<u>692,196.17</u>
	<u>40,952,510.50</u>	<u>22,792,864.05</u>	<u>63,745,374.55</u>

**Debt Service**

Debt service costs for Connexion will be deferred for the first 19 years and Connexion will only pay interest during this time. In years 20 and 21, Connexion will pay their share of the principal balance of the outstanding debt. Light and Power will make level debt service payments over the life of the bonds. An amortization table is included below for reference:

**BOND DEBT SERVICE BREAKDOWN**

**City of Fort Collins, Colorado  
Electric and Broadband Utility Revenue Bonds, Series 2023  
Numbers for Allocation of Debt Service  
Market Rates as of August 9, 2023**

Period Ending	Electric and Broadband Utility Revenue Bonds, Series 2023 (Light and Power)	Electric and Broadband Utility Revenue Bonds, Series 2023 (Connexion)	Total
12/01/2024	2,954,708.33	1,159,673.61	4,114,381.94
12/01/2025	3,095,500.00	1,018,250.00	4,113,750.00
12/01/2026	3,094,250.00	1,018,250.00	4,112,500.00
12/01/2027	3,095,000.00	1,018,250.00	4,113,250.00
12/01/2028	3,097,500.00	1,018,250.00	4,115,750.00
12/01/2029	3,096,500.00	1,018,250.00	4,114,750.00
12/01/2030	3,097,000.00	1,018,250.00	4,115,250.00
12/01/2031	3,093,750.00	1,018,250.00	4,112,000.00
12/01/2032	3,096,750.00	1,018,250.00	4,115,000.00
12/01/2033	3,095,500.00	1,018,250.00	4,113,750.00
12/01/2034	3,095,000.00	1,018,250.00	4,113,250.00
12/01/2035	3,095,000.00	1,018,250.00	4,113,250.00
12/01/2036	3,095,250.00	1,018,250.00	4,113,500.00
12/01/2037	3,095,500.00	1,018,250.00	4,113,750.00
12/01/2038	3,095,500.00	1,018,250.00	4,113,750.00
12/01/2039	3,095,000.00	1,018,250.00	4,113,250.00
12/01/2040	3,093,750.00	1,018,250.00	4,112,000.00
12/01/2041	3,096,500.00	1,018,250.00	4,114,750.00
12/01/2042	3,092,750.00	1,018,250.00	4,111,000.00
12/01/2043	3,097,500.00	10,953,250.00	14,050,750.00
12/01/2044		10,951,500.00	10,951,500.00
	<b>61,768,208.33</b>	<b>41,392,923.61</b>	<b>103,161,131.94</b>

**BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

At the July 6, 2023, meeting, the Council Finance Committee supported proceeding to First Reading for this Ordinance with the full Council.

**PUBLIC OUTREACH**

Not applicable.

**ATTACHMENTS**

1. Ordinance for Consideration (with revision)

ORDINANCE NO. 104, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
APPROPRIATING UNANTICIPATED REVENUE FROM BOND PROCEEDS  
FROM THE ISSUANCE OF THE SERIES 2023 ELECTRIC UTILITY ENTERPRISE  
REVENUE BONDS FOR LIGHT AND POWER, CONNEXION,  
AND THE ART IN PUBLIC PLACES PROGRAM

WHEREAS, both the City’s Light and Power and Connexion have various capital project needs for their systems and Connexion needs additional operating funds; and

WHEREAS, to address these funding needs, the board of the Electric Utility Enterprise has adopted Ordinance No. 015 (“Ordinance No. 015”) authorizing the issuance of the Series 2023 Electric Utility Revenue Bonds (the “Revenue Bonds”); and

WHEREAS, the Revenue Bonds are estimated to be issued for \$66.2 million in total gross proceeds from which: (i) \$40.7 million will be used for Light and Power’s identified capital project needs and possibly for the payment of a bank loan funding the EPIC program, (ii) \$18.0 million used for Connexion’s identified capital project needs, (iii) \$4.8 million used as a contingency for future Connexion capital projects currently unidentified, (iv) \$2.0 million used by Connexion for operations, and (v) \$0.7 million used for the issuance costs for Revenue bonds; and

WHEREAS, of these amounts, only the following are being appropriated in this Ordinance: (i) \$40.7 million for Light and Power’s identified capital project needs, (ii) \$18.0 million for Connexion’s identified project needs, (iii) \$2.0 million for Connexion operations, and \$0.7 for the issuance costs for the Revenue Bonds; and

WHEREAS, the Light and Power and Connexion identified capital projects involve 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”), so this Ordinance also transfers and appropriates these required funds for the APP Program; and

WHEREAS, the appropriations in this Ordinance benefit the public health, safety and welfare of the residents of Fort Collins and serve the public purposes of providing the services and benefits being provided to Fort Collins residents by Light and Power, Connexion, and the APP Program; 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 these appropriations are available and previously unappropriated from the Light and Power Fund and the Broadband Subaccount in the Light and Power Fund (the “Broadband

Fund”), as applicable, and will not cause the total amount appropriated in the Light and Power Fund and the Broadband 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, contributions to the APP Program by each City utility for art projects is kept and spent in such utility’s own fund, except the utility contributes its share of the APP Program’s costs for maintenance, administration, repair and display to the Cultural Services and Facilities Fund as provided in City Code Section 23-303(c); and

WHEREAS, in accordance with Article V, Section 10 of the City Charter, the appropriation for the capital projects from the Light and Power Fund and the Broadband Fund and the transfer of a portion of those unexpended and unencumbered appropriated funds to the APP Program as provided in City Code Section 23-304(c) will be used for the Light and Power and Connexion purposes, as applicable, and improvements in connection with their capital projects that provide a betterment to Light and Power and Connexion; and

WHEREAS, a portion of the funds appropriated in this Ordinance in the amount of \$2,710,387 for the Projects are ineligible for use in the APP Program due to restrictions placed on them by the source and use of these funds; and

WHEREAS, the amount to be contributed to the APP Program by the Light and Power Fund is therefore \$407,043; and

WHEREAS, 0.5% of the Broadband Fund operating revenue is \$100,495 for 2023; and

WHEREAS, the amount to be contributed to the APP Program in this Ordinance by the Broadband Fund is \$100,495; 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 appropriations herein using the proceeds from the issuance of the Revenue Bonds for use on capital projects expended or transferred from the Light and Power Fund and the Broadband Fund, as applicable, as appropriations that shall not lapse until the completion of the projects as such designations are set forth in Sections 2 and 5 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 there is hereby appropriated from the proceeds in the Light and Power Fund to be received from the issuance of the Revenue Bonds the sum of ~~FORTY ONE MILLION ONE HUNDRED SIXTY NINE THOUSAND NINE HUNDRED THIRTY TWO DOLLARS~~ **FORTY MILLION NINE HUNDRED FIFTY-TWO THOUSAND FIVE HUNDRED ELEVEN DOLLARS** (\$40,952,511) to be expended in the Light and Power Fund for capital projects, bond issuance costs, and APP Program transfers **(the latter to be expended with the various qualifying projects)** as set forth below.

Light and Power Capital Projects (non-lapsing)	\$40,095,000
Art in Public Places (Artwork; non-lapsing)	\$315,900
Art in Public Places Project (transfer to Cultural Services Fund for APP Operations; lapsing)	\$81,000
Art in Public Places Project (transfer to Cultural Services Fund for APP Maintenance; lapsing)	\$8,100
Issuance costs (lapsing)	\$452,511
Total	\$40,952,511

Section 3. That the unexpended and unencumbered appropriated amount of **EIGHTY-ONE THOUSAND DOLLARS** (\$81,000) in the Light and Power 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 4. That the unexpended and unencumbered appropriated amount of **EIGHT THOUSAND ONE HUNDRED DOLLARS** (\$8,100) in the Light and Power 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 5. That there is hereby appropriated from the proceeds in the Broadband Fund to be received from the issuance of the Revenue Bonds the sum of **TWENTY MILLION TWO HUNDRED NINETY-TWO THOUSAND EIGHT HUNDRED SIXTY-FOUR DOLLARS** (\$20,292,864) to be expended in the Broadband Fund for capital projects, operating costs, bond issuance costs, and APP Program transfers as set forth below.

Broadband Capital Projects (non-lapsing)	\$18,000,000
Broadband operating costs (lapsing)	\$1,952,683
Art in Public Places (Artwork; non-lapsing)	\$78,386
Art in Public Places Project (transfer to Cultural Services Fund for APP Operations; lapsing)	\$20,099
Art in Public Places Project (transfer to Cultural Services Fund for APP Maintenance; lapsing)	\$2,010
Issuance costs (lapsing)	\$239,686
Total	\$20,292,864

Section 6. That the unexpended and unencumbered appropriated amount of **TWENTY THOUSAND NINETY-NINE DOLLARS** (\$20,099) in the Broadband 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 7. That the unexpended and unencumbered appropriated amount of TWO THOUSAND TEN DOLLARS (\$2,010) in the Broadband 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 8. That the appropriations herein from the issuance of the Revenue Bonds to be used on capital projects in the Light and Power Fund and the Broadband Fund, as applicable, are hereby designated, as authorized in Article V, Section 11 of the City Charter, as appropriations that shall not lapse at the end of this fiscal year but continue until the completion of those projects and repayment of the bonds as such designations are indicated in Sections 2 and 5 above.

Introduced, considered favorably on first reading, and ordered published this 15th day of August, 2023, and to be presented for final passage on the 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

Passed and adopted on final reading on the 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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



September 5, 2023

## AGENDA ITEM SUMMARY

City Council



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### STAFF

Rupa Venkatesh, Assistant City Manager  
Sgt. Annie Hill Fort Collins Police Services  
Katie Donahue, Natural Areas Director  
Marcy Yoder, Neighborhood Services Manager  
Ethan Doak, Legal

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### SUBJECT

**Second Reading of Ordinance No. 105, 2023, Appropriating Prior Year Reserves in the General Fund to Continue the Encampment Site Cleanup Pilot Program.**

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### EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on August 15, 2023, appropriates \$200,000 in additional funds to continue the encampment site cleanup pilot program. In Fall 2022, staff identified a backlog of site cleanups throughout the City and determined that cleanups needed to shift from twice a month to once per week. This was implemented towards the end of January 2023 with the recognition that additional funds would be needed if this pilot program achieved desired results.

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### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

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### BACKGROUND / DISCUSSION

Prior to 2019, the City did not have a separate encampment fund. In 2017 and 2018, costs of cleanups came from regular operating budgets for Natural Areas, Parks, Neighborhood Services, and other departments where cleanups were occurring. In Fall 2018, a mid-cycle adjustment was requested for a dedicated fund to utilize in 2019. The joint offer was submitted by Neighborhood Services, Parks, Stormwater, and Natural Areas who provide staffing. Since 2019, a dedicated encampment fund has been utilized though funds expended have varied over the years likely due to the COVID-19 pandemic.

Since Fall 2022, a weekly tactical team of staff from Social Sustainability, Natural Areas, Police Services, Neighborhood Services, Parks Rangers, Transfort, City Attorney's Office and partners such as Poudre Fire Authority and Outreach Fort Collins meet to coordinate encampment cleanup prioritization and identify hot spots.

During these weekly tactical meetings, the growing number of site cleanups became an emergent issue with the turnaround time of when a site is identified to actual cleanup of the site ranging up to 3 months. A

pilot program was implemented in late January 2023 to move towards weekly cleanups with a goal to reduce turnaround time to 30 days.

In April 2023, the turnaround time for cleanups was an average of 12 days. A total of 257 camps had been cleaned with 169 cubic yards of waste, 363 sharps, 77 shopping carts and 15 cubic yards of metal collected and diverted from Natural Areas, Parks, and other locations in the City.

By July 17, 2023, the turnaround time had been further reduced to an average of 8 days. A total of 560 camps have been cleaned with 365 cubic yards of waste, 880 sharps, 119 shopping carts and 27 cubic yards of metal collected and diverted from Natural Areas, Parks, and other locations in the City. If the current pilot program continues, it is on track to divert 100% more trash, 79% more shopping carts and 20% more metal than 2022.

The weekly cleanups are averaging \$6,500 per week. The cleanup amount varies each week depending on how debris is collected, especially sharps. In addition to the site cleanups, \$10,000 has been utilized from this fund for a debris boom pilot project at Warren Lake/Larimer Ditch #2 to help mitigate issues. Finally, an additional \$13,888 was utilized for stormwater cleanup due to issues in the Conifer Street area as it related to an inoperable RV.

As of July 2023, approximately \$171,000 have been spent of the original \$110,000 offer. To continue the current pilot program of weekly cleanups as weather and holidays permit, an additional \$200,000 is requested for 2023. Any additional expenses related to site cleanups or encampment issues will also be utilized from this fund, including towing of inoperable RVs or mitigation efforts such as any additional debris boom pilots or the need to secure abandoned buildings.

### **Homeless Outreach and Proactive Engagement (H.O.P.E.)**

Sgt. Annie Hill, Fort Collins Police Services, was selected in February 2023 to lead a pilot unit dedicated to homelessness. Since then, the team has expanded to three officers with the hopes of adding a fourth officer in Fall 2023. Twenty-five percent (25%) of the team's time is dedicated towards mitigating environmental impacts such as tagging and accompanying Natural Areas staff on site cleanups. This allows the team to provide direct outreach to people experiencing homelessness (PEH), especially to those that are not regular clients of the Murphy Center, Outreach Fort Collins, or other organizations and encourage them to utilize these resources.

H.O.P.E. uses compassionate-based policing to meet PEH in the field, homeless encampments, and nuisance related calls to address not only the complaint but also to connect them to appropriate resources. This relationship building with PEH has allowed the city to get a better understanding of their needs. Other program goals include:

- Collaborate with Outreach Programs, Service Providers, and municipal and county courts to ensure a coordinated and comprehensive response to homelessness.
- Support and assist with maintaining the city landscape and natural areas, by addressing homeless encampments and encouraging unhoused individuals to utilize shelters as needed.
- Provide training and education to police officers and other community members on how to effectively engage with individuals experiencing homelessness.
- Monitor and evaluate program effectiveness: The outreach team will regularly monitor and evaluate the effectiveness of their program, using data to adjust and improve outcomes over time.

## Next Steps

Initial goals for 2023 have been accomplished including:

- Reduction of the turnaround time of identifying a site to cleanup from over three months to less than 30 days (8 days as of July 17)
- Addressing community and public safety issues faster and more holistically as a city (ex.: working with the Murphy Center to help mitigate daytime camping).
- Supporting safety for Natural Areas and other staff members as they do assessments and cleanups.
- Starting to identify emerging issues to problem solve holistically as a City (ex.: Warren Lake debris boom pilot project, addressing inoperable RVs)

For 2024, goals include:

- Maintain the homelessness tactical team
- Assess the frequency needed for cleanups if it continues to be weekly or a different cadence
- Identify and mitigate hot spots
- Problem-solve emergent issues
- Capture data that is missing for PEH who are not connected with Outreach Fort Collins or Murphy Center
- Understand root causes of homelessness in our community
- Research alternate shelter options and programs
- Apply for state grants for a case manager for the H.O.P.E. and Mental Health Response Team
- Further the relationships with the business and faith communities

It is also important to note that the recent Point In Time numbers were released and have shown an increase from 2022 to 2023. In 2022, there were 263 sheltered and 84 unsheltered individuals. That number has grown in 2023 to 272 sheltered and 120 unsheltered individuals. The issue of homelessness and the prolonged impacts it has on those experiencing homelessness and the community should continue to be addressed with a holistic City and community approach. Staff will be discussing the homelessness response system during the September 12 Work Session.

## CITY FINANCIAL IMPACTS

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The amount of \$200,000 will be appropriated from reserves in the General Fund. Neighborhood Services manages the cleanup program.

## BOARD / COMMISSION / COMMITTEE RECOMMENDATION

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This item was presented to Council Finance Committee (CFC) on May 4, 2023 with a request for \$175,000 and there was support for bringing this item forward for full Council consideration. As more information was collected as to the costs of cleanups, it was determined that \$200,000 was needed rather than \$175,000 as the weekly cleanups cost more than anticipated due to the amount of debris and sharps collected.

In addition, there was support from CFC for bringing forward a request for additional funds for 2024 during the mid-cycle revision process.

## PUBLIC OUTREACH

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Not applicable.

## ATTACHMENTS

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First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 105, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
APPROPRIATING PRIOR YEAR RESERVES IN THE GENERAL FUND TO  
CONTINUE THE ENCAMPMENT SITE CLEANUP PILOT PROGRAM

WHEREAS, prior to 2019, the City did not have a separate encampment fund, rather the costs of cleanups came from regular operating budgets for Natural Areas, Parks, Neighborhood Services, and other departments where cleanups were occurring; and

WHEREAS, in Fall 2018, a mid-cycle adjustment was requested for a dedicated fund to utilize in 2019 with the joint offer being submitted by Neighborhood Services, Parks, Stormwater, and Natural Areas who provide staffing; and

WHEREAS, since 2019, a dedicated encampment fund has been utilized though funds expended, which have varied over the years likely due to the COVID-19 pandemic; and

WHEREAS, the growing number of site cleanups became an emergent issue with the turnaround time of site identification to actual cleanup taking up to 3 months; and

WHEREAS, since Fall 2022, a weekly tactical team of staff from Social Sustainability, Natural Areas, Police Service, Neighborhood Services, Parks Rangers, Transport, the City Attorney’s Office and partners such as Poudre Fire Authority and Outreach Fort Collins meet to coordinate cleanup prioritization and to identify hot spots; and

WHEREAS, the process in coordinating cleanups includes a pre-cleanup stage in which members of the tactical team will tag items in an identified spot for the purpose of determining valuation and providing notice according to Policy 9.0--Lost, Abandoned, Unclaimed or Unattended Tangible Personal Property, adopted by the City Manager and kept on file in the City Clerk’s Office; and

WHEREAS, in January 2023, a pilot program was implemented to move towards weekly cleanups with a goal of reducing turnaround time from up to 3 months to 30 days; and

WHEREAS, in April 2023, the turnaround time for cleanups was lowered to an average of 12 days and by July 17, 2023, the turnaround time had been further reduced to an average of 8 days; and

WHEREAS, to date, a total of 560 camps have been cleaned with 365 cubic yards of waste, 880 sharps, 119 shopping carts and 27 cubic yards of metal collected and diverted from Natural Areas, Parks, and other locations in the City; and

WHEREAS, if the current pilot program continues, it is on track to divert 100% more trash, 79% more shopping carts and 20% more metal than in 2022; and

WHEREAS, in February 2023, the Fort Collins Police Service has created a pilot program, led by Sgt. Annie Hill, called H.O.P.E., which stands for Homeless Outreach and Proactive Engagement; and

WHEREAS, H.O.P.E uses compassionate-based policing to meet people experiencing homelessness (PEH) in the field, homeless encampments, and nuisance-related calls to address not only the complaint but also to connect them to appropriate resources, build relationships with PEH, and to get a better understanding of their needs; and

WHEREAS, twenty-five percent of the H.O.P.E. team’s time is dedicated towards mitigating environmental impacts such as tagging and accompanying Natural Areas staff on site cleanups, which allows the team to provide direct outreach to PEH, especially to those that are not regular clients of the Murphy Center, Outreach Fort Collins, or other organizations and encourage them to utilize these resources; and

WHEREAS, the Point In Time numbers were released and have shown an increase of PEH from 2022 to 2023; and

WHEREAS, in 2022, there were 263 sheltered and 84 unsheltered individuals, which increased in 2023 to 272 sheltered and 120 unsheltered individuals; and

WHEREAS, the issue of homelessness and the prolonged impacts it has on those experiencing homelessness and the community should continue to be addressed with a holistic city and community approach to include the continuation of the site cleanup program; and

WHEREAS, this appropriation benefits the public health, safety and welfare of the residents of Fort Collins and serves the public purpose of continuing the site cleanup pilot program; 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.

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 TWO HUNDRED THOUSAND DOLLARS (\$200,000) to be expended in the General Fund to continue the Encampment Site Cleanup Pilot Program.

Introduced, considered favorably on first reading, and ordered published this 15th day of August, 2023, and to be presented for final passage on the 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

Passed and adopted on final reading on the 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

September 5, 2023



## AGENDA ITEM SUMMARY

City Council

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### STAFF

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Jill Hueser, Chief Judge  
Ingrid Decker, Legal

### SUBJECT

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**Second Reading of Ordinance No. 106, 2023, Making Supplemental Appropriations from the 2023 Colorado Opioid Settlement Funds for Use by the Municipal Court.**

### EXECUTIVE SUMMARY

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This Ordinance, unanimously adopted on First Reading on August 15, 2023, appropriates \$75,000 of the City's share of 2023 funds from the Colorado Opioid Settlement to be used in the remainder of 2023 to work towards establishing a municipal drug court program for persons with opioid use disorder and co-occurring substance use or mental health issues. This is a permitted use for these funds under the Colorado Opioid Settlement Memorandum of Understanding ("MOU") between the City and the State of Colorado.

### STAFF RECOMMENDATION

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Staff recommends adoption of the Ordinance on First Reading.

### BACKGROUND / DISCUSSION

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Over the last several years local and state governments across the nation, including in Colorado, filed lawsuits against opioid manufacturers, distributors, and pharmacies for creating the opioid epidemic. The parties to various opioid lawsuits have been negotiating settlement agreements to resolve the litigation.

The City is participating in the Colorado opioids settlement through a 2021 Memorandum of Understanding with the State, and a 2022 Intergovernmental Agreement (IGA) with Larimer County and other local municipalities that created the Larimer Regional Opioid Council – a body that determines the distribution of funds in Larimer County.

The Municipal Court is working to establish a local drug court program to provide evidence-based problem-solving court practices to individuals with substance use disorders. The City has received its first payment of settlement funds in the amount of \$106,672 for 2023 and wishes to put \$75,000 of these funds towards that program. Providing certain services to and addressing the needs of criminal-justice-involved persons with opioid use disorder and co-occurring substance use or mental health issues is a permitted use of opioid settlement funds under the MOU. These funds would allow the hiring of a probation officer and work towards forming a cooperative team that would include Fort Collins Police Services, treatment providers, prosecution and defense attorneys, and other community resources.

**CITY FINANCIAL IMPACTS**

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The settlement amount received in the General Fund for 2023 is \$106,672. These funds may only be used for specific types of programs and this appropriation would not impact the General Fund.

**BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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The Council Finance Committee supported this appropriation at their July 6, 2023, meeting.

**PUBLIC OUTREACH**

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Not applicable.

**ATTACHMENTS**

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1. Ordinance for Consideration



ORDINANCE NO. 106, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
MAKING SUPPLEMENTAL APPROPRIATIONS FROM THE 2023 COLORADO  
OPIOID SETTLEMENT FUNDS FOR USE BY THE MUNICIPAL COURT

WHEREAS, communities throughout Colorado, including the City of Fort Collins, are suffering from an epidemic of opioid addiction; and

WHEREAS, local and state governments across the nation, including in Colorado, filed lawsuits against opioid manufacturers, distributors, and pharmacies for creating the opioid epidemic; and

WHEREAS, over the last several years the parties to various opioid lawsuits have been negotiating settlement agreements to resolve the litigation; and

WHEREAS, on December 7, 2021, the City Council adopted Resolution 2021-113 approving the City’s participation in the Colorado opioids settlement and authorizing execution of: (a) a Memorandum of Understanding (“MOU”) with the State of Colorado governing the City’s participation in the Colorado opioid settlement and allocation of opioid settlement funds in Colorado, and (b) related releases of legal claims against certain opioid industry defendants; and

WHEREAS, a significant portion of the opioid settlement funds are being distributed to 18 designated regions in the state, including the Larimer County Region; and

WHEREAS, on May 3, 2022, the City Council adopted Resolution 2022-055, authorizing execution of an Intergovernmental Agreement between the City, Larimer County, the City of Loveland and the Town of Wellington to establish the Larimer Regional Opioid Council, which will determine the distribution of the regional funds (the “Regional IGA”); and

WHEREAS, the Regional IGA was signed and went into effect on June 7, 2022, and was amended earlier this year to add the Town of Estes Park to the Regional Council, pursuant to City Council Resolution 2023-011, adopted January 17, 2023; and

WHEREAS, on March 21, 2023, the City Council adopted Resolution 2023-028, authorizing settlements and waivers with five additional opioid defendants; and

WHEREAS, the City has received its first payment of settlement funds in the amount of \$106,672 for 2023; and

WHEREAS, the Fort Collins Municipal Court has asked to appropriate \$75,000 of the settlement funds to use in 2023 to help establish a municipal drug court program that would provide evidence based problem-solving court practices to individuals with opioid use disorders and any co-occurring substance use disorders; and

WHEREAS, programs to address the needs of criminal-justice-involved persons with opioid use disorder and any co-occurring substance use disorders or mental health issues are an approved use of settlement funds under the MOU; and

WHEREAS, this appropriation benefits the public health, safety and welfare of the residents of Fort Collins and serves the public purpose of addressing the criminal justice consequences of substance use in the community; 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 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 Council Finance Committee supported this appropriation at its July 6, 2023, meeting.

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 SEVENTY-FIVE THOUSAND DOLLARS (\$75,000) to be expended in the General Fund for use by Municipal Court for the drug court program.

Introduced, considered favorably on first reading, and ordered published this 15th day of August, 2023, and to be presented for final passage on the 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

Passed and adopted on final reading on the 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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



# AGENDA ITEM SUMMARY

City Council

## STAFF

Derek Bergsten, Poudre Fire Authority Fire Chief  
Kirsten Howard, Poudre Fire Authority Budget and Administration Manager  
John Duval, Legal

## SUBJECT

**Second Reading of Ordinance No. 107, 2023, Appropriating Prior Year Reserves Designated for Fire Protection Services in the Fire Protection Capital Expansion Fee Account within the Capital Expansion Fee Fund for Payment to the Poudre Fire Authority to be Used by it for a New Headquarters Building.**

## EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on August 15, 2023, appropriates funds from the reserves in the Fire Protection Capital Expansion Fee Account within the City’s Capital Expansion Fee Fund (“CEF Fund”) and payment of those funds to the Poudre Fire Authority (“PFA”) for its purchase of a new Headquarters Building.

## STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

## BACKGROUND / DISCUSSION

Replacement or expansion of the PFA Administrative Building (102 Remington Street) has been included in PFA’s Long-Range Financial Plan since 2016 and has been on the unfunded priorities list within PFA budget documents since 2014. PFA staff have been in discussions with the PFA Board over the past year regarding additional space via a rental option at a separate location that required a lease of several years prior to purchase as well as tenant finish expenses, and the most recent option to purchase a new facility to house all PFA administrative and support staff.

PFA staff have been working on options for additional administrative office space with City Real Estate Services, and the property at 301 Remington Street meets the criteria for PFA needs. The Property is three times the size of the current Administration Building and will provide sufficient space for PFA administrative and support staff for the foreseeable future. The property is in Old Town on the southwest corner of East Olive and Remington Streets, near PFA’s current location and convenient for collaboration with City and County partners. The building features on-site parking (34 spaces), an outside courtyard, generator, computer server room, kitchen and eating area, one garage bay, several conference rooms, entry vestibule, and plenty of space for current and future PFA staff. An offer of \$3.8 million has been made by PFA staff and tentatively accepted by the seller.

**CITY FINANCIAL IMPACTS**

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City Code Section 7.5-30(a) requires that capital expansion fees for fire protection services be used only for capital improvements related to the provision of fire services, as such improvements may be identified in the capital improvements plan for fire protection services.

The City Manager is recommending this appropriation and has determined that the funds for it are available in and previously unappropriated from the CEF Fund and this appropriation will not cause the total amount appropriated in the CEF Fund to exceed the current estimate of unappropriated prior year reserves plus the actual and anticipated revenues and all other funds to be received in the CEF Fund during this fiscal year.

The amount of \$3,511,575 will be appropriated from reserves in the CEF Fund to be paid to PFA.

**BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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Not applicable.

**PUBLIC OUTREACH**

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Not applicable.

**ATTACHMENTS**

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1. Ordinance for Consideration.

ORDINANCE NO. 107, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
APPROPRIATING PRIOR YEAR RESERVES DESIGNATED FOR  
FIRE PROTECTION SERVICES IN THE FIRE PROTECTION CAPITAL EXPANSION FEE  
ACCOUNT WITHIN THE CAPITAL EXPANSION FEE FUND FOR PAYMENT TO THE  
POUDRE FIRE AUTHORITY TO BE USED BY IT FOR A  
NEW HEADQUARTERS BUILDING

WHEREAS, Article II of City Code Chapter 7.5 imposes, as an impact fee on new development, capital expansion fees for community parkland, police, fire protection, general government, and transportation; and

WHEREAS, the fire protection capital expansion fee is imposed in City Code Section 7.5-30(a) (“Fire Protection CEF”) and the revenues collected from it are required to be used to fund capital improvements related to the provision of fire services, as such improvements may be identified in the capital improvements plan for fire protection services; and

WHEREAS, such “capital improvements” are defined in Code Section 7.5-17 to include “the purchase or long-term lease or lease-purchase of real property;” and

WHEREAS, Code Section 7.5-30(b) requires that all revenues collected from the Fire Protection CEF be deposited in the Fire Protection Capital Expansion Fee Account established in Code Section 8-97 (“Fire Protection CEF Account”); and

WHEREAS, Code Section 8-97 provides that the Fire Protection CEF Account is an account within the Capital Expansion Fee Fund established in Code Section 8-92 (“CEF Fund”); and

WHEREAS, the current administrative headquarters of the Poudre Fire Authority (the “Authority”) is located at 102 Remington Street, and it houses Fire Prevention and Community Risk Reduction as well as Operations and the administrative personnel of the Authority whose duties include the management and coordination of public education and emergency services; and

WHEREAS, acquiring additional space or a new, larger building to house the Authority’s administrative headquarters has been a priority for the Authority since 2014 due to shortages of space in meeting both current and future needs at the 102 Remington facility and is included in the Authority’s 2023 PFA Long-Range Financial Plan, adopted by the Authority’s Board of Directors; and

WHEREAS, City Code Section 7.5-30(a) requires that capital expansion fees for fire services be used only for capital improvements related to the provision of fire services, as such improvements may be identified in the capital improvements plan for fire protection services; and

WHEREAS, the Authority’s staff has been working with the City’s Real Estate Services on options to acquire additional office space and has identified the property and building at 301 Remington Street (the “New Facility”) and the Authority has made an offer to its owner to purchase it for \$3.8 million, which offer the owner has tentatively accepted; and

WHEREAS, the funding for this purchase of the New Facility is proposed to be provided from the following sources:

City’s CEF Fund	\$3,511,575
Poudre Fire Authority Existing Appropriations	<u>288,425</u>
Total	\$3,800,000

WHEREAS, Article V, Section 9 of the City Charter permits the City Council 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 this appropriation and determined that the funds for it are available in and previously unappropriated from the Fire Protection CEF Account in the CEF Fund and will not cause the total amount appropriated in the CEF Fund to exceed the current estimate of unappropriated prior year reserves plus actual and anticipated revenues and all other funds to be received in the CEF Fund 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 prior year reserves in the Fire Protection CEF Account in the CEF Fund, the sum of THREE MILLION FIVE HUNDRED ELEVEN THOUSAND FIVE HUNDRED SEVENTY-FIVE DOLLARS (\$3,511,575), to be expended from the CEF Fund for payment to the Authority for it to use in its purchase of the New Facility.

Introduced, considered favorably on first reading, and ordered published this 15th day of August, 2023, and to be presented for final passage on the 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

Passed and adopted on final reading on the 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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



## AGENDA ITEM SUMMARY

City Council



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### STAFF

Justin Allar, Director of Information Services  
Zack Mozer, Analyst II, Finance  
Dawn Downs, Legal

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### SUBJECT

**Second Reading of Ordinance No. 108, 2023, Appropriating Prior Year Reserves in the General Fund for the Purchase of Police Radios.**

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### EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on August 15, 2023, requests an appropriation in the amount of \$620,000 for the purchase of police handheld radios and approve the use of prior year reserves in the General Fund. There are currently 242 total handheld radios with 130 replaced in 2022. This leaves the remaining 112 radios needing to be replaced.

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### STAFF RECOMMENDATION

Staff recommend adoption of the Ordinance on Second Reading.

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### BACKGROUND / DISCUSSION

Police Services rely heavily on radio communication as their primary means for transmitting critical information to and between emergency responders. These devices allow field responders to receive and communicate not only life-saving information, but the information required to maintain the safety of the community, their partners, and their own personal safety. The ability to transmit information regarding an in-progress call or evolving situation is critical for responding personnel.

Having a supported and updated radio is critical to ensuring officer safety. Police Services utilizes the public safety emergency radio system on a continuous basis to communicate and receive updates from the 911 Center, convey information to other responders, and/or direct incoming resources for an incident. The current radio devices include handheld radios, mobile/vehicle radios, and dispatch radios. Currently, the handheld radios are in need of replacement.

Police Services utilizes Motorola radios, and the manufacturer has phased out the old APX AN model for the new APX BN model. Motorola will no longer support the old model in December of 2023. These radios will still function, but replacement parts will no longer be produced. Police Services has done well in extending the life of all radio equipment, with industry standards suggesting replacing handheld radios every 5-7 years. The remaining old Police Services handheld radios were purchased in 2013 and are 10 years old, beyond the suggested use standards. Out of the total 242 handheld radios, 130 radios were replaced with the newer BN model in 2022, leaving 112 still in need of replacement in 2023.

The cost to replace the remaining 112 radios is \$620,000 which equates to roughly \$5,500 per radio. The Manufactured Suggested Retail Price (MSRP) is \$7,500 and is reduced to \$5,500 when applying National Association of State Procurement Officials (NASPO) discount. If approved, the next step would be to order and replace the remaining radios in 2023.

**CITY FINANCIAL IMPACTS**

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The requested funds (\$620,000) were held in assigned reserves within the General Fund last year in anticipation of this purchase.

**BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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Not applicable.

**PUBLIC OUTREACH**

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Not applicable.

**ATTACHMENTS**

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1. Ordinance for Consideration

ORDINANCE NO. 108, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
APPROPRIATING PRIOR YEAR RESERVES IN THE GENERAL FUND  
FOR THE PURCHASE OF POLICE RADIOS

WHEREAS, Police Services utilizes the public safety emergency radio system on a continuous basis to communicate and receive updates from the 911 Center, convey information to other responders, and/or direct incoming resources for an incident; and

WHEREAS, Police Services rely heavily on radio communication as their primary means for transmitting critical information to and between emergency responders and these devices allow field responders to receive and communicate not only life-saving information, but the information required to maintain the safety of the community, their partners, and their own personal safety; and

WHEREAS, the ability to transmit information regarding an in-progress call or evolving situation is critical for responding personnel and having a supported and updated radio is critical to ensuring officer safety; and

WHEREAS, the current radio devices include handheld radios, mobile/vehicle radios, and dispatch radios and the handheld radios need to be replaced; and

WHEREAS, Police Services utilizes Motorola radios, and the manufacturer has phased out the old model and will no longer support the old model starting in December of 2023 and although these radios will still function, replacement parts will no longer be produced; and

WHEREAS, although Police Services has done well in extending the life of all radio equipment, with industry standards suggesting replacing handheld radios every 5-7 years. The remaining old Police Services handheld radios were purchased in 2013 and are 10 years old, beyond the suggested use standards; and

WHEREAS, out of the total 242 handheld radios, 130 radios were replaced with the newer model in 2022, leaving 112 still needing to be replaced in 2023, the cost to replace the remaining 112 radios is \$620,000; and

WHEREAS, this appropriation benefits the public health, safety and welfare of the residents of Fort Collins and serves the public purpose of updating police radio equipment which is essential for the safety and function of Police Services; 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.

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 TWENTY THOUSAND DOLLARS (\$620,000) to be expended in the General Fund for the purchase of Police radios.

Introduced, considered favorably on first reading, and ordered published this 15th day of August, 2023, and to be presented for final passage on the 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

Passed and adopted on final reading on the 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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



# AGENDA ITEM SUMMARY

City Council

## STAFF

Perrie McMillen, Senior Supervisor, Neighborhood Services  
Aaron Guin, Legal

## SUBJECT

**Second Reading of Ordinance No. 109, 2023, Making a Supplemental Appropriation from the Colorado Division of Criminal Justice of Unanticipated Grant Revenue for Various Restorative Justice Services Programs.**

## EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on August 15, 2023, appropriates grant revenue to fund Restorative Justice Services within Community Development and Neighborhood Services. A grant in the amount of \$57,356 has been awarded from the Colorado Division of Criminal Justice (DCJ) Juvenile Diversion Fund for the continued operation of Restorative Justice Services, which includes the RESTORE program for shoplifting offenses, and the Restorative Justice Conferencing Program (RJCP) and Reflect Program for all other offenses. No match is required and the grant period is July 1, 2023, to June 30, 2024.

## STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

## BACKGROUND / DISCUSSION

Restorative Justice Services has been partially grant-funded since its inception in 2000. Annually, the City accepts grant funds from DCJ to support Restorative Justice Services' three programs: RESTORE, RJCP, and the Reflect Program, which assist youth referred to the program from the 8th Judicial District Attorney's Office. Since it began, Restorative Justice Services has provided restorative justice alternatives to more than 3,200 young people who have committed chargeable offenses in our community.

Restorative Justice is an alternative method of holding a young offender accountable by facilitating a meeting with the offender, the victim/victim representative, and members of the community to determine the harm done by the crime, and how to address and repair the harm. By identifying and seeking to repair the harm caused by the crime, Criminal Justice Officials are optimistic that repeat offenses by youth will be reduced and the needs and concerns of the victims and affected community will be addressed.

These programs help young people understand how family, friends, victims, and the community are harmed by their actions, and hold them accountable for the harm they caused. The intention is that these young people will make better future decisions and not commit the same or similar crime again. Reducing future criminal behavior and keeping young people out of the justice system, both contribute positively to a safer and healthier community. Addressing the needs and concerns of victims and community members also has a positive effect on the overall health and safety of the community. As part of the programs, youth and

Item 7.

families are referred to appropriate community resources based on needs identified during program participation.

Without grant funding and the support of the City, Restorative Justice Services would not be able to provide this service to young people and their families, victims, the courts, law enforcement and our community.

**CITY FINANCIAL IMPACTS**

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The grant for 2023-2024 in the amount of \$57,356 from DCJ Juvenile Diversion funds provides funding for personnel to support the continuation of Restorative Justice Services. Funds are distributed to the City on a reimbursement basis.

**BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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Not applicable.

**PUBLIC OUTREACH**

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Not applicable.

**ATTACHMENTS**

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1. Ordinance for Consideration

ORDINANCE NO. 109, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
MAKING A SUPPLEMENTAL APPROPRIATION FROM THE  
COLORADO DIVISION OF CRIMINAL JUSTICE OF UNANTICIPATED GRANT  
REVENUE FOR VARIOUS RESTORATIVE JUSTICE SERVICES PROGRAMS

WHEREAS, Restorative Justice Services (“RJS”) is a division within the Neighborhood Services department that operates three programs: RESTORE for shoplifting offenses, and the Restorative Justice Conferencing Program and the Reflect Program for all other offenses; and

WHEREAS, RJS programs hold young offenders accountable by helping understand how family, friends, victims, and the community are harmed by their actions, and seek to hold offenders accountable for the harm they caused, to help them make better decisions in the future; and

WHEREAS, since its inception, Restorative Justice Services has provided restorative justice alternatives to more than 3,200 young people who have committed chargeable offenses in our community; and

WHEREAS, Restorative Justice Services has been partially grant-funded since its inception in 2000, and the City has accepted grant funds on an annual basis from the Colorado Division of Criminal Justice (DCJ) to support Restorative Justice Services programs; and

WHEREAS, a grant in the amount of \$57,356 has been awarded to Restorative Justice Services from DCJ’s Juvenile Diversion fund for the continued operation of Restorative Justice Services; and

WHEREAS, the grant period is from July 1, 2023, to June 30, 2024, and no local match from the City is required; and

WHEREAS, this grant helps fund Restorative Justice Services programs to assist youth referred to the program from the 8th Judicial District Attorney’s Office; and

WHEREAS, this appropriation benefits the public health, safety and welfare of the residents of Fort Collins and serves the public purpose of providing restorative justice alternatives to youth in an effort to reduce recidivism and build a safer and healthier community; 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 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, 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 or donation; and

WHEREAS, the City Council wishes to designate the appropriation herein from the Colorado Division of Criminal Justice 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 General Fund the sum of FIFTY-SEVEN THOUSAND THREE HUNDRED FIFTY-SIX DOLLARS (\$57,356) to be expended in the General Fund for various Restorative Justice Programs.

Section 3. That the appropriation herein from the Colorado Division of Criminal Justice 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 15th day of August, 2023, and to be presented for final passage on the 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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



Passed and adopted on final reading on the 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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



# AGENDA ITEM SUMMARY

City Council

## STAFF

Nina Bodenhamer, City Give Director  
Ted Hewitt, Legal

## SUBJECT

**First Reading of Ordinance No. 110, 2023, Appropriating Prior Year Reserves and Philanthropic Revenue Received Through City Give for The Carnegie Center for Creativity as Designated by the Donors.**

## EXECUTIVE SUMMARY

The purpose of this item is to request appropriation of \$100,000 in philanthropic revenue received through City Give for The Carnegie Center for Creativity as designated by the donors.

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.

## STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

## BACKGROUND / DISCUSSION

The historic 1904 Carnegie building is one of the oldest, continuously operating public buildings in Fort Collins. Carnegie libraries were often the first public libraries in communities across the country. Operated by the City of Fort Collins and designated a local Historic Landmark in 1978, the building is now the Carnegie Center for Creativity (CCC) dedicated to affordable, community-focused cultural space.

The ambitious renovation focuses on both historic restoration and infrastructure investments to ensure the Center continues to serve Fort Collins as an affordable, community-focused space for gallery exhibitions, performance, classes, and special events.

The current project estimate for the full renovation is \$6,200,000 with \$2.2M provided through the generosity of local voters via a 2015 Community Capital Improvement Program ballot measure. A Community Revitalization Grant from the State’s Colorado Creative Industries providing \$2,400,000 in funding. The City of Fort Collins General Fund invested \$900,000 in ADA and structural upgrades as Phase 1 of this project. Private funding is being sought to address final funding needs to bring this important project to fruition.

This Appropriation reflects the generosity of 3 funders: Colorado-based El Pomar Foundation with an award of \$25,000; Denver-based Gates Family Foundation with an award of \$25,000; and, local Bodenhamer Family with a gift of \$50,000.

**CITY FINANCIAL IMPACTS**

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This Ordinance will appropriate \$100,000 in philanthropic revenue received through City Give for The Carnegie Center for Creativity. The funds have been received and accepted per the City Give Administrative and Financial Policy.

The City Manager has also determined that these appropriations are available and previously unappropriated from the designated funds and will not cause the total amount appropriated in these funds to exceed the current estimate of actual and anticipated revenues and all other funds to be received in these funds during fiscal year 2023.

The gift received in 2022 from local Bodenhamer Family totaling \$50,000 is being appropriated from prior year reserves; the awards from El Pomar and Gates Family Foundation are being appropriated from unanticipated 2023 revenues..

**BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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Not applicable.

**PUBLIC OUTREACH**

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Not applicable.

**ATTACHMENTS**

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1. Ordinance for Consideration

ORDINANCE NO. 110, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
APPROPRIATING PRIOR YEAR RESERVES AND PHILANTHROPIC REVENUE  
RECEIVED THROUGH CITY GIVE FOR THE CARNEGIE CENTER FOR CREATIVITY  
AS DESIGNATED BY THE DONORS

WHEREAS, in 2015, the Fort Collins electorate approved the Community Capital Improvement Program Ballot Measure, which helped to support the renovation of the City’s Carnegie Center for Creativity (“Carnegie Center”); and

WHEREAS, renovation work on the Carnegie Center began in 2021; and

WHEREAS, El Pomar Foundation and the Gates Family Foundation have each generously awarded the City \$25,000 to support the renovation work on the Carnegie Center; and

WHEREAS, the Bodenhamer Family has generously donated \$50,000 to support the renovation work on the Carnegie Center; and

WHEREAS, this appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of renovating the Carnegie Center; 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 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 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 in Sections 2 and 3 of this Ordinance and determined that the amount of each of these appropriations is available and previously unappropriated from the funds named in Sections 2 and 3 and will not cause the total amount appropriated in each such fund to exceed the current estimate of actual and anticipated revenues to be received in those funds 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 or donation, 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 donation or the City’s expenditure of all funds received from such grant or donation; and

WHEREAS, the City Council wishes to designate the appropriations herein for the donations to the Carnegie Center for Creativity as appropriations that shall not lapse until the earlier of the expiration of the respective donation or the City’s expenditure of all funds received from such donation.

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 the Capital Projects Fund the amount of philanthropic revenue held in prior year reserves to be expended as designated by the donor in support of the Carnegie Center for Creativity renovation project from the following awards:

Bodenhamer Family	\$ 50,000
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Section 3. That there is hereby appropriated from the Capital Projects Fund these amounts of philanthropic revenue received in 2023 to be expended as designated by the donors in support of the Carnegie Center for Creativity renovation project from the following awards:

El Pomar Foundation	\$ 25,000
Gates Family Foundation	\$ 25,000

Section 4. That the appropriations herein for the donations to the Carnegie Center for Creativity are hereby designated, as authorized in Article V, Section 11 of the City Charter, as appropriations that shall not lapse at the end of this fiscal year but continue until the earlier of the expiration of the respective donation or the City’s expenditure of all funds received from such donation.

Introduced, considered favorably on first reading, and ordered published this 5th day of September, 2023, and to be presented for final passage on the 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

Passed and adopted on final reading on the 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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



# AGENDA ITEM SUMMARY

City Council

## STAFF

Tracy Ochsner, Operation Services Director  
Erik Martin, Financial Analyst  
Ingrid Decker, Legal

## SUBJECT

**Items Related to the Implementation of a Strengthening Mobility and Revolutionizing Transportation (SMART) Grid Electric Vehicle Charge Management Solution.**

## EXECUTIVE SUMMARY

A. Resolution 2023-077 Authorizing the Execution of an Intergovernmental Agreement Between the City of Fort Collins and the U.S. Department of Transportation for Implementation of a SMART Grid Electric Vehicle Charge Management Solution.

B. First Reading of Ordinance No. 111, 2023, Making a Supplemental Appropriation of Grant Funds from the U.S. Department of Transportation SMART Grants Program in Support of the City of Fort Collins Electric Vehicle Fleet.

The City successfully applied for \$1,059,037 under the U.S. Department of Transportation (USDOT) SMART Grants Program to support implementing a SMART Grid Electric Vehicle (EV) charge management solution to control usage of City owned EV chargers to reduce energy consumption (the SMART Grid Project).

The purpose of this item is to support this project by:

- Authorizing the Mayor to execute an Intergovernmental Agreement (IGA) with the USDOT for implementing the SMART Grid Project; and
- Appropriating \$1,059,037 of unanticipated grant revenue from USDOT.

## STAFF RECOMMENDATION

Staff recommends adoption of the Resolution and adoption of the Ordinance on First Reading.

## BACKGROUND / DISCUSSION

The City approved the EV Readiness Roadmap in 2018 and the 2019 Municipal Sustainability and Adaptation Plan, which both list building out the City’s EV charging infrastructure as a critical components to achieve climate goals. The number of City owned EVs and EV chargers will increase in the coming years to address these goals. The City of Fort Collins currently owns and operates 60+ EV chargers and 40+ EVs, but currently lacks a way to centrally control, track and manage usage. Without central control, a

mismatch between electricity demanded through the EV chargers and the current grid constraints can cause higher than optimal energy costs. If the City were able to centrally control the usage of these EV chargers, electricity could be turned off during peak energy events and reduce the energy consumption of the City at the most expensive times. By shifting the time of day in which EVs are charged, this supports the City saving money and helps the City's electric utility manage its energy supply and demands.

Phase 1 of the SMART Grant supports creating a municipal fleet electrification standard framework and studying potential cost savings to deploy a charging management solution across the City's EV chargers.

In Phase 2, a charge management solution will be deployed to all City owned charging locations to align with the framework established in Phase 1. This will be primarily a software deployment but may include some hardware modifications to enable the existing infrastructure to connect to the new system.

This grant was applied for in late 2022 through a multi-department application coming from Operations Services, Transport, Utilities and the Office of Equity and Inclusion. The award is based on total project costs of \$1,059,037, with 100% provided by USDOT. As presented in the Grant Agreement (attached as Exhibit A to the Resolution), the SMART Grid Project is an 18-month project, commencing on September 15, 2023.

**CITY FINANCIAL IMPACTS**

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This item appropriates \$1,059,037 in project costs for Fort Collins Operations Services to establish an electric vehicle charging management solution distribution from unanticipated grant revenue in the General Fund from USDOT.

This grant from the USDOT is a reimbursement type grant, meaning General Fund expenses will be reimbursed up to \$1,059,037, and does not require a City match.

**BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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Not applicable.

**PUBLIC OUTREACH**

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Not applicable.

**ATTACHMENTS**

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- 1. Resolution for Consideration
- 2. Exhibit A to Resolution
- 3. Ordinance for Consideration



RESOLUTION 2023-077  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF FORT COLLINS AND THE U.S. DEPARTMENT OF  
TRANSPORTATION FOR IMPLEMENTATION OF A SMART GRID ELECTRIC VEHICLE  
CHARGE MANAGEMENT SOLUTION

WHEREAS, the City’s 2018 EV Readiness Roadmap and 2019 Municipal Sustainability and Adaptation Plan both list building out the City’s electric vehicle (EV) charging infrastructure as a critical component to achieving the City’s climate goals; and

WHEREAS, the City does not currently have a way to centrally control, track and manage use of the City’s many EVs and EV chargers; and

WHEREAS, in late 2022 the City applied for a grant from the U.S. Department of Transportation (USDOT) Strengthening Mobility and Revolutionizing Transportation (SMART) Grants Program; and

WHEREAS, the DOT has awarded the City \$1,059,037 (the “Grant”) to fund a project to create a municipal fleet electrification standard framework and deploy software to manage all City-owned EV charging locations, so that City EVs can be charged during times of lower energy demand, improving energy efficiency and reducing the cost to charge EVs (the “SMART Grid Project”); and

WHEREAS, the SMART Grid Project directly supports the City’s Climate Action Plan, which aims to reduce community greenhouse gas emissions by 80% by 2030 and achieve carbon neutrality by 2050; and

WHEREAS, to receive the Grant funds the City must execute an intergovernmental agreement with the USDOT that outlines the terms and conditions of the City’s use of the Grant funds, in substantially the form attached as Exhibit “A” and incorporated herein by reference (the “Grant Agreement”); and

WHEREAS, the term of the Grant Agreement is eighteen months, from September 15, 2023, to March 15, 2025; 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, the City Council has determined that the use of the Grant for the SMART Grid Project is in the best interests of the City, and the Mayor should be authorized to execute the Grant Agreement between the City and the USDOT 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 the City Council hereby authorizes the Mayor to execute, on behalf of the City, the Grant Agreement with the U.S. Department of Transportation, in substantially the form attached hereto as Exhibit A, with such 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 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

Item 9.

**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

- 1. Award No.**  
SMARTFY22N1P1G14
- 2. Effective Date**  
See No. 17 Below
- 3. Assistance Listings No.**  
20.941
- 4. Award To**  
City of Fort Collins  
a Colorado municipal corporation
- 5. Sponsoring Office**  
U.S. Department of Transportation  
Office of the Assistant Secretary for Research and Technology  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Unique Entity Id:  
VEJ3BS5GK5G1

- 6. Period of Performance**  
09/15/23 to 03/15/25
- 7. Total Amount**  
Federal Share: \$1,059,037  
Recipient Share: \$0  
Other Federal Funds: \$0  
Other Funds: \$0  
Total: \$1,059,037

- 8. Type of Agreement**  
Grant
- 9. Authority**  
Section 25005 of the Infrastructure Investment and Jobs Act (Pub. L. 117-58, November 15, 2021; also referred to as the “Bipartisan Infrastructure Law” or “BIL”)

- 10. Procurement Request No.**
- 11. Federal Funds Obligated**  
\$1,059,037

- 12. Submit Payment Requests To**  
See article 19.
- 13. Payment Office**  
See article 19.

**14. Accounting and Appropriations Data**

- 15. Description of Project** Smart grid EV charge mngmnt solution for the EV fleet, through a managed charging software pilot, a municipal fleet electrification standards framework, a study on value to city-owned utility ratepayers.

**RECIPIENT**

**16. Signature of Person Authorized to Sign**

**17. OFFICE OF THE ASSISTANT SECRETARY FOR RESEARCH AND TECHNOLOGY Signature of Agreement Officer**

\_\_\_\_\_  
Signature Date  
Name: Jeni Arndt  
Title: Mayor, City of Fort Collins

\_\_\_\_\_  
Signature  
Name: Roxanne Ledesma  
Title: Supervisory Grant Management Specialist (Agreement Officer)

APPROVED AS TO FORM:

\_\_\_\_\_  
Sr. Asst. City Attorney

Item 9.

**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

**U.S. DEPARTMENT OF TRANSPORTATION**

**GRANT AGREEMENT UNDER THE  
FISCAL YEAR 2023 STRENGTHENING MOBILITY AND REVOLUTIONIZING  
TRANSPORTATION (SMART) GRANTS PROGRAM**

This agreement is between the [United States Department of Transportation (the “USDOT”)] and the City of Fort Collins (the “Recipient”).

This agreement reflects the selection of the Recipient to receive a Strengthening Mobility and Revolutionizing Transportation (SMART) Grant for the Smart Grid Electric Vehicle Charge Management Solution

The parties therefore agree to the following:

**ARTICLE 1  
GENERAL TERMS AND CONDITIONS**

- (1) In this agreement, “General Terms and Conditions” means the content of the document titled “General Terms and Conditions Under the Fiscal Year Strengthening Mobility and Revolutionizing Transportation (SMART) Grants Program,” dated June 20, 2023, which is available at <https://www.transportation.gov/grants/smart/grants-management>. Articles 7–30 are in the General Terms and Conditions. The General Terms and Conditions are part of this agreement.
- (2) The Recipient states that it has knowledge of the General Terms and Conditions. Recipient also states that it is required to comply with all applicable Federal laws and regulations including, but not limited to, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200); National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.); and Build America, Buy America Act (BIL, div. G §§ 70901-27).
- (3) The Recipient acknowledges that the General Terms and Conditions impose obligations on the Recipient and that the Recipient’s non-compliance with the General Terms and Conditions may result in remedial action, termination of the SMART Grant, disallowing costs incurred for the Project, requiring the Recipient to refund to the USDOT the SMART Grant, and reporting the non-compliance in the Federal-government-wide integrity and performance system.

Item 9.

**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

**ARTICLE 2  
APPLICATION, PROJECT, AND AWARD**

**a. Application.**

Application Title: Smart Grid Electric Vehicle Charge Management Solution

Application Date: November 18, 2022

**b. Award Amount.**

SMART Grant Amount: \$1,059,037

**c. Award Dates.**

Period of Performance End Date: 03/15/2025

**d. Budget Period**

Budget Period End Date: 03/15/2025

**FEDERAL AWARD IDENTIFICATION NUMBER.**

The Federal Award Identification Number is listed on page 1, line 1.

Item 9.

**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

**ARTICLE 3  
SUMMARY PROJECT INFORMATION**

**a. Summary of Project’s Statement of Work.**

Smart grid EV charge mngmnt solution for the EV fleet, through a managed charging software pilot, a municipal fleet electrification standards framework, a study on value to city-owned utility ratepayers.

**b. Project’s Estimated Schedule.**

<b>Milestone</b>	<b>Schedule Date</b>
Evaluation & Data Management Plan (NLT 3mo after start)	12/15/2023
Draft Implementation Report (NLT 1 yr after start)	09/15/2024
Final Implementation Report (by the end of the POP)	03/15/2025

Project’s Estimated Costs.

(1) Eligible Project Costs

<b>Eligible Project Costs</b>	
SMART Grant Amount:	\$1,059,037
Other Federal Funds:	\$0
State Funds:	\$0
Local Funds:	\$0
In-Kind Match:	\$0
Other Funds:	\$0
<b>Total Eligible Project Cost:</b>	<b>\$1,059,037</b>

(2) Supplemental Estimated Budget

<b>Cost Element</b>	<b>Federal Share</b>	<b>Non-Federal Share</b>	<b>Total Budget Amount</b>
Direct Labor	\$0	\$0	\$0
Fringe Benefits	\$0	\$0	\$0
Travel	\$0	\$0	\$0
Equipment	\$0	\$0	\$0
Supplies	\$0	\$0	\$0
Contractual/Consultant	\$1,059,037	\$0	\$1,059,037
Construction	\$0	\$0	\$0
Other	\$0	\$0	\$0
Indirect Costs	\$0	\$0	\$0

Item 9.

**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

<b>Total Budget</b>	\$1,059,037	\$0	\$1,059,037
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(3) Cost Classification Table -Implementation Grants Only

Utilize the descriptions from the SF-424c to determine what cost goes in each row.

<b>Cost Classification</b>	<b>Total Costs</b>	<b>Non-SMART Previously Incurred Costs</b>	<b>Eligible Costs</b>
Administrative and legal expenses			
Land, structures, rights-of-way, appraisals, etc.			
Relocation expenses and payments			
Architectural and engineering fees			
Other architectural and engineering fees			
Project inspection fees			
Site work			
Demolition and removal			
Construction			
Equipment			
Miscellaneous			
Contingency			
<b>Project Total</b>			

## STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM

**ARTICLE 4  
RECIPIENT INFORMATION**

**a. Recipient's Unique Entity Identifier.**

VEJ3BS5GK5G1

**b. Recipient Contact(s).**

Tracy Ochsner  
 Director, Operation Services  
 PO Box 580,  
 Fort Collins, CO, 80522-0580  
 970-224-6061  
 tochsner@fcgov.com

**c. Recipient Key Personnel.**

Name	Title or Position
Tracy Ochsner	Director, Operation Services

**d. USDOT Project Contact(s).**

Roxanne Ledesma  
 Strengthening Mobility and Revolutionizing Transportation Grants Program Manager  
 U.S. Department of Transportation  
 Office of the Assistant Secretary for Research and Technology 1200 New Jersey Avenue,  
 S.E.  
 Washington, DC 20590  
 (202) 774-8003  
 Roxanne.Ledesma@dot.gov



## ARTICLE 5 USDOT ADMINISTRATIVE INFORMATION

### 5.1 Office for Subaward and Contract Authorization.

- (a) USDOT Office for Subaward and Contract Authorization: Office of the Assistant Secretary for Research and Technology SUBAWARDS AND CONTRACTS APPROVAL

Note: See 2 CFR § 200.331, Subrecipient and contractor determinations, for definitions of subrecipient (who is awarded a subaward) versus contractor (who is awarded a contract).

Note: Recipients with a procurement system deemed approved and accepted by the Government or by the AO are exempt from the requirements of this clause. See 2 CFR 200.317 through 200.327.

- (b) Unless described in the application and funded in the approved award, the Recipient must obtain prior written approval from the AO for the subaward, transfer, or contracting out of any work under this award above the Simplified Acquisition Threshold. This provision does not apply to the acquisition of supplies, material, equipment, or general support services. Approval of each subaward or contract is contingent upon the Recipient's submittal of a written fair and reasonable price determination, and approval by the AO for each proposed contractor/sub-recipient. Consent to enter into subawards or contracts will be issued through written notification from the AO or a formal amendment to the Agreement.
- (c) The following subawards and contracts are currently approved under the Agreement by the AO. This list does not include supplies, material, equipment, or general support services which are exempt from the pre-approval requirements of this clause.

(Fill in at award or by amendment)

### 5.2 Reimbursement Requests

- (a) The Recipient may request reimbursement of costs incurred in the performance of this agreement if those costs do not exceed the funds available under section 2.2 and are allowable under the applicable cost provisions of 2 C.F.R. Part 200, Subpart E. The Recipient shall not request reimbursement more frequently than monthly.
- (b) The Recipient shall use the DELPHI eInvoicing System to submit requests for reimbursement to the payment office. When requesting reimbursement of costs incurred or credit for cost share incurred, the Recipient shall electronically submit supporting cost detail with the SF 271 (Outlay Report and Request for Reimbursement for Construction Programs) to clearly document all costs incurred.

## STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM

- (c) The Recipient's supporting cost detail shall include a detailed breakout of all costs incurred, including direct labor, indirect costs, other direct costs, travel, etc., and the Recipient shall identify the Federal share and the Recipient's share of costs. If the Recipient does not provide sufficient detail in a request for reimbursement, the AO may withhold processing that request until the Recipient provides sufficient detail.
- (d) The USDOT shall not reimburse costs unless the Agreement Officer's Representative (the "AOR") reviews and approves the costs to ensure that progress on this agreement is sufficient to substantiate payment.
- (e) The USDOT may waive the requirement in section 19.7(a) that the Recipient use the DELPHI eInvoicing System. The Recipient may obtain waiver request forms on the DELPHI eInvoicing website (<http://www.dot.gov/cfo/delphi-einvoicing-system.html>) or by contacting the AO. A Recipient who seeks a waiver shall explain why they are unable to use or access the Internet to register and enter payment requests and send a waiver request to

Director of the Office of Financial Management  
 US Department of Transportation,  
 Office of Financial Management B-30, Room W93-431  
 1200 New Jersey Avenue SE  
 Washington DC 20590-0001

or

[DOTElectronicInvoicing@dot.gov](mailto:DOTElectronicInvoicing@dot.gov).

- (f) To seek reimbursement from DOT, the Recipient shall submit documentary evidence of all expenditures associated with the Grant Project (those to be covered by the local and/or state contribution, as well as those covered by the Federal contribution) on a monthly basis. All reimbursement requests to DOT shall include sufficient documentation to justify reimbursement of the Recipient, including invoices and proof of payment of the invoice. In seeking reimbursements, grant recipients must provide invoices or other evidence of the expenditure, details about the expenditure and how it relates to the grant project, and evidence of payment.

The requirements set forth in these terms and conditions supersede previous financial invoicing requirements for Recipients.

Item 9.

**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

**ARTICLE 6  
SPECIAL GRANT TERMS**

- 6.1** SMART funds must be expended by the budget period end date in section 10.3 of the Terms and Conditions.
- 6.2** The Recipient should demonstrate compliance with civil rights obligations and nondiscrimination laws, including Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act, and implementing regulations. This should include a current Title VI plan, completed Community Participation Plan, and a plan to address any legacy infrastructure or facilities that are not compliant with ADA standards. The Department’s and the applicable Operating Administrations’ Offices of Civil Rights may work with awarded grant recipients to ensure full compliance with Federal civil rights requirements.
- 6.3** There are no other special grant requirements for this award.

## STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM

**ATTACHMENT A**  
**PERFORMANCE MEASUREMENT INFORMATION**

**Baseline Measurement Date: Due 90 days after award**

**Baseline Report Date: Due 90 days after award**

**Table 1: Performance Measure Table**

<b>Measure</b>	<b>Category and Description</b>	<b>Measurement Frequency</b>
Safety and Reliability	Qualitative Project Benefits: Qualitative description of the anticipated impacts of at-scale implementation on emergency response and the safety of systems for pedestrians, bicyclists, and the broader traveling public	End of period of performance
Resiliency	Qualitative Project Benefits: Qualitative description of the anticipated impacts of at-scale implementation on the reliability and resiliency of the transportation system including cybersecurity and climate change	End of period of performance
Equity and Access	Qualitative Project Benefits: Qualitative description of the anticipated impacts of at-scale implementation on connecting or expanding access to jobs, education, and essential services for underserved or disadvantaged populations	End of period of performance
Climate	Qualitative Project Benefits: Qualitative description of the anticipated impacts of at-scale implementation on congestion, air pollution, emissions, and energy efficiency	End of period of performance
Partnerships	Qualitative Project Benefits: Qualitative description of the anticipated impacts of	End of period of performance

## STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM

Measure	Category and Description	Measurement Frequency
	at-scale implementation on the economic competitiveness and private sector investments or partnerships including technical and financial commitments	
Integration	Qualitative Project Benefits: Qualitative description of the anticipated impacts of at-scale implementation on the integration of systems and the connectivity of infrastructure, connected vehicles, pedestrians, bicyclists, and the broader traveling public	End of period of performance
Costs	Project Costs: Quantification of the cost of the proof-of-concept or prototype carried out using the grant (Stage 1)	End of period of performance
Costs	Project Costs: Quantification of the anticipated cost of at-scale implementation (Stage 2)	End of period of performance
Lessons Learned and Recommendations	Lessons Learned and Recommendations: Description of lessons learned and recommendations for future deployment strategies	End of period of performance

## STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM

**ATTACHMENT B  
CHANGES FROM APPLICATION**

**INSTRUCTIONS FOR COMPLETING ATTACHMENT B:** Describe all material differences between the scope, schedule, and budget described in the application and the scope, schedule, and budget described in Article 3. The purpose of this attachment B is to document the differences clearly and accurately in scope, schedule, and budget to establish the parties' knowledge and acceptance of those differences. See section 10.1.

**Scope:**

**Schedule:**

**Budget:**

The table below provides a summary comparison of the project budget.

Fund Source	Application		Section 3.3	
	\$	%	\$	%
<b>Previously Incurred Costs (Non-Eligible Project Costs)</b>	\$0	0	\$0	0
Federal Funds	\$0	0	\$0	0
Non-Federal Funds	\$0	0	\$0	0
Total Previously Incurred Costs	\$0	0	\$0	0
<b>Future Eligible Project Costs</b>	\$0	0	\$0	0
SMART Funds	\$1,059,037	100	\$1,059,037	100
Other Federal Funds	\$0	0	\$0	0
Non-Federal Funds	\$0	0	\$0	0
Total Future Eligible Project Costs	\$1,059,037	100	\$1,059,037	100
Total Project Costs	\$1,059,037	100	\$1,059,037	100

## STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM

**ATTACHMENT C**  
**CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE IMPACTS**

**1. Consideration of Climate Change and Environmental Justice Impacts.**

The Recipient states that rows marked in the following table are accurate:

<input checked="" type="checkbox"/>	The Project directly supports a Local/Regional/State Climate Action Plan that results in lower greenhouse gas emissions. <i>(Identify the plan in the supporting narrative below.)</i>
<input type="checkbox"/>	The Project directly supports a Local/Regional/State Equitable Development Plan that results in lower greenhouse gas emissions. <i>(Identify the plan in the supporting narrative below.)</i>
<input type="checkbox"/>	The Project directly supports a Local/Regional/State Energy Baseline Study that results in lower greenhouse gas emissions. <i>(Identify the plan in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient or a project partner used environmental justice tools, such as the EJSCREEN, to minimize adverse impacts of the Project on environmental justice communities. <i>(Identify the tool(s) in the supporting narrative below.)</i>
<input type="checkbox"/>	The Project supports a modal shift in freight or passenger movement to reduce emissions or reduce induced travel demand. <i>(Describe that shift in the supporting narrative below.)</i>
<input type="checkbox"/>	The Project utilizes demand management strategies to reduce congestion, induced travel demand, and greenhouse gas emissions. <i>(Describe those strategies in the supporting narrative below.)</i>
<input checked="" type="checkbox"/>	The Project incorporates electrification infrastructure, zero-emission vehicle infrastructure, or both. <i>(Describe the incorporated infrastructure in the supporting narrative below.)</i>
<input checked="" type="checkbox"/>	The Project supports the installation of electric vehicle charging stations. <i>(Describe that support in the supporting narrative below.)</i>
<input checked="" type="checkbox"/>	The Project promotes energy efficiency. <i>(Describe how in the supporting narrative below.)</i>
<input type="checkbox"/>	The Project serves the renewable energy supply chain. <i>(Describe how in the supporting narrative below.)</i>
<input type="checkbox"/>	The Project improves disaster preparedness and resiliency <i>(Describe how in the supporting narrative below.)</i>
<input type="checkbox"/>	The Project avoids adverse environmental impacts to air or water quality, wetlands, and endangered species, such as through reduction in Clean Air Act criteria pollutants and greenhouse gases, improved stormwater management, or improved habitat connectivity. <i>(Describe how in the supporting narrative below.)</i>
<input type="checkbox"/>	The Project repairs existing dilapidated or idle infrastructure that is currently causing environmental harm. <i>(Describe that infrastructure in the supporting narrative below.)</i>
<input type="checkbox"/>	The Project supports or incorporates the construction of energy- and location-efficient buildings. <i>(Describe how in the supporting narrative below.)</i>

Item 9.

**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

<input type="checkbox"/>	The Project includes recycling of materials, use of materials known to reduce or reverse carbon emissions, or both. <i>(Describe the materials in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient has taken other actions to consider climate change and environmental justice impacts of the Project, as described in the supporting narrative below.
<input type="checkbox"/>	The Recipient has not yet taken actions to consider climate change and environmental justice impacts of the Project but, before beginning construction of the Project, will take relevant actions described in Attachment A. <i>(Identify the relevant actions from Attachment A in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient has not taken actions to consider climate change and environmental justice impacts of the Project and will not take those actions under this award.

**2. Supporting Narrative.**

[ Recipient - Insert supporting text in last page, as described in the table above. ]



**ATTACHMENT D  
RACIAL EQUITY AND BARRIERS TO OPPORTUNITY**

**1. Efforts to Improve Racial Equity and Reduce Barriers to Opportunity.**

The Recipient states that rows marked with “X” in the following table are accurate:

<input type="checkbox"/>	A racial equity impact analysis has been completed for the Project. <i>(Identify a report on that analysis or, if no report was produced, describe the analysis and its results in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient or a project partner has adopted an equity and inclusion program/plan or has otherwise instituted equity-focused policies related to project procurement, material sourcing, construction, inspection, hiring, or other activities designed to ensure racial equity in the overall delivery and implementation of the Project. <i>(Identify the relevant programs, plans, or policies in the supporting narrative below.)</i>
<input type="checkbox"/>	The Project includes physical-barrier-mitigating land bridges, caps, lids, linear parks, and multimodal mobility investments that either redress past barriers to opportunity or that proactively create new connections and opportunities for underserved communities that are underserved by transportation. <i>(Identify the relevant investments in the supporting narrative below.)</i>
<input type="checkbox"/>	The Project includes new or improved walking, biking, and rolling access for individuals with disabilities, especially access that reverses the disproportional impacts of crashes on people of color and mitigates neighborhood bifurcation. <i>(Identify the new or improved access in the supporting narrative below.)</i>
<input type="checkbox"/>	The Project includes new or improved freight access to underserved communities to increase access to goods and job opportunities for those underserved communities. <i>(Identify the new or improved access in the supporting narrative below.)</i>
<input checked="" type="checkbox"/>	The Recipient has taken other actions related to the Project to improve racial equity and reduce barriers to opportunity, as described in the supporting narrative below.
<input type="checkbox"/>	The Recipient has not yet taken actions related to the Project to improve racial equity and reduce barriers to opportunity but, before beginning construction of the project, will take relevant actions described in Attachment A. <i>(Identify the relevant actions from Attachment A in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient has not taken actions related to the Project to improve racial equity and reduce barriers to opportunity and will not take those actions under this award.

**2. Supporting Narrative.**

[Recipient- Insert supporting text in last page, as described in the table above. ]

**ATTACHMENT E  
LABOR AND WORKFORCE**

**1. Efforts to Support Good-Paying Jobs and Strong Labor Standards. Successful projects will also support the creation of good-paying jobs with the free and fair choice to join a union.**

As outlined in the Notice of Funding Opportunity, applicants are evaluated and selected based on criteria including the extent to which applicants identify the necessary planning and engagement activities that, as projects are fully implemented during Stage 2, will ensure high-quality job creation by supporting good-paying jobs with a free and fair choice to join a union, incorporating strong labor standards (e.g., wages and benefits at or above prevailing, use of project labor agreements, registered apprenticeship programs, pre-apprenticeships tied to 16 registered apprenticeships, etc.), and/or providing workforce opportunities for historically underrepresented groups (e.g., workforce development program, etc.). The table below enables The Recipient to demonstrate how this criteria is addressed.

The Recipient states that rows marked with “X” in the following table are accurate:

<input type="checkbox"/>	The Recipient demonstrate, to the full extent possible consistent with the law, an effort to create good-paying jobs with the free and fair choice to join a union and incorporation of high labor standards. <i>(Identify the relevant agreements and describe the scope of activities they cover in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient or a project partner has adopted the use of local and economic hiring preferences in the overall delivery and implementation of the Project. <i>(Describe the relevant provisions in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient or a project partner has adopted the use of registered apprenticeships in the overall delivery and implementation of the Project. <i>(Describe the use of registered apprenticeship in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient or a project partner will provide training and placement programs for underrepresented workers in the overall delivery and implementation of the Project. <i>(Describe the training programs in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient or a project partner will support free and fair choice to join a union in the overall delivery and implementation of the Project by investing in workforce development services offered by labor-management training partnerships or setting expectations for contractors to develop labor-management training programs. <i>(Describe the workforce development services offered by labor-management training partnerships in the supporting narrative below.)</i>

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**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

<input type="checkbox"/>	<p>The Recipient or a project partner will provide supportive services and cash assistance to address systemic barriers to employment to be able to participate and thrive in training and employment, including childcare, emergency cash assistance for items such as tools, work clothing, application fees and other costs of apprenticeship or required pre-employment training, transportation and travel to training and work sites, and services aimed at helping to retain underrepresented groups like mentoring, support groups, and peer networking. <i>(Describe the supportive services and/or cash assistance provided to trainees and employees in the supporting narrative below.)</i></p>
<input type="checkbox"/>	<p>The Recipient or a project partner has documented agreements or ordinances in place to hire from certain workforce programs that serve underrepresented groups. <i>(Identify the relevant agreements and describe the scope of activities they cover in the supporting narrative below.)</i></p>
<input type="checkbox"/>	<p>The Recipient or a project partner participates in a State/Regional/Local comprehensive plan to promote equal opportunity, including removing barriers to hire and preventing harassment on work sites, and that plan demonstrates action to create an inclusive environment with a commitment to equal opportunity, including:</p> <ul style="list-style-type: none"> <li>a. affirmative efforts to remove barriers to equal employment opportunity above and beyond complying with Federal law;</li> <li>b. proactive partnerships with the U.S. Department of Labor’s Office of Federal Contract Compliance Programs to promote compliance with EO 11246 Equal Employment Opportunity requirements and meet the requirements as outlined in the Notice of Funding Opportunity to make good faith efforts to meet the goals of 6.9 percent of construction project hours being performed by women and goals that vary based on geography for construction work hours and for work being performed by people of color;</li> <li>c. no discriminatory use of criminal background screens and affirmative steps to recruit and include those with former justice involvement, in accordance with the Fair Chance Act and equal opportunity requirements;</li> <li>d. efforts to prevent harassment based on race, color, religion, sex, sexual orientation, gender identity, and national origin;</li> <li>e. training on anti-harassment and third-party reporting procedures covering employees and contractors; and</li> <li>f. maintaining robust anti-retaliation measures covering employees and contractors.</li> </ul> <p><i>(Describe the equal opportunity plan in the supporting narrative below.)</i></p>
<input type="checkbox"/>	<p>The Recipient has taken other actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards. <i>(Describe those actions in the supporting narrative below.)</i></p>

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**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

<input checked="" type="checkbox"/>	The Recipient has not yet taken actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards but, before beginning construction of the project, will take relevant actions described in schedule B. <i>(Identify the relevant actions from schedule B in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient has not taken actions related to the Project to improving good-paying jobs and strong labor standards and will not take those actions under this award.

**a. Supporting Narrative.**

[ Recipient- Insert supporting text in last page, as described in the table above. ]

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**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

**ATTACHMENT F  
CRITICAL INFRASTRUCTURE SECURITY AND RESILIENCE**

**1. Efforts to strengthen the Security and Resilience of Critical Infrastructure against both Physical and Cyber Threats.**

The Recipient states that rows marked with “X” in the following table are accurate:

<input type="checkbox"/>	The Recipient demonstrates, prior to the signing of this agreement, effort to consider and address physical and cyber security risks relevant to the transportation mode and type and scale of the activities.
<input type="checkbox"/>	The Recipient appropriately considered and addressed physical and cyber security and resilience in the planning, design and oversight of the project, as determined by the Department and the Department of Homeland Security.
<input checked="" type="checkbox"/>	The Recipient complies with 2 CFR 200.216 and the prohibition on certain telecommunications and video surveillance services or equipment.
<input type="checkbox"/>	For projects in floodplains: The Recipient appropriately considered whether the project was upgraded consistent with the Federal Flood Risk Management Standard, to the extent consistent with current law, in Executive Order 14030, Climate-Related Financial Risk (86 FR 27967), and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Solicit and Considering Stakeholder Input (80 FR 6425).

**2. Supporting Narrative.**

[Recipient- Insert supporting text in last page as described in the table above.]

SUPPORTING TEXT FOR CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE IMPACTS

Phase 1 and 2 of the DOT SMART grant directly support the City of Fort Collins' Climate Action Plan, [<https://www.fcgov.com/climateaction/> ] which aims to reduce community greenhouse gas emissions by 80% by 2030 and achieve carbon neutrality by 2050.

The grant will help accelerate transition away from fossil fuel vehicles to electric vehicles. By establishing a build out plan for electrification infrastructure, this will enable a unified roll out of all future EV charger installations.

The grant project focuses on planning and management of EV chargers, and smart energy management. By deploying a software to track and manage EV charging stations, that is connected to the City's Distributed Energy Resource Management System (DERMS), charging can be completed in a more energy efficiency manner.

In summary, this grant project strongly aligns with the City's climate, and energy goals. Phases 1 and 2 will help Fort Collins mitigate greenhouse gas emissions, expand access to clean transportation, and build a flexible, efficient electric system.

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SUPPORTING TEXT FOR RACIAL EQUITY AND BARRIERS TO OPPORTUNITY

The City of Fort Collins has an Equity & Inclusion Plan 2023 [<https://www.fcgov.com/equity/>] that describes recommended goals and actions to be taken by the City of Fort Collins to improve racial equity and reduce barriers to opportunity. This plan will guide actions towards creating improvement to public transportation for underserved communities. By effectively managing electric charging, this will minimize fuel costs for city run transit services which increases the City's capacity to connect and expand access and services for underserved or disadvantaged populations, improving access to jobs, education, and essential services.

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SUPPORTING TEXT FOR LABOR AND WORKFORCE

While the City has not yet taken actions related to creating good paying jobs with the free and fair choice to join a union and incorporate strong labor standards the following actions, but not limited to, will be taken in compliance with the Code of Federal Regulations 2 CFR 200, which includes, but is not limited to:

- Equal Employment Opportunity
- Small and Minority Businesses, Women’s Businesses and Labor Surplus Area Firms
- Certified Payroll
- Davis Bacon Wages
- Brooks Act
- Build America/Buy America – Domestic Preference
- Anti-Lobbying



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SUPPORTING TEXT FOR CRITICAL INFRASTRUCTURE SECURITY AND RESILIENCE

City of Fort Collins will conduct/comply with internal Software as a Service (SaaS) standards as well as adhere to 2 CFR 200.216.

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**U.S. DEPARTMENT OF TRANSPORTATION**

**GENERAL TERMS AND CONDITIONS UNDER THE**  
**FISCAL YEAR 2022 STRENGTHENING MOBILITY AND REVOLUTIONIZING**  
**TRANSPORTATION (SMART) GRANT PROGRAM:**

Revision date: June 20, 2023

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## GENERAL TERMS AND CONDITIONS

The Infrastructure Investment and Jobs Act (Pub. L. 117–58, November 15, 2021; also referred to as the “Bipartisan Infrastructure Law” or “BIL”) established the Strengthening Mobility and Revolutionizing Transportation (SMART) Discretionary Grant Program (BIL Section 25005) and appropriated additional funds to the United States Department of Transportation (the “USDOT”) under Division J, Title VIII of BIL to implement the program. The funding will be implemented, as appropriate and consistent with law, in alignment with the priorities in Executive Order 14052, Implementation of the Infrastructure Investment and Jobs Act (86 FR 64355). The funds are available to conduct demonstration projects focused on advanced smart city or community technologies and systems in a variety of communities to improve transportation efficiency and safety. The program funds projects that are focused on using technology interventions to solve real-world challenges and build data and technology capacity and expertise in the public sector.

The USDOT published a Notice of Funding Opportunity (the “NOFO”) to solicit applications for Federal financial assistance in Fiscal Year 2022 for the Strengthening Mobility and Revolutionizing Transportation (SMART) (87 FR 58187).

These general terms and conditions are incorporated by reference in a project-specific grant agreement under the fiscal year 2022 SMART Grants Program. Articles 1–6 are in the project-specific portion of the agreement. The term “Recipient” is defined in the project-specific portion of the agreement. Attachments A through D are project-specific attachments.

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**ARTICLE 7  
PURPOSE**

7.1 **Purpose.** The purpose of this award is to is to conduct demonstration projects focused on advanced smart city or community technologies and systems in a variety of communities to improve transportation efficiency and safety. The program funds projects that are focused on using technology interventions to solve real-world challenges and build data and technology capacity and expertise in the public sector. The parties will accomplish that purpose by achieving the following objectives:

- (a) timely completing the Project; and
- (b) ensuring that this award does not substitute for non-Federal investment in the Project, except as proposed in the Grant Application, as modified by section 3.3 and Attachment B.



## **ARTICLE 8 USDOT ROLE**

### **8.1 Division of USDOT Responsibilities.**

The Office of the Secretary of Transportation is ultimately responsible for the USDOT's administration of the SMART Grant Program.

#### USDOT Program Contacts.

U.S. Department of Transportation  
Office of the Assistant Secretary for Research and Technology  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
SMART@dot.gov

## ARTICLE 9 RECIPIENT ROLE

- 9.1 **Statements on the Project.** The Recipient states that:
- (a) all material statements of fact in the Grant Application were accurate when that application was submitted; and
  - (b) Attachment B documents all material changes in the information contained in that application.
- 9.2 **Statements on Authority and Capacity.** The Recipient states that:
- (a) it has the authority to receive Federal financial assistance under this agreement;
  - (b) it has the legal authority to complete the Project;
  - (c) it has the capacity, including institutional, managerial, and financial capacity, to comply with its obligations under this agreement;
  - (d) not less than the difference between the “Total Eligible Project Cost” and the “SMART Grant Amount” listed in section 3.3 are committed to fund the Project;
  - (e) the individual executing this agreement on behalf of the Recipient has authority to enter this agreement and make the statements in this article 9 and in section 24.7 on behalf of the Recipient.
- 9.3 **USDOT Reliance.** The Recipient acknowledges that:
- (a) the USDOT relied on statements of fact in the Grant Application to select the Project to receive this award;
  - (b) the USDOT relied on statements of fact in both the Grant Application and this agreement to determine that the Recipient and the Project are eligible under the terms of the NOFO;
  - (c) the USDOT relied on statements of fact in both the Grant Application and this agreement to establish the terms of this agreement; and
  - (d) the USDOT’s selection of the Project to receive this award prevented awards under the NOFO to other eligible applicants.
- 9.4 **Project Delivery.**
- (a) The Recipient shall complete the Project under the terms of this agreement.

- (b) The Recipient shall ensure that the Project is financed, constructed, operated, and maintained in accordance with all applicable Federal laws, regulations, and policies.
- (c) The Recipient shall provide any certifications or assurances deemed necessary by the USDOT in ensuring the Recipient's compliance with all applicable laws, regulations, and policies.
- (d) The Recipient shall provide access to records as provided at 2 CFR 200.337.

**9.5 Rights and Powers Affecting the Project.**

- (a) The Recipient shall not take or permit any action that deprives it of any rights or powers necessary to the Recipient's performance under this agreement without written approval of the USDOT.
- (b) The Recipient shall act, in a manner acceptable to the USDOT, promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with the Recipient's performance under this agreement.
- (c) The Recipient shall ensure that the funds provided by DOT are not misappropriated or misdirected to any other account, need, project, line-item, or the like.

**9.6 Notification of Changes to Key Personnel.** The Recipient shall notify all USDOT representatives who are identified in Section 4.4 in writing within 30 calendar days of any change in key personnel who are identified in Section 4.3.

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**ARTICLE 10**  
**AWARD AMOUNT, OBLIGATION, AND TIME PERIODS**

10.1 **Federal Award Amount** The USDOT hereby awards a SMART Grant to the Recipient in the amount listed in Section 2.2 as the SMART Grant Amount.

10.2 **Federal Obligations.**

This agreement obligates for the period of performance listed in section 2.3 of the grant agreement.

10.3 **Budget Period**

The budget period for this award begins on the date of this agreement and ends on the budget period end date that is listed in section 2.4, which shall be no later than 2 years from the date of grant execution. In this agreement, “budget period” is used as defined at 2 C.F.R. 200.1.

10.4 **Period of Performance.**

- (a) The period of performance for this award begins on the effective date of award listed in page 1 item 2 and ends on the period of performance end date that is listed in Section 2.3.
- (b) In this agreement, “period of performance” is used as defined at 2 C.F.R. 200.1.

**ARTICLE 11**  
**STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES**

- 11.1 **Notification Requirement.** The Recipient shall notify all USDOT representatives who are identified in section 4.4 in writing within 30 calendar days of any change in circumstances or commitments that adversely affect the Recipient’s plan to complete the Project. In that notification, the Recipient shall describe the change and what actions the Recipient has taken or plans to take to ensure completion of the Project. This notification requirement under this section 11.1 is separate from any requirements under this article 11 that the Recipient request amendment of this agreement.
- 11.2 **Statement of Work Changes.** If the Project’s activities differ from the statement of work that is described in section 3.1 and Attachment B, then the Recipient shall request an amendment of this agreement to update section 3.1.
- 11.3 **Schedule Changes.** If one or more of the following conditions are satisfied, then the Recipient shall request an amendment of this agreement to update the relevant dates:
- (a) a substantial completion date for the Project or a component of the Project is listed in section 3.2 and the Recipient’s estimate for that milestone changes to a date that is more than six months after the date listed in section 3.2; or
  - (b) a schedule change would require the period of performance to continue after the period of performance end date listed in section 2.3.

For other schedule changes, the Recipient shall request an amendment of this agreement unless the USDOT has consented, in writing consistent with applicable requirements, to the change.

- 11.4 **Budget Changes.**
- (a) The Recipient acknowledges that if the cost of completing the Project increases:
    - (1) that increase does not affect the Recipient’s obligation under this agreement to complete the Project; and
    - (2) the USDOT will not increase the amount of this award to address any funding shortfall.
  - (b) The Recipient shall request an amendment of this agreement to update section 3.3 and Attachment B if, in comparing the Project’s budget to the amounts listed in section 3.3:
    - (1) the “Non-Federal Funds” amount decreases; or
    - (2) the “Total Eligible Project Cost” amount decreases.

- (c) For budget changes that are not identified in section 11.4(b), the Recipient shall request an amendment of this agreement to update section 3.3 and Attachment B unless the USDOT has consented, in writing consistent with applicable requirements, to the change.
- (d) If the actual eligible project costs are less than the “Total Eligible Project Cost” that is listed in section 3.3, then the Recipient may propose to the USDOT, in writing consistent with applicable requirements, specific additional activities that are within the scope of this award, as defined in sections 7.1 and 3.1, and that the Recipient could complete with the difference between the “Total Eligible Project Cost” that is listed in section 3.3 and the actual eligible project costs.
- (e) If the actual eligible project costs are less than the “Total Eligible Project Cost” that is listed in section 3.3 and either the Recipient does not make a proposal under section 11.4(d) or the USDOT does not accept the Recipient’s proposal under section 11.4(d), then:
  - (1) in a request under section 11.4(b), the Recipient shall reduce the Federal Share by the difference between the “Total Eligible Project Cost” that is listed in section 3.3 and the actual eligible project costs; and
  - (2) if that amendment reduces this award and the USDOT had reimbursed costs exceeding the revised award, the Recipient shall request to add additional project work that is within the scope of this project.

In this agreement, “**Federal Share**” means the sum of the “SMART Action Plan or Implementation Grant Amount” and the “Other Federal Funds” amounts that are listed in section 3.3.

- (a) The Recipient acknowledges that amounts that are required to be refunded under section 11.4(e)(2) constitute a debt to the Federal Government that the USDOT may collect under 2 C.F.R. 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).
- (b) The Recipient shall ensure compliance with Federal regulations requiring conduct of a Federally approved audit of any expenditure of funds of \$750,000 or more in a year in Federal awards.

**11.5 USDOT Acceptance of Changes.** The USDOT may accept or reject amendments requested under this article 11, and in doing so may elect to consider only the interests of the SMART grant program and the USDOT. The Recipient acknowledges that requesting an amendment under this article 11 does not amend, modify, or supplement this agreement unless the USDOT accepts that amendment request and the parties modify this agreement under section 21.1.

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**ARTICLE 12  
GENERAL REPORTING TERMS**

12.1 **Report Submission.** The Recipient shall send all reports required by this agreement to smartreports@dot.gov.

12.2 **Paperwork Reduction Act Notice.**

Under 5 C.F.R. 1320.6, the Recipient is not required to respond to a collection of information that does not display a currently valid control number issued by the Office of Management and Budget (the “OMB”). Collections of information conducted under this agreement are approved under OMB Control No. 2105-0520.

**ARTICLE 13  
PROGRESS AND FINANCIAL REPORTING**

- 13.1 **Quarterly Program Performance Reports.** The recipient shall submit to USDOT Quarterly Project Progress Reports in the format and with the content described in Exhibit-C. Due dates for reporting periods are 3/31, 6/30, 9/30, or 12/31, regardless of budget period start dates. Recipients shall submit quarterly reports no later than 30 days after the end of the reporting period. Annual reports are due no later than 90 days after the end of the reporting period.
- 13.2 **Quarterly Financial Status.** Recipient shall submit a Federal Financial Report using SF-425 in accordance with specified due dates.



## **ARTICLE 14 PERFORMANCE REPORTING**

### **14.1 Evaluation and Data Management Plan**

The Recipient shall submit to the USDOT, not later than 90 days after receiving the grant award, a report that provides an overview of how the project will be evaluated and how the data collected will be managed and stored including

- (a) an overview of how the proof-of-concept or prototype will be evaluated and how the data collected will be managed and stored;
- (b) a description of the anticipated impact areas (i.e. goals) of the project if implemented at scale and the methods that will be used to estimate the anticipated benefits and costs associated with implementation;
- (c) robust performance metrics and measurable targets based on the project goals to inform whether the proof-of-concept or prototype meets expectations and whether full implementation would meet program goals; and
- (d) the baseline data for each performance measure that is identified in the Performance Measure Table in Attachment A, accurate as of the Baseline Measurement Date that is identified in Attachment A and a detailed description of the data sources, assumptions, variability, and estimated levels of precision for each performance measure that is identified in the Performance Measure Table in Attachment A.

### **14.2 Implementation Report**

The Recipient shall submit to the USDOT, not later than 1 year after receiving the grant award, a report that describes, consistent with section 25005(f) of BIL:

- (a) the deployment and operational costs of the project, as compared to the benefits and savings from the project;
- (b) the means by which the project has met the original expectation, as projected in the SMART grant application, including data describing the means by which the project met the specific goals for the project;
- (c) lessons learned and recommendations for future deployment strategies to optimize transportation efficiency and multimodal system performance; and
- (d) a description of the requirements for a successful at-scale deployment, an assessment of the feasibility of at-scale implementation, and an analysis of the success, challenges, and validity of the initial approach.

- (e) the performance measurement data for each performance measure that is identified in the Performance Measure Table in Attachment A.

**14.3 Performance Reporting Survival.**

The data collection and reporting requirements in this article 14 survive the termination of this agreement which is three years post period of performance.

**14.4 Program Evaluation.**

As a condition of grant award, the recipient may be required to participate in an evaluation undertaken by USDOT, or another agency or partner. The evaluation may take different forms such as an implementation assessment across grant recipients, an impact and/or outcomes analysis of all or selected sites within or across grant recipients, or a benefit/cost analysis or assessment of return on investment. The Department may require applicants to collect data elements to aid the evaluation. As a part of the evaluation, as a condition of award, grant recipients must agree to: (1) make records available to the evaluation contractor or USDOT staff; (2) provide access to program records, and any other relevant documents to calculate costs and benefits; (3) in the case of an impact analysis, facilitate the access to relevant information as requested; and (4) follow evaluation procedures as specified by the evaluation contractor or USDOT staff.

## ARTICLE 15 NONCOMPLIANCE AND REMEDIES

### 15.1 Noncompliance Determinations.

- (a) If the USDOT determines that the Recipient may have failed to comply with the United States Constitution, Federal law, or the terms and conditions of this agreement, the USDOT may notify the Recipient of a proposed determination of noncompliance. For the notice to be effective, it must be written and the USDOT must include an explanation of the nature of the noncompliance, describe a remedy, state whether that remedy is proposed or effective at an already determined date, and describe the process through and form in which the Recipient may respond to the notice.
- (b) If the USDOT notifies the Recipient of a proposed determination of noncompliance under section 15.1(a), the Recipient may, not later than 7 calendar days after the notice, respond to that notice in the form and through the process described in that notice. In its response, the Recipient may:
  - (1) accept the remedy;
  - (2) acknowledge the noncompliance, but propose an alternative remedy; or
  - (3) dispute the noncompliance.

To dispute the noncompliance, the Recipient must include in its response documentation or other information supporting the Recipient's compliance.

- (c) The USDOT may make a final determination of noncompliance only:
  - (1) after considering the Recipient's response under section 15.1(b); or
  - (2) if the Recipient fails to respond under section 15.1(b), after the time for that response has passed.
- (d) To make a final determination of noncompliance, the USDOT must provide a notice to the Recipient that states the bases for that determination.

### 15.2 Remedies.

- (a) If the USDOT makes a final determination of noncompliance under section 15.1(d), the USDOT may impose a remedy, including:
  - (1) additional conditions on the award;
  - (2) any remedy permitted under 2 C.F.R. 200.339–200.340, including withholding of payments; disallowance of previously reimbursed costs,

requiring refunds from the Recipient to USDOT; suspension or termination of the award; or suspension and disbarment under 2 C.F.R. part 180; or

(3) any other remedy legally available.

- (b) To impose a remedy, the USDOT must provide a written notice to the Recipient that describes the remedy, but the USDOT may make the remedy effective before the Recipient receives that notice.
- (c) If the USDOT determines that it is in the public interest, the USDOT may impose a remedy, including all remedies described in section 15.2(a), before making a final determination of noncompliance under section 15.1(d). If it does so, then the notice provided under section 15.1(d) must also state whether the remedy imposed will continue, be rescinded, or modified.
- (d) In imposing a remedy under this section 15.2 or making a public interest determination under section 15.2(c), the USDOT may elect to consider the interests of only the USDOT.
- (e) The Recipient acknowledges that amounts that the USDOT requires the Recipient to refund to the USDOT due to a remedy under this section 15.2 constitute a debt to the Federal Government that the USDOT may collect under 2 C.F.R. 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

### 15.3 **Other Oversight Entities.**

Nothing in this article 15 limits any party's authority to report activity under this agreement to the United States Department of Transportation Inspector General or other appropriate oversight entities.

## ARTICLE 16 AGREEMENT TERMINATION

### 16.1 USDOT Termination.

- (a) The USDOT may terminate this agreement and all of its obligations under this agreement if any of the following occurs:
- (1) the Recipient fails to obtain or provide any non-SMART Grant contribution (all eligible project costs other than the SMART Grant Amount, as described in section 3.2 table (a) of the grant agreement) or alternatives approved by the USDOT as provided in this agreement and consistent with article 3;
  - (2) a construction start date for the Project or Strategy is listed in section 3.2 and the Recipient fails to meet that milestone by six months after the date listed in section 3.2;
  - (3) a substantial completion date for the Project or Strategy is listed in section 3.2 and the Recipient fails to meet that milestone by six months after the date listed in section 3.2;
  - (4) the Recipient fails to comply with the terms and conditions of this agreement, including a material failure to comply with the schedule in section 3.2 even if it is beyond the reasonable control of the Recipient; or,
  - (5) the USDOT determines that termination of this agreement is in the public interest.
  - (6) the Recipient fails to expend the funds within 2 years after the date on which the government executes the grant agreement, which is the date funds are provided for the project.
- (b) In terminating this agreement under this section, the USDOT may elect to consider only the interests of the USDOT.
- (c) This section 16.1 does not limit the USDOT's ability to terminate this agreement as a remedy under section 15.2.
- (d) The Recipient may request that the USDOT terminate the agreement under this section 16.1.

### 16.2 Closeout Termination.

- (a) This agreement terminates on Project Closeout.
- (b) In this agreement, "**Project Closeout**" means the date that the USDOT notifies the Recipient that the award is closed out. Under 2 C.F.R. 200.344, Project

Closeout should occur no later than one year after the end of the period of performance.

- 16.3 **Post-Termination Adjustments.** The Recipient acknowledges that under 2 C.F.R. 200.345–200.346, termination of the agreement does not extinguish the USDOT’s authority to disallow costs, including costs that USDOT reimbursed before termination, and recover funds from the Recipient.
- 16.4 **Non-Terminating Events.**
- (a) The end of the period of performance described under section 10.4 does not terminate this agreement or the Recipient’s obligations under this agreement.
  - (b) The liquidation of funds under section 20.1 does not terminate this agreement or the Recipient’s obligations under this agreement.
- 16.5 **Other Remedies.** The termination authority under this article 16 supplements and does not limit the USDOT’s remedial authority under article 15 or 2 C.F.R. part 200, including 2 C.F.R. 200.339–200.340.

## ARTICLE 17

### MONITORING, FINANCIAL MANAGEMENT, CONTROLS, AND RECORDS

#### 17.1 Recipient Monitoring and Record Retention.

- (a) The Recipient shall monitor activities under this award, including activities under subawards and contracts, to ensure:
  - (1) that those activities comply with this agreement; and
  - (2) that funds provided under this award are not expended on costs that are not allowable under this award or not allocable to this award.
- (b) If the Recipient makes a subaward under this award, the Recipient shall monitor the activities of the subrecipient in compliance with 2 C.F.R. 200.332(d).
- (c) The Recipient shall retain records relevant to the award as required under 2 C.F.R. 200.334.

#### 17.2 Financial Records and Audits.

- (a) The Recipient shall keep all project accounts and records that fully disclose the amount and disposition by the Recipient of the award funds, the total cost of the Project, and the amount or nature of that portion of the cost of the Project supplied by other sources, and any other financial records related to the project.
- (b) The Recipient shall keep accounts and records described under section 17.2(a) in accordance with a financial management system that meets the requirements of 2 C.F.R. 200.301–200.303, 2 C.F.R. part 200, subpart F, and title 23, United States Code, and will facilitate an effective audit in accordance with 31 U.S.C. 7501–7506.
- (c) The Recipient shall separately identify expenditures under the fiscal year 2022 SMART. A grants program in financial records required for audits under 31 U.S.C. 7501–7506. Specifically, the Recipient shall:
  - (1) list expenditures under that program separately on the schedule of expenditures of Federal awards required under 2 C.F.R. part 200, subpart F, including “FY 2022” in the program name; and
  - (2) list expenditures under that program on a separate row under Part II, Item 1 (“Federal Awards Expended During Fiscal Period”) of Form SF-SAC, including “FY 2022” in column c (“Additional Award Identification”).

- 17.3 **Internal Controls.** The Recipient shall establish and maintain internal controls as required under 2 C.F.R. 200.303.

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17.4 **USDOT Record Access.** The USDOT may access Recipient records related to this award under 2 C.F.R. 200.337.



## ARTICLE 18 CONTRACTING AND SUBAWARDS

For domestic sourcing compliance purposes and to ensure proper procurement, recipients shall coordinate with the SMART Program office to identify if their project is considered an Infrastructure project. If USDOT determines that a project is a "project for infrastructure," the recipient will comply with Build America Buy America requirements. If USDOT determines that a project is not a "project for infrastructure," the recipient will comply with Buy American Act requirements. The Recipient may participate in planning activities before project identification, as long as it does not include the purchasing of physical materials or a commitment to do so.

### 18.1 **Build America, Buy America.**

This award term implements § 70914(a) of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1294 (2021) and Office of Management and Budget (OMB) Memorandum M-22-11, "Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure."

For BABA compliance purposes and to ensure proper procurement, recipients shall coordinate with the SMART Program office to identify if their project is considered an Infrastructure project. If USDOT determines that a project is a "project for infrastructure," the recipient will comply with Build America Buy America requirements. If USDOT determines that a project is not a "project for infrastructure," the recipient will comply with Buy American Act requirements. The Recipient may participate in planning activities before project identification, as long as it does not include the purchasing of physical materials or a commitment to do so.

*Requirement to Use Iron, Steel, Manufactured Products, and Construction Materials Produced in the United States.*

The Recipient shall not use funds provided under this award for a project for infrastructure unless:

- (a) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (b) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product; and

- (c) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

*Inapplicability.*

The domestic content procurement preference in this award term only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

*Waivers.*

When necessary, the Recipient may apply for, and the USDOT may grant, a waiver from the domestic content procurement preference in this award term.

A request to waive the application of the domestic content procurement preference must be in writing. The USDOT will provide instructions on the waiver process and on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Office of Management and Budget (OMB) Made in America Office.

When the USDOT has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the USDOT determines that:

- (a) applying the domestic content procurement preference would be inconsistent with the public interest;
- (b) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (c) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at <https://www.transportation.gov/office-policy/transportation-policy/made-in-america>.

*Definitions*

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Primarily iron or steel” means that the cost of the iron and steel content in the article, material, or supply exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

- (a) Construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1294 (2021), as implemented by OMB, USDOT, and FHWA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).
- (b) Under 2 C.F.R. 200.322, as appropriate and to the extent consistent with law, the Recipient should, to the greatest extent practicable under this award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. 200.322 in all subawards including all contracts and purchase orders for work or products under this award.

**18.2 Buy American Act**

The Recipient shall apply, comply with, and implement all provisions of the Buy American Act, 41 U.S.C. §§ 8301-8305.

For the purpose of Article 18 of this agreement, the Project is deemed a public work of the Federal Government under 41 U.S.C. § 8301.

Article 18 implements 41 U.S.C. §§ 8301-8305, the Buy American Act, by providing a preference for domestic construction material.

The Recipient shall not use foreign construction materials in performing this agreement, except that:

- (a) the Recipient may use a commercially available off-the-shelf item under 41 U.S.C. § 1907 regardless of its components if the item is manufactured in the United States;
- (b) the Recipient may use information technology that is a commercial item;
- (c) the Recipient may use foreign construction materials that are listed at 48 C.F.R. 25.104; and
- (d) the Recipient may use foreign construction materials if the USDOT has authorized their use under subsection (d) of Article 18.

If the Recipient uses foreign construction material in violation of Article 18, the USDOT may disallow and deny reimbursement of costs incurred by the Recipient and take other remedial actions under article 15 and 2 C.F.R. 200.339.

The USDOT may authorize the Recipient to use foreign construction material, by modifying this agreement under section 21.1, if the USDOT determines that:

- (a) applying the Buy American statute to the construction material would be impracticable or inconsistent with the public interest;
- (b) the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
- (c) the cost of domestic construction material is unreasonable. To determine if a cost is unreasonable, the USDOT will follow processes described in 48 C.F.R. 25.106.

The Recipient may request that the USDOT authorize the Recipient to use foreign construction material under subsection (d) of Article 18. If the Recipient makes a request under this subsection (e), the Recipient shall provide adequate information for the USDOT to evaluate the request, including:

- (a) a description of the foreign and domestic construction materials;
- (b) unit of measure;
- (c) quantity;

- (d) price, including all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued);
- (e) time of delivery or availability;
- (f) location of the construction project;
- (g) name and address of the proposed supplier;
- (h) a detailed justification of the reason for use of foreign construction materials identifying the specific basis for an exception under subsection (d) of this term;
- (i) if the Recipient requests authorization under subsection (d)(3) of Article 18, a reasonable survey of the market and a full price comparison measuring the relative costs of the available domestic and foreign construction materials; and
- (j) if the Recipient submits the request after contract award, an explanation why the Recipient could not have, before contract award:
  - (1) reasonably foreseen the need for the determination and
  - (2) requested the determination.

The Recipient acknowledges that:

- (a) this agreement is not a Government procurement contract;
- (b) acquisitions of supplies, services, or construction materials by the Recipient under this agreement are not acquisitions by the Government; and
- (c) the Free Trade Agreement exceptions to the Buy American Act as provided by 48 C.F.R. Part 25, Subpart 25.4 are inapplicable to this agreement.

In Article 18, the following definitions apply: “commercially available off-the-shelf (COTS) item”

- (a) means any item of supply (including construction material) that is:
  - (1) a commercial item as defined by 48 C.F.R. § 2.101;
  - (2) sold in substantial quantities in the commercial marketplace; and
  - (3) offered to the Government, under an agreement, without modification, in the same form in which it is sold in the commercial marketplace; and
- (b) does not include bulk cargo, as defined in 46 U.S.C. § 40102(4), such as agricultural products and petroleum products. “construction material” means an article, material, or supply brought to the construction site by the Recipient for incorporation into the building or work. The term also includes an item brought to

the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site.

“cost of components” means—

- (a) For components purchased by the Recipient, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (b) For components manufactured by the Recipient, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“domestic construction material” means—

- (a) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—
  - (1) An unmanufactured construction material mined or produced in the United States; or
  - (2) A construction material manufactured in the United States, if:
    - (i) the cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered in calendar year 2029 or later. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or
    - (ii) the construction material is a COTS item manufactured in the United States; or
- (b) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all the components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of

all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of “cost of components” in this term.

“foreign construction material” means a construction material other than a domestic construction material.

“predominantly of iron or steel or a combination of both” means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

“United States” means the 50 States, the District of Columbia, and outlying areas.

- 18.3 **Small and Disadvantaged Business Requirements.** The Recipient shall expend all funds under this award in compliance with the requirements at 2 C.F.R. 200.321 (“Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms”).
- 18.4 **Engineering and Design Services.** The Recipient shall award each contract or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner that a contract for architectural and engineering services is negotiated under 2 CFR 200.320 or an equivalent qualifications-based requirement prescribed for or by the Recipient.
- 18.5 **Foreign Market Restrictions.** The Recipient shall not allow funds provided under this award to be used to fund the use of any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.
- 18.6 **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** The Recipient acknowledges that Section 889 of Pub. L. No. 115-232, 2 C.F.R. 200.216 and 2 C.F.R. 200.471 prohibit the Recipient and all subrecipients from procuring or obtaining certain telecommunications and video surveillance services or equipment under this award.
- 18.7 **Recipient Responsibilities for Subawards.** If the Recipient makes a subaward under this award, the Recipient shall comply with the requirements on pass-through entities under 2 C.F.R. parts 200 and 1201, including 2 C.F.R. 200.331–200.333.

## ARTICLE 19 COSTS, PAYMENTS, AND UNEXPENDED FUNDS

- 19.1 **Limitation of Federal Award Amount.** Under this award, the USDOT shall not provide funding greater than the amount obligated on the SMART Grant cover page, Item 11, Federal Funds Obligated. The Recipient acknowledges that USDOT is not liable for payments exceeding that amount, and the Recipient shall not request reimbursement of costs exceeding that amount.
- 19.2 **Projects Costs.** This award is subject to the cost principles at 2 C.F.R. part 200 subpart E, including provisions on determining allocable costs and determining allowable costs.
- 19.3 **Timing of Project Costs.**
- (a) The Recipient shall not charge to this award costs that are incurred after the period of performance.
  - (b) The Recipient shall not charge to this award costs that were incurred before the effective date of award of this agreement,
- 19.4 **Recipient Recovery of Federal Funds.** The Recipient shall make all reasonable efforts, including initiating litigation, if necessary, to recover Federal funds if the USDOT determines, after consultation with the Recipient, that those funds have been spent fraudulently, wastefully, or in violation of Federal laws, or misused in any manner under this award. The Recipient shall not enter a settlement or other final position, in court or otherwise, involving the recovery of funds under the award unless approved in advance in writing by the USDOT.
- 19.5 **Unexpended Federal Funds.** Any Federal funds that are awarded at section 10.1 but not expended on allocable, allowable costs remain the property of the United States.
- 19.6 **Timing of Payments to the Recipient.**
- (a) When reimbursement is used, the Recipient shall not request reimbursement of a cost before the Recipient has entered an obligation for that cost.
  - (b) Pursuant to 2 CFR 200.305, advance payments to Recipient must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the Recipient 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 Recipient for direct program or project costs and the proportionate share of any allowable indirect costs. The Recipient must make timely payment to contractors in accordance with the contract provisions.
- 19.7 **Payment Method.**



- (a) If the USDOT Payment System identified in section 5.2 is “DELPHI eInvoicing,” then the Recipient shall use the DELPHI eInvoicing System to request reimbursement or advance payment under this award unless the USDOT agreement officer provides written approval for the Recipient to use a different request and payment method.
- (b) The USDOT may deny a payment request that is not submitted using the method identified in section 5.2.

**19.8 Information Supporting Expenditures.**

- (a) If the USDOT Payment System identified in section 5.2 is “DELPHI eInvoicing,” then when requesting reimbursement of costs incurred or credit for cost share incurred, the Recipient shall electronically submit the SF 270 (Request for Advance or Reimbursement), shall identify the Federal share and the Recipient’s share of costs, and shall submit supporting cost detail to clearly document all costs incurred. As supporting cost detail, the Recipient shall include a detailed breakout of all costs incurred, including direct labor, indirect costs, other direct costs, and travel.
- (b) If the Recipient submits a request for reimbursement that the USDOT determines does not include or is not supported by sufficient detail, the USDOT may deny the request or withhold processing the request until the Recipient provides sufficient detail.

**19.9 Reimbursement Frequency.** If the USDOT Payment System identified in section 5.2 is “DELPHI eInvoicing,” then the Recipient shall not request reimbursement more frequently than monthly.

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**ARTICLE 20**  
**LIQUIDATION, ADJUSTMENTS, AND FUNDS AVAILABILITY**

**20.1 Liquidation of Recipient Obligations.**

- (a) The Recipient shall liquidate all obligations of award funds under this agreement not later than the earlier of (1) 120 days after the end of the period of performance or (2) 2 years after the date on which the grant is provided.
- (b) Liquidation of obligations and adjustment of costs under this agreement follow the requirements of 2 C.F.R. 200.344–200.346.

## ARTICLE 21 AGREEMENT MODIFICATIONS

- 21.1 **Bilateral Modifications.** The parties may amend, modify, or supplement this agreement by mutual agreement in writing signed by the USDOT and the Recipient. Either party may request to amend, modify, or supplement this agreement by written notice to the other party.
- 21.2 **Unilateral Contact Modifications.**
- (a) The USDOT may update the contacts who are listed in sections 4.4 by written notice to all of the Recipient contacts who are listed in section 4.3.
- 21.3 **USDOT Unilateral Modifications.**
- (a) The USDOT may unilaterally modify this agreement to comply with Federal law, including the Program Statute.
  - (b) To unilaterally modify this agreement under this section 21.3(a), the USDOT must provide a notice to the Recipient that includes a description of the modification and state the date that the modification is effective.
- 21.4 **Other Modifications.** The parties shall not amend, modify, or supplement this agreement except as permitted under sections 21.1, 21.2, or 21.3. If an amendment, modification, or supplement is not permitted under section 21.1, not permitted under section 21.2, and not permitted under section 21.3, it is void.

**ARTICLE 22**  
**CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE**

- 22.1 **Climate Change and Environmental Justice.** Consistent with Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad” (Jan. 27, 2021), Attachment C documents the consideration of climate change and environmental justice impacts of the Project.

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**ARTICLE 23**  
**RACIAL EQUITY AND BARRIERS TO OPPORTUNITY**

- 23.1 **Racial Equity and Barriers to Opportunity.** Consistent with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (Jan. 20, 2021), Attachment D documents activities related to the Project to improve racial equity and reduce barriers to opportunity.

**ARTICLE 24**  
**FEDERAL FINANCIAL ASSISTANCE, ADMINISTRATIVE, AND NATIONAL**  
**POLICY REQUIREMENTS**

- 24.1 **Uniform Administrative Requirements for Federal Awards.** The Recipient shall comply with the obligations on non-Federal entities under 2 C.F.R. parts 200 and 1201.
- 24.2 **Federal Law and Public Policy Requirements.**
- (a) The Recipient shall ensure that Federal funding is expended in full accordance with the United States Constitution, Federal law, and statutory and public policy requirements: including but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.
  - (b) The failure of this agreement to expressly identify Federal law applicable to the Recipient or activities under this agreement does not make that law inapplicable.
- 24.3 **Federal Freedom of Information Act.**
- (a) The USDOT is subject to the Freedom of Information Act, 5 U.S.C. 552.
  - (b) The Recipient acknowledges that the Technical Application and materials submitted to the USDOT by the Recipient related to this agreement may become USDOT records subject to public release under 5 U.S.C. 552.
- 24.4 **History of Performance.** Under 2 C.F.R 200.206, any Federal awarding agency may consider the Recipient's performance under this agreement when evaluating the risks of making a future Federal financial assistance award to the Recipient.
- 24.5 **Whistleblower Protection.**
- (a) The Recipient acknowledges that it is a "grantee" within the scope of 41 U.S.C. 4712, which prohibits the Recipient from taking certain actions against an employee for certain disclosures of information that the employee reasonably believes are evidence of gross mismanagement of this award, gross waste of Federal funds, or a violation of Federal law related this this award.
  - (b) The Recipient shall inform its employees in writing of the rights and remedies provided under 41 U.S.C. 4712, in the predominant native language of the workforce.
- 24.6 **External Award Terms and Obligations.**
- (a) In addition to this document and the contents described in article 29, this agreement includes the following additional terms as integral parts:

- (1) Appendix A to 2 C.F.R. part 25: System for Award Management and Universal Identifier Requirements;
- (2) Appendix A to 2 C.F.R. part 170: Reporting Subawards and Executive Compensation;
- (3) 2 C.F.R. 175.15(b): Trafficking in Persons; and
- (4) Appendix XII to 2 C.F.R. part 200: Award Term and Condition for Recipient Integrity and Performance Matters.

(b) The Recipient shall comply with:

- (1) 49 C.F.R. part 20: New Restrictions on Lobbying;
- (2) 49 C.F.R. part 21: Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964;
- (3) 49 C.F.R. part 27: Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance; and
- (4) Subpart B of 49 C.F.R. part 32: Governmentwide Requirements for Drug-free Workplace (Financial Assistance).

24.7 **Incorporated Certifications.** The Recipient makes the statements in the following certifications, which are incorporated by reference:

- (a) Appendix A to 49 CFR part 20 (Certification Regarding Lobbying).

## ARTICLE 25 ASSIGNMENT

- 25.1 **Assignment Prohibited.** The Recipient shall not transfer to any other entity any discretion granted under this agreement, any right to satisfy a condition under this agreement, any remedy under this agreement, or any obligation imposed under this agreement.



**ARTICLE 26  
WAIVER**

**26.1 Waivers.**

- (a) A waiver granted by USDOT under this agreement will not be effective unless it is in writing and signed by an authorized representative of USDOT.
- (b) A waiver granted by USDOT under this agreement on one occasion will not operate as a waiver on other occasions.
- (c) If USDOT fails to require strict performance of a provision of this agreement, fails to exercise a remedy for a breach of this agreement, or fails to reject a payment during a breach of this agreement, that failure does not constitute a waiver of that provision or breach.

**ARTICLE 27**  
**ADDITIONAL TERMS AND CONDITIONS**

- 27.1 **Disclaimer of Federal Liability.** The USDOT shall not be responsible or liable for any damage to property or any injury to persons that may arise from, or be incident to, performance or compliance with this agreement.
- 27.2 **Environmental Review**
- (a) In this section, “Environmental Review Entity” means:
- (1) if the Project is located in a State that has assumed responsibilities for environmental review activities under 23 U.S.C. 326 or 23 U.S.C. 327 and the Project is within the scope of the assumed responsibilities, the State; and
  - (2) for all other cases, an operating agency within the Department of Transportation will be identified to conduct NEPA evaluations.
- (b) Except as authorized under section 27.3(c), the Recipient shall not begin final design; acquire real property, construction materials, or equipment; begin construction; or take other actions that represent an irretrievable commitment of resources for the Project unless and until:
- (1) the Environmental Review Entity complies with the National Environmental Policy Act, 42 U.S.C. 4321 to 4370m-12, and any other applicable environmental laws and regulations; and
  - (2) if the Environmental Review Entity is not the Recipient, the Environmental Review Entity provides the Recipient with written notice that the environmental review process is complete.
- (c) If the Recipient is using procedures for early acquisition of real property under 23 C.F.R. 710.501 or hardship and protective acquisitions of real property 23 C.F.R. 710.503, the Recipient shall comply with 23 C.F.R. 771.113(d)(1).
- (d) The Recipient acknowledges that:
- (1) the Environmental Review Entity’s actions under section 27.3(a) depend on the Recipient conducting necessary environmental analyses and submitting necessary documents to the Environmental Review Entity; and
  - (2) applicable environmental statutes and regulation may require the Recipient to prepare and submit documents to other Federal, State, and local agencies.
- (e) Consistent with 23 C.F.R. 771.105(a), to the extent practicable and consistent with Federal law, the Recipient shall coordinate all environmental investigations, reviews, and consultations as a single process.

- (f) The activities described in this agreement may inform environmental decision-making processes, but the parties do not intend this agreement to document the alternatives under consideration under those processes. If a build alternative is selected that does not align information in this agreement, then:
- (1) the parties may amend this agreement under section 21.1 for consistency with the selected build alternative; or
  - (2) if the USDOT determines that the condition at section 16.1(a)(5) is satisfied, the USDOT may terminate this agreement under section 16.1(a)(5).
- (g) The Recipient shall complete any mitigation activities described in the environmental document or documents for the Project, including the terms and conditions contained in the required permits and authorizations for the Project.
- (h) The Recipient may not expend any of the funds provided in this Agreement or incur expenses under this Agreement on final design, construction, or other activities that represent an irretrievable commitment of resources unless and until it complies with the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (“NEPA”), Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) (“NHPA”), and any other applicable environmental laws and regulations, and DOT has provided the Recipient with a written notice that the environmental review process is complete. At that time, DOT may authorize the distribution and expenditure of funds. The Recipient may not obligate or expend any funds (federal, state or private) for final design, construction, or other activities that represent an irretrievable commitment of resources for the Project, or commence any part of final design, construction, or other activities that represent an irretrievable commitment of resources for the Project or any component of the Project, without receiving such written confirmation from DOT. The Recipient may participate in planning activities, as long as it doesn’t constitute an irretrievable commitment to a specific course of action. Depending on the outcome of the environmental review process, DOT may rescind this Agreement or may pursue any other permissible remedy under 2 C.F.R. § 200.338-200.342.

### 27.3 **Railroad Coordination.**

- (a) If the agreement includes one or more milestones identified as a “Railroad Coordination Agreement,” then for each of those milestones, the Recipient shall enter a standard written railroad coordination agreement, consistent with 23 C.F.R. 646.216(d), no later than the deadline date identified for that milestone, with the identified railroad for work and operation within that railroad’s right-of-way.

### 27.4 **Relocation and Real Property Acquisition.**

- (a) The Recipient shall comply with the land acquisition policies in 49 C.F.R. part 24 subpart B and shall pay or reimburse property owners for necessary expenses as specified in that subpart.

- (b) The Recipient shall provide a relocation assistance program offering the services described in 49 C.F.R. part 24 subpart C and shall provide reasonable relocation payments and assistance to displaced persons as required in 49 C.F.R. part 24 subparts D–E.
- (c) The Recipient shall make available to displaced persons, within a reasonable period of time prior to displacement, comparable replacement dwellings in accordance with 49 C.F.R. part 24 subpart E.

#### 27.5 **Equipment Disposition.**

- (a) In accordance with 2 C.F.R. 200.313 and 1201.313, if the Recipient or a subrecipient acquires equipment under this award, then when that equipment is no longer needed for the Project that entity shall request disposition instructions from the FHWA.
- (b) In accordance with 2 C.F.R. 200.443(d), the distribution of the proceeds from the disposition of equipment must be made in accordance with 2 C.F.R. 200.313–200.316 and 2 C.F.R. 1201.313.
- (c) The Recipient shall ensure compliance with this section 27.6 for all tiers of subawards under this award.

**ARTICLE 28  
MANDATORY AWARD INFORMATION**

**28.1 Information Contained in a Federal Award.** For 2 C.F.R. 200.211:

- (a) the “Federal Award Date” is the date of this agreement, as defined under section 30.2;
- (b) the “Assistance Listings Number” is 20.941 and the “Assistance Listings Title” is “Strengthening Mobility and Revolutionizing Transportation (SMART) Grants Program”; and
- (c) this award is not for research and development.

## ARTICLE 29 CONSTRUCTION AND DEFINITIONS

29.1 **Attachments.** This agreement includes the following attachments as integral parts:

Attachment A Performance Measurement Information  
 Attachment B Changes from Application  
 Attachment C Climate Change and Environmental Justice Impacts  
 Attachment D Racial Equity and Barriers to Opportunity  
 Attachment E Labor and Workforce  
 Attachment F Critical Infrastructure Security and Resilience

29.2 **Exhibits.** The following exhibits, which are in the document titled “Exhibits to Grant Agreements Under the Fiscal Year 2022 SMART Grant Program”, available at <https://www.transportation.gov/grants/SMART>, are part of this agreement

Exhibit A Applicable Federal Laws and Regulations  
 Exhibit B Additional Standard Terms  
 Exhibit C Quarterly Reports and Recertifications: Format and Content  
 Exhibit D Certification for Contracts, Grants, Loans, And Cooperative Agreements  
 Exhibit E FAA Regulations  
 Exhibit F Communications Technology  
 Exhibit G Equipping or Retrofitting Motor Vehicles  
 Exhibit H Eligible Cost  
 Exhibit I Data Collection Requirements

29.3 **Construction.**

- (a) If a provision in the exhibits or the attachments conflicts with a provision in articles 1–30, then the provision in articles 1–30 prevails. If a provision in the attachments conflicts with a provision in the exhibits, then the provision in the attachments prevails.

29.4 **Integration.**

- (a) This agreement constitutes the entire agreement of the parties relating to the SMART grant program and awards under that program and supersedes any previous agreements, oral or written, relating to the SMART grant program and awards under that program.

29.5 **Definitions.** In this agreement, the following definitions apply:

“**Program Statute**” means the BIL Section 25005 of the Infrastructure Investment and Jobs Act (Pub. L. 117–58, November 15, 2021; and statutory text under the heading “Strengthening mobility and revolutionizing transportation grant program” in title I of division J of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (November

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15, 2021), and all other provisions of that act that apply to amounts appropriated under that heading.

“**Project**” means the project proposed in the Grant Application, as modified by the negotiated provisions of this agreement, including article 3 and Attachments A–E.

“**SMART Grant**” means an award of funds that were made available under the NOFO.

“**Grant Application**” means the application identified in section 2.1, including Standard Form 424 and all information and attachments submitted with that form through Grants.gov.

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**ARTICLE 30**  
**AGREEMENT EXECUTION AND EFFECTIVE DATE**

- 30.1 **Counterparts.** This agreement may be executed in counterparts, which constitute one document. The parties intend each countersigned original to have identical legal effect.
- 30.2 **Effective Date.** The agreement will become effective when all parties have signed it. The date of this agreement will be the date this agreement is signed by the last party to sign it. This instrument constitutes a SMART Grant when the USDOT’s authorized representative signs it.
- 30.3 **Termination.** Should this Grant Agreement be terminated prior to the end date of the Period of Performance, DOT reserves the right to require that the Recipient return to DOT any of the funds reimbursed for expenses subsequently deemed ineligible.



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**U.S. DEPARTMENT OF TRANSPORTATION**  
**EXHIBITS TO USDOT/OST GRANT AGREEMENTS UNDER THE**  
**FISCAL YEAR 2022 SMART GRANT PROGRAM**

**EXHIBIT A****APPLICABLE FEDERAL LAWS AND REGULATIONS**

By entering into this agreement for a SMART Grant, the Recipient assures and certifies, with respect to this Grant, that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Project. Performance under this agreement shall be governed by and in compliance with the following requirements, as applicable, to the type of organization of the Recipient and any applicable sub-recipients. The applicable provisions to this agreement include, but are not limited to, the following:

**General Federal Legislation**

- a. Federal Fair Labor Standards Act - 29 U.S.C. §§ 201, et seq.
- b. Hatch Act - 5 U.S.C. §§ 1501, et seq.
- c. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 - 42 U.S.C. §§ 4601, et seq.
- d. National Historic Preservation Act of 1966 - 54 U.S.C. § 306108
- e. Archeological and Historic Preservation Act of 1974 - 54 U.S.C. §§ 312501, et seq.
- f. Native American Graves Protection and Repatriation Act - 25 U.S.C. §§ 3001, et seq.
- g. Clean Air Act – 42 U.S.C. §§ 7401, et. seq.
- h. Clean Water Act - 33 U.S.C. §§ 1251, et seq.
- i. Endangered Species Act – 16 U.S.C. §§ 1531 et seq.
- j. Coastal Zone Management Act – 16 U.S.C. §§ 1451 et seq.
- k. Flood Disaster Protection Act of 1973 – 42 U.S.C. §§ 4001 et seq.
- l. Age Discrimination Act of 1975, as amended - 42 U.S.C. §§ 6101, et seq.
- m. American Indian Religious Freedom Act, 42 U.S.C. 1996
- n. Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101, et seq.
- o. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91-616, as amended - 42 U.S.C. §§ 4541, et seq.
- p. Sections 523 and 527 of the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2
- q. Architectural Barriers Act of 1968 - 42 U.S.C. §§ 4151, et seq.
- r. Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 - 42 U.S.C. § 8373
- s. Contract Work Hours and Safety Standards Act - 40 U.S.C. §§ 3701, et seq.
- t. Copeland Anti-kickback Act, as amended - 18 U.S.C. § 874 and 40 U.S.C. § 3145
- u. National Environmental Policy Act of 1969 - 42 U.S.C. §§ 4321, et seq.
- v. Wild and Scenic Rivers Act – 16 U.S.C. §§ 1271, et seq.
- w. Federal Water Pollution Control Act, as amended – 33 U.S.C. 1251-1376
- x. Single Audit Act of 1984 - 31 U.S.C. §§ 7501, et seq.
- y. Americans with Disabilities Act of 1990 - 42 U.S.C. § 12101, et seq.
- z. Title IX of the Education Amendments of 1972, as amended - 20 U.S.C. §§ 1681–1683 and §§ 1685–1687
- aa. Section 504 of the Rehabilitation Act of 1973, as amended - 29 U.S.C. § 794
- bb. Title VI of the Civil Rights Act of 1964 - 42 U.S.C. §§ 2000d, et seq.
- cc. Title IX of the Federal Property and Administrative Services Act of 1949 - 40 U.S.C.

- §§ 1101–1104
- dd. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. § 1352
  - ee. Freedom of Information Act - 5 U.S.C. § 552, as amended
  - ff. Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. §§ 1801, et seq.
  - gg. Farmland Protection Policy Act of 1981 – 7 U.S.C. §§ 4201, et seq.
  - hh. Noise Control Act of 1972 – 42 U.S.C. §§ 4901, et seq.
  - ii. Fish and Wildlife Coordination Act of 1956 – 16 U.S.C. §§ 661, et seq.
  - jj. Section 9 of the Rivers and Harbors Act and the General Bridge Act of 1946 - 33 U.S.C. §§ 401 and 525
  - kk. Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. § 303 and 23 U.S.C. § 138
  - ll. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) – 42 U.S.C. §§ 9601, et seq.
  - mm. Safe Drinking Water Act – 42 U.S.C. §§ 300f, et seq.
  - nn. The Wilderness Act – 16 U.S.C. §§ 1131, et seq.
  - oo. Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 – 42 U.S.C. 6901, et seq.
  - pp. Migratory Bird Treaty Act 16 U.S.C. §§ 703, et seq.
  - qq. The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252)
  - rr. Cargo Preference Act of 1954 – 46 U.S.C. § 55305
  - ss. Build America, Buy America Act – Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298
  - tt. Section 889 of the John D. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232

### **Executive Orders**

- a. Executive Order 11246 – Equal Employment Opportunity
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11988 – Floodplain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12549 – Debarment and Suspension
- f. Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- g. Executive Order 13166 – Improving Access to Services for Persons with Limited English Proficiency
- h. Executive Order 13985 – Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- i. Executive Order 14005 – Ensuring the Future is Made in All of America by All of America’s Workers
- j. Executive Order 14008 – Tackling the Climate Crisis at Home and Abroad

**General Federal Regulations**

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 C.F.R. Parts 200, 1201
- b. Non-procurement Suspension and Debarment – 2 C.F.R. Parts 180, 1200
- c. Investigative and Enforcement Procedures – 14 C.F.R. Part 13
- d. Procedures for predetermination of wage rates – 29 C.F.R. Part 1
- e. Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States – 29 C.F.R. Part 3
- f. Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) – 29 C.F.R. Part 5
- g. Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) – 41 C.F.R. Parts 60, et seq.
- h. New Restrictions on Lobbying – 49 C.F.R. Part 20
- i. Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 – 49 C.F.R. Part 21
- j. Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs – 49 C.F.R. Part 24
- k. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – 49 C.F.R. Part 25
- l. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance – 49 C.F.R. Part 27
- m. DOT's implementation of DOJ's ADA Title II regulations compliance procedures for all programs, services, and regulatory activities relating to transportation under 28 C.F.R. Part 35
- n. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 C.F.R. Part 28
- o. Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors – 49 C.F.R. Part 30
- p. Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) – 49 C.F.R. Part 32
- q. DOT's implementing ADA regulations for transit services and transit vehicles, including the DOT's standards for accessible transportation facilities in Part 37, Appendix A – 49 C.F.R. Parts 37 and 38
- r. Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs – 49 C.F.R. Part 26 (as applicable under section 18.3 of this agreement)

Specific assurances required to be included in the FY 2022 SMART Grant agreement by any of the above laws, regulations, or circulars are hereby incorporated by reference into this agreement.

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**EXHIBIT B**  
**ADDITIONAL STANDARD TERMS**

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**TERM B.1  
TITLE VI ASSURANCE  
(Implementing Title VI of the Civil Rights Act of 1964, as amended)**

**ASSURANCE CONCERNING NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE**

(Implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act, as amended)

49 C.F.R. Parts 21, 25, 27, 37 and 38

**The United States Department of Transportation (USDOT)**

**Standard Title VI/Non-Discrimination Assurances**

**DOT Order No. 1050.2A**

By signing and submitting the Technical Application and by entering into this agreement under the FY 2022 SMART grant program, the Recipient **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Office of the Secretary (OST), it 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.*

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.

SMART award recipients should demonstrate compliance with civil rights obligations and nondiscrimination laws, including Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act, and implementing regulations. This should include a current Title VI plan, completed Community Participation Plan, and a plan to address any legacy infrastructure or facilities that are not compliant with ADA standards. The Department's and the applicable Operating Administrations' Offices of Civil Rights may work with awarded grant recipients to ensure full compliance with Federal civil rights requirements.

### **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 FY 2022 SMART grant program:

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 the FY 2022 SMART Grant and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

*"The Recipient, 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 for any contract entered into pursuant to this advertisement, disadvantaged business enterprises 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 an award."*

3. 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.
4. 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.

5. 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.
6. 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.
7. 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.
8. 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.
9. 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, 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.
10. 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.
11. The Recipient shall retain all documents relevant to this Grant Agreement and the Grant Project for a period of three (3) years after completion of all projects undertaken pursuant to the Grant Agreement and receipt of final reimbursement from the U.S. Treasury, whichever is later. It shall furnish DOT, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement,



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litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Recipient, in court or otherwise, involving the recovery of such Federal share shall be approved in advance by DOT.

By signing this ASSURANCE, the Recipient also agrees to comply (and require any sub-recipients, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing DOT/OST'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 DOT/OST. You must keep records, reports, and submit the material for review upon request to DOT/OST, 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.

The Recipient 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 FY 2022 SMART grant program. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FY 2022 SMART grant program.

## 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, Maritime Administration (DOT/OST), 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 C.F.R. 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 Recipient or DOT/OST 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 Recipient or DOT/OST, 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 Recipient will impose such contract sanctions as it or DOT/OST 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 DOT/OST may direct as a means of enforcing such provisions including

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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 Specific Assurance 4:

**NOW, THEREFORE**, the U.S. Department of Transportation as authorized by law and upon the condition that the Recipient will accept title to the lands and maintain the project constructed thereon in accordance with the Consolidated Appropriations Act, 2022 (Pub. L. 116-260, Dec. 27, 2020) the Regulations for the Administration of FY 2022 SMART grant program, and the policies and procedures prescribed by the Maritime Administration (DOT/OST) 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 Recipient 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 Recipient 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 Recipient, its successors and assigns.

The Recipient, 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 Recipient 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].\*

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(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order 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 Recipient pursuant to the provisions of Specific Assurance 7(a):

- A. The (Recipient, 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 (Recipient, 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, Recipient 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 Recipient 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 Recipient 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 Recipient pursuant to the provisions of Specific Assurance 7(b):

- A. The (Recipient, 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 (Recipient, 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, Recipient 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, Recipient will there upon revert to and vest in and become the absolute property of Recipient 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:

### A. 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 C.F.R. 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 C.F.R. 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 U.S.C. § 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 nondiscrimination 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);



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- 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).

**TERM B.2**  
**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER**  
**RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS**

**2 C.F.R. Parts 180 and 1200**

These assurances and certifications are 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 DOT/OST approval or that is estimated to cost \$25,000 or more – as defined in 2 C.F.R. Parts 180 and 1200.

By signing and submitting the Technical Application and by entering into this agreement under the FY 2022 SMART grant program, the Recipient is providing the assurances and certifications for First Tier Participants and Lower Tier Participants in the FY 2022 SMART Grant, as set out below.

**1. Instructions for Certification – First Tier Participants:**

(Applicable to all first-tier subawards regardless of potential value and require first tier-subrecipients and lower-tier subrecipients to similarly check SAM.gov; and, for all first-tier procurement contracts with a value of \$25,000 or more and all lower tiers of subcontracts under covered non-procurement transactions (2 CFR § 180.220).

- a. 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,” “civil judgment,” “debarred,” “suspended,” “ineligible,” “participant,” “person,” “principal,” and “voluntarily excluded,” as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a Recipient or subrecipient 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 Recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers to 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 System for Award Management website (<https://www.sam.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.

**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, including a civil settlement, 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 DOT/OST approval or estimated to cost \$25,000 or more - 2 C.F.R. Parts 180 and 1200)

- a. The prospective lower tier participant 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,” “civil settlement,” “debarred,” “suspended,” “ineligible,” “participant,” “person,” “principal,” and “voluntarily excluded,” as used in

this clause, are defined in 2 C.F.R. 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 Recipient or subrecipient 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 Recipient or subrecipient 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 System for Award Management website (<https://www.sam.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.
- i. 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.

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**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.

**TERM B.3**  
**REQUIREMENTS REGARDING DELINQUENT TAX LIABILITY OR A FELONY**  
**CONVICTION UNDER ANY FEDERAL LAW**

As required by sections 744 and 745 of Title VII, Division E of the Consolidated Appropriations Act, 2023 (Pub. L. 116-260), and implemented through USDOT Order 4200.6, the funds provided under this award shall not be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that:

1. Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or
2. Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government.

The Recipient therefore agrees:

1. **Definitions.** For the purposes of this exhibit, the following definitions apply:

“**Covered Transaction**” means a transaction that uses any funds under this award and that is a contract, memorandum of understanding, cooperative agreement, grant, loan, or loan guarantee.

“**Execution of Grant Agreement**” Signing of this Grant Agreement by DOT and the Recipient.

“**Felony Conviction**” means a conviction within the preceding 24 months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the United States Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. 3559.

“**Participant**” means the Recipient, an entity who submits a proposal for a Covered Transaction, or an entity who enters into a Covered Transaction.

“**Tax Delinquency**” means an unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed,

and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2. **Mandatory Check in the System for Award Management.** Before entering a Covered Transaction with another entity, a Participant shall check the System for Award Management (the “SAM”) at <http://www.sam.gov/> for an entry describing that entity.
3. **Mandatory Certifications.** Before entering a Covered Transaction with another entity, a Participant shall require that entity to:
  - 1) Certify whether the entity has a Tax Delinquency; and
  - 2) Certify whether the entity has a Felony Conviction.
4. **Prohibition.** If
  - 1) the SAM entry for an entity indicates that the entity has a Tax Delinquency or a Federal Conviction;
  - 2) an entity provides an affirmative response to either certification in section 3; or
  - 3) an entity’s certification under section 3 was inaccurate when made or became inaccurate after being made

then a Participant shall not enter or continue a Covered Transaction with that entity unless the USDOT has determined in writing that suspension or debarment of that entity are not necessary to protect the interests of the Government.
5. **Mandatory Notice to the USDOT.**
  - 1) If the SAM entry for a Participant indicates that the Participant has a Tax Delinquency or a Felony Conviction, the Recipient shall notify the USDOT in writing of that entry.
  - 2) If a Participant provides an affirmative response to either certification in section 1, the Recipient shall notify the USDOT in writing of that affirmative response.
  - 3) If the Recipient knows that a Participant’s certification under section 1 was inaccurate when made or became inaccurate after being made, the Recipient shall notify the USDOT in writing of that inaccuracy.
6. **Flow Down.** For all Covered Transactions, including all tiers of subcontracts and subawards, the Recipient shall:
  - a. require the SAM check in section 2;



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- b. require the certifications in section 3;
- c. include the prohibition in section 4; and
- d. require all Participants to notify the Recipient in writing of any information that would require the Recipient to notify the USDOT under section 5.

## TERM B.4 RECIPIENT POLICY TO BAN TEXT MESSAGING WHILE DRIVING

*Definitions.* The following definitions are intended to be consistent with the definitions in DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009) and Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009). For clarification purposes, they may expand upon the definitions in the executive order.

For the purpose of this Term B.3, “**Motor Vehicles**” means any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for use on a local, State or Federal roadway, but does not include a military design motor vehicle or any other vehicle excluded under Federal Management Regulation 102-34-15.

For the purpose of this Term B.3, “**Driving**” means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic congestion, a traffic signal, a stop sign, another traffic control device, or otherwise. It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.3, “**Text messaging**” means reading from or entering data into any handheld or other electronic device (including, but not limited to, cell phones, navigational tools, laptop computers, or other electronic devices), including for the purpose of Short Message Service (SMS) texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless this practice is prohibited by State or local law. The term also does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.3, the “**Government**” includes the United States Government and State, local, and tribal governments at all levels.

*Workplace Safety.* In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009) and DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009), the Recipient, subrecipients, contractors, and subcontractors are encouraged to:

(1) adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—

(i) Company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as—

- (i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
- (ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(c) *Subawards and Contracts.* To the extent permitted by law, the Recipient shall insert the substance of this exhibit, including this paragraph (c), in all subawards, contracts, and subcontracts under this award that exceed the micro-purchase threshold, other than contracts and subcontracts for the acquisition of commercially available off-the-shelf items.

## EXHIBIT C

### QUARTERLY REPORTS AND RECERTIFICATIONS: FORMAT AND CONTENT

1. **Purpose.** The purpose of the Quarterly Reports and Recertifications under this agreement for the FY 2022 SMART grant program are to ensure that the project scope, schedule, and budget will be maintained to the maximum extent possible.
2. **Format and Content.** The Recipient shall produce a quarterly cost, schedule, and status report that contains the sections enumerated in the following list. At the discretion of the USDOT, modifications or additions can be made to produce a quarterly reporting format that will most effectively serve both the Recipient and the USDOT. Some projects will have a more extensive quarterly status than others. For smaller projects, the USDOT may determine that the content of the quarterly reports will be streamlined, and project status meetings will be held on a less-frequent basis. The first quarterly progress report should include a detailed description and, where appropriate, drawings of the items funded.
  - a. **Project Overall Status.** This section provides an overall status of the project's scope, schedule and budget. The Recipient shall note and explain any deviations from the scope of work, the schedule, or the budget that are described in this agreement.
  - b. **Project Significant Activities and Issues.** This section provides highlights of key activities, accomplishments, and issues occurring on the project during the previous quarter. Activities and deliverables to be reported on should include meetings, audits and other reviews, design packages submitted, advertisements, awards, construction submittals, construction completion milestones, submittals related to any applicable Recovery Act requirements, media or Congressional inquiries, value engineering/constructability reviews, and other items of significance. This section should specifically address progress towards compliance and issues related to the National Environmental Policy Act (NEPA), the Build America Buy America Act, and the high labor standards prioritized in Executive Order 14052, "Implementation of the Infrastructure Investments and Jobs Act."
  - c. **Action Items/Outstanding Issues.** This section should draw attention to, and track the progress of, highly significant or sensitive issues requiring action and direction in order to resolve. The Recipient should include administrative items and outstanding issues that could have a significant or adverse effect on the project's scope, schedule, or budget. Status, responsible person(s), and due dates should be included for each action item/outstanding issue. Action items requiring action or direction should be included in the quarterly status meeting agenda. The action items/outstanding issues may be dropped from this section upon full implementation of the remedial action, and upon no further monitoring anticipated.

- d. **Project Scope Overview.** The purpose of this section is to provide a further update regarding the project scope. If the original scope contained in the grant agreement is still accurate, this section can simply state that the scope is unchanged.
- e. **Project Schedule.** An updated master program schedule reflecting the current status of the program activities should be included in this section. A Gantt (bar) type chart is probably the most appropriate for quarterly reporting purposes, with the ultimate format to be agreed upon between the Recipient and the USDOT. It is imperative that the master program schedule be integrated, i.e., the individual contract milestones tied to each other, such that any delays occurring in one activity will be reflected throughout the entire program schedule, with a realistic completion date being reported. Narratives, tables, and/or graphs should accompany the updated master program schedule, basically detailing the current schedule status, delays and potential exposures, and recovery efforts. The following information should also be included:
- Current overall project completion percentage vs. latest plan percentage.
  - Completion percentages vs. latest plan percentages for major activities such as right-of-way, major or critical design contracts, major or critical construction contracts, and significant force accounts or task orders. A schedule status description should also be included for each of these major or critical elements.
  - Any delays or potential exposures to milestone and final completion dates. The delays and exposures should be quantified, and overall schedule impacts assessed. The reasons for the delays and exposures should be explained, and initiatives being analyzed or implemented in order to recover the schedule should be detailed.
- f. **Project Cost.** An updated cost spreadsheet reflecting the current forecasted cost vs. the latest approved budget vs. the baseline budget should be included in this section. One way to track project cost is to show: (1) Baseline Budget, (2) Latest Approved Budget, (3) Current Forecasted Cost Estimate, (4) Expenditures or Commitments to Date, and (5) Variance between Current Forecasted Cost and Latest Approved Budget. Line items should include all significant cost centers, such as prior costs, right-of-way, preliminary engineering, environmental mitigation, general engineering consultant, section design contracts, construction administration, utilities, construction packages, force accounts/task orders, wrap-up insurance, construction contingencies, management contingencies, and other contingencies. The line items can be broken-up in enough detail such that specific areas of cost change can be sufficiently tracked, and future improvements made to the overall cost estimating methodology. A Program Total line should be included at the bottom of the spreadsheet. Narratives, tables, and/or graphs should accompany the updated cost spreadsheet, basically detailing the current cost status, reasons for cost deviations, impacts of cost overruns, and efforts to mitigate cost overruns. The following information should be provided:

- Reasons for each line-item deviation from the approved budget, impacts resulting from the deviations, and initiatives being analyzed or implemented in order to recover any cost overruns.
- Transfer of costs to and from contingency line items, and reasons supporting the transfers.
- Speculative cost changes that potentially may develop in the future, a quantified dollar range for each potential cost change, and the current status of the speculative change. Also, a comparison analysis to the available contingency amounts should be included, showing that reasonable and sufficient amounts of contingency remain to keep the project within the latest approved budget.
- Detailed cost breakdown of the general engineering consultant (GEC) services (if applicable), including such line items as contract amounts, task orders issued (amounts), balance remaining for tasks, and accrued (billable) costs.
- Federal obligations and/or disbursements for the project, compared to planned obligations and disbursements.

**g. Certifications.**

- i. A certification that the Recipient is in compliance with 2 C.F.R. 200.303 (Internal Controls) and 2 C.F.R. Part 200, Subpart F (Audit Requirements).
  - ii. The certification required under 2 C.F.R. 200.415(a).
3. Recipients are required to complete post-award reports per the terms and conditions of the award. The types of reports include financial, performance, and other types of required reports.
  4. End dates for reporting periods are 3/31, 6/30, 9/30, or 12/31, regardless of budget period start dates. Deadlines for quarterly and semi-annual reports are no later than 30 days after the end of the reporting period. Annual reports are due no later than 90 days after the end of the reporting period. The Recipient shall provide all reporting deliverables detailed below. Reports should be submitted/mailed to [smartreports@dot.gov](mailto:smartreports@dot.gov) .

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Deliverable	Due Date
<p><b>Milestone Progress Performance Reports</b></p> <p>Submit progress reports to monitor project progress and ensure accountability and financial transparency, as well as to document activities performed, anticipated activities, and any changes to schedule or anticipated issues.</p>	<p>Quarterly (or semi-annual if directed)</p>
<p><b>Federal Financial Report (FFR) (SF-425)</b></p> <p>The Federal Financial Report (SF-425) is a financial reporting form used throughout the Federal Government Grant system. Recipients shall complete this form and attach it to each quarterly Milestone Progress Performance Reports. The form is available at <a href="https://www.grants.gov/forms/post-award-reporting-forms.html">https://www.grants.gov/forms/post-award-reporting-forms.html</a>.</p>	<p>Quarterly (or semi-annual if directed)</p>
<p><b>Evaluation and Data Management Plan</b></p> <p>The Recipient shall submit an evaluation and data management plan that provides an overview of how the project will be evaluated and how the data collected will be managed and stored. The Evaluation and Data Management Plan shall include the following three sections:</p> <ol style="list-style-type: none"> <li>a. An overview of how the proof-of-concept or prototype will be evaluated and how the data collected will be managed and stored.</li> <li>b. A description of the anticipated impact areas (i.e. goals) of the project if implemented at scale and the methods that will be used to estimate the anticipated benefits and costs associated with implementation.</li> <li>c. Robust performance metrics and measurable targets based on the project goals to inform whether the proof-of-concept or prototype meets expectations and whether full implementation would meet program goals</li> <li>d. The baseline data for each performance measure that is identified in the Performance Measure Table in Attachment A and a detailed description of the data sources, assumptions, variability, and estimated levels of precision for each performance measure.</li> </ol>	<p>Within 90 calendar days after execution of this Agreement.</p>
<p><b>Implementation Report</b></p> <p>The Recipient shall submit an implementation report that assesses the anticipated costs and benefits of the project and demonstrates the feasibility of at-scale implementation. The Implementation Report shall include the following five sections:</p>	<p>Annual- Stage 1 grants require a Draft report due within 1 year of the grant award.</p>

Item 9.

<ul style="list-style-type: none"> <li>a. A description of the anticipated deployment and operational costs of the project as compared to the benefits and savings from the project if implemented at scale.</li> <li>b. The means by which the project has met the original expectation, as projected in the grant application, including data describing the means by which the project met the specific goals.</li> <li>c. Lessons learned and recommendations for future deployment strategies to optimize transportation efficiency and multimodal system performance.</li> <li>d. A description of the requirements for a successful at-scale deployment and an assessment of the feasibility of at-scale implementation.</li> <li>e. An analysis of the success, challenges and validity of the initial approach, any changes or improvements they would make in Stage 2 if recommended for award and any challenges to continued maintenance and operations in stage 2.</li> <li>f. The performance measurement data for each performance measure that is identified in the Performance Measure Table in Attachment A.</li> </ul>	
<p><b>Program Evaluation</b></p> <p>As a condition of grant award, grant recipients may be required to participate in an evaluation undertaken by USDOT or another agency or partner. Evaluation may take different forms such as an implementation assessment across grant recipients, an impact and/or outcomes analysis of all the selected sites within or across grant recipients, or a benefit/cost analysis or assessment of return on investment. As a part of the evaluation, as a condition of award, grant recipients must agree to</p> <ul style="list-style-type: none"> <li>a. Make records available to the evaluation contractor or USDOT staff.</li> <li>b. Provide access to program records, and any other relevant documents to calculate costs and benefits.</li> <li>c. In case of an impact analysis, facilitate the access to relevant information as requested.</li> <li>d. Follow evaluation procedures as specified by the evaluation contractor or USDOT staff.</li> </ul>	<p>As applicable</p>



Item 9.

<p><b>Reporting of Matters Related to Recipient Integrity and Performance</b></p> <p>If the total value of a selected applicant’s 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 the applicant during that period of time must maintain the currency of information reported to the SAM that is made available in the designated integrity and performance system (currently FAPIIS) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition.</p> <p>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.</p>	As applicable
<p><b>Tangible Personal Property Report (SF-428)</b></p> <p>The recipient must report on the status of personal property in which the Federal Government retains an interest. Interim property reports may be required at DOT discretion. A final personal property report is required at closeout.</p>	As applicable
<p><b>Real Property Status Report (SF-429)</b></p> <p>The report is a multi-purpose form that DOT may require for general reporting about real property acquired or constructed under a federal award, as well as for recipients to make a request related to acquisition or improvement of real property or to request disposition instructions. If applicable, recipients shall submit this report in accordance with the terms provided in 2 CFR § 200.329, no less frequently than annually.</p>	As applicable
<p><b>Final Report</b></p> <p>The Recipient shall submit (in a format to be provided by DOT) the Recipient’s assessment of the Grant Project to DOT within the Closeout process of the grant agreement.</p>	Final report shall be submitted not later than 120 days after the end of the period of performance
<p><b>Additional Reporting</b> may be required</p>	As applicable

**EXHIBIT D****CERTIFICATION REGARDING INFLUENCING ACTIVITIES  
CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE  
AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. 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 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.
2. 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 Influencing Activities," in accordance with its instructions.
3. The undersigned 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 and disclose 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.

**EXHIBIT E****FAA REGULATIONS**

Innovative aviation projects must comply with all FAA and other federal, state, and local regulations relevant to the technologies and usages thereof. For instance, in the case of innovative aviation projects involving small, unmanned aircraft systems (UAS), applicants are responsible for complying with regulations which may include, and are not limited to the following, as necessary to achieve desired outcomes:

- 14 CFR Part 91 General Operating and Flight Rules
- 14 CFR Part 107 small UAS rule; Small UAS
- UAS Operations over People rule; Operations Over People General Overview
- UAS Remote identification rule; UAS Remote Identification Overview

Proponents of innovative aviation projects are also responsible for using U.S. government tools and resources which may include, and are not limited to the following, as necessary to fulfill requirements to operate technologies and achieve desired outcomes:

- FAA DroneZone, used to register UAS
- FAA Low Altitude Authorization and Notification Capability (LAANC), used to obtain airspace authorization to fly in controlled airspace
- Part 107 Waiver Resources, used to enable more complex UAS operations

## **EXHIBIT F**

### **Communications Technology**

Projects that use communications technologies must either:

- 1) use Vehicle-to-Everything (V2X) services that utilize Cellular Vehicle-to-Everything (C-V2X) based technology designed to operate within the 30 MHz of spectrum (5.895 - 5.925 GHz) that are consistent with the rules established in waivers associated with Federal Communications Commission (FCC) ET Docket No. 19-138 and future Report and Orders effective at the time when the Department selects projects for funding under the FY22-SMART Grants Program; or
- 2) leverage other communications technologies that can support V2X services and operate in spectrum outside of the 5.895 -5.925 GHz range.

Item 9.

## **EXHIBIT G**

### **Equipping or Retrofitting Motor Vehicles**

Projects that involve equipping or retrofitting motor vehicles with additional technologies are only eligible if the vehicles are publicly owned, leased or used in a contracted service; equipping privately owned and operated vehicles outside of a leased or contracted service is not an eligible activity. Projects involving motor vehicles must involve only vehicles that comply with all applicable Federal Motor Vehicle Safety Standards (FMVSSs) and Federal Motor Carrier Safety Regulations (FMCSRs), or vehicles that are exempt from the requirements in a manner that allows for the legal acquisition and operation of the vehicles in the proposed project.

## EXHIBIT H

### Eligible Costs

Broadly, eligible activity costs must comply with the cost principles set forth in 2 CFR Part 200, Subpart E (i.e., 2 CFR § 200.403 and § 200.405). USDOT reserves the right to make cost eligibility determinations on a case-by-case basis. Eligible development and construction activities for grant funding are the following:

- planning;
- feasibility analyses;
- revenue forecasting;
- environmental review;
- permitting;
- preliminary engineering and design work;
- systems development or information technology work;
- acquisition of real property (including land and improvements to land relating to an eligible project);
- construction;
- reconstruction;
- rehabilitation;
- replacement;
- environmental mitigation;
- construction contingencies; and
- acquisition of equipment, including vehicles.

The following are not eligible costs for SMART Grants Program funding:

- reimbursement of any pre-award costs or application preparation costs of the SMART grant application;
- traffic or parking enforcement activity; or
- purchase or lease of a license plate reader.

Federal funds may not be used to support or oppose union organizing, whether directly or as an offset for other funds.

## EXHIBIT I

### Data Collection Requirements Data Management

To fulfill the reporting requirements and in accordance with the USDOT Public Access Plan, award recipients must consider, budget for, and implement appropriate data management for data and information outputs acquired or generated during the grant. Applicants are expected to account for data and performance reporting in their budget submission. Projects must:

- Defaulting to open access when appropriate (exceptions include protecting personally identifiable information [PII], Indigenous data sovereignty, or confidential business information [CBI]);
- Protecting PII, intellectual property rights, and CBI;
- Utilize, when possible, open licenses and protect USDOT's non-exclusive copyright to data and corresponding outputs;
- Make the source code or tools necessary to analyze the data available to the public, if relevant;
- Provide relevant metadata (in a DCAT-US file, and, optionally, a discipline-appropriate metadata standard file), and data documentation (README.txt files, data dictionaries, code books, supporting files, imputation tables, etc.); and
- Where applicable, consider contributing data to voluntary resources such as NHTSA's AV TEST Initiative.

Projects should implement data management best practices including, but not limited to, implementation of published data specifications and standards (formal and informal); increasing data discoverability and data sharing; and enabling interaction of systems, interoperability, and integration of data system

ORDINANCE NO. 111, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
MAKING A SUPPLEMENTAL APPROPRIATION OF GRANT FUNDS FROM THE U.S.  
DEPARTMENT OF TRANSPORTATION SMART GRANTS PROGRAM IN SUPPORT OF  
THE CITY OF FORT COLLINS ELECTRIC VEHICLE FLEET

WHEREAS, the City’s 2018 EV Readiness Roadmap and 2019 Municipal Sustainability and Adaptation Plan both list building out the City’s electric vehicle (EV) charging infrastructure as a critical component to achieving the City’s climate goals; and

WHEREAS, the City does not currently have a way to centrally control, track and manage use of the City’s many EVs and EV chargers; and

WHEREAS, in late 2022 the City applied for a grant from the U.S. Department of Transportation (USDOT) Strengthening Mobility and Revolutionizing Transportation (SMART) Grants Program; and

WHEREAS, the USDOT has awarded the City \$1,059,037 (the “Grant”) to fund a project to create a municipal fleet electrification standard framework and deploy software to manage all City-owned EV charging locations, so that City EVs can be charged during times of lower energy demand, reducing the cost to charge them (the “SMART Grid Project”); and

WHEREAS, the Grant does not require the City to dedicate matching funds to the SMART Grid Project; and

WHEREAS, this appropriation benefits the public health, safety and welfare of the residents of Fort Collins and serves the public purpose of supporting the City’s Climate Action Plan, which aims to reduce community greenhouse gas emissions by 80% by 2030 and achieve carbon neutrality by 2050; 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 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, 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 or donation; and



WHEREAS, the City Council wishes to designate the appropriation herein from the U.S. Department of Transportation SMART Grants Program 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 General Fund the sum of ONE MILLION FIFTY-NINE THOUSAND THIRTY-SEVEN DOLLARS (\$1,059,037) to be expended in the General Fund for the City of Fort Collins Electric Vehicle Fleet SMART Grid Project.

Section 3. That the appropriation herein from the U.S. Department of Transportation SMART Grants Program 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 5th day of September, 2023, and to be presented for final passage on the 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

Passed and adopted on final reading on the 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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



# AGENDA ITEM SUMMARY

City Council

## STAFF

Dashiell Bubar-Hall, Transportation Planner  
Kerri Ishmael, Senior Analyst, Grant Administration  
Aaron Guin, Legal

## SUBJECT

**First Reading of Ordinance No. 112, 2023, Making Supplemental Appropriations and Authorizing Transfers for the “Planning to Implement Future Innovation Zones” Project.**

## EXECUTIVE SUMMARY

The purpose of this item is to develop the Innovation Zones Project Plan by:

- Appropriating \$50,000 of unanticipated grant revenue, awarded by the Colorado Department of Transportation’s Office of Innovative Mobility; and
- Utilizing matching funds in the amount of \$10,000 from existing 2023 appropriations into this new grant project.

## STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

## BACKGROUND / DISCUSSION

The Colorado Department of Transportation (CDOT), through its Office of Innovative Mobility recently awarded a Transportation Demand Management (TDM) grant to the City in support of developing the City’s Innovation Zone Plan (see attached Statement of Work). The grant award is based on a total project cost of \$60,000, with CDOT providing \$50,000 in funds and the remaining \$10,000 being provided by the City’s FC Moves department as a local match.

Pursuant to the State of Colorado Small Dollar Grant Terms and Conditions (see copy attached), and in accordance with Section 1-22 of the City Code, the grant award does not require execution of a post-award agreement.

### Innovation Zone Plan

The “Planning to Implement Future Innovations Zones” Project (the “Project”) will develop the Innovation Zone Plan and prepare for the implementation of innovation zones and a Mobility as a Service (MaaS) application in the City of Fort Collins. The mobility innovation zone concept is a priority that the City identified in the 2019 Transit Master Plan, that will expand mobility offerings to underserved areas of the City by offering microtransit service. The proposed microtransit service will provide a point-to-point, on-

demand transportation service where passengers are picked-up at their home or a nearby “virtual stop” within the designated innovation zone boundary and then taken to other destinations within zone boundaries, or potentially greater distances using vehicles, such as vans, that seat up to six passengers.

The Project will identify zone boundaries, determine the level of service, evaluate the fleet composition (including electric and autonomous vehicles), and develop a marketing plan. Four innovation zones were identified throughout the City in the 2019 Transit Master Plan. The preferred number of zones and their respective boundaries will be determined during the planning process.

In addition to planning for microtransit implementation, the Project also will explore the development of a MaaS application for the City. MaaS is a singular platform for multimodal trip planning with a unified payment solution which would allow for microtransit to be leveraged along with existing services such as fixed-route transit, micromobility (e-scooters, e-bikes), and Transportation Network Companies (TNCs) such as Uber and Lyft.

This Project aligns with goals identified in a number of adopted City plans, including:

### **2022 Strategic Plan**

- Objective 6.2- Support an efficient, reliable transportation system for all modes of travel, enhance high-priority intersection operations, and reduce Vehicle Miles Traveled (VMT).
- Objective 6.3- Invest in equitable access to, and expansion of, all sustainable modes of travel with emphasis on growing transit ridership.
- Objective 1.5 - Enhance the quality of life and sense of belonging in neighborhoods by connecting neighbors to City services, building community and fostering harmonious relationships
- Objective 4.1- Intensify efforts to meet 2030 climate, energy and 100% renewable electricity goals that are centered in equity and improve community resilience
- Objective 4.2- Improve indoor and outdoor air quality

### **2019 City Plan**

Principle T5: Ensure that transit is safe, affordable, and efficient and convenient travel option for people of all ages and abilities.

- Policy T 5.3- Integrate and Expand Transit Service Types: As funding becomes available, integrate fixed-route transit service with mobility innovation zones to serve lower-density areas of the City with nontraditional transit service. Focusing on expanding mobility in a cost-effective way, the City will use existing and new technologies, including micro-transit, partnerships with TNCs, MaaS technologies and other innovations (City Plan, Policy T 5.3)
- Strategy T-3c- Facilitate MaaS with partnerships between Transfort and private providers that include integrated payment and require open data for all transportation providers.

### **2021 Our Climate Future Plan**

Big Move 4: Convenient Transportation Choices: It is safe, easy, fast and affordable to get around without a car.

## **CITY FINANCIAL IMPACTS**

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This item appropriates \$50,000 in grant funds for project costs for development of the Innovation Zone Plan.

Item 10.

The required matching local funds in the amount of \$10,000 already have been appropriated in the 2023 operating budget for FC Moves. The \$10,000 will be transferred to the grant project from the Transportation fund (based on support from FC Moves)

The total project cost is \$60,000.

This grant from CDOT is a reimbursement type grant, meaning Transportation Fund expenses for this project will be reimbursed up to \$50,000.

**BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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Not applicable.

**PUBLIC OUTREACH**

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Not applicable.

**ATTACHMENTS**

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1. Ordinance for Consideration
2. CDOT Transportation Demand Management Grant Program Innovation Grant
3. State of Colorado Small Dollar Grant Award Terms and Conditions

ORDINANCE NO. 112, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
MAKING SUPPLEMENTAL APPROPRIATIONS AND AUTHORIZING TRANSFERS  
FOR THE “PLANNING TO IMPLEMENT FUTURE INNOVATION ZONES” PROJECT

WHEREAS, FC Moves is department is housed in the City’s Planning, Development, and Transportation division that exists to advance mobility solutions to increase walking, bicycling, transit use, shared and environmentally sustainable modes; and

WHEREAS, the Colorado Department of Transportation (“CDOT”), through its Office of Innovative Mobility, recently awarded a Transportation Demand Management (“TDM”) grant to the City in support of developing the City’s Innovation Zone Plan; and

WHEREAS, the “Planning to Implement Future Innovations Zones” Project (the “Project”) will develop the Innovation Zone Plan to prepare for the implementation of innovation zones and a Mobility as a Service (“MaaS”) application in the City of Fort Collins; and

WHEREAS, development of Innovation Zones is a priority that the City identified in its 2019 Transit Master Plan that will expand mobility offerings to underserved areas of the City by offering microtransit service; and

WHEREAS, the proposed microtransit service will provide a point-to-point, on-demand transportation service where passengers are picked-up at their home or a nearby “virtual stop” within the designated innovation zone boundary and then taken to other destinations within zone boundaries, or potentially greater distances using vehicles, such as vans, that seat up to six passengers; and

WHEREAS, while the 2019 Transit Master Plan identified four innovation zones throughout the City, this Project will evaluate and determine the preferred total number of zones and their boundaries in the City and will determine the level of service, evaluate the fleet composition (including electric and autonomous vehicles), and develop a marketing plan; and

WHEREAS, in addition to planning for microtransit implementation, the Project also will explore the development of a MaaS application for the City, which is a singular platform for multimodal trip planning with a unified payment solution which would allow for microtransit to be leveraged along with existing services such as fixed-route transit, micromobility (e-scooters, e-bikes), and Transportation Network Companies (TNCs) such as Uber and Lyft; and

WHEREAS, this Project aligns with goals identified in a number of City plans adopted in recent years, including the 2019 City Plan, the 2021 Our Climate Future Plan, and the 2022 Strategic Plan; and

WHEREAS, the TDM grant award is based on total project costs of \$60,000, with CDOT providing \$50,000 in funds and the remaining \$10,000 being provided by the City’s FC Moves department as a local match; and

WHEREAS, this appropriation benefits the public health, safety and welfare of the residents of Fort Collins and serves the public purpose of promoting shared and environmentally sustainable transportation solutions; 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 Transportation Services Fund and will not cause the total amount appropriated in the Transportation Services 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 \$10,000 from the FC Moves operating budget in the Transportation Services Fund to the “Planning to Implement Future Innovation Zones” Project in the Transportation Services 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 or donation; and

WHEREAS, the City Council wishes to designate the appropriation herein for the Colorado Department of Transportation’s Strategic Transportation Demand Management (TDM) 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 Transportation Services Fund the sum of FIFTY THOUSAND DOLLARS (\$50,000) to be expended in the Transportation Services Fund for “Planning to Implement Future Innovation Zones”.

Section 3. That the unexpended and unencumbered appropriated amount of TEN THOUSAND DOLLARS (\$10,000) is authorized for transfer from the FC Moves operating budget in the Transportation Services Fund to the “Planning to Implement Future Innovation Zones” Project in the Transportation Services Fund and appropriated therein to be expended on the project.

Section 4. That the appropriation herein for the Colorado Department of Transportation’s Strategic Transportation Demand Management 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 5th day of September, 2023, and to be presented for final passage on the 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

Passed and adopted on final reading on the 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

**Colorado Department of Transportation**  
**Transportation Demand Management Grant Program**  
**Innovation Grant**  
*Scope of Work*  
*City of Fort Collins*  
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<b>Project Title</b>	FC Moves
<b>Contact Information</b>	
Project Manager Name	Dashiell Bubar-Hall
Entity Invoicing Address <i>(Include city, state, zip)</i>	900 Auraria Parkway, Denver CO 80204
Project Manager Phone Number	970-416-4361
Project Manager Email	dbubar-hall@fcgov.com
<b>Project Overview Summary</b>	<p>The Innovation Zone concept is a priority that the City identified in the 2019 Transit Master Plan, that will expand mobility offerings to underserved areas of the City by offering microtransit service. The proposed microtransit service will provide a point-to-point on-demand service with passengers being picked-up at their home or current location within the designated innovation zone boundary and taken to other destinations within zone boundaries using vehicles, such as vans, seating up to six passengers. The Innovation Zone Plan will identify zone boundaries, determine the level of service, evaluate the fleet composition (including electric and autonomous vehicles), and develop a marketing plan. There are currently four innovation zones identified throughout the City during the 2019 TMP. The preferred number of zones and their respective boundaries will be determined during the planning process. In addition to planning for microtransit implementation, this project will also explore Mobility as a Service (MaaS). MaaS is a singular platform for multimodal trip</p>



# Colorado Department of Transportation Transportation Demand Management Grant Program Innovation Grant

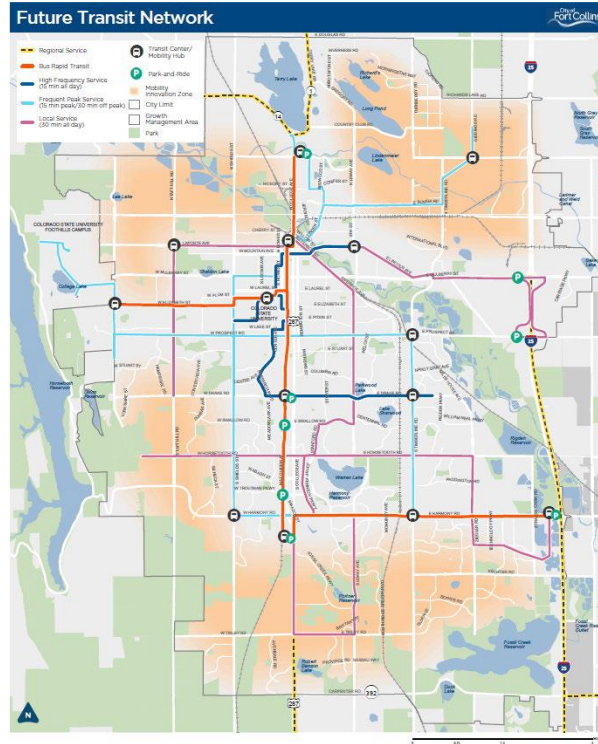
## Scope of Work City of Fort Collins

planning with a unified payment solution which would allow for microtransit to be leveraged along with existing services such as fixed-route transit, micromobility (e-scooters, e-bikes), and Transportation Network Companies (TNCs) such as Uber and Lyft.

### Program Overview Details

Where will your project take place?

The geographic area that this project will cover is the Growth Management Area (GMA) that Fort Collins has established. This area is slightly larger than current city limits and contains areas that are very likely to be annexed into the city in the future. The tan area on the map below depicts the potential innovation zones throughout the city.



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Who is your key target audience?		This planning project is intended to benefit the public who is traveling throughout Fort Collins including residents, employees, and visitors.
Please list any organization that is a pertinent partner with you in this project (the project could not go forward without this partnership).		Spin as a partner for provision of e-scooter and e-bike usage around the city.
<b>Task</b>	<b>Timeline</b>	<b>Task Description</b>
Task 1: Advertise RFP and Hire Consultant	4 weeks	Create and advertise RFP. Review applications and award contract.
Task 2: Work Plan and Public Involvement Plan	2 weeks	Coordinate the project work plan and public involvement with selected consultants.
Task 3: Literature Review and Best Practices	6 weeks	Identify existing microtransit plans from peer communities and create a summary and relevant lessons to our process.
Task 4: Innovation Zone Goals, Objectives, and Vision	8 weeks	Engage the community as identified in Task 1 to garner goals and vision for innovation zones.
Task 5: Innovation Zone Boundary Assessment	4 weeks	Identify and refine the boundaries that microtransit will operate within. Evaluate proposed mobility hub locations and how they interact with innovation zones.

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Task 6: Service Design and Fleet Assessment	6 weeks	Identify the preferred service levels of the microtransit service and corresponding fleet composition needed. Explore the feasibility of electric vehicles and autonomous vehicles in the microtransit fleet.		
Task 7: Mobility as a Service Assessment	4 weeks	Identify mobility offerings to be integrated in the application, projected costs, and technology needs		
Task 8: Implementation Plan	4 weeks	Develop budget, schedule, funding sources, technology, marketing plan and staffing needs for implementation.		
Task 9: Plan Adoption	8 weeks	Visit appropriate city boards and commissions.		
<b>Evaluation</b>				
How will you evaluate the effectiveness of your program?		The proposed project for this application is focused on planning for implementation and will not directly generate any data that can be measured for performance purposes. The metrics that are provided below are anticipated to be key performance indicators for the microtransit system once it is implemented. Performance measures for implementation will be refined during the planning process to ensure that microtransit service is deployed with proper metrics to inform the effectiveness of the service and to indicate if any changes need to be made.		
<b>Performance measure</b>	<b>What program goal or project objective does the identified measure assess?</b>	<b>Target</b>	<b>Data collection need</b>	<b>Reporting frequency (quarterly or end-of-project)</b>

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1) Microtransit Utilization Rate	Objective 1: Increase Mobility Offerings	3 rides per service hour	Based on user data from MaaS	Quarterly
2) Microtransit Ride Share Rate	Objective 1, Objective 3	50% of trips have more than one passenger in the car at the same time	Based on user data from MaaS	Quarterly
3) Modal Shifts	Objective 1, Objective 3	SOV trip reductions, target TBD	Annual Travel Survey	Every Two years

<b>Budget Overview</b>	
<b>State Funds - Grant Amount</b>	<b>\$ 50,000</b>
<i>Grantee Match</i>	<b>\$10,000 cash match</b>
<b>Total Project Cost (State Funds + Grantee Match)</b>	<b>\$ 60,000</b>
<b>Budget Breakdown</b>	

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Work Plan and Public Involvement Plan	\$1,500
Literature Review and Best Practices	\$7,200
Innovation Zone Goals, Objectives, and Vision	\$3,500
Innovation Zone Boundary Assessment	\$9,000
Service Design and Fleet Assessment	\$18,800
Mobility as a Service Evaluation	\$9,000
Implementation Plan	\$11,000
<b>TOTAL GRANT REQUEST:</b>	<b>\$50,000</b>

## State of Colorado Small Dollar Grant Award Terms and Conditions

1. **Offer/Acceptance.** This Small Dollar Grant Award, together with these terms and conditions (including, if applicable, Addendum 1: Additional Terms and Conditions for Information Technology below), and any other attachments, exhibits, specifications, or appendices, whether attached or incorporated by reference (collectively the “Agreement”) shall represent the entire and exclusive agreement between the State of Colorado, by and through the agency identified on the face of the Small Dollar Grant Award (“State”) and the Subrecipient identified on the face of the Small Dollar Grant Award (“Grantee”). If this Agreement refers to Grantee’s bid or proposal, this Agreement is an ACCEPTANCE of Grantee’s OFFER TO PERFORM in accordance with the terms and conditions of this Agreement. If a bid or proposal is not referenced, this Agreement is an OFFER TO ENTER INTO AGREEMENT, subject to Grantee’s acceptance, demonstrated by Grantee’s beginning performance or written acceptance of this Agreement. Any COUNTER-OFFER automatically CANCELS this Agreement, unless a change order is issued by the State accepting a counter-offer. Except as provided herein, the State shall not be responsible or liable for any Work performed prior to issuance of this Agreement. The State’s financial obligations to the Grantee are limited by the amount of Grant Funds awarded as reflected on the face of the Small Dollar Grant Award.
2. **Order of Precedence.** In the event of a conflict or inconsistency within this Agreement, such conflict or inconsistency shall be resolved by giving preference to the documents in the following order of priority: **(1)** the Small dollar Grant Award document; **(2)** these terms and conditions (including, if applicable, Addendum 1 below); and **(3)** any attachments, exhibits, specifications, or appendices, whether attached or incorporated by reference. Notwithstanding the above, if this Agreement has been funded, in whole or in part, with a Federal Award, in the event of a conflict between the Federal Grant and this Agreement, the provisions of the Federal Grant shall control. Grantee shall comply with all applicable Federal provisions at all times during the term of this Agreement. Any terms and conditions included on Grantee’s forms or invoices not included in this Agreement are void.
3. **Changes.** Once accepted in accordance with **§1**, this Agreement shall not be modified, superseded or otherwise altered, except in writing by the State and accepted by Grantee.
4. **Definitions.** The following terms shall be construed and interpreted as follows: **(a) “Award”** means an award by a Recipient to a Subrecipient; **(b) “Budget”** means the budget for the Work described in this Agreement; **(c) “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 CRS §24-11-101(1); **(d) “UCC”** means the Uniform Commercial Code in CRS Title 4; **(e) “Effective Date”** means the date on which this Agreement is issued as shown on the face of the Small Dollar Grant Award; **(f) “Federal Award”** means an award of federal financial assistance or a cost-reimbursement contract, by a Federal Awarding Agency to the Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award, which terms and conditions shall flow down to the Award unless such terms and conditions specifically indicate otherwise. The term does not include payments to a vendor or payments to an individual that is a beneficiary of a Federal program; **(g) “Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient; **(h) “Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement; **(i) “Matching Funds”** mean the funds provided by the Grantee to meet cost sharing requirements described in this Agreement; **(j) “Recipient”** means the State agency identified on the face of the Small Dollar Grant Award; **(k) “Subcontractor”** means

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third parties, if any, engaged by Grantee to aid in performance of the Work; (l) **“Subrecipient”** means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a program, but does not include an individual that is a beneficiary of such program; (m) **“Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, identified as the 2 C.F.R. (Code of Federal Regulations) Part 200, commonly known as the “Super Circular,” 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; and (n) **“Work”** means the goods delivered or services, or both, performed pursuant to this Agreement and identified as Line Items on the face of the Small Dollar Grant Award.

5. **Delivery.** Grantee shall furnish the Work in strict accordance with the specifications and price set forth in this Agreement. The State shall have no liability to compensate Grantee for the performance of any Work not specifically set forth in the Agreement.
6. **Rights to Materials.** *[Not Applicable to Agreements issued either in whole in part for Information Technology, as defined in CRS § 24-37.5-102(2); in which case Addendum 1 §2 applies in lieu of this section.]* Unless specifically stated otherwise in this Agreement, all materials, including without limitation supplies, equipment, documents, content, information, or other material of any type, whether tangible or intangible (collectively “Materials”), furnished by the State to Grantee or delivered by Grantee to the State in performance of its obligations under this Agreement shall be the exclusive property the State. Grantee shall return or deliver all Materials to the State upon completion or termination of this Agreement.
7. **Grantee Records.** Grantee 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 (including, but not limited to the operation of programs) performed under this Agreement (collectively “Grantee Records”). Unless otherwise specified by the State, the Grantee shall retain Grantee Records for a period (the “Record Retention Period”) of three years following the date of submission to the State of the final expenditure report, 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 finding 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 Grantee in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property. Grantee shall permit the State, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and transcribe Grantee Records during the Record Retention Period. Grantee shall make Grantee Records available during normal business hours at Grantee’s office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two 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. The State, in its discretion, may monitor Grantee’s performance of its obligations under this Agreement using procedures as determined by the State. The federal government and any other duly authorized agent of a governmental

## State of Colorado Small Dollar Grant Award Terms and Conditions

agency, in its discretion, Grantee shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Grantee and this Agreement, and the State shall have the right, in its discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State will monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work. Grantee shall promptly submit to the State a copy of any final audit report of an audit performed on Grantee Records that relates to or affects this Agreement or the Work, whether the audit is conducted by Grantee, a State agency or the State's authorized representative, or a third party. If applicable, the Grantee may be required to perform a single audit under 2 CFR 200.501, *et seq.* Grantee shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

8. **Reporting.** If Grantee 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 Grantee's ability to perform its obligations under this Agreement, Grantee shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State. Grantee shall disclose, in a timely manner, in writing to the State and the Federal Awarding Agency, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Award. The State or the Federal Awarding Agency may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.
9. **Conflicts of Interest.** Grantee acknowledges that with respect to this Agreement, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities, or relationships that reasonably may appear to be in conflict with the full performance of Grantee's obligations to the State under this Agreement. If a conflict or appearance of a conflict of interest exists, or if Grantee is uncertain as to such, Grantee 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. Grantee certifies that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's Services and Grantee shall not employ any person having such known interests. Grantee acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Grantee further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Grant.
10. **Taxes.** The State is exempt from federal excise taxes and from State and local sales and use taxes. The State shall not be liable for the payment of any excise, sales, or use taxes imposed on Grantee. A tax exemption certificate will be made available upon Grantee's request. Grantee shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Grantee may wish to have in place in connection with this Agreement.
11. **Payment.** Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Grantee any amount under this Agreement that exceeds the



## State of Colorado Small Dollar Grant Award Terms and Conditions

Document Total shown on the face of the Small Dollar Grant Award. The State shall pay Grantee in the amounts and in accordance with the schedule and other conditions set forth in this Agreement. Grantee shall initiate payment requests by invoice to the State, in a form and manner approved by the State. The State shall pay Grantee for all amounts due within 45 days after receipt of an Awarding Agency's approved invoicing request, or in instances of reimbursement grant programs a request for reimbursement, compliant with Generally Accepted Accounting Principles (GAAP) and, if applicable Government Accounting Standards Board (GASB) of amount requested. Amounts not paid by the State within 45 days of the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate set forth in CRS §24-30-202(24) until paid in full. Interest shall not accrue if a good faith dispute exists as to the State's obligation to pay all or a portion of the amount due. Grantee shall invoice the State separately for interest on delinquent amounts due, referencing the delinquent payment, number of day's interest to be paid, and applicable interest rate. The acceptance of an invoice shall not constitute acceptance of any Work performed under this Agreement. Except as specifically agreed in this Agreement, Grantee shall be solely responsible for all costs, expenses, and other charges it incurs in connection with its performance under this Grantee.

12. **Term.** The parties' respective performances under this Agreement shall commence on the "Service From" date identified on the face of the Small Dollar Grant Award, unless otherwise specified, and shall terminate on the "Service To" date identified on the face of the Small Dollar Grant Award unless sooner terminated in accordance with the terms of this Agreement.
13. **Payment Disputes.** If Grantee disputes any calculation, determination or amount of any payment, Grantee shall notify the State in writing of its dispute within 30 days following the earlier to occur of Grantee'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 Grantee 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.
14. **Matching Funds.** Grantee shall provide Matching Funds, if required by this Agreement. If permitted under the terms of the grant and per this Agreement, Grantee may be permitted to provide Matching Funds prior to or during the course of the project or the match will be an in-kind match. Grantee shall report to the State regarding the status of such funds upon request. Grantee'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 Grantee and paid into Grantee's treasury or bank account. Grantee represents to the State that the amount designated "Grantee's Matching Funds" pursuant to this Agreement, has been legally appropriated for the purposes of this Agreement by its authorized representatives and paid into its treasury or bank account. Grantee 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 Grantee. Grantee shall not pay or be liable for any claimed interest, late

## State of Colorado Small Dollar Grant Award Terms and Conditions

charges, fees, taxes or penalties of any nature, except as required by Grantee's laws or policies.

15. **Reimbursement of Grantee Costs.** If applicable, the State shall reimburse Grantee's allowable costs, not exceeding the maximum total amount described in this Agreement for all allowable costs described in the grant except that Grantee may adjust the amounts between each line item of the Budget without formal modification to this Agreement as long as the Grantee provides notice to, and received approval from the State of the change, the change does not modify the total maximum amount of this Agreement, and the change does not modify any requirements of the Work. If applicable, the State shall reimburse Grantee for the properly documented allowable costs related to the Work after review and approval thereof, subject to the provisions of this Agreement. However, any costs incurred by Grantee prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs. Grantee's costs for Work performed after the "Service To" date identified on the face of the Small Dollar Grant Award, or after any phase performance period end date for a respective phase of the Work, shall not be reimbursable. The State shall only reimburse allowable costs described in this Agreement and shown in the Budget if those costs are **(a)** reasonable and necessary to accomplish the Work, and **(b)** equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the costs actually incurred).
16. **Close-Out.** Grantee shall close out this Award within 45 days after the "Service To" date identified on the face of the Small Dollar Grant Award, including any modifications. To complete close-out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Agreement and Grantee's final reimbursement request or invoice. In accordance with the Agreement, the State may withhold a percentage of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete.
17. **Assignment.** Grantee's rights and obligations under this Agreement may not be transferred or assigned without the prior, written consent of the State and execution of a new agreement. Any attempt at assignment or transfer without such consent and new agreement shall be void. Any assignment or transfer of Grantee's rights and obligations approved by the State shall be subject to the provisions of this Agreement.
18. **Subcontracts.** Grantee shall not enter into any subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Grantee shall submit to the State a copy of each subcontract upon request by the State. All subcontracts entered into by Grantee 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.
19. **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 in accordance with the intent of the Agreement.
20. **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.

## State of Colorado Small Dollar Grant Award Terms and Conditions

21. **Third Party Beneficiaries.** Except for the parties' respective successors and assigns, 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.
22. **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.
23. **Indemnification. [Not Applicable to Inter-governmental agreements]** Grantee shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Grantee, or its employees, agents, Subcontractors, or assignees in connection with this Agreement. This shall include, without limitation, any and all costs, expenses, claims, damages, liabilities, court awards and other amounts incurred by the Indemnified Parties in relation to any claim that any work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right or any claim for loss or improper disclosure of any confidential information or personally identifiable information. If Grantee is a public agency prohibited by applicable law from indemnifying any party, then this section shall not apply.
24. **Notice.** All notices given under this Agreement shall be in writing, and shall be delivered to the contacts for each party listed on the face of the Small Dollar Grant Award. Either party may change its contact or contact information by notice submitted in accordance with this section without a formal modification to this Agreement.
25. **Insurance.** Except as otherwise specifically stated in this Agreement or any attachment or exhibit to this Agreement, Grantee shall obtain and maintain insurance as specified in this section at all times during the term of the Agreement: (a) workers' compensation insurance as required by state statute, and employers' liability insurance covering all Grantee employees acting within the course and scope of their employment, (b) Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent vendors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: \$1,000,000 each occurrence; \$1,000,000 general aggregate; \$1,000,000 products and completed operations aggregate; and \$50,000 any one fire, and (c) 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. If Grantee will or may have access to any protected information, then Grantee shall also obtain and maintain insurance covering loss and disclosure of protected information and claims based on alleged violations of privacy right through improper use and disclosure of protected information with limits of \$1,000,000 each occurrence and \$1,000,000 general aggregate at all times during the term of the Small Dollar Grant Award. Additional insurance may be required as provided elsewhere in this Agreement or any attachment or exhibit to this Agreement. All insurance policies required by this Agreement shall be issued by insurance companies with an AM Best

## State of Colorado Small Dollar Grant Award Terms and Conditions

rating of A-VIII or better. If Grantee is a public agency within the meaning of the Colorado Governmental Immunity Act, then this section shall not apply and Grantee shall instead comply with the Colorado Governmental Immunity Act. The State shall be named as additional insured on all commercial general liability policies required of Vendor. All insurance policies secured or maintained by Vendor in relation to this Purchase Order shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Vendor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

26. **Termination Prior to Grantee Acceptance.** If Grantee has not begun performance under this Agreement, the State may cancel this Agreement by providing written notice to the Grantee.
27. **Termination for Cause.** If Grantee refuses or fails to timely and properly perform any of its obligations under this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, the State may notify Grantee in writing of non-performance and, if not corrected by Grantee within the time specified in the notice, terminate Grantee's right to proceed with the Agreement or such part thereof as to which there has been delay or a failure. Grantee shall continue performance of this Agreement to the extent not terminated. Grantee shall be liable for excess costs incurred by the State in procuring similar Work and the State may withhold such amounts, as the State deems necessary. If after rejection, revocation, or other termination of Grantee's right to proceed under the Colorado Uniform Commercial Code (CUCC) or this clause, the State determines for any reason that Grantee was not in default or the delay was excusable, the rights and obligations of the State and Grantee shall be the same as if the notice of termination had been issued pursuant to termination under **§28**.
28. **Termination in Public Interest.** The State is entering into this Agreement for the purpose of carrying out the public interest of the State, as determined by its Governor, General Assembly, Courts, or Federal Awarding Agency. If this Agreement ceases to further the public interest of the State as determined by its Governor, General Assembly, Courts, or Federal Awarding Agency, the State, in its sole discretion, may terminate this Agreement in whole or in part and such termination shall not be deemed to be a breach of the State's obligations hereunder. This section shall not apply to a termination for cause, which shall be governed by **§27**. A determination that this Small Dollar Grant Award should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. The State shall give written notice of termination to Grantee specifying the part of the Agreement terminated and when termination becomes effective. Upon receipt of notice of termination, Grantee shall not incur further obligations except as necessary to mitigate costs of performance. The State shall pay the Agreement price or rate for Work performed and accepted by State prior to the effective date of the notice of termination. The State's termination liability under this section shall not exceed the total Agreement price.
29. **Termination for Funds Availability.** The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Grantee beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Grant 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 Grant Funds, the State's obligation to pay Grantee shall be contingent upon such non-State

## State of Colorado Small Dollar Grant Award Terms and Conditions

funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Grant Funds, and the State's liability for such payments shall be limited to the amount remaining of such Grant 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 Work performed 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 §28.

- 30. Grantee's Termination Under Federal Requirements.** If the Grant Funds include any federal funds, then Grantee may request termination of this Grant by sending notice to the State, or to the Federal Awarding Agency with a copy to the State, which includes the reasons for the termination and the effective date of the termination. If this Grant is terminated in this manner, then Grantee shall return any advanced payments made for Work that will not be performed prior to the effective date of the termination.
- 31. Governmental Immunity.** Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, *et seq.*, 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, CRS §§24-30-1501, *et seq.* No term or condition of this Agreement 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.
- 32. Grant Recipient.** Grantee shall perform its duties hereunder as a grant recipient and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Grantee 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 Grantee or any of its agents or employees. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.**
- 33. Compliance with Law.** Grantee 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.
- 34. Choice of Law, Jurisdiction and Venue. [Not Applicable to Inter-governmental agreements]** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. 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 Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and

## State of Colorado Small Dollar Grant Award Terms and Conditions

County of Denver. Any provision incorporated herein by reference which purports to negate this or any other provision in this Agreement in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision or for any other reason shall not invalidate the remainder of this Agreement, to the extent capable of execution. Grantee shall exhaust administrative remedies in CRS §24-109-106, prior to commencing any judicial action against the State regardless of whether the Colorado Procurement Code applies to this Agreement.

35. **Prohibited Terms.** Nothing in this Agreement shall be construed as a waiver of any provision of CRS §24-106-109. Any term included in this Agreement that requires the State to indemnify or hold Grantee harmless; requires the State to agree to binding arbitration; limits Grantee's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with that statute in any way shall be void ab initio.

## ADDENDUM 1: Additional Terms & Conditions for Information Technology

IF ANY PART OF THE SUBJECT MATTER OF THIS AGREEMENT IS INFORMATION TECHNOLOGY, AS DEFINED IN CRS § 24-37.5-102 (2), THE FOLLOWING PROVISIONS ALSO APPLY TO THIS AGREEMENT.

- A. **Definitions.** The following terms shall be construed and interpreted as follows: (a) “**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 CRS §24-72-302; (b) “**Incident**” means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, pursuant to CRS §§24-37.5-401 *et seq.*; (c) “**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; (d) “**PHI**” means any protected health information, including, without limitation any information whether oral or recorded in any form or medium 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 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 including, without limitation, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act; (e) “**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, including, without limitation, all information defined as personally identifiable information in CRS §24-72-501. . “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, *et. seq.*, C.R.S. ; (f) “**State Confidential Information**” means any and all State Records not subject to disclosure under the Colorado Open Records Act and includes, without limitation, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under the Colorado Open Records Act, (g) “**State Fiscal Rules**” means those fiscal rules promulgated by the Colorado State Controller pursuant to CRS §24-30-202(13)(a); (h) “**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; (i) “**State Records**” means any and all State data, information, and records, regardless of physical form; (j) “**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, including, without limitation all information defined as federal tax information in Internal Revenue Service Publication 1075; and (k) “**Work Product**” means the tangible and intangible results of the delivery of goods and performance of services, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports,

## ADDENDUM 1: Additional Terms & Conditions for Information Technology

proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work, but does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

B. **Intellectual Property.** Except to the extent specifically provided elsewhere in this Agreement, any State information, including without limitation pre-existing State software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials; or Work Product prepared by Grantee in the performance of its obligations under this Agreement shall be the exclusive property of the State (collectively, "State Materials"). All State Materials shall be delivered to the State by Grantee upon completion or termination of this Agreement. The State's exclusive rights in any Work Product prepared by Grantee shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Grantee shall not use, willingly allow, cause or permit any State Materials to be used for any purpose other than the performance of Grantee's obligations hereunder without the prior written consent of the State. The State shall maintain complete and accurate records relating to **(a)** its use of all Grantee and third party software licenses and rights to use any Grantee or third party software granted under this Agreement and its attachments to which the State is a party and **(b)** all amounts payable to Grantee pursuant to this Agreement and its attachments and the State's obligations under this Agreement or any amounts payable to Grantee in relation to this Agreement, which records shall contain sufficient information to permit Grantee to confirm the State's compliance with the use restrictions and payment obligations under this Agreement or to any third party use restrictions to which the State is a party. Grantee retains the exclusive rights, title and ownership to any and all pre-existing materials owned or licensed to Grantee including, but not limited to all pre-existing software, licensed products, associated source code, machine code, text images, audio, video, and third party materials, delivered by Grantee under the Agreement, whether incorporated in a deliverable or necessary to use a deliverable (collectively, "Grantee Property"). Grantee Property shall be licensed to the State as set forth in a State-approved license agreement **(a)** entered into as exhibits or attachments to this Agreement, **(b)** obtained by the State from the applicable third party Grantee, or **(c)** in the case of open source software, the license terms set forth in the applicable open source license agreement. Notwithstanding anything to the contrary herein, the State shall not be subject to any provision incorporated in any exhibit or attachment attached hereto, any provision incorporated in any terms and conditions appearing on any website, any provision incorporated into any click through or online agreements, or any provision incorporated into any other document or agreement between the parties that **(a)** requires the State or the State to indemnify Grantee or any other party, **(b)** is in violation of State laws, regulations, rules, State Fiscal Rules, policies, or other State requirements as deemed solely by the State, or **(c)** is contrary to this Agreement.

C. **Information Confidentiality.** Grantee shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Grantee shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law, or approved in writing by the State. If



## ADDENDUM 1: Additional Terms & Conditions for Information Technology

Grantee will or may have access to any State Confidential Information or any other protected information, Grantee shall provide for the security of all State Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. Grantee shall comply with all Colorado Office of Information Security ("OIS") policies and procedures which OIS has issued pursuant to CRS §§24-37.5-401 through 406 and 8 CCR §1501-5 and posted at <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>, all information security and privacy obligations imposed by any federal, state, or local statute or regulation, or by any industry standards or guidelines, as applicable based on the classification of the data relevant to Grantee's performance under this Agreement. Such obligations may arise from: Health Information Portability and Accountability Act (HIPAA); IRS Publication 1075; Payment Card Industry Data Security Standard (PCI-DSS); FBI Criminal Justice Information Service Security Addendum; Centers for Medicare & Medicaid Services (CMS) Minimum Acceptable Risk Standards for Exchanges; and Electronic Information Exchange Security Requirements and Procedures for State and Local Agencies Exchanging Electronic Information with The Social Security Administration. Grantee shall immediately forward any request or demand for State Records to the State's principal representative.

**D. Other Entity Access and Nondisclosure Agreements.** Grantee 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. Grantee shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign, or Subcontractors has access to any State Confidential Information. Grantee shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions if requested by the State.

**E. Use, Security, and Retention.** Grantee shall use, hold, and maintain State Confidential Information in compliance with any and all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information. Grantee shall provide the State with access, subject to Grantee'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, Grantee shall return State Records provided to Grantee or destroy such State Records and certify to the State that it has done so, as directed by the State. If Grantee is prevented by law or regulation from returning or destroying State Confidential Information, Grantee warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

**F. Incident Notice and Remediation.** If Grantee 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 Grantee can establish none of Grantee or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Grantee shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State,

## ADDENDUM 1: Additional Terms & Conditions for Information Technology

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. The State may adjust or direct modifications to this plan, in its sole discretion and Grantee shall make all modifications as directed by the State. If Grantee cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Grantee shall reimburse the State for the reasonable actual costs thereof.

**G. Data Protection and Handling.** Grantee shall ensure that all State Records and Work Product in the possession of Grantee or any Subcontractors are protected and handled in accordance with the requirements of this Agreement at all times. Upon request by the State made any time prior to 60 days following the termination of this Agreement for any reason, whether or not this Agreement is expiring or terminating, Grantee shall make available to the State a complete and secure download file of all data that is encrypted and appropriately authenticated. This download file shall be made available to the State within 10 Business Days following the State’s request, and shall contain, without limitation, all State Records, Work Product, and any other information belonging to the State. Upon the termination of Grantee’s services under this Agreement, Grantee shall, as directed by the State, return all State Records provided by the State to Grantee, and the copies thereof, to the State or destroy all such State Records and certify to the State that it has done so. If legal obligations imposed upon Grantee prevent Grantee from returning or destroying all or part of the State Records provided by the State, Grantee shall guarantee the confidentiality of all State Records in Grantee’s possession and will not actively process such data. The State retains the right to use the established operational services to access and retrieve State Records stored on Grantee’s infrastructure at its sole discretion and at any time.

**H. Compliance.** If applicable, Grantee shall review, on a semi-annual basis, all OIS policies and procedures which OIS has promulgated pursuant to CRS §§ 24-37.5-401 through 406 and 8 CCR § 1501-5 and posted at <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>, to ensure compliance with the standards and guidelines published therein. Grantee shall cooperate, and shall cause its Subcontractors to cooperate, with the performance of security audit and penetration tests by OIS or its designee.

**I. Safeguarding PII.** If Grantee or any of its Subcontractors will or may receive PII under this Agreement, Grantee shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, all State requirements relating to non-disclosure, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Grantee shall take full responsibility for the security of all PII in its possession or in the possession of its Subcontractors, and shall hold the State harmless for any damages or liabilities resulting from the unauthorized disclosure or loss thereof. Grantee shall be a “Third-Party Service Provider” as defined in CRS §24-73-103(1)(i) and shall maintain security procedures and practices consistent with CRS §§24-73-101 *et seq.* In addition, as set forth in § 24-74-102, *et. seq.*, C.R.S., Vendor, including, but not limited to, Vendor’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

## ADDENDUM 1: Additional Terms & Conditions for Information Technology

Vendor is given direct access to any State databases containing PII, Vendor shall execute, on behalf of itself and its employees, the certification [PII Individual Certification Form](#) or [PII Entity Certification Form](#) [Download form from Hyperlink] on an annual basis and Vendor's duty shall continue as long as Vendor has direct access to any State databases containing PII. If Vendor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Vendor 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.

**J. Software Piracy Prohibition.** The State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Agreement and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**K. Information Technology.** To the extent that Grantee provides physical or logical storage of State Records; Grantee creates, uses, processes, discloses, transmits, or disposes of State Records; or Grantee is otherwise given physical or logical access to State Records in order to perform Grantee's obligations under this Agreement, the following terms shall apply. Grantee shall, and shall cause its Subcontractors, to: Provide physical and logical protection for all hardware, software, applications, and data that meets or exceeds industry standards and the requirements of this Agreement; Maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), annual security testing, and improvements or enhancements consistent with evolving industry standards; Comply with State and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing; Provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments; Promptly report all Incidents, including Incidents that do not result in unauthorized disclosure or loss of data integrity, to a designated representative of the OIS; Comply with all rules, policies, procedures, and standards issued by the Governor's Office of Information Technology (OIT), including project lifecycle methodology and governance, technical standards, documentation, and other requirements posted at <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>. Grantee shall not allow remote access to State Records from outside the United States, including access by Grantee's employees or agents, without the prior express written consent of OIS. Grantee shall communicate any request regarding non-U.S. access to State Records to the State. The State, acting by and through OIS, shall have sole discretion to grant or deny any such request.

**L. Accessibility.** Grantee shall comply with and the Work Product provided under this PO 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 OIT pursuant to Section §24-85-103 (2.5), C.R.S. Grantee shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current

**ADDENDUM 1:  
Additional Terms & Conditions for Information Technology**

version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards. Grantee shall indemnify, save, and hold harmless the Indemnified Parties against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to Grantee's failure to comply with §§24-85-101, *et seq.*, C.R.S., or the *Accessibility Standards for Individuals with a Disability* as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S. The State may require Grantee's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Grantee'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.

September 5, 2023



## AGENDA ITEM SUMMARY

City Council

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### STAFF

Dashiell Bubar-Hall, Transportation Planner  
 Kerri Ishmael, Senior Analyst, Grant Administration  
 Aaron Guin, Legal

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### SUBJECT

**First Reading of Ordinance No. 113, 2023, Making Supplemental Appropriations and Authorizing Transfers for the City of Fort Collins Electric Vehicle Readiness Roadmap Update.**

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### EXECUTIVE SUMMARY

The purpose of this item is to update the City's 2017 Electric Vehicle (EV) Readiness Roadmap by:

- Appropriating \$40,000 of unanticipated grant revenue, awarded by the Colorado Energy Office; and
- Utilizing matching funds in the amount of \$13,333 from existing 2023 appropriations into this new grant project.

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### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

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### BACKGROUND / DISCUSSION

The Colorado Energy Office ("CEO") recently awarded a Local Government Electric Vehicle ("EV") Readiness Grant to the City to support the updating of the City's 2017 EV Readiness Roadmap ("EVRR") (see attached Statement of Work). The grant award is based on total project costs of \$53,333, with the CEO providing \$40,000 in funds and the remaining \$13,333 being provided by the City's Operation Services, Light & Power, and FC Moves departments as a local match. Pursuant to the State of Colorado Small Dollar Grant Terms and Conditions (see copy attached), and in accordance with Section 1-22 of the City Code, the City Manager has accepted the grant agreement.

#### Electric Vehicle Readiness Roadmap Update

The City of Fort Collins seeks to update its 2017 EVRR to continue to support EV adoptions throughout the Fort Collins community and surrounding area. Over the last six years, conditions within the City and the rapidly evolving EV environment have changed, resulting in a need to provide the community with updated guidance, strategies, and policies to foster increased EV adoption. There also has been a need to advise the City organization on best practices as it continues to grow EV adoption and other alternative fuels for its own fleet of vehicles. Since the 2017 EVRR, a number of City plans have been adopted that feature EVs prominently, necessitating an updated EVRR with a coherent approach regarding EV adoption

and alignment with the various objectives established throughout the City. Existing plans adopted by the City that this effort supports include:

#### 2019 City Plan

Principle ENV 2: Become a carbon-neutral community by 2050 and improve the community's resilience to prepare for and adapt to the impacts of climate change.

- Policy ENV 3.3 - Support a systems approach to transition from the use of natural gas to renewable electricity in buildings and for transportation.

Principle ENV 4: Protect human health and the environment by continually improving air quality.

- Policy ENV 4.6 - Promote efforts to reduce fuel consumption and associated pollutant emissions from vehicles and non-road engine sources, such as lawn and garden equipment.

Principle T 3: Lead transportation innovation by exploring and utilizing emerging and transformative systems and technologies.

- Policy T 3.1 - Update design standards, policies and operational strategies to support and manage newly emerging transportation options (e.g., autonomous vehicles, electric vehicles, electric-assist bicycles, drones and e-scooters).
- Policy T 3.9 - Encourage, prioritize, and support the purchase of electric vehicles through the design, management, outreach, education, policy updates, broad-based coordination, incentives and operations of streets and wayside infrastructure such as electric-vehicle charging stations.
- Policy T 3.10 - Prioritize transportation planning projects and programs that support the Electric Vehicle Readiness Roadmap (EVRR) Goals.

Principle T 9: Utilize the transportation system to support a health and equitable community.

- Policy T 9.2 - Develop a program to promote energy efficient and environmentally sensitive transportation choices. Coordinate the building code with the growth in new transportation fuels such as electricity or hydrogen.
- Policy T 9.5 - Provide equitable access to services and resources, particularly for marginalized and under resourced communities as identified in the Health Equity Index Analysis in the City Plan Trends and Forces Report and other future equity analyses.
- Policy T 9.9 - Prioritize transportation planning projects and programs that support CAP and GHG-reduction goals.

#### 2021 Our Climate Future Plan

##### Big Move 13: Electric Cars and Fleet

- ECF1 - Assess community needs for electric vehicle infrastructure programs.
- ECF3 - Support market driven adoption of electric cars.
- ECF5 - Encourage EV car shares supporting low-income areas.

Fort Collins is geographically positioned along two nationally established alternative fuel corridors, I-25 and US 287. Our proximity to these significant transportation corridors allows for unique investment opportunities to facilitate EV adoption, and other alternative fuels, that will have impacts at the local,

regional, and national level. Fort Collins has made substantial investments at both the government and community level to increase EV adoption and seeks to maintain the momentum of recent efforts by updating their EVRR and developing new strategies that will facilitate increased EV adoption and equitable deployment in the short-, medium- and long-term time frames.

### **CITY FINANCIAL IMPACTS**

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This item appropriates \$40,000 in grant funds for project costs for updating the 2017 EV Readiness Roadmap.

The required matching local funds in the amount of \$13,333 already have been appropriated in the General Fund, the Light & Power Fund and the Transportation Fund, specifically in the 2023 operating budget for the Operation Services, Light & Power and FC Moves departments. The \$13,333 will be transferred to the grant project as follows:

- \$4,444 from the General Fund (based on support from Operation services)
- \$4,444 from the Light & Power Fund and
- \$4,445 from the Transportation fund (based on support from FC Moves)

The total project cost is \$53,333.

This grant from the CEO is a reimbursement type grant, meaning Transportation Fund expenses for this project will be reimbursed up to \$40,000.

### **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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Not applicable.

### **PUBLIC OUTREACH**

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Not applicable.

### **ATTACHMENTS**

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1. Ordinance for Consideration
2. CEO Local Government EV Readiness Grant Award
3. Small Dollar Grant Award Terms and Conditions

ORDINANCE NO. 113, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
MAKING SUPPLEMENTAL APPROPRIATIONS AND AUTHORIZING  
TRANSFERS FOR THE CITY OF FORT COLLINS ELECTRIC VEHICLE  
READINESS ROADMAP UPDATE

WHEREAS, the FC Moves department is housed in the City’s Planning, Development, and Transportation division and exists to advance mobility solutions to increase walking, bicycling, transit use, shared and environmentally sustainable modes; and

WHEREAS, the City of Fort Collins is geographically positioned along two nationally established alternative fuel corridors, I-25 and US 287, which allows for unique investment opportunities to facilitate electric vehicle (“EV”) adoption and alternative-fueled transportation that will have impacts at the local, regional, and national level; and

WHEREAS, Fort Collins has made substantial investments at both the government and community level to increase EV adoption and seeks to maintain the momentum of recent efforts by updating its 2017 Electric Vehicle Readiness Roadmap (“EVRR”) and developing new strategies that will facilitate increased EV adoption and equitable deployment in the short-, medium- and long-term; and

WHEREAS, over the last six years, conditions within the City and the rapidly evolving EV environment have changed, resulting in a need to provide the community with updated guidance, strategies, and policies to foster increased EV adoption; and

WHEREAS, there also has been a need to advise the City organization on best practices as it continues to grow EV adoption and other alternative fuels for its own fleet of vehicles; and

WHEREAS, since the EVRR’s creation, a number of City plans, namely the 2019 City Plan and the 2021 Climate Future Plan, have been adopted that feature EVs prominently, necessitating an updated EVRR with a coherent approach regarding EV adoption and alignment with the various objectives established throughout the City; and

WHEREAS, the Colorado Energy Office (“CEO”) recently awarded FC Moves a Local Government Electric Vehicle Readiness Grant to assist in the updating of the EVRR to continue support of EV adoption throughout the Fort Collins community and surrounding area; and

WHEREAS, the grant award for updating the EVRR is based on total project costs of \$53,333, with the CEO providing \$40,000 in funds and the remaining \$13,333 being provided by the City’s Operation Services, Light & Power, and FC Moves departments as a local match; and

WHEREAS, this appropriation benefits the public health, safety and welfare of the residents of Fort Collins and serves the public purpose of promoting environmentally sustainable transportation solutions; and

WHEREAS, appropriating Light & Power Fund revenues as part of the City’s matching funds benefits electric utility rate payers by allowing the utility to more strategically maintain



system reliability and minimize future capital resources committed to support continued EV adoption; 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 Transportation Services Fund and will not cause the total amount appropriated in the Transportation Services 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 transfers of \$4,445 from the FC Moves operating budget in the Transportation Services Fund, \$4,444 from the Operation Services operating budget in the General Fund, and \$4,444 from the Light and Power department operating budget in the Light and Power Fund to the Electric Vehicle Readiness Roadmap Update Project in the Transportation Services 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 or donation; and

WHEREAS, the City Council wishes to designate the appropriation herein for the Local Government EV Readiness 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 Transportation Services Fund the sum of FORTY THOUSAND DOLLARS (\$40,000) to be

expended in the Transportation Services Fund for the City of Fort Collins Electric Vehicle Readiness Roadmap Update.

Section 3. That the unexpended and unencumbered appropriated amount of FOUR THOUSAND FOUR HUNDRED FORTY-FIVE DOLLARS (\$4,445) is authorized for transfer from the FC Moves operating budget in the Transportation Services Fund to the City of Fort Collins Electric Vehicle Readiness Roadmap Update in the Transportation Service Fund and appropriated therein to be expended for the update.

Section 4. That the unexpended and unencumbered appropriated amount of FOUR THOUSAND FOUR HUNDRED FORTY-FOUR DOLLARS (\$4,444) is authorized for transfer from the Operation Services operating budget in the General Fund to the City of Fort Collins Electric Vehicle Readiness Roadmap Update in the Transportation Services Fund and appropriated therein to be expended for the update.

Section 5. That the unexpended and unencumbered appropriated amount of FOUR THOUSAND FOUR HUNDRED FORTY-FOUR DOLLARS (\$4,444) is authorized for transfer from the Light and Power department operating budget in the Light and Power Fund to the City of Fort Collins Electric Vehicle Readiness Roadmap Update in the Transportation Services Fund and appropriated therein to be expended for the update.

Section 6. That the appropriation herein for the Local Government EV Readiness 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 5th day of September, 2023, and to be presented for final passage on the 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

Passed and adopted on final reading on the 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

# Exhibit A – Statement of Work (SOW)

*Local Government EV Readiness Planning Grant – City of Fort Collins*

## I. Project Background and Description

The Colorado Energy Office (hereinafter called “CEO” or the “State”) agrees to provide grant funding to the City of Fort Collins (hereinafter called “Grantee”) to update the City’s Electric Vehicle (“EV”) Readiness Plan (hereinafter called “Plan”). The scope of this Plan is focused on supporting the current and future adoption of EVs, including on-road personal and fleet vehicles, and necessary EV and utility infrastructure. Reflecting the needs of the community and its stakeholders, the Plan shall be actionable and built on shared regional goals. The Plan developed shall include an assessment of the existing EV market, a description of key barriers (e.g., land use code and zoning, cost, access to information, etc.), stakeholder engagement, and an EV readiness roadmap covering community goals, infrastructure deployment, and cost analysis.

Local governments are uniquely positioned to advance emissions reduction strategies in buildings, energy generation, and transportation. The Polis Administration’s Roadmap to 100% Renewable Energy By 2040 and Bold Climate Action calls for local governments to lead by example, and for the State to support local government EV planning and investment in EV charging infrastructure. In developing these plans, local and regional governments can develop a common vision for EV readiness, identify key partnerships and actionable strategies needed to achieve the vision, and prepare for and stimulate community adoption of EVs. The Plan developed with this grant shall support the Colorado EV Plan of 2023 establishing a target of 940,000 EVs by 2030, as well as supporting numerous local, state, and federal climate action plans in preparing for and implementing actions that support increased use of EVs throughout the region.

## II. Work Tasks, Deliverables, and Timeline

Grantee shall hire an external consultant (hereinafter called “Consultant”) to update the City of Fort Collins’ EV Readiness Plan that was developed in 2017 (hereinafter called “EVRR”). As part of this grant, the City of Fort Collins shall issue a competitive Request for Proposal (hereinafter called “RFP”) and execute a contract with the successful bidder for the Consultant position. It is anticipated that the Grantee will begin work upon issuance of a Small Dollar Grant Award Purchase Order (PO) with CEO.

## Updated EV Readiness Plan

Existing sections of the Plan will be updated with current data, resources, best practices, and emerging technology information. Proposed supplementary content has been identified and added to the Plan outline tentatively, as this will be dependent on stakeholder and community input during the initial stages of the planning process. Newly introduced priority topics that have been included as part of the Plan’s update include equitable deployment of electric vehicle supply equipment (hereinafter called “EVSE”) infrastructure and EV programs, site

specific charging demand analysis (public, private, workplace, residential), smart grid operations to enhance community energy/climate goals and e-bike/micromobility infrastructure and policy needs. The Consultant will complete the following tasks:

### Task 1: Work Plan and Public Involvement Plan

- **Project Initiation.** Upon receiving the notice to proceed, the Consultant shall organize a kick-off meeting with the City project manager to discuss and refine project goals, expectations, tasks, approaches, and identify the timeline and milestones.
- **Project management.** City staff will be responsible for overall project management and a project management team will be established with representation from relevant City departments. The Consultant is expected to manage technical aspects of the Plan, and lead aspects as outlined in the scope of work. Recommendations regarding roles and responsibilities of City staff and the Consultant should be articulated in the response to this RFP. The Consultant is encouraged to propose innovative approaches to develop this Plan and should identify and emphasize those areas where their qualifications and expertise would most benefit this project.
- **Plan administration.** Dashiell Bubar-Hall, Transportation Planner, will serve as the City of Fort Collins project manager for the Plan update. The Consultant will confer/meet with the project manager on a bi-weekly basis (at a minimum) to provide updates on Plan status and progress made, and solicit direction as needed. The Consultant is responsible for preparing meeting agendas and minutes for the City’s project manager. Agendas shall be submitted within three (3) business days prior to a project meeting, and the minutes shall include the meeting date and time, agenda, list of attendees, contact information and as summary of completed and open action items.
  - The Consultant shall prepare bi-weekly progress summary reports. These reports shall include:
    - Project progress to date
    - Work planned in the next bi-weekly period
    - Identification of open issues
    - Action item list with task status, identification of responsible party for each task, and target completion dates.
    - Draft material for review (more than three days may be required depending on the nature and amount of content)
- **Ad-hoc Technical Advisory Committee.** An ad-hoc Technical Advisory Committee (TAC) will be assembled to help inform the Plan’s development, including, but not limited to, the existing conditions, strategies, community engagement, recommendations, and implementation. It is envisioned that this group will be comprised of various experts to be consulted and advised by on an as-needed basis. Below is a preliminary list of potential City departments and organizations to assemble as part of the TAC. This list can be expanded and modified as necessary.
  - City of Fort Collins
    - Utilities (Energy Services, Light & Power engineering)
    - Sustainability Services
    - FC Moves (Mobility Management and Planning, Active Modes)
    - Transfort
    - Engineering
    - Parking Services
    - Operation Services
    - Streets

- Planning
- Parks
- Office of Diversity, Equity, and Inclusion
- External
  - Colorado State University
  - North Front Range Metropolitan Planning Organization
  - Platte River Power Authority
  - Larimer County
  - Neighboring Municipalities
  - Northern Colorado Clean Cities Coalition (NCCC)
  - Drive Clean Colorado (DCC)
  - Electrification Coalition
- **Work Plan and Public Involvement Plan.** Following the initial kickoff meeting between the Consultant and City project manager, the Consultant will develop a detailed work plan, including public involvement to guide the Plan’s development. This will include (at minimum) the following elements:
  - Refined scope of work detailing study tasks, goals, objectives, and deliverables.
  - Detailed schedule identifying key milestones and deliverables.
  - Public Involvement Plan, including digital and in-person engagement.
    - Include strategies for reaching historically underrepresented groups, including non-English speaking communities.
    - Include outreach and communication mechanisms tailored to specific audiences to maximize the effectiveness of outreach and program goals.
    - Include strategy for community questionnaire development and deployment.

## Task 2: Existing Plan, Literature, and Best Practices Review

The purpose of this task is to 1) identify and document the existing plans, literature, and best practices related to EV adoption and EVSE deployment relevant to Fort Collins, and 2) conduct a comprehensive review of resources (provided below) to help inform the development of the plan vision and goals, gaps and opportunities, barriers to adoption/deployment, strategies, and recommendations for the Plan’s update.

- The following plans and reports should be reviewed as part of this task and be used in developing the content featured in the EVRR update. This is not an exhaustive list and further resources may be identified and added to a refined scope of work.
  - 2017 Electric Vehicle Readiness Roadmap
  - 2019 City Plan including the Transportation Master Plan
  - 2019 Municipal Sustainability and Adaptation Plan
  - 2021 Our Climate Future Plan
  - 2023 Zero-Emission Bus Transition Plan
  - Parking Plan
  - City Municipal Codes (especially recently updated building code)
  - Development Review Process (processes related to EVSE requirements and parking)
  - Fort Collins Utilities electric capacity fees and processes

### Task 3: Vision/Goal Refinement, Initiate Community Engagement

- The purpose of this task is to engage stakeholders and the community to revisit the goals, vision and objectives established in the 2017 EVRR and to update them to reflect the current state of the City.
  - Develop the community questionnaire that will be distributed based on the approach identified in the Public Involvement Plan
  - Conduct initial focus group and working group meeting to review content from task 2 and update goals, objectives, and vision
  - Review and finalize goals, objectives, and vision with the TAC

### Task 4: Existing Conditions and Community Context

- The purpose of this task is primarily to review the existing conditions and community context section within the 2017 EVRR and update it with current data and information. The Consultant should highlight how the City and the region have changed since 2017, highlighting how these changes are relevant to EV/EVSE infrastructure and adoption. This task, along with Task 5, will constitute an update to the “Introduction” section of the 2017 EVRR.
  - Develop a report identifying existing conditions related to EV and EVSE trends in and around Fort Collins, including:
    - Population, employment, transportation, housing, economic, permitting, zoning, utility application and energization, and other trends in Fort Collins and the region that impact EV adoption and EVSE deployment
    - Barriers to EV adoption and EVSE deployment
    - Utility distribution capacity, electric capacity fees and EV/EVSE implications
    - EV adoption data and trends
    - EVSE deployment and utilization data

### Task 5: EV Market Assessment

- This task will update the “EV Overview” section within the Introduction of the 2017 EVRR by providing general information about EVs and EVSE infrastructure, including:
  - EV vehicle types (plug-in electric vehicles, plug-in hybrid, hybrid)
    - Cost of ownership of EV vs. conventional engines
    - Medium- and heavy-duty vehicle information
    - Transit vehicle information
    - E-bikes and electric micromobility
  - EVSE categories (level 1, level 2, DCFC, vehicle to grid)
    - Charging capabilities and use cases
    - Cost of installation and maintenance
    - Interconnection requirements
  - State and National initiatives
    - Tax rebates for EV purchases
    - Funding sources for EVSE installation

- Vehicle Manufacturer information
  - Vehicle availability
  - Production and supply chain implications

## Task 6: Charging Demand Analysis

- The purpose of this task is to identify areas of the city that need additional charging capabilities, identify specific sites in the city that are suited or not-suited for EVSE installation (level 2 and level 3 EVSE), and provide a roadmap for increasing EVSE infrastructure within the city. This analysis will be used to help inform City investment decisions but will also allow the private sector to justify EVSE installations that fill a gap in charging access when applying for state and federal funding. This task will specifically address:
  - Public charging needs
    - City-owned property
    - Property of partners identified through the planning process
  - Private charging needs
  - Fleet Charging needs
    - Reference Zero-Emission Bus Study from Transfort, and ongoing SMART Grant effort from Operations
  - Workplace charging needs
    - City employees
    - General workforce
  - Residential charging needs
    - Multifamily units
    - Rental units
    - Older single-family units with outdated infrastructure
  - Smart grid operations and distribution grid utility systems based on charging types and levels

## Task 7: EV and EVSE Equity analysis

- The 2017 EVRR contained a brief section related to equity and EV/EVSE equity will be a point of emphasis within the updated plan. The content generated during this task will be featured in multiple sections of the Plan, including the community context/existing conditions as well as distinct equity-focused strategies. The following equity issues should be evaluated but additional topics may be added to the refined scope of work:
  - Vehicle acquisition assistance for low-income residents
  - EV ride share programs for disadvantaged populations
  - EVSE installation at multifamily units, especially at lower cost complexes
  - ADA accessibility of EVSE infrastructure
  - Solutions for EVSE access for individuals lacking access to smartphones and traditional banking/credit systems

## Task 8: Strategy Development and Implementation Plan

- This task will provide the City with a coherent set of strategies that achieve the goals and objectives of the EVRR and other established plans along with a prescribed approach for implementation of the strategies. The strategies from 2017 should be revisited to understand what worked, what failed to get off the ground, and why. This task will constitute an update to the “Readiness Strategies” and “Strategies” sections of the EVRR, including:
  - Update the methodology and data collection approaches that will be used to inform strategy development
  - Identify key partnerships and the role they will have in implementing strategies throughout the community and surrounding area
  - Develop categories that each strategy will fall under
  - Develop actionable strategies that are directly related to stakeholder and community input or derived from analysis conducted during the plan update
    - Short-, medium-, and long-term

## Task 9: Plan Adoption

- The Consultant will assist City Staff in presenting findings and recommendations from the Plan’s update to relevant boards and commissions, leading up to formal plan adoption from City Council. An initial list of boards and commissions to be engaged is featured below, but additional entities may be identified during the planning process.
  - Transportation Board
  - Senior Advisory Board
  - Bicycle Advisory Board
  - Disability Advisory Board
  - Air Quality Advisory Board
  - Planning and Zoning Commission

## III. Testing & Acceptance Criteria

CEO shall determine whether deliverables meet the Work Task requirements in this Statement of Work. At the conclusion of the project, the Grantee shall submit the final draft of the Plan update to CEO for review. CEO anticipates that prior to submission, the Plan shall go through an internal quality assurance process and as such, shall reflect the requirements of this Statement of Work.

## IV. Reporting

Written reporting is not required for this project; however, the Grantee shall coordinate and conduct monthly virtual meetings with CEO to provide progress updates and answer any questions from CEO in connection with the Plan.



## V. Budget

The maximum amount payable under this Agreement is \$40,000.00, as determined by the State from available funds. Satisfactory performance under the terms of this Agreement shall be a condition precedent to CEO's obligation to compensate the Grantee. CEO shall not be liable to pay or reimburse the Grantee for any performance hereunder prior to the Service From Date as shown on the face of the Small Dollar Grant Award. The Grantee shall provide a cash match of \$13,333.00. The program budget total is \$53,333.00.

## VI. Payment

Payment shall be made following successful completion of the project. The final draft of the Plan update (along with supporting documentation) shall be submitted to CEO with an invoice requesting reimbursement.

## VII. Small Dollar Grant Award Term

The Grantee shall begin work upon the later of the Service From Date as shown on the face of this Small Dollar Grant Award or upon Grantee's acceptance of this Agreement. This Small Dollar Grant Award shall terminate on June 30, 2024, unless sooner terminated or further extended as specified elsewhere herein.

## State of Colorado Small Dollar Grant Award Terms and Conditions

1. **Offer/Acceptance.** This Small Dollar Grant Award, together with these terms and conditions (including, if applicable, Addendum 1: Additional Terms and Conditions for Information Technology below), and any other attachments, exhibits, specifications, or appendices, whether attached or incorporated by reference (collectively the “Agreement”) shall represent the entire and exclusive agreement between the State of Colorado, by and through the agency identified on the face of the Small Dollar Grant Award (“State”) and the Subrecipient identified on the face of the Small Dollar Grant Award (“Grantee”). If this Agreement refers to Grantee’s bid or proposal, this Agreement is an ACCEPTANCE of Grantee’s OFFER TO PERFORM in accordance with the terms and conditions of this Agreement. If a bid or proposal is not referenced, this Agreement is an OFFER TO ENTER INTO AGREEMENT, subject to Grantee’s acceptance, demonstrated by Grantee’s beginning performance or written acceptance of this Agreement. Any COUNTER-OFFER automatically CANCELS this Agreement, unless a change order is issued by the State accepting a counter-offer. Except as provided herein, the State shall not be responsible or liable for any Work performed prior to issuance of this Agreement. The State’s financial obligations to the Grantee are limited by the amount of Grant Funds awarded as reflected on the face of the Small Dollar Grant Award.
2. **Order of Precedence.** In the event of a conflict or inconsistency within this Agreement, such conflict or inconsistency shall be resolved by giving preference to the documents in the following order of priority: **(1)** the Small dollar Grant Award document; **(2)** these terms and conditions (including, if applicable, Addendum 1 below); and **(3)** any attachments, exhibits, specifications, or appendices, whether attached or incorporated by reference. Notwithstanding the above, if this Agreement has been funded, in whole or in part, with a Federal Award, in the event of a conflict between the Federal Grant and this Agreement, the provisions of the Federal Grant shall control. Grantee shall comply with all applicable Federal provisions at all times during the term of this Agreement. Any terms and conditions included on Grantee’s forms or invoices not included in this Agreement are void.
3. **Changes.** Once accepted in accordance with **§1**, this Agreement shall not be modified, superseded or otherwise altered, except in writing by the State and accepted by Grantee.
4. **Definitions.** The following terms shall be construed and interpreted as follows: **(a) “Award”** means an award by a Recipient to a Subrecipient; **(b) “Budget”** means the budget for the Work described in this Agreement; **(c) “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 CRS §24-11-101(1); **(d) “UCC”** means the Uniform Commercial Code in CRS Title 4; **(e) “Effective Date”** means the date on which this Agreement is issued as shown on the face of the Small Dollar Grant Award; **(f) “Federal Award”** means an award of federal financial assistance or a cost-reimbursement contract, by a Federal Awarding Agency to the Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award, which terms and conditions shall flow down to the Award unless such terms and conditions specifically indicate otherwise. The term does not include payments to a vendor or payments to an individual that is a beneficiary of a Federal program; **(g) “Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient; **(h) “Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement; **(i) “Matching Funds”** mean the funds provided by the Grantee to meet cost sharing requirements described in this Agreement; **(j) “Recipient”** means the State agency identified on the face of the Small Dollar Grant Award; **(k) “Subcontractor”** means

## State of Colorado Small Dollar Grant Award Terms and Conditions

third parties, if any, engaged by Grantee to aid in performance of the Work; (l) **“Subrecipient”** means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a program, but does not include an individual that is a beneficiary of such program; (m) **“Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, identified as the 2 C.F.R. (Code of Federal Regulations) Part 200, commonly known as the “Super Circular,” 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; and (n) **“Work”** means the goods delivered or services, or both, performed pursuant to this Agreement and identified as Line Items on the face of the Small Dollar Grant Award.

5. **Delivery.** Grantee shall furnish the Work in strict accordance with the specifications and price set forth in this Agreement. The State shall have no liability to compensate Grantee for the performance of any Work not specifically set forth in the Agreement.
6. **Rights to Materials.** *[Not Applicable to Agreements issued either in whole in part for Information Technology, as defined in CRS § 24-37.5-102(2); in which case Addendum 1 §2 applies in lieu of this section.]* Unless specifically stated otherwise in this Agreement, all materials, including without limitation supplies, equipment, documents, content, information, or other material of any type, whether tangible or intangible (collectively “Materials”), furnished by the State to Grantee or delivered by Grantee to the State in performance of its obligations under this Agreement shall be the exclusive property the State. Grantee shall return or deliver all Materials to the State upon completion or termination of this Agreement.
7. **Grantee Records.** Grantee 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 (including, but not limited to the operation of programs) performed under this Agreement (collectively “Grantee Records”). Unless otherwise specified by the State, the Grantee shall retain Grantee Records for a period (the “Record Retention Period”) of three years following the date of submission to the State of the final expenditure report, 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 finding 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 Grantee in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property. Grantee shall permit the State, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and transcribe Grantee Records during the Record Retention Period. Grantee shall make Grantee Records available during normal business hours at Grantee’s office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two 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. The State, in its discretion, may monitor Grantee’s performance of its obligations under this Agreement using procedures as determined by the State. The federal government and any other duly authorized agent of a governmental

## State of Colorado Small Dollar Grant Award Terms and Conditions

agency, in its discretion, Grantee shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Grantee and this Agreement, and the State shall have the right, in its discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State will monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work. Grantee shall promptly submit to the State a copy of any final audit report of an audit performed on Grantee Records that relates to or affects this Agreement or the Work, whether the audit is conducted by Grantee, a State agency or the State's authorized representative, or a third party. If applicable, the Grantee may be required to perform a single audit under 2 CFR 200.501, *et seq.* Grantee shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

8. **Reporting.** If Grantee 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 Grantee's ability to perform its obligations under this Agreement, Grantee shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State. Grantee shall disclose, in a timely manner, in writing to the State and the Federal Awarding Agency, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Award. The State or the Federal Awarding Agency may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.
9. **Conflicts of Interest.** Grantee acknowledges that with respect to this Agreement, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities, or relationships that reasonably may appear to be in conflict with the full performance of Grantee's obligations to the State under this Agreement. If a conflict or appearance of a conflict of interest exists, or if Grantee is uncertain as to such, Grantee 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. Grantee certifies that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's Services and Grantee shall not employ any person having such known interests. Grantee acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Grantee further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Grant.
10. **Taxes.** The State is exempt from federal excise taxes and from State and local sales and use taxes. The State shall not be liable for the payment of any excise, sales, or use taxes imposed on Grantee. A tax exemption certificate will be made available upon Grantee's request. Grantee shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Grantee may wish to have in place in connection with this Agreement.
11. **Payment.** Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Grantee any amount under this Agreement that exceeds the

## State of Colorado Small Dollar Grant Award Terms and Conditions

Document Total shown on the face of the Small Dollar Grant Award. The State shall pay Grantee in the amounts and in accordance with the schedule and other conditions set forth in this Agreement. Grantee shall initiate payment requests by invoice to the State, in a form and manner approved by the State. The State shall pay Grantee for all amounts due within 45 days after receipt of an Awarding Agency's approved invoicing request, or in instances of reimbursement grant programs a request for reimbursement, compliant with Generally Accepted Accounting Principles (GAAP) and, if applicable Government Accounting Standards Board (GASB) of amount requested. Amounts not paid by the State within 45 days of the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate set forth in CRS §24-30-202(24) until paid in full. Interest shall not accrue if a good faith dispute exists as to the State's obligation to pay all or a portion of the amount due. Grantee shall invoice the State separately for interest on delinquent amounts due, referencing the delinquent payment, number of day's interest to be paid, and applicable interest rate. The acceptance of an invoice shall not constitute acceptance of any Work performed under this Agreement. Except as specifically agreed in this Agreement, Grantee shall be solely responsible for all costs, expenses, and other charges it incurs in connection with its performance under this Grantee.

12. **Term.** The parties' respective performances under this Agreement shall commence on the "Service From" date identified on the face of the Small Dollar Grant Award, unless otherwise specified, and shall terminate on the "Service To" date identified on the face of the Small Dollar Grant Award unless sooner terminated in accordance with the terms of this Agreement.
13. **Payment Disputes.** If Grantee disputes any calculation, determination or amount of any payment, Grantee shall notify the State in writing of its dispute within 30 days following the earlier to occur of Grantee'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 Grantee 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.
14. **Matching Funds.** Grantee shall provide Matching Funds, if required by this Agreement. If permitted under the terms of the grant and per this Agreement, Grantee may be permitted to provide Matching Funds prior to or during the course of the project or the match will be an in-kind match. Grantee shall report to the State regarding the status of such funds upon request. Grantee'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 Grantee and paid into Grantee's treasury or bank account. Grantee represents to the State that the amount designated "Grantee's Matching Funds" pursuant to this Agreement, has been legally appropriated for the purposes of this Agreement by its authorized representatives and paid into its treasury or bank account. Grantee 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 Grantee. Grantee shall not pay or be liable for any claimed interest, late

## State of Colorado Small Dollar Grant Award Terms and Conditions

charges, fees, taxes or penalties of any nature, except as required by Grantee's laws or policies.

15. **Reimbursement of Grantee Costs.** If applicable, the State shall reimburse Grantee's allowable costs, not exceeding the maximum total amount described in this Agreement for all allowable costs described in the grant except that Grantee may adjust the amounts between each line item of the Budget without formal modification to this Agreement as long as the Grantee provides notice to, and received approval from the State of the change, the change does not modify the total maximum amount of this Agreement, and the change does not modify any requirements of the Work. If applicable, the State shall reimburse Grantee for the properly documented allowable costs related to the Work after review and approval thereof, subject to the provisions of this Agreement. However, any costs incurred by Grantee prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs. Grantee's costs for Work performed after the "Service To" date identified on the face of the Small Dollar Grant Award, or after any phase performance period end date for a respective phase of the Work, shall not be reimbursable. The State shall only reimburse allowable costs described in this Agreement and shown in the Budget if those costs are **(a)** reasonable and necessary to accomplish the Work, and **(b)** equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the costs actually incurred).
16. **Close-Out.** Grantee shall close out this Award within 45 days after the "Service To" date identified on the face of the Small Dollar Grant Award, including any modifications. To complete close-out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Agreement and Grantee's final reimbursement request or invoice. In accordance with the Agreement, the State may withhold a percentage of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete.
17. **Assignment.** Grantee's rights and obligations under this Agreement may not be transferred or assigned without the prior, written consent of the State and execution of a new agreement. Any attempt at assignment or transfer without such consent and new agreement shall be void. Any assignment or transfer of Grantee's rights and obligations approved by the State shall be subject to the provisions of this Agreement.
18. **Subcontracts.** Grantee shall not enter into any subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Grantee shall submit to the State a copy of each subcontract upon request by the State. All subcontracts entered into by Grantee 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.
19. **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 in accordance with the intent of the Agreement.
20. **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.

## State of Colorado Small Dollar Grant Award Terms and Conditions

21. **Third Party Beneficiaries.** Except for the parties' respective successors and assigns, 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.
22. **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.
23. **Indemnification. [Not Applicable to Inter-governmental agreements]** Grantee shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Grantee, or its employees, agents, Subcontractors, or assignees in connection with this Agreement. This shall include, without limitation, any and all costs, expenses, claims, damages, liabilities, court awards and other amounts incurred by the Indemnified Parties in relation to any claim that any work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right or any claim for loss or improper disclosure of any confidential information or personally identifiable information. If Grantee is a public agency prohibited by applicable law from indemnifying any party, then this section shall not apply.
24. **Notice.** All notices given under this Agreement shall be in writing, and shall be delivered to the contacts for each party listed on the face of the Small Dollar Grant Award. Either party may change its contact or contact information by notice submitted in accordance with this section without a formal modification to this Agreement.
25. **Insurance.** Except as otherwise specifically stated in this Agreement or any attachment or exhibit to this Agreement, Grantee shall obtain and maintain insurance as specified in this section at all times during the term of the Agreement: (a) workers' compensation insurance as required by state statute, and employers' liability insurance covering all Grantee employees acting within the course and scope of their employment, (b) Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent vendors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: \$1,000,000 each occurrence; \$1,000,000 general aggregate; \$1,000,000 products and completed operations aggregate; and \$50,000 any one fire, and (c) 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. If Grantee will or may have access to any protected information, then Grantee shall also obtain and maintain insurance covering loss and disclosure of protected information and claims based on alleged violations of privacy right through improper use and disclosure of protected information with limits of \$1,000,000 each occurrence and \$1,000,000 general aggregate at all times during the term of the Small Dollar Grant Award. Additional insurance may be required as provided elsewhere in this Agreement or any attachment or exhibit to this Agreement. All insurance policies required by this Agreement shall be issued by insurance companies with an AM Best

## State of Colorado Small Dollar Grant Award Terms and Conditions

rating of A-VIII or better. If Grantee is a public agency within the meaning of the Colorado Governmental Immunity Act, then this section shall not apply and Grantee shall instead comply with the Colorado Governmental Immunity Act. The State shall be named as additional insured on all commercial general liability policies required of Vendor. All insurance policies secured or maintained by Vendor in relation to this Purchase Order shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Vendor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

26. **Termination Prior to Grantee Acceptance.** If Grantee has not begun performance under this Agreement, the State may cancel this Agreement by providing written notice to the Grantee.
27. **Termination for Cause.** If Grantee refuses or fails to timely and properly perform any of its obligations under this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, the State may notify Grantee in writing of non-performance and, if not corrected by Grantee within the time specified in the notice, terminate Grantee's right to proceed with the Agreement or such part thereof as to which there has been delay or a failure. Grantee shall continue performance of this Agreement to the extent not terminated. Grantee shall be liable for excess costs incurred by the State in procuring similar Work and the State may withhold such amounts, as the State deems necessary. If after rejection, revocation, or other termination of Grantee's right to proceed under the Colorado Uniform Commercial Code (CUCC) or this clause, the State determines for any reason that Grantee was not in default or the delay was excusable, the rights and obligations of the State and Grantee shall be the same as if the notice of termination had been issued pursuant to termination under **§28**.
28. **Termination in Public Interest.** The State is entering into this Agreement for the purpose of carrying out the public interest of the State, as determined by its Governor, General Assembly, Courts, or Federal Awarding Agency. If this Agreement ceases to further the public interest of the State as determined by its Governor, General Assembly, Courts, or Federal Awarding Agency, the State, in its sole discretion, may terminate this Agreement in whole or in part and such termination shall not be deemed to be a breach of the State's obligations hereunder. This section shall not apply to a termination for cause, which shall be governed by **§27**. A determination that this Small Dollar Grant Award should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. The State shall give written notice of termination to Grantee specifying the part of the Agreement terminated and when termination becomes effective. Upon receipt of notice of termination, Grantee shall not incur further obligations except as necessary to mitigate costs of performance. The State shall pay the Agreement price or rate for Work performed and accepted by State prior to the effective date of the notice of termination. The State's termination liability under this section shall not exceed the total Agreement price.
29. **Termination for Funds Availability.** The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Grantee beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Grant 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 Grant Funds, the State's obligation to pay Grantee shall be contingent upon such non-State



## State of Colorado Small Dollar Grant Award Terms and Conditions

funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Grant Funds, and the State's liability for such payments shall be limited to the amount remaining of such Grant 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 Work performed 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 §28.

- 30. Grantee's Termination Under Federal Requirements.** If the Grant Funds include any federal funds, then Grantee may request termination of this Grant by sending notice to the State, or to the Federal Awarding Agency with a copy to the State, which includes the reasons for the termination and the effective date of the termination. If this Grant is terminated in this manner, then Grantee shall return any advanced payments made for Work that will not be performed prior to the effective date of the termination.
- 31. Governmental Immunity.** Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, *et seq.*, 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, CRS §§24-30-1501, *et seq.* No term or condition of this Agreement 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.
- 32. Grant Recipient.** Grantee shall perform its duties hereunder as a grant recipient and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Grantee 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 Grantee or any of its agents or employees. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.**
- 33. Compliance with Law.** Grantee 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.
- 34. Choice of Law, Jurisdiction and Venue. [Not Applicable to Inter-governmental agreements]** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. 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 Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and

## State of Colorado Small Dollar Grant Award Terms and Conditions

County of Denver. Any provision incorporated herein by reference which purports to negate this or any other provision in this Agreement in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision or for any other reason shall not invalidate the remainder of this Agreement, to the extent capable of execution. Grantee shall exhaust administrative remedies in CRS §24-109-106, prior to commencing any judicial action against the State regardless of whether the Colorado Procurement Code applies to this Agreement.

35. **Prohibited Terms.** Nothing in this Agreement shall be construed as a waiver of any provision of CRS §24-106-109. Any term included in this Agreement that requires the State to indemnify or hold Grantee harmless; requires the State to agree to binding arbitration; limits Grantee's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with that statute in any way shall be void ab initio.

## ADDENDUM 1: Additional Terms & Conditions for Information Technology

IF ANY PART OF THE SUBJECT MATTER OF THIS AGREEMENT IS INFORMATION TECHNOLOGY, AS DEFINED IN CRS § 24-37.5-102 (2), THE FOLLOWING PROVISIONS ALSO APPLY TO THIS AGREEMENT.

- A. **Definitions.** The following terms shall be construed and interpreted as follows: (a) “**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 CRS §24-72-302; (b) “**Incident**” means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, pursuant to CRS §§24-37.5-401 *et seq.*; (c) “**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; (d) “**PHI**” means any protected health information, including, without limitation any information whether oral or recorded in any form or medium 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 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 including, without limitation, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act; (e) “**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, including, without limitation, all information defined as personally identifiable information in CRS §24-72-501. . “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, *et. seq.*, C.R.S. ; (f) “**State Confidential Information**” means any and all State Records not subject to disclosure under the Colorado Open Records Act and includes, without limitation, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under the Colorado Open Records Act, (g) “**State Fiscal Rules**” means those fiscal rules promulgated by the Colorado State Controller pursuant to CRS §24-30-202(13)(a); (h) “**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; (i) “**State Records**” means any and all State data, information, and records, regardless of physical form; (j) “**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, including, without limitation all information defined as federal tax information in Internal Revenue Service Publication 1075; and (k) “**Work Product**” means the tangible and intangible results of the delivery of goods and performance of services, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports,

## ADDENDUM 1: Additional Terms & Conditions for Information Technology

proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work, but does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

B. **Intellectual Property.** Except to the extent specifically provided elsewhere in this Agreement, any State information, including without limitation pre-existing State software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials; or Work Product prepared by Grantee in the performance of its obligations under this Agreement shall be the exclusive property of the State (collectively, "State Materials"). All State Materials shall be delivered to the State by Grantee upon completion or termination of this Agreement. The State's exclusive rights in any Work Product prepared by Grantee shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Grantee shall not use, willingly allow, cause or permit any State Materials to be used for any purpose other than the performance of Grantee's obligations hereunder without the prior written consent of the State. The State shall maintain complete and accurate records relating to (a) its use of all Grantee and third party software licenses and rights to use any Grantee or third party software granted under this Agreement and its attachments to which the State is a party and (b) all amounts payable to Grantee pursuant to this Agreement and its attachments and the State's obligations under this Agreement or any amounts payable to Grantee in relation to this Agreement, which records shall contain sufficient information to permit Grantee to confirm the State's compliance with the use restrictions and payment obligations under this Agreement or to any third party use restrictions to which the State is a party. Grantee retains the exclusive rights, title and ownership to any and all pre-existing materials owned or licensed to Grantee including, but not limited to all pre-existing software, licensed products, associated source code, machine code, text images, audio, video, and third party materials, delivered by Grantee under the Agreement, whether incorporated in a deliverable or necessary to use a deliverable (collectively, "Grantee Property"). Grantee Property shall be licensed to the State as set forth in a State-approved license agreement (a) entered into as exhibits or attachments to this Agreement, (b) obtained by the State from the applicable third party Grantee, or (c) in the case of open source software, the license terms set forth in the applicable open source license agreement. Notwithstanding anything to the contrary herein, the State shall not be subject to any provision incorporated in any exhibit or attachment attached hereto, any provision incorporated in any terms and conditions appearing on any website, any provision incorporated into any click through or online agreements, or any provision incorporated into any other document or agreement between the parties that (a) requires the State or the State to indemnify Grantee or any other party, (b) is in violation of State laws, regulations, rules, State Fiscal Rules, policies, or other State requirements as deemed solely by the State, or (c) is contrary to this Agreement.

C. **Information Confidentiality.** Grantee shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Grantee shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law, or approved in writing by the State. If

## ADDENDUM 1: Additional Terms & Conditions for Information Technology

Grantee will or may have access to any State Confidential Information or any other protected information, Grantee shall provide for the security of all State Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. Grantee shall comply with all Colorado Office of Information Security ("OIS") policies and procedures which OIS has issued pursuant to CRS §§24-37.5-401 through 406 and 8 CCR §1501-5 and posted at <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>, all information security and privacy obligations imposed by any federal, state, or local statute or regulation, or by any industry standards or guidelines, as applicable based on the classification of the data relevant to Grantee's performance under this Agreement. Such obligations may arise from: Health Information Portability and Accountability Act (HIPAA); IRS Publication 1075; Payment Card Industry Data Security Standard (PCI-DSS); FBI Criminal Justice Information Service Security Addendum; Centers for Medicare & Medicaid Services (CMS) Minimum Acceptable Risk Standards for Exchanges; and Electronic Information Exchange Security Requirements and Procedures for State and Local Agencies Exchanging Electronic Information with The Social Security Administration. Grantee shall immediately forward any request or demand for State Records to the State's principal representative.

**D. Other Entity Access and Nondisclosure Agreements.** Grantee 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. Grantee shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign, or Subcontractors has access to any State Confidential Information. Grantee shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions if requested by the State.

**E. Use, Security, and Retention.** Grantee shall use, hold, and maintain State Confidential Information in compliance with any and all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information. Grantee shall provide the State with access, subject to Grantee'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, Grantee shall return State Records provided to Grantee or destroy such State Records and certify to the State that it has done so, as directed by the State. If Grantee is prevented by law or regulation from returning or destroying State Confidential Information, Grantee warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

**F. Incident Notice and Remediation.** If Grantee 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 Grantee can establish none of Grantee or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Grantee shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State,

## ADDENDUM 1: Additional Terms & Conditions for Information Technology

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. The State may adjust or direct modifications to this plan, in its sole discretion and Grantee shall make all modifications as directed by the State. If Grantee cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Grantee shall reimburse the State for the reasonable actual costs thereof.

**G. Data Protection and Handling.** Grantee shall ensure that all State Records and Work Product in the possession of Grantee or any Subcontractors are protected and handled in accordance with the requirements of this Agreement at all times. Upon request by the State made any time prior to 60 days following the termination of this Agreement for any reason, whether or not this Agreement is expiring or terminating, Grantee shall make available to the State a complete and secure download file of all data that is encrypted and appropriately authenticated. This download file shall be made available to the State within 10 Business Days following the State’s request, and shall contain, without limitation, all State Records, Work Product, and any other information belonging to the State. Upon the termination of Grantee’s services under this Agreement, Grantee shall, as directed by the State, return all State Records provided by the State to Grantee, and the copies thereof, to the State or destroy all such State Records and certify to the State that it has done so. If legal obligations imposed upon Grantee prevent Grantee from returning or destroying all or part of the State Records provided by the State, Grantee shall guarantee the confidentiality of all State Records in Grantee’s possession and will not actively process such data. The State retains the right to use the established operational services to access and retrieve State Records stored on Grantee’s infrastructure at its sole discretion and at any time.

**H. Compliance.** If applicable, Grantee shall review, on a semi-annual basis, all OIS policies and procedures which OIS has promulgated pursuant to CRS §§ 24-37.5-401 through 406 and 8 CCR § 1501-5 and posted at <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>, to ensure compliance with the standards and guidelines published therein. Grantee shall cooperate, and shall cause its Subcontractors to cooperate, with the performance of security audit and penetration tests by OIS or its designee.

**I. Safeguarding PII.** If Grantee or any of its Subcontractors will or may receive PII under this Agreement, Grantee shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, all State requirements relating to non-disclosure, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Grantee shall take full responsibility for the security of all PII in its possession or in the possession of its Subcontractors, and shall hold the State harmless for any damages or liabilities resulting from the unauthorized disclosure or loss thereof. Grantee shall be a “Third-Party Service Provider” as defined in CRS §24-73-103(1)(i) and shall maintain security procedures and practices consistent with CRS §§24-73-101 *et seq.* In addition, as set forth in § 24-74-102, *et. seq.*, C.R.S., Vendor, including, but not limited to, Vendor’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

## ADDENDUM 1: Additional Terms & Conditions for Information Technology

Vendor is given direct access to any State databases containing PII, Vendor shall execute, on behalf of itself and its employees, the certification [PII Individual Certification Form](#) or [PII Entity Certification Form](#) [Download form from Hyperlink] on an annual basis and Vendor's duty shall continue as long as Vendor has direct access to any State databases containing PII. If Vendor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Vendor 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.

**J. Software Piracy Prohibition.** The State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Agreement and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**K. Information Technology.** To the extent that Grantee provides physical or logical storage of State Records; Grantee creates, uses, processes, discloses, transmits, or disposes of State Records; or Grantee is otherwise given physical or logical access to State Records in order to perform Grantee's obligations under this Agreement, the following terms shall apply. Grantee shall, and shall cause its Subcontractors, to: Provide physical and logical protection for all hardware, software, applications, and data that meets or exceeds industry standards and the requirements of this Agreement; Maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), annual security testing, and improvements or enhancements consistent with evolving industry standards; Comply with State and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing; Provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments; Promptly report all Incidents, including Incidents that do not result in unauthorized disclosure or loss of data integrity, to a designated representative of the OIS; Comply with all rules, policies, procedures, and standards issued by the Governor's Office of Information Technology (OIT), including project lifecycle methodology and governance, technical standards, documentation, and other requirements posted at <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>. Grantee shall not allow remote access to State Records from outside the United States, including access by Grantee's employees or agents, without the prior express written consent of OIS. Grantee shall communicate any request regarding non-U.S. access to State Records to the State. The State, acting by and through OIS, shall have sole discretion to grant or deny any such request.

**L. Accessibility.** Grantee shall comply with and the Work Product provided under this PO 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 OIT pursuant to Section §24-85-103 (2.5), C.R.S. Grantee shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current

**ADDENDUM 1:  
Additional Terms & Conditions for Information Technology**

version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards. Grantee shall indemnify, save, and hold harmless the Indemnified Parties against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to Grantee's failure to comply with §§24-85-101, *et seq.*, C.R.S., or the *Accessibility Standards for Individuals with a Disability* as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S. The State may require Grantee's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Grantee'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.





# AGENDA ITEM SUMMARY

City Council

## STAFF

Rupa Venkatesh, Assistant City Manager  
Jenny Lopez Filkins, Legal

## SUBJECT

**First Reading of Ordinance No. 114, 2023, Amending Various Sections of the Code of the City of Fort Collins to Correct References to the Building Review Board and to Correct References to Meeting Minutes Requirements.**

## EXECUTIVE SUMMARY

The purpose of this item is to amend various sections of City Code. During the work of the Ad Hoc Committee on Boards and Commissions, staff identified necessary edits to all reference to the Building Review Board. Those references should be changed to the Building Review Commission, which is in line with City Ordinance No. 049, 2021. Also, staff identified numerous incorrect references to the requirement for various bodies to record meeting minutes.

## STAFF RECOMMENDATION

Staff recommends adoption the Ordinances on First Reading.

## BACKGROUND / DISCUSSION

On April 20, 2021, Council adopted Ordinance No. 049, 2021, which renamed all quasi-judicial bodies as “commissions.” The “Building Review Board” was renamed the “Building Review Commission.” However, there are numerous City Code sections and cross-references that incorrectly use the name “Building Review Board.” One of the purposes of this Ordinance is to direct the codifier to correct the name. Also, Ordinance No. 049, 2021, renumbered the City Code section that requires meeting minutes to City Code Section 2-75 and there are numerous sections of the City Code that cite to the former number, 2-73. The Ordinance directs the City’s codifier to correct these references.

## CITY FINANCIAL IMPACTS

Not applicable.

## BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Not applicable.

## PUBLIC OUTREACH

Not applicable.

## ATTACHMENTS

1. Ordinance for Consideration

ORDINANCE NO. 114, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING VARIOUS SECTIONS OF THE CODE OF THE CITY OF FORT COLLINS TO  
CORRECT REFERENCES TO THE BUILDING REVIEW BOARD AND TO CORRECT  
REFERENCES TO MEETING MINUTES REQUIREMENTS

WHEREAS, the City has 25 boards and commissions, created by the City Council by ordinance, that perform a wide range of functions from advising City staff and the City Council to making quasi-judicial decisions on a variety of topics; and

WHEREAS, on April 20, 2021, the City Council adopted Ordinance No. 049, 2021, which renamed all quasi-judicial bodies as “commissions;” and

WHEREAS, the “Building Review Board” was renamed “Building Review Commission;” and

WHEREAS, there are numerous incorrect references in the City Code to the “Building Review Commission” and such references should be corrected; and

WHEREAS, Ordinance No. 049, 2021, also changed the numbering of various City Code provisions, including the section requiring meeting minutes for City boards and commissions, City Code Section 2-73; and

WHEREAS, the new number assigned to this City Code provision is 2-75; and

WHEREAS, the requirement to record meeting minutes is incorrectly cited as City Code Section 2-73 in numerous City Code provisions, including the Urban Renewal Authority, the Liquor Licensing Authority, the Downtown Development Authority, the General Employees’ Retirement Plan, and numerous cross-references; and

WHEREAS, the City Council finds that the proposed changes to the City Code are in the best interests of the City and its residents.

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 all references in the Code of the City of Fort Collins to the “Building Review Board” are hereby revised to instead refer to the “Building Review Commission,” including any cross-references.

Section 3. That all references in the Code of the City of Fort Collins to City Code Section 2-73 (“§ 2-73”), except for the title of City Code Section 2-73 – Remote meetings, are hereby revised to instead refer to Section 2-75 (“§ 2-75”).

Introduced, considered favorably on first reading and ordered published this 5th day of September, 2023, and to be presented for final passage on the 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

Passed and adopted on final reading this 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

## AGENDA ITEM SUMMARY

City Council



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### STAFF

Aaron Ehle, Airport Planning & Development Specialist  
Ryan Malarky, Legal

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### SUBJECT

**First Reading of Ordinance No. 115, 2023, Authorizing Conveyance of a Permanent Non-Exclusive Utility Easement on Property Jointly Owned by the City and the City of Loveland at the Northern Colorado Regional Airport for the AeroFNL Development.**

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### EXECUTIVE SUMMARY

The purpose of this item is to authorize a permanent non-exclusive utility easement over a portion of the Northern Colorado Regional Airport property owned jointly by the City of Fort Collins and the City of Loveland and leased by IC Loveland Investors, LLC, to allow for the installation and maintenance of electrical infrastructure for the new AeroFNL development.

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### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

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### BACKGROUND / DISCUSSION

Northern Colorado Regional Airport is a public facility jointly owned and operated by the Cities of Fort Collins and Loveland. In 2015, the Cities entered into an intergovernmental agreement (IGA) that formed the Northern Colorado Regional Airport Commission, which delegated certain powers and authority to operate and maintain the Airport. The City Councils of the Cities have the authority to grant an easement as a permanent property right in the Airport property.

In connection with the planned AeroFNL development project, the City of Loveland has requested a permanent non-exclusive easement for electrical infrastructure (the "Easement") to serve the development.

According to Fort Collins City Code Section 23-114. - Disposition of property interests for less than fair market value, any sale, lease or other conveyance of property interests approved under Subsection 23-111(a) or (b) or § 23-113 above must be for an amount equal to or greater than the fair market value of such interest unless the City Council or City Manager, as applicable, determines that such sale or lease serves a bona fide public purpose because:

*(1) The use to which the property will be put promotes health, safety or general welfare and benefits a significant segment of the citizens of Fort Collins;*

Northern Colorado Regional Airport is a public use airport which is jointly owned by Fort Collins and Loveland. This easement will allow for private investment that will bring improvements to the Airport and the users it serves. The Airport supports many important emergency response and safety functions, such as medevac flights and aerial firefighting operations. The improvements constructed by IC Loveland Investors, LLC on the leasehold will revert to the Cities and continue to serve the Airport after the expiration of the lease.

*(2) The use to which the property will be put supports one (1) or more of the City Council's goals, adopted policies, projects or plans;*

The easement will allow for private development of the site in alignment with the Airport Master Plan, which has been approved by the City Council.

*(3) The financial support provided by the City through the below-market disposition of the property will be leveraged with other funding or assistance;*

The City is benefiting from the grant of easement by allowing its partner, the City of Loveland, to install and maintain utilities needed to promote development of the Airport as guided by the Airport Master Plan. Furthermore, the Cities are receiving consideration through rent paid by the lessee under the lease agreement, which has been approved by the Airport Commission.

*(4) The sale or lease will not result in any direct financial benefit to any private person or entity, except to the extent such benefit is only an incidental consequence and is not substantial relative to the public purpose being served; and*

The easement will simply allow the City of Loveland to provide utilities to the private development on leased Airport land, at the developer's expense. The Airport and the two Cities benefit from the utilities, which add value to the Airport. The developer will not receive any more benefit than the other customers to which the City of Loveland provides utility services.

*(5) Selling or leasing the property for less than fair market rent will not interfere with current City projects or work programs, hinder workload schedules or divert resources needed for primary City functions or responsibilities.*

Granting the easement will not interfere with any City projects or work programs, workload schedules, or resources need for primary City functions or responsibilities.

As the easement meets the above criteria, Airport staff and the Airport Commission recommend approval of the Easement as it allows for privately funded aeronautical development on leased land, which will benefit the Airport and Cities.

### **CITY FINANCIAL IMPACTS**

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The Easement does not have material financial impacts on the Airport or City.

### **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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The Northern Colorado Regional Airport Commission and the City Councils of Fort Collins and Loveland have approved the 2020 Airport Master Plan.

The Northern Colorado Regional Airport Commission unanimously approved the assumption of the land lease by IC Loveland Investors, LLC, on November 20, 2022.

The Northern Colorado Regional Airport unanimously recommended approval of the easement by the Fort Collins City Council on April 17, 2023.

## **PUBLIC OUTREACH**

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The development of the 2020 Airport Master Plan, which took more than two years to complete, included numerous public meetings and significant outreach by the Airport, far exceeding what is recommended by the Federal Aviation Administration (FAA).

## **ATTACHMENTS**

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1. Ordinance for Consideration
2. Exhibit A to Ordinance

ORDINANCE NO. 115, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING THE CONVEYANCE OF A PERMANENT NON-EXCUSIVE UTILITY  
EASEMENT ON PROPERTY JOINTLY OWNED BY THE CITY OF FORT COLLINS AND  
THE CITY OF LOVELAND AT THE NORTHERN COLORADO REGIONAL AIRPORT FOR  
THE AEROFNL DEVELOPMENT

WHEREAS, the City of Fort Collins (“City”) and the City of Loveland (“Loveland”) (collectively, the “Cities”) jointly own property located in Loveland (the “Property”) known as the Northern Colorado Regional Airport (the “Airport”); and

WHEREAS, the Cities currently operate and maintain the Airport pursuant to that certain Amended and Restated Intergovernmental Agreement for the Joint Operation of the Fort Collins-Loveland Airport dated January 22, 2015, as amended (the “IGA”); and

WHEREAS, in connection with the planned development of certain undeveloped real property on the Airport leased to and to be developed by IC Loveland Investors, LLC, (“Developer”) for aeronautical uses, Loveland Utilities has requested a permanent non-exclusive easement for installation of Loveland-owned utility systems to serve the Developer’s leased property (the “Easement”) over and across that portion of the Airport property legally described on Exhibit A and depicted on Exhibit B attached hereto and incorporated herein by this reference (the “Easement Property”); and

WHEREAS, the Cities desire to grant the Easement on the terms and conditions more fully set forth in the Grant of Utility Easement attached hereto as Exhibit C and incorporated herein by this reference (the “Easement Agreement”); and

WHEREAS, City Code Section 23-111(a) authorizes the City Council to sell, convey or otherwise dispose of any interest in real property owned by the City, provided the City Council first finds, by ordinance, that such sale or other disposition is in the best interest 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 the City's conveyance of the Easement on the terms and conditions set forth in the Easement Agreement for less than fair market value serves a bona fide public purpose and is in the best interests of the City as required by City Code Section 23-114 because:

- a. The use to which the Easement Property will be put promotes health, safety or general welfare and benefits a significant segment of the citizens of Fort Collins by facilitating

private investment in and improvement of the Airport and the users it serves, including provision of many important emergency response and safety functions, such as medevac flights and aerial firefighting operations, and the improvements to be constructed by Developer will provide revenue and revert to the Cities and continue to serve the Airport after the expiration of the lease;

- b. The use to which the Easement Property will be put supports one (1) or more of the City Council’s goals, adopted policies, projects or plans, including the Airport Master Plan, which was approved by Council;
- c. The financial support provided by the City through the below-market disposition of the Easement Property will be leveraged with other funding or assistance enabling the construction and operation of new on-Airport development at the Developer’s cost, which will provide an ongoing revenue stream to the Airport;
- d. The sale or lease will not result in any direct financial benefit to any private person or entity, except to the extent such benefit is only an incidental consequence and is not substantial relative to the public purpose being served because it will enable development of the Airport for the benefit of the Cities and the Developer will not receive any benefit different from that afforded to all customers to which Loveland provides utility services; and
- e. Granting the Easement for less than fair market value will not interfere with current City projects or work programs, hinder workload schedules, or divert resources needed for primary City functions or responsibilities and will ultimately benefit the Airport and the Cities.

Section 3. That the City Council hereby authorizes the Mayor to execute the Easement Agreement substantially in the form attached hereto as “Exhibit A” with such modifications or 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 or effectuate the purposes of this Ordinance.

Introduced, considered favorably on first reading, and ordered published this 5th day of September, 2023, and to be presented for final passage on the 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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



Passed and adopted on final reading on this 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

## GRANT OF UTILITY EASEMENT

THIS GRANT OF UTILITY EASEMENT is made and entered into by and between the City of Loveland, Colorado, a municipal corporation, with an address of 500 E. Third Street, Loveland, CO 80537, and the City of Fort Collins, Colorado, a municipal corporation (“Grantors”), with an address of 300 LaPorte, Fort Collins, CO 80521, and the CITY OF LOVELAND, COLORADO, a Colorado home rule municipal corporation (“City”), with an address of 500 E. Third Street, Loveland, Colorado 80537. This Grant of Utility Easement is effective as of the date of the City’s Official Acceptance in the City’s signature block below.

### WITNESSETH:

FOR GOOD AND VALUABLE CONSIDERATION, the adequacy and receipt of which is hereby acknowledged, Grantors have this day bargained, sold, conveyed, transferred, and delivered unto the City, its successors, and assigns, in perpetuity, a non-exclusive easement in, over, under, through, and across the real property described below for purposes of constructing, repairing, replacing, relocating, inspecting, operating, maintaining, and accessing City-owned utility systems across, through, upon, and under the real property described on the attached Exhibits A and B (the “Easement Area”); provided, however, that the City shall restore the ground surface to its prior condition after any disturbance of such surface. The term “City-owned utility systems,” means above and below ground wires, lines, cables, ducts, conduits, pipes, pumps, pedestals, risers, poles, vaults, manholes, fire hydrants, pull boxes, and any other equipment, appurtenances, and structures associated with electric systems that are owned and operated by the City.

Grantors are prohibited from constructing or placing on any part of the Easement Area without prior written approval from the City any fence or gate, building, above or below ground utility systems or appurtenances not owned or maintained by the City, or any other permanent or substantial structure. Grantor is prohibited from making or permitting any use of the Easement Area that would impair, impede, or interfere with the City’s access to or along the easement, or the City’s full free use and exercise of the easement. The City shall be permitted to immediately remove without liability for damages any obstruction prohibited by this easement that interferes with the City’s access to the City-owned utility systems or impairs the City’s full free use and exercise of the easement.

This easement is and shall be subordinate to the provision of existing and future agreements between the Grantor and the United States relative to the operation or maintenance of the Northern Colorado Regional Airport (the “Airport”), the execution of which has been or may be required as a condition precedent to the obtaining or expenditure of federal funds for the benefit of the Airport.

The Grantors or their successors and assigns owns the trees and other vegetation on the Easement Area, and the Grantors acknowledge, for themselves and for all successors and assigns, that this easement provides the City with the authority to cut and remove trees and other vegetation that encroaches upon the Easement Area if, in the sole discretion of the City, such trees or vegetation interfere with the City’s use and enjoyment of this easement.

Item 13.

The Easement Area hereby granted, situated in Larimer County, Colorado, is described as follows:

- Exhibit A – Easement Description
- Exhibit B – Easement Drawing

TO HAVE AND TO HOLD said easement unto the City, its successors, and assigns forever. This perpetual easement and the rights, benefits, and obligations created hereby constitute a burden upon the estate of Grantor in the underlying lands and shall run with the land and be binding upon Grantor and its successors, personal representatives, assigns, and heirs. Grantor does hereby covenant with the City that it is lawfully seized and possessed of the real property above described, that it has a good and lawful right to convey the easement herein granted, that the easement is free and clear of all liens and encumbrances, and that it will forever warrant and defend the title thereto against lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, Grantor has executed this Grant of Utility Easement on the date below.

**GRANTOR:**

By: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

State of \_\_\_\_\_ )  
 ) ss  
 County of \_\_\_\_\_ )

Acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by (Name) \_\_\_\_\_ as (Title) \_\_\_\_\_.

Witness my hand and seal. My commission expires: \_\_\_\_\_.

(S E A L) \_\_\_\_\_  
 Notary Public

**OFFICIAL ACCEPTANCE BY THE CITY OF LOVELAND**

APPROVED AS TO FORM:

\_\_\_\_\_  
 Stephen C. Adams, City Manager

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

Item 13.

ATTEST:

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

\_\_\_\_\_  
Date

# EXHIBIT A

Item 13.

A PARCEL OF LAND LOCATED IN THE EAST HALF OF SECTION 33, TOWNSHIP 6 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN; CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO; BEING A PORTION OF TRACT B, BARNSTORM SECOND ADDITION TO THE CITY OF LOVELAND, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BASIS OF BEARINGS:** BEARINGS ARE BASED ON THE EAST LINE, OF THE NORTHEAST CORNER OF SAID SECTION 33, WHICH IS ASSUMED TO BEAR S00°24'16"E

**COMMENCING** AT THE NORTHEAST CORNER OF SECTION 33;

THENCE ON THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 33, S00°24'16"E A DISTANCE OF 1989.53 FEET;

THENCE S89°35'44"W A DISTANCE OF 115.34 FEET TO THE **POINT OF BEGINNING**;

THENCE N 14°26'48" E A DISTANCE OF 203.95 FEET;

THENCE N 75°33'12" W A DISTANCE OF 10.00 FEET;

THENCE S 14°26'48" W A DISTANCE OF 204.19 FEET;

THENCE S 70°50'24" W A DISTANCE OF 774.79 FEET;

THENCE N 19°09'03" W A DISTANCE OF 171.50 FEET;

THENCE S 70°50'57" W A DISTANCE OF 26.44 FEET;

THENCE S 19°09'03" E A DISTANCE OF 10.00 FEET;

THENCE N 70°50'57" E A DISTANCE OF 16.44 FEET;

THENCE S 19°09'03" E A DISTANCE OF 166.69 FEET;

THENCE N 70°51'01" E A DISTANCE OF 793.25 FEET TO THE **POINT OF BEGINNING**;

SAID PARCEL CONTAINS 0.185 ACRES MORE OR LESS.

I, CHAD R. WASHBURN, A PROFESSIONAL LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE ABOVE PROPERTY DESCRIPTION AND ATTACHED EXHIBIT WERE PREPARED UNDER MY RESPONSIBLE CHARGE, AND ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF, ARE CORRECT.

CHAD R. WASHBURN, PROFESSIONAL LAND SURVEYOR  
COLORADO NO. 37963  
FOR AND ON BEHALF OF WASHBURN LAND SURVEYING, LLC

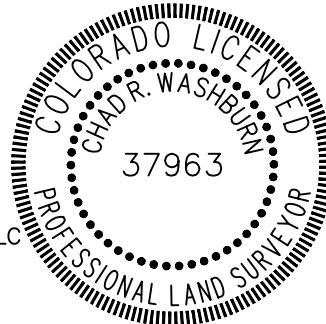


EXHIBIT A  
DATE: AUGUST 01, 2023  
JOB NO. 1232.0001.01  
SHEET 1 OF 1



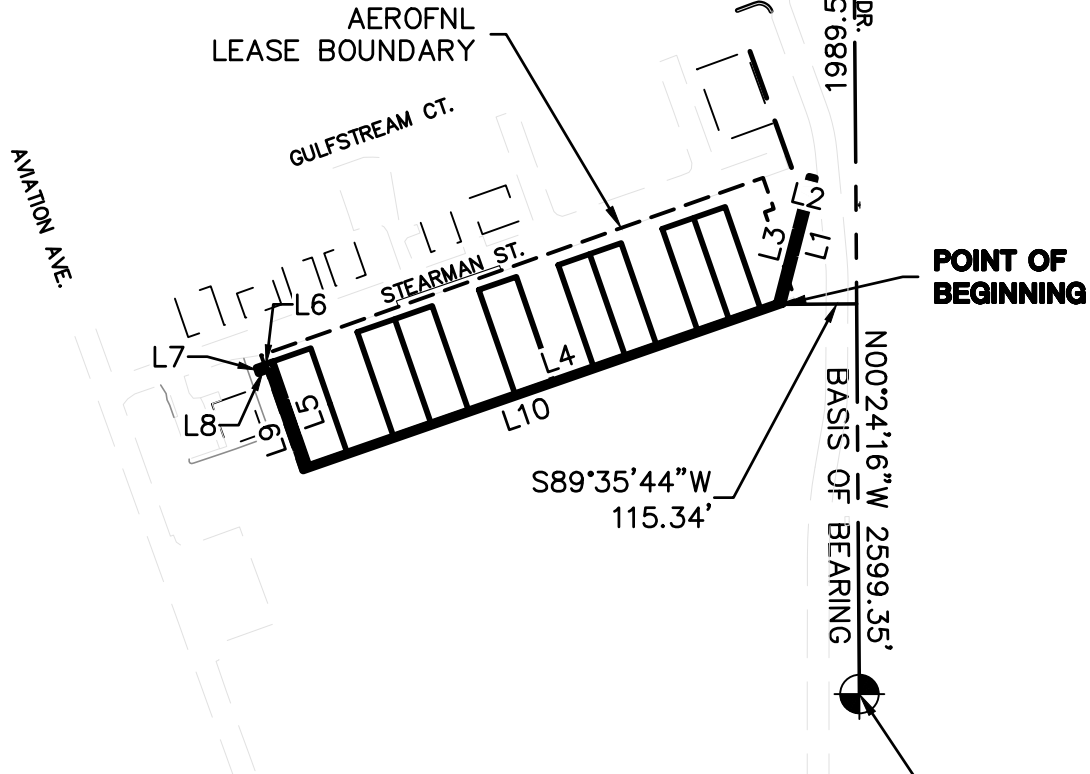
748 Whalers Way, Suite 200  
Fort Collins, Colorado  
Phone: 970.226.0557

K:\2023\0001\01\05 Drawings\Exhibits\AeroFNL\Utility Easement\0001\_UTILITY Easement Legal\_23.07.10

# EXHIBIT B

Item 13.

NORTHEAST CORNER  
SECTION 33,  
T.6N., R.68W

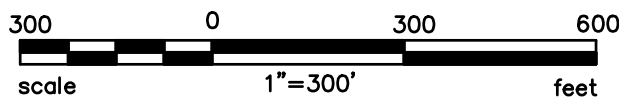


**POINT OF BEGINNING**

EAST QUARTER  
CORNER SECTION 33,  
T.6N., R.68W

LINE TABLE		
LINE	LENGTH	DIRECTION
L1	203.95	N14°26'48"E
L2	10.00	N75°33'12"W
L3	204.19	S14°26'48"W
L4	774.79	S70°50'24"W
L5	171.50	N19°09'03"W
L6	26.44	S70°50'57"W
L7	10.00	S19°09'03"E
L8	16.44	N70°50'57"E
L9	166.69	S19°09'03"E
L10	793.25	N70°51'01"E

EXHIBIT B  
DATE: AUGUST 01, 2023  
JOB NO. 1232.0001.01  
SHEET 1 OF 1



748 Whalers Way, Suite 200  
Fort Collins, Colorado  
Phone: 970.226.0557

# AGENDA ITEM SUMMARY

City Council



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## STAFF

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Justin Allar, Director of Information Services  
Cyril Vidergar, Legal

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## SUBJECT

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**Resolution 2023-078 Approving the Execution of the Fifth Amended Intergovernmental Agreement Establishing the Larimer Emergency Telephone Authority.**

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## EXECUTIVE SUMMARY

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The purpose of this item is to approve an agreement to amend and supersede an intergovernmental agreement (IGA) establishing an "E911" Emergency Telephone Service. The City is a party to an Intergovernmental Agreement (the "E-911 IGA") dated November 14, 1990, which established a separate legal entity called the Larimer Emergency Telephone Authority ("LETA"). LETA is responsible for operating the emergency telephone service program (911) and defining how each of the parties will participate in the Authority. The LETA Board of Directors recently approved an amended E-911 IGA to expand services and representation in LETA operations into Jackson County. This Resolution approves execution of the Fifth Amended Intergovernmental Agreement for the Establishment of the Larimer County Emergency Telephone Authority.

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## STAFF RECOMMENDATION

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Staff recommends adoption of the Resolution.

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## BACKGROUND / DISCUSSION

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On June 7, 2023, the LETA Board of Directors approved an agreement to modify, amend and supersede the original E-911 IGA, signed in 1990, as amended in 1999, 2002, 2009 and 2021.

The proposed modifications in the Fifth Amended IGA include the following:

1. Expands LETA's jurisdiction to include Jackson County.
2. Gives oversight and management of Jackson County's one Public Safety Answering Point ("PSAP") to LETA, so that LETA would be responsible for six PSAPs and its backup PSAP.
3. Adds Jackson County as the 31st signatory to the E-911 IGA.
4. Adds general reference to the three volunteer fire departments in Larimer County, who work with LETA but not governmental entities, and thus, are not signatories to the E-911 IGA.

5. Adds a director position for Jackson County, so LETA's Board will have eight directors.
6. Recognizes Jackson County's appointment of the Jackson County Sheriff or the Sheriff's designee as the County's representative on LETA's Board.
7. Defers to the Bylaws for issues of director attendance and absences (at present, there are six regular meetings per year).
8. Assigns to LETA Jackson County's current balance of surcharge revenue and future surcharge revenue streams, grant funds it receives related to improving 9-1-1 in Jackson County, and its PSAP equipment.
9. Requires that, upon dissolution, all of LETA's assets located in Larimer County (including LETA's bank and investment accounts) remain in Larimer County.

### **CITY FINANCIAL IMPACTS**

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No new impacts; City staff time remains consistent.

### **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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Not applicable.

### **PUBLIC OUTREACH**

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All LETA Board of Director meetings are open public meetings and minutes are posted on LETA's website: <https://leta911.org/leta-board/>.

### **ATTACHMENTS**

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1. Resolution for Consideration
2. Exhibit A to Resolution
3. Fifth Amended IGA Draft – Redlined



RESOLUTION 2023-078  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
APPROVING THE EXECUTION OF THE FIFTH AMENDED  
INTERGOVERNMENTAL AGREEMENT ESTABLISHING THE  
LARIMER EMERGENCY TELEPHONE AUTHORITY

WHEREAS, the City of Fort Collins is authorized under Colorado Revised Statutes (“C.R.S.”) Section 29-1-203 to cooperate or contract with others to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units, including the provision of emergency telephone service; and

WHEREAS, on or about November 14, 1990, pursuant to its authority under C.R.S. Section 29-11-101, et. seq., the City joined multiple political subdivisions in Larimer County, Colorado to form the “Larimer Emergency Telephone Authority” (LETA) as a separate legal entity to provide emergency telephone service and to establish, collect, and disperse the emergency telephone charge in Larimer County, and executed an “Intergovernmental Agreement concerning the implementation of an E-911 Emergency Telephone Service” (the “E-911 IGA”); and

WHEREAS, parties to the E-911 IGA subsequently approved amendments in 1999, 2002, 2009, and in 2021 the Fourth Amended Intergovernmental Agreement for the Establishment of the Larimer Emergency Telephone Authority (the “Fourth Amended IGA”), as approved by City Council Resolution 2021-082; and

WHEREAS, pursuant to Article XII thereof, the Fourth Amended IGA may be further amended upon an affirmative vote of three-quarters (3/4) of the signatories and execution of any amendments by all signatories; and

WHEREAS, the LETA Board of Directors recently held a qualifying vote, approved by three-quarters of the signatories to the Fourth Amended IGA, to further amend the Fourth Amended IGA by approving a (2023) Fifth Amended Intergovernmental Agreement for the Establishment of the Larimer Emergency Telephone Authority (the “Fifth Amended IGA”); and

WHEREAS, the Fifth Amended IGA will supersede the Fourth Amended IGA and principally expand service jurisdiction into Jackson County and add Jackson County as a signatory to the E-911 IGA with a seat on the LETA board of directors; and

1. Grant to LETA oversight and control of Jackson County’s Public Safety Answering Point (“PSAP”);
2. Recognize the Jackson County Sheriff as Jackson County’s appointed director to the LETA Board of Directors;
3. Assign to LETA Jackson County’s E-911 surcharge revenue and future grant funding related to improving E-911 and PSAP equipment;
4. Reference the volunteer fire departments in Larimer County that work with LETA that are neither governmental entities nor signatories to the E-911 IGA;

- 5. Update references to bylaws addressing director attendance and absences; and
  - 6. Require that, upon dissolution, LETA’s assets located in Larimer County (including LETA’s financial assets) remain in Larimer County;
- and

WHEREAS, the City Manager recommends that City Council approve the Fifth Amended IGA to continue participating in regional E-911 Emergency Telephone Services through LETA; and

WHEREAS, the City Council finds it is in the best interests of the City and the health, safety and welfare of its citizens to approve the Fifth Amended IGA and continue participating in LETA.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes any and all determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby approves the Fifth Amended Intergovernmental Agreement for the Establishment of the Larimer Emergency Telephone Authority (the “Fifth Amended IGA”) and agrees to be a signatory thereto.

Section 3. That the City Council authorizes the Mayor to execute on behalf of the City the Fifth Amended IGA, a copy of which is attached hereto as Exhibit “A” and incorporated herein by this reference, with such additional or modified terms and conditions as the City Manager may, in consultation with the City Attorney, determine necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

Section 4. That the City Council hereby reaffirms the City Manager’s authority to appoint a City employee as the City’s representative as provided in the Fifth Amended IGA.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

**FIFTH AMENDED INTERGOVERNMENTAL AGREEMENT  
FOR THE ESTABLISHMENT OF  
LARIMER EMERGENCY TELEPHONE AUTHORITY**

This Fifth Amended Intergovernmental Agreement (“Agreement”) is entered into effective November 1, 2023, by and between the following political subdivisions and public entities of the State of Colorado, which are referred to herein collectively as “Parties” and are referred to herein individually by name or as “Party.”

**Counties (2) /Cities (2) /Towns (6)**

- County of Larimer
- County of Jackson
- City of Fort Collins
- City of Loveland
- Town of Berthoud
- Town of Estes Park
- Town of Johnstown
- Town of Timnath
- Town of Wellington
- Town of Windsor

**Hospital/Health Services Districts (3)**

- Health District of Northern Larimer County
- Park Hospital District
- Thompson Valley Health Services District

**State (1)**

- Colorado State University

**Fire Authorities (2)**

- Loveland Fire Rescue Authority
- Poudre Fire Authority

**Fire Protection Districts (15)**

- Allenspark Fire Protection District
- Berthoud Fire Protection District
- Crystal Lakes Fire Protection District
- Estes Valley Fire Protection District
- Front Range Fire Rescue Fire Protection District (f/k/a Johnstown Fire Protection District)
- Glacier View Fire Protection District
- Livermore Fire Protection District
- Loveland Rural Fire Protection District
- Lyons Fire Protection District
- Pinewood Springs Fire Protection District
- Poudre Canyon Fire Protection District
- Poudre Valley Fire Protection District
- Red Feather Lakes Fire Protection District
- Wellington Fire Protection District
- Windsor-Severance Fire Protection District

WHEREAS, on or about November 14, 1990, multiple political subdivisions entered into an “Intergovernmental Agreement concerning the implementation of an E-911 Emergency Telephone Service” (“the IGA”) to form a separate legal entity to serve as a governing body to provide emergency telephone service and to establish, collect, and disperse the emergency telephone charge in Larimer County, and they named the new entity Larimer Emergency Telephone Authority (“LETA”);

WHEREAS, the IGA was thereafter amended four times effective July 7, 1999, April 5, 2002, July 21, 2009, and November 1, 2021, with the November 1, 2021 amendment being known as the “Fourth Amended IGA”;

WHEREAS, in Larimer County, there are also three volunteer fire departments organized as nonprofit corporations under Colorado law, which are not signatories to the IGA: Glen Haven Area Volunteer Fire Department, Rist Canyon Volunteer Fire Department, and Volunteer Fire Department of Big Elk.

WHEREAS, in April of 2023, the Jackson County Sheriff's Office reached out to LETA for advice and counsel on matters related to emergency telephone service and emergency notification service within Jackson County, Colorado;

WHEREAS, after some initial exploratory conversations and subsequent due diligence, the Jackson County Board of County Commissioners made a formal request that LETA's jurisdiction be expanded to include Jackson County and that Jackson County become an additional signatory to LETA's IGA;

WHEREAS, subject to an affirmative vote of three-quarters (3/4) of the thirty (30) signatories to the Fourth Amended IGA, the Parties desire to update the IGA, as amended, to reflect the expansion of LETA's jurisdiction to include Jackson County and the addition of Jackson County as a signatory to LETA's IGA;

WHEREAS, the Parties are authorized by Colorado statute (Title 29, Article 11, Part 1) to enter into a contract to establish a separate legal entity that serves as a governing body for the purpose of providing emergency telephone service and to establish and collect an emergency telephone charge in the jurisdiction;

WHEREAS, the Colorado Constitution (Article XIV, Section 18) and Colorado statutes (Title 29, Article 1, Part 2) permit and encourage governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with each other; and

WHEREAS, C.R.S. § 29-1-203 authorizes government, as defined in C.R.S. § 29-1-202, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units if:

1. such 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
2. any such contract shall set forth fully the purposes, powers, rights, obligations, and the responsibilities, financial and otherwise, of the contracting parties and may provide for the joint exercise of the function, service, or facility, including the establishment of a separate legal entity to do so.

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the Parties agree as follows:

#### I. PREAMBLE

The Parties agree that the recitals set forth above are true and correct and those recitals are hereby incorporated into the body of this Agreement.

II. SUPERSEDING PRIOR AGREEMENTS

The Parties agree that this Agreement shall supersede the IGA dated November 14, 1990, the amendments thereto dated July 7, 1999, April 5, 2002, July 29, 2009, and the Fourth Amended IGA.

III. DEFINITIONS

As used herein:

A. The definitions for the following terms shall be the same as set forth in C.R.S. § 29-11-101, as may be amended: “emergency telephone charge,” “911 access connection,” “911 call,” “911 surcharge,” “emergency notification service” “emergency service provider,” “public agency,” “public safety answering point” (“PSAP”), which is interchangeable with emergency communications center (“ECC”), “service supplier,” and “service user.”

B. “Agreement” means this Fifth Amended Intergovernmental Agreement for the Establishment of Larimer Emergency Telephone Authority;

C. “Board” means the Board of Directors described in Section V in which the powers of the Governing Body are vested.

D. “Bylaws” means the bylaws of the Governing Body as described in Section V(7).

E. “Emergency telephone service” means the receipt and processing of 911 calls by the PSAP for the purpose of providing responses from emergency service providers, and may include providing 911 call-related applications, services, programs, and systems.

F. “Governing Body” means Larimer Emergency Telephone Authority, per the definition set forth in C.R.S. § 29-11-101(16), as may be amended.

G. “Governing Body's jurisdiction” means within the combined geographic boundaries of Larimer County and Jackson County, per the definition set forth in C.R.S. § 29-11-101(17), as may be amended. The Governing Body's jurisdiction differs from the Governing Body’s emergency telephone service area.

H. “Governing Body’s emergency telephone service area” means the collective boundaries of the emergency service providers that are used by the PSAPs for call routing and emergency response.

I. “Parties” means the signatories hereto, but, in the future, will not include any Party after the effective date of such Party’s withdrawal in accordance with Section X, and will include any new signatory admitted to this Agreement by the Board in accordance with Section VI(2)(q).

J. “Proportional basis” as used in Section X(3) means a percentage determined by the following formula: the number of 911 access connections within each boundary of the Identified Political Subdivisions divided by the total number of 911 access connections in Larimer County. The Board shall determine the data to use for this calculation based on the Board’s determination of the most reliable source(s) and representative timeframes. For the purpose of this definition only: (1) “Identified Political Subdivisions” means Larimer County and each city and town that is a Party, and excludes Jackson County, and (2) the boundary of Larimer County means within the unincorporated areas of the County. If, at the time of the calculation, Larimer County, a city, or a town is not a Party, then the Board shall establish the formula to allocate its percentage among the Identified Political Subdivisions who are Parties.

#### IV. ESTABLISHMENT OF LARIMER EMERGENCY TELEPHONE AUTHORITY

The Parties establish the separate legal entity and Governing Body known as Larimer Emergency Telephone Authority (“LETA”). The Governing Body may have also been referred to in prior intergovernmental agreements as the Larimer County Emergency Telephone Authority, which is hereby corrected. The Governing Body is created as a nonprofit, public entity established pursuant to C.R.S. §§ 29-1-203 and 29-11-102(1)(b), as may be amended. The Parties intend that the Governing Body be formed under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 through 120, as may be amended, and meet the Act’s definition of a “public entity.” The Parties further intend that the Governing Body meet the definition of a “nonprofit organization” under C.R.S. § 13-21-115.5, as may be amended (the Volunteer Service Act), C.R.S. § 13-21-115.7, as amended, and C.R.S. § 13-21-116, as may be amended.

The Governing Body is an independent legal entity, separate and distinct from the Parties. No debt, liability, or obligation of the Governing Body shall extend to or be an obligation of a Party, unless agreed to in writing.

The Governing Body is responsible for the installation, administration, management, operation, maintenance, upgrade, and enhancement of emergency telephone service and emergency notification service in the Governing Body’s jurisdiction. The Parties will provide reasonable assistance and cooperation to the Governing Body as it carries out the functions, services, and facilities described in this Agreement for the Parties.

The Parties believe that governing bodies created pursuant to Part 1 of Title 29, Article 11, including the Governing Body, are not subject to the revenue and spending limitations imposed by Article X, Section 20 of the Colorado Constitution (“Amendment 1”), and, to the extent that Amendment 1 may be deemed to apply to governing bodies, the Governing Body created hereby shall operate as an enterprise within the meaning of Amendment 1 and shall thereby be exempt from all revenue and spending limitations imposed by said Amendment.

The Governing Body is formed in conformity with C.R.S. § 29-1-203.5. The provisions of

C.R.S. § 29-1-203.5 apply to the Governing Body.

A Party whose boundaries include portions of Larimer County and another county may be signatories on another intergovernmental agreement related to emergency telephone service and emergency notification service in such other county.

V. THE BOARD OF DIRECTORS

1. **Board.** The business and affairs of the Governing Body shall be managed by a Board of Directors consisting of eight (8) directors, each serving without compensation. The Board shall have the power to perform all acts necessary, to fulfill the purposes for which the Governing Body was established, whether express or implied.

2. **Qualifications of Directors.** Each director shall be either (a) a resident of Larimer County, or (b) an elected official in or full-time employee of a Party with an established scope of responsibility and delegated authority to make and implement policy-making or management-level decisions for the Party.

3. **Appointment to the Board.** Each director shall be appointed as follows:

a. The Larimer County Board of County Commissioners shall choose one (1) individual who meets the qualifications to serve as the director to represent Larimer County. The Larimer County Board of County Commissioners may determine the method for appointment from time to time and shall give to the Governing Body notice of any change in its method for appointment.

b. The Jackson County Board of County Commissioners appoints the Jackson County Sheriff, or the Sheriff’s designee who meets the qualifications to serve as the director, to represent Jackson County.

c. The City of Fort Collins appoints the City Manager or the City Manager’s designee as its one (1) individual who meets the qualifications to serve as the director to represent the City of Fort Collins. The City Council of the City of Fort Collins may change its method for appointment from time to time and shall give to the Governing Body notice of any change in its method for appointment.

d. The City Council of the City of Loveland shall choose one (1) individual who meets the qualifications to serve as the director to represent the City of Loveland. The City Council of the City of Loveland may determine the method for appointment from time to time and shall give to the Governing Body notice of any change in its method for appointment.

e. The Town of Estes Park appoints the Town Administrator or the Town Administrator’s designee as its one (1) individual who meets the qualifications to serve as the director to represent the Town of Estes Park. The Board of Trustees of the Town of Estes Park

may change its method for appointment from time to time and shall give to the Governing Body notice of any change in its method for appointment.

f. The Board as then-comprised at the time of the appointment shall solicit nominees, nominate individually or as a slate, and appoint three (3) additional qualified directors as follows:

1. A director to represent the Parties that are fire districts and fire authorities;
2. A director to represent the Parties that are hospital and health services districts; and
3. A director to represent the Parties that are Colorado State University and towns not otherwise represented on the Board, with preference given to a Party with a PSAP.

4. **Term and Removal.** Directors shall serve a term of two (2) calendar years. There is no prohibition on consecutive terms or on the number of terms. A director may be removed if permitted by and pursuant to the procedures set forth in the Bylaws.

5. **Voting and Quorum.** Each director shall have one (1) vote. No proxy voting shall be permitted. A quorum of the Board shall consist of four (4) directors, except that, should there be four (4) or more vacancies at any time, then during that time, a quorum shall consist of three (3) directors. No official action may be taken by the Board on any matter unless a quorum is present. The affirmative vote of a majority of the Board shall be required for the Board to take action.

6. **Vacancy.** Any vacancy occurring as a result of a director's resignation, removal, death, disqualification, or any other reason shall be filled for the balance of that director's unfinished term in accordance with the applicable provision of the appointment process set forth in Section V(3).

7. **Bylaws.** The Board has promulgated Bylaws detailing all governance matters it deems necessary, including but not limited to: the scheduling and conduct of Board meetings, voting, and director removal; establishment and responsibilities of officer positions, their terms, and the filling of any vacancies; the establishment and responsibilities of committees; and Governing Body operating and fiscal procedures. Such Bylaws may be amended by the Board in accordance with the procedures set forth therein. In the event of a conflict, direct or indirect, between a provision in the Bylaws and this Agreement, this Agreement shall control.

## VI. POWERS OF THE GOVERNING BODY

1. **Plenary Powers.** The Governing Body may carry out all purposes of this Agreement and may exercise all powers related thereto, including all incidental, implied, expressed, or such other powers as necessary, except as expressly limited in this Agreement. The Governing Body shall not have the power to levy taxes or the power of eminent domain.

2. **Enumerated Powers.** Without in any way limiting the plenary powers set forth in subsection (1) above, the Governing Body is specifically authorized to undertake all actions for the installation, administration, management, operation, maintenance, upgrade, and enhancement



of emergency telephone service and emergency notification service within the Governing Body's jurisdiction that the Governing Body believes are necessary and appropriate and consistent with applicable law, including but not limited to:

- a. imposing, collecting, and auditing all charges and surcharges in the Governing Body's jurisdiction as set forth in Part 1 of Title 29, Article 11, as may be amended, and expending such funds as authorized by statute and this Agreement.
- b. owning, operating, maintaining, leasing (as Lessor or Lessee), selling, or otherwise disposing of any legal or equitable interest in real and personal property.
- c. adopting budgets, maintaining bank accounts, and investing funds.
- d. carrying over funds which have not been used in a given fiscal year to the following fiscal year.
- e. negotiating, entering into, amending (if necessary), and performing contracts.
- f. adopting, reviewing, and amending the Bylaws and passing resolutions not in conflict with this Agreement.
- g. adopting, reviewing on an annual basis, and amending (if necessary) the Governing Body's intergovernmental agreements other than this Agreement, as well as policies, protocols, procedures, or rules and regulations (collectively, "Policies") related to the provision of emergency telephone service and emergency notification service within the Governing Body's jurisdiction on subjects including but not limited to:
  - Human Resources
  - cost sharing
  - street naming
  - pictometry
  - geographic information systems (GIS)
  - Master Street Address Guide (MSAG)
  - 911 Call Flow/Routing
  - use of the backup PSAP
  - 911 network
  - fiber optic cable (leasing and owning)
  - customer-premises equipment (CPE) and other equipment
  - computer aided dispatch (CAD) system
  - Combined Regional Information Systems Project (CRISP)
  - insurance for PSAP equipment owned by the Governing Body and located at a facility owned by a Party
  - emergency alert systems (selection and use)
  - complex emergency events

- records retention and compliance with applicable law
- training, accreditation, and certification
- Emergency Medical Dispatch (EMD)
- call boxes
- finances and investments

In the event of a conflict, direct or indirect, between a provision the Policies and this Agreement, this Agreement shall control.

h. determining who is authorized to send emergency alerts and the circumstances under which they may be sent.

i. adopting a policy regarding street naming after collaboration with the Parties in whose jurisdiction the street is located.

j. adopting systems (software, hardware, and protocols) for Emergency Medical Dispatch (EMD).

k. conducting joint, partnership, cooperative, or other operations with other individuals and entities.

l. employing agents, accountants, attorneys, engineers, consultants, and other advisors.

m. incurring and paying debts, liabilities, or obligations, including borrowing and executing documents incidental thereto.

n. issuing bonds, notes, or other obligations payable from the revenues derived or to be derived from the revenue of the Governing Body as permitted by applicable law.

o. suing and being sued in its own name.

p. receiving contributions, gifts, bequests, grants, cash, equipment, or services from the Parties or any other public or private individual or entity.

q. after a formal Resolution of the Board, admitting a new signatory to this Agreement who becomes a Party without formal amendment of this Agreement, so long as each new signatory qualifies under C.R.S. §§ 29-1-202 and 203, has the approval of its legislative body or other authority having the power to so approve, and signs a document memorializing its admission.

r. participating in committees, groups, and organizations at the federal, state, and local level whose work relates to emergency telephone service and emergency notification service, including laws, regulations, and rules related thereto.

s. any other act which the Governing Body believes is reasonably necessary for the exercise of its powers and the performance of its obligations under this Agreement.

## VII. BOOKS AND RECORDS

The Governing Body shall keep accurate and correct books of account on a modified accrual basis, showing in detail the capital costs, costs of services, installation, maintenance and operating costs, and the financial transactions of the Governing Body. The Governing Body's books of account shall also correctly show any and all revenues, fund balances, costs, or charges, as well as all funds received by and all funds expended by the Governing Body. The Governing Body's books and records shall be open to inspection during normal business hours upon reasonable notice by a Party, its attorneys, accountants, or agents. The books and records of the Governing Body shall also be made available to the public in accordance with the provisions of Colorado's Open Records Act, as may be amended.

The Governing Body shall cause an annual audit to be conducted by an independent Certified Public Accountant licensed to practice in the State of Colorado. The Governing Body shall comply with the Colorado Local Government Audit Law, C.R.S. § 29-1-601 through 608, as may be amended. The Governing Body shall comply with all other applicable federal and state financial reporting requirements.

The Governing Body shall maintain an asset inventory list for any and all real and personal property acquired by the Governing Body in whole or in part.

On and after the effective date of this Agreement, Jackson County will promptly deliver, transfer, and assign to the Governing Body:

1. the entire balance of funds it holds for purposes of providing emergency telephone service and emergency notification service in Jackson County, but no less than \$55,000.00;
2. the entire balance of any funds it receives or has received from the state or federal government or grants for purposes of improving emergency telephone service and emergency notification service in Jackson County, but no less than \$70,000.00;
3. all rights, title, and interest to all charges and surcharges due Jackson County for emergency telephone service under Colorado statute (Title 29, Article 11, Part 1) and deliver the same to the Governing Body, and Jackson County will execute all documents necessary for carriers and the Public Utilities Commission to deliver directly to the Governing Body all such charges and surcharges in the future; and
4. unencumbered title to any PSAP equipment or other assets owned by Jackson County that would assist the Governing Body in its administration and/or operation emergency telephone service and emergency notification service. Jackson County

shall execute any documents reasonably necessary to effectuate the transfer of title.

Similar to Agreements with the Governing Body's other PSAPs, Jackson County agrees to (a) insure the Governing Body's equipment located in a PSAP in Jackson County, and (b) provide proof of insurance promptly upon the Governing Body's written request.

The Governing Body will not become a successor to or assignee of any contracts currently in place for purposes of providing emergency telephone service and emergency notification service in Jackson County, with the exception of the current tariff in place for the provision of basic emergency service in Colorado.

#### VIII. REPORTS TO PARTIES

On an annual basis, the Governing Body shall submit a comprehensive annual report to the Parties summarizing the activities of the Governing Body during the preceding year and make available information concerning the finances of the Governing Body.

#### IX. DURATION OF AGREEMENT

The Agreement and the Governing Body shall have perpetual existence as permitted by C.R.S. § 29-1-203(1), as may be amended, unless sooner terminated in accordance with this Agreement.

#### X. WITHDRAWAL, TERMINATION, AND DISSOLUTION

1. **Withdrawal.** Any Party may withdraw from this Agreement by providing notice to each other Party and to the Governing Body. The withdrawal shall not be effective until at least one calendar year after the last notice is delivered.
2. **Termination by Mutual Agreement of the Parties.** Upon a three quarters (3/4) majority vote of all then-Parties, this Agreement shall be terminated and the Governing Body dissolved so long as, at the time of the vote, at least three quarters (3/4) of the Parties have also agreed in writing as to one or more entities who will succeed the Governing Body and undertake all actions for the continued installation, administration, management, operation, maintenance, upgrade, and enhancement of emergency telephone service and emergency notification service within the Governing Body's jurisdiction. The effective date of termination shall be December 31st in the calendar year ending no less than six months after the three quarters (3/4) majority vote for termination.
3. **Dissolution of Governing Body.** Upon the termination of this Agreement pursuant to subsection (2) above, the Board and the Parties shall take such actions necessary to finalize and conclude the Governing Body's operations, effect the orderly dissolution of the Governing Body, and transition emergency telephone service and emergency notification service to the entity or entities who will succeed the Governing Body, at the discretion of the Board. All assets of the

Governing Body located within Larimer County shall be distributed on a proportional basis pursuant to Section III(J) either in-kind or after liquidation, at the discretion of the Board, except for any assets that the Board determines should be distributed to the entity or entities who will succeed the Governing Body. For purposes of this Agreement, all cash, bank, and investment accounts of LETA are deemed to be located within Larimer County. All assets of the Governing Body located within Jackson County shall be distributed to Jackson County either in-kind or after liquidation, at the discretion of the Board, except for any assets that the Board determines should be distributed to the entity or entities who will succeed the Governing Body. The Board shall be responsible for inventorying the assets of the Governing Body, distributing or liquidating any assets as appropriate, concluding the affairs of the Governing Body, and transitioning emergency telephone service and emergency notification service to the entity or entities who will succeed the Governing Body. Subject to the exercise of the Board's discretion, a Party which has previously made a contribution toward the purchase of a jointly owned asset may receive full ownership of the asset upon termination; however, the Party must account to the Governing Body for the amount that the Governing Body contributed toward purchase of the asset upon distribution of the other assets of the Governing Body. The Parties' rights related to distribution of assets shall survive termination of this Agreement.

XI. LIABILITY OF THE BOARD OF DIRECTORS, OFFICERS,  
AND EMPLOYEES OF THE GOVERNING BODY

The Governing Body and its directors, officers, and employees shall be immune from suit and civil liability as provided by applicable law because the Governing Body is a nonprofit, public entity and political subdivision of the State of Colorado established pursuant to C.R.S. §§ 29-1-203 and 29-11-102(1)(b), as amended; the Governing Body is a public entity under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 through 120, as amended; and the Governing Body is a "nonprofit organization" under C.R.S. § 13-21-115.5, as amended (the Volunteer Service Act), C.R.S. § 13-21-115.7, as amended, and C.R.S. § 13-21-116, as amended.

In addition, the Governing Body shall purchase insurance for the Governing Body and its Board, officers and employees which insurance will provide reasonable coverage against any claims, suit or proceeding arising out of or relating to any act or omission under this Agreement.

XII. AMENDMENTS

This Agreement may be amended upon the affirmative vote of three-quarters (3/4) of the then-Parties to this Agreement.

XIII. NOTICE

Notice to a Party is given by delivering a writing to its current address as listed by the Department of Local Affairs. The Notice shall be addressed as follows: (a) to the Board of County Commissioners in the case of Larimer County and Jackson County, (b) to the Board and its Chief Executive Officer in the case of a special district, a fire authority, or the Governing Body, (c) to

the City Council in the case of cities, and (d) to the Town Board, Town Council, or Board of Trustees in the case of Towns. A courtesy copy shall also be delivered to the attorneys for Larimer County, Jackson County, cities, and towns. Failure to deliver courtesy copies to the attorneys shall not invalidate a notice otherwise properly delivered as provided in this Agreement. Notice to a director is given by delivering a writing addressed to the director to the Governing Body’s current address. Notice shall be effective upon receipt if hand-delivered or three (3) days after mailing if sent by first-class or certified U.S. mail.

XIV. SEVERABILITY

In the event any provision of this Agreement is determined to be illegal or invalid for any reason, all other provisions of this Agreement shall remain in full force and effect unless and until otherwise determined by a Court of competent jurisdiction. The illegality of any provision of this Agreement shall in no way affect the legality and enforceability of any other provision of this Agreement.

XV. SUCCESSORS AND THIRD PARTIES

This Agreement shall be binding upon and shall inure to the benefit of the successors of the Parties. This Agreement is not intended to, and does not, inure to the benefit of non-Parties to this Agreement.

XVI. ASSIGNMENT AND DELEGATION

No Party shall assign any of the rights nor delegate any of the duties created by this Agreement without the written approval of three-quarters (3/4) of the other then-Parties to this Agreement.

XVII. COUNTERPARTS

This Agreement may be executed by original, scanned, or digital counterpart signatures and shall have the same force and effect as if all signatures appeared on the same original.

IN WITNESS WHEREOF, the Parties have caused their representatives to affix their respective signatures hereto.

<p><b>COUNTY OF LARIMER STATE OF COLORADO</b></p> <p>By: _____</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>William Ressue, County Attorney</p> <p>Date: _____</p>	
<p><b>COUNTY OF JACKSON STATE OF COLORADO</b></p> <p>By: _____</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Thomas Sharp</p> <p>Date: _____</p>	<p><b>ALLENSPARK FIRE PROTECTION DISTRICT</b></p> <p>By: _____ Jill Allington, President</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>
<p><b>CITY OF FORT COLLINS, COLORADO</b></p> <p>By: _____ Jeni Arndt, Mayor</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>	<p><b>BERTHOUD FIRE PROTECTION DISTRICT</b></p> <p>By: _____ Dan Hershman, President</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>

<p><b>CITY OF LOVELAND, COLORADO</b></p> <p>By: _____ Jacki Marsh, Mayor</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____ Laurie Stirman</p> <p>Date: _____</p>	<p><b>CRYSTAL LAKES FIRE PROTECTION DISTRICT</b></p> <p>By: _____ Jody Sandquist, President</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>
<p><b>TOWN OF BERTHOUD, COLORADO</b></p> <p>By: _____ William Karspeck, Mayor</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>	<p><b>ESTES VALLEY FIRE PROTECTION DISTRICT</b></p> <p>By: _____ Jon Hodde, President</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>
<p><b>TOWN OF ESTES PARK, COLORADO</b></p> <p>By: _____ Wendy Koenig-Schuett, Mayor</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Dan Kramer</p> <p>Date: _____</p>	<p><b>FRONT RANGE FIRE RESCUE FIRE PROTECTION DISTRICT</b></p> <p>By: _____ Darrin Rutt, President</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>



<p><b>TOWN OF JOHNSTOWN, COLORADO</b></p> <p>By: _____ Gary Lebsack, Mayor</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>	<p><b>GLACIER VIEW FIRE PROTECTION DISTRICT</b></p> <p>By: _____ David Burk, President</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>
<p><b>TOWN OF TIMNATH, COLORADO</b></p> <p>By: _____ Mark Soukup, Mayor</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>	<p><b>LIVERMORE FIRE PROTECTION DISTRICT</b></p> <p>By: _____</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>
<p><b>TOWN OF WELLINGTON, COLORADO</b></p> <p>By: _____ Tory Whanau, Mayor</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Dan Sapienza</p> <p>Date: _____</p>	<p><b>LOVELAND RURAL FIRE PROTECTION DISTRICT</b></p> <p>By: _____ Jeff Swanty, President</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>

<p><b>TOWN OF WINDSOR, COLORADO</b></p> <p>By: _____ Rosa Reynoza, Mayor</p> <p>ATTEST: _____ Karen Frawley, Town Clerk</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>	<p><b>LYONS FIRE PROTECTION DISTRICT</b></p> <p>By: _____ Paul Davidovich, President</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>
<p><b>HEALTH DISTRICT OF NORTHERN LARIMER COUNTY</b></p> <p>By: _____ Molly Gutilla, Board President</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>	<p><b>PINEWOOD SPRINGS FIRE PROTECTION DISTRICT</b></p> <p>By: _____ Michael Graham, President</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>
<p><b>PARK HOSPITAL DISTRICT</b></p> <p>By: _____</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>	<p><b>POUDRE CANYON FIRE PROTECTION DISTRICT</b></p> <p>By: _____ Pat Conway, President</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>

<p><b>THOMPSON VALLEY HEALTH SERVICES DISTRICT</b></p> <p>By: _____ Tom Blomquist, Chair</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>	<p><b>POUDRE VALLEY FIRE PROTECTION DISTRICT</b></p> <p>By: _____ Derek Bergsten, Chief</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>
<p><b>THE BOARD OF GOVERNORS OF THE COLORADO STATE UNIVERSITY SYSTEM ACTING BY AND THROUGH COLORADO STATE UNIVERSITY</b></p> <p>By: _____ Brendan Hanlon, VPUO</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Linda Schutjer, Senior Legal Counsel</p> <p>Date: _____</p>	<p><b>RED FEATHER LAKES FIRE PROTECTION DISTRICT</b></p> <p>By: _____ Dan Defibaugh, President</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>
<p><b>LOVELAND FIRE RESCUE AUTHORITY</b></p> <p>By: _____ Jeff Swanty, Board Chair</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>	<p><b>WELLINGTON FIRE PROTECTION DISTRICT</b></p> <p>By: _____ David Pierson, Vice President</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>

<b>POUDRE FIRE AUTHORITY</b>	<b>WINDSOR-SEVERANCE FIRE PROTECTION DISTRICT</b>
By: _____ David Pusey, Chair	By: _____ Andrew Rosen, President
ATTEST: _____	ATTEST: _____
APPROVED AS TO FORM (if applicable): _____	APPROVED AS TO FORM (if applicable): _____
Date: _____	Date: _____

**~~FOURTH~~FIFTH AMENDED INTERGOVERNMENTAL AGREEMENT  
FOR THE ESTABLISHMENT OF  
LARIMER EMERGENCY TELEPHONE AUTHORITY**

This ~~Fifth~~fourth Amended Intergovernmental Agreement (“Agreement”) is entered into effective ~~November~~November 1, 202~~3~~1, by and between the following political subdivisions and public entities of the State of Colorado, which are referred to herein collectively as “Parties” and are referred to herein individually by name or as “Party.”

**Counties (2~~1~~)/Cities (2)/Towns (6)**

- County of Larimer
- ~~County of Jackson~~
- City of Fort Collins
- City of Loveland
- Town of Berthoud
- Town of Estes Park
- Town of Johnstown
- Town of Timnath
- Town of Wellington
- Town of Windsor

**Hospital/Health Services Districts (3)**

- Health District of Northern Larimer County
- Park Hospital District
- Thompson Valley Health Services District

**State (1)**

- Colorado State University

**Fire Authorities (2)**

- Loveland Fire Rescue Authority
- Poudre Fire Authority

**Fire Protection Districts (15)**

- Allenspark Fire Protection District
- Berthoud Fire Protection District
- Crystal Lakes Fire Protection District
- Estes Valley Fire Protection District
- Front Range Fire Rescue Fire Protection District (f/k/a Johnstown Fire Protection District)
- Glacier View Fire Protection District
- Livermore Fire Protection District
- Loveland Rural Fire Protection District
- Lyons Fire Protection District
- Pinewood Springs Fire Protection District
- Poudre Canyon Fire Protection District
- Poudre Valley Fire Protection District
- Red Feather Lakes Fire Protection District
- Wellington Fire Protection District
- Windsor-Severance Fire Protection District

WHEREAS, on or about November 14, 1990, multiple political subdivisions entered into an “Intergovernmental Agreement concerning the implementation of an E-911 Emergency Telephone Service” (“the IGA”) to form a separate legal entity to serve as a governing body to provide emergency telephone service and to establish, collect, and disperse the emergency telephone charge in Larimer County, and they named the new entity Larimer Emergency Telephone Authority (“LETA”);

WHEREAS, the IGA was thereafter amended ~~three~~four times effective July 7, 1999, April 5, 2002, ~~and~~ July 21, 2009, and November 1, 2021, with the November 1, 2021 July 21, 2009-amendment being known as the “Fourth ~~Third~~-Amended IGA”;

WHEREAS, in Larimer County, there are also three volunteer fire departments organized as nonprofit corporations under Colorado law, which are not signatories to the IGA: Glen Haven Area Volunteer Fire Department, Rist Canyon Volunteer Fire Department, and Volunteer Fire

Department of Big Elk.

WHEREAS, in April of 2023, the Jackson County Sheriff’s Office reached out to LETA for advice and counsel on matters related to emergency telephone service and emergency notification service within Jackson County, Colorado;

WHEREAS, after some initial exploratory conversations and subsequent due diligence, the Jackson County Board of County Commissioners made a formal request that LETA’s jurisdiction be expanded to include Jackson County and that Jackson County become an additional signatory to LETA’s IGA;

WHEREAS, subject to an affirmative vote of three-quarters (3/4) of the ~~25-thirty~~ (30) signatories to the ~~Third~~Fourth Amended IGA, the Parties desire to update the IGA, as amended, to reflect the expansion of changes LETA’s jurisdiction to include Jackson County and the addition of Jackson County as a signatory to LETA’s IGA in federal and state law, the signatories to the IGA, advancements in 911 call technology and infrastructure, and the intent and purposes as to Larimer Emergency Telephone Authority’s operations;

WHEREAS, the Parties are authorized by Colorado statute (Title 29, Article 11, Part 1) to enter into a contract to establish a separate legal entity that serves as a governing body for the purpose of providing emergency telephone service and to establish and collect an emergency telephone charge in the jurisdiction Larimer County;

WHEREAS, the Colorado Constitution (Article XIV, Section 18) and Colorado statutes (Title 29, Article 1, Part 2) permit and encourage governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with each other; and

WHEREAS, C.R.S. § 29-1-203 authorizes government, as defined in C.R.S. § 29-1-202, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units if:

1. such 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
2. any such contract shall set forth fully the purposes, powers, rights, obligations, and the responsibilities, financial and otherwise, of the contracting parties and may provide for the joint exercise of the function, service, or facility, including the establishment of a separate legal entity to do so.

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the Parties agree as follows:

I. PREAMBLE

The Parties agree that the recitals set forth above are true and correct and those recitals are hereby incorporated into the body of this Agreement.

II. SUPERSEDING PRIOR AGREEMENTS

The Parties agree that this Agreement shall supersede the IGA dated November 14, 1990, the amendments thereto dated July 7, 1999, ~~and~~ April 5, 2002, July 29, 2009, and the ~~Fourth~~Third Amended IGA.

III. DEFINITIONS

As used herein:

A. The definitions for the following terms shall be the same as set forth in C.R.S. § 29-11-101, as may be amended: “emergency telephone charge,” “911 access connection,” “911 call,” “911 surcharge,” “emergency notification service” “emergency service provider,” “public agency,” “public safety answering point” (“PSAP”), which is interchangeable with emergency communications center (“ECC”), “service supplier,” and “service user.”

B. “Agreement” means this ~~Fourth~~Fifth Amended Intergovernmental Agreement for the Establishment of Larimer Emergency Telephone Authority;

C. “Board” means the Board of Directors described in Section V in which the powers of the Governing Body are vested.

D. “Bylaws” means the bylaws of the Governing Body as described in Section V(7).

E. “Emergency telephone service” means the receipt and processing of 911 calls by the PSAP for the purpose of providing responses from emergency service providers, and may include providing 911 call-related applications, services, programs, and systems.

F. “Governing Body” means Larimer Emergency Telephone Authority, per the definition set forth in C.R.S. § 29-11-101(16), as may be amended.

G. “Governing Body's jurisdiction” means within the combined geographic boundaries of Larimer County and Jackson County, per the definition set forth in C.R.S. § 29-11-101(17), as may be amended. The Governing Body's jurisdiction differs from the Governing Body's emergency telephone service area.

H. “Governing Body’s emergency telephone service area” means the collective boundaries of the emergency service providers that are used by the PSAPs for call routing and emergency response.

**H.I.** “Parties” means the signatories hereto, but, in the future, will not include any Party after the effective date of such Party’s withdrawal in accordance with Section X, and will include any new signatory admitted to this Agreement by the Board in accordance with Section VI(2)(q).

**H.J.** “Proportional basis” as used in Section X(3) means a percentage determined by the following formula: the number of 911 access connections within each boundary of the Identified Political Subdivisions divided by the total number of 911 access connections in Larimer County~~the Governing Body’s jurisdiction~~. The Board shall determine the data to use for this calculation based on the Board’s determination of the most reliable source(s) and representative timeframes. For the purpose of this definition only: (1) “Identified Political Subdivisions” means Larimer County and each city and town that is a Party, and excludes Jackson County, and (2) the boundary of Larimer County means within the unincorporated areas of the County. If, at the time of the calculation, Larimer County, a city, or a town is not a Party, then the Board shall establish the formula to allocate its percentage among the Identified Political Subdivisions who are Parties.

**IV. ESTABLISHMENT OF  
LARIMER EMERGENCY TELEPHONE AUTHORITY**

The Parties establish the separate legal entity and Governing Body known as Larimer Emergency Telephone Authority (“LETA”). The Governing Body may have also been referred to in prior intergovernmental agreements as the Larimer County Emergency Telephone Authority, which is hereby corrected. The Governing Body is created as a nonprofit, public entity established pursuant to C.R.S. §§ 29-1-203 and 29-11-102(1)(b), as may be amended. The Parties intend that the Governing Body be formed under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 through 120, as may be amended, and meet the Act’s definition of a “public entity.” The Parties further intend that the Governing Body meet the definition of a “nonprofit organization” under C.R.S. § 13-21-115.5, as may be amended (the Volunteer Service Act), C.R.S. § 13-21-115.7, as amended, and C.R.S. § 13-21-116, as may be amended.

The Governing Body is an independent legal entity, separate and distinct from the Parties. No debt, liability, or obligation of the Governing Body shall extend to or be an obligation of a Party, unless agreed to in writing.

The Governing Body is responsible for the installation, administration, management, operation, maintenance, upgrade, and enhancement of emergency telephone service and emergency notification service in the Governing Body’s jurisdiction. The Parties will provide reasonable assistance and cooperation to the Governing Body as it carries out the functions, services, and facilities described in this Agreement for the Parties.

The Parties believe that governing bodies created pursuant to Part 1 of Title 29, Article 11, including the Governing Body, are not subject to the revenue and spending limitations imposed by Article X, Section 20 of the Colorado Constitution (“Amendment 1”), and, to the extent that



Amendment 1 may be deemed to apply to governing bodies, the Governing Body created hereby shall operate as an enterprise within the meaning of Amendment 1 and shall thereby be exempt from all revenue and spending limitations imposed by said Amendment.

The Governing Body is formed in conformity with C.R.S. § 29-1-203.5. The provisions of C.R.S. § 29-1-203.5 apply to the Governing Body.

A Party whose boundaries include portions of Larimer County and another county may be signatories on another intergovernmental agreement related to emergency telephone service and emergency notification service in such other county.

V. THE BOARD OF DIRECTORS

1. **Board.** The business and affairs of the Governing Body shall be managed by a Board of Directors consisting of eight (8) ~~seven (7)~~ directors, each serving without compensation. The Board shall have the power to perform all acts necessary, to fulfill the purposes for which the Governing Body was established, whether express or implied.

2. **Qualifications of Directors.** Each director shall be either (a) a resident of Larimer County, or (b) an elected official in or full-time employee of a Party with an established scope of responsibility and delegated authority to make and implement policy-making or management-level decisions for the Party.

3. **Appointment to the Board.** Each director shall be appointed as follows:

a. The Larimer County Board of County Commissioners shall choose one (1) individual who meets the qualifications to serve as the director to represent Larimer County. The Larimer County Board of County Commissioners may determine the method for appointment from time to time and shall give to the Governing Body notice of any change in its method for appointment.

b. The Jackson County Board of County Commissioners appoints the Jackson County Sheriff, or the Sheriff's designee who meets the qualifications to serve as the director, to represent Jackson County.

~~b.c.~~ The City of Fort Collins appoints the City Manager or the City Manager's designee as its one (1) individual who meets the qualifications to serve as the director to represent the City of Fort Collins. The City Council of the City of Fort Collins may change its method for appointment from time to time and shall give to the Governing Body notice of any change in its method for appointment.

~~e.d.~~ The City Council of the City of Loveland shall choose one (1) individual who meets the qualifications to serve as the director to represent the City of Loveland. The City Council of the City of Loveland may determine the method for appointment from time to time and shall give

to the Governing Body notice of any change in its method for appointment.

~~d.e.~~ e. The Town of Estes Park appoints the Town Administrator or the Town Administrator’s designee as its one (1) individual who meets the qualifications to serve as the director to represent the Town of Estes Park. The Board of Trustees of the Town of Estes Park may change its method for appointment from time to time and shall give to the Governing Body notice of any change in its method for appointment.

e.f. The Board as then-comprised at the time of the appointment shall solicit nominees, nominate individually or as a slate, and appoint three (3) additional qualified directors as follows:

1. A director to represent the Parties that are fire districts and fire authorities;
2. A director to represent the Parties that are hospital and health services districts; and
3. A director to represent the Parties that are Colorado State University and towns not otherwise represented on the Board, with preference given to a Party with a PSAP.

4. **Term and Removal.** Directors shall serve a term of two (2) calendar years. There is no prohibition on consecutive terms or on the number of terms. A director may be removed if permitted by and pursuant to the procedures set forth in the Bylaws.

5. **Voting and Quorum.** Each director shall have one (1) vote. No proxy voting shall be permitted. ~~Directors may participate in a meeting remotely by means of telecommunication that permits the director to hear and be heard by all individuals in attendance (audio and/or video) and shall be deemed present for a quorum and entitled to vote at the meeting.~~ A quorum of the Board shall consist of four (4) directors, except that, should there be four (4) or more vacancies at any time, then during that time, a quorum shall consist of three (3) directors. No official action may be taken by the Board on any matter unless a quorum is present. The affirmative vote of a majority of the Board shall be required for the Board to take action.

6. **Vacancy.** Any vacancy occurring as a result of a director’s resignation, removal, death, disqualification, or any other reason shall be filled for the balance of that director’s unfinished term in accordance with the applicable provision of the appointment process set forth in Section V(3).

7. **Bylaws.** The Board has promulgated Bylaws detailing all governance matters it deems necessary, including but not limited to: the scheduling and conduct of Board meetings, voting, and director removal; establishment and responsibilities of officer positions, their terms, and the filling of any vacancies; the establishment and responsibilities of committees; and Governing Body operating and fiscal procedures. Such Bylaws may be amended by the Board in accordance with the procedures set forth therein. In the event of a conflict, direct or indirect, between a provision in the Bylaws and this Agreement, this Agreement shall control.

VI. POWERS OF THE GOVERNING BODY

1. **Plenary Powers.** The Governing Body may carry out all purposes of this Agreement and may exercise all powers related thereto, including all incidental, implied, expressed, or such other powers as necessary, except as expressly limited in this Agreement. The Governing Body shall not have the power to levy taxes or the power of eminent domain.

2. **Enumerated Powers.** Without in any way limiting the plenary powers set forth in subsection (1) above, the Governing Body is specifically authorized to undertake all actions for the installation, administration, management, operation, maintenance, upgrade, and enhancement of emergency telephone service and emergency notification service within the Governing Body's jurisdiction that the Governing Body believes are necessary and appropriate and consistent with applicable law, including but not limited to:

a. imposing, collecting, and auditing all charges and surcharges in the Governing Body's jurisdiction as set forth in Part 1 of Title 29, Article 11, as may be amended, and expending such funds as authorized by statute and this Agreement.

b. owning, operating, maintaining, leasing (as Lessor or Lessee), selling, or otherwise disposing of any legal or equitable interest in real and personal property.

c. adopting budgets, maintaining bank accounts, and investing funds.

d. carrying over funds which have not been used in a given fiscal year to the following fiscal year.

e. negotiating, entering into, amending (if necessary), and performing contracts.

f. adopting, reviewing, and amending the Bylaws and passing resolutions not in conflict with this Agreement.

g. adopting, reviewing on an annual basis, and amending (if necessary) the Governing Body's intergovernmental agreements other than this Agreement, as well as policies, protocols, procedures, or rules and regulations (collectively, "Policies") related to the provision of emergency telephone service and emergency notification service within the Governing Body's jurisdiction on subjects including but not limited to:

- Human Resources
- cost sharing
- street naming
- pictometry
- geographic information systems (GIS)
- Master Street Address Guide (MSAG)
- 911 Call Flow/Routing
- use of the backup PSAP
- 911 network

- fiber optic cable (leasing and owning)
- customer-premises equipment (CPE) and other equipment
- computer aided dispatch (CAD) system
- Combined Regional Information Systems Project (CRISP)
- insurance for PSAP equipment owned by the Governing Body and located at a facility owned by a Party
- emergency alert systems (selection and use)
- complex emergency events
- records retention and compliance with applicable law
- training, accreditation, and certification
- Emergency Medical Dispatch (EMD)
- call boxes
- finances and investments

In the event of a conflict, direct or indirect, between a provision the Policies and this Agreement, this Agreement shall control.

h. determining who is authorized to send emergency alerts and the circumstances under which they may be sent.

i. adopting a policy regarding street naming after collaboration with the Parties in whose jurisdiction the street is located.

j. adopting systems (software, hardware, and protocols) for Emergency Medical Dispatch (EMD).

k. conducting joint, partnership, cooperative, or other operations with other individuals and entities.

l. employing agents, accountants, attorneys, engineers, consultants, and other advisors.

m. incurring and paying debts, liabilities, or obligations, including borrowing and executing documents incidental thereto.

n. issuing bonds, notes, or other obligations payable from the revenues derived or to be derived from the revenue of the Governing Body as permitted by applicable law.

o. suing and being sued in its own name.

p. receiving contributions, gifts, bequests, grants, cash, equipment, or services from the Parties or any other public or private individual or entity.

q. after a formal Resolution of the Board, admitting a new signatory to this Agreement

who becomes a Party without formal amendment of this Agreement, so long as each new signatory qualifies under C.R.S. §§ 29-1-202 and 203, has the approval of its legislative body or other authority having the power to so approve, and signs a document memorializing its admission.

r. participating in committees, groups, and organizations at the federal, state, and local level whose work relates to emergency telephone service and emergency notification service, including laws, regulations, and rules related thereto.

s. any other act which the Governing Body believes is reasonably necessary for the exercise of its powers and the performance of its obligations under this Agreement.

VII. BOOKS AND RECORDS

The Governing Body shall keep accurate and correct books of account on a modified accrual basis, showing in detail the capital costs, costs of services, installation, maintenance and operating costs, and the financial transactions of the Governing Body. The Governing Body's books of account shall also correctly show any and all revenues, fund balances, costs, or charges, as well as all funds received by and all funds expended by the Governing Body. The Governing Body's books and records shall be open to inspection during normal business hours upon reasonable notice by a Party, its attorneys, accountants, or agents. The books and records of the Governing Body shall also be made available to the public in accordance with the provisions of Colorado's Open Records Act, as may be amended.

The Governing Body shall cause an annual audit to be conducted by an independent Certified Public Accountant licensed to practice in the State of Colorado. The Governing Body shall comply with the Colorado Local Government Audit Law, C.R.S. § 29-1-601 through 608, as may be amended. The Governing Body shall comply with all other applicable federal and state financial reporting requirements.

The Governing Body shall maintain an asset inventory list for any and all real and personal property acquired by the Governing Body in whole or in part.

On and after the effective date of this Agreement, Jackson County will promptly deliver, transfer, and assign to the Governing Body:

1. the entire balance of funds it holds for purposes of providing emergency telephone service and emergency notification service in Jackson County, but no less than \$55,000.00;
2. the entire balance of any funds it receives or has received from the state or federal government or grants for purposes of improving emergency telephone service and emergency notification service in Jackson County, but no less than \$70,000.00;
3. all rights, title, and interest to all charges and surcharges due Jackson County for

emergency telephone service under Colorado statute (Title 29, Article 11, Part 1) and deliver the same to the Governing Body, and Jackson County will execute all documents necessary for carriers and the Public Utilities Commission to deliver directly to the Governing Body all such charges and surcharges in the future; and

- 4. unencumbered title to any PSAP equipment or other assets owned by Jackson County that would assist the Governing Body in its administration and/or operation emergency telephone service and emergency notification service. Jackson County shall execute any documents reasonably necessary to effectuate the transfer of title.

Similar to Agreements with the Governing Body’s other PSAPs, Jackson County agrees to (a) insure the Governing Body’s equipment located in a PSAP in Jackson County, and (b) provide proof of insurance promptly upon the Governing Body’s written request.

The Governing Body will not become a successor to or assignee of any contracts currently in place for purposes of providing emergency telephone service and emergency notification service in Jackson County, with the exception of the current tariff in place for the provision of basic emergency service in Colorado.

VIII. REPORTS TO PARTIES

On an annual basis, the Governing Body shall submit a comprehensive annual report to the Parties summarizing the activities of the Governing Body during the preceding year and make available information concerning the finances of the Governing Body.

IX. DURATION OF AGREEMENT

The Agreement and the Governing Body shall have perpetual existence as permitted by C.R.S. § 29-1-203(1), as may be amended, unless sooner terminated in accordance with this Agreement.

X. WITHDRAWAL, TERMINATION, AND DISSOLUTION

1. **Withdrawal.** Any Party may withdraw from this Agreement by providing notice to each other Party and to the Governing Body. The withdrawal shall not be effective until at least one calendar year after the last notice is delivered.

2. **Termination by Mutual Agreement of the Parties.** Upon a three quarters (3/4) majority vote of all then-Parties, this Agreement shall be terminated and the Governing Body dissolved so long as, at the time of the vote, at least three quarters (3/4) of the Parties have also agreed in writing as to one or more entities who will succeed the Governing Body and undertake all actions for the continued installation, administration, management, operation, maintenance, upgrade, and enhancement of emergency telephone service and emergency notification service within the Governing Body's jurisdiction. The effective date of termination shall be December 31st in the

calendar year ending no less than six months after the three quarters (3/4) majority vote for termination.

3. **Dissolution of Governing Body.** Upon the termination of this Agreement pursuant to subsection (2) above, the Board and the Parties shall take such actions necessary to finalize and conclude the Governing Body's operations, effect the orderly dissolution of the Governing Body, and transition emergency telephone service and emergency notification service to the entity or entities who will succeed the Governing Body, at the discretion of the Board. All assets of the Governing Body located within Larimer County shall be distributed on a proportional basis pursuant to Section III(J) either in-kind or after liquidation, at the discretion of the Board, except for any assets that the Board determines should be distributed to the entity or entities who will succeed the Governing Body. For purposes of this Agreement, all cash, bank, and investment accounts of LETA are deemed to be located within Larimer County. All assets of the Governing Body located within Jackson County shall be distributed to Jackson County either in-kind or after liquidation, at the discretion of the Board, except for any assets that the Board determines should be distributed to the entity or entities who will succeed the Governing Body. The Board shall be responsible for inventorying the assets of the Governing Body, distributing or liquidating any assets as appropriate, concluding the affairs of the Governing Body, and transitioning emergency telephone service and emergency notification service to the entity or entities who will succeed the Governing Body. Subject to the exercise of the Board's discretion, a Party which has previously made a contribution toward the purchase of a jointly owned asset may receive full ownership of the asset upon termination; however, the Party must account to the Governing Body for the amount that the Governing Body contributed toward purchase of the asset upon distribution of the other assets of the Governing Body. The Parties' rights related to distribution of assets shall survive termination of this Agreement.

XI. LIABILITY OF THE BOARD OF DIRECTORS, OFFICERS, AND EMPLOYEES OF THE GOVERNING BODY

The Governing Body and its directors, officers, and employees shall be immune from suit and civil liability as provided by applicable law because the Governing Body is a nonprofit, public entity and political subdivision of the State of Colorado established pursuant to C.R.S. §§ 29-1-203 and 29-11-102(1)(b), as amended; the Governing Body is a public entity under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 through 120, as amended; and the Governing Body is a "nonprofit organization" under C.R.S. § 13-21-115.5, as amended (the Volunteer Service Act), C.R.S. § 13-21-115.7, as amended, and C.R.S. § 13-21-116, as amended.

In addition, the Governing Body shall purchase insurance for the Governing Body and its Board, officers and employees which insurance will provide reasonable coverage against any claims, suit or proceeding arising out of or relating to any act or omission under this Agreement.

XII. AMENDMENTS

This Agreement may be amended upon the affirmative vote of three-quarters (3/4) of the

then-Parties to this Agreement.

XIII. NOTICE

Notice to a Party is given by delivering a writing to its current address as listed by the Department of Local Affairs. The Notice shall be addressed as follows: (a) to the Board of County Commissioners in the case of Larimer County and Jackson County, (b) to the Board and its Chief Executive Officer in the case of a special district, a fire authority, or the Governing Body, (c) to the City Council in the case of cities, and (d) to the Town Board, Town Council, or Board of Trustees in the case of Towns. A courtesy copy shall also be delivered to the attorneys for Larimer County, Jackson County, cities, and towns. Failure to deliver courtesy copies to the attorneys shall not invalidate a notice otherwise properly delivered as provided in this Agreement. Notice to a director is given by delivering a writing addressed to the director to the Governing Body’s current address. Notice shall be effective upon receipt if hand-delivered or three (3) days after mailing if sent by first-class or certified U.S. mail.

XIV. SEVERABILITY

In the event any provision of this Agreement is determined to be illegal or invalid for any reason, all other provisions of this Agreement shall remain in full force and effect unless and until otherwise determined by a Court of competent jurisdiction. The illegality of any provision of this Agreement shall in no way affect the legality and enforceability of any other provision of this Agreement.

XV. SUCCESSORS AND THIRD PARTIES

This Agreement shall be binding upon and shall inure to the benefit of the successors of the Parties. This Agreement is not intended to, and does not, inure to the benefit of non-Parties to this Agreement.

XVI. ASSIGNMENT AND DELEGATION

No Party shall assign any of the rights nor delegate any of the duties created by this Agreement without the written approval of three-quarters (3/4) of the other then-Parties to this Agreement.

XVII. COUNTERPARTS

This Agreement may be executed by original, scanned, or digital counterpart signatures and shall have the same force and effect as if all signatures appeared on the same original.

IN WITNESS WHEREOF, the Parties have caused their representatives to affix their respective signatures hereto.



<p><b>COUNTY OF LARIMER STATE OF COLORADO</b></p> <p>By: _____</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p><u>William Ressue, County Attorney</u></p> <p>Date: _____</p>	
<p><b>COUNTY OF JACKSON STATE OF COLORADO</b></p> <p>By: _____</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>	<p><b>ALLENSPARK FIRE PROTECTION DISTRICT</b></p> <p>By: _____ <u>Jill Allington, President</u></p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>
<p><b>CITY OF FORT COLLINS, COLORADO</b></p> <p>By: _____ Jeni Arndt, Mayor</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p><u>Cyril Vidergar</u></p> <p>Date: _____</p>	<p><b>BERTHOUD FIRE PROTECTION DISTRICT</b></p> <p>By: _____ <u>Dan Hershman, President</u></p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>

<p><b>CITY OF LOVELAND, COLORADO</b></p> <p>By: _____ <u>Jacki Marsh, Mayor</u><del>Stephen C. Adams,</del> <u>City Manager</u></p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____ Laurie Stirman</p> <p>Date: _____</p>	<p><b>CRYSTAL LAKES FIRE PROTECTION DISTRICT</b></p> <p>By: _____ <u>Jody Sandquist, President</u></p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____ Date: _____</p>
<p><b>TOWN OF BERTHOUD, COLORADO</b></p> <p>By: _____ <u>William Karspeck, Mayor</u></p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____ Date: _____</p>	<p><b>ESTES VALLEY FIRE PROTECTION DISTRICT</b></p> <p>By: _____ <u>Jon Hodde, President</u></p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____ Date: _____</p>
<p><b>TOWN OF ESTES PARK, COLORADO</b></p> <p>By: _____ Wendy Koenig-<u>Schuett</u>, Mayor</p> <p>ATTEST: _____ <u>Jackie Williamson, Town Clerk</u></p> <p>APPROVED AS TO FORM (if applicable): _____ Dan Kramer</p> <p>Date: _____</p>	<p><b>FRONT RANGE FIRE RESCUE FIRE PROTECTION DISTRICT</b></p> <p>By: _____ <u>Darrin Rutt, President</u></p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____ Date: _____</p>

<p><b>TOWN OF JOHNSTOWN, COLORADO</b></p> <p>By: _____ <u>Gary Lebsack, Mayor</u></p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>	<p><b>GLACIER VIEW FIRE PROTECTION DISTRICT</b></p> <p>By: _____ <u>David Burk, President</u></p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>
<p><b>TOWN OF TIMNATH, COLORADO</b></p> <p>By: _____ <u>Mark Soukup, Mayor</u></p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>	<p><b>LIVERMORE FIRE PROTECTION DISTRICT</b></p> <p>By: _____</p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>
<p><b>TOWN OF WELLINGTON, COLORADO</b></p> <p>By: _____ <u>Troy Hamman, Tory Whanau, Mayor</u></p> <p>ATTEST: _____ <u>Krystal Eucker, Town Clerk</u></p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Dan Sapienza</p> <p>Date: _____</p>	<p><b>LOVELAND RURAL FIRE PROTECTION DISTRICT</b></p> <p>By: _____ <u>Jeff Swanty, President</u></p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>

<p><b>TOWN OF WINDSOR, COLORADO</b></p> <p>By: _____ <u>Paul Rennemeyer, Rosa Reynoza, Mayor</u></p> <p>ATTEST: _____ Karen Frawley, Town Clerk</p> <p>APPROVED AS TO FORM (if applicable): _____ <u>Ian McCargar</u></p> <p>Date: _____</p>	<p><b>LYONS FIRE PROTECTION DISTRICT</b></p> <p>By: _____ <u>Paul Davidovich, President</u></p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>
<p><b>HEALTH DISTRICT OF NORTHERN LARIMER COUNTY</b></p> <p>By: _____ <u>Michael D. Liggett, Molly Gutilla, Board President</u></p> <p>ATTEST: _____ <u>Anita Benavidez, Asst. to E.D.</u></p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>	<p><b>PINEWOOD SPRINGS FIRE PROTECTION DISTRICT</b></p> <p>By: _____ <u>Michael Graham, President</u></p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>
<p><b>PARK HOSPITAL DISTRICT</b></p> <p>By: _____ <u>Gary Hall, CIO/COO, Estes Park Health</u></p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p>	<p><b>POUDRE CANYON FIRE PROTECTION DISTRICT</b></p> <p>By: _____ <u>Gene Mericle, Pat Conway, President</u></p> <p>ATTEST: _____ <u>Paula Collins, Secretary</u></p> <p>APPROVED AS TO FORM (if applicable): _____</p>

<p>Date: _____</p> <p><b>THOMPSON VALLEY HEALTH SERVICES DISTRICT</b></p> <p>By: _____ <u>Tom Blomquist, Chair</u></p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>	<p>Date: _____</p> <p><b>POUDRE VALLEY FIRE PROTECTION DISTRICT</b></p> <p>By: _____ Derek Bergsten, Chief</p> <p>ATTEST: _____ <del>Sean Jones, Battalion Chief</del></p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>
<p><b><u>THE BOARD OF GOVERNORS OF THE COLORADO STATE UNIVERSITY SYSTEM ACTING BY AND THROUGH COLORADO STATE UNIVERSITY</u></b></p> <p>By: _____ <u>Brendan Hanlon, VPUO</u></p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p><u>Linda Schutjer, Senior Legal Counsel</u></p> <p>Date: _____</p>	<p><b>RED FEATHER LAKES FIRE PROTECTION DISTRICT</b></p> <p>By: _____ <u>Dan Defibaugh, President</u></p> <p>ATTEST: _____</p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p>Date: _____</p>
<p><b>LOVELAND FIRE RESCUE AUTHORITY</b></p> <p>By: _____ Jeff Swanty, Board Chair</p> <p>ATTEST: _____ <u>Kristen Cummings</u></p> <p>APPROVED AS TO FORM (if applicable): _____</p> <p><u>Emily Powell</u></p>	<p><b>WELLINGTON FIRE PROTECTION DISTRICT</b></p> <p>By: _____ <del>Gary Green, Chief</del> <u>David Pierson, Vice President</u></p> <p>ATTEST: _____ <del>Ashley Macdonald, Deputy District Manager</del></p> <p>APPROVED AS TO FORM (if applicable): _____</p>

Date: _____	Date: _____
<b>POUDRE FIRE AUTHORITY</b>	<b>WINDSOR-SEVERANCE FIRE PROTECTION DISTRICT</b>
By: _____ <u>David Pusey, Chair</u>	By: _____ <u>Andrew Rosen, President</u>
ATTEST: _____	ATTEST: _____
APPROVED AS TO FORM (if applicable): _____ <u>Emily Powell</u>	APPROVED AS TO FORM (if applicable): _____
Date: _____	Date: _____

DRAFT



# AGENDA ITEM SUMMARY

City Council

## STAFF

Tyler Stamey, City Traffic Engineer, PDT  
Aaron Guin, Legal

## SUBJECT

**Resolution 2023-079 Amending the Existing Intergovernmental Agreement Between the City of Fort Collins and the Colorado Department of Transportation for the Reconstruction of the US 287 and Troutman Traffic Signal to Extend the Agreement’s Expiration Date.**

## EXECUTIVE SUMMARY

The purpose of this item is to extend the expiration date of an existing Intergovernmental Agreement (“IGA”) with the Colorado Department of Transportation (“CDOT”) that is set to expire on September 11, 2023, to September 11, 2025. This date will allow for staff to complete the work and receive the full \$250,000 reimbursement amount identified in the IGA.

## STAFF RECOMMENDATION

Staff recommends adoption of this Resolution.

## BACKGROUND / DISCUSSION

CDOT completed an Intersection Prioritization study on its highway system in the region and identified necessary improvements to the intersection of College Avenue and Troutman Parkway. The recommended improvements consist of new signal poles with longer mast arms, upgrades to aging conduit, the addition of flashing yellow arrows, replacing the signal cabinet, adding audible pedestrian signals, and improving pedestrian accessibility. CDOT has identified funding to complete the improvements. The contract reflects that the budgeted funding from the State is \$250,000.

This IGA was executed in August of 2018, and set an expiration date of September 11, 2023. Staff has completed the majority of the work pursuant to this IGA; however, some work still remains. The proposed Amendment #1 to the IGA will extend the IGA expiration date to September 11, 2025.

## CITY FINANCIAL IMPACTS

If this IGA is not extended, the City will lose approximately \$50,000 in eligible reimbursement costs for this project for work that is not yet completed.

**BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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Not applicable.

**PUBLIC OUTREACH**

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Not applicable.

**ATTACHMENTS**

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1. Resolution for Consideration
2. Exhibit A to Resolution



RESOLUTION 2023-079  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING THE EXISTING INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE CITY OF FORT COLLINS AND THE COLORADO DEPARTMENT OF  
TRANSPORTATION FOR THE RECONSTRUCTION OF THE US 287 AND TROUTMAN  
TRAFFIC SIGNAL TO EXTEND THE AGREEMENT’S EXPIRATION DATE

WHEREAS, the Colorado Department of Transportation (“CDOT”) completed an Intersection Prioritization study on its highway system in the region and identified necessary improvements to the intersection of College Avenue and Troutman Parkway (the “Intersection”); and

WHEREAS, the recommended Intersection improvements from the study consist of new signal poles with longer mast arms, upgrades to aging conduit, the addition of flashing yellow arrows, replacing the signal cabinet, adding audible pedestrian signals, and improving pedestrian accessibility (the “Project”); and

WHEREAS, CDOT identified funding to complete the improvements and, pursuant to an Intergovernmental Agreement (“IGA”) approved by the City Council and executed in August of 2018, the City agreed to construct the Project, with CDOT fully reimbursing the City for the costs of construction of the Project up to \$250,000; and

WHEREAS, the IGA is set to expire on September 11, 2023 and, although the majority of the work under the IGA is complete, some work on the Project still remains; and

WHEREAS, CDOT has proposed an Amendment to the Intergovernmental Agreement (“Amendment #1”), attached as Exhibit “A” and incorporated by reference, which extends the expiration date of the IGA to September 11, 2025, to allow completion of the Project; 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 such 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, Article II, Section 16 of the City Charter 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, the City Council has determined that the Amendment to the IGA is in the best interests of the City and provides the public benefit of upgrading traffic signals within the City and that the Mayor be authorized to execute the Amendment to 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, Amendment #1 to the Intergovernmental Agreement with the Colorado Department of Transportation, in substantially the form attached hereto as Exhibit "A," together with such 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.

Section 3. That the City Council hereby authorizes the City Manager to approve and execute future amendments to the IGA that the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to facilitate completion of the Project, so long as such amendments do not increase the cost of the Project, substantially modify the purposes of the IGA, increase the allocation or amount of funding for the Project funded by the City, or otherwise increase the obligations and responsibilities of the City as set forth in the IGA.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

# STATE OF COLORADO AMENDMENT

Amendment #: 1

Project #: FSA M455-126 (22461)

## SIGNATURE AND COVER PAGE

<b>State Agency</b> Department of Transportation		<b>Amendment Routing Number</b> 19-HA4-XC-00011-M0001
<b>Local Agency</b> City of Fort Collins		<b>Original Agreement Routing Number</b> 19-HA4-XC-00011
<b>Agreement Maximum Amount</b> \$250,000.00	<b>Agreement Performance Beginning Date</b> September 12, 2018	
	<b>Initial Agreement Expiration Date</b> September 11, 2023	
	<b>New Agreement Expiration Date</b> September 11, 2025	

### THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

Each person signing this Amendment represents and warrants that he or she is duly authorized to execute this Amendment and to bind the Party authorizing his or her signature.

**STATE OF COLORADO**  
**Jared S. Polis, Governor**  
 Department of Transportation  
 Shoshana M. Lew, Executive Director

\_\_\_\_\_  
 Keith Stefanik, P.E., Chief Engineer  
 Date: \_\_\_\_\_

<p style="text-align: center;"><b>LOCAL AGENCY</b> City of Fort Collins</p> <p style="text-align: center;">_____ Signature</p> <p style="text-align: center;">_____ By: (Print Name and Title)</p> <p style="text-align: center;">Date: _____</p>	<p style="text-align: center;"><b>ADDITIONAL LOCAL AGENCY SIGNATURES</b></p> <p style="text-align: center;">_____ Signature</p> <p style="text-align: center;">_____ By: (Print Name and Title)</p> <p style="text-align: center;">Date: _____</p> <p>ATTEST:</p> <p style="text-align: center;">_____ Signature</p> <p style="text-align: center;">_____ By: (Print Name and Title)</p> <p style="text-align: center;">Date: _____</p>
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In accordance with §24-30-202 C.R.S., this Amendment 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: \_\_\_\_\_

**1) PARTIES**

This Amendment (the “Amendment”) to the Original Agreement shown on the Signature and Cover Page for this Amendment (the “Agreement”) is entered into by and between the Local Agency and the State.

**2) TERMINOLOGY**

Except as specifically modified by this Amendment, all terms used in this Amendment that are defined in the Agreement shall be construed and interpreted in accordance with the Agreement.

**3) EFFECTIVE DATE AND ENFORCEABILITY****A. Amendment Effective Date**

This Amendment shall not be valid or enforceable until the Amendment Effective Date shown on the Signature and Cover Page for this Amendment. The State shall not be bound by any provision of this Amendment before that Amendment Effective Date, and shall have no obligation to pay the Local Agency for any Work performed or expense incurred under this Amendment either before or after the Amendment term shown in **§3.B** of this Amendment

**B. Amendment Term**

The Parties’ respective performances under this Amendment and the changes to the Agreement contained herein shall commence on the Amendment Effective Date shown on the Signature and Cover Page for this Amendment and shall terminate on the termination of the Agreement.

**4) PURPOSE**

The Parties entered into the Original Agreement for the US 287 and Troutman Intersection Project in Fort Collins, Colorado. The Parties now desire to extend the Agreement expiration date.

**5) MODIFICATIONS**

This Amendment will extend the Agreement Expiration Date by two (2) years, from the Initial Agreement Expiration Date of September 11, 2023 to a New Agreement Expiration Date of September 11, 2025.

**6) LIMITS OF EFFECT**

This Amendment is incorporated by reference into the Agreement, and the Agreement and all prior amendments or other modifications to the Agreement, if any, remain in full force and effect except as specifically modified in this Amendment. Except for the Special Provisions contained in the Agreement, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Agreement or any prior modification to the Agreement, the provisions of this Amendment shall in all respects supersede, govern, and control. The provisions of this Amendment shall only supersede, govern, and control over the Special Provisions contained in the Agreement to the extent that this Amendment specifically modifies those Special Provisions.

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# AGENDA ITEM SUMMARY

City Council



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## STAFF

Paul Sizemore, Director, Community Development and Neighborhood Services  
Ryan Mounce, City Planner  
Chris Hayes, Legal

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## SUBJECT

**Resolution 2023-080 Adopting Findings of Fact in Support of the City Council's Decision on Appeal to Remand the Planning and Zoning Commission Approval of a Major Amendment to the Ziegler-Corbett Overall Development Plan.**

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## EXECUTIVE SUMMARY

The purpose of this item is to make findings of fact and conclusions regarding Council's decision at the August 15, 2023, appeal hearing to remand the Planning and Zoning Commission decision to approve the Ziegler-Corbett Overall Development Plan Major Amendment back to the Planning and Zoning Commission for further consideration.

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## STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

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## BACKGROUND / DISCUSSION

On March 23, 2023, the Planning and Zoning Commission considered an application for the Ziegler-Corbett Overall Development Plan Major Amendment #220004. The Commission approved the Major Amendment with reliance on alternative compliance to Land Use Code Sections 3.6.3(E) and (F) to provide a bike and pedestrian connection to the site's northern boundary. These sections would otherwise require a local street connection. Two Notices of Appeal were filed on April 5, 2023, alleging that the Planning and Zoning Commission failed to conduct a fair hearing and failed to properly interpret and apply relevant provisions of the Land Use Code.

On August 15, 2023, Council considered the consolidated appeal allegations, the record on appeal, information presented at the hearing, and testimony from parties in interest and their representatives. After discussing the appeal allegations, Council denied the fair hearing appeal allegation, finding that the Planning and Zoning Commission did conduct a fair hearing. Council remanded the proposal for rehearing to the Planning and Zoning Commission with the direction that the Commission must at a minimum determine and make specific factual findings whether the Major Amendment proposal complies with the street connectivity standards set forth in Land Use Code 3.6.3, without deference to the alternative compliance approval granted as part of the Ziegler-Corbett Overall Development Plan.

Council dismissed the remaining appeal allegations.

**CITY FINANCIAL IMPACTS**

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Not applicable.

**BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

---

Not applicable.

**PUBLIC OUTREACH**

---

Not applicable.

**ATTACHMENTS**

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1. Resolution for Consideration

RESOLUTION 2023-080  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
ADOPTING FINDINGS OF FACT IN SUPPORT OF THE CITY COUNCIL’S DECISION ON  
APPEAL TO REMAND THE PLANNING AND ZONING COMMISSION APPROVAL OF A  
MAJOR AMENDMENT TO THE ZIEGLER-CORBETT OVERALL DEVELOPMENT PLAN

WHEREAS, on March 23, 2023, the Planning and Zoning Commission (“P&Z”) approved a Major Amendment to the Ziegler-Corbett Overall Development Plan, MJA#220004 (“Major Amendment”); and

WHEREAS, on April 5, 2023, Craig Latzke filed a notice of appeal (“Latzke Appeal”) asserting that:

- (a) P&Z failed to conduct a fair hearing because P&Z substantially ignored its previously established rules of procedure
- (b) P&Z failed to properly interpret and apply Fort Collins Land Use Code Section 3.6.3(E) and (F) (Street Pattern & Connectivity Standards)
- (c) P&Z failed to properly interpret and apply City Plan Policy LIV 4.2 (Compatibility of Adjacent Development)

; and

WHEREAS, on April 5, 2023, Lacey Joyal and Tamara Burnside also filed a notice of appeal (“Joyal Appeal”) asserting that P&Z failed to properly interpret and apply the following sections:

- (a) Fort Collins Land Use Code Section 3.6.3(E) and (F) (Street Pattern & Connectivity Standards)
- (b) Fort Collins Land Use Code Section 1.2.2(K) (Purpose)
- (c) City Plan Policy LIV 4.2 (Compatibility of Adjacent Development)

; and

WHEREAS, the people who filed the Latzke Appeal and the Joyal 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 August 15, 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 Latzke Appeal and the Joyal Appeal; and

WHEREAS, at the Hearing, the City Council considered the record on appeal; testimony from City staff; statements and arguments by Craig Latzke in support of the Latzke Appeal; statements and arguments by Lacey Joyal in support of the Joyal Appeal; and statements and arguments by Robert Choate and Jason Sherrill, legal counsel and CEO, respectively, for Landmark Homes, the applicant for the Major Amendment in opposition to the notices of appeal; and

WHEREAS, there were no evidentiary objections raised during the Hearing by any party-in-interest or by the applicant in opposition to the notices of appeal; and

WHEREAS, during the Hearing, Craig Latzke withdrew the fair hearing issue raised in the Latzke Appeal, and 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 issue lacked merit and that P&Z did not fail to conduct a fair hearing; and

WHEREAS, after discussion, the City Council decided based on the evidence in the record and presentations made at the Hearing, to remand this matter to P&Z with the direction that P&Z consider whether the Major Amendment complies with the street connectivity standards in the Fort Collins Land Use Code, without deference to the alternative compliance originally approved as part of the Zieler-Corbett Overall Development Plan; and

WHEREAS, in remanding the matter to P&Z, the City Council dismissed the Latzke Appeal and the Joyal Appeal with respect to any issues not specifically addressed by the remand; 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 allegation set forth in the Latzke Appeal that P&Z failed to conduct a fair hearing is without merit and is dismissed in its entirety.
3. That the Major Amendment to the Ziegler-Corbett Overall Development Plan be remanded to P&Z for rehearing with the direction that, at a minimum, P&Z determine and make specific factual findings whether the Major Amendment proposal complies with the street connectivity standards set forth in Land Use Code 3.6.3, without deference to the alternative compliance approval granted as part of the Ziegler-Corbett Overall Development Plan.



4. That the March 23, 2023, P&Z decision approving the Major Amendment is hereby vacated.
5. That the Latzke Appeal and Joyal appeal are dismissed in their entirety with respect to any issues not addressed in the remand.
6. 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 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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



# AGENDA ITEM SUMMARY

City Council

## STAFF

Davina Lau, Public Engagement Specialist  
Carrie M. Daggett, Legal

## SUBJECT

**Resolution 2023-081 Making an Appointment to the Human Relations Commission.**

## EXECUTIVE SUMMARY

The purpose of this item is to fill a vacancy on the Human Relations Commission.

## STAFF RECOMMENDATION

Staff recommends adoption of this Resolution.

## BACKGROUND / DISCUSSION

This resolution appoints Kevin Goff to fill the vacancy left by Fabiola Pascual Luna. Kevin Goff was interviewed by Mayor Arndt, Mayor Pro Tem Francis, and Councilmember Canonico on May 1, 2023. This appointment will begin and expire as noted next to the recommended name shown below and in the resolution.

### Human Relations Commission

Appointment	Term Effective Date	Expiration of Term
Kevin Goff (Seat C)	September 6, 2023	December 31, 2026

## CITY FINANCIAL IMPACTS

Not applicable.

## BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Not applicable.

## **PUBLIC OUTREACH**

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Public outreach to seek applicants for boards and commissions included a spotlight and press release on the City of Fort Collins website, media releases for earned coverage in local media sources, and social media promotion of opportunities.

## **ATTACHMENTS**

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1. Resolution for Consideration
2. Application

RESOLUTION 2023-081  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
MAKING AN APPOINTMENT TO THE HUMAN RELATIONS COMMISSION

WHEREAS, the Human Relations Commission has a vacancy due to the resignation of Fabiola Pascual Luna; and

WHEREAS, Councilmembers interviewed candidates for these appointments on May 1, 2023; and

WHEREAS, the City Council desires to make an appointment to fill this vacancy on the Human Relations 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 person is hereby appointed to fill the open vacancy on the Human Relations Commission with a term to begin and expire as noted below next to the appointee’s name:

**Human Relations Commission**

Appointments	Term Effective Date	Expiration of Term
Kevin Goff (Seat C)	September 6, 2023	December 31, 2026

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

# VOLUNTEER APPLICATION

Kevin John Goff

4/18/2023 4:27 PM

Application: **HRC - Human Relations Commission**

### Applicant Information

Birthdate: [REDACTED] Gender: Male Education Level: Some College

Address: [REDACTED] Phone: [REDACTED] <<

### Volunteer Groups Applied For

Human Relations Commission

### Job Description

I have read the job description

### Questions

Current Occupation:	Actor/Film Producer/Writer
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.	Cultural Resources Board, Human Relations Commission & the Youth Advisory Board.
I acknowledge I am available when the Human Relations Commission meets: Second Thursday of each month at 5:30 p.m.	YES
How many hours per month are you willing to put in (including research, work, and meeting time) as a commission member?	10-15 hours per month.
Which Council District do you live in? Please refer to the map at: <a href="https://gisweb.fcgov.com/HTML5Vie">https://gisweb.fcgov.com/HTML5Vie</a>	5
Current Employer:	HattieMcDaniel.com and also Tolmar, Inc.
Prior work experience (please include dates):	HattieMcDaniel.com (Project Founder/Producer): October 2003 - present Tolmar, Inc. (Injectables): April 2023 - present 24 Seven, Inc. (various positions): September 2019 - October 2022
Volunteer experience (please include dates):	International Documentary Association (IDA); <a href="http://www.documentary.org">www.documentary.org</a> (June 2016 - present) Motion Picture & Television Fund (MPTF); <a href="http://www.mptf.com">www.mptf.com</a> (February 2018 - present) Young Artist Academy (YAA); <a href="http://www.youngartistacademy.info">www.youngartistacademy.info</a> (December 2020 - present)
Have you applied for this commission before? If yes, please explain.	N/A
Are you currently serving on a City board or Commission? If so, which one?	No; N/A

Why do you want to become a member of this particular board or commission

I believe in humanitarian efforts, inclusion & equity for all, and I am thrilled to be a new Fort Collins resident like my relatives from over 100 years ago.

Have you had any exposure to the board or commission you are applying for If yes, please explain:

No;  
N/A

Specify any activities which might create a serious conflict of interest if you are appointed:

N/A

How did you learn of a vacancy on this board or commission

Other (please specify);  
I learned about the various board vacancies from Nick Heimann, Cultural Community Programs Manager.

Briefly explain what you believe are the three most important issues facing this board or commission, and how do you believe this board or commission should address each issue Feel free to upload a separate sheet of paper if necessary.

I am a fairly new resident to Fort Collins, so I would definitely need to do my homework on any issues that are before this specific board. Of course, I would imagine outreach as it relates to educating the community, DEI initiatives, and recognizing the work of those that sacrifice their time & attention are vital.

# Kevin Goff



## OBJECTIVE

To provide professional service to clients by utilizing great communication (verbal and written), a positive attitude, strong organization, and the ability to work exceptionally well with others.

## SUMMARY OF QUALIFICATIONS

- . 20+ years of customer service/client relations experience coupled with integrity, reliability, and flexibility
- . Supervisory/management experience (1 to 100 employees)
- . Knowledge of business principles and core competencies. Adept at meeting quality standards for service, evaluation of customer satisfaction, and due diligence
- . Outstanding communication/listening skills with emphasis on conveying information effectively

## WORK EXPERIENCE

OCT 2003 – Present **Project Founder/Producer – HattieMcDaniel.com**

- . Proud partnership with the Young Artists Academy to honor performer Hattie McDaniel during Black History Month and to create meaningful discussions about how young performers can encourage respect and kindness for all
- . Coordination with the web development team (1HappyPlace, LLC) in the creation of the project website, marketing direction, and updates relating to website content
- . Weekly meetings with public relations team (AMB Publicity) to discuss new developments related to project visibility and new project development (i.e., docu-series, podcast, and illustrative book)

SEPT 2019 – Present **Stock Support – 24 Seven, Inc.**

- . Transporting merchandise to the sales floor
- . Acceptance of product deliveries from carriers (UPS, other vendors)
- . Unpacking of stock and placement on warehouse shelves
- . Labeling of product codes and batch codes (and the arrangement of expired product to be prepared for disposal)

NOV 2020 – FEB 2021 **Customer Advisor (Remote) - Sundae, Inc.**

- . Develop and refine phone scripts that adapt to different customer personas
- . Manage a comprehensive lifecycle pipeline ranging from customers performing initial research to sellers who have presented an offer in writing
- . Work directly with management to package learnings from customer interaction into actionable feature expansion and new product development
- . Documenting processes, implementing learnings, and recommendations for updates to Salesforce

JAN 2006 – NOV 2008 **Ecommerce Floor Supervisor - Aerotek Staffing Services**

- . Supervision of 50+ call center agents
- . Monitoring, attendance, and employee assessments
- . CRM reporting and administrative tasks to track employee productivity
- . Account Executive code creation for loan officers and bi-monthly agent reporting

## **PROGRAM AND SOFTWARE EXPOSURE**

- . Slack
- . Salesforce
- . Google Suite
- . Avaya CRM & WebAdmin
- . Automatic Call Distribution (ACD)
- . Microsoft Office
- . ZenDesk

## **EDUCATION**

- . Southern New Hampshire University. Manchester, NH. Bachelors, Creative Writing & English, 2022-2024
- . University of La Verne. La Verne, CA. Business Administration, 1996
- . West Los Angeles College. Culver City, CA. Engineering/Political Science, 1990-1992

## **VOLUNTEER WORK**

### **KRFC 88.9 FM**, November 2022 – present

Present role: Community Advisory Board Member

Mission: Formulating strategic plans during board meetings aimed at seeking help with engagement in the community.

### **International Documentary Association (IDA)**, JUL 2016 – present

Past & present roles: Volunteer Staff Assistance

Mission: The International Documentary Association supports the vital work of documentary storytellers and champions a thriving and inclusive documentary culture.

### **Motion Picture & Television Fund (MPTF)**, FEB 2018 – present

Past & present roles: Documentary Curator and Angel Card Volunteer

Mission: MPTF supports working and retired members of the entertainment community with a safety net of health services, including temporary financial assistance, case management, and residential living.





# AGENDA ITEM SUMMARY

City Council

## STAFF

Sylvia Tatman-Burruss, Senior Project Manager  
Aaron Guin, Legal

## SUBJECT

**Items Relating to City Council’s Direction to Address Existing Occupancy Regulations.**

## EXECUTIVE SUMMARY

- A. Possible Public Hearing and Motion(s) Regarding Protest(s) of Ballot Language.
- B. Resolution 2023-082 Directing City Staff to Prepare and Present to Council Amendments to the City of Fort Collins Land Use Code Increasing Limits on Occupancy in Residential Dwellings.
- C. Resolution 2023-083 Referring to the Registered Electors of the City of Fort Collins Resolution 2023-082, Concerning Amending the Fort Collins Land Use Code to Increase the Occupancy Allowed in Residential Dwellings.

Any protest of the proposed ballot language must be received no later than Tuesday, September 5, 2023, at noon. Protest(s) shall be heard, considered and resolved by the Council prior to adoption of the related Resolution. If protests are received, copies will be included in Council’s “Read Before the Meeting” packet.

## STAFF RECOMMENDATION

Not applicable.

## BACKGROUND / DISCUSSION

The City has had an Ordinance regulating occupancy since 1963. The current version of this Ordinance, Section 3.8.16 of the Land Use Code (also known as “U+2”), limits occupancy of residential dwellings to a family of any size plus one additional unrelated occupant, or to no more than three unrelated occupants. Active enforcement of the Ordinance began in 2005, when violation was classified as a civil infraction. Since then, Council has had several in-depth conversations about occupancy and nuisance regulation as part of the community dialogue regarding neighborhood livability. Council also has reviewed regular evaluations of the occupancy Ordinance and its impacts.

Over the years, adjustments have been made to the Ordinance to allow for designations as extra occupancy rentals in some zoning districts through a development review process outlined in Land Use Code Section 3.8.28, and the addition of a Host Family Permit.

The City’s Housing Strategic Plan formally adopted in March 2021, addresses how the occupancy Ordinance limits housing options and poses challenges related to fair housing compliance. Additional

concerns with the occupancy Ordinance include underutilization of the City's existing housing stock and how the application of the definition of "family" in the Ordinance no longer reflects the demographic makeup of many households in the community.

Numerous types of analysis have been completed over time including existing conditions (Root Policy Research); housing stock analysis; occupancy cases and enforcement review; peer city comparisons; community surveys and engagement; and overall analysis by Corona Insights in 2005, 2009, and 2019.

The Council continues to hear strong arguments from the community on both the effectiveness of the Ordinance and its disadvantages.

The proposed Resolutions seek to acknowledge the history of the occupancy Ordinance, the change in demographics and economic conditions over the last twenty-odd years, the difficulty in applying a "family" related-ness definition and the desire to make effective modifications that will benefit the community as a whole. The proposed Resolutions also seek to confirm, either through ballot referral or through other means that the work necessary to amend the Ordinance will meet the needs and desires of the community.

Council may pass Resolution 2023-082 which directs staff to:

*Prepare amendments to the Land Use Code to eliminate familial relatedness as a mechanism for regulating occupancy and to develop new regulations that increase the maximum occupancy allowed in residential dwellings based on the number of adults per dwelling unit, or based on building size or number of sleeping rooms (bedrooms), or by some other method, and present them to Council for consideration no later than June 30, 2024.*

Council can then opt to pass Resolution 2023-083 which refers this question to the November 2023 election or Council can choose not to refer a ballot question and wait until June 2024 to determine if the Council wants to adopt amendments meeting the direction in Resolution 2023-082 or at that time refer the amendments to the November 2024 election.

### **CITY FINANCIAL IMPACTS**

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Not applicable.

### **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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Not applicable.

### **PUBLIC OUTREACH**

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Not applicable.

### **ATTACHMENTS**

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1. Resolution A for Consideration
2. Resolution B for Consideration
3. Current Occupancy Definitions/Scenarios
4. Occupancy Presentation

RESOLUTION 2023-082  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
DIRECTING CITY STAFF TO PREPARE AND PRESENT TO COUNCIL AMENDMENTS  
TO THE CITY OF FORT COLLINS LAND USE CODE INCREASING OCCUPANCY  
ALLOWED IN RESIDENTIAL DWELLINGS

WHEREAS, the City of Fort Collins began regulating occupancy in 1963; and

WHEREAS, the current version of the City’s occupancy ordinance, Section 3.8.16 of the Land Use Code (hereafter, the “Ordinance”), limits occupancy of residential dwellings to a family of any size plus one additional unrelated occupant, or to no more than three unrelated occupants; and

WHEREAS, active enforcement of the Ordinance began in 2005, when violation of the Ordinance was classified as a civil infraction; and

WHEREAS, since then, Council has had several in-depth conversations about occupancy and nuisance regulation as part of the community dialogue regarding neighborhood livability, and has reviewed regular evaluations of the occupancy ordinance and its impacts; and

WHEREAS, adjustments have been made to the Ordinance over the years to allow for designations as extra occupancy rentals in some zoning districts through a development review process outlined in Land Use Code Section 3.8.28, as well as the addition of a Host Family Permit; and

WHEREAS, the City’s Housing Strategic Plan, formally adopted in March 2021, addresses how the occupancy ordinance limits housing options and poses challenges related to fair housing compliance; and

WHEREAS, additional concerns with the occupancy ordinance include underutilization of the City's existing housing stock and how the application of the definition of “family” in the Ordinance no longer reflects the demographic makeup of many households in the community; and

WHEREAS, numerous types of analysis have been completed over time, including analysis of existing conditions (Root Policy Research), housing stock analysis, occupancy cases and enforcement, peer city comparisons, and community surveys and engagement; and

WHEREAS, the City partnered with Corona Insights in 2005, 2009, and 2019 to evaluate the overall impacts of the occupancy ordinance on the community; and

WHEREAS, compared to the previous survey in 2005, the 2019 Corona Insights study reported a dramatic shift in the demographics of households in violation of occupancy regulations, suggesting that, compared to 2005, a wider cross-section of households are bringing in roommates in violation of the occupancy ordinance, likely in an effort to defray high housing costs; and

WHEREAS, from the period of 2005 to 2018, a price escalation of 78% for rent payments, paired with low rental vacancy rates under 5%, likely resulted in occupants “doubling up” to afford housing for a broad range of household configurations; and

WHEREAS, the City’s population was estimated to be between 169,000-172,000 residents in 2020-2021, and there were roughly between 14,718 and 17,718 more bedrooms in the City than there were residents; and

WHEREAS, these figures demonstrate a noteworthy underutilization of the City’s existing housing stock; and

WHEREAS, the issue of occupancy limits in the Land Use Code has become an issue of considerable interest and debate among residents of the City; and

WHEREAS, the City Council continues to hear strong arguments from the community on both the perceived effectiveness of regulation of occupancy as well as its perceived disadvantages; and

WHEREAS, the City Council is of the opinion that City Staff should prepare and present for Council consideration by no later than June 30, 2024, amendments to the Land Use Code to eliminate familial relatedness as a mechanism for regulating occupancy and to enact new regulations that increase the maximum occupancy allowed in residential dwellings based on the number of adults per dwelling unit, or based on building size or number of sleeping rooms (bedrooms), or by some other method.

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 Staff are hereby directed to prepare amendments to the Land Use Code to eliminate familial relatedness as a mechanism for regulating occupancy and to enact new regulations that increase the maximum occupancy allowed in residential dwellings based on the number of adults per dwelling unit, or based on building size or number of sleeping rooms (bedrooms), or by some other method, and present them to Council for consideration no later than June 30, 2024.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

RESOLUTION 2023-083  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
REFERRING TO THE REGISTERED ELECTORS OF THE CITY OF FORT COLLINS  
RESOLUTION 2023-082, CONCERNING AMENDING THE FORT COLLINS  
LAND USE CODE TO INCREASE OCCUPANCY  
ALLOWED IN RESIDENTIAL DWELLINGS

WHEREAS, the City Council passed and adopted Resolution 2023-082, directing City Staff to prepare amendments to the Land Use Code to eliminate familial relatedness as a mechanism for regulating occupancy and to enact new regulations that increase the maximum occupancy allowed in residential dwellings based on the number of adults per dwelling unit, or based on building size or number of sleeping rooms (bedrooms), or by some other method, and present them to Council for consideration no later than June 30, 2024; and

WHEREAS, Article X, Section 3 of the Charter of the City of Fort Collins authorizes the City Council to refer any adopted ordinance or resolution to the vote of the people at a regular election; and

WHEREAS, accordingly, the City Council desires to refer to the Fort Collins electors Resolution 2023-082 which directs City staff to draft amendments to the Land Use Code as stated 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 there is hereby submitted to the registered electors of the City of Fort Collins at the next regular election to be held on November 7, 2023, Resolution 2023-082 adopted by Council on September 5, 2023, as set forth below:

RESOLUTION 2023-082  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
DIRECTING CITY STAFF TO PREPARE AND PRESENT TO COUNCIL  
AMENDMENTS TO THE CITY OF FORT COLLINS LAND USE CODE  
INCREASING OCCUPANCY ALLOWED IN RESIDENTIAL DWELLINGS

WHEREAS, the City of Fort Collins began regulating occupancy in 1963; and

WHEREAS, the current version of the City’s occupancy ordinance, Section 3.8.16 of the Land Use Code (hereafter, the “Ordinance”), limits occupancy of residential dwellings to a family of any size plus one additional unrelated occupant, or to no more than three unrelated occupants; and

WHEREAS, active enforcement of the Ordinance began in 2005, when violation of the Ordinance was classified as a civil infraction; and

WHEREAS, since then, Council has had several in-depth conversations about occupancy and nuisance regulation as part of the community dialogue regarding neighborhood livability, and has reviewed regular evaluations of the occupancy ordinance and its impacts; and

WHEREAS, adjustments have been made to the Ordinance over the years to allow for designations as extra occupancy rentals in some zoning districts through a development review process outlined in Land Use Code Section 3.8.28, as well as the addition of a Host Family Permit; and

WHEREAS, the City’s Housing Strategic Plan, formally adopted in March 2021, addresses how the occupancy ordinance limits housing options and poses challenges related to fair housing compliance; and

WHEREAS, additional concerns with the occupancy ordinance include underutilization of the City's existing housing stock and how the application of the definition of “family” in the Ordinance no longer reflects the demographic makeup of many households in the community; and

WHEREAS, numerous types of analysis have been completed over time, including analysis of existing conditions (Root Policy Research), housing stock analysis, occupancy cases and enforcement, peer city comparisons, and community surveys and engagement; and

WHEREAS, the City partnered with Corona Insights in 2005, 2009, and 2019 to evaluate the overall impacts of the occupancy ordinance on the community; and

WHEREAS, compared to the previous survey in 2005, the 2019 Corona Insights study reported a dramatic shift in the demographics of households in violation of occupancy regulations, suggesting that, compared to 2005, a wider cross-section of households are bringing in roommates in violation of the occupancy ordinance, likely in an effort to defray high housing costs; and

WHEREAS, from the period of 2005 to 2018, a price escalation of 78% for rent payments, paired with low rental vacancy rates under 5%, likely resulted in occupants “doubling up” to afford housing for a broad range of household configurations; and

WHEREAS, the City’s population was estimated to be between 169,000-172,000 residents in 2020-2021, and there were roughly between 14,718 and 17,718 more bedrooms in the City than there were residents; and

WHEREAS, these figures demonstrate a noteworthy underutilization of the City’s existing housing stock; and

WHEREAS, the issue of occupancy limits in the Land Use Code has become an issue of considerable interest and debate among residents of the City; and

WHEREAS, the City Council continues to hear strong arguments from the community on both the perceived effectiveness of regulation of occupancy as well as its perceived disadvantages; and

WHEREAS, the City Council is of the opinion that City Staff should prepare and present for Council consideration by no later than June 30, 2024, amendments to the Land Use Code to eliminate familial relatedness as a mechanism for regulating occupancy and to enact new regulations that increase the maximum occupancy allowed in residential dwellings based on the number of adults per dwelling unit, or based on building size or number of sleeping rooms (bedrooms), or by some other method.

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 Staff are hereby directed to prepare amendments to the Land Use Code to eliminate familial relatedness as a mechanism for regulating occupancy and to enact new regulations that increase the maximum occupancy allowed in residential dwellings based on the number of adults per dwelling unit, or based on building size or number of sleeping rooms (bedrooms), or by some other method, and present them to Council for consideration no later than June 30, 2024.

Section 3. That the following ballot question, with its title and submission clause, is hereby adopted for referring Resolution 2023-082, concerning amending the Fort Collins Land Use Code to increase the occupancy allowed in residential dwellings, to the voters at the November 2023 Election:

**CITY-REFERRED  
RESOLUTION 2023-082  
(Occupancy Limits)**

Shall Resolution 2023-082, directing City Staff to prepare amendments to the Land Use Code to eliminate familial relatedness as a mechanism for regulating occupancy and to enact new regulations that increase the maximum occupancy allowed in residential dwellings based on the number of adults per dwelling unit, or based on building size or number of sleeping rooms (bedrooms), or by some other method, and present them to Council for consideration no later than June 30, 2024, be approved?

\_\_\_\_\_ Yes/For  
\_\_\_\_\_ No/Against

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

### **Current Occupancy Definitions and Allowable/Prohibited Occupancy Scenarios**

The following is provided in response to questions at the last Council meeting. The scenarios are not intended to be an exhaustive list.

**Family** shall mean any number of persons who are all related by blood, marriage, adoption, guardianship or other duly authorized custodial relationship, and who live together as a single housekeeping unit and share common living, sleeping, cooking, and eating facilities.

Under this ordinance the following scenarios are allowed:

- a family (of any size and configuration)
- a family (of any size and configuration) and their nanny
- a family (of any size and configuration) and an exchange student
- two single parents, their kids, and a friend
- any number of siblings and **one** friend
- two married couples as long as a familial relationship exists linking the two couples

These are **not** allowed:

- two couples, married or not, with no familial relationship linking couple A to couple B
- two siblings and their two or more friends
- a family (of any size), plus 2 unrelated roommates or an additional family
- three siblings, plus 2 unrelated roommates
- four unrelated roommates





# Consideration of Occupancy Related Ballot Measure

## City Council Regular Meeting

Sylvia Tatman-Burruss, Sr. Project Manager

Arnon Guin, Legal

September 5, 2023

Council discussion under other business at the July 18, 2023, meeting resulted in ballot resolution and question being brought forward. Council discussion on the Occupancy item from August 15, 2023, resulted in Council request for additional options.

### **Purpose:**

Refer a question to voters OR direct staff to conduct community engagement and bring back recommended changes to the existing ordinance that would:

- Allow some increase to the existing occupancy limit based on housing type/size, zone, or other policy measure.
- Remove the existing definition of family and replace with non-familial language.

Materials include two options within the Resolutions and associated ballot language. Both options eliminate familial relatedness as regulation mechanism, and both allow for an increase from the currently allowed occupancy.

**Option 1:** Refer a question to the November 2023 ballot that confirms a desire to change familial status and allow for some increase in occupancy by June 2024.

**Option 2:** Council directs staff to bring back occupancy code changes in June 2024 which Council can then either a) consider for adoption or b) refer to the November 2024 election.

The City's occupancy ordinance limits occupancy of residential dwellings to a family of any size plus one additional unrelated occupant *OR* no more than three unrelated occupants.

Active enforcement of the ordinance (Section 3.8.16 of the Land Use Code, also called "U+2") began in 2005.

Adjustments have been made to the Ordinance allowing for extra occupancy designation in some zones and the addition of a Host Family Permit.

Numerous types of analysis have been completed demonstrating trends over time and anticipated and perceived impacts and opinions.

City Council continues to hear strong arguments from the community on both the effectiveness and the detriments of the ordinance.



September 5, 2023

## AGENDA ITEM SUMMARY

City Council




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### STAFF

Kirk Longstein, Senior Environmental Planner  
Brad Yatabe, Legal

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### SUBJECT

**First Reading of Ordinance No. 116, 2023, Amending the Land Use Code Regarding Buffering Between Buildings with Occupiable Space and Oil and Gas Facilities.**

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### EXECUTIVE SUMMARY

Based on Council direction during the October 25, 2022, Work Session discussion and the April 2023 adoption of Ordinance No. 151, 2022 for new oil and gas well sittings, staff seek to update the reverse setback development standards (LUC 3.8.26) to reflect recent changes in the **Colorado Energy and Carbon Management Commission (ECMC)** regulations, recently adopted Ordinance No. 151, 2022 – AMENDING THE LAND USE CODE TO REGULATE OIL AND GAS FACILITIES AND PIPELINES, and lessons learned over the past 4 years, including:

- Apply reverse setback buffers to all occupiable buildings, not just residential uses; and
- Explicitly state required setback buffers, rather than refer generally to ECMC rules; and
- Create a more predictable pathway for abandoned/inactive well types; and
- Eliminate the buffer exemption for crossings of arterial roadways.

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### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

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### BACKGROUND / DISCUSSION

In the Fort Collins field, the vast majority of the oil is produced from an underground formation called the Muddy formation. These wells require high pressure water injection lines which pressurize the formation and bring a mixture of water (~97%), oil (~3%) and gas (minimal) to the surface for separation and distribution.

The Fort Collins Land Use Code (LUC 3.8.26) currently requires a five hundred (500) foot minimum buffer between a residential dwelling and any oil and gas location, or the Colorado Oil and Gas Conservation Commission designated setback distance, whichever is greater. For wells that are fully reclaimed to the ECMC standards, the Code allows an alternative compliance pathway to reduce the buffer to 150 feet. Alternative compliance requires the applicant to submit an alternative compliance buffering plan which includes five years of soil gas and ground water monitoring.

**Existing Oil and Gas Facility Buffers:**

Number of Wells	ECMC Well Status	Short Description	Current Buffering Standards	Proposed Code UPDATES Buffering Standard	
4	Producing	Wells where produced oil and/or gas is collected from underground reservoirs.	500-feet	Well Not Abandoned	2,000-feet
6	Injection	Wells used for the exclusive purpose of injecting fluids for enhanced oil recovery (EOR).	500-feet	Well Not Abandoned	2,000-feet
6	Drilled (Dry) and Abandoned	A well that is dry and abandoned, and never produced.	500-feet	Abandoned Well, Not Reclaimed	500-feet
14	Plugged and Abandoned	A well that has been plugged by means of cementing of a well, with removal of associated production facilities, abandonment of its flowline(s), and the remediation and reclamation of the wellsite.	150 – feet (alternative compliance)	Abandoned Well, Reclaimed	150-feet

The current buffer requirements were specifically intended to align with the ECMC setback requirements for new wells prior to the passage of SB19-181. This is why the current code language states, “The minimum buffer between a dwelling and any oil and gas location shall be five hundred (500) feet, or the Colorado Oil and Gas Conservation Commission designated setback distance, whichever is greater.” However, staff did not intend to apply the variance criteria set forth by the ECMC rules. Since then, ECMC has updated its setbacks for new oil and gas wells to 2,000 feet, and the reverse setback code (LUC 3.8.26) is silent on whether City staff would accept a variance request from the setbacks as outlined by ECMC Rule 604b. Updating the City’s buffer requirements to 2,000 feet from all occupiable structures would be consistent with State-level regulation and Council’s previous discussions when adopting regulations related to new oil and gas siting: [Ordinance No. 151, 2022](#) - AMENDING THE LAND USE CODE TO REGULATE OIL AND GAS FACILITIES AND PIPELINES.

**ADDITIONAL COUNCIL CONSIDERATIONS FOR CODE UPDATES SUMMARIZED UNDER THE ATTACHMENTS:**

**Abandoned and Not Reclaimed.**

Drilled (Dry) and abandoned wells can serve as conduits for contaminants to migrate. Dealing with the contamination risk associated with abandoned wells can add additional cost to a development. There is less of a risk for contamination from abandoned wells that have never been in production. If a well was producing at some point and then was abandoned, greater risks need to be considered, such as:

- Past producing abandoned wells can become pathways for the migration of oil, or other fluids to the surface and these substances can leak into surrounding soil, groundwater, or surface water.
- Over time, abandoned wells can lead to land subsidence or sinking due to the changes in underground pressure and stability caused by the extraction and absence of fluids.

Wells in the Fort Collins field consist primarily of abandoned and not full reclaimed wells that never produced oil, and so there is less risk to hydrocarbon exposure from these types of wells. Staff recommends a 500-foot buffer and five years of monitoring related to the existing waste associated with drilling the well, and the benefits of fully reclaiming these sites.

### **Secondary Structures within the Buffer.**

Staff recommend prescriptive Code language for secondary structures allowed within the established oil and gas buffer and to cross reference the City's adopted building code. These standards would apply to new developments and existing homes within the oil and gas buffer. As such, the policy intent is to limit new occupancies and permanent structures within the buffer. The recommendation includes no permanent playgrounds, play structures, recreational fields, or permanent community gathering spaces within the buffer. For the purposes of the proposed buffer standards, it is important to note that occupiable space does not always mean habitable space. Almost all structures that are given an occupancy classification would be considered occupiable space and are issued a Certificate of Occupancy to support that. As an example, sheds and greenhouses would be an allowed use within the oil and gas buffer yard standard since they are not occupiable and do not receive a Certificate of Occupancy upon completion. Structures that receive a Certificate of Occupancy include structures with specific egress, light or ventilation facility components and meet the definition for occupiable space. These regulations would permit additions to homes on parcels that are within the buffer zone of an existing oil and gas well. Applicants can seek a modification of standard to the prohibition of secondary structures and detached occupiable buildings within the buffer.

### **Soil-Gas and Groundwater Monitoring.**

The proposed Code updates include prescriptive language that requires a Phase II **Environmental Site Assessment (ESA)** traditionally conducted for sites observing industrial containments. Monitoring requirements are specific to abandoned well type and not wells unabandoned given state inspection requirements. The Environmental Site Assessment standards of practices are maintained by ASTM International as a globally recognized leader in the development and delivery of voluntary consensus standards. As prescribed by the Code, monitoring must occur within a 1/2 mile of the well. In practice, an environmental professional will develop a sampling plan to evaluate the potential presence of contamination from hazardous substances on the property and determine the sources of contamination and exposure risk. The report is reviewed by the City Planner ahead of the development construction permit and the Planner will determine if additional remediation is conditioned with the permit. As an example, a Phase II ESA was conducted at the Country Club Reserve well site and found that sampled contaminants were within acceptable limits per federal and state standards (ATTACHMENT). Stakeholder feedback has included a recommendation to require monitoring in perpetuity/indefinity. Staff has addressed this stakeholder comment through the required point of sale disclosure by unveiling environmental site assessments through future real estate transactions.

### **Point of Sale Disclosure.**

In Colorado, the Seller's Property Disclosure is an important disclosure form for the real estate broker to discuss with their respective client. Both the seller and listing broker have obligations concerning the use of this form, and the buyer and buyer's broker need to have an understanding of what this form represents by way of disclosures. More information about the Seller's property disclosure forms is available at Colorado Department of Regulatory Agencies, Division of Real Estate website:

<https://dre.colorado.gov/division-notifications/understanding-sellers-property-disclosure-forms>

The proposed Fort Collins Code outlines that the seller or lessor of any building containing occupiable space within the buffer standards specific to the well's active or abandoned status is required to provide a purchaser with the following specific language in addition to a recorded plat and covenants which likely will be provided to the buyer or lessee through the real estate transaction:

*As required by 3.8.36 of the Fort Collins Land Use Code, notice is hereby given that [insert description of lot] is within [insert buffer standard set forth in Subsection (D) including well status and distance from well]. At the time of [sale or lease], environmental assessments, studies or reports done involving the physical condition of the Property impacted by oil and gas production are within the acceptable Environmental Protection Agency limits. For more information contact the City of Fort Collins Environmental Planner or the Energy and Colorado Carbon Management Commission formerly known as the Colorado Oil and Gas Conservation Commission.*



## Enhanced Oil Recovery Injection Wells.

**Enhanced Oil Recovery (EOR)** injection wells are categorized by the EPA as a Class II Underground Injection Control (UIC). The Colorado ECMC has primacy over Class II UIC wells, being delegated such from the Environmental Protection Agency. Class II UIC wells are permitted by the ECMC according to the Federal Safe Drinking Water Act to be protective of Underground Sources of Drinking Water. Attached is a peer review of communities along the Front Range with adopted reverse setback buffer standards from EOR injection wells.

There are currently six EOR injecting wells within the City limits. Although an EOR injection well within the Fort Collins field operates on a closed loop system, the main community concern for these types of wells relates to the potential impacts from leaks, spill or loss of integrity of the well and associated flowlines. A key question during community engagement was what is an appropriate buffer if an injection well receives a reduced buffer requirement, especially if the well changes status from injection to a producing well? The Water Edge Subdivision's development team has submitted a report and recommendations regarding appropriate reverse setback buffer (see attached). The report suggests a 75-foot reverse setback from EOR Injection Wells.

The distances where contamination related to UIC wells ranges from 0.25 mile up to 2 miles from a potential source of pollution. It is within these distances where the potential for contamination may occur and therefore the proposed 2,000-foot reverse setback is a conservative approach to mitigating the potential risks permeating from the "the Zone of Endangering influence" as defined by the Federal Safe Drinking Water Act, 40 CFR 146.6.

### Modification of Standards.

[Ordinance No. 151, 2022](#) setback standards for new oil and gas facilities (2,000-foot) are not subject to a modification of standards, which means these setbacks cannot be reduced. It is assumed that EOR Injection wells are less common across the state and therefore less common locally if a new oil and gas applications is received in Fort Collins. Furthermore, the Fort Collins Code does not allow EOR wells for waste disposal. That said, Fort Collins currently hosts six existing EOR wells near the northern aspect of the city limits. Because the peer-reviewed scientific literature is incomplete for buffering from EOR injection wells, staff recommend a modification of standards from EOR injection wells when the operator can meet one of the four modification criteria in LUC 2.8.2 (H). Attached is a peer review of neighboring jurisdictions that offer a modification of standards to EOR injection well setbacks.

### Existing Oil and Gas Well Recompletion.

Prospect Energy has expressed interest in developing the Codell formation within the Fort Collins field, which is shallower than the Muddy formation and would require no new drilling (see attached Prospect Energy Form 2 Decision). Full development would allow for the Muddy zones to be permanently abandoned, which would eliminate the need for high pressure water injection and water treatment. This would also introduce increased gas volumes, which could potentially be used to generate electricity on site. In 2019, Prospect Energy shared their intention to further develop existing oil and gas wells (see attached Prospect Energy letter, August 29, 2019).

Since the adoption of the City's oil and gas development standards ([Ordinance No. 151, 2022](#)) the following scenarios may apply:

1. For the purposes of recompletion and entering a new formation – ECMC Rule 300 applies, and the operator would need to submit a form 2 to the ECMC in addition to a Type II development application to the City of Fort Collins per the Land Use Code.
2. For the purposes of entering the same formation for the purposes of production – ECMC Rule 811 – Form 4 Sundry notice is all that is required.

Prospect Energy shares interest in recompletion of an existing well and the need to install new equipment on the surface, the City's new Land Use Code requirements for permitting oil and gas facilities would apply. Given the uncertain nature of these wells, staff does not recommend differentiating reverse setback distances from active operating oil and gas wells.

## **CITY FINANCIAL IMPACTS**

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There are no financial impacts related to adopting oil and gas regulations. Costs related to processing development applications, administering permits, and conducting inspections would be recovered through fees.

## **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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Staff meet with the Air Quality Advisory Board (AQAB) on July 17 and August 21, 2023. Based on information presented the board provided the following information. In addition to the bullets below, the AQAB will provide a memo directly to Council (copy attached).

- Unabandoned Wells - the AQAB recommends that Council adopt the staff proposal (2,000 ft. setback with a conditional potential variance to 500 ft.)
- Enhanced Oil Recovery (EOR) Injection Wells - the AQAB recommends that Council adopt the staff proposal (2,000 ft. setback with a conditional potential variance to 500 ft.)
- Not Fully Reclaimed Abandoned Wells - the AQAB recommends that Council adopt the staff proposal (500 ft.)
- Fully Reclaimed Abandoned Wells - the AQAB recommends that Council NOT adopt the staff proposal but instead set this reverse setback at 500 ft., similar to that of not fully reclaimed abandoned wells

On July 19, 2023, The Natural Resources Advisory Board reviewed the proposed changes and shared general support for the staff recommendations with the following feedback:

- Supports monitoring of fully reclaimed wells within the first year following permit followed by periodic monitoring indefinitely.
- Does not support a modification of standards for EOR wells.
- Does not support a prohibition on detached occupiable buildings and recommends placing the onus of this decision on the property owner and requiring the disclosure to renters/point-of-sale.

During the Planning and Zoning Commission hearing on July 20, 2023, the Commission unanimously recommend that the Council adopt the Land Use Code amendment addressing setbacks from existing oil and gas facilities, including language that permits any applicant that submits a completed basic development review project plan, planned unit development, or building permit application prior to the effective date of the proposed ordinance to continue development review under standards adopted by Ordinance No. 114, 2018. The Commission's discussion highlighted the following themes:

- Scenarios related to a modification of standards from the 2,000-foot setback in the instances of the operator recompleting existing injection wells for the purposes of oil and gas production.
- Impacts on existing homes currently located within the proposed buffer standards.
- Discussed how point of sale disclosure requirements are enforced.

Staff has incorporated stakeholder feedback from boards and commissions into the first reading of the ordinance.

**PUBLIC OUTREACH**

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Staff circulated a memo to Council on August 10, 2023, summarizing community feedback. For reference, the memo has been provided as an attachment to Council's materials.

**ATTACHMENTS**

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1. Ordinance for Consideration
2. Council Work Session Summary, October 25, 2022
3. Summary of Code Updates
4. Council Memo - Community Engagement Summary, August 10, 2023
5. 2018 Phase II Environmental Site Assessment at Country Club Reserve
6. Peer City Review of Injection Well Reverse Setback Buffers
7. Peer City Review of Modification of Standards from Reverse Setback Buffers
8. Water's Edge Subdivision Report and Recommendations, October 13, 2022
9. Prospect Energy Form 2 Decision, April 5, 2022
10. Prospect Energy Letter, August 29, 2019
11. Air Quality Advisory Board Minutes, July 17, 2023
12. Air Quality Advisory Board Memo to Council/Response, August 28, 2023
13. Natural Resources Advisory Board Memo, August 16, 2023
14. Planning & Zoning Commission Draft Hearing Minutes, July 20, 2023

ORDINANCE NO. 116, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING THE LAND USE CODE REGARDING BUFFERING BETWEEN  
BUILDINGS WITH OCCUPIABLE SPACE AND OIL AND GAS FACILITIES

WHEREAS, on December 2, 1997, by its adoption of Ordinance No. 190, 1997, the City Council enacted the Fort Collins Land Use Code (the “Land Use Code”); and

WHEREAS, at the time of the adoption of the Land Use Code, it was the understanding of staff and the City Council that the Land Use Code would most likely be subject to future amendments, not only for the purpose of clarification and correction of errors, but also for the purpose of ensuring that the Land Use Code remains a dynamic document capable of responding to issues identified by staff, other land use professionals and citizens of the City; and

WHEREAS, several active oil and gas facilities are located in the northern part of the City; and

WHEREAS, several active oil facilities are located within the City's Growth Management Area in unincorporated Larimer County; and

WHEREAS, there is potential for additional oil gas activity within the City and within the City's Growth Management Area; and

WHEREAS, oil and gas facilities are an industrial use that can pose serious health risks to humans and damage to the environment from the potential release of chemicals and potential accidents, including fires and explosions; and

WHEREAS, the buffer distances between proposed buildings containing habitable space and existing oil and gas facilities align with and are based upon the required distances between proposed oil and gas facilities and existing development adopted in City Council Ordinance No. 151, 2022; and

WHEREAS, the Planning and Zoning Commission at its July 20, 2023, regular meeting unanimously recommended that City Council adopt the proposed buffer standards and amend the existing Land Use Code; and

WHEREAS, it is necessary to impose the buffers set forth in this Ordinance between proposed buildings containing habitable space and existing oil and gas facilities to protect the public health, safety, and welfare from the risks posed by oil and gas facilities.

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 3.8.26 of the Land Use Code is hereby amended to read as follows:

**3.8.26 Buffering for ~~Between~~ Residential and ~~Industrial Uses~~ ~~High Occupancy Building Units~~**

- (A) **Applicability.** These standards apply only to applications that include residential uses **proposed to be located in proximity to existing industrial uses,** ~~and, to the extent legally applicable, high occupancy building units.~~ Standards regarding ~~Buffer Yard D~~ shall not apply to any lot for which a site specific development plan with vested rights was approved prior to September 14, 2018 so long as such site specific development plan was, or is, valid at the time of issuance of any building permit for the construction or modification of any dwelling unit or high occupancy building unit on such lot. **Buffering between buildings containing occupiable space and oil and gas facilities is addressed in Section 3.8.36.**
- (B) **Purpose.** The purpose of this Section is to provide standards to separate residential land uses ~~and high occupancy building units~~ from existing industrial uses in order to eliminate or minimize potential nuisances such as dirt, litter, noise, glare of lights and unsightly buildings or parking areas, or to provide spacing to reduce adverse impacts of noise, odor, air pollutants, hazardous materials or site contamination, or danger from fires or explosions.
- (C) **Buffer standards.** Buffer yards shall be located on the outer perimeter of a lot or parcel and may be required along all property lines for buffering purposes and shall meet the standards as provided in this Section.
  - (1) Only those structures used for buffering and/or screening purposes shall be located within a buffer yard. The buffer yard shall not include any paved area, except for pedestrian sidewalks or paths or vehicular access drives which may intersect the buffer yard at a point which is perpendicular to the buffer yard and which shall be the minimum width necessary to provide vehicular or pedestrian access. Fencing and/or walls used for buffer yard purposes shall be solid, with at least seventy-five (75) percent opacity.
  - (2) There are four (4) types of buffer yards which are established according to land use intensity as described in Chart 1 below. Buffer yard distances are established in Chart 2 below and specify deciduous or coniferous plants required per one hundred (100) linear feet along the affected property line, on an average basis.
  - (3) The buffer yard requirements shall not apply to temporary or seasonal uses or to properties that are separated by a major collector street, arterial street, or highway.
  - ~~(4) **Additional Standards Applicable to Buffer Yard D.** The following requirements shall also apply to development located in Buffer Yard D:~~

- (a) ~~Measured.~~ For purposes of Buffer Yard D standards, the buffer yard shall be measured as either the distance from the outer edge of an oil and gas location to the nearest wall or corner of any dwelling or high occupancy building unit location or, if any Colorado Oil and Gas Conservation Commission adopted setback measurement method applicable to a dwelling or high occupancy building unit results in a greater distance between the existing oil and gas operation site location and the dwelling or high occupancy building unit at issue, then the Colorado Oil and Gas Conservation Commission setback measurement method shall be used. Buffer Yard D areas may include paved areas, notwithstanding paragraph (1) above.
- (b) ~~Minimum Buffer Distances.~~ The following minimum buffer distances shall apply:
1. ~~Residential Development.~~ The minimum buffer between a dwelling and any oil and gas location shall be five hundred (500) feet, or the Colorado Oil and Gas Conservation Commission designated setback distance, whichever is greater. Public playgrounds, parks, recreational fields, or community gathering spaces shall not be placed within a buffer. Private common areas within a buffer shall not contain playgrounds, parks, recreational fields, or community gathering spaces.
  2. ~~High Occupancy Building Units.~~ The minimum buffer between a high occupancy building unit and any oil and gas location shall be one thousand (1,000) feet, or the Colorado Oil and Gas Conservation Commission designated setback distance, whichever is greater. Public or private playgrounds, parks, recreational fields, or community gathering spaces shall not be allowed within a buffer.
- (c) ~~Alternative compliance buffer reduction from plugged and abandoned wells.~~ Upon applicant request, the decision maker may approve a reduced buffer distance from a plugged and abandoned well for which reclamation has been completed, all of the aforementioned in accordance with Colorado Oil and Gas Conservation Commission regulations, in lieu of the minimum buffer distances set forth in the immediately preceding Subsection (b), provided that the approved reduced buffer is no less than 150 feet from the permanently abandoned well and meets the requirements specified below.

1. ~~Procedure.~~ To request alternative compliance, an alternative compliance buffer reduction plan shall be prepared and submitted in accordance with the submittal requirements established by the Director. At a minimum, the plan must:
  - a. ~~Clearly identify and discuss the proposed buffer reduction and the ways in which the plan will equally well or better eliminate or minimize the nuisances and reduce the adverse effects referenced in the purpose of this Section than would a plan which complies with the separation and spacing standards of this Section.~~
  - b. ~~Include information regarding environmental testing and monitoring for the site. Site investigation, sampling, and monitoring shall be conducted to demonstrate that the well has been properly abandoned and that soil, air and water quality have not been adversely impacted by oil and gas operations or facilities or other sources of contamination. Such sampling and monitoring shall be conducted by a qualified environmental engineering or consulting firm with experience in oil and gas investigations. Director approval that the sampling and monitoring plan contains the information required pursuant to this subsection b) is required prior to sampling occurring and such plan shall include, but it not limited to, the following:~~
    - i. ~~Site survey, historical research, and/or physical locating techniques to determine exact location and extent of oil and gas operations and facilities.~~
    - ii. ~~Documentation of plugging activities, abandonment and any subsequent inspections.~~
    - iii. ~~Soil sampling, including soil gas testing.~~
    - iv. ~~Groundwater sampling.~~
    - v. ~~Installation of permanent groundwater wells for future site investigations.~~

~~vi. A minimum of five (5) years of annual soil gas and groundwater monitoring at the well location.~~

~~c. Upon completion of the site investigation and sampling, not including the ongoing monitoring, the consultant must provide a written report verifying that the soil and groundwater samples meet applicable EPA and State residential regulations and that a reduced buffer would not pose a greater health or safety risk for future residents or users of the site. Otherwise, the decision maker may specify an appropriate buffer distance or require that the following actions be completed by a qualified professional before development may occur, including but not limited to:~~

~~i. Remediation of environmental contamination to background levels.~~

~~ii. Well repair or re-plugging of a previously abandoned well.~~

~~2. Review Criteria. To approve an alternative compliance buffer reduction plan, the decision maker must first find that the proposed alternative plan eliminates or minimizes the nuisances and reduces the adverse effects referenced in the purpose of this Section equally well or better than would a plan which complies with the separation and spacing standards of this Section. An approved alternative compliance buffer reduction plan shall be exempt from the screening requirements of Chart 2 Buffer Yard Types and below Subsection (e) regarding fencing.~~

~~(d) Disclosure. If any residential development or dwelling, or high occupancy building unit is proposed to be located within one thousand (1,000) feet of an oil and gas location, the following requirements shall apply:~~

~~1. At such time as the property to be developed is platted or replatted, the plat shall show the one thousand foot radius on the property from such oil and gas location and shall contain a note informing subsequent property owners that certain lots shown on the plat are in close proximity to an existing oil and gas location.~~



2. ~~For residential developments requiring a declaration pursuant to the Colorado Common Interest Ownership Act, a statement shall be included in such declaration specifying the lots within such residential development upon which dwelling may be constructed that are within one thousand (1,000) feet of an oil and gas location. The approved plan for such residential development shall be attached to the recorded declaration. Where no such declaration is required, the property owner shall record a statement on the property where the dwelling is located indicating that such property is located within one thousand feet of an oil and gas location.~~

(e) ~~Fencing. If any residential development is proposed to be located within five hundred (500) feet of an oil and gas location, and if an existing fence does not surround the oil and gas location, the developer must erect a fence that restricts public access to the oil and gas location along the property boundary between the oil and gas location and the development.~~

**Chart 1  
Land Use Intensity Categories**

<i>Land Use</i>	<i>Intensity Category</i>	<i>Buffer Yard</i>
Airports/airstrips	Very High	C
Composting facilities	High	B
Dry cleaning plants	Very High	C
Feedlots	Very High	C
Heavy industrial uses	Very High	C
Light industrial uses	High	B
Junkyards	High	B
Outdoor storage facilities	High	B
Recreation vehicle, boat, truck storage	Medium	A
Recycling facilities	High	B
Agricultural research laboratories	High	B
Resource extraction	Very High	C
Oil and gas operations, including plugged and abandoned wells	Very High	D
Transportation terminals (truck, container storage)	High	B
Warehouse & distribution facilities	High	B
Workshops and custom small industry	Medium	A

**Chart 2  
Buffer Yard Types**

<i>Type - Base Standard (plants per 100 linearfeet along affected property line)*</i>	<i>Option Width</i>	<i>Plant Multiplier**</i>	<i>Option: Add 6' Wall</i>	<i>Option: Add 3' Berm or 6' Fence</i>
<b>Buffer Yard A:</b>	<b>15 feet</b>	<b>1.00</b>		
	20 feet	.90		
3 Shade Trees	25 feet	.80		
2 Ornamental Trees or Type 2 Shrubs***	30 feet	.70	.65	.80
3 Evergreen Trees	35 feet	.60		
15 Shrubs (33% Type 1, 67% Type 2)	40 feet	.50		
<b>Buffer Yard B:</b>	<b>15 feet</b>	<b>1.25</b>		
	<b>20 feet</b>	<b>1.00</b>		
	25 feet	.90		
4 Shade Trees	30 feet	.80	.75	.85
4 Ornamental Trees or Type 2 Shrubs***	35 feet	.70		
3 Evergreen Trees	40 feet	.60		
25 Shrubs (Type 2)	45 feet	.50		
<b>Buffer Yard C:</b>	<b>20 feet</b>	<b>1.25</b>		
	<b>25 feet</b>	<b>1.00</b>		
	30 feet	.90		
5 Shade Trees	35 feet	.80	.75	.85
6 Ornamental Trees or Type 2 Shrubs***	40 feet	.70		
4 Evergreen Trees	45 feet	.60		
30 Shrubs (Type 2)	50 feet	.50		
<b>Buffer Yard D:</b>	<b>500 feet</b>	<b>1.25</b>		
	<b>525 feet</b>	<b>1.00</b>		
	550 feet	.90		
6 Shade Trees	575 feet	.80	.75	.85
7 Ornamental Trees or Type 2 Shrubs***	600 feet	.70		
5 Evergreen Trees	625 feet	.60		
35 Shrubs (Type 2)	650 feet	.50		

\* "Base standard" for each type of buffer yard is that width which has a plant multiplier.

\*\* "Plant multipliers" are used to increase or decrease the amount of required plants based on providing a buffer yard of reduced or greater width or by the addition of a wall, berm or fence.

\*\*\* Shrub types: Type 1: 4' - 8' High Type 2: Over 8' High

Section 3. That Article 3 of the Land Use Code is hereby amended by the addition of a new Section 3.8.36 which reads in its entirety as follows:

**3.8.36 Buffering Between Buildings with Occupiable Space and Oil and Gas Facilities**

- (A) **Applicability.** These standards apply to all applications to construct buildings containing occupiable space and existing buildings containing occupiable space within the oil and gas buffer of an existing oil and gas facility regardless of whether such oil and gas facility is located within or outside of the City limits. These standards also apply to common outdoor areas within an oil and gas buffer.
  - (1) Any applicant that submitted an application prior to September 29, 2023, to construct a building containing occupiable space may construct such building within an oil and gas buffer upon satisfying all applicable Code requirements for approval. However, any lot upon which such building is placed is subject to the restriction described in Subsection (E)(3) and disclosures in Subsection (F).
  - (2) Any building containing occupiable space already constructed within an oil and gas buffer prior to September 29, 2023, is exempt from the restriction on such building in an oil and gas buffer. However, any lot upon which the building is placed is subject to the restriction described in Subsection (E)(3) and disclosures in Subsection (F).
- (B) **Purpose.** The purpose of this Section is to protect public health and safety by providing spacing and regulating certain uses within oil and gas buffers to reduce adverse impacts of noise, odor, air pollutants, soil-gas contaminants, groundwater contaminants, hazardous materials, or danger from fires or explosions.
- (C) **General Standard.** Proposed development shall ensure that the risk to public health and safety is sufficiently mitigated from all extended exposure to the main pollutants resulting from oil and gas production, including but not limited to heavy metals, salts, oil and grease (O&G), benzene, toluene, ethylbenzene and xylene (BTEX), total petroleum hydrocarbon (TPH), and polycyclic aromatic hydrocarbon (PAHs). Proposed development must ensure that any potential contaminants associated with existing oil and gas facilities and located on the development site are within the acceptable limits of applicable local, state and federal soil-gas, groundwater, and air quality regulations and standards, including, but not limited to, those regulating odor, dust, fumes, or gases which are noxious, toxic or corrosive, and suspended solid or liquid particles.
- (D) **Oil and Gas Buffers.** This Subsection establishes oil and gas buffers for different oil and gas facilities, and applicable development standards within such buffers are set forth in Subsection (E).

- (1) Oil and Gas Buffer – Well Not Abandoned. The oil and gas buffer for an oil and gas facility whose well is not abandoned shall extend from the outer edge of the oil and gas location for two thousand (2000) feet in all directions. The Planning and Zoning Commission may grant a modification of standards pursuant to Division 2.8 to reduce the two thousand (2000) foot distance to no less than five hundred (500) feet provided the applicant provides a *Phase II Environmental Site Assessment* as part of the modification request showing that levels of oil and gas contaminants, if any, are within Federal Environmental Protection Agency or State health department standards, whichever ensures greater public health protections. Any approved modification shall require as a condition that the applicant annually provide a *Phase II Environmental Site Assessment* for five (5) years from the issuance of a development construction permit. Initial baseline samples and subsequent monitoring samples shall be collected within one-half (1/2) mile radius of the existing well location. If the main pollutants resulting from oil and gas production described in Subsection (C) are identified at the time of assessment, such pollutants must be remediated by the development applicant per Federal Environmental Protection Agency or State health department standards, whichever ensures greater public health protections.
- (2) Oil and Gas Buffer – Abandoned Well, Not Reclaimed. For oil and gas facilities consisting of an abandoned well that have not been reclaimed pursuant to Section 3.12.6, the oil and gas buffer shall extend five hundred (500) feet in all directions as measured from the center of the well bore. Development plans that include an abandoned well that has not been reclaimed must provide a *Phase II Environmental Site Assessment* as part of the application showing that levels of oil and gas contaminants, if any, are within Federal Environmental Protection Agency or State health department standards, whichever ensures greater public health protections. The approved application shall require as a condition that the applicant annually provide a *Phase II Environmental Site Assessment* for five (5) years from the issuance of a development construction permit. Initial baseline samples and subsequent monitoring samples shall be collected within one-half (1/2) mile radius of the existing well location. If the main pollutants resulting from oil and gas production described in Subsection (C) are identified at the time of assessment, such pollutant must be remediated by the development applicant per Federal Environmental Protection Agency or State health department standards, whichever ensures greater public health protections. This buffer is not subject to the modification of standards process.
- (3) Oil and Gas Buffer – Abandoned Well, Reclaimed. For oil and gas facilities consisting of abandoned wells that have been reclaimed pursuant to Section 3.12.6, the oil and gas buffer shall extend one hundred and fifty (150) feet in all directions as measured from the center of the well bore. Development

plans that include an abandoned well that has been reclaimed must provide a *Phase II Environmental Site Assessment* as part of the application and a second Phase II Environmental Site Assessment must be provided five (5) years after a Development Construction Permit is issued. If the main pollutants resulting from oil and gas production described in Subsection (C) are identified at the time of assessment, such pollutants must be remediated by the development applicant per Federal Environmental Protection Agency or State health department standards, whichever ensures greater public health protections. This buffer is not subject to the modification of standards process.

**(E) Oil and Gas Buffer Standards.**

- (1) Except as stated in (E)(3) below, no portion of a building that contains occupiable space may be located within an oil and gas buffer.
- (2) After September 29, 2023, permanent playgrounds, play structures, recreational fields, or permanent community gathering spaces may not be placed within any portion of a homeowner's association owned or maintained common area located within an oil and gas buffer.
- (3) Exceptions to Restriction on Buildings Containing Occupiable Space Within an Oil and Gas Buffer.
  - (a) Any applicant that submitted an application prior to September 29, 2023, to construct a building containing occupiable space may construct such building within an oil and gas buffer upon satisfying all applicable Code requirements for approval. However, no additional building containing occupiable space for which an application was submitted after September 29, 2023, may be constructed on any portion of the same lot located within an oil and gas buffer.
  - (b) Any building containing occupiable space already constructed within an oil and gas buffer prior to September 29, 2023, is exempt from the restriction on such building within an oil and gas buffer. However, no additional building containing occupiable space for which an application was submitted after September 29, 2023, may be constructed on any portion of the same lot located within an oil and gas buffer.

**(F) Disclosure.** The following disclosure requirements shall apply to any real property upon which a building containing occupiable space is or may be located within any oil and gas buffer described in Subsection (D):

- (1) At such time as the real property to be developed is platted or replatted, the plat shall show the oil and gas buffer on the property and shall contain a note informing subsequent property owners that certain lots shown on the plat are within an oil and gas buffer.
- (2) For residential developments requiring a declaration pursuant to the Colorado Common Interest Ownership Act, a statement shall be included in such declaration specifying the lots within an oil and gas buffer upon which buildings containing occupiable space may be constructed. The approved plat for such development shall be attached to the recorded declaration. Where no such declaration is required, the property owner shall record a statement on the property where the dwelling is located indicating that such property is located within an oil and gas buffer.
- (3) Sellers and lessors of any real property within an oil and gas buffer must provide the following written notice of material facts related to oil and gas facilities identified by environmental site assessments the disclosure notice must be provided in at least fourteen (14) point font to any potential purchaser who intends to resell, occupy and/or lease the property prior to or as part of the purchase or rental agreement:

*As required by 3.8.36 of the Fort Collins Land Use Code, notice is hereby given that [insert description of lot] is within [insert buffer standard set forth in Subsection (D) including well status and distance from well]. At the time of [sale or lease], environmental assessments, studies or reports done involving the physical condition of the Property impacted by oil and gas production are within the acceptable Environmental Protection Agency limits. For more information contact the City of Fort Collins Environmental Planner or the Energy and Colorado Carbon Management Commission formerly known as the Colorado Oil and Gas Conservation Commission.*

The above notice shall be provided by the prospective seller or lessor to the prospective buyer or lessee of real property no less than thirty (30) days before closing or such shorter time period agreed to by the parties and shall be provided before the signing of any purchase, sale, or rental agreement for the subject property.

Section 4. That Section 5.1.2 of the Land Use Code is hereby amended by the addition of a new definition “Occupiable space” which reads in its entirety as follows:

*Occupiable space shall mean, as defined in the version of the International Building Code adopted in Chapter 5 of the Code of the City of Fort Collins, a room or enclosed space designed for human occupancy in which individuals congregate for amusement, educational or similar purposes or in which occupants are engaged at labor, and which is*

equipped with means of egress and light and ventilation facilities meeting the requirements of this code.

Section 5. That Section 5.1.2 of the Land Use Code is hereby amended by the addition of a new definition “*Oil and gas buffer*” which reads in its entirety as follows:

*Oil and gas buffer* shall mean the area located on a development site formed by measuring two thousand (2000) feet in all directions from an oil and gas facility location or, as applicable, the area located on a development site formed by measuring two thousand (2000) feet in all directions from the middle of an oil and gas facility well bore.

Introduced, considered favorably on first reading and ordered published this 5th day of September, 2023, and to be presented for final passage on the 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

Passed and adopted on final reading this 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

Item 19.



Community Development & Neighborhood Services
281 North College Ave.
P.O. Box 580
Fort Collins, CO 80522-0580
970.221.6750
970.224.6134 - fax
fcgov.com/planning

MEMORANDUM

DATE: October 28, 2022
TO: Mayor and Councilmembers
THRU: Kelly DiMartino, City Manager
Tyler Marr, Deputy City Manager
Caryn Champine, Planning, Development, and Transportation Director
Paul Sizemore, Community Development and Neighborhood Services Director
Rebecca Everette, Planning Manager
FROM: Cassie Archuleta, Air Quality Program Manager
SUBJECT: October 25, 2022 Work Session Summary

Attendees

Caryn Champine, Cassie Archuleta and Rebecca Everette presented a summary of draft regulations for oil and gas development. All City Councilmembers except Councilmember Pignataro were present.

Discussion Summary

Staff presented an overview regarding (1) an adoption schedule for zoning and setback restrictions for new or modified oil and gas facilities in the Land Use Code, (2) updates regarding recent regional oil and gas regulations and compliance issues for existing oil and gas facilities, and (3) recommendations for refinements to reverse setback regulations for new land development near oil and gas facilities.

Staff heard support for:

- 1. Proceeding with proposed adoption schedule for new code related to zoning and setback restrictions for new oil and gas facilities.
2. Continuing to leverage State and County regulations and resources to ensure regulatory compliance for existing facilities.
3. Updating reverse setback code to reflect recent changes in COGCC regulations and lessons learned over the past 4 years, including:
- Apply reverse setbacks to all occupiable buildings, not just residential uses
- Explicitly match 2000', rather than refer generally to COGCC regulations
- Create a more predictable pathway to reduce to 150' for abandoned well types
- Eliminate the buffer exemption for crossings of arterial roadways

Next Steps

- Draft code updates for zoning and setback restrictions will be published in November 2022 and considered for adoption on December 6, 2022.
• Larimer County will use City funds to purchase an Optical Gas Imaging (OGI) camera to support leak detections and subsequent compliance actions at existing oil and gas facilities.
• Staff will submit a request to the Colorado Oil and Gas Conservation Commission (COGCC) asking that low and non-producing wells within City limits be plugged and abandoned. Staff will inform Council of any COGCC decisions on this item via memo (anticipated Q1 of 2023).
• Staff will develop draft code updates for reverse setbacks, and schedule for consideration in Q1 of 2023.



### Summary of Proposed Code Updates:

A draft of the Code was posted to the public ahead of the planning and zoning commission hearing on July 20, 2023. The staff recommendations included the following:

1. Apply oil and gas reverse setbacks to all occupiable buildings, not just residential uses.
2. Eliminate the buffer exemption for crossings of arterial roadways.
3. Increase buffer for developments near existing oil and gas operations from 500' to 2,000' to match ECMC and Fort Collins new code setbacks.
4. Allow modification of standards for Enhanced Oil Recovery (EOR) Injection wells and Producing well buffers, no less than 500'.
5. Decrease soil-gas and ground water monitoring requirements for plugged and abandoned wells from once every 5 years to once prior to permits and once again at the end of a five-year construction guarantee.
6. No change to buffer for developments near existing abandoned wells (not fully reclaimed) at 500'
7. No change to buffer near plugged and abandoned wells (fully reclaimed) at 150'
8. No change to disclosure requirements for future property owners via a property covenant
9. Add requirements for point-of-sale disclosure notice for new developments and existing homes within a 2,000' buffer.
10. Add prohibition on detached occupiable buildings from existing buildings located within the oil and gas buffer.

Item 19.



Planning, Development & Transportation Services

Community Development & Neighborhood Services

281 North College Avenue
P.O. Box 580
Fort Collins, CO 80522.0580

970.416.2740
970.224.6134- fax
fcgov.com

MEMORANDUM

DATE: August 10, 2023
TO: Mayor and City Council
THRU: Kelly DiMartino, City Manager
Tyler Marr, Deputy City Manager
Caryn Champine, Director of Planning, Development and Transportation
Paul Sizemore, Community Development and Neighborhood Services Director
Clay Frickey, Interim Planning Manager
FROM: Kirk Longstein, Senior Environmental Planner
RE: Land Use Code buffer standards near existing oil and gas facilities

Bottom Line:

The purpose of this memo is to provide Council with a summary of stakeholder feedback related to updates to the land use code that increase setback requirements for new and existing homes near oil and gas facilities. Based on public engagement, staff has incorporated feedback into the draft ordinance for Council's consideration on September 5. Below is a summary of feedback themes and how staff has incorporated feedback into the draft ordinance.

Background:

Based on Council direction during the October 25, 2022, work session discussion and the April 2023 adoption of Ordinance no. 151, 2022 for new oil and gas well sittings, Staff seek to update the reverse setback development standards (LUC 3.8.26) to reflect recent changes in the Colorado Energy and Carbon Management Commission (ECMC) regulations and lessons learned over the past 4 years, including:

- Apply reverse setbacks to all occupiable buildings, not just residential uses; and,
Explicitly state required setbacks, rather than refer generally to ECMC rules; and,
Create a more predictable pathway for abandoned/inactive well types; and,
Eliminate the buffer exemption for crossings of arterial roadways.

Item 19.

**Summary of proposed oil and gas reverse setback Code updates:**

A draft of the Code was posted to the public ahead of the planning and zoning commission hearing on July 17, 2023. The staff recommendations included the following:

1. Apply oil and gas reverse setbacks to all occupiable buildings, not just residential uses.
2. Eliminate the buffer exemption for crossings of arterial roadways.
3. Increase buffer for developments near existing oil and gas operations from 500' to 2,000' to match ECMC and Fort Collins new code setbacks.
4. Allow modification of standards for Enhanced Oil Recovery (EOR) Injection well buffers, no less than 500'.
5. Decrease soil-gas and ground water monitoring requirements for plugged and abandoned wells from once every 5 years to once prior to permits and once again at the end of a five-year construction guarantee.
6. No change to buffer for developments near existing abandoned wells (not fully reclaimed) at 500'
7. No change to buffer near plugged and abandoned wells (fully reclaimed) at 150'
8. No change to disclosure requirements for future property owners via a property covenant
9. Add requirements for point-of-sale disclosure notice for new developments and existing homes within a 2,000' buffer.
10. Add prohibition on detached occupiable buildings from existing buildings located within the oil and gas buffer.

**Community Feedback Summary:**

Staff coordinated a series of group meetings and continues to seek feedback from community partners and private landowners impacted by proposed buffering standards. Focused meetings were held to gather general community input on regulating reverse setbacks from existing oil and gas wells. The following group engagement is planned to inform code updates:

Date	Group
5/31/2023	Larimer Alliance
6/1/2023	Sonders
6/6/2023	Sonders
6/7/2023	Montava
6/9/2023	Larimer Alliance/Earthworks/Colorado Department of Public Health and Environment
6/13/2023	Sonders/Tami McMullin, PhD Toxicologist
6/21/2023	City of Fort Collins Parks Planning
6/22/2023	Larimer Alliance/Fort Collins Sustainability Group/Sierra Club
7/7/2023	Home Builders Association
7/17/2023	Air Quality Advisory Board
7/19/2023	Natural Resources Advisory Board
7/20/2023	Planning and Zoning Commission
7/26/2023	Sierra Club
8/8/2023	Board of Realtors
8/9/2023	Land Conservation Stewardship Board
9/12/2023	Urban Land Institute

Item 19.	Feedback theme	Feedback Summary	How has staff addressed the feedback?
	Increase Monitoring requirements adjacent inactive oil and gas wells	In 2018 as well as feedback heard in 2023, environmental community members wish to increase the groundwater/soil gas monitoring requirements adjacent fully reclaimed wells (plugged and abandoned).	<p>Staff recommend updates to the Code that include monitoring once before a permit is issued and again at the end of a 5-year construction guarantee rather than every year of a new development project's guarantee period.</p> <p>Since the city started collecting environmental site assessments in 2018, there is no evidence of contamination adjacent fully reclaimed wells within the proposed buffer. Staff recognize that cement is not a forever product and at some point, in the future, reclaimed wells may need repair.</p>
	Disclosure requirements for future homeowners	<p>Stakeholders expressed concern that monitoring is the responsibility of future residents after a developer's 5-year construction guarantee. Due to this time-bound responsibility, stakeholders have asked that disclosures state clearly any potential for hydrocarbon contamination.</p> <p>The Board of Realtors have commented that disclosure requirements should clearly state the responsible party and limit requirements to the specific buffer standards, not a flat 2,000' from all wells.</p>	Staff has updated the draft and provided prescriptive disclosure requirements for new developments and existing homes that is specific to buffer requirements and specifies the seller as the responsible party.
	Reduce the 2,000-foot buffer for Injection (EOR) Wells	The development community is suggesting that injection (EOR) wells receive a reduced buffer due to the fact that there is decreased air quality risk from these wells as compared to injection wells with onsite storage tanks or used for waste disposal.	As prescribed by the Colorado Water Quality Control Commission's Regulation 41 and the Federal Safe Drinking Water Act, a specified area which ground water is classified and an area of interest to monitor public health risks adjacent Class II UIC wells (e.g., EOR – Injection well) is identified. The distances where contamination related to a UIC wells ranges from .25 mile up to 2 miles from a potential source of pollution. It is within these distances where the potential for contamination may occur and therefore the Staff 2,000' reverse setback recommendation mitigates the potential risks permeating from the "the Zone of Endangering influence" as defined by the Federal Safe Drinking Water Act.

Item 19.

<p>Increase 2,000-foot buffer for all active oil and gas wells. (e.g., Producing and EOR injection wells)</p>	<p>Although the State ECMC has a presumptive 2,000-foot setback, Fort Collins should ensure public health and safety by increasing setbacks established by EXMC rules.</p>	<p>At this time, staff does not have evidence to support a buffer beyond 2,000-feet.</p> <p>The ECMC has implemented a 2,000-foot setback rule (ECMC Rule 604), which pertains to permitting for new well development, not existing wells. This setback was based on air emission and modeling studies pertaining to unconventional oil and gas operations. Additionally, the State ECMC requires mechanical integrity testing every 5 years which would serve as an indicator of a potential contamination event adjacent EOR injection wells.</p>
<p>Variance from the 2,000-foot buffer</p>	<p>Adopted in 2018, 500' is the current reverse setback standard. Staff has heard strong support from the development community to allow for a modification of standards per criteria listed under <a href="#">Sec. 2.8</a> of the land use code to provide a variance from the proposed 2,000' setback and no less than 500'.</p> <p>Environmental stakeholders share concerns that aging infrastructure and historic contamination events within the area of concern should preclude a reduced buffer through a modification of standards.</p>	<p>Because the peer-reviewed scientific literature is incomplete for buffering from EOR injection wells, Staff recommend a modification of standards from EOR injection wells where appropriate and when the four standards of LUC 2.8.2 (H) can be met.</p>
<p>Impacts to property values</p>	<p>Real estate professionals have shared concerns that these regulations signal a perception to potential home buyers that may negatively impact home values.</p>	<p>Staff do not assess the impacts to property value as part of development review applications.</p> <p>The city commissioned an appraiser to try to answer this question in 2014 but could not come up with a conclusive determination. To date, few scholarly property impact studies have been published, but the literature does suggest that a negative environmental event associated with fracking will likely have an adverse impact on property values in proximity to the event. <a href="http://www.fcgov.com/oilandgas/pdf/hunsperger-report.pdf?1453314619">www.fcgov.com/oilandgas/pdf/hunsperger-report.pdf?1453314619</a></p>

**Staff Work Plan - Next Steps to Address Fort Collins Oil and Gas wells.**

- ✓ **COMPLETED.** Financial assurances have been approved by State and are in place, ensuring operator has sufficient funds to plug, abandon and reclaim.
- ✓ **SCHEDULED.** City Council hearing to adopt updates to the oil and gas reverse setbacks, September 5.
- ✓ **Q4 2023 PRIORITY.** The City will submit an application to the State to order additional low and non-producing wells to be plugged and abandoned.
- ✓ **ONGOING.** Policy discussion to optimize enforcement and operational standards.



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October 22, 2018

Rebecca Everette  
 Development Review Manager  
 City of Fort Collins, Colorado

**Reference: Phase II Environmental Site Assessment Summary Report  
 City of Fort Collins Brownfield  
 Country Club Reserve, 1949 East Douglas Road, Fort Collins, Colorado (Site)  
 TRC Project No. 241300.0001.0000**

Dear Ms. Everette:

This report summarizes the findings of a Phase II Environmental Site Assessment (Phase II ESA) conducted by TRC Environmental Corporation (TRC) at the request of the City of Fort Collins at the Country Club Reserve, at 1949 East Douglas Road, Fort Collins, Colorado (Site) for a United States Environmental Protection Agency (USEPA) Brownfields Assessment grant. A Site Location map is shown on **Figure 1**.

**1. EXECUTIVE SUMMARY**

The Phase II ESA included advancing four monitoring wells, installing five soil vapor points, and the collection and laboratory analyses of soil and groundwater samples to evaluate potential subsurface impacts at the Site. Analytical results document that the constituents of concern (COC) were either not detected above laboratory detection limits or were detected at concentrations close to or below applicable regulatory screening levels, with the exception of arsenic in all four soil samples. However, the concentrations of arsenic in all four locations are below USEPA’s background arsenic concentration in Colorado, so arsenic is not considered a COC at the Site. The investigation results demonstrate that there is no risk to human health or the environment.

**2. BACKGROUND**

The approximate 77.12-acre Site is owned by Crystal Cove Development LLC. The Site is currently vacant. One plugged and abandoned oil and gas wellhead is present on the west-central portion of the Site.

TRC conducted a Phase I ESA at the Site on behalf of the City of Fort Collins. The results of the ESA were summarized in a corresponding report dated June 6, 2018. The Phase I ESA identified the presence of a Historical Recognized Environmental Condition (HREC) at the Site. Specifically, the Phase I ESA indicates that the plugged and abandoned well head located on the west-central portion of the Site represents an HREC.

### 3. OBJECTIVES OF THE PHASE II ESA

The objective of the Phase II ESA is to:

- Confirm that the plugged and abandoned wellhead located on the west-central portion of the Site has not impacted the groundwater or soil at the target area.

### 4. SCOPE AND METHODOLOGY OF THE PHASE II ESA

#### 4.1 Introduction

The Phase II ESA consisted of:

- Advancing four soil borings for soil screening and soil sampling with a track mounted Geoprobe®;
- Collection and laboratory analysis of four soil samples collected from each of the four borings;
- Installation of four permanent ground water monitoring wells at the boring locations;
- Collection and laboratory analysis of four ground water samples from each of the four monitoring wells; and
- Installation and sampling of five soil vapor monitoring points.

TRC conducted a site inspection prior to initiating the field work to inspect the Site and locate the borings.

#### 4.2 Soil Investigation

On July 5 and July 6, 2018, TRC and its subcontractor Remington Technologies, LLC installed four soil borings SB-1 through SB-4 at the locations shown on **Figure 2**. Prior to installing the soil borings, utility clearance was conducted and a hand auger was used to remove soil from each borehole to an approximate depth of four feet to verify that no utilities were present at the boring locations.

The soil borings were advanced using a Geoprobe® with direct push capabilities. All four soil borings were advanced to a depth ranging from 23 - 30 feet below ground surface (ft bgs) to evaluate soil conditions at each boring location. Soil was collected continuously via five-foot direct push intervals, utilizing a new sample liner each flight. A TRC scientist visually screened and logged the descriptions of the soil encountered in each boring. Photo-ionization detector (PID) readings were also recorded for each two-foot soil interval. Boring logs with soil descriptions, visual observations, and PID readings are presented in **Appendix A**. The soil at boring locations consisted of fine to medium sand with some silt. No free or residual product was detected at any of the borings.

One unsaturated soil sample was collected from each original soil boring location. Soil from each boring did not exhibit any apparent impacts; therefore, a soil sample was collected directly above the water table or from the interval of highest PID reading. The samples were transferred directly into pre-preserved laboratory-supplied sample containers. Each sample container was labeled with a unique identification number specifying the sample location, the time and date of sample collection, the analytical parameters required, the Site name, and the sampler's initials. The samples were preserved, as appropriate, and chilled to approximately 4°C under chain-of-custody until shipped to the laboratory.

Each of the soil samples was analyzed for:

- DRO by Semi-Volatile Organic Compounds (SVOC) by Gas Chromatograph (GC) Method 8015
- Gasoline Range Organics (GRO) by VOC by GC Method 8015D/GRO

- Benzene, Toluene, Ethylbenzene, Xylenes (BTEX) by GC/Mass Spectrometer (GC/MS) Method 8260C
- RCRA 8 Metals by Inductively Coupled Plasma (ICP) - Optical Emission Spectrometer (OES) Method 6010B

#### **4.3 Ground Water Investigation**

SB-3 and SB-4 had 1-inch diameter permanent wells installed to a depth of approximately 30 ft bgs and constructed with 10 feet of 0.10-slot poly vinyl chloride (PVC) screen at the bottom and 20 feet of blank PVC casing at the top. SB-1 and SB-2 had 1-inch diameter permanent wells installed to approximately 42 and 37 ft bg, respectively, and constructed with 10 feet of 0.10-slot PVC screen at the bottom and 32 and 27 feet of blank PVC casing at the top. The monitoring wells, MW-1 through MW-4, were constructed as permanent monitoring wells with appropriately sized screen and sand filter packs as well as with permanent surface completions. **Figure 2** shows their approximate locations. TRC developed the monitoring wells on August 15, 2018 and allowed 24 hours for the wells to equilibrate after development before sampling.

Prior to initiating ground water sampling activities, ground water level measurements were first collected from each well at the Site. The depth from the top of casing (TOC) to the top of the ground water was recorded at each well for use in calculating ground water elevations. A team of surveyors measured the surface elevations using a Global Positioning System (GPS) unit on September 20, 2018. Ground water level measurements were recorded on a Water Level Gauging Form presented in **Appendix B**.

Hand bailing and sampling procedures were utilized in connection with the ground water sampling activities. Disposable hand bailers were used at all four monitoring wells since the ground water levels were too deep for the peristaltic pump to lift water to the surface. Prior to sampling, each well was purged. Field parameters including pH, oxidation reduction potential (ORP/Eh), dissolved oxygen (DO), specific conductance, turbidity, and temperature of the ground water being purged was measured periodically and recorded in the field notebook. The visual appearance of the ground water was also recorded. Three field measurement readings were recorded prior to sampling.

Care was taken to minimize agitation and aeration of the samples during sample collection activities. Each ground water sample was transferred directly into appropriate pre-preserved laboratory-supplied sample containers. Each sample container was labeled with a unique identification number specifying the sample location, the time and date of sample collection, the analytical parameters required, the Site name, and the sampler's initials. The samples were preserved, as appropriate, and chilled to approximately 4°C under chain-of-custody until shipped to the laboratory. Ground water sample collection data was recorded on the Sampling Form presented in **Appendix C**.

Each of the ground water samples was analyzed for:

- DRO by SVOC (GC) by Method 8015
- GRO and BTEX by VOC (GC) Method 8015D/GRO
- Methane, Ethane, Ethene by VOC (GC) Method RSK175
- Dissolved Calcium, Dissolved Iron, Dissolved Magnesium, Dissolved Potassium, Dissolved Sodium by Metals (ICP) Method 6010B
- Bromide, Chloride, Nitrate and Nitrite, Sulfate by Wet Chemistry Method 9056A
- Alkalinity by Wet Chemistry Method 2320 B-2011



#### **4.4 Soil Vapor Investigation**

Five soil vapor points were constructed on Site. Four of the points were installed surrounding the plugged and abandoned well while the last point was installed at the edge of the property as a background control sample. The four soil vapor points constructed around the plugged and abandoned well, SVP-1 through SVP-4, were installed in five foot intervals to a maximum radius of 20 feet. The fifth soil vapor point, SVP-5, was installed at the edge of the property boundary as a control sample. The soil vapor points were installed to a target depth of approximately three to five feet bgs by a direct push drill rig. The soil probes were constructed with a dedicated stainless-steel soil vapor tip, connected to the ground surface with Teflon tubing. After the soil vapor probes were installed to the target depth, the boreholes were backfilled with hydrated bentonite to create a seal and completed at-grade with flush mount surface completions. Field screening of soil vapor points using an Eagle multi-gas meter did not detect significant VOC concentrations above background levels in any of the samples.

#### **4.5 Decontamination Procedures**

Down-hole drilling equipment was decontaminated with high pressure tap water prior to each soil boring. Sampling tools were decontaminated using a trisodium phosphate cleaning detergent and tap water rinse followed by a distilled water rinse. The equipment and tools were decontaminated prior to each soil boring and collection of each sample. Hand bailers from ground water purging and sampling activities were discarded after the collection of project samples.

### **5. RESULTS**

#### **5.1 Soil Analytical Results**

The soil analytical results are summarized in **Table 1** along with applicable soil standards. The laboratory analytical report is provided in **Appendix D**.

The analytical results indicate that soil within the target area does not contain any COC at concentrations above the Colorado Oil and Gas Conservation Commission Screening Level (COGCC SL) standards, except for arsenic. Arsenic exceeded the COGCC SL of 0.39 milligrams per kilogram (mg/kg) at all four soil borings with the highest concentration at SB-3 (5.73 mg/kg). According to the U.S. Environmental Protection Agency (USEPA), the average background concentration of arsenic in Colorado is 11 mg/kg. The arsenic concentration at each soil boring is less than 11 mg/kg and there is no reason to believe arsenic contamination could have occurred on Site. Therefore, arsenic is not a COC for on-Site soil at the target area. TPH and BTEX concentrations were well below the COGCC SL in all four borings. These results confirm that there are no COCs in soil at the Site and do not pose any risk to human health and the environment.

#### **5.2 Ground Water Analytical Results**

The ground water analytical results are summarized in **Table 2** along with applicable Colorado Department of Public Health and Environment (CDPHE) ground water standards. The laboratory analytical report is provided in **Appendix D**.

The ground water samples collected at the Site did not indicate an exceedance over CDPHE ground water standards at any of the four locations. There were no detections of BTEX in any of the four wells and any detections of TPH were minor. These results confirm that there are no COCs in ground water at the Site and do not pose any risk to human health and the environment.

### 5.3 Ground Water Flow Directions

Ground water was encountered at depths that ranged between approximately 22 and 34 feet bgs (**Appendix B**). Ground water level measurements (**Appendix B**) and grade elevations at well locations were used to estimate ground water elevations and develop a ground water elevation contour map (**Figure 3**). Accordingly, ground water elevations were estimated to range between approximately 5075 feet above mean sea level (ft-AMSL) near MW-3 and 5076 ft-AMSL near MW-2. **Figure 3** indicates that the horizontal ground water flow direction in the shallow zone is generally southeasterly (i.e., from the northwest to the southeast) consistent with the Site topography. The average horizontal hydraulic gradient was estimated to be approximately 0.005 ft/ft.

## 6. CONCLUSIONS

The following conclusions are made based on the Phase II ESA results:

- Soil at the Site meets the COGCC SL for TPH and BTEX; thus, these constituents are not considered COCs for soil at the Site.
- Arsenic concentrations detected during this Phase II ESA are all well below the average background concentration of 11 mg/kg in Colorado and there is no reason to believe arsenic contamination could have occurred on Site; therefore arsenic is not considered a COC for soil at the Site.
- The shallow ground water at the Site meets CDPHE ground water standards for BTEX within the target area; thus, these constituents are not considered COCs for shallow ground water at the Site.

## 7. LIMITING CONDITIONS/ASSUMPTIONS

It should be noted that this investigation is limited in nature and extent and was conducted for due diligence purposes based upon the Phase I ESA conducted by TRC. The scope of work of this Phase II ESA was based on results from the previous Phase I Investigation, which listed the plugged and abandoned wellhead as a HREC. As such, the target area evaluated in this Phase II ESA was limited to constituents likely related to historical operations at the potential REC including TPH-DRO, TPH-GRO, BTEX, and RCRA 8 Metals in soil, and BTEX, TPH, and dissolved gases in ground water. This investigation is therefore intended to identify significant impacts to environmental conditions of the Site to common and suspected COCs based on the Phase I ESA and should not be construed to guarantee or warrant the Site from environmental impacts or rule out the possibility of impacts to the Site in locations not evaluated as part of this assessment.

Sincerely,  
**TRC Environmental Corporation**



Natalie Pabon  
Engineer II



Jason Jayroe  
Project Manager

Enclosures:

Figure 1 – Site Location Map

Figure 2 – Monitoring Wells and Soil Vapor Points Locations Map

Figure 3 – Ground Water Elevation Contour Map

Table 1 – Soil Analytical Results

Table 2 – Ground Water Analytical Results

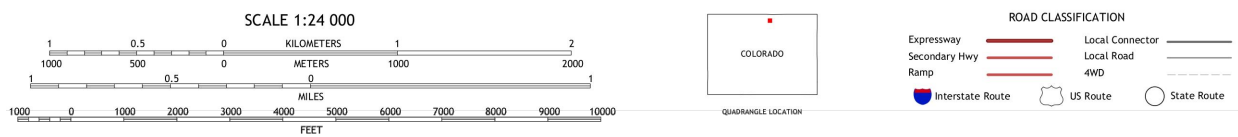
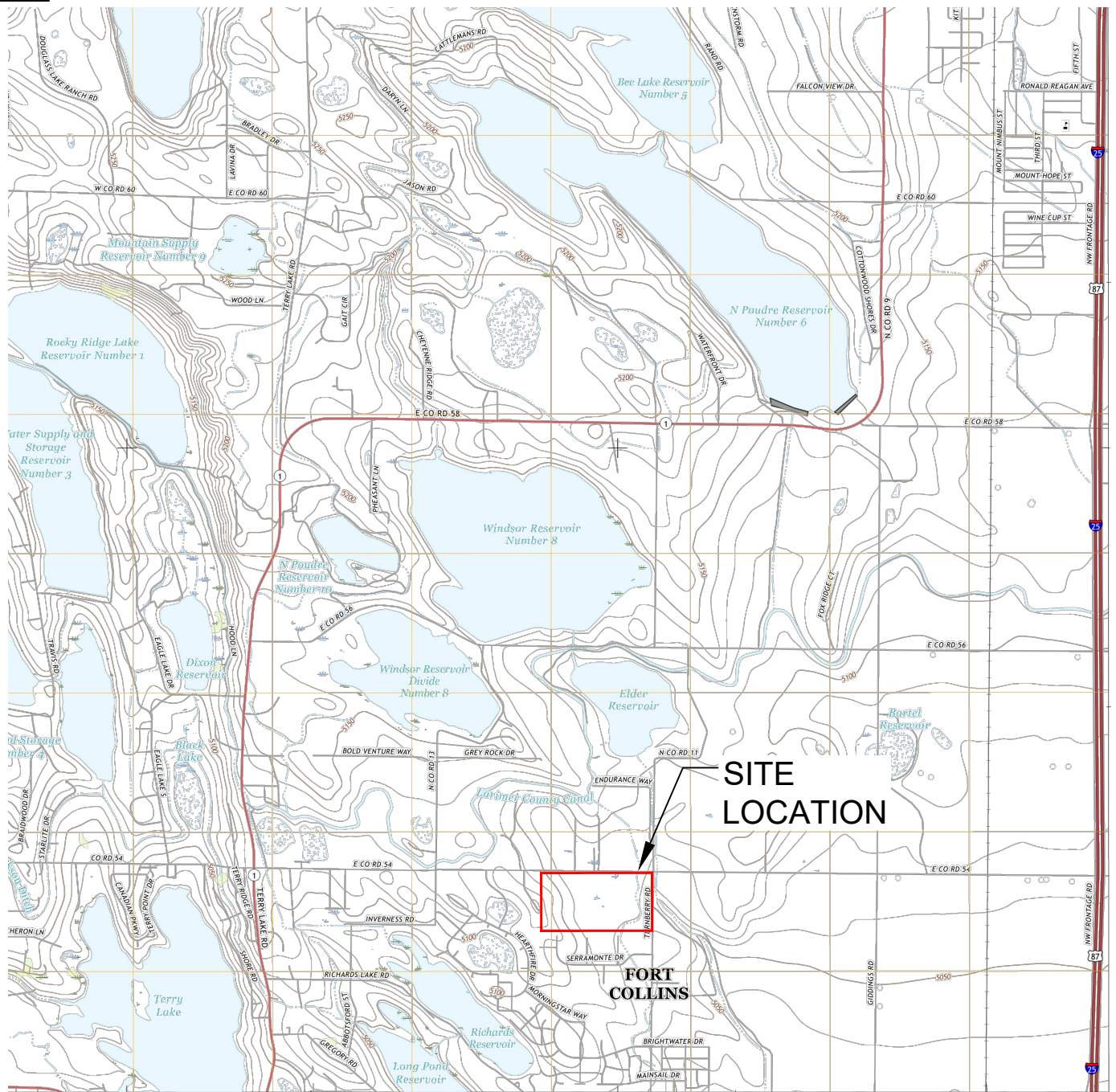
Appendix A – Soil Boring logs

Appendix B – Water Level Gauging Forms

Appendix C – Ground Water Sampling Forms

Appendix D – Laboratory Analytical Results

USER: Npabon --- ATTACHED: XREFS --- ATTACHED: IMAGES  
 KING: NAME: \\fortcollins-p2\Remediation\FTC Brownfield\Sites\Current\Oil and Gas\Counrty Club Reserve\Phase II\Implementation\Report\Figures\CCR Phase 2 Figure 1.dwg --- PLOT DATE: October 22, 2018 - 4:34PM --- LAYOUT: Figure 1



WELLINGTON QUADRANGLE  
 COLORADO  
 USGS 7.5-MINUTE SERIES



PROJECT:	<b>CITY OF FORT COLLINS BROWNFIELD COUNTRY CLUB RESERVE FORT COLLINS, COLORADO</b>
TITLE:	<b>SITE LOCATION MAP</b>

DRAWN BY:	N. PABON
CHECKED BY:	J. JAYROE
APPROVED BY:	J. JAYROE
DATE:	SEPTEMBER 2018
PROJ. NO.:	241300.0001.0000
FILE:	CCR Phase 2 Figure 1.dwg

**FIGURE 1**



**LEGEND**

- ▬ PROPERTY BOUNDARY
- ⊕ PLUGGED & ABANDONED (P&A) WELL
- SOIL BORING (SB) / MONITORING WELL (MW)
- ◇ SOIL VAPOR POINT (SVP)





**NOTE**

SOURCE AERIAL: GOOGLE EARTH, GOOGLE INC. PHOTOGRAPH CIRCA 2018

PROJECT: <b>CITY OF FORT COLLINS BROWNFIELD COUNTRY CLUB RESERVE</b>	
TITLE: <b>MONITORING WELLS AND SOIL VAPOR POINTS LOCATIONS</b>	
DRAWN BY: E. EMERSON	PROJ. NO: 241300.0001.0000
CHECKED BY: J. JAYROE	<b>FIGURE 2</b>
APPROVED BY: J. JAYROE	
DATE: 7/26/2018	
131 LINCOLN AVE, SUITE 200 FORT COLLINS, CO 80524 PHONE: 970-484-3263	
FILE NO:	

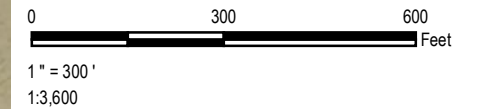
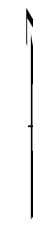



**LEGEND**

-  SITE BOUNDARY
-  MONITORING WELL
-  PLUGGED AND ABANDONED WELL
-  GROUNDWATER CONTOURS  
(DASHED WHERE INFERRED, FT AMSL)

**NOTES**

1. BASE MAP IMAGERY FROM ESRI "CLARITY" WEB SERVICE LAYER, YEAR UNKNOWN.



PROJECT:		<b>CITY OF FORT COLLINS BROWNFIELD COUNTRY CLUB RESERVE FORT COLLINS, COLORADO</b>	
TITLE:			
<b>GROUNDWATER ELEVATION CONTOUR MAP</b>			
DRAWN BY:	S. MAJOR	PROJ. NO.:	241300
CHECKED BY:	N. PABON	<b>FIGURE 3</b>	
APPROVED BY:	J. JAYROE		
DATE:	OCTOBER 2018		
		131 E. Lincoln Avenue, Suite 200 Fort Collins, CO 80524 Phone: 970.484.3263 www.trcsolutions.com	
FILE NO.:		241300-002.mxd	

**Table 1 - Soil Analytical Results  
City of Fort Collins Brownfield  
Country Club Reserve**

Client Sample ID			SB-1-32	SB-2-16	SB-3-15	SB-4-20				
Lab Sample ID			L1007912-01	L1007912-02	L1007912-03	L1007912-04				
Date Collected			07/05/2018	07/05/2018	07/05/2018	07/05/2018				
Analyte	Units	COGCC SL								
<b>RCRA 8 Metals</b>										
Arsenic	mg/kg	0.39	<b>1.97</b>	J	<b>5.1</b>	<b>5.73</b>	<b>1.46</b>	J		
Barium	mg/kg	15000	58.8		47.5	98	104			
Cadmium	mg/kg	70	<0.500		<0.500	0.133	J	<0.500		
Chromium	mg/kg	23*	21.2		12.7	14.7		8.05		
Lead	mg/kg	400	5.13		8.04	9.08		4.21		
Selenium	mg/kg	390	1.54	J	<2.00	<2.00		<2.00		
Silver	mg/kg	390	0.283	J	<1.00	<1.00		<1.00		
Mercury	mg/kg	23	0.017	J	0.0142	J	0.0111	J	0.00473	J
<b>TPH GRO/DRO</b>										
TPH (Gc/Fid) High Fraction	mg/kg	500	<4.00		<4.00	<4.00		<4.00		
TPH (Gc/Fid) Low Fraction	mg/kg	500	0.036	J	0.0927	J	0.104		0.0241	J
<b>BTEX</b>										
Benzene	mg/kg	0.17	0.000778		0.00152		0.00135		0.000186	J
Toluene	mg/kg	85	0.000796	J	0.00214	J	0.00303	J	0.000201	J
Ethylbenzene	mg/kg	100	0.000125	J	0.000757		0.00102		<0.000500	
Xylenes, Total	mg/kg	175	<0.00150		0.00164		0.00328		<0.00150	

**Notes:**

**Exceedance**

J = estimated concentration

mg/kg = milligrams per kilogram

\*Chromium screened against Chromium VI screening Level

**Table 2 - Ground Water Analytical Results  
City of Fort Collins Brownfield  
Country Club Reserve**

Client Sample ID				MW-01	MW-02	MW-03	MW-04
Lab Sample ID				L1018955-03	L1018955-01	L1018955-02	L1018955-04
Date Collected				8/16/2018	8/16/2018	8/16/2018	8/17/2018
Analyte	Units	CDPHE Groundwater Organic Standards <sup>1</sup>	CDPHE Groundwater Human Health Standards <sup>2</sup>				
<b>Alkalinity</b>							
Alkalinity	mg/l			412	440	448	442
<b>Major Anions</b>							
Bromide	mg/l			0.129	J	<1	<1
Chloride	mg/l			29.5		27.5	31.3
Sulfate	mg/l			510		956	736
Nitrate as (N)	mg/l		1	0.42		0.305	0.892
Nitrite as (N)	mg/l		10	0.311		0.47	<0.1
<b>Major Cations, Dissolved</b>							
Calcium	mg/l			139		181	202
Iron	mg/l			<0.1		<0.1	<0.1
Magnesium	mg/l			69.3		105	93
Potassium	mg/l			7.4		8.57	3.29
Sodium	mg/l			168		271	181
<b>BTEX</b>							
Benzene	mg/l	0.005		<0.0005		<0.0005	<0.0005
Toluene	mg/l	0.56		<0.001		<0.001	<0.001
Ethylbenzene	mg/l	0.7		<0.0005		<0.0005	<0.0005
Xylenes, Total	mg/l	1.4		<0.0015		<0.0015	<0.0015
<b>Dissolved Gases</b>							
Methane	mg/l			0.0132		0.00855	J
Ethane	mg/l			<0.013		<0.013	<0.013
Ethene	mg/l			<0.013		<0.013	<0.013
<b>Total Petroleum Hydrocarbons (TPH)</b>							
TPH (GC/FID) High Fraction	mg/l			<0.1		0.137	J
TPH (GC/FID) Low Fraction	mg/l			0.858		0.34	<1

**Notes:****Exceedance**

J = estimated concentration

mg/L = milligrams per liter

1 - Colorado Department of Public Health &amp; Environment, Groundwater Organic Chemical Standards, Table A (CDPHE, 2016)

2 - Colorado Department of Public Health &amp; Environment, Domestic Water Supply - Human Health Standards, Table 1 (CDPHE, 2016)



**APPENDIX A**  
**SOIL BORING LOGS**

### LOG OF SOIL BORING

PROJECT NAME: Country Club Reserve - P&A Well	SOIL BORING ID: SB-1 (MW-1)
PROJECT NUMBER: 241300.0001.0000	LOCATION: West of P&A well by ~150 feet
LOGGED BY: Eric Emerson	SHEET 1 OF
PROJECT LOCATION: North Fort Collins Revitalization	DATE STARTED: 7-5-18
DRILLED BY: Penington	DRILLER NAME: Travis
	DATE COMPLETED: 7-5-18

NO.	TYPE	%	BLOWS	PID	DEPTH	VISUAL CLASSIFICATION AND OBSERVATIONS	COMMENT
					2.5	<p>Composite</p> <p>Well sorted sand, fine, some medium and silt, yellowish brown, organic material, dense, dry to moist, No HC odor or staining</p>	Hand agar to check for utilities abandoned irrigation
					5.0	<p>Well sorted fine sand, trace medium, some silt, yellowish brown, medium dense, moist, No HC odor or staining</p>	Bentonite chips Blank
					7.5	SAA, No HC odor or staining	
					10.0	No Recovery	
					12.5		
					15.0	<p>Well sorted, <del>fine</del> fine sand, SAA except increased density, very dense</p>	
					17.5	No Recovery	
					20.0		

DRILLING METHOD Direct Push
DRILL RIG Geoprobe F822DT
BORING DIAMETER 3 in (actual 3.25)

WATER LEVEL OBSERVATIONS			
FIRST OCCURRENCE:			
DATE	TIME	DEPTH TO WATER	DEPTH TO BOTTOM



# LOG OF SOIL BORING

SHEET 2 OF

PROJECT NAME: Country Club Reserve - P&A Well

SOIL BORING ID: SB-1 (MW-1)

NO.	TYPE	%	BLOWS	PID	DEPTH	VISUAL CLASSIFICATION AND OBSERVATIONS	COMMENT
				Ø.Ø	22.5	Well sorted fine sand, some medium, trace coarse and silt, light yellowish brown, dense, moist, No HC odor or staining	Sand 10/20
	NR	30" of 60"				No Recovery	
				Ø.Ø	25.0	Well sorted fine sand, some medium and silt, trace coarse (not enough for partly sorted), yellowish brown, loose, moist, No HC odor or staining	Sand 10/20
	NR	40" of 60"					
					30.0	Well sorted, fine sand, trace coarse, some medium and silt, loose, very moist, light yellowish brown, No HC odor or staining	Collapsed
					32.5	<del>contact</del> weathered shale, light olive grey brown, very dense	
						Refusal TD during sampling	
					35.0	Construction TD = 29.5 feet (32.87 w/ Riser)	Total Depth Borehole (3" bore got little further)
					37.5	Sand - 29.5 feet - 18.5 feet	
						Screen 29.5 - 19.5 feet	
						Bentonite - 18.5 - 0.5 feet	
					40.0		
					42.5		
					45.0		

SIGNED

DATE

CHECKED

DATE



### LOG OF SOIL BORING

PROJECT NAME: Country Club Reserve - P&A Well	SOIL BORING ID: <u>SB-2 (CMW-2)</u>	
PROJECT NUMBER: 241300.0001.0000	LOCATION: <u>North of P&amp;A well ~150 feet</u>	SHEET 1 OF 2
LOGGED BY: Eric Emerson		SURFACE ELEV.: <u>    </u>
PROJECT LOCATION: North Fort Collins Revitalization	N: <u>    </u> E: <u>    </u>	DATE STARTED: <u>7-5-18</u>
DRILLED BY: <u>Rerington</u>	DRILLER NAME: <u>Travis</u>	DATE COMPLETED: <u>    </u>

NO.	TYPE	%	BLOWS	PID	DEPTH	VISUAL CLASSIFICATION AND OBSERVATIONS	COMMENT
		NA		0.0		well sorted fine sand, some medium and silt, yellowish brown, loose, dry → moist, No HC odor or stain, roots	Hand auger to check for utilities
		16' of 32'		0.0	2.5	well sorted fine sand, yellowish brown, loose moist, No HC or odor or staining	
	NR					No Recovery	
		32' of 60"		0.1	5.0	SAA, dense, No HC or odor or staining	
	NR					No Recovery	
		6' of 60"		0.2	10.0	SAA, dense, No HC odor or staining except brown, loses yellow tint	← end of recover
	NR					No Recovery	
		46' of 60"		1.0	15.0	well sorted sand, fine, some silt, trace medium light yellowish brown, roots, loose to medium dense, No HC odor or staining, moist	Sample SB-2-16 1550 7-5-18 (4)
	NR					No Recovery	
					20.0		

DRILLING METHOD <u>Direct Push</u>
DRILL RIG <u>Geopac 7822DT</u>
BORING DIAMETER <u>3 in (actual 3.25)</u>

WATER LEVEL OBSERVATIONS			
FIRST OCCURRENCE:			
DATE	TIME	DEPTH TO WATER	DEPTH TO BOTTOM



# LOG OF SOIL BORING

SHEET 2 OF 2

PROJECT NAME: Country Club Reserve - P&A Well SOIL BORING ID: SB-2 (MW-2)

NO.	TYPE	%	BLOWS	PID	DEPTH	VISUAL CLASSIFICATION AND OBSERVATIONS	COMMENT
		35% of 60%		88	22.5	<del>Saturated entire sample</del> well sorted fine sand, some medium coarse silt, trace coarse, loose, saturated, No HC odor or staining	No visible contact for water zone
	NR				25.0	No Recovery	TD of well
	NR				27.5	Sluff, dry, rig hit refusal at approx. 27 feet Total Borehole depth	Could not get to same depth with 3" core barrel
					30.0		Construction Details Slot - 0.015 in Sand - 23 - 12.5
					32.5		
					35.0	BTOC 26.80	TV - 23.2 Bentonite - 12.5 - 0.5
					37.5		Screen Interval 23.2 - 13.2
					40.0		
					42.5		
					45.0		

SIGNED \_\_\_\_\_ DATE \_\_\_\_\_

CHECKED \_\_\_\_\_ DATE \_\_\_\_\_



### LOG OF SOIL BORING

PROJECT NAME: Country Club Reserve - P&A Well	SOIL BORING ID: SB-3 (mw-3)	
PROJECT NUMBER: 241300.0001.0000	LOCATION: East of P&A well by ~150 feet	SHEET 1 OF
LOGGED BY: Eric Emerson		SURFACE ELEV.:
PROJECT LOCATION: North Fort Collins Revitalization	N: E:	DATE STARTED: 7-6-18
DRILLED BY: Penington	DRILLER NAME: Travis Stolz	DATE COMPLETED:

NO.	TYPE	%	BLOWS	PID	DEPTH	VISUAL CLASSIFICATION AND OBSERVATIONS	COMMENT
					0.0	Composite Well sorted fine sand, some silt and medium sand, roots, yellowish brown, dense, moist, NO HC odor or staining	Head Auger
			15' 30'	0.1	2.5	SAA, <del>no</del> NO HC odor or staining	
			48' 60'	0.1	5.0	Well sorted fine sand, some silt, trace medium sand, from dark yellowish brown to light yellowish brown, medium dense, moist, NO HC odor or staining	
			24' 60'	0.2	7.5		
			12' 60'	0.4	10.0	Well sorted fine sand, some silt and medium sand, dark yellowish brown, dense, moist, NO HC odor or staining	
					12.5		
					15.0	Well sorted fine sand SAA grading, color, density, moisture, NO HC odor or staining	Sample SB-3-15 7-6-18 0860
					17.5		
					20.0		

DRILLING METHOD Direct Push
DRILL RIG Geoprobe 7820T
BORING DIAMETER 3 in (7.25 actual)

WATER LEVEL OBSERVATIONS			
FIRST OCCURRENCE: During construction			
DATE	TIME	DEPTH TO WATER	DEPTH TO BOTTOM
7-6-18	0830	24.3 rising	70.2 (40' Reser)
7-6-18	1400	25.16	33.0

Td  
BTL  
finish



# LOG OF SOIL BORING

SHEET 2 OF 2

PROJECT NAME: Country Club Reserve - P&A Well      SOIL BORING ID: 37-3 (MW-3)

NO.	TYPE	%	BLOWS	PID	DEPTH	VISUAL CLASSIFICATION AND OBSERVATIONS	COMMENT
		18% out 60"		NA	22.5	[Saturated] well sorted fine sand, some fines, trace medium sand, yellowish brown, loose, saturated no HC odor or staining, <del>some</del> plasticity	
		34% out 60"		NA	25.0 27.5	[Saturated] well sorted fine sand, decreased fines ( <del>trace</del> ), plyable, very pale brown, loose to very loose saturated, no HC odor or staining, little plasticity	
		13" for 13"		NA	30.0	weathered shale and medium sand (broken shale and silt)	TD well collapse
					32.5	Refusal	
					35.0	Construction Details TD = ~29.5 Abgs      BTAC 29.00	
						Screen - 29.5 - 19.5 feet	
						Sand - 29.5 - 17.5 feet	
					37.5	Perlite - 17.5 - 0.5 feet	
						1 in OD PVC well	
					40.0		
					42.5		
					45.0		

SIGNED \_\_\_\_\_ DATE \_\_\_\_\_

CHECKED \_\_\_\_\_ DATE \_\_\_\_\_



### LOG OF SOIL BORING

PROJECT NAME: Country Club Reserve - P&A Well	SOIL BORING ID: <u>SB-4 (MW-4)</u>	
PROJECT NUMBER: 241300.0001.0000	LOCATION: <u>South of P&amp;A well by 150 feet</u>	SHEET 1 OF 2
LOGGED BY: Eric Emerson		SURFACE ELEV.: <u>      </u>
PROJECT LOCATION: North Fort Collins Revitalization	N: <u>      </u> E: <u>      </u>	DATE STARTED: <u>7-6-18</u>
DRILLED BY: <u>Remington</u>	DRILLER NAME: <u>Travis Stolz</u>	DATE COMPLETED: <u>      </u>

NO.	TYPE	%	BLOWS	PID	DEPTH	VISUAL CLASSIFICATION AND OBSERVATIONS	COMMENT
					0.0	well sorted fine sand, some silt and medium sand, yellowish brown, medium dense, moist, No HC odor or staining	Hand Auger
					2.5		
					5.0	well sorted fine sand, some silt, yellowish brown dense, moist, No HC odor or staining	
					7.5	well sorted fine sand, trace silt and medium sand, yellowish brown, medium dense, moist, No HC odor or staining	Sample MS/MSD 7-6-18 @ 0930
					10.0	well sorted fine sand, some silt and medium sand, dark yellowish brown, dense, moist, No HC odor or staining	
					12.5		
					15.0	Shoe only, no recovery, re try well sorted fine sand, with silt, trace medium sand, pale brown, loose, very moist, some plasticity	Sample SB-4-20 @ 0940 7-6-18
					17.5	color change pale brown to light olive brown, well sorted fine sand, trace fines and medium sand	
					20.0		

DRILLING METHOD <u>Direct Push</u>
DRILL RIG <u>Geoprobe 78220T</u>
BORING DIAMETER <u>3 in (actual 3.25 in)</u>

WATER LEVEL OBSERVATIONS			
FIRST OCCURRENCE:			
DATE	TIME	DEPTH TO WATER	DEPTH TO BOTTOM





<sup>correct</sup>  
**LOG OF SOIL BORING**

SHEET 2 OF 2

PROJECT NAME: Country Club Reserve - P&A Well SOIL BORING ID: SB-4 (RW-4)

NO.	TYPE	%	BLOWS	PID	DEPTH	VISUAL CLASSIFICATION AND OBSERVATIONS	COMMENT
		50' at 60"		Øφ		well sorted fine sand, with silt, trace medium sand, pale brown, loose, very moist some plasticity	Sample SB-4-20 @ 0940
					22.5	Color change pale brown to light olive brown, well sorted fine sand, trace fines and medium sand	
		4' at 60"		Øφ		well sorted fine sand, some silt, trace medium sand, light olive brown to olive yellow, moist, medium dense, No HC or staining	Borehole obstruction or barrel refusal for sample description of approximate lithology
					25.0	Total drilled to ~27 feet, refusal (but no indication of weathered shale)	
					27.5	<u>Construction Details</u> TD - 22.5 feet (3in couldn't reach 2in depth) Screen interval - 22.5ft - Sand - 20 - Bentonite	
					30.0	<u>Step-Out Details (Auger Run)</u> Drilled to 30 feet, reamed	
					32.5	Well TD @ 23.5 (collapse from 30-23)	PITOC 26.85
					35.0	Screen interval 23.5-13.5 feet by S	
					37.5	Sand - 23-12.5 feet by S	
					40.0	Bentonite 12.5 - 0.5 feet	
					42.5		
					45.0		

SIGNED \_\_\_\_\_ DATE \_\_\_\_\_ CHECKED \_\_\_\_\_ DATE \_\_\_\_\_

**APPENDIX B**  
**WATER LEVEL GAUGING FORMS**



**APPENDIX C**  
**GROUND WATER SAMPLING FORMS**



### WATER SAMPLE LOG

PROJECT NAME: FTC Braunfelds-COR PREPARED: \_\_\_\_\_ CHECKED: \_\_\_\_\_  
 PROJECT NUMBER: 241300.0001 BY: MP DATE: 8/16/18 BY: \_\_\_\_\_ DATE: \_\_\_\_\_

SAMPLE ID: MW-01 WELL DIAMETER:  2"  4"  6"  OTHER 1"  
 WELL MATERIAL:  PVC  SS  IRON  GALVANIZED STEEL  OTHER \_\_\_\_\_  
 SAMPLE TYPE:  GW  WW  SW  DI  LEACHATE  OTHER \_\_\_\_\_

<b>PURGING</b>	TIME: <u>17:00</u>	DATE: <u>8/16/18</u>	<b>SAMPLE</b>	TIME: <u>17:30</u>	DATE: <u>8/16/18</u>
PURGE METHOD: <input type="checkbox"/> PUMP <input checked="" type="checkbox"/> BAILER	PH: _____ SU		CONDUCTIVITY: _____ umhos/cm		
DEPTH TO WATER: <u>37.08</u> T/ PVC	ORP: _____ mV		DO: _____ mg/L		
DEPTH TO BOTTOM: _____ T/ PVC	TURBIDITY: _____ NTU		<input type="checkbox"/> NONE <input type="checkbox"/> SLIGHT <input type="checkbox"/> MODERATE <input checked="" type="checkbox"/> VERY		
WELL VOLUME: _____ LITERS <input type="checkbox"/> GALLONS	TEMPERATURE: _____ °C		OTHER: _____		
VOLUME REMOVED: _____ LITERS <input type="checkbox"/> GALLONS	COLOR: _____		ODOR: <u>none</u>		
COLOR: _____	ODOR: <u>none</u>		FILTRATE (0.45 um) <input checked="" type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
TURBIDITY: <input checked="" type="checkbox"/> NONE <input type="checkbox"/> SLIGHT <input type="checkbox"/> MODERATE <input type="checkbox"/> VERY		FILTRATE COLOR: _____		FILTRATE ODOR: _____	
DISPOSAL METHOD: <input checked="" type="checkbox"/> GROUND <input type="checkbox"/> DRUM <input type="checkbox"/> OTHER		QC SAMPLE: <input type="checkbox"/> MS/MSD <input type="checkbox"/> DUP-		COMMENTS: _____	

TIME	PURGE RATE (ML/MIN)	PH (SU)	CONDUCTIVITY (umhos/cm)	ORP (mV)	D.O. (mg/L)	TURBIDITY (NTU)	TEMPERATURE (°C)	WATER LEVEL (FEET)	CUMULATIVE PURGE VOLUME (GAL OR L)
17:00	-	8.34	1367	-126.5	3.08	MM	18.19	37.25	INITIAL
17:10	-	8.25	1279	-142.3	2.10	↓	15.84	37.70	
17:20	-	8.30	1170	-129.4	1.70	↓	14.83	37.88	

NOTE: STABILIZATION TEST IS COMPLETE WHEN 3 SUCCESSIVE READINGS ARE WITHIN THE FOLLOWING LIMITS:

pH: +/- 10% COND.: +/- 10% ORP: +/- 10% D.O.: +/- 10% TURB: +/- 10% or <= 5 TEMP.: +/- 0.5°C

BOTTLES FILLED		PRESERVATIVE CODES A - NONE B - HNO3 C - H2SO4 D - NaOH E - HCL F - _____												
NUMBER	SIZE	TYPE	PRESERVATIVE	FILTERED	NUMBER	SIZE	TYPE	PRESERVATIVE	FILTERED	NUMBER	SIZE	TYPE	PRESERVATIVE	FILTERED
3	250	HDPE	A	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N										
7	40	Amber	E	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N										
				<input type="checkbox"/> Y <input type="checkbox"/> N										
				<input type="checkbox"/> Y <input type="checkbox"/> N										
				<input type="checkbox"/> Y <input type="checkbox"/> N										
				<input type="checkbox"/> Y <input type="checkbox"/> N										

SHIPPING METHOD: \_\_\_\_\_ DATE SHIPPED: \_\_\_\_\_ AIRBILL NUMBER: \_\_\_\_\_  
 NUMBER: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_ DATE SIGNED: \_\_\_\_\_



# WATER SAMPLE LOG

PROJECT NAME: <u>FTC Brownfields - CCR</u>	PREPARED	CHECKED
PROJECT NUMBER: <u>241300.0001</u>	BY: <u>EMP</u> DATE: <u>8/16/18</u>	BY: _____ DATE: _____

SAMPLE ID: <u>MW-02</u>	WELL DIAMETER: <input type="checkbox"/> 2" <input type="checkbox"/> 4" <input type="checkbox"/> 6" <input type="checkbox"/> OTHER <u>1"</u>
WELL MATERIAL: <input checked="" type="checkbox"/> PVC <input type="checkbox"/> SS <input type="checkbox"/> IRON <input type="checkbox"/> GALVANIZED STEEL <input type="checkbox"/> OTHER	
SAMPLE TYPE: <input checked="" type="checkbox"/> GW <input type="checkbox"/> WW <input type="checkbox"/> SW <input type="checkbox"/> DI <input type="checkbox"/> LEACHATE <input type="checkbox"/> OTHER	

PURGING	TIME: <u>12:25</u>	DATE: <u>8/16/18</u>	SAMPLE	TIME: <u>13:15</u>	DATE: <u>8/16/18</u>
PURGE METHOD: <input type="checkbox"/> PUMP <input checked="" type="checkbox"/> BAILER	PH: _____ SU	CONDUCTIVITY: _____ umhos/cm	ORP: _____ mV	DO: _____ mg/L	
DEPTH TO WATER: <u>25.41</u> T/ PVC	TURBIDITY: _____ NTU				
DEPTH TO BOTTOM: _____ T/ PVC	<input checked="" type="checkbox"/> NONE <input type="checkbox"/> SLIGHT <input type="checkbox"/> MODERATE <input type="checkbox"/> VERY				
WELL VOLUME: _____ LITERS <input type="checkbox"/> GALLONS	TEMPERATURE: _____ °C	OTHER: _____			
VOLUME REMOVED: _____ LITERS <input type="checkbox"/> GALLONS	COLOR: <u>clear</u>	ODOR: <u>none</u>			
COLOR: <u>clear</u>	ODOR: <u>none</u>	FILTRATE (0.45 um) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
TURBIDITY: <input checked="" type="checkbox"/> NONE <input type="checkbox"/> SLIGHT <input type="checkbox"/> MODERATE <input type="checkbox"/> VERY	FILTRATE COLOR: _____	FILTRATE ODOR: _____			
DISPOSAL METHOD: <input checked="" type="checkbox"/> GROUND <input type="checkbox"/> DRUM <input type="checkbox"/> OTHER	QC SAMPLE: <input type="checkbox"/> MS/MSD <input type="checkbox"/> DUP-	COMMENTS: _____			

TIME	PURGE RATE (ML/MIN)	PH (SU)	CONDUCTIVITY (umhos/cm)	ORP (mV)	D.O. (mg/L)	TURBIDITY (NTU)	TEMPERATURE (°C)	WATER LEVEL (FEET)	CUMULATIVE PURGE VOLUME (GAL OR L)
12:25	—	8.03	1874	385.0	4.32	NM	15.68	25.53	INITIAL
12:40	—	7.74	1903	502.1	2.74	NM	17.32	25.64	
12:55	—	8.26	1692	523.7	2.06	NM	14.09	25.93	

**NOTE: STABILIZATION TEST IS COMPLETE WHEN 3 SUCCESSIVE READINGS ARE WITHIN THE FOLLOWING LIMITS:**

pH: +/- 10%    COND.: +/- 10%    ORP: +/- 10%    D.O.: +/- 10%    TURB: +/- 10%    or <= 5    TEMP.: +/- 0.5°C

BOTTLES FILLED		PRESERVATIVE CODES A - NONE    B - HNO3    C - H2SO4    D - NaOH    E - HCL    F - _____									
NUMBER	SIZE	TYPE	PRESERVATIVE	FILTERED	NUMBER	SIZE	TYPE	PRESERVATIVE	FILTERED		
3	250	HDPE	A	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N					<input type="checkbox"/> Y <input type="checkbox"/> N		
7	40	Amber	E	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N					<input type="checkbox"/> Y <input type="checkbox"/> N		
				<input type="checkbox"/> Y <input type="checkbox"/> N					<input type="checkbox"/> Y <input type="checkbox"/> N		
				<input type="checkbox"/> Y <input type="checkbox"/> N					<input type="checkbox"/> Y <input type="checkbox"/> N		
				<input type="checkbox"/> Y <input type="checkbox"/> N					<input type="checkbox"/> Y <input type="checkbox"/> N		
				<input type="checkbox"/> Y <input type="checkbox"/> N					<input type="checkbox"/> Y <input type="checkbox"/> N		

SPRING METHOD: _____	DATE SHIPPED: _____	AIRBILL NUMBER: _____
NUMBER: _____	SIGNATURE: _____	DATE SIGNED: _____



# WATER SAMPLE LOG

PROJECT NAME: FTC Brownfields -CCR PREPARED BY: UP DATE: 8/16/18 CHECKED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

PROJECT NUMBER: 241300.0001

SAMPLE ID: MW-03 WELL DIAMETER:  2"  4"  6"  OTHER 1"

WELL MATERIAL:  PVC  SS  IRON  GALVANIZED STEEL  OTHER

SAMPLE TYPE:  GW  WW  SW  DI  LEACHATE  OTHER

PURGING TIME: 16:05 DATE: 8/16/18 SAMPLE TIME: 16:30 DATE: 8/16/18

PURGE METHOD:  PUMP  BAILER

DEPTH TO WATER: 25.48 T/ PVC PH: \_\_\_\_\_ SU CONDUCTIVITY: \_\_\_\_\_ umhos/cm

DEPTH TO BOTTOM: \_\_\_\_\_ T/ PVC ORP: \_\_\_\_\_ mV DO: \_\_\_\_\_ mg/L

WELL VOLUME: \_\_\_\_\_ LITERS  GALLONS TURBIDITY: \_\_\_\_\_ NTU

VOLUME REMOVED: \_\_\_\_\_ LITERS  GALLONS  NONE  SLIGHT  MODERATE  VERY

COLOR: \_\_\_\_\_ ODOR: None TEMPERATURE: \_\_\_\_\_ °C OTHER: \_\_\_\_\_

FILTRATE (0.45 um)  YES  NO

TURBIDITY  NONE  SLIGHT  MODERATE  VERY

DISPOSAL METHOD:  GROUND  DRUM  OTHER

FILTRATE COLOR: \_\_\_\_\_ FILTRATE ODOR: \_\_\_\_\_

QC SAMPLE:  MS/MSD  DUP-

COMMENTS: \_\_\_\_\_

TIME	PURGE RATE (ML/MIN)	PH (SU)	CONDUCTIVITY (umhos/cm)	ORP (mV)	D.O. (mg/L)	TURBIDITY (NTU)	TEMPERATURE (°C)	WATER LEVEL (FEET)	CUMULATIVE PURGE VOLUME (GAL OR L)
16:05	—	8.13	1608	439.8	2.89	—	18.28	25.52	INITIAL
16:15	—	8.20	1368	507.6	3.01	—	13.94	25.72	—
16:25	—	8.83	1392	484.2	2.95	—	14.27	25.77	—

NOTE: STABILIZATION TEST IS COMPLETE WHEN 3 SUCCESSIVE READINGS ARE WITHIN THE FOLLOWING LIMITS:

pH: +/- 10% COND.: +/- 10% ORP: +/- 10% D.O.: +/- 10% TURB: +/- 10% or <= 5 TEMP.: +/- 0.5°C

BOTTLES FILLED		PRESERVATIVE CODES A - NONE B - HNO3 C - H2SO4 D - NaOH E - HCL F - _____							
NUMBER	SIZE	TYPE	PRESERVATIVE	FILTERED	NUMBER	SIZE	TYPE	PRESERVATIVE	FILTERED
3	250	HDPE	A	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N					
7	40	Amber	E	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N					<input type="checkbox"/> Y <input type="checkbox"/> N
				<input type="checkbox"/> Y <input type="checkbox"/> N					<input type="checkbox"/> Y <input type="checkbox"/> N
				<input type="checkbox"/> Y <input type="checkbox"/> N					<input type="checkbox"/> Y <input type="checkbox"/> N
				<input type="checkbox"/> Y <input type="checkbox"/> N					<input type="checkbox"/> Y <input type="checkbox"/> N
				<input type="checkbox"/> Y <input type="checkbox"/> N					<input type="checkbox"/> Y <input type="checkbox"/> N

SHIPPING METHOD: \_\_\_\_\_ DATE SHIPPED: \_\_\_\_\_ AIRBILL NUMBER: \_\_\_\_\_

ER: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_ DATE SIGNED: \_\_\_\_\_



# WATER SAMPLE LOG

PROJECT NAME: <u>FTC Brownfields-CCR</u>	PREPARED	CHECKED
PROJECT NUMBER: <u>241300.0001</u>	BY: <u>MP</u> DATE: <u>8/17/18</u>	BY: _____ DATE: _____

SAMPLE ID: <u>MW-04</u>	WELL DIAMETER: <input type="checkbox"/> 2" <input type="checkbox"/> 4" <input type="checkbox"/> 6" <input checked="" type="checkbox"/> OTHER <u>1"</u>
WELL MATERIAL: <input checked="" type="checkbox"/> PVC <input type="checkbox"/> SS <input type="checkbox"/> IRON <input type="checkbox"/> GALVANIZED STEEL <input type="checkbox"/> OTHER	
SAMPLE TYPE: <input checked="" type="checkbox"/> GW <input type="checkbox"/> WW <input type="checkbox"/> SW <input type="checkbox"/> DI <input type="checkbox"/> LEACHATE <input type="checkbox"/> OTHER	

PURGING	TIME: <u>09:30</u>	DATE: <u>8/17/18</u>	SAMPLE	TIME: <u>09:55</u>	DATE: <u>8/17/18</u>
PURGE METHOD: <input type="checkbox"/> PUMP <input checked="" type="checkbox"/> BAILER	PH: _____ SU CONDUCTIVITY: _____ umhos/cm		ORP: _____ mV DO: _____ mg/L		
DEPTH TO WATER: <u>28.26</u> T/ PVC	TURBIDITY: _____ NTU		<input type="checkbox"/> NONE <input type="checkbox"/> SLIGHT <input checked="" type="checkbox"/> MODERATE <input type="checkbox"/> VERY		
DEPTH TO BOTTOM: _____ T/ PVC	WELL VOLUME: _____ <input type="checkbox"/> LITERS <input type="checkbox"/> GALLONS		TEMPERATURE: _____ °C OTHER: _____		
VOLUME REMOVED: _____ <input type="checkbox"/> LITERS <input type="checkbox"/> GALLONS	COLOR: _____		ODOR: <u>none</u>		
COLOR: _____	ODOR: <u>none</u>		FILTRATE (0.45 um) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
TURBIDITY: <input type="checkbox"/> NONE <input checked="" type="checkbox"/> SLIGHT <input type="checkbox"/> MODERATE <input type="checkbox"/> VERY		FILTRATE COLOR: _____		FILTRATE ODOR: _____	
DISPOSAL METHOD: <input checked="" type="checkbox"/> GROUND <input type="checkbox"/> DRUM <input type="checkbox"/> OTHER		QC SAMPLE: <input type="checkbox"/> MS/MSD <input type="checkbox"/> DUP- _____			
COMMENTS: _____					

TIME	PURGE RATE (ML/MIN)	PH (SU)	CONDUCTIVITY (umhos/cm)	ORP (mV)	D.O. (mg/L)	TURBIDITY (NTU)	TEMPERATURE (°C)	WATER LEVEL (FEET)	CUMULATIVE PURGE VOLUME (GAL OR L)
09:30	—	7.18	1542	-47.3	4.36	—	15.99	28.33	INITIAL
09:40	—	7.36	1150	29.7	4.02	—	14.94	28.42	—
09:50	—	7.63	1134	-20.8	3.40	—	14.19	28.47	—

**NOTE: STABILIZATION TEST IS COMPLETE WHEN 3 SUCCESSIVE READINGS ARE WITHIN THE FOLLOWING LIMITS:**

PH: +/- 10%    COND.: +/- 10%    ORP: +/- 10%    D.O.: +/- 10%    TURB: +/- 10%    or <= 5    TEMP.: +/- 0.5°C

BOTTLES FILLED		PRESERVATIVE CODES							
NUMBER	SIZE	TYPE	PRESERVATIVE	FILTERED	NUMBER	SIZE	TYPE	PRESERVATIVE	FILTERED
3	250	HDPE	A	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N					<input type="checkbox"/> Y <input type="checkbox"/> N
7	40	Amber	E	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N					<input type="checkbox"/> Y <input type="checkbox"/> N
				<input type="checkbox"/> Y <input type="checkbox"/> N					<input type="checkbox"/> Y <input type="checkbox"/> N
				<input type="checkbox"/> Y <input type="checkbox"/> N					<input type="checkbox"/> Y <input type="checkbox"/> N
				<input type="checkbox"/> Y <input type="checkbox"/> N					<input type="checkbox"/> Y <input type="checkbox"/> N

SHIPPING METHOD: _____	DATE SHIPPED: _____	AIRBILL NUMBER: _____
NUMBER: _____	SIGNATURE: _____	DATE SIGNED: _____



**APPENDIX D**  
**LABORATORY ANALYTICAL RESULTS**

# ANALYTICAL REPORT

July 25, 2018

## TRC Solutions - Suncor

Sample Delivery Group: L1007912  
Samples Received: 07/10/2018  
Project Number:  
Description: FTC CCR

Report To: Jason Jayroe  
131 E. Lincoln Ave  
Suite 200  
Fort Collins, CO 80524

Entire Report Reviewed By:



Jason Romer  
Project Manager

Results relate only to the items tested or calibrated and are reported as rounded values. This test report shall not be reproduced, except in full, without written approval of the laboratory. Where applicable, sampling conducted by Pace National is performed per guidance provided in laboratory standard operating procedures: 060302, 060303, and 060304.



Item 19.

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# SAMPLE SUMMARY



Item 19.

## SB-1-32 L1007912-01 Solid

Collected by	Collected date/time	Received date/time
Eric Emerson	07/05/18 13:20	07/10/18 08:45

Method	Batch	Dilution	Preparation date/time	Analysis date/time	Analyst
Mercury by Method 7471A	WG1136077	1	07/10/18 20:16	07/11/18 10:55	JDG
Metals (ICP) by Method 6010B	WG1136387	1	07/11/18 18:25	07/12/18 20:21	JDG
Volatile Organic Compounds (GC) by Method 8015/8021	WG1136204	1	07/10/18 16:37	07/11/18 19:40	GLN
Semi-Volatile Organic Compounds (GC) by Method 8015	WG1136500	1	07/12/18 19:58	07/13/18 02:36	TNG

- 1  
Cp
- 2  
Tc
- 3  
Ss
- 4  
Cn
- 5  
Sr
- 6  
Qc
- 7  
Gl
- 8  
Al
- 9  
Sc

## SB-2-16 L1007912-02 Solid

Collected by	Collected date/time	Received date/time
Eric Emerson	07/05/18 15:50	07/10/18 08:45

Method	Batch	Dilution	Preparation date/time	Analysis date/time	Analyst
Mercury by Method 7471A	WG1136077	1	07/10/18 20:16	07/11/18 11:53	JDG
Metals (ICP) by Method 6010B	WG1136387	1	07/11/18 18:25	07/12/18 20:24	JDG
Volatile Organic Compounds (GC) by Method 8015/8021	WG1136204	1	07/10/18 16:37	07/11/18 20:04	GLN
Semi-Volatile Organic Compounds (GC) by Method 8015	WG1136500	1	07/12/18 19:58	07/13/18 03:08	TNG

## SB-3-15 L1007912-03 Solid

Collected by	Collected date/time	Received date/time
Eric Emerson	07/05/18 09:30	07/10/18 08:45

Method	Batch	Dilution	Preparation date/time	Analysis date/time	Analyst
Mercury by Method 7471A	WG1136077	1	07/10/18 20:16	07/11/18 11:55	JDG
Metals (ICP) by Method 6010B	WG1136387	1	07/11/18 18:25	07/12/18 20:27	JDG
Volatile Organic Compounds (GC) by Method 8015/8021	WG1136204	1	07/10/18 16:37	07/11/18 20:27	GLN
Semi-Volatile Organic Compounds (GC) by Method 8015	WG1136500	1	07/12/18 19:58	07/13/18 03:19	TNG

## SB-4-20 L1007912-04 Solid

Collected by	Collected date/time	Received date/time
Eric Emerson	07/05/18 09:40	07/10/18 08:45

Method	Batch	Dilution	Preparation date/time	Analysis date/time	Analyst
Mercury by Method 7471A	WG1136077	1	07/10/18 20:16	07/11/18 11:58	JDG
Metals (ICP) by Method 6010B	WG1136387	1	07/11/18 18:25	07/12/18 20:31	JDG
Volatile Organic Compounds (GC) by Method 8015/8021	WG1136204	1	07/10/18 16:37	07/11/18 20:51	GLN
Semi-Volatile Organic Compounds (GC) by Method 8015	WG1136500	1	07/12/18 19:58	07/13/18 03:30	TNG



Item 19.

All sample aliquots were received at the correct temperature, in the proper containers, with the appropriate preservatives, and within method specified holding times, unless qualified or notated within the report. Where applicable, all MDL (LOD) and RDL (LOQ) values reported for environmental samples have been corrected for the dilution factor used in the analysis. All radiochemical sample results for solids are reported on a dry weight basis with the exception of tritium, carbon-14 and radon, unless wet weight was requested by the client. All Method and Batch Quality Control are within established criteria except where addressed in this case narrative, a non-conformance form or properly qualified within the sample results. By my digital signature below, I affirm to the best of my knowledge, all problems/anomalies observed by the laboratory as having the potential to affect the quality of the data have been identified by the laboratory, and no information or data have been knowingly withheld that would affect the quality of the data.

Jason Romer  
Project Manager

- 1 Cp
- 2 Tc
- 3 Ss
- 4 Cn
- 5 Sr
- 6 Qc
- 7 Gl
- 8 Al
- 9 Sc



C /time: 07/05/18 13:20

L1007912

Item 19.

Mercury by Method 7471A

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/kg		ug/kg	ug/kg		date / time	
Mercury	17.0	J	2.80	20.0	1	07/11/2018 10:55	<a href="#">WG1136077</a>

Metals (ICP) by Method 6010B

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/kg		ug/kg	ug/kg		date / time	
Arsenic	1970	J	650	2000	1	07/12/2018 20:21	<a href="#">WG1136387</a>
Barium	58800		170	500	1	07/12/2018 20:21	<a href="#">WG1136387</a>
Cadmium	U		70.0	500	1	07/12/2018 20:21	<a href="#">WG1136387</a>
Chromium	21200		140	1000	1	07/12/2018 20:21	<a href="#">WG1136387</a>
Lead	5130		190	500	1	07/12/2018 20:21	<a href="#">WG1136387</a>
Selenium	1540	J	740	2000	1	07/12/2018 20:21	<a href="#">WG1136387</a>
Silver	283	J	280	1000	1	07/12/2018 20:21	<a href="#">WG1136387</a>

Volatile Organic Compounds (GC) by Method 8015/8021

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/kg		ug/kg	ug/kg		date / time	
Benzene	0.778		0.120	0.500	1	07/11/2018 19:40	<a href="#">WG1136204</a>
Toluene	0.796	B J	0.150	5.00	1	07/11/2018 19:40	<a href="#">WG1136204</a>
Ethylbenzene	0.125	B J	0.110	0.500	1	07/11/2018 19:40	<a href="#">WG1136204</a>
Total Xylene	U		0.460	1.50	1	07/11/2018 19:40	<a href="#">WG1136204</a>
TPH (GC/FID) Low Fraction	36.0	J	21.7	100	1	07/11/2018 19:40	<a href="#">WG1136204</a>
(S) a,a,a-Trifluorotoluene(FID)	100			77.0-120		07/11/2018 19:40	<a href="#">WG1136204</a>
(S) a,a,a-Trifluorotoluene(PID)	99.1			75.0-128		07/11/2018 19:40	<a href="#">WG1136204</a>

Semi-Volatile Organic Compounds (GC) by Method 8015

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/kg		ug/kg	ug/kg		date / time	
TPH (GC/FID) High Fraction	U		769	4000	1	07/13/2018 02:36	<a href="#">WG1136500</a>
(S) o-Terphenyl	45.5			18.0-148		07/13/2018 02:36	<a href="#">WG1136500</a>

- 1 Cp
- 2 Tc
- 3 Ss
- 4 Cn
- 5 Sr
- 6 Qc
- 7 Gl
- 8 Al
- 9 Sc



C /time: 07/05/18 15:50

L1007912

Item 19.

Mercury by Method 7471A

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/kg		ug/kg	ug/kg		date / time	
Mercury	14.2	J	2.80	20.0	1	07/11/2018 11:53	<a href="#">WG1136077</a>

Metals (ICP) by Method 6010B

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/kg		ug/kg	ug/kg		date / time	
Arsenic	5100		650	2000	1	07/12/2018 20:24	<a href="#">WG1136387</a>
Barium	47500		170	500	1	07/12/2018 20:24	<a href="#">WG1136387</a>
Cadmium	U		70.0	500	1	07/12/2018 20:24	<a href="#">WG1136387</a>
Chromium	12700		140	1000	1	07/12/2018 20:24	<a href="#">WG1136387</a>
Lead	8040		190	500	1	07/12/2018 20:24	<a href="#">WG1136387</a>
Selenium	U		740	2000	1	07/12/2018 20:24	<a href="#">WG1136387</a>
Silver	U		280	1000	1	07/12/2018 20:24	<a href="#">WG1136387</a>

Volatile Organic Compounds (GC) by Method 8015/8021

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/kg		ug/kg	ug/kg		date / time	
Benzene	1.52		0.120	0.500	1	07/11/2018 20:04	<a href="#">WG1136204</a>
Toluene	2.14	B J	0.150	5.00	1	07/11/2018 20:04	<a href="#">WG1136204</a>
Ethylbenzene	0.757	B	0.110	0.500	1	07/11/2018 20:04	<a href="#">WG1136204</a>
Total Xylene	1.64		0.460	1.50	1	07/11/2018 20:04	<a href="#">WG1136204</a>
TPH (GC/FID) Low Fraction	92.7	J	21.7	100	1	07/11/2018 20:04	<a href="#">WG1136204</a>
(S) a,a,a-Trifluorotoluene(FID)	97.9			77.0-120		07/11/2018 20:04	<a href="#">WG1136204</a>
(S) a,a,a-Trifluorotoluene(PID)	97.3			75.0-128		07/11/2018 20:04	<a href="#">WG1136204</a>

Semi-Volatile Organic Compounds (GC) by Method 8015

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/kg		ug/kg	ug/kg		date / time	
TPH (GC/FID) High Fraction	U		769	4000	1	07/13/2018 03:08	<a href="#">WG1136500</a>
(S) o-Terphenyl	43.0			18.0-148		07/13/2018 03:08	<a href="#">WG1136500</a>

- 1 Cp
- 2 Tc
- 3 Ss
- 4 Cn
- 5 Sr
- 6 Qc
- 7 Gl
- 8 Al
- 9 Sc



Item 19.

Mercury by Method 7471A

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/kg		ug/kg	ug/kg		date / time	
Mercury	11.1	J	2.80	20.0	1	07/11/2018 11:55	<a href="#">WG1136077</a>

Metals (ICP) by Method 6010B

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/kg		ug/kg	ug/kg		date / time	
Arsenic	5730		650	2000	1	07/12/2018 20:27	<a href="#">WG1136387</a>
Barium	98000		170	500	1	07/12/2018 20:27	<a href="#">WG1136387</a>
Cadmium	133	J	70.0	500	1	07/12/2018 20:27	<a href="#">WG1136387</a>
Chromium	14700		140	1000	1	07/12/2018 20:27	<a href="#">WG1136387</a>
Lead	9080		190	500	1	07/12/2018 20:27	<a href="#">WG1136387</a>
Selenium	U		740	2000	1	07/12/2018 20:27	<a href="#">WG1136387</a>
Silver	U		280	1000	1	07/12/2018 20:27	<a href="#">WG1136387</a>

Volatile Organic Compounds (GC) by Method 8015/8021

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/kg		ug/kg	ug/kg		date / time	
Benzene	1.35		0.120	0.500	1	07/11/2018 20:27	<a href="#">WG1136204</a>
Toluene	3.03	J	0.150	5.00	1	07/11/2018 20:27	<a href="#">WG1136204</a>
Ethylbenzene	1.02	B	0.110	0.500	1	07/11/2018 20:27	<a href="#">WG1136204</a>
Total Xylene	3.28		0.460	1.50	1	07/11/2018 20:27	<a href="#">WG1136204</a>
TPH (GC/FID) Low Fraction	104		21.7	100	1	07/11/2018 20:27	<a href="#">WG1136204</a>
(S) a,a,a-Trifluorotoluene(FID)	98.2			77.0-120		07/11/2018 20:27	<a href="#">WG1136204</a>
(S) a,a,a-Trifluorotoluene(PID)	97.8			75.0-128		07/11/2018 20:27	<a href="#">WG1136204</a>

Semi-Volatile Organic Compounds (GC) by Method 8015

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/kg		ug/kg	ug/kg		date / time	
TPH (GC/FID) High Fraction	U		769	4000	1	07/13/2018 03:19	<a href="#">WG1136500</a>
(S) o-Terphenyl	50.2			18.0-148		07/13/2018 03:19	<a href="#">WG1136500</a>

- 1 Cp
- 2 Tc
- 3 Ss
- 4 Cn
- 5 Sr
- 6 Qc
- 7 Gl
- 8 Al
- 9 Sc





Item 19.

Mercury by Method 7471A

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/kg		ug/kg	ug/kg		date / time	
Mercury	4.73	J	2.80	20.0	1	07/11/2018 11:58	<a href="#">WG1136077</a>

Metals (ICP) by Method 6010B

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/kg		ug/kg	ug/kg		date / time	
Arsenic	1460	J	650	2000	1	07/12/2018 20:31	<a href="#">WG1136387</a>
Barium	104000		170	500	1	07/12/2018 20:31	<a href="#">WG1136387</a>
Cadmium	U		70.0	500	1	07/12/2018 20:31	<a href="#">WG1136387</a>
Chromium	8050		140	1000	1	07/12/2018 20:31	<a href="#">WG1136387</a>
Lead	4210		190	500	1	07/12/2018 20:31	<a href="#">WG1136387</a>
Selenium	U		740	2000	1	07/12/2018 20:31	<a href="#">WG1136387</a>
Silver	U		280	1000	1	07/12/2018 20:31	<a href="#">WG1136387</a>

Volatile Organic Compounds (GC) by Method 8015/8021

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/kg		ug/kg	ug/kg		date / time	
Benzene	0.186	J	0.120	0.500	1	07/11/2018 20:51	<a href="#">WG1136204</a>
Toluene	0.201	B J	0.150	5.00	1	07/11/2018 20:51	<a href="#">WG1136204</a>
Ethylbenzene	U		0.110	0.500	1	07/11/2018 20:51	<a href="#">WG1136204</a>
Total Xylene	U		0.460	1.50	1	07/11/2018 20:51	<a href="#">WG1136204</a>
TPH (GC/FID) Low Fraction	24.1	J	21.7	100	1	07/11/2018 20:51	<a href="#">WG1136204</a>
(S) a,a,a-Trifluorotoluene(FID)	99.5			77.0-120		07/11/2018 20:51	<a href="#">WG1136204</a>
(S) a,a,a-Trifluorotoluene(PID)	98.5			75.0-128		07/11/2018 20:51	<a href="#">WG1136204</a>

Semi-Volatile Organic Compounds (GC) by Method 8015

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/kg		ug/kg	ug/kg		date / time	
TPH (GC/FID) High Fraction	U		769	4000	1	07/13/2018 03:30	<a href="#">WG1136500</a>
(S) o-Terphenyl	41.6			18.0-148		07/13/2018 03:30	<a href="#">WG1136500</a>

- 1 Cp
- 2 Tc
- 3 Ss
- 4 Cn
- 5 Sr
- 6 Qc
- 7 Gl
- 8 Al
- 9 Sc



Method 7471A

[L1007912-01,02,03,04](#)

Item 19.

Method Blank (MB)

(MB) R3324729-1 07/11/18 10:48

Analyte	MB Result	MB Qualifier	MB MDL	MB RDL
Mercury	U		2.80	20.0

1 Cp

2 Tc

3 Ss

4 Cn

5 Sr

6 Qc

Laboratory Control Sample (LCS) • Laboratory Control Sample Duplicate (LCSD)

(LCS) R3324729-2 07/11/18 10:50 • (LCSD) R3324729-3 07/11/18 10:53

Analyte	Spike Amount	LCS Result	LCSD Result	LCS Rec.	LCSD Rec.	Rec. Limits	LCS Qualifier	LCSD Qualifier	RPD	RPD Limits
Mercury	300	269	269	89.7	89.5	80.0-120			0.200	20

L1007912-01 Original Sample (OS) • Matrix Spike (MS) • Matrix Spike Duplicate (MSD)

(OS) L1007912-01 07/11/18 10:55 • (MS) R3324729-4 07/11/18 10:58 • (MSD) R3324729-5 07/11/18 11:08

Analyte	Spike Amount	Original Result	MS Result	MSD Result	MS Rec.	MSD Rec.	Dilution	Rec. Limits	MS Qualifier	MSD Qualifier	RPD	RPD Limits
Mercury	300	17.0	277	266	86.7	83.0	1	75.0-125			4.01	20

7 Gl

8 Al

9 Sc



M Item 19. by Method 6010B

[L1007912-01,02,03,04](#)

Method Blank (MB)

(MB) R3325239-1 07/12/18 19:28

Analyte	MB Result	MB Qualifier	MB MDL	MB RDL
	ug/kg		ug/kg	ug/kg
Arsenic	U		650	2000
Barium	U		170	500
Cadmium	U		70.0	500
Chromium	U		140	1000
Lead	217	<u>J</u>	190	500
Selenium	U		740	2000
Silver	U		280	1000

<sup>1</sup> Cp

<sup>2</sup> Tc

<sup>3</sup> Ss

<sup>4</sup> Cn

<sup>5</sup> Sr

<sup>6</sup> Qc

<sup>7</sup> Gl

<sup>8</sup> Al

<sup>9</sup> Sc

Laboratory Control Sample (LCS) • Laboratory Control Sample Duplicate (LCSD)

(LCS) R3325239-2 07/12/18 19:31 • (LCSD) R3325239-3 07/12/18 19:34

Analyte	Spike Amount	LCS Result	LCSD Result	LCS Rec.	LCSD Rec.	Rec. Limits	LCS Qualifier	LCSD Qualifier	RPD	RPD Limits
	ug/kg	ug/kg	ug/kg	%	%	%			%	%
Arsenic	100000	94700	95900	94.7	95.9	80.0-120			1.19	20
Barium	100000	103000	104000	103	104	80.0-120			0.883	20
Cadmium	100000	97700	98700	97.7	98.7	80.0-120			1.03	20
Chromium	100000	99800	100000	99.8	100	80.0-120			0.394	20
Lead	100000	98000	99000	98.0	99.0	80.0-120			0.997	20
Selenium	100000	93700	95400	93.7	95.4	80.0-120			1.77	20
Silver	20000	19000	19000	95.0	95.2	80.0-120			0.219	20

L1007892-01 Original Sample (OS) • Matrix Spike (MS) • Matrix Spike Duplicate (MSD)

(OS) L1007892-01 07/12/18 19:37 • (MS) R3325239-6 07/12/18 19:47 • (MSD) R3325239-7 07/12/18 19:51

Analyte	Spike Amount (dry)	Original Result (dry)	MS Result (dry)	MSD Result (dry)	MS Rec.	MSD Rec.	Dilution	Rec. Limits	MS Qualifier	MSD Qualifier	RPD	RPD Limits
	ug/kg	ug/kg	ug/kg	ug/kg	%	%		%			%	%
Arsenic	146000	55400	169000	156000	77.6	69.1	1	75.0-125		<u>J6</u>	7.65	20
Barium	146000	147000	290000	263000	98.3	79.6	1	75.0-125			9.83	20
Cadmium	146000	421	146000	143000	100	97.6	1	75.0-125			2.43	20
Chromium	146000	24300	161000	155000	94.1	89.4	1	75.0-125			4.32	20
Lead	146000	16800	161000	153000	98.6	93.4	1	75.0-125			4.90	20
Selenium	146000	U	138000	134000	94.9	91.9	1	75.0-125			3.21	20
Silver	29200	U	28800	28100	98.8	96.4	1	75.0-125			2.48	20



V Organic Compounds (GC) by Method 8015/8021

[L1007912-01,02,03,04](#)

Item 19.

Method Blank (MB)

(MB) R3325027-5 07/11/18 15:22

Analyte	MB Result	MB Qualifier	MB MDL	MB RDL
	ug/kg		ug/kg	ug/kg
Benzene	U		0.120	0.500
Toluene	0.253	J	0.150	5.00
Ethylbenzene	0.111	J	0.110	0.500
Total Xylene	U		0.460	1.50
TPH (GC/FID) Low Fraction	U		21.7	100
<sup>(S)</sup> a,a,a-Trifluorotoluene(FID)	101			77.0-120
<sup>(S)</sup> a,a,a-Trifluorotoluene(PID)	100			75.0-128

1 Cp

2 Tc

3 Ss

4 Cn

5 Sr

6 Qc

Laboratory Control Sample (LCS) • Laboratory Control Sample Duplicate (LCSD)

(LCS) R3325027-1 07/11/18 13:22 • (LCSD) R3325027-2 07/11/18 13:46

Analyte	Spike Amount	LCS Result	LCSD Result	LCS Rec.	LCSD Rec.	Rec. Limits	LCS Qualifier	LCSD Qualifier	RPD	RPD Limits
	ug/kg	ug/kg	ug/kg	%	%	%			%	%
Benzene	50.0	54.0	54.2	108	108	71.0-121			0.477	20
Toluene	50.0	51.9	51.5	104	103	72.0-120			0.898	20
Ethylbenzene	50.0	53.4	53.3	107	107	76.0-121			0.137	20
Total Xylene	150	168	166	112	111	75.0-124			0.779	20
<sup>(S)</sup> a,a,a-Trifluorotoluene(FID)				100	101	77.0-120				
<sup>(S)</sup> a,a,a-Trifluorotoluene(PID)				99.8	99.4	75.0-128				

7 Gl

8 Al

9 Sc

Laboratory Control Sample (LCS) • Laboratory Control Sample Duplicate (LCSD)

(LCS) R3325027-3 07/11/18 14:10 • (LCSD) R3325027-4 07/11/18 14:34

Analyte	Spike Amount	LCS Result	LCSD Result	LCS Rec.	LCSD Rec.	Rec. Limits	LCS Qualifier	LCSD Qualifier	RPD	RPD Limits
	ug/kg	ug/kg	ug/kg	%	%	%			%	%
TPH (GC/FID) Low Fraction	5500	6090	6060	111	110	70.0-136			0.628	20
<sup>(S)</sup> a,a,a-Trifluorotoluene(FID)				107	107	77.0-120				
<sup>(S)</sup> a,a,a-Trifluorotoluene(PID)				109	110	75.0-128				



S Organic Compounds (GC) by Method 8015

[L1007912-01,02,03,04](#)

Item 19.

Method Blank (MB)

(MB) R3325293-1 07/13/18 01:31

Analyte	MB Result	MB Qualifier	MB MDL	MB RDL
TPH (GC/FID) High Fraction	U		769	4000
(S) o-Terphenyl	65.3			18.0-148

Laboratory Control Sample (LCS) • Laboratory Control Sample Duplicate (LCSD)

(LCS) R3325293-2 07/13/18 01:42 • (LCSD) R3325293-3 07/13/18 01:53

Analyte	Spike Amount	LCS Result	LCSD Result	LCS Rec.	LCSD Rec.	Rec. Limits	LCS Qualifier	LCSD Qualifier	RPD	RPD Limits
TPH (GC/FID) High Fraction	50000	35700	36900	71.3	73.8	50.0-150			3.43	20
(S) o-Terphenyl				89.8	92.0	18.0-148				

L1007912-01 Original Sample (OS) • Matrix Spike (MS) • Matrix Spike Duplicate (MSD)

(OS) L1007912-01 07/13/18 02:36 • (MS) R3325293-4 07/13/18 02:47 • (MSD) R3325293-5 07/13/18 02:57

Analyte	Spike Amount	Original Result	MS Result	MSD Result	MS Rec.	MSD Rec.	Dilution	Rec. Limits	MS Qualifier	MSD Qualifier	RPD	RPD Limits
TPH (GC/FID) High Fraction	50000	U	34800	34100	69.6	68.2	1	50.0-150			1.94	20
(S) o-Terphenyl					84.7	83.6		18.0-148				

1 Cp

2 Tc

3 Ss

4 Cn

5 Sr

6 Qc

7 Gl

8 Al

9 Sc



Item 19.

Guide to Reading and Understanding Your Laboratory Report

The information below is designed to better explain the various terms used in your report of analytical results from the Laboratory. This is not intended as a comprehensive explanation, and if you have additional questions please contact your project representative.

Abbreviations and Definitions

(dry)	Results are reported based on the dry weight of the sample. [this will only be present on a dry report basis for soils].
MDL	Method Detection Limit.
RDL	Reported Detection Limit.
Rec.	Recovery.
RPD	Relative Percent Difference.
SDG	Sample Delivery Group.
(S)	Surrogate (Surrogate Standard) - Analytes added to every blank, sample, Laboratory Control Sample/Duplicate and Matrix Spike/Duplicate; used to evaluate analytical efficiency by measuring recovery. Surrogates are not expected to be detected in all environmental media.
U	Not detected at the Reporting Limit (or MDL where applicable).
Analyte	The name of the particular compound or analysis performed. Some Analyses and Methods will have multiple analytes reported.
Dilution	If the sample matrix contains an interfering material, the sample preparation volume or weight values differ from the standard, or if concentrations of analytes in the sample are higher than the highest limit of concentration that the laboratory can accurately report, the sample may be diluted for analysis. If a value different than 1 is used in this field, the result reported has already been corrected for this factor.
Limits	These are the target % recovery ranges or % difference value that the laboratory has historically determined as normal for the method and analyte being reported. Successful QC Sample analysis will target all analytes recovered or duplicated within these ranges.
Original Sample	The non-spiked sample in the prep batch used to determine the Relative Percent Difference (RPD) from a quality control sample. The Original Sample may not be included within the reported SDG.
Qualifier	This column provides a letter and/or number designation that corresponds to additional information concerning the result reported. If a Qualifier is present, a definition per Qualifier is provided within the Glossary and Definitions page and potentially a discussion of possible implications of the Qualifier in the Case Narrative if applicable.
Result	The actual analytical final result (corrected for any sample specific characteristics) reported for your sample. If there was no measurable result returned for a specific analyte, the result in this column may state "ND" (Not Detected) or "BDL" (Below Detectable Levels). The information in the results column should always be accompanied by either an MDL (Method Detection Limit) or RDL (Reporting Detection Limit) that defines the lowest value that the laboratory could detect or report for this analyte.
Case Narrative (Cn)	A brief discussion about the included sample results, including a discussion of any non-conformances to protocol observed either at sample receipt by the laboratory from the field or during the analytical process. If present, there will be a section in the Case Narrative to discuss the meaning of any data qualifiers used in the report.
Quality Control Summary (Qc)	This section of the report includes the results of the laboratory quality control analyses required by procedure or analytical methods to assist in evaluating the validity of the results reported for your samples. These analyses are not being performed on your samples typically, but on laboratory generated material.
Sample Chain of Custody (Sc)	This is the document created in the field when your samples were initially collected. This is used to verify the time and date of collection, the person collecting the samples, and the analyses that the laboratory is requested to perform. This chain of custody also documents all persons (excluding commercial shippers) that have had control or possession of the samples from the time of collection until delivery to the laboratory for analysis.
Sample Results (Sr)	This section of your report will provide the results of all testing performed on your samples. These results are provided by sample ID and are separated by the analyses performed on each sample. The header line of each analysis section for each sample will provide the name and method number for the analysis reported.
Sample Summary (Ss)	This section of the Analytical Report defines the specific analyses performed for each sample ID, including the dates and times of preparation and/or analysis.

- 1 Cp
- 2 Tc
- 3 Ss
- 4 Cn
- 5 Sr
- 6 Qc
- 7 Gl
- 8 Al
- 9 Sc

Qualifier Description

B	The same analyte is found in the associated blank.
J	The identification of the analyte is acceptable; the reported value is an estimate.
J6	The sample matrix interfered with the ability to make any accurate determination; spike value is low.



Item 19.

Pace National is the only environmental laboratory accredited/certified to support your work nationwide from one location. One phone call, one point of contact, one laboratory. No other lab is as accessible or prepared to handle your needs throughout the country. Our capacity and capability from our single location laboratory is comparable to the collective totals of the network laboratories in our industry. The most significant benefit to our one location design is the design of our laboratory campus. The model is conducive to accelerated productivity, decreasing turn-around time, and preventing cross contamination, thus protecting sample integrity. Our focus on premium quality and prompt service allows us to be YOUR LAB OF CHOICE.

\* Not all certifications held by the laboratory are applicable to the results reported in the attached report.  
 \* Accreditation is only applicable to the test methods specified on each scope of accreditation held by Pace National.

## State Accreditations

Alabama	40660	Nebraska	NE-OS-15-05
Alaska	17-026	Nevada	TN-03-2002-34
Arizona	AZ0612	New Hampshire	2975
Arkansas	88-0469	New Jersey-NELAP	TN002
California	2932	New Mexico <sup>1</sup>	n/a
Colorado	TN00003	New York	11742
Connecticut	PH-0197	North Carolina	Env375
Florida	E87487	North Carolina <sup>1</sup>	DW21704
Georgia	NELAP	North Carolina <sup>3</sup>	41
Georgia <sup>1</sup>	923	North Dakota	R-140
Idaho	TN00003	Ohio-VAP	CL0069
Illinois	200008	Oklahoma	9915
Indiana	C-TN-01	Oregon	TN200002
Iowa	364	Pennsylvania	68-02979
Kansas	E-10277	Rhode Island	LA000356
Kentucky <sup>1,6</sup>	90010	South Carolina	84004
Kentucky <sup>2</sup>	16	South Dakota	n/a
Louisiana	AI30792	Tennessee <sup>1,4</sup>	2006
Louisiana <sup>1</sup>	LA180010	Texas	T 104704245-17-14
Maine	TN0002	Texas <sup>5</sup>	LAB0152
Maryland	324	Utah	TN00003
Massachusetts	M-TN003	Vermont	VT2006
Michigan	9958	Virginia	460132
Minnesota	047-999-395	Washington	C847
Mississippi	TN00003	West Virginia	233
Missouri	340	Wisconsin	9980939910
Montana	CERT0086	Wyoming	A2LA

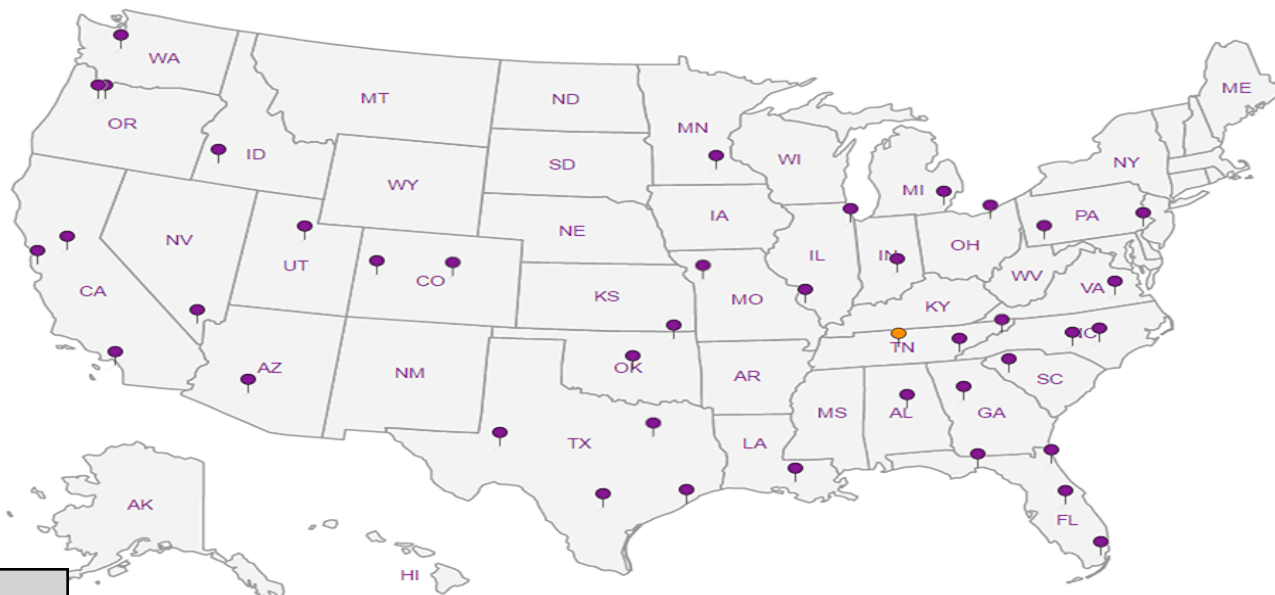
## Third Party Federal Accreditations

A2LA – ISO 17025	1461.01	AIHA-LAP,LLC EMLAP	100789
A2LA – ISO 17025 <sup>5</sup>	1461.02	DOD	1461.01
Canada	1461.01	USDA	P330-15-00234
EPA-Crypto	TN00003		

<sup>1</sup> Drinking Water <sup>2</sup> Underground Storage Tanks <sup>3</sup> Aquatic Toxicity <sup>4</sup> Chemical/Microbiological <sup>5</sup> Mold <sup>6</sup> Wastewater n/a Accreditation not applicable

## Our Locations

Pace National has sixty-four client support centers that provide sample pickup and/or the delivery of sampling supplies. If you would like assistance from one of our support offices, please contact our main office. Pace National performs all testing at our central laboratory.



1 Cp

2 Tc

3 Ss

4 Cn

5 Sr

6 Qc

7 Gl

8 Al

9 Sc

Item 19.

TBC Solutions  
Collins

Billing Information:

Report to: Jason Jayroe  
Email To: jjayroe@trcsolutions.com

Project Description: FTC CCR  
City/State Collected: Fort Collins, CO

Phone: 9704205666  
Client Project #  
Lab Project #

Collected by (print): Eric Emerson  
Site/Facility ID #  
P.O. #

Collected by (signature):  
Rush? (Lab MUST Be Notified)  
Same Day \_\_\_ Five Day \_\_\_  
Next Day \_\_\_ 5 Day (Rad Only) \_\_\_  
Two Day  10 Day (Rad Only) \_\_\_  
Three Day \_\_\_  
Quote #

Immediately Packed on Ice N \_\_\_ Y   
Date Results Needed

Sample ID

Comp/Grab Matrix \* Depth Date Time

SB-1-32 Grab SS 32 07/05/2018 1320

SB-2-16 Grab SS 16 07/05/2018 1550

SB-3-15 Grab SS 15 07/05/2018 0800

SB-4-MS/MSD Grab SS 20 07/05/2018 0930

SB-4-20 Grab SS 20 07/05/2018 0940

Pres Chk	Analysis / Container / Preservative									
	BTEX	TPH GRO	TPH DRO	RCRA 8 Metals						
	X	X	X	X						
	X	X	X	X						
	X	X	X	X						
	X	X	X	X						
	X	X	X	X						

Chain of Custody Page \_\_\_ of \_\_\_



12065 Lebanon Rd  
Mount Juliet, TN 37122  
Phone: 615-758-5858  
Phone: 800-767-5859  
Fax: 615-758-5859



L# L1067912

C129

Template:  
Prelogin:  
TSR:  
PB:  
Shipped Via:

Remarks	Sample # (lab only)
	-01
	02
	03
Hold this	04

Remarks: ESCDEN

Samples returned via:  
\_\_\_ UPS \_\_\_ FedEx \_\_\_ Courier \_\_\_

Tracking # 48616933 5960

Relinquished by: (Signature)  
Date: 07/09/18 Time: 16:00

Received by: (Signature)  
Trip Blank Received: Yes  No   
HCL/MeOH TBR

Relinquished by: (Signature)  
Date: 07/09/18 Time: 16:47

Received by: (Signature)  
Temp: 8.4°C Bottles Received: 24/402

Relinquished by: (Signature)  
Date: 7/9/18 Time: 17:30

Received for lab by: (Signature)  
Date: 7/10/18 Time: 0845

Sample Receipt Checklist

COC Seal Present/Intact:  Y  N

COC Signed/Accurate:  Y  N

Bottles arrive intact:  Y  N

Correct bottles used:  Y  N

Sufficient volume sent:  Y  N

If Applicable  
VOA Zero HeadSpace:  Y  N

Preservation Correct/Checked:  Y  N

If preservation required by Login: Date/Time  
Hold: 7-029  
Condition: NCF / OK



# ANALYTICAL REPORT

August 27, 2018

## TRC Solutions - Suncor

Sample Delivery Group: L1018955  
Samples Received: 08/18/2018  
Project Number: 241300.0001  
Description: FTC CCR

Report To: Jason Jayroe  
131 E. Lincoln Ave  
Suite 200  
Fort Collins, CO 80524

Entire Report Reviewed By:



Chris Ward  
Project Manager

Results relate only to the items tested or calibrated and are reported as rounded values. This test report shall not be reproduced, except in full, without written approval of the laboratory. Where applicable, sampling conducted by Pace National is performed per guidance provided in laboratory standard operating procedures: 060302, 060303, and 060304.



Item 19.

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<b>Sr: Sample Results</b>	<b>5</b>
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<b>MW-03 L1018955-02</b>	<b>6</b>
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# SAMPLE SUMMARY



Item 19.

## MW-02 L1018955-01 GW

Collected by: Natalie Pabon  
 Collected date/time: 08/16/18 13:15  
 Received date/time: 08/18/18 08:45

Method	Batch	Dilution	Preparation date/time	Analysis date/time	Analyst
Wet Chemistry by Method 2320 B-2011	WG1156979	1	08/24/18 14:35	08/24/18 14:35	GB
Wet Chemistry by Method 9056A	WG1154105	10	08/21/18 07:39	08/21/18 07:39	ELN
Wet Chemistry by Method 9056A	WG1154214	1	08/18/18 12:02	08/18/18 12:02	MAJ
Metals (ICP) by Method 6010B	WG1155529	1	08/22/18 13:45	08/22/18 21:54	ST
Volatile Organic Compounds (GC) by Method 8015/8021	WG1154427	1	08/19/18 13:41	08/19/18 13:41	LRL
Volatile Organic Compounds (GC) by Method RSK175	WG1154860	1	08/21/18 14:31	08/21/18 14:31	MEL
Semi-Volatile Organic Compounds (GC) by Method 3511/8015	WG1155345	1	08/23/18 00:41	08/23/18 12:06	TH

1 Cp

2 Tc

3 Ss

4 Cn

5 Sr

6 Qc

7 Gl

8 Al

9 Sc

## MW-03 L1018955-02 GW

Collected by: Natalie Pabon  
 Collected date/time: 08/16/18 16:30  
 Received date/time: 08/18/18 08:45

Method	Batch	Dilution	Preparation date/time	Analysis date/time	Analyst
Wet Chemistry by Method 2320 B-2011	WG1156979	1	08/24/18 14:49	08/24/18 14:49	GB
Wet Chemistry by Method 9056A	WG1154214	1	08/18/18 13:00	08/18/18 13:00	MAJ
Wet Chemistry by Method 9056A	WG1155155	10	08/22/18 00:57	08/22/18 00:57	ELN
Metals (ICP) by Method 6010B	WG1155529	1	08/22/18 13:45	08/22/18 21:56	ST
Volatile Organic Compounds (GC) by Method 8015/8021	WG1154427	1	08/19/18 14:03	08/19/18 14:03	LRL
Volatile Organic Compounds (GC) by Method RSK175	WG1154860	1	08/21/18 14:51	08/21/18 14:51	MEL
Semi-Volatile Organic Compounds (GC) by Method 3511/8015	WG1155345	1	08/23/18 00:41	08/23/18 12:24	TH

## MW-01 L1018955-03 GW

Collected by: Natalie Pabon  
 Collected date/time: 08/16/18 17:30  
 Received date/time: 08/18/18 08:45

Method	Batch	Dilution	Preparation date/time	Analysis date/time	Analyst
Wet Chemistry by Method 2320 B-2011	WG1156979	1	08/24/18 14:57	08/24/18 14:57	GB
Wet Chemistry by Method 9056A	WG1154214	1	08/18/18 13:30	08/18/18 13:30	MAJ
Wet Chemistry by Method 9056A	WG1155155	10	08/22/18 01:12	08/22/18 01:12	ELN
Metals (ICP) by Method 6010B	WG1155529	1	08/22/18 13:45	08/22/18 21:59	ST
Volatile Organic Compounds (GC) by Method 8015/8021	WG1154427	1	08/19/18 14:26	08/19/18 14:26	LRL
Volatile Organic Compounds (GC) by Method RSK175	WG1154860	1	08/21/18 14:59	08/21/18 14:59	MEL
Semi-Volatile Organic Compounds (GC) by Method 3511/8015	WG1155345	1	08/23/18 00:41	08/23/18 12:42	TH

## MW-04 L1018955-04 GW

Collected by: Natalie Pabon  
 Collected date/time: 08/17/18 09:55  
 Received date/time: 08/18/18 08:45

Method	Batch	Dilution	Preparation date/time	Analysis date/time	Analyst
Wet Chemistry by Method 2320 B-2011	WG1156979	1	08/24/18 15:04	08/24/18 15:04	GB
Wet Chemistry by Method 9056A	WG1154214	1	08/18/18 14:16	08/18/18 14:16	MAJ
Wet Chemistry by Method 9056A	WG1155155	5	08/22/18 01:28	08/22/18 01:28	ELN
Metals (ICP) by Method 6010B	WG1155529	1	08/22/18 13:45	08/22/18 22:01	ST
Volatile Organic Compounds (GC) by Method 8015/8021	WG1154427	1	08/19/18 14:48	08/19/18 14:48	LRL
Volatile Organic Compounds (GC) by Method RSK175	WG1154860	1	08/21/18 15:03	08/21/18 15:03	MEL
Semi-Volatile Organic Compounds (GC) by Method 3511/8015	WG1155345	1	08/23/18 00:41	08/23/18 12:59	TH

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Item 19.

All sample aliquots were received at the correct temperature, in the proper containers, with the appropriate preservatives, and within method specified holding times, unless qualified or notated within the report. Where applicable, all MDL (LOD) and RDL (LOQ) values reported for environmental samples have been corrected for the dilution factor used in the analysis. All Method and Batch Quality Control are within established criteria except where addressed in this case narrative, a non-conformance form or properly qualified within the sample results. By my digital signature below, I affirm to the best of my knowledge, all problems/anomalies observed by the laboratory as having the potential to affect the quality of the data have been identified by the laboratory, and no information or data have been knowingly withheld that would affect the quality of the data.

Chris Ward  
Project Manager

- <sup>1</sup> Cp
- <sup>2</sup> Tc
- <sup>3</sup> Ss
- <sup>4</sup> Cn
- <sup>5</sup> Sr
- <sup>6</sup> Qc
- <sup>7</sup> Gl
- <sup>8</sup> Al
- <sup>9</sup> Sc



Item 19.

Wet Chemistry by Method 2320 B-2011

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
Alkalinity	440000		2710	20000	1	08/24/2018 14:35	<a href="#">WG1156979</a>

Sample Narrative:

L1018955-01 WG1156979: Endpoint pH 4.5 headspace

Wet Chemistry by Method 9056A

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
Bromide	U		79.0	1000	1	08/18/2018 12:02	<a href="#">WG1154214</a>
Chloride	27500		51.9	1000	1	08/18/2018 12:02	<a href="#">WG1154214</a>
Nitrate as (N)	305		22.7	100	1	08/18/2018 12:02	<a href="#">WG1154214</a>
Nitrite as (N)	470		27.7	100	1	08/18/2018 12:02	<a href="#">WG1154214</a>
Sulfate	956000		774	50000	10	08/21/2018 07:39	<a href="#">WG1154105</a>

Metals (ICP) by Method 6010B

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
Calcium,Dissolved	181000		46.3	1000	1	08/22/2018 21:54	<a href="#">WG1155529</a>
Iron,Dissolved	U		14.1	100	1	08/22/2018 21:54	<a href="#">WG1155529</a>
Magnesium,Dissolved	105000		11.1	1000	1	08/22/2018 21:54	<a href="#">WG1155529</a>
Potassium,Dissolved	8570		102	1000	1	08/22/2018 21:54	<a href="#">WG1155529</a>
Sodium,Dissolved	271000		98.5	1000	1	08/22/2018 21:54	<a href="#">WG1155529</a>

Volatile Organic Compounds (GC) by Method 8015/8021

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
Benzene	U		0.190	0.500	1	08/19/2018 13:41	<a href="#">WG1154427</a>
Toluene	U		0.412	1.00	1	08/19/2018 13:41	<a href="#">WG1154427</a>
Ethylbenzene	U		0.160	0.500	1	08/19/2018 13:41	<a href="#">WG1154427</a>
Total Xylene	U		0.510	1.50	1	08/19/2018 13:41	<a href="#">WG1154427</a>
TPH (GC/FID) Low Fraction	340		31.4	100	1	08/19/2018 13:41	<a href="#">WG1154427</a>
(S) a,a,a-Trifluorotoluene(FID)	98.5			77.0-122		08/19/2018 13:41	<a href="#">WG1154427</a>
(S) a,a,a-Trifluorotoluene(PID)	99.3			80.0-121		08/19/2018 13:41	<a href="#">WG1154427</a>

Volatile Organic Compounds (GC) by Method RSK175

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
Methane	8.55	J	2.91	10.0	1	08/21/2018 14:31	<a href="#">WG1154860</a>
Ethane	U		4.07	13.0	1	08/21/2018 14:31	<a href="#">WG1154860</a>
Ethene	U		4.26	13.0	1	08/21/2018 14:31	<a href="#">WG1154860</a>

Semi-Volatile Organic Compounds (GC) by Method 3511/8015

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
TPH (GC/FID) High Fraction	137		24.7	100	1	08/23/2018 12:06	<a href="#">WG1155345</a>
(S) o-Terphenyl	83.2			31.0-160		08/23/2018 12:06	<a href="#">WG1155345</a>

- 1 Cp
- 2 Tc
- 3 Ss
- 4 Cn
- 5 Sr
- 6 Qc
- 7 Gl
- 8 Al
- 9 Sc



C /time: 08/16/18 16:30

L1018955

Item 19.

Wet Chemistry by Method 2320 B-2011

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
Alkalinity	448000		2710	20000	1	08/24/2018 14:49	<a href="#">WG1156979</a>

Sample Narrative:

L1018955-02 WG1156979: Endpoint pH 4.5 headspace

Wet Chemistry by Method 9056A

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
Bromide	U		79.0	1000	1	08/18/2018 13:00	<a href="#">WG1154214</a>
Chloride	31300		51.9	1000	1	08/18/2018 13:00	<a href="#">WG1154214</a>
Nitrate as (N)	892		22.7	100	1	08/18/2018 13:00	<a href="#">WG1154214</a>
Nitrite as (N)	U		27.7	100	1	08/18/2018 13:00	<a href="#">WG1154214</a>
Sulfate	736000		774	50000	10	08/22/2018 00:57	<a href="#">WG1155155</a>

Metals (ICP) by Method 6010B

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
Calcium,Dissolved	202000		46.3	1000	1	08/22/2018 21:56	<a href="#">WG1155529</a>
Iron,Dissolved	U		14.1	100	1	08/22/2018 21:56	<a href="#">WG1155529</a>
Magnesium,Dissolved	93000		11.1	1000	1	08/22/2018 21:56	<a href="#">WG1155529</a>
Potassium,Dissolved	3290		102	1000	1	08/22/2018 21:56	<a href="#">WG1155529</a>
Sodium,Dissolved	181000		98.5	1000	1	08/22/2018 21:56	<a href="#">WG1155529</a>

Volatile Organic Compounds (GC) by Method 8015/8021

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
Benzene	U		0.190	0.500	1	08/19/2018 14:03	<a href="#">WG1154427</a>
Toluene	U		0.412	1.00	1	08/19/2018 14:03	<a href="#">WG1154427</a>
Ethylbenzene	U		0.160	0.500	1	08/19/2018 14:03	<a href="#">WG1154427</a>
Total Xylene	U		0.510	1.50	1	08/19/2018 14:03	<a href="#">WG1154427</a>
TPH (GC/FID) Low Fraction	U		31.4	100	1	08/19/2018 14:03	<a href="#">WG1154427</a>
(S) a,a,a-Trifluorotoluene(FID)	98.4			77.0-122		08/19/2018 14:03	<a href="#">WG1154427</a>
(S) a,a,a-Trifluorotoluene(PID)	99.3			80.0-121		08/19/2018 14:03	<a href="#">WG1154427</a>

Volatile Organic Compounds (GC) by Method RSK175

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
Methane	U		2.91	10.0	1	08/21/2018 14:51	<a href="#">WG1154860</a>
Ethane	U		4.07	13.0	1	08/21/2018 14:51	<a href="#">WG1154860</a>
Ethene	U		4.26	13.0	1	08/21/2018 14:51	<a href="#">WG1154860</a>

Semi-Volatile Organic Compounds (GC) by Method 3511/8015

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
TPH (GC/FID) High Fraction	61.5	J	24.7	100	1	08/23/2018 12:24	<a href="#">WG1155345</a>
(S) o-Terphenyl	70.5			31.0-160		08/23/2018 12:24	<a href="#">WG1155345</a>

- 1 Cp
- 2 Tc
- 3 Ss
- 4 Cn
- 5 Sr
- 6 Qc
- 7 Gl
- 8 Al
- 9 Sc



C /time: 08/16/18 17:30

L1018955

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Wet Chemistry by Method 2320 B-2011

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
Alkalinity	412000		2710	20000	1	08/24/2018 14:57	<a href="#">WG1156979</a>

Sample Narrative:

L1018955-03 WG1156979: Endpoint pH 4.5 headspace

Wet Chemistry by Method 9056A

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
Bromide	129	<u>B J</u>	79.0	1000	1	08/18/2018 13:30	<a href="#">WG1154214</a>
Chloride	29500		51.9	1000	1	08/18/2018 13:30	<a href="#">WG1154214</a>
Nitrate as (N)	420		22.7	100	1	08/18/2018 13:30	<a href="#">WG1154214</a>
Nitrite as (N)	311		27.7	100	1	08/18/2018 13:30	<a href="#">WG1154214</a>
Sulfate	510000		774	50000	10	08/22/2018 01:12	<a href="#">WG1155155</a>

Metals (ICP) by Method 6010B

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
Calcium,Dissolved	139000		46.3	1000	1	08/22/2018 21:59	<a href="#">WG1155529</a>
Iron,Dissolved	U		14.1	100	1	08/22/2018 21:59	<a href="#">WG1155529</a>
Magnesium,Dissolved	69300		11.1	1000	1	08/22/2018 21:59	<a href="#">WG1155529</a>
Potassium,Dissolved	7400		102	1000	1	08/22/2018 21:59	<a href="#">WG1155529</a>
Sodium,Dissolved	168000		98.5	1000	1	08/22/2018 21:59	<a href="#">WG1155529</a>

Volatile Organic Compounds (GC) by Method 8015/8021

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
Benzene	U		0.190	0.500	1	08/19/2018 14:26	<a href="#">WG1154427</a>
Toluene	U		0.412	1.00	1	08/19/2018 14:26	<a href="#">WG1154427</a>
Ethylbenzene	U		0.160	0.500	1	08/19/2018 14:26	<a href="#">WG1154427</a>
Total Xylene	U		0.510	1.50	1	08/19/2018 14:26	<a href="#">WG1154427</a>
TPH (GC/FID) Low Fraction	858		31.4	100	1	08/19/2018 14:26	<a href="#">WG1154427</a>
(S) a,a,a-Trifluorotoluene(FID)	98.3			77.0-122		08/19/2018 14:26	<a href="#">WG1154427</a>
(S) a,a,a-Trifluorotoluene(PID)	98.1			80.0-121		08/19/2018 14:26	<a href="#">WG1154427</a>

Volatile Organic Compounds (GC) by Method RSK175

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
Methane	13.2		2.91	10.0	1	08/21/2018 14:59	<a href="#">WG1154860</a>
Ethane	U		4.07	13.0	1	08/21/2018 14:59	<a href="#">WG1154860</a>
Ethene	U		4.26	13.0	1	08/21/2018 14:59	<a href="#">WG1154860</a>

Semi-Volatile Organic Compounds (GC) by Method 3511/8015

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
TPH (GC/FID) High Fraction	U		24.7	100	1	08/23/2018 12:42	<a href="#">WG1155345</a>
(S) o-Terphenyl	69.5			31.0-160		08/23/2018 12:42	<a href="#">WG1155345</a>

- 1 Cp
- 2 Tc
- 3 Ss
- 4 Cn
- 5 Sr
- 6 Qc
- 7 Gl
- 8 Al
- 9 Sc



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Wet Chemistry by Method 2320 B-2011

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
Alkalinity	442000		2710	20000	1	08/24/2018 15:04	<a href="#">WG1156979</a>

Sample Narrative:

L1018955-04 WG1156979: Endpoint pH 4.5 headspace

Wet Chemistry by Method 9056A

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
Bromide	U	<u>J6</u>	79.0	1000	1	08/18/2018 14:16	<a href="#">WG1154214</a>
Chloride	22400		51.9	1000	1	08/18/2018 14:16	<a href="#">WG1154214</a>
Nitrate as (N)	191	<u>B</u>	22.7	100	1	08/18/2018 14:16	<a href="#">WG1154214</a>
Nitrite as (N)	150		27.7	100	1	08/18/2018 14:16	<a href="#">WG1154214</a>
Sulfate	394000		387	25000	5	08/22/2018 01:28	<a href="#">WG1155155</a>

Metals (ICP) by Method 6010B

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
Calcium,Dissolved	140000		46.3	1000	1	08/22/2018 22:01	<a href="#">WG1155529</a>
Iron,Dissolved	U		14.1	100	1	08/22/2018 22:01	<a href="#">WG1155529</a>
Magnesium,Dissolved	71900		11.1	1000	1	08/22/2018 22:01	<a href="#">WG1155529</a>
Potassium,Dissolved	3840		102	1000	1	08/22/2018 22:01	<a href="#">WG1155529</a>
Sodium,Dissolved	126000		98.5	1000	1	08/22/2018 22:01	<a href="#">WG1155529</a>

Volatile Organic Compounds (GC) by Method 8015/8021

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
Benzene	U		0.190	0.500	1	08/19/2018 14:48	<a href="#">WG1154427</a>
Toluene	U		0.412	1.00	1	08/19/2018 14:48	<a href="#">WG1154427</a>
Ethylbenzene	U		0.160	0.500	1	08/19/2018 14:48	<a href="#">WG1154427</a>
Total Xylene	U		0.510	1.50	1	08/19/2018 14:48	<a href="#">WG1154427</a>
TPH (GC/FID) Low Fraction	U		31.4	100	1	08/19/2018 14:48	<a href="#">WG1154427</a>
(S) a,a,a-Trifluorotoluene(FID)	98.9			77.0-122		08/19/2018 14:48	<a href="#">WG1154427</a>
(S) a,a,a-Trifluorotoluene(PID)	99.4			80.0-121		08/19/2018 14:48	<a href="#">WG1154427</a>

Volatile Organic Compounds (GC) by Method RSK175

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
Methane	11.3		2.91	10.0	1	08/21/2018 15:03	<a href="#">WG1154860</a>
Ethane	U		4.07	13.0	1	08/21/2018 15:03	<a href="#">WG1154860</a>
Ethene	U		4.26	13.0	1	08/21/2018 15:03	<a href="#">WG1154860</a>

Semi-Volatile Organic Compounds (GC) by Method 3511/8015

Analyte	Result	Qualifier	MDL	RDL	Dilution	Analysis	Batch
	ug/l		ug/l	ug/l		date / time	
TPH (GC/FID) High Fraction	62.4	<u>J</u>	24.7	100	1	08/23/2018 12:59	<a href="#">WG1155345</a>
(S) o-Terphenyl	57.4			31.0-160		08/23/2018 12:59	<a href="#">WG1155345</a>

- 1 Cp
- 2 Tc
- 3 Ss
- 4 Cn
- 5 Sr
- 6 Qc
- 7 Gl
- 8 Al
- 9 Sc





W Analyte by Method 2320 B-2011

[L1018955-01,02,03,04](#)

Item 19.

Method Blank (MB)

(MB) R3336578-1 08/24/18 13:54

Analyte	MB Result	MB Qualifier	MB MDL	MB RDL
Alkalinity	3240	↓	2710	20000

Sample Narrative:

BLANK: Endpoint pH 4.5

L1018955-01 Original Sample (OS) • Duplicate (DUP)

(OS) L1018955-01 08/24/18 14:35 • (DUP) R3336578-3 08/24/18 14:43

Analyte	Original Result	DUP Result	Dilution	DUP RPD	DUP Qualifier	DUP RPD Limits
Alkalinity	440000	437000	1	0.720		20

Sample Narrative:

OS: Endpoint pH 4.5 headspace

DUP: Endpoint pH 4.5

L1019519-04 Original Sample (OS) • Duplicate (DUP)

(OS) L1019519-04 08/24/18 17:29 • (DUP) R3336578-7 08/24/18 17:36

Analyte	Original Result	DUP Result	Dilution	DUP RPD	DUP Qualifier	DUP RPD Limits
Alkalinity	51800	51600	1	0.377		20

Sample Narrative:

OS: Endpoint pH 4.5

DUP: Endpoint pH 4.5

Laboratory Control Sample (LCS) • Laboratory Control Sample Duplicate (LCSD)

(LCS) R3336578-4 08/24/18 15:39 • (LCSD) R3336578-6 08/24/18 17:14

Analyte	Spike Amount	LCS Result	LCSD Result	LCS Rec.	LCSD Rec.	Rec. Limits	LCS Qualifier	LCSD Qualifier	RPD	RPD Limits
Alkalinity	100000	98400	95000	98.4	95.0	85.0-115			3.55	20

Sample Narrative:

LCS: Endpoint pH 4.5

LCSD: Endpoint pH 4.5

1 Cp

2 Tc

3 Ss

4 Cn

5 Sr

6 Qc

7 Gl

8 Al

9 Sc



W Analyte by Method 9056A

[L1018955-01](#)

Item 19.

Method Blank (MB)

(MB) R3335298-1 08/20/18 23:07

Analyte	MB Result	MB Qualifier	MB MDL	MB RDL
Sulfate	U		77.4	5000

1 Cp

2 Tc

3 Ss

4 Cn

5 Sr

6 Qc

7 Gl

8 Al

9 Sc

L1018541-01 Original Sample (OS) • Duplicate (DUP)

(OS) L1018541-01 08/21/18 00:58 • (DUP) R3335298-4 08/21/18 01:12

Analyte	Original Result	DUP Result	Dilution	DUP RPD	DUP Qualifier	DUP RPD Limits
Sulfate	5080	5160	1	1.61		15

L1018908-01 Original Sample (OS) • Duplicate (DUP)

(OS) L1018908-01 08/21/18 05:34 • (DUP) R3335298-7 08/21/18 05:48

Analyte	Original Result	DUP Result	Dilution	DUP RPD	DUP Qualifier	DUP RPD Limits
Sulfate	97900	97800	1	0.116		15

Laboratory Control Sample (LCS) • Laboratory Control Sample Duplicate (LCSD)

(LCS) R3335298-2 08/20/18 23:20 • (LCSD) R3335298-3 08/20/18 23:35

Analyte	Spike Amount	LCS Result	LCSD Result	LCS Rec.	LCSD Rec.	Rec. Limits	LCS Qualifier	LCSD Qualifier	RPD	RPD Limits
Sulfate	40000	39000	38900	97.5	97.3	80.0-120			0.260	15

L1018541-01 Original Sample (OS) • Matrix Spike (MS) • Matrix Spike Duplicate (MSD)

(OS) L1018541-01 08/21/18 00:58 • (MS) R3335298-5 08/21/18 01:53 • (MSD) R3335298-6 08/21/18 02:07

Analyte	Spike Amount	Original Result	MS Result	MSD Result	MS Rec.	MSD Rec.	Dilution	Rec. Limits	MS Qualifier	MSD Qualifier	RPD	RPD Limits
Sulfate	50000	5080	55100	55300	100	100	1	80.0-120			0.351	15

L1018908-01 Original Sample (OS) • Matrix Spike (MS)

(OS) L1018908-01 08/21/18 05:34 • (MS) R3335298-8 08/21/18 06:02

Analyte	Spike Amount	Original Result	MS Result	MS Rec.	Dilution	Rec. Limits	MS Qualifier
Sulfate	50000	97900	143000	89.7	1	80.0-120	E



W Analy by Method 9056A

[L1018955-01,02,03,04](#)

Item 19.

Method Blank (MB)

(MB) R3335108-1 08/18/18 09:19

Analyte	MB Result	MB Qualifier	MB MDL	MB RDL
	ug/l		ug/l	ug/l
Bromide	131	↓	79.0	1000
Chloride	86.4	↓	51.9	1000
Nitrate	25.1	↓	22.7	100
Nitrite	U		27.7	100

1 Cp

2 Tc

3 Ss

4 Cn

5 Sr

6 Qc

7 Gl

8 Al

9 Sc

L1018960-02 Original Sample (OS) • Duplicate (DUP)

(OS) L1018960-02 08/18/18 15:19 • (DUP) R3335108-6 08/18/18 15:34

Analyte	Original Result	DUP Result	Dilution	DUP RPD	DUP Qualifier	DUP RPD Limits
	ug/l	ug/l		%		%
Bromide	U	0.000	1	0.000		15
Chloride	21400	21000	1	1.90		15
Nitrate	71.0	70.5	1	0.707	↓	15
Nitrite	U	0.000	1	0.000		15

L1018976-01 Original Sample (OS) • Duplicate (DUP)

(OS) L1018976-01 08/18/18 19:26 • (DUP) R3335108-8 08/18/18 19:41

Analyte	Original Result	DUP Result	Dilution	DUP RPD	DUP Qualifier	DUP RPD Limits
	ug/l	ug/l		%		%
Bromide	ND	244	1	0.000		15
Nitrate	4650	4610	1	0.674		15
Nitrite	ND	0.000	1	0.000		15

L1018976-01 Original Sample (OS) • Duplicate (DUP)

(OS) L1018976-01 08/18/18 20:27 • (DUP) R3335108-9 08/18/18 20:43

Analyte	Original Result	DUP Result	Dilution	DUP RPD	DUP Qualifier	DUP RPD Limits
	ug/l	ug/l		%		%
Chloride	301000	299000	5	0.711		15



W Analyze by Method 9056A

[L1018955-01,02,03,04](#)

Item 19.

Laboratory Control Sample (LCS) • Laboratory Control Sample Duplicate (LCSD)

(LCS) R3335108-2 08/18/18 09:35 • (LCSD) R3335108-3 08/18/18 09:50

Analyte	Spike Amount ug/l	LCS Result ug/l	LCSD Result ug/l	LCS Rec. %	LCSD Rec. %	Rec. Limits %	<u>LCS Qualifier</u>	<u>LCSD Qualifier</u>	RPD %	RPD Limits %
Bromide	40000	39100	39000	97.8	97.5	80.0-120			0.359	15
Chloride	40000	38500	38500	96.3	96.2	80.0-120			0.104	15
Nitrate	8000	7930	7910	99.2	98.8	80.0-120			0.350	15
Nitrite	8000	7690	7700	96.2	96.3	80.0-120			0.112	15

1 Cp

2 Tc

3 Ss

4 Cn

5 Sr

L1018955-04 Original Sample (OS) • Matrix Spike (MS) • Matrix Spike Duplicate (MSD)

(OS) L1018955-04 08/18/18 14:16 • (MS) R3335108-4 08/18/18 14:32 • (MSD) R3335108-5 08/18/18 14:48

Analyte	Spike Amount ug/l	Original Result ug/l	MS Result ug/l	MSD Result ug/l	MS Rec. %	MSD Rec. %	Dilution	Rec. Limits %	<u>MS Qualifier</u>	<u>MSD Qualifier</u>	RPD %	RPD Limits %
Bromide	50000	U	28000	27900	55.9	55.8	1	80.0-120	<u>J6</u>	<u>J6</u>	0.194	15
Chloride	50000	22400	70300	70200	95.8	95.6	1	80.0-120			0.136	15
Nitrate	5000	191	4350	4330	83.1	82.7	1	80.0-120			0.404	15
Nitrite	5000	150	5080	5090	98.7	98.7	1	80.0-120			0.0846	15

6 Qc

7 Gl

8 Al

L1018960-07 Original Sample (OS) • Matrix Spike (MS)

(OS) L1018960-07 08/18/18 17:38 • (MS) R3335108-7 08/18/18 17:53

Analyte	Spike Amount ug/l	Original Result ug/l	MS Result ug/l	MS Rec. %	Dilution	Rec. Limits %	<u>MS Qualifier</u>
Bromide	50000	U	45000	90.1	1	80.0-120	
Chloride	50000	13800	62800	97.9	1	80.0-120	
Nitrate	5000	U	4620	92.3	1	80.0-120	
Nitrite	5000	U	4950	98.9	1	80.0-120	

9 Sc



W Analyte by Method 9056A

[L1018955-02.03.04](#)

Item 19.

Method Blank (MB)

(MB) R3335825-1 08/21/18 23:55

Analyte	MB Result ug/l	MB Qualifier	MB MDL ug/l	MB RDL ug/l
Sulfate	U		77.4	5000

Laboratory Control Sample (LCS) • Laboratory Control Sample Duplicate (LCSD)

(LCS) R3335825-2 08/22/18 00:11 • (LCSD) R3335825-3 08/22/18 00:26

Analyte	Spike Amount ug/l	LCS Result ug/l	LCSD Result ug/l	LCS Rec. %	LCSD Rec. %	Rec. Limits %	LCS Qualifier	LCSD Qualifier	RPD %	RPD Limits %
Sulfate	40000	37700	37800	94.3	94.4	80.0-120			0.169	15

<sup>1</sup> Cp

<sup>2</sup> Tc

<sup>3</sup> Ss

<sup>4</sup> Cn

<sup>5</sup> Sr

<sup>6</sup> Qc

<sup>7</sup> Gl

<sup>8</sup> Al

<sup>9</sup> Sc



M by Method 6010B

[L1018955-01,02,03,04](#)

Item 19.

Method Blank (MB)

(MB) R3335903-1 08/22/18 21:12

Analyte	MB Result	MB Qualifier	MB MDL	MB RDL
	ug/l		ug/l	ug/l
Calcium,Dissolved	U		46.3	1000
Iron,Dissolved	U		14.1	100
Magnesium,Dissolved	54.4	↓	11.1	1000
Potassium,Dissolved	117	↓	102	1000
Sodium,Dissolved	316	↓	98.5	1000

<sup>1</sup> Cp

<sup>2</sup> Tc

<sup>3</sup> Ss

<sup>4</sup> Cn

<sup>5</sup> Sr

Laboratory Control Sample (LCS) • Laboratory Control Sample Duplicate (LCSD)

(LCS) R3335903-2 08/22/18 21:15 • (LCSD) R3335903-3 08/22/18 21:17

Analyte	Spike Amount	LCS Result	LCSD Result	LCS Rec.	LCSD Rec.	Rec. Limits	LCS Qualifier	LCSD Qualifier	RPD	RPD Limits
	ug/l	ug/l	ug/l	%	%	%			%	%
Calcium,Dissolved	10000	9840	9920	98.4	99.2	80.0-120			0.805	20
Iron,Dissolved	10000	9830	9910	98.3	99.1	80.0-120			0.831	20
Magnesium,Dissolved	10000	10000	10100	100	101	80.0-120			0.524	20
Potassium,Dissolved	10000	9720	9850	97.2	98.5	80.0-120			1.27	20
Sodium,Dissolved	10000	10200	10200	102	102	80.0-120			0.713	20

<sup>6</sup> Qc

<sup>7</sup> Gl

<sup>8</sup> Al

<sup>9</sup> Sc

L1018796-03 Original Sample (OS) • Matrix Spike (MS) • Matrix Spike Duplicate (MSD)

(OS) L1018796-03 08/22/18 21:20 • (MS) R3335903-5 08/22/18 21:25 • (MSD) R3335903-6 08/22/18 21:27

Analyte	Spike Amount	Original Result	MS Result	MSD Result	MS Rec.	MSD Rec.	Dilution	Rec. Limits	MS Qualifier	MSD Qualifier	RPD	RPD Limits
	ug/l	ug/l	ug/l	ug/l	%	%		%			%	%
Calcium,Dissolved	10000	72400	82300	82400	99.4	100	1	75.0-125			0.0782	20
Iron,Dissolved	10000	5290	15200	15100	99.0	98.6	1	75.0-125			0.253	20
Magnesium,Dissolved	10000	29500	39000	39100	94.6	95.5	1	75.0-125			0.242	20
Potassium,Dissolved	10000	9630	19300	19200	97.0	96.0	1	75.0-125			0.552	20
Sodium,Dissolved	10000	51000	60100	59900	91.0	89.4	1	75.0-125			0.269	20



V Organic Compounds (GC) by Method 8015/8021

[L1018955-01,02,03,04](#)

Item 19.

Method Blank (MB)

(MB) R3335316-5 08/19/18 06:06

Analyte	MB Result	MB Qualifier	MB MDL	MB RDL
	ug/l		ug/l	ug/l
Benzene	U		0.190	0.500
Toluene	U		0.412	1.00
Ethylbenzene	U		0.160	0.500
Total Xylene	U		0.510	1.50
TPH (GC/FID) Low Fraction	U		31.4	100
(S) a,a,a-Trifluorotoluene(FID)	99.6			77.0-122
(S) a,a,a-Trifluorotoluene(PID)	99.8			80.0-121

1 Cp

2 Tc

3 Ss

4 Cn

5 Sr

6 Qc

Laboratory Control Sample (LCS) • Laboratory Control Sample Duplicate (LCSD)

(LCS) R3335316-1 08/19/18 04:15 • (LCSD) R3335316-2 08/19/18 04:37

Analyte	Spike Amount	LCS Result	LCSD Result	LCS Rec.	LCSD Rec.	Rec. Limits	LCS Qualifier	LCSD Qualifier	RPD	RPD Limits
	ug/l	ug/l	ug/l	%	%	%			%	%
Benzene	50.0	52.9	51.5	106	103	71.0-121			2.65	20
Toluene	50.0	54.0	52.7	108	105	72.0-120			2.52	20
Ethylbenzene	50.0	54.3	52.8	109	106	75.0-122			2.69	20
Total Xylene	150	164	159	109	106	74.0-124			3.04	20
(S) a,a,a-Trifluorotoluene(FID)				99.4	99.4	77.0-122				
(S) a,a,a-Trifluorotoluene(PID)				98.4	99.4	80.0-121				

7 Gl

8 Al

9 Sc

Laboratory Control Sample (LCS) • Laboratory Control Sample Duplicate (LCSD)

(LCS) R3335316-3 08/19/18 05:00 • (LCSD) R3335316-4 08/19/18 05:22

Analyte	Spike Amount	LCS Result	LCSD Result	LCS Rec.	LCSD Rec.	Rec. Limits	LCS Qualifier	LCSD Qualifier	RPD	RPD Limits
	ug/l	ug/l	ug/l	%	%	%			%	%
TPH (GC/FID) Low Fraction	5500	6210	5940	113	108	71.0-136			4.55	20
(S) a,a,a-Trifluorotoluene(FID)				105	104	77.0-122				
(S) a,a,a-Trifluorotoluene(PID)				109	109	80.0-121				



V Organic Compounds (GC) by Method 8015/8021

[L1018955-01,02,03,04](#)

Item 19.

L1018743-01 Original Sample (OS) • Matrix Spike (MS) • Matrix Spike Duplicate (MSD)

(OS) L1018743-01 08/19/18 06:51 • (MS) R3335316-6 08/19/18 15:33 • (MSD) R3335316-7 08/19/18 16:19

Analyte	Spike Amount ug/l	Original Result ug/l	MS Result ug/l	MSD Result ug/l	MS Rec. %	MSD Rec. %	Dilution	Rec. Limits %	MS Qualifier	MSD Qualifier	RPD %	RPD Limits %
Benzene	50.0	ND	47.8	47.6	95.5	95.3	1	29.0-146			0.299	20
Toluene	50.0	ND	47.9	47.5	95.8	95.0	1	35.0-140			0.856	20
Ethylbenzene	50.0	ND	46.9	47.1	93.9	94.2	1	39.0-143			0.303	20
Total Xylene	150	ND	143	143	95.3	95.1	1	42.0-142			0.140	20
(S) a,a,a-Trifluorotoluene(FID)					99.1	99.2		77.0-122				
(S) a,a,a-Trifluorotoluene(PID)					98.7	98.8		80.0-121				

1 Cp

2 Tc

3 Ss

4 Cn

5 Sr

L1018743-01 Original Sample (OS) • Matrix Spike (MS) • Matrix Spike Duplicate (MSD)

(OS) L1018743-01 08/19/18 06:51 • (MS) R3335316-8 08/19/18 16:42 • (MSD) R3335316-9 08/19/18 17:04

Analyte	Spike Amount ug/l	Original Result ug/l	MS Result ug/l	MSD Result ug/l	MS Rec. %	MSD Rec. %	Dilution	Rec. Limits %	MS Qualifier	MSD Qualifier	RPD %	RPD Limits %
TPH (GC/FID) Low Fraction	5500	ND	5600	5940	102	108	1	18.0-160			5.83	20
(S) a,a,a-Trifluorotoluene(FID)					101	102		77.0-122				
(S) a,a,a-Trifluorotoluene(PID)					107	108		80.0-121				

6 Qc

7 Gl

8 Al

9 Sc





Volatile Organic Compounds (GC) by Method RSK175

[L1018955-01,02,03,04](#)

Item 19.

Method Blank (MB)

(MB) R3335409-1 08/21/18 13:54

Analyte	MB Result	MB Qualifier	MB MDL	MB RDL
Methane	U		2.91	10.0
Ethane	U		4.07	13.0
Ethene	U		4.26	13.0

L1018940-01 Original Sample (OS) • Duplicate (DUP)

(OS) L1018940-01 08/21/18 14:29 • (DUP) R3335409-2 08/21/18 14:56

Analyte	Original Result	DUP Result	Dilution	DUP RPD	DUP Qualifier	DUP RPD Limits
Methane	ND	0.000	1	0.000		20
Ethane	ND	0.000	1	0.000		20
Ethene	ND	0.000	1	0.000		20

L1018960-08 Original Sample (OS) • Duplicate (DUP)

(OS) L1018960-08 08/21/18 16:06 • (DUP) R3335409-3 08/21/18 16:11

Analyte	Original Result	DUP Result	Dilution	DUP RPD	DUP Qualifier	DUP RPD Limits
Methane	1370	1330	1	3.40		20
Ethane	U	0.000	1	0.000		20
Ethene	U	0.000	1	0.000		20

Laboratory Control Sample (LCS) • Laboratory Control Sample Duplicate (LCSD)

(LCS) R3335409-4 08/21/18 16:15 • (LCSD) R3335409-5 08/21/18 16:22

Analyte	Spike Amount	LCS Result	LCSD Result	LCS Rec.	LCSD Rec.	Rec. Limits	LCS Qualifier	LCSD Qualifier	RPD	RPD Limits
Methane	67.8	77.7	70.5	115	104	85.0-115			9.64	20
Ethane	129	118	115	91.2	89.0	85.0-115			2.44	20
Ethene	127	117	113	92.0	88.9	85.0-115			3.39	20

1 Cp

2 Tc

3 Ss

4 Cn

5 Sr

6 Qc

7 Gl

8 Al

9 Sc



S Organic Compounds (GC) by Method 3511/8015

[L1018955-01,02,03,04](#)

Item 19.

Method Blank (MB)

(MB) R3336372-1 08/23/18 11:13

Analyte	MB Result	MB Qualifier	MB MDL	MB RDL
TPH (GC/FID) High Fraction	U		24.7	100
(S) o-Terphenyl	89.0			31.0-160

Laboratory Control Sample (LCS) • Laboratory Control Sample Duplicate (LCSD)

(LCS) R3336372-2 08/23/18 11:31 • (LCSD) R3336372-4 08/23/18 11:49

Analyte	Spike Amount	LCS Result	LCSD Result	LCS Rec.	LCSD Rec.	Rec. Limits	LCS Qualifier	LCSD Qualifier	RPD	RPD Limits
TPH (GC/FID) High Fraction	1500	1320	1260	88.0	84.0	50.0-150			4.65	20
(S) o-Terphenyl				106	99.0	31.0-160				

1 Cp

2 Tc

3 Ss

4 Cn

5 Sr

6 Qc

7 Gl

8 Al

9 Sc



Item 19.

Guide to Reading and Understanding Your Laboratory Report

The information below is designed to better explain the various terms used in your report of analytical results from the Laboratory. This is not intended as a comprehensive explanation, and if you have additional questions please contact your project representative.

Abbreviations and Definitions

MDL	Method Detection Limit.
ND	Not detected at the Reporting Limit (or MDL where applicable).
RDL	Reported Detection Limit.
Rec.	Recovery.
RPD	Relative Percent Difference.
SDG	Sample Delivery Group.
(S)	Surrogate (Surrogate Standard) - Analytes added to every blank, sample, Laboratory Control Sample/Duplicate and Matrix Spike/Duplicate; used to evaluate analytical efficiency by measuring recovery. Surrogates are not expected to be detected in all environmental media.
U	Not detected at the Reporting Limit (or MDL where applicable).
Analyte	The name of the particular compound or analysis performed. Some Analyses and Methods will have multiple analytes reported.
Dilution	If the sample matrix contains an interfering material, the sample preparation volume or weight values differ from the standard, or if concentrations of analytes in the sample are higher than the highest limit of concentration that the laboratory can accurately report, the sample may be diluted for analysis. If a value different than 1 is used in this field, the result reported has already been corrected for this factor.
Limits	These are the target % recovery ranges or % difference value that the laboratory has historically determined as normal for the method and analyte being reported. Successful QC Sample analysis will target all analytes recovered or duplicated within these ranges.
Original Sample	The non-spiked sample in the prep batch used to determine the Relative Percent Difference (RPD) from a quality control sample. The Original Sample may not be included within the reported SDG.
Qualifier	This column provides a letter and/or number designation that corresponds to additional information concerning the result reported. If a Qualifier is present, a definition per Qualifier is provided within the Glossary and Definitions page and potentially a discussion of possible implications of the Qualifier in the Case Narrative if applicable.
Result	The actual analytical final result (corrected for any sample specific characteristics) reported for your sample. If there was no measurable result returned for a specific analyte, the result in this column may state "ND" (Not Detected) or "BDL" (Below Detectable Levels). The information in the results column should always be accompanied by either an MDL (Method Detection Limit) or RDL (Reporting Detection Limit) that defines the lowest value that the laboratory could detect or report for this analyte.
Case Narrative (Cn)	A brief discussion about the included sample results, including a discussion of any non-conformances to protocol observed either at sample receipt by the laboratory from the field or during the analytical process. If present, there will be a section in the Case Narrative to discuss the meaning of any data qualifiers used in the report.
Quality Control Summary (Qc)	This section of the report includes the results of the laboratory quality control analyses required by procedure or analytical methods to assist in evaluating the validity of the results reported for your samples. These analyses are not being performed on your samples typically, but on laboratory generated material.
Sample Chain of Custody (Sc)	This is the document created in the field when your samples were initially collected. This is used to verify the time and date of collection, the person collecting the samples, and the analyses that the laboratory is requested to perform. This chain of custody also documents all persons (excluding commercial shippers) that have had control or possession of the samples from the time of collection until delivery to the laboratory for analysis.
Sample Results (Sr)	This section of your report will provide the results of all testing performed on your samples. These results are provided by sample ID and are separated by the analyses performed on each sample. The header line of each analysis section for each sample will provide the name and method number for the analysis reported.
Sample Summary (Ss)	This section of the Analytical Report defines the specific analyses performed for each sample ID, including the dates and times of preparation and/or analysis.

- 1 Cp
- 2 Tc
- 3 Ss
- 4 Cn
- 5 Sr
- 6 Qc
- 7 Gl
- 8 Al
- 9 Sc

Qualifier Description

B	The same analyte is found in the associated blank.
E	The analyte concentration exceeds the upper limit of the calibration range of the instrument established by the initial calibration (ICAL).
J	The identification of the analyte is acceptable; the reported value is an estimate.
J6	The sample matrix interfered with the ability to make any accurate determination; spike value is low.



**Item 19.**

Pace National is the only environmental laboratory accredited/certified to support your work nationwide from one location. One phone call, one point of contact, one laboratory. No other lab is as accessible or prepared to handle your needs throughout the country. Our capacity and capability from our single location laboratory is comparable to the collective totals of the network laboratories in our industry. The most significant benefit to our one location design is the design of our laboratory campus. The model is conducive to accelerated productivity, decreasing turn-around time, and preventing cross contamination, thus protecting sample integrity. Our focus on premium quality and prompt service allows us to be YOUR LAB OF CHOICE.

\* Not all certifications held by the laboratory are applicable to the results reported in the attached report.  
 \* Accreditation is only applicable to the test methods specified on each scope of accreditation held by Pace National.

## State Accreditations

Alabama	40660	Nebraska	NE-OS-15-05
Alaska	17-026	Nevada	TN-03-2002-34
Arizona	AZ0612	New Hampshire	2975
Arkansas	88-0469	New Jersey-NELAP	TN002
California	2932	New Mexico <sup>1</sup>	n/a
Colorado	TN00003	New York	11742
Connecticut	PH-0197	North Carolina	Env375
Florida	E87487	North Carolina <sup>1</sup>	DW21704
Georgia	NELAP	North Carolina <sup>3</sup>	41
Georgia <sup>1</sup>	923	North Dakota	R-140
Idaho	TN00003	Ohio-VAP	CL0069
Illinois	200008	Oklahoma	9915
Indiana	C-TN-01	Oregon	TN200002
Iowa	364	Pennsylvania	68-02979
Kansas	E-10277	Rhode Island	LA000356
Kentucky <sup>1,6</sup>	90010	South Carolina	84004
Kentucky <sup>2</sup>	16	South Dakota	n/a
Louisiana	AI30792	Tennessee <sup>1,4</sup>	2006
Louisiana <sup>1</sup>	LA180010	Texas	T 104704245-17-14
Maine	TN0002	Texas <sup>5</sup>	LAB0152
Maryland	324	Utah	TN00003
Massachusetts	M-TN003	Vermont	VT2006
Michigan	9958	Virginia	460132
Minnesota	047-999-395	Washington	C847
Mississippi	TN00003	West Virginia	233
Missouri	340	Wisconsin	9980939910
Montana	CERT0086	Wyoming	A2LA

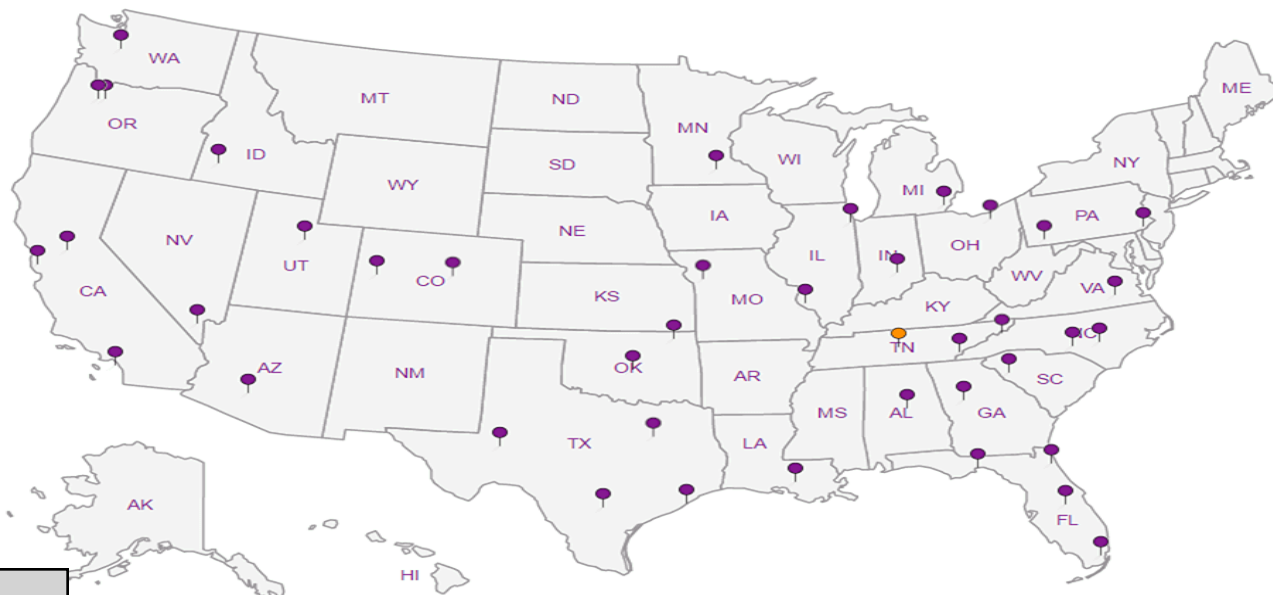
## Third Party Federal Accreditations

A2LA – ISO 17025	1461.01	AIHA-LAP,LLC EMLAP	100789
A2LA – ISO 17025 <sup>5</sup>	1461.02	DOD	1461.01
Canada	1461.01	USDA	P330-15-00234
EPA-Crypto	TN00003		

<sup>1</sup> Drinking Water <sup>2</sup> Underground Storage Tanks <sup>3</sup> Aquatic Toxicity <sup>4</sup> Chemical/Microbiological <sup>5</sup> Mold <sup>6</sup> Wastewater n/a Accreditation not applicable

## Our Locations

Pace National has sixty-four client support centers that provide sample pickup and/or the delivery of sampling supplies. If you would like assistance from one of our support offices, please contact our main office. Pace National performs all testing at our central laboratory.



1 Cp

2 Tc

3 Ss

4 Cn

5 Sr

6 Qc

7 Gl

8 Al


9 Sc

Item 19. Name/Address: **TRC Solutions**  
 131 E. Lincoln Ave  
 Suite 200  
 Fort Collins, CO 80524

Billing information:  
 Jason Jayroe  
 TRC Solutions  
 131 E. Lincoln Ave  
 Site 200  
 Fort Collins, CO 80524


Analysis / Container / Preservative

Chain of Custody Page \_\_\_ of \_\_\_



YOUR LAB OF CHOICE

12065 Lebanon Rd  
 Mount Juliet, TN 37122  
 Phone: 615-758-5858  
 Phone: 800-767-5859  
 Fax: 615-758-5859



Report to: Jason Jayroe  
 Email To: jjayroe@trcsolutions.com

Project Description: **FTC Brownfields - CCR**  
 City/State Collected: **Ft. Collins, CO**

Phone: **303-395-4038** Client Project # **241300.0001** Lab Project #  
 Fax: **303-792-0122**

Collected by (print): **Natalie Pabon** Site/Facility ID # P.O. #

Collected by (signature): *Natalie Pabon* Date Results Needed  
 Immediately Packed on Ice N \_\_\_ Y **X**

**Rush? (Lab MUST Be Notified)**

\_\_\_ Same Day .....200%  
 \_\_\_ Next Day .....100%  
 \_\_\_ Two Day .....50%  
 \_\_\_ Three Day .....25%

Email? \_\_\_ No  Yes  
 FAX? \_\_\_ No \_\_\_ Yes

No. of Cntrs

Sample ID	Comp/Grab	Matrix *	Depth	Date	Time	Cntrs	BTEX (GRO) (3) 40ml Amber w/HCl	TPH-DRO (2) 40ml Amber w/HCl	RSK-175 (2) 40ml Amber w/HCl	Diss. Metals* - 250ml HDPE w/NO <sub>2</sub> -No Pres	NO <sub>2</sub> NO <sub>3</sub> - 250ml HDPE No Pres	ALK,Br,Cl, S04 - 250ml HDPE No Pres
MW-02	Grab	GW	27'	8/16/18	13:15	10	X	X	X	X	X	X
MW-03	Grab	GW	27'	8/16/18	16:30	10	X	X	X	X	X	X
MW-01	Grab	GW	40'	8/16/18	17:30	10	X	X	X	X	X	X
MW-04	Grab	GW	30'	8/17/18	09:55	10	X	X	X	X	X	X
		GW										
		GW										
		GW										
		GW										
		GW										
		GW										

L# **1018955**  
**G077**

Acctnum: **SUNTRCFCCO**  
 Template:  
 Prelogin:  
 TSR:  
 Cooler:  
 Shipped Via:

Rem./Contaminant Sample # (lab only)

**01**  
**02**  
**03**  
**04**

\* Matrix: **SS** - Soil **GW** - Groundwater **WW** - WasteWater **DW** - Drinking Water **OT** - Other **# 4361 6930 3358** pH \_\_\_\_\_ Temp \_\_\_\_\_

Remarks: **Dissolved Metals to be lab filtered prior to analysis.** Flaw \_\_\_\_\_ Other \_\_\_\_\_

Relinquished by: (Signature) <i>Natalie Pabon</i>	Date: <b>8/17/18</b>	Time: <b>12:30</b>	Received by: (Signature) <i>[Signature]</i>	Samples returned via: <input checked="" type="checkbox"/> UPS <input type="checkbox"/> FedEx <input type="checkbox"/> Courier <input type="checkbox"/> Other	Condition: (lab use only) <b>L-5 MCHP</b>
Relinquished by: (Signature) <i>[Signature]</i>	Date: <b>8/17/18</b>	Time: <b>1730</b>	Received by: (Signature) <i>[Signature]</i>	Temp: <b>3.6°C</b> Bottles Received: <b>40</b>	COC Seal Intact: <b>Y</b> <b>N</b> <b>NA</b>
Relinquished by: (Signature) <i>[Signature]</i>	Date: _____	Time: _____	Received for lab by: (Signature) <i>[Signature]</i>	Date: <b>8/18/18</b> Time: <b>0845</b>	pH Checked: _____ NCF: <b>YLS</b>

Pace Analytical National Center for Testing & Innovation Cooler Receipt Form			
Client: <u>SUNTRCFCD</u>	SDG#	<u>1078955</u>	
Cooler Received/Opened On: <u>8/18/18</u>	Temperature:	<u>3.4</u>	
Received By: <u>Keteishia Cameron</u>			
Signature: <u>[Signature]</u>			
Receipt Check List			
	NP	Yes	No
COC Seal Present / Intact?	/		
COC Signed / Accurate?		/	
Bottles arrive intact?		/	
Correct bottles used?		/	
Sufficient volume sent?		/	
If Applicable		/	
VOA Zero headspace?		/	
Preservation Correct / Checked?			

Vann



Login #:1018955	Client:SUNTRCFCCO	Date:08/18/18	Evaluated by:Matthew Lockhart
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**Non-Conformance (check applicable items)**

Sample Integrity	Chain of Custody Clarification	If Broken Container:
Parameter(s) past holding time	Login Clarification Needed	
Improper temperature	Chain of custody is incomplete	Insufficient packing material around container
Improper container type	Please specify Metals requested.	Insufficient packing material inside cooler
Improper preservation	X Please specify TCLIP requested.	Improper handling by carrier (FedEx / UPS / Courier)
Insufficient sample volume.	Received additional samples not listed on coc.	Sample was frozen
Sample is biphasic.	Sample ids on containers do not match ids on coc	Container lid not intact
Vials received with headspace.	Trip Blank not received.	<b>If no Chain of Custody:</b>
Broken container	Client did not "X" analysis.	Received by:
Broken container:	Chain of Custody is missing	Date/Time:
Sufficient sample remains		Temp./Cont. Rec./pH:
		Carrier:
		Tracking#

**Login Comments:** Client does not specify what dissolved metals to run.

Client informed by:	Call	x	Email	Voice Mail	Date: 8/20/18	Time: 1122
TSR Initials: CMW	Client Contact: Jason Jayroe					

**Login Instructions:**

Please log for CADICP, MGDICP, NADICP, FEDICP, and KDICP

Municipality	Differentiate Injection Wells	Injection Well Reverse Setback	Comments
<a href="#">Aurora</a>	None	NA	No reverse setback standards.
<a href="#">Boulder</a>	Yes	2000' single well 2500' multi well	No residential use, school, daycare center, hospital, senior living facility, assisted living facility, outdoor venue, playground, permanent sports field, amphitheater, public park and recreation use, or other similar public outdoor facility, but not including trails or City of Boulder open space, shall be located closer than two thousand feet from any single-well well pad of an oil and gas operation in pre-production, closer than two thousand five hundred feet from any multi-well well pad of an oil and gas operation in pre-production, closer than five hundred feet from any well pad of an oil and gas operation in production, and closer than two hundred fifty feet from an oil and gas operation that has been capped and abandoned.  Injection wells are defined as pre-production.
<a href="#">Broomfield</a>	No	2000'	Producing and injection wells both have 2000-foot reverse setbacks.  Broomfield does not have any water injection wells.
<a href="#">Commerce City</a>	No	1000'	Producing and injection wells both have 1000-foot reverse setbacks.
<a href="#">Erie</a>	No	2000'	Producing and injection wells both have 2000-foot reverse setback from wells being proposed or 500-foot from existing wells.
<a href="#">Loveland</a>	No	1000'	Producing and injection wells both have 1000-foot reverse setbacks.
<a href="#">Longmont</a>	No	750'	Producing and injection wells both have 750-foot reverse setbacks.  Injection wells are defined as inactive wells in the Land Use Code.
<a href="#">Thornton</a>	No	500'	Any development within 500 feet of the city will notify the owner/operator and triggers certain requirements



Municipality	Modification of Standards	Code Language
<a href="#">Aurora</a>	None	No reverse setback standards.
<a href="#">Boulder</a>	No	
<a href="#">Broomfield</a>	Yes	“The land use review commission and city council may authorize variances from these setbacks in cases where, due to exceptional topographical conditions or other conditions peculiar to the site, an unnecessary hardship is placed on the subdivider or developer. Such variances shall not be granted if it would be detrimental to the public good or impair the intent and purposes of this title. The conditions of any variance authorized shall be stated in writing.”
<a href="#">Commerce City</a>	No	
<a href="#">Erie</a>	No	
<a href="#">Loveland</a>	Yes	“An owner of any real property subject to the requirements and limitations of Division 18.10.04, Oil and Gas Overlay Zone, may request a variance from those requirements and limitations. The grounds for such variance shall be those set out in Section 18.17.15.07, Variances, to the extent applicable. However, any variance to the oil and gas overlay zone standards must be in compliance with the underlying zoning or approved development plan governing the subject property....”
<a href="#">Longmont</a>	No	
<a href="#">Thornton</a>	No	

REPORT AND RECOMMENDATION REGARDING APPROPRIATE  
REVERSE SETBACKS  
FROM INJECTION WELLS AND PLUGGED AND ABANDONED OIL AND  
GAS WELLS IN THE FORT COLLINS FIELD

Date: October 13, 2022

Stuart M. Ellsworth, CO PE 0034621



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EXECUTIVE SUMMARY:

The City of Fort Collins has grown up around the Fort Collins Oil Field, which continues to produce relatively small amounts of oil but no natural gas. As the City has grown, the need for appropriate “Reverse Setbacks” from the remaining oil wells has become apparent. A reverse setback is the distance that must be maintained between a new building unit and an existing production, injection or plugged and abandoned well.<sup>1</sup> This report provides background information on the Fort Collins Oil Field and the life cycle of wells, a snapshot of Colorado Oil and Gas Conservation Commission (COGCC) regulations, and examples of other agency regulations related to reverse setbacks. This report focuses on two categories of wells that fall within 2,000 feet of the Sonders Property near the intersection of Douglas and Turnberry Roads: operating underground injection wells; and wells that have been plugged and abandoned.

All operating injection wells within the City limits are without storage tanks; the injection water is transported by buried pipes called flowlines<sup>2</sup>; and the wells inject low volumes of produced water deep underground. The injection wells are constructed, inspected, and monitored under requirements imposed by the COGCC consistent with regulations adopted by the US Environmental Protection Agency (EPA). These wells only handle injection water, which was itself produced by other wells from deep underground; they do not produce, store, transmit, or inject oil or gas; and they have little potential to impact public health, safety, and welfare. They cannot emit hydrocarbons, and the use of flowlines to transport the injection water to eliminate truck emissions, noise, odors, and roadway impacts that would otherwise arise from trucking the water to the injection well sites. Of note, there are two locations with an injection well and storage tanks outside but adjacent to the current City of Fort Collins.

A plugged and abandoned well is sealed with multiple cement plugs pursuant to COGCC Rule 434. The plugs prevent air emissions from the well and isolate and protect groundwater. In addition, the operator has

- Removed all surface facilities and equipment per COGCC Rule 1004,
- Disconnected, purged, depressurized, sealed, and in some cases removed all flowlines per COGCC Rule 1105<sup>3</sup>, and
- Reclaimed and revegetated the surface per COGCC Rule 1004.

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<sup>1</sup> A production well is a well that produces oil or natural gas, though in the Fort Collins Field all of the production wells produce only oil. An injection well is a well that injects fluids deep underground. A plugged and abandoned well may previously have been either a production well or an injection well. In either case, it has been sealed with cement plugs and otherwise decommissioned as explained in the text.

<sup>2</sup> Flowline means a segment of pipe transferring oil, gas, condensate or produced water between a wellhead and processing equipment.

<sup>3</sup> COGCC Rule 1105 was approved in 2019 as a result of the Firestone incident. These regulations require the removal of all flowlines at the time of well abandonment unless approved by the Commission and noticed to the local government.

For these reasons, a plugged and abandoned well presents even less risk to public health, safety, and welfare.

This report recommends that newly constructed building units be subject to a reverse setback of 75 feet from existing injection wells without storage tanks or from plugged and abandoned wells. For injection wells with storage tanks, a reverse setback of 500 feet is recommended. New building units should be prohibited within these reverse setbacks, but parks, ballfields, playgrounds, gardens, and similar outdoor activity areas can be permitted within these areas.

These recommended reverse setbacks will minimize risk to public health, safety, and welfare and will protect nearby residents and the environment. These reverse setbacks will also allow safe and sufficient access to the well. For injection wells, this distance will allow access needed for required annual testing, inspection, monitoring, maintenance, and eventually abandonment. For plugged and abandoned wells, this access may be needed in the unlikely event that future remedial work on the well is necessary.

It should be noted that the issue of reverse setbacks for injection and plugged and abandoned wells in the Fort Collins Oil Field is separate and distinct from the issues associated with the Firestone incident. Unlike the injection wells and plugged and abandoned wells in the Fort Collins Field, the Firestone incident involved a producing well that produced natural gas. The Firestone well had also been returned to production after being shut-in, and the flowline had been severed. The COGCC subsequently adopted a number of regulations that address the risks associated with returning wells to production and operating flowlines.

### BACKGROUND

#### Fort Collins Oil Field

The Fort Collins Oil Field (Field) was discovered almost 100 years ago, in 1924. It is located in Larimer County and the City of Fort Collins. It generally falls within Township 8 North, Range 68 West. Figure 1 shows the general field layout highlighting the producing and enhanced recovery injection wells, flowline pipes to transport fluids, and the central processing facilities.

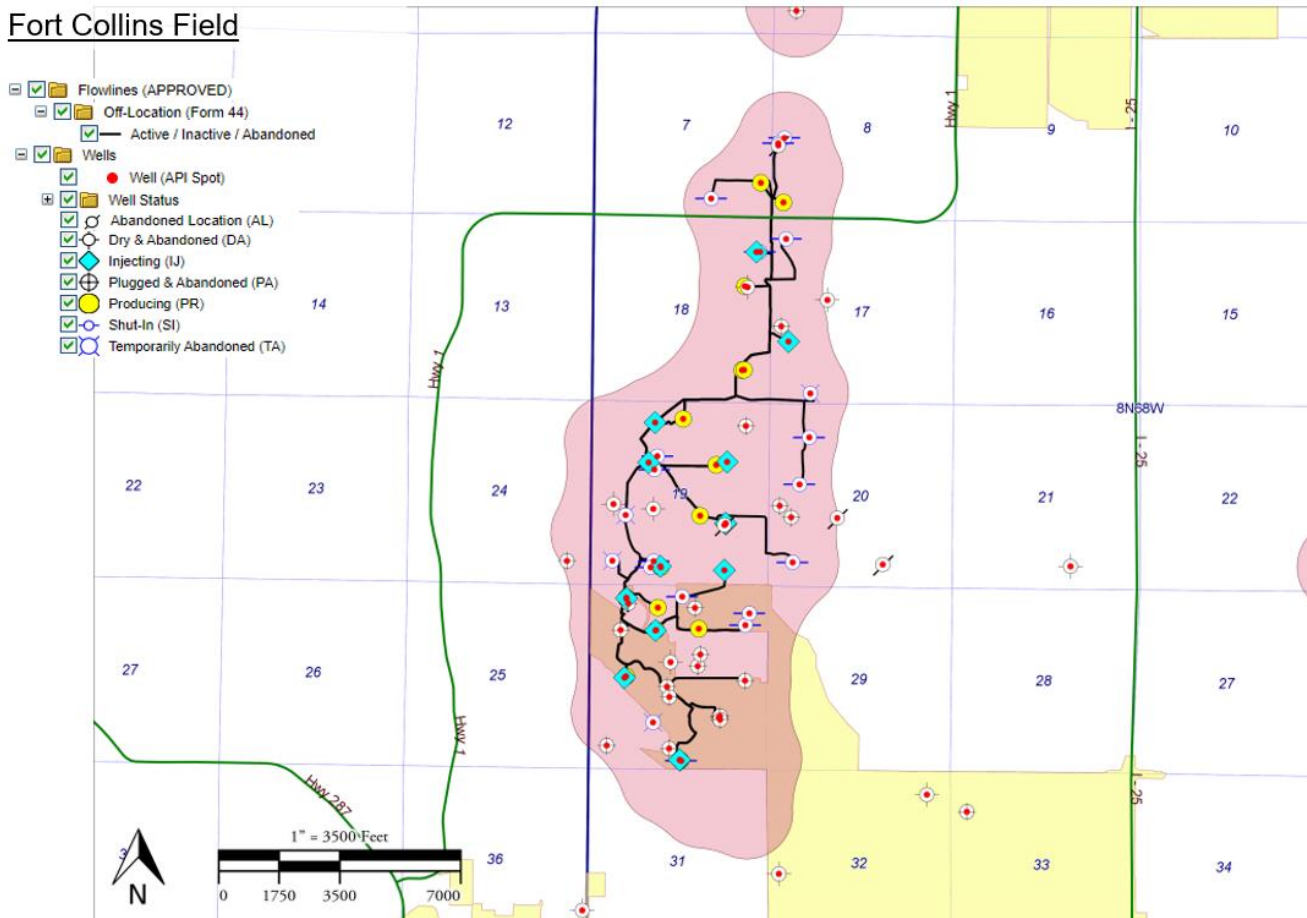


Figure 1: A depiction of the Fort Collins oil Field with the current well status and flowlines from the Colorado Oil and Gas Conservation Commission with Google Earth images of injection wells and abandoned well sites.

The Field has produced over 5 million barrels of oil but is now largely depleted. This means that the energy and pressure within the oil reservoir has declined over time. Due to this reduced reservoir pressure, the existing production wells are currently being produced through enhanced recovery. Enhanced recovery is a process whereby an external fluid such as water is injected into the reservoir through injection wells. This supports reservoir pressure and displaces hydrocarbons towards the production wells. Despite the enhanced recovery process, the existing production wells in the Field remain low-producing and average less than two barrels of oil production per day.<sup>4</sup>

<sup>4</sup> The COGCC has defined a low producing well as one that produces a daily average of less than 2 barrels of oil equivalent or 10 thousand cubic feet of natural gas equivalent of gas over the previous 12 months.

The Field does not produce any natural gas. Therefore, there is no flowing natural gas emitted from the wells into the atmosphere or released into the soil.

The field is unusual in that all produced fluids from the production wells are transported by flowlines to facilities located along the western side of the field (COGCC Fac# 333083 and COGCC Fac# 307186). These facilities separate the oil from produced water, have storage tanks, and include an enhanced recovery injection well. The oil is collected and trucked off site for sale. The water is piped by flowline to the injection wells and then reinjected as part of the enhanced recovery process. The flowlines and facilities eliminate the need for on-site separation and storage of fluids. Because the production well sites do not have separators and oil tanks, they do not generate air emissions, fluid spills, odors, or nuisance noises. This is an important consideration because the CDPHE has highlighted pre-production activities<sup>5</sup> and oil tanks<sup>6</sup> as a potentially significant source of well site emissions. The flowlines and central facilities also eliminate the need to truck oil and water from the production well sites, which eliminates truck traffic.

Figure 2 is a Google Earth image of an enhanced recovery injection well in the City of Fort Collins Hearthfire Subdivision. The well is currently less than 80 and about 160 feet from the adjacent residential buildings. The site shows a fenced area surrounded by landscaping. The site is accessed by a 15-foot-wide drive off Town Center Drive. The site contains the injection well house for the wellhead and injection pump. There is also a production well on the site, which contains a wellhead and pumpjack. There are no other pieces of surface equipment (separators or storage tanks). The access drive and site allow for maintenance by truck mounted equipment.

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<sup>5</sup> Assessment of Potential Public Health Effects from Oil and Gas Operations in Colorado February 21, 2017

<sup>6</sup> Oil & Gas and Point Source Emissions Inventory Development, Supporting the Denver Metro/North Front Range State Implementation Plan for the 2008 and 2015 8-Hour Ozone National Ambient Air Quality Standards DRAFT: July 8, 2022, Adopted: December xx, 2022

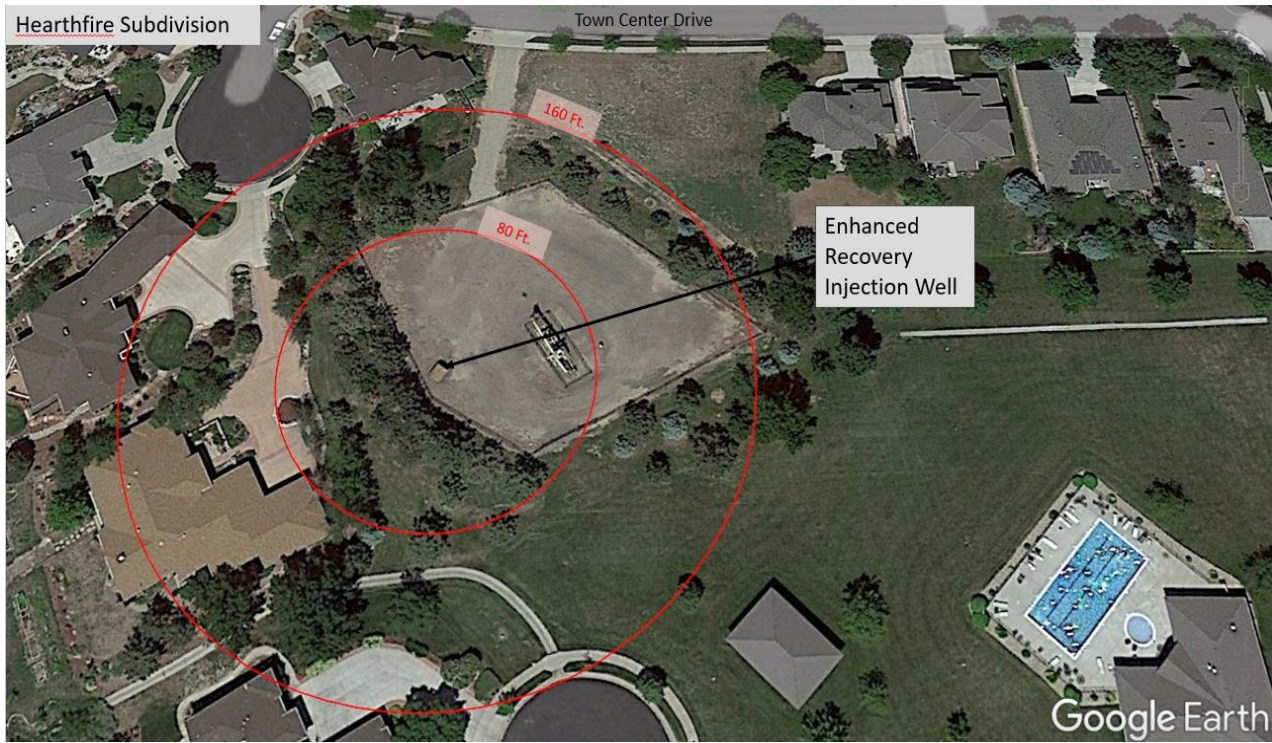


Figure 2: Google Earth image of an enhanced recovery injection well site in the Hearthfire Subdivision.

### Life Cycle of Wells in the Fort Collins Oil Field

Distinct stages within the life cycle of a production or injection well present different risks, and understanding these stages is vital from a risk-management standpoint.

- **Pre-Production Stage:** The pre-production stage involves the construction of the location and the well. This includes constructing the well pad and production facilities, drilling, casing, and cementing the well, and completing the well by perforating the casing and hydraulically fracturing the formation. This stage involves the largest area of disturbance, the most activity, and the greatest risk of environmental impact.
- **Production Stage:** The production stage is the production of oil and gas from a production well or the injection of produced water into an injection well, and it is the longest stage in a well's life cycle ranging from a few years to over 100 years. The area of disturbance, activity, and risk of impact are all greatly reduced from the pre-production stage.
- **Abandonment Stage:** The last stage is when the well is no longer economically viable, or the reservoir is fully depleted of hydrocarbons. At this stage, the well is plugged with multiple layers of cement; all associated equipment and flowlines are removed; and the site is reclaimed and revegetated. There is little or no disturbance, activity, or risk associated thereafter with the site.

The following sections provide additional information on a well's life cycle, which helps to understand why some other agencies have required setbacks based on the activities within the various life cycle stages. The production and injection wells in the Fort Collins Oil Field have already been drilled, so no



pre-production activities will occur at them and based on the near depletion of the Field, it would not be economic to drill future wells in the Field. Moreover, all of the well sites are less than half an acre in size, there are no fluid storage tanks, and the surface equipment is limited to a pump and wellhead.

#### **Pre-Production Stage: Vertical Well Drilling and Construction**

Figure 3 is a Google Earth image of a vertical production well construction site with a 2-acre disturbed area, a drill rig, and the associated drilling equipment. Figure 4 depicts a typical rig used to drill the vertical well.

The downhole portion of a well is constructed in a manner to isolate and protect all known and potentially usable ground water. This is accomplished by placing a set of telescoping steel casings cemented into the drill hole.

#### **Pre-Production Stage: Vertical Well Completion**

The hydraulic fracturing phase occurs after the production well has been drilled and the steel casing cemented. The steel casing is perforated with small holes at the injection formation. Water is injected down the steel casing and through the perforations at high pressure to initiate formation fractures extending about 100 feet away from the well. After the fractures have been created, the fracture water will flow back out of the well into storage tanks. After flowback is complete, the well production stage will begin. Figure 5 shows a hydraulic fracture treatment on a vertical well.



Figure 3: Google Earth image of a vertical well drilling in 2011 on 2-acres in Weld County.



Figure 4: A typical drill rig use to drill a deep vertical hole.

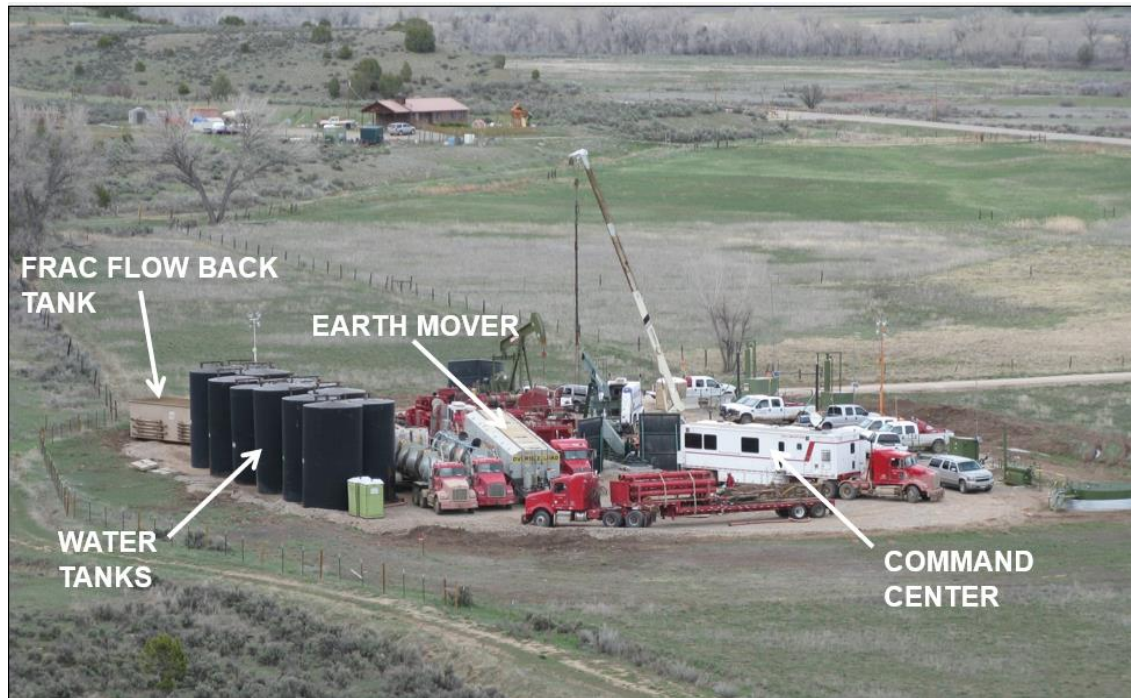


Figure 5: Hydraulic fracture job on a vertical well.

### Pre-Production Stage: Horizontal Wells

For new horizontal wells, the area of disturbance, activities, and potential impacts are greatly increased. A well's horizontal portion can extend up to three miles, and multiple horizontal wells are often drilled on a single pad. The pre-production disturbed area can be 20 acres or more. The scale of operations is dramatically increased due to the large number of wells being drilled, the length of the wells' horizontal portion, the magnitude of the hydraulic fracture treatment, and the volume of oil, natural gas and water being produced. Figure 6 shows a multiple well drilling site with the numerous pieces of production equipment (separators, oil and water storage tanks, compressors, meters, emission control devices and flaring units). Figure 7 shows a multiple well hydraulic fracturing operation with the numerous pieces of equipment (hydraulic pumping trucks, water storage tanks, flowback tanks, emission control devices and flaring units). Though hard to pick out, the pickup trucks can provide a sense of scale in the images.



Figure 6: A pre-production 15-acre site drilling multiple long horizontal wells showing the drill rig and associated equipment.



Figure 7: A pre-production 15-acre site drilling multiple long horizontal wells during hydraulic fracturing of the long horizontal wells.

### **Possible Future Work on Existing Oil and Gas Wells in the Fort Collins Field**

In the Fort Collins Oil Field, future maintenance work on existing wells would seek to maintain the wells' mechanical integrity and their ability to continue production or injection. It would also include plugging and abandoning wells that are no longer needed. This work is considered to be routine maintenance work, and it can be scheduled during daylight hours during weekdays.

Work activities might include:

- Repair of the surface or downhole pumps,
- Repair or replacement of downhole tubing or packers,
- Cleaning and opening downhole casing perforations,
- Required mechanical integrity and bradenhead testing,
- Repair or replacement of flowlines, and
- Well plugging and abandonment.

Work would be performed in a few days or less by some or all of the following:

- A small several person work crew,
- A truck mounted workover rig or pulling unit to pull and place tubing, pump, or pump rods in and out of well,
- A roundoff tank to hold any fluids which might come out of the hole during maintenance,
- A cement truck during well plugging, and
- A couple of pickup trucks.

No new production well construction would be expected in the Fort Collins Oil Field. As previously noted, the Field is depleted, and the existing production wells are low producing. Throughout the Field's long history, production wells have been drilled to various geologic formations. Production from other formations has been evaluated with little success. Therefore, deepening, or recompleting an existing production well into another formation is not a perceived future for extending the well's productive life. Also, converting an existing vertical well into a long horizontal well is not physically possible since an older vertical well was not designed or capable of managing the stresses from current hydraulic fracture treatments or production stresses present in new long horizontal wells.

### **WELL ABANDONMENT**

At the end of a production or injection well's active life, the well is plugged with cement and other materials placed into the wellbore to prevent upward migration of fluids in the wellbore. The Ground Water Protection Council has described the plugging process as follows:

“The purpose of well plugging is to permanently seal the inside of the well and wellbore so that fluid cannot migrate from deeper to shallower zones or create reservoir problems through downward drainage. The process involves the placement of cement and other materials such as gels inside the well or wellbore in a manner that prevents the upward or downward migration of formation fluids.”

According to the COGCC, more than 27,000 wells have been plugged in Colorado. The few wells that have experienced problems are distinguishable from the Fort Collins Field because they were older wells, often abandoned prior to 1952 when the COGCC was formed. COGCC Rule 434 imposes strict requirements concerning the plugging and abandonment of production and injection wells, and it requires that plugging procedures be reviewed and approved by the COGCC staff before plugging operations take place. Rule 434 also requires the operator to install multiple cement or mechanical plugs in the wellbore, including:

- A cement or mechanical plug above any perforated interval in the well,
- A cement or mechanical plug above any unperforated hydrocarbon zones that are generally produced in the nearby vicinity,
- A cement plug across the casing stub (end) if casing is cut and pulled,
- A cement or mechanical plug above any repaired casing leaks or cementing stage tools,
- A cement plug across any freshwater aquifers not covered by surface casing or production casing cement,
- A cement plug across the surface casing shoe, and
- A cement plug at the surface 50 feet in length.

After the well is plugged, the operator must remove all of the surface equipment and the subsurface flowlines and reclaim the surface terrain. Surface reclamation involves regrading and revegetating the site to match the surrounding landscape and prevent storm water runoff. Figure 8 shows how a well is constructed with cemented steel casings and abandoned with the sealing plugs. Figure 9 shows a plugged and abandoned well in the Fort Collins Oil Field with the site reclaimed. Many plugged and abandoned wells in the Fort Collins Oil Field are currently interspersed with residential development and open space, and they have become part of the existing landscape.

The equipment needed to plug a well includes a truck mounted rig, steel tank to capture well fluids, and truck mounted pumping equipment to mix and pump cement plugs. A 75 foot reverse setback area will provide an adequate and safe area to perform the work. A 16-foot-wide access drive can provide access to the site. These distances will allow access to the well and space to stage equipment around the well.

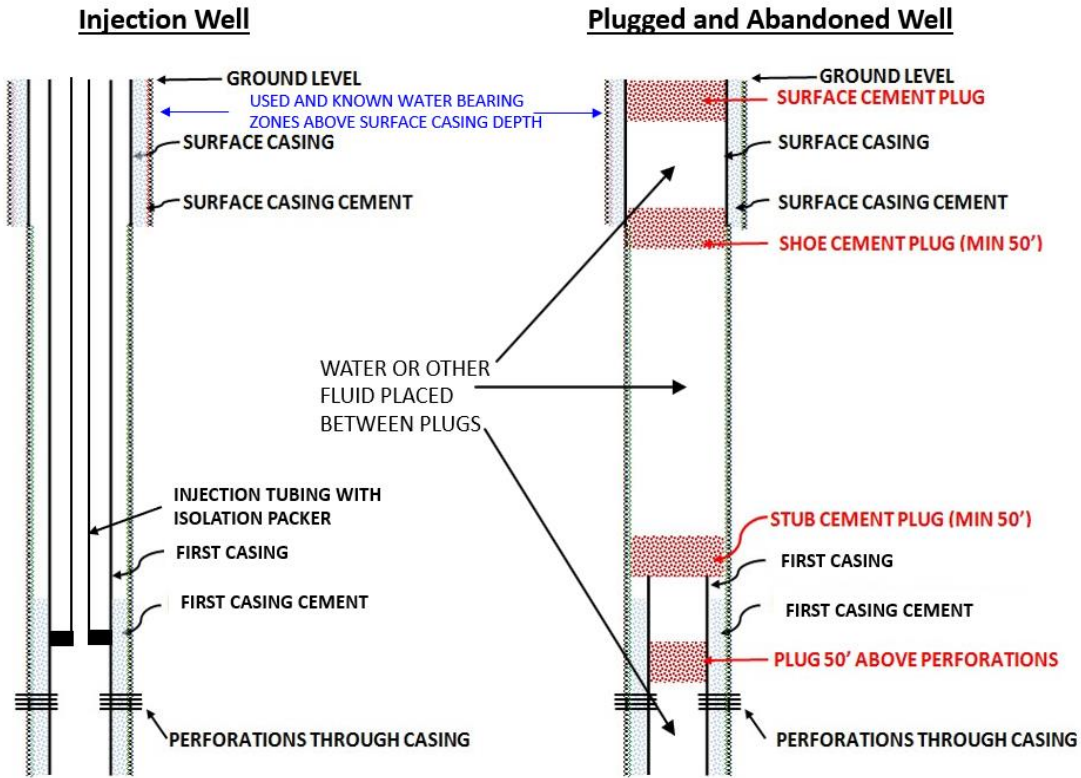


Figure 8: Depicting a plugged and abandoned injection well.



Figure 9: A plugged and abandoned well in the Fort Collins Oil Field with site reclaimed.

### **UNDERGROUND INJECTION WELL**

An oil and gas well produces brine water, which contains dissolved salts and trace amounts of hydrocarbons. In Colorado, most of this produced water is injected deep underground into geologic formations that are 7,000 to 10,000 feet deep. These formations cannot be used for domestic or industrial purposes. These special wells are called underground injection wells, and they differ from oil and gas production wells in many ways and are regulated differently. Where production wells withdraw oil and gas from deep underground formations, underground injection wells inject water into even deeper underground formations. Accordingly, underground injection wells do not generate air emissions due to the absence of oil and gas.

In the Fort Collins Oil Field, most of the injection wells do not have storage tanks, which are a potential source of emissions according to a CDPHE report<sup>7</sup>. Therefore, the injection well sites have little impact on the surrounding communities and likewise pose little risk to the environment.

### **Disposal Well -vs- Enhanced Recovery Injection Well**

There are two types of underground injection wells.

1. **Disposal Wells**: A disposal well permanently places produced water into an authorized deep geologic formation. Disposal wells are deep wells drilled below used or potentially useable water.

The Fort Collins Field has one disposal well, Peterson #14-20, located just outside the City in the SW quarter of the SW quarter of section 20, Township 8 North and Range 68 West, 968 feet northeast of the intersection of Douglas and Turnberry Roads. The produced water is transported to this well by flowlines. There are no pits or storage tanks on location. The well was drilled to a depth of 6,635 feet below ground surface. By permit, only produced water from the Fort Collins Oil Field can be injected into the well. A review of COGCC Monthly Report of Operation shows this to be a low volume injection well.

2. **Enhanced Recovery Injection Wells**: The second injection well classification is enhanced recovery injection wells. These are injection wells drilled into existing hydrocarbon fields for enhanced recovery as discussed previously and schematically depicted in Figure 10. The result is the production of residual oil and produced water. The produced water is then recycled back into the injection well to repeat the process. There are a number of enhanced recovery injection wells in the Fort Collins Oil Field.

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<sup>7</sup> Oil & Gas and Point Source Emissions Inventory Development, Supporting the Denver Metro/North Front Range State Implementation Plan for the 2008 and 2015 8-Hour Ozone National Ambient Air Quality Standards DRAFT: July 8, 2022, Adopted: December xx, 2022



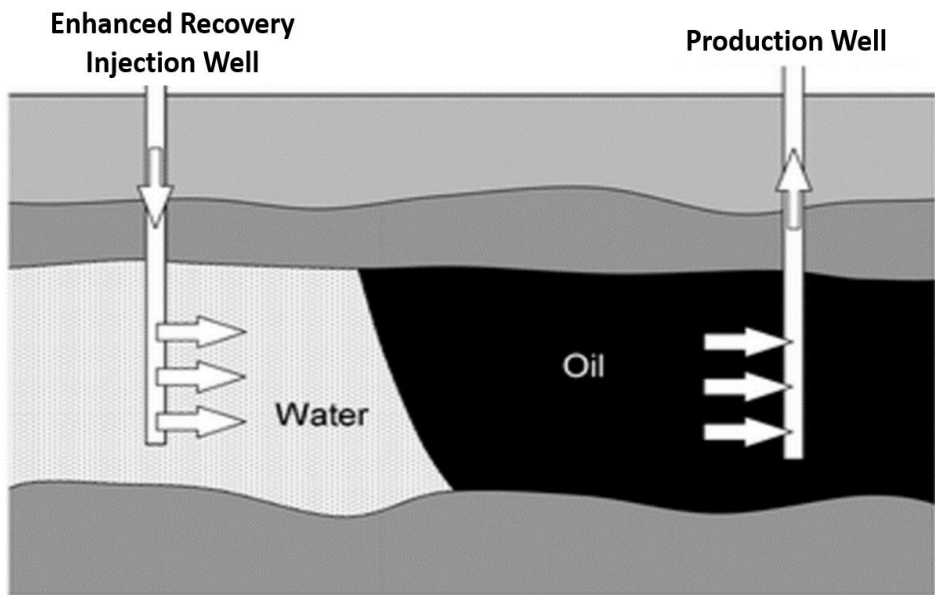


Figure 10: Schematic of waterflood showing a water injection and oil production wells

Under the Safe Drinking Water Act, EPA has regulatory authority over underground injection wells. In Colorado, EPA has delegated the permitting, monitoring, inspection, and closure of these wells to the COGCC. The COGCC's EPA authorization and the details of their underground injection program can be found at <https://cogcc.state.co.us/library.html#/technicalreports>.

COGCC has a robust regulatory program to authorize, permit, annually inspect, and mechanically test each injection well. The authorization process requires documentation of well construction, injection formation water analysis, fracture gradient testing, seismicity review, public, surface owner and mineral owner notifications, offset well review, water well review and a surface use agreement. The annual inspection includes an audit of surface facilities. The annual mechanical integrity testing of the wells includes an internal mechanical integrity test and external bradenhead pressure test of the casing to assure there are no well integrity issues and no potential for produced water to leak from the well bore.<sup>8</sup> The inspection and test results are available on the COGCC website. A summary of these test results is provided to the EPA as part of the required annual and biannual reporting.

<sup>8</sup> Mechanical Integrity Tests and Bradenhead Tests are used to monitor a well's integrity and identify leaks.

A Mechanical Integrity Test (MIT) of a well is a test of a casing's internal integrity used to determine if there is a leak in the well's casing, tubing, or mechanical isolation device. To perform a test an isolation packer is placed above the downhole perforations, the casing is filled with water, then a pressure is applied and held for a time. If the pressure remains stable (unchanged), the casing has integrity. If the pressure is not stable (it falls or rises) the casing does not have integrity. Reference: *COGCC Mechanical Integrity Tests - Practices and Procedures*

A Bradenhead Test of a well is a pressure measure of the annular space between the surface casing and the next smaller diameter casing string that extends up to the wellhead. Ideally a pressure reading should be zero. A pressure reading can be an indication of fluid entering the annular space.

Reference: *COGCC Bradenhead Pressure Monitoring, Testing, Management, Mitigation, and Reporting*

**REVIEW OF REVERSE SETBACKS ADOPTED BY OTHER AGENCIES**

State oil and gas commissions regulate where and how new oil and gas wells are drilled and produced. They have adopted varying setback requirements for this purpose. But as previously explained, the pre-production and production operations associated with new long horizontal wells involve many large-scale activities and can generate impacts that are quite different and much more significant than those associated with injection wells and plugged and abandoned wells within the Fort Collins Oil Field.

Local governments regulate new residential and commercial development. As part of that authority, some local governments have adopted reverse setbacks from existing oil and gas locations. Some of these local government reverse setbacks are overly broad and problematic because they do not distinguish between old low volume vertical production or injection wells, new multiple horizontal well locations, the presence or absence of surface production facilities, and plugged and abandoned wells; each of these well types and classifications presents different risks. As a result of these differences, some local governments have defined setbacks based on well stages: pre-production, during production, and for a plugged and abandoned well. Below is a summary of the reverse setbacks adopted by some state and local agencies.

**COGCC**

The COGCC has no requirements or recommendations regarding reverse setbacks. This is because the COGCC does not regulate where new residential or commercial development may occur.

**EPA**

As previously noted, the EPA regulates the drilling of injection wells in many states. Like the COGCC, EPA has no requirements or recommendations regarding reverse setbacks from injection wells. Nor does EPA have setback requirements for siting new injection wells away from existing buildings. All of EPA's requirements for injection well siting involve the protection of underground sources of drinking water or otherwise address subsurface conditions.

**Other States**

Other states reviewed were California, New Mexico, Ohio, Pennsylvania, and Texas. None of these states have reverse setback requirements from production or injection wells or address where new building development should occur.

**Alberta Energy Regulator**

The Alberta Energy Regulator (AER) [an equivalent to the COGCC] regulates oil and gas development in the Province of Alberta, Canada, and has adopted a reverse setback requirement for plugged and abandoned wells. Through AER-Directive 079A, *Surface Development in Proximity to Abandoned Wells*, the AER prohibits the construction of any structures over plugged and abandoned wells and

requires a 5-meter (16.5 foot) setback radius around the plugged well in case the well should need remedial work.<sup>9</sup>

**Local governments**

In Colorado, seven other Front Range cities and counties have adopted reverse setbacks for new residential and commercial developments. Several of the reverse setbacks have been adjusted based on if the well is in the pre-production, production, or abandonment stage. Six Colorado local governments include injection wells in the definition of “Production Facility” or “Well.” Within these regulations, there does not appear to be a distinction between a disposal well or an enhanced recovery well. But several of these regulations require a special use permit, which would allow the local government to consider the lower risks associated with low volume enhanced recovery wells. Table 1 provides an overview of the tabulated results, which vary significantly. The full tabulated review is in Appendix A.

Well Life Cycle Stage	Reverse setback (feet)	
	Low	High
Pre-production (Drilling and Completion Activities)	150	2,000
Production Well - Horizontal Wells	150	2,000
Production Well - Vertical Well	150	2,000
Plugged & Abandoned wells	25	250

*Table 1: Summary of Colorado Front Range Community reverse setback for new development based on life cycle phase.*

Below are the reverse setback references for Denton, Texas and Los Angeles, California. This information too is included in Appendix A, together with reverse setbacks from local governments in Pennsylvania and New Mexico.

- Denton, Texas has a defined reverse setback of 20-feet from an abandoned well. They did not reference injection or oil wells.
- Los Angeles, California regulates new building setback through 110.4 Methane Gas Hazards, which states “no new habitable buildings or enclosed structures can be adjacent to, or within 300 feet (91.44 m) of active, abandoned or idle oil or gas well(s) unless designed according to recommendations contained in a report prepared by a registered design professional, such as a licensed civil engineer or a licensed petroleum engineer, to evaluate whether such wells are being properly operated or maintained, or are abandoned. No permits shall be issued until documentation of proper operation, maintenance, abandonment, or re-abandonment is submitted to and approved by the Building Official.” They do not reference injection wells.

<sup>9</sup> Through AER-Directive 056, *Energy Development Applications and Schedules*, the AER also requires a special plan review for new development near a well producing or a facility processing sour gas. Sour gas is natural gas that contains measurable amounts of hydrogen sulfide (H<sub>2</sub>S). <https://www.aer.ca/providing-information/by-topic/sour-gas>. This requirement has no application to the Fort Collins field because the field does not contain flowing sour gas.

**REVERSE SETBACK RECOMMENDATIONS:**

The Fort Collins Oil Field injection wells already exist, so they have none of the disturbance activities, or potential impacts associated with pre-production work as depicted in Figures 3 through 7. The surface equipment is limited to a pumping unit and wellhead. These injection wells do not produce any oil, gas, or water. They inject water into an authorized zone. They have limited visual impact, produce no emissions, generate no routine truck trips, and are virtually indistinguishable from the surrounding landscape. There are two injection wells with surface storage equipment, both are outside the City of Fort Collins.

Plugged and abandoned wells in the Fort Collins Oil Field have even less impact. The wellbore has been sealed with multiple plugs, all surface equipment and subsurface flowlines have been removed, and the surface has been reclaimed and revegetated. Many of these wells are currently part of the existing landscape and are interspersed with residential and commercial development.

State and local setback requirements for new production wells provide no useful direction on an appropriate reverse setback from existing injection wells or wells that are plugged and abandoned in the Fort Collins Oil Field. Many of those state and local requirements respond to the greater area of disturbance, activity, and potential impacts associated with horizontal production wells during the pre-production and production stages. In contrast, existing injection wells and wells that were previously plugged and abandoned do not involve any pre-production activities. A vertical production well may impact 2 or more acres as depicted in Figure 3, while a horizontal production well may impact 20 or more acres as depicted in Figures 6 & 7. In contrast, an injection well in the Fort Collins Field typically uses 1,000 square feet or less for the wellhead and injection pump, while a plugged and abandoned well has no surface impact once the site has been reclaimed.

The following are the recommendations for a reverse setback from an existing plugged and abandoned well and from an existing injection well with and without surface facilities. New building units should be prohibited within these reverse setbacks, but parks, ballfields, playgrounds, gardens, and other non-residential public spaces could be permitted within these areas.

**75-Foot Reverse Setback to Plugged and Abandoned Wells:**

As noted, the COGCC rigorously regulates the plugging and abandonment of wells, and it has done so for many years. After a well is plugged and abandoned, it cannot emit pollutants and the wellsite is reclaimed. In addition, the well should not require additional work. Therefore, the well does not present a risk to public health and safety or the environment. For plugged and abandoned wells, a reverse setback should be 75 feet. This recommendation is based upon the following factors:

- The plugging process has a proven record of protecting the public and the environment in Colorado and other states by preventing oil and gas from reaching useable ground water or the ground surface.

- The COGCC has not required or recommended any setback for residential structures from plugged and abandoned wells, and the Province of Alberta uses a five-meter (16.5 feet) setback requirement for this purpose. Denton, TX requires 20-feet.
- Several plugged and abandoned wells within the City of Fort Collins have setbacks of 75 feet or less from an occupied building with no discernible impact or threat to public health or safety.
- The remaining risk associated with a plugged well is the potential need to reenter and repair the well at a later time, and this contingency can be addressed through a setback of 75 feet if access to the well became necessary.
- After wells are physically plugged and abandoned, casing is cut off four to six feet below ground level and the surface area is restored. The COGCC requires all plugged wells to be surveyed using a GPS system in the event the well needs to be located at some future date. A “dry hole” marker may be placed on the surface at the landowner’s discretion.
- There is no risk of natural gas in the soil surrounding a well because the Fort Collins Field is an oil field that has not produced natural gas.

In the highly unlikely event that a plugged well needs to be replugged, a truck mounted rig will need to access the well site. Additional equipment would include steel tanks to capture fluid from the well and truck mounted pumping equipment to mix and pump new cement plugs. A reverse setback of 75 feet is more than adequate for this purpose.

#### 75-Foot Reverse Setback to Injection Wells without Surface Facilities:

Injection wells in the Fort Collins Oil Field generally do not contain storage tanks, and they do not produce or inject oil or gas. Produced water is transported to the injection wells by flowlines. The use of flowlines greatly reduces if not eliminates the risk of spills. There is no potential for any air emissions. Future well access is required for the operator to perform maintenance and an annual integrity test. This will require the use of a small truck mounted rig and can be completed in a few days. A reverse setback of 75 feet is more than sufficient for this purpose. This recommendation is based on the following considerations:

- The injection wells already exist, and therefore there will be no pre-production construction activities.
- The risk associated with well maintenance is limited because the well produces no natural gas emissions.
- There is no surface production equipment requiring maintenance, which could generate leaks or air emissions.
- The absence of surface production equipment eliminates nuisance noise and odors.
- All injection wells are required to perform an annual bradenhead to assure there are no leaks.
- All injection wells are required to annually perform a mechanical integrity test, which likewise ensures there are no leaks.
- Several existing injection wells without storage tanks in the City of Fort Collins have setbacks of 75 feet or less from an occupied building with no discernible impact or threat to public health or safety.

### 500-Foot Reverse Setback to Injection Wells with Surface Facilities:

Within the Fort Collins Oil Field, there are two injection wells with surface storage which have the potential for spills and air emissions. Both are outside the City limits. These are not large high volume production facilities, which were the basis of the COGCC 2,000-foot setback adopted in 2020, so the emission risks are much less than the risks that gave rise to the COGCC setback. Moreover, as part of the CDPHE health impact study<sup>10</sup>, CDPHE reviewed over 10,000 ambient samples collected 500-feet or more from oil and gas active operations during pre-production and the production activities, and they found no elevated risks beyond 500 feet. With respect to these samples, the report states:

- *“All measured air concentrations were below short- and long-term safe levels of exposure for non-cancer health effects, even for sensitive populations;”* and
- *“Cancer risks for all substances were within the “acceptable risk” range established by the U.S. EPA.”*

The well operator will need access to the well to perform maintenance and the annual integrity test as discussed for an injection well without surface facilities.

For the two injection wells with storage tanks within the Fort Collins Field, a reverse setback should be 500 feet. This should be more than sufficient to provide access to the well to perform maintenance and the annual integrity test, and it provides an additional buffer to address the risks of potential air emissions, noise, and other impacts associated with the storage tanks. This recommendation is based on the following considerations:

- The CDPHE study on health impacts found no elevated air samples at 500 feet or more.
- The injection wells already exist, and therefore there will be no pre-production construction activities.
- The risk associated with well maintenance is limited because the well produces no natural gas emissions.
- The storage tanks contain produced water with only traces amount of oil.
- All injection wells are required to perform an annual bradenhead to assure there a no leaks into near surface ground water.
- All injection wells are required to annually perform a mechanical integrity test, which likewise ensures there are no leaks.

### **CONCLUSION:**

The Fort Collins Oil Field has existing injection wells and plugged and abandoned wells. Most of the injection wells in the Field have no on-site storage because the water is transported by flowlines. The absence of storage tanks eliminates the need for trucks trips to transport the injected water. With no

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<sup>10</sup> Assessment of Potential Public Health Effects from Oil and Gas Operations in Colorado February 21, 2017.

truck traffic, the related truck noise and odor is not present to impact the surrounding community. Accordingly, there is little risk to the public and the environment.

Two injection wells in the Field have storage tanks. These are outside the City of Fort Collins. The Colorado Department of Public Health and Environment has determined oil storage tanks at oil and gas locations present a risk of air emissions. But the CDPHE health impact study found no elevated *levels of exposure for cancer or non-cancer* sample greater than 500-feet. Injection wells do not produce or inject hydrocarbons and are constructed to isolate and protect groundwater. As a result of these factors, there is limited risk to public health, safety, the environment, and wildlife.

COGCC regulations for the plugging and abandonment of a well require the well to be sealed through the placement of multiple cement plugs, including above injection perforations, at casing cut off points, at exposed aquifers, and at the surface. These plugs provide multiple layers of protection for both ground water and nearby surface occupants. Further, all surface appurtenances and flowlines are removed, and the location is reclaimed and revegetated. A plugged and abandoned well presents no meaningful risk to the public or the environment.

Under these circumstances, the following reverse setback distances are recommended to ensure that future residents are provided with a safe buffer protective of public health, safety, and the environment

- A reverse setback of 75 feet for:
  - Plugged and abandoned wells, and
  - Injection wells with no storage tanks.
  
- A reverse setback of 500 feet for the two injection wells with storage tanks.

These setback distances can still be utilized for non-residential public spaces like parks or open spaces.

**REFERENCES:**

Opinion Supporting 100-Foot Setbacks From Plugged and Abandoned Oil and Gas Wells within the Waters' Edge Subdivision, Larimer County, Colorado, David K. Dillion December 26, 2015

Alberta Energy Regulator: AER Directive 056: Energy Development Applications and Schedules, May 2021

Alberta Energy Regulator: AER Directive 079 Surface Development in Proximity to Abandoned Wells. November 2014

Alberta Energy Regulator: AER Bulletin 2013-03 Mandated Subdivision and Development Application Referrals, Setback Relaxations, Land Development Information Package, and Abandoned Well Information. 2013

Alberta Energy Regulator: Explaining AER Setbacks – EnerFAQ, September 2015

California Department of Conservation, Geologic Energy Management Statutes & Regulation, January 2022

COGCC Rules and Regulations, <https://coacc.state.co.us/req.html#/rules>

**COGCC 2020 Rulemaking** hearing audio for setback to newly drilled wells including the Colorado Department of Public Health and Environments presentation of the related emission:

Mission Change Rulemaking - September 4, 2020 (Morning)

<https://www.youtube.com/watch?v=uHwVWCF4bCU&list=PLpwAEXLpeKye1Zq4Lbqc6OwqGt02k21Jk&index=45>

Mission Change Rulemaking - September 4, 2020 (Afternoon)

<https://www.youtube.com/watch?v=8o9L77TLNrw&list=PLpwAEXLpeKye1Zq4Lbqc6OwqGt02k21Jk&index=44>

Mission Change Rulemaking - September 8, 2020 (Morning)

[https://www.youtube.com/watch?v=tq\\_nd6MciU&list=PLpwAEXLpeKye1Zq4Lbqc6OwqGt02k21Jk&index=43](https://www.youtube.com/watch?v=tq_nd6MciU&list=PLpwAEXLpeKye1Zq4Lbqc6OwqGt02k21Jk&index=43)

Mission Change Rulemaking - September 8, 2020 (Afternoon)

<https://www.youtube.com/watch?v=TuBOT7cxqk8&list=PLpwAEXLpeKye1Zq4Lbqc6OwqGt02k21Jk&index=42>

Mission Change Rulemaking - September 9, 2020 (Morning)

<https://www.youtube.com/watch?v=2KkJCq5BI7w&list=PLpwAEXLpeKye1Zq4Lbqc6OwqGt02k21Jk&index=41>

**CDPHE:**

[https://www.youtube.com/watch?v=seel\\_qd3TzY&list=PLpwAEXLpeKye1Zq4Lbqc6OwqGt02k21Jk&index=46](https://www.youtube.com/watch?v=seel_qd3TzY&list=PLpwAEXLpeKye1Zq4Lbqc6OwqGt02k21Jk&index=46)

Assessment of Potential Public Health Effects from Oil and Gas Operations in Colorado  
February 21, 2017



Oil & Gas and Point Source Emissions Inventory Development, Supporting the Denver Metro/North Front Range State Implementation Plan for the 2008 and 2015 8-Hour Ozone National Ambient Air Quality Standards DRAFT: July 8, 2022, Adopted: December xx, 2022,

**Appendix A**

OTHER COMMUNITIES	REGULATION	SETBACK	NOTES
Los Angeles, California	110.4 Methane Gas Hazards	300 ft.	No new buildings or enclosed structures, additions, or conversions of a building or structure to habitable or occupiable space regulated by this Code on, adjacent to, or within 300 feet (91.44 m) of active, abandoned or idle oil or gas well(s) unless designed according to recommendations contained in a report prepared by a registered design professional, such as a licensed civil engineer or a licensed petroleum engineer, to evaluate whether such wells are being properly operated or maintained, or are abandoned. No permits shall be issued until documentation of proper operation, maintenance, abandonment, or re-abandonment is submitted to and approved by the Building Official.
			Exceptions: 1. When approved by the Building Official, mitigation of methane gas hazards shall not be required for additions or alterations to existing buildings or structures located no closer than 200 feet (60.96 m) to active, abandoned, or idle oil or gas well(s).
			2. Grading permits may be issued when the proposed work is necessary to mitigate the methane gas hazard.
	22.310.050 Oil Field Development Standards	400 ft.	Drilling and Redrilling Setbacks. The following setbacks shall apply within the oil field for drilling or redrilling: a. At least 400 feet from developed areas.
		20 ft	b. At least 20 feet from any public roadway.
500 ft develop area 200 ft public road		No new storage tank, excluding a replacement tank, shall be constructed closer than 500 feet from any developed area, or closer than 200 feet from a public road.	
50 ft		No building shall be constructed within 50 feet of any oil storage tank	
Denton, Texas	6.2.2 - Required Authorization for Gas Well Development in City Limits.	500 feet	Reverse Setback
Butler County, Pennsylvania	§ 204-5. Design and installation requirements		Oil and gas development is part of the Municipalities Planning Code Chapter 252 and Chapter 300: D. Drilling rigs shall be located a minimum setback distance of 1.5 times their height from any property line, public or private street, and building.
San Juan County, New Mexico	No defined setback distance from oil and gas well		

COLORADO COMMUNITIES	ORIGINAL SETBACK	UPDATED SETBACK	NOTES
<b>Fort Collins</b>	2,000' for all well types 150' PA*	TBD	Min. 500' for residential and 1000' High Occupancy Buildings, or matches COGCC, whichever greater Buffers cannot contain playgrounds, parks, rec fields, community gathering spaces Properties separated by a major road are not subject to setbacks. Only applies to residential and High Occupancy Buildings
<b>Larimer County</b>	NA	1,000' Pre-production 200'-500' Producing 50'-200' PA	Setbacks range from producing wells based on number of wells on well pad Setbacks can be reduced from 200' to 50' for PA Applies to residential, commercial, and mixed-use Does not apply to agricultural, industrial, or open space uses
<b>Arapahoe County</b>	NA	250' All OG phases and well types 150' PA	Applies to all occupied structures
<b>Broomfield</b>	200' Residential 500' Schools 50'-100' PA	2000' Horizontal wells (any phase) 2000' Pre-production (Vertical wells) 500' Producing (Vertical wells) 150'-250' PA	Applies to residential and schools Differentiates horizontal and vertical wells because of scale of operations and duration to drill/complete
<b>Commerce City</b>	NA	1,000' 150' PA	Applies to residential only
<b>Erie</b>	350' residential, parks	2,000' Pre-production 500' Producing 50'-150' PA	Applies to all buildings approved for human occupation
<b>Longmont</b>	750' for occupied buildings, sports fields, playgrounds 150' PA	No change	
<b>Westminster</b>	350' from all buildings	2,000' for all well types and buildings 200' PA	Applies to all buildings approved for human occupation 95% built out so no impact to future land use/development

**MEMORANDUM**

**To:** Bill Swalling, Actual Communities, Inc

**Cc:** David Neslin, Davis Graham & Stubbs LLP

**From:** Stuart Ellsworth, P.E., Ellsworth Engineering, LLC

**Date:** May 26, 2023

**Subject:** Response comments to Kirk Longstein inquiries regarding reverse setbacks at Water’s Edge/Sonders properties.

Kirk Longstein, City of Fort Collins, Senior Environmental Planner, has posed questions about oil and gas facilities and reverse setbacks in his email correspondence. He expressed concerns that benzene levels may increase due to hydrocarbon contamination in the surrounding groundwater and gas that has leaked from a well into the surrounding ground surface (soil gas).

Water’s Edge/Sonders acknowledges the City’s concerns related to oil and gas production and the creation of appropriate reverse setbacks to protect health, safety, and welfare, and wishes to facilitate a better understanding of how appropriate reverse setbacks may be crafted within Fort Collins. The focus of Water’s Edge/Sonders input has focused on plugged and abandoned wells and water injection wells. since these are the well types which impact their properties. Water’s Edge/Sonders has previously provided the City with the following three documents related to plugged and abandoned wells and water injection wells:

- *Opinion Supporting 100-Foot Setbacks From Plugged and Abandoned Oil and Gas Wells within the Waters’ Edge Subdivision, Larimer County, Colorado*, David K. Dillion December 26, 2015.
- *Report and Recommendation Regarding Appropriate Reverse Setbacks From Injection Wells and Plugged and Abandoned Wells in the Fort Collins Field*, October 13, 2022.
- Comments on oil and gas facilities regulations and setbacks proposed by the City of Fort Collins, December 6, 2022

Foremost in this discussion, is to clarify that **injection wells in the Fort Collins Field are more similar to water wells than producing oil wells**. These injection wells inject relatively fresh water. These **injection wells do not produce or withdraw any oil or gas** to the surface, **nor do they produce any emissions**.

Oil and gas wells produce oil and gas fluids released at the surface and have the potential for related emissions and other impacts. The produced oil and gas can contain benzene. At a producing oil and gas well, Mr. Longstein’s concerns do have a basis for the City to use reverse setbacks as one method to protect public health and safety.

For injection wells within the Fort Collins Field, the injected water has had the oil and gas removed prior to being injected into the well. The water is injected through a combination of 3/8-inch thick steel casings cemented into the ground to a depth of about 5,034 feet below the ground surface. Mr. Longstein’s concerns for benzene and soil gas in the ground should be alleviated because:

- No oil and gas is in the injected water. Therefore, no elevated benzene levels would be present.
- The injected water contains no gas. Therefore, no soil gas potential is present at the injection well.

The injection water is relatively fresh. EPA's Total Dissolved Solids (TDS) threshold standard is 10,000 ppm for potential useable water. A review of the COGCC Fort Collins Field online documents has water analysis reporting Total Dissolved Solids (TDS) levels between 2,243 to 14,906 ppm. A 2018 water analysis reports the TDS level at 9,372 ppm.

***Longstein Question 1:*** Ellsworth states: *"The COGCC has no requirements or recommendations regarding reverse setbacks. This is because the COGCC does not regulate where new residential or commercial development may occur."*

*It's true that home rule and SB181 grant local authority to regulate surface activities including land use planning; however is there a common understanding that COGCC Rule 604 provides presumptive setbacks from high occupancy buildings?*

COGCC Rule 604 defines where the state oil and gas commission (now, Colorado Energy and Carbon Management Commission, CECMC) will allow a new well to be constructed when in proximity to an existing building. The State Commission has no authority as to where new buildings are constructed.

***Longstein Question 2:*** Ellsworth states: *"Two injection wells in the Field have storage tanks. These are outside the City of Fort Collins. The Colorado Department of Public Health and Environment has determined oil storage tanks at oil and gas locations present a risk of air emissions. But the CDPHE health impact study found no elevated levels of exposure for cancer or non-cancer sample greater than 500-feet. Injection wells do not produce or inject hydrocarbons and are constructed to isolate and protect groundwater."*

*Curious if you can provide the CDPHE health impact study that you reference in your recommendations that connects Injection wells to a 75' reserve setback. Also, It's my understanding that the industry standard is at least 150' to access the well for ongoing operations, are you seeing other BMP standards? If I'm understanding the recommendation correctly, because there are no storage tanks at the well head, then there is no elevated risk of exposure to nearby residences; is that correct? also, the Ellsworth study references the storage site as being the primary source of contamination/risk related to the Injection site, however, does not reference surface disturbance from on-going operations. Curious if you have supporting analysis related to ongoing operations/surface disturbances at the injection well and its risk to public health?*

The Colorado Department of Health and Environment (CDPHE) reference documents (CDPHE Studies)<sup>1, 2</sup> are attached. The Ellsworth Report footnoted these studies. They are easily available on the internet. The CDPHE Studies are:

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<sup>1</sup> Assessment of Potential Public Health Effects from Oil and Gas Operations in Colorado February 21, 2017

<sup>2</sup> Oil & Gas and Point Source Emissions Inventory Development, Supporting the Denver Metro/North Front Range State Implementation Plan for the 2008 and 2015 8-Hour Ozone National Ambient Air Quality Standards DRAFT: July 8, 2022, Adopted: December xx 2022.

- *Oil & Gas and Point Source Emissions Inventory Development, Supporting the Denver Metro/North Front Range State Implementation Plan for the 2008 and 2015 8-Hour Ozone National Ambient Air Quality Standards DRAFT: July 8, 2022, Adopted: December xx, 2022*
- *Assessment of Potential Public Health Effects from Oil and Gas Operations in Colorado February 21, 2017.*

The CDPHE Studies focused on emissions from an oil and gas well during the construction, hydraulic fracturing, and production operations. The results pointed to hydraulic fracturing and storage tanks as the main emitters of emissions. The CDPHE Studies did not discuss injection wells. The CDPHE Studies do not discuss a setback distance from an injection well.

Because the CDPHE Studies pointed to storage tanks as an emission source, the Ellsworth Study (Report and Recommendation Regarding Appropriate Reverse Setbacks from Injection Wells and Plugged and Abandoned Wells in the Fort Collins Field) reasons that due to the absence of storage tanks there no tanks emissions. Due to oil and gas being removed from the water prior to transport to the injection well, there is no potential for oil or gas emissions at the well. The water is injected into the well with electric injection pumps. Therefore, there are no motor emissions. **Based on these points of reason, the Ellsworth Report recommended a 75-foot reverse setback.**

**Longstein Question 3:** *Also, It's my understanding that the industry standard is at least 150' to access the well for ongoing operations, are you seeing other BMP standards?*

Yes, the Industry has agreed to a 150 ft area around existing oil and gas wells in order to perform well maintenance. This distance allows for larger equipment layouts needed for oil and gas well operations like hydraulic fracturing. Therefore, a setback of 150' is adequate for existing oil and gas wells. Large maintenance operations and hydraulic fracturing jobs can utilize numerous BMPs to minimize the impacts from noise, odors, emissions, traffic, and other similar nuisances to provide public and environmental protections.

Injection wells in the Fort Collins Field will never utilize large maintenance operations like hydraulic fracturing due to the high cost and reservoir dynamics. The maintenance on these wells will entail down hole clean out, the required 5-year mechanical integrity test, or well abandonment. These operations will use a small truck mounted rig, a cement truck, a roll-off fluid container and a small number of pick-up trucks. Therefore, **a reverse setback of 75-feet is adequate for these operations** and provides public protection.

**Longstein Question 4:**

- a.) If I'm understanding the recommendation correctly, because there are no storage tanks at the well head, then there is no elevated risk of exposure to nearby residences; is that correct?*
- b.) also, the Ellsworth study references the storage site as being the primary source of contamination/risk related to the Injection site, however, does not reference surface disturbance from on-going operations. Curious if you have supporting analysis related to ongoing operations/surface disturbances at the injection well and its risk to public health?*

Yes, no storage tanks at the injection well results in no elevated exposure risk from emissions to nearby residences due to the absence of an emission source.

No health studies have been found regarding a water injection well that has no storage tanks. In an effort to seek a reference document or study, EPA was contacted, and an internet search was conducted. In an email exchange with EPA regarding reference documents on air emissions related to enhanced recovery injection wells, EPA did not have any to refer. To quote the email response: *"I looked for references discussing air quality impacts related to secondary enhanced recovery injection wells. There is very little info on this topic. I think this is because secondary injection operations for enhanced recovery do not result in any significant air emissions."*

An internet search on air emissions related to enhanced recovery injection wells, the response only referred to thermal injection for heavy oil (thick low gravity oil), which would never be applicable at the Fort Collins Field due to the oil being light high gravity oil.

The ongoing operations/surface disturbances at the Fort Collins Field is a periodic pickup truck checking the injection pump and wellhead. The injection wells do require a mechanical integrity test every 5 years, which would be a truck mounted rig to pull out the injection tubing and test the well's integrity. Hence, the public health risk is very limited and benefitted by the mechanical integrity test assuring the well has integrity and does not leak into ground.

***Longstein Question 5:*** *Should plugged and abandoned and dry and abandoned wells receive a 150-foot setback from all new occupiable buildings?*

In the Ellsworth Study, background on the field is discussed. Further, a description of how wells are abandoned is included. Based on this background, pages 17 and 18 present a recommendation for a 75-foot reverse setback from abandoned wells. A 75 feet reverse setback is adequate for public protection based upon the following factors:

- The plugging process has a proven record of protecting the public and the environment in Colorado and other states by preventing oil and gas from reaching useable ground water or the ground surface.
- Several plugged and abandoned wells within the City of Fort Collins have setbacks of 75 feet or less from an occupied building with no discernible impact or threat to public health or safety.
- The remaining risk associated with a plugged well is the potential need to reenter and repair the well at a later time, and this contingency can be addressed through a setback of 75 feet if access to the well became necessary.
- After wells are physically plugged and abandoned, casing is cut off four to six feet below ground level and the surface area is restored. The COGCC requires all plugged wells to be surveyed using a GPS system in the event the well needs to be located at some future date. A "dry hole" marker may be placed on the surface at the landowner's discretion.
- There is no risk of natural gas in the soil surrounding a well because the Fort Collins Field is an oil field that has not produced natural gas.

***Longstein Question 6:*** *Should all producing wells receive a 2000' setback from all new occupiable buildings?*

In the CDPHE Studies, elevated levels of emissions were noted during the pre-production phase of an oil and gas well. This is when a well is being constructed and hydraulic fracturing may occur. Emissions from hydraulic fracturing operations were the primary basis of the State's 2000-foot setback. CDPHE Studies also noted during a well's production stage emissions from storage tanks decreased to below health standard at the 500-foot distance.

On page 16 of the Ellsworth Study, it was noted that some Front Range Communities have adopted two reverse setbacks: a pre-production and production setback. It is believed that the Communities based the pre-production and production setback on the CDPHE Studies. They adopted a 2,000-foot pre-production setback for new well construction and hydraulic fracturing operations and a 500-foot production setback while an oil and gas well is in production.

**Longstein Question 7: Should injection wells receive a 150' 500', or 2000' setback?**

It is understood that the City of Fort Collins has banned commercial injection wells within the city limits. The discussion here is in regard to enhanced recovery wells. As noted in the Ellsworth Report, the CDPHE Studies have made a clear distinction that a majority of emissions coming from a producing oil and gas location originate from the storage tanks.

Therefore, it is inferred that both the absence of storage tanks and the oil and gas being removed from the water prior to being piped and injected in the injection well, no emissions and no emission impacts to the public are present. Ellsworth Report Page 18 provides the following basis for a 75-foot reverse setback:

- The injection wells already exist, and therefore there will be no pre-production construction activities.
- The risk associated with well maintenance is limited because the well produces no oil or gas hence no production associated emissions.
- There is no surface production equipment requiring maintenance, which could generate leaks or air emissions.
- The absence of surface production equipment eliminates nuisance noise and odors.
- All injection wells are required to perform an annual bradenhead to assure there are no leaks.
- All injection wells are required to perform a mechanical integrity test, which ensures there are no leaks.
- Several existing injection wells without storage tanks in the City of Fort Collins have setbacks of 75 feet or less from an occupied building with no discernible impact or threat to public health or safety.





**COLORADO**  
**Oil & Gas Conservation**  
**Commission**  
 Department of Natural Resources  
 1120 Lincoln Street, Suite 801  
 Denver, CO 80203

April 5, 2022

Mr. Ward Giltner  
 Prospect Energy LLC, Operator Number 10312  
 1036 Country Club Estates Dr  
 Castle Rock, CO 80108

I am writing to request additional information regarding your Form 2, Application for Permit to Drill, to recomplete and operate the MSSU 30-8 well (Document Number: 402704523; Received 10/29/2021; API # 05-069-06253) ("Form 2"). Following a review of your proposed operations, Colorado Oil and Gas Conservation Commission ("COGCC") Staff and I have concluded that your proposal constitutes a significant change to the design and operation of an oil and gas location. Pursuant to COGCC Rules, you must obtain an approved Form 2A and Oil and Gas Development Plan ("OGDP") from the Commission before the Director will consider the Form 2. The only Form 2 for the MSSU 30-8 well was approved on April 25, 1985. No Form 2A has ever been submitted for this location (Location ID# 333083).

For any significant change to the design and operation of an Oil and Gas Location ("Location"), COGCC Rule 304.a.(3) requires operators to submit a completed Form 2A. Since the Location at issue was originally constructed, the area surrounding the Location has changed significantly. The Location is now within 2,000 feet of several residential buildings units, which has increased the potential for adverse impacts to public health, safety, or welfare. The increased potential for adverse impacts and your proposed changes to operations constitute a significant change requiring a new Form 2A.

COGCC Rules also require an approved OGDP or Form 2A for the Location before the Director can approve or deny a Form 2. COGCC Rule 303.a. states that any Location which meets the criteria of Rule 304.a. (i.e., any Location requiring a Form 2A) must have an approved OGDP or Form 2A. Per COGCC Rule 308.a., I cannot approve or deny your Form 2 to recomplete and operate an existing well until you obtain an approved OGDP or Form 2A from the Commission.

Additionally, Rule 308.c. requires that the Director assess and address potential impacts to public health, safety, and welfare as part of the review of a Form 2. COGCC Staff and I cannot adequately assess or address potential impacts without the information provided in an approved Form 2A.



March 30, 2022

Page 2

Based on the foregoing, I request that you submit and obtain an approved Form 2A and an OGDG for the Location at issue. Upon providing the Form 2A and the OGDG, COGCC Staff and I will review your Form 2.

If you have any questions, please contact my office.

Sincerely,

A handwritten signature in blue ink that reads "Sabrina Trask".

Sabrina Trask  
Planning & Permitting Manager



**Prospect Energy, LLC**  
1036 Country Club Estates Dr.  
Castle Rock, CO 80108

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August 29, 2019

Dear City Council Members,

I'm Ward Giltner, the owner and Operator of the Fort Collins Field. I understand that there is a September Work Session that will address SB181 and other Oil and Gas issues.

I wanted to introduce myself and our company to those of you that don't already know us. I'm a Colorado native and was born and raised in Fort Collins, my high school years were spent living very close to the field. After graduating from Poudre H.S., I went to school in Greeley at UNC and started my career with Texaco in Denver in 1983. After a successful career with Texaco, I elected early retirement and started out on my own. I've been involved in managing the Fort Collins field since 2009, and am most proud of being selected from a field of hundreds of operators in Colorado as the COGCC's Environmental and Protection Operator of the Year. In addition, we have developed a great relationship with the Hearthfire neighborhood and are developing healthy relationships with the Waters Edge and Country Club Reserves developments, as well as with the City's LGD (Cassie Archuleta).

To give you some background on the Fort Collins field's history, it was discovered in 1924 and is one of the oldest discoveries in Colorado's long history of oil and gas development. As the city of Fort Collins continues to grow and expand, housing developments have encroached on the farmland that was once home to the field and appears likely to continue. Although it is more difficult to operate in a more urban environment, we have made it a priority to be good neighbors to those that have moved into the field. We plan to continue to do so and feel that this mutual cooperation that currently exists with the various neighborhoods, but can be a model for success in dealing with the City of Fort Collins as the changes related to SB181 unfold. As an example of our commitment, we just went through a major repair and maintenance program that included replacing all of our water tanks for the injection system as well as doing significant well repairs in preparation of our upcoming Codell development program.

You might not be aware, but we are in the process of developing the Codell formation within the Fort Collins field. Currently, the vast majority of the oil produced in the field is coming from the Muddy formation. However, we feel that there are many mutual benefits to developing the Codell, which will allow for the Muddy zones to be permanently abandoned. Upon abandonment, we will eliminate the need for the Water Treatment plant in the Fort Collins yard as well as all of the high pressure water injection lines located throughout the field, including existing neighborhoods. In addition, the Codell doesn't contain any H<sub>2</sub>S in the oil, gas and water; so from an environmental standpoint this is great news for the field. Lastly, due the insignificant amount of gas that is produced from the field currently, we are burning all excess gas through Thermal Oxidizers that destroy 99% of the methane emissions. This is a great option to flaring, however, with the increased gas volumes produced from the Codell formation, we will have a 3<sup>rd</sup> Party company contracted on site to convert this gas to electricity. Initially, this electricity will be used to power Super Computers, for cloud based storage and other uses and eventually will be sold back into the grid.

I understand that there have been some discussions around imposing Moratoriums, etc., that could limit or ban development within the city. However, I would strongly encourage the City not to embark on this path. As mentioned, the environmental benefits associated with future Codell development justifies that these minerals be developed. In addition, City Council should be cognizant that these wells were here long before the City annexed them and then allowed development to encroach on the field. The mineral rights owned by our company and the many mineral owners that rely on the royalty payments derived from their ownership in the field must be preserved, especially given the unusual circumstances that have arisen to get us to this point.



**Prospect Energy, LLC**  
1036 Country Club Estates Dr.  
Castle Rock, CO 80108

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We feel that the best step forward is to continue pursuing a cooperative approach that encompasses Best Management Practices and meaningful dialogue to ensure that the minerals are developed in a manner that protects public health, safety, welfare, the environment and wildlife resources. We're excited to working with the City, with a goal of obtaining your trust and confidence as we have done with our current neighbors.

If you have any questions, or want any additional information, please let me know. Please see my contact information below.

Sincerely yours,

*Ward Giltner*

Ward Giltner  
Owner  
Prospect Energy, LLC  
1036 Country Club Estates Drive  
Castle Rock, CO 80108  
[prospectenergy@icloud.com](mailto:prospectenergy@icloud.com)  
Phone: (303) 489-8773

# MINUTES

CITY OF FORT COLLINS BOARDS AND COMMISSIONS

## Air Quality Advisory Board REGULAR MEETING

Monday, July 17, 2023 - 5:30 PM

222 Laporte Avenue, Colorado River Room

### 1. CALL TO ORDER: 5:33 PM

### 2. ROLL CALL

- a. Board Members Present -
  - Mark Houdashelt (Chair)
  - Greg Clark (Vice-Chair)
  - Gavin McMeeking
  - Dan Welsh
  - Wayne Chuang
  - Maria Moore
  - Matt Ayres
- b. Board Members Absent -
  - Greg Boiarsky
  - Sandra LeBrun
- c. Staff Members Present -
  - Cassie Archuleta, Staff Liaison
  - Kirk Longstein, Senior Environmental Planner
- d. Guest(s) -
  - Tim Gosar

Roll call included introductions from new members Maria Moore and Matt Ayres.

- Matt Ayres is a recent CSU graduate. His main interest is political science with a focus on environmental policy.
- Maria Moore currently owns a business that includes indoor air quality inspections.

### 3. AGENDA REVIEW

No changes.

### 4. CITIZEN PARTICIPATION

Tim Gosar, Steering Committee member of Larimer Alliance, provided comments regarding proposed updates to the City's reverse setback standards for oil and gas operations. He noted that:

- Biggest chunk of poor air quality in Fort Collins comes from oil and gas.
- For setbacks, it should not matter who got there first (e.g., operator or residential developer).
- Advocated for reverse setbacks that have no variance opportunities.

- All wells leak over time, and 500' is not protective enough. 2000' should be the standard.
- Sampling should be considered up to 2000'.
- 150' is not protective enough for abandoned wells.
- Disclosure notification window of 30 days is not sufficient.
- Requested additional definitions in code draft.

## 5. APPROVAL OF MINUTES

- a. Dan moved and Mark seconded a motion to approve the May minutes as amended. Motion passed 3-0-3 (3 abstained as they were absent).

## 6. UNFINISHED BUSINESS

- a. Cassie will provide more information regarding badges prior to next meeting.
- b. There is a volunteer engagement event scheduled on August 26 at the Lincoln Center.
- c. Mark commented that sustainable revenue conversation has recently begun including aquatic facilities, and he has spoken at City Council meetings. He is concerned that City staff are doing a sales pitch and asking for advocates rather than collecting input on alternatives. Still pushing for a dedicated sales tax for climate initiatives.

## 7. NEW BUSINESS

### a. Oil and Gas Operational Standards (Operations at Existing/New Wells)

Cassie Archuleta, Air Quality Program Manager, provided an update regarding current oil and gas operations and potential for additional regulations in Fort Collins in advance of a Council Work Session scheduled for September 12, 2023.

Overview:

- Cassie is supporting conversations regarding regulations at existing wells, and Kirk is supporting policy questions regarding land use, approvals for new wells, and new development near existing wells.
- Following the adoption of SB-181, the regulatory landscape has changed. There are new State rules, and new opportunities for local regulations regarding operations.
- Since adoption of SB181, the City has actively participated in State rulemakings in efforts to strengthen State requirements and identify and fill any gaps in regulations.
- The City also adopted new rules regarding locations of new wells that highly restrict any new development.
- In April 2023, City Council directed staff to further discuss additional local regulations for operations of oil and gas wells, and staff is scheduled to return to Council on September 12.
- The City hosted a City, County and State panel describing the new regulatory environment to support advocacy group requests for more time to help with understanding of current code. Recording is available at [fcgov.com/oilandgas](https://fcgov.com/oilandgas).
- Existing wells include 10 active wells in Fort Collins. Summaries were provided regarding current regulations and enforcement activity, which has included an order from the Energy and Carbon Management Commission (ECMC) to shut-in some of the wells (due to new ECMC requirement that restricts flaring), and

increased leak inspection resources. Additionally, the CDPHE is currently working with the operator on a settlement agreement due to compliance issues.

- State regulations continue to be updated and enhanced. Effective City activity has included supporting the State and County in enforcing existing regulations.
- The City and County are also exercising new authority to request that low- or non-producing wells be plugged and abandoned.
- The City is also exploring options with the County that expand regulations to incorporated parts of the County where oil fields overlap between the County and city. This would mean that local wells are subject to County requirements for annual operator registration and provision of emergency management plans.
- No new regulations have been identified that would speed the path towards eliminating current and future impacts from operational wells.

Discussion:

- There was some discussion about whether the City could adopt new regulations that would apply to existing wells, or whether the wells would become legal non-conforming uses. For County rules, most operational requirements are triggered by new permits.
- There was some discussion about air quality monitoring, and how the City and County are collaborating to provide fence-line VOC monitoring near the Fort Collins oil and gas sites. This would be an indicator of potential compliance issues related to leaks and would be used to alert State and County inspection and enforcement resources.
- It was noted the AQAB has previously submitted recommendations to Council regarding the need for additional local regulations, and it was requested that AQAB recommendations be explored more substantially, indicating why they are not necessary for Fort Collins.
- Financial assurance requirements were discussed as an example. Tim was invited to speak and recommended that the City adopt full cost bonding. Cassie commented that a Financial Assurances Plan has been approved for the Fort Collins operator through the ECMC and includes ~\$100K coverage per well, which is sufficient per City estimates.
- There was some discussion about whether the City should adopt redundant regulations even if duplicative of State. It was suggested that it is best to enact additional recommendations even if redundant. Cassie commented that staff had approached the regulatory environment looking to fill gaps, not provide redundancy, which was accomplished primarily through updated State regulations.
- It was re-iterated that some members of the AQAB were interested in redundancy of regulations, with expansion of regulations where possible. This was largely due to distrust of the State and County. There was no interest in re-visiting AQAB recommendation without further evidence that State regulations are comprehensive and effective. Previous recommendation indicated that, given the history of State/County inaction or its slow pace of action in this arena, the AQAB feels that the City would be better protected by having local control measures available in these areas.
- There were some questions about why regulations for new wells would be considered when there didn't appear to be any opportunity for new wells. A Board member replied that additional regulations could be an insurance policy, regardless of whether such regulations would necessarily be used.

**b. Oil and Gas Reverse Setbacks (New Development Near Existing Wells)**

Item 19.

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Kirk Longstein, Senior Environmental Planner, provided an overview of reverse setbacks from operational wells and was seeking a Board recommendation.

Overview:

- Reverse setbacks are distance of a new development application (e.g., homebuilders and developers) from an existing oil and gas well.
- The City first adopted reverse setbacks in 2013 (350') and updated them in 2018 (500'). In 2021, ECMC (formerly COGCC) updated setbacks for new wells to 2000', prompting the City to consider updates to local code to align with ECMC code.
- Current ordinance requires testing around abandoned, reclaimed wells, including groundwater and soil gas monitoring, if the developer is approved for a variance to reduce setbacks to 150'.
- Proposed updates address issues with setbacks being expanded beyond arterial roads, and addressing more than just residential properties, and adding more consistent requirements for monitoring.
- Proposed standards include 2000' for active wells (producing and injecting), 500' for inactive wells that have not been fully reclaimed, and 150' for reclaimed inactive wells. Additionally, 5 years of monitoring would be required if not active, but not fully reclaimed, and 1 year of monitoring if fully reclaimed.
- New code would also restrict occupiable secondary structures, such as ADUs, within reverse setback buffer.
- Disclosures are required for any potential home purchase no later than 30-days before the closing date for a transaction.

Discussion:

- There was some confusion about the terminology and whether it was different in Kirk's presentation than in the proposed code. Kirk clarified that City code uses different terminology than the ECMC, clarifying that he proposed code distinguishes between whether a well has been fully reclaimed per City code requirements or still requires reclamation.
- There was a question about whether a 150' setback for a fully reclaimed (plugged and abandoned) well was sufficient to protect health and safety. Kirk responded that degradation of the well is a concern, but research has suggested this is sufficient, especially if sampling shows no evidence of contamination. The City has been collecting monitoring samples at wells near new developments and to date has not identified contamination due to oil and gas operations.
- Interest was expressed in a tracking system that identified all wells within City limits, and a question was posed about whether there was a risk of undiscovered wells. Cassie responded that wells identified within City limits had been reviewed in a cursory way. It was recommended that the City undertake additional efforts to ensure more safety with plugged and abandoned (or orphaned) wells, as they are abandoned and potentially forgotten.
- There was some discussion about disclosure requirements for rentals and real estate transactions and whether 30 days is sufficient. A suggestion was made to include notification as a requirement in a seller disclosure. Several Board members expressed interest in longer time periods. Kirk clarified that notification requirements were only for sale, or lease, for new developments and not rentals. The code's intent is to include sales of existing homes within the buffer as well, and the Code will be updated prior to Council's first reading to clarify this intent. There was discussion about similarities with disclosures for radon levels, which

must be disclosed during real estate transactions if known. This has been used

Item 19.

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as a negotiation point in home sales.

- Question was asked about what happens when plugged and abandoned wells start to fail. Could monitoring be required in perpetuity? Kirk replied that no contamination has been found to date with monitoring that has been conducted by developers since sampling requirements were first implemented in 2018. Some of the wells sampled date back to early 1900s, with no new wells drilled since the 1990s. If monitoring extended beyond the current Code's 5-year construction guarantee, the burden would be placed on the property owners, not the developers. Kirk explained that the intent of the Code's disclosure requirement is to give future homeowners the choice to continuing monitoring but not to regulate future monitoring into perpetuity.

## 8. BOARD MEMBER REPORT

- Dan shared that the CDPHE is working toward involvement/engagement/support of the UN's Environment Program, and the International Day of Clean Air for Blue Skies is Sept 7th (<https://www.cleanairblueskies.org/>). If the City or any of you would like to take part or support this effort, please let me know (dan.welsh@state.co.us).

## 9. STAFF REPORTS

- None

## 10. OTHER BUSINESS

- Agenda planning: August meeting will include discussions with Councilmember Pignataro and potential to discuss recommendations for oil and gas issues.

## 11. ADJOURNMENT

- (8:20pm)

Minutes approved by a vote of the Board on 8/21/2023



## MEMORANDUM

**DATE:** August 28, 2023  
**TO:** Mayor and City Councilmembers  
**FROM:** Mark Houdashelt, Chair for the Air Quality Advisory Board  
**RE:** Recommendations Regarding Oil and Gas Reverse Setbacks  
**CC:** Boards and Commissions via email [boardsandcommissions@fcgov.com](mailto:boardsandcommissions@fcgov.com)

The Air Quality Advisory Board has discussed City staff's proposals for amending the City's regulations related to oil and gas (O&G) reverse setbacks and makes the recommendations described below.

In terms of the setbacks from different types of O&G wells:

- operating wells - the AQAB recommends that Council adopt the staff proposal (2000 ft setback with a conditional potential variance to 500 ft).
- enhanced oil recovery (EOR) injection wells - the AQAB recommends that Council adopt the staff proposal (2000 ft setback with a conditional potential variance to 500 ft).
- not fully reclaimed abandoned wells - the AQAB recommends that Council adopt the staff proposal (500 ft).
- fully reclaimed abandoned wells - the AQAB recommends that Council NOT adopt the staff proposal but instead set this reverse setback at 500 ft, similar to that of not fully reclaimed abandoned wells.

The AQAB also recommends that Council adopt the staff proposals:

- to prohibit ADUs (detached occupiable buildings) within the buffer zones;
- to measure setbacks from all occupiable buildings, not just residences;
- to extend buffer zones beyond arterial roads;
- for soil-gas and groundwater monitoring (monitor once prior to permitting and once at the end of a five-year construction guarantee); and
- for the notification requirements that a landowner must provide to potential buyers or renters that would reside on a property that fully or partially includes land within the buffer zone near an O&G facility.

In addition, the AQAB recommends that Council adopt regulations that clearly specify the parties that are financially liable for the environmental and health impacts of any future well plug failure and develop the disclosure requirements that will apply when this responsibility is transferred from one party to another.



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PO Box 580  
Fort Collins, CO 80522  
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[fcgov.com](http://fcgov.com)

August 31, 2023

Air Quality Advisory Board  
c/o Selina Lujan, Staff Liaison  
PO Box 580  
Fort Collins, CO 80522

Dear Chair Houdashelt and Board Members:

On behalf of City Council, thank you for providing us with the August 28, 2023 memorandum wherein you summarized the Board's recommendations for Council to adopt some, but not all, of the staff recommendations regarding oil and gas (O&G) reverse setbacks. Thank you for outlining which specific recommendations the Board supports, which it does not, and additional staff proposals regarding dwelling units and financial liability for well plug failures.

This topic is scheduled to be discussed during the September 5, 2023 City Council meeting and we encourage you to watch the proceedings of the meeting either in person at City Hall at 6:00 p.m. or online via [fcgov.com](http://fcgov.com).

Thank you for the expertise and perspectives that you bring to the Board and share with City Council.

Best Regards,

A handwritten signature in black ink, appearing to read "Jeni Arndt".

Jeni Arndt  
Mayor

/sek

cc: City Council Members  
Kelly DiMartino, City Manager



**MEMORANDUM**  
**NATURAL RESOURCES ADVISORY BOARD**

**DATE:** August 16, 2023  
**TO:** Mayor and City Council Members  
**FROM:** Natural Resources Advisory Board  
**SUBJECT:** Recommendations Regarding Proposed Changes to Oil and Gas Policies

Dear Mayor and Councilmembers,

On July 19, 2023, Kristie Raymond (Environmental Planner) and Cassie Archuleta (Air Quality Program Manager) presented to the Natural Resources Advisory Board on updates regarding potential recommendations to oil and gas reverse setbacks as it pertains to new development within the city limits. During the presentation, Kristie Raymond shared a summary of proposed changes. The Natural Resources Advisory Board has reviewed these proposed changes and have made the below recommendations.

Proposed changes with Board recommendations:

*\*The Board's recommendations are italicized.*

1. Apply oil and gas reverse setbacks to all occupiable buildings, not just residential uses.
  - a. NRAB is in support and encourages the Council to adopt.*
2. Eliminate the buffer exemption for crossings of arterial roadways.
  - a. NRAB did not receive adequate information to take a position.*
3. Increase buffer for developments near existing oil and gas operations from 500' to 2000' to match ECMC and Fort Collins new code setbacks.
  - a. NRAB is in support and encourages the Council to adopt.*
4. Allow modification of standards for Enhanced Oil Recovery (EOR) injection well buffers, no less than 500'.
  - a. NRAB does not support and encourages for the buffer zone to remain at 2000' for new development.*
5. Decrease soil-gas and ground water monitoring requirements for plugged and abandoned wells from once every 5 years to once prior to permits and once again at the end of a five-year construction guarantee.

- a. NRAB would support an initial early monitoring within the first year following being plugged followed by periodic monitoring indefinitely.*
  - b. NRAB also suggests rephrasing this statement for clarity (e.g. replace “decrease” with “modify”).*
6. No change to buffer for developments near existing abandoned wells (not fully reclaimed) at 500’.
  - a. NRAB is in support.*
7. No change to buffer near plugged and abandoned wells (fully reclaimed) at 150’.
  - a. NRAB is in support.*
8. No change to disclosure requirements for future property owners via a property covenant.
  - a. NRAB is in support.*
9. Add requirements for point-of-sale disclosure notice for new developments and existing homes within a 2,000’ buffer.
  - a. NRAB is in support and encourages the Council to adopt.*
10. Add prohibition on detached occupiable buildings from existing buildings located within the oil and gas buffer.
  - a. NRAB does not support and recommends placing the onus of this decision on the property owner and requiring the disclosure to renters/point-of-sale.*

The Board views the adoption of the proposed changes as an incremental step in achieving Our Climate Future goals, particularly as it pertains to the “Big Move 3: Climate Resilient Community,” “Big Move 11: Healthy Natural Spaces,” and additional environmental health goals outlined in the City’s strategic plan.

Thank you for your time and consideration on this issue and its future implications for the community.

Very Respectfully,

Dawson Metcalf, MS  
Chair, Natural Resources Advisory Board



David Katz, Chair  
 Julie Stackhouse, Vice Chair  
 Michelle Haefele  
 Adam Sass  
 Ted Shepard  
 Samantha Stegner  
 York

Virtual Hearing  
 City Council Chambers  
 300 Laporte Avenue  
 Fort Collins, Colorado

Cablecast on FCTV, Channel 14 on Connexion &  
 Channels 14 & 881 on Comcast

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The City of Fort Collins will make reasonable accommodations for access to City services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call 221-6515 (TDD 224-6001) for assistance.

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**Regular Hearing  
 July 20, 2023**

**Chair Katz called the meeting to order at 6:00 p.m.**

**Roll Call:** Haefele, Katz, Sass, Shepard, Stackhouse, Stegner, York

**Absent:** None

**Staff Present:** Frickey, Sizemore, Claypool, Yatabe, Guin, Longstein, Raymond, and Manno

Chair Katz provided background on the Commission's role and what the audience could expect as to the order of business. He noted that members are volunteers appointed by City Council. The Commission members review the analysis by staff, the applicants' presentations, and input from the public and make a determination regarding whether each proposal meets the Land Use Code. He noted that this is a legal hearing, and that he will moderate for civility and fairness.

**Agenda Review**

CDNS Director Sizemore reviewed the items on the Consent and Discussion agendas, stating that all items will be heard as originally advertised.

**Public Input on Items Not on the Hearing Agenda:**

None noted.

**Consent Agenda:**

1. Draft Minutes from May 18, 2023, P&Z Hearing



### **Public Input on Consent Agenda:**

None noted.

Chair Katz did a final review of the items on consent and reiterated that those items will not have a separate presentation unless pulled from the consent agenda.

**Member York made a motion that the Planning and Zoning Commission approve the Consent Agenda for the July 20, 2023, Planning and Zoning Commission hearing as originally advertised. Member Shepard seconded the motion. Vote: 7:0.**

### **Discussion Agenda:**

#### **2. Land Use Code: Oil & Gas Reverse Setbacks**

**Project Description:** This is a request for a recommendation to City Council amending the Land Use Code to update reverse setback standards from new development near existing oil and gas wells.

**Recommendation: Approval**

Secretary Manno reported that no new information had been received after the agenda packet was published.

#### **Staff and Applicant Presentations**

Senior Environmental Planner, Kirk Longstein, gave a brief verbal/visual overview of the project.

#### **Public Input (3 minutes per person)**

Bill Swalling, 6164 S. Fairfax Ct., presented on behalf himself, along with comments from the following individuals: Stuart Ellsworth, 7716 S. Harrison, Centennial, CO; Dade Neslion, 720 S. Jackson St., Denver, CO; Katelyn Hall, 350 Indiana St., Golden, CO; Tami McMullin, 350 Indiana St., Golden, CO; and Dan Nickless. Stuart spoke to the specifics of water injection wells and the process involved in maintaining these wells. Dade spoke to the buffer size, concerns, likelihood of changes, and safety. Dr. McMullin spoke to the potential of health impacts or, more likely, the lack thereof of health impacts. Dr. Hall spoke to air emissions and lack of health impacts due to the type of wells.

Michael Welty, 319 Orion Cir., spoke on behalf of the Builders Council. He is concerned that this is a continued path toward increasing the cost of new home construction. This hurts the construction industry and the number of jobs that are created.

Tim Gosar, 1908 Promenade Way, spoke to the Firestone tragedy and the possibility of 500' variances that could be granted. He is also concerned with the safety issues and potential for lack of or no reporting of spills.

Ed Beehan, 3580 Stanford Rd., is concerned with the proposed reverse setback standards, site monitoring, and the notification process.

#### **Staff Response**

Planner Longstein responded that he has had the pleasure of working with Bill Swalling and his team over the months and appreciates their time. Regarding available literature, it is not complete regarding oil recovery wells and setback attributes. This is the primary reason that staff has introduced the modification of standards opportunity from the 2000' setback, for instances where additional information could help the Commission make a decision. Staff does not recommend differentiating setbacks between pre- and post-production situations. Staff does continue to collect monitoring reports. Staff has tried to balance disclosures between ongoing monitoring and concerns about future contaminates in the community.

## Commission Questions / Deliberation

### Commission questions

Member Haefele asked for clarification regarding the buffer. Planner Longstein responded that if the developer submits a proposal today, under the current Code, it would be 500' or Colorado Oil and Gas Conservation Commission (COGCC) standards, whichever is stricter. Once the changes to Code are made, the buffer will be 2000'. Currently, the Code breaks the buffer, meaning that if there is an arterial or collector road, the buffer would not extend over that road. The proposed updates would remove this provision so that the buffer would extend.

Member Shepard asked for clarification on whether the proposed Code changes only affected occupiable buildings. Planning Manager Frickey responded that Code will affect only inhabitable buildings for which one would receive a certificate of occupancy.

Member Shepard asked what would happen if someone wanted to complete an addition on a main structure that fronts to a street. Planner Longstein responded that it would be allowed. Member Haefele asked if the proposed Code changes would apply to an addition to an existing building where the addition encroached into the buffer. Planner Longstein responded that this type of addition would be permitted. After additional discussion of alternative situations, Planner Longstein responded that if the existing home falls in the buffer, an addition would be allowed. If the home falls outside of the buffer and the addition encroaches into the buffer, it would not be allowed.

Member Haefele asked about how requests from an existing operator to go back into an injection would be treated once the regulations go into effect. Planner Longstein responded that the response might need a follow up. However, if it were even feasible, the operator would have to go through a COGCC process. There is no local process. Member Haefele asked about a situation where a developer gets a modification of standard because a well is not producing but later wants to go back into an injection or a plugged and abandoned well. Planner Longstein responded that the operator would have to go through the State process.

Member Haefele asked if the disclosure relates to real estate transaction and whether these would be required for every transaction for the property. Planner Longstein affirmed her understanding. Member Haefele asked to be walked through how this would happen during a transaction. Planner Longstein responded that he is not a licensed real estate professional. The intent of the Code is not to regulate private transactions; however, the State of Colorado has rules and guidance around disclosures that the real estate professional would include. The Code is specific around the language that should be provided to the seller. Chair Katz understands this and suspects this would be a signed disclosure from the buyer.

Vice Chair Stackhouse asked if every house in the radius would receive the disclosure if they sold their homes. Planner Longstein confirmed that the Code changes would require the disclosure.

Chair Katz asked whether the continued monitoring is specific to the Enhanced Oil Recovery or all types of production wells. Planner Longstein responded that a well is reclaimed is through cement, and we do not know when cement might fail. It is reasonable to assume that older wells are going to be at a higher risk than the newly plugged wells. Wells will be monitored for five years once they are plugged. Vice Chair Stackhouse asked about the environmental consequences if a failure were to occur. Planner Longstein responded that it would depend on the exposure related to the industrial contaminants. Member York asked who would be responsible in the instance of a failure. Planner Longstein responded that if a contamination is identified from the monitoring, the development would be required to bring it back to an acceptable level. Member York asked who would be responsible after the expiration of monitoring? Planner Longstein responded the homeowners, Homeowners Association, or the landowner.

### Commission Deliberations

Member Shepard commented in regard to peer municipalities and stringency of standards, the City of Fort Collins is second most stringent. This resonates with him. Vice Chair Stackhouse commented the proposed Code language reflects a compromise. It provides protection but is not so arduous that it creates unintended consequences. She feels this is a reasonable compromise and she supports the Code language.

Member Haefele commented on the five-year monitoring for plugged and abandoned wells, noting a likelihood that failure will occur over time. She proposed that the Commission recommend to the Council a period of monitoring that is longer and less frequent than annual. She also believes homeowner disclosures should be upfront and not buried. Member York agreed with the Member Haefele's longer and less frequent monitoring proposal. Vice Chair Stackhouse asked if this meant monitoring in perpetuity. Planner Longstein then clarified that monitoring will not tell us if the plug is failing. Rather, the monitoring is groundwater and soil gas to evaluate for contaminants. Member Sass requested clarification on whether the five years was only on the abandoned wells. Chair Katz confirmed this understanding and noted that the reclaimed wells require one inspection upon permit. Member Sass also requested clarification on the setbacks for each: reclaimed is 150' setback, dried is 500' setback and 2000' for injected and production. Chair Katz confirmed the understanding.

Chair Katz asked the Commission for comments in support or opposition. He is sensitive to some of the public comments and has considered what has been said. He encourages the modification of standards process. He supports the staff's recommendation. Member Sass asked the Commission if members understand the distance between an injection well and a production well. He wants to understand why a 2000' setback is proposed for both types when they operate very differently. Member Haefele responded that the injection well could again be used for development and production. She feels they should be treated the same. Member York feels there should be consistency between them regardless of what the fluid is. Vice Chair Stackhouse feels the staff's proposal is a conservative approach. For that reason, there are going to be consequences to existing homeowners and future development; however, it is a tradeoff. Chair Katz feels this will not have much of an effect on existing residents, but more so for the new development. Both Chair Katz and Member Shepard support this proposal. Member Shepard suggested the addition of a couple of columns to the peer city slide to show Council what other cities have the modification of standard procedure and which do not. He asked if 2.8.2h1-4 be the same criteria. The response was yes. Member Shepard expressed comfort with this proposal, as did Chair Katz.

**Member Stackhouse made a motion that the Planning and Zoning Commission recommend that the City Council adopt the Land Use Code amendment addressing setbacks from existing oil and gas facilities, including language that permits any applicant that submits a completed Basic Development Review Project Plan, planned unit development, or building permit application prior to the effective date of the proposed ordinance to continue development review under standards adopted by Ordinance 114-2018. Member York seconded.** Member Shepard thanked the public for speaking. He also commented that he feels staff has engaged in a rational process with sufficient and comprehensive public engagement. Member York thanked everyone, and he will be supporting. Chair Katz commented that he learned a lot and it was very well put together and he will be supporting the recommendation. **Vote: 7:0.**

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For more complete details on this hearing, please view our video recording located here:

<https://www.fcgov.com/fctv/video-archive.php?search=PLANNING%20ZONING>

### Other Business

Vice Chair Stackhouse spoke to the rules of public participation and if it could be posted on the website for future audiences. Director Sizemore responded that staff will look into it and let the Commission know at the next work session. Attorney Guin commented that the city code addresses the rules/procedure. They are forwarded to the Clerk's office and maintained by the Clerk.

### Adjournment

Chair Katz moved to adjourn the P&Z Commission hearing. The meeting was adjourned at 7:49 pm.

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*Minutes respectfully submitted by Shar Manno.*

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Minutes approved by a vote of the Commission on: September 21, 2023.

\_\_\_\_\_  
Paul Sizemore, CDNS Director

\_\_\_\_\_  
David Katz, Chair

DRAFT

## AGENDA ITEM SUMMARY

City Council



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### STAFF

Rupa Venkatesh, Assistant City Manager  
Davina Lau, Public Engagement Specialist  
Jenny Lopez Filkins, Legal

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### SUBJECT

**Items Implementing Recommendations from the Ad Hoc Committee on Boards and Commissions.**

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### EXECUTIVE SUMMARY

- A. First Reading of Ordinance No. 117, 2023, Amending Chapter 2, Article III, Division 1 of the Code of the City of Fort Collins to Add City Council Liaison Responsibilities.
- B. First Reading of Ordinance No. 118, 2023, Amending Chapter 2, Article III, Division 2 of the Code of the City of Fort Collins to Modify Type 1 Advisory Board Composition and Functions and Eliminate One-Year Terms.
- C. First Reading of Ordinance No. 119, 2023, Amending Chapter 2, Article III, Division 3 of the Code of the City of Fort Collins to Eliminate One-Year Terms of Type 2 Advisory Boards.
- D. First Reading of Ordinance No. 120, 2023, Reorganizing Chapter 2, Article VII, Divisions 1 and 2 of the Code of the City of Fort Collins to Consolidate the Ethical Rules of Conduct and Board of Ethics Sections with a Complaint Process for Violations of the Code of Conduct.
- E. Resolution 2023-084 Approving Amendments to the Respectful Workplace Policy and Renaming it the Anti-Discrimination and Anti-Harassment Policy.
- F. Resolution 2023-085 Approving a Code of Conduct for City Councilmembers and Board and Commission Members.
- G. Discussion and Direction to Staff Regarding Ex-officio Members.

The purpose of these items is to consider resolutions and amendments to various divisions of Chapter 2 of the Municipal Code to reflect the recommendations of the Ad Hoc Committee on Boards and Commissions.

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### STAFF RECOMMENDATION

Staff recommends adoption of the four Ordinances on First Reading and adoption of the two Resolutions.

## BACKGROUND / DISCUSSION

In July 2019, Council adopted the priority to Reimagine Boards and Commissions which highlighted the following goals:

- Continuous improvements that do not require policy change
- Policies that reduce barriers to participation
- Improve efficiency and consistency

Since then, Council adopted several code changes for the purposes of reorganizing boards and commissions based on their functions, renaming several boards, and structural changed to allow for more flexibility in membership and participation. In addition, several administrative changes have been made to improve the application and interview process.

In November of 2022, Council established an Ad Hoc Committee to improve the efficiency and consistency of board and commission processes and reduce barriers to participation on boards and commissions. Appointed to the Committee were Mayor Pro Tem Emily Francis and Councilmembers Tricia Canonico and Julie Pignataro with Councilmember Kelly Ohlson as the alternate.

The Ad Hoc Committee completed its work in July 2023 and shared its recommendations at the August 8, 2023, Council Work Session. Though the Committee’s work has concluded, improvements to the boards and commissions program will be continuous and ongoing.

### Changes to Recruitment Timing

Though this is an administrative change, it is important to note as it will result in significant shifts in the annual recruitment timeline. Due to Council regular elections moving from April to November on odd years, the Committee evaluated the option of shifting annual recruitment for boards and commissions. During the Council work session, there was support to open applications from December 1 to January 30. However, staff is recommending that applications close on January 15 to give time to set up interviews and for Council to review applications. This will be confirmed during the September 5 regular meeting.

	Application Opens	Interviews	Council Appointment	Term Begins
<b>Current</b>	September	October	November	January 1
<b>New</b>	December 1- January 15	Mid-February	March	April 1
<b>Exception**</b>	December 1- January 15	Mid-February	March	July 1

\*\*The terms for the Affordable Housing Board and Human Services and Housing Funding Board will start on July 1 to align with funds received from the U.S. Department of Housing and Urban Development.

### A. Ordinance No. 117, 2023, Amending Chapter 2, Article III, Division 1 of the Code of the City of Fort Collins to Add City Council Liaison Responsibilities.

The purpose of this ordinance is to change the Code language in Section 2-72 in order to provide flexibility for one or more boards to meet together. The responsibility for the Council liaisons in making the determination of allowing the joint meeting has also been added to Council liaison role section:

- (d) Two or more board or commissions, committees of boards or commissions, or representatives from each such board, commission or committee may hold a joint meeting if the subject of the meeting specifically relates to the functions an item or project in the work plan of each participating board or commission, or if the City Manager or City Council liaison assigned to each of the involved boards or commissions has approved the joint meeting.

**D. Ordinance No. 118, 2023, Amending Chapter 2, Article III, Division 2 of the Code of the City of Fort Collins to Modify Type 1 Advisory Board Composition and Functions and Eliminate One-Year Terms.**

One-year Terms for Type 1 Advisory Boards

As part of the Reimagine process in April 2021, the addition of 1-year terms was added to allow for shorter term commitments. However, the feedback received was that the short term did not allow for a new member to fully learn their role and if they wanted to continue to serve, they would need to re-apply and re-interview. None of the seats on quasi-judicial commissions currently have 1-year terms.

This Code change would eliminate all one-year terms for Type 1 advisory boards and redistribute as follows:

Type 1 - 7 Members

Current	Recommended Changes
4 members with 4-year terms	4 members with 4-year terms
2 members with 2-year terms	3 members with 2-year terms
1 member with 1-year term	

Type 1- 9 Members

Current	Recommended Changes
4 members with 4-year terms	5 members with 4-year terms
3 members with 2-year terms	4 members with 2-year terms
2 members with 1-year terms	

Because Type 2 boards are in a separate division in the Code, it will be considered in a separate Ordinance.

Affordable Housing Board (AHB)

Staff received a request from the Executive Director of Housing Catalyst to add a Housing Catalyst representative as a non-voting ex-officio member to AHB. AHB unanimously supported the recommendation during their July 6, 2023, meeting for the following reasons:

- In recognition of the contributions of expertise and local knowledge of a Housing Catalyst staff or board member
- A non-voting seat avoids conflicts of interest so that quorum can be more easily attained
- Residency limits would not apply to this seat

This recommendation was also supported by the Committee and full Council.

Golf Board

Council will consider adding the scope of work of the Golf Board to the Parks and Recreation Board. It was discussed by the Committee and at the Council work session that the original goals of the Golf Board have been achieved and with no foreseeable plans to add golf courses, there likely is not a need for a standalone board to advise on golf related matters. Section 2-107 of Chapter 2, Article III, Division 2 would be struck from the Code. The Board would effectively dissolve on January 1, 2024.

## Parks and Recreation Board

Section 2-111 would be amended to include matters related to the operation and maintenance of City-owned golf courses to their scope of work, effective January 1, 2024. In addition, of the four currently active Golf Board members, one would like to serve the remainder of their term on the Parks Board. Therefore, a temporary 10th seat will be added effective January 1, 2024, through December 1, 2024.

### Bicycle Advisory Committee (BAC)

Direction was received from the Council work session to bring draft Code language to:

- Rename the Committee to the Active Modes Advisory Board
- Rescope the purpose of the board to reflect the recommendations in the Active Modes Master Plan
- Create a standalone Type 1, 9-member board
- Bring recommendations as to how many and which community organizations should be added as ex-officio seats

As a result, the recommendation for new code language is as follows:

- a) The City shall have an Active Modes Advisory Board, hereafter referred to in this Section as the "Board." The Board shall be a type 1 advisory board consisting of nine (9) members. In connection with the solicitation, consideration, and appointment of members to the Board, the City Council may give preference to and consider an applicant's experience or training in, or familiarity with, active modes of transportation. It is also desirable that at least one Board member understand the transportation challenges facing individuals with disabilities.
  - b) The Board is created for the purpose of addressing issues related to active modes of transportation and to seek guidance from active modes-focused stakeholders in order to achieve the City's climate, mode shift, safety, and equity goals. Active modes of transportation include walking, biking, micro-mobility (such as scooters and skateboards), and wheelchair use. Active modes may also include human-powered and small electric devices.
  - c) The Transportation Board, Colorado State University, Bike Fort Collins, and the Downtown Development Authority may each appoint a representative to serve as an ex officio non-voting liaison to the Board. Each ex officio member shall serve for a term of two years.
- d) The duties and functions of the Board shall be:
1. To advise the City Council and City staff on all matters pertaining to active modes of transportation;
  2. To advise and make recommendations to City staff and the City Council concerning the expenditure of City funds to promote active modes of transportation;
  3. To aid and guide the development of City-wide active modes plans, programs, policies, and infrastructure;
  4. To periodically coordinate its work with the Transportation Board, to support the City's efforts to create a balanced transportation network. This coordination is intended to provide an integrated review of transportation issues.
  5. To promote public use of active modes and public education on City-wide active modes issues; and



6. To be aware of, and coordinate with, the various other City boards, commissions and authorities, City departments, and other organizations and entities whose actions may affect active modes of transportation in the community.

### Transportation Board

Section 2-113 will be amended to add an ex-officio member from the Active Modes Advisory Board as an additional member under Section A. The entirety of Section C will be struck which describes the Bicycle Advisory Committee.

### Women's Advisory Board

Direction received from the Council work session included the following:

- Rename to Women and Gender Equity Advisory Board
- Add gender equity to scope of work
- Reduce the number of members of the Board from nine to seven

The following draft Code language will be presented to Council for discussion and consideration:

(a) The City shall have a Women's **and Gender Equity** Advisory Board, hereafter referred to in this Section as the "Board." The Board shall consist of nine (9) members. In addition to the nine (9) Board members appointed by the City Council, the County and Colorado State University may each appoint a representative to serve as an ex-officio nonvoting liaison to the Board.

(b) The Board is created for the purpose of enhancing the status of and opportunities for all women, **transgender, gender non-binary and gender non-conforming persons ("all genders")** in the City, and shall have the following functions:

- (1) To document, **understand, and prioritize** issues of importance **for all genders** ~~to the status of women~~ in the City;
- (2) To **coordinate and facilitate** ~~conduct~~ educational programs in the Fort Collins community to increase public awareness and sensitivity to the needs and capabilities of all ~~women~~ **genders**;
- (3) To **coordinate and collaborate** ~~cooperate~~ with other organizations and individuals interested in issues affecting ~~women~~ **all genders** in the Fort Collins area;
- (4) To review proposed legislation, policy changes or other governmental action at the federal, state or local level that would enhance or otherwise affect ~~the status of women~~ **all genders** in the City and make recommendations to the City Council regarding the same; and
- (5) To recommend to the City Council the adoption of local legislation or policies that would ~~enhance the status of~~ **achieve equity for** ~~women~~ **all genders** in the City.

### Youth Advisory Board (YAB)

The draft Code language presented to Council will attempt to address historical quorum issues that may have resulted from the structure of the board by:

- Changing membership requirement from five to nine members to no more than 12 members with the quorum defined as the majority of the number of appointed members
- Further clarifying that YAB can hold joint meetings with other similar boards
- Adds to the scope the requirement to complete an annual project which is similar to other municipal youth boards

**C. Ordinance No. 119, 2023, Amending Chapter 2, Article III, Division 3 of the Code of the City of Fort Collins to Eliminate One-Year Terms of Type 2 Advisory Boards.**

Similar to Type 1 boards, this amendment will eliminate the one-year terms for Type 2 boards and redistribute as follows:

Type 2 boards - 7 members

Current	Recommended Changes
4 members with 4-year terms	4 members with 4-year terms
2 members with 2-year terms	3 members with 2-year terms
1 member with 1 year term	

Type 2 boards – 9 members

Current	Recommended Changes
4 members with 4-year terms	5 members with 4-year terms
3 members with 2-year terms	4 members with 2-year terms
2 members with 1-year terms	

**D. Ordinance No. 120, 2023, Reorganizing Chapter 2, Article VII, Divisions 1 and 2 of the Code of the City of Fort Collins to Consolidate the Ethical Rules of Conduct and Board of Ethics Sections with a Compliant Process for Violations of the Code of Conduct.**

The complaint process for the Code of Conduct would be described in the Code as follows:

An alleged violation should be filed with the City Clerk’s Office (CCO) within 12 months. CCO will then notify the City Manager’s Office, the member named in the complaint, City Council and the City Attorney. The City Attorney will review the complaint to determine if the scope falls under the Code of Conduct. If an investigation is warranted, the City Attorney’s Office or outside counsel shall conduct the investigation and share written findings with City Council upon completion.

If violation is sustained against a board or commission member, City Council can take formal action to do any one or more of the following:

- Issue verbal or written direction to cease the problematic conduct
- Direct or encourage corrective training
- Require the violator to issue a written or verbal apology
- Removal from the board or commission

If violation is sustained against a Council liaison, City Council can take formal action to do any one or more of the following:

- Motion of censure or resolve to remove the particular Council member from the role of liaison
- Issue verbal or written direction to cease the problematic conduct
- Encourage corrective training
- Encourage the violator to issue a written or verbal apology

The Committee also recommended describing the Council Liaison responsibilities in the Code as well. This allows for the public to easily locate the information.

Sections of the Rules of Ethical Conduct have been renumbered and reorganized as these all pertain to conduct of Councilmembers and Board and Commission members so it will be more accessible and easier to follow. In addition, there has been other renumbering to incorporate the new Code of Conduct review process.

### **E. Anti-Discrimination and Anti-Harassment Policy (ADAHP)**

Formerly known as the Respectful Workplace Policy, ADAHP revises the definition of harassment to comply with the new State of Colorado Protecting Opportunities and Workers' Rights (POWR) Act that went into effect on August 7, 2023. It also changes the screening process to be handled by the Equity Office and the annual reporting and review be conducted by the Assistant City Manager. Attachment 6 contains the full policy and Council will consider adopting this via resolution (Attachment 5).

### **F. Code of Conduct**

At least within the last year, there have been several interpersonal issues that have risen on boards and commissions that have not been promptly addressed, in part due to the vacancy of the Public Engagement Specialist and also due to no existing policies which cover standards of behavior. The Code of Conduct would apply to both board members as well as Councilmembers. The full policy is included as Attachment 8 and Council will consider adopting this via resolution (Attachment 7).

### **G. Discussion Regarding Ex-officio Members**

During the Council work session discussion on the Housing Catalyst's request for an ex-officio representation on the Affordable Housing Board, the question was asked if other boards and commissions would benefit from an ex-officio member. Direction was also given to craft criteria of when an ex-officio seat would be considered by Council. A memorandum was provided to Council on August 31, 2023, to share work that has been done to date and the recommendation that this be considered a separate work stream from the Ad Hoc Committee's work to allow for more time for feedback to be given by staff liaisons, board members, and community organizations.

## **CITY FINANCIAL IMPACTS**

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Not applicable.

## **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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Feedback was received from Senior Advisory Board, Affordable Housing Board, Transportation Board, and the Bicycle Advisory Committee. The Chair of Human Relations Commission also provided a recommendation for the Women's Advisory Board.

## **PUBLIC OUTREACH**

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No formal public outreach was conducted. One community member provided research and recommendations concerning the Women's Advisory Board.

## **ATTACHMENTS**

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1. Ordinance A for Consideration – Council Liaison
2. Ordinance B for Consideration – Type 1 Advisory Board
3. Ordinance C for Consideration – Type 2 Advisory Board
4. Ordinance D for Consideration – Ethical Rules of Conduct
5. Resolution E for Consideration – Anti-Discrimination
6. Exhibit A to Resolution E
7. Resolution F for Consideration – Code of Conduct

Item 20.

8. Exhibit A to Resolution F
9. Ordinance No. 120, 2023 (Redline Version)
10. Ad Hoc Committee Recommendations Presentation

ORDINANCE NO. 117, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING CHAPTER 2, ARTICLE III, DIVISION 1 OF THE CODE OF THE CITY OF FORT  
COLLINS TO ADD CITY COUNCIL LIAISON RESPONSIBILITIES

WHEREAS, the City has 25 boards and commissions, created by the City Council by ordinances, that perform a wide range of functions, including advising City Council and City staff on areas of particular knowledge or expertise; and

WHEREAS, on November 15, 2023, the City Council adopted Resolution 2022-122 creating an ad hoc committee on boards and commissions (“Committee”) to consider and make recommendations to improve efficiency and consistency of board and commission processes and reduce barriers to participation; and

WHEREAS, currently, City Councilmember responsibilities as a liaison to a board or commission are included in the City Council approved Boards and Commissions Manual, last approved by City Council in 2016; and

WHEREAS, the Committee discussed removing the City Council board and commission liaison responsibilities from the Boards and Commissions Manual and adding them in the City Code in order to make them more accessible; and

WHEREAS, the Committee discussed updating the City Council liaison responsibilities to make them more consistent with current practices and procedures; and

WHEREAS, on July 19, 2023, the Committee recommended adding the updated City Council liaison responsibilities to the City Code; and

WHEREAS, the City Clerk’s Office received input from board and commission members that they would like more flexibility for boards and commissions to hold joint meetings; and

WHEREAS, on July 19, 2023, the Committee recommended to City Council changes to Sec. 2-72 of the City Code that grant more flexibility for joint meetings between City boards and commissions; and

WHEREAS, the City Council finds that the proposed changes to the City Code are in the best interests of the City and its residents.

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 2-72(d) of the Code of the City of Fort Collins is hereby amended as follows:

**Sec. 2-72 – Open meetings required; exceptions; joint meetings.**

...

(d) Two or more boards or commissions, committees of boards or commissions, or representatives from each such board, commission, or committee, may hold a joint meeting if the subject of the meeting specifically relates **to the functions** ~~an item or project in the work plan~~ of each participating board or commission, or if the City Manager or City Council **liaison assigned to each of the involved boards or commissions** has approved the joint meeting.

Section 3. That Chapter 2, Article III, Division I of the Code of the City of Fort Collins is hereby amended by the addition of a new Section 2-82 which reads in its entirety as follows:

**Sec. 2-82. City Council liaison responsibilities.**

**City Councilmembers appointed to serve as liaison to a board or commission have the following responsibilities:**

- (1) **Communicate with the board or commission when Council communication is needed and to serve as the primary two-way communications channel between Council and the board or commission.**
- (2) **Take the lead in filling vacancies by reviewing applications, conducting interviews with candidates for assigned board or commission.**
- (3) **Make decisions about appointment recommendations to the City Council, keeping in mind the need for fresh perspectives and not primarily based on liaison’s personal preferences.**
- (4) **Serve as the primary City Council contact for the board or commission.**
- (5) **Resolve questions the board or commission may have about the role of City Council, municipal government, or the board or commission.**
- (6) **Establish contact with the board or commission chairperson and effectively communicate the role of the liaison.**
- (7) **Serve as Council contact rather than an advocate for or ex-officio member of the board or commission.**
- (8) **Review the annual work plan of the board or commission and make recommendations to the City Council regarding the work plan.**
- (9) **Identify and help resolve problems with respect to the functionality of the board or commission with the assistance of the City Clerk’s Office, City Manager’s Office and the staff liaison.**

(10) Decide whether to grant a request from their assigned board or commission to hold a joint meeting with other boards or commissions.

Introduced, considered favorably on first reading and ordered published this 5th day of September, 2023, and to be presented for final passage on the 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

Passed and adopted on final reading this 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

ORDINANCE NO. 118, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING CHAPTER 2, ARTICLE III, DIVISION 2 OF THE CODE OF THE CITY OF  
FORT COLLINS TO MODIFY TYPE 1 ADVISORY BOARD COMPOSITION AND  
FUNCTIONS AND ELIMINATE ONE-YEAR TERMS

WHEREAS, the City has 25 boards and commissions, created by the City Council by ordinances, that perform a wide range of functions, including advising City Council and City staff on areas of particular knowledge or expertise; and

WHEREAS, on November 15, 2022, the City Council adopted Resolution 2022-122 creating an ad hoc committee on boards and commissions (“Committee”) to consider and make recommendations to improve efficiency and consistency of board and commission processes and reduce barriers to participation; and

WHEREAS, on July 19, 2023, its final meeting, the Committee recommended to City Council several changes to the composition and functions of several Type 1 advisory boards, and eliminating most one-year board member terms; and

WHEREAS, City staff developed assessment tools and indicators for the Committee and City Council to consider in deciding whether to sunset or repurpose a board or commission; and

WHEREAS, the Housing Catalyst requested that the Committee consider adding an ex-officio, non-voting member to the Affordable Housing Board, a Housing Catalyst staff member who has expertise and local knowledge of affordable housing; and

WHEREAS, the Committee recommended adding a Housing Catalyst staff member to serve as a non-voting, ex-officio member of the Affordable Housing Board; and

WHEREAS, City staff members recommended dissolving the Bicycle Advisory Committee referenced in the Transportation Board functions and creating a new Type 1 advisory board named the Active Modes Advisory Board, with nine members and functions focused on all active modes of transportation; and

WHEREAS, the Committee evaluated the Golf Board based on the assessment tools and indicators developed by City staff and noted that the Golf Board frequently has a lack of quorum, a lack of membership applications and infrequently communicates with City Council; and

WHEREAS, the Committee recommended combining one of the Golf Board functions with the Parks and Recreation Board functions and dissolving the Golf Board effective January 1, 2024; and

WHEREAS, City staff asked current Golf Board members whether they are interested in serving the remainder of their term on the Parks and Recreation Board and only one Golf Board member expressed interest; and



WHEREAS, the Committee recommended adding one of the current Golf Board members as a tenth member to the Parks and Recreation Board only until that member’s term expires or his term ends for other permissible reason; and

WHEREAS, the Transportation Board currently includes a committee referred to as the “Bicycle Advisory Committee,” which consists of sixteen (16) members, including representatives from several other boards; and

WHEREAS, the Committee used the assessment tools and indicators developed by staff and determined that repurposing the Women’s Advisory Board to include gender equity is warranted; and

WHEREAS, the Committee recommended changing the name of the Women’s Advisory Board to the Women and Gender Equity Advisory Board, reducing the number of board members from nine (9) to seven (7); and

WHEREAS, the Committee also recommended changes to the functions of the Women’s Advisory Board to include enhancing the status and opportunities for women and gender non-binary and gender non-conforming persons in the City; and

WHEREAS, City staff recommended changes to the Youth Advisory Board, including the number of members, a quorum requirement, and revisions to functions; and

WHEREAS, the Committee considered staff’s input and recommended these changes to the City Council; and

WHEREAS, on April 20, 2021, the City Council adopted Ordinance No. 049, 2021, which amended City Code provisions to require one (1) year terms for Type I and II advisory boards; and

WHEREAS, feedback from Type I and II advisory board members is that a one (1) year term is not long enough for board members to learn their role and contribute meaningfully to the functions of assigned boards; and

WHEREAS, the Committee recommended that one (1) year terms be eliminated except for one (1) year terms of the Youth Advisory Board; and

WHEREAS, the City Council finds that the proposed changes to the City Code are in the best interests of the City and its residents.

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 2-101 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 2-101 Membership; term.**

Except as otherwise expressly provided, all type 1 advisory boards shall consist of either seven (7) or nine (9) members. ~~To achieve overlapping tenure and allow for a variety of time commitments by members four (4) members shall be appointed for a term of four (4) years.~~ On nine-member boards, **five (5)** ~~three (3)~~ members shall be appointed for a term of **four (4)** ~~two (2)~~ years, and **four (4)** ~~two (2)~~ members shall be appointed for a term of **two (2)** ~~one (1)~~ years. On seven-member boards, **four (4)** ~~two (2)~~ members shall be appointed for a term of **four (4)** ~~two (2)~~ years and **three (3)** ~~one (1)~~ members shall be appointed for a term of **two (2)** ~~one (1)~~ years. No board member shall serve more than eight (8) consecutive years regardless of term length.

Section 3. That Chapter 2, Division 2 of the Code of the City of Fort Collins is hereby amended by the addition of a new Section 2-101.5 which reads in its entirety as follows:

**Sec. 2-101.5. Active Modes Advisory Board.**

(a) The City shall have an Active Modes Advisory Board, hereafter referred to in this Section as the “Board”. The Board shall consist of nine (9) members. In connection with the solicitation, consideration, and appointment of members to the Board, the City Council may give preference to and consider an applicant's experience or training in, or familiarity with, active modes of transportation. It is also desirable that at least one Board member understand the transportation challenges facing individuals with disabilities. The purpose of the Board is to address issues related to active modes of transportation and to seek guidance from active modes-focused stakeholders to achieve the City’s climate, mode shift, safety, and equity goals. Active modes of transportation include walking, biking, micro-mobility (such as scooters and skateboards), and wheelchair use. Active modes may also include human-powered and small electric devices.

(b) The duties and functions of the Board shall be:

(1) To advise the City Council and City staff on all matters pertaining to active modes of transportation;

(2) To advise and make recommendations to City staff and the City Council concerning the expenditure of City funds for active modes of transportation;

(3) To aid and guide the development of City-wide active modes plans, programs, policies, and infrastructure;

(4) To periodically coordinate its work with the Transportation Board, to support the City’s efforts to create a balanced transportation network. This coordination is intended to provide an integrated review of transportation issues.

(5) To promote public use of active modes and public education on City-wide active modes issues; and

(6) To be aware of, and coordinate with, the various other City boards, commissions and authorities, City departments, and other organizations and entities whose actions may affect active modes of transportation in the community.

(c) In addition to the nine (9) voting members, the Transportation Board, Colorado State University, Bike Fort Collins, and the Downtown Development Authority may each appoint a representative to serve as ex-officio non-voting member to the Board. Each ex-officio member may serve a term of no more than two (2) years.

Section 4. That Section 2-102 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 2-102 Affordable Housing Board.**

(a) The City shall have an Affordable Housing Board, hereafter referred to in this Section as the "Board." The Board shall consist of seven (7) members. In connection with the solicitation, consideration, and appointment of members to the Board, the City Council may give preference to and consider an applicant's experience or training in, or familiarity with, affordable housing issues, including, without limitation, issues pertaining to development, finance, lending, charitable and low-income services, and general community services. It is also desirable that at least one Board member be a current or former resident of affordable housing. In addition to the seven (7) Board members appointed by the City Council, the Housing Catalyst may appoint a representative to serve as an ex officio nonvoting member to the Board. Such Housing Catalyst appointee shall not be subject to any residency requirement.

...

Section 5. That Section 2-107 of the Code of the City of Fort Collins is hereby deleted in its entirety and the section held in reserve.

**~~Sec. 2-107. Golf Board.~~**

~~(a) The City shall have a Golf Board, hereafter referred to in this Section as the "Board." The Board shall consist of seven (7) members.~~

~~(b) The Board shall have the following functions:~~

~~(1) To advise and make recommendations to the Director of Community Services (the "Director") and the City Council as to rules, regulations, policies, administrative and budgetary matters pertaining to the operation and maintenance of all City-owned golf courses;~~

~~(2) — To advise and make recommendations to the Director concerning the terms and conditions of any agreements to be entered into with golf professionals and other concessionaires in connection with City owned golf courses as well as any other agreements which may affect the management, operation, maintenance, construction or acquisition of City owned golf courses;~~

~~(3) — To assist in the procurement of goods and services for City owned golf courses, including the selection of golf professionals, concessionaires and other contractors, by appointing two (2) Board members to serve on any review committee that may be established by the City under the provisions of §8-158 of this Code for the purpose of making such procurements; and~~

~~(4) — To advise and make recommendations to the City Manager concerning approval of annual fees and charges at City owned golf courses.~~

Section 6. That Section 2-111 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 2-111. Parks and Recreation Board.**

(a) The City shall have a Parks and Recreation Board, hereafter referred to in this Section as the "Board." The Board shall consist of nine (9) members, with the addition of one (1) member, until the term of said additional member, previously a Golf Board member to be appointed for a term beginning in 2024, expires or ends for other permissible reason.

(b) The Board shall have the following functions:

(1) To advise and make recommendations to the Director of Community Services and the City Council for their approval as to rules, regulations, policies, administrative and budgetary matters pertaining to the Department, ~~excluding~~ including matters relating to the operation and maintenance of City-owned golf courses and ~~excluding~~ cemeteries;

...

Section 7. That Section 2-113 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 2-113. Transportation Board.**

(a) The City shall have a Transportation Board, hereafter referred to in this Section as the "Board." The Board shall consist of nine (9) members. In addition to the nine (9) Board members appointed by the City Council, the Transportation Board may appoint an ex officio nonvoting member to the Active Modes Advisory Board.

(b) The Board shall have the following functions:

(1) To advise the City Council on matters pertaining to the City's transportation policies and system, including, but not limited to, transportation planning, alternative modes planning (including bikeways, pedestrian facilities, transit, air transportation and van- and car-pooling), capital improvement projects, downtown parking management and other transportation issues as identified in the Board work plan; and

(2) To review the City's interaction with federal, state and county government, as well as North Front Range Transportation and Air Quality Planning Council, Colorado State University and Poudre School District on transportation-related issues.

~~(c) The Board shall also establish and keep in place a committee to be known as the "Bicycle Advisory Committee," the purpose of which shall be to advise the Board with regard to bicycling-related issues.~~

~~(1) Said committee shall consist of sixteen (16) members, one of whom shall be a member of the Board. The remaining fifteen (15) members shall consist of three (3) community "at large" members and six (6) members of community stakeholder organizations, all appointed by the City Manager, and representatives from the following City Boards and Commissions, which may each nominate a representative for a position on the committee:~~

- ~~a. Air Quality Advisory Board;~~
- ~~b. Parks and Recreation Board;~~
- ~~c. Natural Resources Advisory Board;~~
- ~~d. Land Conservation and Stewardship Board;~~
- ~~e. Senior Advisory Board; and~~
- ~~f. Economic Advisory Board.~~

~~Representatives from Boards and Commissions are subject to confirmation by the City Manager or their designee.~~

~~In addition to the foregoing sixteen (16) voting members, the Committee shall include non-voting staff representatives from the City's Planning, Development and Transportation Service Area.~~

~~(2) Each member of the Bicycle Advisory Committee shall serve for a term of two (2) years.~~

(dc) The Board will coordinate its policy review with other appropriate City boards and commissions as needed. This coordination is intended to provide an integrated review of transportation issues as they relate to other policy areas such as air quality, natural resources and land use. The Board will ensure that an element of its policy review will include appropriate community input.

Section 8. That Section 2-114 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 2-114. – Women’s and Gender Equity Advisory Board.**

(a) The City shall have a Women’s and Gender Equity Advisory Board, hereafter referred to in this Section as the "Board." The Board shall consist of nine (9) members. In addition to the nine (9) Board members appointed by the City Council, the County and Colorado State University may each appoint a representative to serve as an ex officio nonvoting liaison to the Board.

(b) The Board is created for the purpose of enhancing the status of and opportunities for all women, transgender, and gender non-binary and gender non-conforming persons (“all genders”) in the City, and shall have the following functions:

- (1) To document, understand, and prioritize issues of importance for all genders to the status of women in the City;
- (2) To coordinate and facilitate conduct educational programs in the Fort Collins community to increase public awareness and sensitivity to the needs and capabilities of all women-genders;
- (3) To coordinate and collaborate cooperate with other organizations and individuals interested in issues affecting women and all genders in the Fort Collins area;
- (4) To review proposed legislation, policy changes or other governmental action at the federal, state or local level that would enhance or otherwise affect the status of women all genders in the City and make recommendations to the City Council regarding the same; and
- (5) To recommend to the City Council the adoption of local legislation or policies that would enhance the status of achieve equity for women all genders in the City.

Section 9. That Section 2-115 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 2-115. Youth Advisory Board.**

(a) The City shall have a Youth Advisory Board, hereafter referred to in this Section as the "Board." The Board shall consist of no less than five (5) and no more than nine (9) members no more than twelve (12) members appointed by the City Council. All members shall be qualified by experience, training, age, ethnicity or socioeconomic background to represent a diverse cross section of youth in the Fort Collins community. Each member of the Board shall be under the age of nineteen (19) years at the time of appointment and currently enrolled in high school or an equivalent program such as home school or distance learning. A quorum of the Board shall consist of a majority number of members appointed to the Board at any point in time. three (3) members for a five member Board or four (4) members for a Board consisting of six (6) to nine (9) members.

(b) Each member shall serve for a term of one (1) year unless otherwise specified by the City Council, and no member may serve for more than four (4) consecutive years regardless of term length. Appointments shall specify the term of office of each individual.

(c) The Board shall have the following functions:

(1) To gather information from, hold joint meetings, and otherwise communicate with, other groups, organizations and agencies regarding youth-oriented issues and problems;

(2) To document and discuss issues of importance to youth in the Fort Collins community, specifically as they affect City-operated services;

(3) To review and discuss legislation that may affect youth; and

(4) To recommend to City Council local legislation and policy actions or changes which would enhance the status of youth in the Fort Collins community; and

(5) To complete an annual project consistent with the other listed functions

Section 10. That the revisions to the City Code set forth in this Ordinance will go into effect on January 1, 2024.

Introduced, considered favorably on first reading and ordered published this 5th day of September, 2023, and to be presented for final passage on the 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

Passed and adopted on final reading this 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

ORDINANCE NO. 119, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING CHAPTER 2, ARTICLE III, DIVISION 3 OF THE CODE OF THE CITY OF  
FORT COLLINS TO ELIMINATE ONE-YEAR TERMS OF TYPE 2 ADVISORY BOARDS

WHEREAS, the City has 25 boards and commissions, created by the City Council by ordinances, that perform a wide range of functions, including advising City Council and City staff on areas of particular knowledge or expertise; and

WHEREAS, on November 15, 2022, the City Council adopted Resolution 2022-122 creating an ad hoc committee on boards and commissions (“Committee”) to consider and make recommendations to improve efficiency and consistency of board and commission processes and reduce barriers to participation; and

WHEREAS, on July 19, 2023, the Committee recommended to City Council to eliminate one-year board member terms of Type 2 advisory boards; and

WHEREAS, on April 20, 2021, the City Council adopted Ordinance No. 049, 2021, which amended City Code provisions to require one (1) year terms for Type 1 and 2 advisory boards; and

WHEREAS, feedback from advisory board members is that a one (1) year term is not long enough for board members to learn their role and contribute meaningfully to the functions of assigned boards; and

WHEREAS, the Committee recommended to City Council to eliminate one-year terms for Type 2 advisory boards; and

WHEREAS, the City Council finds that the proposed changes to the City Code are in the best interests of the City and its residents.

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 2-141 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 2-141 Membership; term.**

Except as otherwise expressly provided, all type 2 advisory boards shall consist of either seven (7) or nine (9) members. ~~To achieve overlapping tenure and allow for a variety of time commitments by members~~ ~~four (4) members shall be appointed for a term of four (4) years.~~ On nine-member boards, **five (5)** ~~three (3)~~ members shall be appointed for a term of **four (4)** ~~two (2)~~ years, and **four (4)** ~~two (2)~~ members shall be appointed for a term of **two (2)** ~~one (1)~~ years. On seven-member



boards, **four (4)** ~~two (2)~~ members shall be appointed for a term of **four (4)** ~~two (2)~~ years and **three (3)** ~~one (1)~~ members shall be appointed for a term of **two (2)** ~~one (1)~~ years. No board member shall serve more than eight (8) consecutive years regardless of term length.

Section 3. That this Ordinance will go into effect on January 1, 2024.

Introduced, considered favorably on first reading and ordered published this 5th day of September, 2023, and to be presented for final passage on the 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

Passed and adopted on final reading this 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

ORDINANCE NO. 120, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
REORGANIZING CHAPTER 2, ARTICLE VII, DIVISIONS 1 AND 2 OF THE CODE OF  
THE CITY OF FORT COLLINS TO CONSOLIDATE THE ETHICAL RULES OF CONDUCT  
AND BOARD OF ETHICS SECTIONS WITH A COMPLAINT PROCESS FOR  
VIOLATIONS OF THE CODE OF CONDUCT

WHEREAS, the City has 25 boards and commissions, whose members are appointed by the City Council; and

WHEREAS, on November 15, 2023, the City Council adopted Resolution 2022-122 creating an ad hoc committee on boards and commissions (“Committee”) to consider and make recommendations to improve efficiency and consistency of board and commission processes and reduce barriers to participation; and

WHEREAS, with input from individual City Councilmembers, City staff developed a Code of Conduct that applies to board and commission members, and some provisions that apply to both board and commission members as well as City Councilmembers; and

WHEREAS, the Code of Conduct includes provisions about upholding standards of integrity and honesty, and respectful discourse; and

WHEREAS, City staff presented versions of the Code of Conduct to the Committee for comment and, after revisions were made in response to comments, on July 19, 2023, the Committee recommended adoption of a final version of the Code of Conduct for City Council approval; and

WHEREAS, the Code of Conduct will be considered for approval by separate City Council resolution and, if approved, attached as an appendix to the Boards and Commissions Manual; and

WHEREAS, City staff developed a process for formally filing and resolving complaints of violation of the Code of Conduct (“Complaint Process”); and

WHEREAS, on July 19, 2023, the Committee recommended adoption of the Complaint Process; and

WHEREAS, Sections 2-568 and 2-569 of the City Code contain ethical rules of conduct and discussion about a board of ethics charged with interpreting and applying the definitions, rules and procedures pertaining to ethics established by the City Charter and City Code and applicable provisions of state statute; and

WHEREAS, the ethical rules and the Code of Conduct are similar in that they both address City Councilmember and board or commission member conduct; and

WHEREAS, the City developed its ethical rules and board of ethics under its home rule authority; and

WHEREAS, City staff recommends combining the ethical rules and the board of ethics provisions with the Complaint Process in Division 2 of Chapter 2, Article VII to reorganize and simplify rules governing the conduct of City Councilmembers and board and commission members with the Complaint Process in one division; and

WHEREAS, the City Council finds that the proposed changes to the City Code are in the best interests of the City and its residents.

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 Division 2 of Article VII of Chapter 2 of the Code of the City of Fort Collins is hereby entitled "Ethical Rules and Conduct: Related Procedures."

Section 3. That Section 2-568 of the Code of the City of Fort Collins is hereby repealed and reenacted in multiple new sections in Division 2 of Article VII, Sections 2-575 through 2-578, to read as follows:

**Sec. 2-575. Ethical Rules of Conduct - Definitions**

The following words, terms and phrases, when used in this Division, and in Section 9 of the Charter Article IV, shall have the following meanings:

(a) *Attempt to influence or influence*, as it pertains to this Division, shall mean take any action intended to impact, shape, control, sway, bias or prejudice.

(b) *Benefit* shall mean an advantage or gain.

(c) *Board and commission member* shall mean a member of any appointive board or commission of the City.

(d) *Confidential information or information received in confidence* shall mean:

(1) Information contained in any writing that may properly be withheld from public inspection under the provisions of the Colorado Open Records Act and that is marked "confidential" when provided to the officer or employee;

(2) All information exchanged or discussed in any executive session properly convened under § 2-31 or 2-71 of the Code, except to the extent that such information is also contained in a public record available to the general public under the provisions of the Colorado Open Records Act; or

(3) All communications between attorneys representing the City and officers or employees of the City that are subject to the attorney-client privilege, whether oral or written, unless the privilege has been waived.

(e) *Councilmember* shall mean a member of the City Council.

(f) *Different in kind from that experienced by the general public* shall mean of a different type or nature not shared by the public generally and that is not merely different in degree from that experienced by the public generally.

(g) *Direct* shall mean resulting immediately and proximately from the circumstances and not from an intervening cause.

(h) *Detriment* shall mean disadvantage, injury, damage or loss.

(i) *Financial interest* shall have the meaning given to this term in Section 9(a) of Charter Article IV, which states:

*Financial interest* means any interest equated with money or its equivalent. Financial interest shall not include:

(1) the interest that an officer, employee or relative has as an employee of a business, or as a holder of an ownership interest in such business, in a decision of any public body, when the decision financially benefits or otherwise affects such business but entails no foreseeable, measurable financial benefit to the officer, employee or relative;

(2) the interest that an officer, employee or relative has as a nonsalaried officer or member of a nonprofit corporation or association or of an educational, religious, charitable, fraternal or civic organization in the holdings of such corporation, association or organization;

(3) the interest that an officer, employee or relative has as a recipient of public services when such services are generally provided by the city on the same terms and conditions to all similarly situated citizens, regardless of whether such recipient is an officer, employee or relative;

(4) the interest that an officer, employee or relative has as a recipient of a commercially reasonable loan made in the ordinary course of business by a lending institution, in such lending institution;

(5) the interest that an officer, employee or relative has as a shareholder in a mutual or common investment fund in the holdings of such fund unless the shareholder actively participates in the management of such fund;

(6) the interest that an officer, employee or relative has as a policyholder in an insurance company, a depositor in a duly established savings association or bank, or a

similar interest-holder, unless the discretionary act of such person, as an officer or employee, could immediately, definitely and measurably affect the value of such policy, deposit or similar interest;

(7) the interest that an officer, employee or relative has as an owner of government-issued securities unless the discretionary act of such owner, as an officer or employee, could immediately, definitely and measurably affect the value of such securities; or

(8) the interest that an officer or employee has in the compensation received from the city for personal services provided to the city as an officer or employee.

(j) *Officer or employee* shall mean any person holding a position by election, appointment or employment in the service of the City, whether part-time or full-time, including any member of the City Council and any member of any authority, board, committee or commission of the City, other than an authority that is:

(1) Established under the provisions of the Colorado Revised Statutes;

(2) Governed by state statutory rules of ethical conduct; and

(3) Expressly exempted from the provisions of Article IV of the City Charter by ordinance of the City Council.

(k) *Personal interest* shall have the meaning given to this term in Section 9(a) of the Charter Article IV, which states:

*Personal interest* means any interest (other than a financial interest) by reason of which an officer or employee, or a relative of such officer or employee, would, in the judgment of a reasonably prudent person, realize or experience some direct and substantial benefit or detriment different in kind from that experienced by the general public. Personal interest shall not include:

(1) the interest that an officer, employee or relative has as a member of a board, commission, committee, or authority of another governmental entity or of a nonprofit corporation or association or of an educational, religious, charitable, fraternal, or civic organization;

(2) the interest that an officer, employee or relative has in the receipt of public services when such services are generally provided by the city on the same terms and conditions to all similarly situated citizens; or

(3) the interest that an officer or employee has in the compensation, benefits, or terms and conditions of his or her employment with the city.

(l) *Public body* shall have the meaning given to this term in Section 9(a) of Charter Article IV, which states:

*Public body* means the Council or any authority, board, committee, commission, service area, department or office of the city.

(m) *Public services* shall mean city services provided to or made available for the public's benefit.

(n) *Purchases from the city*, as described in Section 9(b)(2) of Charter Article IV, shall not include payments by an employee to the city pursuant to an agreement for housing in which such employee is required to live as a condition of employment with the city.

(o) *Related entity* shall mean any corporation, limited liability company, partnership, sole proprietorship, joint venture, trust, estate, foundation, association, business, company or any other organization, whether or not operated for profit, with respect to which an officer or employee, or a relative of the same, has a substantial ownership interest in, is employed by, is an agent for or otherwise represents in any legal capacity.

(p) *Relative* shall have the meaning given to this word in Section 9(a) of Charter Article IV, which states:

*Relative* means the spouse or minor child of the officer or employee, any person claimed by the officer or employee as a dependent for income tax purposes, or any person residing in and sharing with the officer or employee the expenses of the household.

(q) *Routine City matter* shall mean a usual and ordinary registration, reservation, or other request or application, within a program or for public services or City approval, such as a registration for a recreation class, reservation of a park shelter, request for standard utility services or application for a building permit, development approval or variance, or an appeal, provided that the same is carried out using a routine process or system or in a manner consistent with standard practices.

(r) *Similarly situated citizens* shall mean citizens in like circumstances having comparable legal rights and obligations.

(s) *Substantial* shall mean more than nominal in value, degree, amount or extent.

**Sec. 2-576. Ethical rules of conduct – officers and employees.**

(a) Use and disclosure of confidential information. The following rules shall apply to the use and disclosure of confidential information by officers and employees of the City. In the event of any conflict among these provisions, the more specific provision shall take precedence over the more general provision.

(1) No use for personal gain. No officer or employee shall knowingly use information received in confidence as an officer or employee to advance the financial or personal interests of the officer or employee or others.

(2) Disclosure of confidential information, generally. No officer or employee shall knowingly disclose any confidential information to any person who is not an officer or employee or to an officer or employee whose official duties are unrelated to the subject matter of the confidential information or to maintaining an official record of such information on behalf of the City, unless such disclosure is reasonably necessary to protect the City from the gross mismanagement of public funds, the abuse of governmental authority, or illegal or unethical practices.

(3) Disclosure of confidential information provided to the City Council. All information received in confidence by the City Council shall remain confidential, and no officer or employee shall knowingly disclose any such confidential information to any person to whom such information was not originally distributed by City staff unless and until the City Council has, by majority vote, consented to its release, unless such disclosure is reasonably necessary to protect the City from the gross mismanagement of public funds, the abuse of governmental authority, or illegal or unethical practices.

(4) Disclosure of information discussed in executive session. No officer or employee shall knowingly disclose any confidential information discussed in an executive session to any person who was not present during such discussion, other than members of such body who were unable to attend the executive session, without the prior knowledge and consent of the body holding such executive session, unless such disclosure is reasonably necessary to protect the City from the gross mismanagement of public funds, the abuse of governmental authority, or illegal or unethical practices. In the event that a matter discussed in executive session comes before the City Council or a board or commission of the City for formal action at an open meeting, or if such formal action is anticipated, nothing herein shall be construed as prohibiting a member of the body that will be taking such formal action from stating his or her position or opinion with regard to the matter, as long as such statements do not divulge confidential information received from others during the executive session.

(5) Certain distribution and discussion by City Manager and City Attorney permitted. Notwithstanding the provisions of Subparagraphs (3) and (4) above, the City Manager and City Attorney may further distribute confidential information provided to the City Council and may disclose confidential information discussed in any executive session of the City Council, or of a Council committee, to such staff members and/or board and commission members as they may consider reasonably necessary to enable them to fully advise the City Council or to implement any direction given by the City Council or to advise other officers and employees of the City whose official duties are related to the subject matter of the confidential information or to maintaining a record of the same on behalf of the City.

(6) No disclosure of confidential information to officer or employee having conflict of interest. No officer or employee who has filed a statement of conflict of interest with the

City Clerk under Article IV, Section 9 of the Charter, or who has been determined by the City Council under the provisions of Subparagraph g. below to have a conflict of interest, shall knowingly elicit, accept or inspect any confidential information pertaining to the subject matter of such conflict of interest, nor shall any such officer or employee attend or participate in an executive session of the City Council, or of a Council committee or board or commission of the City, pertaining to said subject matter.

(7) The City Council may determine that a Councilmember shall not receive confidential information or attend executive sessions on a particular topic if the City Council first determines that said Councilmember has a conflict of interest in the subject matter of such confidential information and/or executive session. Any such determination by the City Council shall be made only after the City Council has received an advisory opinion and recommendation of the Ethics Review Board on the question, rendered in accordance with the provisions of § 2-579.

(b) All officers and employees shall refrain from accepting payment for any speeches, debates or other public events and shall further refrain from accepting any gift or favor which, in the judgment of a reasonably prudent person, would tend to impair the officer's or employee's independence of judgment in the performance of his or her official duties. The following shall not constitute prohibited gifts or favors under this Section:

(1) Campaign contributions reported as required by Chapter 7, Article V of this Code;

(2) A nonpecuniary award publicly presented by a nonprofit organization in recognition of public service;

(3) Payment of or reimbursement for actual and necessary expenditures for travel and subsistence for attendance at a convention or other meeting at which an officer or employee is scheduled to participate;

(4) Reimbursement for or acceptance of an opportunity to participate in a social function or meeting which is offered to an officer or employee which is not extraordinary when viewed in light of the position held by such officer or employee;

(5) Items of perishable or nonpermanent value that are insignificant in value, including, but not limited to, meals, lodging, travel expenses or tickets to sporting, recreational, educational or cultural events; and

(6) Payment of salary from employment, including other employment in addition to that earned from being an officer or employee.

(c) No officer or employee shall request on his or her own behalf, or for or through a relative or related entity, from any other officer or employee, or grant to any other officer or employee, or relative or related entity of the same, any consideration, treatment or advantage in the interpretation, administration or enforcement of the Charter, Code, any City regulation, policy or



program or in the provision of public services, that is substantially different from that available to other persons in the same circumstances or having the same need.

**Sec. 2-577. Additional ethical rules of conduct – board or commission members**

(a) In any action in which a member of a City board or commission ("member") declares a conflict of interest or is prohibited from participation pursuant to subsection (7) below, or for any other reason, such member shall not communicate to or attempt to influence such board or commission regarding such item, in any capacity, except that:

(1) the member may communicate with said board or commission to protect a strictly personal interest, in the same or similar ways in which the public is permitted to communicate with the board or commission.

(2) the member may prepare materials on behalf of another for a project in the normal course of business or operation, so long as the purpose of those materials is not directly and substantially related to advocacy before said member's board or commission. Those materials may be included in materials submitted by another to said member's board or commission so long as they fall within this exception. For illustrative purposes, such materials may include, but are not necessarily limited to architectural plans, technical studies, and engineering designs.

(3) if a member is precluded from participating in or influencing the decision of their board or commission, they may request a variance from the limitations of this subsection from the City Council in the following circumstances, and in the following manner:

a. The member must submit a request for a variance to the City Clerk on a form provided by the City Clerk for such purpose.

b. The member must demonstrate that without the variance, they would suffer an exceptional hardship, and that no reasonable alternative exists that would allow for that hardship to be avoided or substantially mitigated;

c. The City Council must act by resolution to approve or disapprove the requested variance.

(4) This limitation does not apply to persons other than the member who are affiliated with that member's firm or entity, and such other persons, but not the member, may continue to work on the project and may advocate to such member's board or commission, provided that the member complies with the applicable requirements and limitations.

(5) Additional limitations on participation.

a. No member of a Quasi-Judicial Commission, as defined in Article III of this Chapter 2, who has participated or intends to participate as a member of the public, or on behalf of another person or entity, to provide input or public comment as part

of a City process about a particular proposal or project for which a City review, permit or approval is required (such as, for example, speaking at a neighborhood meeting for a development project or appearing at an administrative hearing for a project), is allowed to participate in that process in their role as a board or commission member.

1. In the event such input or public comment has been provided, or is expected to be provided, the commission member must promptly provide written notice to the City Clerk that they are required to refrain from participation in their role as a commission member in the City process or decision.

2. The commission member must also provide the required notice to the chair of the commission of which they are a member.

b. The prohibitions and requirements of this subsection (5) apply whether or not a conflict of interest is presented or has been declared and are in addition to, and not in place of, the requirements applicable to any officer or employee in the event of a conflict of interest.

c. No member of a Quasi-Judicial Commission, as defined in Article III of this Chapter 2, may provide input or public comment on behalf of that commission as part of a City process about a particular proposal or project for which a City review, permit or approval is required, except as expressly authorized and directed by such commission.

**Sec. 2-578. Additional ethical rules of conduct – mayor and council members.**

(a) With respect to any matter regarding which a Councilmember has declared a conflict of interest, said Councilmember is prohibited from discussing with, or otherwise attempting in any capacity to influence, directly or indirectly, any City officer or employee, and from representing any person or interest before the City Council or any board of commission of the City or in dealing with any City officer or employee, except that such Councilmember may represent with any City employee or before the City Council or a board or commission of the City his or her own interest or that of a relative provided said Councilmember does not violate § 2-577.

(b) If any Councilmember contacts an officer or employee regarding a request in connection with that contacted officer's or employee's role and in relation to a matter that is not a routine City matter and is not within the Councilmember's role as an officer of the City, said Councilmember shall no later than 5:00 p.m. on the next business day after such contact deliver a written disclosure to the City Clerk and the City Manager and to all other members of City Council. The written disclosure must describe the date, time and general subject matter of the contact, together with the identity of the officer or employee contacted. Any private or confidential information, such as tax, utility account, or other personal information may be excluded or redacted from such disclosure. Disclosure by means of an electronic message shall be deemed to constitute written disclosure for purposes of this provision.

(c) Notwithstanding the provisions of § 1-15 of the Code, an alleged violation of the provisions of this Division by a member of the City Council shall not be prosecuted in the Municipal Court as a misdemeanor criminal offense but shall instead be referred to the Ethics Review Board for an advisory opinion and recommendation under the provisions of § 2-579.

(d) With respect to any Councilmember serving as a liaison to a board or commission, such Councilmember must not direct the board in its activities or work. A liaison’s role is to serve as a contact rather than an advocate for or ex-officio member of the board or commission.

Section 4. That Section 2-569 of the Code of the City of Fort Collins regarding the Board of Ethics is hereby moved to Division 2 of Article VII and renumbered to Section 2-579, with all internal references renumbered accordingly.

Section 5. That Chapter 2, Article VII, Division 2 of the Code of the City of Fort Collins is hereby amended by the addition of a new Section 2-580 which reads in its entirety as follows:

**Sec. 2-580. Code of Conduct formal complaint and resolution process.**

(a) Definitions

(1) *Appointee* shall mean any person who is serving on a Council-appointed board or commission.

(2) *Code of Conduct* shall mean the “Code of Conduct” applicable to City board and commission members and members of the City Council, and adopted by the City Council by resolution or ordinance, as amended from time to time.

(3) *Colorado Open Records Act* shall mean C.R.S. §§24-72-200.1, et. seq, as the same may be amended from time to time.

(4) *Members* shall mean any appointee or City Councilmember.

(5) *Liaison* shall mean the councilmember appointed to serve as council liaison to a given board or commission.

(b) The City Council encourages any person who is a witness to a violation of the Code of Conduct to immediately bring the violation to the attention of the City, in accordance with the following procedures.

(c) Confidentiality and Privacy Interests.

(1) Members must be accountable to the City Council, the City organization and the public they serve. The public deserves to have access to some information about complaints and complaint trends, but this must be balanced with the needs of the parties to have a safe, fair, and impartial process with appropriate confidentiality. The complaint resolution

process is a confidential process. Those involved in the complaint process must ensure that reporting parties can communicate privately and confidentially with them in discussing their complaints. Complaints and information about the investigation must be kept confidential by all parties, witnesses, those who handle the complaints, and those who recommend discipline or remediation, to the fullest extent possible. Information received through the complaint process shall not be disclosed pursuant to an open records request except in accordance with the Colorado Open Records Act.

(d) Complaints.

(1) Any person who believes that a member has violated any provision of the Code of Conduct may file a complaint with the City Clerk. Complaints may be filed by any member, a City staff person, a City contractor or vendor, or a person whose employment gives them access to or contact with the board or commission at issue or the City Council.

(2) The complaint must contain all facts available to the reporting party regarding the alleged violation.

(3) No action may be taken under this section on any complaint that is filed later than twelve months after discovery of the facts supporting an allegation that a violation of the Code of Conduct has occurred.

(4) Upon receipt of the complaint, the City Clerk shall immediately notify the City Manager's Office, the member named in the complaint, the City Council, and the City Attorney. Each complaint shall name only one individual as its subject.

(5) The City Attorney or City Manager or their designee shall review the complaint to determine whether the alleged misconduct falls within the scope and purpose of the Code of Conduct and whether the complaint warrants investigation in light of commonly known and documented facts and circumstances. If investigation is warranted, the City Attorney shall develop facts relevant to the complaint and interpret and apply the provisions of the Code of Conduct. The City Attorney may select and retain one or more qualified attorneys to review complaints as his or her designee.

(6) After investigation, the City Attorney shall issue written findings of fact and conclusions of law to the City Council, which shall be filed with the City Clerk and available for public inspection.

(d) Sanctions and Remedies for Violation.

(1) If the party conducting an investigation pursuant to this section finds that a member has violated any provision of the Code of Conduct, the City Council may take any of the following actions:

a. In the case of a City Councilmember, a motion of censure or a motion to remove the particular Councilmember from the role of liaison;

b. In the case of an appointee, removal from the applicable board or commission;

c. In the case of a member:

i. Issue verbal or written direction (for appointee) or encouragement (for member) to cease the violative conduct;

ii. Direct (for appointee) or encourage (for member) corrective training; or

iii. Require the violator (for appointee) or encourage (for member) to issue a written or verbal apology to the reporting party if the latter consents to such an apology.

iv. Any other actions determined appropriate by City Council.

d. While a violation of the Code of Conduct shall not constitute a violation of the City Code, as such, this provision is not intended to impair or supersede such other action as may be appropriate under applicable state statutes, the City Charter, ordinances, resolutions, or rules and policies of the City or City Council.

Section 6. That Sections 2-568 and 2-569 of the Code of the City of Fort Collins are now held in reserve.

Section 7. That all references in the Code of the City of Fort Collins to Section 2-568 or Section 2-569, or any portions thereof, shall be renumbered in accordance with the new section numbers assigned to those provisions in this Ordinance.

Introduced, considered favorably on first reading and ordered published this 5th day of September, 2023, and to be presented for final passage on the 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

Passed and adopted on final reading this 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

RESOLUTION 2023-084  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
APPROVING AMENDMENTS TO THE RESPECTFUL WORKPLACE POLICY AND  
RENAMING IT THE ANTI-DISCRIMINATION AND ANTI-HARASSMENT POLICY

WHEREAS, the City Council is committed to providing and maintaining an environment that exemplifies high standards of behavior, treats others with dignity and respect, and is known for its honesty, inclusivity, and transparency; and

WHEREAS, on February 12, 2019, City Council adopted Resolution 2019-015 approving the Respectful Workplace Policy; and

WHEREAS, the Respectful Workplace Policy prohibits discriminatory and harassing conduct, including the creation of a hostile work environment; and

WHEREAS, the Respectful Workplace Policy includes provisions applicable to City board and commission members; and

WHEREAS, on November 15, 2022, the City Council adopted Resolution 2022-122 creating an ad hoc committee on boards and commissions (“Committee”) to consider and make recommendations to improve efficiency and consistency of board and commission processes and reduce barriers to participation; and

WHEREAS, the Committee considered revisions to the Respectful Workplace Policy, including renaming it the Anti-Discrimination and Anti-Harassment Policy; and

WHEREAS, the Committee also considered revisions to the policy to address the definition of harassment in compliance with new state law, and update complaint contacts and the screening process used when complaints are filed; and

WHEREAS, on July 19, 2023, the Committee approved a recommendation that City Council formally adopt the attached version of the Anti-Discrimination and Anti-Harassment Policy.

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 policy statements contained in the attached Anti-Discrimination and Anti-Harassment Policy accurately reflect the City’s policies on these issues.

Section 3. That the City Council hereby approves the Fort Collins Anti-Discrimination and Anti-Harassment Policy attached hereto as Exhibit “A,” incorporated herein by reference.

Section 4. That the City Council hereby directs that the Fort Collins Anti-Discrimination and Anti-Harassment Policy be included as an appendix to the City Council-approved Boards and Commissions Manual.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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





City Council  
300 LaPorte Avenue  
PO Box 580  
Fort Collins, CO 80521

**ANTI-DISCRIMINATION AND ANTI-HARASSMENT POLICY**

**Introduction:**

Fort Collins aspires to be a city that addresses the needs of all members of our community and strives to ensure that everyone has the opportunity to thrive. As a community, we commit to building a healthy, equitable, and resilient city – for our families, for our neighbors, and for future generations.

The Fort Collins City Council is committed to providing and maintaining an environment that encourages mutual respect and promotes equality, dignity, and respect. This Policy embodies the City Council’s commitment to prevent and address discrimination; harassment, including sexual harassment; and retaliation. Discrimination, harassment, and retaliation in the workplace are against the law and will not be tolerated.

Through adoption, implementation, and enforcement of this Anti-Discrimination and Anti-Harassment Policy (“Policy”) and through continuing education and training provided by or through the City Clerk’s Office, the Fort Collins City Council will seek to prevent, address, and correct behavior that violates this Policy.

**Application:**

This policy applies to all members of the City of Fort Collins City Council and Appointed Officials in the performance of City governance or operations, at City sponsored activities, and in all interactions between members of City Council, Appointed Officials, and City employees and contractors (defined herein as “Related Interactions”). Appointed Officials include the City Manager, the City Attorney, the Chief Municipal Judge, any appointed employee including municipal judges, and any City board or commission member. Nothing in this Policy is intended or should be read to alter the terms and conditions of the at-will status of Appointed Officials.

**It is important for all to keep in mind that the Mayor and City Council are committed to providing an environment that exemplifies high standards of behavior, treats others with dignity and respect, and is known for its honesty, inclusivity, and transparency. Conduct that does not clearly fall into the realm of conduct prohibited by this Policy but is inconsistent with these values may be a violation of the Council-adopted code of conduct.**

**Prohibited Conduct**

- I. Discrimination Strictly Prohibited

Policy

The City Council strictly prohibits discrimination based on protected characteristics and will take

prompt and appropriate action in response to good faith complaints or knowledge of an alleged violation of this Policy.

Definitions

- “Protected characteristics” means a person’s race, color, religion, creed, national origin or ancestry, sex, sexual orientation (including perceived sexual orientation), gender identity and expression, disability, age 40 years or older, pregnancy or related condition, genetic information, and, in certain specific circumstances, marital status, marriage to a coworker or any other status protected under federal, state, or local law.
- “Discrimination” occurs when a person covered by this policy experiences an adverse official action based on one or more of that person’s protected characteristic(s). Adverse official actions include, but are not limited to, termination, suspension, involuntary demotion, failure to promote, and opposition, rejection or failure to appoint to committee or leadership role. Adverse official actions that are taken for any reason other than the protected characteristic(s) of a person covered by this policy are not discrimination.

Examples of Discrimination

- A Councilmember harshly criticizes City staff and the municipal clerk notes he disproportionately criticizes her and other women.
- A female candidate for city attorney, city manager or chief judge is selected for a position over a more qualified male candidate because she is a woman.
- A community member is not considered for a board or commission appointment because he is homosexual.
- A candidate is not chosen for a promotion to an open City position by an appointee because the candidate does not share the appointee’s religious beliefs or does not have religious beliefs.
- A direct report receives an unfavorable, unjustified pay decision because they are disabled.

II. Harassment, Including Sexual Harassment, Strictly Prohibited

Policy

The City Council strictly prohibits harassment, including sexual harassment, and will take prompt and appropriate action in response to good faith complaints or knowledge of an alleged violation of this Policy. Please note that this Policy does not address conduct that could constitute a violation of criminal law. Any person who believes a violation of criminal law has occurred should report the conduct to Fort Collins Police Services or other appropriate law enforcement agency.

Definitions

- “Harassment” means any unwelcome conduct or communication directed at an individual or group because of that individual’s or group’s actual or perceived protected characteristic and such conduct or communication is subjectively offensive to the individual alleging harassment and the conduct is objectively offensive to a reasonable individual who is a member of the same protected characteristic.

It is not necessary for a complaining party to be a member of a protected characteristic to file a complaint.

Harassment is a violation of this policy if:

- Submission to the conduct is explicitly or implicitly made a term or condition of employment or appointment;
- Submission to, or objection to, or rejection of the conduct is used as a basis for employment or appointment decisions; or
- The conduct has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile or offensive work environment or in related interactions.

Petty slights, minor annoyances, and lack of good manners are not included in the definition of harassment, unless they meet the definition of harassment above when taken individually or in combination and under the totality of the circumstances. The totality of the circumstances considered includes:

- The frequency, duration and location of the conduct or communication; and
- The number of individuals involved; and
- The type or nature of the conduct or communication; and
- Whether it is threatening, involves epithets or slurs, or reflects stereotypes; and
- Whether there is a power differential between the individual or group and the subject of the complaint.

#### Examples of Harassment

**No policy can provide an exhaustive list of behaviors that may rise to the level of harassment.** Harassment encompasses a broad range of conduct that may be verbal, visual, or physical in nature. Specifically prohibited conduct includes, but is not limited to:

- Verbal conduct such as epithets, derogatory comments, and slurs directed at someone because of their protected class;
- Insisting on giving hugs to all women encountered at a recurring meeting;
- Repeatedly not using a person's preferred pronoun(s);
- Visual conduct such as derogatory posters, photographs, cartoons, drawings, or gestures directed at someone because of their protected class;
- Mocking someone's accent or disability;
- Acts or jokes that are hostile or demeaning toward a protected class;
- Racially offensive words or phrases;
- Written or graphic material that insults, stereotypes, or shows aversion or hostility to an individual or group because of a protected class that is placed on walls, bulletin boards, email, or elsewhere on the premises of the workplace;
- Displays of symbols, slogans, or items that are associated with hate or intolerance towards any select group, such as swastikas or nooses;
- Pranks or hazing someone because of their protected characteristic; and
- Physical aggression or gestures based on someone's protected characteristic.

In addition to the examples listed above, an aggregation of a series of incidents can constitute harassment, even if one of the incidents considered separately would not rise to the level of harassment. Harassing conduct does not have to rise to the level of an unlawful hostile work environment to warrant corrective action under this policy.

#### Sexual Harassment

Because sexual harassment raises issues that are to some extent unique in comparison to other types of harassment, the City Council believes it warrants separate emphasis. The City Council strongly opposes

sexual harassment and inappropriate sexual conduct. Sexual harassment can involve persons of any gender identity or sexual orientation being harassed by another individual.

Examples of sexual harassment include, but are not limited to, the following conduct:

- Inappropriate commentary, such as sexual epithets, jokes, written or verbal references to sexual conduct, gossip regarding a person's sex life, comments regarding a person's body or sexual activity deficiencies or prowess;
- Sexually suggestive comments about a person's clothing, vocal activity like catcalls or whistles, leering or staring at a person or part of a person's body, obscene letters, emails, text messages, photographs, cartoons, or other written or pictorial materials of a sexual nature, or sexting or posting sexual messages or images on social media;
- Direct sexual propositions including persistent requests for dates, drinks, or other personal contact after being informed that the interest is unwelcome, inappropriate sexually themed communication in person, online or via mobile devices;
- Explicit or implicit requests for sexual activity in exchange for reward, position, or career advancement, support of legislative initiatives, introductions, special access invitations to exclusive events, support for candidacies, position stability, or any other such condition or potential benefit;
- Sexual contact including unwanted physical touching, blocking or impeding movements, groping, or kissing.

Inappropriate sexual conduct that could lead to a claim of sexual harassment is expressly prohibited by this policy. This policy prohibits opposite sex and same sex harassment.

Sexual harassment may be obvious or subtle. Some behavior that is appropriate in a social setting may not be appropriate in the performance of City governance, City operations, at City sponsored activities, or in Related Interactions, particularly considering the Council's stated values noted above in the Introduction.

### III. Retaliation Strictly Prohibited

#### Policy

The City Council strictly prohibits retaliation. The City Council will take prompt and appropriate action in response to good faith complaints of retaliation or knowledge of a violation of this Policy.

#### Definitions

"Retaliation" means an act of punishment, reprisal, or revenge that is taken against a person because he or she reported a form of harassment prohibited under this Policy, prevented unlawful practices, or participated in an investigation of an alleged act of harassment. For purposes of retaliation, an action is materially adverse if it is harmful to the point that it would dissuade a reasonable employee from making a complaint of discrimination.

#### Examples

Retaliation can take place on City locations or elsewhere. Harassing conduct does not have to rise to the level of an unlawful hostile work environment to warrant corrective action under this policy. Examples of retaliation after a person makes a complaint or raised a concern may include, but are not limited to:

- party filed a complaint);
- Removing that person from an assignment;
- Change in support for Council action proposed by, or supported by, that person in their professional capacity;
- Disparaging that person to colleagues or peers;
- Changing that person's role, responsibilities, managerial or legislative authority;
- Newfound scrutiny of that person's work performance by a supervisor manager or Councilmember;
- Denial of a promotion for that person, or demoting, suspending, or terminating them, when such acts are not otherwise justified;
- Issuing that person warnings, reprimands, or poor performance evaluations that are not otherwise justified;
- Excluding that person from beneficial networking or other opportunities, or from team or coworker events;
- Encouraging shunning by other Councilmembers;
- Workplace or legislative sabotage;
- Assigning that person a disproportionate workload;
- Disparaging that person to others or in the media;
- Disparaging that person to potential new employers;
- Threatening that person with legal action;
- Threatening that person with immigration action; or
- Abusive verbal or physical behavior towards that person.

### **Formal Complaint and Resolution Process**

The City Council encourages the reporting of all perceived incidents of discrimination, harassment or retaliation, as described above, regardless of the position of the alleged offender. The following processes will be used when a reporting party reports a violation of this Policy. The formal resolution process will be used when someone makes a good faith report of discrimination, harassment, or retaliation in a manner that makes clear that the Reporting Party intends to make a complaint of a policy violation.

### **Definitions**

- “Reporting Party” means a person who has been subjected to or who has witnessed another person be subjected to behavior that violates this Policy. A Reporting Party may be a member of the City Council, a City staff member, a member of the public, a City contractor or vendor, an Appointed Official, a contractor, or a person whose employment gives them access to or contact with the Fort Collins City Council.
- “Complaint Contact” means:
  - The Mayor;
  - Any City Councilmember;
  - A representative of Human Resources including the Human Resources Executive, the Human Resources Director, or a Human Resources Business Partner;
  - The City Manager, Deputy City Manager, Assistant City Manager, Service Area Director, Service Unit Director
  - The City Attorney, Deputy City Attorney
  - Lead Specialist, Office of Equity & Inclusion.
  - The staff liaison or attorney liaison to a board or commission

While the reporting party should contact anyone on this list, the following guidance is provided for “Complaint Contact:”

- For a complaint about the City Manager, City Attorney and Chief Judge, contact the Mayor or the Human Resources Executive.
- For a complaint about a City Councilmember, contact the Human Resources Executive.
- For a complaint about a Board and Commission member, contact the City Manager, Deputy City Manager, Assistant City Manager, Service Area Director, Service Unit Director, City Attorney, or Deputy City Attorney.
- “Respondent” means a person who is alleged to have violated this Policy and includes members of the City Council, Appointed Officials, and persons who are under contract with the City of Fort Collins.

**Confidentiality and Privacy Interests**

An essential duty of the City Council and Appointed Officials is to be accountable to the public they serve. Members of the public deserve to have access to some information about complaints and complaint trends, but this must be balanced with the needs of the parties to have a safe, fair, and impartial process with appropriate confidentiality. The complaint resolution process is a confidential process. Complaint contacts must ensure that reporting parties can communicate privately and confidentially with them in discussing their complaints. Complaints and information about the investigation must be kept confidential by all parties, witnesses, those who handle the complaints, and those who recommend discipline or remediation, to the fullest extent possible. The confidential investigation report or any records of complaints of sexual harassment, and any sexual harassment investigations shall not be disclosed pursuant to an open records request except in accordance with Colo. Rev. Stat. § 24-72-204.

**Complaints Against a Member of the City Council**

Complaint Process

The Fort Collins City Council encourages any person who is the subject of or witness to a violation of this Policy by a City Councilmember to immediately bring the violation to the attention of the Fort Collins City Council, via the complaint contacts listed above, so it may take proper steps to investigate and address the issue. The report should contain all facts available to the Reporting Party regarding the alleged Policy violation.

Action by Complaint Contact

A Complaint Contact who receives a report from a Reporting Party must document the date, time, the form of communication that the complaint was received (in person, by phone, email, text etc.), substance of any communication about the complaint and any steps taken. The Complaint Contact must transmit complaints that fall under the Policy to the Lead Specialist, Equity and Inclusion Office of the City and the City Attorney. A screening process will be used to ensure that the alleged misconduct falls within the scope and purpose of this Policy, assuming the allegations are true. A Complaint Contact must take actions described in this Policy promptly upon becoming aware of a complaint.

Screening Process

The Lead Specialist, Equity and Inclusion Office or their designee and the City Attorney or their designee will contact the Reporting Party and obtain a complete description of the conduct that

allegedly violates this Policy. The Lead Specialist, Equity and Inclusion Office or their designee, the City Manager or their designee and the City Attorney or their designee will determine whether the alleged misconduct, if true, violates this Policy. Unless the alleged violation clearly does not fall within this Policy, the allegations will be referred for investigation. If the alleged violation clearly does not fall within this Policy, a confidential written summary of the basis for not referring the matter for investigation is placed in the file. If the allegations are not referred for full investigation, the complaining party will be notified both in person and in writing that the allegations were reviewed as a screening matter and determined not to fall within the scope of this Policy. If any of those involved in the screening the complaint believes the alleged misconduct, if true, violates this Policy, the allegations will be referred for investigation and the complaining party will be notified.

Investigation

Complaints against a Councilmember that, if true, violate this Policy must promptly be referred to a third-party investigator retained by the City Attorney’s Office. The City Attorney must inform the City Council that an investigation is underway and retain an independent outside investigator (preferably a lawyer that specializes in workplace investigations) to conduct interviews with the Reporting Party and other individuals with knowledge of relevant facts, and to perform such other actions as are necessary to ensure a complete investigation of all allegations and a fair process for all involved. Once the investigation is deemed complete by the investigator and the City Attorney, the investigator shall prepare a written report indicating whether the allegations in the complaint are sustained or not sustained and shall provide such confidential investigation report to the City Attorney.

Timeline for Investigation

Every effort will be made to complete an investigation in 60 days.

Disciplinary and Remedial Action

Upon completion of the investigation by a third-party investigator, the City Attorney will inform the Human Resources Executive, the City Manager, the Reporting Party and the Respondent of the pertinent findings. The City Attorney, the Human Resources Executive and the City Manager will send the confidential investigative report to each member of the City Council with a cover letter that contains recommendations to remedy the harassment, discrimination, or retaliation. Alternatively, the City Attorney shall present the investigator’s written report to the City Council in executive session. Upon receipt, the Respondent must immediately endeavor to comply with recommendations.

The City Council may consider and direct any or all of the following actions in response to a finding that a complaint of harassment, discrimination or retaliation is sustained:

1. Adopt a resolution finding that an individual covered by this policy violated this policy;
2. Direct or encourage additional corrective training;
3. Such other action as is consistent with its authority under applicable state statutes, the City Charter, ordinances, resolutions, or rules and policies of the City Council.

Any Councilmember at any time may initiate a motion for censure of a Respondent Councilmember.

**Complaints Against an Appointed Official**

Reporting

The City Council encourages any person who is the subject of or witness to a violation of this Policy by an Appointed Official to bring the violation to the attention of the City Council immediately, so it

may take proper steps to investigate and address the issue. The report should contain all facts available to the Reporting Party regarding the alleged Policy violation.

The Reporting Party is encouraged to take the following actions:

- If the Reporting Party is comfortable addressing the issue directly with the Respondent, the party may explain to the Respondent that the behavior is offensive to the Reporting Party, and request that such behavior be discontinued.
- If the behavior recurs, the Reporting Party is strongly encouraged to immediately report the behavior to a complaint contact listed above.
- If the Reporting Party is not comfortable addressing the issue directly with the Respondent, the Reporting Party should immediately report the offensive behavior to a Complaint Contact listed above.

#### Action by Complaint Contact

A Complaint Contact who receives a report from a Reporting Party must document the date, time, the form of communication that the complaint was received (by phone, in person, email, text message, etc.), substance of any communication about the complaint, and any steps taken. The Complaint Contact must transmit complaints that fall under the Policy to the Human Resources Executive, the City Attorney, unless the City Attorney is the Respondent and the City Manager, unless the City Manager is the Respondent. If the Respondent is the City Attorney, the Complaint Contact must transmit complaints that fall under the Policy to the Human Resources Executive and the City Manager. A screening process will be used to ensure that the alleged misconduct falls within the scope and purpose of this Policy, assuming the allegations are true. A Complaint Contact must take actions described in this Policy promptly upon becoming aware of a complaint.

#### Screening Process

The Lead Specialist, Equity and Inclusion Office or their designee and the City Attorney or their designee, if the City Attorney is not the Respondent, will contact the Reporting Party and obtain a complete description of the conduct that allegedly violates this Policy. The Lead Specialist, Equity and Inclusion Office or their designee, the City Manager or their designee, if the City Manager is not the Respondent, and the City Attorney or their designee, if the City Attorney is not the Respondent, will determine whether the alleged misconduct, if true, violates this Policy. Unless the alleged violation clearly does not fall within this Policy, the allegations will be referred for investigation. If the alleged violation clearly does not fall within this Policy, a confidential written summary of the basis for not referring the matter for investigation is placed in the file. If the allegations are not referred for full investigation, the Reporting Party will be notified both in person and in writing that the allegations were reviewed as a screening matter and determined not to fall within the scope of this Policy. If any of those involved in the screening the complaint believe the alleged misconduct, if true, violates this Policy, the allegations will be referred for investigation. If the Respondent is the City Attorney, the City Council will use outside legal counsel to engage in the screening process as described herein. If the Respondent is the City Manager, the Lead Specialist, Equity and Inclusion Office or their designee and City Attorney will engage in the screening process.

#### Investigation

Complaints against an Appointed Official that warrant investigation must promptly be referred to a third-party investigator retained the City Attorney's Office, unless the Respondent is the City Attorney. Unless the Respondent is the City Attorney, the City Attorney must inform the City Council



that an investigation is underway and retain an independent outside investigator (preferably a lawyer that specializes in workplace investigations). If the Respondent is the City Attorney, the Lead Specialist, Equity and Inclusion Office or their designee will retain the services of outside counsel to retain an independent outside investigator (preferably a lawyer that specializes in workplace investigations) and the City Manager must inform the City Council that an investigation is underway.

An outside investigator will conduct interviews with the Reporting Party and other individuals with knowledge of relevant facts, and to perform such other actions as are necessary to ensure a complete investigation of all allegations and a fair process for all involved. Once the investigation is deemed complete by the investigator and the City Attorney or outside counsel, the investigator shall prepare a written report indicating whether the allegations in the complaint are sustained or not sustained, and shall provide such confidential investigation report to the City Attorney, unless the Respondent is the City Attorney. If the Respondent is the City Attorney, the confidential investigation report will be provided to the outside counsel who will forward the report to the Lead Specialist, Equity and Inclusion Office or their designee and the City Manager.

The confidential investigation report and findings, along with a recommendation, will be provided to the City Manager and the City Council.

#### Timeline for Investigation

Every effort will be made to complete an investigation in 60 days.

#### Disciplinary and Remedial Action

Any Respondent found to have engaged in harassment, discrimination, or retaliation prohibited by this Policy is subject to appropriate disciplinary action. The City Council shall consult with the Lead Specialist, Equity and Inclusion Office or their designee and the City Attorney, if the City Attorney is not the Respondent, regarding disciplinary actions that are commensurate with the severity of the offense. If the City Attorney is the Respondent, the City Council shall consult with the Lead Specialist, Equity and Inclusion Office or their designee and outside employment counsel about disciplinary actions that are commensurate with the severity of the offense. Disciplinary action can include, but is not limited to, demotion or termination. Other remedial measures may include:

- Verbal or written direction to cease the offensive behavior;
- A written or verbal apology to the Reporting Party if the Reporting Party consents to the apology;
- Resources and support to Reporting Party; or
- Education and training for the Appointed Officials.

In any case, a written record of any action taken on the complaint, or any determination to take no further action on the complaint, shall be prepared in consultation with the City Attorney or such other legal counsel appointed by City Council in connection with a given complaint and kept with the report of investigation.

#### Training

All members of City Council shall participate in training regarding harassment, discrimination and retaliation every two years and in conjunction with the orientation provided to new City Council members. All Appointed Officials shall participate in such training every two years.

### **Annual Reporting and Review**

The Assistant City Manager will publicly report, on an annual basis, the total number of complaints under the Policy, and the resolution of each complaint, appropriately redacted to protect the confidential personnel decisions and party identities. The Assistant City Manager will maintain a publicly available list of Councilmembers and Appointed Officials who have attended mandatory and voluntary trainings.

RESOLUTION 2023-085  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
APPROVING A CODE OF CONDUCT FOR CITY COUNCILMEMBERS AND BOARD  
AND COMMISSION MEMBERS

WHEREAS, the City Council is committed to preserving standards of integrity and ensuring that the City Council and board and commission members are respectful, impartial and fair in their judgment and actions while carrying out their duties; and

WHEREAS, the City Council is committed to ensuring that Councilmembers and board and commission members make decisions based on merits of an issue before them, while treating all persons in a respectful manner and conducting business in a way that exemplifies transparency and open communication; and

WHEREAS, interpersonal issues arise among board members and Councilmembers that are outside the scope of the City’s Respectful Workplace Policy or the ethical provisions of the City Charter; and

WHEREAS, on November 15, 2023, the City Council adopted Resolution 2022-122 creating an ad hoc committee on boards and commissions (“Committee”) to consider and make recommendations to improve efficiency and consistency of board and commission processes and reduce barriers to participation; and

WHEREAS, the Committee directed City staff to develop a code of conduct to address the City Council’s values and address interpersonal issues (“Code of Conduct”) and considered several versions during its meetings; and

WHEREAS, on July 19, 2023, the Committee approved a recommendation that the City Council formally adopt the Code of Conduct.

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 policy statements contained in the attached Code of Conduct accurately reflect the City’s policies on these issues.

Section 3. That the City Council hereby approves the Code of Conduct, attached hereto as Exhibit “A,” incorporated herein by reference.

Section 4. That the City Council hereby directs that the Code of Conduct be included as an appendix to the City Council-approved Boards and Commissions Manual.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 5th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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



City Council  
300 LaPorte Avenue  
PO Box 580  
Fort Collins, CO 80521

## Code of Conduct

### Purpose:

Fort Collins aspires to be a city that addresses the needs of all members of our community and strives to ensure that everyone has the opportunity to thrive. As a community, we commit to building a healthy, equitable, and resilient city – for our families, for our neighbors, and for future generations. The high quality of life we enjoy requires a city that is safe and where all individuals are treated with dignity and respect. The Mayor and City Council are committed to providing an environment that exemplifies the highest standards of behavior and is known for its honesty, inclusivity and transparency. Our elected officials and those they appoint believe that how they treat others is a direct reflection of our collective character.

### Application:

This policy applies to board and commission members appointed by the City Council. The Council also adopts this policy to establish standards for Councilmember interactions with board and commission members, staff, and amongst Councilmembers. The term “Appointees” refers to appointed board and commission members. The term “Members” refers to both appointees and City Council.

The City Council appoints individuals who:

- Comply with both the letter and the spirit of the laws and policies affecting operations of boards and commissions.
- Are independent, impartial, and fair in their judgment and actions.
- Participate in assigned duties and functions for the public good.
- Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility toward each other, City staff, and members of the public.
- Learn and understand the legal and ethical requirements that apply to public officials and processes.

### Therefore, members commit to the following:

1. To uphold the standards of integrity and honesty with the intention of using true and accurate evidence and/or statements in the decision-making process, and making decisions based on the best interest of the city and its residents.
2. To conduct business of their board or commission that is within the scope of the specific board or commission functions as described in the Fort Collins Municipal Code.

## EXHIBIT A TO RESOLUTION 2023-085

3. To perform Council liaison assignments and duties as described in the Fort Collins Municipal Code.
4. Familiarize themselves with, adhere to, and comply with established policies and laws, as applicable:
  - The City of Fort Collins Boards and Commissions Manual
  - Colorado's Sunshine Laws regarding open meetings and public records – as outlined in the Council Resource Guide
  - The City of Fort Collins Charter and Municipal Code; specifically, the ethical rules of conduct and the open meetings, remote meetings, notice and minutes of meetings, board or commission action and attendance requirements (see Fort Collins Municipal Code §§2-71 through 2-79)
  - The City Council-adopted Anti-Discrimination and Anti-Harassment Policy, which prohibits harassment, discrimination and retaliation based on a person's protected characteristics.
5. Avoid all *ex parte* communications (communications with anyone about a pending issue including communication with City staff) about quasi-judicial matters.
6. To be aware of the open records requirement that applies to written notes, calendars, voicemail messages, and e-mail. All written or recorded materials including notes, voicemail, text messages, and e-mail that discuss or touch on public business or the functions of the board or communication will likely be subject to disclosure to a requesting party.
7. Appointees are encouraged to meet with their Staff or City Council liaison to discuss any concerns regarding work that may be outside the scope of designated functions, conflicts of interest, appearance of impropriety, *ex parte* communications, or gifts. Appointees must make disclosures to the City Clerk's Office as appropriate under the circumstances.
8. Make decisions based on the merits of the issue, while treating all persons and decisions in a respectful and equitable manner and committing to conducting business in a way that exemplifies transparency and open communication.
9. Respect the legitimacy and authority of decisions that have been finalized – regardless of personal position on the matter.
10. (For Appointees) Strive to represent the official policies and positions of their board or commission when serving in the member role. When presenting their personal opinions or positions in a public meeting, such as a City Council meeting, Appointees shall explicitly state that they are not representing their board or commission or the City.
11. (For Appointees) Avoid actively participating in matters that interfere with a quasi-judicial commission member's ability to remain impartial in making decisions.
12. Continue respectful behavior among Members and City staff when communicating in private. The same level of respect and consideration of differing points of view should be maintained in private conversations.
13. To use public resources (e.g., staff time, equipment, supplies, or facilities) appropriately

## EXHIBIT A TO RESOLUTION 2023-085

and in a manner that fosters stewardship of the taxpayer and ratepayer dollar.

14. Attend meetings of your board or commission. Because contemplation, deliberation, and decision-making require collaboration and participation, Appointees are expected to attend their meetings. Appointees must comply with attendance requirements described in Fort Collins Municipal Code § 2-79. Appointees commit to attend any required trainings and even suggested trainings that enhance a member's ability to serve.
15. To respect fellow Members, staff, and the public by treating all with patience, courtesy, and civility at all times during the performance of official duties, regardless of differences of opinion.
16. Avoid making personal, profane, vulgar, slanderous, humiliating, intimidating, or harassing remarks that disturb, disrupt, or impede the conduct of the meeting or the completion of the meeting agenda. Similarly, abusive language, intimidation, threats of violence or harm, or racial or ethnic slurs directed at any person or group of persons are prohibited. Members are expected to know that problematic behavior can cause the targets of behavior to feel threatened, humiliated, or intimidated and such conduct is detrimental to the proper functioning of a public body. Members are expected to avoid publicly ridiculing or insulting fellow Members, members of the public, and City staff.
17. Act in furtherance of the principle that healthy discourse occurs when individuals of all backgrounds and personalities are allowed to respectfully speak candidly about matters of interest, ask difficult questions, challenge ideas and propositions, and work together toward optimal solutions in a respectful manner.
18. Explain to a person who engages in disrespectful treatment that the behavior is disrespectful and, if the person who is the target of the behavior feels comfortable doing so, ask that they discontinue the behavior. If this does not change the behavior the person who believes they are being treated disrespectfully is strongly encouraged to report the behavior using the process described in Fort Collins Municipal Code §\_\_\_\_.
19. Report behavior that is disruptive, humiliating, intimidating, or threatening or otherwise in violation of this Code of Conduct in the performance of City business, at City-sponsored events, and in all interactions between members, City staff, or the public to the staff liaison and the Boards and Commissions Coordinator. Complaints of such behavior will be processed following procedures in the Fort Collins Municipal Code.

Appointees may not be reappointed and are subject to censure or dismissal by the appointing authority for misconduct, nonperformance of duty, or failure to comply with this Code of Conduct, applicable policies, and the Fort Collins City Charter and Municipal Code.

I have read and understand the City of Fort Collins Code of Conduct and agree to abide by and uphold this code to the best of my ability at all times while serving as an appointed or elected official of the city.

I understand that I may not be reappointed, and may be suspended, censured or removed from my appointment if my conduct falls below these standards.

EXHIBIT A TO RESOLUTION 2023-085

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_



ORDINANCE NO. 120, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
REORGANIZING CHAPTER 2, ARTICLE VII, DIVISIONS 1 AND 2 OF THE CODE OF  
THE CITY OF FORT COLLINS TO CONSOLIDATE THE ETHICAL RULES OF CONDUCT  
AND BOARD OF ETHICS SECTIONS WITH A COMPLAINT PROCESS FOR  
VIOLATIONS OF THE CODE OF CONDUCT

WHEREAS, the City has 25 boards and commissions, whose members are appointed by the City Council; and

WHEREAS, on November 15, 2023, the City Council adopted Resolution 2022-122 creating an ad hoc committee on boards and commissions (“Committee”) to consider and make recommendations to improve efficiency and consistency of board and commission processes and reduce barriers to participation; and

WHEREAS, with input from individual City Councilmembers, City staff developed a Code of Conduct that applies to board and commission members, and some provisions that apply to both board and commission members as well as City Councilmembers; and

WHEREAS, the Code of Conduct includes provisions about upholding standards of integrity and honesty, and respectful discourse; and

WHEREAS, City staff presented versions of the Code of Conduct to the Committee for comment and, after revisions were made in response to comments, on July 19, 2023, the Committee recommended adoption of a final version of the Code of Conduct for City Council approval; and

WHEREAS, the Code of Conduct will be considered for approval by separate City Council resolution and, if approved, attached as an appendix to the Boards and Commissions Manual; and

WHEREAS, City staff developed a process for formally filing and resolving complaints of violation of the Code of Conduct (“Complaint Process”); and

WHEREAS, on July 19, 2023, the Committee recommended adoption of the Complaint Process; and

WHEREAS, Sections 2-568 and 2-569 of the City Code contain ethical rules of conduct and discussion about a board of ethics charged with interpreting and applying the definitions, rules and procedures pertaining to ethics established by the City Charter and City Code and applicable provisions of state statute; and

WHEREAS, the ethical rules and the Code of Conduct are similar in that they both address City Councilmember and board or commission member conduct; and

WHEREAS, the City developed its ethical rules and board of ethics under its home rule authority; and

WHEREAS, City staff recommends combining the ethical rules and the board of ethics provisions with the Complaint Process in Division 2 of Chapter 2, Article VII to reorganize and simplify rules governing the conduct of City Councilmembers and board and commission members with the Complaint Process in one division; and

WHEREAS, the City Council finds that the proposed changes to the City Code are in the best interests of the City and its residents.

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 Division 2 of Article VII of Chapter 2 of the Code of the City of Fort Collins is hereby entitled "Ethical Rules and Conduct: Related Procedures."

Section 3. That Section 2-568 of the Code of the City of Fort Collins is hereby repealed and reenacted in multiple new sections in Division 2 of Article VII, Sections 2-575 through 2-578, to read as follows:

**Sec. 2-568~~575~~. Ethical Rules of Conduct - Definitions**

~~(a) Definitions.~~—The following words, terms and phrases, when used in this ~~Section, Section 2-569~~ **Division**, and in Section 9 of the Charter Article IV, shall have the following meanings:

~~(1a)~~ **(1a)** *Attempt to influence or influence*, as it pertains to this Division, shall mean take any action intended to impact, shape, control, sway, bias or prejudice.

~~(2b)~~ **(2b)** *Benefit* shall mean an advantage or gain.

~~(3c)~~ **(3c)** *Board and commission member* shall mean a member of any appointive board or commission of the City.

~~(4d)~~ **(4d)** *Confidential information or information received in confidence* shall mean:

~~a.~~ **(1)** Information contained in any writing that may properly be withheld from public inspection under the provisions of the Colorado Open Records Act and that is marked "confidential" when provided to the officer or employee;

~~b.~~ **(2)** All information exchanged or discussed in any executive session properly convened under § 2-31 or 2-71 of the Code, except to the extent that such information is also contained in a public record available to the general public under the provisions of the Colorado Open Records Act; or

~~e.~~(3) All communications between attorneys representing the City and officers or employees of the City that are subject to the attorney-client privilege, whether oral or written, unless the privilege has been waived.

(5e) *Councilmember* shall mean a member of the City Council.

(6f) *Different in kind from that experienced by the general public* shall mean of a different type or nature not shared by the public generally and that is not merely different in degree from that experienced by the public generally.

(7g) *Direct* shall mean resulting immediately and proximately from the circumstances and not from an intervening cause.

(8h) *Detriment* shall mean disadvantage, injury, damage or loss.

(9i) *Financial interest* shall have the meaning given to this term in Section 9(a) of Charter Article IV, which states:

*Financial interest* means any interest equated with money or its equivalent. Financial interest shall not include:

a.(1) the interest that an officer, employee or relative has as an employee of a business, or as a holder of an ownership interest in such business, in a decision of any public body, when the decision financially benefits or otherwise affects such business but entails no foreseeable, measurable financial benefit to the officer, employee or relative;

b.(2) the interest that an officer, employee or relative has as a nonsalaried officer or member of a nonprofit corporation or association or of an educational, religious, charitable, fraternal or civic organization in the holdings of such corporation, association or organization;

~~e.~~(3) the interest that an officer, employee or relative has as a recipient of public services when such services are generally provided by the city on the same terms and conditions to all similarly situated citizens, regardless of whether such recipient is an officer, employee or relative;

~~d.~~(4) the interest that an officer, employee or relative has as a recipient of a commercially reasonable loan made in the ordinary course of business by a lending institution, in such lending institution;

~~e.~~(5) the interest that an officer, employee or relative has as a shareholder in a mutual or common investment fund in the holdings of such fund unless the shareholder actively participates in the management of such fund;

f.(6) the interest that an officer, employee or relative has as a policyholder in an insurance company, a depositor in a duly established savings association or bank, or a

similar interest-holder, unless the discretionary act of such person, as an officer or employee, could immediately, definitely and measurably affect the value of such policy, deposit or similar interest;

~~g.~~(7) the interest that an officer, employee or relative has as an owner of government-issued securities unless the discretionary act of such owner, as an officer or employee, could immediately, definitely and measurably affect the value of such securities; or

~~h.~~(8) the interest that an officer or employee has in the compensation received from the city for personal services provided to the city as an officer or employee.

(10) *Officer or employee* shall mean any person holding a position by election, appointment or employment in the service of the City, whether part-time or full-time, including any member of the City Council and any member of any authority, board, committee or commission of the City, other than an authority that is:

~~a.~~(1) Established under the provisions of the Colorado Revised Statutes;

~~b.~~(2) Governed by state statutory rules of ethical conduct; and

~~c.~~(3) Expressly exempted from the provisions of Article IV of the City Charter by ordinance of the City Council.

(11) *Personal interest* shall have the meaning given to this term in Section 9(a) of the Charter Article IV, which states:

*Personal interest* means any interest (other than a financial interest) by reason of which an officer or employee, or a relative of such officer or employee, would, in the judgment of a reasonably prudent person, realize or experience some direct and substantial benefit or detriment different in kind from that experienced by the general public. Personal interest shall not include:

~~a.~~(1) the interest that an officer, employee or relative has as a member of a board, commission, committee, or authority of another governmental entity or of a nonprofit corporation or association or of an educational, religious, charitable, fraternal, or civic organization;

~~b.~~(2) the interest that an officer, employee or relative has in the receipt of public services when such services are generally provided by the city on the same terms and conditions to all similarly situated citizens; or

~~c.~~(3) the interest that an officer or employee has in the compensation, benefits, or terms and conditions of his or her employment with the city.

(12) *Public body* shall have the meaning given to this term in Section 9(a) of Charter Article IV, which states:

*Public body* means the Council or any authority, board, committee, commission, service area, department or office of the city.

(13m) *Public services* shall mean city services provided to or made available for the public's benefit.

(14n) *Purchases from the city*, as described in Section 9(b)(2) of Charter Article IV, shall not include payments by an employee to the city pursuant to an agreement for housing in which such employee is required to live as a condition of employment with the city.

(15o) *Related entity* shall mean any corporation, limited liability company, partnership, sole proprietorship, joint venture, trust, estate, foundation, association, business, company or any other organization, whether or not operated for profit, with respect to which an officer or employee, or a relative of the same, has a substantial ownership interest in, is employed by, is an agent for or otherwise represents in any legal capacity.

(16p) *Relative* shall have the meaning given to this word in Section 9(a) of Charter Article IV, which states:

*Relative* means the spouse or minor child of the officer or employee, any person claimed by the officer or employee as a dependent for income tax purposes, or any person residing in and sharing with the officer or employee the expenses of the household.

(17q) *Routine City matter* shall mean a usual and ordinary registration, reservation, or other request or application, within a program or for public services or City approval, such as a registration for a recreation class, reservation of a park shelter, request for standard utility services or application for a building permit, development approval or variance, or an appeal, provided that the same is carried out using a routine process or system or in a manner consistent with standard practices.

(18r) *Similarly situated citizens* shall mean citizens in like circumstances having comparable legal rights and obligations.

(19s) *Substantial* shall mean more than nominal in value, degree, amount or extent.

**Sec. 2-576. Ethical rules of conduct – officers and employees.**

~~(c) — Rules of conduct.~~

(1a) Use and disclosure of confidential information. The following rules shall apply to the use and disclosure of confidential information by officers and employees of the City. In the event of any conflict among these provisions, the more specific provision shall take precedence over the more general provision.

~~a.~~(1) No use for personal gain. No officer or employee shall knowingly use information received in confidence as an officer or employee to advance the financial or personal interests of the officer or employee or others.

~~b.~~(2) Disclosure of confidential information, generally. No officer or employee shall knowingly disclose any confidential information to any person who is not an officer or employee or to an officer or employee whose official duties are unrelated to the subject matter of the confidential information or to maintaining an official record of such information on behalf of the City, unless such disclosure is reasonably necessary to protect the City from the gross mismanagement of public funds, the abuse of governmental authority, or illegal or unethical practices.

~~c.~~(3) Disclosure of confidential information provided to the City Council. All information received in confidence by the City Council shall remain confidential, and no officer or employee shall knowingly disclose any such confidential information to any person to whom such information was not originally distributed by City staff unless and until the City Council has, by majority vote, consented to its release, unless such disclosure is reasonably necessary to protect the City from the gross mismanagement of public funds, the abuse of governmental authority, or illegal or unethical practices.

~~d.~~(4) Disclosure of information discussed in executive session. No officer or employee shall knowingly disclose any confidential information discussed in an executive session to any person who was not present during such discussion, other than members of such body who were unable to attend the executive session, without the prior knowledge and consent of the body holding such executive session, unless such disclosure is reasonably necessary to protect the City from the gross mismanagement of public funds, the abuse of governmental authority, or illegal or unethical practices. In the event that a matter discussed in executive session comes before the City Council or a board or commission of the City for formal action at an open meeting, or if such formal action is anticipated, nothing herein shall be construed as prohibiting a member of the body that will be taking such formal action from stating his or her position or opinion with regard to the matter, as long as such statements do not divulge confidential information received from others during the executive session.

~~e.~~(5) Certain distribution and discussion by City Manager and City Attorney permitted. Notwithstanding the provisions of Subparagraphs ~~e.~~ and ~~d.~~(3) and (4) above, the City Manager and City Attorney may further distribute confidential information provided to the City Council and may disclose confidential information discussed in any executive session of the City Council, or of a Council committee, to such staff members and/or board and commission members as they may consider reasonably necessary to enable them to fully advise the City Council or to implement any direction given by the City Council or to advise other officers and employees of the City whose official duties are related to the subject matter of the confidential information or to maintaining a record of the same on behalf of the City.

f.(6) No disclosure of confidential information to officer or employee having conflict of interest. No officer or employee who has filed a statement of conflict of interest with the City Clerk under Article IV, Section 9 of the Charter, or who has been determined by the City Council under the provisions of Subparagraph g. below to have a conflict of interest, shall knowingly elicit, accept or inspect any confidential information pertaining to the subject matter of such conflict of interest, nor shall any such officer or employee attend or participate in an executive session of the City Council, or of a Council committee or board or commission of the City, pertaining to said subject matter.

g.(7) The City Council may determine that a Councilmember shall not receive confidential information or attend executive sessions on a particular topic if the City Council first determines that said Councilmember has a conflict of interest in the subject matter of such confidential information and/or executive session. Any such determination by the City Council shall be made only after the City Council has received an advisory opinion and recommendation of the Ethics Review Board on the question, rendered in accordance with the provisions of § 2-5692-579.

~~(2) — With respect to any matter regarding which a Councilmember has declared a conflict of interest, said Councilmember is prohibited from discussing with, or otherwise attempting in any capacity to influence, directly or indirectly, any City officer or employee, and from representing any person or interest before the City Council or any board or commission of the City or in dealing with any City officer or employee, except that such Councilmember may represent with any City employee or before the City Council or a board or commission of the City his or her own interest or that of a relative provided said Councilmember does not violate Section 2-568(c)(5) or (c)(6).~~

~~(3) — In any action in which a member of a City board or commission ("member") declares a conflict of interest or is prohibited from participation pursuant to subsection (7) below, or for any other reason, such member shall not communicate to or attempt to influence such board or commission regarding such item, in any capacity, except that:~~

~~a. the member may communicate with said board or commission to protect a strictly personal interest, in the same or similar ways in which the public is permitted to communicate with the board or commission.~~

~~b. the member may prepare materials on behalf of another for a project in the normal course of business or operation, so long as the purpose of those materials is not directly and substantially related to advocacy before said member's board or commission. Those materials may be included in materials submitted by another to said member's board or commission so long as they fall within this exception. For illustrative purposes, such materials may include, but are not necessarily limited to architectural plans, technical studies, and engineering designs.~~

~~c. if a member is precluded from participating in or influencing the decision of their board or commission, they may request a variance from the limitations of this subsection from the City Council in the following circumstances, and in the following manner:~~

~~1. The member must submit a request for a variance to the City Clerk on a form provided by the City Clerk for such purpose.~~

~~2. The member must demonstrate that without the variance, they would suffer an exceptional hardship, and that no reasonable alternative exists that would allow for that hardship to be avoided or substantially mitigated;~~

~~3. The City Council must act by resolution to approve or disapprove the requested variance.~~

~~d. This limitation does not apply to persons other than the member who are affiliated with that member's firm or entity, and such other persons, but not the member, may continue to work on the project and may advocate to such member's board or commission, provided that the member complies with the applicable requirements and limitations.~~

(4b) All officers and employees shall refrain from accepting payment for any speeches, debates or other public events and shall further refrain from accepting any gift or favor which, in the judgment of a reasonably prudent person, would tend to impair the officer's or employee's independence of judgment in the performance of his or her official duties. The following shall not constitute prohibited gifts or favors under this Section:

~~a.~~(1) Campaign contributions reported as required by Chapter 7, Article V of this Code;

~~b.~~(2) A nonpecuniary award publicly presented by a nonprofit organization in recognition of public service;

~~c.~~(3) Payment of or reimbursement for actual and necessary expenditures for travel and subsistence for attendance at a convention or other meeting at which an officer or employee is scheduled to participate;

~~d.~~(4) Reimbursement for or acceptance of an opportunity to participate in a social function or meeting which is offered to an officer or employee which is not extraordinary when viewed in light of the position held by such officer or employee;

~~e.~~(5) Items of perishable or nonpermanent value that are insignificant in value, including, but not limited to, meals, lodging, travel expenses or tickets to sporting, recreational, educational or cultural events; and

~~f.~~(6) Payment of salary from employment, including other employment in addition to that earned from being an officer or employee.

(5c) No officer or employee shall request on his or her own behalf, or for or through a relative or related entity, from any other officer or employee, or grant to any other officer or employee, or relative or related entity of the same, any consideration, treatment or advantage in the interpretation, administration or enforcement of the Charter, Code, any City regulation, policy or



program or in the provision of public services, that is substantially different from that available to other persons in the same circumstances or having the same need.

**Sec. 2-577. Additional ethical rules of conduct – board or commission members**

(a) In any action in which a member of a City board or commission ("member") declares a conflict of interest or is prohibited from participation pursuant to subsection (7) below, or for any other reason, such member shall not communicate to or attempt to influence such board or commission regarding such item, in any capacity, except that:

(1) the member may communicate with said board or commission to protect a strictly personal interest, in the same or similar ways in which the public is permitted to communicate with the board or commission.

(2) the member may prepare materials on behalf of another for a project in the normal course of business or operation, so long as the purpose of those materials is not directly and substantially related to advocacy before said member's board or commission. Those materials may be included in materials submitted by another to said member's board or commission so long as they fall within this exception. For illustrative purposes, such materials may include, but are not necessarily limited to architectural plans, technical studies, and engineering designs.

(3) if a member is precluded from participating in or influencing the decision of their board or commission, they may request a variance from the limitations of this subsection from the City Council in the following circumstances, and in the following manner:

a. The member must submit a request for a variance to the City Clerk on a form provided by the City Clerk for such purpose.

b. The member must demonstrate that without the variance, they would suffer an exceptional hardship, and that no reasonable alternative exists that would allow for that hardship to be avoided or substantially mitigated;

c. The City Council must act by resolution to approve or disapprove the requested variance.

(4) This limitation does not apply to persons other than the member who are affiliated with that member's firm or entity, and such other persons, but not the member, may continue to work on the project and may advocate to such member's board or commission, provided that the member complies with the applicable requirements and limitations.

(75) Additional limitations on participation.

a. No member of a Quasi-Judicial Commission, as defined in Article III of this Chapter 2, who has participated or intends to participate as a member of the public, or on behalf of another person or entity, to provide input or public comment as part

of a City process about a particular proposal or project for which a City review, permit or approval is required (such as, for example, speaking at a neighborhood meeting for a development project or appearing at an administrative hearing for a project), is allowed to participate in that process in their role as a board or commission member.

1. In the event such input or public comment has been provided, or is expected to be provided, the commission member must promptly provide written notice to the City Clerk that they are required to refrain from participation in their role as a commission member in the City process or decision.

2. The commission member must also provide the required notice to the chair of the commission of which they are a member.

b. The prohibitions and requirements of this subsection (75) apply whether or not a conflict of interest is presented or has been declared and are in addition to, and not in place of, the requirements applicable to any officer or employee in the event of a conflict of interest.

c. No member of a Quasi-Judicial Commission, as defined in Article III of this Chapter 2, may provide input or public comment on behalf of that commission as part of a City process about a particular proposal or project for which a City review, permit or approval is required, except as expressly authorized and directed by such commission.

**Sec. 2-578. Additional ethical rules of conduct – mayor and council members.**

(a) With respect to any matter regarding which a Councilmember has declared a conflict of interest, said Councilmember is prohibited from discussing with, or otherwise attempting in any capacity to influence, directly or indirectly, any City officer or employee, and from representing any person or interest before the City Council or any board of commission of the City or in dealing with any City officer or employee, except that such Councilmember may represent with any City employee or before the City Council or a board or commission of the City his or her own interest or that of a relative provided said Councilmember does not violate § 2-577.

(6b) If any Councilmember contacts an officer or employee regarding a request in connection with that contacted officer's or employee's role and in relation to a matter that is not a routine City matter and is not within the Councilmember's role as an officer of the City, said Councilmember shall no later than 5:00 p.m. on the next business day after such contact deliver a written disclosure to the City Clerk and the City Manager and to all other members of City Council. The written disclosure must describe the date, time and general subject matter of the contact, together with the identity of the officer or employee contacted. Any private or confidential information, such as tax, utility account, or other personal information may be excluded or redacted from such disclosure. Disclosure by means of an electronic message shall be deemed to constitute written disclosure for purposes of this provision.

(c) Notwithstanding the provisions of § 1-15 of the Code, an alleged violation of the provisions of this Division by a member of the City Council shall not be prosecuted in the Municipal Court as a misdemeanor criminal offense but shall instead be referred to the Ethics Review Board for an advisory opinion and recommendation under the provisions of § 2-579.

(d) With respect to any Councilmember serving as a liaison to a board or commission, such Councilmember must not direct the board in its activities or work. A liaison’s role is to serve as a contact rather than an advocate for or ex-officio member of the board or commission.

Section 3. That Section 2-569 of the Code of the City of Fort Collins regarding the Board of Ethics is hereby moved to Division 2 of Article VII and renumbered to Section 2-579, with all internal references renumbered accordingly.

Section 4. That Chapter 2, Article VII, Division 2 of the Code of the City of Fort Collins is hereby amended by the addition of a new Section 2-580 which reads in its entirety as follows:

**Sec. 2-580. Code of Conduct formal complaint and resolution process.**

(a) Definitions

(1) *Appointee* shall mean any person who is serving on a Council-appointed board or commission.

(2) *Code of Conduct* shall mean the “Code of Conduct” applicable to City board and commission members and members of the City Council, and adopted by the City Council by resolution or ordinance, as amended from time to time.

(3) *Colorado Open Records Act* shall mean C.R.S. §§ 24-72-200.1, et. seq, as the same may be amended from time to time.

(4) *Members* shall mean any appointee or City Councilmember.

(5) *Liaison* shall mean the councilmember appointed to serve as council liaison to a given board or commission.

(b) The City Council encourages any person who is a witness to a violation of the Code of Conduct to immediately bring the violation to the attention of the City, in accordance with the following procedures.

(c) Confidentiality and Privacy Interests.

(1) Members must be accountable to the City Council, the City organization and the public they serve. The public deserves to have access to some information about complaints and complaint trends, but this must be balanced with the needs of the parties to have a safe, fair, and impartial process with appropriate confidentiality. The complaint resolution

process is a confidential process. Those involved in the complaint process must ensure that reporting parties can communicate privately and confidentially with them in discussing their complaints. Complaints and information about the investigation must be kept confidential by all parties, witnesses, those who handle the complaints, and those who recommend discipline or remediation, to the fullest extent possible. Information received through the complaint process shall not be disclosed pursuant to an open records request except in accordance with the Colorado Open Records Act.

(d) Complaints.

(1) Any person who believes that a member has violated any provision of the Code of Conduct may file a complaint with the City Clerk. Complaints may be filed by any member, a City staff person, a City contractor or vendor, or a person whose employment gives them access to or contact with the board or commission at issue or the City Council.

(2) The complaint must contain all facts available to the reporting party regarding the alleged violation.

(3) No action may be taken under this section on any complaint that is filed later than twelve months after discovery of the facts supporting an allegation that a violation of the Code of Conduct has occurred.

(4) Upon receipt of the complaint, the City Clerk shall immediately notify the City Manager's Office, the member named in the complaint, the City Council, and the City Attorney. Each complaint shall name only one individual as its subject.

(5) The City Attorney or City Manager or their designee shall review the complaint to determine whether the alleged misconduct falls within the scope and purpose of the Code of Conduct and whether the complaint warrants investigation in light of commonly known and documented facts and circumstances. If investigation is warranted, the City Attorney shall develop facts relevant to the complaint and interpret and apply the provisions of the Code of Conduct. The City Attorney may select and retain one or more qualified attorneys to review complaints as his or her designee.

(6) After investigation, the City Attorney shall issue written findings of fact and conclusions of law to the City Council, which shall be filed with the City Clerk and available for public inspection.

(d) Sanctions and Remedies for Violation.

(1) If the party conducting an investigation pursuant to this section finds that a member has violated any provision of the Code of Conduct, the City Council may take any of the following actions:

a. In the case of a City Councilmember, a motion of censure or a motion to remove the particular Councilmember from the role of liaison;

b. In the case of an appointee, removal from the applicable board or commission;

c. In the case of a member:

i. Issue verbal or written direction (for appointee) or encouragement (for member) to cease the violative conduct;

ii. Direct (for appointee) or encourage (for member) corrective training; or

iii. Require the violator (for appointee) or encourage (for member) to issue a written or verbal apology to the reporting party if the latter consents to such an apology.

iv. Any other actions determined appropriate by City Council.

d. While a violation of the Code of Conduct shall not constitute a violation of the City Code, as such, this provision is not intended to impair or supersede such other action as may be appropriate under applicable state statutes, the City Charter, ordinances, resolutions, or rules and policies of the City or City Council.

Section 5. That Sections 2-568 and 2-569 of the Code of the City of Fort Collins are now held in reserve.

Section 6. That all references in the Code of the City of Fort Collins to Section 2-568 or Section 2-569, or any portions thereof, shall be renumbered in accordance with the new section numbers assigned to those provisions in this Ordinance.

Introduced, considered favorably on first reading and ordered published this 5th day of September, 2023, and to be presented for final passage on the 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

Passed and adopted on final reading this 19th day of September, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

# Ad Hoc Committee on Boards and Commissions Recommendations

**Rupa Venkatesh**

Assistant City Manager

**Davina Lau**

Public Engagement Specialist

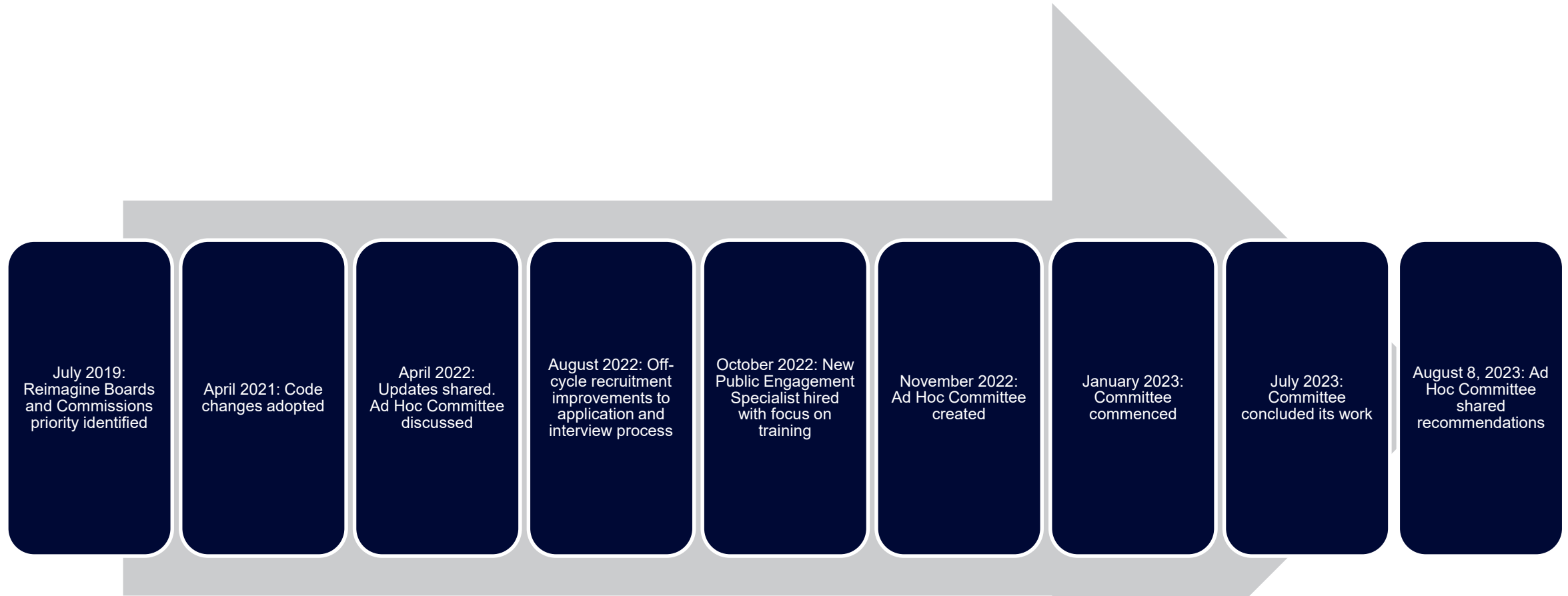
**Jenny Lopez Filkins**

Senior Assistant City Attorney



- Ordinance A – Addition of City Council Liaison Responsibilities to Code
- Ordinance B – Amendments to Type 1 Advisory Board Composition and Functions; Elimination of One-year Terms
- Ordinance C – Elimination of One-year Terms for Type 2 Advisory Boards
- Ordinance D – Consolidation of Ethical Rules of Conduct and Board of Ethics Sections with Code of Conduct Complaint Process
- Resolution E – to Adopt Anti-Discrimination and Anti-Harassment Policy
- Resolution F – to Adopt the Code of Conduct for Councilmembers and Board Members
- Discussion on Ex-officio Members





- In November 2022, Res. 2022-122 established an Ad Hoc Committee on Boards and Commissions
  - New Public Engagement Specialist role to focus on providing more support to board and commission members, staff liaisons, applicants, including onboarding and training
  - Intention to begin work in December 2022 and make recommendations by July 2023 to allow time for Council to act on the recommendations and, if needed, for staff to implement changes and communicate to the public prior to the start of the annual recruitment process
  - Committee members will receive a compiled list of recommendations that have been submitted from board members, Councilmembers, and the general public
  - Make recommendations to improve the efficiency and consistency of processes and reduce barriers to participation on boards and commissions

**Mayor Pro Tem Emily Francis and Councilmembers Tricia Canonico and Julie Pignataro were appointed to serve as Committee members. Councilmember Kelly Ohlson served as the alternate.**

- Purpose: Boards and Commissions are established for the purpose of acquiring and studying information in specific areas and to make recommendations to City Council on issues within the board's area of expertise.

Type 1 and Type 2 members have 1-, 2-, and 4-year terms and consist of either 7 or 9 members

	1-year Term	2-year Term	4-year Term
7-member board	1	2	4
9-member board	2	3	4

- A person can serve on only 1 board unless it is a temporary committee
- No member is allowed serve more than two consecutive terms. A term includes the balance of an unexpired term served by a person appointed to fill a vacancy if such unexpired term exceeds 12 months

Advisory Boards - Type 1	Advisory Boards - Type 2	Quasi-judicial Commissions
<p><b>Type 1</b> advisory boards make recommendations to the City Council and City staff on particular areas of knowledge or expertise. Recommendations made by advisory boards are formal board action to advise the City Council on items and subjects that are on the boards' approved workplans. These recommendations are limited to advisement and are not policy decisions.</p>	<p>In addition to serving an advisory function to the City Council and City staff, the assigned functions of <b>Type 2</b> advisory boards give them the authority to make decisions on certain matters specified in the City Code. These decisions then serve as formal recommendations to City Council or City staff for their consideration and adoption.</p>	<p><b>Quasi-judicial commissions</b> are non-judicial bodies that use formal procedures to objectively determine facts, interpret the law, and draw conclusions to provide the basis of an official action. Decisions of quasi-judicial commissions are subject to appeal to the City Council or the courts.</p>
<ul style="list-style-type: none"> <li>• Affordable Housing Board (7 members)</li> <li>• Air Quality Advisory Board (9 members)</li> <li>• Disability Advisory Board (9 members)</li> <li>• Economic Advisory Board (9 members)</li> <li>• Energy Board (9 members)</li> <li>• Golf Board (7 members)</li> <li>• Land Conservation and Stewardship Board (9)</li> <li>• Natural Resources Advisory Board (9)</li> <li>• Parks and Recreation Board (9 members)</li> <li>• Senior Advisory Board (9 members)</li> <li>• Transportation Board (9 members)</li> <li>• Youth Advisory Board (between 5-9 members)</li> <li>• Women's Advisory Board (9 members)</li> </ul>	<ul style="list-style-type: none"> <li>• Art in Public Places Board (7 members)</li> <li>• Citizen Review Board (7 members)</li> <li>• Cultural Resources Board (7 members)</li> <li>• Human Services and Housing Funding Board (9)</li> </ul>	<ul style="list-style-type: none"> <li>• Building Review Commission (7 members)</li> <li>• Historic Preservation Commission (9)</li> <li>• Human Relations Commission (9)</li> <li>• Land Use Review Commission (7)</li> <li>• Planning and Zoning Commission (7)</li> <li>• Water Commission (9 members)</li> </ul>

# Recommendations to Recruitment Timing



- Due to elections moving from April to November on odd years, re-evaluation is needed as to when recruitment should take place.

	Application Opens	Interviews	Council Appointment	Term Begins
Current	September	October	November	January 1
Recommendation	Dec 1-January 15	Mid-February	March	April 1
Exception – HSHF & AHB	Dec 1 – January 15	Mid-February	March	July 1

- The goal is to do one annual recruitment unless there is a need for a special recruitment due to quorum issues.
- Similar to Council, the recommendation is to adjust current board member terms for an additional 3 months until March 31 of the year their term expires.
  - **To be considered during the September 19 meeting**



# Ordinance A – City Council Liaison Responsibilities

## Item 20. Council Liaison Responsibilities

1. Communicate with the board when Council communication is needed and to serve as the primary two-way communications channel between Council and the board or commission.
2. Take the lead in filling vacancies by reviewing applications and conducting interviews with candidates.
3. Make decisions about appointment recommendations to Council, keeping in mind the need for fresh perspectives and not primarily based on liaison's personal preferences
4. Serve as primary Council contact for the board
5. Resolve questions the board may have about the role of Council, municipal government, or the board.
6. Establish contact with chair and effectively communicate the role of the liaison.
7. Serve as Council contact rather than an advocate for or ex-officio member of the board
8. Review the annual work plan of the board and make recommendations to Council regarding the work plan.
9. Identify and help resolve problems with respect to the functionality of the board with assistance of the City Clerk's Office, City Manager's Office and the staff liaison
10. Decide whether to grant a request from their assigned board to hold a joint meeting with other boards

Section 2-72. Open meetings required; exceptions; joint meetings

(d) Two or more board or commissions, committees of boards or commissions, or representatives from each such board, commission or committee may hold a joint meeting if the subject of the meeting specifically relates to **the functions** ~~an item or project in the work plan~~ of each participating board or commission, or if the City Manager or City Council **liaison assigned to each of the involved boards or commissions** has approved the joint meeting.





# **Ordinance B – Type 1 Advisory Boards; Elimination of One-Year Terms**

All revisions to the Boards go into affect January 1, 2024

Item 20. **e-year Terms**

- Revise City Code to eliminate all one-year terms from Type 1 boards

Type 1 boards – 7 members

- 4 members with 4-year terms
- 2 members with 2-year terms
- 1 member with 1 year term

Type 1 boards – 9 members

- 4 members with 4-year terms
- 3 members with 2-year terms
- 2 members have 1-year term

**RECOMMENDATION**

- 4 members with 4-year terms
- 3 members with 2-year terms

**RECOMMENDATION**

- 5 members with 4-year terms
- 4 members with 2-year terms

Item 20. **c. 2-113 - Transportation Board**

(a) The City shall have a Transportation Board, hereafter referred to in this Section as the "Board." The Board shall consist of nine (9) members. **The Active Modes Advisory Board shall appoint a representative to serve as an ex officio non-voting liaison to the Board for a term of two years.**

~~(c) The Board shall also establish and keep in place a committee to be known as the "Bicycle Advisory Committee," the purpose of which shall be to advise the Board with regard to bicycling-related issues.~~

~~(1) Said committee shall consist of sixteen (16) members, one of whom shall be a member of the Board. The remaining fifteen (15) members shall consist of three (3) community "at large" members and six (6) members of community stakeholder organizations, all appointed by the City Manager, and representatives from the following City Boards and Commissions, which may each nominate a representative for a position on the committee:~~

- ~~a. Air Quality Advisory Board;~~
- ~~b. Parks and Recreation Board;~~
- ~~c. Natural Resources Advisory Board;~~
- ~~d. Land Conservation and Stewardship Board;~~
- ~~e. Senior Advisory Board; and~~
- ~~f. Economic Advisory Board.~~

~~Representatives from Boards and Commissions are subject to confirmation by the City Manager or their designee. In addition to the foregoing sixteen (16) voting members, the Committee shall include non-voting staff representatives from the City's Planning, Development and Transportation Service Area.~~

~~(2) Each member of the Bicycle Advisory Committee shall serve for a term of two (2) years.~~

Item 20. **Active Modes Advisory Board**

- a) The City shall have an Active Modes Advisory Board, hereafter referred to in this Section as the "Board." The Board shall be a type 1 advisory board consisting of nine (9) members. In connection with the solicitation, consideration, and appointment of members to the Board, the City Council may give preference to and consider an applicant's experience or training in, or familiarity with, active modes of transportation. It is also desirable that at least one Board member understand the transportation challenges facing individuals with disabilities.
- b) The Board is created for the purpose of addressing active modes related issues and to seek guidance from active modes-focused stakeholders in order to achieve the City's climate, mode shift, safety, and equity goals. Active modes of transportation include walking, biking, micro-mobility (such as scooters and skateboards), and wheelchair use. Active modes may also include human-powered and small electric devices.
- c) The Transportation Board, Colorado State University, Bike Fort Collins, and the Downtown Development Authority may each appoint a representative to serve as an ex officio non-voting liaison to the Board. Each ex officio member shall serve for a term of two years.

d) The duties and functions of the Board shall be:

1. To advise the City Council and City staff on all matters pertaining to active modes of transportation;
2. To advise and make recommendations to City staff and the City Council concerning the expenditure of City funds for active modes of transportation;
3. To aid and guide the development of City-wide active modes plans, programs, policies, and infrastructure;
4. To periodically coordinate its work with the Transportation Board, to support the City's efforts to create a balanced transportation network. This coordination is intended to provide an integrated review of transportation issues;
5. To promote public use of active modes and public education on City-wide active modes issues; and
6. To be aware of, and coordinate with, the various other City boards, commissions and authorities, City departments, and other organizations and entities whose actions may affect active modes of transportation in the community.

Item 20. **c. 2-102 - Affordable Housing Board**

a) The Board shall consist of seven (7) members. In connection with the solicitation, consideration, and appointment of members to the Board, the City Council may give preference to and consider an applicant's experience or training in, or familiarity with, affordable housing issues, including, without limitation, issues pertaining to development, finance, lending, charitable and low-income services, and general community services. It is also desirable that at least one Board member be a current or former resident of affordable housing. In addition to the seven (7) Board members appointed by the City Council, the Housing Catalyst may appoint a representative to serve as an ex officio nonvoting member to the Board. Such Housing Catalyst appointee shall not be subject to any residency requirement.

~~(a) The City shall have a Golf Board, hereafter referred to in this Section as the "Board." The Board shall consist of seven (7) members.~~

~~(b) The Board shall have the following functions:~~

~~(1) To advise and make recommendations to the Director of Community Services (the "Director") and the City Council as to rules, regulations, policies, administrative and budgetary matters pertaining to the operation and maintenance of all City owned golf courses;~~

~~(2) To advise and make recommendations to the Director concerning the terms and conditions of any agreements to be entered into with golf professionals and other concessionaires in connection with City owned golf courses as well as any other agreements which may affect the management, operation, maintenance, construction or acquisition of City owned golf courses;~~

~~(3) To assist in the procurement of goods and services for City owned golf courses, including the selection of golf professionals, concessionaires and other contractors, by appointing two (2) Board members to serve on any review committee that may be established by the City under the provisions of §8-158 of this Code for the purpose of making such procurements; and~~

~~(4) To advise and make recommendations to the City Manager concerning approval of annual fees and charges at City owned golf courses.~~

(a) The City shall have a Parks and Recreation Board, hereafter referred to in this Section as the “Board.” The Board shall consist of nine (9) members, with the addition of one (1) member, until the term of said additional member, previously a Golf Board member to be appointed for a term beginning in 2024, expires or ends for other permissible reason.

(b) (1) To advise and make recommendations to the Director of Community Services and the City Council for their approval as to rules, regulations, policies, administrative and budgetary matters pertaining to the Department, ~~excluding~~ including matters relating to the operation and maintenance of City-owned golf courses and ~~excluding~~ cemeteries;



- (a) The City shall have a Women's and **Gender Equity** Advisory Board, hereafter referred to in this Section as the "Board." The Board shall consist of nine (9) members. In addition to the nine (9) Board members appointed by the City Council, the County and Colorado State University may each appoint a representative to serve as an ex-officio nonvoting liaison to the Board.
- (b) The Board is created for the purpose of enhancing the status of and opportunities for all women, **transgender, gender non-binary, and gender non-conforming persons ("all genders")** in the City, and shall have the following functions:
- (1) To document, **understand, and prioritize** issues of importance for **all genders** ~~to the status of women~~ in the City;
  - (2) To **coordinate and facilitate** ~~conduct~~ educational programs in the Fort Collins community to increase public awareness and sensitivity to the needs and capabilities of all ~~women~~ **genders**;
  - (3) To **coordinate and collaborate** ~~cooperate~~ with other organizations and individuals interested in issues affecting ~~women~~ **all genders** in the Fort Collins area;
  - (4) To review proposed legislation, policy changes or other governmental action at the federal, state or local level that would enhance or otherwise affect ~~the status of women~~ **all genders** in the City and make recommendations to the City Council regarding the same; and
  - (5) To recommend to the City Council the adoption of local legislation or policies that would ~~enhance the status of~~ **achieve equity for women** ~~all genders~~ in the City.

## c. 2-115 - Youth Advisory Board

(a) The City shall have a Youth Advisory Board, hereafter referred to in this Section as the "Board." The Board ~~shall consist of no less than five (5) and no more than nine (9) members~~ **no more than 12 members** appointed by the City Council. All members shall be qualified by experience, training, age, ethnicity or socioeconomic background to represent a diverse cross section of youth in the Fort Collins community. Each member of the Board shall be under the age of nineteen (19) years at the time of appointment and currently enrolled in high school or an equivalent program such as home school or distance learning. A quorum of the Board shall consist of a majority number of members **appointed to the Board at any point in time.** ~~three (3) members for a five-member Board or four (4) members for a Board consisting of six (6) to nine (9) members.~~

(b) Each member shall serve for a term of one (1) year unless otherwise specified by the City Council, and no member may serve for more than four (4) consecutive years regardless of term length. Appointments shall specify the term of office of each individual.

(c) The Board shall have the following functions:

- (1) To gather information from, **hold joint meetings**, and otherwise communicate with, other groups, organizations and agencies regarding youth-oriented issues and problems;
- (2) To document and discuss issues of importance to youth in the Fort Collins community, specifically as they affect City-operated services;
- (3) To review and discuss legislation that may affect youth; ~~and~~
- (4) To recommend to City Council local legislation and policy actions or changes which would enhance the status of youth in the Fort Collins community; **and**
- (5) To complete an annual project consistent with the other listed functions**



# **Ordinance C – Elimination of Type 2 One-year Terms**

Item 20. **e-year Terms**

- Revise City Code to eliminate all one-year terms from Type 2 boards

Type 2 boards – 7 members

- 4 members with 4-year terms
- 2 members with 2-year terms
- 1 member with 1 year term

Type 2 boards – 9 members

- 4 members with 4-year terms
- 3 members with 2-year terms
- 2 members have 1-year term

**RECOMMENDATION**

- 4 members with 4-year terms
- 3 members with 2-year terms

**RECOMMENDATION**

- 5 members with 4-year terms
- 4 members with 2-year terms



# Code of Conduct

This policy applies to board and commission members appointed by the City Council. The Council also adopts this policy to establish standards for Councilmember interactions with board and commission members, ~~and staff,~~ **and amongst Councilmembers**. The term “Appointees” refers to appointed board and commission members. The term “Members” refers to both appointees and City Council.

1. To uphold the standards of integrity and honesty **with the intention of,** ~~including~~ using true and accurate evidence and/or statements in the decision-making process, and making decisions based on the best interest of the city and its residents.
2. To conduct business of their board or commission that is within the scope of the specific board or commission functions as described in the Fort Collins Municipal Code.
3. To perform Council liaison assignments and duties as described in the Fort Collins Municipal Code.
4. Familiarize themselves with, adhere to, and comply with established policies and laws, as applicable:
  - The City of Fort Collins Boards and Commissions Manual
  - Colorado’s Sunshine Laws regarding open meetings and public records – as outlined in the Council Resource Guide
  - The City of Fort Collins Charter and Municipal Code; specifically, the ethical rules of conduct and the open meetings, remote meetings, notice and minutes of meetings, board or commission action and attendance requirements (see Fort Collins Municipal Code Secs. 2-71 through 2-79)
  - The City Council-adopted ~~Respectful Governance Policy~~ **Anti-Discrimination and Anti-Harassment Policy**, which prohibits harassment, discrimination and retaliation based on a person’s protected characteristics.
5. ~~For quasi-judicial matters,~~ **Avoid all *ex parte* communications** (communications with anyone about a pending issue including communication with City staff) about quasi-judicial matters

Item 20. **Code of Conduct (continued)**

6. To be aware of the open records requirement that applies to written notes, calendars, voicemail messages, and e-mail. **All written or recorded materials including notes, voicemail, text messages, and e-mail that discuss or touch on public business or the functions of the board or communication will likely be subject to disclosure to a requesting party.**
7. Appointees are encouraged to meet with their Staff or City Council liaison to discuss any concerns regarding work that may be outside the scope of designated functions, conflicts of interest, appearance of impropriety, *ex parte* communications, or gifts. Appointees must make disclosures to the City Clerk's Office as appropriate under the circumstances.
8. Make decisions based on the merits of the issue, while treating all persons and decisions in a respectful and equitable manner and committing to conducting business in a way that exemplifies transparency and open communication.
9. Respect the legitimacy and authority of decisions that have been finalized –regardless of personal position on the matter.
10. **(For Appointees) shall Strive to** represent the official policies and positions of their board or commission **when serving in the member role.** When presenting their personal opinions or positions in a public meeting, such as a City Council meeting, Appointees shall explicitly state that they are not representing their board or commission or the City.
11. **(For Appointees) Avoid actively participating in matters that interfere with a quasi-judicial commission member's ability to remain impartial in making decisions.**

12. Continue respectful behavior among Members and City staff when communicating in private. The same level of respect and consideration of differing points of view should be maintained in private conversations.
13. To use public resources (e.g., staff time, equipment, supplies, or facilities) appropriately and in a manner that fosters stewardship of the taxpayer and ratepayer dollar.
14. **Attend meetings of your board or commission.** Because contemplation, deliberation, and decision-making require collaboration and participation, Appointees are expected to attend their meetings. Appointees must comply with attendance requirements described in Fort Collins Municipal Code Section 2-79. Appointees commit to attend any required trainings and even suggested trainings that enhance a member's ability to serve.
15. To respect fellow Members, staff, and the public by treating all with patience, courtesy, and civility at all times during the performance of official duties, regardless of ~~consensus by all parties~~ **differences of opinion.**
16. ~~To not make~~ **Avoid making** personal, ~~impertinent~~, profane, vulgar, slanderous, humiliating, intimidating, or harassing remarks that disturb, disrupt, or impede the conduct of the meeting or ~~the board or commission's completion of its business~~ **the meeting agenda.** Similarly, abusive language, intimidation, threats of violence or harm, or racial or ethnic slurs directed at any person or group of persons are prohibited. Members are expected to know that problematic behavior can cause the targets of behavior to feel threatened, humiliated, or intimidated and such conduct is detrimental to the proper functioning of a public body. Members are ~~prohibited from~~ **expected to avoid** publicly ridiculing or insulting fellow Members, members of the public, and City staff.



## Code of Conduct (continued)

17. ~~To recognize~~ **Act in furtherance of the principle** that healthy discourse occurs when individuals of all backgrounds and personalities are allowed to respectfully speak candidly about matters of interest, ask difficult questions, challenge ideas and propositions, and work together toward optimal solutions in a respectful manner.

18. Explain to a person who engages in disrespectful treatment that the behavior is ~~offensive~~ **disrespectful and, if the person who is the target of the behavior feels comfortable doing so, ask that they discontinue the behavior**. If this does not change the behavior ~~or if the target is not comfortable addressing the offensive behavior directly with the person behaving in conflict with this Code, the target of the behavior must report the behavior as described as below~~ **the person who believes they are being treated disrespectfully is strongly encouraged to report the behavior using the process described in Fort Collins Municipal Code Section 2-580.**

19. Report behavior that is disruptive, humiliating, intimidating, or threatening or otherwise in violation of this Code of Conduct in the performance of City business, at City-sponsored events, and in all interactions between members, City staff, or the public to the staff liaison and the Boards and Commissions Coordinator. Complaints of such behavior will be processed following procedures in the Fort Collins Municipal Code.



# **Ordinance D – Code of Conduct Complaint Process in Ethical Rules Section**

## Item 20. Code of Conduct Complaint Process

- Applies to both board and commission members and Council liaisons
- Complaint to be filed with City Clerk's Office
- Complaint must be filed within 12 months of the alleged violation
- CCO notifies the City Manager's Office, the member named in the complaint, City Council and the City Attorney
- City Attorney reviews the complaint to determine if the scope of the allegation falls under Code of Conduct and warrants investigation
- If an investigation is warranted, City Attorney or outside counsel shall conduct the investigation
- After investigation is complete, City Attorney will issue written findings of fact and conclusion of law to City Council

## Remedies to Code of Conduct Violation

- If violation is sustained against a board or commission member, City Council can take formal action to do any one or more of the following:
  - Issue verbal or written direction to cease the problematic conduct
  - Direct or encourage corrective training
  - Require the violator to issue a written or verbal apology
  - Removal from the board or commission
- If violation is sustained against a Council liaison, City Council can take formal action to do any one or more of the following:
  - Motion of censure or resolve to remove the particular Council member from the role of liaison
  - Issue verbal or written direction to cease the problematic conduct
  - Direct or encourage corrective training
  - Encourage the violator to issue a written or verbal apology



# Anti-Discrimination and Anti-Harassment Policy

Item 20. **Anti-Discrimination and Anti-Harassment Policy**

- Recommendation to rename from Respectful Workplace Policy
- Still covers City Council and those that they appoint
- Violations as it relates to discrimination, harassment, and retaliation against protected classes
- Clarification around “Complaint Contact”
- Definition of harassment revised to comply with the new Protecting Opportunities and Workers’ Rights (POWR) Act that went into effect August 7, 2023
- Describes what constitutes a violation of the policy
- Not necessary for a complaining party to be a member of a protected characteristic to file a complaint
- Changes to screening process – it is recommended that this be handled by Equity Office
- Recommended that annual reporting and review conducted by Assistant City Manager rather than Human Resources Executive
- One additional example added: A City Council direct report receives an unfavorable, unjustified pay decision because she is disabled.

*More changes to ADAHP may be necessary as courts and DOL interpret the POWR Act*



# Ex-officio Discussion

Item 20. **Advisory Board Members**

- Typically holds expertise in a particular area that can be helpful to the board in carrying out its duties
- No voting rights
- Help identify potential issues early on
- Offer advise as needed
- Valuable liaison for key organizations in the community
- Useful to boards where more technical work is needed

Need more info	Maybe Yes	Maybe No
Disability Advisory Board	Historic Preservation Commission	Arts in Public Places
Parks and Recreation	Air Quality Advisory Board	Cultural Resources Board
	Energy Board	Human Services and Funding Board
		Water Commission



- Council consideration on September 19th
  - Adoption of Boards and Commissions Manual via resolution
  - Extension of current board and commission terms by three months via resolution
  - 2nd Reading of Municipal Code changes
  
- Separate workstream for Ex-officio members

Item 20.



# Thank you!



## AGENDA ITEM SUMMARY

City Council

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### STAFF

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Clay Frickey, Interim Planning Manager  
Eric Potyondy, Legal  
Brad Yatabe, Legal

### SUBJECT

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**First Reading of Ordinance No. 121, 2023, Amending the Land Use Code to include Regulations for Making Water Adequacy Determinations.**

### EXECUTIVE SUMMARY

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The purpose of this item is to adopt Land Use Code provisions to add specific regulations outlining how the City will make water adequacy determinations for development. The proposed regulations are divided into three different categories for: (1) established potable water supply entities; (2) new, or other potable water supply entities; and, (3) non-potable water supply entities. The goals of these changes include: complying with Colorado state statutory requirements (Section 29-20-301, et seq., C.R.S.); ensuring development has an adequate water supply; providing City staff with guidance to make these determinations and applicants with certainty on the requirements; and ensuring that growth and development in the City occur in a planned and coordinated manner. Other than minor, non-substantive clarifications, the proposed regulations are the same as those discussed at the June 6, 2023, Work Session. The Planning & Zoning Commission has recommended adoption of the proposed regulations (4-2 vote).

### STAFF RECOMMENDATION

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Staff recommends adopting the Ordinance on First Reading.

### BACKGROUND / DISCUSSION

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Water is a crucial and constrained resource, and the City strives to ensure that development meets the community's vision and expectations for responsible resource management. Currently, development within the City only occurs within the boundaries of existing City (Fort Collins Utilities) and special district water supply entities, such as Fort Collins-Loveland Water District and East Larimer County Water District, and the water adequacy determination is made through the issuance of a "will serve" letter from the established water supply entity.

The necessity for an updated water adequacy review program stems from the limited supply and high cost of water resources, which have resulted in developers pursuing more creative ways to provide water (potable and non-potable) to their proposed developments, particularly projects striving to provide affordable housing or the denser development patterns called for in City Plan. One development contemplating a more unique and potentially innovative approach to supplying water resources is the Montava Planned Unit Development (PUD), which proposes a tributary groundwater-based water supply

for both potable and non-potable water service. The developer believes this system will improve the overall resiliency of the water supply for the area while also reducing the development costs

Because the City does not currently have a review process or criteria for “non-standard” water service models, including non-potable systems and groundwater-based systems, new policy and code are needed to confirm that future residents are adequately served. While the Montava project has generated the immediate need for this type of review, City staff believes a comprehensive program will have benefits for reviewing all new developments moving forward, regardless of the proposed water source, water supply entity, or other details of the proposed system.

### **Relevant Past Council Discussions**

#### Water Adequacy Determination Regulations – June 6, 2023

Work Session Summary:

<https://records.fcgov.com/CityCouncil/DocView.aspx?id=17610114&dbid=0&repo=FortCollins>

#### Water Adequacy Code Update – July 12, 2022

Work Session Summary:

<https://records.fcgov.com/CityCouncil/DocView.aspx?id=15514959&dbid=0&repo=FortCollins>

#### Northeast Fort Collins Planning and Projects Overview - August 31, 2021

Work Session Summary:

<https://records.fcgov.com/CityCouncil/DocView.aspx?id=15319767&dbid=0&repo=FortCollins>

#### Montava Development: Overview of Proposed Potable Water Supply Relying on Groundwater - February 9, 2021

Work Session Summary:

<https://records.fcgov.com/CityCouncil/DocView.aspx?id=13049288&dbid=0&repo=FortCollins>

#### Approval of Montava PUD Overlay and Master Plan - February 18, 2020

Agenda Item Summary:

<https://records.fcgov.com/CityCouncil/DocView.aspx?id=3487541&dbid=0&repo=FortCollins>

#### Northeast Fort Collins Planning and Projects Overview - September 24, 2019

Work Session Summary:

<https://records.fcgov.com/CityCouncil/DocView.aspx?id=3247255&dbid=0&repo=FortCollins>

#### Rural Scenario Assessment and reconfirmation of the Mountain Vista subarea framework plan – June 9, 2015.

Work Session Summary:

<https://records.fcgov.com/CityCouncil/DocView.aspx?id=3481555&dbid=0&repo=FortCollins>

## Requirement for Water Adequacy Review

This review process is being proposed to further effectuate a Colorado state statute (Section 29-20-301, et seq., C.R.S.), which states:

*A local government shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate. A local government shall make such determination only once during the development permit approval process unless the water demands or supply of the specific project for which the development permit is sought are materially changed. A local government shall have the discretion to determine the stage in the development permit approval process at which such determination is made.*

For the proposed regulations, the Colorado state statute defines some key terms, including the following. “Adequate’ means a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the type of development proposed and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.” “Water supply entity’ means a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply company that supplies, distributes, or otherwise provides water at retail.”

### Summary of Proposed Regulations for the Land Use Code

The proposed Water Adequacy Determination regulations for the Land Use Code include changes to Article Three, adding Division 3.13, and adding nine new definitions to Article Five, Section 5.1.2 Definitions. A summary of the proposed changes include:

#### Article Three, Division 3.13 – Water Adequacy Determinations

The proposed new division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S.

The subsequent sections outline the applicability, application, and procedures and standards for the three different review types:

- Established potable water supply entities, such as Fort Collins Utilities, Fort Collins-Loveland Water District, and East Larimer County Water District.
- Other potable water supply entities, such as new or proposed private water suppliers or metro districts.
- Non-potable water supply entities, such as new or proposed private water suppliers or metro districts providing irrigation water to a development.

#### *Established Entities*

For established potable water supply entities, the proposed regulations provide an applicant options for compliance through review of water supply plans or letters from engineers detailing how the water supply system functions. Once an initial approval is completed, the process would move forward similarly to what the City does now with will serve letters.

*Other Entities*

A more detailed process is proposed for other potable water supply entities and City staff has identified the following characteristics for evaluation criteria:

- Water Quality
- Quantity of Water
- Dependability of Supply and Supplier
  - Supply Resiliency
  - System Redundancy
  - Maintenance and Outages
- Availability of Supply
- Financial Sustainability of Supplier Capitalization

In general, the standards compare the new proposed system to the City's existing municipal utility (Fort Collins Utilities).

*Non-potable Entities*

The criteria for non-potable water supply entities looks to make sure the supply has enough quantity and quality to support the associated uses such as irrigation for landscape.

Article Five, Division 5.1.2 – Definitions

The proposed change to Division 5.1.2 is to add the following definitions that relate to the water adequacy determination review process and provide additional clarity on specific terms used in that section.

*Adequate* shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

*Established Potable Water Supply Entities* shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

*Non-Potable Water* shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

*Non-Potable Water Supply Entities* shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

*Other Potable Water Supply Entities* shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

*Potable Water* shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

*Water Adequacy Determination* shall mean a determination that the proposed water supply for a development is adequate.

*Water Supply Entity* shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that supplies, distributes, or otherwise provides water at retail.

*Water Rights Portfolio* shall mean all rights to water, including water rights, contracts, and agreements associated with water supplies that are used to meet demands. A water rights portfolio that includes non-renewable or non-perpetual water supplies does not mean that the entire portfolio is not renewable and/or sustainable.

*Water Supply System* shall mean all infrastructure planned or used to divert and deliver water to a development.

### **Status of the Three Decision Points Discussed at the June 6, 2023 Work Session**

At the June 6, 2023, City Council work session, City staff presented three decision points. The third decision point remains the key issue lacking consensus and was a focus of the discussion at the Planning & Zoning Commission hearing on August 17, 2023, as discussed below.

#### Decision Point 1 - Section 3.13.3 (A): Timing of Water Adequacy Determination

This section outlines the timeline for when the water adequacy determination is made and aligns it with a milestone during the development review process. Currently, the proposed regulations place the timing of the water adequacy determination at the time of Final Plan or Basic Development Review per Council's direction at the work session. It is City staff's understanding that this is not controversial.

#### Decision Point 2 - Section 3.13.4 (A) (1): City Council Information Only Review of Established Potable Water Supply Entity Water Supply Resource Information

Subsections (a) and (b) both require documents from the established potable water supply entities regarding their water supplies to be provided to Council for information only. Currently, the proposed regulations require existing water providers to supply Council with their water supply plan per Council's direction at the work session. It is City staff's understanding that this is not controversial.

#### Decision Point 3 – Section 3.13.5(C)(5)(c): Require New Potable Water Supply Entities Within the Service Area of an Established Potable Water Supply Entity to Be Excluded from the Service Area or Receive Consent to Operate

This provision of the proposed regulations would require that if a new potable water supply entity is proposing to locate within the service area of an established potable supply entity (such as service areas of Fort Collins Utilities or the East Larimer County or Fort Collins-Loveland water districts), the new entity must either: 1) be excluded from the boundaries of the established potable supply entity pursuant to existing statutory procedures; or 2) get consent from the established potable supply entity to operate within their service area. There is an exception provided for circumstances where the established potable water supply entity is incapable of providing a reasonable level of service to the proposed development, which mirrors language in City Code Section 26-4.

Under state law, this exclusion / consent requirement effectively already applies to new potable water supply entities that are publicly owned (like metro districts, special districts, and municipalities). There is some uncertainty whether this requirement applies to privately-owned water supply entities under existing law. This provision in the proposed regulations would expressly extend this requirement to new potable water supply entities that are privately-owned (like by corporations or limited liability companies).

## Alternatives

- Remove this requirement from the proposed regulations.
  - Pros:
    - Removes the City from the middle of the issue of whether privately-owned potable water supply entities should also be excluded / get consent from established potable water supply entities.
    - Potentially allows new, privately-owned water supply entities to innovate, provide cheaper water supply alternatives, and supply water in a manner that makes denser development in accordance with the vision of City Plan possible where it might not otherwise be economically feasible.
  - Cons:
    - From the perspective of the established potable water supply entities, including the City, removing this requirement would allow the potential for new, privately-owned potable water supply entities to operate within the established potable water supply entity's service area. Various policy concerns are raised by the prospect of small potable water supply entities in the Growth Management Area (GMA), including costs for customers and the long-term viability of such a small system.
    - This more easily allows additional water providers in the GMA, adding additional complexity for water supply, including regional coordination on various issues, including drought response, and fees and rates. That some new potable water supply entities could be small and privately-owned, thus perhaps lacking economies of scale and elected representation adds potential additional considerations. See Council Work Session: Water Resources Matters in the Fort Collins Growth Management Area: Study Report Results, January 24, 2023: <https://mccmeetings.blob.core.usgovcloudapi.net/fortcollco-pubu/MEET-Packet-044c02ace41c4f9c9121400e25470558.pdf>
    - This could harm the established potable water supply entities and their ratepayers by eliminating service in areas where service was already planned for and where expenses such as infrastructure or other less obvious costs such as treatment capacity have already been accrued by the established potable water supply entity. In some instances, bonds may have been issued based, in part, on this service area. This could affect future rates and fees.
    - Offers less certainty and transparency regarding where and when privately-owned water supply entities can operate.
- Alter the requirement in the proposed regulations.
  - Pros: Staff was unable to find a reasonable compromise that would satisfy all parties with the concerns of this proposed code provision.
  - Cons: The proposed language is based on an existing municipal code provision (Sec. 26-4) that gives general policy direction with the respect to the City respecting the service area boundaries of established potable water supply entities and is supported by Fort Collins Utilities staff. The current language achieves the desired purpose as written.



## Staff Analysis

This is the most contentious issue of the proposed regulations and staff does not believe an alternative exists that would resolve all stakeholder concerns. Staff based the proposed language, in part, on the following section of the municipal code:

*Sec. 26-4. - Dual supply of water and wastewater service.*

*If a property located within the City is in an area not supplied with both water and wastewater service from the City but is capable of receiving both water and wastewater service from the one (1) or more duly established quasi-municipal utility service districts, then the City shall not extend or provide either service to the property. The City may, however, extend either or both services to such property if the utility service district becomes incapable of providing a reasonable level of service to the property. Upon the review of the Water Board and the City administration, the City Council may waive any part or all of this Section.*

*(Ord. No. 164, 1986, § 1(112-7), 11-4-86; Ord. No. 117, 1996, § 5, 9-17-96; Ord. No. 28, 1998, § 4, 3-17-98)*

Staff relied on this City Code language as evidence of a general policy direction the City has historically taken to respect the service areas of other established potable water supply entities. Staff believes this is a reasonable middle ground to respect established potable water supply entities, as well as their investment and planning, and to allow for innovation. There are also existing laws that could require a new potable water supply entity to exclude from the service area of an established provider regardless of the inclusion of Section 3.13.5(C)(5)(c), however, staff believes that including this language in the proposed regulations provides greater transparency and eliminates confusion.

The regulation, as proposed, would require the new potable water supply entity to either exclude from the established entities' special district or seek consent from the established entity. There is an existing formal process to exclude property from a special district, roughly comparable to the de-annexation (or disconnection) process and that decision is appealable to the Board of County Commissioners and then District Court.

East Larimer County, Fort Collins-Loveland, and West Fort Collins water districts have all expressed support for the inclusion of this code language and significant concern if the code provision is altered or removed. The City's Water Utility has also expressed support for this provision.

The team representing the Montava Development has expressed significant opposition to the proposed code language in this section and Section 3.13.6.(A) (5) because they believe it would give an established potable water supply entity more authority than it would otherwise legally have over future development within the City. They have also argued that, if a new potable water supply entity is a private entity (as opposed to a governmental entity), they are not otherwise required to be excluded or get the consent for the established potable water supply entity.

## **CITY FINANCIAL IMPACTS**

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Not applicable.

## **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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### **Planning & Zoning Commission Recommendation**

The Planning & Zoning Commission considered the proposed Water Adequacy Determination regulations for the Land Use Code on August 17, 2023. The Commission voted 4-2 to recommend that City Council

accept the regulations (Katz and Sass nay). The discussion focused on Decision Point 3 – Section 3.13.5(C)(5)(c), and the following items:

- Whether the City is enhancing the authority of established potable water supply entities by giving them a say in the exclusion of private service providers
- Explanation from the Assistant City Attorney that this is an unclear area of law
- The importance of compensation to established potable water supply entities, balanced against the burden of a developer needing to go through an exclusion process, and potentially a subsequent appeal of the decision on an exclusion
- Concern for provisions that refer to a “reasonable level of service” that is not currently defined
- The importance of natural monopolies in delivering essential utility services like water, and the need for water providers to have security in their investment in order to provide services
- The rationale for why the draft includes language that requires the establish potable water supply entity to agree to exclusion of all new potable water supply entities (both private and public)

Related to the third bullet point above, the exclusion process as outlined in State statute requires water districts to consider the economic impact of excluding property from their service territory. What this means is that financial compensation to water districts in exchange for excluding property from their service territory is a common point of negotiation and water districts can seek financial compensation to offset their investments to serve all of their service territory. Due to this, the City’s proposed Water Adequacy Determination process does not include an additional or redundant mechanism to analyze financial compensation for water districts in the event of an exclusion so that there is no duplication of processes.

City staff also clarified the appeal process for decisions made by Title 32 districts, such as the Fort Collins-Loveland Water District and the East Larimer County Water District. Commissioners inquired at the previous hearing what body hears appeals for decisions made by water districts. City staff clarified that, pursuant to Colorado statutes, the Board of County Commissioners would hear appeals for decisions related to excluding property from the service territory of existing water providers. City staff further clarified that legal recourse exists for virtually any decision a water district makes and that the recourse depends on the action taken by the water district.

Note: If draft minutes are available prior to the September 5 Council meeting, they will be provided as a ‘read before the meeting’ memo to Council.

## **PUBLIC OUTREACH**

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This proposed Water Adequacy Determination regulations in the Land Use Code did not include specific public outreach meetings for the general public, however information on the code update was provided on the website, including an educational video. City staff met with representatives from the following groups to present the draft code updates as well to solicit feedback:

- West Fort Collins Water District
- East Larimer County Water District
- Fort Collins Loveland Water District
- Hartford Homes/Bloom
- HF2M/Montava
- Polestar Gardens/Polestar Village

City staff also received a call from the Sunset Water District expressing they did not have concerns about the update based on their perceived lack of development in their district boundary which they state is entirely in an unincorporated area. Save the Poudre also stated they had no concerns with the proposed update.

In general, the stakeholder feedback included an appreciation to discuss the proposed code and a better understanding of the intent after the meetings. The main points of contentions expressed included:

- Ability of established providers to “veto” new systems. There was both support and concern over this concept.
- The disparity between review criteria for established and new potable water supply entities.
- The perception that the City was trying to regulate special districts through the review of a water supply plan or letter establishing the District’s resources.
- A desire for more cooperation and consistency between all water supply entities.
- Concerns on not duplicating review efforts between other processes, especially for non-potable systems.
- Concerns over review costs
- Feedback that some metrics were vague.
- Feedback on the review timing proposed (FDP versus DCP) with a desire to complete the determination sooner.
- Feedback that there is a desire to be able to review new service for an entire development and then true up each phase at the time of final plan or BDR.
- Concerns on tight review timing for code update.

Fort Collins Utilities staff has also expressed support for the current draft regulations.

### **Engagement Since the June 6, 2023 Work Session**

City staff met with the following stakeholders since the work session on June 6, 2023:

- Fort Collins Loveland Water District
- East Larimer County Water District
- Montava

All stakeholders appreciated the opportunity to continue to weigh in on the proposed regulations. All stakeholders also welcomed the additional time to analyze the proposed Water Adequacy Determination regulations for the Land Use Code. Comments from the stakeholders above focused on the following:

- Disagreement on the ability for established potable water supply entities to veto new potable water supply entities
- Updates to the Code to increase clarity
  - Consistency with State statute
  - Provision of water supply plans by existing water potable water supply entities is purely informational (i.e., City Council will not “approve” water supply plans of existing water providers)
- Suggestions on how to achieve outcomes of State statutory requirements without implementing Water Adequacy Determination Review process

The Montava team has also provided comments stating generally that the City already the authority for the proposed regulations, and that the proposed regulations could be replaced with a simple sentence or two requiring City staff to make water adequacy determination. However, City staff does not agree that clear authority exists for water adequacy determinations of non-potable systems and non-standard potable systems. City staff also sees value in the detail of the proposed regulations, which provide a framework of analysis and certainty for both City staff and applicants regarding what information is needed and how determinations will be made.

Written comments were received from many of the stakeholders outlined above and are included in the packet.

## ATTACHMENTS

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1. Ordinance for Consideration
2. Written Comments from Stakeholders
3. Correspondence about Appeal Process
4. Water Adequacy Presentation

ORDINANCE NO. 121, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING THE LAND USE CODE TO INCLUDE REGULATIONS FOR  
MAKING WATER ADEQUACY DETERMINATIONS

WHEREAS, on December 2, 1997, by its adoption of Ordinance No. 190, 1997, the City Council enacted the Fort Collins Land Use Code (the "Land Use Code"); and

WHEREAS, at the time of the adoption of the Land Use Code, it was the understanding of staff and the City Council that the Land Use Code would most likely be subject to future amendments, not only for the purpose of clarification and correction of errors, but also for the purpose of ensuring that the Land Use Code remains a dynamic document capable of responding to issues identified by staff, other land use professionals and citizens of the City; and

WHEREAS, pursuant to Colorado Revised Statutes (“C.R.S.”) Section 29-20-301, et seq., the City may not approve an application for a development permit until the City has determined that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate; and

WHEREAS, water is an increasingly scarce resource and ensuring that a proposed development will have an adequate water supply is essential to protecting public health, safety, and welfare, and ensuring that growth and development within the City is sustainable; and

WHEREAS, the City wishes to update and formalize its water adequacy determination process by adopting the procedure and standards set forth in this Ordinance; and

WHEREAS, on August 17, 2023, the Planning and Zoning Commission recommended on a 4-2 vote that City Council adopt the proposed water adequacy determination Land Use Code provisions; and

WHEREAS, City Council finds that the water adequacy determination provisions set forth in this Ordinance are in the best interests of the City of Fort Collins.

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 3.7.3 of the Land Use Code is hereby amended by the addition of a new Subsection (G) which reads in its entirety as follows:

### 3.7.3 - Adequate Public Facilities

...

(G) **Water Supply Adequacy.** The determination required by C.R.S. § 29-20-301, et seq., whether the proposed water supply for development is adequate and is not addressed in this Section but is set forth in Division 3.13.

Section 3. That the Land Use Code is hereby amended by the addition of a new Division 3.13 which reads in its entirety as follows:

#### **Division 3.13 - Water Adequacy Determinations**

##### **Section 3.13.1 Purpose.**

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to C.R.S. § 29-20-301, et seq. The specific purposes are to:

- (1) Fulfill the C.R.S. § 29-20-303(1) requirement that the City “shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.”;
- (2) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
- (3) Ensure that growth and development in the City occur in a planned and coordinated manner;
- (4) Ensure that the City is provided with reliable information concerning the adequacy of developments’ proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
- (5) Promote safe, efficient, and economic use of public resources in developing and providing water; and
- (6) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

**Section 3.13.2 Applicability.**

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

- (1) Temporary non-potable water supply systems to establish native vegetation are exempt from these requirements if the term of use is three (3) consecutive years or less and identified as such on an approved landscape plan.
- (2) Except as stated in Subsection 3.13.5(D), the modification of standards review set forth in Division 2.8 shall not apply to this Division 3.13.

**Section 3.13.3 Application.**

(A) **Application Timing.** An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for final plan or basic development review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to the following:

- (1) Upon written request at the time of application, the Director may defer the timing of an application for a water adequacy determination for potable or non-potable water until submittal with a development construction permit (Division 2.6) if the Director determines such timing will not substantially interfere with or otherwise make it more difficult to determine whether the proposed water supply is adequate.
- (2) Upon written request at the time of application, the Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a building permit (Division 2.7), if the provider is an established potable water supply entity and the Director determines such timing will not substantially interfere with or otherwise make it more difficult to determine whether the proposed water supply is adequate.

(B) **Separate Applications.** The applicant shall file separate applications for water adequacy determinations for each portion of the development served by different water supply entities or water supply systems unless the Director determines that a single combined application can fully describe and provide needed information and be effectively analyzed. Subsequent sections in this Division provide distinctions in the evaluation process for established potable water supply entities, other potable water supply entities, and non-potable water supply entities.

(C) **Material Changes.** The City shall make a determination that a proposed water supply is adequate only once for each portion of a development served by a different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a new water adequacy determination. The Director’s determination that a material change has occurred is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(D) **Application After Director Denial.** If the Director denies an application for a water adequacy determination, the applicant may submit another application at any time, subject to applicable fees, that addresses the stated reason or reasons for denial.

**Section 3.13.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities**

(A) **Application Requirements.**

(1) Requests under this Section shall include a letter as described in Subsection (a), unless exempted pursuant to Subsection (b).

(a) A letter prepared by a registered professional engineer or by a water supply expert from the established potable water supply entity that contains the following information:

1. An estimate of the water supply requirements for the proposed development through build-out conditions;
2. A description of the established potable water supply entity’s water supply system and the physical source(s) of water supply that will be used to serve the proposed development. If the proposed source(s) includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;
3. An estimate of the amount of water yield projected from the proposed water supply system and water rights portfolio under various hydrologic conditions;
4. Water conservation and/or water demand management measures, if any, that may be implemented within the proposed development;



5. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development under various hydrologic conditions;
6. An affidavit signed by the entity manager attesting that to the best of their knowledge, the entity is in compliance with all applicable regulations; and
7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

All letters shall be provided to City Council for informational purposes only and kept on file with the City's Community Development and Neighborhood Services Department. At the established potable water supply entity's discretion, the letter may describe their entire service area and be submitted for a determination once updated as required based on any material changes to any of the requirements in this Section or in their reported supply as described in Subsection 3.13.3(C). If the letter describes the entire service area, then the entity does not need to resubmit the approved letter with each letter as outlined in Subsection 3.13.4(A)(2) but should be referenced within the letter content in addition to what is outlined in Subsection 3.13.4(A)(2).

- (b) The letter described in Subsection (a) shall not be required if the established potable water supply entity has a water supply plan, or other plans that cumulatively provide the information, that:
  1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the established potable water supply entity;
  2. Has a minimum twenty-year planning horizon;
  3. Lists the water conservation measures, if any, that may be implemented within the service area;
  4. Lists the water demand management measures, if any, that may be implemented within the development or service area;
  5. Includes a general description of the established potable water supply entity's water obligations, such as a general description of customer demands and operational water delivery obligations, such as augmentation requirements and return flow obligations;

- 6. Includes a general description of the established potable water supply entity's water supply system and water rights portfolio; and
- 7. Includes an affidavit signed by the entity manager attesting that, to the best of their knowledge, the entity is in compliance with Colorado Primary Drinking Water Regulations, 5 CCR 1002-11.

All water supply plans, or other plans that cumulatively provide the information required above shall be provided to City Council for informational purposes only and kept on file with the City's Community Development and Neighborhood Services Department. The Director may defer providing the Council with any water supply plan or other plans until such time as the established potable water supply entity updates their existing water supply plan. Once the plan, or plans, are on file, they do not need to be resubmitted with each letter as outlined in Subsection 3.13.4(A)(2) but should be referenced within the letter content in addition to what is outlined in Subsection 3.13.4(A)(2).

- (2) Requests for a water adequacy determination for all or portions of a development to be served with potable water by an established potable water supply entity shall be in a form as required by the Director. Such requests shall include a letter prepared by a registered professional engineer or by a water supply expert from the established potable water supply entity:
  - (a) Identifying the portions of a development to be served with potable water by the established potable water supply entity;
  - (b) Stating its ability to provide an adequate water supply for the proposed development;
  - (c) Stating it is willing to commit to provide an adequate water supply for the proposed development including any conditions of the commitment; and
  - (d) Providing the length of time the letter is valid for should the proposed development not occur immediately.

(B) **Review of Application.** The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.

(C) **Standards.** To issue a determination that a proposed water supply is adequate under this Section, the Director must find that the statements in the application and associated materials are complete, correct, and reliable.

**(D) Decision.**

- (1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations pursuant to this Section in writing including specific findings and shall either:
  - (a) Approve the application finding that the proposed water supply is adequate;
  - (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
  - (c) Deny the application finding that the proposed water supply is inadequate.
- (2) All water adequacy determinations shall become part of the plan set for the associated development application, if approved. The Director shall maintain a record of all information submitted or developed upon which any water adequacy decision was based, and that record shall become part of the associated development application.
- (3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section. No building permit may be issued until all conditions have been met.
- (4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

**Section 3.13.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities**

- (A) Application Requirements for Other Potable Water Supply Entities.** Applications for a water adequacy determination for all or portions of a development to be served with potable water by other potable water supply entities shall be in a form as required by the Director. Such applications shall include all of the following:
- (1) A summary document linking the information to the standard of review.
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:
    - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;

- (b) A description of the potable water supply entity's water supply system and the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer or water supply expert;
  - (c) A description of all elements of the water rights portfolio either owned or planned for acquisition required for proposed water supply;
  - (d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
  - (e) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
  - (f) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.
- (3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
  - (4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the established potable water supply entities. This assessment should include consideration of any metro district, homeowners' or property owners' association, or other taxes or fees that are also uniquely applicable to the proposed development to be served by the other potable water supply entity.
  - (5) Approval documentation from other regulatory agencies such as CDPHE. At the Director's discretion, this information may substitute in whole or in part for the application requirements set forth in this Section. If additional approvals will be required, provide an explanation of how those approvals will be obtained, and at the Director's discretion, the additional approvals may be required as conditions of approval.
  - (6) Detailed process diagrams stamped by a registered professional engineer on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed of.
  - (7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
  - (8) An other potable water supply entity with an approved ODP or PUD Overlay as outlined in Division 2.3 and Division 2.15 that includes the

entire proposed service area, may at either the other potable water supply entity's, or Director's discretion, submit an application that describes their entire proposed service area once with the initial phase of development and then update the initial determination with a letter from a professional engineer for each subsequent phase with the information required in Subsection 3.13.4(A)(2); or as required based on any material changes to:

- (a) Any of the requirements set forth in this Section;
- (b) The reported water supply as set forth in Section 3.13.3(C); or
- (c) The proposed development, as determined by the Director.

**(B) Review of Application.**

(1) *Agreement on Costs.* Prior to the City reviewing any application under this Section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No water adequacy determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) *Review.*

- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in Subsection 3.13.5(B)(1). The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
- (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.
- (c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.

**(C) Standards.** To issue a water adequacy determination under this Section, the Director must find that the application and associated materials establish that:

- (1) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:

- (a) Providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
  - (b) Providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects; and
  - (c) Establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.
- (2) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:
- (a) Relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
  - (b) Having ability to acquire a water rights portfolio that provides a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty-year drought or equivalent or more stringent standard, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
- (3) For lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty-year drought or equivalent or more stringent standard, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.
- (4) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
- (a) Establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
  - (b) If the water supply system includes a water treatment facility, include the class of facility and treatment processes and provide information that the level of operations is equivalent or better as required by CDPHE, and demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the

treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;

(c) Establishing that the water supply system and water rights portfolio can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and

(d) Establishing and maintaining a water supply entity that can oversee and maintain the water supply system and water rights portfolio for the lifetime of the development.

(5) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

(a) Establishing the applicant has, or has the ability to acquire, the necessary property rights and resources to build and operate the proposed water supply system;

(b) For lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and

(c) For lands within the water service area of an established potable water supply entity, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity. The Director may, however, waive this requirement if an established potable water supply entity is incapable of providing a reasonable level of service to the proposed development.

(D) **Modification of Standards.** If a potable water supply entity cannot meet the standards set forth above in Subsection 3.13.5(C), with the exception of 3.13.5(C)(5)(c) which shall not be subject to modification, then they may seek a modification of standards pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the four standards set forth in Section 2.8.2(H) for granting a modification, the Director may also grant a modification if such modification would not be detrimental to the public good and the standard as modified is comparable to an existing standard already being employed by another established potable water supply entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

**(E) Decision.**

- (1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations in writing including specific findings and shall either:
  - (a) Approve the application finding that the proposed water supply is adequate;
  - (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
  - (c) Deny the application finding that the proposed water supply is inadequate.
- (2) All water adequacy determinations shall become part of the plan set for the associated development application, if approved. The Director shall maintain a record of all non-privileged information submitted or developed upon which the water adequacy determination was based for the proposed water supply and proposed water supply system, and that record shall become part of the associated development application.
- (3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section, including conditions that the applicant acquire the required water right decrees and water contracts for the water supply system; and/or the applicant completing construction of all infrastructure for the water supply system. No building permit may be issued until all conditions have been met.
- (4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (5) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for the development is being provided by the approved entity.

**Section 3.13.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities**

- (A) **Application Requirements for Non-Potable Water Supplies.** Applications for a water adequacy determination for all or portions of a development to be served with non-potable water shall include all of the following:
  - (1) Summary document linking the information to the standard of review.



- (2) Report including information required under Section 29-20-304(1), C.R.S.:
  - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
  - (b) A description of the water supply system and physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;
  - (c) A description of all elements of the water rights portfolio either owned or planned for acquisition, contracts, and/or IGAs required for the proposed water supply;
  - (d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year, including any augmentation requirements;
  - (e) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
  - (f) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the Land Use Code.
- (3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
- (4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.
- (5) Approval documentation from other regulatory agencies, including the established potable water supply entity whose service area contains the proposed non-potable system when applicable. At the Director's discretion,

this information may substitute in whole or in part for the application requirements set forth in this Section.

(6) Such other information as may be required by the Director.

**(B) Review of Application.**

(1) *Agreement on Costs.* Prior to the City reviewing any application under this Section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director’s review. No water adequacy determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) *Review.*

(a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in Subsection 3.13.6(B)(1). The length of the Director’s review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.

(b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director’s review.

(c) Applications for water adequacy determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.

**(C) Standards.** To issue a water adequacy determination under this Section, the Director must find that the application and associated materials establish that:

(1) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;

(2) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

(a) Relying upon a renewable and/or sustainable physical supply of water;

- (b) Having a water rights portfolio that provides a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) under various hydrological conditions, including a modeled one-in-fifty-year drought or equivalent or more stringent standard, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and
  - (c) For lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand under various hydrological conditions, including a modeled one-in-fifty-year drought or equivalent or more stringent standard, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.
- (3) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
- (a) If the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products; and
  - (b) Establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.
- (4) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:
- (a) Establishing the applicant has, or has the ability to acquire, the necessary property rights and resources to build and operate the proposed non-potable water supply system; and
  - (b) For lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

**(D) Decision.**

- (1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations in writing including specific findings and shall either:

- (a) Approve the application finding that the proposed water supply is adequate;
  - (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
  - (c) Deny the application finding that the proposed water supply is inadequate.
- (2) The written determination shall be included in the plan set for the associated development application, if approved. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
- (3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section, including conditions that the applicant acquire the required water right decrees and water contracts for the water supply system. No building permit may be issued until all conditions have been met.
- (4) The Director’s decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Section 4. That Section 5.1.2 of the Land Use Code is hereby amended by the addition of the following ten definitions which read in their entirety as follows:

*Adequate* shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

*Established potable water supply entities* shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

*Non-potable water* shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

*Non-potable water supply entities* shall mean the water supply entities, either established potable water supply entities or other water supply entities that provide

water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of non-potable water.

*Other potable water supply entities* shall mean the water supply entities other than the established potable water supply entities that provide potable water service, including new proposed water supplies.

*Potable water* shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

*Water adequacy determination* shall mean a determination whether the proposed water supply for a development is adequate.

*Water supply entity* shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that supplies, distributes, or otherwise provides water at retail.

*Water rights portfolio* shall mean all rights to water, including water rights, contracts, and agreements associated with water supplies that are used to meet demands. A water rights portfolio that includes non-renewable or non-perpetual water supplies does not mean that the entire portfolio is not renewable and/or sustainable.

*Water supply system* shall mean all infrastructure planned or used to divert and deliver water to a development.

Introduced, considered favorably on first reading and ordered published this 5th day of September 2023, and to be presented for final passage on the 19th day of September 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

Passed and adopted on final reading this 19th day of September 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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

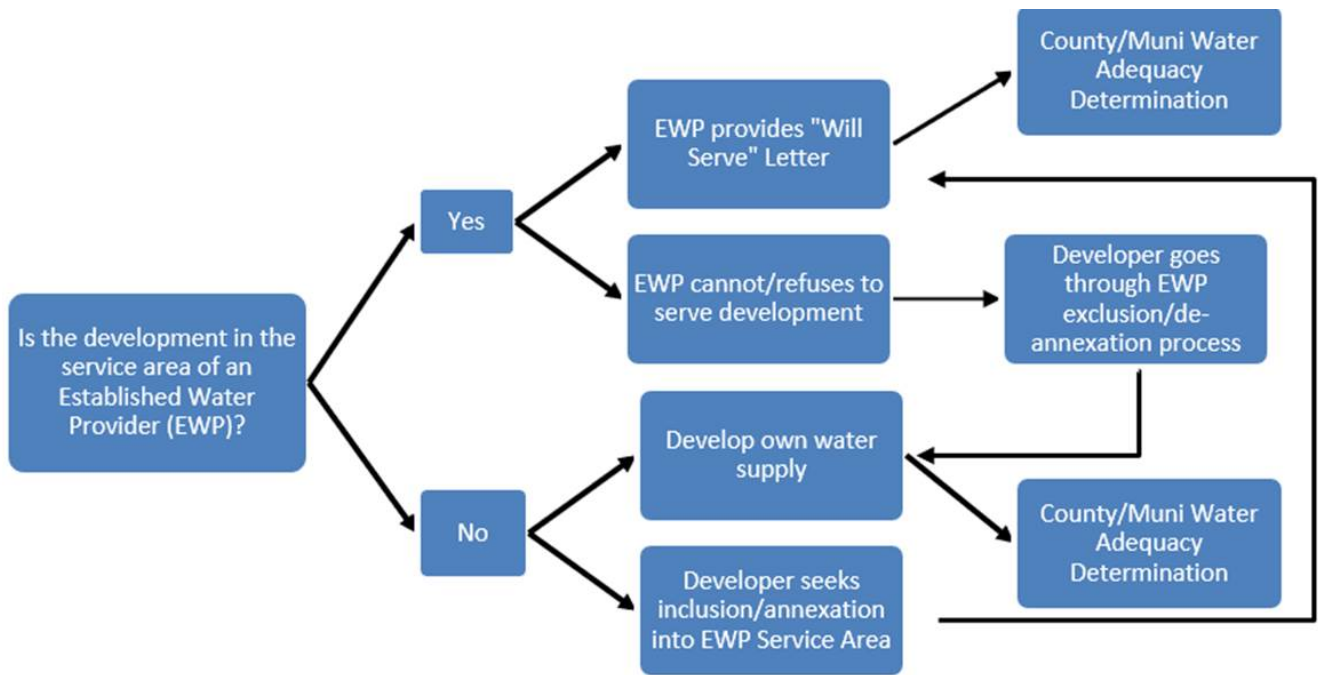
## Clay Frickey

**From:** Sandra Bratlie <SBratlie@fclwd.com>  
**Sent:** Tuesday, July 18, 2023 12:04 PM  
**To:** Clay Frickey  
**Cc:** Chris Pletcher - Contact  
**Subject:** [EXTERNAL] Water Adequacy Determination - Comments  
**Attachments:** 5\_3\_23 Redline changes.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Hi Clay,

Thank you again for your time yesterday to hear our comments and concerns with the pending Water Adequacy Determination code. Below is the flow chart that illustrates our ideal workflow when development comes through the process. I've also attached a markup of existing draft code with our comments. (Side note, I noticed that your water adequacy website has an outdated draft published).




As I mentioned yesterday, we were very fortunate to provide feedback to DOLA's county template through Abbye Neel <[aneel@brendlegroup.com](mailto:aneel@brendlegroup.com)>, currently with Brendle Group. I recommend reaching out to her for their latest versions as I know that along with the County template they will be starting the municipal one shortly.

Thanks!

**Sandra Bratlie, P.E.**  
*District Engineer*

Item 21.

 **FORT COLLINS-LOVELAND WATER DISTRICT**

5150 Snead Drive | Fort Collins, CO 80525 

**OFFICE:** 970.226.3104 x 106

**MOBILE:** 970.786.5273

[sbratlie@fclwd.com](mailto:sbratlie@fclwd.com)

**Please note upcoming PTO: Jul 24 through Aug 4**



**Amend Section 3.7.3, Adequate Public Facilities**

Add Subsection (G):

(G) **Water Supply Adequacy.** The determination required by Section 29-20-301, et seq., C.R.S., whether the proposed water supply for development is adequate is not addressed in this Section but is set forth in Division 3.13.

**Division 3.13 - Water Adequacy Determinations****Section 3.13.1 - Purpose.**

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

- (A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City “shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.”;
- (B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
- (C) Ensure that growth and development in the City occur in a planned and coordinated manner;
- (D) Ensure that the City is provided with reliable information concerning the adequacy of developments’ proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
- (E) Promote safe, efficient, and economic use of public resources in developing and providing water; and
- (F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

**Section 3.13.2 - Applicability.**

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

- (A) Temporary non-potable water supply systems to establish native vegetation are exempt from these requirements, if the term of use is three consecutive years or less and identified as such on an approved landscape plan.
- (B) Except as stated in Subsection 3.13.5(D), the modification of standards review set forth in Division 2.8 shall not apply to this Division 3.13.

**Section 3.13.3 Application.**

- (A) **Application Timing.** An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for final plan or basic development review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to ~~any of~~ the following:
- (1) Upon written request at the time of application, the Director may defer the timing of an application for a water adequacy determination for potable or non-potable water until submittal with a development construction permit (Division 2.6) if the Director determines such timing will not substantially interfere with or otherwise make it more difficult to determine whether the proposed water supply is adequate.
  - (2) Upon written request at the time of application, the Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a building permit (Division 2.7), if the provider is an established potable water supply entity and the Director determines such timing will not substantially interfere with or otherwise make it more difficult to determine whether the proposed water supply is adequate.
- (B) **Separate Applications.** The applicant shall file separate applications for water adequacy determinations for each portion of the development served by different water supply entities or water supply systems unless the Director determines ~~separate applications are not required that~~ a single combined application can fully describe and provide needed information and be effectively analyzed. Subsequent sections in this Division provide distinctions in the evaluation process for established potable water supply entities, other potable water supply entities, and non-potable water supply entities.
- (C) **Material Changes.** The City shall make a determination that a proposed water supply is adequate only once for each portion of a development served by a different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a new water adequacy determination. The Director's determination that a material change has occurred is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (D) **Application After Director Denial.** If the Director denies an application for a water adequacy determination, the applicant may submit another application at any time, subject to applicable fees, ~~at any time~~ that addresses the stated reason or reasons for denial.

**Section 3.13.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities**

- (A) **Application Requirements.**
- (1) Requests under this Section shall include a letter as described in Subsection (a), unless exempted pursuant to Subsection (b).
    - (a) A letter prepared by a registered professional engineer or by a water supply expert from the established potable water supply entity ~~stating that contains the following~~ information:

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1. An estimate of the water supply requirements for the proposed development through build-out conditions;
2. A description of the established potable water supply entity's water supply system and the physical source(s) of water supply that will be used to serve the proposed development. If the proposed source(s) includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;
3. An estimate of the amount of water yield projected from the proposed water supply system and water rights portfolio under various hydrologic conditions including long term variability and future climate risk;
- ~~4.~~ Water conservation ~~measures, if any, that may be implemented within the proposed development~~;
- ~~5.4.~~ and, or water demand management measures, if any, that may be implemented to address hydrologic variations within the proposed development;
- ~~6.5.~~ Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development under various hydrologic conditions;
- ~~7.6.~~ An affidavit signed by the entity manager attesting that to the best of their knowledge the entity in compliance with all applicable regulations; and
- ~~8.7.~~ Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate; and
- ~~9.~~ Has been reviewed by All letters shall be provided to City Council for informational purposes only and is kept on file with the City's Community Development and Neighborhood Services Department; and

. At the established potable water supply entity's discretion, the letter may describe their entire service area and be submitted for a determination once and updated as required based on any material changes to any of the requirements in this Section or in their reported supply as described in Subsection 3(C). If the letter describes the entire service area, then the entity does not need to resubmit the approved letter with each letter as outlined in Subsection (2) but should be referenced within the letter content in addition to what is outlined in Subsection (2).

- (b) The letter described in Subsection (a) shall not be required if the established potable water supply entity has a water supply plan, or other plans that cumulatively provide the information, that:
1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the established potable water supply entity;
  2. Has a minimum twenty-year planning horizon;
  3. Lists the water conservation measures, if any, that may be implemented within the service area;
  4. Lists the water demand management measures, if any, that may be implemented within the development or service area;
  5. Includes a general description of the established potable water supply entity's water obligations; , such as a general description of customer demands and

The term "all applicable regulations" is too broad, FCLWD would prefer this to be specific to Colorado drinking water standards or state and federal drinking water standards.

operational water delivery obligations, such as augmentation requirements and return flow obligations;

- 6. ~~Includes a general description of the established potable water supply entity's water supplies, supply system and water rights portfolio; and~~
- 7. ~~Includes an affidavit signed by the entity manager attesting that, to the best of their knowledge, the entity is in compliance with all applicable regulations; and. Has been reviewed by City Council and is~~ **Colorado Drinking Water Standards.**

All water supply plans, or other plans that cumulatively provide the information required above shall be provided to City Council for informational purposes only and kept on file with the City's Community Development and Neighborhood Services Department. The Director may defer providing the Council review requirement with any water supply plan or other plans until such time as the established potable water supply entity updates their existing water supply plan. Once the plan, or plans, are on file, they do not need to be resubmitted with each letter as outlined in Subsection (2) but should be referenced within the letter content in addition to what is outlined in Subsection (2).

As FYI, FCLWD "will serve" letters have the following time constraints:

- \* approved plans is LUCASS expiration (3 years from approval date) .
- \* "will serve" without approved plans (e.g. conceptual review ) is 1 year.

- (2) Requests for a water adequacy determination for all or portions of a development to be served with potable water by an established potable water supply entity shall be in a form as required by the Director. Such requests shall include a letter prepared by a registered professional engineer or by a water supply expert from the established potable water supply entity:

- (a) Identifying the portions of a development to be served with potable water by the established potable water supply entity;
- (b) Stating its ability to provide an adequate water supply for the proposed development;
- (c) Stating it is willing to commit to provide an adequate water supply for the proposed development including any conditions of the commitment; and
- (d) Providing the length of time the letter is valid for, should the proposed development not occur immediately.

- (B) **Review of Application.** The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.
- (C) **Standards.** To issue a determination that a proposed water supply is adequate under this Section, the Director must find that the statements in the application and associated materials are complete, correct, and reliable.
- (D) **Decision.**
  - (1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations pursuant to this Section in writing including specific findings and shall either:
    - (a) Approve the application finding that the proposed water supply is adequate;
    - (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
    - (c) Deny the application finding that the proposed water supply is inadequate.
  - (2) All water adequacy determinations shall become part of the plan set for the associated development application, if approved-. The Director shall maintain a record of all

- information submitted or developed upon which any water adequacy decision was based, and that record shall become part of the associated development application.
- (3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section. No building permit may be issued until all conditions have been met.
  - (4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

### **Section 3.13.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities**

- (A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a water adequacy determination for all or portions of a development to be served with potable water by other potable water supply entities shall be in a form as required by the Director. Such applications shall include all of the following:
- (1) A summary document linking the information to the standard of review.
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:
    - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
    - (b) A description of the established potable water supply entity's water supply system and the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;
    - (c) A description of all elements of the water rights portfolio either owned or planned for acquisition required for proposed water supply;
    - (d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
    - (e) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
    - (f) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.
  - (3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
  - (4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the established potable water supply entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development to be served by the other potable water supply entity.
  - (5) Approval documentation from other regulatory agencies such as CDPHE. At the Director's discretion, this information may substitute in whole or in part for the application requirements set forth in this Section. If additional approvals will be required, provide an explanation of how those approvals will be obtained, and at the Director's discretion, the additional approvals may be required as conditions of approval.

- (6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed of.
  - (7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
  - (8) An other potable water supply entity with an approved ODP or PUD Overlay as outlined in Division 2.3 and Division 2.15 that includes the entire proposed service area, may at either the other potable water supply entity's, or Director's discretion, submit an application that describes their entire proposed service area once with the initial phase of development and then update the initial determination with a letter from a professional engineer for each subsequent phase with the information required in Section 3.13.4.(A) (2); or as required based on any material changes to:
    - (a) Any of the requirements set forth in this Section;
    - (b) The reported water supply as set forth in Section 3(C); or
    - (c) The proposed development, as determined by the Director.
- (B) Review of Application.**
- (1) **Agreement on Costs.** Prior to the City reviewing any application under this Section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No water adequacy determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.
  - (2) **Review.**
    - (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous Subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
    - (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.
    - (c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.
- (C) Standards.** To issue a water adequacy determination under this Section, the Director must find that the application and associated materials establish that:
- (1) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:
    - (a) Providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
    - (b) Providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects; and
    - (c) Establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.

- (2) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - (a) Relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
  - (b) Having ability to acquire ~~the~~ water rights ~~or water contracts~~ portfolio that ~~provide~~ provides a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
- (3) For lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.
- (4) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - (a) Establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
  - (b) If the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;
  - (c) Establishing that the water supply system and water rights portfolio can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
  - (d) Establishing and maintaining a water supply entity that can oversee and maintain the water supply system and water rights portfolio for the lifetime of the development.
- (5) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - (a) Establishing the applicant has, or has the ability to acquire, the necessary property rights and resources to build and operate the proposed water supply system;
  - (b) For lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
  - (c) For lands within the water service area of an established potable water supply entity, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity. The Director may, however, waive this requirement if an established potable water supply entity is incapable of providing a reasonable level of service to the proposed development.

FCLWD strongly supports this requirement. This ensures that growth and development in the City occur in a planned and coordinated manner, and promotes the safe, efficient, and economic use of public resources, both goals of this code. Pop up private water companies do not have the economy of scale to provide the same level of service as established providers. While short term they may realize cost savings, the savings are negated when considering infrastructure redundancy and resiliency over the long term. FCLWD has been planning for service in our area for decades. We structure rates, obtain water resources, and develop infrastructure for planned growth based on the jurisdictional land use code.

- (D) **Modification of Standards.** If a potable water supply entity cannot meet the Fort Collins Utility standards set forth above in Subsection 3.13.5(C), with the exception of 3.13.5(C)(5)(c) which shall not be subject to modification, then they may seek a modification of standards pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the four standards set forth in Section 2.8.2(H) for granting a modification, the Director may also grant a modification if such modification would not be detrimental to the public good and the standard as modified is comparable to an existing standard already being employed by another established potable water supply entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (E) **Decision.**
- (1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations in writing including specific findings and shall either:
    - (a) Approve the application finding that the proposed water supply is adequate;
    - (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
    - (c) Deny the application finding that the proposed water supply is inadequate.
  - (2) All water adequacy determinations shall become part of the plan set for the associated development application, if approved. The Director shall maintain a record of all non-privileged information submitted or developed upon which the water adequacy determination was based for the proposed water supply and proposed water supply system, and that record shall become part of the associated development application.
  - (3) The Director may impose conditions of approval that when met,- as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section, including conditions that the applicant acquire the required water right decrees and water contracts for the water supply system; and/or the applicant completing construction of all infrastructure for the water supply system. No building permit may be issued until all conditions have been met.
  - (4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
  - (5) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for the development is being provided by the approved entity.

### **Section 3.13.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities**

- (A) **Application Requirements for Non-Potable Water Supplies.** Applications for a water adequacy determination for all or portions of a development to be served with untreated non-potable water shall include all of the following:
- (1) Summary document linking the information to the standard of review.
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:
    - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;



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- (b) A description of the water supply system and physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;
  - (c) A description of all elements of the water rights portfolio either owned or planned for acquisition-, contracts, and/or IGAs required for the proposed water supply;
  - (d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year based on augmentation requirements;
  - (e) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
  - (f) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the Land Use Code.
- (3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
  - (4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.
  - (5) Approval documentation from other regulatory agencies, including the established potable water supply entity whose service area contains the proposed non-potable system. At the Director's discretion, this information may substitute in whole or in part for the application requirements set forth in this Section.
  - (6) Such other information as may be required by the Director.
- (B) **Review of Application.**
- (1) **Agreement on Costs.** Prior to the City reviewing any application under this Section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No water adequacy determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.
  - (2) **Review.**
    - (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous Subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
    - (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.

- (c) Applications for water adequacy determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.
- (C) **Standards.** To issue a water adequacy determination under this Section, the Director must find that the application and associated materials establish that:
  - (1) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;
  - (2) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
    - (a) Relying upon a renewable and/or sustainable physical supply of water;
    - (b) Having a water rights or water contracts portfolio that provide/provides a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) under various hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and
    - (c) For lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand under various hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.
  - (3) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
    - (a) If the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products; and
    - (b) Establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.
  - (4) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:
    - (a) Establishing the applicant has, or has the ability to acquire, the necessary property rights and resources to build and operate the proposed non-potable water supply system; and
    - (b) For lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.
- (D) **Decision.**
  - (1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations in writing including specific findings and shall either:
    - (a) Approve the application finding that the proposed water supply is adequate;

- (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
  - (c) Deny the application finding that the proposed water supply is inadequate.
- (2) The written determination shall be included in the plan set for the associated development application, if approved. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
- (3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section, including conditions that the applicant acquire the required water right decrees and water contracts for the water supply system. No building permit may be issued until all conditions have been met.
- (4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

#### **Water Adequacy Determination Definitions to Place in LUC Art. 5**

*Adequate* shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

*Established potable water supply entities* shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

*Non-potable water* shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

*Non-potable water supply entities* shall mean the water supply entities, either established potable water supply entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of non-potable water.

*Other potable water supply entities* shall mean the water supply entities other than the established potable water supply entities that provide potable water service, including new proposed water supplies.

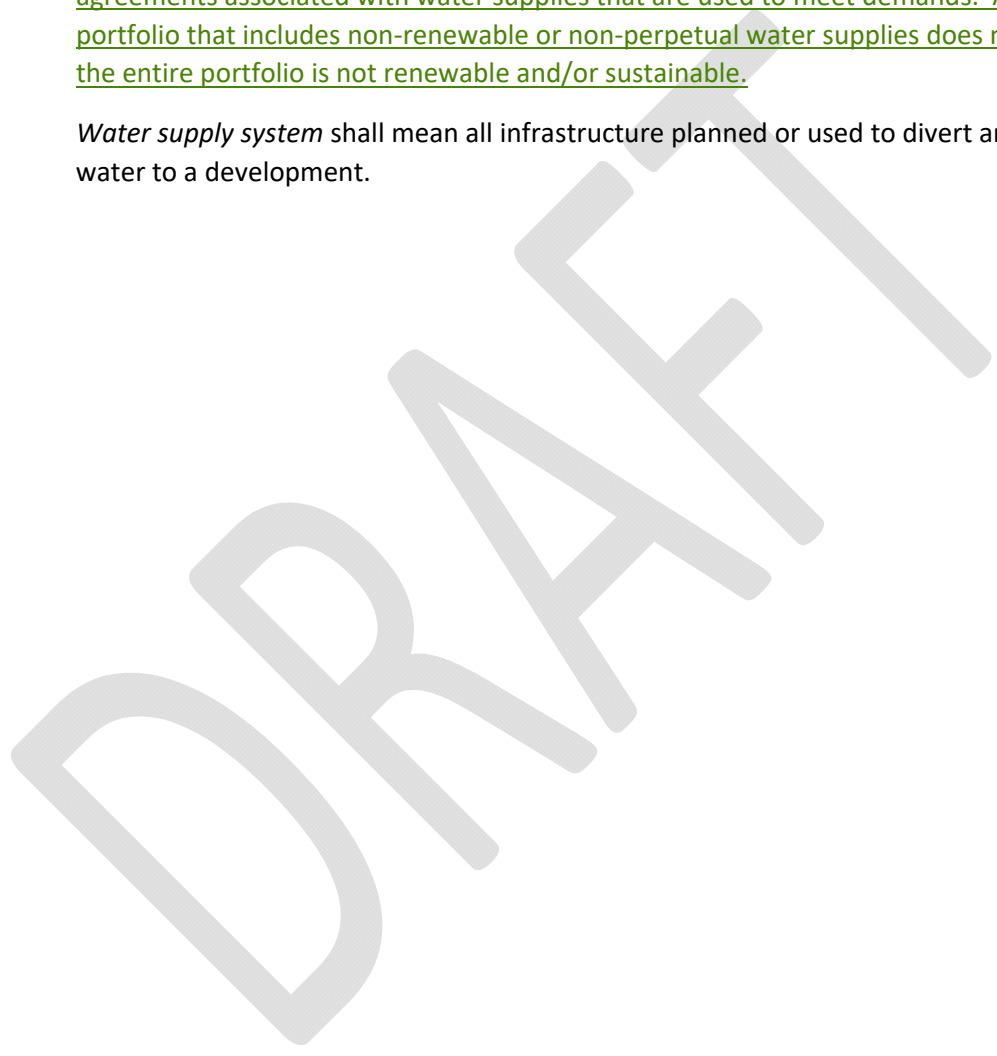
*Potable water* shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

*Water adequacy determination* shall mean a determination whether the proposed water supply for a development is adequate.

*Water supply entity* shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, ~~at the time of the application, or within three years of application,~~ supplies, distributes, or otherwise provides water at retail.

*Water rights portfolio* shall mean all rights to water, including water rights, contracts, and agreements associated with water supplies that are used to meet demands. A water rights portfolio that includes non-renewable or non-perpetual water supplies does not mean that the entire portfolio is not renewable and/or sustainable.

*Water supply system* shall mean all infrastructure planned or used to divert and deliver water to a development.



## Clay Frickey

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**From:** max moss <max@montava.com>  
**Sent:** Monday, July 3, 2023 11:26 AM  
**To:** Clay Frickey  
**Subject:** [EXTERNAL] WAD  
**Attachments:** Revised Water Adequacy Presentation -- 7-3-2023 copy.docx

Clay,

For our call later today please see this that we put together with Steve.

Our first opinion is the city has all they currently need to make the decisions in front of them without a 12 page addition to the code.

Our second position is if you really really want to add something, the small addition we suggested in #2 completely covers you.

Although we really really don't think you need to do this 12 page document that adds all kinds of pain to the process for everyone, the remaining issues of concern are listed.

Max Moss  
430 N College Ave. Suite 410  
Fort Collins, CO 80524  
Cell# 512-507-5570  
[www.montava.com](http://www.montava.com)

**WATER ADEQUACY**

New water adequacy code provisions is overly complicated and probably not necessary.

1. The City already has broad authority to ensure the “acquisition of sufficient water rights as the City grows and develops” and to ensure the “safe and efficient delivery of water to City residents and other water users.” Ch. 26, Article III, § 26-42.

- That can be construed as allowing the City to ensure sufficient water rights exist for all new development within the City.

2. But if the City wants a code provision that applies more specifically to the Montava situation, where the City is not currently planning on extending service and where the property is located in an existing district – the City already has a code provision directly on point that could be modified by a sentence or two:

If a property located within the City is in an area not supplied with both water and wastewater service from the City but is capable of receiving both water and wastewater service from the one (1) or more duly established quasi-municipal utility service districts, then the City shall not extend or provide either service to the property. The City may, however, extend either or both services to such property if the utility service district **is or** becomes incapable of providing a reasonable level of service to the property **for the proposed development. If a developer proposes alternative water supplies (potable and/or non-potable) for such property that do not rely upon the existing district, the City through its Utilities Executive Director shall review the adequacy of such water supplies consistent with C.R.S. § 29-20-301, et. seq., based upon all available relevant information, and either approve it, approve it subject to conditions, or deny it.** Upon the review of the Water Board and the City administration, the City Council may waive any part or all of this Section. Ch. 26, Article I § 26-4

- This would expressly authorize the water adequacy review but allow flexibility to consider all available information.

3. If the City still wants the separate 12-page addition to its code to examine water adequacy – we have several comments that we would like you to consider:

A. In the Procedures and Standards for Water Adequacy Determination for Other Potable Water Supply Entities, we have two suggested changes:

3.13.5(A)(4) “A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the established potable water supply entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees

to the extent that are also uniquely applicable to providing the proposed water service development to be served by the other potable water supply entity.”

- An HOA or metro district may exist regardless of who supplies water. Since the purpose of this provision is to assess and compare the true costs of the water service being provided by other potable water supply entities, this provision should apply only to HOAs or metro districts to the extent uniquely applicable to the water service that will be provided. The City should compare apples to apples.

3.13.5(C)(5)(c): “For lands within the water service area of an established potable water supply entity, **and if required by Colorado law**, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity. The Director may, however, waive this requirement if an established potable water supply entity is incapable of providing a reasonable level of service to the proposed development.”

- As currently written, if an existing district will not consent to the proposed service and will not exclude the land, then that existing district will control development within the City by controlling the water supply for that development. That should only occur where it is required by Colorado law. As written, the code would give existing districts that legal authority where they wouldn’t otherwise have it.

B. In the Procedures and Standards for Water Adequacy Determinations for Non-Potable Supply Entities, we have one suggested change:

3.13.6(A)(5): “Approval documentation from other regulatory agencies, including the established potable water supply entity whose service area contains the proposed non-potable system **if such approval is required by Colorado law**. At the Director’s discretion, this information may substitute in whole or in part for the application requirements set forth in this Section. **The Director may, however, waive this requirement if an established potable water supply entity is incapable of providing a reasonable level of service to the proposed development.**”

- These changes (1) ensure approval by the existing district is only required by the City when required by law; and (2) retains the City’s existing authority under the code to assess the reasonableness of the established district’s service and is identical to the last sentence already in 3.13.5(C)(5)(c).

**From:** [Eric Potyondy](#)  
**To:** [Ted Shepard](#)  
**Cc:** [Paul S. Sizemore](#); [Clay Frickey](#); [Aaron Guin](#); [Jenny Axmacher](#); [Brad Yatabe](#)  
**Subject:** RE: [EXTERNAL] Re: Fwd: Housing Priority Group meeting Friday 8:30 - 10:00  
**Date:** Tuesday, May 16, 2023 7:17:39 PM  
**Attachments:** [image001.png](#)

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Hi Ted,

I appreciate the discussion.

As a general matter, I do not think it is safe to assume that the actions and decisions of local governments are unappealable. In our legal system in this country, very few governmental actions are immune from a potential review by the courts, either as an appeal or as another type of legal challenge, with local government actions not really being the type that get a free pass. (Issues like the federal government's foreign policy decisions are the types of things are unlikely to be reviewed by courts.)

For instance, Colorado Rule of Civil Procedure (C.R.C.P.) 106 provides express authority for state district courts to review actions taken by local governments (including municipalities and special districts). Actions and decisions of local governments can also be challenged by lawsuits brought under other legal authorities, like declaratory judgment actions (C.R.C.P. 57), claims that a local government violated a statute or regulations (including its own), breach of contract actions, or tort claims.

It is generally true that special districts are independent, local governments. However, they are subject to numerous state laws and regulations, and are not free from potential review by the courts.

**Eric Ryan Potyondy**  
 Water Attorney (Assistant City Attorney)  
 Fort Collins City Attorney's Office  
 300 LaPorte Avenue (P.O. Box 580)  
 Fort Collins, Colorado 80521 (80522)  
 (office) 970-416-2126  
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**From:** Ted Shepard <[tshepard533@gmail.com](mailto:tshepard533@gmail.com)>  
**Sent:** Tuesday, May 16, 2023 5:23 PM  
**To:** Eric Potyondy <[epotyondy@fcgov.com](mailto:epotyondy@fcgov.com)>  
**Cc:** Paul S. Sizemore <[psizemore@fcgov.com](mailto:psizemore@fcgov.com)>; Clay Frickey <[cfrickey@fcgov.com](mailto:cfrickey@fcgov.com)>; Aaron Guin <[aguin@fcgov.com](mailto:aguin@fcgov.com)>; Jenny Axmacher <[jaxmacher@fcgov.com](mailto:jaxmacher@fcgov.com)>; Brad Yatabe <[byatabe@fcgov.com](mailto:byatabe@fcgov.com)>  
**Subject:** [EXTERNAL] Re: Fwd: Housing Priority Group meeting Friday 8:30 - 10:00



Eric,

Thank you for your prompt response. I can see by your message and the attachments that with regard to an exclusion issue, a special district board decision is appealable to the BCC.

I wish this was made more clear at the hearing that the appeal provision applies only to the exclusion of property issue. At the hearing, my question was not specific to property exclusion but more in general and I should have made this clear. In other words, I am now assuming that not all special district board decisions are appealable. For example, if a special district water provider decides not to serve a property (or properties) for whatever reason, the affected property owners cannot appeal this decision to the BCC. Their only recourse would be to petition out of the district per the statutes that you attached.

Is my understanding correct?

Again, thanks for all your help,

Ted

On Mon, May 15, 2023 at 2:13 PM Eric Potyondy <[epotyondy@fcgov.com](mailto:epotyondy@fcgov.com)> wrote:

Hi Ted,

Please see the attached C.R.S. § 32-1-501 (Exclusion of property by fee owners or board – procedure).

- C.R.S. § 32-1-501(1) through -(4) describes exclusion procedures before the board of the special district.
- C.R.S. § 32-1-501(5)(b)(1) states that “Any petition that is denied or resolution that is finally adopted may be appealed to the board of county commissioners of the county in which the special district’s petition for organization was filed for review of the board’s decision.” (Underlining added).
- C.R.S. § 32-1-501(5)(c)(1) states that: “Any decision of the board of county commissioners may be appealed for review to the district court of the county which has jurisdiction of the special district pursuant to section 32-1-303 within thirty days of such board’s decision.”

I believe that this is the statutory section to which FCLWD and ELCO were referring.

The attached C.R.S. § 32-1-502 (Exclusion of property within municipality - procedure) also describes a separate set of procedures pursuant to which, in certain circumstances, a court may order the exclusion of land from a special district.

Perhaps County staff is not aware of C.R.S. § 32-1-501, as these procedures may not be commonly invoked.

**Eric Ryan Potyondy**

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**From:** Ted Shepard <[tshepard533@gmail.com](mailto:tshepard533@gmail.com)>  
**Sent:** Monday, May 15, 2023 1:53 PM  
**To:** Paul S. Sizemore <[psizemore@fcgov.com](mailto:psizemore@fcgov.com)>; Clay Frickey <[cfrickey@fcgov.com](mailto:cfrickey@fcgov.com)>; Aaron Guin <[aguin@fcgov.com](mailto:aguin@fcgov.com)>; Eric Potyondy <[epotyondy@fcgov.com](mailto:epotyondy@fcgov.com)>  
**Subject:** [EXTERNAL] Fwd: Housing Priority Group meeting Friday 8:30 - 10:00

All,

You may not be aware that I also volunteer on the Housing Sub-committee of the Partnership for Age-Friendly Communities. At our monthly meeting last Friday, Laurie Kadrich, assistant County Manager, presented on the topic of Larimer County acting as a convener of water providers in Larimer County as a forum to address a variety of topics. I asked Laurie about the testimony from the two managers of Elco and the FCLWD. Please see the response from the County Attorney's Office.

I'm forwarding this message because I'm concerned that P & Z received misleading information during our hearing on amending the Land Use Code regarding water supply standards. At our special hearing on April 26, 2023, the two managers of the Elco and FCLWD informed the Commission that if a party disagreed with a Special District Board decision, that party would then have the ability to appeal the decision to the Board of County Commissioners.

This turns out to be incorrect.

I think it's important that the entire Commission receive this information. When this item comes back to P & Z, could we get a memo that clarifies this?

Thanks,

Ted

----- Forwarded message -----

From: **Alea Rodriguez** <[rodrigal@co.larimer.co.us](mailto:rodrigal@co.larimer.co.us)>

Date: Mon, May 15, 2023 at 12:15 PM

Subject: Re: Housing Priority Group meeting Friday 8:30 - 10:00

To: Sue Ballou <[sueballou@yahoo.com](mailto:sueballou@yahoo.com)>

Cc: Diane Cohn <[cohndm@gmail.com](mailto:cohndm@gmail.com)>, Sue Beck-Ferkiss <[sbeckferkiss@fcgov.com](mailto:sbeckferkiss@fcgov.com)>, Ted Shepard <[tshepard533@gmail.com](mailto:tshepard533@gmail.com)>, Blake Chambliss <[blake\\_chambliss@pinkardcc.com](mailto:blake_chambliss@pinkardcc.com)>, Alan Kress <[utoalan@gmail.com](mailto:utoalan@gmail.com)>, Nancy Luttrupp <[nancyluttrupp@gmail.com](mailto:nancyluttrupp@gmail.com)>, Katy Mason <[yo\\_masons@hotmail.com](mailto:yo_masons@hotmail.com)>, Michele Christensen <[mchristensen@housingcatalyst.com](mailto:mchristensen@housingcatalyst.com)>, Andy Goldman <[andy\\_goldman@hotmail.com](mailto:andy_goldman@hotmail.com)>, Bill Swalling <[bill@actuallyp.com](mailto:bill@actuallyp.com)>, Karrie Hatfield <[hatfield.karrie@gmail.com](mailto:hatfield.karrie@gmail.com)>, Roberto Rey <[rrey@aarpp.org](mailto:rrey@aarpp.org)>, Elicia Ratajczyk <[elicia.ratajczyk@colostate.edu](mailto:elicia.ratajczyk@colostate.edu)>, Lorye McLeod <[ed@pafclarimer.org](mailto:ed@pafclarimer.org)>, Trish Warner <[trishwarner27@gmail.com](mailto:trishwarner27@gmail.com)>, Claire Bouchard <[claire@nocofoundation.org](mailto:claire@nocofoundation.org)>, Sam Betters <[sbetters@comcast.net](mailto:sbetters@comcast.net)>

Hello Housing Priority Group,

I am following up on Ted's question to Laurie during the meeting on Friday. She reached out to our County attorney and received the following reply:

*No, a water district is a quasi-municipal entity (basically a "mini" local government of its own) and the BCC does not have oversight or review authority over water district decisions.*

Please let me know if you all have any follow up questions for her and I would be happy to relay them.

thanks,

**Alea Rodriguez** (she/her)

Housing Stability Program Manager



200 West Oak Street

Fort Collins, CO 80521

(970) 498-7148

On Tue, May 9, 2023 at 4:49 PM Sue Ballou <[sueballou@yahoo.com](mailto:sueballou@yahoo.com)> wrote:

Hello friends,

The next Housing Priority Group is this Friday, May 12 from 8:30 - 10:00 via Zoom:

<https://us02web.zoom.us/j/85620936829?pwd=MHA0UjZCWkF1QzZ4TE9GSGpzbkQ0UT09>

As usual, it's a busy meeting. Laurie Kadrich, Assistant County Manager will join us to talk about water issues in the County and then Ian Shuff from Alm2s architects will talk about the 4 plex he's trying to build in Old Town. Not to mention the other things we've been working on.

Also, think about if we could move to quarterly meetings in person and if we do, whether they should be at this time or combined with a happy hour, like we did in September. I miss you all.

As always, please let me know if you can't come. Call or text my cell if you can't get on the Zoom link (phone number below).

Sue



Sue Ballou  
Housing Priority Group Co-Chair  
Board and Steering Committee  
970.493.7550 (h) 970.310-7678 (c)

Item 21.



# Water Adequacy Determination Review Land Use Code Update

- Water is a critical resource and its cost and availability impact new development
- Existing review process
- Need for a more robust process
  - More complicated development
  - Potential for creation of new water providers

- Water Adequacy Determination Review Program supports the goals of
  - City Plan
  - Housing Strategic Plan
  - Climate Action Plan
- Viewed as a tool kit to look at water affordability and support sustainable development patterns
- Neighborhood Livability & Social Health - 1.6 - Align land use regulations and review procedures to guide development consistent with City Plan.

**April 26, 2023**

**Planning &  
Zoning  
Commission**



**May 16, 2023**

**City Council**



**June 6, 2023**

**City Council  
Work  
Session**



**August 17, 2023**

**Planning &  
Zoning  
Commission**



**September 5, 2023**

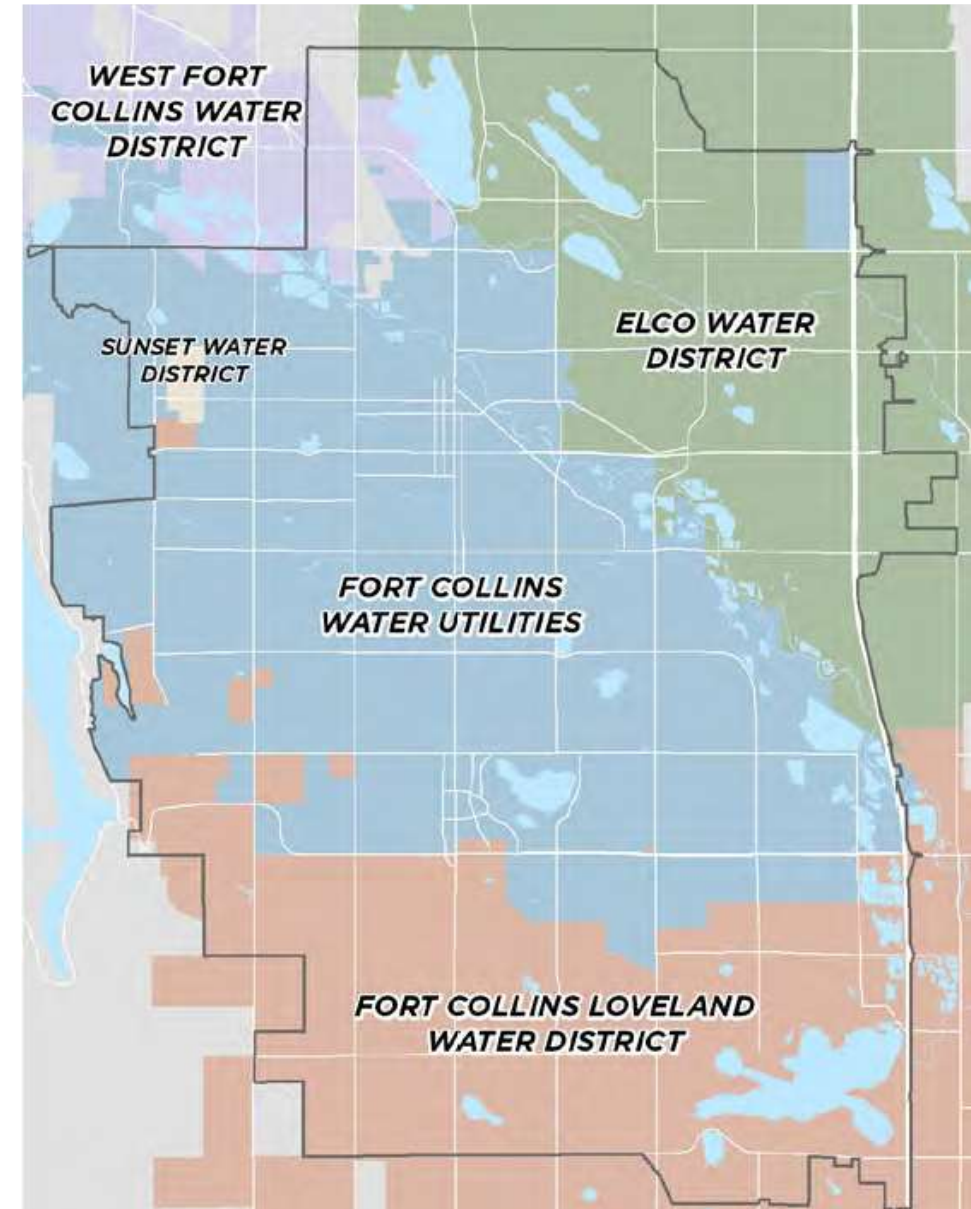
**City Council**



This review process is being proposed to further effectuate Section 29-20-301, et seq., C.R.S. which states:

A local government shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate. A local government shall make such determination only once during the development permit approval process unless the water demands or supply of the specific project for which the development permit is sought are materially changed. A local government shall have the discretion to determine the stage in the development permit approval process at which such determination is made.

- Development occurs within the district boundaries of existing water providers
- Will Serve Letter issued by provider
  - Part of the building permit process



- Other Agency Review
  - Other agencies have the authority to review new providers
  - CDPHE
    - Requires public water systems demonstrate adequate capacity to construct, operate and manage the new public waterworks.
  - Water Court
    - There is also likely a role for Water Court to plan in validating claims for water under Colorado Law.

- Water Adequacy is a new code division, 3.13 that builds off existing adequate public facilities section 3.7.3.
- Creates 3 determination processes for different providers:
  - Established potable water supply entities, such as Fort Collins-Loveland Water District and East Larimer County Water District
  - Other potable water supply entities such as new private water supplies or metro districts
  - Non-potable water supply entities, such as irrigation water supplied by metro districts

- Timing

- The state statute leaves the determination timing during the development process up to the purview of the local jurisdiction however they limit making the determination to **only once** unless something materially changes.
- The draft code identifies the milestone in the development review process when this determination will be made for each of the three different processes.

- Approval

- The determination of adequacy would be made administratively subject to a review and recommendation by a qualified water consultant.



- Keep similar process for existing providers
  - Will Serve Letter
  - Director can differ timing to building permit for review
  - Director as the decision maker
- Includes opportunities to
  - Review proposed updates to water supply plans by Council
  - Improve letters
  - Increase consistency between different providers

- Evaluation criteria for new providers
  - Water Quality
  - Quantity of Water
  - Dependability of Supply and Supplier
    - Supply Resiliency
    - System Redundancy
    - Maintenance and Outages
  - Availability of Supply
  - Financial Sustainability of Supplier
    - Capitalization



- Overall Standards Equivalent to Municipal Utility
  - Allows for a Modification of Standard for noncompliance
- Review Timing
  - At the time of Final Development Plan or Basic Development Review
  - Initial review anticipated to be done by a consultant
    - Cost agreement with applicant
- Final decision maker is CDNS Director

- Non-potable Entities
- Criteria:
  - Supply has enough quantity and;
  - Quality to support the associated uses such as irrigation for landscape.
- Review Timing
  - At the time of Development Construction Permit
  - Initial review anticipated to be done by a consultant
    - Cost agreement with applicant
- Final decision maker is CDNS Director

- Article Five, Division 5.1.2 – Definitions
- The proposed change to Division 5.1.2 is to add the following definitions that relate to the water adequacy determination review process and provide additional clarity on specific terms used in that section.
  - Adequate
  - Established Potable Water Supply Entities
  - Non-Potable Water
  - Non-Potable Water Supply
  - Other Potable Water Supply Entities
  - Potable Water
  - Water Adequacy Determination
  - Water supply entity
  - Water supply system

- Stakeholder Meetings:
  - Water Commission
  - West Fort Collins Water District
  - East Larimer County Water District
  - Fort Collins Loveland Water District
  - Hartford Homes/Bloom
  - HF2M/Montava
  - Polestar Gardens/Polestar Village
- Additional Feedback (no concerns):
  - Sunset Water District
  - Save the Poudre

- Disagreement on the ability for established potable water supply entities to veto new potable water supply entities
- Updates to the Code to increase clarity
  - Consistency with State statute
  - Provision of water supply plans by existing water potable water supply entities is purely informational (i.e., City Council will not “approve” water supply plans of existing water providers)
- Suggestions on how to achieve outcomes of State statutory requirements without implementing Water Adequacy Determination Review process

- Recommended approval of Ordinance
  - 4-2 vote
- Discussion focused on 3.13.5(C)(5)(c)
  - Does this give existing providers more authority?
  - Discussion about need to compensate existing districts in the event of an exclusion
  - “Reasonable level of service” not defined
  - Importance of natural monopolies
  - Rationale for this provision

- Water district board considers exclusions
  - 8 criteria for exclusions
    - Best interest of stakeholders
    - Cost/benefit
    - Ability of district to provide service
    - **Economic impact**
      - Potential financial compensation for impact to existing district
    - Feasibility of alternative service
- Decisions by special districts appealable to County Commissioners
- Decisions by County Commissioners appealable to District Court
- Decisions by District Court appealable to Appeals Court

Staff recommends adoption of the Ordinance on First Reading.