

Fort Collins City Council Agenda

Regular Meeting

6:00 p.m., Tuesday, May 21, 2024

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

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

NOTICE:

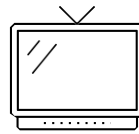
Regular meetings of the City Council are held on the 1st and 3rd Tuesdays of each month in the City Council Chambers. Meetings are conducted in a hybrid format, with a Zoom webinar in addition to the in person meeting in Council Chambers.

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

How to view this Meeting:



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



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



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



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

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

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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. Staff is also available outside of Chambers prior to meetings to assist with the sign up process for in person attendees.

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

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

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

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

Call in number: 720 928 9299

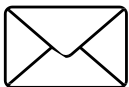
Meeting ID: 982 4141 6497

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

Submit written comments:



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



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

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

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



City Council Regular Meeting Agenda

May 21, 2024 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
Melanie Potyondy, 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

Heather Walls
Interim City Clerk

PROCLAMATIONS & PRESENTATIONS 5:00 PM

A) PROCLAMATIONS AND PRESENTATIONS

- [PP 1.](#) Declaring May 19 through 25, 2024 as Emergency Medical Services Week.
- [PP 2.](#) Declaring May 19 through 25, 2024 as Flood Awareness Week.
- [PP 3.](#) Declaring June 2024 as Bike Month.

REGULAR MEETING 6:00 PM

B) CALL MEETING TO ORDER

C) PLEDGE OF ALLEGIANCE

D) ROLL CALL

E) CITY MANAGER'S AGENDA REVIEW

- City Manager Review of Agenda
- Consent Calendar Review, including removal of items from Consent Calendar for individual discussion.

F) COMMUNITY REPORTS - None.

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

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

- Those who wish to speak are required to sign up using the online sign-up system available at www.fcgov.com/council-meeting-participation-signup/
- Each speaker will be allowed to speak one time during public comment. If a speaker comments on a particular agenda item during general public comment, that speaker will not also be entitled to speak during discussion on the same agenda item.
- All speakers will be called to speak by the presiding officer from the list of those signed up. After everyone signed up is called on, the presiding officer may ask others wishing to speak to identify themselves by raising their hand (in person or using the Raise Hand option on Zoom), and if in person then will be asked to move to one of the two lines of speakers (or to a seat nearby, for those who are not able to stand while waiting).
- The presiding officer will determine and announce the length of time allowed for each speaker.
- Each speaker will be asked to state 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 recommends approval of the Consent Calendar. Agenda items pulled from the Consent Calendar by either Council or the City Manager will be considered separately under their own Section, titled "Consideration of Items Removed from Consent Calendar for Individual Discussion." Items remaining on the Consent Calendar will be approved by Council with one vote. The Consent Calendar consists of:

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

1. Second Reading of Ordinance No. 058, 2024, Making Supplemental Appropriation of the 2050 Tax for Various Programs and Services Related to Parks, Recreation, Transit and Our Climate Future.

This Ordinance, unanimously adopted on First Reading on May 7, 2024, appropriates the 2024 funding of the new 2050 Tax. In November 2023, Fort Collins voters approved this 0.5% Sales and Use Tax increase, which is dedicated to the areas of Parks, Recreation, Transit and Climate. This tax begins in 2024 and expires at the end of 2050.

2. Second Reading of Ordinance No. 059, 2024, Making a Supplemental Appropriation from the Local Planning Capacity Grant for the Affordable Housing and Planning Development Process Improvement Project and Approving a Related Grant Agreement.

This Ordinance, unanimously adopted on First Reading on May 7, 2024, appropriates awarded funds from the Proposition 123 Local Planning Capacity (LPC) Grant, administered by the State Department of Local Affairs (DOLA). This \$200,000 grant to the City will support a 12- to 18-month process improvement project intended to reduce development review timelines for affordable housing developments to meet Proposition 123's 90-day "fast track" approval requirements.

3. Second Reading of Ordinance No. 060, 2024, Appropriating Philanthropic Revenue Received Through City Give for Environmental Services Curbside Recycling.

This Ordinance, unanimously adopted on First Reading on May 7, 2024, appropriates an award of approximately \$664,000 to defray the cost of new recycling carts being purchased for the City's Residential Contracted Trash and Recycling Program and to support recycling outreach and education for the community.

4. Second Reading of Ordinance No. 061, 2024, Appropriating Prior Year Reserves and Unanticipated Philanthropic Revenue Received Through City Give for Various Programs and Services as Designated by the Donors.

This Ordinance, unanimously adopted on First Reading on May 7, 2024, requests appropriation of \$58,235 in philanthropic revenue received through City Give. 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 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.

5. Second Reading of Ordinance No. 062, 2024, Appropriating Philanthropic Revenue Received Through City Give for the Art in Public Places Program, Pianos About Town Project.

This Ordinance, unanimously adopted on First Reading on May 7, 2024, considers an appropriation of \$47,115 in philanthropic revenue received through City Give for the Art in Public Places program for the designated purpose of Pianos About Town, a collaborative effort among the City of Fort Collins Art in Public Places program, the Fort Collins Downtown Development Authority, and the donor, Bohemian Foundation.

6. Second Reading of Ordinance No. 063, 2024, Making a Supplemental Appropriation from the Colorado Department of Local Affairs Gray and Black-Market Marijuana Enforcement Grant Program for the Fort Collins Police Services Marijuana Enforcement Program.

This Ordinance, unanimously adopted on First Reading on May 7, 2024, supports Fort Collins Police Services' Marijuana Enforcement Program in investigating gray and black-market marijuana cases by appropriating \$39,641 of unanticipated grant revenue from the Colorado Department of Local Affairs (DOLA), Gray and Black-Market Marijuana Enforcement.

7. Second Reading of Ordinance No. 064, 2024, Making Supplemental Appropriations of Prior Year Reserves and Grant Revenue from the Colorado Department of Transportation and Authorizing Transfers for the College Avenue-Trilby Road Intersection Improvements Project.

This Ordinance, unanimously adopted on First Reading on May 7, 2024, enables the City to receive and expend Colorado Department of Transportation (CDOT) funds for the College Avenue-Trilby Road Intersection Improvements Project (Project). The funds will be used for construction of improvements at the intersection of South College Avenue and Trilby Road. If approved, this item will 1) appropriate \$361,361 of Congestion Mitigation and Air Quality (CMAQ) Improvement Program grant funds for the Project; 2) appropriate \$1,870,000 of Highway Improvement Program (HIP) grant funds; 3) appropriate \$5,272,260 of Surface Transportation Block Grant (STBG) Program funds; 4) appropriate \$2,000,000 of Funding Advancements for Surface Transportation and Economic Recovery (FASTER) Act grant funds; 5) use \$14,800 from development contributions to construction as part of the local match; 6) appropriate as part of the local match contribution \$1,300 from the Transportation Capital Expansion Fee (TCEF) Reserves; 7) appropriate \$113 (0.7% of the local match amount) from TCEF Reserves to the Art in Public Places Program; and 8) appropriate \$48 (0.3% of the local match amount) for maintenance of art from Transportation Fund Reserves to the Art in Public Places Program.

8. Second Reading of Ordinance No. 065, 2024, Authorizing the Conveyance of a Permanent Non-Exclusive Sewer Easement on Property Jointly Owned by the City of Fort Collins and the City of Loveland at the Northern Colorado Regional Airport.

This Ordinance, unanimously adopted on First Reading on May 7, 2024, authorizes a conveyance of an easement to the Sanitation District to allow for a sewer service line for the terminal. The easement is over a portion of the Northern Colorado Regional Airport property, which is owned jointly by the City of Fort Collins and the City of Loveland.

9. First Reading of Ordinance No. 066, 2024, Making a Supplemental Appropriation and Appropriating Prior Year Reserves to Develop a Digital Accessibility Roadmap.

The purpose of this item is to request an appropriation of \$150,000 in General Funds in order to work with a consultant to develop a comprehensive and actionable Digital Accessibility Roadmap. The purpose of this roadmap is to provide a strategy for compliance with both Colorado and federal laws and regulations pertaining to digital accessibility requirements, including both the Americans with Disabilities Act and Colorado House Bill 21-1110.

10. First Reading of Ordinance No. 067, 2024, Making a Supplemental Appropriation from the Colorado Department of Transportation Colorado Highway Safety Office Click It or Ticket Grant for the Fort Collins Police Services Traffic Enforcement Unit.

The purpose of this item is to appropriate \$16,529 of unanticipated federal grant revenue from the Colorado Department of Transportation, Colorado Highway Safety Office (HSO), to support Fort Collins Police Services' Traffic Enforcement Unit work toward traffic safety and reducing serious injuries and fatal crashes through the enforcement of traffic laws and specifically those related to driver and passenger restraint system use.

11. First Reading of Ordinance No. 068, 2024, Appropriating Prior Year Reserves in the Transportation Capital Expansion Fee Fund for Eligible Reimbursement to the Waters Edge Second Filing Developer for Construction of Turnberry Road, Brightwater Drive, and Morningstar Way Improvements.

The purpose of this item is to appropriate \$612,027 of Transportation Capital Expansion Fee (TCEF) Funds for expenditure from the Transportation Capital Expansion Fee Program Budget to reimburse the Waters Edge Second Filing developer, Waters Edge Development Inc. (Developer), for its oversizing construction of Turnberry Road, Brightwater Drive, and Morningstar Way. As part of the development plans and development agreement for Waters Edge Second Filing and permitted for construction under the Waters Edge Third Filing Development Construction Permit, the Developer has constructed to City standards Turnberry Road as a two-lane arterial, and Brightwater Drive and Morningstar Way as collectors as part of its development requirements. Per Section 24-112 of the City Code, the Developer is eligible for reimbursement from TCEF funds for the oversized, non-local portion of Turnberry Road, Brightwater Drive, and Morningstar Way not attributed to the local portion obligation.

12. First Reading of Ordinance No. 069, 2024, Making a Supplemental Appropriation from the Colorado Department of Early Childhood in Support of Licensed City Childcare Programs.

The purpose of this item is to support licensed City childcare programs by appropriating \$21,069 of unanticipated grant revenue awarded by the Colorado Department of Early Childhood (CDEC).

Through the CDEC's Childcare Stabilization Grants program the City was awarded \$21,069 in federal pass-through funds to provide enhancements in licensed City Childcare programs.

13. First Reading of Ordinance No. 070, 2024, Correcting Ordinance No. 003, 2024, Authorizing Transfers and Reappropriating Funds Previously Approved for the Utilities' Grid Flexibility Programs.

The purpose of this item is to appropriate \$200,000 of prior year reserves in the Light and Power Fund to support Ordinance No. 003, 2024, which authorized transfers and reappropriation of funds previously appropriated for the Utilities' Grid Flexibility Programs. The ordinance, as adopted, omitted the need for \$200,000 of prior year reserves to fully fund the requested appropriation, since those funds had technically lapsed at the end of fiscal year 2023.

14. First Reading of Ordinance No. 071, 2024, Approving the First Amendment to the Hangar Ground Lease Agreement with IC Loveland, LLC, for the Aero FNL Hangar Development at the Northern Colorado Regional Airport.

The purpose of this item is to request City Council approval of an amendment to an existing hangar ground lease between the City of Fort Collins, the City of Loveland, and IC Loveland, LLC, to allow for subleasing and fractional ownership of multi-unit aircraft hangar buildings.

15. Items Relating to the I-25 & Mulberry Annexation.

A. Resolution 2024-069 Setting Forth Findings of Fact and Determinations Regarding the I-25 & Mulberry Annexation.

B. Public Hearing and First Reading of Ordinance No. 072, 2024, Annexing the Property Known as the I-25 & Mulberry Annexation to the City of Fort Collins, Colorado.

The purpose of this item is to annex a 46.92-acre property located at the NE Corner of the I-25 and East Mulberry interchange. A specific project development plan proposal is not included with the

annexation application. The Initiating Resolution was adopted on April 16, 2024. A related item to zone the annexed property is presented as the next item on this Agenda.

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

16. Public Hearing and First Reading of Ordinance No. 073, 2024, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the I-25 & Mulberry Annexation to the City of Fort Collins, Colorado, and Approving Corresponding Changes to the Residential Neighborhood Sign District Map and Lighting Context Area Map.

The purpose of this item is to zone the property included in the I-25 & Mulberry Annexation into the Industrial (I), and General Commercial (CG) zone districts and place the property into the LC2 Lighting Context Area and Non-residential Sign District.

This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 1(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2015-091.

17. Resolution 2024-070 Authorizing the Execution of an Amendment to the Intergovernmental Agreement for Solid Waste Programming and Infrastructure Improvements.

The purpose of this item is to make an amendment to the 2019 Intergovernmental Agreement for Solid Waste Programming and Infrastructure Improvements (the "IGA") to place the existing agreement into abeyance until the parties agree on further amendments to address the changed circumstances and updated timelines. The new amended agreement will supersede the existing one.

18. Resolution 2024-071 Adopting Findings of Fact in Support of the City Council's Decision on Appeal to Uphold the Planning and Zoning Commission Approval of the Mason Street Infrastructure Overall Development Plan ODP230001.

The purpose of this item is to make findings of fact and conclusions regarding Council's decision at the May 7, 2024, Mason Street Infrastructure Overall Development Plan appeal hearing that the Planning and Zoning Commission held a fair hearing and dismissing the failure to properly interpret and apply allegations and thereby upholding the Planning and Zoning Commissions' approval of the Mason Street Infrastructure Overall Development Plan.

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

None planned due to Executive Session for Mid Year Reviews of Council Direct Reports.

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 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."

OB 3. Consideration of a motion to go into Executive Session for Mid-Year Reviews of Chief Judge, City Manager, and City Attorney:

Chief Judge 60 minutes

City Manager 60 minutes

City Attorney 60 minutes

Note: Times are approximate with breaks, as necessary.

"I move that the City Council 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 the purpose of conducting mid-year performance reviews of the Chief Judge, City Attorney and City Manager."

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, this is the 50th anniversary of National Emergency Medical Services (EMS) Week; and the theme, “Honoring Our Past, Forging Our Future,” seeks to empower us to remember the pioneers who made EMS what it is today and encourages us to face the future with their same tenacity and drive for excellence; and

WHEREAS, the members of EMS teams are ready to provide lifesaving care 24 hours a day, 7 days a week; and

WHEREAS, access to quality emergency care dramatically improves the survival and recovery rate of those who experience sudden illness or injury; and

WHEREAS, EMS has grown to fill gaps by providing vital, out-of-hospital care, including preventative medicine, connections to social services, follow-up care, and access to telemedicine; and

WHEREAS, the EMS system consists of medical technicians, paramedics, telecommunicators, firefighters, data analysts, police officers, educators, administrators, nurses, physicians, community members, and other out-of-hospital care providers; and

WHEREAS, the members of EMS teams, whether career or volunteer, engage in thousands of hours of specialized training and continuing education to enhance their lifesaving skills; and

WHEREAS, it is important to recognize the value and the accomplishments of EMS providers by designating EMS Week and celebrating their tireless work.

NOW, THEREFORE, I, Jeni Arndt, Mayor of the City of Fort Collins, do hereby proclaim the week of May 19 through 25, 2024, as

EMERGENCY MEDICAL SERVICES WEEK

with the theme, “*Honoring our Past, Forging our Future,*” I encourage the community to observe this week with appropriate programs, education, and activities such as learning CPR or thanking a first responder.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 21st day of May, 2024.

Mayor

ATTEST:



PROCLAMATION

WHEREAS, April to September is the season most commonly associated with snowmelt flooding and thunderstorm flash flooding; and

WHEREAS, Fort Collins has experienced the social, economic and environmental consequences of loss of life and damage to property caused by flood disasters; and

WHEREAS, emergency preparedness depends on the leadership and efforts of public officials dedicated to public safety and requires the establishment of farsighted and proactive public policy; and

WHEREAS, Fort Collins Utilities has received a Community Rating System Class 2 designation by the Federal Emergency Management Agency, recognizing the City’s comprehensive Stormwater and Floodplain Management Program; and

WHEREAS, Fort Collins community members have benefited from past investment in stormwater infrastructure, while additional infrastructure is still needed to continue to mitigate flooding in areas that are not yet protected; and

WHEREAS, by being informed and prepared and taking proper protective action, the residents of Fort Collins can reduce the potential for loss of life and damage to property when threatened by these events.

NOW, THEREFORE, I, Jeni Arndt, Mayor of the City of Fort Collins, do hereby proclaim May 19 through 25, 2024, as

FLOOD AWARENESS WEEK

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 21st day of May, 2024.

Mayor

ATTEST:

Interim City Clerk



PROCLAMATION

WHEREAS, thousands of Fort Collins residents will experience the joys of bicycling during the month of June through educational programs, commuting events, races, groups rides, or just getting out and going for a ride; and

WHEREAS, Fort Collins encourages the increased use of the bicycle, benefiting all citizens by fostering physical and mental health, improving air quality, reducing traffic congestion and noise, decreasing the use of and dependence upon finite energy sources; and

WHEREAS, the City of Fort Collins recognizes the use of bicycles as a viable mode of transportation, endeavors to promote safe and responsible bicycling and is committed to incorporating the development of bicycle facilities; and

WHEREAS, our City maintains over 280 miles of bikeway networks which attract thousands of bicyclists each year; and

WHEREAS, Fort Collins is nationally recognized as one of only five Platinum Level Bicycle Friendly Communities, as designated by the League of American Bicyclists; and

WHEREAS, the City of Fort Collins adopted the Active Modes Plan in 2022 which set the goals to achieve a 50 percent active mode share for all trips and eliminate all active modes traffic fatalities and serious injuries by 2032 in support of the City’s larger vision zero goal to support eliminating all traffic fatalities and serious injuries; and

WHEREAS, FC Moves, the Bicycle Ambassador Program, Safe Routes to School, and other local businesses and organizations will be promoting bicycling as a viable means of transportation during the month of June 2024.

NOW, THEREFORE, I, Jeni Arndt, Mayor of the City of Fort Collins, do hereby proclaim the month of June 2024, as

BIKE MONTH

in Fort Collins and I encourage citizens to try bicycling as a sensible mode of transportation or recreation and to participate in the many events planned for the summer months, particularly, the 36th annual Bike to Work (or Wherever) Day on Wednesday, June 26th.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 21st day of May, 2024.

Mayor

ATTEST:

AGENDA ITEM SUMMARY

City Council



STAFF

Lawrence Pollack, Budget Director
Jacob Castillo, Chief Sustainability Officer
Travis Storin, Chief Financial Officer

SUBJECT

Second Reading of Ordinance No. 058, 2024, Making Supplemental Appropriation of the 2050 Tax for Various Programs and Services Related to Parks, Recreation, Transit and Our Climate Future.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on May 7, 2024, appropriates the 2024 funding of the new 2050 Tax. In November 2023, Fort Collins voters approved this 0.5% Sales and Use Tax increase, which is dedicated to the areas of Parks, Recreation, Transit and Climate. This tax begins in 2024 and expires at the end of 2050.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

At the December 2021 Council Finance Committee (CFC) meeting, staff presented an item to discuss specific identified revenue needs and potential funding options. Multiple conversations occurred throughout 2022 at various CFC meetings. In 2023, the areas of need were focused on Parks, Recreation, Transit, Climate and Housing. Estimated annual shortfalls ranged from eight to nearly fifteen million per area, as follows:

- Parks & Recreation \$8.0 to \$12.0M annual shortfall (Parks & Recreation Master Plan)
- Transit \$8.0M to \$14.7M annual shortfall (Transit Master Plan)
- Climate \$9.5M+ annual shortfall (Our Climate Future Plan)
- Housing \$8.0M to \$9.5M annual shortfall (Housing Strategic Plan)

This topic eventually came in front of Council in 2023 and after a few Work Sessions, proposed funding for these items was determined. Council approved two ballot items to be referred to the voters of Fort Collins to fund these areas. Parks, Recreation, Transit and Climate were proposed to be funded from a dedicated 0.5% Sales and Use Tax increase. In a departure from previous tax initiatives and renewals, this item was proposed for a 27-year period beginning in 2024 and expiring at the end of 2050. The other referral was for housing needs, which were proposed to be funded by a property tax increase.

In November 2023, the voters of Fort Collins approved one of those initiatives, specifically the 0.5% Sales Tax outlined as follows:

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2023 Ballot Language:

SHALL CITY OF FORT COLLINS TAXES BE INCREASED BY \$23,800,000 IN THE FIRST FULL FISCAL YEAR (2024), AND BY SUCH AMOUNTS COLLECTED ANNUALLY THEREAFTER, FROM A .50% SALES AND USE TAX BEGINNING JANUARY 1, 2024, AND ENDING AT MIDNIGHT ON DECEMBER 31, 2050, WITH THE TAX REVENUES SPENT ONLY FOR THE FOLLOWING:

- 50% FOR THE REPLACEMENT, UPGRADE, MAINTENANCE, AND ACCESSIBILITY OF PARKS FACILITIES AND FOR THE REPLACEMENT AND CONSTRUCTION OF INDOOR AND OUTDOOR RECREATION AND POOL FACILITIES,
- 25% FOR PROGRAMS AND PROJECTS ADVANCING GREENHOUSE GAS AND AIR POLLUTION REDUCTION, THE CITY’S 2030 GOAL OF 100% RENEWABLE ELECTRICITY, AND THE CITY’S 2050 GOAL OF COMMUNITY-WIDE CARBON NEUTRALITY, AND
- 25% FOR THE CITY’S TRANSIT SYSTEM, INCLUDING, WITHOUT LIMITATION, INFRASTRUCTURE IMPROVEMENTS, PURCHASE OF EQUIPMENT, AND UPGRADED AND EXPANDED SERVICES;

AND WHILE CITY COUNCIL MAY EXERCISE ITS DISCRETION IN DECIDING THE TIMING OF SPENDING FOR EACH CATEGORY, THAT SPENDING SHALL SUPPLEMENT AND NOT REPLACE THE CURRENT CITY FUNDING FOR THE SPECIFIED PURPOSES AND SHALL BE RECONCILED TO THE STATED PERCENTAGES BY THE END OF 2030, 2040, AND WHEN THE LAST REVENUES COLLECTED FROM THE TAX ARE SPENT, BUT THIS TAX SHALL NOT APPLY TO:

- ITEMS EXEMPT UNDER THE CITY CODE FROM CITY SALES AND USE TAX;
- FOOD FOR HOME CONSUMPTION; AND
- MANUFACTURING EQUIPMENT, BUT FOR THE USE TAX ONLY;

AND WITH ALL THE TAX REVENUES, AND INVESTMENT EARNINGS THEREON, TO BE COLLECTED, RETAINED, AND SPENT AS A VOTER-APPROVED REVENUE CHANGE NOTWITHSTANDING THE SPENDING AND REVENUE LIMITATIONS OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?

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Given the timing of the vote relative to the 2024 Annual Appropriation (2024 Budget) process, it was determined that the 2024 appropriation for the approved Sales and Use Tax increase would be discussed as its own item early in the year. Staff has worked to identify specific projects for the first year of this tax, as detailed in the list of proposed projects (Attachment 1). Knowing that staff is concurrently working on the 2025-26 City Manager’s Recommended Budget to present to Council later this year, many of the proposed projects are one-time in nature, targeted to be substantially completed in 2024. Proposals of an ongoing nature are primarily for the staff needed to start this work and be positioned to execute the projects approved as part of the 2025-26 Budget.

This item was discussed at the Council Finance Committee (CFC) meeting on March 20, 2024. Council questions were addressed with a follow-up request for more detail on the Parks and Recreation offer. This offer initiates a large asset and infrastructure replacement program like the Street Maintenance Program or the Water and Sewer Replacement programs, and this offer is modeled after those types of programs. The details for the analysis and prioritization of current assets can be found in the Infrastructure

Item 1.

Replacement Program report at the following web address: https://www.fcgov.com/parks/files/fort-collins-parks-infrastructure-replacement-program-management-plan_compressed.pdf?1665426175

Additionally, per that CFC conversation on the climate portion of the tax, the item to 'Add Solar PV System at City Facility' was moved from the elective offers to the recommended offers.

The 2050 Tax was subsequently reviewed with the full Council at their work session on April 9, 2024. The associated work session summary includes specific follow up from that Council conversation (Attachment 2).

From that work session, the following changes were made for First Reading:

1. The Parks and Recreation portion of the tax has been broken into three separate proposals and those are viewable in Attachment 1.
2. Of the three elective proposals within the Climate portion of the tax discussed during the work session, only the Poudre River Health Assessment has been included in the First Reading materials.

CITY FINANCIAL IMPACTS

Adoption of this ordinance would increase City appropriations by \$10,244,180 with \$5,302,586 supporting Parks and Recreation, \$1,149,594 for Transit and \$3,792,000 for Climate. The 2024 estimated revenue collections is \$20,000,000 and of that, the remaining unappropriated amount of \$9,755,820 will be held in reserves dedicated to each of the three ballot language categories. Those funds will be available for future appropriation, whether in the 2025-26 Recommended Budget or other appropriations authorized by Council.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 058, 2024
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING SUPPLEMENTAL APPROPRIATION OF THE 2050 TAX
FOR VARIOUS PROGRAMS AND SERVICES RELATED TO
PARKS, RECREATION, TRANSIT AND OUR CLIMATE FUTURE

A. In August 2023, the City Council adopted Resolution No. 2023-074, which submitted to the City’s registered electors a ballot issue to increase the City’s sales and use tax by .50%, beginning January 1, 2024 and ending at midnight on December 31, 2025, with the revenues to be spent only for certain items related to parks and recreation; air pollution and climate goals; and transit system improvements (the “2050 Tax”).

B. The electors approved the ballot issue at the City’s regular municipal election held on November 7, 2023, and the 2050 Tax went into effect January 1, 2024.

C. City staff presented proposed projects for the revenue from the 2050 Tax to Council Finance Committee on March 20, 2024. Building on questions and comments from Council Finance Committee, City staff presented proposed projects to the full Council at a work session on April 9, 2024.

D. Because the vote to approve the 2050 Tax occurred at roughly the same time as Council’s approval of the 2024 annual appropriation, the appropriation of 2024 revenue from the 2050 Tax is being presented as a standalone item.

E. City staff continue to work on the 2025-2026 City Manager’s Recommended Budget to be presented to Council later this year, and many of the projects staff is proposing for the 2024 revenue from the 2050 Tax are one-time in nature and are expected to be substantially complete in 2024. However, a portion of the amounts identified for the proposals are ongoing in nature primarily for the staff needed to start this work and be positioned to execute projects approved as part of the 2025-2026 Budget.

F. 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.

G. The City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the 2050 Tax Parks Recreation Transit and Our Climate Future Fund and will not cause the total amount appropriated in the 2050 Tax Parks Recreation Transit and Our Climate Future 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.

H. Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds for capital projects that such funds shall not lapse until the completion of the capital project.

I. The City Council wishes to designate a portion of the appropriation herein for the 2050 tax for Parks, Recreation, Transit and Our Climate Future as an appropriation that shall not lapse until the earlier completion of Capital Projects or the City’s expenditure of all funds.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. There is hereby appropriated from new revenue or other funds in the 2050 Tax Parks Recreation Transit and Our Climate Future Fund the sum of FIVE MILLION THREE HUNDRED TWO THOUSAND FIVE HUNDRED EIGHTY-SIX DOLLARS (\$5,302,586) to be expended in the 2050 Tax Parks Recreation Transit and Our Climate Future Fund for various Parks and Recreation programs and services.

Section 2. There is hereby appropriated from new revenue or other funds in the 2050 Tax Parks Recreation Transit and Our Climate Future Fund the sum of ONE MILLION ONE HUNDRED FORTY-NINE THOUSAND FIVE HUNDRED NINETY-FOUR DOLLARS (\$1,149,594) to be expended in the 2050 Tax Parks Recreation Transit and Our Climate Future Fund for various Transit programs and services.

Section 3. There is hereby appropriated from new revenue or other funds in the 2050 Tax Parks Recreation Transit and Our Climate Future Fund the sum of THREE MILLION SEVEN HUNDRED NINETY-TWO THOUSAND DOLLARS (\$3,792,000) to be expended in the 2050 Tax Parks Recreation Transit and Our Climate Future Fund for various Our Climate Future programs and services.

Section 4. That, as provided in Article V, Section 11 of the City Charter, all of the following funds appropriated herein for capital projects shall not lapse until the completion of the capital project:

| | |
|--|-------------|
| Parks and Recreation – Transform | \$4,000,000 |
| Our Climate Future - Comprehensive exterior lighting retrofits at City recreation centers | \$500,000 |
| Our Climate Future - Implement bicycle infrastructure as determined in Active Modes plan (Centre Ave) | \$350,000 |
| Our Climate Future - Implement bicycle infrastructure as determined in Active Modes plan (Laporte Ave) | \$57,000 |

| | |
|--|-----------|
| Our Climate Future - Add solar PV system at City Facility – new fueling canopy and shop expansion at Wood St | \$250,000 |
|--|-----------|

Introduced, considered favorably on first reading on May 7, 2024, and approved on second reading for final passage on May 21, 2024.

Mayor

ATTEST:

Interim City Clerk

Effective Date: May 31, 2024
Approving Attorney: Ryan Malarky

AGENDA ITEM SUMMARY

City Council



STAFF

Meaghan Overton, Housing Manager
Clay Frickey, Planning Manager

SUBJECT

Second Reading of Ordinance No. 059, 2024, Making a Supplemental Appropriation from the Local Planning Capacity Grant for the Affordable Housing and Planning Development Process Improvement Project and Approving a Related Grant Agreement.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on May 7, 2024, appropriates awarded funds from the Proposition 123 Local Planning Capacity (LPC) Grant, administered by the State Department of Local Affairs (DOLA). This \$200,000 grant to the City will support a 12- to 18-month process improvement project intended to reduce development review timelines for affordable housing developments to meet Proposition 123's 90-day "fast track" approval requirements.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

In February 2024, staff applied for a \$200,000 grant from the Local Planning Capacity (LPC) grant program administered by the Department of Local Affairs (DOLA). In March 2024, staff received notification that the City's grant application had been awarded full funding. To begin the project, Council must appropriate the awarded funds.

This project, "Fast Track LEAN Process Improvements," seeks to reduce approval timelines for affordable housing by approximately 50% compared to Fort Collins's baseline approval averages from 2019-2023. Staff plans to achieve this goal through both land use code changes (expected May 2024) and a formal process improvement project utilizing LEAN principles (12–18-month project timeline). Funding will support consultant expertise in LEAN principles and project management, which are critical for a project that seeks to implement process improvement among the 15+ departments involved in development review. Upon completion, Fort Collins will be poised to consistently achieve the 90-day Fast Track requirements under Proposition 123. This project is aligned with and will be managed concurrently with the Development Review Digital Transformation project.

The LPC grant program was established by Proposition 123, the State Affordable Housing Fund, and is one of several new funding programs available through DOLA. The program supports local government efforts to implement systems that expedite the development review process for affordable housing. These funds can also support local government capacity to achieve local affordable housing goals and maintain

eligibility for Proposition 123 funding. The City's project proposal for the LPC grant program was reviewed based on a variety of factors including readiness, impact on housing, support from local leadership, and local context.

Fort Collins has made a local commitment under Proposition 123 which makes the City and its partners eligible to apply for Proposition 123 funds. This most recent award brings Fort Collins' total Proposition 123 funding to nearly \$5 million to date across multiple projects in less than 2 years:

- \$200,000 - Fast Track LEAN Process Improvement (Local Planning Capacity grant program, 2024)
- \$1.6 million - Housing Catalyst's Village on Eastbrook (Land Banking grant program, 2024)
- \$3.1 million - Several awards to partners including Outreach Fort Collins, Homeward Alliance, Fort Collins Rescue Mission, and the Matthews House (Transformational Homelessness Response grant program, 2023)

CITY FINANCIAL IMPACTS

The \$200,000 grant will be appropriated into the General Fund.

This grant requires a 21% local match, which has already been integrated into the project scope and budget for software expenses as part of the development review and permitting digital transformation project.

The grant is reimbursement-based.

There is no ongoing financial impact to the City.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 059, 2024
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING A SUPPLEMENTAL APPROPRIATION FROM THE LOCAL
PLANNING CAPACITY GRANT FOR THE AFFORDABLE HOUSING
AND PLANNING DEVELOPMENT PROCESS IMPROVEMENT
PROJECT AND APPROVING A RELATED GRANT AGREEMENT

A. In February 2024, the City applied for a \$200,000 grant from the Local Planning Capacity (“LPC”) grant program administered by the Department of Local Affairs (“DOLA”). The LPC grant program was established by Proposition 123, the State Affordable Housing Fund and supports local governments’ efforts to implement systems that expedite the development review process for affordable housing.

B. In March 2024, staff received notification that the City’s grant application had been awarded full reimbursement funding, subject to a 21% match requirement. DOLA has provided the City with a draft grant agreement (“Agreement”) to govern the grant funding, which is attached hereto as Exhibit “A”.

C. This Grant will be used to help reduce approval timelines for affordable housing by approximately 50% compared to Fort Collins’s baseline approval averages from 2019-2023 (“Project”). Staff plans to achieve this goal through both land use code changes and a formal process improvement project utilizing LEAN principles. Grant funding will support consultant expertise in LEAN principles and project management, which are critical for a project that seeks to implement process improvement among the more than fifteen departments involved in development review. Upon completion, Fort Collins will be poised to consistently achieve the 90-day Fast Track requirements under Proposition 123.

D. The state of Colorado issued the Agreement, which grants an award of \$200,000 to the City for the Project. The Agreement includes a 21% City match requirement of the total Project cost and such funds were previously appropriated.

E. This appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of improving the efficiency of the City’s administrative processes relating to affordable housing development.

F. 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.

G. 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.

H. 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 the City's expenditure of all funds received from such grant.

I. The City Council wishes to designate the appropriation herein for the Local Planning Capacity 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.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. There is hereby appropriated from new revenue or other funds in the General Fund the sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000) to be expended in the General Fund for the Affordable Housing and Planning Development Process Improvement Project.

Section 2. The appropriation herein for the Local Planning Capacity Grant is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

Section 3. The City Council authorizes the City Manager or their designee to accept the grant and obligate the City to comply with the terms of the grant of the award and Agreement.

Introduced, considered favorably on first reading on May 7, 2024, and approved on second reading for final passage on May 21, 2024.

Mayor

ATTEST:

Interim City Clerk

Effective Date: May 31, 2024
Approving Attorney: Ted Hewitt

State of Colorado Intergovernmental Grant Agreement SUMMARY OF TERMS AND CONDITIONS

| | | |
|---|--|---|
| State Agency Department of Local Affairs (DOLA) | DLG Portal Number LPC-24-010 | CMS Number 190603 |
| Grantee City of Fort Collins | Grant Award Amount \$200,000.00 | Retainage Amount \$10,000.00 |
| Project Number and Name LPC-24-010 Fort Collins - Fast Track LEAN Process Improvements | Performance Start Date The later of the Effective Date or April 22, 2024 | Grant Expiration Date December 31, 2025 |
| Project Description The Project consists of upgrading development review software and hiring consultants to support Lean process improvements across City departments in order to implement a system to expedite the development review process for affordable housing projects and generally advance affordable housing goals in Fort Collins, Colorado. | Program Name Local Planning Capacity Grant Program (Acctg Dropdwn LPC) | |
| | Funding Source STATE FUNDS | |
| | Catalog of Federal Domestic Assistance (CFDA) Number N/A | |
| DOLA Program Manager Robyn DiFalco, (720) 682-5202, (robyn.difalco@state.co.us) | Funding Account Codes Acctg enters CTGG1 # | |
| DOLA Program Assistant Jessica Rupe, (720) 557-4902, (jessica.rupe@state.co.us) | VCUST# 14149 | Address Code AD004 EFT |

THE SIGNATORIES LISTED BELOW AUTHORIZE THIS GRANT

| | |
|--|--|
| <p>DEPARTMENT OF LOCAL AFFAIRS PROGRAM REVIEWER</p> <hr style="width: 80%; margin: 20px auto;"/> <p>By: Robyn DiFalco, LPC Program Manager</p> <p>Date: _____</p> | <p>STATE OF COLORADO Jared S. Polis, Governor DEPARTMENT OF LOCAL AFFAIRS Maria De Cambra, Executive Director</p> <hr style="width: 80%; margin: 20px auto;"/> <p>By: Maria De Cambra, Executive Director</p> <p>Date: _____</p> |
|--|--|

In accordance with §24-30-202 C.R.S., this Grant is not valid until signed and dated below by the State Controller or an authorized delegate (the “Effective Date”).

| |
|--|
| <p><u>STATE CONTROLLER</u> <u>Robert Jaros, CPA, MBA, JD</u></p> <hr style="width: 80%; margin: 20px auto;"/> <p>By: Beulah Messick, Controller Delegate Department of Local Affairs</p> <p>Effective Date: _____</p> |
|--|

TERMS AND CONDITIONS

1. GRANT

As of the Performance Start Date, the State Agency shown on the Summary of Terms and Conditions page of this Intergovernmental Grant Agreement (the “State”) hereby obligates and awards to Grantee shown on the Summary of Terms and Conditions page of this Intergovernmental Grant Agreement (the “Grantee”) an award of Grant Funds in the amount shown on the Summary of Terms and Conditions page of this Intergovernmental Grant Agreement. By accepting the Grant Funds provided under this Intergovernmental Grant Agreement, Grantee agrees to comply with the terms and conditions of this Intergovernmental Grant Agreement and requirements and provisions of all Exhibits to this Intergovernmental Grant Agreement.

2. TERM

A. Initial Grant Term and Extension

The Parties’ respective performances under this Intergovernmental Grant Agreement shall commence on the Performance Start Date and shall terminate on the Grant Expiration Date unless sooner terminated or further extended in accordance with the terms of this Intergovernmental Grant Agreement. Upon request of Grantee, the State may, in its sole discretion, extend the term of this Intergovernmental Grant Agreement by providing Grantee with an updated Intergovernmental Grant Agreement or an executed Option Letter showing the new Grant Expiration Date.

B. Early Termination in the Public Interest

The State is entering into this Intergovernmental Grant Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Intergovernmental Grant Agreement ceases to further the public interest of the State or if State, Federal or other funds used for this Intergovernmental Grant Agreement are not appropriated, or otherwise become unavailable to fund this Intergovernmental Grant Agreement, the State, in its discretion, may terminate this Intergovernmental Grant Agreement in whole or in part by providing written notice to Grantee. If the State terminates this Intergovernmental Grant Agreement in the public interest, the State shall pay Grantee an amount equal to the percentage of the total reimbursement payable under this Intergovernmental Grant Agreement that corresponds to the percentage of Work satisfactorily completed, as determined by the State, less payments previously made. Additionally, the State, in its discretion, may reimburse Grantee for a portion of actual, out-of-pocket expenses not otherwise reimbursed under this Intergovernmental Grant Agreement that are incurred by Grantee and are directly attributable to the uncompleted portion of Grantee’s obligations, provided that the sum of any and all reimbursements shall not exceed the maximum amount payable to Grantee hereunder. This subsection shall not apply to a termination of this Intergovernmental Grant Agreement by the State for breach by Grantee.

C. *Reserved.*

3. AUTHORITY

Authority to enter into this Intergovernmental Grant Agreement exists in the law as follows:

A. *Reserved.*

B. State Authority

Authority to enter into this Grant exists in C.R.S. 24-32-106 and 29-3.5-101 and funds have been budgeted, appropriated and otherwise made available pursuant to C.R.S. Section 29-32-103(1) *et. seq.* (Affordable Housing Support Fund) and a sufficient unencumbered balance hereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies. This Intergovernmental Grant Agreement is funded, in whole or in part, with State funds.

4. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “Budget”** means the budget for the Work described in **Exhibit B**.
- B. “Business Day”** means any day on which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S.
- C. *Reserved.***
- D. “CORA”** means the Colorado Open Records Act, §§24-72-200.1 *et seq.*, C.R.S.
- E. “Grant” or “Intergovernmental Grant Agreement”** means this agreement which offers Grant Funds to Grantee, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future updates thereto.
- F. “Grant Funds” or “Grant Award Amount”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Intergovernmental Grant Agreement.
- G. “Grant Expiration Date”** means the Grant Expiration Date shown on the Summary of Terms and Conditions page of this Intergovernmental Grant Agreement. Work performed after the Grant Expiration Date is not eligible for reimbursement from Grant Funds.
- H. “Performance Start Date”** means the later of the Performance Start Date or the Effective Date shown on the Summary of Terms and Conditions page of this Intergovernmental Grant Agreement.
- I. “Exhibits”** means the following exhibits attached to this Intergovernmental Grant Agreement:
 - i. Exhibit B, Scope of Project**
 - ii. Exhibit G, Form of Option Letter**
- J. “Extension Term”** means the period of time by which the Grant Expiration Date is extended by the State through delivery of an updated Intergovernmental Grant Agreement, an amendment, or an Option Letter.
- K. *Reserved.***
- L. *Reserved.***
- M. “Goods”** means any movable material acquired, produced, or delivered by Grantee as set forth in this Intergovernmental Grant Agreement and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.

- N. “**Incident**” means any accidental or deliberate event that results in, or constitutes an imminent threat of, the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- O. “**Initial Term**” means the time period between the Performance Start Date and the initial Grant Expiration Date.
- P. “**Matching Funds**” or “**Other Funds**” means funds provided by the Grantee as a match required to receive the Grant Funds.
- Q. “**Party**” means the State or Grantee, and “**Parties**” means both the State and Grantee.
- R. *Reserved.*
- S. *Reserved.*
- T. *Reserved.*
- U. *Reserved.*
- V. “**Services**” means the services performed by Grantee as set forth in this Intergovernmental Grant Agreement, and shall include any services rendered by Grantee in connection with the Goods.
- W. “**State Confidential Information**” means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Grantee which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Grantee without restrictions at the time of its disclosure to Grantee; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Grantee to the State; (iv) is disclosed to Grantee, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- X. “**State Fiscal Rules**” means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a) C.R.S.
- Y. “**State Fiscal Year**” means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- Z. “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- AA. *Reserved.*
- BB. “**Subcontractor**” means third-parties, if any, engaged by Grantee to aid in performance of the Work. “Subcontractor” also includes sub-grantees.
- CC. *Reserved.*
- DD. *Reserved.*
- EE. *Reserved.*
- FF. “**Work**” means the delivery of the Goods and performance of the Services described in this Intergovernmental Grant Agreement.

GG. “Work Product” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Performance Start Date that is used, without modification, in the performance of the Work.

Any other term used in this Intergovernmental Grant Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

5. PURPOSE

The purpose of the Local Planning Capacity Grant Program is to increase the capacity of local government planning departments responsible for processing land use, permitting, and zoning applications for affordable housing projects. The purpose of this Grant is described in **Exhibit B**.

6. SCOPE OF PROJECT

Grantee shall complete the Work as described in this Intergovernmental Grant Agreement and in accordance with the provisions of **Exhibit B**. The State shall have no liability to compensate or reimburse Grantee for the delivery of any goods or the performance of any services that are not specifically set forth in this Intergovernmental Grant Agreement.

7. PAYMENTS TO GRANTEE

A. Maximum Amount

Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Grantee any amount under this Grant that exceeds the Grant Award Amount shown on the Summary of Terms and Conditions page of this Intergovernmental Grant Agreement.

- i. The State may increase or decrease the Grant Award Amount by providing Grantee with an updated Intergovernmental Grant Agreement or an executed Option Letter showing the new Grant Award Amount.
- ii. The State shall not be liable to pay or reimburse Grantee for any Work performed or expense incurred before the Performance Start Date or after the Grant Expiration Date.
- iii. Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

B. *Reserved.*

C. Matching Funds.

Grantee shall provide the Other Funds amount shown on the Project Budget in **Exhibit B** (the “Local Match Amount”). Grantee shall appropriate and allocate all Local Match Amounts to the purpose of this Intergovernmental Grant Agreement each fiscal year prior to accepting any Grant Funds for that fiscal year. Grantee does not by accepting this Intergovernmental Grant Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Intergovernmental Grant 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 charges, fees, taxes or penalties of any nature, except as required by Grantee’s laws or policies.

D. Reimbursement of Grantee Costs

The State shall reimburse Grantee's allowable costs, not exceeding the maximum total amount described in this Intergovernmental Grant Agreement for all allowable costs described in this Intergovernmental Grant Agreement and shown in the Budget in **Exhibit B**. The State shall only reimburse allowable costs if those costs are: **(a)** reasonable and necessary to accomplish the Work and for the Goods and Services provided; 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 cost actually incurred).

- i. Upon request of the Grantee, the State may, without changing the maximum total amount of Grant Funds, adjust or otherwise reallocate Grant Funds among or between each line of the Project Budget by providing Grantee with an executed Option Letter or formal amendment.

E. Close-Out and De-obligation of Grant Funds

Grantee shall close out this Grant no later than 90 days after the Grant Expiration Date. To complete close out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Intergovernmental Grant Agreement and Grantee's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. Any Grant Funds remaining after submission and payment of Grantee's final reimbursement request are subject to de-obligation by the State.

F. Erroneous Payments

The State may recover, at the State's discretion, payments made to Grantee in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Grantee. The State may recover such payments by deduction from subsequent payments under this Intergovernmental Grant Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Grantee, or by any other appropriate method for collecting debts owed to the State.

8. REPORTING – NOTIFICATION**A. Performance and Final Status**

Grantee shall submit all financial, performance and other reports to the State no later than the end of the close out period described in §7.E.

B. Violations Reporting

Grantee shall disclose, in a timely manner, in writing to the State, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting this Award.

9. GRANTEE RECORDS**A. Maintenance and Inspection**

Grantee shall make, keep, and maintain, all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to this Grant for a period of three years following the completion of the close out of this Grant. Grantee shall permit the State to audit, inspect, examine, excerpt, copy and transcribe all such records during normal business hours at Grantee's office or place of business, unless

the State determines that an audit or inspection is required without notice at a different time to protect the interests of the State.

B. Monitoring

The State will monitor Grantee's performance of its obligations under this Intergovernmental Grant Agreement using procedures as determined by the State. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work.

C. Audits

Grantee shall comply with all State and federal audit requirements.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Grantee shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Grantee for the sole and exclusive benefit of the State, unless those State Records are otherwise publically available at the time of disclosure or are subject to disclosure by Grantee under CORA. Grantee shall not, without prior written approval of the State, use for Grantee's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Intergovernmental Grant Agreement. Grantee shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Grantee or any of its Subcontractors will or may receive the following types of data, Grantee or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Grant as an Exhibit, if applicable, **(ii)** the most recently updated PCI (payment card information) Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information (CJI) Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act (HIPAA) for all protected health information (PHI) and the HIPAA Business Associate Agreement attached to this Grant, if applicable. Grantee shall immediately forward any request or demand for State Records to the State's principal representative.

B. 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 Intergovernmental Grant Agreement. Grantee shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements with provisions at least as protective as those in this Grant, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State

Confidential Information. Grantee shall provide copies of those signed nondisclosure restrictions to the State upon request.

C. Use, Security, and Retention

Grantee shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. 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 Grant, 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.

D. 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. 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, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding Personally Identifiable Information (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, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Grantee shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S. In addition, as set forth in §24-74-102, *et seq.*, C.R.S., Grantee, including, but not limited to, Grantee'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 Grantee is given direct access to any State databases containing PII, Grantee shall execute, on behalf of itself and its employees, the certification on an annual basis, attached as an exhibit, if applicable. Grantee's duty and obligation to certify as set forth in the exhibit shall continue as long as Grantee has direct access to any State databases containing PII. If Grantee uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Grantee shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

11. CONFLICTS OF INTEREST

Grantee shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Grantee under this Grant. Grantee acknowledges that, with respect to this Grant, even the appearance of a conflict of interest shall be harmful to the State's interests and absent the State's prior written approval, Grantee shall refrain

from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations under this Grant. If a conflict or the appearance of a conflict arises, or if Grantee is uncertain whether a conflict or the appearance of a conflict has arisen, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. 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.

12. INSURANCE

Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"). Grantee shall ensure that any Subcontractors maintain all insurance customary for the completion of the Work done by that Subcontractor and as required by the State or the GIA.

13. REMEDIES

In addition to any remedies available under any Exhibit to this Intergovernmental Grant Agreement, if Grantee fails to comply with any term or condition of this Grant, the State may terminate some or all of this Grant and require Grantee to repay any or all Grant Funds to the State in the State's sole discretion. The State may also terminate this Intergovernmental Grant Agreement at any time if the State has determined, in its sole discretion, that Grantee has ceased performing the Work without intent to resume performance, prior to the completion of the Work.

14. DISPUTE RESOLUTION

Except as herein specifically provided otherwise, disputes concerning the performance of this Grant that cannot be resolved by the designated Party representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager or official designated by Grantee for resolution.

15. NOTICES AND REPRESENTATIVES

Each Party shall identify an individual to be the principal representative of the designating Party and shall provide this information to the other Party. All notices required or permitted to be given under this Intergovernmental Grant Agreement shall be in writing, and shall be delivered either in hard copy or by email to the representative of the other Party. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §15.

16. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

Grantee hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Grantee or any Subcontractors or Subgrantees and paid for with Grant Funds provided by the State pursuant to this Grant.

17. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions, committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. No term or

condition of this Intergovernmental Grant 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.

18. GENERAL PROVISIONS

A. Assignment

Grantee's rights and obligations under this Grant are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Grantee's rights and obligations approved by the State shall be subject to the provisions of this Intergovernmental Grant Agreement.

B. Captions and References

The captions and headings in this Intergovernmental Grant Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Intergovernmental Grant Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

C. Entire Understanding

This Intergovernmental Grant Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Intergovernmental Grant Agreement.

D. Modification

The State may modify the terms and conditions of this Grant by issuance of an updated Intergovernmental Grant Agreement, which shall be effective if Grantee accepts Grant Funds following receipt of the updated letter. The Parties may also agree to modification of the terms and conditions of the Grant in either an option letter or a formal amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules.

E. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Intergovernmental Grant Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Performance Start Date. Grantee shall strictly comply with all applicable Federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

G. Order of Precedence

In the event of a conflict or inconsistency between this Intergovernmental Grant Agreement and any Exhibits or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions in §19 of the main body of this Grant;
- ii. Any executed Option Letter and Amendment;
- iii. The provisions of this Intergovernmental Grant Agreement; and
- iv. The provisions of any exhibits to this Intergovernmental Grant Agreement.

H. Severability

The invalidity or unenforceability of any provision of this Intergovernmental Grant Agreement shall not affect the validity or enforceability of any other provision of this Intergovernmental Grant Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under the Grant in accordance with the intent of the Grant.

I. Survival of Certain Intergovernmental Grant Agreement Terms

Any provision of this Intergovernmental Grant Agreement that imposes an obligation on a Party after termination or expiration of the Grant shall survive the termination or expiration of the Grant and shall be enforceable by the other Party.

J. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described above, this Intergovernmental Grant Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

K. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Intergovernmental Grant 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.

L. Accessibility

- i. Grantee shall comply with and adhere to Section 508 of the U.S. Rehabilitation Act of 1973, as amended.
- ii. Grantee shall comply with and the Work Product provided under this Agreement shall be in compliance with all applicable provisions of §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability*, as established by 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 version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.

- iii. 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.

M. *Reserved.*

19. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

A. STATUTORY APPROVAL. §24-30-202(1) C.R.S.

This Intergovernmental Grant Agreement shall not be valid until it has been approved by the Colorado State Controller or designee. If this Intergovernmental Grant Agreement is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Intergovernmental Grant Agreement shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5) C.R.S.

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the Parties, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. No term or condition of this Intergovernmental Grant 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.

D. INDEPENDENT CONTRACTOR.

Grantee shall perform its duties hereunder as an independent Grantee 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 Intergovernmental Grant 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.**

E. 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.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Intergovernmental Grant 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 Intergovernmental Grant Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Intergovernmental Grant 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 this provision in any way shall be void ab initio. Nothing in this Intergovernmental Grant Agreement shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Intergovernmental Grant 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 Intergovernmental Grant 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 Intergovernmental Grant Agreement, including, without limitation, immediate termination of this Intergovernmental Grant Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507 C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Intergovernmental Grant 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.

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EXHIBIT B – SCOPE OF PROJECT (SOP)

1. PURPOSE

1.1. Local Planning Capacity. The purpose of the Local Planning Capacity (LPC) grant program is to provide funding to local governments to increase the capacity of their planning departments responsible for processing land use, permitting, and zoning applications for housing projects. “Fast Track” or expedited review of affordable housing projects is a top priority to increase the number of units built. Grant Funds may be used support new staff wages, hiring consultants, implementing new systems and technologies, revising land use development codes, regional collaborations, and tracking and documentation of Prop 123 goals.

2. DESCRIPTION OF THE PROJECT(S) AND WORK

2.1. Project Description. The Project consists of upgrading development review software and hiring consultants to support Lean process improvements across City departments in order to implement a system to expedite the development review process for affordable housing projects and generally advance affordable housing goals in Fort Collins, Colorado.

2.2. Work Description. The City of Fort Collins (Grantee) will hire qualified consultants, with expertise in Lean principles and project management, to explore process improvements across City departments in order to implement an expedited review process for affordable housing. Work includes auditing existing conditions, presenting findings, making recommendations, staff training, and implementation of process improvements. Additional Work includes upgrades to development review software as part of the City’s development review digital transformation project. Grantee may also conduct targeted stakeholder engagement activities related to some of the Project elements, where applicable. The Grantee will complete quarterly performance metric reporting in a form provided by DOLA. Additionally, at Project Closeout, a Final Informal Memo will be submitted that identifies the following: 1) description of the Grantee’s approach to expedited review of affordable housing; 2) the outcome of that effort, including whether new policies were formally adopted and an assessment how effectively this approach has been at reducing the amount of time required for review; 3) any other project outcomes that impacted the Grantee’s Prop 123-related goals; 4) description of community engagement efforts; 5) the number of affordable housing units that were either permitted or preserved during the grant period; 6) the degree to which this grant has had a transformative impact on Grantee’s affordable housing efforts; and 7) any lessons learned. Grantee will own all resulting documents.

2.2.1. A contract for consultant services shall be awarded by Grantee to a qualified firm through a formal Request For Proposals or competitive selection process.

2.2.2. A contract for the purchase or acquisition of materials or equipment shall be awarded by Grantee to a qualified vendor or firm through a competitive selection process with the Grantee being obligated to award the contract to the lowest responsive, responsible bidder meeting the Grantee's specifications.

2.2.3. During a period of ten (10) years following the date of closeout of the Project by the State, the Grantee may **not change the ownership of the equipment**. If the Grantee decides to change the ownership of the equipment to an entity which the State determines does not qualify in meeting the original intent of the Project, the Grantee must reimburse to the State an amount equal to the current fair market value of the equipment, less any portion of the value attributable to expenditures of non-LPC grant funds for acquisition of and improvements to, the equipment. At the end of the ten (10) year period following the date of completion and thereafter, no State restrictions on ownership of the equipment shall be in effect.

2.3. Responsibilities. Grantee shall be responsible for the completion of the Work and to provide required documentation to DOLA as specified herein.

2.3.1. Grantee shall notify DOLA at least 30 days in advance of Project Completion.

2.4. Recapture of Advanced Funds. To maximize the use of Grant Funds, the State shall evaluate Grantee's expenditure of the Grant Funds for timeliness and compliance with the terms of this Grant.

DOLA reserves the right to recapture advanced Grant Funds when Grantee has not or is not complying with the terms of this Grant.

2.5. Eligible Expenses. Eligible expenses shall include: consultant fees, RFP/bid advertisements, equipment and software acquisition costs, freight costs, hardware, software and training costs, installation costs, and attorney’s fees.

2.5.1. Direct costs are those that are identified as program-specific allowable costs of implementing the grant program objective.

2.5.2. Ineligible Expenses. Ineligible expenses shall include, but are not limited to,: job posting or recruitment costs, indirect overhead or general operating costs, housing construction, pre-development costs, lobbying, food, drink, or entertainment costs. Grant Funds may not be used to cover legal costs to defend.

3. DEFINITIONS

3.1. Project Budget Lines.

3.1.1. “Consultant Services” means consultant fees, RFP/bid advertisements, and attorney’s fees.

3.1.2. “Equipment, Software Acquisition” means freight costs, RFP/Bid advertisement costs, hardware, software and training costs, installation costs, and attorney’s fees.

3.2. “Substantial Completion” means the Work is sufficiently complete in accordance with the Grant so it can be utilized for its intended purpose without undue interference.

4. DELIVERABLES

4.1. Outcome. The final outcome of this Grant is completion of the development review software upgrade, documentation/reports associated with the process improvement efforts, implementation of a system to expedite the development review process for affordable housing projects and / or achieve Proposition 123 requirements in Fort Collins, Colorado, and a completed Final Informal Memo, submitted to DOLA.

4.2. Service Area. The performance of the Work described within this Grant shall be located in Fort Collins, Colorado.

4.3. Performance Measures. Grantee shall comply with the following performance measures:

| <u>Milestone/Performance Measure/Grantee will:</u> | <u>By:</u> |
|--|--|
| Provide DOLA with baseline data on estimated review time for affordable housing projects. DOLA will provide the template. | Within 30 days after the Effective Date of this Intergovernmental Grant Agreement. |
| Begin procurement process or Contractor mobilization. | Within 90 days after the Effective Date of this Intergovernmental Grant Agreement. |
| Provide DOLA with a copy of Grantee’s Consultant Agreement or its Scope of Work. | Within 14 days after the Effective Date of the subcontract(s). |
| Documentation of efforts to explore, adopt, and/or implement policies to expedite review of affordable housing. | Within 30 days after the Policy adoption. |
| Submit draft deliverables (land use/zoning code or policy updates, reports/analysis/studies) to DOLA for review prior to adoption. | Within 7 days prior to a scheduled public hearing. |
| Submit Quarterly Pay Requests | See §4.5.2 below |
| Submit Quarterly Status Reports | See §4.5.2 below |

| | |
|-----------------------------|----------------|
| Submit Project Final Report | March 31, 2026 |
|-----------------------------|----------------|

4.4. Budget Line Adjustments.

- 4.4.1. Grant Funds.** Grantee may request in writing that DOLA move Grant Funds between and among budget lines, so long as the total amount of Grant Funds remains unchanged. To make such budget line changes, DOLA will use an Option Letter (**Exhibit G**).
- 4.4.2. Other Funds.** Grantee may increase or decrease the amount of Other Funds in any one or any combination of budget lines as described in **§6.2**, or move Other Funds between and among budget lines, so long as the total amount of such “Other Funds” is not less than the amount set forth in **§6.2** below. Grantee may increase the Total Project Cost with “Other Funds” and such change does not require an amendment or option letter. DOLA will verify the Grantee’s contribution of “Other Funds” and compliance with this section at Project Closeout.

4.5. Quarterly Pay Request and Status Reports. Beginning 30 days after the end of the first quarter following execution of this Grant and for each quarter thereafter until termination of this Grant, Grantee shall submit Pay Requests and Status Reports using a form provided by the State. The State shall pay the Grantee for actual expenditures made in the performance of this Grant based on the submission of statements in the format prescribed by the State. The Grantee shall submit Pay Requests setting forth a detailed description and provide documentation of the amounts and types of reimbursable expenses. Pay Requests and Status Reports are due within 30 days of the end of the quarter but may be submitted more frequently at the discretion of the Grantee.

4.5.1. For quarters in which there are no expenditures to reimburse, Grantee shall indicate zero (0) requested in the Pay Request and describe the status of the Work in the Status Report. The report will contain an update of expenditure of funds by budget line as per **§6.2** of this **Exhibit B** Scope of Project as well as a projection of all Work expected to be accomplished in the following quarter, including an estimate of Grant Funds to be expended.

4.5.2. Specific submittal dates.

| Quarter | Year | Due Date | Pay Request Due | Status Report Due |
|---------------------------|------|------------------|-----------------|-------------------|
| 2 nd (Apr-Jun) | 2024 | JULY 15, 2024* | Yes | Yes |
| 3 rd (Jul-Sep) | 2024 | October 30, 2024 | Yes | Yes |
| 4 th (Oct-Dec) | 2024 | January 30, 2025 | Yes | Yes |
| 1 st (Jan-Mar) | 2025 | April 30, 2025 | Yes | Yes |
| 2 nd (Apr-Jun) | 2025 | JULY 15, 2025* | Yes | Yes |
| 3 rd (Jul-Sep) | 2025 | October 30, 2025 | Yes | Yes |
| 4 th (Oct-Dec) | 2025 | January 30, 2026 | Yes | Yes |

***State fiscal year runs July 1 – June 30 annually. Grantee must request reimbursement for all eligible costs incurred during a State fiscal year by July 15 annually.**

4.6. DOLA Acknowledgment. The Grantee agrees to acknowledge the Colorado Department of Local Affairs in any and all materials or events designed to promote or educate the public about the Work and the Project, including but not limited to: press releases, newspaper articles, op-ed pieces, press conferences, presentations and brochures/pamphlets.

5. PERSONNEL

5.1. Responsible Administrator. Grantee’s performance hereunder shall be under the direct supervision of **Clay Frickey, Planning Manager, (cfrickey@fcgov.com)**, who is an employee or agent of Grantee, and is hereby designated as the responsible administrator of this Project and a key person under this **§5**. Such administrator shall be updated through the process in **§5.3**. If this person is an agent of the

Grantee, such person must have signature authority to bind the Grantee and must provide evidence of such authority.

5.2. Other Key Personnel. Meaghan Overton, Housing Manager, (moverton@fcgov.com). Such key personnel shall be updated through the process in §5.3.

5.3. Replacement. Grantee shall immediately notify the State if any key personnel specified in §5 of this Exhibit B cease to serve. All notices sent under this subsection shall be sent in accordance with §15 of the Grant.

5.4. DLG Program Manager: Robyn DiFalco, (720) 682-5202, (robyn.difalco@state.co.us).

5.5. DLG Program Assistant: Jessica Rupe, (720) 557-4902, (jessica.rupe@state.co.us).

6. FUNDING

The State provided funds shall be limited to the amount specified under the “Grant Funds” column of §6.2, Budget, below.

6.1. Matching/Other Funds. Grantee shall provide **at least 21%** of the Total Project Cost as documented by Grantee and verified by DOLA at Project Closeout. Initial estimates of Grantee’s contribution are noted in the “Other Funds” column of §6.2 below. Increases to Grantee’s contribution to Total Project Cost do not require modification of this Intergovernmental Grant Agreement and/or Exhibit B.

6.2. Budget

| Budget Line(s) | | Total Project Cost | Grant Funds | Other Funds | Other Funds Source |
|----------------|---------------------------------|--------------------|------------------|-----------------|--------------------|
| Line # | Cost Category | | | | |
| 1 | Consultant Services | \$200,000 | \$200,000 | \$0 | Grantee |
| 2 | Equipment, Software Acquisition | \$55,000 | \$0 | \$55,000 | Grantee |
| Total | | \$255,000 | \$200,000 | \$55,000 | |

7. PAYMENT

Payments shall be made in accordance with this section and the provisions set forth in §7 of the Grant.

7.1. Payment Schedule. If Work is subcontracted or subgranted and such Subcontractors and/or Subgrantees are not previously paid, Grantee shall disburse Grant Funds received from the State to such Subcontractor or Subgrantee within fifteen days of receipt. Excess funds shall be returned to DOLA.

| Payment | Amount | |
|--------------------|------------------|--|
| Interim Payment(s) | \$190,000 | Paid upon receipt of actual expense documentation and written Pay Requests from the Grantee for reimbursement of eligible approved expenses. |
| Final Payment | \$10,000 | Paid upon Substantial Completion of the Project (as determined by the State in its sole discretion), provided that the Grantee has submitted, and DOLA has accepted, all required reports. |
| Total | \$200,000 | |

7.2. Interest. Grantee or Subgrantee may keep interest earned from Grant Funds up to \$100 per year for administrative expenses.

8. ADMINISTRATIVE REQUIREMENTS

8.1. Reporting. Grantee shall submit the following reports to DOLA using the State-provided forms. DOLA may withhold payment(s) if such reports are not submitted timely.

8.1.1. Quarterly Pay Request and Status Reports. Quarterly Pay Requests shall be submitted to DOLA in accordance with §4.5 of this **Exhibit B**.

8.1.2. Final Reports. Within 90 days after the completion of the Project, Grantee shall submit the final Pay Request and Status Report to DOLA.

8.2. Monitoring. DOLA shall monitor this Work on an as-needed basis. DOLA may choose to audit the records for activities performed under this Grant. Grantee shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of activities undertaken pursuant to an executed Grant. Such books and records shall contain documentation of the Grantee's pertinent activity under this Grant in accordance with Generally Accepted Accounting Principles.

8.2.1. Subgrantee/Subcontractor. Grantee shall monitor its Subgrantees and/or Subcontractors, if any, during the term of this Grant. Results of such monitoring shall be documented by Grantee and maintained on file.

8.3. Bonds. If Project includes construction or facility improvements, Grantee and/or its contractor (or subcontractors) performing such work shall secure the bonds hereunder from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR Part 223 and are authorized to do business in Colorado.

8.3.1. Bid Bond. A bid guarantee from each bidder equivalent to 5 percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

8.3.2. Performance Bond. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

8.3.3. Payment Bond. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

8.3.4. Substitution. The bonding requirements in this §8.3 may be waived in lieu of an irrevocable letter of credit if the price is less than \$50,000.

9. CONSTRUCTION/RENOVATION. The following subsections shall apply to construction and/or renovation related projects/activities:

9.1. Plans & Specifications. Construction plans and specifications shall be drawn up by a qualified engineer or architect licensed in the State of Colorado, or pre-engineered in accordance with Colorado law, and hired by the Grantee through a competitive selection process.

9.2. Procurement. A construction contract shall be awarded to a qualified construction firm through a formal selection process with the Grantee being obligated to award the construction contract to the lowest responsive, responsible bidder meeting the Grantee's specifications.

9.3. Subcontracts. Copies of any and all contracts entered into by the Grantee in order to accomplish this Project shall be submitted to DOLA upon request, and any and all contracts entered into by the Grantee or any of its Subcontractors shall comply with all applicable federal and state laws and shall be governed by the laws of the State of Colorado.

9.4. Standards. Grantee, Subgrantees and Subcontractors shall comply with all applicable statutory design and construction standards and procedures that may be required, including the standards required by Colorado Department of Public Health and Environment, and shall provide the State with documentation of such compliance.

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AGENDA ITEM SUMMARY

City Council



STAFF

Nina Bodenhamer, City Give
Emily Wegner, Lead Specialist, Environmental Sustainability, Environmental Services

SUBJECT

Second Reading of Ordinance No. 060, 2024, Appropriating Philanthropic Revenue Received Through City Give for Environmental Services Curbside Recycling.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on May 7, 2024, appropriates an award of approximately \$664,000 to defray the cost of new recycling carts being purchased for the City’s Residential Contracted Trash and Recycling Program and to support recycling outreach and education for the community.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

The City Residential Contracted Trash and Recycling collection program will begin on September 30, 2024, and include weekly single-stream curbside recycling collection for approximately 41,500 households within City limits.

The Environmental Services Department in the Sustainability Services Area received a grant from the Recycling Partnership totaling approximately \$622,500 to support the purchase of recycling carts and an additional \$41,500 to support additional recycling outreach and education.

In addition to the cash grants, Recycling Partnership will provide access to resources, time, and other in-kind services at an estimated value of up to \$125,000. The purpose of these in-kind services is to support the City’s public recycling program through technical support, including strategic planning, program assessment, measurement activities, and education and outreach.

The City through their trash and recycling contractor, Republic Services, will distribute recycling carts to residents. Grant funding will help offset the cost of purchasing and distributing one (1) recycling cart to each eligible household. Customers’ service rates have been reduced by \$0.25/month to account for the grant funding.

Republic Services will make the initial purchase of all carts for the program, including the recycling carts under the Grant Agreement. Republic Services will invoice the City for the amount of the grant and recover

the remaining cost of the carts by amortizing the cost over the life of the recycling services contract. Ownership of the carts will transfer from Republic Services to the City upon expiration or termination of the City's contract with Republic Services.

The City's responsibilities include but are not limited to:

- The recycling carts, embedded RFID tags, must be manufactured with a minimum of five percent (5%) residential post-consumer recycled plastic content based on the weight of the entire mass of the body, lid, and wheels.
- The development and implementation of an education program utilizing the City's website, digital and print material content, and supported events. The goal of the education program is to communicate the cart delivery schedule, acceptable recyclable materials in the new program, and the recycling collection schedule.
- The production and distribution of educational materials with the delivery of new recycling carts.
- Utilization of program analysis and measurement activities.

The Recycling Partnership is a mission driven non-governmental organization that works to unlock the environmental and economic benefits of recycling. For nearly a decade, Recycling Partnership has reached millions of households, diverted hundreds of millions of incremental pounds of valuable recyclables from landfills, delivered hundreds of thousands of recycling carts, and has led innovative recycling systems change.

CITY FINANCIAL IMPACTS

This item appropriates \$664,000 in philanthropic revenue to support the City's curbside recycling collection system and community engagement as designated by the donor. The award from Recycling Partnership is a reimbursement award; the City will provide documentation accompanied by reasonable and appropriate summaries of expenses paid outlined in the Agreement.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 060, 2024
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PHILANTHROPIC REVENUE RECEIVED THROUGH
CITY GIVE FOR ENVIRONMENTAL SERVICES CURBSIDE RECYCLING

A. The City’s residential waste collection program (the “Program”) will begin on September 30, 2024, and include weekly single-stream curbside recycling collection for approximately 41,500 households within City limits.

B. The City has been awarded a reimbursement-based grant from The Recycling Partnership totaling approximately \$622,500 to support the purchase of recycling carts and an additional \$41,500 to support additional recycling outreach and education (the “Grant”). In addition to the Grant, The Recycling Partnership will provide the City access to resources, time, and other in-kind services at an estimated value of up to \$125,000.

C. The Grant will be used to purchase recycling carts delivered to residents as part of the Program. Republic Services, the City’s contracted waste hauler, will make the initial purchase of all carts for the Program, including recycling carts. Republic Services will invoice the City for the amount of the Grant dedicated to purchasing recycling carts and recover the remaining cost of the carts by amortizing the cost over Republic Services’ five-year contract with the City. Program customers will receive a discount on their bill of \$0.25 per month to reflect the value of the Grant funding. Ownership of the carts will transfer from Republic Services to the City upon expiration or termination of the City’s contract with Republic Services.

D. This appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of improving and economizing recycling services offered to City residents.

E. 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 from such revenues and funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated.

F. 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.

G. 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.

H. The City Council wishes to designate the appropriation herein for Environmental Services Curbside Recycling as an appropriation that shall not lapse until the earlier of the expiration of the grant or donation or the City’s expenditure of all funds received from such grant or donation.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. There is hereby appropriated from new Philanthropic Revenue in the General Fund the sum of SIX HUNDRED SIXTY-FOUR THOUSAND DOLLARS (\$664,000) to be expended in the General Fund for curbside recycling collection.

Section 2. The appropriation herein for Environmental Services Curbside Recycling 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 donation or the City’s expenditure of all funds received from such grant or donation.

Introduced, considered favorably on first reading on May 7, 2024, and approved on second reading for final passage on May 21, 2024.

Mayor

ATTEST:

Interim City Clerk

Effective Date: May 31, 2024
Approving Attorney: Ted Hewitt



AGENDA ITEM SUMMARY
City Council

STAFF

Nina Bodenhamer, City Give Director

SUBJECT

Second Reading of Ordinance No. 061, 2024, Appropriating Prior Year Reserves and Unanticipated Philanthropic Revenue Received Through City Give for Various Programs and Services as Designated by the Donors.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on May 7, 2024, requests appropriation of \$58,235 in philanthropic revenue received through City Give. 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 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.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

The City has long been the beneficiary of local generosity and has a valuable role in our community’s philanthropic landscape. Generosity is demonstrated in both large and modest gifts, each appreciated for its investment in the mission and the range of services the City strives to deliver.

The City received several individual philanthropic donations supporting various departments totaling \$58,235 and these funds are currently unappropriated. As acknowledged by Section 2.5 of the City’s Fiscal Management Policy 2-Revenue approved by Council, the City Manager has adopted the City Give Financial Governance Policy to provide for the responsible and efficient management of charitable donations to the City.

These generous donations have been directed by the respective donors to be used by the City for designated uses within and for the benefit of City service areas and programs. These gifts represent a range of support for City programming and services: 9-11 Memorial, Visual Arts, Restorative, Forestry, FC Moves, and the Youth Golf Scholarship Fund.

CITY FINANCIAL IMPACTS

This Ordinance will appropriate \$4,815 received in 2023 being appropriated from prior year reserves, and \$53,420 in new philanthropic revenue received in 2024 through City Give for gifts to various City departments support a variety of programs and services.

The donations shall be expended from the designated fund solely for the donor’s directed intent.

From Prior Year Reserves:

| | |
|-----------------------|---------|
| Capital Projects Fund | \$2,800 |
| General Fund | \$2,015 |

From New Unanticipated Philanthropic Revenue:

| | |
|------------------------------|----------|
| General Fund | \$14,920 |
| Golf Fund | \$27,000 |
| Transportation Services Fund | \$1,500 |
| Capital Projects Fund | \$10,000 |

The funds have been received and accepted per City Give Administrative and Financial Policy.

The City Manager has also determined that these appropriations, are available and previously unappropriated from their designated City Fund and will not cause the total amount appropriated in those Funds to exceed the current estimate of actual and anticipated revenues.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 061, 2024
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES AND
UNANTICIPATED PHILANTHROPIC REVENUE RECEIVED
THROUGH CITY GIVE FOR VARIOUS PROGRAMS AND
SERVICES AS DESIGNATED BY THE DONORS

A. In 2023, the City received seven donations totaling \$4,815 and since the beginning of 2024, nineteen donations totaling \$53,420 to be used for various City programs and services.

B. The donors have directed these donations to be used solely by the City for certain designated uses.

C. As acknowledged by Section 2.5 of the City’s Fiscal Management Policy 2 – Revenue approved by City Council, the City Manager has adopted the City Give Financial Governance Policy to provide for the responsible and efficient management of charitable donations to the City (the “City Give Policy”).

D. Section 52.2.C. of the City Give Policy authorizes the City Give Director to accept donations of \$5,000 or less for the City service area intended by the donor to be benefited and Section 52.2.D. of the City Give Policy similarly authorizes the City Manager to accept donations of more than \$5,000 up to \$100,000.

E. As so authorized, the City Give Director and City Manager have accepted for the benefited City service areas, as applicable, the donations to be appropriated in this Ordinance to be used solely as directed by each donor.

F. Article V, Section 9 of the City Charter permits the City Council, upon the 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

G. 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.

H. The City Manager has recommended the appropriations described in Sections 1 and 2 of this Ordinance and determined that the amount of each of these appropriations is available and previously unappropriated from the funds named in Sections 1 and 2 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.

I. Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds, 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 donation or the City's expenditure of all funds received from such donation.

J. The City Council wishes to designate the appropriation herein for various City Give donations as an appropriation that shall lapse at the end of this fiscal year, except for the appropriation from the Golf Fund for a golf scholarship, which shall be non-lapsing.

K. These appropriations will serve the public purpose of providing additional revenue to each of the benefited service areas to aid them in accomplishing the public purposes for which each service area is established thereby benefitting the public's health, safety and welfare.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. There is hereby appropriated from the following funds these amounts of philanthropic revenue held in prior year reserves to be expended as designated by the donors:

| | |
|-----------------------|----------|
| Capital Projects Fund | \$ 2,800 |
| General Fund | \$ 2,015 |

Section 2. There is hereby appropriated from the following funds these amounts of philanthropic revenue received in 2024 to be expended as designated by the donors:

| | |
|------------------------------|-----------|
| Capital Projects Fund | \$ 10,000 |
| General Fund | \$ 14,920 |
| Transportation Services Fund | \$ 1,500 |
| Golf Fund | \$ 27,000 |

Section 3. As authorized in Article V, Section 11 of the City Charter, the appropriations herein for various City Give donations are hereby designated as appropriations that shall lapse at the end of this fiscal year; provided, however, that the appropriation herein from the Golf Fund for a golf scholarship donation is hereby designated as an appropriation that shall not lapse at the end of the fiscal year but shall

continue until the earlier of the expiration of the donation or the City's expenditure of all funds received from such donation.

Introduced, considered favorably on first reading on May 7, 2024, and approved on second reading for final passage on May 21, 2024.

Mayor

ATTEST:

Interim City Clerk

Effective Date: May 31, 2024
Approving Attorney: Ryan Malarky



AGENDA ITEM SUMMARY

City Council

STAFF

Nina Bodenhamer, City Give Director

SUBJECT

Second Reading of Ordinance No. 062, 2024, Appropriating Philanthropic Revenue Received Through City Give for the Art in Public Places Program, Pianos About Town Project.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on May 7, 2024, considers an appropriation of \$47,115 in philanthropic revenue received through City Give for the Art in Public Places program for the designated purpose of Pianos About Town, a collaborative effort among the City of Fort Collins Art in Public Places program, the Fort Collins Downtown Development Authority, and the donor, Bohemian Foundation.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

Pianos About Town is a collaboration between the City’s Art in Public Places program (APP), the Downtown Development Authority’s Art in Action program, and Bohemian Foundation. The project involves local artists painting or artistically decorating pianos at the Art in Action tent in Old Town Square where the public can watch the creative process and interact with the artists.

Pianos About Town contributes to the vibrancy of Fort Collins, making art and music fun and accessible for all. These colorfully painted pianos are rotated throughout Fort Collins for the public to enjoy as both musical instruments and works of art.

The \$47,115 in philanthropic revenue is the second partial award toward a total 2023/2024 grant of \$94,301.

The first pianos were placed in Old Town in 2010. Since then, more than 130 donated pianos have been decorated and placed into rotation at sites throughout Fort Collins. The painting and decorating of pianos takes place throughout the year but is moved to indoor venues during the winter months. Area businesses play a key role in the success of the project by "adopting" the painted pianos and covering them during inclement weather.

The City’s responsibilities for the funding include but are not limited to: annually acquiring, repairing, pre-painting preparing, and tuning twelve to thirteen pianos; the coordination of placement, moving and piano tuning; working with appropriate City departments, the DDA and property owners on logistics for placing pianos in desired locations; selecting and managing the visual artists; managing logistics with area partners

or other entities to cover and uncover pianos; and collaborating with Bohemian Foundation to host Pianos About Town related events.

The grant is awarded by Bohemian Foundation, a Fort Collins-based private family foundation that supports local, national, and global efforts to build strong communities. Funding for Equity Indicators was awarded by Bohemian Foundation's Community Programs which is committed to the care and enrichment of our local community.

CITY FINANCIAL IMPACTS

If adopted, this Ordinance will appropriate \$47,115 in unanticipated philanthropic revenue in the Cultural Services and Facilities Fund for the Art in Public Places program. The funds have been received and accepted per City Give Administrative and Financial Policy.

The City Manager recommends the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Cultural Services and Facilities Fund and will not cause the total amount appropriated in the Cultural Services and Facilities Fund to exceed the current estimate of actual and anticipated revenues to be received in the Cultural Services and Facilities Fund during this fiscal year.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 062, 2024
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PHILANTHROPIC REVENUE RECEIVED
THROUGH CITY GIVE FOR THE ART IN PUBLIC PLACES
PROGRAM, PIANOS ABOUT TOWN PROJECT

A. The Pianos About Town project was started by the City’s Art in Public Places (APP) program in 2010 and involved local artists painting or decorating pianos in Old Town Square, with the finished pianos being rotated throughout Fort Collins for the public to enjoy.

B. Pianos About Town is now a collaboration between APP, the Downtown Development Authority’s Art in Action Program, and Bohemian Foundation.

C. Bohemian Found has donated \$47,115 to support Pianos About Town in 2024, and this Ordinance would appropriate the donated funds for that purpose.

D. This appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of contributing to the vibrancy of Fort Collins by making art and music fun and accessible for all.

E. 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 from such revenues and funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated.

F. The City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Cultural Services and Facilities Fund and will not cause the total amount appropriated in the Cultural Services and Facilities 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.

G. 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.

H. The City Council wishes to designate the appropriation herein for Pianos About Town donation as an appropriation that shall not lapse until the earlier of the expiration of the grant or donation or the City’s expenditure of all funds received from such grant or donation.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. There is hereby appropriated from New Philanthropic Revenue in the Cultural Services and Facilities Fund the sum of FORTY-SEVEN THOUSAND ONE HUNDRED FIFTEEN DOLLARS (\$47,115) to be expended in the Cultural Services and Facilities Fund for Pianos About Town.

Section 2. The appropriation herein for Pianos About Town 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 donation or the City's expenditure of all funds received from such grant or donation.

Introduced, considered favorably on first reading on May 7, 2024, and approved on second reading for final passage on May 21, 2024.

Mayor

ATTEST:

Interim City Clerk

Effective Date: May 31, 2024
Approving Attorney: Ted Hewitt

AGENDA ITEM SUMMARY

City Council



STAFF

Jim Lenderts, Marijuana Enforcement Officer, Police Services
Zack Mozer, Financial Analyst

SUBJECT

Second Reading of Ordinance No. 063, 2024, Making a Supplemental Appropriation from the Colorado Department of Local Affairs Gray and Black-Market Marijuana Enforcement Grant Program for the Fort Collins Police Services Marijuana Enforcement Program.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on May 7, 2024, supports Fort Collins Police Services' Marijuana Enforcement Program in investigating gray and black-market marijuana cases by appropriating \$39,641 of unanticipated grant revenue from the Colorado Department of Local Affairs (DOLA), Gray and Black-Market Marijuana Enforcement.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

"Gray Market" is a term that refers to marijuana grown legally then sold in a way that would be illegal. An example would be where someone has a medical card with an "extended plant count" which may allow them to grow up to 99 plants, but instead of using the product for their own medical needs, they sell it on the black market either locally to minors or someone in another state.

For the past five years, the State has made grant funding available to help address unlicensed and illegal marijuana activity in Colorado. In 2023, Police Services received \$32,339 and continue to investigate complaints of illegal residential cultivation operations and unlicensed smoke shops selling synthetic marijuana to minors.

On January 25, 2024, the City was awarded \$39,641 through DOLA Gray and Black-Market Marijuana Enforcement Grant Program for the purpose of investigating these cases of illegal marijuana cultivation and distribution outside the legal, licensing framework.

Use of this grant funding and investigations has not only addressed criminal activity but also improved neighborhood livability and provided insight into the level of unlicensed/illegal marijuana activity in the community. With additional insight and knowledge, Police Services can address community priorities and emerging trends in a proactive manner.

CITY FINANCIAL IMPACTS

Grant dollars helped provide additional resources to existing staff without having a direct impact on the City budget. Funds are used primarily for overtime, equipment, and storage expenses to support these investigations.

This item appropriates \$39,641 in project and overtime costs to Fort Collins Police Services' Marijuana Enforcement Program from unanticipated grant revenue from DOLA.

DOLA will advance the funds to the City so overtime and equipment purchases may be authorized. Any unused funds will be returned at the end of the grant period.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 063, 2024
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING A SUPPLEMENTAL APPROPRIATION FROM THE
COLORADO DEPARTMENT OF LOCAL AFFAIRS GRAY AND
BLACK-MARKET MARIJUANA ENFORCEMENT GRANT
PROGRAM FOR THE FORT COLLINS POLICE SERVICES
MARIJUANA ENFORCEMENT PROGRAM

A. For the past five years, the State has made grant funding available to help address unlicensed and illegal marijuana activity in Colorado.

B. In 2023, Fort Collins Police Services (FCPS) received \$32,339 from the Department of Local Affairs (“DOLA”) and continues to investigate complaints of illegal residential cultivation operations and unlicensed smoke shops selling synthetic marijuana to minors.

C. On January 25, 2024, City of Fort Collins was awarded \$39,641 through the DOLA Gray and Black-Market Marijuana Enforcement Grant Program for the purpose of investigating cases of illegal marijuana cultivation and distribution outside the legal, licensing framework.

D. Use of this grant funding and investigations has not only addressed criminal activity but also improved neighborhood livability and provided insight into the level of unlicensed/illegal marijuana activity in the community. With additional insight and knowledge, Police Services can address community priorities and emerging trends in a proactive manner.

E. These grant funds help provide additional financial resources to supplement overtime costs, equipment, and storage expenses without having a direct impact on the City budget.

F. This item appropriates \$39,641 to FCPS Marijuana Enforcement Program from unanticipated grant revenue from DOLA by advancing the funds to the City of Fort Collins so overtime and equipment purchases may be authorized and any unused funds will be returned at the end of the grant period.

F. 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.

G. 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.

H. 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 the City’s expenditure of all funds received from such grant.

I. The City Council wishes to designate the appropriation herein for the DOLA Gray and Black-Market Enforcement 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.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. There is hereby appropriated from new revenue or other funds in the General Fund the sum of THIRTY-NINE THOUSAND SIX HUNDRED FORTY-ONE DOLLARS (\$39,641) to be expended in the General Fund for the FCPS Marijuana Enforcement Program.

Section 2. The appropriation herein for the DOLA Gray and Black-Market Enforcement 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 on May 7, 2024, and approved on second reading for final passage on May 21, 2024.

Mayor

ATTEST:

Interim City Clerk

Effective Date: May 31, 2024
Approving Attorney: Ethan Doak

AGENDA ITEM SUMMARY

City Council



STAFF

Tracy Dyer, Project Manager
Dana Hornkohl, Capital Projects Manager

SUBJECT

Second Reading of Ordinance No. 064, 2024, Making Supplemental Appropriations of Prior Year Reserves and Grant Revenue from the Colorado Department of Transportation and Authorizing Transfers for the College Avenue-Trilby Road Intersection Improvements Project.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on May 7, 2024, enables the City to receive and expend Colorado Department of Transportation (CDOT) funds for the College Avenue-Trilby Road Intersection Improvements Project (Project). The funds will be used for construction of improvements at the intersection of South College Avenue and Trilby Road. If approved, this item will 1) appropriate \$361,361 of Congestion Mitigation and Air Quality (CMAQ) Improvement Program grant funds for the Project; 2) appropriate \$1,870,000 of Highway Improvement Program (HIP) grant funds; 3) appropriate \$5,272,260 of Surface Transportation Block Grant (STBG) Program funds; 4) appropriate \$2,000,000 of Funding Advancements for Surface Transportation and Economic Recovery (FASTER) Act grant funds; 5) use \$14,800 from development contributions to construction as part of the local match; 6) appropriate as part of the local match contribution \$1,300 from the Transportation Capital Expansion Fee (TCEF) Reserves; 7) appropriate \$113 (0.7% of the local match amount) from TCEF Reserves to the Art in Public Places Program; and 8) appropriate \$48 (0.3% of the local match amount) for maintenance of art from Transportation Fund Reserves to the Art in Public Places Program.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

Beginning in 2020 Engineering, Traffic Operations and FC Moves staff, with the use of the Arterial Intersection Prioritization Study as a guide, identified traffic safety and congestion issues, as well as a lack of active modes infrastructure, at the intersection of Trilby Road and South College Avenue (also known as State Highway 287).

Staff has identified safety concerns with the current intersection, including high frequencies of approach turn crashes and rear-end crashes. Operational concerns include high volumes of motorists on the north-south legs of South College Avenue and increasing volumes on the east-west approach legs of Trilby Road. Bicycle and pedestrian safety and accessibility are also concerns at the intersection, as there is very little infrastructure established for either mode of travel.

The reconstructed intersection, with the assistance of design professionals, will improve safety for current and future traffic levels as growth continues in the region and will create a safer intersection for all users. After construction, the intersection will feature dual left turn lanes from South College Avenue to Trilby Road, right turn lanes for each direction of travel, and a widened Trilby Road approach to South College Avenue.

In early 2023 the Project Team, with CDOT’s approval, engaged a regional general contractor to assist in the final design to improve efficiency in constructability. Due to a longer than anticipated rights of way acquisition phase, that has involved over 24 different land parcels, the project team divided the project into packages to commence early work in areas where rights of way have been secured while remaining rights of way were continued to be secured. The project is currently underway with package one and anticipates starting package two at the beginning of the 3rd quarter of 2024. The overall project is anticipated to be completed sometime early 2025.

Funds that were appropriated to the Project prior to this action were utilized primarily for design and acquisition. In order to secure the remaining funds needed to construct the Project, staff actively explored and applied for multiple opportunities in 2022 and 2023. CDOT has also made significant additional commitments to the Project in this timeframe.

CITY FINANCIAL IMPACTS

The following is a summary of the funding anticipated for design, right-of-way acquisition, and construction for the College Avenue-Trilby Road Intersection Improvements Project.

| | |
|---|---------------------|
| Prior Appropriated Funds | |
| Highway Safety Improvement Program (HSIP) | \$ 2,250,000 |
| Congestion Mitigation and Air Quality (CMAQ) Improvement Program Grant Funds | \$ 387,371 |
| Funding Advancements for Surface Transportation and Economic Recovery (FASTER) Act Grant Funds | \$ 1,500,000 |
| Transportation Capital Expansion Fee (TCEF) Funds | \$ 598,680 |
| Transportation Services Fund Reserves | \$ 20,570 |
| Development Contributions to Construction | |
| Contribution in Aid of Construction | \$ 38,163 |
| Community Capital Improvement Program (CCIP) Arterial Intersection Improvements (2021 BFO Offer) | \$ 400,000 |
| Community Capital Improvement Program (CCIP) Arterial Intersection Improvements (2023 - 2024 BFO Offer) | \$ 1,800,000 |
| Total Prior Appropriated Funds | \$ 6,994,784 |

| | |
|--|----------------------|
| Funds to be Appropriated per this Action | |
| Congestion Mitigation and Air Quality (CMAQ) Improvement Program Grant Funds | \$ 361,361 |
| Highway Improvement Program (HIP) Funds | \$ 1,870,000 |
| Surface Transportation Block Grant (STBG) Program Funds | \$ 5,272,260 |
| Funding Advancements for Surface Transportation and Economic Recovery (FASTER) Act Grant Funds | \$ 2,000,000 |
| Development Contributions to Construction | |
| Payment In Lieu | \$ 14,800 |
| Transportation Capital Expansion Fee (TCEF) Funds | \$ 1,300 |
| Transportation Fund Reserves | \$ 48 |
| Total Funds to be Appropriated per this Action | \$ 9,519,769 |
| | |
| Transfer to Art in Public Place | \$161 |
| | |
| Total Project Funds | \$ 16,514,553 |

The total fund amount projected for this Project is \$16,514,553 composed of funds appropriated with prior actions and with this action.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The Project, through the design process and construction phasing, has received full environmental and historical clearances through CDOT.

PUBLIC OUTREACH

Staff has developed a comprehensive Public Engagement Plan for the Project.

As part of the design and acquisition process, staff has discussed the Project with the adjacent property owners, current business owners, and prospective developers immediately abutting the Project improvements. In addition, staff and an outside acquisition consultant have met or conversed individually with property owners on multiple occasions regarding design and construction details.

Staff has discussed and presented conceptual level drawings at several public outreach events including a virtual neighborhood public meeting on March 3, 2022, and an open house held on November 13, 2023. Project information was shown at the Transportation Projects Fairs in February 2023 and February 2024. A Project website is regularly updated with Project information and upcoming milestones.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 064, 2024
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING SUPPLEMENTAL APPROPRIATIONS OF PRIOR YEAR
RESERVES AND GRANT REVENUE FROM THE COLORADO
DEPARTMENT OF TRANSPORTATION AND AUTHORIZING
TRANSFERS FOR THE COLLEGE AVENUE-TRILBY ROAD
INTERSECTION IMPROVEMENTS PROJECT

A. Beginning in 2020, Fort Collins Engineering Department Traffic Operations and FC Moves staff, guided by the Arterial Intersection Prioritization Study, identified traffic safety and congestion issues, as well as a lack of active modes infrastructure, at the intersection of Trilby Road and South College Avenue (also known as State Highway 287).

B. Safety concerns with the current intersection include high frequencies of approach turn crashes and rear-end crashes.

C. Operational concerns include high volumes of motorists on the north-south legs of South College Avenue and increasing volumes on the east-west approach legs of Trilby Road.

D. Bicycle and pedestrian safety and accessibility are also concerns at the intersection, because very little infrastructure is established for either mode of travel.

E. The College Avenue-Trilby Road Intersection Improvements Project (the "Project") has been developed to reconstruct the intersection to improve vehicular, bicycle, and pedestrian safety in and around the intersection.

F. The Project, with the assistance of design professionals, will improve safety for current and future traffic levels as growth continues in the region and will create a safer intersection for all users. After construction, the intersection will feature dual left turn lanes from South College Avenue to Trilby Road, right turn lanes for each direction of travel, and a widened Trilby Road approach to South College Avenue.

G. In 2020, via Resolution 2020-046, the City Council authorized execution of an intergovernmental agreement ("IGA") with the Colorado Department of Transportation ("CDOT"), which administers the grant funds for the Project. Initial funds were appropriated via Ordinance No. 071, 2020. Design and right-of-way acquisition has progressed since the initial authorization and appropriations.

H. In early 2023 the Project Team, with CDOT approval, engaged a regional general contractor to assist in the final design to improve efficiency in constructability. Due to a longer than anticipated rights of way acquisition phase, that has involved over twenty-four different land parcels, the project team divided the project into packages to commence early work in areas where rights of way have been secured while remaining rights of way were continued to be secured.

I. Construction is currently underway with package one, and the schedule anticipates starting package two at the beginning of the third quarter of 2024.

J. The overall Project is anticipated to be completed sometime in early 2025.

K. Funds that were appropriated to the Project before this action were used primarily for design and acquisition. To secure the remaining funds needed to construct the Project, staff actively explored and applied for multiple opportunities in 2022 and 2023. CDOT has also made significant additional commitments to the Project in this timeframe.

L. CDOT has proposed an amendment to the IGA to enable the City to receive and expend the additional grant funds to continue the Project.

M. These appropriations benefit public health, safety, and welfare of the residents of Fort Collins and serve the public purpose of promoting safer travel across multiple modalities and improving the transportation infrastructure within the City.

N. 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.

O. The City Manager has recommended the appropriations 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.

P. 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 from such revenues and funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated.

Q. 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.

R. 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.

S. The City Manager has recommended the transfer of \$1,300 from the Transportation Capital Expansion Fee Fund to the Capital Project Fund and \$48 from the Transportation Services Fund to the Capital Project Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged.

T. 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 the City’s expenditure of all funds received from such grant.

U. This Project involves construction estimated to cost more than \$250,000 and, as such, City Code Section 23-304 requires one percent of these appropriations to be transferred to the Cultural Services and Facilities Fund for a contribution to the Art in Public Places program (“APP Program”).

V. The total project cost of \$16,148 has been used to calculate the contribution to the APP program.

W. The amount to be contributed in this Ordinance will be \$161.

X. A portion of the funds appropriated in this Ordinance for the Project are ineligible for use in the APP Program due to restrictions placed on them by Colorado Department of Transportation, the source of these funds.

Y. The City Council wishes to designate the appropriations herein for the Colorado Department of Transportation Congestion Mitigation and Air Quality (CMAQ) grant and the Highway Improvement Program (HIP) grant and the Surface Transportation Block Grant (STBG) and the Funding Advancement Surface Transportation and Economic Recovery (FASTER) grant funds as appropriations that shall not lapse until the earlier of the expiration of the grants or the City’s expenditure of all funds received from such grants.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. There is hereby appropriated from new revenue (CMAQ) or other funds in the Capital Projects Fund the sum of THREE HUNDRED SIXTY-ONE THOUSAND THREE HUNDRED SIXTY-ONE DOLLARS (\$361,361) to be expended in the Capital Projects Fund for the College and Trilby Intersection Improvement Project.

Section 2. There is hereby appropriated from new revenue (HIP) or other funds in the Capital Projects Fund the sum of ONE MILLION EIGHT HUNDRED SEVENTY THOUSAND DOLLARS (\$1,870,000) to be expended in the Capital Projects Fund for the College and Trilby Intersection Improvement Project.

Section 3. There is hereby appropriated from new revenue (STBG) or other funds in the Capital Projects Fund the sum of FIVE MILLION TWO HUNDRED SEVENTY-TWO THOUSAND TWO HUNDRED SIXTY DOLLARS (\$5,272,260) to be expended in the Capital Projects Fund for the College and Trilby Intersection Improvement Project.

Section 4. There is hereby appropriated from new revenue (FASTER) or other funds in the Capital Projects Fund the sum of TWO MILLION DOLLARS (\$2,000,000) to be expended in the Capital Projects Fund for the College and Trilby Intersection Improvement Project.

Section 5. There is hereby appropriated from new revenue or other funds (PILOT) in the Capital Projects Fund the sum of FOURTEEN THOUSAND EIGHT HUNDRED DOLLARS (\$14,800) to be expended in the Capital Projects Fund for the College and Trilby Intersection Improvement Project.

Section 6. The unexpended and unencumbered appropriated amount of ONE THOUSAND THREE HUNDRED DOLLARS (\$1,300) is authorized for transfer from the Transportation Capital Expansion Fee Fund to the Capital Project Fund and appropriated therein to be expended for College and Trilby Intersection Improvement Project.

Section 7. The unexpended and unencumbered appropriated amount of ONE HUNDRED TWENTY-SIX DOLLARS (\$126) in the Capital Project Fund is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein to fund art projects under the APP Program.

Section 8. The unexpended and unencumbered appropriated amount of THIRTY-TWO DOLLARS (\$32) in the Capital Project 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 9. The unexpended and unencumbered appropriated amount of THREE DOLLARS (\$3) in the Capital Project 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 10. The appropriations herein for the Colorado Department of Transportation Congestion Mitigation and Air Quality (CMAQ) grant and the Highway Improvement Program (HIP) grant and the Surface Transportation Block Grant (STBG) and the Funding Advancement Surface Transportation and Economic Recovery (FASTER) grant funds 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 grants or the City's expenditure of all funds received from such grants.

Introduced, considered favorably on first reading on May 7, 2024, and approved on second reading for final passage on May 21, 2024.

Mayor

ATTEST:

Interim City Clerk

Effective Date: May 31, 2024
Approving Attorney: Heather N. Jarvis

AGENDA ITEM SUMMARY

City Council



STAFF

Aaron Ehle, Airport Planning & Development Specialist

SUBJECT

Second Reading of Ordinance No. 065, 2024, Authorizing the Conveyance of a Permanent Non-Exclusive Sewer Easement on Property Jointly Owned by the City of Fort Collins and the City of Loveland at the Northern Colorado Regional Airport.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on May 7, 2024, authorizes a conveyance of an easement to the Sanitation District to allow for a sewer service line for the terminal. The easement is over a portion of the Northern Colorado Regional Airport property, which is owned jointly by the City of Fort Collins and the City of Loveland.

STAFF RECOMMENDATION

Staff recommends adoption the Ordinance on Second Reading.

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 that formed the Northern Colorado Regional Airport Commission, which delegated certain powers and authority to operate and maintain the Airport. However, only the Cities' Councils have the authority to grant easements as permanent property rights at the Airport.

In connection with the construction of the new terminal, South Fort Collins Sanitation District ("Sanitation District") requires the City of Fort Collins, the City of Loveland, and the Sanitation District to execute an Agreement for Purchase of Sewer Tap ("Tap Agreement"). Because the Tap Agreement is an agreement between the Cities and the Sanitation District, it is an intergovernmental agreement. The price for the sewer tap is \$49,600. Fort Collins City Code ("City Code") Section 1-22 allows that intergovernmental agreements may be approved by Council by either ordinance or resolution. A resolution is presented here to expedite execution of the Agreement because it is necessary for the completion of the terminal project, which has been approved by Council. The Tap Agreement presented with the Resolution is the Sanitation District's form Agreement as revised by the Cities' attorneys.

Along with the Tap Agreement, the Sanitation District requires that the Cities grant a permanent, non-exclusive easement across Airport property to allow for the installation and maintenance of a sewer line to the terminal ("Easement"). The total area of the associated sewer easement is 10,722 square feet. The

Easement Agreement included with the Ordinance is the Sanitation District's form easement as revised by the Cities' attorneys.

Under City Code Section 23-111, Council may sell, convey, exchange, or otherwise dispose of any and all interests in City-owned real property if Council finds, by ordinance, that such sale or disposition is in the best interests of the City. City Code Section 23-114 requires that any sale, lease, or other conveyance of property must be for an amount equal to or greater than the fair market value of such interest unless 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;*

The Airport is a public use facility jointly owned by Fort Collins and Loveland. The Easement will allow for public investment and development that will bring improvements to the Airport and the users it serves.

- (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 public development of the site in alignment with the Airport Master Plan, which was approved by 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 would benefit from granting the easement because doing so will allow the Sanitation District to install and maintain utility infrastructure necessary for the terminal project. In addition to federal grant funding and Airport revenue being used for the terminal, both Cities individually contributed \$1,000,000 towards the project.

- (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 Sanitation District to provide service to the new public terminal. The Airport and two Cities benefit from utilities running to the public terminal, which add value to the Airport.

- (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.*

Authorizing the conveyance of the Easement will not interfere with City projects or work programs, workload schedules, or resources needed for primary City functions or responsibilities.

As the conveyance of the Easement meets the above criteria, Airport staff and the Airport Commission recommend approval because the easement allows for the Sanitation District to install and maintain the sewer infrastructure required to serve the new public facility. The new terminal is in alignment with the Airport Master Plan, which has been approved by Council.

CITY FINANCIAL IMPACTS

The Tap Agreement authorizes the Cities to purchase a sewer tap from the Sanitation District for \$49,600. This cost has been budgeted as part of the terminal project. There are no material financial impacts to the City.

The cost of the legal description and exhibit for the easement is \$500, to be paid from the terminal project budget. There are no material financial impacts to the City.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The Northern Colorado Regional Airport Commission and Councils of Fort Collins and Loveland have approved the 2020 Airport Master Plan, which prominently features plans for the new terminal facility.

The Fort Collins and Loveland Councils have each appropriated \$1.0 million in support of the new terminal.

The Airport Commission unanimously voted at its January 18, 2024, meeting to recommend Council approve the easement. At that time, airport staff were unaware that the Sanitation District would require the Tap Agreement. Also at the January 18th meeting, the Airport Commission unanimously voted to recommend Council approve a Memorandum of Agreement for Purchase of Water Tap (“MOA”) with the Fort Collins-Loveland Water District, and to recommend the granting of an easement to the Water District for a water line. The Tap Agreement is substantially the same form as the MOA recommended by the Commission. Accordingly, airport staff conclude that although the Tap Agreement was not sent to the Commission, the Commission would have almost certainly recommended its approval because its terms are essentially the same as the MOA and because the easement is only functional if a sewer tap is purchased and installed.

PUBLIC OUTREACH

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

First Reading attachments not included.

1. Ordinance for Consideration
2. Exhibit A to Ordinance

ORDINANCE NO. 065, 2024
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CONVEYANCE OF A PERMANENT NON-
EXCLUSIVE SEWER EASEMENT ON PROPERTY JOINTLY OWNED
BY THE CITY OF FORT COLLINS AND THE CITY OF LOVELAND AT
THE NORTHERN COLORADO REGIONAL AIRPORT

A. 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”).

B. 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”).

C. In connection with the ongoing construction of the new airport terminal facility project, the South Fort Collins Sanitation District (the “District”) has requested a permanent non-exclusive easement across Airport property to allow for the installation and maintenance of a sanitary sewer line to serve the terminal (the “Easement”) over and across that portion of the Airport property legally described and depicted in the Easement Agreement, attached hereto and incorporated herein by this reference as Exhibit “A.”

D. The Cities desire to grant the Easement on the terms and conditions as substantially set forth in the Easement Agreement, which includes that the District will not pay a specific purchase price for the easement but will instead provide sewer service necessary for the terminal.

E. 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.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. The City Council hereby finds that the City’s conveyance of the Easement subject to the terms and conditions substantially 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 public investment in and improvement of the Airport and the users it serves, and will allow for sanitary sewer service for the new public terminal currently being constructed;

b. The use to which the Easement 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 will be leveraged with other funding or assistance enabling the construction and operation of the new terminal facility, which the City has partnered with Loveland to complete;

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 new public terminal facility for the benefit of the Cities and the greater public; 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 2. The City Council hereby authorizes the Mayor to execute the Easement Agreement 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 on May 7, 2024, and approved on second reading for final passage on May 21, 2024.

Mayor

ATTEST:

Interim City Clerk

Effective Date: May 31, 2024
Approving Attorney: Ryan Malarky

EASEMENT AGREEMENT

THIS AGREEMENT, made and entered into as of the ____ day of _____, 20__, 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, with an address of 300 Laporte Ave, Fort Collins, CO 80521, hereinafter referred jointly to as “the Grantors” and South Fort Collins Sanitation District, a Political Subdivision of the State of Colorado, hereinafter referred to as “the District”. This Grant of Utility Easement is effective as of the date of the City’s Official Acceptance in the City’s signature block below.

WHEREAS, the Grantors jointly own and operate the Northern Colorado Regional Airport (the “Airport”) located in Loveland, Colorado on a parcel of property legally described below; and

WHEREAS, the District desires to install, and obtain an easement for a sanitary sewer line necessary to serve the Airport’s terminal facility that is under construction as of the date of this Agreement.

WITNESSETH:

For and in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and adequacy of which is hereby confessed and acknowledged, the Grantors have granted and conveyed and by these presents does grant and convey unto the District, its successors and assigns, a permanent non-exclusive easement for the installation, construction, maintenance, inspection, operation, replacement, or removal of one (1) or more sanitary sewer lines for the collection and service of sanitary sewer and wastewater, and all underground and surface appurtenances thereto, including metering stations and other fixtures, in, over, across, and upon:

A ___30___ foot easement, the centerline of which is described in the attached Easement Exhibit:

The parties hereto acknowledge that said easement (hereinafter referred to as “the Easement”) is located on a parcel of property owned by the Grantors legally described as follows and hereinafter referred to as “the Grantors’ Property”:

A parcel of land, being part Larimer County Parcel No. 8633006902, situate in the Southeast Quarter (SE1/4) of Section Twenty-eight (28), Township Six North (T.6N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), City of Loveland, County of Larimer, State of Colorado

In addition to the foregoing grant of easement by the Grantors to the District, the Grantors further grant and convey to the District the following rights and privileges:

A. The right to grade the Easement for the full width thereof in such manner as the District may reasonably determine to be necessary or advisable. The District will coordinate with Airport staff to perform such grading at a time that does not unduly interfere with Airport operations. For purposes of this Agreement, “Airport staff” shall mean the individual(s) designated and authorized by Grantors to make the decisions and take the actions described and directed herein. The District may rely on information and direction given by Airport staff and shall have no obligation to verify if that particular individual has been duly authorized by the Grantors to provide such information and/or direction.

B. Subject to Airport security requirements and prior written consent of Airport staff, which shall not be unreasonably withheld, the right of ingress and egress in, to, through, over and across the Easement by means of existing roads (whether public or private) located on the Grantors’ Property.

C. The right to grade, construct, maintain, and use any access roads upon the Grantors’ Property for such purposes of initial construction and ongoing maintenance with prior written consent of the Airport staff in the exercise of its right of ingress and egress to and from the Easement. For any construction or alteration on the Easement or Grantors’ Property, the District will be required to complete and submit to the Federal Aviation Administration a Form 760-1 “Notice of Proposed Construction or Alteration.”

D. To mark the location of the Easement with markers set in the ground provided that any such markers remaining after the period of construction of the sanitary sewer line and appurtenances shall be placed in locations which will minimize interference with any reasonable use of the Easement area by the Grantor.

E. For all the District's access needs, such access is subject to the prior written consent of Airport staff pursuant to the Northern Colorado Regional Airport's security requirements and other applicable laws, plans, policies, and rules and regulations. It is the parties' intent to provide the District as much reasonable access as possible to the Easement while complying with the rules and regulations associated with operating the Airport.

F. All other rights necessary and incident to the full and complete use and enjoyment of the Easement for the purposes herein granted.

G. Other public utilities such as sanitary sewer, storm sewer, gas, electric, and cable lines may be installed in the Easement so long as they do not interfere with the District's rights hereunder and meet the District's requirements for separation and crossing of utilities.

The Grantor hereby covenants and agrees to and with the District, its successors and assigns that:

A. Except as otherwise provided in this subparagraph A, the Grantors, their heirs, personal representatives, administrators, successors, and assigns shall not erect or place any permanent building, structure, improvement, fence, tree, or other landscaping on the Easement excluding the installation of permanent paved surfaces, including but not limited to roadways and taxiways needed for Airport purposes. In the event of the placement of such obstacles on the Easement contrary to the provisions of this subparagraph A, the District shall have the right to require the Grantors to remove such prohibited obstacles from the Easement and, in the event the Grantors fail to do so upon request, the District may remove such obstacles without any liability for repair or replacement thereof. Notwithstanding the foregoing, the Grantors, their heirs, personal representatives, administrators, successors, and assigns shall have the right, without the consent of the District, to plant grasses and other groundcover and small shrubs upon the Easement area which are usual and customary for the full use and enjoyment of the Property. The District shall be responsible at its sole cost and expense for repair and replacement of any permanent paved surfaces and associated landscaping damaged or removed by the District

B. The Grantors do hereby covenant and agree to and with the District that the Grantors are lawfully seized of the Easement and the Grantors' Property, and that the Grantors have a good and lawful right to convey the Easement to the District.

The District does hereby covenant and agree to and with the Grantors as follows:

A. The District shall not fence or otherwise enclose the easement, except during periods of construction and repair.

B. All trenches and excavations made in the laying or repairing of the sanitary sewer line shall be properly backfilled and as much of the original surface soil as reasonably possible shall be placed on top. All large gravel, stones, and clods will be removed from the finished backfill. The District will finish the backfill after normal settling of the soil so that the use and enjoyment of said Easement by the Grantors shall be suitable for the purpose now used. The District will maintain the trench area and the sanitary sewer line at its sole cost and expense.

C. The District may not use the Easement or any of Grantors' Property for any purpose other than to transport, serve and distribute potable water. If the Easement is used by the District for any purpose other than stated herein, the Easement may be terminated at the Grantors' sole discretion and all of the right, title and interest of District (and District's successors or assigns) in and to the Easement become null and void, and the Easement shall absolutely revert to and revest in Grantors as fully and completely as if this instrument had not been executed, without the necessity for suit or re-entry and District shall remove improvements. No act or omission on the part of any beneficiary of this paragraph shall be a waiver of the operation or enforcement of this paragraph.

D. To the extent allowed by law, the District shall be liable for loss and damage which shall be caused by any wrongful exercise of the rights or ingress or egress to or from the Easement or by wrongful or negligent acts or omission of its agents or employees during the course of their employment on the Grantors' Property. To the extent allowed by law, District agrees to indemnify and hold harmless the Grantors, their officers, employees, and agents, from and against all liability, claims, and demands on account of any injury, loss, or damage arising out of or connected with District's use of the Easement, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the District or any officer, employee, agent, or contractor of the District, or any other person for whom the District is responsible. The District shall notify Grantors and provide a copy of any and all written claims or demands within two

business days of receipt. The District’s indemnification obligation shall not be construed to extend to any injury, loss, or damage caused by the negligent act or omission of the Grantors.

Written notices shall be directed as follows and shall be deemed received when hand-delivered or emailed to the then-current email address for the addressee, or three days after being sent by certified mail, return receipt requested:

If to Grantors:

City of Fort Collins
Attn: City Manager
City Hall West
300 LaPorte Avenue
Fort Collins, CO 80521

With a copy to:

City Attorney
City of Fort Collins
City Hall West
300 LaPorte Avenue
Fort Collins, CO 80521

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

With a copy to:

City Attorney
City of Loveland
500 E. Third Street
Loveland, CO 80537

If to District:

District Engineer
Fort Collins-Loveland Water District
5150 Snead Drive
Fort Collins, CO 80525

It is mutually agreed between the parties hereto that:

- A. Except to the extent that such rights may be inconsistent with or interfere with the rights and privileges herein granted to the District, the Grantors shall retain the right to use and enjoy the Easement.
- B. The benefit and burdens of this Agreement shall inure to and be binding upon the respective heirs, personal representatives, successors, or assigns of the parties hereto.
- C. Whenever used herein, the singular shall include the plural and the plural the singular and the use of any gender shall apply to all genders.
- D. This Easement is and shall be subordinate to the provision of existing and future agreements between the Grantors and the United States relative to the operation or maintenance of 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. Airport staff shall give the District adequate written notice of any future agreements that may impair any grant contained in this Agreement.
- E. This Agreement contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties. In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Easement. This Agreement shall be governed by the laws of the State of Colorado, and venue shall be in the County of Larimer, State of Colorado.

F. This Agreement may be executed in separate counterparts, and the counterparts taken together shall constitute the whole of this Agreement. Facsimile, scanned and other electronic signatures permitted by law, for purposes of this Agreement, shall be deemed as original signatures.

G. The District shall at its sole expense record this Agreement in the real property records of the Clerk and Recorder of Larimer County, Colorado.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

GRANTOR:
City of Fort Collins, Colorado
A municipal corporation

By: _____

Date: _____

Print Name: _____

Title: _____

ATTEST:

Name: _____ Date: _____

Title: _____

APPROVE AS TO FORM:

Assistant City Attorney

GRANTOR:
City of Loveland, Colorado
A municipal corporation

EXHIBIT A

PARCEL DESCRIPTION

A parcel of land, being part Larimer County Parcel No. 8633006902, situate in the Southeast Quarter (SE1/4) of Section Twenty-eight (28), Township Six North (T.6N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), City of Loveland, County of Larimer, State of Colorado and being more particularly described as follows:

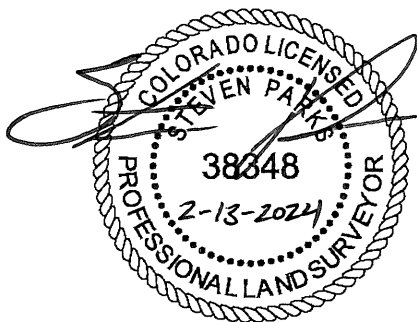
COMMENCING at the Center Quarter corner of said Section 28 and assuming the North line of said Se1/4 as bearing South 87°33'44" East, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/2011, a distance of 2635.84 feet, monumented by a 2" iron pipe with 2 1/2" aluminum cap stamped LS 12936 at the Center Quarter corner and a #6 rebar with 3.25" aluminum cap stamped LS 38209 1.0' Witness Corner at the East Quarter corner and with all other bearings contained herein relative thereto;

THENCE South 27°24'36" East a distance of 2445.65 feet to the POINT OF BEGINNING;
THENCE South 54°43'29" East a distance of 30.00 feet;
THENCE South 35°16'31" West a distance of 359.06 feet;
THENCE North 54°43'29" West a distance of 30.00 feet;
THENCE North 35°16'31" East a distance of 359.06 feet to the POINT OF BEGINNING.

Said described parcel of land contains 10,722 Square Feet or 0.247 Acres, more or less (±).

SURVEYORS STATEMENT

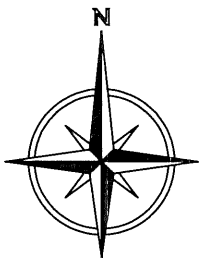
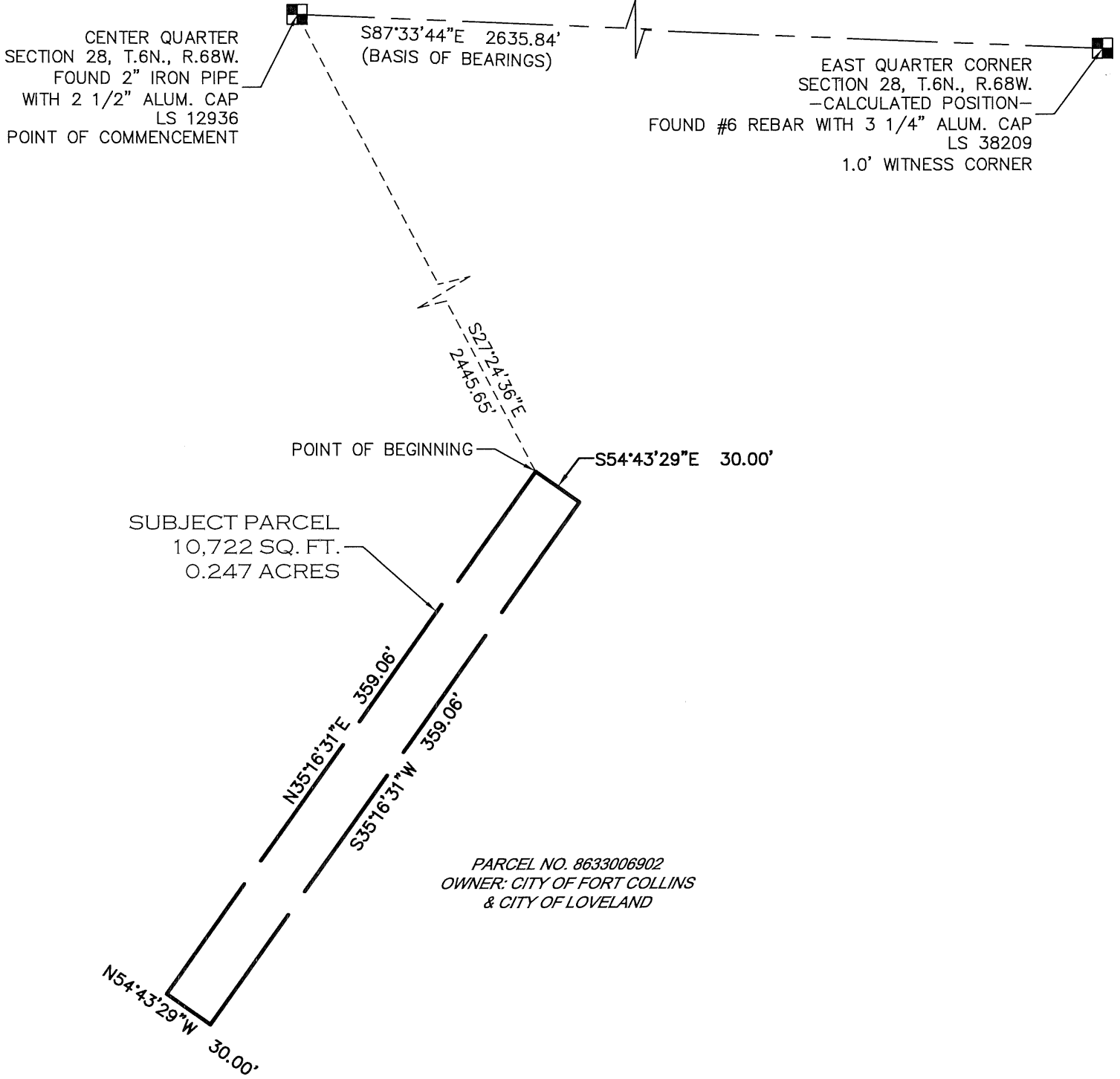
I, Steven Parks, a Colorado Licensed Professional Land Surveyor do hereby state that this Parcel Description was prepared under my personal supervision and checking, and that it is true and correct to the best of my knowledge and belief.



Steven Parks - on behalf of Majestic Surveying, LLC
Colorado Licensed Professional Land Surveyor #38348

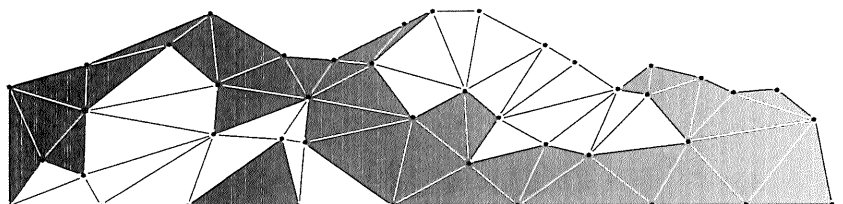
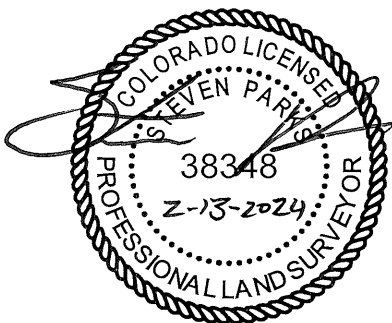


EXHIBIT B



Note: This drawing does not represent a monumented land survey. Its sole purpose is a graphic representation of the accompanying written description.

Notice: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon. (CRS 13-80-105)



MAJESTIC SURVEYING

AGENDA ITEM SUMMARY

City Council



STAFF

Rupa Venkatesh, Assistant City Manager
Claudia Menendez, Equity Officer
Jan Reece, Lead Equal Opportunity Compliance Specialist
Sara Arfmann, Assistant City Attorney

SUBJECT

First Reading of Ordinance No. 066, 2024, Making a Supplemental Appropriation and Appropriating Prior Year Reserves to Develop a Digital Accessibility Roadmap.

EXECUTIVE SUMMARY

The purpose of this item is to request an appropriation of \$150,000 in General Funds in order to work with a consultant to develop a comprehensive and actionable Digital Accessibility Roadmap. The purpose of this roadmap is to provide a strategy for compliance with both Colorado and federal laws and regulations pertaining to digital accessibility requirements, including both the Americans with Disabilities Act and Colorado House Bill 21-1110.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

House Bill 21-1110, Colorado Laws for Persons with Disabilities, as amended by Senate Bill 23-244, relates to all technology, hardware, and software, that is both public-facing and internal-facing. This includes any technology provided by or procured by a government entity that is used by the public or used by a government entity employee. This technology includes but is not limited to websites, applications, kiosks, digital signage, documents, video, audio, and third-party tools.

By July 1, 2024, all local governments need to be compliant. Part of this work includes conducting an inventory survey, classifying, prioritizing, and accessing all applicable Information and Communication Technology (ICT) as defined by the State and goes beyond just web content. A citywide survey has been completed, which revealed that staff needs additional expertise to assist in determining the accessibility of the City's current ICT portfolio. Therefore, a Request for Proposals (RFP) was issued to hire a consultant to provide the City with an assessment and roadmap.

A consultant selected from the RFP process will assist in the following:

- Conduct a comprehensive review and analysis of the City's digital technology, on-line services, websites, and third-party software applications to develop a prioritized Digital Accessibility Roadmap

Item 9.

- Analyze the current usage level for City webpages, software applications, and online services as part of development of prioritized mitigation strategies and Digital Accessibility Roadmap.
- Provide an evaluation of the time and cost needed to remediate non-compliant content on both the City’s website and third-party service delivery platforms.
- Develop a strategy and action plan to drive compliance with Colorado’s digital accessibility laws and regulations.
- Future phases of this work may include ongoing services to ensure future digital content is compliant with accessibility standards, including but not limited to, processes to validate that newly created content is in compliance with accessibility regulations; provide training for staff to ensure that they have knowledge and skills to maintain compliance; and recommendations for modifying existing City procurement processes and documents to ensure that new or renewing third party software and digital services comply with applicable accessibility regulations.

Additional work on various elements of ADA are taking place concurrently with Digital Accessibility work.

Current Work Underway for Digital Accessibility

| Year | Actions |
|---------------|--|
| 2022 | <ul style="list-style-type: none"> • Team meetings to learn about HB21-1110 and start to identify department roles. • Meetings included City Attorney’s Office (CAO), Communications and Public Information Office (CPIO), Information Technology (IT), Operations Services, Purchasing, Equity Office and City Manager’s Office (CMO). • Research on HB21-1110 and peer cities approach. • Lead Equal Opportunity Compliance Specialist actively training in Digital Accessibility. • Purchasing to include clearer language on ADA compliance in contracts. |
| 2023 | <ul style="list-style-type: none"> • Continued cross-department meetings to create an outline of workstreams. • Participate in State rulemaking for HB21-1110. • Meetings with peer cities of Colorado Springs and Englewood for peer learning. • On-going research and training on ADA work. • Lead Equal Opportunity Compliance Specialist position split into 2 Full-Time Equivalents (FTEs) to give priority and focus. Positions now include: <ul style="list-style-type: none"> ○ Lead Equal Opportunity Compliance Specialist, hired in November 2023 ○ Lead Equal Opportunity Investigator hired in January 2024 |
| 2024 Q1-Q2 | <ul style="list-style-type: none"> • Build Core Collaboration Team including CAO, CPIO, IT, Operation Services, Purchasing, Equity Office and CMO. <ul style="list-style-type: none"> ○ FAQ document for staff. ○ Tech/software inventory completed by Service Areas. ○ Meeting with ADOBE company. ○ Update to City website legal disclaimer and accessibility statement, reasonable |

Item 9.

| | |
|--|--|
| | <p>accommodation request form, and reporting of web issues.</p> <ul style="list-style-type: none">○ Provide overview on HB21-1110 to DAB, ELT and Leadership Link.○ Team members attending the ADA Symposium in June 8-12, 2024.○ Staff Training session planned for Q3-Q4. <ul style="list-style-type: none">● Purchasing<ul style="list-style-type: none">○ Evaluate contracts from peer cities.○ Leverage peer cities for RFP search.○ Consultant selection and scope of work; contract signing in May.○ Consultant will provide a Digital Accessibility Roadmap to complete a comprehensive analysis of the City's current state of digital ICT accessibility, recommendations for remediation, and an evaluation of the level of effort required to evaluate compliance. |
|--|--|

CITY FINANCIAL IMPACTS

This Ordinance will appropriate \$150,000 in General Funds.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

This item was presented to Council Finance Committee on May 2, 2024. The Committee supported this appropriation ordinance to be brought forward for consideration.

PUBLIC OUTREACH

None.

ATTACHMENTS

- 1. Ordinance for Consideration

ORDINANCE NO. 066, 2024
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING A SUPPLEMENTAL APPROPRIATION AND
APPROPRIATING PRIOR YEAR RESERVES TO
DEVELOP A DIGITAL ACCESSIBILITY ROADMAP

A. Colorado House Bill 21-1110, as amended by Senate Bill 23-244, makes it a state civil rights violation for a government agency to exclude people with disabilities from receiving services or benefits because of lack of accessibility.

B. The state accessibility standards apply to all technology, hardware, and software, that is both public-facing and internal-facing. This includes any technology provided by or procured by a government entity that is used by the public or used by a government entity employee. This technology includes but is not limited to websites, applications, kiosks, digital signage, documents, video, audio, and third-party tools.

C. The City seeks to hire an outside consultant to assist the City in reaching compliance with these state accessibility standards by developing a comprehensive and actionable Digital Accessibility Roadmap. The estimated cost of this consultant will be \$150,000 for phase 1 of this project.

D. Future phases of this project may include ongoing services to ensure future digital content is compliant with accessibility standards, including but not limited to, processes to validate that newly created content is in compliance with accessibility regulations; provide training for City staff to ensure that they have knowledge and skills to maintain compliance; and recommendations for modifying existing City procurement processes and documents to ensure that new or renewing third party software and digital services comply with applicable accessibility regulations.

E. This appropriation benefits the public health and welfare of the citizens of Fort Collins and serves the public purpose and strategic objective of improving the accessibility of the City's information and communication technology.

F. 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.

G. 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.

H. 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.

I. The City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated the General Fund and will not cause the total amount appropriated in the General Fund, as applicable, to exceed the current estimate of actual and anticipated revenues and all other funds to be received in these funds during this fiscal year.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that there is hereby appropriated from prior year reserves in the General Fund the sum of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000) to be expended in the General Fund to hire a consultant for the development of a Digital Accessibility Roadmap.

Introduced, considered favorably on first reading on May 21, 2024, and approved on second reading for final passage on June 4, 2024.

Mayor

ATTEST:

Interim City Clerk

Effective Date: June 14, 2024
Approving Attorney: Sara Arfmann

AGENDA ITEM SUMMARY

City Council



STAFF

Brandon Barnes, Police Officer
Michael Avrech, Police Sergeant
Zack Mozer, Finance Analyst

SUBJECT

First Reading of Ordinance No. 067, 2024, Making a Supplemental Appropriation from the Colorado Department of Transportation Colorado Highway Safety Office Click It or Ticket Grant for the Fort Collins Police Services Traffic Enforcement Unit.

EXECUTIVE SUMMARY

The purpose of this item is to appropriate \$16,529 of unanticipated federal grant revenue from the Colorado Department of Transportation, Colorado Highway Safety Office (HSO), to support Fort Collins Police Services' Traffic Enforcement Unit work toward traffic safety and reducing serious injuries and fatal crashes through the enforcement of traffic laws and specifically those related to driver and passenger restraint system use.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

On March 2, 2024, Fort Collins Police Services (FCPS), Traffic Enforcement Unit was awarded a federal grant through the Colorado Department of Transportation HSO Click It or Ticket program.

The intent of the Click It or Ticket grant program is to provide high visibility enforcement focusing on enforcement of driver and passenger restraint system use. The federal grant runs on three enforcement cycles occurring in April, May, and July of 2024. Each enforcement cycle runs for a two-week period where officers will be deployed to conduct traffic enforcement and specifically enforcement of driver and passenger restraint use.

The enforcement of driver and passenger restraint system use aligns with the City's Vision Zero goal for reducing and/or eliminating serious injury and fatal crashes. Driver and passenger restraint systems have proven to save lives by keeping the restrained passengers inside the vehicle in the course of a serious collision.

The award is based on an application that was submitted requesting funds in support of deployment over the course of the three two-week enforcement periods. The grant funds are maintained by the Colorado Department of Transportation and are reimbursed to FCPS and the City after receipt of a claim that is filed

within 45 days of the conclusion of each two-week enforcement period. All reimbursements must match the actual personnel salary overtime rate.

CITY FINANCIAL IMPACTS

This item appropriates \$16,529 in program costs for FCPS Traffic Enforcement Unit and other agency personnel to deploy at the personnel salary overtime rate over three two-week enforcement waves of “Click It or Ticket.”

This grant from HSO is a reimbursement type grant, meaning General Fund expenses will be reimbursed up to \$16,529.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Ordinance for Consideration
2. Grant Award Letter
3. Grant Enforcement Calendar
4. Grant Purchase Order

ORDINANCE NO. 067, 2024
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING A SUPPLEMENTAL APPROPRIATION FROM THE
COLORADO DEPARTMENT OF TRANSPORTATION COLORADO
HIGHWAY SAFETY OFFICE CLICK IT OR TICKET GRANT FOR THE
FORT COLLINS POLICE SERVICES TRAFFIC ENFORCEMENT UNIT

A. On March 2, 2024, Fort Collins Police Services (FCPS), Traffic Enforcement Unit was awarded a federal grant through the Colorado Department of Transportation (HSO) Click It or Ticket program, which is a grant program that provides high visibility enforcement focusing on enforcement of driver and passenger restraint system use.

B. The federal grant runs on three enforcement cycles occurring in April, May, and July of 2024. Each enforcement cycle runs for a two-week period where officers will be deployed to conduct traffic enforcement and specifically enforcement of driver and passenger safety belt restraint use.

C. This item appropriates \$16,529 in unanticipated funds received through this grant for FCPS Traffic Enforcement Unit and other agency personnel to deploy at the personnel salary overtime rate over three two-week enforcement waves of Click It or Ticket.

D. This grant from HSO is a reimbursement type grant, meaning General Fund expenses will be reimbursed up to \$16,529.

E. This appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves a public purpose of saving lives through education and enforcement measures.

F. 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.

G. 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.

H. 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 the City’s expenditure of all funds received from such grant.

I. The City Council wishes to designate the appropriation herein for the Colorado Department of Transportation, Colorado Highway Safety Office Click It or Ticket 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.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. There is hereby appropriated from new revenue or other funds in the General Fund the sum of SIXTEEN THOUSAND FIVE HUNDRED TWENTY-NINE DOLLARS (\$16,529) to be expended in the General Fund for the Fort Collins Police Services Traffic Enforcement Unit.

Section 2. The appropriation herein for the Colorado Department of Transportation, Colorado Highway Safety Office Click It or Ticket 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 on May 21, 2024, and approved on second reading for final passage on June 4, 2024.

Mayor

ATTEST:

Interim City Clerk

Effective Date: June 14, 2024
Approving Attorney: Dawn Downs



COLORADO

Department of Transportation

Office of Transportation
Safety & Risk Management
2829 W. Howard Place
Denver, CO 80204-2305

March 2, 2024

To: Fort Collins Police Department

From: Brittany Janes, Colorado Highway Safety Office, Lee Birk, Law Enforcement Liaison

Re: Fiscal Year 2024 Click it or Ticket Award

The Colorado Highway Safety Office (HSO) would like to thank you for your dedication in improving traffic safety in your community. We are pleased to inform you that your Click It or Ticket federal grant application is approved for the amount indicated on the attached Purchase Order document. You may proceed with enforcement activity planning as it coincides with the Click It or Ticket enforcement periods for Fiscal Year 2024. Your award packet includes: a copy of your purchase order, your claim workbook which includes the enforcement campaign calendar, Officer Activity Report template and this award letter. If you need copies of any of these documents, please inform your Law Enforcement Liaison.

Be advised the following changes to Click it or Ticket grants have been implemented to ensure compliance with National Highway Traffic Safety Administration (NHTSA) rules and regulations.

- **Officer Activity Reports:** these are optional. These are provided to you as a tool to collect overtime activity reports, use them if you wish.
- **\$50/ hour flat rate:** Effective fiscal year 2022, we no longer offer the \$50/ hour flat rate option on the Click It or Ticket grant. This direction comes from NHTSA (The Click It or Ticket funding source). Starting with Fiscal Year '22, all reimbursements must match the actual personnel salary overtime rate.
Note: This ruling does not apply to the state-funded High Visibility Enforcement or LEAF grants
- **Salary verification:** LELs will conduct Program Monitoring Visits annually with majority of our Click it or Ticket grantees. At your next Program Monitoring Visit, we will be requesting copies of payroll records to verify overtime pay rate, regular pay rate being claimed in the grant. This is inline with federal grant management practices.
- **Occupant Protection CFDA#: 20.616**

Please contact me at 303-757-9069 or Brittany.Janes@state.co.us or your Law Enforcement Liaison if you need further clarification.

Thank you for your commitment toward traffic safety.

Sincerely,

Brittany Janes
Click It or Ticket Program Manager
Colorado Highway Safety office



2024 Click It or Ticket - Occupant Protection Enforcement Waves

*All claims are due by the 45th day after the enforcement period

| OCCUPANT PROTECTION ENFORCEMENT PERIOD | ENFORCEMENT PLAN DUE ON TRAFFIC SAFETY PORTAL | ENFORCEMENT BEGINS @ 0500 HRS | ENFORCEMENT ENDS @ 2000 HRS | CITATION DATA DUE ON TRAFFIC SAFETY PORTAL | CLAIM DUE TO YOUR LEL |
|---|---|-------------------------------|-----------------------------|--|------------------------------|
| APRIL ENFORCEMENT WAVE April 1 – April 14 | MARCH 29, 2024 FRIDAY | APRIL 1, 2024 MONDAY | APRIL 14, 2024 SUNDAY | APRIL 26, 2024 FRIDAY | MAY 29, 2024 WEDNESDAY |
| MAY MOBILIZATION May 13 – June 2 NATIONAL ENFORCEMENT | MAY 10, 2024 FRIDAY | MAY 13, 2024 MONDAY | JUNE 2, 2024 SUNDAY | JUNE 7, 2024 FRIDAY | JULY 17, 2024 WEDNESDAY |
| JULY ENFORCEMENT WAVE July 22 – August 2 | JULY 19, 2024 FRIDAY | JULY 22, 2024 MONDAY | AUGUST 2, 2024 FRIDAY | AUGUST 9, 2024 FRIDAY | SEPTEMBER 16, 2024 MONDAY |



COLORADO

Department of Transportation



[Click here to subscribe to CDOT Enforcement Wave Google Calendar](#)

Colorado Dept of Transportation
28 Howard Place
Denver, CO 80204
Item 10.

DATE: 02/21/2024



Purchase Order
State of Colorado

Buyer: Richard Clark
Phone Number: 303-512-4182
Agency Contact: Lisa Totman
Phone Number: 303-512-5003

IMPORTANT
The PO# and Line# must appear on all invoices, packing slips, cartons and correspondence

PO# 411037899
Award#:
BID#:



Page# 1 of 1

Vendor Master#: 2000023
Phone: 970-221-6770
Vendor Contact:

Invoice

TO: CDOT OFFICE OF TRANSP. SAFETY
2829 W. Howard Place
DENVER CO 80204

Payment will be made by this agency

V
E
N
D
O
R
CITY OF FORT COLLINS
PO BOX 580
FORT COLLINS CO 80522-0580

Ship

TO:

Delivery/Installation Date: 09/30/2024

INSTRUCTIONS TO VENDOR

- 1. If for any reason, delivery of this order is delayed beyond the delivery/Installation date shown, please notify the agency contact named at the top left (Right of cancellation is reserved in instances in which timely delivery is not made).
- 2. All chemicals, equipment and materials must conform to the standards required by OSHA.
- 3. NOTE: Additional terms and conditions on reverse side or at address shown in Special Instructions.

SPECIAL INSTRUCTIONS

| LINE | PRODUCT NUMBER PRODUCT CATEGORY DESCRIPTION | UOM PLANT | QUANTITY | UNIT COST | TOTAL ITEM COST |
|-------|--|--------------|-----------|-----------|-----------------|
| 00001 | 92585 Ft Collins PS FFY24 Click it or Ticket | AU 7001 | 16,529.00 | 1.00 | 16,529.00 |

I agree to comply with the statements made and contained under the title Certification and Assurances in the Office of Transportation Safety approved application. No expenditures against this project will be paid prior to April 2024 or the PO effective date, whichever is later.

The Small Dollar Grant Award Terms and Conditions supersede CDOT's Standard Terms and Conditions and can be found on our website:
<https://www.codot.gov/business/procurement-and-contract-services> or directly at:
https://docs.google.com/document/d/1QRGlW_xf9H46_5xR3s4h5obQGhtOPnFk/view.

DOCUMENT TOTAL: 16,529.00

THIS PO IS ISSUED IN ACCORDANCE WITH STATE AND FEDERAL REGULATIONS

FOR THE STATE OF COLORADO

<https://osc.colorado.gov/spco/central-contracts-unit/purchase-order-terms-conditions>

DP-01 (R-02/06)

Authorized Signature

Date

Signature not required if PO transmitted electronically.

AGENDA ITEM SUMMARY

City Council



STAFF

Marc Virata, Senior Manager, Civil Engineering
Monica Martinez, Financial Planning and Analysis Manager
Andy Smith, Redevelopment Program Manager

SUBJECT

First Reading of Ordinance No. 068, 2024, Appropriating Prior Year Reserves in the Transportation Capital Expansion Fee Fund for Eligible Reimbursement to the Waters Edge Second Filing Developer for Construction of Turnberry Road, Brightwater Drive, and Morningstar Way Improvements.

EXECUTIVE SUMMARY

The purpose of this item is to appropriate \$612,027 of Transportation Capital Expansion Fee (TCEF) Funds for expenditure from the Transportation Capital Expansion Fee Program Budget to reimburse the Waters Edge Second Filing developer, Waters Edge Development Inc. (Developer), for its oversizing construction of Turnberry Road, Brightwater Drive, and Morningstar Way. As part of the development plans and development agreement for Waters Edge Second Filing and permitted for construction under the Waters Edge Third Filing Development Construction Permit, the Developer has constructed to City standards Turnberry Road as a two-lane arterial, and Brightwater Drive and Morningstar Way as collectors as part of its development requirements. Per Section 24-112 of the City Code, the Developer is eligible for reimbursement from TCEF funds for the oversized, non-local portion of Turnberry Road, Brightwater Drive, and Morningstar Way not attributed to the local portion obligation.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The TCEF Program (formerly Street Oversizing), instituted by ordinance in 1979, was established to manage the construction of new arterial and collector streets, and is an "Impact Fee" funded program. The TCEF Program determines and collects impact fees from development and redevelopment projects. The collection of these impact fees contributes funding for growth's related share towards City Capital Projects, including the City's Active Modes Plan, and reimburses development for constructing roadway improvements above the local street access standards. Section 24-112 of the City Code allows for reimbursement to developers for the construction of collector and arterial streets.

Waters Edge (marketed as Sonders Fort Collins) is a development on the west side of Turnberry Road between Douglas Road and Country Club Road built by Waters Edge Development Inc. (Developer). This reimbursement is for the Developer's construction above the local street access standards of Turnberry

Road (2-lane arterial), Brightwater Drive (collector), and Morningstar Way (collector) as part of the Waters Edge Second Filing and permitted for construction under the Waters Edge Third Filing Development Construction Permit.

Portions of pavement, landscaping, and sidewalk for all three streets are eligible for reimbursement and are depicted in the “Waters Edge Second Filing Street Oversizing/Repay” and itemized between City (TCEF) and local (developer/adjacent parcel owner) responsibility in “Street Reimbursement Agreement” and “Street Reimbursement Agreement City-Developer Cost Breakdown”

Staff has reviewed the documentation provided by the Waters Edge developer and agrees that the requested reimbursement meets the requirements under City Code Section 24-112 for appropriation from TCEF funds. There are presently adequate funds in TCEF to reimburse the Developer and Staff recommends reimbursement in the amount of \$612,027.

Waters Edge has metro districts that were established with City Council approving the consolidated service plan for Waters Edge Metropolitan Districts Nos. 1-5 by adoption of Resolution 2018-084 on September 18, 2018. Staff has identified on the review of this reimbursement request that, as part of the metro district service plan for Waters Edge, the Developer may be eligible to seek reimbursement from the metro districts for these same street improvements that the Developer is requesting from TCEF funds. The Board of Directors of Districts 1 and 2 adopted a joint resolution affirming that the Districts shall not reimburse the Developer, and the Districts’ accountant shall ensure that the Districts do not reimburse the Developer. Additionally, the accountant issued an affidavit to Districts 1 and 2 affirming that Districts 1-5 have not reimbursed the Developer, and that the districts cannot reimburse the Developer for street oversizing costs that the City has already reimbursed, nor can the districts acquire such improvements. Resolutions declaring Districts 3, 4, and 5 as inactive were adopted on December 2019, and Districts 3, 4, and 5 are intended for future development (separate from Sonders Fort Collins) east of Turnberry Road. These districts are not associated with the Waters Edge Filings and the associated street improvements that the Developer is requesting from TCEF funds. Special district notices declaring the continued inactive status of Districts 3, 4, and 5 were provided to the City in December 2023.

The City Manager is recommending this supplemental appropriation and has determined it will not cause the total amount appropriated in 2024 in the Transportation Improvement Fund, the fund into which TCEF revenues are deposited and from which these appropriated funds will be expended, to exceed the current estimate of actual and anticipated and all other funds to be received in the Transportation Improvement Fund during the 2024 fiscal year.

In addition, this reimbursement under the TCEF program is subject to the Council’s approval of this Ordinance to appropriate the needed funds, which approval is within the Council’s sole discretion.

CITY FINANCIAL IMPACTS

This item appropriates \$612,027 of TCEF Funds into the Transportation Capital Expansion Fee Program Budget for reimbursement to the Waters Edge Second Filing developer.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Council Finance Committee recommended approval at its May 2nd, 2024, meeting.

PUBLIC OUTREACH

Public outreach is not required or contemplated in the requirements for reimbursement to developers as described under Municipal Code Sec. 24-112. – Transportation improvements reimbursement program.

ATTACHMENTS

1. Ordinance for Consideration
2. Waters Edge Second Filing Street Oversizing/Repay
3. Street Reimbursement Agreement
4. Street Reimbursement Agreement City – Developer Cost Breakdown
5. Joint Resolution of the Board of Directors of Waters Edge Metropolitan District Nos. 1 & 2 – Prohibiting District Reimbursement
6. Board of Directors of Waters Edge Metropolitan District Nos. 1 & 2 – Accountant’s Affidavit
7. Resolution of the Board of Directors of the Waters Edge Metropolitan District No. 3 – Declaring Inactive Special District Status
8. Resolution of the Board of Directors of the Waters Edge Metropolitan District No. 4 – Declaring Inactive Special District Status
9. Resolution of the Board of Directors of the Waters Edge Metropolitan District No. 5 – Declaring Inactive Special District Status
10. Notice of Continuing Inactive Status for Waters Edge Metropolitan District Nos. 3-5

ORDINANCE NO. 068, 2024
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES IN THE
TRANSPORTATION CAPITAL EXPANSION FEE FUND FOR ELIGIBLE
REIMBURSEMENT TO THE WATERS EDGE SECOND FILING
DEVELOPER FOR CONSTRUCTION OF TURNBERRY ROAD,
BRIGHTWATER DRIVE, AND MORNINGSTAR WAY IMPROVEMENTS

A. City Code Section 7.5-32 establishes a transportation capital expansion fee (“TCEF”) that is one of the City’s capital expansion fees that are imposed on development at the time of building permit issuance to ensure that new growth and development in the City bears a proportional share of the City’s costs for certain capital improvements, including streets and related transportation improvements.

B. City Code Section 7.5-32 also provides that the TCEF revenues are to be deposited into the City’s Transportation Improvement Fund established in City Code Section 8-87 (the “TCEF Fund”).

C. City Code Section 8-87 directs that the monies in the TCEF Fund are to be used as provided in Division 2 of Article III of City Code Chapter 24 (“Division 2”).

D. Division 2 provides that the revenues in the TCEF Fund are to be used by the City to fund certain transportation improvements, including arterial and collector streets, either directly or as reimbursement to developers of real property who have constructed such improvements.

E. For a developer to be eligible for reimbursement of its costs for qualifying transportation improvements it has constructed, Division 2 requires the developer to submit proof of its costs to the City for the City Engineer’s review and approval consistent with the requirements of Division 2.

F. Waters’ Edge Development, Inc. is the developer of the Waters Edge Second Filing development (“Developer”) and as part of that development, has constructed portions of Turnberry Road as a two-lane arterial street, and Brightwater Drive and Morningstar Way as collector streets (collectively, “Road Improvements”).

G. The Developer has submitted its request to the City for a reimbursement of \$612,027 representing its costs for the oversized portions of the Road Improvements (the “Reimbursement Request”).

H. The City Engineer has reviewed the Reimbursement Request and determined it meets the requirements of Division 2 and that the Developer is eligible to be reimbursed for the amount requested in its Reimbursement Request, but City Code Section 24-112(c) provides that all reimbursements under Division 2 must first be appropriated from the TCEF fund by City Council.

I. The monies necessary to satisfy the Reimbursement Request have not been appropriated from the TCEF Fund by Council, so this Ordinance must be adopted by Council before the reimbursement can be made to the Developer.

J. 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 from such revenues and funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated.

K. The City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Transportation Capital Expansion Fee Fund and will not cause the total amount appropriated in the Transportation Capital Expansion Fee 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.

L. This appropriation benefits the public health, safety and welfare of the residents of Fort Collins and serves the public purpose of reimbursing the Developer for the costs it incurred to construct the Road Improvements to oversized standards, which standards the Developer was not legally required to satisfy considering the impacts of the development.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that there is hereby appropriated from prior year reserves in the Transportation Capital Expansion Fee Fund the sum of SIX HUNDRED TWELVE THOUSAND TWENTY-SEVEN DOLLARS (\$612,027) to be expended in the Transportation Capital Expansion Fee Fund for eligible reimbursement to the Developer for construction of Turnberry Road, Brightwater Drive, and Morningstar Way improvements beyond local access standards.

Introduced, considered favorably on first reading on May 21, 2024, and approved on second reading for final passage on June 4, 2024.

Mayor

ATTEST:

Interim City Clerk

Effective Date: June 14, 2024
Approving Attorney: Ryan Malarky

STREET REIMBURSEMENT AGREEMENT

****This exhibit provides repay and street oversizing items/ areas for the Waters Edge West Development. Please refer to the Street Oversizing Exhibit, dated December 23, 2022, that correspond to the items/ areas shown below.**

PERMANENT PUBLIC STREET IMPROVEMENTS INSTALLED FOR: Waters Edge Second Filing

Date: Feb 28,2024

1. Construction

| | Item Description | Unit | QTY | Unit Price | Total | KEY NOTE LEGEND # (Reference to Cadd Exhibit) |
|---|---|------|-------|------------|---------------------|--|
| TURNBERRY ROAD (CR11) EAST SIDE | | | | | | |
| REPAY | 4" HMA/ 6" ABC pavement section, including subgrade prep (27.10+2.30) | SY | 1,730 | \$ 29.40 | \$50,862.00 | 18 |
| | Fly Ash Stabilization (12" @ 12%) | SY | 1,730 | \$ 9.45 | \$16,348.50 | 18 |
| | FLY ASH MOBILZATION (Pro rated to 1.23/SY) | SY | 1,730 | \$ 1.23 | \$2,127.90 | 18 |
| | Sawcut Existing Pavement | LF | 1,216 | \$ 3.85 | \$4,681.60 | 17 |
| | Remove Existing Pavement | SY | 1,012 | \$ 5.25 | \$5,313.00 | 17 |
| | Sub Total | | | | \$79,333.00 | |
| TURNBERRY ROAD (CR11) WEST SIDE | | | | | | |
| OVERSIZ | 4" HMA/ 6" ABC pavement section, including subgrade prep (27.10+2.30) | SY | 1,764 | \$ 29.40 | \$51,861.60 | 16 |
| | Fly Ash Stabilization (12" @ 12%) | SY | 1,764 | \$ 9.45 | \$16,669.80 | 16 |
| | FLY ASH MOBILZATION (Pro rated to 1.23/SY) | SY | 1,764 | \$ 1.23 | \$2,169.72 | 16 |
| | Parkway Oversizing | SF | 4,947 | \$ 4.00 | \$19,788.00 | 15 |
| | 6" Thick Concrete Sidewalk | SF | 1,930 | \$ 6.00 | \$11,580.00 | 14 |
| | Fine Grade Under Sidewalk | SF | 1,930 | \$ 0.73 | \$1,408.90 | 14 |
| | Sawcut Existing Pavement | LF | 1,445 | \$ 3.85 | \$5,563.25 | 13 |
| | Remove Existing Pavement | SY | 1,229 | \$ 5.25 | \$6,452.25 | 13 |
| | Sub Total | | | | \$115,493.52 | |
| MORNINGSTAR WAY (WEST OF ROUNDABOUT) | | | | | | |
| OVERSIZ | 4" HMA/ 6" ABC pavement section, including subgrade prep (27.10+2.30) | SY | 1,798 | \$ 29.40 | \$52,861.20 | 2 |
| | FLY ASH STABILIZATION (12" @ 12%) | SY | 1,798 | \$ 9.45 | \$16,991.10 | 2 |
| | FLY ASH MOBILIZATION (Pro rated to 1.23/SY) | SY | 1,798 | \$ 1.23 | \$2,211.54 | 2 |
| | 6" Thick Concrete Sidewalk | SF | 1,182 | \$ 6.00 | \$7,092.00 | 1 |
| | Fine Grade Under Sidewalk | SF | 1,182 | \$ 0.73 | \$862.86 | 1 |
| | Parkway Oversizing | SF | 5,234 | \$ 4.00 | \$20,936.00 | 3 |
| | Sub Total | | | | \$100,954.70 | |
| BRIGHTWATER DRIVE (WEST SIDE) | | | | | | |
| OVERSIZ | 4" HMA/ 6" ABC pavement section, including subgrade prep (27.10+2.30) | SY | 1,353 | \$ 29.40 | \$39,778.20 | 5 |
| | FLY ASH STABILIZATION (12" @ 12%) | SY | 1,353 | \$ 9.45 | \$12,785.85 | 5 |
| | FLY ASH MOBILIZATION (Pro rated to 1.23/SY) | SY | 1,353 | \$ 1.23 | \$1,664.19 | 5 |
| | 6" Thick Concrete Sidewalk | SF | 867 | \$ 6.00 | \$5,202.00 | 4 |
| | Fine Grade Under Sidewalk | SF | 867 | \$ 0.73 | \$632.91 | 4 |
| | Parkway Oversizing | SF | 2,512 | \$ 4.00 | \$10,048.00 | 6 |
| | Sub Total | | | | \$70,111.15 | |

| Item 11. | | Item Description | Unit | QTY | Unit Price | Total | KEY NOTE LEGEND # |
|---|--|--|------|--------------|--------------|---------------------|--|
| | | BRIGHTWATER DRIVE (EAST SIDE, ADJACENT TO CITY PARK) | | | | | |
| OVERSIZE | | 6" Thick, 5' Wide Concrete Sidewalk, including subgrade prep. | SF | 486 | \$ 6.00 | \$2,916.00 | 4 |
| | | Fine Grade Under Sidewalk | SF | 486 | \$ 0.73 | \$354.78 | 4 |
| | | 4" HMA/ 6" ABC pavement section, including subgrade prep (27.10+2.30) | SY | 1,143 | \$ 29.40 | \$33,604.20 | 5 |
| | | Fly Ash Stabilization (12" @ 12%) | SY | 1,143 | \$ 9.45 | \$10,801.35 | 5 |
| | | FLY ASH MOBILIZATION (Pro rated to 1.23/SY) | SY | 1,143 | \$ 1.23 | \$1,405.89 | 5 |
| | | Remove Existing Pavement | SY | 0 | \$ 5.25 | \$0.00 | Area east of CL Existing roadway, along Park |
| | | Parkway Oversizing | SF | 2,002 | \$ 4.00 | \$8,008.00 | 6 |
| | | Sub Total | | | | \$57,090.22 | |
| | | BRIGHTWATER DRIVE (EAST SIDE) | | | | | |
| OVERSIZE | | 6" Thick, 5' Wide Concrete Sidewalk, including subgrade prep. | SF | 310 | \$ 6.00 | \$1,860.00 | 4 |
| | | Fine Grade Under Sidewalk | SF | 310 | \$ 0.73 | \$226.30 | 4 |
| | | 4" HMA/ 6" ABC pavement section, including subgrade prep (27.10+2.30) | SY | 186 | \$ 29.40 | \$5,468.40 | 5 |
| | | Fly Ash Stabilization (12" @ 12%) | SY | 186 | \$ 9.45 | \$1,757.70 | 5 |
| | | FLY ASH MOBILIZATION (Pro rated to 1.23/SY) | SY | 186 | \$ 1.23 | \$228.78 | 5 |
| | | Remove Existing Pavement (8,795 SY Total for M-Star and Brightwater, less 2096 SY East side by park) | SY | 2,625 | \$ 5.25 | \$13,781.25 | Demo of Ex Asphalt M-Star & Brightwater |
| | | Parkway Oversizing | SF | 1,217 | \$ 4.00 | \$4,868.00 | 6 |
| | | Sub Total | | | | \$28,190.43 | |
| | | MISCELLANEOUS | | | | | |
| OVERSIZE | | PVMT MARKING | LS | 1 | \$ 37,450.00 | \$37,450.00 | |
| | | SIGNING | LS | 1 | \$ 4,100.00 | \$4,100.00 | |
| | | EROSION CONTROL | LS | 1 | \$ 2,902.00 | \$2,902.00 | |
| | | MOBILIZATION | LS | 1 | \$ 18,684.00 | \$18,684.00 | |
| | | CONSTRUCTION MANAGEMENT | LS | 1 | \$ 4,396.00 | \$4,396.00 | |
| | | TRAFFIC CONTROL | LS | 1 | \$ 24,502.00 | \$24,502.00 | |
| | | Sub Total | | | | \$92,034.00 | |
| | | CONSTRUCTION TOTAL | | | | \$543,207.02 | |
| 2. Aspen Engineering - Civil Engineers | | | | | | | |
| OVERSIZE | | Item Description | Unit | QTY | Unit Price | Total | |
| | | DESIGN COSTS INCURRED FOR THE PUBLIC STREET IMPROVEMENTS | LS | 1 | \$ 58,800.00 | \$58,800.00 | |
| | | | | TOTAL | | \$58,800.00 | |
| 3. Soil Testing for Roadway Portions | | | | | | | |
| OVERSIZE | | Item Description | Unit | QTY | Unit Price | Total | |
| | | COST OF TESTING MATERIALS FOR CONSTRUCTION OF THE ROADWAY | LS | 1 | \$ 6,329.00 | \$6,329.00 | |
| | | | | TOTAL | | \$6,329.00 | |
| 4. Construction Survey Staking | | | | | | | |
| OVERSIZE | | Item Description | Unit | QTY | Unit Price | Total | |
| | | CONSTRUCTION STAKING FOR ROADWAY IMPROVEMENTS (Turnberry, Morningstar, Brightwater, Parkside) | LS | 1 | \$ 3,691.00 | \$3,691.00 | |
| | | | | TOTAL | | \$3,691.00 | |
| TOTAL COST OF THE PERMANENT PUBLIC STREET IMPROVEMENTS | | | | | | \$612,027.02 | |

Item 11.

Project: WATERS EDGE WEST (Street Reimbursement Agreement City-Developer Cost Breakdown)

Developer: Actual Communities, Inc.
 Created by: Aspen Engineering
 Date: 29-Feb-24

Brief Description of Eligible Improvements: Reimbursement request for applicable roadway oversized portions, per DA for Waters Edge West

*Please note that the "adjacent parcel owner" costs are not the actual repay costs for City Parks, as the City of FC requires we reduce the asphalt costs to match the local street section. Repay will be based on the actual costs, by Connell for street sections.

Roadway: Turnberry Road

| Item # | Description of Item | Unit | Unit Price | Quantity Breakdown | | | Cost Breakdown | | | Total Cost |
|---------------------------------------|---|------|------------|--------------------|-------|-----------------------|----------------|---------------|-----------------------|---------------|
| | | | | Developer | City | Adjacent Parcel Owner | Developer | City | Adjacent Parcel Owner | |
| 18 & 16 | 4" HMA/ 6" ABC pavement section, including subgrade prep (27.10+2.30) | SY | \$ 29.40 | 2,475 | 3,494 | 1,812 | \$ 72,765.00 | \$ 102,723.60 | \$ 53,272.80 | \$ 228,761.40 |
| 18 & 16 | Fly Ash Stabilization (12" @ 12%) | SY | \$ 9.45 | 2,475 | 3,494 | 1,812 | \$ 23,388.75 | \$ 33,018.30 | \$ 17,123.40 | \$ 73,530.45 |
| 18 & 16 | FLY ASH MOBILIZATION (Pro rated to 1.23/SY) | SY | \$ 1.23 | 2,475 | 3,494 | 1,812 | \$ 3,044.25 | \$ 4,297.62 | \$ 2,228.76 | \$ 9,570.63 |
| 17 & 13 | Sawcut Existing Pavement | LF | \$ 3.85 | 1,403 | 2,661 | 1,216 | \$ 5,401.55 | \$ 10,244.85 | \$ 4,681.60 | \$ 20,328.00 |
| 17 & 13 | Remove Existing Pavement | SY | \$ 5.25 | 1,432 | 2,241 | 1,012 | \$ 7,518.00 | \$ 11,765.25 | \$ 5,313.00 | \$ 24,596.25 |
| 14 | 6" Thick Concrete Sidewalk | SF | \$ 6.00 | 5,792 | 1,930 | - | \$ 34,752.00 | \$ 11,580.00 | \$ - | \$ 46,332.00 |
| 14 | Fine Grade Under Sidewalk | SF | \$ 0.73 | 5,792 | 1,930 | - | \$ 4,228.16 | \$ 1,408.90 | \$ - | \$ 5,637.06 |
| 15 | Parkway Oversizing | SF | \$ 4.00 | 6,875 | 4,947 | - | \$ 27,500.00 | \$ 19,788.00 | \$ - | \$ 47,288.00 |
| Roadway Construction Sub-Total | | | | | | | \$ 178,597.71 | \$ 194,826.52 | \$ 82,619.56 | \$ 456,043.79 |

Roadway: Morningstar Way (West of Roundabout)

| Item # | Description of Item | Unit | Unit Price | Quantity Breakdown | | | Cost Breakdown | | | Total Cost |
|---------------------------------------|---|------|------------|--------------------|-------|-----------------------|----------------|---------------|-----------------------|---------------|
| | | | | Developer | City | Adjacent Parcel Owner | Developer | City | Adjacent Parcel Owner | |
| 2 | 4" HMA/ 6" ABC pavement section, including subgrade prep (27.10+2.30) | SY | \$ 29.40 | 2,502 | 1,798 | 0 | \$ 73,558.80 | \$ 52,861.20 | \$ - | \$ 126,420.00 |
| 2 | FLY ASH STABILIZATION (12" @ 12%) | SY | \$ 9.45 | 2,502 | 1,798 | 0 | \$ 23,643.90 | \$ 16,991.10 | \$ - | \$ 40,635.00 |
| 2 | FLY ASH MOBILIZATION (Pro rated to 1.23/SY) | SY | \$ 1.23 | 2,502 | 1,798 | 0 | \$ 3,077.46 | \$ 2,211.54 | \$ - | \$ 5,289.00 |
| 1 | 6" Thick Concrete Sidewalk | SF | \$ 6.00 | 7,875 | 1,182 | 0 | \$ 47,250.00 | \$ 7,092.00 | \$ - | \$ 54,342.00 |
| 1 | Fine Grade Under Sidewalk | SF | \$ 0.73 | 7,875 | 1,182 | 0 | \$ 5,748.75 | \$ 862.86 | \$ - | \$ 6,611.61 |
| 3 | Parkway Oversizing | SF | \$ 4.00 | 9,625 | 5,234 | 0 | \$ 38,500.00 | \$ 20,936.00 | \$ - | \$ 59,436.00 |
| Roadway Construction Sub-Total | | | | | | | \$ 191,778.91 | \$ 100,954.70 | \$ - | \$ 292,733.61 |

Roadway: Brightwater Drive (South of Roundabout)

| Item # | Description of Item | Unit | Unit Price | Quantity Breakdown | | | Cost Breakdown | | | Total Cost |
|---------------------------------------|---|------|------------|--------------------|-------|-----------------------|----------------|---------------|-----------------------|-----------------|
| | | | | Developer | City | Adjacent Parcel Owner | Developer | City | Adjacent Parcel Owner | |
| 5 | 4" HMA/ 6" ABC pavement section, including subgrade prep (27.10+2.30) | SY | \$ 29.40 | 3,704 | 2,682 | 2,600 | \$ 108,897.60 | \$ 78,850.80 | \$ 76,440.00 | \$ 264,188.40 |
| 5 | FLY ASH STABILIZATION (12" @ 12%) | SY | \$ 9.45 | 3,704 | 2,682 | 2,600 | \$ 35,002.80 | \$ 25,344.90 | \$ 24,570.00 | \$ 84,917.70 |
| 5 | FLY ASH MOBILIZATION (Pro rated to 1.23/SY) | SY | \$ 1.23 | 3,704 | 2,682 | 2,600 | \$ 4,555.92 | \$ 3,298.86 | \$ 3,198.00 | \$ 11,052.78 |
| 4 | 6" Thick, 5' wide Concrete Sidewalk, including subgrade prep. | SF | \$ 6.00 | 6,368 | 1,663 | 4,891 | \$ 38,208.00 | \$ 9,978.00 | \$ 29,346.00 | \$ 77,532.00 |
| 4 | Fine Grade Under Sidewalk | SF | \$ 0.73 | 6,368 | 1,663 | 4,891 | \$ 4,648.64 | \$ 1,213.99 | \$ 3,570.43 | \$ 9,433.06 |
| 6 | Parkway Oversizing | SF | \$ 4.00 | 8,882 | 5,731 | 5,450 | \$ 35,528.00 | \$ 22,924.00 | \$ 21,800.00 | \$ 80,252.00 |
| Demo | Remove Existing Pavement. (Old Brightwater access drive) | SY | \$ 5.25 | 3,625 | 2,625 | 2,545 | \$ 19,031.25 | \$ 13,781.25 | \$ 13,361.25 | \$ 46,173.75 |
| Roadway Construction Sub-Total | | | | | | | \$ 245,872.21 | \$ 155,391.80 | \$ 172,285.68 | \$ 573,549.69 |
| Construction Total | | | | | | | \$ 616,248.83 | \$ 451,173.02 | \$ 254,905.24 | \$ 1,322,327.09 |
| Percentage | | | | | | | 46.6% | 34.1% | 19.3% | 100.0% |

Soft Costs (based on a proportional split of construction costs)

| Item # | Description of Item | Unit | Unit Price | Quantity Breakdown (Proportional Split) | | | Cost Breakdown (Proportional Split) | | | Total Cost |
|-------------------------|----------------------------|------|------------|---|------|-----------------------|-------------------------------------|---------------|-----------------------|-----------------|
| | | | | Developer | City | Adjacent Parcel Owner | Developer | City | Adjacent Parcel Owner | |
| | Construction Surveying | - | - | - | - | - | \$ 251,714.00 | \$ 3,691.00 | \$ 6,549.00 | \$ 261,954.00 |
| | Mobilization | - | - | - | - | - | \$ 404,018.00 | \$ 18,684.00 | \$ 2,500.00 | \$ 425,202.00 |
| | Construction Management | - | - | - | - | - | \$ 84,974.00 | \$ 4,396.00 | \$ 10,630.00 | \$ 100,000.00 |
| | Erosion Control | - | - | - | - | - | \$ 116,863.00 | \$ 2,902.00 | \$ 3,071.00 | \$ 122,836.00 |
| | Traffic Control | - | - | - | - | - | \$ 34,486.00 | \$ 24,502.00 | \$ 1,512.00 | \$ 60,500.00 |
| | Signage & Striping | - | - | - | - | - | \$ 72,915.00 | \$ 41,550.00 | \$ 2,935.00 | \$ 117,400.00 |
| | Geotech./Materials Testing | - | - | - | - | - | \$ 294,661.00 | \$ 6,329.00 | \$ 7,718.00 | \$ 308,708.00 |
| | Design Engineering | - | - | - | - | - | \$ 379,950.00 | \$ 58,800.00 | \$ 11,250.00 | \$ 450,000.00 |
| Soft Cost Totals | | | | | | | \$ 1,639,581.00 | \$ 160,854.00 | \$ 46,165.00 | \$ 1,846,600.00 |

Totals: 1,639,581.00 612,027.02 301,070.24 3,168,927.09

Item 11.

**JOINT RESOLUTION
OF THE BOARD OF DIRECTORS OF
WATERS' EDGE METROPOLITAN DISTRICT NOS. 1 & 2**

**PROHIBITING DISTRICT REIMBURSEMENT
TO DEVELOPER FOR VARIOUS OVERSIZING IMPROVEMENT COSTS**

WHEREAS, Waters' Edge Metropolitan District Nos. 1 & 2 (the "**Districts**") are each a quasi-municipal corporation and political subdivision of the State of Colorado, duly organized pursuant to §§ 32-1-101, *et seq.*, C.R.S.; and

WHEREAS, pursuant to § 32-1-1001(1)(d), C.R.S., the Boards of Directors of the Districts (together, the "**Board**") are authorized to enter into contracts and agreements affecting the affairs of the Districts; and

WHEREAS, pursuant to § 32-1-1001(1)(h) C.R.S., the Board has the management, control, and supervision of all the business and affairs of the Districts; and

WHEREAS, Waters' Edge Developments Inc. (the "**Developer**") constructed certain oversized improvements to portions of Brightwater Drive, Morningstar Way, and Turnberry Road, collector roadways within the Districts' boundaries (the "**Street Oversized Improvements**"), and streets, curb, and sidewalk, around the park located centrally in the Districts (the "**Oversized Park Improvements**") and together with the Street Oversized Improvements, the "**Oversized Improvements**"); and

WHEREAS, the Developer dedicated the Oversized Improvements to the City of Fort Collins (the "**City**"); and

WHEREAS, the Developer seeks reimbursement from, and/or has been reimbursed by the City for, certain costs associated with the construction of the Oversized Improvements; and

WHEREAS, the City seeks assurances from the Districts that, to the extent that the City reimburses the Developer for the Oversized Improvements, the Districts shall not reimburse the Developer for such Oversized Improvements; and

WHEREAS, the District's accountant has furnished an affidavit stating that the District has neither accepted costs for reimbursement nor reimbursed costs related to the Oversized Improvements.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD AS FOLLOWS:

1. To the extent the City reimburses the Developer, the Districts shall not reimburse the Developer for the costs associated with the Oversized Improvements.

Item 11.

2. Nothing herein shall prohibit any of the Districts from reimbursing the Developer for any improvement costs that are eligible for reimbursement under the Districts' service plan to the extent such improvement costs *are not* reimbursed by the City.

3. The Districts' accountant shall ensure that the Districts do not reimburse the Developer, or its successors or assigns, for the cost of the Oversized Improvements that have been reimbursed by the City.

[Signature Page Follows.]

Item 11.


ADOPTED October 18, 2023.

DISTRICTS:

WATERS' EDGE METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado

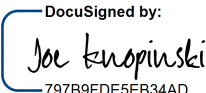
By: 
797B9FDE5EB34AD
Officer of the District

Attest:

By: 
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DISTRICTS:

WATERS' EDGE METROPOLITAN DISTRICT NO. 2, a quasi-municipal corporation and political subdivision of the State of Colorado


By: 
797B9FDE5EB34AD
Officer of the District

Attest:

By: 
D2E394E77E9B4B1...

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law

By: 
1D2D68C7D0884D1...
General Counsel to the District

Signature page to Resolution Prohibiting District Reimbursement to Developer For Various Oversizing Improvement Costs

ACCOUNTANT'S Affidavit

October 18, 2023

Board of Directors
 Water's Edge Metropolitan Districts 1-2
 c/o White, Bear, Ankele, Tanaka & Waldron, P.C.
 2154 E. Commons Avenue, Suite 2000
 Centennial, CO 80122

Re: Developer Reimbursement of oversized improvements

This report summarizes the results of the procedures we have performed related to substantiation that the District has not accepted costs nor reimbursed Waters' Edge Developments, Inc. (the "Developer") for costs relating to oversized improvements to portions of Brightwater Drive, Morningstar Way, and Turnberry Road, and streets, curb, and sidewalk, around the park located centrally in the Districts

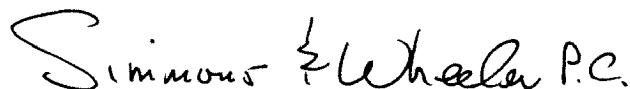
The Developer has submitted documentation of \$18,320,797.64 of expenditures for the District Eligible Improvements consisting of invoices and other supporting documentation as outlined in the Engineer's Report and Verification of Costs Associated with Public Improvements No. 9 ("Report No. 9").

Schedio Group LLC, ("Schedio Group"), the District's independent engineer, has reviewed certain underlying documentation and has submitted an Engineer's Verification verifying \$18,320,797.64 as being for soft, indirect and hard costs associated with the design and construction of Public Improvements and therefore eligible for Developer Reimbursement. According to Report No. 9, certain of those costs relate to the oversized improvements to portions of Brightwater Drive, Morningstar Way, and Turnberry Road, and streets, curb, and sidewalk around the park located centrally in the Districts ("Oversize Costs"). \$612,027 of the above-referenced Oversize Costs have been identified by City of Fort Collins Staff as reimbursable by the City in accordance with the City's oversizing reimbursement policy ("City-Reimbursable Oversize Costs"), and said City-Reimbursable Oversize Costs are not eligible to be acquired by the Water's Edge Metropolitan Districts Nos. 1-5 or reimbursed to the Developer. None of Waters' Edge District Nos. 1-5 have reimbursed the Developer for the above-referenced City-Reimbursable Oversize Costs, nor have Waters' Edge Metropolitan District Nos. 1-5 acquired the improvements associated with said City-Reimbursable Oversize Costs.

We have reviewed certain underlying documentation supporting Report No. 9 as necessary and appropriate, in accordance with accounting principles generally accepted in the United States of America, to verify the accuracy of the cost summary set forth in Report No. 9. I have discussed the allocation of costs relating to various invoices with Schedio Group, to determine the reasonableness of the allocation.

We were not engaged to and did not conduct an examination in accordance with generally accepted auditing standards in the United States of America, the objective of which would be the expression of an opinion on the financial statements of the District. Accordingly, we do not express such an opinion. We performed our engagement as a consulting service under the American Institute of Certified Public Accountants' Statement of Standards for Consulting Services. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

We are not independent with respect to the District.



Simmons & Wheeler, P.C.

**RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WATERS' EDGE METROPOLITAN DISTRICT NO. 3

DECLARING INACTIVE SPECIAL DISTRICT STATUS**

WHEREAS, the Waters' Edge Metropolitan District No. 3 (the "District") is a quasi-municipal corporation and political subdivision of the State of Colorado and is a duly organized and existing special district pursuant to §§ 32-1-101, *et seq.*, C.R.S.; and

WHEREAS, pursuant to § 32-1-104(3)(a), C.R.S., the board of directors of an "inactive special district," as that term is defined in § 32-1-103(9.3), C.R.S., may adopt a resolution that declares and affirms its qualifications for inactive status; and

WHEREAS, the Board of Directors for the District (the "Board") has determined that the District qualifies as an inactive special district; and

WHEREAS, the Board desires to declare and affirm the District's qualifications for inactive status in this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE DISTRICT AS FOLLOWS:

1. INACTIVE SPECIAL DISTRICT STATUS. The Board hereby declares and affirmatively states that the District meets the criteria for being an inactive special district as defined in § 32-1-103(9.3), C.R.S. The Board directs legal counsel to file a notice of inactive status with the agencies prescribed in § 32-1-104(3)(a), C.R.S., and, for each year thereafter in which the District qualifies as an inactive special district, to file a notice of continuing inactive status for the District pursuant to § 32-1-104(4), C.R.S.

2. AUTHORITY TO CONDUCT ELECTIONS. The Secretary of the District (the "Authorized Officer") shall be authorized and is hereby directed by the Board to cause such actions to be taken as may be necessary, including but not limited to, the adoption of a resolution to conduct regular or special elections of the District (collectively, the "Election") during the period of inactive status and to seek funding for such activities from the developer or owner(s) of property within the District's boundaries, if necessary. The Board further hereby deems that the following shall apply to the Election:

2.1 The Election shall be conducted pursuant to §§ 32-1-101, *et seq.*, C.R.S. (the "Special District Act"); §§ 1-13.5-101, *et seq.*, C.R.S. (the "Colorado Local Government Election Code"); and §§ 1-1-101 through 1-13-101, *et seq.*, C.R.S. (the "Uniform Election

Code of 1992”), including any amendments thereto, and shall also comply with Article X, § 20 of the Colorado Constitution (“TABOR”), as necessary.

2.2 The Election shall be conducted as an independent mail ballot election unless otherwise deemed necessary and expressed in a separate election resolution adopted by the Board.

2.3 Pursuant to the authority set forth in § 1-1-111, C.R.S., the Board hereby appoints Ashley B. Frisbie, of the law firm of WHITE BEAR ANKELE TANAKA & WALDRON, Attorneys at Law, as the Designated Election Official (the “DEO”) of the District for the Election called by the Board, or called on behalf of the Board by the DEO, and hereby authorizes and directs the DEO to take all actions necessary for the proper conduct of the Election, including, if applicable, cancellation of the Election in accordance with § 1-13.5-513, C.R.S.

2.4 In the event the DEO is not available, the Authorized Officer shall be authorized to appoint a new DEO, who shall thereafter have all of the authority granted to the DEO by this Resolution, the Colorado Local Government Election Code and the Uniform Election Code of 1992.

3. COMPLIANCE MATTERS. The Board hereby directs legal counsel for the District to undertake to all action required of inactive special districts in accordance with law.

4. FULL FORCE AND EFFECT. This Resolution shall remain in full force and effect until repealed or superseded, in whole or part, by subsequent official action of the Board, including, but not limited to, a return to active status pursuant to § 32-1-104(3)(b), C.R.S.

[Signature page follows.]

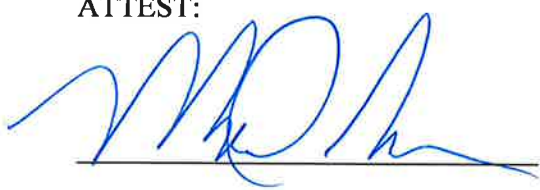
RESOLVED, APPROVED AND ADOPTED THIS 4TH DAY OF DECEMBER, 2019.

WATERS' EDGE METROPOLITAN DISTRICT NO. 3




Officer of the District

ATTEST:



APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law



General Counsel to the District

[Signature Page to Resolution Declaring Inactive District Status.]

**RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WATERS' EDGE METROPOLITAN DISTRICT NO. 4

DECLARING INACTIVE SPECIAL DISTRICT STATUS**

WHEREAS, the Waters' Edge Metropolitan District No. 4 (the "District") is a quasi-municipal corporation and political subdivision of the State of Colorado and is a duly organized and existing special district pursuant to §§ 32-1-101, *et seq.*, C.R.S.; and

WHEREAS, pursuant to § 32-1-104(3)(a), C.R.S., the board of directors of an "inactive special district," as that term is defined in § 32-1-103(9.3), C.R.S., may adopt a resolution that declares and affirms its qualifications for inactive status; and

WHEREAS, the Board of Directors for the District (the "Board") has determined that the District qualifies as an inactive special district; and

WHEREAS, the Board desires to declare and affirm the District's qualifications for inactive status in this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE DISTRICT AS FOLLOWS:

1. INACTIVE SPECIAL DISTRICT STATUS. The Board hereby declares and affirmatively states that the District meets the criteria for being an inactive special district as defined in § 32-1-103(9.3), C.R.S. The Board directs legal counsel to file a notice of inactive status with the agencies prescribed in § 32-1-104(3)(a), C.R.S., and, for each year thereafter in which the District qualifies as an inactive special district, to file a notice of continuing inactive status for the District pursuant to § 32-1-104(4), C.R.S.

2. AUTHORITY TO CONDUCT ELECTIONS. The Secretary of the District (the "Authorized Officer") shall be authorized and is hereby directed by the Board to cause such actions to be taken as may be necessary, including but not limited to, the adoption of a resolution to conduct regular or special elections of the District (collectively, the "Election") during the period of inactive status and to seek funding for such activities from the developer or owner(s) of property within the District's boundaries, if necessary. The Board further hereby deems that the following shall apply to the Election:

2.1 The Election shall be conducted pursuant to §§ 32-1-101, *et seq.*, C.R.S. (the "Special District Act"); §§ 1-13.5-101, *et seq.*, C.R.S. (the "Colorado Local Government Election Code"); and §§ 1-1-101 through 1-13-101, *et seq.*, C.R.S. (the "Uniform Election

Code of 1992”), including any amendments thereto, and shall also comply with Article X, § 20 of the Colorado Constitution (“TABOR”), as necessary.

2.2 The Election shall be conducted as an independent mail ballot election unless otherwise deemed necessary and expressed in a separate election resolution adopted by the Board.

2.3 Pursuant to the authority set forth in § 1-1-111, C.R.S., the Board hereby appoints Ashley B. Frisbie, of the law firm of WHITE BEAR ANKELE TANAKA & WALDRON, Attorneys at Law, as the Designated Election Official (the “DEO”) of the District for the Election called by the Board, or called on behalf of the Board by the DEO, and hereby authorizes and directs the DEO to take all actions necessary for the proper conduct of the Election, including, if applicable, cancellation of the Election in accordance with § 1-13.5-513, C.R.S.

2.4 In the event the DEO is not available, the Authorized Officer shall be authorized to appoint a new DEO, who shall thereafter have all of the authority granted to the DEO by this Resolution, the Colorado Local Government Election Code and the Uniform Election Code of 1992.

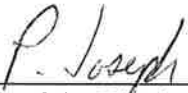
3. COMPLIANCE MATTERS. The Board hereby directs legal counsel for the District to undertake to all action required of inactive special districts in accordance with law.

4. FULL FORCE AND EFFECT. This Resolution shall remain in full force and effect until repealed or superseded, in whole or part, by subsequent official action of the Board, including, but not limited to, a return to active status pursuant to § 32-1-104(3)(b), C.R.S.

[Signature page follows.]

RESOLVED, APPROVED AND ADOPTED THIS 4TH DAY OF DECEMBER, 2019.

**WATERS' EDGE METROPOLITAN
DISTRICT NO. 4**



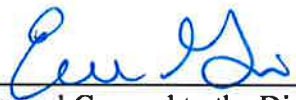
Officer of the District

ATTEST:



APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law



General Counsel to the District

[Signature Page to Resolution Declaring Inactive District Status.]

**RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WATERS' EDGE METROPOLITAN DISTRICT NO. 5

DECLARING INACTIVE SPECIAL DISTRICT STATUS**

WHEREAS, the Waters' Edge Metropolitan District No. 5 (the "District") is a quasi-municipal corporation and political subdivision of the State of Colorado and is a duly organized and existing special district pursuant to §§ 32-1-101, *et seq.*, C.R.S.; and

WHEREAS, pursuant to § 32-1-104(3)(a), C.R.S., the board of directors of an "inactive special district," as that term is defined in § 32-1-103(9.3), C.R.S., may adopt a resolution that declares and affirms its qualifications for inactive status; and

WHEREAS, the Board of Directors for the District (the "Board") has determined that the District qualifies as an inactive special district; and

WHEREAS, the Board desires to declare and affirm the District's qualifications for inactive status in this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE DISTRICT AS FOLLOWS:

1. INACTIVE SPECIAL DISTRICT STATUS. The Board hereby declares and affirmatively states that the District meets the criteria for being an inactive special district as defined in § 32-1-103(9.3), C.R.S. The Board directs legal counsel to file a notice of inactive status with the agencies prescribed in § 32-1-104(3)(a), C.R.S., and, for each year thereafter in which the District qualifies as an inactive special district, to file a notice of continuing inactive status for the District pursuant to § 32-1-104(4), C.R.S.

2. AUTHORITY TO CONDUCT ELECTIONS. The Secretary of the District (the "Authorized Officer") shall be authorized and is hereby directed by the Board to cause such actions to be taken as may be necessary, including but not limited to, the adoption of a resolution to conduct regular or special elections of the District (collectively, the "Election") during the period of inactive status and to seek funding for such activities from the developer or owner(s) of property within the District's boundaries, if necessary. The Board further hereby deems that the following shall apply to the Election:

2.1 The Election shall be conducted pursuant to §§ 32-1-101, *et seq.*, C.R.S. (the "Special District Act"); §§ 1-13.5-101, *et seq.*, C.R.S. (the "Colorado Local Government Election Code"); and §§ 1-1-101 through 1-13-101, *et seq.*, C.R.S. (the "Uniform Election

Code of 1992”), including any amendments thereto, and shall also comply with Article X, § 20 of the Colorado Constitution (“TABOR”), as necessary.

2.2 The Election shall be conducted as an independent mail ballot election unless otherwise deemed necessary and expressed in a separate election resolution adopted by the Board.

2.3 Pursuant to the authority set forth in § 1-1-111, C.R.S., the Board hereby appoints Ashley B. Frisbie, of the law firm of WHITE BEAR ANKELE TANAKA & WALDRON, Attorneys at Law, as the Designated Election Official (the “DEO”) of the District for the Election called by the Board, or called on behalf of the Board by the DEO, and hereby authorizes and directs the DEO to take all actions necessary for the proper conduct of the Election, including, if applicable, cancellation of the Election in accordance with § 1-13.5-513, C.R.S.

2.4 In the event the DEO is not available, the Authorized Officer shall be authorized to appoint a new DEO, who shall thereafter have all of the authority granted to the DEO by this Resolution, the Colorado Local Government Election Code and the Uniform Election Code of 1992.

3. COMPLIANCE MATTERS. The Board hereby directs legal counsel for the District to undertake to all action required of inactive special districts in accordance with law.

4. FULL FORCE AND EFFECT. This Resolution shall remain in full force and effect until repealed or superseded, in whole or part, by subsequent official action of the Board, including, but not limited to, a return to active status pursuant to § 32-1-104(3)(b), C.R.S.

[Signature page follows.]

RESOLVED, APPROVED AND ADOPTED THIS 4TH DAY OF DECEMBER, 2019.

WATERS' EDGE METROPOLITAN DISTRICT NO. 5




Officer of the District

ATTEST:



APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law



General Counsel to the District

[Signature Page to Resolution Declaring Inactive District Status.]



Abby J. Franz
Paralegal

303-858-1800
afranz@wbapc.com

December 11, 2023

VIA CERTIFIED MAIL

City of Fort Collins
300 Laporte Avenue
PO BOX 580
Fort Collins, CO 80521

Division of Local Government
E-filed via www.dola.colorado.gov/e-filing

Larimer County Board of County
Commissioners
200 W Oak Street, Ste 2200
Fort Collins, CO 80521

State of Colorado
Office of State Auditor
E-filed via <https://apps.leg.co.gov/osa/lg>

**Re: Notices of Continuing Inactive Status for Waters' Edge Metropolitan District
Nos. 3-5**

To Whom It May Concern:

Pursuant to § 32-1-104(4), C.R.S., enclosed for your records please find copies of the Special District Notices of Continuing Inactive Status for the above-referenced Districts. Should you have any questions or concerns, please do not hesitate to contact our office.

Sincerely,
WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law

Abby J. Franz, Paralegal

Enclosures



Title 32, Article 1 Special District Annual Notice of Continuing Inactive Status
NOTICE IS HEREBY GIVEN

the Waters' Edge Metropolitan District No. 3 67115 (LGID)
in Larimer County, Colorado
pursuant to subsection 32-1-104(4) C.R.S., and upon the attached authorization of the current board of the District, is
continuing as an Inactive Special District as defined by C.R.S. 32-1-103(9.3) for the fiscal year beginning: **January 1, 2024**

NOTICE IS FURTHER GIVEN, pursuant to subsection 32-1-104(4) C.R.S., the District has not and shall not issue any debt, impose a mill levy, or conduct any other official business other than to conduct elections and to undertake procedures necessary to implement the district's intention to return to active status.

District Contact Person: Robert G. Rogers Phone: (303) 858-1800

Contact Signature: [Signature] Date: 12/11/2023
Contact Email Address: rrogers@wbapc.com
District Business Address: c/o White Bear Ankele Tanaka & Waldron
Business Address (cont.): 2154 E. Commons Ave., Suite 2000
Address City/State/Zip: Centennial, CO 80122

| Directors | | Elected or Appointed | Term Exp. Yr. |
|-----------------|-----------------------|----------------------|---------------|
| 1. Board Chair: | Paul Joseph Knopinski | Elected | May 2025 |
| 2. Director: | John Gooch | Elected | May 2025 |
| 3. Director: | Jerry Wenzel | Elected | May 2023 |
| 4. Director: | Todd Johnson | Elected | May 2025 |

- Generally, per C.R.S. 32-1-104(5), Inactive Special Districts shall be exempt from compliance with the provisions of:
- 32-1-104(2) - Annual January 15th Contact Filing;
 - 32-1-306 - Annual January 1st Map Filing
 - 32-1-809 - Annual January 15th Notice to Electors
 - 32-1-903 - Meetings
 - Title 29, Art 1, Part 1 - Budget Law
 - Title 29, Art 1, Part 2 - List of Contracts
 - Title 29, Art 1, Part 6 - Audit Law
 - Title 39, Art 1, Part 1 - Notices of Boundary Change, Intent to Levy
 - Title 39, Art 5, Part 1 - Annual Mill Levy Certification

PROCEDURAL INSTRUCTIONS

As directed in 32-1-104(3)(b) C.R.S., by *Certified Mail, Return Receipt Requested* except where electronic filing is required by the receiving entity, file this annual Notice of Continuing Inactive Status on or before December 15th with:

- the Office of the State Auditor;
- the Division of Local Government (ELECTRONIC FILING REQUIRED – www.dola.colorado.gov/e-filing –); and
- the Board of County Commissioners of each county in which the District is located as confirmation of the District's intent to not certify a mill levy for collection in the upcoming fiscal year.





Title 32, Article 1 Special District Annual Notice of Continuing Inactive Status
NOTICE IS HEREBY GIVEN

the Waters' Edge Metropolitan District No. 4 67116 (LGID)
in Larimer County, Colorado
pursuant to subsection 32-1-104(4) C.R.S., and upon the attached authorization of the current board of the District, is
continuing as an Inactive Special District as defined by C.R.S. 32-1-103(9.3) for the fiscal year beginning: **January 1, 2024**

NOTICE IS FURTHER GIVEN, pursuant to subsection 32-1-104(4) C.R.S., the District has not and shall not issue any debt,
impose a mill levy, or conduct any other official business other than to conduct elections and to undertake procedures
necessary to implement the district's intention to return to active status.

District Contact Person: Robert G. Rogers Phone: (303) 858-1800

Contact Signature: [Signature] Date: 12/11/2023

Contact Email Address: rrogers@wbapc.com

District Business Address: c/o White Bear Ankele Tanaka & Waldron

Business Address (cont.): 2154 E. Commons Ave., Suite 2000

Address City/State/Zip: Centennial, CO 80122

| Directors | | Elected or Appointed | Term Exp. Yr. |
|-----------------|-----------------------|----------------------|---------------|
| 1. Board Chair: | Paul Joseph Knopinski | Elected | May 2025 |
| 2. Director: | John Gooch | Elected | May 2025 |
| 3. Director: | Jerry Wenzel | Elected | May 2023 |
| 4. Director: | Todd Johnson | Elected | May 2025 |

- Generally, per C.R.S. 32-1-104(5), Inactive Special Districts shall be exempt from compliance with the provisions of:
- 32-1-104(2) - Annual January 15th Contact Filing;
 - 32-1-306 - Annual January 1st Map Filing
 - 32-1-809 - Annual January 15th Notice to Electors
 - 32-1-903 - Meetings
 - Title 29, Art 1, Part 1 - Budget Law
 - Title 29, Art 1, Part 2 - List of Contracts
 - Title 29, Art 1, Part 6 - Audit Law
 - Title 39, Art 1, Part 1 - Notices of Boundary Change, Intent to Levy
 - Title 39, Art 5, Part 1 - Annual Mill Levy Certification

PROCEDURAL INSTRUCTIONS

As directed in 32-1-104(3)(b) C.R.S., by *Certified Mail, Return Receipt Requested* except where electronic filing is required by the receiving entity, file this annual Notice of Continuing Inactive Status on or before December 15th with:

- the Office of the State Auditor;
- the Division of Local Government (ELECTRONIC FILING REQUIRED – www.dola.colorado.gov/e-filing –); and
- the Board of County Commissioners of each county in which the District is located as confirmation of the District's intent to not certify a mill levy for collection in the upcoming fiscal year.





Title 32, Article 1 Special District Annual Notice of Continuing Inactive Status
NOTICE IS HEREBY GIVEN

the Waters' Edge Metropolitan District No. 5 67117 (LGID)
in Larimer County, Colorado
pursuant to subsection 32-1-104(4) C.R.S., and upon the attached authorization of the current board of the District, is
continuing as an Inactive Special District as defined by C.R.S. 32-1-103(9.3) for the fiscal year beginning: **January 1, 2024**

NOTICE IS FURTHER GIVEN, pursuant to subsection 32-1-104(4) C.R.S., the District has not and shall not issue any debt,
impose a mill levy, or conduct any other official business other than to conduct elections and to undertake procedures
necessary to implement the district's intention to return to active status.

District Contact Person: Robert G. Rogers Phone: (303) 858-1800

Contact Signature: [Signature] Date: 12/11/2023

Contact Email Address: rrogers@wbapc.com

District Business Address: c/o White Bear Ankele Tanaka & Waldron

Business Address (cont.): 2154 E. Commons Ave., Suite 2000

Address City/State/Zip: Centennial, CO 80122

| Directors | | Elected or Appointed | Term Exp. Yr. |
|-----------------|-----------------------|----------------------|---------------|
| 1. Board Chair: | Paul Joseph Knopinski | Elected | May 2025 |
| 2. Director: | John Gooch | Elected | May 2025 |
| 3. Director: | Jerry Wenzel | Elected | May 2023 |
| 4. Director: | Todd Johnson | Elected | May 2025 |

Generally, per C.R.S. 32-1-104(5), Inactive Special Districts shall be exempt from compliance with the provisions of:

- 32-1-104(2) - Annual January 15th Contact Filing;
- 32-1-306 - Annual January 1st Map Filing
- 32-1-809 - Annual January 15th Notice to Electors
- 32-1-903 - Meetings
- Title 29, Art 1, Part 1 - Budget Law
- Title 29, Art 1, Part 2 - List of Contracts
- Title 29, Art 1, Part 6 - Audit Law
- Title 39, Art 1, Part 1 - Notices of Boundary Change, Intent to Levy
- Title 39, Art 5, Part 1 - Annual Mill Levy Certification

PROCEDURAL INSTRUCTIONS

As directed in 32-1-104(3)(b) C.R.S., by *Certified Mail, Return Receipt Requested* except where electronic filing is required by the receiving entity, file this annual Notice of Continuing Inactive Status on or before December 15th with:

- the Office of the State Auditor;
- the Division of Local Government (ELECTRONIC FILING REQUIRED – www.dola.colorado.gov/e-filing –); and
- the Board of County Commissioners of each county in which the District is located as confirmation of the District's intent to not certify a mill levy for collection in the upcoming fiscal year.

Rev. 6/16



7022 0410 0002 3731 5872

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

| | |
|--|--|
| Certified Mail Fee \$ | 1983 - 0024 |
| Extra Services & Fees (check box, add fee as appropriate) | Waters' Edge Postmark mo Nias. 3-5 |
| <input type="checkbox"/> Return Receipt (hardcopy) \$ | |
| <input type="checkbox"/> Return Receipt (electronic) \$ | |
| <input type="checkbox"/> Certified Mail Restricted Delivery \$ | |
| <input type="checkbox"/> Adult Signature Required \$ | |
| <input type="checkbox"/> Adult Signature Restricted Delivery \$ | |
| Postage \$ | Cont. Inactive Status 12-12 |
| Total Postage and Fees \$ | |
| Sent To City of Ft. Collins | |
| Street and Apt. No., or PO Box No. 500 Laporte Ave / PO Box 580 | |
| City, State, ZIP+4® Ft. Collins CO 80521 | |

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

| | | | | | | | | | | | | | | | |
|--|--|--|---|--|---|---|--|---|---|--|---|--|---|--|--|
| <p>SENDER: COMPLETE THIS SECTION</p> <ul style="list-style-type: none"> Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. | <p>COMPLETE THIS SECTION ON DELIVERY</p> <p>A. Signature <input checked="" type="checkbox"/> Agent 15 <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) Muzette Mercer</p> <p>C. Date of Delivery 12-16-23</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> | | | | | | | | | | | | | | |
| <p>1. Article Addressed to:</p> <p style="text-align: center;">City of Fort Collins 300 Laporte Avenue PO BOX 580 Fort Collins, CO 80521</p> <p style="text-align: center;">9590 9402 5817 0034 1198 72</p> | <p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input checked="" type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Restricted Delivery</td> <td></td> </tr> </table> | <input type="checkbox"/> Adult Signature | <input type="checkbox"/> Priority Mail Express® | <input type="checkbox"/> Adult Signature Restricted Delivery | <input type="checkbox"/> Registered Mail™ | <input checked="" type="checkbox"/> Certified Mail® | <input type="checkbox"/> Registered Mail Restricted Delivery | <input type="checkbox"/> Certified Mail Restricted Delivery | <input type="checkbox"/> Return Receipt for Merchandise | <input type="checkbox"/> Collect on Delivery | <input checked="" type="checkbox"/> Signature Confirmation™ | <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery | <input type="checkbox"/> Restricted Delivery | |
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| <p>2. Article Number (Transfer from service label)</p> <p style="text-align: center;">7022 0410 0002 3731 5872</p> | <p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p> <p style="text-align: right;">Domestic Return Receipt</p> | | | | | | | | | | | | | | |

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| <ul style="list-style-type: none"> Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. | <p>A. Signature: <u>John Davis</u> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name): <u>JOHN DAVIS</u></p> <p>C. Date of Delivery: <u>12.15</u></p> | | | | | | | | | | | | | |
| <p>1. Article Addressed to:</p> <p style="text-align: center;">Larimer County Board of County Commissioners 200 W Oak Street, Ste 2200 Fort Collins, CO 80521</p> <p style="text-align: center;">9590 9402 5817 0034 1198 65</p> | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> | | | | | | | | | | | | | |
| <p>2. Article Number (Transfer from service label)</p> <p style="text-align: center;">7022 0410 0002 3731 5865</p> | <p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input checked="" type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> </table> | | <input type="checkbox"/> Adult Signature | <input type="checkbox"/> Priority Mail Express® | <input type="checkbox"/> Adult Signature Restricted Delivery | <input type="checkbox"/> Registered Mail™ | <input checked="" type="checkbox"/> Certified Mail® | <input type="checkbox"/> Registered Mail Restricted Delivery | <input type="checkbox"/> Certified Mail Restricted Delivery | <input type="checkbox"/> Return Receipt for Merchandise | <input type="checkbox"/> Collect on Delivery | <input checked="" type="checkbox"/> Signature Confirmation™ | <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
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AGENDA ITEM SUMMARY

City Council



STAFF

LeAnn Williams, Director, Recreation
Kelly Dubois, Senior Supervisor, Recreation

SUBJECT

First Reading of Ordinance No. 069, 2024, Making a Supplemental Appropriation from the Colorado Department of Early Childhood in Support of Licensed City Childcare Programs.

EXECUTIVE SUMMARY

The purpose of this item is to support licensed City childcare programs by appropriating \$21,069 of unanticipated grant revenue awarded by the Colorado Department of Early Childhood (CDEC).

Through the CDEC's Childcare Stabilization Grants program the City was awarded \$21,069 in federal pass-through funds to provide enhancements in licensed City Childcare programs.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The City was informed by the CDEC in spring 2024 that three of the City's licensed childhood programs were eligible to receive American Rescue Plan Act (ARPA) federal pass-through funds under the CDEC's Childcare Stabilization Grants Program. These federal funds are under the U.S. Department of Health and Human Services' Childcare and Development Block Grant.

Based on efforts by City's Recreation, the City was awarded funds to support operations of the Camp FunQuest program at both the Northside Aztlan Community Center and Foothills Activity Center, as well as the Funtime Preschool Program at Northside Aztlan Community Center (per Attachments 2, 3 and 4). The CDEC awarded each program \$7,023 for a total of \$21,069.

The grants do not require the City to sign a post-award agreement and do not require that the City provide matching funds. Funds must be fully spent by September 30, 2024.

Recreation will be administering these grant funds, providing monthly reporting and attestations to the CDEC about allowable costs, which is required to receive the next monthly installment of grant funds.

CITY FINANCIAL IMPACTS

The item appropriates \$21,069 in unanticipated federal pass-through grant revenue through the CDEC in support of the City's licensed childcare programs.

There is no match requirement by the City under this grant.

The grant is a reimbursement-based grant that works through funding installments by the CDEC, meaning Recreation Fund expenses will be reimbursed up to \$21,069.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Ordinance for Consideration
2. Northside Aztlan Community Center- Camp FunQuest- Grant Award
3. Foothills Activity Center- Camp FunQuest- Grant Award
4. Northside Aztlan Community Center- Funtime Preschool- Grant Award

ORDINANCE NO. 069, 2024
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING A SUPPLEMENTAL APPROPRIATION FROM THE
COLORADO DEPARTMENT OF EARLY CHILDHOOD IN
SUPPORT OF LICENSED CITY CHILDCARE PROGRAMS

A. The City was awarded grants from the Colorado Department of Early Childhood (CDEC) to provide enhancements to three City licensed childcare programs.

B. The grant funds will support operations of the Camp FunQuest program at both Northside Aztlan Community Center and Foothills Activity Center and the Funtime Preschool Program at Northside Aztlan Community Center.

C. The CDEC awarded each program \$7,023 for a total grant award of \$21,069 which Recreation will administer.

D. This appropriation benefits the public health and welfare of the citizens of Fort Collins and serves the public purpose and strategic objective of providing licensed City childcare programs.

E. 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.

F. The City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Recreation Fund and will not cause the total amount appropriated in the Recreation 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.

G. 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 the City's expenditure of all funds received from such grant.

H. The City Council wishes to designate the appropriation herein for the Colorado Department of Early Childhood Stabilization 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.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. There is hereby appropriated from new revenue or other funds in the Recreation Fund the sum of TWENTY-ONE THOUSAND SIXTY-NINE DOLLARS (\$21,069) to be expended in the Recreation Fund for the support of Licensed City Childcare Programs.

Section 2. The appropriation herein for the Colorado Department of Early Childhood Stabilization 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 on May 21, 2024, and approved on second reading for final passage on June 4, 2024.

Mayor

ATTEST:

Interim City Clerk

Effective Date: June 14, 2024
Approving Attorney: Sara Arfmann

From: [Kerri Ishmael](#)
To: [Kerri Ishmael](#)
Subject: Northside Aztlan- Camp FunQuest
Date: Thursday, May 2, 2024 9:47:29 AM

From: Colorado Early Childhood Stimulus Grants <coecstimulus@metrixiq.com>
Sent: Tuesday, April 30, 2024 3:22 PM
To: Kyle Urich <kurich@fcgov.com>
Subject: [EXTERNAL] Your Stabilization/New Provider Success Bonus Grant Award

Hello,

Congratulations! We received your Stabilization/New Provider Success 2024 Bonus Grant application. Thank you for your time to apply. We are excited to announce your site has been approved for the bonus payment.

Your location: **Northside Aztlan Community Center**
License Number: **1737253**
Stabilization/New Provider Success 2024 Total Bonus Award: **\$7023.00**

You should expect to receive your grant payment around 5/1/2024.

All funding must be spent by September 30th 2024.

Please [use this link](#) for the allowable Stabilization grant uses. The dates have NOT been updated but the requirements for this bonus payment remain the same as the previous stabilization grants. You can use this bonus payment towards operations, workforce, one or the other, or both.

As a reminder, here are the attestations from the grant application:

- I attest that my child care program is open and operating (not temporarily closed)
- I agree to abide by the federal CCDF grant requirements and restrictions [Allowable Uses click here](#)
- I attest that I have read, understand, and agree to abide by the stipulations regarding allowable uses and unallowable costs under the federal CCDF grant as listed above.
- I will not use these funds for
 - the purchase of alcohol, firearms, tobacco, lottery tickets or entertainment costs (except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized);

- equipment and other capital expenditures such as building improvements, or equipment purchased to make capital improvements (unless necessary to meet health/safety requirements);
 - used for sectarian purposes, and;
 - used as the non-federal share for other federal grant programs.
- I attest that I will not use this grant funding towards the purchase of any single item over \$5,000. I agree to retain all expense documentation for a minimum of three years after the grant period ends.

This email is only being sent to this email address. Please forward to others in your program as needed.

If you have questions about your grant award, please reach out to the [Stimulus Grants Help Desk](#).

Thank you,
The CDEC Stimulus Grants Team

From: [Kerri Ishmael](#)
To: [Kerri Ishmael](#)
Subject: Foothills Activity Center - Camp FunQuest - Grant Award
Date: Thursday, May 2, 2024 9:45:55 AM

From: Colorado Early Childhood Stimulus Grants <coecstimulus@metrixiq.com>
Sent: Tuesday, April 30, 2024 3:22 PM
To: Erica Weimer <eweimer@fcgov.com>
Subject: [EXTERNAL] Your Stabilization/New Provider Success Bonus Grant Award

Hello,

Congratulations! We received your Stabilization/New Provider Success 2024 Bonus Grant application. Thank you for your time to apply. We are excited to announce your site has been approved for the bonus payment.

Your location: **City of Ft Collins Foothills Activity Ctr**
License Number: **1743864**
Stabilization/New Provider Success 2024 Total Bonus Award: **\$7023.00**

You should expect to receive your grant payment around 5/1/2024.

All funding must be spent by September 30th 2024.

Please [use this link](#) for the allowable Stabilization grant uses. The dates have NOT been updated but the requirements for this bonus payment remain the same as the previous stabilization grants. You can use this bonus payment towards operations, workforce, one or the other, or both.

As a reminder, here are the attestations from the grant application:

- I attest that my child care program is open and operating (not temporarily closed)
- I agree to abide by the federal CCDF grant requirements and restrictions [Allowable Uses click here](#)
- I attest that I have read, understand, and agree to abide by the stipulations regarding allowable uses and unallowable costs under the federal CCDF grant as listed above.
- I will not use these funds for
 - the purchase of alcohol, firearms, tobacco, lottery tickets or entertainment costs (except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized);

- equipment and other capital expenditures such as building improvements, or equipment purchased to make capital improvements (unless necessary to meet health/safety requirements);
 - used for sectarian purposes, and;
 - used as the non-federal share for other federal grant programs.
- I attest that I will not use this grant funding towards the purchase of any single item over \$5,000. I agree to retain all expense documentation for a minimum of three years after the grant period ends.

This email is only being sent to this email address. Please forward to others in your program as needed.

If you have questions about your grant award, please reach out to the [Stimulus Grants Help Desk](#).

Thank you,
The CDEC Stimulus Grants Team

From: [Kerri Ishmael](#)
To: [Kerri Ishmael](#)
Subject: Northside Aztlan- Funtime Preschool
Date: Thursday, May 2, 2024 9:46:54 AM

From: Colorado Early Childhood Stimulus Grants <coecstimulus@metrixiq.com>
Sent: Tuesday, April 30, 2024 3:22 PM
To: Savanna Allen <sallen@fcgov.com>
Subject: [EXTERNAL] Your Stabilization/New Provider Success Bonus Grant Award

Hello,

Congratulations! We received your Stabilization/New Provider Success 2024 Bonus Grant application. Thank you for your time to apply. We are excited to announce your site has been approved for the bonus payment.

Your location: **Northside Aztlan Community Center**
License Number: **1740039**
Stabilization/New Provider Success 2024 Total Bonus Award: **\$7023.00**

You should expect to receive your grant payment around 5/1/2024.

All funding must be spent by September 30th 2024.

Please [use this link](#) for the allowable Stabilization grant uses. The dates have NOT been updated but the requirements for this bonus payment remain the same as the previous stabilization grants. You can use this bonus payment towards operations, workforce, one or the other, or both.

As a reminder, here are the attestations from the grant application:

- I attest that my child care program is open and operating (not temporarily closed)
- I agree to abide by the federal CCDF grant requirements and restrictions [Allowable Uses click here](#)
- I attest that I have read, understand, and agree to abide by the stipulations regarding allowable uses and unallowable costs under the federal CCDF grant as listed above.
- I will not use these funds for
 - the purchase of alcohol, firearms, tobacco, lottery tickets or entertainment costs (except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized);
 - equipment and other capital expenditures such as building improvements, or

equipment purchased to make capital improvements (unless necessary to meet health/safety requirements);

- used for sectarian purposes, and;
- used as the non-federal share for other federal grant programs.

- I attest that I will not use this grant funding towards the purchase of any single item over \$5,000. I agree to retain all expense documentation for a minimum of three years after the grant period ends.

This email is only being sent to this email address. Please forward to others in your program as needed.

If you have questions about your grant award, please reach out to the [Stimulus Grants Help Desk](#).

Thank you,
The CDEC Stimulus Grants Team

AGENDA ITEM SUMMARY

City Council



STAFF

Lawrence Pollack, Budget Director

SUBJECT

First Reading of Ordinance No. 070, 2024, Correcting Ordinance No. 003, 2024, Authorizing Transfers and Reappropriating Funds Previously Approved for the Utilities' Grid Flexibility Programs.

EXECUTIVE SUMMARY

The purpose of this item is to appropriate \$200,000 of prior year reserves in the Light and Power Fund to support Ordinance No. 003, 2024, which authorized transfers and reappropriation of funds previously appropriated for the Utilities' Grid Flexibility Programs. The ordinance, as adopted, omitted the need for \$200,000 of prior year reserves to fully fund the requested appropriation, since those funds had technically lapsed at the end of fiscal year 2023.

STAFF RECOMMENDATION

Staff recommends adoption of this Ordinance on First Reading.

BACKGROUND / DISCUSSION

Section 1 of Ordinance No. 003, 2024, adopted on February 6, 2024, should have been split into separate allocations: the first referencing the use of prior year reserves in the Light and Power Fund Water Heater and Communication Protocol Project budgets and another referencing the use of prior year reserves in the Light and Power Fund. The Ordinance, as written and adopted, indicates the full unexpended and unencumbered amount is authorized for transfer from the Light and Power Fund Water Heater and Communication Protocol Project Budgets. One of those budgets in the amount of \$200,000 lapsed at the end of fiscal year 2023 and therefore was not technically available for transfer directly from the indicated fund. This action corrects that situation by appropriating those funds from prior year reserves in the Light and Power Fund and updating the non-lapsing fund designation.

CITY FINANCIAL IMPACTS

This action will use \$200,000 of previously appropriated and unexpended Light and Power funds which lapsed at the end of 2023. This action does not create any net new appropriation other than what was approved in Ordinance No. 003, 2024.

Item 13.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

- 1. Ordinance for Consideration
- 2. Ordinance No. 003, 2024 (Copy)

ORDINANCE NO. 070, 2024
OF THE COUNCIL OF THE CITY OF FORT COLLINS
CORRECTING ORDINANCE NO. 003, 2024, AUTHORIZING
TRANSFERS AND REAPPROPRIATING FUNDS PREVIOUSLY
APPROVED FOR THE UTILITIES' GRID FLEXIBILITY PROGRAMS

A. City Council authorized expenditures in the 2023/2024 City Budget for purposes in the Light and Power Fund, portions of which were not spent or encumbered in 2023 and are not anticipated to be spent in 2024 due to changes in technology related to certain projects.

B. Utilities staff determined that unspent and unencumbered amounts applied to ongoing grid flexibility efforts described in approved 2023/2024 Budget Offers could be more effectively repurposed to pursue use of similar technologies and result in similar outcomes as described in the subject Offers.

C. On February 6, 2024, City Council adopted on second reading Ordinance No. 003, 2024, reappropriating and redeploying certain amounts Utilities staff determined were available and unencumbered.

D. Since Council's adoption of Ordinance No. 003, 2024, City Budget staff identified that Section 1 of the Ordinance incorrectly indicated the total unexpended and unencumbered amount of Three Hundred Ninety-Eight Thousand Nine Hundred Eighty-five dollars (\$398,985), was authorized for transfer from the Light and Power Fund Water Heater and Communication Protocol Project Budgets.

E. Budget staff identified a project budget within the Water Heater and Communication Protocol Project Budgets in the amount of Two Hundred Thousand dollars (\$200,000) lapsed at the end of fiscal year 2023, and therefore was not available for transfer directly from the identified project fund.

F. The purpose of this Ordinance is to split the amounts described in Section 1 of Ordinance No. 003, 2024, into separate fund allocations: items referencing the use of prior-year funds in the Light and Power Fund Water Heater and Communication Protocol Project Budgets, and another referencing the use of prior-year reserves in the Light and Power Fund.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. Section 1 of Ordinance No. 003, 2024, is hereby replaced in its entirety to read as follows:

Section 1. The unexpended and unencumbered appropriated amount of ONE HUNDRED FORTY-EIGHT THOUSAND NINE HUNDRED EIGHTY-FIVE

DOLLARS (148,985) and FIFTY THOUSAND DOLLARS (\$50,000) respectively, totaling ONE HUNDRED NINETY-EIGHT THOUSAND NINE HUNDRED EIGHTY FIVE DOLLARS (\$198,985), is authorized for transfer from the Light and Power Fund Water Heater and Communication Protocol Project Budgets, and for the following purposes and appropriated therein to be expended for Utilities Grid Flexibility programs projects as follows:

- Light and Power Fund Ongoing Demand Response \$ 91,202
 - Thermostat Program \$ 107,783
- GRID FLEXIBILITY PROGRAM TOTAL: \$ 198,985

Section 2. Section 2 of Ordinance No. 003, 2024, is hereby replaced in its entirety to read as follows:

Section 2. There is hereby appropriated from prior year reserves in the Light and Power Fund the sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000) to be expended in the Light and Power Fund for Utilities Grid Flexibility programs projects.

Section 3. A new Section is hereby added to Ordinance No. 003, 2024, to read as follows:

Section 3. The appropriation herein for Grid Flexibility Program projects is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the completion of the projects.

Introduced, considered favorably on first reading on May 21, 2024, and approved on second reading for final passage on June 4, 2024.

Mayor

ATTEST:

Interim City Clerk

Effective Date: June 14, 2024
Approving Attorney: Cyril Vidergar

ORDINANCE NO. 003, 2024
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING TRANSFERS AND REAPPROPRIATION
OF FUNDS PREVIOUSLY APPROPRIATED FOR THE
UTILITIES' GRID FLEXIBILITY PROGRAMS

A. City Council authorized expenditures in the 2023/2024 City Budget for various purposes in the Light and Power Fund, portions of which were not spent or encumbered in 2023 and are not anticipated to be spent in 2024 due to changes in technology related to certain projects.

B. Utilities staff has determined that unspent and unencumbered amounts applied to ongoing grid flexibility efforts described in approved 2023/2024 Budget Offers can be more effectively repurposed to pursue use of similar technologies and result in similar outcomes as described in the subject Offers.

C. Utilities staff has determined that the amounts to be reappropriated and redeployed as described herein are available and currently encumbered.

D. This reappropriation benefits public health, safety and welfare of the citizens of Fort Collins and benefits City electric utility ratepayers by leveraging utility reserves and unexpended funds to efficiently improve the flexibility of the local electric distribution grid using current technologies.

E. 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.

F. The City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Light and Power Fund and will not cause the total amount appropriated in the Light and Power 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.

G. 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.

H. The City Manager has recommended the transfer of \$148,985 from the Light and Power Fund Water Heater Program Project Budget and \$250,000 from the Light and Power Fund Communication Protocol Project Budget to the Light and Power Fund Ongoing Demand Response Project Budget, in the amount of \$291,202 and Thermostat Program Project Budget, in the amount of \$107,783; and determined that the following purpose for which the transferred funds are to be expended remains unchanged: to provide customer programs for the transition to the next generation electricity system outlined in Our Climate Future (OCF), focusing on mitigation, resilience, and equity.

I. 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 earlier of the expiration of the federal, state or private grant or the City's expenditure of all funds received from such grant.

J. The City Council wishes to designate the appropriation herein for the Light and Power Fund Ongoing Demand Response Project and Light and Power Fund Thermostat Program Project Budget 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.

In light of the foregoing Recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. The unexpended and unencumbered appropriated amount of ONE HUNDRED FORTY-EIGHT THOUSAND NINE HUNDRED EIGHTY-FIVE DOLLARS (\$148,985) and TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) respectively, totaling THREE HUNDRED NINETY-EIGHT THOUSAND NINE HUNDRED EIGHTY-FIVE DOLLARS (\$398,985), is authorized for transfer from the Light and Power Fund Water Heater and Communication Protocol Project Budgets for the following purposes and appropriated therein to be expended for Utilities Grid Flexibility programs projects as follows:

| | |
|--|------------------|
| - Light and Power Fund Ongoing Demand Response | \$291,202 |
| - Thermostat Program | <u>\$107,783</u> |
| GRID FLEXIBILITY PROGRAM TOTAL: \$398,985 | |

Section 2. The appropriation herein for Light and Power Ongoing Demand Response Project and the Light and Power Thermostat 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 completion of the projects.

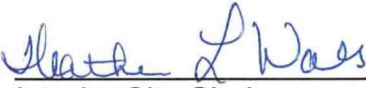
Introduced, considered favorably on first reading on January 16, 2024, and approved on second reading for final passage on February 6, 2024.



Mayor



ATTEST:



Interim City Clerk

Effective Date: February 16, 2024
Approving Attorney: Cyril Vidergar

COPY

AGENDA ITEM SUMMARY

City Council



STAFF

Aaron Ehle, Airport Planning and Development Specialist

SUBJECT

First Reading of Ordinance No. 071, 2024, Approving the First Amendment to the Hangar Ground Lease Agreement with IC Loveland, LLC, for the Aero FNL Hangar Development at the Northern Colorado Regional Airport.

EXECUTIVE SUMMARY

The purpose of this item is to request City Council approval of an amendment to an existing hangar ground lease between the City of Fort Collins, the City of Loveland, and IC Loveland, LLC, to allow for subleasing and fractional ownership of multi-unit aircraft hangar buildings.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

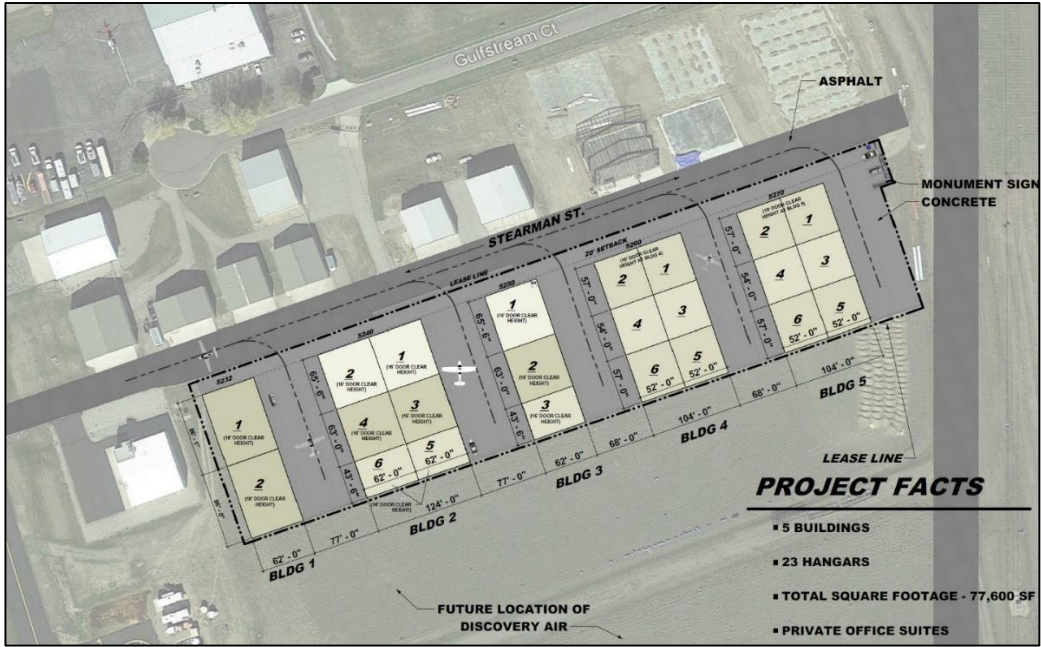
BACKGROUND / DISCUSSION

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. In 2016, the IGA was amended to, in part, provide the Commission with the authority to enter into leases of real property at the Airport if certain requirements are met. One of those requirements is the leases must be “in a form generally approved by the City Manager and City Attorneys for each City.”

In 2022, the Commission approved the Hangar Ground Lease Agreement with IC Loveland, LLC, with an initial term of 25 years and the option for three additional 5-year extensions. IC Loveland, LLC, then assigned the Ground Lease to IC Loveland Investors, LLC, with Commission consent. IC Loveland Investors, LLC, is developing what is known as “Aero FNL,” which is a large hangar project that is currently under construction. The project will add 23 hangar units with over 77,000 square feet of hangar space to the Airport. The development occupies approximately 3.67 acres in the southeast area of the Airport.

While the existing lease agreement was approved and executed by the Northern Colorado Regional Airport Commission using an approved to form lease template, the First Amendment will deviate from that template. Therefore, Airport staff is presenting the First Amendment to both City Councils for approval.

Project Exhibit:



Traditionally at the Airport, management of multi-unit hangar developments has been done through the standard form lease that provides for the creation of a condominium association and making each hangar a condominium unit. That is the structure under the form Ground Lease the Commission approved. IC Loveland, LLC, the owner of the project, is requesting an amendment to the lease to allow it to sublease and sell units within their various buildings instead of the condominium structure. This is similar to the condominium structure but will be done through subleasing and fractionalized ownership of the individual building entities themselves. IC Loveland, LLC, will continue to retain the master lease and manage the common areas. Subleases will include and incorporate the requirements of the master lease. This is a typical structure for operating master developments at other airports. It allows the developer to retain control over the campus and common areas. An example that is very successful is Centennial InterPort campus at Centennial Airport.

Airport and legal staff have reviewed the proposed structure and amendment and recommend approval of the First Amendment.

CITY FINANCIAL IMPACTS

There are no material financial impacts to the Airport or City.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

At their April 18, 2024, meeting, the Northern Colorado Regional Airport Commission voted 5-0 in favor of recommending approval of the Amendment by the City Councils.

PUBLIC OUTREACH

The Aero FNL project is in alignment with the 2020 Airport Master Plan, which took more than two years to complete and included numerous public meetings and significant outreach by the Airport, far exceeding what is recommended by the Federal Aviation Administration (FAA).

ATTACHMENTS

1. Ordinance for Consideration
2. Exhibit A to Ordinance
3. Amended and Restated Hangar Ground Lease Agreement
4. Assignment and Assumption of Lease Agreement

ORDINANCE NO. 071, 2024
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING THE FIRST AMENDMENT TO THE HANGAR
GROUND LEASE AGREEMENT WITH IC LOVELAND, LLC,
FOR THE AERO FNL HANGAR DEVELOPMENT AT THE
NORTHERN COLORADO REGIONAL AIRPORT

A. The City of Fort Collins (“City”) and the City of Loveland (“Loveland”) (collectively, the “Cities”) jointly own property located in Loveland known as the Northern Colorado Regional Airport.

B. 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”).

C. The Cities are parties to that certain Amended and Restated Hangar Ground Lease Agreement (“Ground Lease”), dated August 22, 2022, with IC Loveland, LLC, as lessee, with an initial term of 25 years with the option of three 5-year extensions. The Ground Lease was approved by the Northern Colorado Regional Airport Commission pursuant to its authority under the IGA and City Code Section 23-113(3). The Ground Lease was executed by the Chair of the Airport Commission.

D. IC Loveland, LLC is developing hangars upon the leased premises, which project is known as the Aero FNL development.

E. IC Loveland, LLC has requested the Ground Lease be amended to remove the condominium structure for the marketing of individual hangar units and to replace it with a subleasing structure, which would be a deviation from the standard ground lease form utilized at the Airport. The proposed First Amendment is attached hereto as Exhibit “A.”

F. The First Amendment to the Ground Lease was presented to the Airport Commission at its April 18, 2024, meeting and the Airport Commission voted unanimously to recommend the City Council and the Loveland City Council approve the First Amendment.

G. Section 23-113 of the City Code allows the City Council to lease any and all interests in real property owned in the name of the City if the City Council first finds that the lease is in the best interests of the City, with such leases being approved by resolution unless the proposed term of the lease exceeds twenty (20) years, in which event the lease must be approved by the City Council by ordinance.

H. City Council finds that the amendment of the Ground Lease is in the best interest of the City and its residents in that it will allow for the marketing of the individual hangars in a manner suitable for IC Loveland, LLC, which in turn will promote the success of the development and continued lease revenue for the Airport.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. The First Amendment to the Amended and Restated Hangar Ground Lease Agreement with IC Loveland, LLC, attached hereto as Exhibit "A" and incorporated herein by reference is hereby approved.

Section 2. The Mayor is authorized to execute the First Amendment in substantially the form as Exhibit "A," with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interest of the City or effectuate the purposes of this Ordinance.

Introduced, considered favorably on first reading on May 21, 2024, and approved on second reading for final passage on June 4, 2024.

Mayor

ATTEST:

Interim City Clerk

Effective Date: June 14, 2024
Approving Attorney: Ryan Malarky

FIRST AMENDMENT TO HANGAR GROUND LEASE AGREEMENT

(5232, 5240, 5250, 5260, 5270 Stearman Street)

THIS FIRST AMENDMENT TO HANGAR GROUND LEASE AGREEMENT (this “*Amendment*”) is entered into as of _____, 2024 (the “*Effective Date*”), by and between the CITY OF LOVELAND, COLORADO AND THE CITY OF FORT COLLINS, COLORADO (the “*Cities*”), and IC LOVELAND INVESTORS, LLC, a Colorado limited liability company (“*Lessee*”).

RECITALS

WHEREAS, the Cities, the Commission, and Lessee (as assignee) are parties to that certain Amended and Restated Hangar Ground Agreement dated as of August 22, 2022 (the “*Original Agreement*,” and as amended hereby, the “*Agreement*”) whereby Lessee leases from the Cities the parcel of land consisting of approximately 3.665 acres located at the Northern Colorado Regional Airport (the “*Airport*”) described in Exhibit A to the Original Agreement (the “*Leased Premises*”); and

WHEREAS, the Commission does not have authority under that certain Amended and Restated Intergovernmental Agreement for the Joint Operation of the Fort Collins-Loveland Municipal Airport dated January 22, 2015 due to the substantive changes made in this Amendment to the Original Agreement;

WHEREAS, Lessee has requested the Cities amend the Original Agreement to remove the condominium structure set forth in the Original Agreement and replace it with a subleasing structure; and

WHEREAS, the Cities and Lessee have agreed to amend certain terms, covenants, and conditions of the Original Agreement as set forth in this Amendment.

AGREEMENT

In consideration of the following terms and conditions, the Cities and Lessee agree as follows:

1. **Capitalized Terms.** All capitalized terms contained in this Amendment, unless specifically defined herein, shall have the meaning ascribed to them in the Original Agreement.

2. **Fourth Recital.** The fourth Recital of the Original Agreement is hereby deleted in its entirety and is amended and restated as follows in its entirety to remove reference to a condominium structure:

WHEREAS, Lessee is a Colorado limited liability company and desires to construct a hangar building or buildings and other improvements installed or constructed on the Leased Premises in accordance with the terms and conditions hereof (“*Hangars*”); and

3. **New Recital.** After the amended and restated fourth Recital set forth in Section 2 above, a new Recital is hereby added to Agreement:

WHEREAS, Lessee desires to sublease to tenants (“*Tenants*”) all or portions of the Hangars (as defined below) pursuant to subleases for the use or occupancy of such Hangars (“*Tenant Subleases*”); and

4. **Defined Terms.** Throughout the Original Agreement, including, but not limited to, paragraphs 3.1, 5.2, 6.1, 6.3, 6.10, 15.3, and 18.5 of the Original Agreement:

4.1 the term “*Condominium Declaration*” shall be replaced by the term “*Tenant Subleases*;”

4.2 the terms “*Condominium Unit*” and “*Hangar Condominium Unit*” shall be replaced by the term “*Hangar*;”

4.3 the terms “*Unit Owners*” and “*hangar tenants*” shall be replaced by the term “*Tenants*;”

4.4 the term “*Act*”, referring to the Condominium Ownership Act, is hereby deleted; and

4.5 the term “*Condominium Association*” is hereby deleted.

5. **Use of Leased Premises.** The words “operation of a hangar building (the “Hangers”)...” in the first sentence of paragraph 3.1.1 shall be replaced by the words “operation of Hangars...”

6. **Assignment and Subletting.** Article 13: Assignment and Sublease of the Original Agreement is hereby deleted and is amended and restated in its entirety as follows:

ARTICLE 13: ASSIGNMENT AND TENANT SUBLEASES

13.1 Consent to Assignment. The prior written consent of the Cities shall be required for any assignment or transfer of this Agreement and of the leasehold estate created hereby, except in connection with a leasehold mortgage. Consent to assignment of this Agreement may be withheld by the Cities in the event (a) Lessee is in default of any of the terms or conditions of this Agreement, (b) the assignee or transferee (the “*Assignee*”) does not deliver to the Cities its written agreement to be bound by all of the provisions of this Agreement in a form satisfactory to the Cities, or (c) the Assignee does not submit proof of insurance as required in Articles 8 and 9. Consent to assignment shall not otherwise be unreasonably withheld. Upon the granting of written consent by the Cities and assignment of this Agreement, Lessee shall be released by the Cities from its obligations under this Agreement.

13.2.2 Conditions of Assignment. Each assignment of this Agreement shall, among other terms, conditions, and restrictions, require the Assignee to comply with all terms and conditions of this Agreement. Lessee and any Assignee shall be jointly and severally responsible for compliance with the terms and conditions of this Agreement; provided, that, notwithstanding the foregoing, or any other provision of this Agreement to the contrary (including by way of example and not in limitation, the provisions of Articles 9, 18, and 21), the person above identified as Lessee (“*Initial Lessee*”) shall not be responsible for noncompliance of any Assignee, and Initial Lessee’s obligations under this Agreement shall terminate at such time that Initial Lessee (i) assigns this Agreement to an Assignee and the consent of the Cities is obtained pursuant to paragraph 13.1, or (ii) holds no ownership interest in any Hangar, whichever event first occurs (“*Initial Lessee Termination*”) and all obligations of Lessee under this Agreement shall thereupon be the responsibility of the Assignee of this Agreement. Following Initial Lessee Termination,

except as the context otherwise indicates, the Assignee of this Agreement shall exercise the rights and fulfill the responsibilities of Lessee hereunder as Lessee.

13.3 Tenant Subleases.

13.3.1 Other than in the manner set forth in in this Article 13, Lessee shall not subdivide, sublease, or fractionalize either its ownership of the Improvements or leasehold interest in the Leased Premises.

13.3.2 Lessee shall have the right and obligation to construct Improvements and sublease Hangars on the Leased Premises in accordance with applicable law, without the prior consent of the Cities, except that Lessee shall not have the right to subdivide, sublease or fractionalize either its ownership of the Improvements or its interest in the Leased Premises, except in accordance with a map of the Leased Premises previously approved by the Cities. By way of clarification, and not by limitation, the restrictions on assignment contained in paragraph 13.1 shall not apply to subleasing by Lessee of an individual Hangar to a Tenant pursuant to a Tenant Sublease that is in compliance with the terms and conditions of this Agreement.

13.3.3 Any such Tenant Sublease shall be subject and subordinate to this Agreement. Lessee shall cause any future Tenant Sublease, entered into by Lessee or any Tenant of Lessee, to contain provisions substantially similar to the following provision:

If at any time during the term of this lease the leasehold estate of lessor shall terminate or be terminated for any reason, lessee agrees, at the election and upon demand of any owner or overlessor of the Leased Premises or Improvements, or of any mortgagee in possession thereof, or of any holder of a leasehold now or hereafter affecting premises which include the Leased Premises, to attorn, from time to time, to any such owner, overlessor, mortgagee, or holder, upon the terms and conditions set forth herein for the remainder of the term demised in this lease. The foregoing provisions shall inure to the benefit of any such owner, overlessor, mortgagee, or holder, and shall apply to the tenancy of the lessee notwithstanding that this lease may terminate upon the termination of any such leasehold estate and shall be self-operative upon any such demand, without requiring any further instrument to give effect to said provisions. Lessee, however, upon demand of any such owner, overlessor, mortgagee, or holder, agrees to execute, from time to time, an instrument in confirmation of the foregoing, in which lessee shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy, which shall be the same as those set forth herein and shall apply for the remainder of the term originally demised in this lease. Nothing contained in this Section shall be construed to impair any right, privilege or option of any such owner, overlessor, mortgagee, or holder.

13.3.3 Upon the sublease or the assignment of a Tenant Sublease of any Hangar, Lessor or Tenant (as applicable) shall provide the Cities with notification of the Tenant Sublease, providing the Cities with the name, address, and other

contact information for the Tenant and a description of the aircraft to be regularly stored in such Hangar.

13.3.4 At all times during the term of this Agreement, the Tenant Subleases shall provide the following: the date on which this Agreement is scheduled to expire; a legal description of the Leased Premises; a statement that the Tenants have no right to redeem any reversion in the Leased Premises or this Agreement; a statement that Tenants have no right to remove any Improvements on the Leased Premises, including at or after termination of this Agreement; and a statement that Tenants have no right to renew this Agreement at or after termination, other than the contingent right of Lessee to do so under paragraph 1.3 above.

13.3.5 The Tenant Subleases shall require that with respect to Hangars and the Tenant’s use thereof, and activities of Tenants on the Airport, each Tenant shall comply with applicable terms of this Agreement and shall take no action which is in violation of any term or condition of an applicable term of this Agreement. The Tenant Subleases shall provide that any act or omission of a Tenant which is contrary to or violates an applicable term of this Agreement, or of any Airport rule or regulation, shall be a violation of the terms of the Tenant Sublease, and shall contain adequate provisions for Lessee’s enforcement of such requirements. Before or at the closing of any sublease or assignment of a Tenant Sublease with respect to a Hangar, the prospective Tenant of the Hangar shall be required to sign and deliver to the Cities, on a form acceptable to the Cities, a declaration providing the prospective Tenant’s name, address and contact information, and acknowledging that such prospective Tenant has been provided with a copy of this Agreement and the Tenant Sublease, has read this paragraph 13.3, and understands the prospective Tenant’s obligations to comply with the applicable terms of this Agreement.

7. **Requirements for Condominiumization.** Article 31 of the Original Agreement is hereby deleted in its entirety.

8. **Notice Address of Lessee.** Paragraph 23.2 of the Original Agreement is hereby amended to provide that all notices to Lessee shall be addressed as follows:

IC Loveland Investors, LLC
8084 S Wallace Ct. Ste A
Englewood, CO 80112
Gary.roffe@cypress16.com

9. **Counterparts/Electronic Signatures.** This Amendment may be executed in multiple counterparts, each of which shall be effective upon delivery and, thereafter, shall be deemed to be an original, and all of which shall be taken as one and the same instrument with the same effect as if each party had signed on the same signature page. This Amendment may be transmitted by DocuSign or by electronic mail in portable document format (“pdf”) and signatures appearing on DocuSigned and/or electronic mail instruments shall be treated as original signatures.

10. **Interpretation of Amendment.** In the event of any conflict between the Original Agreement and this Amendment, the terms of this Amendment shall control. Except as expressly amended,

Item 14.

supplemented, or modified by this Amendment, the Agreement shall continue in full force and effect with respect to the Premises, as amended hereby.

11. **Binding Effect.** This Amendment shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

12. **Submission.** Submission of this Amendment by the Cities to Lessee for examination and/or execution shall not in any manner bind the Cities and no obligations on the Cities shall arise under this Amendment unless and until this Amendment is fully signed and delivered by the Cities and Lessee.

13. **Modification.** A modification of any provision herein contained, or any other amendment to this Amendment, shall be effective only if the modification or amendment is in writing and signed by both the Cities and Lessee.

14. **No Third Party Beneficiaries.** Except as otherwise provided herein, no person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Amendment (either expressed or implied) is intended to confer upon any person or entity, other than the Cities and/or Lessee (and their respective nominees, successors and assigns), any rights, remedies, obligations, or liabilities under or by reason of this Amendment.

15. **Construction.** This Amendment shall not be construed as if it had been prepared by only the Cities or Lessee, but rather as if both the Cities and Lessee had prepared the same.

[Remainder of page left blank; signature page follows.]

IN WITNESS WHEREOF, the Cities and Lessee have caused this Amendment to be executed as of the Effective Date set forth above.

IC LOVELAND INVESTORS, LLC,
a Colorado limited liability company

By: _____

Name:

Title:

Date: _____

CITY OF FORT COLLINS, COLORADO
A Municipal Corporation

By: _____

Title: _____

ATTEST:

By: _____ Date

Title: _____

APPROVE AS TO FORM: _____

Assistant City Attorney

CITY OF LOVELAND, COLORADO
A Municipal Corporation

By: _____

Title: _____

ATTEST:

Date

City Clerk

APPROVE AS TO FORM: _____

Acting Deputy City Attorney

**AMENDED AND RESTATED
HANGAR GROUND LEASE AGREEMENT
5232, 5240, 5250, 5260, 5270 STEARMAN STREET**

**CITIES OF LOVELAND AND FORT COLLINS, COLORADO,
acting by and through the
NORTHERN COLORADO REGIONAL AIRPORT COMMISSION
AND
IC LOVELAND, LLC**

**DATED
AUGUST 22, 2022**

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EXHIBIT A, Description of Leased Premises

EXHIBIT B, Concept Plan

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LEASE AGREEMENT

THIS AMENDED AND RESTATED HANGAR GROUND LEASE AGREEMENT, made and entered into this 22nd day of August, 2022, is by and between the Cities of Fort Collins and Loveland, Colorado (the “**Cities**”) acting by and through the Northern Colorado Regional Airport Commission (the “**Commission**”) and IC Loveland, LLC, a Colorado limited liability company, hereinafter called “**Lessee**.”

WITNESSETH:

WHEREAS, the Cities own and operate an airport known as the Northern Colorado Regional Airport located in Larimer County, Colorado, including the real property upon which the same is located, (hereinafter, the “**Airport**”); and

WHEREAS, the Cities and Lessee are mutually desirous of entering into this Lease Agreement (the “**Agreement**”) for the use and occupancy of certain areas at the Airport; and

WHEREAS, the Cities desire to accommodate, promote and enhance general aviation at the Airport and Lessee desires to be assured of the Airport's continued availability as a base for aircraft; and

WHEREAS, Lessee is a Colorado limited liability company, which intends to be a Declarant of a condominium declaration creating a leasehold condominium ownership pursuant to the Condominium Ownership Act, C.R.S. § 38-33-101, *et seq.* (the “**Act**”), and desires to construct leasehold hangar condominiums on the Leasehold Premises, for ownership by individual Unit Owners as defined in such Act (the “**Unit Owners**”); and

WHEREAS, the Cities and Lessee have reached an understanding in principle, which envisions Lessee's maintenance of an existing hangar building or buildings, without cost to the Cities; and

WHEREAS, the Lessee recently received assignment of and assumed the existing lease originally entered into between the Cities and Homestead Hangars, LLC on October 1, 2019 (the “**Original Lease**”). The Lessee desires to bring the Original Lease into good standing through repayment of outstanding rent in addition to complying with all other terms and conditions of the Original Lease; and

WHEREAS, since 2019, the Cities’ standard lease form has had minor modifications which are incorporated herein, primarily to address the Airport’s Land Use and Design Standards which were adopted after execution of the Original Lease; and

WHEREAS, the parties desire to enter into this Amended and Restated Hangar Ground Lease to set forth their rights and obligations herein.

NOW, THEREFORE, in consideration of the premises and of the rents, covenants and conditions herein contained, the Cities do hereby lease to Lessee the area(s) of the Airport described in Article 2 hereof (the “**Leased Premises**”) on to the conditions set forth below.

ARTICLE 1: TERM; OPTIONS; RIGHT OF FIRST REFUSAL

1.1 The initial term of this Agreement shall commence at 12:01 a.m. on September 1, 2022, and expire at 11:59 p.m. on August 30, 2047, a duration of twenty-five (25) years, hereinafter the “**Initial Term**,” unless sooner terminated in accordance with the provisions hereof.

1.2 Subject to the conditions set forth herein, Lessee shall have the option to extend the term of this Agreement for three (3) additional periods of five (5) years each, hereinafter the “**Extended Term(s)**,” provided Lessee is not in default in the payment of any rent or in default in any other provisions

of this Agreement at the time of its exercise of any such option. Lessee may exercise each option by giving written notice to the Cities not more than eighteen (18) months, nor less than six (6) months prior to the expiration of the Initial Term or the then-current Extended Term, of Lessee's intent to exercise its option to extend. With the exception of rentals due, as set forth in Section 4.1, the terms and conditions applicable during the Initial Term of this Agreement shall remain applicable during any Extended Term. The rent escalation shall continue throughout the Initial Term and any Extended Term as provided in Article 4.

1.3 If Lessee desires to continue occupying the Leased Premises after the expiration of all three (3) Extended Terms, Lessee may request in writing that the Cities grant a new lease agreement. Such a request shall be made by Lessee in writing and delivered to the Cities not later than one hundred twenty (120) days prior to the expiration of the last Extended Term. If: (i) if Lessee is not then in default under any provision of this Agreement; and (ii) the Cities in their discretion wish to offer to lease the Leased Premises to hangar tenants or an association of hangar tenants; and (iii) such a new lease would be consistent with the Airport's master plan then in effect and any and all federal rules, regulations, directives, guidelines or other obligations with respect to Airport, including but not limited to the "grant assurances" to the FAA ; then the Cities may, in their sole discretion, offer Lessee a new lease of the Leased Premises, under such terms and conditions as the Cities deem appropriate, including rental rates to include an assessment of fair market value of the property including the improvements thereon, and duration of the lease term and on the then-current lease form being offered by the Cities.

ARTICLE 2: LEASED PREMISES

2.1 The Leased Premises consist of the parcel of land described in **Exhibit "A"**. Without limiting the foregoing, the Cities acknowledge that the Hangars (as defined below) to be constructed upon the leased premises shall, during the term of this Agreement, be and remain the property of Lessee or any successor in interest.

ARTICLE 3: USE OF LEASED PREMISES

3.1 Lessee and its Unit Owners shall use and occupy the Leased Premises for the following purposes and for no other purpose whatsoever unless approved in writing by Cities:

3.1.1 For the construction, installation, maintenance and operation of a hangar building (the "Hangars") to be used for the parking, storage, servicing, repair, maintenance, modification, and construction of aircraft owned or operated by Lessee or its Unit Owners. Lessee's construction, installation, maintenance and operation of the Hangars shall comply with and be subject to the requirements of the Airport Minimum Standards, including the Airport Land Use and Design Standards incorporated therein. Lessee's use of the Leased Premises, including use for storage of aircraft owned by Unaffiliated Entities, shall be of a non-commercial nature, unless a commercial use is approved by the Cities by a separate written License. The foregoing shall not preclude the subleasing of space within individual Hangar buildings to Unaffiliated Entities, so long as a License is obtained if required by the Airport's Minimum Standards then in effect. Any such License shall require compliance with Minimum Standards for the Provision of Commercial Aeronautical Activities at the Airport (the "Minimum Standards"), as they then exist or are thereafter adopted or amended by the Cities. Any such commercial use must also be consistent with the City of Loveland, Colorado, building, use and zoning regulations and requirements applicable to the Leased Premises. Lessee shall include in its Condominium Declaration governing use and operation of the Leased Premises, a provision that all Unit Owners shall cause such aircraft based at the Leased Premises to comply with noise standards established under Part 36 of Title 14 of the Code of Federal Regulations, ("FAR 36") as amended from time to time. The Leased Premises shall not be used for residential purposes.

3.1.2 A copy of a Concept Plan for the development of the Hangars is attached as **Exhibit "B"** (the "Concept Plan"). The Cities make no representations, guarantees, or warranties

that the Leased Premises may be lawfully used for the purposes set forth in this Section 3.1. Lessee shall have the sole responsibility of obtaining all applicable permits or other governmental approvals necessary to construct and use the Leased Premises as intended herein. This Agreement is expressly conditioned upon Lessee obtaining all such permits and approvals, and the failure of Lessee to obtain any such permits or approvals within eighteen (18) months of the commencement date set forth in Section 1.1 or the failure of Lessee to maintain any such permits or approvals during the term of this Agreement shall result in termination of this Agreement pursuant to Article 18, generally, and to Section 18.9 specifically.

3.1.3 During the term of this Agreement, Lessee and/or its Unit Owners must regularly house at least one airworthy aircraft or at least one aircraft that periodically may be in active stages of assembly or reassembly in each Hangar, use each Hangar for the primary purpose of aircraft storage, and each Hangar shall be used for Aeronautical Activities only, unless the prior written permission of the Cities is first obtained. The term "Aeronautical Activities" shall mean any activity or service that involves, makes possible, facilitates, is related to, assists in, or is required for the operation of aircraft, or which contributes to or is required for the safety of aircraft operations.

ARTICLE 4: RENT

4.1 Lessee agrees to pay to the Cities during the Initial Term an annual rent of \$0.3227731 per square foot for the 159,648 square feet of the Leased Premises, including the building footprint, ramp, and area surrounding the building footprint, as set forth in Exhibit A, for a total of \$51,530.08 per year, subject to adjustment pursuant to Section 4.2. If Lessee exercises any option to extend the term of this Agreement under Section 1.2, annual rent per square foot for the first year of such Extended Term shall be the greater of (a) the rent determined under Section 4.2, as if the Initial Term had continued throughout such Extended Term, or (b) the then current market rates for hangar ground leases at comparable airports in the Front Range area, which shall be deemed to include the Denver Metro Area north through Cheyenne. Cities and Lessee agree to use their best efforts to agree on then current market rates, and execute a Lease Extension Agreement, within ninety (90) days after Lessee's written notice of election is received by the Cities. If the Cities and Lessee cannot agree upon the rental rates, the parties agree to submit to mediation before the Judicial Arbitrator Group of Denver, Colorado, or if it no longer exists a similar organization, to determine the rent to be paid by Lessee for the first year of the ensuing Extended Term; provided, however, that such rent shall never be lower than the rental which is due by application of subsection (a), above. The parties will each pay fifty percent (50%) of the mediator cost.

4.2 Commencing on May 1st next occurring after the date of this Agreement, and on May 1st in each year thereafter during the remainder of the Initial Term, the annual rent shall be adjusted by multiplying the annual rent payable in the next preceding year by a fraction, the numerator of which shall be the C.P.I., as hereinafter defined, published for the previous month of December and the denominator of which shall be the C.P.I. published for the month of December which preceded the month used as the numerator. In no event shall the annual rent be reduced from that payable in a previous year. If this Agreement is executed after January 1st, such C.P.I. increase for the calendar year in which this Agreement is executed shall be prorated. If Lessee elects to exercise its option for any Extended Term, and accordingly, the rental for the first year of such Extended Term has been set on the basis of current market rates, then rental for any subsequent year of such Extended Term shall be adjusted in accordance with the C.P.I. formula set forth in this section above.

4.2.1 The term "C.P.I." as used herein shall mean the Consumer Price Index for all Urban Consumers (CPI_U), All items, for the Denver-Boulder-Greeley, CO as published by the Bureau of Labor Statistics of the United States Department of Labor, 1982-84 base = 100. In the event the base year is changed, the C.P.I. shall be converted to the equivalent of the base year 1982-84 = 100. In the event the Bureau of Labor Statistics ceases to publish the C.P.I., or this index, an equivalent or comparable economic index will be used.

4.3 The annual rent payable hereunder may be paid in advance in annual installments, or shall be paid in equal monthly installments on the first day of each month in advance at the office of the Airport Manager or at such other office as may be directed in writing by the Cities. Payments due to the Cities under this Agreement shall be paid without offset. In addition to any other remedies provided in this Agreement, in the event that any rental, fee or charge set forth in this Agreement is not paid to the Cities within ten days of the date due, Lessee agrees to pay a late charge of \$50.00 for each such late payment, and default interest shall accrue on such payment from the date the payment was due, at a rate of twelve percent (12%) per annum. If any action is brought to collect any amounts due under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees and costs incurred.

4.4 Lessee, as additional rent, shall complete construction of Hangars and related Improvements on the Leased Premises, in accordance with plans and specifications approved by the Cities based upon the Concept Plan. The Hangars shall, collectively, be at least a total of 76,856 square feet in size and shall have a concrete or asphalt floor, with each Hangar to have at least one aircraft access door sized to accommodate an average private aircraft. Lessee shall use commercially reasonable and diligent efforts to complete construction of the Hangars and other such Improvements within the earlier of eighteen (18) months of the Cities' approval thereof or within three years from the date of this Agreement. If Lessee fails to construct the Hangars and other such Improvements in accordance with the provisions of this section, and such failure to construct is caused by force majeure or improper action of the Cities, then this Agreement may be cancelled by Lessee upon thirty (30) days notice to the Cities, in which event and as of the date of such cancellation, Lessee shall be released from any further obligations under this Agreement.

4.5 Lessee, shall maintain a paved aircraft ramp area on the Leased Premises (the "Ramp"). The Ramp must be designed and built to specifications, and for a minimum weight bearing capacity, established by the Cities, and to connect with adjacent taxiway, ramp and/or auto parking areas, in order that a continuous and safe pavement section results. It is the responsibility of Lessee to maintain the entire Ramp area, and all other pavement areas on the Leased Premises, in a manner, which is safe and clean of debris so as not to cause danger or unsafe conditions for taxiing aircraft and Airport users. Notwithstanding the foregoing, the Cities shall be responsible for snow removal on the aircraft Ramp area excluding any parking and side lots and excluding any area within three feet (3') of any Hangar; provided, however, that priority of snow removal shall be in accordance with the Cities' Snow Removal Plan as it now exists or as it may be amended in the Cities' sole discretion. Lessee grants to users of the Airport the right to use aircraft Ramp areas on the Leased Premises from time to time for passage of aircraft on and near the adjacent taxiway.

4.6 Subject to the provisions of Article 10, Lessee shall keep the Leased Premises, and the Hangar, Ramp and any and all structures constructed by Lessee on the Leased Premises (collectively, the "Improvements" hereinafter), free and clear of any liens and encumbrances, except as contemplated by Article 10, or unless expressly approved in writing by the Cities, and shall indemnify, hold harmless and defend the Cities from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Lessee. In the event any lien is filed, Lessee shall do all acts necessary to discharge any lien within ten (10) days of filing, or if Lessee desires to contest any lien, then Lessee shall deposit with the Cities such security as the Cities shall reasonably demand to insure the payment of the lien claim. In the event Lessee fails to pay any lien claim when due or fails to deposit the security with the Cities, then the Cities shall have the right to expend all sums necessary to discharge the lien claim, and Lessee shall pay the Cities, as additional rental when the next rental payment is due, all sums expended by the Cities in discharging any lien, including reasonable attorneys' fees and costs, and interest at twelve percent (12%) on the sums expended by the Cities from the date of expenditure to the date of payment by Lessee.

4.7 Lessee agrees to comply with Minimum Standards adopted by the Cities for the Airport, as they now exist or as they may hereafter be adopted or amended. Fees due under such Minimum Standards or pursuant to any License issued for commercial activities conducted in whole or part on the Leased

Premises, may be collected by the Cities as additional rent under this Agreement, in addition to any other remedies available to the Cities.

4.8 Lessee acknowledges and agrees that there is past due rent owed under the Lease from the original lessee in the amount of \$114,307.51. Lessee and the Cities agree that Lessee shall repay such past due rent in addition to the other rent owed under this Lease with a fixed interest rate of 5.5% in twenty-eight monthly installments of \$4,321.17 due on the first of each month beginning with the month this Lease commences, with the balance to be paid in full by December 1, 2024. The full repayment plan schedule is attached as "Exhibit C." Failure to make any payment as due under this Paragraph 4.8 shall be considered an event of default on the payment of rents under this Lease.

ARTICLE 5: ACCEPTANCE, CARE, MAINTENANCE, IMPROVEMENTS AND REPAIR

5.1 Lessee acknowledges that it has inspected the Leased Premises, conducted such studies and tests thereof (including environmental tests) as it deems necessary, and accepts possession of the Leased Premises "as is" in its present condition, and, subject to all limitations imposed upon the use thereof by the rules and regulations of the Federal Aviation Administration, the rules and regulations of the Airport, and by ordinances of the Cities, admits its suitability and sufficiency for the uses permitted hereunder. The Cities represent to Lessee that, to their knowledge, the Leased Premises are free of any adverse environmental conditions and no part of the Leased Premises lies in a flood hazard area or constitutes a fresh water wetland, nor is any part of the Leased Premises within one hundred feet (100') feet of a fresh water wetland. Except as may otherwise be provided for herein, the Cities shall not be required to maintain nor to make any improvements, repairs or restoration upon or to the Leased Premises or to any of the improvements presently located thereon or placed thereon by Lessee.

5.2 Except as provided in Section 4.5, Lessee shall, throughout the term of this Agreement, assume the entire responsibility, cost and expense, for all repair and maintenance whatsoever on the Leased Premises and all Improvements thereon in a good workmanlike manner, whether such repair or maintenance be ordinary or extraordinary, structural or otherwise. Additionally, Lessee, without limiting the generality hereof, shall:

5.2.1 Keep at all times, in a clean and orderly condition and appearance, the Leased Premises, all Improvements thereon and all of Lessee's and/or its Unit Owners' fixtures, equipment and personal property which are located on any part of the Leased Premises. Lessee and its Unit Owners shall not park or leave, or allow to be parked, aircraft on the taxiways, ramps or pavement adjacent to any Hangar in a manner which unduly interferes with or obstructs access to other hangars or movement on adjacent taxiways.

5.2.2 Provide and maintain on the Leased Premises all obstruction lights and similar devices, and safety equipment required by law.

5.2.3 Take measures to prevent erosion, including but not limited to, the planting and replanting of grasses with respect to all portions of the Leased Premises not paved or built upon, if any, and in particular shall plant, maintain and replant any landscaped areas.

5.2.4 Be responsible for the maintenance and repair of all utility services lines placed on the Leased Premises and used by Lessee exclusively, including, but not limited to, water lines, gas lines, electrical power and telephone conduits and lines, sanitary sewers and storm sewers.

5.2.5 In the event Lessee discovers any hazardous material on the Leased Premises, it will promptly notify the Cities in writing.

5.2.6 If extraordinary repairs or maintenance to the Improvements are required during the last five years of the Initial Term or any Extended Term of this Agreement, Lessee may elect

not to repair and/or maintain the Improvements, by giving the Cities written notice of its election. In such case, Cities shall have the option of requiring Lessee to either (a) clear the site, remove all debris and paving, stub up all utilities, and restore the site to its original cleared condition prior to commencement of construction; or (b) transfer title to the Improvements to the Cities, as is. Upon Lessee's election and compliance with this section, the Cities shall terminate this Agreement and relieve Lessee of all future rental obligations hereunder.

5.3 Plans and specifications for each of the Improvements and all repairs (other than emergency repairs), construction, alterations, modifications, additions or replacements to the Improvements, including those made to any paving upon the Leased Premises, excluding non-structural repairs, construction, alterations, modifications, additions or replacements costing less than ten thousand dollars (\$10,000.00) shall be submitted to the Cities for approval, which approval shall not be unreasonably denied, providing the plans and specifications comply with the provisions of this Agreement, the Airport Land Use and Design Standards, as well as all applicable building, use and zoning regulations. Submittal of the above described Plans and Specifications shall also include a site plan, drainage plan, and building plan for the initial project development. The site plan shall show the location of all Improvements on the Leased Premises, including the Hangars, pavements, utilities and location of the Hangars on the site. The drainage plan must show how drainage will be handled and be approved by the Airport Manager prior to a building permit being issued by the City of Loveland. Lessee shall reimburse the Cities for all costs incurred for providing a legal survey and legal description of the Leased Premises and for a proportional share of any costs to bring road access and utilities to the Leased Premises, should the Cities agree to do so. Prior to the commencement of any construction of the Improvements Lessee shall have the Leased Premises staked by a certified surveying company to ensure all Improvements are placed accurately on the Leased Premises. Within ninety (90) days of the certificate of occupancy being received, Lessee shall submit to the Airport Manager a full set of as-built record drawings of the Improvements, which among other things, depicts exact locations of all Improvements, including utilities, made on and/or off of the Leased Premises.

ARTICLE 6: ADDITIONAL OBLIGATIONS OF LESSEE

6.1 Lessee shall conduct its operations hereunder and cause each of its Unit Owners to conduct their operations in an orderly and proper manner, considering the nature of such operations, so as not to unreasonably annoy, disturb, endanger or be offensive to others.

6.2 Further, Lessee shall take all reasonable measures:

6.2.1 To reduce to a practicable minimum vibrations tending to damage any equipment, structure, buildings or portions of buildings.

6.2.2 Not to produce or allow to be produced on the Airport through the operation of machinery or equipment any electrical, electronic or other disturbances that interfere with the operation by the Cities or the Federal Aviation Administration of air navigational, communication or flight equipment on the Airport or on aircraft using the Airport, or with ground transportation communications.

6.3 Lessee shall comply and shall include covenants in its Condominium Declaration that require Unit Owners to comply with all federal, state and municipal laws, ordinances, rules, regulations and requirements, the Airport Minimum Standards, Airport security rules and regulations, and other Airport rules and regulations, as they now exist or may hereafter be amended or promulgated, and the terms of this Agreement, applicable to the Leased Premises and the Improvements thereon and its operations and activities at the Airport hereunder.

6.4 Lessee and its Unit Owners shall commit no nuisance, waste or injury on the Leased Premises, and shall not do, or permit to be done, anything that may result in the creation, commission or maintenance of such nuisance, waste or injury on the Leased Premises.

6.5 Lessee and its Unit Owners shall not do, nor permit to be done, anything which may interfere with the effectiveness or accessibility of the drainage system, sewerage system, fire protection system, sprinkler system, alarm system and fire hydrants and hoses, if any, installed or located on the Leased Premises.

6.6 Lessee shall take measures and shall include covenants in its Condominium Declaration that require Unit Owners to take measures to ensure security in compliance with Federal Aviation Administration Regulations and the Airport Security Plan, as they now exist or may hereafter be amended or promulgated.

6.7 Lessee and its Unit Owners shall not do, nor permit to be done, any act or thing which will invalidate or conflict with any fire insurance policies or regulations applicable to the Leased Premises or any part thereof; or other contiguous premises at the Airport.

6.8 Lessee and its Unit Owners shall not install, maintain, operate or permit the installation, maintenance or operation of any restaurant, kitchen, stand or other establishment of any type for the sale of food or of any vending machines or device designed to dispense or sell merchandise or services of any kind to the general public, unless all required development approvals and permits for that activity are first obtained from the Cities.

6.9 Except for uses permitted under Article 3 to be performed by Lessee, or Unit Owners or their tenants, Lessee and its Unit Owners shall not provide or allow to be provided aircraft maintenance work, flight instruction of any sort, air taxi, aircraft charter or aircraft leasing of any sort on the Leased Premises, for commercial purposes, without all required development approvals, and a License from the Cities if and as required by the Airport's Minimum Standards then in effect.

6.10 Lessee will conduct its operations, and shall include covenants in its Condominium Declaration that require each of its Unit Owners to conduct their operations, in such a manner as to keep the noise produced by aircraft engines and component parts thereof, and any other noise, to a minimum, by such methods as are practicable, considering the extent and type of the operations of Lessee and/or its Unit Owners, and the limitations of federal law. In addition, Lessee and its Unit Owners will employ the maximum amount of noise arresting and noise reducing devices that are available and economically practicable, considering the extent of their operations, but in no event less than those devices required by federal, state or local law. In its use of the Leased Premises, Lessee and its Unit Owners shall take all possible care, exercise caution and use commercially reasonable efforts to minimize prop or jet blast interference and prevent jet blast damage to aircraft operating on taxiways and to buildings, structures and roadways, now located on or which in the future may be located on areas adjacent to the Leased Premises. In the event the Cities determine that Lessee or any of its Unit Owners has not curbed the prop or jet blast interference and/or damage, Lessee hereby covenants and agrees to erect and maintain at its own expense or to cause the Unit Owners or Condominium Association to erect and maintain at their expense such structure or structures as may be necessary to prevent prop or jet blast interference, subject, however, to the prior written approval of the Cities as to type, manner and method of construction.

6.11 Lessee shall not store nor permit the storage of disabled aircraft or any equipment or materials outside of the Hangars constructed on the Leased Premises, without the written approval of the Cities.

6.12 On forms and at the frequency prescribed by the Airport Manager, and with respect to each aircraft stored on the Leased Premises, Lessee shall provide the Cities with the (a) make and model, (b) N-number, and (3) identity and address of the registered owner. This requirement shall apply to aircraft whether owned by Lessee or another party, and regardless of whether its storage is subject to the Minimum Standards.

ARTICLE 7: INGRESS AND EGRESS

7.1 Lessee and its Unit Owners shall have the right of ingress and egress between the Leased Premises and the public landing areas at the Airport by means of connecting taxiways; and between the Leased Premises and the entrance(s) to the Airport by means of connecting paved roads. Lessee and its Unit Owners shall have the right to use the public runways and public aviation aids at all times during which they are open to the public. Such rights of ingress, egress and use shall be in common with others having rights of use and passage thereon.

7.1.1 If, at the time of entering into this Agreement, access to the Leased Premises is not available on existing taxiways and/or roadways, then such taxiways and/or roadways necessary for Lessee's use and occupancy shall be constructed at the sole expense of Lessee, in accordance with construction specifications and design criteria approved by the Cities for the uses contemplated by Lessee. The Cities shall have no obligation whatsoever for the cost of these improvements. Upon completion of construction, Lessee shall certify that the taxiways and/or roadways so constructed have been built to such specifications and criteria, and those portions of any such taxiways and/or roads located off the Leased Premises shall be conveyed and dedicated to the Cities, which shall accept them for maintenance. Upon such conveyance and dedication, Lessee shall warrant that the same shall be free of defects in materials and workmanship for a period of not less than two (2) years after the date of such conveyance and dedication. Such warranty shall be backed by a warranty bond or another form of security instrument, satisfactory to the Cities in their sole discretion, in the amount of not less than fifteen-percent (15%) of the construction cost of the improvements warranted.

7.2 The use of any such roadways or taxiways shall be subject to the Rules and Regulations of the Airport, which are now in effect or which may hereafter be promulgated, and subject to temporary closure, provided, however, that any closure shall be only for reasonably necessary or unique circumstances, and provided that fourteen (14) days prior written notice will be given to Lessee relevant to any closure, unless such closure is necessary due to emergency. Lessee, for itself and its authorized subtenants, hereby releases and discharges the Cities, the Commission, their officers, employees and agents, and all their respective successors and assigns, of and from any and all claims, demands, or causes of action which Lessee or its authorized subtenants may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any street, roadway or other area, provided that other reasonable means of access to the Leased Premises remain available to Lessee without cost to Lessee, unless otherwise mandated by emergency safety considerations or lawful exercise of the police power. Lessee shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the Leased Premises or in any streets or roadways on the Airport.

ARTICLE 8: INSURANCE, DAMAGE OR DESTRUCTION

8.1 Lessee, at its sole cost and expense, shall procure and maintain throughout the term of this Agreement insurance protection for all risk coverage on the Improvements which are part of the Leased Premises, to the extent of one hundred percent (100%) of the actual replacement cost thereof. Such insurance shall be written by insurers acceptable to Cities. The insurance shall provide for ten (10) days' notice of cancellation or material change, certified mail, return receipt requested, to the Cities, Attention: Airport Manager.

8.1.1 The above stated property insurance shall be for the benefit and to safeguard the interests of the Cities and Lessee.

8.1.2 Lessee shall settle all losses with the insurance carrier. Lessee shall consult with the Cities and use its best efforts to obtain a settlement that covers the cost of repairing or rebuilding the Improvements.

8.1.3 Lessee shall provide certificates of insurance, in a form acceptable to the Cities and marked "premium paid" evidencing existence of all insurance required to be maintained prior to occupancy of the Improvements. Upon the failure of Lessee to maintain such insurance as above provided, the Cities, at their option, may take out such insurance and charge the cost thereof to Lessee, which shall be payable on demand, or may give notice of default pursuant to Article 18.

8.2 In the event the Improvements and any subsequent improvements, insurable or uninsurable, on the Leased Premises are damaged or destroyed to the extent that they are unusable by Lessee for the purposes for which they were used prior to such damage, or same are destroyed, Lessee shall promptly repair and reconstruct the Improvements substantially as they were immediately prior to such casualty or in a new or modified design, subject to the provisions of Article 5 hereof and applicable building codes and the Airport Land Use and Design Standards, existing at the time of repairing or rebuilding. If the aforesaid damage or destruction occurs in the last five years of the Initial term or any option term of this Agreement, Lessee may elect not to repair and reconstruct the Improvements, subject to the following terms and conditions:

8.2.1 Lessee shall give the Cities written notice of its election not to repair and reconstruct the Improvements within ninety (90) days of the date upon which the Improvements were damaged or destroyed. In such case, the Cities shall have the option of either:

8.2.1.1 Requiring Lessee to clear the site, remove all debris and paving, stub up all utilities, and restore the site to its original cleared condition prior to commencement of construction; in which case Lessee shall retain all insurance proceeds above those necessary to fund such site restoration; or

8.2.1.2 Taking title to the damaged Improvements, as is, in which case Lessee shall assign to and the Cities shall retain all insurance coverage and proceeds.

8.2.3 Upon Lessee's notice under Section 8.2.1 hereof and Lessee's compliance with the provisions of Sections 8.2.1.1 or 8.2.1.2 hereof, the Cities shall terminate this Agreement and relieve Lessee of all future rental obligations hereunder.

8.3 All policies of insurance required herein shall name the Cities as additional insureds.

8.4 Whenever in this Agreement, provision is made for the carrying of any insurance, it shall be deemed that such provision is complied with if such insurance otherwise complying with such provision is carried under a blanket policy or policies covering the Leased Premises as well as other properties.

8.5 Lessee shall not violate, nor permit to be violated, any of the conditions of any of the said policies; and shall perform and satisfy, or cause to be satisfied, the requirements of the companies writing such policies.

ARTICLE 9: LIABILITIES AND INDEMNITIES

9.1 The Cities and the Commission shall not in any way be liable for any cost, liability, damage or injury including cost of suit and expenses of legal services, claimed or recovered by any person whomsoever, or occurring on the Leased Premises, or the Airport, or as a result of any operations, works, acts or omissions performed on the Leased Premises, or the Airport, by Lessee, its agents, servants, employees or authorized tenants, or their guests or invitees. Lessee, and each of its Unit Owners, shall not in any way be liable for any cost, liability, damage or injury including cost of suit and expenses of legal services, claimed or recovered by any person whomsoever, or occurring on the Leased Premises, or the Airport, or as a result of any operations, works, acts, or commission performed on the Leased Premises, or

the Airport, solely by the Cities and the Commission, their agents, servants, employees or authorized tenants, or their guests or invitees.

9.2 Lessee and its Unit Owners agree to indemnify, save and hold harmless, the Cities and the Commission, their officers, agents, servants and employees, of and from any and all costs, liability, damage and expense, including costs of suit and reasonable expenses of legal services, claimed or recovered, justly or unjustly, falsely, fraudulently or frivolously, by any person, firm or corporation by reason of injury to, or death of, any person or persons, including Cities' personnel, and damage to, destruction or loss of use of any property, including Cities' property, directly or indirectly arising from, or resulting from, any operations, works, acts or omissions of Lessee, its agents, servants, employees, contractors, or authorized tenants. Upon the filing with the Cities by anyone of a claim for damages arising out of incidents for which Lessee herein agrees to indemnify and hold the Cities harmless, the Cities shall notify Lessee of such claim and in the event that Lessee does not settle or compromise such claim, then Lessee shall undertake the legal defense of such claim on behalf of Lessee and the Cities. It is specifically agreed, however, that the Cities at their own cost and expense, may participate in the legal defense of any such claim. Any final judgment rendered against the Cities for any cause for which Lessee is liable shall be conclusive against Lessee as to liability and amount upon the expiration of the time for appeal.

9.3 Lessee shall procure and keep in force during the term of the Lease policies of Comprehensive General Liability insurance insuring Lessee and the Cities against any liability for personal injury, bodily injury, death, or property damage arising out of the subject of this Agreement with a combined single limit of at least one million dollars or with a limit of not less than the maximum amount that may be recovered against the Cities under the Colorado Governmental Immunity Act, whichever is greater. No such policies shall be cancelable or subject to reduction in coverage limits or other modification except after ten (10) days prior written notice to the Cities. The policies shall be for the mutual and joint benefit and protection of Lessee and the Cities and such policies shall contain a provision that the Cities, although named as an insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its servants, agents, citizens, and employees by reason of negligence of Lessee. Lessee shall provide certificates of insurance, in a form acceptable to the Cities and marked "premium paid" evidencing existence of all insurance required to be maintained prior to the commencement of the Agreement.

9.4 Lessee represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under or in any way connected with this Agreement. Lessee agrees to save and hold the Cities, their officers, employees, agents and representatives free and harmless of and from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright, or arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Lessee under or in any way connected with this Agreement.

ARTICLE 10: LEASEHOLD MORTGAGES

10.1 If Lessee shall execute a Leasehold Mortgage of its leasehold estate, or if a Unit Owner shall grant a similar interest, to an entity which is not directly or indirectly owned or controlled by, or is not under common ownership or control with Lessee or Unit owner, as the case may be, (collectively, an "Unaffiliated Entity"), and if the holder of such Leasehold Mortgage shall provide the Cities through the Commission or Airport Manager with notice in the manner described in Article 13 with notice of such Leasehold Mortgage together with a true copy of such Leasehold Mortgage and the name and address of the Mortgagee, then following receipt of such notice by the Cities, the provisions of this Article 10 shall apply in respect to such Leasehold Mortgage.

10.2 The term "Leasehold Mortgage" as used in this Agreement shall include, but not be limited to, a mortgage, a deed of trust, a deed to secure debt, or other security instrument by which Lessee's leasehold estate is mortgaged, conveyed, assigned, or otherwise transferred, to secure a debt or other obligation, in connection with the construction contemplated by Sections 4.4 through 4.5, above.

10.3 The Cities, upon providing Lessee any notice of default under this Agreement or termination of this Agreement, shall at the same time provide a copy of such notice to the Leasehold Mortgagee by first class U.S. mail at the address specified in the notice given pursuant to Section 10.1, above. Such Leasehold Mortgagee shall have the additional periods of time specified in Section 10.4 hereof to remedy, commence remedying, or cause to be remedied the default or acts or omissions which are specified in any such notice. The Cities shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Lessee.

10.4 Anything contained in this Agreement to the contrary notwithstanding, if any default shall occur which entitles the Cities to terminate this Agreement, the Cities shall have no right to terminate this Agreement unless, following the expiration of the period of time given Lessee to cure such default or the act or omission which gave rise to such default, the Leasehold Mortgagee is given an additional period of thirty (30) days to:

10.4.1 Notify the Cities of such Leasehold Mortgagee's desire to defeat such Termination Notice; and

10.4.2 Pay or cause to be paid all rent, additional rent, and other payments then due and in arrears as specified in the Termination Notice to such Leasehold Mortgagee and which may become due during such thirty (30) day period; and

10.4.3 Comply with due diligence and continuity, or in good faith commence to and with diligence continue to pursue compliance with all non-monetary requirements of this Agreement then in default.

10.5 The making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Agreement or of the leasehold estate hereby created, nor shall the Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Agreement or of the leasehold estate hereby created so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions of this Agreement. Any Leasehold Mortgagee who takes an instrument of assignment or transfer in lieu of the foreclosure of the Leasehold Mortgagee shall be deemed to be a permitted assignee or transferee, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Lessee to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of the leasehold estate. If the Leasehold Mortgagee or its designee shall become holder of the leasehold estate and if the Hangar and Improvements on the Leased Premises shall have been or become materially damaged on, before or after the date of such purchase and assignment, the Leasehold Mortgagee or its designee shall be obligated to repair, replace or reconstruct the building or other improvements.

ARTICLE 11: RULES AND REGULATIONS

Lessee acknowledges that the Cities have proposed or adopted rules and regulations with respect to the occupancy and use of the Airport, and such rules and regulations may be amended, supplemented or re-enacted from time to time by the Cities provided that such rules and regulations apply generally to all similar occupants and users on the Airport. Lessee and its Unit Owners agree to observe and obey any and all such rules and regulations and all other federal, state and municipal rules, regulations and laws and to require its officers, agents, employees, subtenants, contractors, and suppliers, to observe and obey the same. In the event of a conflict between the provisions of Airport Rules and Regulations and this Agreement, the more stringent provisions shall control. This provision will include compliance with the Airport's Noise Abatement Plan as it now exists and as it may hereafter be amended or supplemented. The Cities reserve the right to deny access to the Airport and its facilities to any person, firm or corporation that fails or refuses to obey and comply with such rules, regulations or laws. Nothing in this Article 11 shall be construed to limit the rights of Lessee to file any action challenging the lawfulness of any such amendment, supplement or reenactment of any such rule or regulations, or to challenge the application of the same to Lessee.

ARTICLE 12: SIGNS

Lessee shall have the right to install and maintain one or more signs on the Leased Premises identifying it and its operations, provided, however, the subject matter, type, design, number, location and elevation of such signs, and whether lighted or unlighted, shall be subject to and in accordance with the City of Loveland Sign Code, and Airport Land Use and Design Standards. No sign will be allowed that may be confusing to aircraft pilots or automobile drivers or other traffic.

ARTICLE 13: ASSIGNMENT AND SUBLEASE

The prior written consent of the Cities shall be required for any sale, transfer, assignment or sublease of this Agreement and of the leasehold estate hereby created. Consent may be withheld by the Cities in the event (a) Lessee is in default of any of the terms or conditions of this Agreement, (b) the transferee or assignee does not deliver to the Cities its written agreement to be bound by all of the provisions of this Agreement in a form satisfactory to the Cities, or (c) the transferee or assignee does not submit proof of insurance as required in Articles 8 and 9 herein, or (d) the transferee or assignee does not qualify as a successor to Lessee under the Condominium Declaration recorded pursuant to Article 31 . Consent shall not otherwise be unreasonably withheld. Upon the granting of written consent by the Cities and actual transfer or assignment, Lessee shall be released by the Cities from its obligations under this Agreement. Other than in the manner set forth in Article 31 below, Lessee shall not subdivide or fractionalize either its ownership of the Improvements or leasehold interest in the Leased Premises.

13.2 Lessee shall have the right and obligation to construct and sell hangar condominiums on the Leased Premises in accordance with applicable law, without the prior consent of the Cities. By way of clarification, and not by limitation, the restrictions on sale, assignment or subleasing contained in this Article 13 shall not apply to the first transfer or conveyance by Lessee of an individual Condominium Unit to another Owner. The Condominium Declaration to be recorded by Lessee shall, among other terms, conditions and restriction, require all Unit Owners to comply with all terms and conditions of this Agreement. Lessee, the Condominium Association and any Unit Owner shall be jointly and severally responsible for compliance with the terms and conditions of this Agreement; provided, that, notwithstanding the foregoing, or any other provision of this Agreement to the contrary (including by way of example and not in limitation, the provisions of Articles 9, 18 and 21), the person first above identified as Lessee (“Initial Lessee”) shall not be responsible for noncompliance of any Unit Owner other than Initial Lessee or for compliance obligations of the Condominium Association, and Initial Lessee’s obligations under this Agreement shall terminate at such time that Initial Lessee (i) assigns this Agreement to the Condominium Association, or (ii) holds no ownership interest in any Condominium Unit, whichever event first occurs (“Initial Lessee Termination”) and all obligations of Lessee under this Agreement shall thereupon be the responsibility of the Condominium Association and the Unit Owners, as applicable in the

context of this Agreement. Following Initial Lessee Termination, except as the context otherwise indicates, the Condominium Association shall exercise the rights and fulfill the responsibilities of Lessee hereunder as Lessee and as agent and attorney-in-fact of the Unit Owners. Upon the lease of any Condominium Unit, the Unit Owner shall provide Cities with notification of the lease and otherwise comply with Article 4, above. Upon the sale, resale or lease of any Condominium Unit, Initial Lessee if the one conveying or leasing, and if not then the Condominium Association, shall promptly provide the Cities with the name, address and other contact information for the Unit Owner, and a description of the aircraft to be regularly stored in such hangar.

13.3 Lessee shall not have the right to subdivide or fractionalize either its ownership of the Improvements or its interest in the Leased Premises, except in accordance with the Condominium Map recorded pursuant to the Act, previously approved by the Cities, and filed with a Condominium Declaration recorded pursuant to the Act and Article 31.

ARTICLE 14: CONDEMNATION

14.1 In the event that all or any portion of the Leased Premises is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of appropriation, condemnation or eminent domain (or pursuant to a sale to such power or authority under the threat of condemnation or eminent domain), all rents payable with respect to that portion of the Leased Premises taken shall no longer be payable, and the proceeds, if any, from such taking or sale shall be allocated between the Cities, Lessee, and any affected Unit Owners in accordance with the applicable condemnation law, with Lessee and any affected Unit Owner being entitled to compensation for the fair market value of the leasehold interest, Improvements and personal property taken. If a portion of the Leased Premises is so taken or sold, and as a result thereof, the remaining part cannot reasonably be used to continue the authorized uses set forth in Article 3, then this Agreement shall terminate at Lessee's election, and Lessee's obligation to pay rent and perform the other conditions of the lease shall be deemed to have ceased as of the date of such taking or sale.

14.2 The Cities expressly reserve the right to grant or take easements on rights-of-way across the Leased Premises if it is determined to be in the best interest of the Cities to do so. If the Cities grant or take an easement or right-of-way across any of the Leased Premises, Lessee shall be entitled only to compensation for damages to all Improvements owned by Lessee or its Unit Owners destroyed or physically damaged thereby, but not to damages for loss of use of the Leased Premises itself. Damages to improvements shall be determined by the reduction in fair market value of the Improvements caused by said damage or cost of repair, whichever is less.

14.3 Lessee understands and agrees that the Cities have the right to take all or any portion of the Leased Premises, and any additions, alterations or improvements thereon, should the Cities, in their sole discretion, determine that said portion of the Leased Premises, and improvements thereon, are required for other Airport purposes, without initiating condemnation proceedings. If such action is taken, the Cities shall substitute comparable areas within the Airport, or any additions or extensions thereof, brought to the same level of improvement as the area taken. The Cities shall bear all expenses of bringing the substituted area to the same level of improvement to the area taken, and of moving Lessee's improvements, equipment, furniture and fixtures to the substituted area. If any of Lessee's improvements, equipment, furniture or fixtures cannot be relocated, the Cities shall replace, at their own expense, such non-relocatable improvements and other property with comparable property in the substituted area, and the Cities shall be deemed the owner of the non-relocated improvements and other property, free and clear of all claims of any interest or title therein by Lessee, any mortgagee, or any other third party whomsoever. It is the specific intent of this subparagraph that Lessee would be placed, to the extent possible, in the same position it would have been, had the Cities not substituted new premises for the Leased Premises; provided however, that the Cities shall not be obligated to reimburse Lessee for lost revenues or other costs due to such substitution. In the event that such substitution of area is demanded by the Cities, Lessee shall have the right and option to terminate this Agreement, prior to the Cities commencing the substitution, upon thirty (30) days prior

written notice to Cities, in which event the Cities shall pay Lessee the fair market value of all Improvements constructed on the Leased Premises pursuant to approval of the Cities. Nothing in this subparagraph shall be construed to limit the Cities' rights to condemn Lessee's leasehold rights and interests in the Leased Premises pursuant to state law.

ARTICLE 15: NON-DISCRIMINATION

15.1 Lessee, for itself, its Unit Owners, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Leased Premises, for a purpose for which a United States government program or activity is extended, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

15.2 Lessee, for itself, its Unit Owners and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

15.2.1 No person on the grounds of race, color, national origin, creed, religion, sex, disability, or age and without regard to the exercise of rights guaranteed by state or federal law shall be excluded from participating in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises;

15.2.2 That in the construction of any Improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, national origin, creed, religion, sex, disability or age shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;

15.2.3 That Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

15.3 In this connection, the Cities reserve the right to take whatever action they might be entitled by law to take in order to enforce this provision following the sixty (60) days prior written notice to Lessee, the Condominium Association and/or Unit Owner, as the case may be, of any alleged violation. This provision is to be considered as a covenant on the part of Lessee, a breach of which, continuing after notice by the Cities to cease and desist and after a determination that a violation exists made in accordance with the procedures and appeals provided by law, will constitute a material breach of this Agreement and will entitle the Cities, at their option, to exercise its right of termination as provided for herein, or take any action that it deems necessary to enforce.

15.4 Lessee shall include the foregoing provisions in every agreement or concession pursuant to which any person or persons, other than Lessee, operates any facility at the Leased Premises providing service to the public and shall include a provision granting the Cities a right to take such action as the United States may direct to enforce such covenant.

15.5 To the extent legally required and applicable, Lessee assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, disability or sex, be excluded from participation in any employment activities covered in 14 CFR Part 152 Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or

activity covered by this subpart. Lessee assures that it will require that its covered sub organizations provide assurances to Lessee that they similarly will undertake affirmative action program and that they will require assurances from their sub organizations, to the extent required by 14 CFR Part 152, Subpart E, to the same effect.

ARTICLE 16: GOVERNMENTAL REQUIREMENTS

16.1 Lessee and its Unit Owners shall procure all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over Lessee's operations at the Leased Premises which may be necessary for Lessee's and/or Unit Owner's operations on the Airport.

16.2 Lessee shall pay all taxes, license, certification, permits and examination fees and excise taxes which may be assessed, levied, exacted or imposed on the Leased Premises or operation hereunder or on the gross receipts or gross income to Lessee there from, and shall make all applications, reports and returns required in connection therewith.

16.3 Lessee shall pay all water, sewer, utility and other applicable use taxes and fees, arising from its occupancy and use of the Leased Premises and/or the Improvements.

ARTICLE 17: RIGHTS OF ENTRY RESERVED

17.1 The Cities, by their officers, employees, agents, representatives and contractors, shall have the right at all reasonable times to enter upon the Leased Premises and enter the Improvements for any and all purposes not inconsistent with this Agreement, including, without limitation, inspection and environmental testing, provided such action by the Cities, their officers, employees, agents, representatives and contractors does not unreasonably interfere with Lessee's and/or Unit Owner's use, occupancy or security requirements of the Leased Premises. Except when necessary for reasons of public safety or law enforcement, or for the protection of property, as determined by Cities, Cities shall provide seventy-two (72) hours written notice of its intent to inspect.

17.2 Without limiting the generality of the foregoing, the Cities, by their officers, employees, agents, representatives, contractors and furnishers of utilities and other services, shall have the right, at their own cost and expense, whether for their own benefit, or for the benefit of others than Lessee at the Airport, to maintain existing and future Airport mechanical, electrical and other utility systems and to enter upon the easements in the Leased Premises to make such repairs, replacements or alterations thereto, as may, in the opinion of the Cities, be deemed necessary or advisable, and from time to time to construct or install over, in or under existing easements within the Leased Premises such systems or parts thereof and in connection with such maintenance use the Leased Premises existing easements for access to other parts of the Airport otherwise not conveniently accessible; provided, however, that in the exercise of such rights of access, repair, alteration or new construction, the Cities shall not install a utility under or through any building on the Leased Premises or unreasonably interfere with the actual use and occupancy of the Leased Premises by Lessee, all such utilities to be placed within existing easements, except as provided in Article 14. It is specifically understood and agreed that the reservation of the aforesaid right by the Cities shall not impose or be construed to impose upon the Cities any obligation to repair, replace or alter any utility service lines now or hereafter located on the Leased Premises for the purpose of providing utility services only to the Leased Premises; provided, however, that if they repair, replace or alter any utility service lines now or hereafter located on the Leased Premises for the purpose of providing utility services to others, the Cities will restore the Leased Premises to their preexisting condition in a timely manner. Lessee will provide for the installation, maintenance and repair, at its own expense, of all service lines of utilities providing services only to the Leased Premises. Cities will repair, replace and maintain all other utility lines, at Cities' expense.

17.3 In the event that any personal property of Lessee or any Unit Owner shall obstruct the access of the Cities, their officers, employees, agents or contractors, or the utility company furnishing utility service over, along and across the existing easements to any of the existing utility, mechanical, electrical

and other systems, and thus shall interfere with the inspection, maintenance or repair of any such system pursuant to Section 17.2, Lessee shall move such property, as directed by the Cities or said utility company, upon reasonable notice by the Cities, in order that access may be had to the system or part thereof for inspection, maintenance or repair. If Lessee or any Unit Owner shall fail to so move such property after direction from the Cities or said utility company to do so, the Cities or the utility company may move it, and Lessee, on behalf of itself and its Unit Owners hereby waives any claim against the Cities for damages as a result there from, except for claims for damages arising from the Cities' negligence.

ARTICLE 18: TERMINATION

18.1 In the event of a default on the part of Lessee in the payment of rents, the Cities shall give written notice to Lessee, each Unit Owner of which it has been given notice under Section 13.2, above, and each holder of a Leasehold Mortgage, if any, of which it has been give notice under Section 10.1, of such default, and demand the cancellation of this Agreement, or the correction thereof. If, within sixty (60) days after the date the Cities give such notice, Lessee has not corrected said default and paid the delinquent amount in full, then subject to Article 10 above, the Cities may by written notice to Lessee, and each such Unit Owner and holder of a Leasehold Mortgage, terminate this Agreement.

18.2 Subject to the provisions of Section 18.1 above, this Agreement, together with all rights and privileges granted in and to the Leased Premises, shall terminate at the option of the Cities with prompt written notice to Lessee and each such Unit Owner and holder of a Leasehold Mortgage upon the happening of any one or more of the following events:

18.2.1 The filing by Lessee of a voluntary petition in bankruptcy, or any assignment for benefit of creditors of all or any part of Lessee's assets; or

18.2.2 Any institution of proceedings in bankruptcy against Lessee; provided, however, that Lessee may defeat such termination if the petition is dismissed within one hundred twenty (120) days after the institution thereof; or

18.2.3 The filing of a petition requesting a court to take jurisdiction of Lessee or its assets under the provision of any Federal reorganization act which, if it is an involuntary petition is not dismissed within one hundred twenty (120) days after its being filed; or

18.2.4 The filing of a request for the appointment of a receiver or trustee of all, or substantially all, of Lessee's assets by a court of competent jurisdiction, which if the request if not made by Lessee is not rejected within one hundred twenty (120) days after being made, or the request for the appointment of a receiver or trustee of all, or substantially all, of Lessee's assets by a voluntary agreement with Lessee's creditors.

18.3 Upon the default by Lessee in the performance of any covenant or condition required to be performed by Lessee and/or its Unit Owners, other than the payment of rent, and the failure of Lessee, and each such Unit Owner or holder of a Leasehold Mortgage to remedy such default for a period of sixty (60) days after mailing by the Cities of written notice to remedy the same, unless more extensive notice is otherwise provided for in this Agreement, the Cities may, by written notice of cancellation to Lessee, and each such Unit Owner and holder of a Leasehold Mortgage, terminate this Agreement and all rights and privileges granted hereby in and to the Leased Premises.

18.4 Upon the default by Lessee, and the giving of notice of the default and cancellation by the Cities as provided for elsewhere herein, the notice of cancellation shall become final.

18.5 Subject to the provisions of Section 18.1, upon the cancellation or termination of this Agreement for any reason, all rights of Lessee, its Unit Owners, authorized tenants and any other person in possession shall terminate, including all rights or alleged rights of creditors, trustees, assigns, and all others

similarly so situated as to the Leased Premises. Except as may be expressly provided to the contrary elsewhere herein, upon said cancellation or termination of this Agreement for any reason, the Leased Premises and all Improvements located thereon, except for Lessee's equipment, fixtures and other personal property which may be removed from said Leased Premises without damage thereto as provided elsewhere herein, shall be and become the property of the Cities, free and clear of all encumbrances and all claims of Lessee, its subtenants, creditors, trustees, assigns and all others, and the Cities shall have immediate right of possession of the Leased Premises and such Improvements. Termination of this Agreement as to any Unit Owner shall not act as a merger of this Agreement, into the Cities' ownership of the applicable Condominium Unit.

18.6 Failure by the Cities or Lessee to take any authorized action upon default by Lessee of any of the terms, covenants or conditions required to be performed, kept and observed by Lessee shall not be construed to be, nor act as, a waiver of said default nor of any subsequent default of any of the terms, covenants and conditions contained herein to be performed, kept and observed by Lessee. Acceptance of rentals by the Cities from Lessee, or performance by the Cities under the terms hereof, for any period or periods after a default by Lessee of any of the terms, covenants and conditions herein required to be performed, kept and observed by Lessee shall not be deemed a waiver or estoppel of any right on the part of the Cities to cancel this Agreement for any subsequent failure by Lessee to so perform, keep or observe any of said terms, covenants or conditions.

18.7 This Lease will terminate at the option of Lessee:

18.7.1 Upon the permanent closure of the Airport, the term "permanent closure" to mean for the purposes of this Agreement, the closure of the airport for ninety (90) or more consecutive days;

18.7.2 The loss of the ability of Lessee due to no significant fault of Lessee to fly in or out of the Airport for reasons other than inclement weather, casualty or disaster, for a period of ninety (90) consecutive days; and

18.7.3 The default by Cities in the performance of any covenant or condition required to be performed by the Cities, and the failure of the Cities to remedy such default for a period of sixty (60) days after receipt from Lessee of written notice to remedy the same, or default in the timely payment of any money due Lessee and failure to cure such default within sixty (60) days after notice to the Cities. Notice of exercise of the option to terminate by Lessee shall be given in the manner specified in Article 23 (Notices). In the event of Termination pursuant to this subsection 18.7.3, Lessee (or its Unit Owners) shall be entitled to compensation from the Cities for the fair market value of the Improvements.

18.8 If Lessee ceases to conduct its authorized Aeronautical Activities on the Leased Premises for a period of twelve (12) consecutive months, the Cities may terminate this Agreement by written notice to Lessee given at any time while such cessation continues, unless Lessee resumes such activities within sixty (60) days following receipt of written notice from the Cities of such intent to terminate this Agreement.

18.9 If Lessee fails to obtain any required permit or other governmental approval for the use of the Leased Premises pursuant to Section 3.1, within eighteen (18) months of the commencement date set forth in Section 1.1, or if Lessee fails to maintain any such permits or approvals during the term of this Agreement, this Agreement shall terminate, unless cured by Lessee within sixty (60) days following receipt of written notice from the Cities specifying the nature of such failure. Upon termination of this Agreement pursuant to this Section 18.9, and upon vacating the Leased Premises, Lessee shall not be required to pay additional rents, but no refund shall be due to Lessee of payments made by Lessee pursuant to this Agreement.

18.10 Upon termination of this Agreement prior to the expiration of the Initial Term or the Extended Term, if any, the Cities may, but are not required to, relet the Leased Premises, or any part thereof, for the whole or any part of the remainder of such Initial Term or Extended Term, or for a longer period of time. Subject to Section 21.3, any rents received by the Cities as a result of such reletting shall remain the property of the Cities and shall not be credited to or otherwise become the property of Lessee.

ARTICLE 19: SURRENDER AND RIGHT OF RE-ENTRY

19.1 Subject to Section 8.2 above, upon the expiration, cancellation or termination of this Agreement pursuant to any terms hereof, Lessee agrees peaceably to surrender up the Leased Premises to the Cities in the condition required by Article 29, below. Upon such expiration, cancellation or termination, the Cities may re-enter and repossess the Leased Premises together with all Improvements and additions thereto, or pursue any remedy permitted by law for the enforcement of any of the provisions of this Agreement, at the Cities' election.

19.2 In the event that Lessee remains in possession of the Leased Premises after the expiration, cancellation or termination of this Lease without written agreement with respect thereto, then Lessee shall be deemed to be occupying the Leased Premises as a tenant at-will, subject to all of the conditions, provisions and obligations of this Lease, but without any rights to extend the term of this Lease. The Cities' acceptance of rent from Lessee in such event shall not alter the status of Lessee as a tenant at will whose occupancy of the Leased Premises may be terminated by Cities at any time upon ten (10) days prior written notice.

ARTICLE 20: SERVICES TO LESSEE

20.1 The Cities covenant and agree that during the term of this Agreement, and subject to Airport priorities then in effect, they will use reasonable efforts to (a) operate the Airport as such for the use and benefit of the public; provided, however, that the Cities may prohibit or limit any given type, kind or class of aeronautical use of the Airport if such action is necessary for the safe and/or efficient operation of the Airport or necessary to serve the civil aviation needs of the public, (b) maintain the runways and taxiways in good repair, including the removal of snow, and (c) keep in good repair hard-surfaced public roads for access to the Leased Premises and remove snow there from.

20.1.1 Said obligations of the Cities relevant to the maintenance of public roads and taxiways shall extend to the point where in such roads, streets and taxiways reach the property line of the Leased Premises, or the Ramp area constructed by Lessee under Section 4.5.

20.1.2 Said obligations of the Cities relevant to the snow removal from public roads and taxiways shall extend to the point where in such roads, streets and taxiways reach the property line of the Leased Premises, and shall additionally include the Ramp area constructed by Lessee under Section 4.5 subject to the snow removal limitations set forth under Article 4.5.

20.2 Except in cases of emergency, in which case no notice shall be required, Cities will endeavor to give not less than fourteen (14) days' prior written notice to Lessee of any anticipated temporary Airport closure, for maintenance, expansion or otherwise. Notwithstanding the above, the Cities shall not be deemed to be in breach of any provision of this Article 20 in the event of a permanent closure of the Airport. Provided, however, that if such permanent closure is in connection with the construction of a new airport by the Cities, Lessee shall have the option to enter into a substitute hangar ground lease agreement with the Cities, for the use of a portion of such new airport not smaller than the Leased Premises, under financial terms which are no less favorable than those set forth herein.

ARTICLE 21: SURVIVAL OF THE OBLIGATIONS OF LESSEE

21.1 In the event that the Agreement shall have been terminated due to default by Lessee in accordance with notice of termination as provided in Article 18, all of the obligations of Lessee under this Agreement shall survive such termination, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of this Agreement, and the amount or amounts of damages or deficiency shall become due and payable to the Cities to the same extent, at the same time or times, and in the same manner as if no termination, re-entry, regaining or resumption of possession had taken place. The Cities may maintain separate actions each month to recover the damage or deficiency then due or at its option and at any time may sue to recover the full deficiency less the proper discount, for the entire unexpired term of this Agreement.

21.2 The amount of damages for the period of time subsequent to termination (or re-entry, regaining or resumption of possession) on account of Lessee's rental obligations shall be the sum of the following:

21.2.1 The amount of the total of all installments of rents, less the installments thereof payable prior to the effective date of termination; and

21.2.2 An amount equal to all expenses incurred by the Cities and not reimbursed in connection with regaining possession, restoring the Leased Premises required by Article 19, above, acquiring a new lease for the Leased Premises, legal expenses (including, but not limited to, attorneys' fees) and putting the Leased Premises in order.

21.3 There shall be credited to the account of Lessee against its survived obligations hereunder, the amount actually received from any lessee, licensee, permittee, or other occupier in connection with the use of the said Leased Premises or portion thereof during the balance of the term of use and occupancy as the same is originally stated in this Agreement, and the market value of the occupancy of such portion of the Leased Premises as the Cities may themselves during such period actually use and occupy. No such use and occupancy shall be, or be construed to be, an acceptance of a surrender of the Leased Premises, nor shall such use and occupancy constitute a waiver of any rights of the Cities. The Cities will use their best efforts to minimize damages to Lessee under this Article.

21.4 The provisions of this Article 21 shall not be applicable to termination of this Agreement pursuant to Section 3.1.2 or Section 4.4, or if expressly provided to the contrary elsewhere in this Agreement.

ARTICLE 22: USE SUBSEQUENT TO CANCELLATION OR TERMINATION

The Cities shall, upon termination or cancellation, or upon re-entry, regaining or resumption of possession, have the right to repair and to make structural or other changes in the Leased Premises, including changes which alter its character and the suitability thereof for the purposes of Lessee under this Agreement, without affecting, altering or diminishing the obligations of Lessee hereunder, provided that any structural changes shall not be at Lessee's expense.

ARTICLE 23: NOTICES

23.1 Any notice, consent, approval or other communication given by either party to the other relating to this Agreement shall be in writing, and shall be delivered in person, sent by U.S. mail postage prepaid, sent by reputable overnight courier, or sent by electronic means (with evidence of such transmission received) to such other party at the respective addresses set forth below (or at such other address as may be designated from time to time by written notice given in the manner provided herein). Such notice shall, if hand delivered or personally served, be effective immediately upon receipt. If sent by US mail postage prepaid, such notice shall be deemed given on the third business day following deposit in

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the United States mail, postage prepaid and properly addressed; if delivered by overnight courier, notice shall be deemed effective on the first business day following deposit with such courier; and if delivered by electronic means, notice shall be deemed effective when received.

23.2 The notice addresses of the parties are as follows:

To the Cities: Northern Colorado Regional Airport Commission
Attn: Airport Manager
4900 Earhart Drive
Loveland, CO 80538
Facsimile: (970) 962-2855
Email address: airport@cityofloveland.org

With a copy to:
Loveland City Attorney's Office
500 E. Third Street
Loveland, CO 80537

and

To Lessee: IC Loveland, LLC
Attn: Ryan McClurg
8082 South Interport Boulevard, Ste. 200
Englewood, CO 80112
Email Address: ryan@mcclurg.net

ARTICLE 24: INVALID PROVISIONS

The invalidity of any provisions, articles, paragraphs, portions or clauses of this Agreement shall have no effect upon the validity of any other part or portion hereof, so long as the remainder shall constitute an enforceable agreement. Furthermore, in lieu of such invalid provisions, articles, paragraphs, portions or clauses, there shall be added automatically as a part of this Agreement, a provision as similar in terms to such invalid provision as may be possible and be legal, valid and enforceable.

ARTICLE 25: MISCELLANEOUS PROVISIONS

25.1 Remedies to be Non-exclusive. All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of, or exclusive of, each other, or of any other remedy available to the Cities, or Lessee, at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy provided that the Cities' remedies in the event of default shall not exceed those set forth in this Agreement.

25.2 Non-liability of Individuals. No director, officer, agent or employee of the Cities shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement because of any breach thereof, or because of his or their execution or attempted execution of the same. Except to the extent expressly provided for herein, no officer, director, shareholder, manager, member, agent or employee of Lessee or of any Unit Owner shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement because of any breach thereof, or because of his or their execution or attempted execution of the same.

25.3 Estoppel Certificate. At the request of Lessee in connection with an assignment of its interest in this Agreement, the Cities shall execute and deliver a written statement identifying them as the Lessors under this Agreement and certifying:

25.3.1 The documents that then comprise this Agreement,

25.3.2 That this Agreement is in full force and effect,

25.3.3 The then current annual amount of rent and the date through which it has been paid,

25.3.4 The expiration date of this Agreement,

25.3.5 That no amounts are then owed by Lessee to the Cities (or, if amounts are owed, specifying the same)

25.3.6 To the knowledge of the Cities, there are not defaults by Lessee under this Agreement or any facts which but for the passage of time, the giving of notice or both would constitute such a default, and

25.3.7 Remaining rights to renew the term of this lease to the extent not theretofore exercised.

The party acquiring Lessee's interest in the Agreement shall be entitled to rely conclusively upon such written statement.

25.4 Recording of Lease. This Agreement shall be recorded by the Cities, and the costs of such recordation, and any closing costs associated with this Agreement, its execution and recordation, shall be billed to and paid by Lessee as additional rent.

25.5 General Provisions.

25.5.1 This Agreement and shall be construed in accordance with the laws of the State of Colorado, venue shall be in Larimer County, Colorado.

25.5.2 This Agreement is made for the sole and exclusive benefit of the Cities and Lessee, their successors and assigns, and is not made for the benefit of any third party.

25.5.3 In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

25.5.4 All covenants, stipulations and agreements in this Agreement shall extend to and bind each party hereto, its legal representatives, successors and assigns.

25.5.5 The titles of the several articles of this Agreement are for inserted herein for convenience only, and are not intended and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.

25.5.6 Nothing herein contained shall create or be construed to create, a partnership, joint venture, agency or any other relationship between the Cities and Lessee, other than that of landlord and tenant. The Cities and Lessee each expressly disclaim the existence of any such other relationship between them.

25.5.7 Cities have and may allow certain portions of the Airport to be used by other tenants at any time and Lessee shall not interfere in any manner with said other tenants or with the facilities granted to such tenants. Nothing herein contained shall be construed to grant or authorize

the granting of an exclusive right prohibited by Section 308 of the Federal Aviation Act of 1958, as amended, and the Cities reserve the right to grant to others the privilege and right of conducting any one or all of the activities specified herein, or any other activities of an aeronautical nature.

25.5.8 In the event any action or proceeding is brought to recover payments due under this Agreement or take possession of the Leased Premises and/or the improvements thereon, or to enforce compliance with this Agreement for failure to observe any of its covenants, the prevailing party shall be awarded reasonable attorneys' fees and costs as set by the court.

25.5.9 The time within which either party hereto shall be required to perform any act under this Agreement, other than the payment of money, shall be extended by a period equal to the number of days during which performance of such act is delayed unavoidably by strikes, lockouts, acts of God, governmental restrictions, failure or inability to secure materials or labor by reason of or similar regulation or order of any governmental or regulatory body, war, enemy action, acts of terrorism, civil disturbance, fire, unavoidable casualties, or any similar occurrence.

25.6 Availability of Government Facilities. In the event the existence, maintenance or operation of air navigation aids or other facilities supplied or operated by the United States or the State of Colorado at or in conjunction with the Airport are discontinued, the Cities shall have no obligation to furnish such facilities.

25.7 The Cities designate the Commission and the Airport Manager as its representatives who shall make, within the scope of their authority, all necessary and proper decisions with reference to the Lease.

25.8 The parties further acknowledge and agree that this Lease Agreement replaces and supersedes the prior lease agreements for the Leased Premises approved by the Cities on May 17, 2017 with Loren and Heidi Johnson (originally KFNL Hangars, LLC) and CO Fire Aviation Leasing (originally KFNL Hangars, LLC).

ARTICLE 26: SUBORDINATION CLAUSES

26.1 This Agreement is subject and subordinate to the following:

26.1.1 The Cities reserve the right to develop and improve the Airport as they see fit, regardless of the desires or view of Lessee, and without interference or hindrance by or on behalf of Lessee, provided Lessee is not deprived of the use or access to the Leased Premises or any of Lessee's rights under this Agreement and unless said activities by the Cities shall result in the loss of convenient access to the Leased Premises by motor vehicles and/or aircraft owned or operated by Lessee or Lessee's assigns, subtenants, renters, agents, employees or invitees.

26.1.2 The Cities reserve the right to take any action they consider necessary to protect the aerial approaches to the Airport against obstruction, together with the right to prevent Lessee from erecting or permitting to be erected any building or other structure on the Airport which would limit the usefulness of the Airport or constitute a hazard to aircraft.

26.1.3 This Agreement is and shall be subordinate to the provision of existing and future agreements between the Cities and the United States relative to the operation or maintenance of 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.

26.1.4 During the time of war or national emergency, the Cities shall have the right to lease all or any part of the landing area or of the airport to the United States for military use, and if any such lease is executed, the provisions of this Agreement insofar as they may be inconsistent with the provisions of such lease to the government, shall be suspended, but such suspension shall

not extend the term of this Agreement. Abatement of rentals shall be reasonably determined by the Cities and Lessee in proportion to the degree of interference with Lessee's use of the Leased Premises.

26.1.5 Except to the extent required for the performance of any obligations of Lessee hereunder, nothing contained in this Agreement shall grant to Lessee any rights whatsoever in the airspace above the Leased Premises other than those reasonably necessary to Lessee's enjoyment of the Leased Premises and Cities' Airport facilities and which are consistent with Federal Aviation Administration rules, regulations and orders currently or subsequently effective. Further, Lessee's rights in airspace above the Leased Premises and the Airport and the Airport facilities shall be not less than the rights therein by other users of the Airport and Airport facilities.

ARTICLE 27: QUIET ENJOYMENT

Cities hereby covenant and warrant that they are the owners of the Leased Premises and that Lessee upon payment of rentals herein provided for and performance of provisions on its part to be performed shall and may peacefully possess and enjoy the Leased Premises during the term hereof and any extensions hereof without any interruption or disturbance.

ARTICLE 28: ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties hereto and may be changed, modified, discharged or extended by written instrument duly executed by the Cities and Lessee. The parties agree that no representations or warranties shall be binding upon the Cities or Lessee unless expressed in writing.

ARTICLE 29: TITLE TO IMPROVEMENTS UPON TERMINATION

29.1 Upon the expiration, cancellation or termination of this Agreement, Lessee may elect to remove the Improvements and all additions and appurtenances thereto at its own expense in accordance with the following:

(a) Lessee may elect to remove the Improvements upon expiration of the Initial Term or any Extended Term by giving the Cities written notice of Lessee's election not less than sixty (60) days prior to the expiration of the Initial Term or Extended Term (the "Notice Deadline"). If Lessee gives such written notice of its election on or before the Notice Deadline, Lessee shall complete removal of the Improvements and all additions and appurtenances as required by this Article 29 on or before the expiration of the Initial Term or any Extended Term. Failure of Lessee to give such written notice of its election on or before the Notice Deadline shall be deemed to be an election, by Lessee, to surrender ownership of the Improvements and all additions and appurtenances thereto to the Cities in accordance with Section 29.2 below.

(b) Lessee may elect to remove the Improvements upon cancellation or termination of this Agreement by giving the Cities written notice of its election within thirty (30) days after such cancellation or termination. Provided Lessee is not in default in the payment of rental or other financial obligations due hereunder and has given written notice of its election within such thirty (30) day period, Lessee shall have a reasonable time, not to exceed sixty (60) days after notice of such election is given to the Cities, in which to complete removal of Improvements and restoration as required by this Article 29. During any occupancy by Lessee after cancellation or termination of this Agreement for the time period prior to completion of removal of Improvements and restoration, Lessee shall be deemed to be holding over under the terms and conditions of Section 19.2 above and shall pay to the Cities rent at the then-current lease rate for such period. If Lessee (i) fails to give such written notice of its election within the thirty (30) day period set forth in this subsection (b); or (ii) is ineligible to make such election because Lessee is in default in the

payment of rental or other financial obligations due hereunder, Lessee shall be deemed to have made an election to surrender ownership of the Improvements and all additions and appurtenances thereto to the Cities in accordance with Section 29.2.

(c) Removal of Improvements and all additions and appurtenances thereto and restoration as required under this Article 29 shall include Lessee's completion of all work necessary to leave the Leased Premises in a clean, orderly, and as close to original condition as possible as approved by the Cities, and shall include as a minimum:

(i) removal of all Improvements and above ground structures and above ground foundations, including utilities and utility connections, which shall be capped or otherwise left in a safe condition; and

(ii) modification of the surface so that it is free of any holes or obstructions that would prevent normal aircraft taxi operations and graded as necessary to ensure proper drainage.

29.2 In the event that Lessee fails to give written notice to the Cities of its election to remove Improvements within the time periods and as otherwise provided in Section 29.1 above, then Cities and Lessee agree that in consideration of Lessee's use of the Airport for construction and operation of the Improvements, the Improvements and all additions and appurtenances thereto shall become the property of and title shall automatically vest in the Cities upon expiration, cancellation or termination of this Agreement, without payment of additional consideration by the City, and free and clear of all liens and encumbrances. Lessee agrees to execute all documents and take such reasonable actions, if any, as may be necessary to confirm the transfer of title to the Improvements to the Cities.

Lessee's obligations under this Article 29 shall survive any expiration, cancellation, or termination of this Agreement

ARTICLE 30: RIGHT OF FIRST REFUSAL

If at any time Lessee desires to sell, assign, or otherwise transfer its interest under this Agreement, including the Improvements existing on the Leased Premises, or if any Unit Owner desires to sell its interest in any Unit, to an Unaffiliated Entity as defined in Section 10.1 and has obtained a bona fide offer for such sale, Lessee and/or such Unit Owner must first offer to sell, assign, or otherwise transfer such interest to the Cities, at the price and on the same terms as such bona fide offer, and the Cities shall have the right to purchase Lessee's and /or such Unit Owner's interest under such terms. Such offer must be in writing and state the name of the proposed transferee and all of the terms and conditions of the proposed transfer. The Cities shall have the right for a period of sixty (60) days after receipt of the offer from Lessee or Unit Owner to elect to purchase Lessee's and/or Unit Owner's interest (such sixty (60) day period referred to as the "Election Period"). If the Cities do not desire to purchase Lessee's and/or Unit Owner's interest, Lessee and/or unit Owner may then sell, assign, or otherwise transfer its interest in this Agreement or the Unit to the person making the said offer, at the price and terms set forth in the offer, subject to the requirements of Article 13. If Lessee and/or Unit Owner fail to close such sale within sixty (60) days after the expiration of the Election Period, any proposed sale, assignment or other transfer thereafter shall again be subject to this Article. This right of the Cities shall be continuing and shall survive any sale, assignment or other transfer of Lessee's interest under this Agreement. The intent of this Article is to require all of Lessee's interests in this Agreement be sold, assigned or otherwise transferred intact, without fractionalization; except as contemplated by subletting the Lease Premises to the Condominium Declarant pursuant to Article 31. The foregoing right of first refusal shall not apply to the first sale, assignment or other transfer of an interest of any individual Hangar Condominium Unit by Lessee to the first Owner of such Unit.

ARTICLE 31: REQUIREMENTS FOR CONDOMINIUMIZATION

31.1 Prior to the sale of any Hangar Condominium Unit on the Leased Premises, Lessee shall cause a declaration to be recorded in the real property records of Larimer County, Colorado, in compliance with the Condominium Ownership Act (the "Act"), C.R.S. §38-33-105. Lessee shall not record such declaration unless it first provides the Cities' with a copy of such declaration and establishes to the reasonable satisfaction of the Cities that the declaration contains each provision required by this Agreement. The Cities shall not sign such a declaration or otherwise subject this Agreement to the provisions of C.R.S. §38-33.3-206(1).

31.2 At all times during the term of this Agreement, the Condominium Declaration recorded by Lessee pursuant to the Act shall provide the recording data for this Agreement; the date on which this Agreement is scheduled to expire; a legal description of the Leased Premises; a statement that the Unit Owners have no right to redeem any reversion in the Leased Premises or this Agreement; a statement that Unit Owners have no right to remove any Improvements on the Leased Premises, including at or after termination of this Agreement; and a statement that Unit Owners have no right to renew this Agreement at or after termination, other than the contingent right of Lessee to do so under Article 1.3, above.

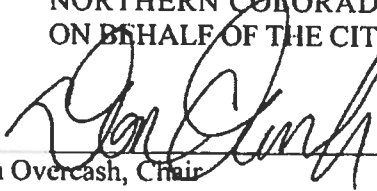
31.3 The Condominium Declaration recorded by Lessee hereunder shall require that with respect to Units and the Unit Owner's use thereof, and activities of Unit Owners on the Airport, each Unit Owner shall comply with applicable terms of this Agreement, and shall take no action which is in violation of any term or condition of this Agreement. The Condominium Declaration shall provide that any act or omission of a Unit Owner which is contrary to or violates the terms of this Agreement, or of any Airport rule or regulation, shall be a violation of the terms of the Condominium Declaration, and shall contain adequate provisions for Lessee's enforcement of such requirements. Before or at the closing of any sale or resale of a Condominium Unit, the purchaser of the Condominium Unit shall be required to sign and deliver to the Cities, on a form acceptable to the Cities, a declaration providing purchaser's name, address and contact information, and acknowledging that such purchaser has been provided with a copy of this Agreement and the Condominium Declaration, has read this Section 31.3, and understands purchaser's obligations to comply with the applicable terms of this Agreement.

31.4 The Condominium Declaration required by Lessee hereunder shall require the formation of a Condominium Association (being a Colorado non-profit corporation) which, subject to the terms of this Agreement, will have broad authority over and govern the use and operation of the Leased Premises and the Hangar Units, and grant to the Condominium Association the right to enforce all of the terms, conditions and covenants of this Agreement against the Unit Owner, to assess the Unit Owners for the purpose of funding the payment of all monetary amounts due and payable pursuant to the terms of this Agreement and to serve as agent for the Unit Owners in dealing with the Cities pursuant to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

LESSOR:

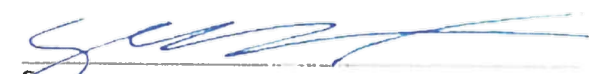
NORTHERN COLORADO REGIONAL AIRPORT COMMISSION
ON BEHALF OF THE CITIES OF FORT COLLINS AND LOVELAND



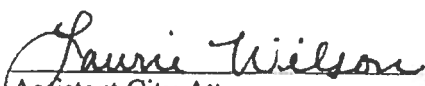
Don Overcash, Chair
Northern Colorado Regional Airport Commission

8-27-2022
Date

ATTEST:



Secretary

APPROVED AS TO FORM:


Assistant City Attorney
for Northern Colorado Regional Airport Commission

LESSEE:

IC Loveland, LLC


Ryan McClurg

9/9/22
Date

PROPERTY DESCRIPTION

A parcel of land being part of Tract B, Barnstorm Second Addition, recorded August 12, 1986 as Reception No. 86044345 of the Records of Larimer County, located in the Northeast Quarter (NE1/4) of Section Thirty-three (33), Township Six North (T.6N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), City of Loveland, County of Larimer, State of Colorado and being more particularly described as follows:

COMMENCING at the Northeast corner of said Section 33 and assuming the East line of said NE1/4 as bearing South 00°24'38" East being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/2011, a distance of 2599.42 feet with all other bearings contained herein relative thereto;

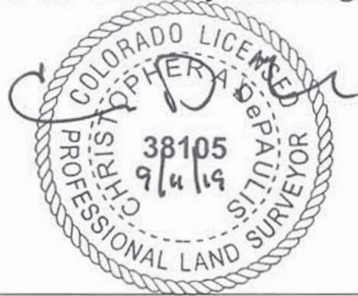
THENCE South 00°24'38" East along the East line of said NE1/4 a distance of 1791.63 feet;
THENCE South 89°35'22" West a distance of 144.78 feet to the **POINT OF BEGINNING**;

THENCE South 19°09'39" East a distance of 51.42 feet;
THENCE South 70°50'04" West a distance of 15.00 feet;
THENCE South 19°09'35" East a distance of 145.59 feet;
THENCE South 70°51'01" West a distance of 816.80 feet;
THENCE North 19°08'59" West a distance of 192.11 feet;
THENCE North 70°30'47" East a distance of 831.78 feet to the **POINT OF BEGINNING**.

Said described parcel of land contains 159,648 Square Feet or 3.665 Acres, more or less (±), and is subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

SURVEYORS STATEMENT

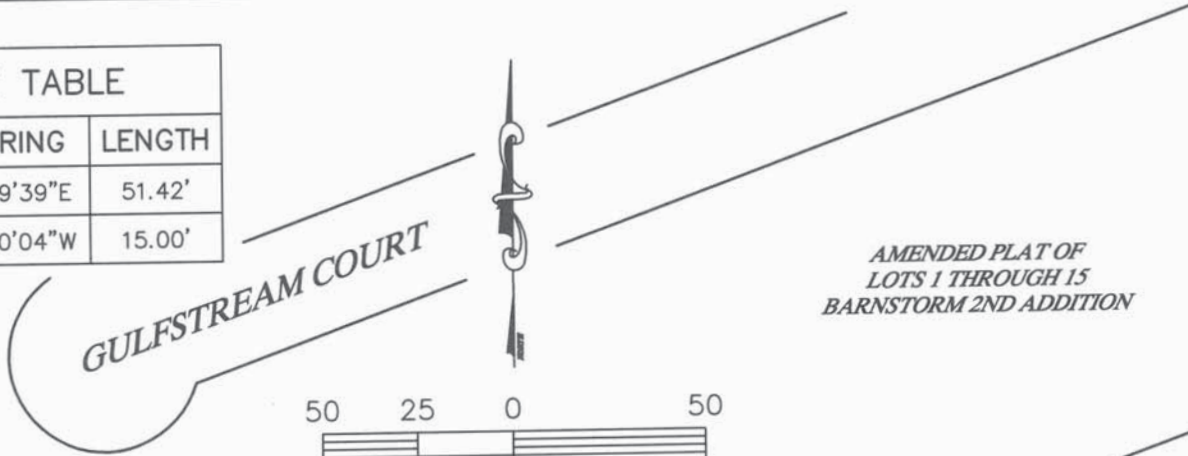
I, Christopher A. DePaulis, a Colorado Licensed Professional Land Surveyor do hereby state that this Parcel Description was prepared under my personal supervision and checking and that it is true and correct to the best of my knowledge and belief.



Christopher A. DePaulis- On Behalf Of King Surveyors
Colorado Licensed Professional
Land Surveyor #38105

KING SURVEYORS
650 East Garden Drive
Windsor, Colorado 80550
(970) 686-5011

| LINE TABLE | | |
|------------|-------------|--------|
| LINE | BEARING | LENGTH |
| L1 | S19°09'39"E | 51.42' |
| L2 | S70°50'04"W | 15.00' |



AMENDED PLAT OF
LOTS 1 THROUGH 15
BARNSTORM 2ND ADDITION

LEASE PARCEL
159,648 SQ.FT.
3.665 ACRES

EXISTING
BUILDING

NORTHEAST CORNER
SECTION 33, T.6N., R.68W.
FOUND 2" PIPE WITH
3" BRASS CAP LS 13446
POINT OF COMMENCEMENT

POINT OF BEGINNING

S89°35'22"W
144.78'

1791.63'

2599.42'

807.79'
(BASIS OF BEARINGS)

145.59'
S19°09'35"E

N70°30'47"E 831.78'

S70°51'01"W 816.80'

EAST QUARTER CORNER
SECTION 33, T.6N., R.68W.
FOUND #6 REBAR WITH
2" ALUMINUM CAP LS 11989

TRACT B
BARNSTORM
2ND ADDITION



Christopher A. DePaulis – On Behalf Of King Surveyors
Colorado Licensed Professional
Land Surveyor #38105

NOTE: This exhibit drawing is not intended to be a monumented land survey. Its sole purpose is as a graphic representation to aid in the visualization of the written property description which it accompanies. The written property description supersedes the exhibit drawing.

NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon. (13-80-105 C.R.S. 2012)

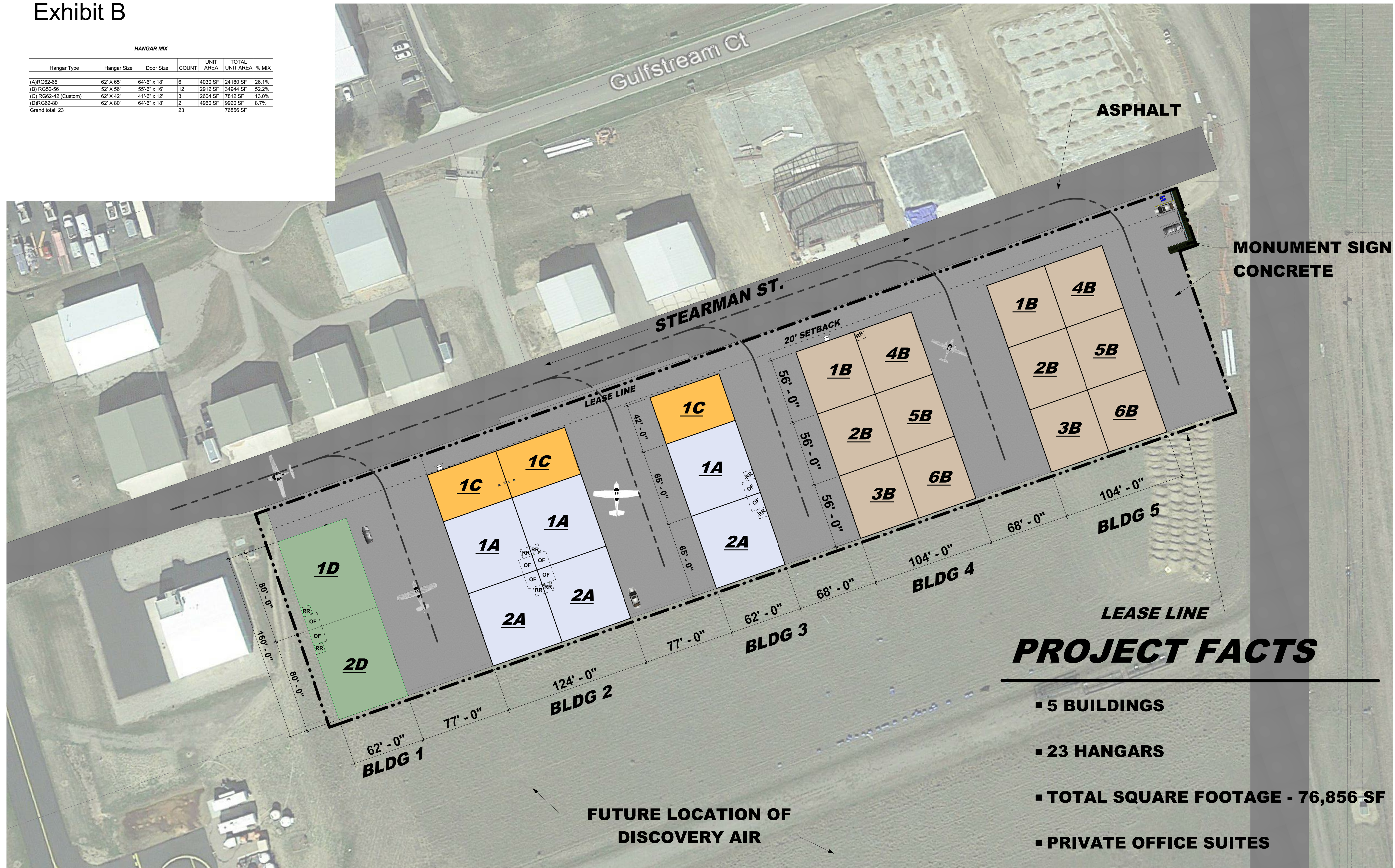
PROJECT NO: 20190175-B
DATE: 9/11/2019
CLIENT: N. CO REGIONAL AIRPORT
DWG: 20190175B-EXH
DRAWN: CSK CHECKED: CAD

KING SURVEYORS
650 E. Garden Drive | Windsor, Colorado 80550
phone: (970) 686-5011 | fax: (970) 686-5821
email: contact@KingSurveyors.com



Exhibit B

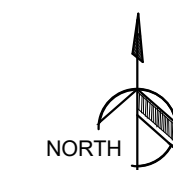
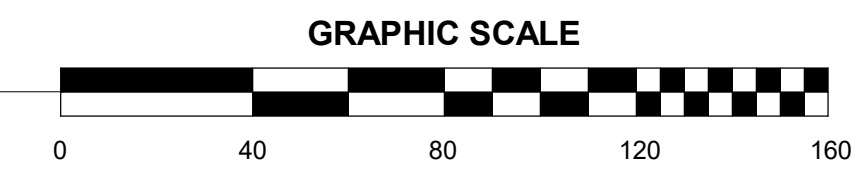
| HANGAR MIX | | | | | | |
|---------------------|-------------|--------------|-------|-----------|-----------------|-------|
| Hangar Type | Hangar Size | Door Size | COUNT | UNIT AREA | TOTAL UNIT AREA | % MIX |
| (A)RG62-65 | 62' X 65' | 64'-6" x 18" | 6 | 4030 SF | 24180 SF | 26.1% |
| (B)RG52-56 | 52' X 56' | 55'-6" x 16" | 12 | 2912 SF | 34944 SF | 52.2% |
| (C)RG62-42 (Custom) | 62' X 42' | 41'-6" x 12" | 3 | 2604 SF | 7812 SF | 13.0% |
| (D)RG62-80 | 62' X 80' | 64'-6" x 18" | 2 | 4960 SF | 9920 SF | 8.7% |
| Grand total: | | | 23 | | 76856 SF | |



PROJECT FACTS

- 5 BUILDINGS
- 23 HANGARS
- TOTAL SQUARE FOOTAGE - 76,856 SF
- PRIVATE OFFICE SUITES

1 GRAPHIC SITE PLAN
1" = 40'-0"



HOMESTEAD HANGARS

09.16.2019

SITE PLAN



| Payment Date | Payment | Principal | Interest | Total Interest | Balance |
|--------------|------------|------------|----------|----------------|--------------|
| Sep 2022 | \$4,321.17 | \$3,801.84 | \$519.33 | \$519.33 | \$109,505.67 |
| Oct 2022 | \$4,321.17 | \$3,819.27 | \$501.90 | \$1,021.23 | \$105,686.40 |
| Nov 2022 | \$4,321.17 | \$3,836.77 | \$484.40 | \$1,505.62 | \$101,849.63 |
| Dec 2022 | \$4,321.17 | \$3,854.36 | \$466.81 | \$1,972.43 | \$97,995.28 |
| Jan 2023 | \$4,321.17 | \$3,872.02 | \$449.15 | \$2,421.58 | \$94,123.26 |
| Feb 2023 | \$4,321.17 | \$3,889.77 | \$431.40 | \$2,852.98 | \$90,233.49 |
| Mar 2023 | \$4,321.17 | \$3,907.60 | \$413.57 | \$3,266.55 | \$86,325.89 |
| Apr 2023 | \$4,321.17 | \$3,925.51 | \$395.66 | \$3,662.21 | \$82,400.39 |
| May 2023 | \$4,321.17 | \$3,943.50 | \$377.67 | \$4,039.88 | \$78,456.89 |
| Jun 2023 | \$4,321.17 | \$3,961.57 | \$359.59 | \$4,399.47 | \$74,495.32 |
| Jul 2023 | \$4,321.17 | \$3,979.73 | \$341.44 | \$4,740.91 | \$70,515.59 |
| Aug 2023 | \$4,321.17 | \$3,997.97 | \$323.20 | \$5,064.10 | \$66,517.62 |
| Sep 2023 | \$4,321.17 | \$4,016.29 | \$304.87 | \$5,368.98 | \$62,501.33 |
| Oct 2023 | \$4,321.17 | \$4,034.70 | \$286.46 | \$5,655.44 | \$58,466.62 |
| Nov 2023 | \$4,321.17 | \$4,053.19 | \$267.97 | \$5,923.41 | \$54,413.43 |
| Dec 2023 | \$4,321.17 | \$4,071.77 | \$249.39 | \$6,172.81 | \$50,341.66 |
| Jan 2024 | \$4,321.17 | \$4,090.43 | \$230.73 | \$6,403.54 | \$46,251.23 |
| Feb 2024 | \$4,321.17 | \$4,109.18 | \$211.98 | \$6,615.52 | \$42,142.04 |
| Mar 2024 | \$4,321.17 | \$4,128.02 | \$193.15 | \$6,808.68 | \$38,014.03 |
| Apr 2024 | \$4,321.17 | \$4,146.94 | \$174.23 | \$6,982.91 | \$33,867.09 |
| May 2024 | \$4,321.17 | \$4,165.94 | \$155.22 | \$7,138.13 | \$29,701.15 |
| Jun 2024 | \$4,321.17 | \$4,185.04 | \$136.13 | \$7,274.26 | \$25,516.12 |
| Jul 2024 | \$4,321.17 | \$4,204.22 | \$116.95 | \$7,391.21 | \$21,311.90 |
| Aug 2024 | \$4,321.17 | \$4,223.49 | \$97.68 | \$7,488.89 | \$17,088.41 |
| Sep 2024 | \$4,321.17 | \$4,242.84 | \$78.32 | \$7,567.21 | \$12,845.57 |
| Oct 2024 | \$4,321.17 | \$4,262.29 | \$58.88 | \$7,626.09 | \$8,583.28 |
| Nov 2024 | \$4,321.17 | \$4,281.83 | \$39.34 | \$7,665.43 | \$4,301.45 |
| Dec 2024 | \$4,321.17 | \$4,301.45 | \$19.71 | \$7,685.14 | \$0.00 |

Item 14.

ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT

5232, 5240, 5250, 5260, 5270 Stearman Street
Loveland, Colorado 80538

WHEREAS, the Cities of Fort Collins and Loveland, Colorado (the "Cities") acting by and through the Northern Colorado Regional Airport Commission ("NCRAC") are the Lessors under that Amended and Restated Lease Agreement dated August 22, 2022 as amended, a copy of which is attached hereto as **Attachment 1** and incorporated herein by this reference (the "Lease Agreement") to IC Loveland, LLC as Lessee ("Assignor") concerning that property at the Northern Colorado Regional Airport described in Exhibit A to the Lease Agreement (the "Leased Premises"); and

WHEREAS, the Cities are parties to an Amended and Restated Intergovernmental Agreement for the Joint Operation of the Northern Colorado Regional Airport signed on January 22, 2015 and paragraph 4.A. of said Agreement delegates to the NCRAC the authority to enter into lease agreements in a form generally approved by the Cities; and

WHEREAS, the form of this lease agreement has been previously generally approved by the Cities; and

WHEREAS, Commission Bylaws adopted on October 15, 2015 authorize the Commission Chair to sign such agreements on behalf of NCRAC; and

WHEREAS, Assignor desires to assign all of its lease rights and obligations for the Leased Premises, as well as all improvements located thereon, to IC Loveland Investors, LLC, ("Assignee"); and

WHEREAS, Article 13 of the Lease Agreement permits this assignment under the conditions as set forth therein; and

WHEREAS, Assignee intends to benefit the Cities by promising to perform all terms and conditions of the Lease Agreement with respect to the Leased Premises as Lessee under the Lease Agreement.

NOW, THEREFORE, in consideration of the Cities' approval, the mutual covenants and agreements expressed in the Lease Agreement, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Assignor, by its signature below, hereby assigns all of its right, title and interest in and to the Lease Agreement and the Leased Premises, to Assignee as of November 10, 2022 (the "Effective Date").
2. Assignee, by its signature below, hereby assumes and agrees to be bound by all obligations, responsibilities and terms of the Lease Agreement with respect to the Leased Premises and hereby becomes the Lessee of the Leased Premises under the Lease Agreement as of the Effective Date.

Item 14.

3. Assignee acknowledges and agrees that the annual rent payment for the Leased Premises under the Lease Agreement is \$51,530.08 per year, payable in monthly installments, which rental amount shall be adjusted on May 1, 2023 and on each anniversary thereafter pursuant to Article 4 of the Lease Agreement.

4. Assignee submits to the Cities herewith, the proof of insurance as required in Articles 8 and 9 of the Lease Agreement, attached hereto as **Attachment 2** and incorporated herein by this reference.

5. Assignee submits to the Cities the following notice address pursuant to Article 23 of the Lease Agreement:

IC Loveland Investors, LLC
8082 South Interport Boulevard, Ste 200
Englewood, CO 80112
gary.roffe@cypress16.com

6. The Cities designate the NCRAC and the Airport Manager as its representatives who shall make, within the scope of their authority, all necessary and proper decisions with reference to the Lease.

7. For purposes of this Agreement, there may be any number of counterparts, each of which shall be deemed as originals. Facsimile, scanned and other electronic signatures permitted by law, for purposes of this Agreement, shall be deemed as original signatures.

Dated this 10th day of November, 2022.

[end of page 2]

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Assignee:
IC Loveland Investors, LLC
8082 South Interport Boulevard, Ste 200
Englewood, CO 80112

By: *[Signature]*
Gary Roffe, Manager

State of Colorado)
)ss
County of ~~Larimer~~) Arapahoe

Subscribed and sworn to before me this 4th day of November, 2022 by
Gary Roffe, as manager of IC Loveland Investors, LLC

My commission expires 6-8-25. SEAL

Ann E. Mason
Notary Public

ANNE E. MASON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20054015293
MY COMMISSION EXPIRES 06/08/2025

Assignor:
IC Loveland, LLC
8082 South Interport Boulevard, Ste 200
Englewood, CO 80112

By: *[Signature]*
Gary Roffe, Manager

State of Colorado)
)ss
County of ~~Larimer~~) Arapahoe

Subscribed and sworn to before me this 4th day of November, 2022 by
Gary Roffe, as manager of IC Loveland, LLC

My commission expires 6-8-25. SEAL

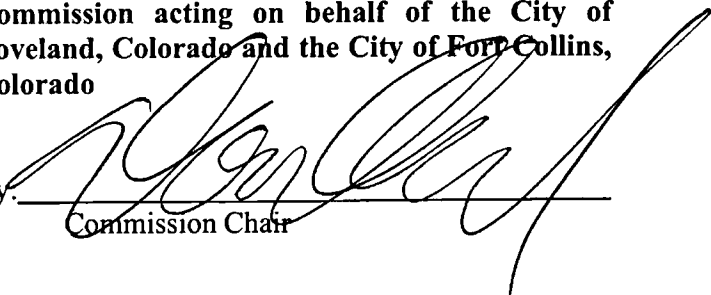
Ann E. Mason
Notary Public

ANNE E. MASON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20054015293
MY COMMISSION EXPIRES 06/08/2025

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The Northern Colorado Regional Airport Commission acting on behalf of the City of Loveland, Colorado and the City of Fort Collins, Colorado, hereby consents to the above-described assignment of all right, title, and interest as Lessee under the above-described Lease Agreement from Assignor to Assignee on the terms and conditions set forth above.

**Northern Colorado Regional Airport
Commission acting on behalf of the City of
Loveland, Colorado and the City of Fort Collins,
Colorado**

By: 

Commission Chair

ATTEST:



Secretary

APPROVED AS TO FORM:



Senior Assistant City Attorney

Item 14.

ATTACHMENT 1

(Lease Agreement, including all prior amendments and assignments)

Item 14.

**HANGAR GROUND LEASE AGREEMENT
LOT SOUTH OF STEARMAN STREET**

**CITIES OF LOVELAND AND FORT COLLINS, COLORADO,
acting by and through the
NORTHERN COLORADO REGIONAL AIRPORT COMMISSION
AND
HOMESTEAD HANGARS, LLC.**

**DATED
October 1, 2019**

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LEASE AGREEMENT

THIS HANGAR GROUND LEASE AGREEMENT, made and entered into this 1st day of October 2019, the Cities of Fort Collins and Loveland, Colorado (the "Cities") acting by and through the Northern Colorado Regional Airport Commission ("the Commission") and Homestead Hangars, LLC, a Colorado limited liability company, hereinafter called "**Lessee**."

WITNESSETH:

WHEREAS, the Cities own and operate an airport known as the Northern Colorado Regional Airport located in Larimer County, Colorado, including the real property upon which the same is located, (hereinafter, the "**Airport**"); and

WHEREAS, the Cities and Lessee are mutually desirous of entering into a Lease Agreement (the "**Agreement**") for the use and occupancy of certain areas at the Airport; and

WHEREAS, the Cities desire to accommodate, promote and enhance general aviation at the Airport and Lessee desires to be assured of the Airport's continued availability as a base for aircraft; and

WHEREAS, Lessee is a Colorado limited liability company, which intends to be a Declarant of a condominium declaration creating a leasehold condominium ownership pursuant to the Condominium Ownership Act, C.R.S. § 38-33-101, *et seq.* (the "Act"), and desires to construct leasehold hangar condominiums on the Leasehold Premises, for ownership by individual Unit Owners as defined in such Act (the "**Unit Owners**"); and

WHEREAS, the Cities and Lessee have reached an understanding in principle, which envisions Lessee's construction of a hangar building or buildings, without cost to the Cities.

NOW, THEREFORE, in consideration of the premises and of the rents, covenants and conditions herein contained, the Cities do hereby lease to Lessee the area(s) of the Airport described in Article 2(the "**Leased Premises**") during the term and pursuant to the conditions set forth below.

ARTICLE 1: TERM; OPTIONS; RIGHT OF FIRST REFUSAL

1.1 The initial term of this Agreement shall commence at 12:01 a.m. on October 1, 2019, and expire at 11:59 p.m. on September 30, 2044, a duration of twenty-five (25) years (the "Initial Term") unless sooner terminated in accordance with the provisions below.

1.2 Subject to the conditions set forth herein, Lessee has the option to extend the term of this Agreement for three (3) additional periods of five (5) years each ("**Extended Term(s)**") provided Lessee is not in default in the payment of any rent or in default in any other provisions of this Agreement at the time of its exercise of any such option. Lessee may exercise each option by giving written notice to the Cities not more than eighteen (18) months, nor less than six (6) months prior to the expiration of the Initial Term or the then-current Extended Term of Lessee's intent to exercise its option to extend. With the exception of rent amounts due, as set forth in Section 4.1, the terms and conditions applicable during the Initial Term of this Agreement shall remain applicable during any Extended Term. The rent escalation shall continue throughout the Initial Term and any Extended Term as provided in Article 4.

1.3 If Lessee desires to continue occupying the Leased Premises after the expiration of all three (3) Extended Terms, Lessee may request in writing that the Cities grant a new lease agreement not later than one hundred twenty (120) days prior to the expiration of the last Extended Term. If: (i) if Lessee is not then in default under any provision of this Agreement; and (ii) the Cities in their discretion wish to offer to lease the Leased Premises to hangar tenants or an association of hangar tenants; and (iii) such a

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new lease would be consistent with the Airport's master plan then in effect and any and all federal rules, regulations, directives, guidelines or other obligations with respect to Airport, including but not limited to the "grant assurances" to the FAA ; then the Cities may, in their sole discretion, offer Lessee a new lease of the Leased Premises, under such terms and conditions, including rental rates and duration of the lease term and on the then-current lease form being offered by the Cities.

ARTICLE 2: LEASED PREMISES

2.1 The Leased Premises consist of the parcel of land described in attached **Exhibit "A"**. Without limiting the foregoing, the Cities acknowledge that during the term of this Agreement, the Hangars (as defined below) to be constructed upon the leased premises shall be and remain the property of Lessee or any successor in interest.

ARTICLE 3: USE OF LEASED PREMISES

3.1 Lessee and its Unit Owners shall use and occupy the Leased Premises for the following purposes and for no other purpose whatsoever unless approved in writing by Cities:

3.1.1 For the construction, installation, maintenance and operation of a hangar building or buildings (the "Hangars") to be used for the parking, storage, servicing, repair, maintenance, modification, and construction of aircraft owned or operated by Lessee or its Unit Owners. Lessee's use of the Leased Premises, including use for storage of aircraft owned by Unaffiliated Entities, shall be of a non-commercial nature, unless a commercial use is approved by the Cities by a separate written License. The foregoing shall not preclude the subleasing of space within individual Hangar units to Unaffiliated Entities, so long as a License is obtained if required by the Airport's Minimum Standards then in effect. Any such License shall require compliance with Minimum Standards for the Provision of Commercial Aeronautical Activities at the Airport (the "Minimum Standards"), as they then exist or are thereafter adopted or amended by the Cities. Any such commercial use must also be consistent with the City of Loveland, Colorado, building, use and zoning regulations and requirements applicable to the Leased Premises. Lessee shall include in its Condominium Declaration governing use and operation of the Leased Premises, a provision that all Unit Owners shall cause such aircraft based at the Leased Premises to comply with noise standards established under Part 36 of Title 14 of the Code of Federal Regulations, ("FAR 36") as amended from time to time. The Leased Premises shall not be used for residential purposes.

3.1.2 A copy of a Concept Plan for the development of the Hangars is attached as **Exhibit "B"** (the "Concept Plan"). The Cities make no representations, guarantees, or warranties that the Leased Premises may be lawfully used for the purposes set forth in this Article 3.1. Lessee shall have the sole responsibility of obtaining all applicable permits or other governmental approvals necessary to use the Leased Premises as intended. This Agreement is expressly conditioned upon Lessee obtaining all such permits and approvals, and the failure of Lessee to obtain any such permits or approvals within eighteen (18) months of the commencement date set forth in Article 1.1 or the failure of Lessee to maintain any such permits or approvals during the term of this Agreement shall result in termination of this Agreement pursuant to Article 18, generally, and to Article 18.9 specifically.

3.1.3 During the term of this Agreement, Lessee and/or its Unit Owners must regularly house at least one airworthy aircraft or at least one aircraft that periodically may be in active stages of assembly or reassembly in each Hangar, use each Hangar for the primary purpose of aircraft storage, and each Hangar shall be used for Aeronautical Activities only, unless the prior written permission of the Cities is first obtained. The term "Aeronautical Activities" shall mean any

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activity or service that involves, makes possible, facilitates, is related to, assists in, or is required for the operation of aircraft, or which contributes to or is required for the safety of aircraft operations. Notwithstanding the foregoing: (i) during construction of the Hangars, materials, equipment and supplies related to construction may be stored within the Hangar units; and, (ii) it is recognized that market conditions may result in units being unoccupied following Hangar completion and periodically thereafter, and so long as the owner of the Hangar unit is undertaking reasonable commercial efforts to sell or lease the unoccupied unit and does not use the unit for anything other than permitted Aeronautical Activities, then the foregoing terms shall not be deemed to have been violated.

ARTICLE 4: RENT

4.1 Lessee agrees to pay to the Cities during the Initial Term an annual rent of \$0.30 per square foot for the 159,648 square feet of the Leased Premises (including the building footprint, ramp, and area surrounding the building footprint, as set forth in Exhibit A, for a total of (\$47,894.40) per year, subject to adjustment pursuant to Section 4.2,. Notwithstanding the foregoing, and in recognition of the fact that it may take Lessee a period of time to construct the Hangars described in Paragraph 4.4, Lessee's rent payment for the first six months of the first year of this Agreement and excluding any Extended Term shall be waived. If Lessee exercises any option to extend the term of this Agreement under Section 1.2, annual rent per square foot for the first year of such Extended Term shall be the greater of (a) the rent determined under Section 4.2 , as if the Initial Term had continued throughout such Extended Term, or (b) the then current market rates for hangar ground leases at comparable airports in the Front Range area, which shall be deemed to include the Denver Metro Area north through Cheyenne. Cities and Lessee agrees to use their best efforts to agree on then current market rates, and execute a Lease Extension Agreement, within ninety (90) days after Lessee's written notice of election is received by the Cities. If the Cities and Lessee cannot agree upon the rental rates, the parties agree to submit to mediation before the Judicial Arbiter Group of Denver, Colorado, or if it no longer exists a similar organization, to determine the rent to be paid by Lessee for the first year of the ensuing Extended Term; provided, however, that such rent shall never be lower than the rental which would be due by application of subsection (a), above. The parties will each pay fifty percent (50%) of the mediator cost.

4.2 Commencing on May 1st next occurring after the date of this Agreement, and on May 1st in each year thereafter during the remainder of the Initial Term, the annual rent shall be adjusted by multiplying the annual rent payable in the next preceding year by a fraction, the numerator of which shall be the C.P.I., as hereinafter defined, published for the previous month of December and the denominator of which shall be the C.P.I. published for the month of December which preceded the month used as the numerator. In no event shall the annual rent be reduced from that payable in a previous year. If this Agreement is executed after January 1st, such C.P.I. increase for the calendar year in which this Agreement is executed shall be prorated. If Lessee elects to exercise its option for any Extended Term, and accordingly, the rental for the first year of such Extended Term has been set on the basis of current market rates, then rental for any subsequent year of such Extended Term shall be adjusted in accordance with the C.P.I formula set forth in this section above.

4.2.1 The term "C.P.I." as used herein shall mean the Consumer Price Index for all Urban Consumers, all items, Selected Large Cities, for the Denver/Boulder Area as published by the Bureau of Labor Statistics of the United States Department of Labor, 1982-84 base = 100. In the event the base year is changed, the C.P.I. shall be converted to the equivalent of the base year 1982-84 = 100. In the event the Bureau of Labor Statistics ceases to use the C.P.I., or this index, an equivalent or comparable economic index will be used.

4.3 The annual rent payable hereunder may be paid in advance in annual installments, or shall be paid in equal monthly installments on the first day of each month in advance at the office of the Airport Manager or at such other office as may be directed in writing by the Cities. Payments due to the Cities under this Agreement shall be paid without offset. In addition to any other remedies provided in this

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Agreement, in the event that any rental, fee or charge set forth in this Agreement is not paid to the Cities within ten days of the date due, Lessee agrees to pay a late charge of \$50.00 for each such late payment, and default interest shall accrue on such payment from the date the payment was due, at a rate of twelve percent (12%) per annum. If any action is brought to collect any amounts due under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees and costs incurred.

4.4 Lessee, as additional rent, shall complete construction of Hangars and related Improvements on the Leased Premises, in accordance with plans and specifications approved by the Cities based upon the Concept Plan. The Hangars shall, collectively, be at least a total of 76,856 square feet in size and shall have a concrete or asphalt floor, with each Hangar to have at least one aircraft access door sized to accommodate an average private aircraft. Lessee shall use commercially reasonable and diligent efforts to complete construction of the Hangars and other such Improvements within the earlier of eighteen (18) months of the Cities' approval thereof or within three years from the date of this Agreement. If Lessee fails to construct the Hangars and other such Improvements in accordance with the provisions of this section, and such failure to construct is caused by force majeure or improper action of the Cities, then this Agreement may be cancelled by Lessee upon thirty (30) days notice to the Cities, in which event and as of the date of such cancellation, Lessee shall be released from any further obligations under this Agreement.

4.5 Lessee, as additional rent, shall construct and maintain a paved aircraft ramp area on the Leased Premises (the "Ramp."). The Ramp must be designed and built to specifications, and for a minimum weight bearing capacity, established by the Cities, built to the full width of the Leased Premises, and to connect with adjacent taxiway, ramp and/or auto parking areas, in order that a continuous and safe pavement section results. If access to the Leased Premises is not available on existing taxiways and/or roadways, then Lessee may also be required to construct the same pursuant to Article 7.1.1. It is the responsibility of Lessee to maintain the entire Ramp area, and all other pavement areas on the Leased Premises, in a manner, which is safe and clean of debris so as not to cause danger or unsafe conditions for taxiing aircraft and Airport users. Notwithstanding the foregoing, the Cities shall be responsible for snow removal on the aircraft Ramp area excluding any parking and side lots and excluding any area within three feet (3') of any Hangar; provided, however, that priority of snow removal shall be in accordance with the Cities' Snow Removal Plan as it now exists or as it may be amended in the Cities' sole discretion. Lessee grants to users of the Airport the right to use aircraft Ramp areas on the Leased Premises from time to time for passage of aircraft on and near the adjacent taxiway. The construction time and default provisions of subsection 4.4 shall be applicable to the Ramp described in this subsection.

4.6 Subject to the provisions of Article 10, Lessee shall keep the Leased Premises, and the Hangar, Ramp and any and all structures constructed by Lessee on the Leased Premises (collectively, the "Improvements" hereinafter), free and clear of any liens and encumbrances, except as contemplated by Article 10, or unless expressly approved in writing by the Cities, and shall indemnify, hold harmless and defend the Cities from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Lessee. In the event any lien is filed, Lessee shall do all acts necessary to discharge any lien within ten (10) days of filing, or if Lessee desires to contest any lien, then Lessee shall deposit with the Cities such security as the Cities shall reasonably demand to insure the payment of the lien claim. In the event Lessee fails to pay any lien claim when due or fails to deposit the security with the Cities, then the Cities shall have the right to expend all sums necessary to discharge the lien claim, and Lessee shall pay the Cities, as additional rental when the next rental payment is due, all sums expended by the Cities in discharging any lien, including reasonable attorneys' fees and costs, and interest at twelve percent (12%) on the sums expended by the Cities from the date of expenditure to the date of payment by Lessee.

4.7 Lessee agrees to comply with Minimum Standards adopted by the Cities for the Airport, as they now exist or as they may hereafter be adopted or amended. Fees due under such Minimum Standards or pursuant to any License issued for commercial activities conducted in whole or part on the Leased Premises, may be collected by the Cities as additional rent under this Agreement, in addition to any other remedies available to the Cities."

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ARTICLE 5: ACCEPTANCE, CARE, MAINTENANCE, IMPROVEMENTS AND REPAIR

5.1 Lessee acknowledges that it has inspected the Leased Premises, conducted such studies and tests thereof (including environmental tests) as it deems necessary, and accepts possession of the Leased Premises "as is" in its present condition, and, subject to all limitations imposed upon the use thereof by the rules and regulations of the Federal Aviation Administration, the rules and regulations of the Airport, and by ordinances of the Cities, admits its suitability and sufficiency for the uses permitted hereunder. The Cities represent to Lessee that, to their knowledge, the Leased Premises are free of any adverse environmental conditions and no part of the Leased Premises lies in a flood hazard area or constitutes a fresh water wetland, nor is any part of the Leased Premises within one hundred feet (100') feet of a fresh water wetland. Except as may otherwise be provided for herein, the Cities shall not be required to maintain nor to make any improvements, repairs or restoration upon or to the Leased Premises or to any of the improvements presently located thereon or placed thereon by Lessee.

5.2 Except as provided in Section 4.5, Lessee shall, throughout the term of this Agreement, assume the entire responsibility, cost and expense, for all repair and maintenance whatsoever on the Leased Premises and all Improvements thereon in a good workmanlike manner, whether such repair or maintenance be ordinary or extraordinary, structural or otherwise. Additionally, Lessee, without limiting the generality hereof, shall:

5.2.1 Keep at all times, in a clean and orderly condition and appearance, the Leased Premises, all Improvements thereon and all of Lessee's and/or its Unit Owners' fixtures, equipment and personal property which are located on any part of the Leased Premises. Lessee and its Unit Owners shall not park or leave, or allow to be parked, aircraft on the taxiways, ramps or pavement adjacent to any Hangar in a manner which unduly interferes with or obstructs access to other hangars or movement on adjacent taxiways.

5.2.2 Provide and maintain on the Leased Premises all obstruction lights and similar devices, and safety equipment required by law.

5.2.3 Take measures to prevent erosion, including but not limited to, the planting and replanting of grasses with respect to all portions of the Leased Premises not paved or built upon, if any, and in particular shall plant, maintain and replant any landscaped areas.

5.2.4 Be responsible for the maintenance and repair of all utility services lines placed on the Leased Premises and used by Lessee exclusively, including, but not limited to, water lines, gas lines, electrical power and telephone conduits and lines, sanitary sewers and storm sewers.

5.2.5 In the event Lessee discovers any hazardous material on the Leased Premises, it will promptly notify the Cities in writing.

5.2.6 If extraordinary repairs or maintenance to the Improvements are required during the last five years of the Initial Term or any Extended Term of this Agreement, Lessee may elect not to repair and/or maintain the Improvements, by giving the Cities written notice of its election. In such case, Cities shall have the option of requiring Lessee to either (a) clear the site, remove all debris and paving, stub up all utilities, and restore the site to its original cleared condition prior to commencement of construction; or (b) transfer title to the Improvements to the Cities, as is. Upon Lessee's election and compliance with this section, the Cities shall terminate this Agreement and relieve Lessee of all future rental obligations hereunder.

5.3 Plans and specifications for each of the Improvements and all repairs (other than emergency repairs), construction, alterations, modifications, additions or replacements to the

Item 14.

Improvements, including those made to any paving upon the Leased Premises, excluding non-structural repairs, construction, alterations, modifications, additions or replacements costing less than ten thousand dollars (\$10,000.00) shall be submitted to the Cities for approval, which approval shall not be unreasonably denied, providing the plans and specifications comply with the provisions of this Agreement, the Airport's design standards, if any, as well as all applicable building, use and zoning regulations. Submittal of the above described Plans and Specifications shall also include a site plan, drainage plan, and building plan for the initial project development. The site plan shall show the location of all Improvements on the Leased Premises, including the Hangars, pavements, utilities and location of the Hangars on the site. The drainage plan must show how drainage will be handled and be approved by the Airport Manager prior to a building permit being issued by the City of Loveland. Lessee shall reimburse the Cities for all costs incurred for providing a legal survey and legal description of the Leased Premises and for a proportional share of any costs to bring road access and utilities to the Leased Premises, should the Cities agree to do so. Prior to the commencement of any construction of the Improvements Lessee shall have the Leased Premises staked by a certified surveying company to ensure all Improvements are placed accurately on the Leased Premises. Within ninety (90) days of the certificate of occupancy being received, Lessee shall submit to the Airport Manager a full set of as-built record drawings of the Improvements, which among other things, depicts exact locations of all Improvements, including utilities, made on and/or off of the Leased Premises.

ARTICLE 6: ADDITIONAL OBLIGATIONS OF LESSEE

6.1 Lessee shall conduct its operations and cause each of its Unit Owners to conduct their operations in an orderly and proper manner, considering the nature of such operations, so as not to unreasonably annoy, disturb, endanger or be offensive to others.

6.2 Further, Lessee shall take all reasonable measures:

6.2.1 To reduce to a practicable minimum vibrations tending to damage any equipment, structure, buildings or portions of buildings.

6.2.2 Not to produce or allow to be produced on the Airport through the operation of machinery or equipment any electrical, electronic or other disturbances that interfere with the operation by the Cities or the Federal Aviation Administration of air navigational, communication or flight equipment on the Airport or on aircraft using the Airport, or with ground transportation communications.

6.3 Lessee shall comply and shall include covenants in its Condominium Declaration that require Unit Owners to comply with all federal, state and municipal laws, ordinances, rules, regulations and requirements, the Airport Minimum Standards, Airport security rules and regulations, and other Airport rules and regulations, as they now exist or may hereafter be amended or promulgated, and the terms of this Agreement, applicable to the Leased Premises and the Improvements thereon and its operations and activities at the Airport hereunder.

6.4 Lessee and its Unit Owners shall commit no nuisance, waste or injury on the Leased Premises, and shall not do, or permit to be done, anything that may result in the creation, commission or maintenance of such nuisance, waste or injury on the Leased Premises.

6.5 Lessee and its Unit Owners shall not do, nor permit to be done, anything which may interfere with the effectiveness or accessibility of the drainage system, sewerage system, fire protection system, sprinkler system, alarm system and fire hydrants and hoses, if any, installed or located on the Leased Premises.

6.6 Lessee shall take measures and shall include covenants in its Condominium Declaration that require Unit Owners to take measures to insure security in compliance with Federal Aviation

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Administration Regulations and the Airport Security Plan, as they now exist or may hereafter be amended or promulgated.

6.7 Lessee and its Unit Owners shall not do, nor permit to be done, any act or thing which will invalidate or conflict with any fire insurance policies or regulations applicable to the Leased Premises or any part thereof; or other contiguous premises at the Airport.

6.8 Lessee and its Unit Owners shall not install, maintain, operate or permit the installation, maintenance or operation of any restaurant, kitchen, stand or other establishment of any type for the sale of food or of any vending machines or device designed to dispense or sell merchandise or services of any kind to the general public, unless all required development approvals and permits for that activity are first obtained from the Cities.

6.9 Except for uses permitted under Article 3 to be performed by Lessee, or Unit Owners or their tenants, Lessee and its Unit Owners shall not provide or allow to be provided aircraft maintenance work, flight instruction of any sort, air taxi, aircraft charter or aircraft leasing of any sort on the Leased Premises, for commercial purposes, without all required development approvals, and a License from the Cities if and as required by the Airport's Minimum Standards then in effect.

6.10 Lessee will conduct its operations, and shall include covenants in its Condominium Declaration that require each of its Unit Owners to conduct their operations, in such a manner as to keep the noise produced by aircraft engines and component parts thereof, and any other noise, to a minimum, by such methods as are practicable, considering the extent and type of the operations of Lessee and/or its Unit Owners, and the limitations of federal law. In addition, Lessee and its Unit Owners will employ the maximum amount of noise arresting and noise reducing devices that are available and economically practicable, considering the extent of their operations, but in no event less than those devices required by federal, state or local law. In its use of the Leased Premises, Lessee and its Unit Owners shall take all possible care, exercise caution and use commercially reasonable efforts to minimize prop or jet blast interference and prevent jet blast damage to aircraft operating on taxiways and to buildings, structures and roadways, now located on or which in the future may be located on areas adjacent to the Leased Premises. In the event the Cities determine that Lessee or any of its Unit Owners has not curbed the prop or jet blast interference and/or damage, Lessee hereby covenants and agrees to erect and maintain at its own expense or to cause the Unit Owners or Condominium Association to erect and maintain at their expense such structure or structures as may be necessary to prevent prop or jet blast interference, subject, however, to the prior written approval of the Cities as to type, manner and method of construction.

6.11 Following the completion of construction of the Hangars, Lessee shall not store nor permit the storage of disabled aircraft or any equipment or materials outside of the Hangars constructed on the Leased Premises, without the written approval of the Cities.

6.12 On forms and at the frequency prescribed by the Airport Manager, and with respect to each aircraft stored on the Leased Premises, Lessee shall provide the Cities with the (a) make and model, (b) N-number, and (3) identity and address of the registered owner. This requirement shall apply to aircraft whether owned by Lessee or another party, and regardless of whether its storage is subject to the Minimum Standards.

ARTICLE 7: INGRESS AND EGRESS

7.1 Lessee and its Unit Owners shall have the right of ingress and egress between the Leased Premises and the public landing areas at the Airport by means of connecting taxiways; and between the Leased Premises and the entrance(s) to the Airport by means of connecting paved roads. Lessee and its Unit Owners shall have the right to use the public runways and public aviation aids at all times during which

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they are open to the public. Such rights of ingress, egress and use shall be in common with others having rights of use and passage thereon.

7.1.1 If, at the time of entering into this Agreement, access to the Leased Premises is not available on existing taxiways and/or roadways, then such taxiways and/or roadways necessary for Lessee's use and occupancy shall be constructed at the sole expense of Lessee, in accordance with construction specifications and design criteria approved by the Cities for the uses contemplated by Lessee. There shall be no consideration made on the part of the Cities for the cost of these improvements. Upon completion of construction, Lessee shall certify that the taxiways and/or roadways so constructed have been built to such specifications and criteria, and those portions of any such taxiways and/or roads located off the Leased Premises shall be conveyed and dedicated to the Cities, which shall accept them for maintenance. Upon such conveyance and dedication, Lessee shall warrant that the same shall be free of defects in materials and workmanship for a period of not less than two (2) years after the date of such conveyance and dedication. Such warranty shall be backed by a warranty bond or another form of security instrument, satisfactory to the Cities in their sole discretion, in the amount of not less than fifteen-percent (15%) of the construction cost of the improvements warranted.

7.2 The use of any such roadways or taxiways shall be subject to the Rules and Regulations of the Airport, which are now in effect or which may hereafter be promulgated, and subject to temporary closure, provided, however, that any closure shall be only for reasonably necessary or unique circumstances, and provided that fourteen (14) days prior written notice will be given to Lessee relevant to any closure, unless such closure is necessary due to emergency. Lessee, for itself and its authorized subtenants, hereby releases and discharges the Cities, the Commission, their officers, employees and agents, and all their respective successors and assigns, of and from any and all claims, demands, or causes of action which Lessee or its authorized subtenants may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any street, roadway or other area, provided that other reasonable means of access to the Leased Premises remain available to Lessee without cost to Lessee, unless otherwise mandated by emergency safety considerations or lawful exercise of the police power. Lessee shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the Leased Premises or in any streets or roadways on the Airport.

ARTICLE 8: INSURANCE, DAMAGE OR DESTRUCTION

8.1 Lessee, at its sole cost and expense, shall procure and maintain throughout the term of this Agreement insurance protection for all risk coverage on the Improvements which are part of the Leased Premises, to the extent of one hundred percent (100%) of the actual replacement cost thereof. Such insurance shall be written by insurers acceptable to Cities. The insurance shall provide for ten (10) days notice of cancellation or material change, by U.S. mail, postage prepaid, to the Cities, Attention: Airport Manager.

8.1.1 The above stated property insurance shall be for the benefit and to safeguard the interests of the Cities and Lessee.

8.1.2 Lessee shall settle all losses with the insurance carrier. Lessee shall consult with the Cities and use its best efforts to obtain a settlement that covers the cost of repairing or rebuilding the Improvements.

8.1.3 Lessee shall provide certificates of insurance, in a form acceptable to the Cities and marked "premium paid" evidencing existence of all insurance required to be maintained prior to occupancy of the Improvements. Upon the failure of Lessee to maintain such insurance as above provided, the Cities, at their option, may take out such insurance and charge the cost to Lessee, which shall be payable on demand, or may give notice of default hereunder pursuant to Article 18.

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8.2 In the event the Improvements and any subsequent improvements, insurable or uninsurable, on the Leased Premises are damaged or destroyed to the extent that they are unusable by Lessee for the purposes for which they were used prior to such damage, or same are destroyed, Lessee shall promptly repair and reconstruct the Improvements substantially as they were immediately prior to such casualty or in a new or modified design, subject to the provisions of Article 5 and applicable building codes and Airport design standards, if any, existing at the time of repairing or rebuilding. If the aforesaid damage or destruction occurs in the last five years of the Initial term or any option term of this Agreement, Lessee may elect not to repair and reconstruct the Improvements, subject to the following terms and conditions:

8.2.1 Lessee shall give the Cities written notice of its election not to repair and reconstruct the Improvements within ninety (90) days of the date upon which the Improvements were damaged or destroyed. In such case, the Cities shall have the option of either:

8.2.1.1 Requiring Lessee to clear the site, remove all debris and paving, stub up all utilities, and restore the site to its original cleared condition prior to commencement of construction; in which case Lessee shall retain all insurance proceeds above those necessary to fund such site restoration; or

8.2.1.2 Taking title to the damaged Improvements, as is, in which case Lessee shall assign to and the Cities shall retain all insurance coverage and proceeds.

8.2.3 Upon Lessee's notice under Section 8.2.1 and Lessee's compliance with the provisions of Sections 8.2.1.1 or 8.2.1.2, the Cities shall terminate this Agreement and relieve Lessee of all future rental obligations hereunder.

8.3 All policies of insurance required herein shall name the Cities as additional insureds.

8.4 Whenever in this Agreement, provision is made for the carrying of any insurance, it shall be deemed that such provision is complied with if such insurance otherwise complying with such provision is carried under a blanket policy or policies covering the Leased Premises as well as other properties.

8.5 Lessee shall not violate, or permit to be violated, any of the conditions of any of the said policies; and shall perform and satisfy, or cause to be satisfied, the requirements of the companies writing such policies.

ARTICLE 9: LIABILITIES AND INDEMNITIES

9.1 The Cities shall not in any way be liable for any cost, liability, damage or injury including cost of suit and expenses of legal services, claimed or recovered by any person whomsoever, or occurring on the Leased Premises, or the Airport, or as a result of any operations, works, acts or omissions performed on the Leased Premises, or the Airport, by Lessee, its agents, servants, employees or authorized tenants, or their guests or invitees. Lessee, and each of its Unit Owners, shall not in any way be liable for any cost, liability, damage or injury including cost of suit and expenses of legal services, claimed or recovered by any person whomsoever, or occurring on the Leased Premises, or the Airport, or as a result of any operations, works, acts, or commission performed on the Leased Premises, or the Airport, solely by the Cities and the Commission, their agents, servants, employees or authorized tenants, or their guests or invitees.

9.2 Lessee and its Unit Owners agree to indemnify, save and hold harmless, the Cities and the Commission, their officers, agents, servants and employees, of and from any and all costs, liability, damage and expense, including costs of suit and reasonable expenses of legal services, claimed or recovered, justly or unjustly, falsely, fraudulently or frivolously, by any person, firm or corporation by reason of injury to,

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or death of, any person or persons, including Cities' personnel, and damage to, destruction or loss of use of any property, including Cities' property, directly or indirectly arising from, or resulting from, any operations, works, acts or omissions of Lessee, its agents, servants, employees, contractors, or authorized tenants. Upon the filing with the Cities by anyone of a claim for damages arising out of incidents for which Lessee herein agrees to indemnify and hold the Cities harmless, the Cities shall notify Lessee of such claim and in the event that Lessee does not settle or compromise such claim, then Lessee shall undertake the legal defense of such claim on behalf of Lessee and the Cities. It is specifically agreed, however, that the Cities at their own cost and expense, may participate in the legal defense of any such claim. Any final judgment rendered against the Cities for any cause for which Lessee is liable shall be conclusive against Lessee as to liability and amount upon the expiration of the time for appeal.

9.3 Lessee shall procure and keep in force during the term of the Lease policies of Comprehensive General Liability insurance insuring Lessee and the Cities against any liability for personal injury, bodily injury, death, or property damage arising out of the subject of this Agreement with a combined single limit of at least one million dollars or with a limit of not less than the maximum amount that may be recovered against the Cities under the Colorado Governmental Immunity Act, whichever is greater. No such policies shall be cancelable or subject to reduction in coverage limits or other modification except after ten (10) days prior written notice to the Cities. The policies shall be for the mutual and joint benefit and protection of Lessee and the Cities and such policies shall contain a provision that the Cities, although named as an insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its servants, agents, citizens, and employees by reason of negligence of Lessee. Lessee shall provide certificates of insurance, in a form acceptable to the Cities and marked "premium paid" evidencing existence of all insurance required to be maintained prior to the commencement of the Agreement.

9.4 Lessee represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under or in any way connected with this Agreement. Lessee agrees to save and hold the Cities, their officers, employees, agents and representatives free and harmless of and from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright, or arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Lessee under or in any way connected with this Agreement.

ARTICLE 10: LEASEHOLD MORTGAGES

10.1 If Lessee shall execute a Leasehold Mortgage of its leasehold estate, or if a Unit Owner shall grant a similar interest, to an entity which is not directly or indirectly owned or controlled by, or is not under common ownership or control with Lessee or Unit owner, as the case may be, (collectively, an "Unaffiliated Entity"), and if the holder of such Leasehold Mortgage shall provide the Cities through the Commission or Airport Manager with notice of such Leasehold Mortgage together with a true copy of such Leasehold Mortgage and the name and address of the Mortgagee, then following receipt of such notice by the Cities, the provisions of this Article 10 shall apply in respect to such Leasehold Mortgage.

10.2 The term "Leasehold Mortgage" as used in this Agreement shall include, but not be limited to, a mortgage, a deed of trust, a deed to secure debt, or other security instrument by which Lessee's leasehold estate is mortgaged, conveyed, assigned, or otherwise transferred, to secure a debt or other obligation, in connection with the construction contemplated by Articles 4.4 through 4.5.

10.3 The Cities, upon providing Lessee any notice of default under this Agreement or termination of this Agreement, shall at the same time provide a copy of such notice to the Leasehold Mortgagee by first class U.S. mail at the address specified in the notice given pursuant to Section 10.1. Such Leasehold Mortgagee shall have the additional periods of time specified in Sections 10.4 to remedy, commence remedying, or cause to be remedied the default or acts or omissions which are specified in any

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such notice. The Cities shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Lessee.

10.4 Anything contained in this Agreement to the contrary notwithstanding, if any default shall occur which entitles the Cities to terminate this Agreement, the Cities shall have no right to terminate this Agreement unless, following the expiration of the period of time given Lessee to cure such default or the act or omission which gave rise to such default, the Leasehold Mortgagee is given an additional period of thirty (30) days to:

10.4.1 Notify the Cities of such Leasehold Mortgagee's desire to defeat such Termination Notice; and

10.4.2 Pay or cause to be paid all rent, additional rent, and other payments then due and in arrears as specified in the Termination Notice to such Leasehold Mortgagee and which may become due during such thirty (30) day period; and

10.4.3 Comply with due diligence and continuity, or in good faith commence to and with diligence continue to pursue compliance with all non-monetary requirements of this Agreement then in default.

10.5 The making of a Leasehold Mortgage shall not constitute an assignment or transfer of this Agreement or of the leasehold estate hereby created, nor shall the Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Agreement or of the leasehold estate hereby created so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions of this Agreement. Any Leasehold Mortgagee who takes an instrument of assignment or transfer in lieu of the foreclosure of the Leasehold Mortgagee shall be deemed to be a permitted assignee or transferee, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Lessee to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of the leasehold estate. If the Leasehold Mortgagee or its designee shall become holder of the leasehold estate and if the Hangar and Improvements on the Leased Premises shall have been or become materially damaged on, before or after the date of such purchase and assignment, the Leasehold Mortgagee or its designee shall be obligated to repair, replace or reconstruct the building or other improvements.

ARTICLE 11: RULES AND REGULATIONS

Lessee acknowledges that the Cities have proposed or adopted rules and regulations with respect to the occupancy and use of the Airport, and such rules and regulations may be amended, supplemented or re-enacted from time to time by the Cities provided that such rules and regulations apply generally to all similar occupants and users on the Airport. Lessee and its Unit Owners agree to observe and obey any and all such rules and regulations and all other federal, state and municipal rules, regulations and laws and to require its officers, agents, employees, subtenants, contractors, and suppliers, to observe and obey the same. In the event of a conflict between the provisions of Airport Rules and Regulations and this Agreement, the more stringent provisions shall control. This provision will include compliance with the Airport's Noise Abatement Plan as it now exists and as it may hereafter be amended or supplemented. The Cities reserve the right to deny access to the Airport and its facilities to any person, firm or corporation that fails or refuses to obey and comply with such rules, regulations or laws. Nothing in this Article 11 shall be construed to limit the rights of Lessee to file any action challenging the lawfulness of any such amendment, supplement or reenactment of any such rule or regulations, or to challenge the application of the same to Lessee.

ARTICLE 12: SIGNS

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Lessee shall have the right to install and maintain one or more signs on the Leased Premises identifying it and its operations, provided, however, the subject matter, type, design, number, location and elevation of such signs, and whether lighted or unlighted, shall be subject to and in accordance with the City of Loveland Sign Code, and Airport design standards, if any. No sign will be allowed that may be confusing to aircraft pilots or automobile drivers or other traffic.

ARTICLE 13: ASSIGNMENT AND SUBLEASE

The prior written consent of the Cities shall be required for any sale, assignment or sublease of this Agreement and of the leasehold estate hereby created. Consent may be withheld by the Cities in the event (a) Lessee is in default of any of the terms or conditions of this Agreement, (b) the transferee or assignee does not deliver to the Cities its written agreement to be bound by all of the provisions of this Agreement in a form satisfactory to the Cities, (c) the transferee or assignee does not submit proof of insurance as required at Articles 8 and 9 or (d) the transferee or assignee does not qualify as a successor to Lessee under the Condominium Declaration recorded pursuant to Article 31. Consent shall not otherwise be unreasonably withheld. Upon the granting of written consent by the Cities and actual transfer or assignment, Lessee shall be released by the Cities from its obligations under this Agreement. Other than in the manner set forth in paragraph 31, Lessee shall not subdivide or fractionalize either its ownership of the Improvements or leasehold interest in the Leased Premises.

13.2 Lessee shall have the right and obligation to construct and sell hangar condominiums on the Leased Premises in accordance with applicable law, without the prior consent of the Cities. By way of clarification, and not by limitation, the restrictions on sale, assignment or subleasing contained in this Article 13 shall not apply to the first transfer or conveyance by Lessee of an individual Condominium Unit to another Owner. The Condominium Declaration to be recorded by Lessee shall, among other terms, conditions and restriction, require all Unit Owners to comply with all terms and conditions of this Agreement. Lessee, the Condominium Association and any Unit Owner shall be jointly and severally responsible for compliance with the terms and conditions of this Agreement; provided, that, notwithstanding the foregoing, or any other provision of this Agreement to the contrary (including by way of example and not in limitation, the provisions of Articles 9, 18 and 21), the person first above identified as Lessee (“Initial Lessee”) shall not be responsible for noncompliance of any Unit Owner other than Initial Lessee or for compliance obligations of the Condominium Association, and Initial Lessee’s obligations under this Agreement shall terminate at such time that Initial Lessee (i) assigns this Agreement to the Condominium Association, or (ii) holds no ownership interest in any Condominium Unit, whichever event first occurs (“Initial Lessee Termination”) and all obligations of Lessee under this Agreement shall thereupon be the responsibility of the Condominium Association and the Unit Owners, as applicable in the context of this Agreement. Following Initial Lessee Termination, except as the context otherwise indicates, the Condominium Association shall exercise the rights and fulfill the responsibilities of Lessee hereunder as Lessee and as agent and attorney-in-fact of the Unit Owners. Upon the lease of any Condominium Unit, the Unit Owner shall provide Cities with notification of the lease and otherwise comply with Article 4, above. Upon the sale, resale or lease of any Condominium Unit, Initial Lessee if the one conveying or leasing, and if not then the Condominium Association, shall promptly provide the Cities with the name, address and other contact information for the Unit Owner, and a description of the aircraft to be regularly stored in such hangar.

13.3 Lessee shall not have the right to subdivide or fractionalize either its ownership of the Improvements or its interest in the Leased Premises, except in accordance with the Condominium Map recorded pursuant to the Act, previously approved by the Cities, and filed with a Condominium Declaration recorded pursuant to the Act and Article 31.

ARTICLE 14: CONDEMNATION

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14.1 In the event that all or any portion of the Leased Premises is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of appropriation, condemnation or eminent domain (or pursuant to a sale to such power or authority under the threat of condemnation or eminent domain), all rents payable hereunder with respect to that portion of the Leased Premises taken shall no longer be payable, and the proceeds, if any, from such taking or sale shall be allocated between the Cities, Lessee and any affected Unit Owners in accordance with the applicable condemnation law, with Lessee and any affected Unit Owner being entitled to compensation for the fair market value of the leasehold interest, Improvements and personal property taken. If a portion of the Leased Premises is so taken or sold, and as a result thereof, the remaining part cannot reasonably be used to continue the authorized uses set forth in Article 3, then this Agreement shall terminate at Lessee's election, and Lessee's obligation to pay rent and perform the other conditions of the lease shall be deemed to have ceased as of the date of such taking or sale.

14.2 The Cities expressly reserve the right to grant or take easements on rights-of-way across the Leased Premises if it is determined to be in the best interest of the Cities to do so. If the Cities grant or take an easement or right-of-way across any of the Leased Premises, Lessee shall be entitled only to compensation for damages to all Improvements owned by Lessee or its Unit Owners destroyed or physically damaged thereby, but not to damages for loss of use of the Leased Premises itself. Damages to improvements shall be determined by the reduction in fair market value of the Improvements caused by said damage or cost of repair, whichever is less.

14.3 Lessee understands and agrees that the Cities have the right to take all or any portion of the Leased Premises, and any additions, alterations or improvements thereon, should the Cities, in their sole discretion, determine that said portion of the Leased Premises, and improvements thereon, are required for other Airport purposes, without initiating condemnation proceedings. If such action is taken, the Cities shall substitute comparable areas within the Airport, or any additions or extensions thereof, brought to the same level of improvement as the area taken. The Cities shall bear all expenses of bringing the substituted area to the same level of improvement to the area taken, and of moving Lessee's improvements, equipment, furniture and fixtures to the substituted area. If any of Lessee's improvements, equipment, furniture or fixtures cannot be relocated, the Cities shall replace, at their own expense, such non-relocatable improvements and other property with comparable property in the substituted area, and the Cities shall be deemed the owner of the non-relocated improvements and other property, free and clear of all claims of any interest or title therein by Lessee, any mortgagee, or any other third party whomsoever. It is the specific intent of this subparagraph that Lessee would be placed, to the extent possible, in the same position it would have been, had the Cities not substituted new premises for the Leased Premises; provided however, that the Cities shall not be obligated to reimburse Lessee for lost revenues or other costs due to such substitution. In the event that such substitution of area is demanded by the Cities, Lessee shall have the right and option to terminate this Agreement, prior to the Cities commencing the substitution, upon thirty (30) days prior written notice to Cities, in which event the Cities shall pay Lessee the fair market value of all Improvements constructed on the Leased Premises pursuant to approval of the Cities. Nothing in this subparagraph shall be construed to limit the Cities' rights to condemn Lessee's leasehold rights and interests in the Leased Premises pursuant to state law.

ARTICLE 15: NON-DISCRIMINATION

15.1 Lessee, for itself, its Unit Owners, successors in interest, and assigns, as a part of the consideration, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Leased Premises, for a purpose for which a United States government program or activity is extended, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

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15.2 Lessee, for itself, its Unit Owners and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

15.2.1 No person on the grounds of race, color, national origin, creed, religion, sex, disability, or age and without regard to the exercise of rights guaranteed by state or federal law shall be excluded from participating in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises;

15.2.2 In the construction of any Improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of of race, color, national origin, creed, religion, sex, disability or age shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;

15.2.3 That Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

15.3 In this connection, the Cities reserve the right to take whatever action they might be entitled by law to take in order to enforce this provision following the sixty (60) days prior written notice to Lessee, the Condominium Association and/or Unit Owner, as the case may be, of any alleged violation. This provision is to be considered as a covenant on the part of Lessee, a breach of which, continuing after notice by the Cities to cease and desist and after a determination that a violation exists made in accordance with the procedures and appeals provided by law, will constitute a material breach of this Agreement and will entitle the Cities, at their option, to exercise its right of termination as provided for herein, or take any action that it deems necessary to enforce compliance herewith.

15.4 Lessee shall include the foregoing provisions in every agreement or concession pursuant to which any person or persons, other than Lessee, operates any facility at the Leased Premises providing service to the public and shall include a provision granting the Cities a right to take such action as the United States may direct to enforce such covenant.

15.5 To the extent legally required and applicable, Lessee assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, disability or sex, be excluded from participation in any employment activities covered in 14 CFR Part 152 Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Lessee assures that it will require that its covered sub organizations provide assurances to Lessee that they similarly will undertake affirmative action program and that they will require assurances from their sub organizations, to the extent required by 14 CFR Part 152, Subpart E, to the same effect.

ARTICLE 16: GOVERNMENTAL REQUIREMENTS

16.1 Lessee and its Unit Owners shall procure all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over Lessee's operations at the Leased Premises which may be necessary for Lessee's and/or Unit Owner's operations on the Airport.

16.2 Lessee shall pay all taxes, license, certification, permits and examination fees and excise taxes which may be assessed, levied, exacted or imposed on the Leased Premises or operation hereunder

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or on the gross receipts or gross income to Lessee there from, and shall make all applications, reports and returns required in connection therewith.

16.3 Lessee shall pay all water, sewer, utility and other applicable use taxes and fees, arising from its occupancy and use of the Leased Premises and/or the Improvements.

ARTICLE 17: RIGHTS OF ENTRY RESERVED

17.1 The Cities, by their officers, employees, agents, representatives and contractors, shall have the right at all reasonable times to enter upon the Leased Premises and enter the Improvements for any and all purposes not inconsistent with this Agreement, including, without limitation, inspection and environmental testing, provided such action by the Cities, their officers, employees, agents, representatives and contractors does not unreasonably interfere with Lessee's and/or Unit Owner's use, occupancy or security requirements of the Leased Premises. Except when necessary for reasons of public safety or law enforcement, or for the protection of property, as determined by Cities, Cities shall provide seventy-two (72) hours written notice of its intent to inspect.

17.2 Without limiting the generality of the foregoing, the Cities, by their officers, employees, agents, representatives, contractors and furnishers of utilities and other services, shall have the right, at their own cost and expense, whether for their own benefit, or for the benefit of others than Lessee at the Airport, to maintain existing and future Airport mechanical, electrical and other utility systems and to enter upon the easements in the Leased Premises to make such repairs, replacements or alterations thereto, as may, in the opinion of the Cities, be deemed necessary or advisable, and from time to time to construct or install over, in or under existing easements within the Leased Premises such systems or parts thereof and in connection with such maintenance use the Leased Premises existing easements for access to other parts of the Airport otherwise not conveniently accessible; provided, however, that in the exercise of such rights of access, repair, alteration or new construction, the Cities shall not install a utility under or through any building on the Leased Premises or unreasonably interfere with the actual use and occupancy of the Leased Premises by Lessee, all such utilities to be placed within existing easements, except as provided in Article 14, . It is specifically understood and agreed that the reservation of the aforesaid right by the Cities shall not impose upon the Cities any obligation to repair, replace or alter any utility service lines now or hereafter located on the Leased Premises for the purpose of providing utility services only to the Leased Premises; provided, however, that if they repair, replace or alter any utility service lines now or hereafter located on the Leased Premises for the purpose of providing utility services to others, the Cities will restore the Leased Premises to their preexisting condition in a timely manner. Lessee will provide for the installation, maintenance and repair, at its own expense, of all service lines of utilities providing services only to the Leased Premises. Cities will repair, replace and maintain all other utility lines, at Cities' expense.

17.3 In the event that any personal property of Lessee or any Unit Owner shall obstruct the access of the Cities, their officers, employees, agents or contractors, or the utility company furnishing utility service over, along and across the existing easements to any of the existing utility, mechanical, electrical and other systems, and thus shall interfere with the inspection, maintenance or repair of any such system pursuant to Section 17.2, Lessee shall move such property, as directed by the Cities or said utility company, upon reasonable notice by the Cities, in order that access may be had to the system or part thereof for inspection, maintenance or repair. If Lessee or any Unit Owner shall fail to so move such property after direction from the Cities or said utility company to do so, the Cities or the utility company may move it, and Lessee, on behalf of itself and its Unit Owners hereby waives any claim against the Cities for damages as a result there from, except for claims for damages arising from the Cities' negligence.

ARTICLE 18: TERMINATION

18.1 In the event of a default on the part of Lessee in the payment of rents, the Cities shall give written notice to Lessee, each Unit Owner of which it has been given notice under Section 13.2, above, and

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each holder of a Leasehold Mortgage, if any, of which it has been give notice under Section 10.1, of such default, and demand the cancellation of this Agreement, or the correction thereof. If, within sixty (60) days after the date the Cities give such notice, Lessee has not corrected said default and paid the delinquent amount in full, then subject to Article 10 the Cities may by written notice to Lessee, and each such Unit Owner and holder of a Leasehold Mortgage, terminate this Agreement.

18.2 Subject to the provisions of Article 18.1, this Agreement, together with all rights and privileges granted in and to the Leased Premises, shall terminate at the option of the Cities with prompt written notice to Lessee and each such Unit Owner and holder of a Leasehold Mortgage upon the happening of any one or more of the following events:

18.2.1 The filing by Lessee of a voluntary petition in bankruptcy, or any assignment for benefit of creditors of all or any part of Lessee's assets; or

18.2.2 Any institution of proceedings in bankruptcy against Lessee; provided, however, that Lessee may defeat such termination if the petition is dismissed within one hundred twenty (120) days after the institution thereof; or

18.2.3 The filing of a petition requesting a court to take jurisdiction of Lessee or its assets under the provision of any Federal reorganization act which, if it is an involuntary petition is not dismissed within one hundred twenty (120) days after its being filed; or

18.2.4 The filing of a request for the appointment of a receiver or trustee of all, or substantially all, of Lessee's assets by a court of competent jurisdiction, which if the request if not made by Lessee is not rejected within one hundred twenty (120) days after being made, or the request for the appointment of a receiver or trustee of all, or substantially all, of Lessee's assets by a voluntary agreement with Lessee's creditors.

18.3 Upon the default by Lessee in the performance of any covenant or condition required to be performed by Lessee and/or its Unit Owners, other than the payment of rent, and the failure of Lessee, and each such Unit Owner or holder of a Leasehold Mortgage to remedy such default for a period of sixty (60) days after mailing by the Cities of written notice to remedy the same (or if such default cannot reasonably be remedied within 60 days, commenced to remedy within such 60-day period with completion of such remedy within no more than 120 days following notice from the City), unless more extensive notice is otherwise provided for in this Agreement, the Cities may, by written notice of cancellation to Lessee, and each such Unit Owner and holder of a Leasehold Mortgage, terminate this Agreement and all rights and privileges granted hereby in and to the Leased Premises.

18.4 Upon the default by Lessee, and the giving of notice of the default and cancellation by the Cities as provided for elsewhere herein, the notice of cancellation shall become final.

18.5 Subject to the provisions of Article 18.1, upon the cancellation or termination of this Agreement for any reason, all rights of Lessee, its Unit Owners, authorized tenants and any other person in possession shall terminate, including all rights or alleged rights of creditors, trustees, assigns, and all others similarly so situated as to the Leased Premises. Except as may be expressly provided to the contrary elsewhere herein, upon said cancellation or termination of this Agreement for any reason, the Leased Premises and all Improvements located thereon, except for Lessee's equipment, fixtures and other personal property which may be removed from said Leased Premises without damage thereto as provided elsewhere herein, shall be and become the property of the Cities, free and clear of all encumbrances and all claims of Lessee, its subtenants, creditors, trustees, assigns and all others, and the Cities shall have immediate right of possession of the Leased Premises and such Improvements. Termination of this Agreement as to any Unit Owner shall not act as a merger of this Agreement, into the Cities' ownership of the applicable Condominium Unit.

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18.6 Failure by the Cities or Lessee to take any authorized action upon default by Lessee of any of the terms, covenants or conditions required to be performed, kept and observed by Lessee shall not be construed to be, nor act as, a waiver of said default nor of any subsequent default of any of the terms, covenants and conditions contained herein to be performed, kept and observed by Lessee. Acceptance of rentals by the Cities from Lessee, or performance by the Cities under the terms hereof, for any period or periods after a default by Lessee of any of the terms, covenants and conditions herein required to be performed, kept and observed by Lessee shall not be deemed a waiver or estoppel of any right on the part of the Cities to cancel this Agreement for any subsequent failure by Lessee to so perform, keep or observe any of said terms, covenants or conditions.

18.7 This Lease will terminate at the option of Lessee:

18.7.1 Upon the permanent closure of the Airport, the term "permanent closure" to mean for the purposes of this Agreement, the closure of the airport for ninety (90) or more consecutive days;

18.7.2 The loss of the ability of Lessee due to no significant fault of Lessee to fly in or out of the Airport for reasons other than inclement weather, casualty or disaster, for a period of ninety (90) consecutive days; and

18.7.3 The default by Cities in the performance of any covenant or condition required to be performed by the Cities, and the failure of the Cities to remedy such default for a period of sixty (60) days after receipt from Lessee of written notice to remedy the same, or default in the timely payment of any money due Lessee and failure to cure such default within sixty (60) days after notice to the Cities. Notice of exercise of the option to terminate by Lessee shall be given in the manner specified in Article 23 (Notices). In the event of Termination pursuant to this subsection 18.7.3, Lessee (or its Unit Owners) shall be entitled to compensation from the Cities for the fair market value of the Improvements.

18.8 If Lessee ceases to conduct its authorized Aeronautical Activities on the Leased Premises for a period of twelve (12) consecutive months, the Cities may terminate this Agreement by written notice to Lessee given at any time while such cessation continues, unless Lessee resumes such activities within sixty (60) days following receipt of written notice from the Cities of such intent to terminate this Agreement.

18.9 If Lessee fails to obtain any required permit or other governmental approval for the use of the Leased Premises pursuant to Article 3.1 herein, within eighteen (18) months of the commencement date set forth in Article 1.1 herein, or if Lessee fails to maintain any such permits or approvals during the term of this Agreement, this Agreement shall terminate, unless cured by Lessee within sixty (60) days following receipt of written notice from the Cities specifying the nature of such failure. Upon termination of this Agreement pursuant to this Article 18.9, and upon vacating the Leased Premises, Lessee shall not be required to pay additional rentals hereunder, but no refund shall be due to Lessee of payments made by Lessee pursuant to this Agreement.

18.10 Upon termination of this Agreement prior to the expiration of the Initial Term or the Extended Term, if any, the Cities may, but are not required to, relet the Leased Premises, or any part thereof, for the whole or any part of the remainder of such Initial Term or Extended Term, or for a longer period of time. Subject to Section 21.3, any rents received by the Cities as a result of such reletting shall remain the property of the Cities and shall not be credited to or otherwise become the property of Lessee.

ARTICLE 19: SURRENDER AND RIGHT OF RE-ENTRY

Item 14.

19.1 Subject to Article 8.2, upon the expiration, cancellation or termination of this Agreement pursuant to any terms hereof, Lessee agrees peaceably to surrender up the Leased Premises to the Cities in the condition required by Article 29 . Upon such expiration, cancellation or termination, the Cities may re-enter and repossess the Leased Premises together with all Improvements and additions thereto, or pursue any remedy permitted by law for the enforcement of any of the provisions of this Agreement, at the Cities' election.

19.2 In the event that Lessee remains in possession of the Leased Premises after the expiration, cancellation or termination of this Lease without written agreement with respect thereto, then Lessee shall be deemed to be occupying the Leased Premises as a tenant at-will, subject to all of the conditions, provisions and obligations of this Lease, but without any rights to extend the term of this Lease. The Cities' acceptance of rent from Lessee in such event shall not alter the status of Lessee as a tenant at will whose occupancy of the Leased Premises may be terminated by Cities at any time upon ten (10) days prior written notice.

ARTICLE 20: SERVICES TO LESSEE

20.1 The Cities covenant and agree that during the term of this Agreement, and subject to Airport priorities then in effect, they will use reasonable efforts to (a) operate the Airport as such for the use and benefit of the public; provided, however, that the Cities may prohibit or limit any given type, kind or class of aeronautical use of the Airport if such action is necessary for the safe and/or efficient operation of the Airport or necessary to serve the civil aviation needs of the public, (b) maintain the runways and taxiways in good repair, including the removal of snow, and (c) keep in good repair hard-surfaced public roads for access to the Leased Premises and remove snow there from.

20.1.1 Said obligations of the Cities relevant to the maintenance of public roads and taxiways shall extend to the point where in such roads, streets and taxiways reach the property line of the Leased Premises, or the Ramp area constructed by Lessee under Article 4.5.

20.1.2 Said obligations of the Cities relevant to the snow removal from public roads and taxiways shall extend to the point where in such roads, streets and taxiways reach the property line of the Leased Premises, and shall additionally include the Ramp area constructed by Lessee under Article 4.5 subject to the snow removal limitations set forth under Article 4.5, above.

20.2 Except in cases of emergency, in which case no notice shall be required, Cities will endeavor to give not less than fourteen (14) days' prior written notice to Lessee of any anticipated temporary Airport closure, for maintenance, expansion or otherwise. Notwithstanding the above, the Cities shall not be deemed to be in breach of any provision of this Article 20 in the event of a permanent closure of the Airport. Provided, however, that if such permanent closure is in connection with the construction of a new airport by the Cities, Lessee shall have the option to enter into a substitute hangar ground lease agreement with the Cities, for the use of a portion of such new airport not smaller than the Leased Premises, under financial terms which are no less favorable than those set forth herein.

ARTICLE 21: SURVIVAL OF THE OBLIGATIONS OF LESSEE

21.1 In the event that the Agreement shall have been terminated due to default by Lessee in accordance with notice of termination as provided in Article 18 , all of the obligations of Lessee under this Agreement shall survive such termination, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of this Agreement, and the amount or amounts of damages or deficiency shall become due and payable to the Cities to the same extent, at the same time or times, and in the same manner as if no termination, re-entry, regaining or resumption of possession had taken place. The

Item 14.

Cities may maintain separate actions each month to recover the damage or deficiency then due or at its option and at any time may sue to recover the full deficiency less the proper discount, for the entire unexpired term of this Agreement.

21.2 The amount of damages for the period of time subsequent to termination (or re-entry, regaining or resumption of possession) on account of Lessee's rental obligations shall be the sum of the following:

21.2.1 The amount of the total of all installments of rents, less the installments thereof payable prior to the effective date of termination; and

21.2.2 An amount equal to all expenses incurred by the Cities and not reimbursed in connection with regaining possession, restoring the Leased Premises required by paragraph 19, acquiring a new lease for the Leased Premises, legal expenses (including, but not limited to, attorneys' fees) and putting the Leased Premises in order.

21.3 There shall be credited to the account of Lessee against its survived obligations hereunder, the amount actually received from any lessee, licensee, permittee, or other occupier in connection with the use of the said Leased Premises or portion thereof during the balance of the term of use and occupancy as the same is originally stated in this Agreement, and the market value of the occupancy of such portion of the Leased Premises as the Cities may themselves during such period actually use and occupy. No such use and occupancy shall be, or be construed to be, an acceptance of a surrender of the Leased Premises, nor shall such use and occupancy constitute a waiver of any rights of the Cities hereunder. The Cities will use their best efforts to minimize damages to Lessee under this Article.

21.4 The provisions of this Article 21 shall not be applicable to termination of this Agreement pursuant to Section 3.1.2 or Section 4.4, or if expressly provided to the contrary elsewhere in this Agreement.

ARTICLE 22: USE SUBSEQUENT TO CANCELLATION OR TERMINATION

The Cities shall, upon termination or cancellation, or upon re-entry, regaining or resumption of possession, have the right to repair and to make structural or other changes in the Leased Premises, including changes which alter its character and the suitability thereof for the purposes of Lessee under this Agreement, without affecting, altering or diminishing the obligations of Lessee, provided that any structural changes shall not be at Lessee's expense.

ARTICLE 23: NOTICES

23.1 Any notice, consent, approval or other communication given by either party to the other relating to this Agreement shall be in writing, and shall be delivered in person, sent by U.S. mail postage prepaid, sent by reputable overnight courier, or sent by electronic means (with evidence of such transmission received) to such other party at the respective addresses set forth below (or at such other address as may be designated from time to time by written notice given in the manner provided herein). Such notice shall, if hand delivered or personally served, be effective immediately upon receipt. If sent by US mail postage prepaid, such notice shall be deemed given on the third business day following deposit in the United States mail, postage prepaid and properly addressed; if delivered by overnight courier, notice shall be deemed effective on the first business day following deposit with such courier; and if delivered by electronic means, notice shall be deemed effective when received.

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23.2 The notice addresses of the parties are as follows:

To the Cities: Northern Colorado Regional Airport Commission
Attn: Airport Manager
4900 Earhart Drive
Loveland, CO 80538
Facsimile: (970) 962-2855
Email address: Airport@cityofloveland.org

With a copy to:
Loveland City Attorney's Office
500 E. Third Street
Loveland, CO 80537

and

To Lessee: Attn: Pete Jacobson
Homestead Hangars, LLC
2032 Kaplan Ct
Windsor, CO 80550
Email Address: homesteadproperties@q.com

ARTICLE 24: INVALID PROVISIONS

The invalidity of any provisions, articles, paragraphs, portions or clauses of this Agreement shall have no effect upon the validity of any other part or portion hereof, so long as the remainder shall constitute an enforceable agreement. Furthermore, in lieu of such invalid provisions, articles, paragraphs, portions or clauses, there shall be added automatically as a part of this Agreement, a provision as similar in terms to such invalid provision as may be possible and be legal, valid and enforceable.

ARTICLE 25: MISCELLANEOUS PROVISIONS

25.1 Remedies to be Non-exclusive. All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of, or exclusive of, each other, or of any other remedy available to the Cities, or Lessee, at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy provided that the Cities' remedies in the event of default shall not exceed those set forth in this Agreement.

25.2 Non-liability of Individuals. No director, officer, agent or employee of the Cities shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement because of any breach thereof, or because of his or their execution or attempted execution of the same. Except to the extent expressly provided for herein, no officer, director, shareholder, manager, member, agent or employee of Lessee or of any Unit Owner shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement because of any breach thereof, or because of his or their execution or attempted execution of the same.

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25.3 Estoppel Certificate. At the request of Lessee in connection with an assignment of its interest in this Agreement, the Cities shall execute and deliver a written statement identifying them as the Lessors under this Agreement and certifying:

25.3.1 The documents that then comprise this Agreement,

25.3.2 That this Agreement is in full force and effect,

25.3.3 The then current annual amount of rent and the date through which it has been paid,

25.3.4 The expiration date of this Agreement,

25.3.5 That no amounts are then owed by Lessee to the Cities (or, if amounts are owed, specifying the same)

25.3.6 To the knowledge of the Cities, there are not defaults by Lessee under this Agreement or any facts which but for the passage of time, the giving of notice or both would constitute such a default, and

25.3.7 Remaining rights to renew the term of this lease to the extent not theretofore exercised.

The party acquiring Lessee's interest in the Agreement shall be entitled to rely conclusively upon such written statement.

25.4 Recording of Lease. This Agreement shall be recorded by the Cities, and the costs of such recordation, and any closing costs associated with this Agreement, its execution and recordation, shall be billed to and paid by Lessee as additional rent.

25.5 General Provisions.

25.5.1 This Agreement and shall be construed in accordance with the laws of the State of Colorado, venue shall be in Larimer County, Colorado .

25.5.2 This Agreement is made for the sole and exclusive benefit of the Cities and Lessee, their successors and assigns, and is not made for the benefit of any third party.

25.5.3 In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party on the basis that such party did or did not author the same.

25.5.4 All covenants, stipulations and agreements in this Agreement shall extend to and bind each party, its legal representatives, successors and assigns.

25.5.5 The titles of the several articles of this Agreement are for convenience only and shall not be construed to affect in any manner the terms and provisions or the interpretation or construction thereof.

25.5.6 Nothing herein contained shall create, a partnership, joint venture, agency or any other relationship between the Cities and Lessee, other than that of landlord and tenant. The Cities and Lessee each expressly disclaim the existence of any such other relationship between them.

25.5.7 Cities have and may allow certain portions of the Airport to be used by other tenants at any time and Lessee shall not interfere in any manner with said other tenants or with the facilities granted to such tenants. Nothing herein contained shall be construed to grant or authorize

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the granting of an exclusive right prohibited by Section 308 of the Federal Aviation Act of 1958, as amended, and the Cities reserve the right to grant to others the privilege and right of conducting any one or all of the activities specified herein, or any other activities of an aeronautical nature.

25.5.8 In the event any action or proceeding is brought to recover payments due under this Agreement or take possession of the Leased Premises and/or the Improvements, or to enforce compliance with this Agreement for failure to observe any of its covenants, the prevailing party shall be awarded reasonable attorneys' fees and costs as set by court order.

25.5.9 The time within which either party hereto shall be required to perform any act under this Agreement, other than the payment of money, shall be extended by a period equal to the number of days during which performance of such act is delayed unavoidably by strikes, lockouts, acts of God, governmental restrictions, failure or inability to secure materials or labor by reason of or similar regulation or order of any governmental or regulatory body, war, enemy action, acts of terrorism, civil disturbance, fire, unavoidable casualties, or any similar occurrence.

25.5.10 The Cities designate the Commission and the Airport Manager as its representatives who shall make, within the scope of their authority, all necessary and proper decisions with reference to the Lease.

25.6 Availability of Government Facilities. In the event the existence, maintenance or operation of air navigation aids or other facilities supplied or operated by the United States or the State of Colorado at or in conjunction with the Airport are discontinued, the Cities shall have no obligation to furnish such facilities.

ARTICLE 26: SUBORDINATION CLAUSES

26.1 This Agreement is subject and subordinate to the following:

26.1.1 The Cities reserve the right to develop and improve the Airport as they see fit, regardless of the desires or view of Lessee, and without interference or hindrance by or on behalf of Lessee, provided Lessee is not deprived of the use or access to the Leased Premises or any of Lessee's rights under this Agreement and unless said activities by the Cities shall result in the loss of convenient access to the Leased Premises by motor vehicles and/or aircraft owned or operated by Lessee or Lessee's assigns, subtenants, renters, agents, employees or invitees.

26.1.2 The Cities reserve the right to take any action they consider necessary to protect the aerial approaches to the Airport against obstruction, together with the right to prevent Lessee from erecting or permitting to be erected any building or other structure on the Airport which would limit the usefulness of the Airport or constitute a hazard to aircraft.

26.1.3 This Agreement is and shall be subordinate to the provision of existing and future agreements between the Cities and the United States relative to the operation or maintenance of 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.

26.1.4 During the time of war or national emergency, the Cities shall have the right to lease all or any part of the landing area or of the airport to the United States for military use, and if any such lease is executed, the provisions of this Agreement insofar as they may be inconsistent with the provisions of such lease to the government, shall be suspended, but such suspension shall not extend the term of this Agreement. Abatement of rentals shall be reasonably determined by the

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Cities and Lessee in proportion to the degree of interference with Lessee's use of the Leased Premises.

26.1.5 Except to the extent required for the performance of any obligations of Lessee hereunder, nothing contained in this Agreement shall grant to Lessee any rights whatsoever in the airspace above the Leased Premises other than those reasonably necessary to Lessee's enjoyment of the Leased Premises and Cities' Airport facilities and which are consistent with Federal Aviation Administration rules, regulations and orders currently or subsequently effective. Further, Lessee's rights in airspace above the Leased Premises and the Airport and the Airport facilities shall be not less than the rights therein by other users of the Airport and Airport facilities.

ARTICLE 27: QUIET ENJOYMENT

Cities hereby covenant and warrant that they are the owners of the Leased Premises and that Lessee upon payment of rentals herein provided for and performance of provisions on its part to be performed shall and may peacefully possess and enjoy the Leased Premises during the term and any extensions without any interruption or disturbance.

ARTICLE 28: ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties hereto and may be changed, modified, discharged or extended by written instrument duly executed by the Cities and Lessee. The parties agree that no representations or warranties shall be binding upon the Cities or Lessee unless expressed in writing.

ARTICLE 29: TITLE TO IMPROVEMENTS UPON TERMINATION

29.1 Upon the expiration, cancellation or termination of this Agreement, Lessee may elect to remove the Improvements and all additions and appurtenances thereto at its own expense in accordance with the following:

(a) Lessee may elect to remove the Improvements upon expiration of the Initial Term or any Extended Term by giving the Cities written notice of Lessee's election not less than sixty (60) days prior to the expiration of the Initial Term or Extended Term (the "Notice Deadline"). If Lessee gives such written notice of its election on or before the Notice Deadline, Lessee shall complete removal of the Improvements and all additions and appurtenances as required by this Article 29 on or before the expiration of the Initial Term or any Extended Term. Failure of Lessee to give such written notice of its election on or before the Notice Deadline shall be deemed to be an election, by Lessee, to surrender ownership of the Improvements and all additions and appurtenances thereto to the Cities in accordance with Section 29.2.

(b) Lessee may elect to remove the Improvements upon cancellation or termination of this Agreement by giving the Cities written notice of its election within thirty (30) days after such cancellation or termination. Provided Lessee is not in default in the payment of rental or other financial obligations due hereunder and has given written notice of its election within such thirty (30) day period, Lessee shall have a reasonable time, not to exceed one hundred twenty (120) days after notice of such election is given to the Cities, in which to complete removal of Improvements and restoration as required by this Article 29. During any occupancy by Lessee after cancellation or termination of this Agreement for the time period prior to completion of removal of Improvements and restoration, Lessee shall be deemed to be holding over under the terms and conditions of Section 19.2 above and shall pay to the Cities rent at the then-current lease rate for such period. If Lessee (i) fails to give such written notice of its election within the thirty (30) day period set forth in this subsection (b); or (ii) is ineligible to make such election because Lessee is in default in the payment of rental or other financial obligations due hereunder, Lessee shall be deemed to

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have made an election to surrender ownership of the Improvements and all additions and appurtenances thereto to the Cities in accordance with Section 29.2 .

(c) Removal of Improvements and all additions and appurtenances thereto and restoration as required under this Article 29 shall include Lessee’s completion of all work necessary to leave the Leased Premises in a clean, orderly, and as close to original condition as possible as approved by the Cities, and shall include as a minimum:

- (i) removal of all Improvements and above ground structures and above ground foundations, including utilities and utility connections, which shall be capped or otherwise left in a safe condition; and
- (ii) modification of the surface so that it is free of any holes or obstructions that would prevent normal aircraft taxi operations and graded as necessary to ensure proper drainage.

29.2 In the event that Lessee fails to give written notice to the Cities of its election to remove Improvements within the time periods and as otherwise provided in Section 29.1 then Cities and Lessee agree that in consideration of Lessee’s use of the Airport for construction and operation of the Improvements, the Improvements and all additions and appurtenances thereto shall become the property of and title shall automatically vest in the Cities upon expiration, cancellation or termination of this Agreement, without payment of additional consideration by the City, and free and clear of all liens and encumbrances. Lessee agrees to execute all documents and take such reasonable actions, if any, as may be necessary to confirm the transfer of title to the Improvements to the Cities.

Lessee’s obligations under this Article 29 shall survive any expiration, cancellation, or termination of this Agreement

ARTICLE 30: RIGHT OF FIRST REFUSAL

If at any time Lessee desires to sell, assign, or otherwise transfer its interest under this Agreement, including the Improvements existing on the Leased Premises, or if any Unit Owner desires to sell its interest in any Unit, to an Unaffiliated Entity as defined in Section 10.1 and has obtained a bona fide offer for such sale, Lessee and/or such Unit Owner must first offer to sell, assign, or otherwise transfer such interest to the Cities, at the price and on the same terms as such bona fide offer, and the Cities shall have the right to purchase Lessee’s and /or such Unit Owner’s interest under such terms. Such offer must be in writing and state the name of the proposed transferee and all of the terms and conditions of the proposed transfer. The Cities shall have the right for a period of sixty (60) days after receipt of the offer from Lessee or Unit Owner to elect to purchase Lessee’s and/or Unit Owner’s interest (such sixty (60) day period referred to as the “Election Period”). If the Cities do not desire to purchase Lessee’s and/or Unit Owner’s interest, Lessee and/or unit Owner may then sell, assign, or otherwise transfer its interest in this Agreement or the Unit to the person making the said offer, at the price and terms set forth in the offer, subject to the requirements of Article 13. If Lessee and/or Unit Owner fail to close such sale within sixty (60) days after the expiration of the Election Period, any proposed sale, assignment or other transfer thereafter shall again be subject to this Article. This right of the Cities shall be continuing and shall survive any sale, assignment or other transfer of Lessee’s interest under this Agreement. The intent of this Article is to require all of Lessee’s interests in this Agreement be sold, assigned or otherwise transferred intact, without fractionalization; except as contemplated by subletting the Lease Premises to the Condominium Declarant pursuant to Article 31, . The foregoing right of first refusal shall not apply to the first sale, assignment or other transfer of an interest of any individual Hangar Condominium Unit by Lessee to the first Owner of such Unit.

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ARTICLE 31: REQUIREMENTS FOR CONDOMINIUMIZATION

31.1 Prior to the sale of any Hangar Condominium Unit on the Leased Premises, Lessee shall cause a declaration to be recorded in the real property records of Larimer County, Colorado, in compliance with the Condominium Ownership Act (the "Act"), C.R.S. §38-33-105. Lessee shall not record such declaration unless it first provides the Cities' with a copy of such declaration and establishes to the reasonable satisfaction of the Cities that the declaration contains each provision required by this Agreement. The Cities shall not sign such a declaration or otherwise subject this Agreement to the provisions of C.R.S. §38-33.3-206(1).

31.2 At all times during the term of this Agreement, the Condominium Declaration recorded by Lessee pursuant to the Act shall provide the recording data for this Agreement; the date on which this Agreement is scheduled to expire; a legal description of the Leased Premises; a statement that the Unit Owners have no right to redeem any reversion in the Leased Premises or this Agreement; a statement that Unit Owners have no right to remove any Improvements on the Leased Premises, including at or after termination of this Agreement; and a statement that Unit Owners have no right to renew this Agreement at or after termination, other than the contingent right of Lessee to do so under Article 1.3, above.

31.3 The Condominium Declaration recorded by Lessee hereunder shall require that with respect to Units and the Unit Owner's use thereof, and activities of Unit Owners on the Airport, each Unit Owner shall comply with applicable terms of this Agreement, and shall take no action which is in violation of any term or condition of this Agreement. The Condominium Declaration shall provide that any act or omission of a Unit Owner which is contrary to or violates the terms of this Agreement, or of any Airport rule or regulation, shall be a violation of the terms of the Condominium Declaration, and shall contain adequate provisions for Lessee's enforcement of such requirements. Before or at the closing of any sale or resale of a Condominium Unit, the purchaser of the Condominium Unit shall be required to sign and deliver to the Cities, on a form acceptable to the Cities, a declaration providing purchaser's name, address and contact information, and acknowledging that such purchaser has been provided with a copy of this Agreement and the Condominium Declaration, has read this section 31.3, and understands purchaser's obligations to comply with the applicable terms of this Agreement.

31.4 The Condominium Declaration required by Lessee hereunder shall require the formation of a Condominium Association (being a Colorado non-profit corporation) which, subject to the terms of this Agreement, will have broad authority over and govern the use and operation of the Leased Premises and the Hangar Units, and grant to the Condominium Association the right to enforce all of the terms, conditions and covenants of this Agreement against the Unit Owner, to assess the Unit Owners for the purpose of funding the payment of all monetary amounts due and payable pursuant to the terms of this Agreement and to serve as agent for the Unit Owners in dealing with the Cities pursuant to this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

LESSOR:

NORTHERN COLORADO REGIONAL AIRPORT COMMISSION
ON BEHALF OF THE CITIES OF FORT COLLINS AND LOVELAND



Northern Colorado Regional Airport Commission

9/19/19

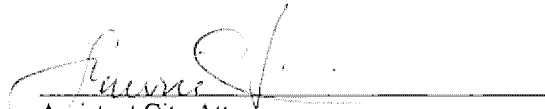
Date

ATTEST:



Secretary

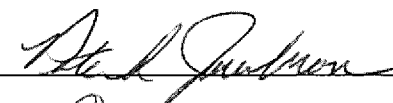
APPROVED AS TO FORM:



Assistant City Attorney
for Northern Colorado Regional Airport Commission

LESSEE:

HOMESTEAD HANGARS, LLC

By:  Date: 9/16/19
Title: OWNER

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Exhibit A

PROPERTY DESCRIPTION

A parcel of land being part of Tract B, Barnstorm Second Addition, recorded August 12, 1986 as Reception No. 86044345 of the Records of Larimer County, located in the Northeast Quarter (NE1/4) of Section Thirty-three (33), Township Six North (T.6N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), City of Loveland, County of Larimer, State of Colorado and being more particularly described as follows:

COMMENCING at the Northeast corner of said Section 33 and assuming the East line of said NE1/4 as bearing South 00°24'38" East being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/2011, a distance of 2599.42 feet with all other bearings contained herein relative thereto;

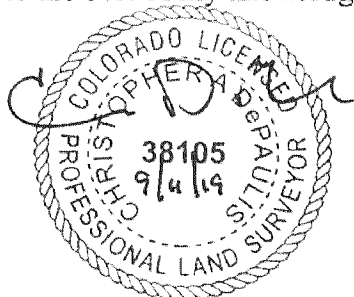
THENCE South 00°24'38" East along the East line of said NE1/4 a distance of 1791.63 feet;
THENCE South 89°35'22" West a distance of 144.78 feet to the **POINT OF BEGINNING**;

THENCE South 19°09'39" East a distance of 51.42 feet;
THENCE South 70°50'04" West a distance of 15.00 feet;
THENCE South 19°09'35" East a distance of 145.59 feet;
THENCE South 70°51'01" West a distance of 816.80 feet;
THENCE North 19°08'59" West a distance of 192.11 feet;
THENCE North 70°30'47" East a distance of 831.78 feet to the **POINT OF BEGINNING**.

Said described parcel of land contains 159,648 Square Feet or 3.665 Acres, more or less (±), and is subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

SURVEYORS STATEMENT

I, Christopher A. DePaulis, a Colorado Licensed Professional Land Surveyor do hereby state that this Parcel Description was prepared under my personal supervision and checking and that it is true and correct to the best of my knowledge and belief.



Christopher A. DePaulis- On Behalf Of King Surveyors
Colorado Licensed Professional
Land Surveyor #38105

KING SURVEYORS
650 East Garden Drive
Windsor, Colorado 80550
(970) 686-5011

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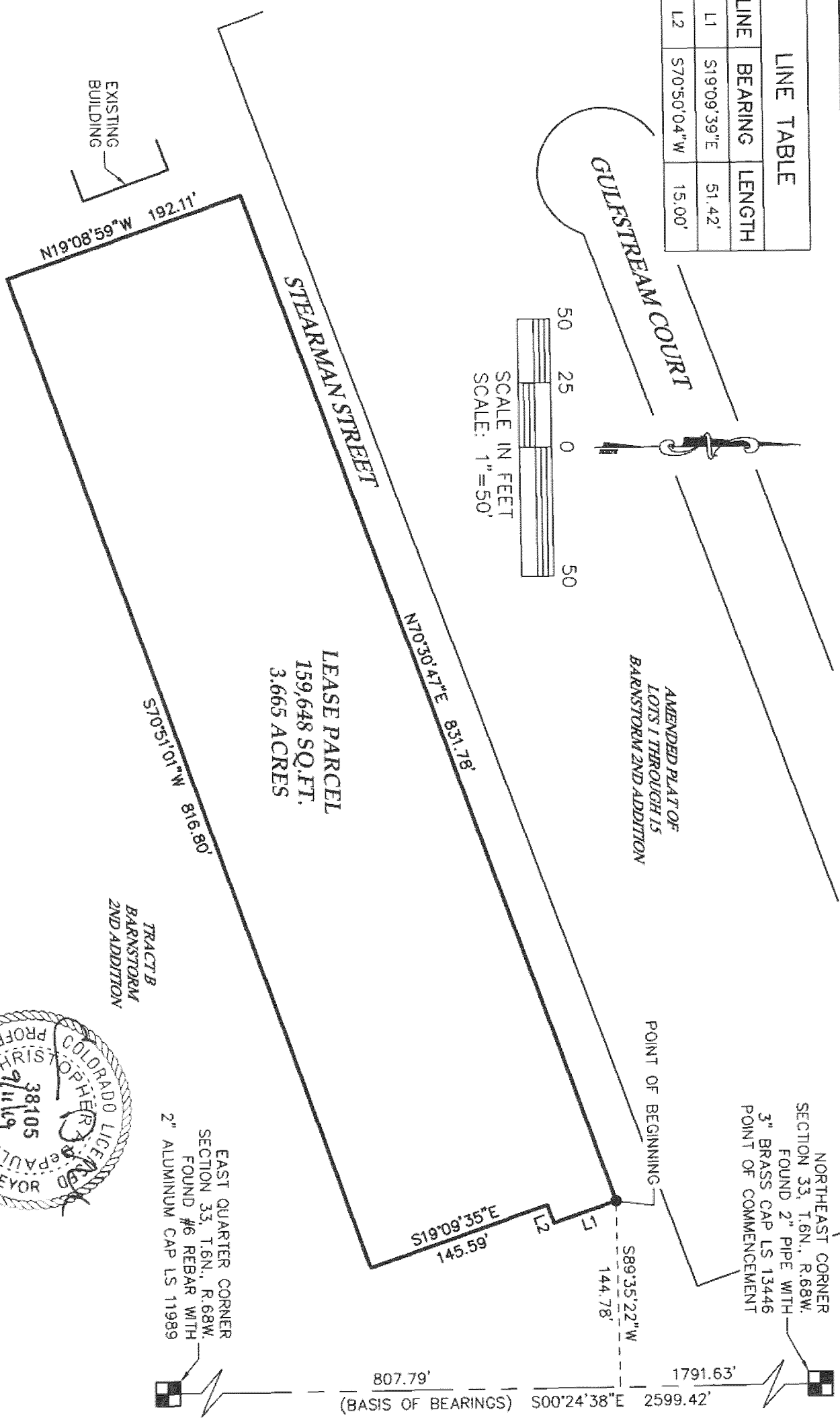
LEASE PARCEL

EXHIBIT

NORTHEAST QUARTER
 SECTION 33, T.6N., R.68W.

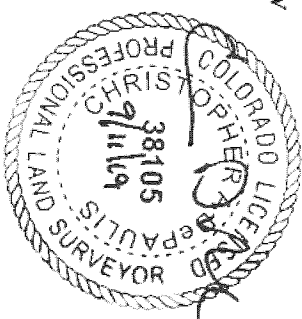
PAGE 2 OF 2

| LINE TABLE | | |
|------------|-------------|--------|
| LINE | BEARING | LENGTH |
| L1 | S19°09'39"E | 51.42' |
| L2 | S70°50'04"W | 15.00' |



NOTE: This exhibit drawing is not intended to be a monumented land survey. Its sole purpose is as a graphic representation to aid in the visualization of the written property description which it accompanies. The written property description supersedes the exhibit drawing.

NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon. (13-80-105 C.R.S. 2012)



Christopher A. DePaulis - On Behalf Of King Surveyors
 Colorado Licensed Professional
 Land Surveyor #38105

KING SURVEYORS

650 E. Garden Drive | Windsor, Colorado 80550
 phone: (970) 686-5011 | fax: (970) 686-5821
 email: contact@KingSurveyors.com

PROJECT NO: 20190175-B
 DATE: 9/11/2019
 CLIENT: N. CO REGIONAL AIRPORT
 DWG: 20190175B-EXH
 DRAWN: CSK CHECKED: CAD

Item 14.

Exhibit B

| HANGAR MIX | | | | | | |
|----------------------|-------------|--------------|-------|-----------|-----------------|-------|
| Hangar Type | Hangar Size | Door Size | COUNT | UNIT AREA | TOTAL UNIT AREA | % MIX |
| (A) RG62-65 | 62' X 65' | 64'-6" X 18' | 6 | 4030 SF | 24180 SF | 26.1% |
| (B) RG52-56 | 52' X 56' | 55'-6" X 16' | 12 | 2912 SF | 34944 SF | 52.2% |
| (C) RG62-42 (Custom) | 62' X 42' | 41'-6" X 12' | 3 | 2604 SF | 7812 SF | 13.0% |
| (D) RG62-80 | 62' X 80' | 64'-6" X 18' | 2 | 4960 SF | 9920 SF | 8.7% |
| Grand total: 23 | | | 23 | 76856 SF | | |



1 GRAPHIC SITE PLAN
 1" = 40'-0"

HOMESTEAD HANGARS

09.16.2019

Item 14.

ATTACHMENT 2

(Certificate of Insurance)

AGENDA ITEM SUMMARY

Council



STAFF

Ryan Mounce, City Planner
Kai Kleer, Senior City Planner

SUBJECT

Items Relating to the I-25 & Mulberry Annexation.

EXECUTIVE SUMMARY

A. Resolution 2024-069 Setting Forth Findings of Fact and Determinations Regarding the I-25 & Mulberry Annexation.

B. Public Hearing and First Reading of Ordinance No. 072, 2024, Annexing the Property Known as the I-25 & Mulberry Annexation to the City of Fort Collins, Colorado.

The purpose of this item is to annex a 46.92-acre property located at the NE Corner of the I-25 and East Mulberry interchange. A specific project development plan proposal is not included with the annexation application. The Initiating Resolution was adopted on April 16, 2024. A related item to zone the annexed property is presented as the next item on this Agenda.

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

STAFF RECOMMENDATION

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

BACKGROUND / DISCUSSION

Introduction

This is a 100% voluntary annexation of a 47-acre property located at the northeast corner of I-25 and East Mulberry Street. The property is currently and has historically been used in an agricultural capacity. The site is bound by NE Frontage Road to the west, former Heli-One industrial building to the north, Cloverleaf Community to the east and Sunstate Equipment Rental/East Mulberry Street to the south. As noted, no development proposal was submitted in conjunction with this application, however, the property is overlaid by a metro district which outlines the desire to design and construct roadway and utility infrastructure to suite approximately 400,000+ square feet of retail and light industrial/flex space.

Larimer County and City of Fort Collins Intergovernmental Agreement

The property is located within the Fort Collins Growth Management Area (GMA) and according to policies and agreements between the City of Fort Collins and Larimer County contained in the Intergovernmental Agreement for the Fort Collins Growth Management Area, the City agrees to consider annexation of property in the GMA when the property is eligible for annexation according to State law.

Contiguity Requirements

The subject property gains the required one-sixth contiguity to existing City limits from a common perimeter boundary with city limits of 3,811 feet or 62%, which satisfies the one-sixth (16%) required by State Statute. Contiguity is gained from the East Gateway Annexation (2018), Interchange Business Park Third Annexation (2006), and I-25 Third Annexation (2017).

Mulberry Frontage Metro District

Metro districts are independent local government units designed to finance and manage public infrastructure. Colorado law empowers them to provide services such as water, sewer, roads, storm drainage, parks, and sometimes fire protection. They are governed by elected boards that establish policies, set budgets, and raise funds through property taxes, fees for service, and by issuing bonds.

As outlined in the Initiating Resolution for this annexation, the Mulberry Frontage Metropolitan District (MFMD) was approved and established by Larimer County in 2017. The annexation area/parcel boundary matches the service area of the District.

Mulberry Frontage Metro District Service Plan

A fundamental component of establishing a metro district is the development of a service plan, which is required by Colorado law. The service plan outlines the metro district's powers, governance, boundaries, land use, financing, and descriptions of services.

The MFMD Service Plan (Plan) anticipates financing infrastructure that includes the design and construction of a realigned Frontage Road, two commercial local streets, utility infrastructure (water, sanitary, and storm sewer), and detention pond infrastructure. The Plan acknowledges that East Larimer County Water District, Boxelder Sanitation District, and Poudre Fire Authority will continue to provide services, and that infrastructure would be designed according to their specifications.

The District's Plan anticipates only commercial and light industrial development with a projected residential population of zero at build-out. Should the District propose the addition of residential land uses, Larimer County considers this a material modification of the Service Plan and would require additional review and approval.

To implement the Service Plan, the MFMD will be required to enter into an intergovernmental agreement (IGA) with Larimer County. City staff have communicated with Larimer County Community Development staff and District representatives. The District has expressed its position that it is not interested in modifying the Service Plan to allow the City of Fort Collins to have oversight or a regulatory role regarding the MFMD.

Since this is an existing metro district, Council could consider either:

- Entering into an Annexation Agreement that would run with the land.
- Entering into an Intergovernmental Agreement with the District.

however, the District and developer have expressed opposition to any such agreement.

In the table below, staff have compared the MFMD's existing Service Plan to the City's Model Service Plan, highlighting major differences.

| Comparison Point | Existing Metro District | City Metro District Policy | Considerations for Annexation |
|--|---|---|--|
| Public Improvements and Services | <p>Under Colorado Law, metro districts can provide fire, mosquito spraying, parks and recreation, safety protection, sanitation, solid waste disposal, street improvement, television relay, transportation, and water services within their geographic service territory.</p> <p>The Mulberry Frontage Metro District Service Plan indicates that the district does not plan to own or operate water, fire, or sanitation facilities, however it reserves the right to, “have and exercise all rights and powers necessary or incidental to, or implied from, the specific power granted to the District in the Service Plan and the Act.”</p> | The City restricts the ability for metro districts to provide policing or other security services, water and wastewater treatment facility, sales and use tax, television relay and translation restriction, golf courses, grant funding, and fire protection. | <p>Council may require an annexation agreement or an IGA with the District to restrict services that are not aligned with the City’s current policies.</p> <p>The Service Plan explicitly states that it does not anticipate providing water, wastewater, or fire service of it’s own.</p> |
| Alignment with City Priorities and Extraordinary Public Benefits | County Metro District Policy does not require extraordinary public benefits. | The City of Fort Collins evaluates non-residential districts based on Environmental Sustainability Outcomes, Critical Public Infrastructure, Smart Growth Management, and other Strategic Priorities such as affordable housing, workforce housing, infill/redevelopment, and economic health outcomes. | Council could request an annexation agreement with the developer that requires any future development to meet the performance criterion of the City’s Metro District Policy. |

| Comparison Point | Existing Metro District | City Metro District Policy | Considerations for Annexation |
|------------------|---|--|---|
| Other Powers | The existing Service Plan allows for the use of eminent domain. | City policy does not allow metro districts to exercise the power of eminent domain but rather the City could utilize eminent domain on their own projects within the District. | <p>Council may request that the Metro District enter into an agreement that would both prohibit general use of eminent domain and limit its use in specific projects.</p> <p>Eminent Domain is a very lengthy process that carries significant financial risks for the District due to potential litigation costs and high compensation awards.</p> |
| Max Mills | The County allows up to 65 mills for debt service and operations and maintenance (O&M), with a maximum of 15 mills for O&M. | <p>The City has a stricter limit of 50 mills total for debt service and O&M, with a maximum of 10 mills dedicated to O&M.</p> <p>City policy allows for increased mill levies beyond the standard limit for commercial districts, subject to Council approval.</p> | The City and Metro District could enter into an agreement with the District to reduce the max mills. |
| Debt Term Limit | The Service Plan indicates a debt service limit of 50-years. | The City limits debt service term to no more than 40-years. | The Council should consider whether to require the Metro District to amend its Service Plan to align with the City's 40-year debt term limit. |

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The Planning and Zoning Commission will vote on this annexation and zoning at its May 16, 2024, meeting.

CITY FINANCIAL IMPACTS

The annexation and zoning will not result in any initial direct significant financial/economic impacts.

Future development will trigger the transition of law enforcement from Larimer County Sheriff to Fort Collins Police Services. Should development occur, water utility services will be provided by the East Larimer

Water District (ELCO), wastewater utility service will be provided by the Boxelder Sanitation District, and electric service will be provided by Fort Collins Light and Power.

PUBLIC OUTREACH

A neighborhood meeting was held September 22, 2022, to jointly share information and discuss the proposed annexation and associated Overall Development Plan for the site. All other notification requirements as required by state and local law have been met.

A majority of questions and concerns discussed at the meeting related to future transportation access and development potential of the associated Overall Development Plan. Key topics related to annexation include:

- Zoning boundaries in relation to the proposed realignment of the Frontage Road.
- Whether the Cloverleaf Mobile Home Park would also be annexed into the City?

ATTACHMENTS

1. Resolution for Consideration
2. Ordinance for Consideration
3. Vicinity Map
4. Applicant Narrative
5. Annexation Petition
6. Annexation Plat Map

RESOLUTION 2024-069
OF THE COUNCIL OF THE CITY OF FORT COLLINS
SETTING FORTH FINDINGS OF FACT AND DETERMINATIONS
REGARDING THE I-25 & MULBERRY ANNEXATION

A. Pursuant to Resolution 2024-061, annexation proceedings were initiated by the City Council for property to be known as the I-25 & Mulberry Annexation (the "Property").

B. Following notice given as required by law, the City Council held a hearing on said annexation.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. The City Council hereby finds that the petition for annexation of the Property complies with the Municipal Annexation Act (the "Act"), Colorado Revised Statutes Section 31-12-101, et seq.

Section 2. The City Council hereby finds that there is at least one-sixth (1/6) contiguity between the City and the Property proposed to be annexed; that a community of interest exists between the Property proposed to be annexed into the City; that said Property is urban or will be urbanized in the near future; and that the Property is integrated with or is capable of being integrated with the City.

Section 3. The City Council further determines that the applicable parts of the Act have been met, that an election is not required under the Act, and that there are no other terms and conditions to be imposed upon said annexation.

Section 4. The City Council further finds that notice was duly given, and a hearing was held regarding the annexation in accordance with the Act.

Section 5. The City Council concludes that the Property is eligible for annexation to the City and should be so annexed.

Passed and adopted on May 21, 2024.

Mayor

ATTEST:

Interim City Clerk

Effective Date: May 21, 2024
Approving Attorney: Brad Yatabe

ORDINANCE NO. 072, 2024
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ANNEXING THE PROPERTY KNOWN AS THE I-25 & MULBERRY
ANNEXATION TO THE CITY OF FORT COLLINS, COLORADO

A. On April 16, 2024, City Council adopted Resolution 2024-061, finding substantial compliance and initiating annexation proceedings for the I-25 & Mulberry Annexation, as defined therein and described below.

B. Resolution 2024-069 setting forth findings of fact and determinations regarding the I-25 & Mulberry Annexation was adopted concurrently with the first reading of this Ordinance.

C. The City Council has determined that it is in the best interests of the City to annex the property to be known as the I-25 & Mulberry Annexation as described below (the "Property") to the City.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. The City Council hereby incorporates the findings of Resolution 2024-061 and Resolution 2024-069 and further finds that it is in the best interests of the City to annex the Property to the City.

Section 2. The Property, more particularly described as:

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN; COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN BEING MONUMENTED AT THE SOUTHWEST CORNER BY A 3" BRASS CAP STAMPED " LS23503 2007" IN A RANGE BOX, AND AT THE WEST QUARTER CORNER BY A 2"ALUMINUM CAP STAMPED " LS 5028 1998" ASSUMED TO BEAR N00°09'34"W.

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 10, THENCE N70°26'24"E A DISTANCE OF 648.39 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE 25, AND THE POINT OF BEGINNING;

THENCE ON SAID EASTERLY RIGHT-OF-WAY LINE, THE FOLLOWING SIX (6) COURSES:

1. N58°42'20"W A DISTANCE OF 212.59 FEET;
2. N38°22'59"W A DISTANCE OF 442.05 FEET;
3. N14°16'20"W A DISTANCE OF 206.20 FEET;
4. N00°13'50"W A DISTANCE OF 37.90 FEET;
5. N00°31'20"W A DISTANCE OF 940.70 FEET;
6. N03°19'40"E A DISTANCE OF 245.20 FEET, TO THE SOUTHWESTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20050043464;

THENCE ON THE SOUTHERLY LINE OF SAID PROPERTY, S89°19'40"E A DISTANCE OF 1241.28 FEET, TO A POINT ON THE WESTERLY LINE OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 2002051529;

THENCE ON SAID WESTERLY LINE, S00°20'18"W A DISTANCE OF 1727.08 FEET, TO THE NORTHEASTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20120069518;

THENCE ON THE NORTHERLY AND WESTERLY LINES OF SAID PROPERTY, THE FOLLOWING FOUR (4) COURSES:

1. N69°41'20"W A DISTANCE OF 224.55 FEET;
2. N81°42'20"W A DISTANCE OF 504.90 FEET;
3. N58°42'20"W A DISTANCE OF 20.61 FEET;
4. S00°19'40"W A DISTANCE OF 300.00 FEET, TO THE POINT OF BEGINNING. CONTAINING A CALCULATED AREA OF 2,043,904 SQUARE FEET OR 46.9216 ACRES

is hereby annexed to the City of Fort Collins and made a part of said City, to be known as the I-25 & Mulberry Annexation, which annexation shall become effective upon completion of the conditions contained in Colorado Revised Statutes ("C.R.S.") Section 31-12-113, including, without limitation, all required filings for recording with the Larimer County Clerk and Recorder.

Section 3. In annexing the Property to the City, the City does not assume any obligation respecting the construction of water mains, sewer lines, gas mains, electric service lines, streets or any other services or utilities in connection with the Property hereby annexed except as may be provided by ordinances of the City.

Section 4. The City hereby consents, pursuant to C.R.S. Section 37-45-136(3.6), to the inclusion of the Property into the Municipal Subdistrict, Northern Colorado Water Conservancy District.

Introduced, considered favorably on first reading on May 21, 2024, and approved on second reading for final passage on June 4, 2024.

Mayor

ATTEST:

Interim City Clerk

Effective Date: June 14, 2024
Approving Attorney: Brad Yatabe

I-25 and Mulberry Annexation Vicinity Map



Legend

-  Project Site
-  Parcels



ATTACHMENT "D"

I-25 & MULBERRY ANNEXATION NARRATIVE

The following is the required narrative described in the Fort Collins Land Use Code for a proposed annexation. The Annexor does not propose any conditions of annexation with this Petition and Zoning request.

4(g) A statement as to why it is necessary and desirable for the City of Fort Collins to annex the area.

The I-25 and Mulberry property is generally located at the northeast corner of I-25 and Mulberry Street. The property is currently vacant and has been historically used for irrigated agricultural farming activities. The subject property is located within the City's Growth Management Area (GMA) and therefore, is subject to the Intergovernmental Agreement (IGA) between the City of Fort Collins and Larimer County. The IGA requires that before urban development of the property can occur it must request to be annexed into the City of Fort Collins. The boundary of the GMA, together with the IGA, verifies that the City and County agree that the property should be annexed prior to its development. The applicant agrees that this is both appropriate and desirable.

The Owner of the property is requesting annexation and zoning for commercial, retail, and industrial uses consistent with the intent of the City's Structure Plan and the I-25 Subarea Plan. The Subject property is approximately 46.92 acres in size and meets the statutory requirements of one-sixth or greater contiguity to the City of Fort Collins Municipal Boundary in order to be considered for annexation. The proposal is to annex the property to the City of Fort Collins and Zone the western portion of the property, being approximately 17.29 acres, CG - General Commercial with the remaining eastern portion of the property, being 29.63 acres to be Zoned I - Industrial. Primary access to the subject property will be provided through the site with the construction of the realigned I-25 NE Frontage Road, which in the future will be extended to the intersection of Mulberry Street located just south of the property. The realigned I-25 Frontage Road will extend through the site and connect to the existing I-25 NE Frontage Road located at the Northwest corner of the property, additional there will be vehicular access provided to the east with a connection being made to Spruce Lane.

It is proposed to abandon the existing Northeast I-25 Frontage Road, which is located immediately south and along a large portion of the western boundary of the property. It will be relocated interior to the property. The Mulberry Frontage Metropolitan District ("MFMD") will complete the I-25 East Frontage Road realignment. CDOT and the MFMD believes it will be beneficial to relocate the Frontage Road based on the following:

- The realignment of the NE I-25 Frontage Road is necessary to help advance planned improvements to property adjacent to the realigned Frontage Road.
- The realignment of the NE I-25 Frontage Road is anticipated to improve operations at the intersection of Mulberry Street, I-25 Frontage Road, and Cloverleaf Way, which currently requires additional signal phases due to the current configuration.
- CDOT recognized the need in 2005 for the NE I-25 Frontage Road to be realigned as part of the I-25 & Mulberry Street interchange reconstruction and purchased a Deed of Covenant, reserving a portion of property on the north side of Mulberry Street for future development of a new I-25 frontage road.

As a result of the recent NE I-25 and Mulberry Street Interchange Improvements and the proposed abandonment and realignment of the NE I-25 Frontage Road coupled with other recent developments within close proximity of the subject property, the Owner of the subject property recognizes that the development of the property, consistent with the City's CG - General Commercial and I - Industrial Zone Districts would be the best possible use of the I-25 & Mulberry property. Additionally the Owner believes that the development of the property will provide a significant economic benefit to the City of Fort Collins and greatly improving the overall safety and traffic operations at the Mulberry and I-25 Intersection.

4(h) A description of the zoning classification being requested and any condition requested for that zone district classification.

The Applicant is requesting a Zone District Classification of CG - General Commercial: 17.29 acres and I – Industrial: 29.63 acres, which is in general conformance with the City of Fort Collins Structure Plan. There are no conditions of zoning being requested at this time.

4(i) A statement of consistency of the requested zoning to the Structure Plan.

The City's Structure Plan describes the southernmost third of the I-25 & Mulberry property as being a Suburban Mixed-Use District and the remaining northern portion as an Industrial District.

City Plan Structure Plan states:

The Structure Plan Map and Place Types - or land use categories provide a framework for the ultimate buildout of Fort Collins and plays a critical role in helping the community achieve its vision over the next 10 - 20 years.

The City's Structure Plan and associated Place Types:

- *Guides future growth and reinvestment and serves as official land use plan for the City;*
- *Informs planning for infrastructure and services;*
- *Fosters coordinated land use and transportation decisions within the city and region; and*
- *Helps implement principles and policies.*

Suburban Mixed-Use District - Key Characteristics as stated by the City Plan Structure Plan

City Plan Structure Plan states:

Principal Land Use

Retail, restaurants, office and other commercial services

Supporting Land Use

High-Density Residential, Entertainment, Childcare Centers and other Supporting Uses

Density

Densities and building heights will vary; building heights will generally be between one and five stories, however, may be higher in some locations.

Key Characteristics/Considerations

- *Walkable mixed-use districts that provide a range of retail and commercial services, as well as high-density residential.*
- *Uses should be supported by direct pedestrian and bicycle linkages to surrounding neighborhoods, as well as by BRT or High-frequency bus service.*

Typical Types of Transit

Varies depending on density and surrounding context, but generally served by fixed-route service at frequencies of between 30 and 60 minutes; higher-frequency service may exist where densities are sufficient to support it.

Zoning Consistency with Structure Plan

Based on the City Plan Structure Plan the Applicant requesting Annexation and Zoning believes that the CG - General Commercial Zone District will best promote the Goals and Objectives of the Suburban Mixed-Use District.

Industrial District - Key Characteristics as stated by the City Plan Structure Plan

City Plan Structure Plan states:

Principal Land Use

Industrial land uses such as manufacturing, assembly plants, primary metal and related industries; vehicle-related commercial uses; warehouses, outdoor storage yards and distribution facilities; and flex space for small, local startups as well as large national or regional enterprises.

Supporting Land Use

Restaurants, convenience retail and other supporting services

Density

Varies

Key Characteristics/Considerations

- *Areas dedicated for a variety of more-intensive work processes and other uses of similar character;*
- *Typically located away from residential neighborhoods.*
- *Transportation facilities in Industrial Districts should promote the efficient movement of commercial truck and/or access to rail.*
- *Supported by direct pedestrian and bicycle linkages from surrounding areas, as well as transit in some locations.*

Typical Types of Transit

Limited due to low population and low employment densities; however, fixed-route service at frequencies exist in some locations.

Zoning Consistency with Structure Plan

Based on the City Plan Structure Plan the Applicant requesting Annexation and Zoning believes that the I – Industrial Zone Districts will best promote the Goals and Objectives of the City’s Structure Plan.

PETITION FOR ANNEXATION

THE UNDERSIGNED (hereinafter referred to as the "Petitioners") hereby petition the Council of the City of Fort Collins, Colorado for the annexation of an area, to be referred to as the I-25 & Mulberry Annexation to the City of Fort Collins. Said area, consisting of approximately 2,043,835.20 Sq. Ft. (46.92) acres, is more particularly described on Attachment "A," attached hereto.

The Petitioners allege:

- 1. That it is desirable and necessary that such area be annexed to the City of Fort Collins.
2. That the requirements of Sections 31-12-104 and 31-12-105, C.R.S., exist or have been met.
3. That not less than one-sixth (1/6) of the perimeter of the area proposed to be annexed is contiguous with the boundaries of the City of Fort Collins.
4. That a community of interest exists between the area proposed to be annexed and the City of Fort Collins.
5. That the area to be annexed is urban or will be urbanized in the near future.
6. That the area proposed to be annexed is integrated with or capable of being integrated with the City of Fort Collins.
7. That the Petitioners herein comprise more that fifty percent (50%) of the landowners in the area and own more than fifty percent (50%) of the area to be annexed, excluding public streets, alleys and lands owned by the City of Fort Collins.
8. That the City of Fort Collins shall not be required to assume any obligations respecting the construction of water mains, sewer lines, gas mains, electric service lines, streets or any other services or utilities in connection with the property proposed to be annexed except as may be provided by the ordinance of the City of Fort Collins.

Further, as an express condition of annexation, Petitioners consent to the inclusion into the Municipal Subdistrict, Northern Colorado Water Conservancy District (the "Subdistrict") pursuant to §37-45-136(3.6) C.R.S., Petitioners acknowledge that, upon inclusion into the Subdistrict, Petitioners' property will be subject to the same mill levies and special assessments as are levied or will be levied on other similarly situated property in the Subdistrict at the time of inclusion of Petitioners' lands. Petitioners agree to waive any right to an election which may exist pursuant to Article X, §20 of the Colorado Constitution before the Subdistrict can impose such mill levies and special assessments as it has the authority to impose. Petitioners also agree to waive, upon inclusion, any right which may exist to a refund pursuant to Article X, §20 of the Colorado Constitution.

WHEREFORE, said Petitioners request that the Council of the City of Fort Collins approve the annexation of the area described on Attachment "A." Furthermore, the Petitioners request that said area be placed in the CG & I Zone District pursuant to the Land Use Code of the City of Fort Collins.

(Check box if applicable). The Petitioners reserve the right to withdraw this petition and their signatures therefrom at any time prior to the commencement of the roll call of the City Council for the vote upon the second reading of the annexation ordinance.

Individual Petitioners signing this Petition represent that they own the portion(s) of the area described on Attachment "A" as more particularly described below:

A tract of land situate in the County of Larimer, State of Colorado, to-wit:

INSTRUCTIONS: INSERT HERE the legal description of individual parcels, or if only ownership, type "See Legal Description on Attachment 'A'."

IN WITNESS WHEREOF, I/we have executed this Petition for Annexation this 15th day of November, 2023.

By MILLER-MOKLER, LLC
By MILLER FORT COLLINS, LLC, ITS MANAGER
By STEVEN STOFLECK, ITS MANAGER

Steve Siph
Petitioner's/Owner's Signature

Petitioner's/Owner's Signature

16900 E. Bellevue Ave,
Address

Address

Greenwood Village, CO 80121
City State Zip

City State Zip

ATTACHMENT "A"

LEGAL DESCRIPTION OF I-25 & MULBERRY ANNEXATION AREA:

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN; COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN BEING MONUMENTED AT THE SOUTHWEST CORNER BY A 3" BRASS CAP STAMPED " LS23503 2007" IN A RANGE BOX, AND AT THE WEST QUARTER CORNER BY A 2"ALUMINUM CAP STAMPED " LS 5028 1998" ASSUMED TO BEAR N00°09'34"W.

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 10, THENCE N70°26'24"E A DISTANCE OF 648.39 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE 25, AND THE POINT OF BEGINNING;

THENCE ON SAID EASTERLY RIGHT-OF-WAY LINE, THE FOLLOWING SIX (6) COURSES:

1. N58°42'20"W A DISTANCE OF 212.59 FEET;
2. N38°22'59"W A DISTANCE OF 442.05 FEET;
3. N14°16'20"W A DISTANCE OF 206.20 FEET;
4. N00°13'50"W A DISTANCE OF 37.90 FEET;
5. N00°31'20"W A DISTANCE OF 940.70 FEET;
6. N03°19'40"E A DISTANCE OF 245.20 FEET, TO THE SOUTHWESTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20050043464;

THENCE ON THE SOUTHERLY LINE OF SAID PROPERTY, S89°19'40"E A DISTANCE OF 1241.28 FEET, TO A POINT ON THE WESTERLY LINE OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 2002051529;

THENCE ON SAID WESTERLY LINE, S00°20'18"W A DISTANCE OF 1727.08 FEET, TO THE NORTHEASTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20120069518;

THENCE ON THE NORTHERLY AND WESTERLY LINES OF SAID PROPERTY, THE FOLLOWING FOUR (4) COURSES:

1. N69°41'20"W A DISTANCE OF 224.55 FEET;
2. N81°42'20"W A DISTANCE OF 504.90 FEET;
3. N58°42'20"W A DISTANCE OF 20.61 FEET;
4. S00°19'40"W A DISTANCE OF 300.00 FEET, TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 2,043,904 SQUARE FEET OR 46.9216 ACRES.

ATTACHMENT "A1"

PARCEL 1 LEGAL DESCRIPTION: CG – GENERAL COMMERCIAL ZONE DISTRICT

A PORTION OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 2009006924 IN THE RECORDS OF THE LARIMER COUNTY CLERK AND RECORDER, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN; COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN BEING MONUMENTED AT THE SOUTHWEST CORNER BY A 3" BRASS CAP STAMPED " LS23503 2007" IN A RANGE BOX, AND AT THE WEST QUARTER CORNER BY A 2"ALUMINUM CAP STAMPED " LS 5028 1998" ASSUMED TO BEAR N00°09'34"W.

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 10, THENCE N70°26'24"E A DISTANCE OF 648.39 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE 25, AND THE POINT OF BEGINNING;

THENCE ON SAID EASTERLY RIGHT-OF-WAY LINE, THE FOLLOWING SIX (6) COURSES:

1. N58°42'20"W A DISTANCE OF 212.59 FEET;
2. N38°22'59"W A DISTANCE OF 442.05 FEET;
3. N14°16'20"W A DISTANCE OF 206.20 FEET;
4. N00°13'50"W A DISTANCE OF 37.90 FEET;
5. THENCE N00°31'20"W A DISTANCE OF 940.70 FEET;
6. N03°19'40"E A DISTANCE OF 245.20 FEET, TO THE SOUTHWESTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20050043464;

THENCE ON THE SOUTHERLY LINE OF SAID PROPERTY, THENCE S89°19'40"E A DISTANCE OF 400.00 FEET;

THENCE DEPARTING SAID SOUTHERLY LINE, THE FOLLOWING FIVE (5) COURSES:

1. S00°40'20"W A DISTANCE OF 591.74 FEET;
2. S44°30'21"W A DISTANCE OF 127.98 FEET;
3. S00°29'39"E A DISTANCE OF 256.82 FEET, TO A POINT OF CURVE;
4. ON THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 600.00 FEET, A CENTRAL ANGLE OF 88°52'35" AND AN ARC LENGTH OF 930.71 FEET, TO A POINT OF TANGENT;
5. S89°22'14"E A DISTANCE OF 333.27 FEET;

THENCE ON SAID WESTERLY LINE, S00°20'18"W A DISTANCE OF 198.69 FEET, TO THE NORTHEASTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20120069518;

THENCE ON THE NORTHERLY AND WESTERLY LINES OF SAID PROPERTY, THE FOLLOWING FOUR (4) COURSES:

1. N69°41'20"W A DISTANCE OF 224.55 FEET;
2. N81°42'20"W A DISTANCE OF 504.90 FEET;
3. N58°42'20"W A DISTANCE OF 20.61 FEET;
4. S00°19'40"W A DISTANCE OF 300.00 FEET, TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 753,127 SQUARE FEET OR 17.2894 ACRES.

ATTACHMENT "A2"

PARCEL 2 LEGAL DESCRIPTION: I – INDUSTRIAL ZONE DISTRICT

A PORTION OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 2009006924 IN THE RECORDS OF THE LARIMER COUNTY CLERK AND RECORDER, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN; COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN BEING MONUMENTED AT THE SOUTHWEST CORNER BY A 3" BRASS CAP STAMPED " LS23503 2007" IN A RANGE BOX, AND AT THE WEST QUARTER CORNER BY A 2"ALUMINUM CAP STAMPED " LS 5028 1998" ASSUMED TO BEAR N00°09'34"W.

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 10, THENCE N3°41'03"E A DISTANCE OF 2153.64 FEET TO A POINT ON THE SOUTHERLY LINE OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20050043464 AND THE POINT OF BEGINNING;

THENCE ON SAID SOUTHERLY LINE, S89°19'40"E A DISTANCE OF 841.28 FEET, TO A POINT ON THE WESTERLY LINE OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 2002051529;

THENCE ON THE SAID WESTERLY LINE, S00°20'18"W A DISTANCE OF 1528.39 FEET;

THENCE DEPARTING SAID WESTERLY LINE THE FOLLOWING FIVE (5) COURSES:

1. N89°22'14"W A DISTANCE OF 333.27 FEET, TO A POINT OF CURVE;
2. ON THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 600.00 FEET, A CENTRAL ANGLE OF 88°52'35" AND AN ARC LENGTH OF 930.71 FEET, TO A POINT OF TANGENT;
3. N00°29'39"W A DISTANCE OF 256.82 FEET;
4. N44°30'21"E A DISTANCE OF 127.98 FEET;
5. N00°40'20"E A DISTANCE OF 591.74 FEET, TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 1,290,778 SQUARE FEET OR 29.6322 ACRES.

ATTACHMENT "B"

STATE OF COLORADO)
)ss.
COUNTY OF LARIMER)
 Arapahoe

The undersigned, being first duly sworn upon his oath states:

That he was the circulator of the attached Petition for Annexation and that each signature therein is the signature of the person whose name it purports to be.

Stu Spk
Circulator's Signature

Subscribed and sworn to before me this 15th day of November, 2 023,
by Steven Shoflick.

WITNESS my hand and official seal.

7/15/23
Commission Expiration

Sarah Lehr
Notary Public




ATTACHMENT "C"

ATTORNEY CERTIFICATION

I, Timothy L. Goddard, an attorney licensed to practice in the State of Colorado, hereby certify that, as of the date of this certificate, the signers of this Annexation Petition* for the area referred to as the I25 & Mulberry Annexation to the City of Fort Collins are the owners of real property in the area proposed for annexation. Furthermore, I certify that said owners constitute more than 50% of the landowners in the area proposed for annexation, as said area is described on Attachment "A" of said Annexation Petition, and own more than 50% of the land in said area, exclusive of streets and alleys.

November 17, 2023
Date

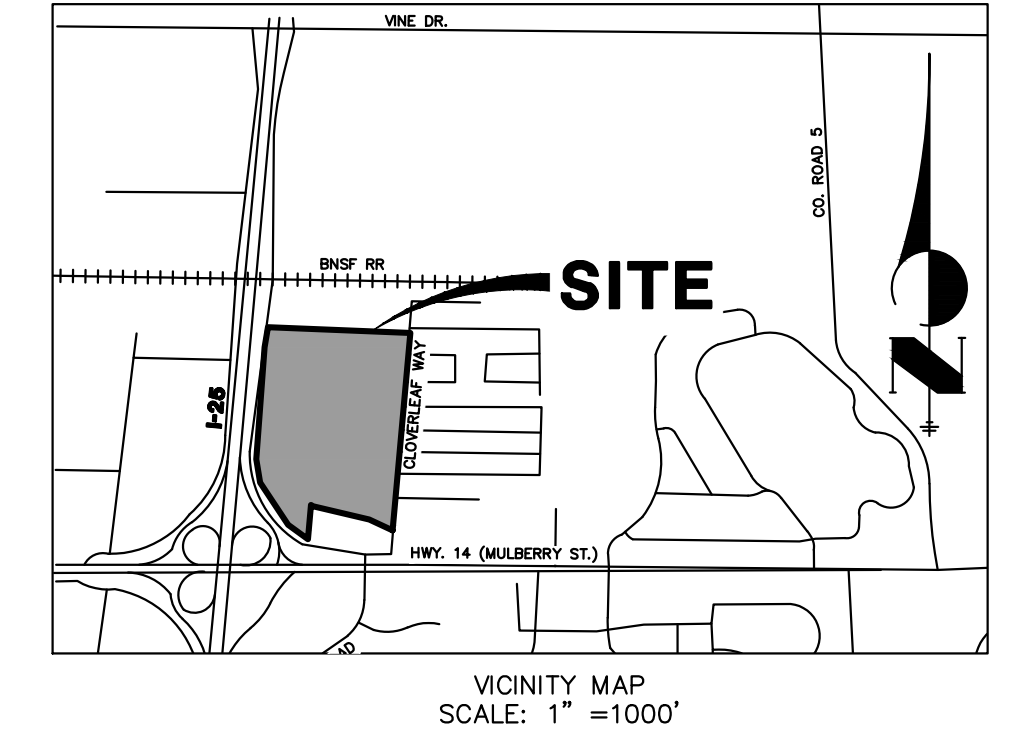

Signature

17645
Attorney Reg. No.

*Miller Mokler, LLC, a Colorado limited liability company, is the record owner of the property being annexed.

I-25 AND MULBERRY ANNEXATION

TO THE CITY OF FORT COLLINS, COLORADO
 LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10,
 TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE SIXTH P.M.
 COUNTY OF LARIMER, STATE OF COLORADO



DESCRIPTION

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN; COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN BEING MONUMENTED AT THE SOUTHWEST CORNER BY A 3" BRASS CAP STAMPED "LS23503 2007" IN A RANGE BOX, AND AT THE WEST QUARTER CORNER BY A 2" ALUMINUM CAP STAMPED "LS 5028 1998" ASSUMED TO BEAR N00°09'34"W.

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 10, THENCE N70°26'24"E A DISTANCE OF 648.39 FEET TO A POINT ON THE EXISTING CITY OF FORT COLLINS BOUNDARY AS ANNEXED IN ORDINANCE NO. 151 SERIES OF 2017 RECORDED UNDER RECEPTION NO. 20170080964 IN THE RECORDS OF THE LARIMER COUNTY CLERK AND RECORDER, SAID POINT ALSO BEING THE EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE 25, AND THE POINT OF BEGINNING;

THENCE ON SAID EXISTING CITY BOUNDARY LINE, THE FOLLOWING SIX (6) COURSES:

1. N58°42'20"W A DISTANCE OF 212.59 FEET;
2. N38°22'59"W A DISTANCE OF 442.05 FEET;
3. N14°16'20"W A DISTANCE OF 206.20 FEET;
4. N00°13'50"W A DISTANCE OF 37.90 FEET;
5. N00°31'20"W A DISTANCE OF 940.70 FEET;
6. N03°19'40"E A DISTANCE OF 245.20 FEET, TO THE SOUTHWESTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20050043464;

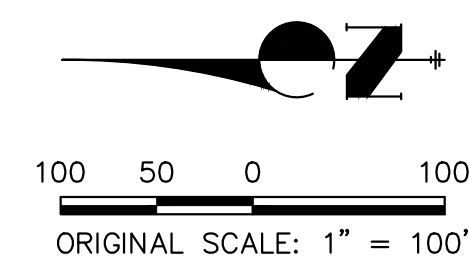
THENCE ON THE SOUTHERLY LINE OF SAID PROPERTY, S89°19'40"E A DISTANCE OF 1241.28 FEET, TO A POINT ON THE EXISTING CITY OF FORT COLLINS BOUNDARY AS ANNEXED IN ORDINANCE NO. 103 SERIES OF 2018 RECORDED UNDER RECEPTION NO. 20180054265;

THENCE ON SAID EXISTING CITY BOUNDARY LINE, S00°20'18"W A DISTANCE OF 1727.08 FEET, TO THE NORTHEASTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20120069518;

THENCE ON THE NORTHERLY AND WESTERLY LINES OF SAID PROPERTY, THE FOLLOWING FOUR (4) COURSES:

1. N69°41'20"W A DISTANCE OF 224.55 FEET;
2. N81°42'20"W A DISTANCE OF 504.90 FEET;
3. N58°42'20"W A DISTANCE OF 20.61 FEET;
4. S00°19'40"W A DISTANCE OF 300.00 FEET, TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 2,043,904 SQUARE FEET OR 46.9216 ACRES.



LEGEND

EXISTING CITY BOUNDARY

CONTIGUITY STATEMENT:

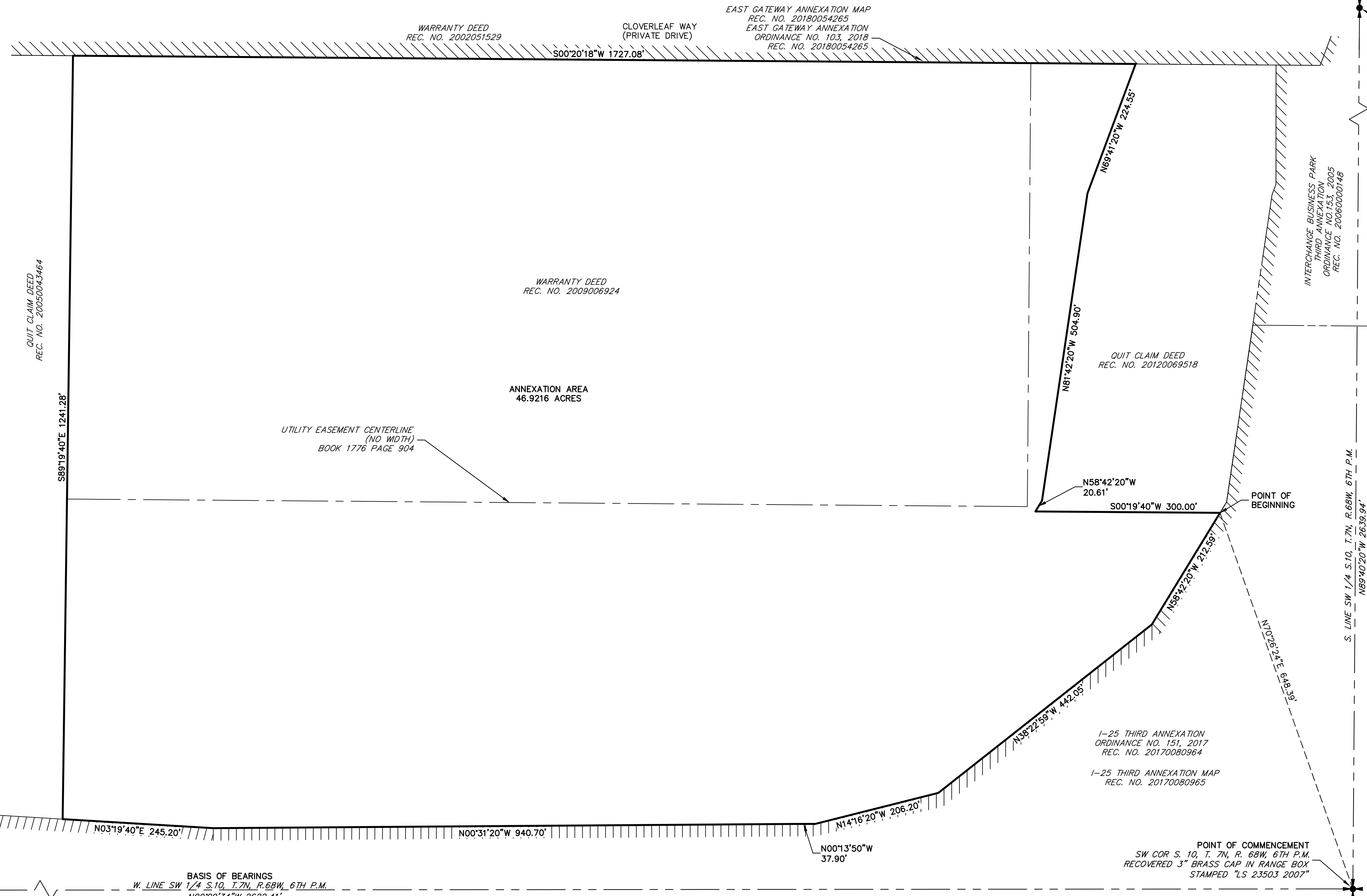
- TOTAL PERIMETER OF AREA CONSIDERED FOR ANNEXATION = 6,103.06 FEET.
- ONE-SIXTH OF TOTAL PERIMETER OF AREA = 1,017.18 FEET.
- PERIMETER OF THE AREA CONTIGUOUS WITH EXISTING CITY LIMITS = 3,811.72 FEET.

THE TOTAL CONTIGUOUS PERIMETER IS 62.46%, WHICH EXCEEDS THE ONE-SIXTH (1/6) AREA REQUIRED.

I-25 & MULBERRY
 39789.00
 8-2-2022
 REV. 5-5-2023
 SHEET 1 OF 1



Centennial 303-740-9393 • Colorado Springs 719-593-2593
 Fort Collins 970-491-9888 • www.jrengineering.com



QUIT CLAIM DEED
 REC. NO. 20050043464

WARRANTY DEED
 REC. NO. 2002051529

CLOVERLEAF WAY
 (PRIVATE DRIVE)

EAST GATEWAY ANNEXATION MAP
 REC. NO. 20180054265
 EAST GATEWAY ANNEXATION
 ORDINANCE NO. 103, 2018
 REC. NO. 20180054265

WARRANTY DEED
 REC. NO. 2009006924

ANNEXATION AREA
 46.9216 ACRES

UTILITY EASEMENT CENTERLINE
 (NO WIDTH)
 BOOK 1776 PAGE 904

I-25 THIRD ANNEXATION
 ORDINANCE NO. 151, 2017
 REC. NO. 20170080964

I-25 THIRD ANNEXATION MAP
 REC. NO. 20170080965

POINT OF COMMENCEMENT
 SW COR. S. 10, T. 7N, R. 68W, 6TH P.M.
 RECOVERED 3" BRASS CAP IN RANGE BOX
 STAMPED "LS 23503 2007"

BASIS OF BEARINGS
 W LINE SW 1/4 S. 10, T. 7N, R. 68W, 6TH P.M.
 N00°09'34"W 2622.41'

W 1/4 COR. S. 10, T. 7N, R. 68, 6TH P.M.
 RECOVERED 2.5" ALUMINUM CAP
 STAMPED "LS5028 1998"

CITY APPROVAL

ON BEHALF OF THE CITY OF FORT COLLINS, THE UNDERSIGNED HEREBY APPROVE FOR FILING THE ACCOMPANYING ANNEXATION PLAT OF "I-25 AND MULBERRY"

CITY PLANNING DIRECTOR _____ DATE _____

CITY ENGINEER _____ DATE _____

THE ANNEXATION OF THE REAL PROPERTY SHOWN ON THIS PLAT IS APPROVED PURSUANT TO AN ORDINANCE MADE AND ADOPTED BY THE CITY OF FORT COLLINS, LARIMER COUNTY, COLORADO, BY ACTIONS OF THE CITY COUNCIL OF FORT COLLINS AT ITS MEETING ON THE _____ DAY OF _____ 202____ A.D.

CITY CLERK _____ DATE _____

SURVEYORS CERTIFICATE

I, JARROD ADAMS, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE MAP HEREIN IS A CORRECT DELINEATION OF THE DESCRIBED PARCEL OF LAND AND THAT IT IS CONTIGUOUS TO THE CITY OF FORT COLLINS, COLORADO AND MEETS THE REQUIREMENTS SET FORTH IN COLORADO REVISED STATUTES 31-12-104-(1) (c) THAT ONE-SIXTH (1/6) OR MORE OF THE PERIMETER TO BE ANNEXED IS CONTIGUOUS WITH THE ANNEXING MUNICIPALITY.

JARROD ADAMS, PROFESSIONAL LAND SURVEYOR
 COLORADO NO. 38252
 FOR AND ON BEHALF OF JR ENGINEERING, LLC
 7200 S. ALTON WAY SUITE C400
 CENTENNIAL CO, 80112



AGENDA ITEM SUMMARY

City Council



STAFF

Kai Kleer, Senior City Planner
Ryan Mounce, City Planner

SUBJECT

Public Hearing and First Reading of Ordinance No. 073, 2024, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the I-25 & Mulberry Annexation to the City of Fort Collins, Colorado, and Approving Corresponding Changes to the Residential Neighborhood Sign District Map and Lighting Context Area Map.

EXECUTIVE SUMMARY

The purpose of this item is to zone the property included in the I-25 & Mulberry Annexation into the Industrial (I), and General Commercial (CG) zone districts and place the property into the LC2 Lighting Context Area and Non-residential Sign District.

This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 1(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2015-091.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The requested zoning for this annexation is Industrial (I) and General Commercial (CG) zone districts, which is in alignment with the City of Fort Collins Structure Plan, I-25 Subarea Plan and East Mulberry Plan. The I-25 & Mulberry Annexation area is currently and has historically been used for an agricultural capacity. Directly west of the property is the Frontage Road/I-25, directly north abutting the property line is the former Heli-One building (County). The property to the east contains the Cloverleaf Manufactured Housing Community (County) which also acts as the eastern most boundary of the East Mulberry Enclave, and the south property line abuts Sunstate Rental (County).

Item 16.

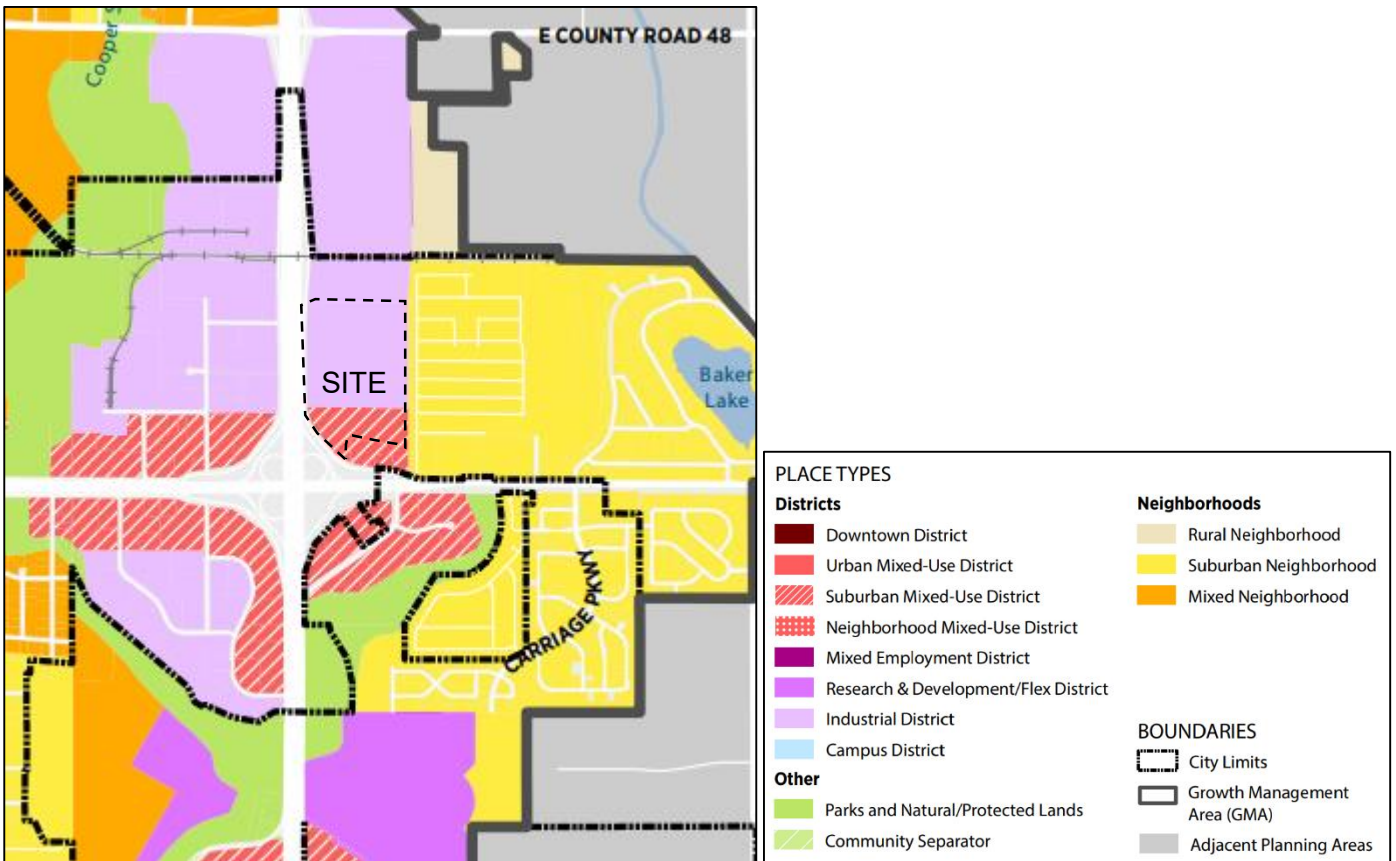
The surrounding zoning and land uses are as follows:

| Direction | Zone District | Existing Land Use |
|-----------|--|--|
| N | Larimer County Light Industrial (IL) | Vehicle Services and Modification |
| S | General Commercial (CG) | Equipment Rental, Hotel, Fuel Sales, Emissions Testing |
| E | Larimer County Manufactured Home Park (MHP) and Commercial Corridor (CC) | Manufactured Housing Community |
| W | Larimer County Commercial Corridor (CC) | Miscellaneous retail and light industrial uses |

City of Fort Collins Structure Plan

The Structure Plan Map found in City Plan provides the broadest land use guidance applicable to the site and potential zoning via Place Type designations. Place Types describe the general land-uses, densities, and transportation characteristics for an area to help guide potential zoning when properties are annexed into the City.

The Structure Plan Map indicates opportunity for both the 'Suburban Mixed-Use' and 'Industrial' place types for the site, indicating a mix of mixed-use and industrial development potential are appropriate. This designation follows similar land use patterns nearby, including commercial uses to the south, and a mix of commercial and industrial development at the northwest and southwest corners of the interchange.



Structure Plan Map

The characteristics of these Place Types include:

Suburban Mixed-Use:

Principal Land Use: Retail, restaurants, office, and other commercial services. Supporting Land Use: High-density residential, entertainment, childcare centers, and other supporting uses. Densities and building heights will vary; building heights will generally be between one and five-stories but may be higher in some locations.

Mixed-use districts provide opportunities for a range of retail and commercial services, office and employment, multifamily residential, civic, and other complementary uses in a compact, pedestrian and transit-supportive setting. Suburban Mixed-Use Districts help meet the needs of surrounding neighborhoods and populations beyond. Although largely auto-oriented today, the integration of higher-density residential and a broader mix of retail/ restaurants, office and entertainment uses is encouraged to help reinvigorate underutilized centers, expand housing options where transit exists or is planned, and improve access to services and amenities in both existing and new districts.

The Suburban Mixed-Use Place Type is most commonly associated with the City's commercial zoning districts, including the General Commercial (CG) District proposed for portions of the annexation.

Industrial:

Principal Land Use: Industrial land uses such as manufacturing, assembly plants, primary metal and related industries; vehicle-related commercial uses; warehouses, outdoor storage yards and distribution facilities; and flex space for small, local startups as well as large national or regional enterprises. Supporting Land Use: Restaurants, convenience retail and other supporting services. Densities and building heights vary.

Employment districts encourage and support a variety of employment opportunities in Fort Collins—ranging from those oriented toward education, research, entrepreneurship, and business incubators, to those that endeavor to turn knowledge into products, processes, and services, to those oriented toward industrial, manufacturing and logistics.

The Industrial Place Type typically corresponds to the Industrial (I) Zone District, which is proposed for the site.

While the proposed zoning is consistent with the Structure Plan Map Place Types in composition and approximate size (acres), notably, the boundary and shape differ. This is due to CDOT's proposed realignment of the Frontage Road which will shift the street inward into the site and parallel to the interstate versus its current position directly adjacent and parallel to the interstate. The proposed zoning boundaries follows this new alignment and staff support the new zoning boundaries which will create a more logical and orderly pattern for development versus what is illustrated on the Structure Plan Map before the CDOT roadway realignment was known.

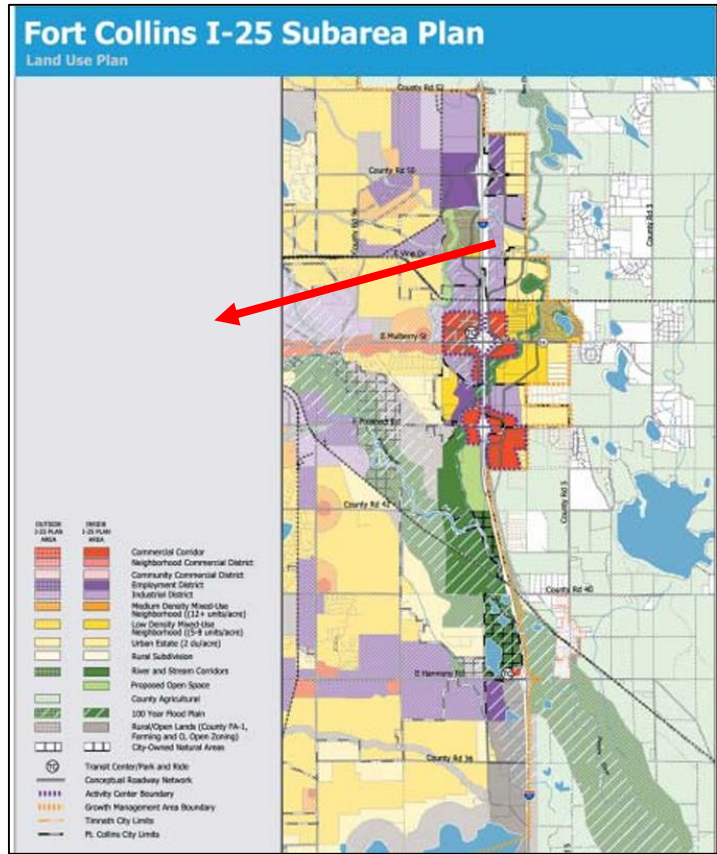
The Structure Plan map also encourages the use of more specific land use guidance for sites when subarea and neighborhood plans have been approved. At this location, both the East Mulberry Plan and the I-25 Subarea Plan provide guidance.

I-25 Subarea Plan

The I-25 Subarea Plan was adopted in 2003 and establishes transportation and land-use guidance for the entire I-25 corridor through the community. The Land Use Plan identifies the site as a commercial corridor with adjacent industrial zoning to the north. The Plan also identifies the area around the I-25 and Mulberry interchange as an Activity Center, which will require enhanced design and land use

Item 16.

considerations during development of the site and the Land Use Code's supplemental I-25 Subarea Plan standards.

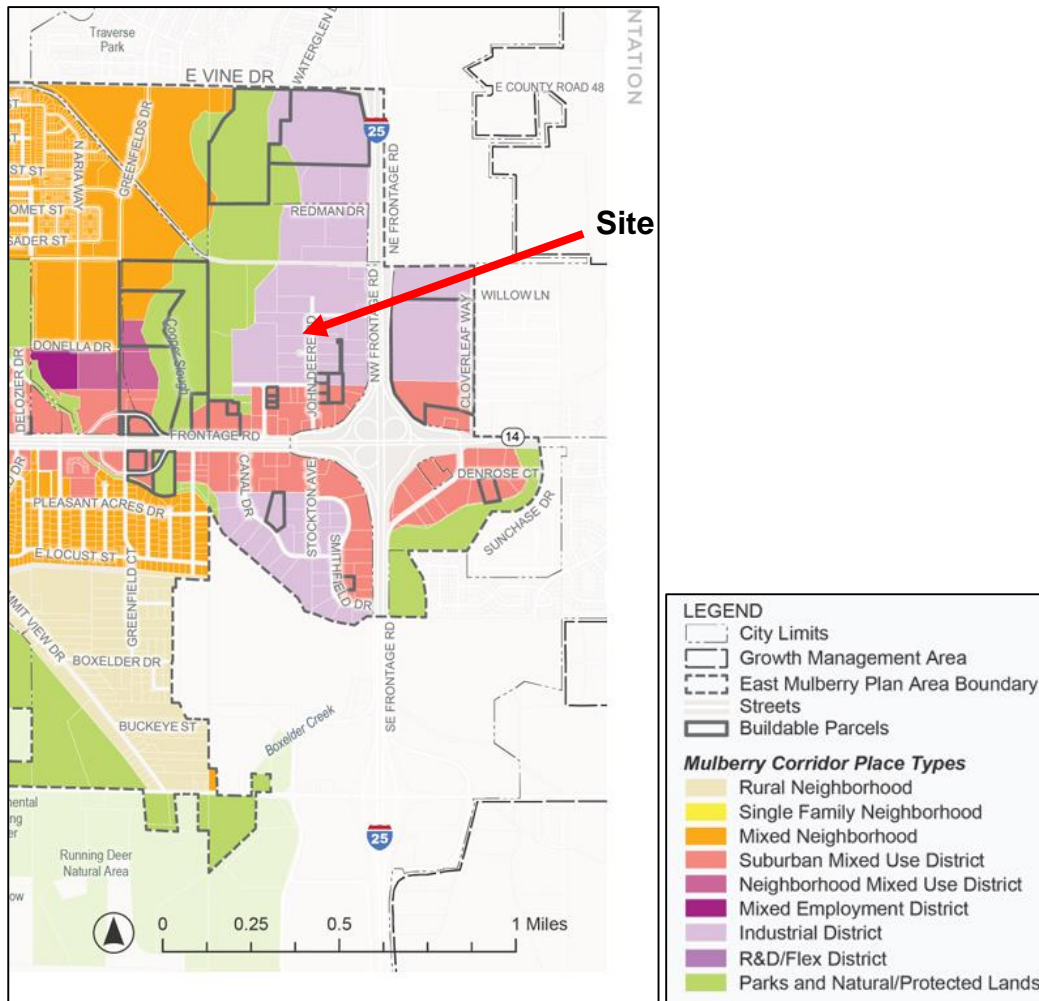


The I-25 Subarea Plan designated the total site for commercial zoning rather than a mix of commercial and industrial zoning as proposed. The commercial zoning is in part due to the possibility the area could host a regional or community shopping center. Little interest in a retail center of this scale has been discussed for the site in the 20+ years since adoption of the I-25 Subarea Plan, and internally, staff no longer feel the site is as well suited towards this goal given shifts in land use, transportation, and the commercial/retail market. Much of the potential retail activity originally envisioned for this location has shifted further west along Mulberry Street to the proposed Bloom and Peakview Developments near Mulberry Street and Greenfields Court.

The loss of a larger commercial zoning site may be appropriately backfilled by the proposed Industrial zoning, which is consistent with the Structure Plan Map and the much more recent East Mulberry Plan, as well as the consistency of other quadrants of the interchange which feature mixed commercial/industrial zoning.

East Mulberry Plan

The East Mulberry Plan was adopted in December 2023 and updated the original 2002 East Mulberry Corridor Plan. The update provides renewed land use and policy guidance for the Mulberry corridor, including the subject property. The Plan's land use framework shifted from one based on zoning to place types to match the City Plan Structure Map, and the land use guidance illustrated below matches the current Structure Plan Map with indications for a mix of Suburban Mixed-Use and Industrial place types.



Similar to the Structure Plan analysis described above, the land use guidance provided by the East Mulberry Plan matches the proposed (CG) and (I) zoning in size but differs in shape due to more recent knowledge of CDOT’s plan to alter the alignment of the I-25 Frontage Road. Staff supports the requested zoning boundary changes to match this shift in roadway alignment to create a more logical and orderly pattern of development.

Further, the proposed CG and I zoning promotes policy guidance related to the I-25 Interchange Character Area, specifically:

1.N.1 *Preserve existing agricultural and industrial businesses through land use guidance and zoning upon annexing into the City of Fort Collins. See Section 4 of the Plan for more specific recommendations related to existing agricultural and industrial businesses around the I-25 Interchange.*

3.N.1 *Collaborate with CDOT to redesign and reconstruct the I-25 and Mulberry interchange, incorporating design enhancements that align with Fort Collins’ character.*

7.N.3 *Enhance the safety, aesthetics, and functionality of the I-25 interchange.*

The CG and I zoning allows for a combination of commercial and industrial services and businesses to occupy the site while working with CDOT to realign the Frontage Roads in anticipation of the future redesign of the I-25 and Mulberry interchange. The altered shape of the commercial zoning adjacent to the highway mirrors existing zoning on other quadrants of the interchange and may serve to enhance the aesthetics by limiting certain lower quality industrial activities (i.e., outdoor storage) from public visibility.

Sign District

Given the proposed commercial and industrial zoning, staff recommend the property be placed in the Non-Residential Sign District.

Lighting Context Area

On March 26, 2021, the City of Fort Collins adopted new exterior lighting standards and established Lighting Context Areas that correspond to the City's zone districts. The corresponding districts identified by Table 3.2.4-1 of the City's lighting code is LC2 for the General Commercial and Industrial zone districts, accordingly, staff recommends placement of the property into the LC2 Lighting Context Area.

LC2 - Moderate ambient lighting. Areas of human activity where the vision of human residents and users is adapted to moderate light levels. Lighting may typically be used for safety and convenience, but it is not necessarily uniform or continuous. Typical locations include high density residential areas, shopping and commercial districts, industrial parks and districts, City playfields and major institutional uses, and mixed-use districts.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The Planning and Zoning Commission will vote on this annexation and zoning at its May 16, 2024, meeting.

CITY FINANCIAL IMPACTS

None.

PUBLIC OUTREACH

A neighborhood meeting was held September 22, 2022, to jointly share information and discuss the proposed annexation and associated Overall Development Plan for the site. All other notification requirements as required by state and local law have been met.

A majority of questions and concerns discussed at the meeting related to future transportation access and development potential of the associated Overall Development Plan which remains under review. Key topics related to annexation include:

- Zoning boundaries in relation to the proposed realignment of the Frontage Road; and
- Whether the Cloverleaf Mobile Home Park would also be annexed into the City.

ATTACHMENTS

1. Ordinance for Consideration
2. Vicinity Map
3. Petition
4. Applicant Narrative
5. Annexation Map
6. Structure Plan Map
7. East Mulberry Plan Framework Map
8. Fort Collins I-25 Subarea Plan Land Use Plan Map
9. Existing Zoning Map
10. Lighting Context Area Map
11. Lighting Context Map with Annexation
12. Zoning Plat Map
13. Residential Sign District Map

ORDINANCE NO. 073, 2024
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE ZONING MAP OF THE CITY OF FORT COLLINS AND
CLASSIFYING FOR ZONING PURPOSES THE PROPERTY INCLUDED
IN THE I-25 & MULBERRY ANNEXATION TO THE CITY OF FORT
COLLINS, COLORADO, AND APPROVING CORRESPONDING
CHANGES TO THE RESIDENTIAL NEIGHBORHOOD SIGN DISTRICT
MAP AND LIGHTING CONTEXT AREA MAP

A. On June 4, 2024, the City Council adopted on second reading Ordinance No. 072, 2024, annexing to the City of Fort Collins the property known as the I-25 & Mulberry Annexation (the "Property").

B. Division 1.3 of the Land Use Code of the City of Fort Collins establishes the Zoning Map and Zone Districts of the City.

C. Division 2.9 of the Land Use Code of the City of Fort Collins establishes procedures and criteria for reviewing the zoning of land.

D. Pursuant to Land Use Code Section 2.9.2, the City Planning and Zoning Commission, at its meeting on May 16, 2024, voted to [not] recommend zoning the Property to be known as the I-25 & Mulberry Annexation (the "Property") as General Commercial and Industrial Zone Districts as more particularly described below and determined that the proposed zonings are consistent with the City's Comprehensive Plan.

E. The City Council has determined that the proposed zonings of the Property are consistent with the City's Comprehensive Plan.

F. To the extent applicable, the City Council has also analyzed the proposed zonings against the applicable criteria set forth in Section 2.9.4(H)(3) of the Land Use Code and finds the proposed zonings to be in compliance with all such criteria.

G. In accordance with the foregoing, the City Council has considered the zonings of the Property as described below, finds it to be in the best interests of the City, and has determined that the Property should be zoned as hereafter provided.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. The Zoning Map of the City of Fort Collins adopted pursuant to Section 1.3.2 of the Land Use Code of the City of Fort Collins is hereby changed and amended by including the following portion of the Property in the General Commercial ("CG") Zone District as more particularly described as:

A PORTION OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 2009006924 IN THE RECORDS OF THE LARIMER COUNTY CLERK AND RECORDER, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN; COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN BEING MONUMENTED AT THE SOUTHWEST CORNER BY A 3" BRASS CAP STAMPED " LS23503 2007" IN A RANGE BOX, AND AT THE WEST QUARTER CORNER BY A 2"ALUMINUM CAP STAMPED " LS 5028 1998" ASSUMED TO BEAR N00°09'34"W.

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 10, THENCE N70°26'24"E A DISTANCE OF 648.39 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE 25, AND THE POINT OF BEGINNING;

THENCE ON SAID EASTERLY RIGHT-OF-WAY LINE, THE FOLLOWING SIX (6) COURSES:

1. N58°42'20"W A DISTANCE OF 212.59 FEET;
2. N38°22'59"W A DISTANCE OF 442.05 FEET;
3. N14°16'20"W A DISTANCE OF 206.20 FEET;
4. N00°13'50"W A DISTANCE OF 37.90 FEET;
5. THENCE N00°31'20"W A DISTANCE OF 940.70 FEET;
6. N03°19'40"E A DISTANCE OF 245.20 FEET, TO THE SOUTHWESTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20050043464;

THENCE ON THE SOUTHERLY LINE OF SAID PROPERTY, THENCE S89°19'40"E A DISTANCE OF 400.00 FEET; THENCE DEPARTING SAID SOUTHERLY LINE, THE FOLLOWING FIVE (5) COURSES:

1. S00°40'20"W A DISTANCE OF 591.74 FEET;
2. S44°30'21"W A DISTANCE OF 127.98 FEET;
3. S00°29'39"E A DISTANCE OF 256.82 FEET, TO A POINT OF CURVE;

4. ON THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 600.00 FEET, A CENTRAL ANGLE OF 88°52'35" AND AN ARC LENGTH OF 930.71 FEET, TO A POINT OF TANGENT;
5. S89°22'14"E A DISTANCE OF 333.27 FEET;

THENCE ON SAID WESTERLY LINE, S00°20'18"W A DISTANCE OF 198.69 FEET, TO THE NORTHEASTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20120069518;

THENCE ON THE NORTHERLY AND WESTERLY LINES OF SAID PROPERTY, THE FOLLOWING FOUR (4) COURSES:

1. N69°41'20"W A DISTANCE OF 224.55 FEET;
2. N81°42'20"W A DISTANCE OF 504.90 FEET;
3. N58°42'20"W A DISTANCE OF 20.61 FEET;
4. S00°19'40"W A DISTANCE OF 300.00 FEET, TO THE POINT OF BEGINNING. CONTAINING A CALCULATED AREA OF 753,127 SQUARE FEET OR 17.2894 ACRES.

Section 2. The Zoning Map of the City of Fort Collins adopted pursuant to Section 1.3.2 of the Land Use Code of the City of Fort Collins is hereby changed and amended by including the following portion of the Property in the Industrial ("I") Zone District as more particularly described as:

A PORTION OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 2009006924 IN THE RECORDS OF THE LARIMER COUNTY CLERK AND RECORDER, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN; COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN BEING MONUMENTED AT THE SOUTHWEST CORNER BY A 3" BRASS CAP STAMPED " LS23503 2007" IN A RANGE BOX, AND AT THE WEST QUARTER CORNER BY A 2"ALUMINUM CAP STAMPED " LS 5028 1998" ASSUMED TO BEAR N00°09'34"W.

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 10, THENCE N3°41'03"E A DISTANCE OF 2153.64 FEET TO A POINT ON THE SOUTHERLY LINE OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20050043464 AND THE POINT OF BEGINNING;

THENCE ON SAID SOUTHERLY LINE, S89°19'40"E A DISTANCE OF 841.28 FEET, TO A POINT ON THE WESTERLY LINE OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 2002051529;

THENCE ON THE SAID WESTERLY LINE, S00°20'18"W A DISTANCE OF 1528.39 FEET; THENCE DEPARTING SAID WESTERLY LINE THE FOLLOWING FIVE (5) COURSES:

1. N89°22'14"W A DISTANCE OF 333.27 FEET, TO A POINT OF CURVE;
2. ON THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 600.00 FEET, A CENTRAL ANGLE OF 88°52'35" AND AN ARC LENGTH OF 930.71 FEET, TO A POINT OF TANGENT;
3. N00°29'39"W A DISTANCE OF 256.82 FEET;
4. N44°30'21"E A DISTANCE OF 127.98 FEET;
5. N00°40'20"E A DISTANCE OF 591.74 FEET, TO THE POINT OF BEGINNING. CONTAINING A CALCULATED AREA OF 1,290,778 SQUARE FEET OR 29.6322 ACRES.

Section 3. That the Sign District Map adopted pursuant to Section 3.8.7.1(M) of the Land Use Code of the City of Fort Collins is hereby changed and amended by showing that the Property described herein is not included in the Residential Neighborhood Sign District.

Section 4. That the Lighting Context Area Map adopted pursuant to Section 3.2.4(H) of the Land Use Code of the City of Fort Collins is hereby changed and amended by showing that the Property described herein is included in the LC2 Lighting Context Area.

Section 5. That the City Manager is hereby authorized and directed to amend said Zoning Map in accordance with this Ordinance.

Introduced, considered favorably on first reading on May 21, 2024, and approved on second reading for final passage on June 4, 2024.

Mayor

ATTEST:

Interim City Clerk

Effective Date: June 14, 2024
Approving Attorney: Brad Yatabe

I-25 and Mulberry Annexation

Vicinity Map



Legend

-  Project Site
-  Parcels



PETITION FOR ANNEXATION

THE UNDERSIGNED (hereinafter referred to as the "Petitioners") hereby petition the Council of the City of Fort Collins, Colorado for the annexation of an area, to be referred to as the I-25 & Mulberry Annexation to the City of Fort Collins. Said area, consisting of approximately 2,043,835.20 Sq. Ft. (46.92) acres, is more particularly described on Attachment "A," attached hereto.

The Petitioners allege:

1. That it is desirable and necessary that such area be annexed to the City of Fort Collins.
2. That the requirements of Sections 31-12-104 and 31-12-105, C.R.S., exist or have been met.
3. That not less than one-sixth (1/6) of the perimeter of the area proposed to be annexed is contiguous with the boundaries of the City of Fort Collins.
4. That a community of interest exists between the area proposed to be annexed and the City of Fort Collins.
5. That the area to be annexed is urban or will be urbanized in the near future.
6. That the area proposed to be annexed is integrated with or capable of being integrated with the City of Fort Collins.
7. That the Petitioners herein comprise more that fifty percent (50%) of the landowners in the area and own more than fifty percent (50%) of the area to be annexed, excluding public streets, alleys and lands owned by the City of Fort Collins.
8. That the City of Fort Collins shall not be required to assume any obligations respecting the construction of water mains, sewer lines, gas mains, electric service lines, streets or any other services or utilities in connection with the property proposed to be annexed except as may be provided by the ordinance of the City of Fort Collins.

Further, as an express condition of annexation, Petitioners consent to the inclusion into the Municipal Subdistrict, Northern Colorado Water Conservancy District (the "Subdistrict") pursuant to §37-45-136(3.6) C.R.S., Petitioners acknowledge that, upon inclusion into the Subdistrict, Petitioners' property will be subject to the same mill levies and special assessments as are levied or will be levied on other similarly situated property in the Subdistrict at the time of inclusion of Petitioners' lands. Petitioners agree to waive any right to an election which may exist pursuant to Article X, §20 of the Colorado Constitution before the Subdistrict can impose such mill levies and special assessments as it has the authority to impose. Petitioners also agree to waive, upon inclusion, any right which may exist to a refund pursuant to Article X, §20 of the Colorado Constitution.

WHEREFORE, said Petitioners request that the Council of the City of Fort Collins approve the annexation of the area described on Attachment "A." Furthermore, the Petitioners request that said area be placed in the CG & I Zone District pursuant to the Land Use Code of the City of Fort Collins.

(Check box if applicable). The Petitioners reserve the right to withdraw this petition and their signatures therefrom at any time prior to the commencement of the roll call of the City Council for the vote upon the second reading of the annexation ordinance.

Individual Petitioners signing this Petition represent that they own the portion(s) of the area described on Attachment "A" as more particularly described below:

A tract of land situate in the County of Larimer, State of Colorado, to-wit:

INSTRUCTIONS: INSERT HERE the legal description of individual parcels, or if only ownership, type "See Legal Description on Attachment 'A'."

IN WITNESS WHEREOF, I/we have executed this Petition for Annexation this 15th day of November, 2023.

By MILLER-MOKLER, LLC
By MILLER FORT COLLINS, LLC, ITS MANAGER
By STEVEN STOFLECK, ITS MANAGER

Steve Siph
Petitioner's/Owner's Signature

Petitioner's/Owner's Signature

16900 E. Bellevue Ave,
Address

Address

Greenwood Village, CO 80121
City State Zip

City State Zip

ATTACHMENT "A"

LEGAL DESCRIPTION OF I-25 & MULBERRY ANNEXATION AREA:

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN; COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN BEING MONUMENTED AT THE SOUTHWEST CORNER BY A 3" BRASS CAP STAMPED " LS23503 2007" IN A RANGE BOX, AND AT THE WEST QUARTER CORNER BY A 2"ALUMINUM CAP STAMPED " LS 5028 1998" ASSUMED TO BEAR N00°09'34"W.

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 10, THENCE N70°26'24"E A DISTANCE OF 648.39 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE 25, AND THE POINT OF BEGINNING;

THENCE ON SAID EASTERLY RIGHT-OF-WAY LINE, THE FOLLOWING SIX (6) COURSES:

1. N58°42'20"W A DISTANCE OF 212.59 FEET;
2. N38°22'59"W A DISTANCE OF 442.05 FEET;
3. N14°16'20"W A DISTANCE OF 206.20 FEET;
4. N00°13'50"W A DISTANCE OF 37.90 FEET;
5. N00°31'20"W A DISTANCE OF 940.70 FEET;
6. N03°19'40"E A DISTANCE OF 245.20 FEET, TO THE SOUTHWESTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20050043464;

THENCE ON THE SOUTHERLY LINE OF SAID PROPERTY, S89°19'40"E A DISTANCE OF 1241.28 FEET, TO A POINT ON THE WESTERLY LINE OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 2002051529;

THENCE ON SAID WESTERLY LINE, S00°20'18"W A DISTANCE OF 1727.08 FEET, TO THE NORTHEASTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20120069518;

THENCE ON THE NORTHERLY AND WESTERLY LINES OF SAID PROPERTY, THE FOLLOWING FOUR (4) COURSES:

1. N69°41'20"W A DISTANCE OF 224.55 FEET;
2. N81°42'20"W A DISTANCE OF 504.90 FEET;
3. N58°42'20"W A DISTANCE OF 20.61 FEET;
4. S00°19'40"W A DISTANCE OF 300.00 FEET, TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 2,043,904 SQUARE FEET OR 46.9216 ACRES.

ATTACHMENT "A1"

PARCEL 1 LEGAL DESCRIPTION: CG – GENERAL COMMERCIAL ZONE DISTRICT

A PORTION OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 2009006924 IN THE RECORDS OF THE LARIMER COUNTY CLERK AND RECORDER, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN; COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN BEING MONUMENTED AT THE SOUTHWEST CORNER BY A 3" BRASS CAP STAMPED " LS23503 2007" IN A RANGE BOX, AND AT THE WEST QUARTER CORNER BY A 2"ALUMINUM CAP STAMPED " LS 5028 1998" ASSUMED TO BEAR N00°09'34"W.

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6. N03°19'40"E A DISTANCE OF 245.20 FEET, TO THE SOUTHWESTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20050043464;

THENCE ON THE SOUTHERLY LINE OF SAID PROPERTY, THENCE S89°19'40"E A DISTANCE OF 400.00 FEET;

THENCE DEPARTING SAID SOUTHERLY LINE, THE FOLLOWING FIVE (5) COURSES:

1. S00°40'20"W A DISTANCE OF 591.74 FEET;
2. S44°30'21"W A DISTANCE OF 127.98 FEET;
3. S00°29'39"E A DISTANCE OF 256.82 FEET, TO A POINT OF CURVE;
4. ON THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 600.00 FEET, A CENTRAL ANGLE OF 88°52'35" AND AN ARC LENGTH OF 930.71 FEET, TO A POINT OF TANGENT;
5. S89°22'14"E A DISTANCE OF 333.27 FEET;

THENCE ON SAID WESTERLY LINE, S00°20'18"W A DISTANCE OF 198.69 FEET, TO THE NORTHEASTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20120069518;

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3. N58°42'20"W A DISTANCE OF 20.61 FEET;
4. S00°19'40"W A DISTANCE OF 300.00 FEET, TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 753,127 SQUARE FEET OR 17.2894 ACRES.

ATTACHMENT "A2"

PARCEL 2 LEGAL DESCRIPTION: I – INDUSTRIAL ZONE DISTRICT

A PORTION OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 2009006924 IN THE RECORDS OF THE LARIMER COUNTY CLERK AND RECORDER, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN; COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN BEING MONUMENTED AT THE SOUTHWEST CORNER BY A 3" BRASS CAP STAMPED " LS23503 2007" IN A RANGE BOX, AND AT THE WEST QUARTER CORNER BY A 2"ALUMINUM CAP STAMPED " LS 5028 1998" ASSUMED TO BEAR N00°09'34"W.

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 10, THENCE N3°41'03"E A DISTANCE OF 2153.64 FEET TO A POINT ON THE SOUTHERLY LINE OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20050043464 AND THE POINT OF BEGINNING;

THENCE ON SAID SOUTHERLY LINE, S89°19'40"E A DISTANCE OF 841.28 FEET, TO A POINT ON THE WESTERLY LINE OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 2002051529;

THENCE ON THE SAID WESTERLY LINE, S00°20'18"W A DISTANCE OF 1528.39 FEET;

THENCE DEPARTING SAID WESTERLY LINE THE FOLLOWING FIVE (5) COURSES:

1. N89°22'14"W A DISTANCE OF 333.27 FEET, TO A POINT OF CURVE;
2. ON THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 600.00 FEET, A CENTRAL ANGLE OF 88°52'35" AND AN ARC LENGTH OF 930.71 FEET, TO A POINT OF TANGENT;
3. N00°29'39"W A DISTANCE OF 256.82 FEET;
4. N44°30'21"E A DISTANCE OF 127.98 FEET;
5. N00°40'20"E A DISTANCE OF 591.74 FEET, TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 1,290,778 SQUARE FEET OR 29.6322 ACRES.

ATTACHMENT "B"

STATE OF COLORADO)
)ss.
COUNTY OF LARIMER)
 Arapahoe

The undersigned, being first duly sworn upon his oath states:

That he was the circulator of the attached Petition for Annexation and that each signature therein is the signature of the person whose name it purports to be.

Stu Sfk
Circulator's Signature

Subscribed and sworn to before me this 15th day of November, 2 023,
by Steven Shoflick.

WITNESS my hand and official seal.

7/15/23
Commission Expiration

Sarah Lehr
Notary Public


SARAH LEHR
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID# 20014019579
MY COMMISSION EXPIRES 7/15/2025

ATTACHMENT "C"

ATTORNEY CERTIFICATION

I, Timothy L. Goddard, an attorney licensed to practice in the State of Colorado, hereby certify that, as of the date of this certificate, the signers of this Annexation Petition* for the area referred to as the I25 & Mulberry Annexation to the City of Fort Collins are the owners of real property in the area proposed for annexation. Furthermore, I certify that said owners constitute more than 50% of the landowners in the area proposed for annexation, as said area is described on Attachment "A" of said Annexation Petition, and own more than 50% of the land in said area, exclusive of streets and alleys.

November 17, 2023
Date


Signature

17645
Attorney Reg. No.

*Miller Mokler, LLC, a Colorado limited liability company, is the record owner of the property being annexed.

ATTACHMENT "D"

I-25 & MULBERRY ANNEXATION NARRATIVE

The following is the required narrative described in the Fort Collins Land Use Code for a proposed annexation. The Annexor does not propose any conditions of annexation with this Petition and Zoning request.

4(g) A statement as to why it is necessary and desirable for the City of Fort Collins to annex the area.

The I-25 and Mulberry property is generally located at the northeast corner of I-25 and Mulberry Street. The property is currently vacant and has been historically used for irrigated agricultural farming activities. The subject property is located within the City's Growth Management Area (GMA) and therefore, is subject to the Intergovernmental Agreement (IGA) between the City of Fort Collins and Larimer County. The IGA requires that before urban development of the property can occur it must request to be annexed into the City of Fort Collins. The boundary of the GMA, together with the IGA, verifies that the City and County agree that the property should be annexed prior to its development. The applicant agrees that this is both appropriate and desirable.

The Owner of the property is requesting annexation and zoning for commercial, retail, and industrial uses consistent with the intent of the City's Structure Plan and the I-25 Subarea Plan. The Subject property is approximately 46.92 acres in size and meets the statutory requirements of one-sixth or greater contiguity to the City of Fort Collins Municipal Boundary in order to be considered for annexation. The proposal is to annex the property to the City of Fort Collins and Zone the western portion of the property, being approximately 17.29 acres, CG - General Commercial with the remaining eastern portion of the property, being 29.63 acres to be Zoned I - Industrial. Primary access to the subject property will be provided through the site with the construction of the realigned I-25 NE Frontage Road, which in the future will be extended to the intersection of Mulberry Street located just south of the property. The realigned I-25 Frontage Road will extend through the site and connect to the existing I-25 NE Frontage Road located at the Northwest corner of the property, additional there will be vehicular access provided to the east with a connection being made to Spruce Lane.

It is proposed to abandon the existing Northeast I-25 Frontage Road, which is located immediately south and along a large portion of the western boundary of the property. It will be relocated interior to the property. The Mulberry Frontage Metropolitan District ("MFMD") will complete the I-25 East Frontage Road realignment. CDOT and the MFMD believes it will be beneficial to relocate the Frontage Road based on the following:

- The realignment of the NE I-25 Frontage Road is necessary to help advance planned improvements to property adjacent to the realigned Frontage Road.
- The realignment of the NE I-25 Frontage Road is anticipated to improve operations at the intersection of Mulberry Street, I-25 Frontage Road, and Cloverleaf Way, which currently requires additional signal phases due to the current configuration.
- CDOT recognized the need in 2005 for the NE I-25 Frontage Road to be realigned as part of the I-25 & Mulberry Street interchange reconstruction and purchased a Deed of Covenant, reserving a portion of property on the north side of Mulberry Street for future development of a new I-25 frontage road.

As a result of the recent NE I-25 and Mulberry Street Interchange Improvements and the proposed abandonment and realignment of the NE I-25 Frontage Road coupled with other recent developments within close proximity of the subject property, the Owner of the subject property recognizes that the development of the property, consistent with the City's CG - General Commercial and I - Industrial Zone Districts would be the best possible use of the I-25 & Mulberry property. Additionally the Owner believes that the development of the property will provide a significant economic benefit to the City of Fort Collins and greatly improving the overall safety and traffic operations at the Mulberry and I-25 Intersection.

4(h) A description of the zoning classification being requested and any condition requested for that zone district classification.

The Applicant is requesting a Zone District Classification of CG - General Commercial: 17.29 acres and I – Industrial: 29.63 acres, which is in general conformance with the City of Fort Collins Structure Plan. There are no conditions of zoning being requested at this time.

4(i) A statement of consistency of the requested zoning to the Structure Plan.

The City's Structure Plan describes the southernmost third of the I-25 & Mulberry property as being a Suburban Mixed-Use District and the remaining northern portion as an Industrial District.

City Plan Structure Plan states:

The Structure Plan Map and Place Types - or land use categories provide a framework for the ultimate buildout of Fort Collins and plays a critical role in helping the community achieve its vision over the next 10 - 20 years.

The City's Structure Plan and associated Place Types:

- *Guides future growth and reinvestment and serves as official land use plan for the City;*
- *Informs planning for infrastructure and services;*
- *Fosters coordinated land use and transportation decisions within the city and region; and*
- *Helps implement principles and policies.*

Suburban Mixed-Use District - Key Characteristics as stated by the City Plan Structure Plan

City Plan Structure Plan states:

Principal Land Use

Retail, restaurants, office and other commercial services

Supporting Land Use

High-Density Residential, Entertainment, Childcare Centers and other Supporting Uses

Density

Densities and building heights will vary; building heights will generally be between one and five stories, however, may be higher in some locations.

Key Characteristics/Considerations

- *Walkable mixed-use districts that provide a range of retail and commercial services, as well as high-density residential.*
- *Uses should be supported by direct pedestrian and bicycle linkages to surrounding neighborhoods, as well as by BRT or High-frequency bus service.*

Typical Types of Transit

Varies depending on density and surrounding context, but generally served by fixed-route service at frequencies of between 30 and 60 minutes; higher-frequency service may exist where densities are sufficient to support it.

Zoning Consistency with Structure Plan

Based on the City Plan Structure Plan the Applicant requesting Annexation and Zoning believes that the CG - General Commercial Zone District will best promote the Goals and Objectives of the Suburban Mixed-Use District.

Industrial District - Key Characteristics as stated by the City Plan Structure Plan

City Plan Structure Plan states:

Principal Land Use

Industrial land uses such as manufacturing, assembly plants, primary metal and related industries; vehicle-related commercial uses; warehouses, outdoor storage yards and distribution facilities; and flex space for small, local startups as well as large national or regional enterprises.

Supporting Land Use

Restaurants, convenience retail and other supporting services

Density

Varies

Key Characteristics/Considerations

- *Areas dedicated for a variety of more-intensive work processes and other uses of similar character;*
- *Typically located away from residential neighborhoods.*
- *Transportation facilities in Industrial Districts should promote the efficient movement of commercial truck and/or access to rail.*
- *Supported by direct pedestrian and bicycle linkages from surrounding areas, as well as transit in some locations.*

Typical Types of Transit

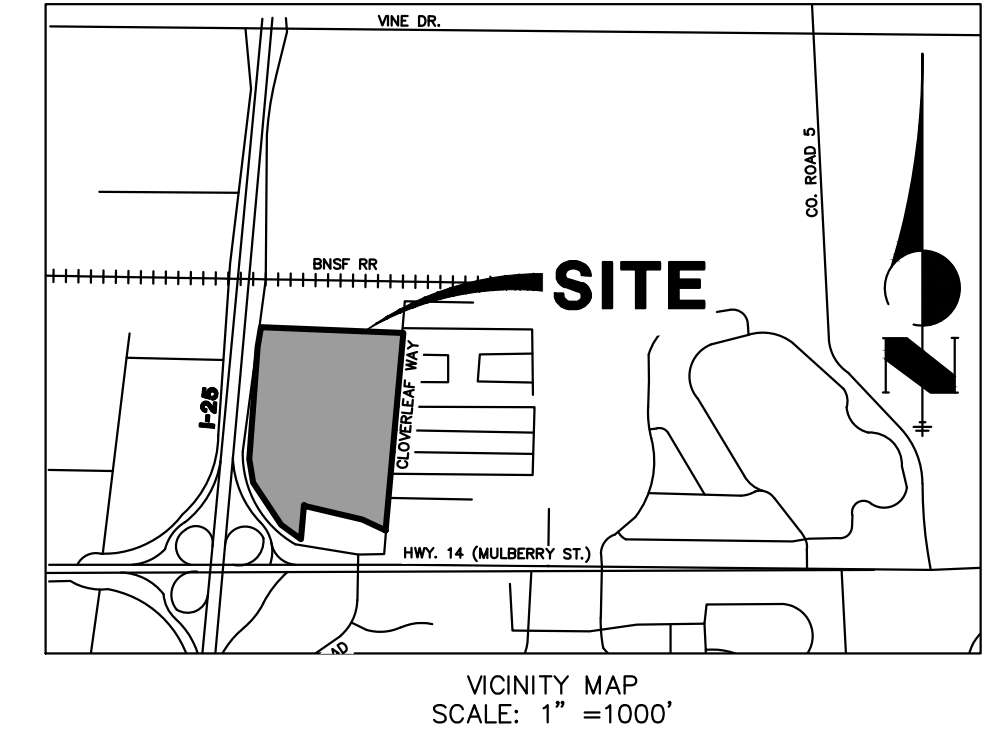
Limited due to low population and low employment densities; however, fixed-route service at frequencies exist in some locations.

Zoning Consistency with Structure Plan

Based on the City Plan Structure Plan the Applicant requesting Annexation and Zoning believes that the I – Industrial Zone Districts will best promote the Goals and Objectives of the City’s Structure Plan.

I-25 AND MULBERRY ANNEXATION

TO THE CITY OF FORT COLLINS, COLORADO
LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10,
TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE SIXTH P.M.
COUNTY OF LARIMER, STATE OF COLORADO



DESCRIPTION

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN; COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN BEING MONUMENTED AT THE SOUTHWEST CORNER BY A 3" BRASS CAP STAMPED "LS23503 2007" IN A RANGE BOX, AND AT THE WEST QUARTER CORNER BY A 2" ALUMINUM CAP STAMPED "LS 5028 1998" ASSUMED TO BEAR N00°09'34"W.

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 10, THENCE N70°26'24"E A DISTANCE OF 648.39 FEET TO A POINT ON THE EXISTING CITY OF FORT COLLINS BOUNDARY AS ANNEXED IN ORDINANCE NO. 151 SERIES OF 2017 RECORDED UNDER RECEPTION NO. 20170080964 IN THE RECORDS OF THE LARIMER COUNTY CLERK AND RECORDER, SAID POINT ALSO BEING THE EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE 25, AND THE POINT OF BEGINNING;

THENCE ON SAID EXISTING CITY BOUNDARY LINE, THE FOLLOWING SIX (6) COURSES:

1. N58°42'20"W A DISTANCE OF 212.59 FEET;
2. N38°22'59"W A DISTANCE OF 442.05 FEET;
3. N14°16'20"W A DISTANCE OF 206.20 FEET;
4. N00°13'50"W A DISTANCE OF 37.90 FEET;
5. N00°31'20"W A DISTANCE OF 940.70 FEET;
6. N03°19'40"E A DISTANCE OF 245.20 FEET, TO THE SOUTHWESTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20050043464;

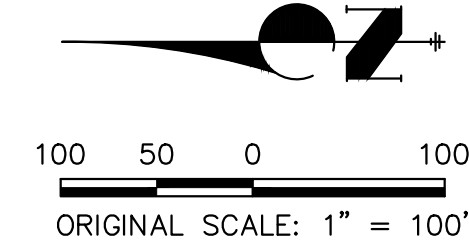
THENCE ON THE SOUTHERLY LINE OF SAID PROPERTY, S89°19'40"E A DISTANCE OF 1241.28 FEET, TO A POINT ON THE EXISTING CITY OF FORT COLLINS BOUNDARY AS ANNEXED IN ORDINANCE NO. 103 SERIES OF 2018 RECORDED UNDER RECEPTION NO. 20180054265;

THENCE ON SAID EXISTING CITY BOUNDARY LINE, S00°20'18"W A DISTANCE OF 1727.08 FEET, TO THE NORTHEASTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20120069518;

THENCE ON THE NORTHERLY AND WESTERLY LINES OF SAID PROPERTY, THE FOLLOWING FOUR (4) COURSES:

1. N69°41'20"W A DISTANCE OF 224.55 FEET;
2. N81°42'20"W A DISTANCE OF 504.90 FEET;
3. N58°42'20"W A DISTANCE OF 20.61 FEET;
4. S00°19'40"W A DISTANCE OF 300.00 FEET, TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 2,043,904 SQUARE FEET OR 46.9216 ACRES.



LEGEND

EXISTING CITY BOUNDARY

CONTIGUITY STATEMENT:

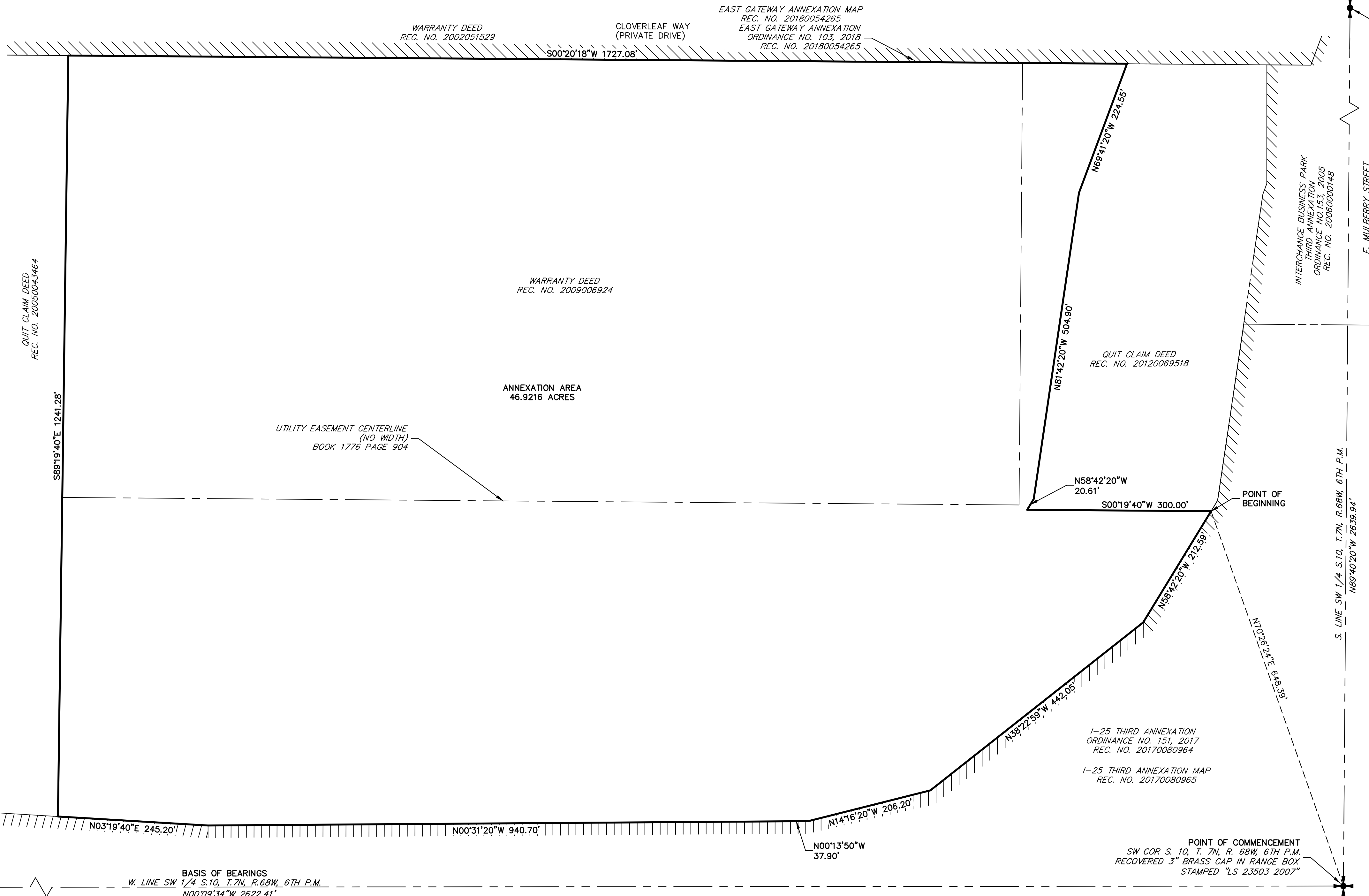
- TOTAL PERIMETER OF AREA CONSIDERED FOR ANNEXATION = 6,103.06 FEET.
- ONE-SIXTH OF TOTAL PERIMETER OF AREA = 1,017.18 FEET.
- PERIMETER OF THE AREA CONTIGUOUS WITH EXISTING CITY LIMITS = 3,811.72 FEET.

THE TOTAL CONTIGUOUS PERIMETER IS 62.46%, WHICH EXCEEDS THE ONE-SIXTH (1/6) AREA REQUIRED.

I-25 & MULBERRY
39789.00
8-2-2022
REV. 5-5-2023
SHEET 1 OF 1



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Fort Collins 970-491-9888 • www.jrengineering.com



CITY APPROVAL

ON BEHALF OF THE CITY OF FORT COLLINS, THE UNDERSIGNED HEREBY APPROVE FOR FILING THE ACCOMPANYING ANNEXATION PLAT OF "I-25 AND MULBERRY"

CITY PLANNING DIRECTOR _____ DATE _____

CITY ENGINEER _____ DATE _____

THE ANNEXATION OF THE REAL PROPERTY SHOWN ON THIS PLAT IS APPROVED PURSUANT TO AN ORDINANCE MADE AND ADOPTED BY THE CITY OF FORT COLLINS, LARIMER COUNTY, COLORADO, BY ACTIONS OF THE CITY COUNCIL OF FORT COLLINS AT ITS MEETING ON THE _____ DAY OF _____ 202____ A.D.

CITY CLERK _____ DATE _____

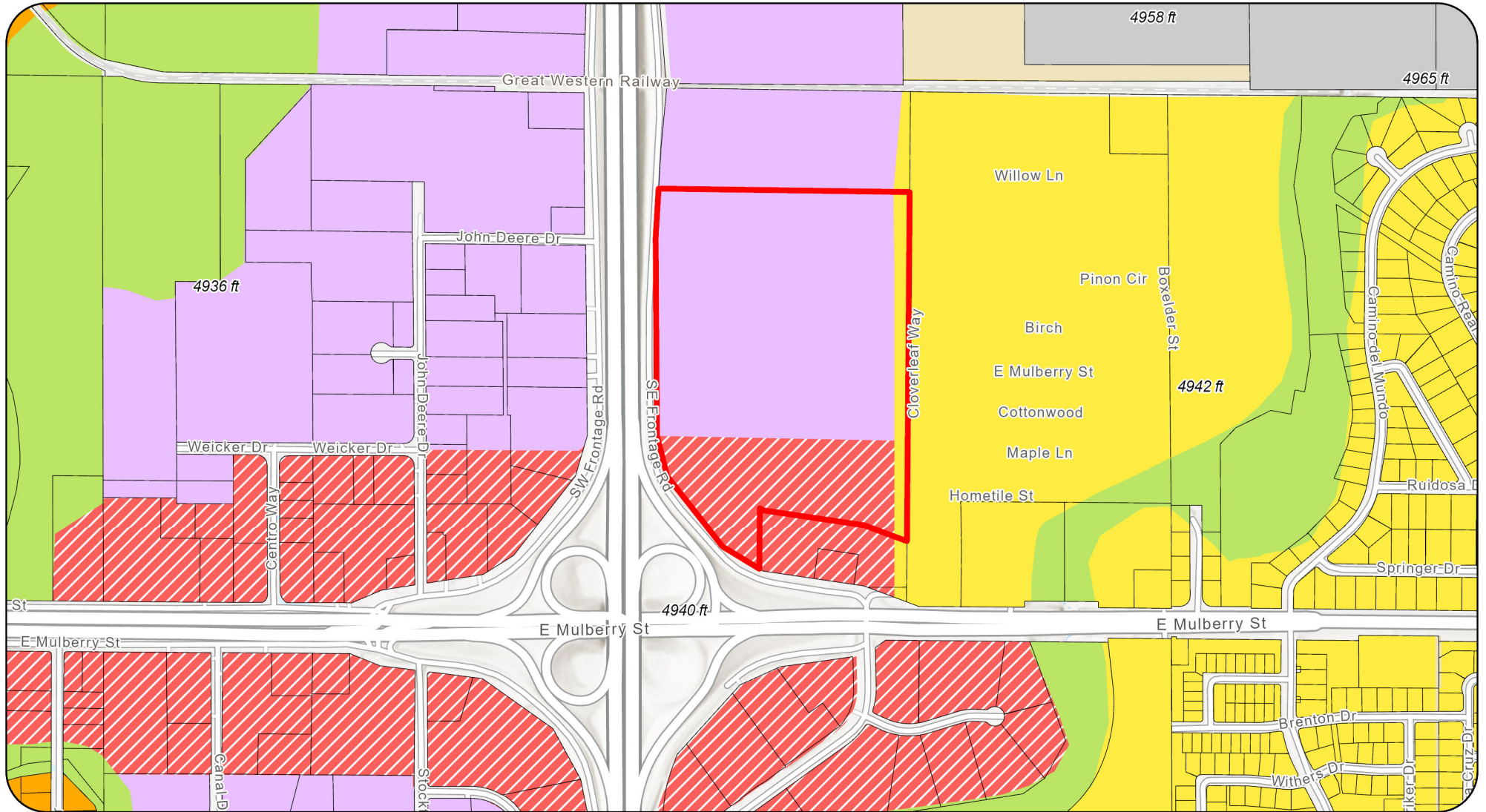
SURVEYORS CERTIFICATE

I, JARROD ADAMS, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE MAP HEREIN IS A CORRECT DELINEATION OF THE DESCRIBED PARCEL OF LAND AND THAT IT IS CONTIGUOUS TO THE CITY OF FORT COLLINS, COLORADO AND MEETS THE REQUIREMENTS SET FORTH IN COLORADO REVISED STATUTES 31-12-104-(1) (c) THAT ONE-SIXTH (1/6) OR MORE OF THE PERIMETER TO BE ANNEXED IS CONTIGUOUS WITH THE ANNEXING MUNICIPALITY.

JARROD ADAMS, PROFESSIONAL LAND SURVEYOR
COLORADO NO. 38252
FOR AND ON BEHALF OF JR ENGINEERING, LLC
7200 S. ALTON WAY SUITE C400
CENTENNIAL CO, 80112



I-25 and Mulberry Annexation Structure Plan

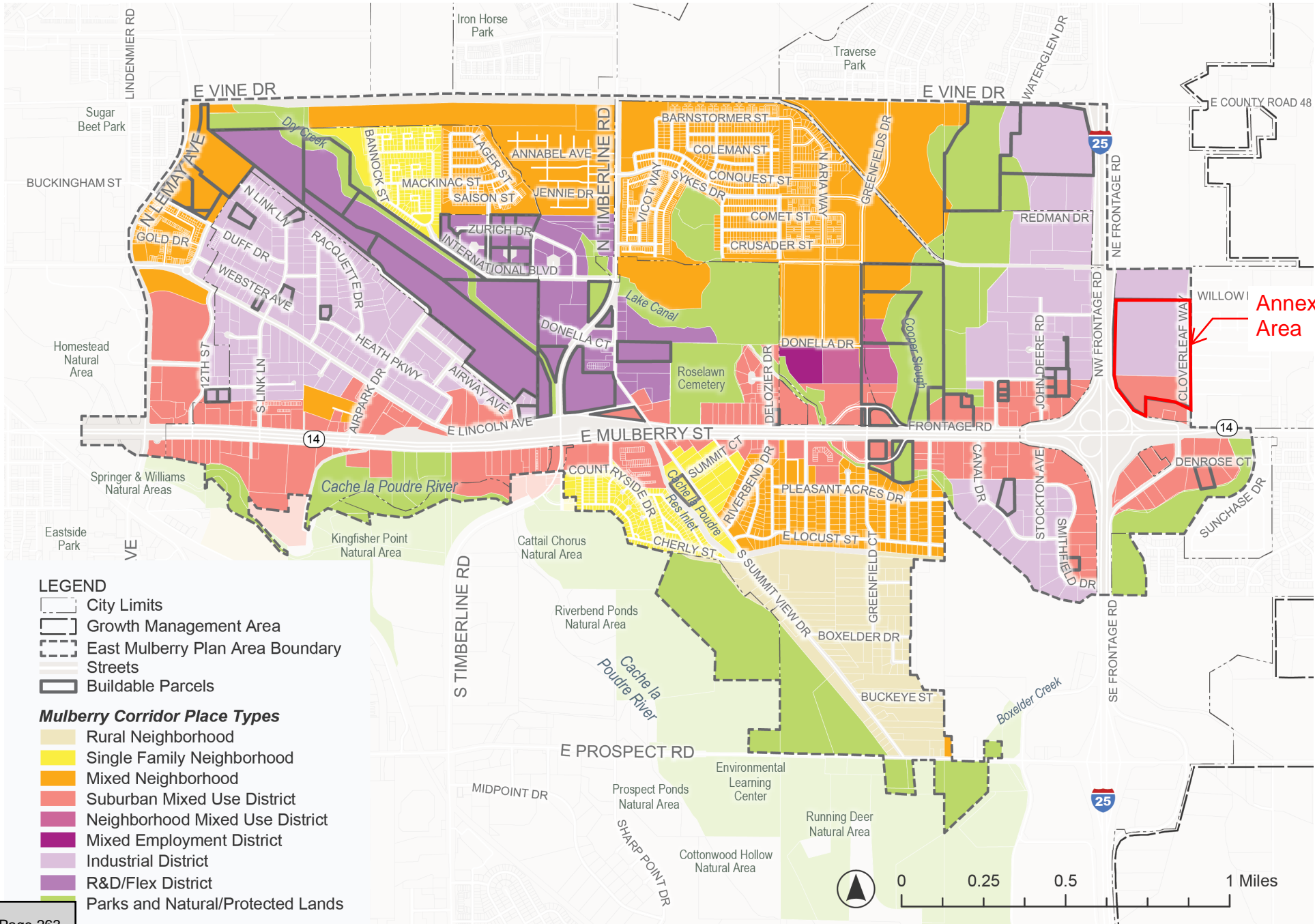


Legend

- | | | |
|------------------------|---------------------------------|-----------------------------------|
| Project Site | Community Separator | Parks and Natural/Protected Lands |
| Parcels | Downtown District | R&D/Flex District |
| Community Separator | Industrial District | Rural Neighborhood |
| Adjacent Planning Area | Mixed Employment District | Suburban Mixed Use District |
| Structure Plan | Mixed Neighborhood | Suburban Neighborhood |
| Adjacent Planning Area | Neighborhood Mixed Use District | Urban Mixed Use District |
| Campus District | | |



PLACE TYPE FRAMEWORK MAP



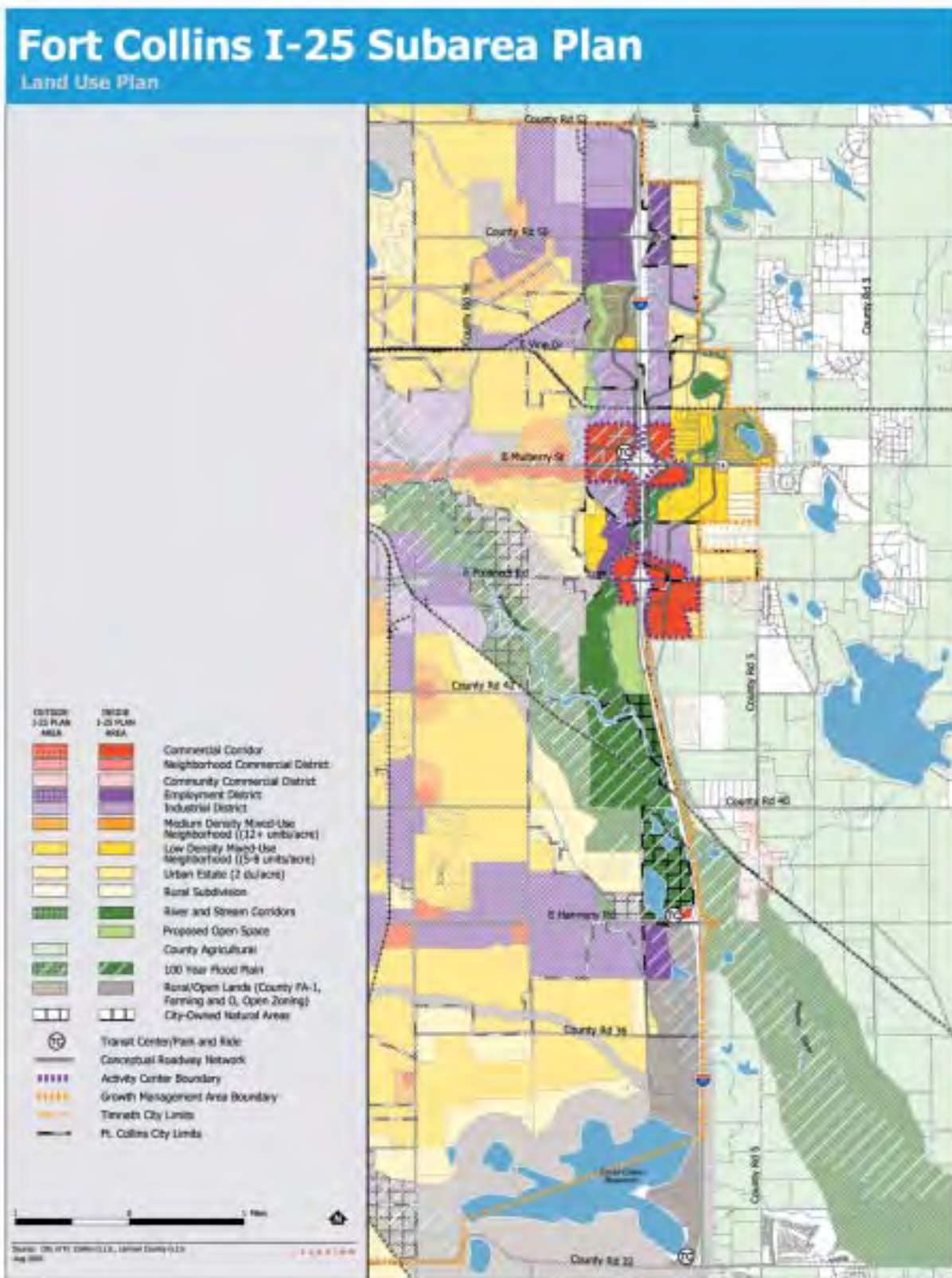
LEGEND

- City Limits
- Growth Management Area
- East Mulberry Plan Area Boundary
- Streets
- Buildable Parcels

Mulberry Corridor Place Types

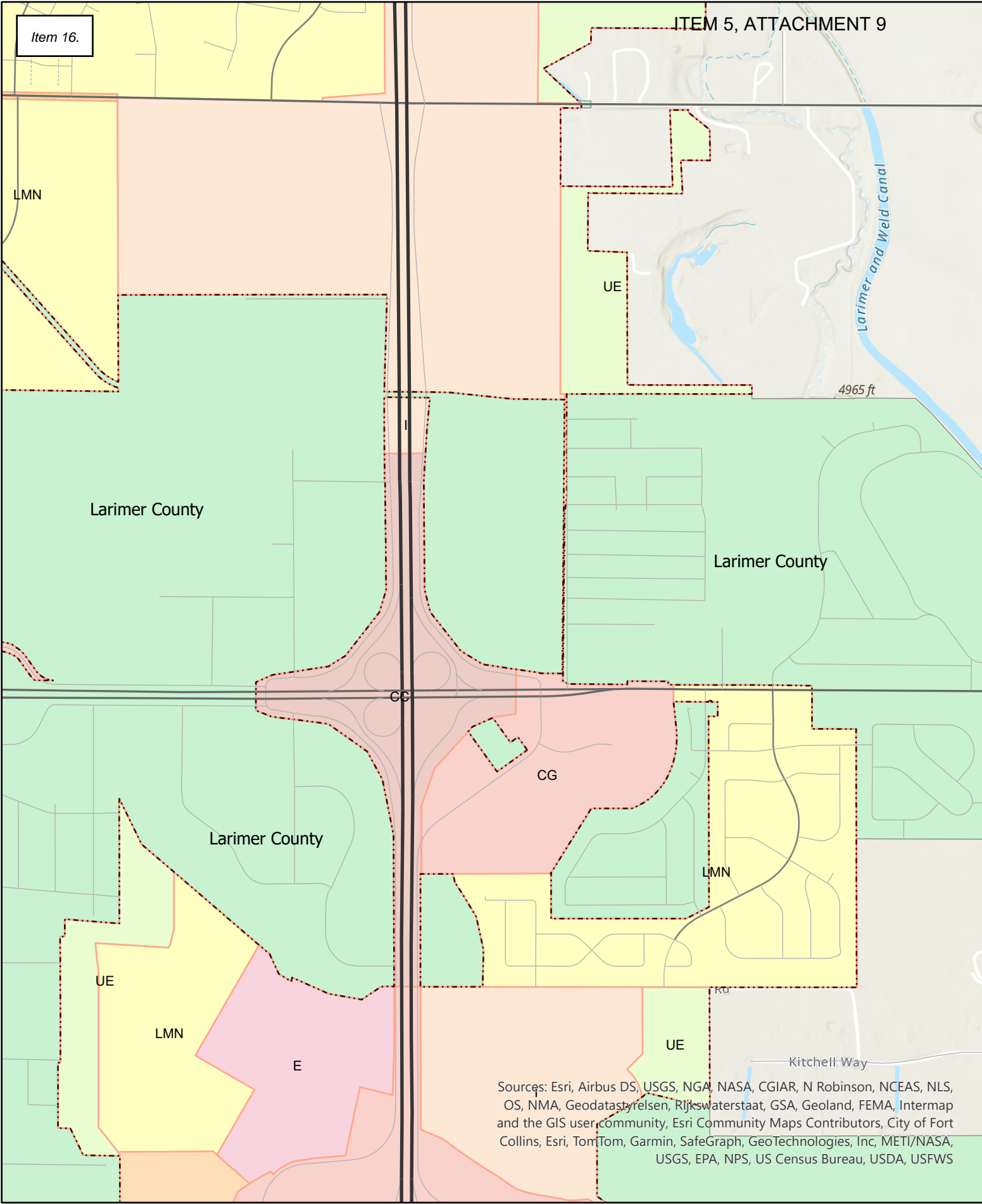
- Rural Neighborhood
- Single Family Neighborhood
- Mixed Neighborhood
- Suburban Mixed Use District
- Neighborhood Mixed Use District
- Mixed Employment District
- Industrial District
- R&D/Flex District
- Parks and Natural/Protected Lands

Item 16.



Item 16.

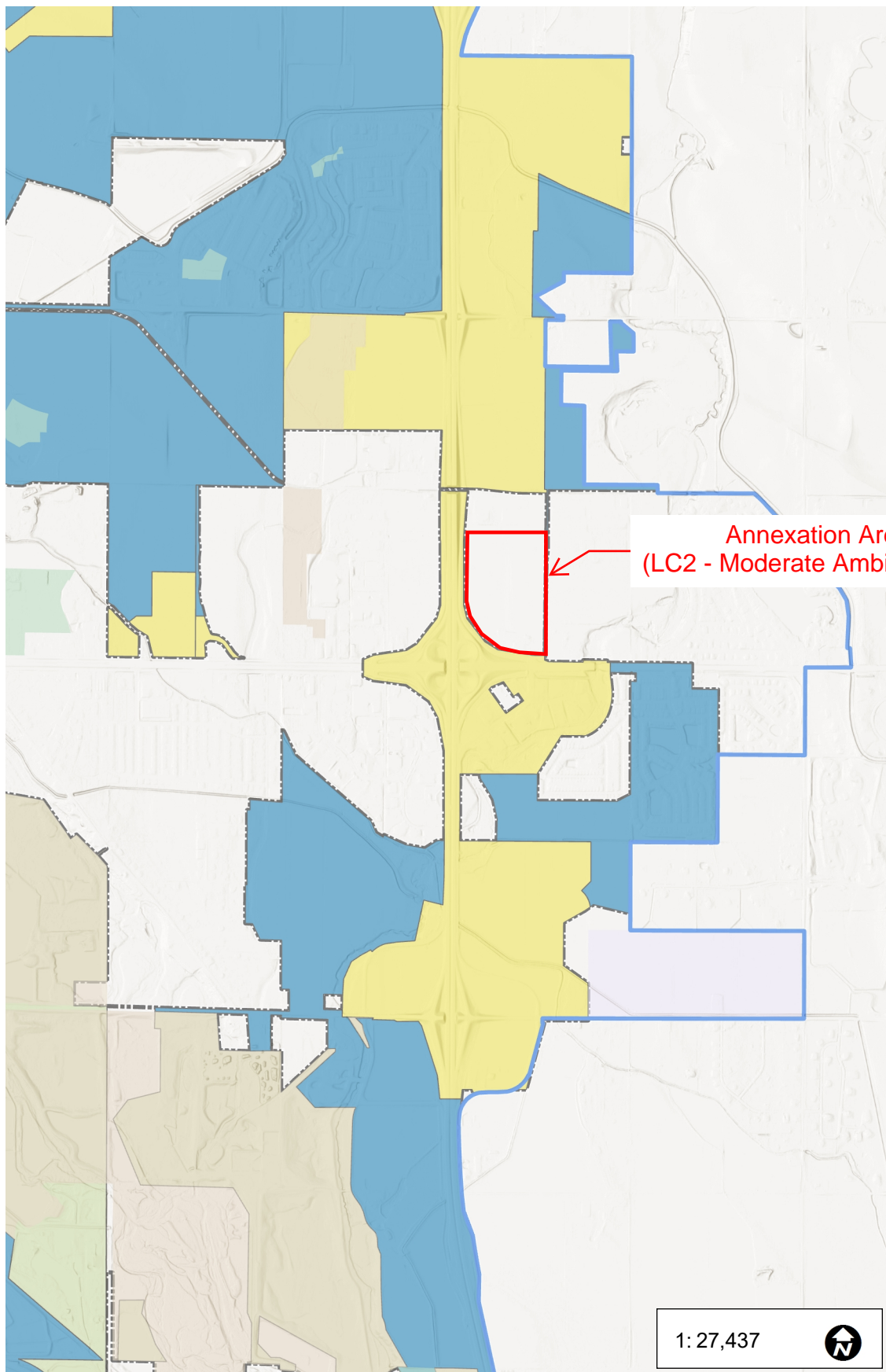
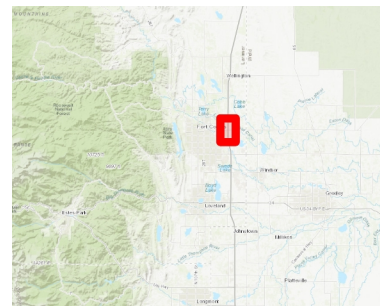
ITEM 5, ATTACHMENT 9



Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodatastyrelsen, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap and the GIS user community, Esri Community Maps Contributors, City of Fort Collins, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS

Existing Zoning Map

Lighting Context Area Map



Legend

- Growth Management Area
- Parks
- Schools
- Natural Areas
- Lighting Context Areas**
 - LC0 - No ambient lighting
 - LC1 - Low ambient lighting
 - LC2 - Moderate ambient lighting
 - LC3 - Moderately high ambient light
- City Limits
- World Hillshade

**Annexation Area
(LC2 - Moderate Ambient Light)**

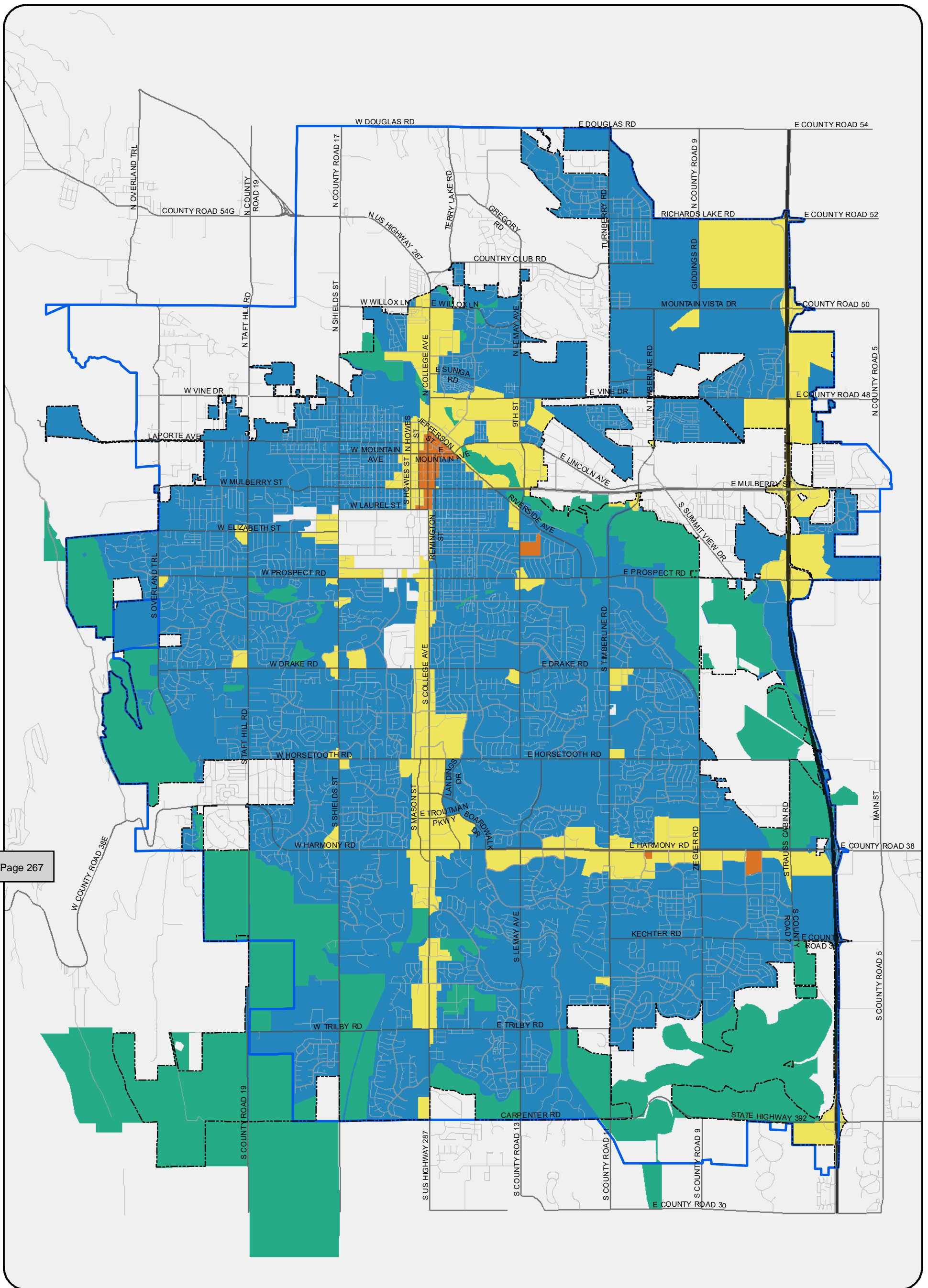
Notes

1: 27,437









4,573.0 0 2,286.50 4,573.0 Feet

Lighting Ordinance Planning - Draft



Lighting Ordinance Context Areas - Draft

-  City Limits - Outline
-  Growth Management Area
-  LC0
-  LC1
-  LC2
-  LC3

I-25 AND MULBERRY - ZONING AMENDMENT

BEING A ZONING AMENDMENT OF THAT PARCEL OF LAND
LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10,
TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE SIXTH P.M.
COUNTY OF LARIMER, STATE OF COLORADO

LEGAL DESCRIPTION (OVERALL PARCEL):

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN; COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN BEING MONUMENTED AT THE SOUTHWEST CORNER BY A 3" BRASS CAP STAMPED "LS23503 2007" IN A RANGE BOX, AND AT THE WEST QUARTER CORNER BY A 2" ALUMINUM CAP STAMPED "LS 5028 1998" ASSUMED TO BEAR N00°09'34"W.

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 10, THENCE N70°26'24"E A DISTANCE OF 648.39 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE 25, AND THE POINT OF BEGINNING;

THENCE ON SAID EASTERLY RIGHT-OF-WAY LINE, THE FOLLOWING SIX (6) COURSES:

1. N58°42'20"W A DISTANCE OF 212.59 FEET;
2. N38°22'59"W A DISTANCE OF 442.05 FEET;
3. N14°16'20"W A DISTANCE OF 206.20 FEET;
4. N00°13'50"W A DISTANCE OF 37.90 FEET;
5. N00°31'20"W A DISTANCE OF 940.70 FEET;
6. N03°19'40"E A DISTANCE OF 245.20 FEET, TO THE SOUTHWESTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20050043464;

THENCE ON THE SOUTHERLY LINE OF SAID PROPERTY, S89°19'40"E A DISTANCE OF 1241.28 FEET, TO A POINT ON THE WESTERLY LINE OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 2002051529;

THENCE ON SAID WESTERLY LINE, S00°20'18"W A DISTANCE OF 1727.08 FEET, TO THE NORTHEASTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20120069518;

THENCE ON THE NORTHERLY AND WESTERLY LINES OF SAID PROPERTY, THE FOLLOWING FOUR (4) COURSES:

1. N69°41'20"W A DISTANCE OF 224.55 FEET;
2. N81°42'20"W A DISTANCE OF 504.90 FEET;
3. N58°42'20"W A DISTANCE OF 20.61 FEET;
4. S00°19'40"W A DISTANCE OF 300.00 FEET, TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 2,043,904 SQUARE FEET OR 46.9216 ACRES.

LEGAL DESCRIPTION CG ZONING DISTRICT (PARCEL1):

A PORTION OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 2009006924 IN THE RECORDS OF THE LARIMER COUNTY CLERK AND RECORDER, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN; COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN BEING MONUMENTED AT THE SOUTHWEST CORNER BY A 3" BRASS CAP STAMPED "LS23503 2007" IN A RANGE BOX, AND AT THE WEST QUARTER CORNER BY A 2" ALUMINUM CAP STAMPED "LS 5028 1998" ASSUMED TO BEAR N00°09'34"W.

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 10, THENCE N70°26'24"E A DISTANCE OF 648.39 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE 25, AND THE POINT OF BEGINNING;

THENCE ON SAID EASTERLY RIGHT-OF-WAY LINE, THE FOLLOWING SIX (6) COURSES:

1. N58°42'20"W A DISTANCE OF 212.59 FEET;
2. N38°22'59"W A DISTANCE OF 442.05 FEET;
3. N14°16'20"W A DISTANCE OF 206.20 FEET;
4. N00°13'50"W A DISTANCE OF 37.90 FEET;
5. THENCE N00°31'20"W A DISTANCE OF 940.70 FEET;
6. N03°19'40"E A DISTANCE OF 245.20 FEET, TO THE SOUTHWESTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20050043464;

THENCE ON THE SOUTHERLY LINE OF SAID PROPERTY, THENCE S89°19'40"E A DISTANCE OF 400.00 FEET;

THENCE DEPARTING SAID SOUTHERLY LINE, THE FOLLOWING FIVE (5) COURSES:

1. S00°40'20"W A DISTANCE OF 591.74 FEET;
2. S44°30'21"W A DISTANCE OF 127.98 FEET;
3. S00°29'39"E A DISTANCE OF 256.82 FEET, TO A POINT OF CURVE;
4. ON THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 600.00 FEET, A CENTRAL ANGLE OF 88°52'35" AND AN ARC LENGTH OF 930.71 FEET, TO A POINT OF TANGENT;
5. S89°22'14"E A DISTANCE OF 333.27 FEET;

THENCE ON SAID WESTERLY LINE, S00°20'18"W A DISTANCE OF 198.69 FEET, TO THE NORTHEASTERLY CORNER OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20120069518;

THENCE ON THE NORTHERLY AND WESTERLY LINES OF SAID PROPERTY, THE FOLLOWING FOUR (4) COURSES:

1. N69°41'20"W A DISTANCE OF 224.55 FEET;
2. N81°42'20"W A DISTANCE OF 504.90 FEET;
3. N58°42'20"W A DISTANCE OF 20.61 FEET;
4. S00°19'40"W A DISTANCE OF 300.00 FEET, TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 753,127 SQUARE FEET OR 17.2894 ACRES.

LEGAL DESCRIPTION I ZONING DISTRICT (PARCEL2):

A PORTION OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 2009006924 IN THE RECORDS OF THE LARIMER COUNTY CLERK AND RECORDER, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN; COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN BEING MONUMENTED AT THE SOUTHWEST CORNER BY A 3" BRASS CAP STAMPED "LS23503 2007" IN A RANGE BOX, AND AT THE WEST QUARTER CORNER BY A 2" ALUMINUM CAP STAMPED "LS 5028 1998" ASSUMED TO BEAR N00°09'34"W.

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 10, THENCE N3°41'03"E A DISTANCE OF 2153.64 FEET TO A POINT TO A POINT ON THE SOUTHERLY LINE OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 20050043464 AND THE POINT OF BEGINNING;

THENCE ON SAID SOUTHERLY LINE, S89°19'40"E A DISTANCE OF 841.28 FEET, TO A POINT ON THE WESTERLY LINE OF THAT PROPERTY RECORDED UNDER RECEPTION NO. 2002051529;

THENCE ON THE SAID WESTERLY LINE, S00°20'18"W A DISTANCE OF 1528.39 FEET;

THENCE DEPARTING SAID WESTERLY LINE THE FOLLOWING FIVE (5) COURSES:

1. N89°22'14"W A DISTANCE OF 333.27 FEET, TO A POINT OF CURVE;
2. ON THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 600.00 FEET, A CENTRAL ANGLE OF 88°52'35" AND AN ARC LENGTH OF 930.71 FEET, TO A POINT OF TANGENT;
3. N00°29'39"W A DISTANCE OF 256.82 FEET;
4. N44°30'21"E A DISTANCE OF 127.98 FEET;
5. N00°40'20"E A DISTANCE OF 591.74 FEET, TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 1,290,778 SQUARE FEET OR 29.6322 ACRES.

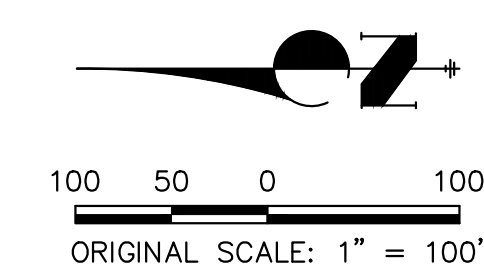
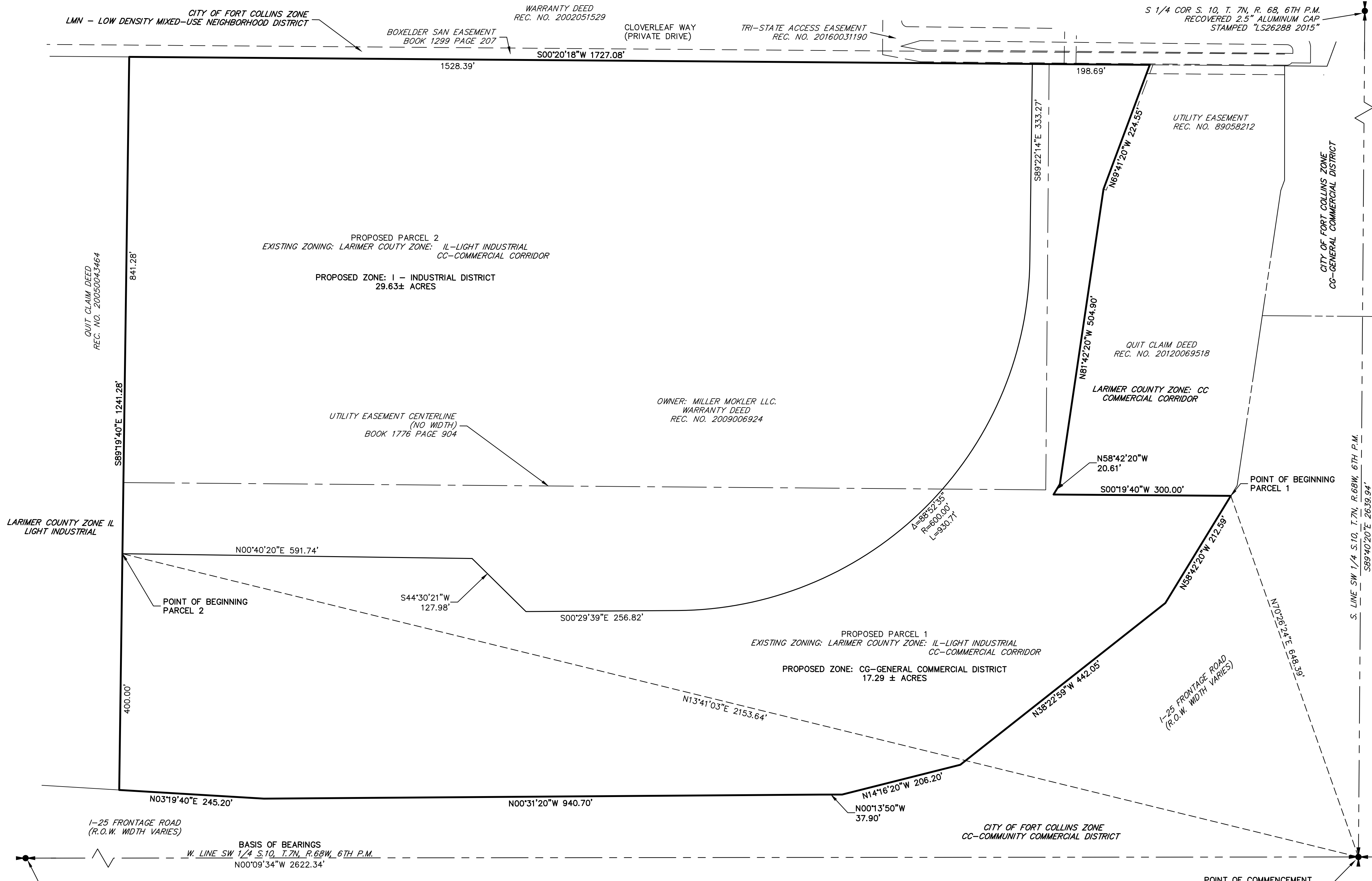
GENERAL NOTES:

1. THE WORD "CERTIFY" OR "CERTIFICATION" AS SHOWN AND USED IN THE SURVEYOR'S CERTIFICATE HEREON IS AN EXPRESSION OF PROFESSIONAL OPINION REGARDING THE FACTS OF THE SURVEY, AND DOES NOT CONSTITUTE A WARRANTY OR GUARANTY, EXPRESSED OR IMPLIED.

I-25 & MULBERRY
39789.00
8-2-2022
REV. 11-14-2023
SHEET 1 OF 1



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LEGEND

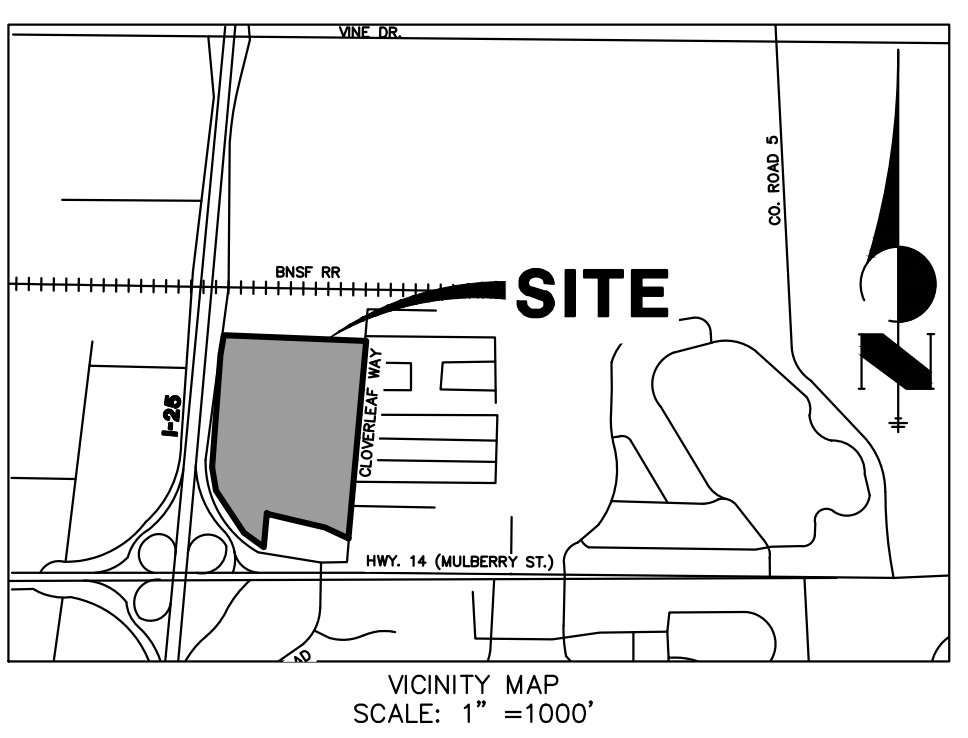
| | |
|---------|------------------------|
| --- | EXISTING PROPERTY LINE |
| - - - - | EXISTING RIGHT-OF-WAY |
| --- | BOUNDARY LINE |
| (R) | RADIAL BEARING |

CITY APPROVAL

ON BEHALF OF THE CITY OF FORT COLLINS, THE UNDERSIGNED HEREBY APPROVE FOR FILING THE ACCOMPANYING REZONE OF THE PLAT OF "I-25 AND MULBERRY"

| | |
|------------------------|------|
| CITY PLANNING DIRECTOR | DATE |
| CITY ENGINEER | DATE |
| CITY CLERK | DATE |

THE REZONE OF THE REAL PROPERTY SHOWN ON THIS PLAT IS APPROVED PURSUANT TO AN ORDINANCE MADE AND ADOPTED BY THE CITY OF FORT COLLINS, LARIMER COUNTY, COLORADO, BY ACTIONS OF THE CITY COUNCIL OF FORT COLLINS AT ITS MEETING ON THE ____ DAY OF ____ 202__ A.D.



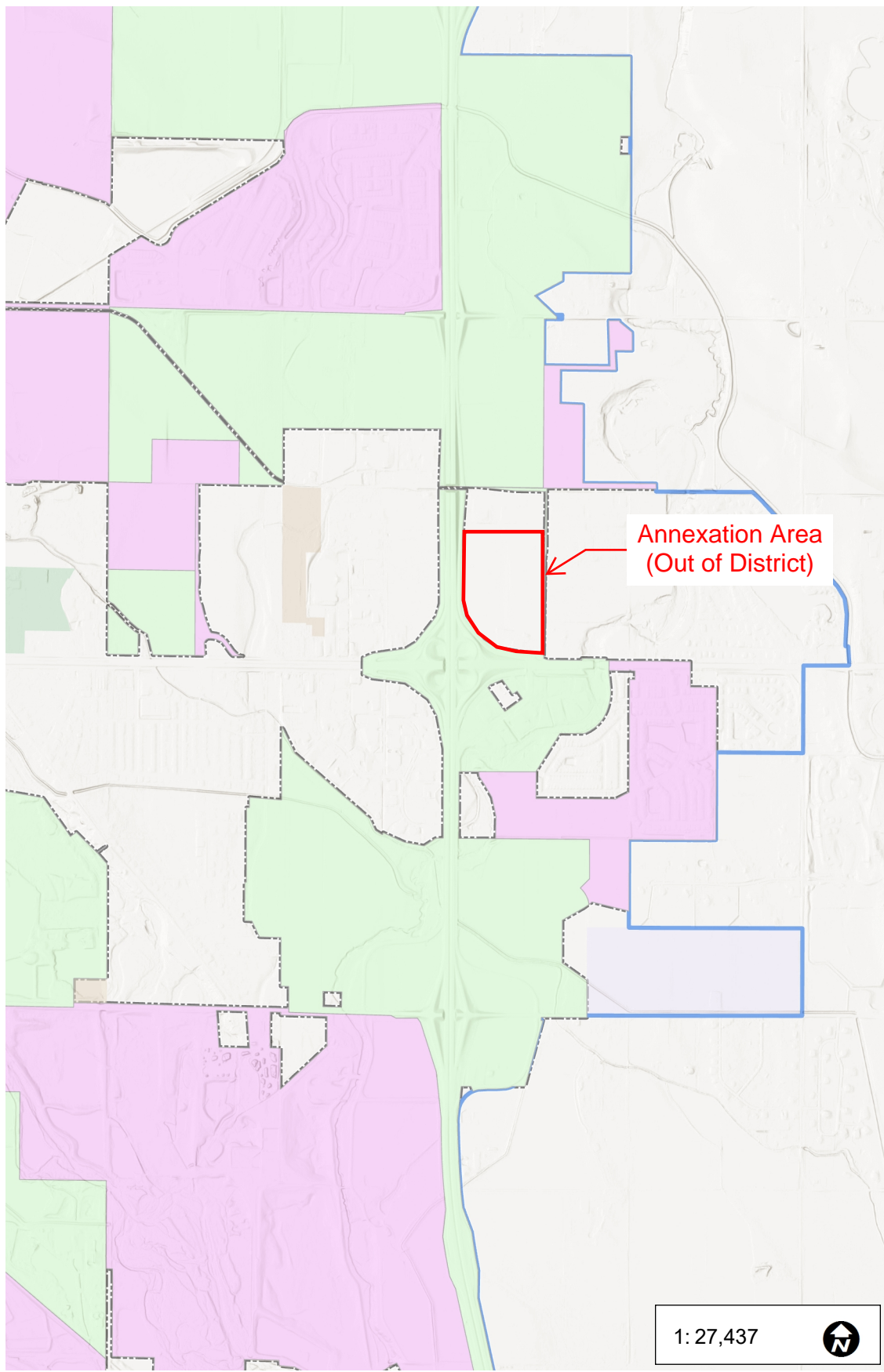
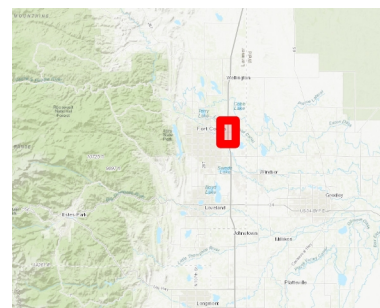
SURVEYORS CERTIFICATE:

I, JARROD ADAMS, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE ZONING AMENDMENT MAP SHOWN HEREON IS A CORRECT DELINEATION OF THE ABOVE DESCRIBED PARCEL OF LAND.
I FURTHER CERTIFY THAT THIS MAP AND LEGAL DESCRIPTION WERE PREPARED UNDER MY DIRECT SUPERVISION ON THIS 27TH DAY OF JULY, 2022.



JARROD ADAMS, PROFESSIONAL LAND SURVEYOR
COLORADO NO. 38252
FOR AND ON BEHALF OF JR ENGINEERING, LLC
7200 S. ALTON WAY SUITE C400
CENTENNIAL CO, 80112

Residential Sign District Map



Annexation Area
(Out of District)

Legend

- Residential Sign Dist
 - Out of District
 - In District
- Growth Management Area
- Parks
- Schools
- Natural Areas
- City Limits
- World Hillshade

Notes

1: 27,437



4,573.0 0 2,286.50 4,573.0 Feet

AGENDA ITEM SUMMARY

City Council



STAFF

Jacob Castillo, Sustainability Officer
Amy King, Environmental Services Director

SUBJECT

Resolution 2024-070 Authorizing the Execution of an Amendment to the Intergovernmental Agreement for Solid Waste Programming and Infrastructure Improvements.

EXECUTIVE SUMMARY

The purpose of this item is to make an amendment to the 2019 Intergovernmental Agreement for Solid Waste Programming and Infrastructure Improvements (the "IGA") to place the existing agreement into abeyance until the parties agree on further amendments to address the changed circumstances and updated timelines. The new amended agreement will supersede the existing one.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

Loveland, Larimer County, Fort Collins, Wellington and Estes Park created the Regional Wasteshed Coalition in 2015 to plan for future infrastructure needs after the Larimer County Landfill closes in mid-2025. This planning work developed the Solid Waste Infrastructure Master Plan (SWIMP), which Larimer County adopted in 2018. Subsequently, the aforementioned communities adopted a related Intergovernmental Agreement (IGA) in 2019 which clarifies how they would work together to implement the SWIMP.

Since the adoption of the 2019 IGA, the landscape of the regional wasteshed has significantly changed. As such, the IGA includes outdated language, assumptions, costs estimates, market conditions, and timelines that no longer reflect the complex reality that exists today, which staff discussed with Council at a Work Session on March 26, 2024.

Given the current state of the IGA, four of the five signatories to the IGA have voted to suspend the agreement. During the period of suspension, the Regional Wasteshed Coalition members have committed to working together to create an amended agreement for implementing waste and recycling infrastructure and policies. The next agreement is anticipated to supersede the IGA that this resolution would place into abeyance.

- Attachment 3 provides additional background and context for this project.
- Attachment 4 is the 2019 IGA that was included in the March 26, 2024 Work Session.

next Steps

- Staff members of the Regional Wasteshed communities will work together to support the creation of the next agreement.
- Fort Collins staff will conduct analysis on pathways to infrastructure for food scraps and construction and demolition materials (C&D) through grant-funded consulting support as part of the Council Priority to Accelerated Pathways for Zero Waste Infrastructure and Policies.

CITY FINANCIAL IMPACTS

None.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Resolution for Consideration
2. Exhibit A to Resolution
3. March 26, 2024 Work Session Agenda Item Summary (Copy)
4. 2019 Regional Wasteshed IGA

RESOLUTION 2024-070
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE
INTERGOVERNMENTAL AGREEMENT FOR SOLID WASTE
PROGRAMMING AND INFRASTRUCTURE IMPROVEMENTS

A. On December 17, 2013, City Council adopted Resolution 2013-111 recognizing that the City's history of public education regarding recycling and solid waste reduction and waste reduction goals from 1985 through the adoption of Resolution 1999-139, which established the goal of diverting 50% of the community's waste stream from landfill disposal by 2010.

B. On October 21, 2014, City Council adopted Resolution 2014-098, establishing the City's Waste Diversion Policy with the goal of achieving "zero waste" by 2030 (with interim goals) and recognizing the City's "Road to Zero Waste" plan created to achieve this policy goal and the resulting direct economic and environmental benefits to the local and global community.

C. In early 2016, the Larimer County Board of Commissioners convened the North Front Range Wasteshed Policy Group, referred to as the North Front Range Regional Wasteshed Coalition (the "Coalition") to identify, analyze, and prioritize solid waste infrastructure and implementation options, resulting in the development of a Solid Waste Infrastructure Master Plan (the "Master Plan") for adoption by Larimer County.

D. On December 19, 2018, the Larimer County Planning Commission adopted the Master Plan, which includes various recommendations for infrastructure and facility improvements, education, licensing, and other program elements to provide solid waste services within Larimer County and increase material diversion from landfill disposal. On January 15, 2019, the City Council adopted Resolution 2019-010 supporting the Master Plan.

E. After adoption of the Master Plan, the County, the City, the City of Loveland and the Town of Estes Park desired to work cooperatively to implement the Master Plan, continue to develop joint programs for consistent public education, evaluate future technologies associated with solid waste management, and establish the respective responsibilities of the members of the Coalition by entering into an Intergovernmental Agreement for Solid Waste Programming and Infrastructure Improvements (the "IGA"). The City Council authorized the execution of the IGA in Resolution 2019-047. Larimer County, the City of Loveland, and the Towns of Estes Park and Wellington also entered into the IGA (together with the City, the "Parties").

F. The IGA was designed to allow the Parties to develop a comprehensive systems-based approach to waste management in the North Front Range. Specifically, the IGA prioritized the development of a new landfill, transfer station, yard waste facility, food waste composting facility, and construction and demolition waste processing facility. These priorities align with meeting the City's zero waste and climate action goals,

particularly the development of a construction and demolition waste processing facility and food composting facility. The IGA also created the Solid Waste Policy Council to advise the Larimer County Board of Commissioners on implementation of and updates to the Master Plan. The initial term of the IGA is to run through December 31, 2050, with an automatic extension term of ten years. The IGA authorizes its termination in the event of non-appropriation, by a Party giving 18 months' written notice, or by mutual agreement of the Parties.

G. In recent years, elements of the wasteshed and priorities among the Parties have changed. All Parties, except for the City, have amended the IGA to place its requirements in abeyance. A copy of the amendment adopted by the other Parties is attached hereto as Exhibit "A."

H. The City is committed to working in partnership with the County, the City of Loveland, and the Towns of Estes Park and Wellington to develop a new agreement to implement the Master Plan while the IGA is held in abeyance. The City seeks to have the new agreement allow for the implementation of an integrated package of waste disposal services designed to increase diversion and confer health and environmental benefits upon the residents of the City and Larimer County.

I. Article II, Section 16 of the Charter of the City of Fort Collins empowers the City Council 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.

J. Under Section 1-22 of the City Code, intergovernmental agreements and other cooperative arrangements between the City and other governmental entities are to be submitted to the City Council for review, unless they fit within one of the exceptions that permit execution by the City Manager.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the Mayor is hereby authorized to execute the amendment to the IGA substantially in the form attached hereto as Exhibit "A," with such modifications and additions 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 set forth herein and not otherwise inconsistent with this Resolution.

Passed and adopted on May 21, 2024.

Mayor

ATTEST:

Interim City Clerk

Effective Date: May 21, 2024
Approving Attorney: Ted Hewitt

**INTERGOVERNMENTAL AGREEMENT FOR SOLID WASTE
PROGRAMMING AND INFRASTRUCTURE IMPROVEMENTS
Amendment 1, 2023**

This Amendment to the 2019 Intergovernmental Agreement for Solid Waste Programming and Infrastructure Improvements ("Agreement") is made and effective on _____, 2023 (Effective Date), by and among the Board of County Commissioners of Larimer County, Colorado (referred to as "County"), and the City of Fort Collins, Colorado, the City of Loveland, Colorado, the Town of Estes Park, Colorado, and the Town of Wellington, Colorado (individually referred to as "Municipality" or collectively as "Municipalities"). The County and Municipalities shall jointly be referred to as the "Parties".

I. RECITALS

WHEREAS, under the 2019 Solid Waste Programming and Infrastructure Improvements Agreement (2019 Agreement), the Parties have worked cooperatively to implement the 2018 Solid Waste Infrastructure Master Plan (SWIMP), to coordinate and establish the respective responsibilities of the Parties in an Integrated Solid Waste Management System including, but not limited to, planning, education, waste prevention, recycling, collection, composting, transportation and disposal, and to evaluate future technologies associated with solid waste management; and

WHEREAS, County and Municipalities are authorized pursuant to Article XIV, Section 18 of the Colorado Constitution and Section 29-1-201, et seq., Colorado Revised Statutes, to enter into intergovernmental agreements for the purpose of providing any service or performing any function which they can perform individually; and

WHEREAS, conditions have changed since the 2019 Agreement and decisions since 2019 have affected the regional waste shed such that the County is unable to fulfill the obligations set forth in Section 5.2; and

WHEREAS, the Parties intend to continue to cooperate to reevaluate and reprioritize solid waste facilities identified in the SWIMP and timeframes; and

WHEREAS, the Parties recognize that continued cooperation pursuant to this Agreement and the 2019 Agreement will allow for implementation of an integrated package of waste disposal services designed to increase recycling and confer significant health and environmental benefits for Larimer County.

NOW THEREFORE, the Parties agree as follows:

II. AMENDED AGREEMENT

1. The Parties will temporarily suspend or put in abeyance the 2019 Agreement until they agree on amendments to address the changed circumstances and update timelines.
2. During the abeyance, the Parties will continue to work together to address amendments in accordance with the provisions in Section VI, Solid Waste Council.
3. The Parties will coordinate to focus on amending topics including but not limited to the following:
 - a. Update certain Definitions in Section II to be consistent with those of Colorado Department of Health and Environment (CDPHE) and to reflect updates to priorities;
 - b. Revisit and redefine the General Obligations set forth in Section V, for facilities, design, financing, operations, waste stream facility types, haulers – for both Larimer County (Sec. 5.1) and the Parties (Sec. 5.2).
 - c. Remove prohibitions of flow control by Parties.
 - d. Align the direction for the Solid Waste Policy Council set forth in Section V to reflect input of a Bylaws Committee that will update the bylaws.
4. The Parties will consider and reprioritize the projects identified through the SWIMP that appear in the General Obligations section.
5. Along with these steps, the Parties will prepare an amended Agreement, that once put in place would supersede this Agreement and the 2019 Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be ratified by resolution of their governing Boards or Councils as evidenced by the minutes of their governing Boards or Councils and executed by their duly authorized officers as of the date first written.

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SIGNATURE PAGES FOLLOW

BOARD OF COUNTY COMMISSIONERS OF
LARIMER COUNTY, COLORADO

By: Jody Shaddock McNally

Title: Chair, Larimer County Bocc

ATTEST:

Jessa Beatty

Approved as to form:

Wimber

County Attorney



CITY OF FORT COLLINS, COLORADO

By: _____

Title: _____

ATTEST:

Approved as to form:

City Attorney

CITY OF LOVELAND, COLORADO

By: _____

Title: _____

ATTEST:

Approved as to form:

City Attorney

TOWN OF ESTES PARK, COLORADO

By: _____

Title: _____

ATTEST:

Approved as to form:

Town Attorney

TOWN OF WELLINGTON, COLORADO

By: _____

Title: _____

ATTEST:

Approved as to form:

Town Attorney

WORK SESSION AGENDA ITEM SUMMARY

City Council



STAFF

Jacob Castillo, Sustainability Officer
Amy King, Environmental Services Director
Honore Depew, Climate Program Manager
Caroline Mitchell, Waste Reduction and Recycling Lead Specialist

SUBJECT FOR DISCUSSION

Regional Wasteshed Update: Intergovernmental Agreement and Immediate Next Steps.

EXECUTIVE SUMMARY

The purpose of this item is to provide context for Councilmembers to discuss approaches to regional collaboration supporting the Council Priority to Accelerate Zero Waste Infrastructure and Policy, including a request from Larimer County to suspend an Intergovernmental Agreement.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

1. What feedback do Councilmembers have about whether to bring forward a Resolution placing the 2019 Intergovernmental Agreement into abeyance?
2. What are the areas of primary importance to Councilmembers as staff engage in finding regional solutions for missing infrastructure?
3. Do Councilmembers wish to hold a joint meeting with the Larimer County Board of Commissioners to discuss Regional Wasteshed collaboration?

BACKGROUND / DISCUSSION

Connection with Adopted Goals and Council Priorities

Development of community-scale, regional diversion facilities, especially for construction and demolition (C&D) materials and food scraps, is needed to advance future policy initiatives to align with the following adopted plans and is essential to meeting the Council-adopted goal of zero waste by 2030:

- Our Climate Future Big Moves 2 (Zero Waste Neighborhoods) and 10 (Zero Waste Economy)
- City Plan Principle ENV 5: Create a Zero Waste System
- 2024-25 City Strategic Plan ENV 1 (presumed to be adopted March 19, 2024)
- City Council 2024-25 Priority: Accelerate Zero Waste Policies and Infrastructure

Background

For many years, the City has prioritized efforts to become a zero-waste community. With the pending closure of the Larimer County Landfill in mid-2025, there are decision points in the near term that may move our community along the path toward our goals. The recent adoption of Council Priorities further emphasized the need for C&D diversion and recycling, and the diversion of food waste from landfills. City staff have been working with the Regional Wasteshed Coalition to facilitate the development of the needed infrastructure.

This Work Session item is intended to prompt a discussion between Councilmembers about the City's approach to Regional Wasteshed collaboration and the Intergovernmental Agreement (IGA). Work Sessions specific to the Council Priority to *Accelerate Zero Waste Policies and Infrastructure* are being planned throughout 2024 to discuss options and opportunities for City Council action after additional research has been conducted and further staff collaboration with Larimer County, per Council guidance.

Regional Wasteshed Coalition and Solid Waste Infrastructure Master Plan

The Regional Wasteshed Coalition (the Coalition) was formed nearly ten years ago to plan for the Larimer County Landfill reaching capacity around 2025 and includes Fort Collins, Larimer County, Loveland, Estes Park, and Wellington. The Coalition has been valuable for addressing and planning for future needs, however, the Coalition's recent ability to move toward agreed upon outcomes has been suboptimal regional waste issues through the development of the Solid Waste Infrastructure Master Plan (SWIMP). The Coalition has been unable to substantially advance policies, strategies and tactics that make headway on the work outlined in the SWIMP. There are a variety of factors that have contributed to the slowdown of progress, one being a lack of alignment on the approach to the Intergovernmental Agreement (IGA) that commits signatories to specific expectations for infrastructure and policy.

Intergovernmental Agreement (IGA)

The 2019 IGA was developed and adopted by all members of the Coalition to create clear expectations for conditions needed to spur the County's construction of new diversion facilities concurrent with supportive policy development.

Larimer County has requested each member jurisdiction formally suspend the agreement and does not anticipate bringing the IGA back out of abeyance. Four out of five signatories in the Coalition have voted to place it in abeyance, Fort Collins being the sole organization that has not.

The reasons other jurisdictions have shared for putting the IGA into abeyance are varied and nuanced based on the needs of each individual community, but the overarching theme is that the agreement has outdated language, assumptions, costs for facilities, market assumptions, and timeframes that no longer reflect the current market within the Regional Wasteshed. This is especially true for the infrastructure cost estimates, over which the County expressed concerns, stating that the cost of the infrastructure was infeasible for the County to cover alone as stipulated in the IGA, given rapidly escalating costs and the County's perceived uncertainty in the market about volume of waste materials.

It is important to note that the IGA has meaningful content that commits to the tiered prioritization of infrastructure projects. This prioritization aligns with the waste hierarchy that guides policy decisions and the strategic approach to waste reduction and recycling in Fort Collins. Ensuring that these elements of the agreement are not lost in the process of advancing the work of the Regional Wasteshed Coalition is vitally important, as clarity of expectations provide the foundation for moving collaboratively toward a zero-waste community. The County is currently progressing cautiously on the landfill and transfer station, which is foundational infrastructure.

The prioritization of projects in the IGA is of particular importance since Larimer County is currently considering multiple partners and technological solutions, some of which may be aligned with the goals of the City and other, like waste-to-energy projects, that are not necessarily aligned with the City’s preferred approach and were assigned a low priority in in both the SWIMP and the IGA. Furthermore, without an IGA in place, there is not a clear process to determine prioritization of potential infrastructure. See the section below for details of the current state of Larimer County’s plan for infrastructure.

Fort Collins’ members of the Regional Wasteshed Policy Advisory Committee (PAC) have expressed interest during past discussions in an approach that would develop a replacement IGA prior to suspending the current IGA. Larimer County has proposed recrafting an agreement in the future that could take the form of multiple IGAs with individual partners or possibly one regional IGA. At this juncture, the current IGA is not being followed and the County has suspended meetings of the PAC until all partners place the IGA into abeyance. The following table includes potential actions councilmembers may consider in relation to the IGA.

| Potential options for next steps for the IGA | |
|---|--|
| Option | Considerations |
| 1) Place IGA into abeyance | <ul style="list-style-type: none"> • Ends commitment to tiered prioritization of infrastructure elements • Meets Larimer County request and aligns with partner actions • Unclear timeline, roles and process to create next IGA <ul style="list-style-type: none"> ○ Unclear if next IGA would be shared regional IGA or if distinct IGAs between Larimer County and each community would be developed |
| 2) Place IGA into abeyance with conditions | <ul style="list-style-type: none"> • Could place current IGA into abeyance for a certain amount of time and have it come back into effect unless specific actions (e.g. creating a new IGA) have been completed • Many of the same considerations as Option 1 |
| 3) Replace and repeal IGA | <ul style="list-style-type: none"> • Develop new IGA and repeal prior at the same time as adopting new • Would have clarity on next agreement prior to exiting existing • Unclear timeline or pathway |
| 4) Terminate IGA | <ul style="list-style-type: none"> • Would likely have same impact as putting IGA into abeyance, as Larimer County does not intend to bring the IGA out of abeyance • Requires notification and goes into effect 18 months after notice is given <ul style="list-style-type: none"> ○ Could place IGA into abeyance for the 18 months until it is terminated • May be clearer than unending abeyance |
| 5) No action | <ul style="list-style-type: none"> • Current IGA would remain in place but commitments unlikely to be met • Next steps unclear |

Planned Infrastructure and Status

The SWIMP identifies and prioritizes infrastructure to be constructed with regional partner policy support. In 2022, Larimer County issued a request for proposals (RFP) for potential diversion partners which yielded additional potential infrastructure. Larimer County is in negotiations with four potential private partners, some of which propose waste-to-energy or mixed waste processing, which are not categories of infrastructure prioritized in the SWIMP. Details are included in the following table.

Status of infrastructure identified in the SWIMP and Larimer County RFP

| Infrastructure element | Material processed | Tier in SWIMP | Status | Notes |
|--|------------------------------------|---------------|---|--|
| Infrastructure elements from SWIMP and in IGA | | | | |
| Landfill | Waste | 1 | Under construction | Market risk of landfill not receiving enough material if Fort Collins does not adopt flow control. |
| Transfer station | Waste | 1 | Planned | |
| C&D Recycling | Construction & Demolition material | 1 | Dependent on receiving state grant (notification anticipated Q2 2024) | Addresses barrier of having to separate all materials at C&D sites – could make C&D materials “single stream” recyclable |
| Yard trimmings composting | Yard trimmings | 1 | Under consideration | Could move forward via A1 Organics proposal to Larimer County |
| Food scraps composting | Food scraps | 1 | Unclear | <ul style="list-style-type: none"> Residential food scraps are often collected mixed with yard waste and composted <ul style="list-style-type: none"> No identified path for this material Commercial food scraps are often collected separately and composted or anaerobically digested |
| Anaerobic digestion | Food scraps, nutrient-rich liquids | 2 | Under consideration | Could move forward via Anaergia proposal to Larimer County |
| Expand recycle center | Curbside recyclables | 2 | Not being considered | Requires more recyclables than facility currently receives |
| Waste-to-Energy | Mixed waste or specific materials | 3 | Under consideration | EPA waste hierarchy supports this only for materials that can't be reused, recycled or composted |
| Specific companies that submitted proposals to Larimer County RFP | | | | |
| Anaergia | Mixed waste or food scraps | 2 or 3 | Under consideration | <ul style="list-style-type: none"> Processing of food scraps consistent with EPA waste hierarchy Mixed waste processing can be more expensive and can generate materials that are hard to market |
| Biochar | Wood | N/A | Under consideration | <ul style="list-style-type: none"> May process treated / painted wood or clean wood Uncertainty around potential air quality impacts |
| A1 Organics | Yard trimmings | 1 | Under consideration | Largest composter in Colorado, currently owns and operates sites in Eaton, Keenesburg |
| Plasma Development | Unclear | 3 | Under consideration | Waste to Energy company |

Flow Control – Context for Future Discussion

Flow control is a requirement that waste is directed for disposal to a specific facility. The location that receives the material must be owned and operated by a public entity and there must be a public benefit to sending the material to that facility.

Larimer County would like Fort Collins to consider instituting flow control for solid waste to ensure the County has enough material to operate the new landfill and transfer station, and potentially support development of future diversion facilities. The IGA states the partners will not adopt flow control for waste. However, there have been significant market changes since the adoption of the IGA that change the assumptions and further examination may be warranted on the impacts flow control would have on the City, the County, and customers in the regional wasteshed.

Consistent with the commitments in the IGA, the City has already conditionally required that mixed C&D waste be deposited at the County processing facility if and when it is constructed. However, for waste, flow control has not been adopted, meaning haulers can decide where to take it. If haulers opt to take more waste to other landfills, the County is at risk of not having enough material to cover the costs of landfill operations.

To address this risk, Larimer County is requesting Fort Collins consider adopting flow control to Larimer County for the residential waste collected via the City's single hauler contract. The adoption of flow control has a pricing impact on customers.

Staff propose making this topic a central consideration at future Work Sessions as councilmembers consider ways to advance the priority to accelerate zero waste infrastructure and policies. In the meantime, staff from both organizations will continue to meet regularly to seek clarity and discuss viable options.

Grant-supported Research and Development

The City has recently been awarded a Technical Assistance Grant (TASP) by the State of Colorado to identify specific options and implementable solutions for greater C&D diversion and recycling, and community-scale food scraps composting. This staff work will begin in the spring of 2024 and should yield clear actions that the City, on its own or in partnership with regional collaborators, can take to advance its zero waste goals. The research conducted will be central to future Work Sessions on the Council Priority to *Accelerate Zero Waste Policies and Infrastructure*. Concurrently, Larimer County is pursuing State grant funds to construct a C&D processing facility that is aligned with the City's diversion objectives. Ongoing collaboration and cooperation with partners is critical to identifying the path forward on local and regional waste solutions.

Data and Supporting Information

In 2021 – the most recent year for which data is available – the City of Fort Collins produced 350,000 tons of waste; 52% of it, or 182,000 tons, was diverted from the landfill.

The Community Diversion Rate includes material from the residential, commercial, and industrial sectors and is calculated based on weights. Per recent discussions regarding the use of weight-based measurement rather than volume, Fort Collins uses weight-based measurements as they are the industry standard and are the most accurate available approach to measuring waste. Fort Collins also tracks diversion rates by sector (in 2021, they were: single-unit residential: 29%, commercial / multi-unit residential: 32%, industrial: 66%). In order to capture the impacts of source reduction, Fort Collins also tracks the pounds per capita of material landfilled. Conducting more regular and smaller scale waste sorts is also a potential future source of additional data about materials disposal in the community.

More information can be found in the 2021 Waste Reduction and Recycling Annual Report (included as an attachment).

NEXT STEPS

- Staff will bring forward a Resolution relating to the IGA, if desired, consistent with feedback.
- If Councilmembers desire a joint Work Session with the Larimer County Commissioners, an off-cycle meeting time will be set.
- City staff will work with the TASP grant consultants to further identify and vet potential pathways to food scrap and C&D materials infrastructure, including analysis and collaboration regarding flow control informed by Councilmember feedback.
- City staff will propose next steps for the Council Priority to Accelerate Zero Waste Policies and Infrastructure at a work session on May 14.

ATTACHMENTS

1. Solid Waste Infrastructure Master Plan (SWIMP) Executive Summary
2. 2019 Regional Wasteshed Intergovernmental Agreement
3. 2021 Waste Reduction and Recycling Annual Report (most recent available)
4. Presentation

COPY

**INTERGOVERNMENTAL AGREEMENT FOR SOLID WASTE PROGRAMMING
AND INFRASTRUCTURE IMPROVEMENTS**

This Intergovernmental Agreement for Solid Waste Programming and Infrastructure Improvements (“Agreement”) is made and effective on March 19, 2019 (Effective Date), by and among the Board of County Commissioners of Larimer County, Colorado (referred to as “County”), and the City of Fort Collins, Colorado, the City of Loveland, Colorado, and the Town of Estes Park, Colorado (individually referred to as “Municipality” or collectively as “Municipalities”). The County and Municipalities shall jointly be referred to as the “Parties”.

I. RECITALS

WHEREAS, the appropriate management of solid waste materials is critical to human health and safety, the environmental and the economic wellbeing of the region; and

WHEREAS, the Larimer County Solid Waste Facility located at 5887 S. Taft Hill Road serves as a regional solid waste processing and disposal site for residents of Larimer County located in municipalities and unincorporated areas; and

WHEREAS, The Larimer County Solid Waste Facility includes a regional sanitary landfill that receives approximately one million cubic yards of material per year and is forecasted to consume the available permitted air space capacity by the fourth quarter of the year 2024; and

WHEREAS, the Parties formed the North Front Range Regional Wasteshed Coalition (including a Technical Advisory Committee of staff members and a Policy Advisory Committee of elected officials and a 60+ member stakeholder advisory group) to identify, analyze, and prioritize solid waste infrastructure and implementation options. This work resulted in the development of a Solid Waste Infrastructure Master Plan for adoption by Larimer County; and

WHEREAS, on December 19, 2018, the Larimer County Planning Commission adopted the 2018 Solid Waste Infrastructure Master Plan, which includes various recommendations for infrastructure and facility improvements, education, licensing and other program elements to provide solid waste services within Larimer County and increase material diversion from landfill disposal; and

WHEREAS, the Parties desire to work cooperatively to implement the 2018 Solid Waste Infrastructure Master Plan, continue to develop joint programs for consistent public education, evaluate future technologies associated with solid waste management, and establish the respective responsibilities of the Parties; and

WHEREAS, the Colorado legislature has expressly endorsed “local efforts...focused toward the reduction of the volume and toxicity of the waste stream...through source reduction, recycling, composting, and similar waste management strategies” (Section 30-20-100.5, C.R.S.) and

authorized designation of exclusive sites and facilities for disposal of solid waste (Section 30-20-107, C.R.S.); and

WHEREAS, cooperation of the Parties pursuant to this Agreement will allow for implementation of an integrated package of waste disposal services designed to increase recycling and confer significant health and environmental benefits upon the citizens of Larimer County by enhancing recycling incentives and opportunities, obtaining information for the tracking and planning of waste diversion, and increasing the ability of the Parties to monitor and enforce recycling and other waste management laws; and

WHEREAS, County and Municipalities are authorized pursuant to Article XIV, Section 18 of the Colorado Constitution and Section 29-1-201, et seq., Colorado Revised Statutes, to enter into intergovernmental agreements for the purpose of providing any service or performing any function which they can perform individually; and

WHEREAS, in addition to the existing infrastructure and infrastructure to be constructed by Larimer County, the Municipalities have developed and continue to operate the following solid waste infrastructure: the Estes Park Transfer Station owned by the Town of Estes Park and operated by Larimer County, the Timberline Recycling Center and the Crushing Operations Site which are owned by the City of Fort Collins, and the Loveland Recycling Center and collection vehicles which are owned by the City of Loveland.

NOW THEREFORE, the Parties agree as follows:

II. DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply:

Clean Material Recovery Facility. A facility consisting of structures, machinery, devices, or persons to sort, bale, or otherwise manage or process recyclable materials prior to conveyance to end markets.

Construction and Demolition Waste. Waste that is generated from construction, remodeling, repairs, or demolition of buildings, and other structures which includes but is not limited to, lumber, bricks, carpets, ceramics, sheetrock, porcelain, metals, drywall, window glass, metal and plastic piping, paint and any other non-hazardous materials resulting from construction and demolition activities.

Disposal. The final treatment, deposition, or incineration of Solid Waste but shall not include Waste Prevention or Recycling as defined herein.

Flow Control. Provision that allows local governments to designate the places where materials generated within their jurisdiction are taken for processing disposal. For the purposes of this Agreement, flow control explicitly excludes municipal solid waste, yard waste, food waste and hazardous waste.

Food Waste. Materials that include animal/fruit/vegetable based staple scraps, old fruit/vegetables, egg shells, coffee grounds, tea bags, food-soiled paper, old bread, food scraps, and expired de-packaged foods. Additionally, it may include plant wastes from the food processing industry and pre-consumer vegetative food waste.

Hauler. Any person or company that collects, transports and/or disposes of discarded materials and waste (e.g. solid waste, recyclables, food waste, yard trimmings) as their primary business and delivers waste into facilities for disposal or recycling.

Hauler Licensing. A coordinated licensing approach for data tracking, public outreach and curbside collection requirements for implementation to licensed haulers (Appendix C).

Hazardous Waste. Hazardous substances as defined in 25-15-101(6), as amended, and any other substances or materials defined or classified as such by the Hazardous Waste Commission pursuant to 25-15-302, C.R.S., as amended.

Integrated Solid Waste Management System. The system of facilities for the collection, processing, and disposal of solid waste currently owned/operated by the Parties, which includes the Estes Park Transfer Station owned by the Town of Estes Park and operated by Larimer County, the Timberline Recycling Center and the Crushing Operations Site owned by the City of Fort Collins, the Loveland Recycling Center and collection vehicles owned by the City of Loveland, and the Larimer County Solid Waste Infrastructure System.

Landfill. A discrete area of land or an excavation where solid wastes are placed for final disposal, which is not a land application unit, waste impoundment, or waste pile. Landfills include, but are not limited to, ash monofills, construction and demolition landfills, sanitary landfills, tire monofills and similar facilities where final disposal occurs.

Larimer County Solid Waste Infrastructure System. Includes Larimer County's Solid Waste facilities used to manage Solid Waste which includes but is not limited to household hazardous waste, landfill, recycling facility, and Tier 1 processing and disposal facilities as established pursuant to the approved Solid Waste Infrastructure Master Plan.

Municipal Solid Waste. Solid waste from household, community, commercial and industrial sources that does not contain hazardous wastes as defined in Section 25-15-101(9) of the Colorado Hazardous Waste Act unless otherwise regulated by the Colorado Department of Public Health and Environment.

Processing. Sorting and converting solid waste, by manual or mechanical means, into raw material for new use. Includes Recycling and Composting.

Recyclable Material. Any type of discarded or waste material that is not regulated under Section 25-8-205(1) (e), C.R.S., and can be reused, remanufactured, reclaimed, or recycled.

Solid Waste. Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, air pollution control facility, or other discarded material; including solid, liquid, semisolid,

or contained gaseous material resulting from industrial operations, commercial operations or community activities. Solid Waste does not include any solid or dissolved materials in irrigation return flows, or industrial discharges which are point sources subject to permits under the provisions of the “Colorado Water Quality Control Act”, Title 25, Article 8, CRS or materials handled at facilities licensed pursuant to the provisions on “Radiation Control Act” in Title 25, Article 11, CRS. Solid Waste does not include: (a) materials handled at facilities licensed pursuant to the provisions on radiation control in Article 11 of Title 25, C.R.S.; or (b) excluded scrap metal that is being recycled; or (c) shredded circuit boards that are being recycled.

Solid Waste Policy Council or Policy Council. The Policy Council created to advise the Parties on solid waste matters regarding infrastructure, programs, education and master plan updates.

Solid Waste Infrastructure Master Plan. The Larimer County 2018 Solid Waste Infrastructure Master Plan as approved and amended from time to time by the Larimer County Planning Commission.

Technical Staff. A group of technical staff provided by each Party pursuant to Section 6.1.2 to support the Policy Council.

Tier 1 Infrastructure Facilities. Tier 1 Infrastructure facilities are outlined in the approved Solid Waste Infrastructure Master Plan to be developed in supporting the solid waste infrastructure system and include: Central Transfer Station, New County Landfill, Construction and Demolition Waste Processing Facility, Yard Waste Windrow Composting Facility and Food Waste Composting Facility (Appendix A).

Tier 2 Infrastructure Facilities. Tier 2 Infrastructure facilities are outlined in the approved Solid Waste Infrastructure Master Plan to be reviewed on an annual basis for possible implementation at a later date and include: Clean Material Recovery Facility/Upgrade, Anaerobic Digestion/Pre-Processing (Appendix A).

Tier 3 Infrastructure Facilities. Tier 3 Infrastructure facilities are outlined in the approved Solid Waste Infrastructure Master Plan and will be further reviewed on an annual basis as industry changes occur and include: Waste to Energy and Refuse Derived Fuel Processing (Appendix A).

Transfer Station. A facility at which Solid Waste, awaiting transportation to a processing or disposal site, is transferred from one type of containerized collection receptacle and placed into another and/or is processed for compaction.

Waste Prevention. Methods utilized to create less waste prior to recycling, composting or disposal.

Yard Waste. Waste generated from yard maintenance, including garden waste, fruit fall, grass clippings, wood, twigs, leaves and branches.

III. PURPOSE

The purpose of this Agreement is to foster coordination and cooperation between the Parties and to establish the respective responsibilities of the Parties in an Integrated Solid Waste Management System including, but not limited to, planning, education, waste prevention, recycling, collection, composting, transportation and disposal.

IV. TERM

- 4.1 Initial Term.** This Agreement shall become effective on the Effective Date and shall remain in effect through December 31, 2050 (Initial Term).
- 4.2 Extension Term.** Unless earlier terminated as provided herein, the Agreement will automatically renew for an additional term of ten years (Extension Term).
- 4.3 Termination.** Any Party shall have the right to terminate their continued participation in this Agreement during the Initial Term or any Extension Term as follows:
 - 4.3.1** In the event of non-appropriation by their elected bodies.
 - 4.3.2** By written notice given to all other Parties 18 months prior to the date on which the Party elects to terminate their continued participation.
 - 4.3.3** By mutual agreement by all parties.

V. GENERAL OBLIGATIONS OF THE PARTIES

5.1 LARIMER COUNTY

- 5.1.1 Land for Facility Improvements.** The County agrees to provide land for construction of Tier 1 Infrastructure Facilities which includes the County-owned land adjacent to the existing Larimer County Landfill located at 5887 S. Taft Hill Road and the 626 acres of County owned property located at the intersection of County Road 76 East and County Road 11 North. An alternate site for Tier 1 composting facilities is indicated on the map in appendix D, which is on jointly owned property by the County, City of Fort Collins, and City of Loveland. Construction of any new Tier 1 Infrastructure on land jointly-owned by Larimer County, Loveland and Fort Collins will require consent from the Cities of Fort Collins and Loveland as landowners and pursuant to the 1974 Operating Agreement. If consent is not given by Fort Collins or Loveland, Larimer County shall not be required to provide the yard waste and food waste facilities described in Sections 5.1.7 and 5.1.8 below; however, the Parties agree to negotiate in an effort to find an alternative location for such facilities.
- 5.1.2 Facility Design and Construction.** The County shall be responsible for all Tier 1 Infrastructure Facility Design and Construction activities. In addition to the development of the Tier 1 Infrastructure Facilities, the County will annually evaluate, in close coordination with the Solid Waste Policy Council described in Section VI, the applicability/feasibility of developing the Tier 2 and Tier 3 Infrastructure Facilities based on current waste management practices, the waste market within the region, and quantity and quality of waste materials managed within the Tier 1 Infrastructure Facilities. The County reserves the right to design

and construct any Tier 1 Infrastructure Facilities prior to the dates and/or volumes set forth in this Agreement.

- 5.1.3 Project Funding and Financing.** The County shall be responsible for all funding and financing of Tier 1 Infrastructure Facilities, and retain all corresponding revenue, within the County's Solid Waste Enterprise. Funding and financing of Tier 2 and Tier 3 Infrastructure Facilities will be determined at the time of facility planning and development.
- 5.1.4 Facility Operations and Maintenance.** The County shall own and operate all Tier 1 Infrastructure Facilities and shall be responsible for operations and maintenance of the facilities. The County may hire private service providers to operate Tier 1 facilities at its discretion, however, County shall at all times retain ownership and any contracted service provider shall only serve as a vendor for operational purposes. In no event shall County delegate discretionary rate-setting authority and no private vendor will have authority or influence over the integrated waste management systems implemented by this Agreement. The County shall receive all income from the operation of Tier 1 Infrastructure Facilities. In the event there are any operating losses in connection with the Tier 1 Infrastructure Facilities, the County shall bear the same without contribution from the Parties. Operations and maintenance of Tier 2 and Tier 3 Infrastructure Facilities will be determined at the time of facility planning and development. The County shall continue to operate and maintain the Larimer County Solid Waste Infrastructure System for the term of this Agreement.
- 5.1.5 Hauler Licensing.** The County shall support and participate with the Parties in a coordinated approach to data tracking. The County hauler licensing program will be developed and implemented no later than January 1, 2020. Appendices B and C attached hereto provide proposed minimum hauler licensing requirements and maps, which will be applied in the County's hauler licensing program.
- 5.1.6 Solid Waste Management.** The County agrees to develop and construct the Tier 1 Infrastructure Facilities to manage solid waste that include a Central Transfer Station and New County Landfill, that will be operational prior to the closure of the current Larimer County Landfill. The County will design and construct the Tier 1 Central Transfer Station and the New County Landfill beginning in 2019 to accept solid waste on October 1, 2023.
- 5.1.7 Yard Waste Material Management.** The County agrees to develop and construct the Tier 1 Yard Waste Windrow Compost Facility and to establish fees that promote segregation of yard waste from disposal and encourage composting. The County will continue to operate the current green waste landfill segregation program at the Larimer County Landfill through calendar year 2021. The County will design and construct the Tier 1 Yard Waste Windrow Compost Facility beginning in 2019 to accept yard waste on June 1, 2021.
- 5.1.8 Food Waste Material Management.** The County agrees to develop and construct the Tier 1 Food Waste Compost Facility to recycle and compost segregated food waste upon adoption of policies or programs pursuant to section 5.2.4 of this agreement. The Parties shall coordinate through the Solid Waste Policy Council the development and timing of food waste collection programs that meet the

required quantities to properly schedule the planning, design, and construction of a food waste compost facility, and establish policies to encourage composting.

- 5.1.9 Construction and Demolition Waste Management.** The County agrees to develop, construct and operate the Tier 1 Construction and Demolition Waste Processing Facility to recycle mixed construction and demolition waste and to establish policies to encourage recycling of mixed construction and demolition waste. The County will design and construct the Tier 1 Construction and Demolition Waste Processing Facility pursuant to section 5.2.5 of this agreement within not more than four years of policy adoption.
- 5.1.10 Single Stream Recycling Material Management.** The County shall continue to own and operate a Single Stream Recycling Materials Management Facility. The County agrees to issue a request for letters of interest from private companies to expand or replace the existing Recycling Facility for conversion to a full-service Clean Material Recovery Facility to serve as a regional single stream recycling center for northern Colorado and potentially other areas upon adopting flow control for single stream recyclables pursuant to section 5.2.6.
- 5.1.11 Public Education Programs.** The County shall work cooperatively with the Municipalities to coordinate public education and outreach to provide information and educational materials that shall engage and educate the community on topics including waste disposal, recycling, waste prevention, reuse, and materials handling methods. The Solid Waste Policy Council shall coordinate overall educational efforts associated with solid waste programs and the best practices for proper waste management. The Solid Waste Policy Council will coordinate a toolkit for use within Parties' education programs to facilitate a consistent look, feel and message across all of Larimer County. This toolkit may be customized by the Parties without interfering with the consistent messaging. The Solid Waste Policy Council will also initiate the formation and regular meetings of an Education subcommittee comprised of representatives from each Party and appropriate key stakeholders that will meet at least once per year.
- 5.1.12 Solid Waste Planning.** The County shall serve as the coordinating body with responsibility for completing and updating the Solid Waste Infrastructure Master Plan through participation of the Solid Waste Policy Council.

5.2 PARTIES

- 5.2.1 Solid Waste Management.** The Parties shall continue to operate and maintain their respective Integrated Solid Waste Management System facilities for the term of this Agreement, provided that the parties may independently relocate, replace, and/or modify their respective facilities in a manner not detrimental to the overall operation of the Integrated Solid Waste Management System.
- 5.2.2 Hauler Licensing.** The Parties shall participate in a coordinated approach to data tracking. Curbside collection requirements will be implemented through the Parties' hauler licensing programs, which will be developed and implemented in accordance with Appendices B and C no later than January 1, 2020. The Parties agree to manage and enforce Hauler Licensing requirements with reasonable diligence within their respective jurisdictions.

- 5.2.3 Yard Waste Management.** The Parties agree to develop and implement local programs to encourage segregation of yard waste from landfill disposal within the designated yard waste collection service area as outlined in Appendix B. The Municipalities agree to waive any claim to a share of revenues from the existing Larimer County Landfill property for composting operations, should the County construct the Tier 1 yard waste composting facility on “Alternative Compost Area” as illustrated in Appendix D. The City of Loveland agrees to direct all yard waste material received by the Loveland solid waste program to the Larimer County yard waste facility commencing on June 1, 2021 or sooner if mutually agreed by City of Loveland and County.
- 5.2.4 Food Waste Management.** The Parties may implement policies and procedures to segregate food waste from landfill disposal at their individual discretion. The Parties shall work cooperatively to plan and implement segregated food waste programs, to allow County adequate time to construct a food waste processing facility as described in Section 5.1.8. The Parties must demonstrate to the County that one or more of them have adopted policies or programs reasonably anticipated to generate in the aggregate, a minimum of 6,000 tons per year of food waste and a minimum of 30,000 tons per year of yard waste for delivery to the facility prior to implementation of the Tier 1 facility construction. The Parties agree to conduct ongoing education to reduce contamination in food waste collection programs.
- 5.2.5 Construction and Demolition Waste Management.** To support waste diversion, the Parties may direct mixed construction and demolition waste to the County Tier 1 Construction and Demolition Waste Processing Facility. One or more of the Parties must adopt policies or programs reasonably anticipated to generate in the aggregate, a minimum of 60,000 tons per year of mixed construction and demolition waste for delivery to the facility prior to implementation of the Tier 1 facility construction. The Parties may adopt control measures as deemed appropriate through the following:
- 5.2.5.1** Flow control by one or more local Municipalities of mixed construction and demolition waste reasonably anticipated to generate the minimum volume set forth in this section 5.2.5;
 - 5.2.5.2** Pricing differentials/incentives; and/or
 - 5.2.5.3** Mandates as developed by the State of Colorado.
- 5.2.6 Single Stream Recycling Material Management.** To support waste diversion Parties may direct single stream recyclables to the County owned Larimer County Recycling Center at 5887 S. Taft Hill Road or the County developed full service Clean Material Recovery Facility. One or more of the Parties, with or without participation by others, must adopt policies or programs reasonably anticipated to generate, in the aggregate, a minimum of 55,000 tons per year of single stream recyclables materials for delivery to the facility prior to the County soliciting letters of interest for a Clean Material Recovery Facility.
- 5.2.7 Public Education Programs.** Parties shall work cooperatively to coordinate public education and outreach to provide information and educational materials that shall engage and educate the community on topics including waste disposal, recycling, waste prevention, reuse, and materials handling methods. In addition, each Party will use the jointly-created education and public outreach toolkit within

the Parties' educational programs to facilitate a consistent look, feel and message across all of Larimer County. The toolkit may be customized by the Parties without interfering with the consistent messaging.

VI. SOLID WASTE POLICY COUNCIL

6.1 There is hereby created an advisory council comprised of representatives from the Parties which shall be known as the Solid Waste Policy Council ("Council"). The charge of the Council is to serve in an advisory capacity to the Larimer County Board of Commissioners on solid waste matters. In addition, the Council shall also be available to the other Parties to discuss solid waste management and planning matters.

6.1.1 Membership. The membership of the Council shall consist of eight (8) members as follows: one (1) elected official appointee and one (1) appointee from each of the signatories to this Intergovernmental Agreement. In the event other jurisdictions join as parties to this Agreement pursuant to Section 10.5 below, membership of the Council shall be expanded to include one (1) elected official appointee and one (1) appointee from such jurisdiction. Members shall be appointed within 90 days of the Effective Date of this Intergovernmental Agreement. Each member of the Council shall serve a term of three (3) years, except the first appointees shall serve staggered terms to avoid all membership terms ending during the same year. Each member shall be limited to two terms, with the exception of elected official appointees who may serve for the duration of their term as an elected official. Regular terms shall begin December 1 and end November 30 of the expiring term year. Members of the Council shall serve at the pleasure of their appointing bodies and shall receive no compensation from the County.

6.1.2 Organization. The Council shall elect a chair and vice-chair and shall adopt bylaws to guide its deliberations. Each Party shall provide one or more technical staff to serve in an advisory and staff-support role to the Council (collectively the "Technical Staff").

6.1.3 Council Responsibilities. The Council shall:

6.1.3.1 Serve as an ongoing forum to advise and assist the Larimer County Board of Commissioners, providing it with technical and non-technical advice on solid waste matters. The Council is not authorized to make decisions or speak for the Larimer County Board of Commissioners or any other Party.

6.1.3.2 Meet with and provide direction to the Technical Staff. The Technical Staff shall be available to provide research/technical and programmatic guidance to the Council on matters including but not limited to infrastructure, programs, education and master plan updates. Employees of the Parties have already been collaborating in this capacity, and the intent of the Parties is for such efforts to continue and for each Party to make one or more of its employees available to serve as the Technical Staff.

6.1.3.3 Provide comments to the Parties on all policy aspects of Solid Waste management and planning;

- 6.1.3.4** Participate in the development of future recommendations for the Solid Waste Infrastructure Management Plan (SWIMP) and other plans governing the future of the Integrated Solid Waste Management System, and facilitate a review and approval of revisions/updates to the existing SWIMP by each jurisdiction;
 - 6.1.3.5** Assist in the development of proposed revisions to this Intergovernmental Agreement between Larimer County and municipalities regarding waste management;
 - 6.1.3.6** Review and comment on disposal rate proposals and County financial policies;
 - 6.1.3.7** Review and comment on status reports generated by the Technical Staff and/or Parties;
 - 6.1.3.8** Promote consistent information exchange and interaction between waste generators, haulers, recyclers, and the Parties with respect to the Integrated Solid Waste Management System.
- 6.1.4 County Responsibilities.** The County shall assume the following responsibilities with respect to the Council:
- 6.1.4.1** The County shall provide staff support to Council;
 - 6.1.4.2** In consultation with the chair of the Council, the County shall notify Municipalities and their designated representatives and alternates of meeting times, locations and meeting agendas. Notification by electronic mail or regular mail shall meet the requirements of this Subsection;
 - 6.1.4.3** The County shall post such notices of meetings as may be required from time to time by the Colorado Open Meetings Law and shall maintain custody of the records of the Council in accordance with the Colorado Open Records Act;
 - 6.1.4.4** The County shall consider and respond on a timely basis to questions and issues posed by the Council and shall seek to resolve those issues in collaboration with the Municipalities.
 - 6.1.4.5** The County shall provide information and supporting documentation and analyses as reasonably requested by the Council to perform its duties and functions described herein.

VII. RATE SETTING

The Larimer County Board of County Commissioners may adopt and amend rates for any Tier 1 Infrastructure Facilities at its sole discretion to fund and recover all capital, debt, operating, maintenance, depreciation, regulatory, post closure, and any other expenses of the County Solid Waste Enterprise. Differential pricing of waste streams may be developed and implemented to assist with waste diversion efforts and support flow control where applicable. Upon the opening of the central transfer station and initial receipt of waste, sections 5 and 6 of the November 21, 1974 Intergovernmental Agreement regarding free disposal will be terminated.

VIII. NOTICE

Any notice, request, demand, consent, or approval, or other communication required or permitted under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, or by overnight commercial courier, addressed to such other Party at its respective addresses set forth in Exhibit "A" attached hereto and such notice or other communication shall be deemed given when so hand-delivered or three (3) business days after so mailed, or the next business day after being deposited within an overnight commercial courier.

IX. FUNDING OBLIGATIONS

The financial obligations of the Parties arising under this Agreement that are payable after calendar year 2019 are contingent upon funds for that purpose being annually appropriated, budgeted and otherwise made available by the respective governing bodies of the Parties in their sole discretion. No term or condition of this Agreement is intended nor shall be interpreted to be a multi-fiscal year obligation.

X. MISCELLANEOUS

- 10.1 Entire Agreement.** This Agreement is to be construed according to its fair meaning and as if prepared by all Parties hereto and is deemed to be and contain the entire understanding and agreement between the Parties hereto. There shall be deemed to be no other terms, conditions, promises, understandings, statements, or representations, expressed or implied, concerning this Agreement unless set forth in writing and signed by the Parties hereto. This Agreement cannot be modified except in writing signed by all Parties.
- 10.2 Governing Law.** This Agreement shall be governed by and its terms construed under the laws of the State of Colorado. Venue for any action shall be in Larimer County, State of Colorado.
- 10.3 Agency Relationship.** Nothing contained herein is deemed or shall be construed by the Parties or by any third party as creating a relationship of principle and agent, a partnership or a joint venture between the parties, or an employment relationship between the Parties.
- 10.4 Third Party Beneficiaries.** This agreement is made for the sole and exclusive benefit of the Parties, their successors and assigns, and it is not made for the benefit of any third party.
- 10.5 Addition of New Parties to the Agreement.** Additional governmental entities in Larimer County may be added to this Agreement with the consent of all Parties.
- 10.6 Severability.** If any term or condition of this Agreement is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such a term or condition shall not in any way affect any of the other terms or conditions of this Agreement, provided that the invalidity of any such term or condition does not materially prejudice an Party in their respective rights and obligations under the valid terms and conditions of this Agreement.
- 10.7 Uncontrollable Circumstances.** No Party shall be deemed in violation of this Agreement if prevented from performing any of its respective obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of God, acts of public enemies, acts of superior governmental authorities, weather conditions, right,

rebellions, sabotage, or any other circumstances for which it is not responsible or that are not within its control.

- 10.8 Counterparts.** This Agreement may be signed by the Parties in counterpart.
- 10.9 Governmental Immunity.** No term or condition of this Agreement is intended nor shall be construed as a waiver, either express or implied, of the monetary limits, notice requirements, immunities, rights, benefits, defenses, limitations and protections available to the Parties under any applicable law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et. seq.*, as currently written or hereafter amended or implemented.
- 10.10 Future Amendment.** This Agreement is made in reliance on current laws and legal authority. The Parties agree to negotiate amendments to this Agreement as may be necessary to maintain the stated purposes and goals while accounting for changes and evolution of applicable laws and legal authority.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be ratified by resolution of their governing Boards or Councils as evidenced by the minutes of their governing Boards or Councils and executed by their duly authorized officers as of the date first written.

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SIGNATURE PAGES FOLLOW

BOARD OF COUNTY COMMISSIONERS OF
LARIMER COUNTY, COLORADO

By: [Signature]
Title: CHAIR

ATEST:

[Signature]



Approved as to form:

(see Page 13A)

County Attorney

CITY OF FORT COLLINS, COLORADO


By: 
Wade Troxell, Mayor

ATTEST:





Approved as to form:


Sr. Asst. City Attorney



**BOARD OF COUNTY COMMISSIONERS OF
LARIMER COUNTY, COLORADO**

By: _____

Title: _____

ATEST:

Approved as to form:

 3/19/20

County Attorney

Item 17.


CITY OF LOVELAND, COLORADO

By: Stephen Adams


Stephen C. Adams, City Manager



ATTEST:

Deputy City Clerk 

Approved as to form:

Assistant City Attorney 

TOWN OF ESTES PARK, COLORADO



By: 

Title: Frank Lancaster

Town Administrator

ATTEST:



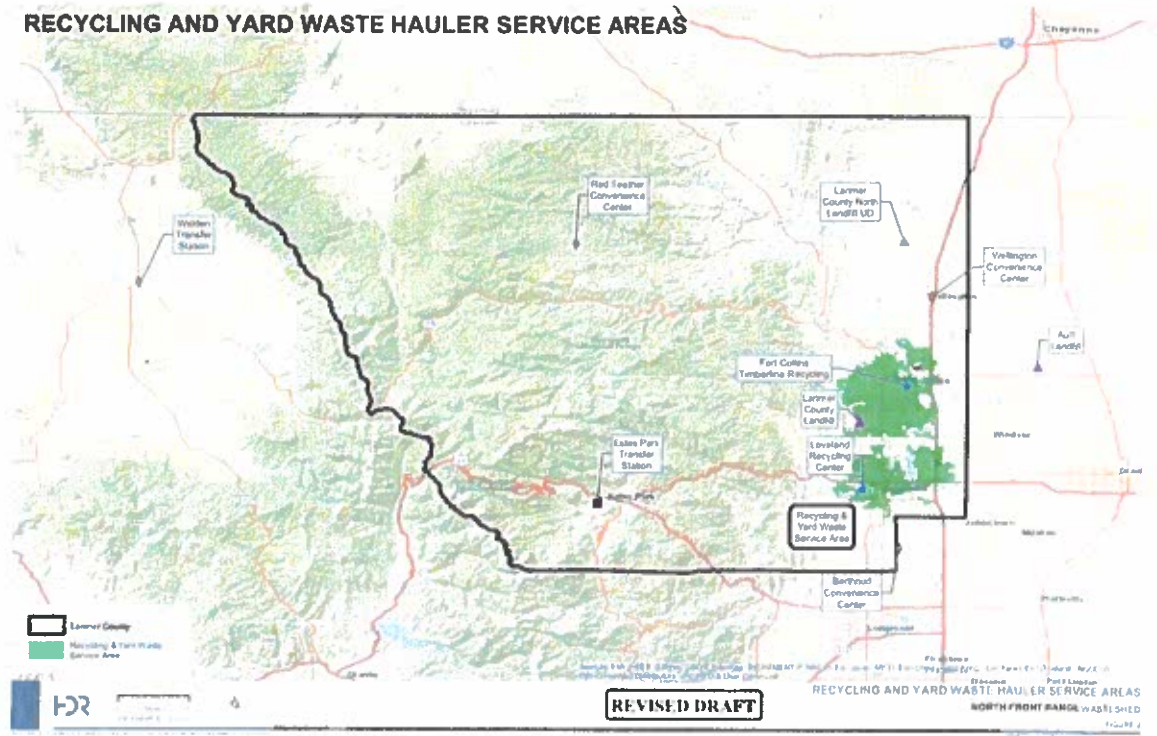
Appendix A

Tiered Infrastructure Facilities

Table 1 outlines the Tier 1, 2 and 3 Infrastructure Facilities selected with a potential schedule for siting approval, permitting and design, construction and year to be place in service.

| Table 1. Tiered Infrastructure Facilities | | | | |
|--|----------------------------------|--------------------|--------------|------------|
| Tier Recommendations | Potential Schedule | | | |
| | Local Siting Approval | Permitting/ Design | Construction | In Service |
| <u>Tier 1</u> | | | | |
| Central Transfer Station | 2019 | 2020 | 2021 | 2022 |
| New County Landfill | 2019 | 2020 | 2022 | 2023 |
| Yard Waste Open Windrow Composting | 2019 | 2019 | 2020 | 2021 |
| Construction & Demolition Waste Processing | 2020 | 2021 | 2022 | 2022 |
| Food Waste Composting | 2021 | 2021 | 2023 | 2024 |
| <u>Tier 2</u> | | | | |
| Clean Material Recovery Facility /Upgrade | Assessed Annually Moving Forward | | | |
| Anaerobic Digestion /Pre-Processing - WWTP | | | | |
| <u>Tier 3</u> | | | | |
| Waste to Energy (Direct Combustion) | Possible Future Consideration | | | |
| Refuse Derived Fuel Processing | | | | |

Appendix B Regional Recycling and Yard Waste Collection Service Area Map* February 2019



***Individual Parties may amend this Appendix B to add portions of their jurisdiction to the Recycling and/or Yard Waste Service Area without consent from the other Parties.**

****Note: As of February 26, 2019, the green shaded area depicted includes all areas within the city limits of Fort Collins and Loveland. The electronic map depicted above is maintained by and available from the County and shall govern the area within which recycling and yard waste collection services must be offered. It is the County’s intent to include portions of Larimer County in the above map in the future as the County hauler licensing program is developed and implemented.**

Appendix C

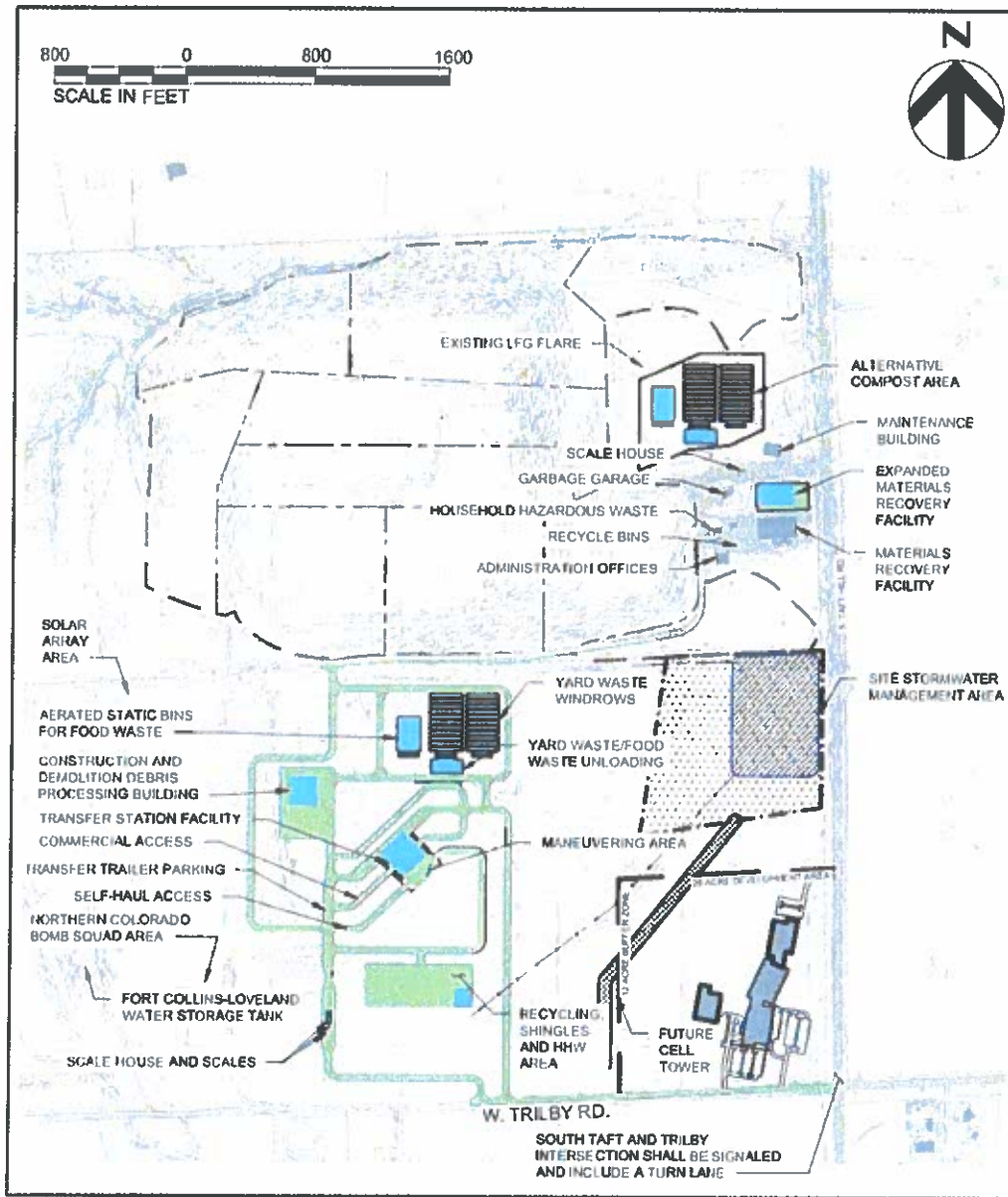
Hauler Minimum Standards

The Parties will establish minimum hauler requirements as part of a required Hauler License to provide a coordinated licensing approach for data tracking, educational material distribution, and curbside collection requirements.

At a minimum, hauler license requirements will include:

- a. For single-family residential customers: Pay As You Throw volume based requirements that apply differential pricing structures for different sized solid waste containers, or a bag pricing model. Volume based rates will be established with a substantive differential cart rate. A minimum of two cart sizes shall be required for curbside garbage collection, unless a bag pricing model is used. Recycling containers shall be provided for areas on map in Appendix B with each curbside garbage cart. Yard waste collection must be offered as an option in areas depicted on the map in Appendix B.
- b. Requirement that Haulers abide by ordinances in that Party's jurisdiction.
- c. Requirement that Haulers meet Insurance requirements as established by each jurisdiction.
- d. Requirement that Haulers list each vehicle in the Hauler's fleet that will be used for collection in that Party's jurisdiction.
- e. Requirement that Haulers report twice yearly the waste and recyclable materials (in tons or cubic yards) collected in the Party's jurisdiction and the customer type from which the waste and recyclable material was collected.
- f. Requirement that Haulers distribute to customers educational materials provided by Parties at least once per year.
- g. Provisions allowing Parties to conduct audits and penalties for non-compliance.

Appendix D Preliminary Site Plan (Subject to Change)



**LARIMER COUNTY SOLID WASTE
AND BEHAVIORAL HEALTH**

PRELIMINARY SITE LAYOUT

DATE
2-21-19

FIGURE
1

AGENDA ITEM SUMMARY

City Council



STAFF

Paul Sizemore, Director, Community Development and Neighborhood Services
Clark Mapes, City Planner

SUBJECT

Resolution 2024-071 Adopting Findings of Fact in Support of the City Council’s Decision on Appeal to Uphold the Planning and Zoning Commission Approval of the Mason Street Infrastructure Overall Development Plan ODP230001.

EXECUTIVE SUMMARY

The purpose of this item is to make findings of fact and conclusions regarding Council’s decision at the May 7, 2024, Mason Street Infrastructure Overall Development Plan appeal hearing that the Planning and Zoning Commission held a fair hearing and dismissing the failure to properly interpret and apply allegations and thereby upholding the Planning and Zoning Commissions’ approval of the Mason Street Infrastructure Overall Development Plan.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

On February 15, 2024, the Planning and Zoning Commission considered an application for the Mason Street Infrastructure Overall Development Plan #ODP230001. The Commission approved the application that showed parameters and alignments for infrastructure facilities on property at the west end of Hibdon Court and extending south to Hickory Street in the North College Avenue corridor area. The infrastructure comprises a stormwater detention pond, a proposed new segment of North Mason Street, and water, sewer, and electric lines. On February 27, 2024, a Notice of Appeal was filed, alleging:

1. The Planning and Zoning Commission failed to conduct a fair hearing by considering evidence relevant to its findings that was substantially false or grossly misleading.
2. The Planning and Zoning Commission failed to properly interpret and apply Land Use Code Subsection 3.3.2(D)(5) regarding stormwater requirements for a building permit to be issued and City Code Sections 26-543(a)(4) and 26-544(a) regarding the Dry Creek Basin master plans and stormwater facilities required for subdivision plats.

On May 7, 2024, Council considered the 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 voted to deny and dismiss the appeal, finding the Planning and Zoning Commission conducted a fair hearing having considered evidence and staff recommendations that were appropriate for

Item 18.

the level of detail required at the level of an overall development plan, finding the appellant's fair hearing issue was without merit, and dismissing the appellant's allegations that Land Use Code and City Code provisions that were not relevant to an overall development plan were not properly interpreted and applied.

CITY FINANCIAL IMPACTS

None.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Resolution for Consideration

RESOLUTION 2024-071
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ADOPTING FINDINGS OF FACT IN SUPPORT OF THE CITY
COUNCIL’S DECISION ON APPEAL TO UPHOLD THE PLANNING AND
ZONING COMMISSION APPROVAL OF THE MASON STREET
INFRASTRUCTURE OVERALL DEVELOPMENT PLAN ODP230001

A. On February 15, 2024, the Planning and Zoning Commission (“P&Z”) approved the Mason Street Infrastructure Overall Development Plan ODP230001.

B. On February 27, 2024, Charles Meserlian (“Appellant”) filed a notice of appeal (“Appeal”) with the City alleging:

a. P&Z failed to conduct a fair hearing because it considered evidence relevant to its findings that was substantially false or grossly misleading; and

b. P&Z failed to properly interpret and apply Land Use Code Subsection 3.3.2(D)(5) regarding stormwater requirements for a building permit to be issued and City Code Sections 26-543(a)(4) and 26-544(a) regarding the Dry Creek Basin master plans and stormwater facilities required for subdivision plats.

C. On May 7, 2024, 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 allegations raised in the Appeal.

D. At the Hearing the Appellant and the Appellant’s engineer appeared and addressed Council, arguing in favor of the Appeal.

E. Also at the Hearing, representatives for the applicant for the Mason Street Infrastructure Overall Development Plan addressed Council, arguing in opposition to the Appeal.

F. In making its determination regarding the Appeal allegations at the Hearing, the City Council considered the record on appeal; testimony from City staff; statements and arguments by the Appellant and Appellant’s engineer; and statements and arguments in opposition to the appeal made by representatives for the applicant for the Mason Street Infrastructure Overall Development Plan.

G. City Council determined that P&Z conducted a fair hearing when it approved the Mason Street Infrastructure Overall Development Plan, finding the P&Z considered evidence and staff recommendations that were appropriate for the level of detail required at the level of an overall development plan and that were not substantially false or grossly misleading and finding the Appeal’s fair hearing issue was without merit.

H. City Council dismissed the Appeal’s failure to properly interpret and apply allegations, finding Land Use Code Section 3.3.2(D) and City Code Section 26-544(a) are not required to be met for an overall development plan to be approved and City Code

Section 26-543(a)(4) adopts the Dry Creek Master Plan by reference and is not subject to interpretation or application.

I. The Council motion to dismiss the failure to interpret and apply allegations inadvertently referenced "Section 26-54(a)," instead of the correct reference to "Section 26-544(a)," and this Resolution corrects such reference.

J. 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 the appeal.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. The allegation set forth in the Appeal that P&Z failed to conduct a fair hearing is dismissed because the Appeal's fair hearing issue was without merit and the P&Z conducted a fair hearing and considered evidence and staff recommendations that were appropriate for the level of detail required at the level of an overall development plan and that were not substantially false or grossly misleading.

Section 2. The allegations set forth in the Appeal that P&Z failed to properly interpret and apply the Land Use Code and City Code are dismissed because the Land Use Code and City Code provisions set forth in the Appeal were not relevant to interpretation or application for an overall development plan.

Section 3. 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 on May 21, 2024.

Mayor

ATTEST:

Interim City Clerk

Effective Date: May 21, 2024
Approving Attorney: Heather N. Jarvis