Fort Collins City Council Agenda

Regular Meeting

6:00 p.m. Tuesday,May 2, 2023

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

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

NOTICE:

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

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

How to view this Meeting:

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

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

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

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

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

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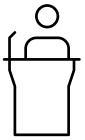
City of Fort Collins

Meeting agendas, minutes, and archived videos are available on the City's meeting portal at https://fortcollins-co.municodemeetings.com/

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.

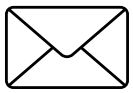
Full instructions for online participation are available at fcgov.com/councilcomments.

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 02, 2023 at 6:00 PM

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

City Council Chambers 300 Laporte Avenue, Fort Collins & via Zoom at https://zoom.us/j/98241416497

Cablecast on FCTV
Channel 14 on Connexion
Channel 14 and 881 on Xfinity

Carrie Daggett
City Attorney

Kelly DiMartino
City Manager

Anissa Hollingshead
City Clerk

PROCLAMATIONS & PRESENTATIONS
5:00 PM

A) PROCLAMATIONS AND PRESENTATIONS

PP 1. **Declaring May 2023 as Fort Collins Archaeology and Historic Preservation Month.**

PP 2. **Friend of Preservation Awards**

The Historic Preservation Commission established the Friend of Preservation Awards in 1985 to recognize people, organizations, and projects that exemplify work in local history, education, and historic preservation. The chair of the HPC and the Mayor give the award each year. In 2023, the Commission is recognizing D.L. Roberts, Rose Brinks, Kim Medina, and Meg Dunn for both recent and lifetime achievements in support of preserving the Fort Collins area's important places.

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/agendas/*

- *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 Development Review Center page on the city's website at https://www.fcgov.com/developmentreview/, or contact the Development Review Center at 970.221.6760.]*

H) PUBLIC COMMENT FOLLOW-UP

I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

CONSENT CALENDAR

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

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

1. **Consideration and Approval of the Minutes of the April 18, 2023 Regular Meeting.**

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

2. **Second Reading of Ordinance No. 063, 2023, Appropriating Prior Year Reserves in the Natural Areas Fund and the Sales and Use Tax Fund for the Purpose of Land Conservation, Visitor Amenities, Restoration and Other Related Natural Areas Stewardship Activities Not Included in the 2023 Adopted City Budget.**

   This Ordinance, unanimously adopted on First Reading on April 18, 2023, appropriates $10,844,479 in prior year reserves in the Natural Areas Fund and $1,258,071 in prior year reserves in the Sales and Use Tax fund to be transferred to the Natural Areas Fund. These appropriations are for land conservation, visitor amenities and restoration of wildlife habitat, as well as other Natural Areas Department stewardship activities to benefit the residents of Fort Collins.

3. **Second Reading of Ordinance No. 064, 2023, Appropriating Unanticipated Grant Revenue from the Colorado Energy Office's Community Access to Electric Bicycles Grant Program for the Choose Your Ride, Shift Your Ride Program.**

   This Ordinance, unanimously adopted on First Reading on April 18, 2023, supports the Choose Your Ride, Shift Your Ride project being administered by FC Moves in collaboration with Colorado State University in support of affordable active modes of transportation for low-income individuals by appropriating $148,350 of unanticipated grant revenue, awarded by the Colorado Energy Office, to the Transportation Fund.

4. **Second Reading of Ordinance No. 065, 2023, Authorizing the Acquisition by Eminent Domain Proceedings of Temporary Easements on Certain Lands Necessary to Construct Public Improvements for the Eastern Segment of the Laporte Corridor Improvement Project.**

   This Ordinance, unanimously adopted on First Reading on April 18, 2023, authorizes the use of eminent domain, if deemed necessary, to acquire temporary construction easements needed for constructing improvements for the Laporte Corridor Project.

5. **Items Relating to the Appropriation of Federal Funds in the Community Development Block Grant and HOME Investment Partnership (HOME) Program Funds.**

   A. First Reading of Ordinance No. 066, 2023, Making Supplemental Appropriations in the Community Development Block Grant Fund.

   B. First Reading of Ordinance No. 067, 2023, Making Supplemental Appropriations in the HOME Investment Partnerships Grant Fund.

   The purpose of this item is to appropriate the City's FY2023 Community Development Block Grant (CDBG) Entitlement Grant and Fiscal Year (FY) 2023 Home Investment Partnerships Program (HOME) Participating Jurisdiction Grant from the Department of Housing and Urban Development (HUD), and CDBG program income from FY2021 and FY2022 and HOME Program Income from FY2021 and FY2022.

6. **Public Hearing and First Reading of Ordinance No. 068, 2023 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the North College Mobile Home Park Rezoning.**

The purpose of this item is to amend the Zoning Map and rezone the North College Mobile Home Park (the "Property") from the Service Commercial (CS) and Low Density Mixed-Use Neighborhood (LMN) zone districts to the Manufactured Housing (MH) zone district. Half the Property is the CS zone district, and the other half is the LMN zone district. With the proposed rezoning both of those would change to the MH zone district, which would cover the entirety of the property. The 33-acre Property is located southwest of the North College Avenue and Willox Lane intersection. The proposed rezoning was initiated by the City and continues a series of rezonings begun in 2020 to rezone existing mobile home parks to the MH zone district to promote the preservation of existing manufactured housing communities.

The rezoning request is subject to Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Commission. The Planning and Zoning Commission voted 5 to 1 at their March 23, 2023, hearing to recommend approval of the rezoning.

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

7. **Items Relating to the West Elizabeth Corridor Final Design.**

A. First Reading of Ordinance No. 069, 2023, Making Supplemental Appropriations, Appropriating Prior Year Reserves, and Authorizing Transfers of Appropriations for the West Elizabeth Corridor Final Design and Related Art in Public Places.

B. Resolution 2023-041, Authorizing the Execution of an Intergovernmental Agreement Between the City of Fort Collins and Colorado State University for the West Elizabeth Corridor Final Design.

C. Resolution 2023-042, Authorizing the Execution of an Intergovernmental Agreement Between the City of Fort Collins and the Colorado Department of Transportation for the West Elizabeth Corridor Final Design.

The purpose of this item is to appropriate local match funds and approve two intergovernmental agreements (IGAs) for the West Elizabeth Corridor Final Design (the Project) and enable the City to receive and expend Federal and Colorado Department of Transportation (CDOT) funds for and to proceed forward with the Project. The funds will be used for the final 100% design and outreach regarding improvements along West Elizabeth Street from Mason Street and the Colorado State University (CSU) campus to Overland Drive. If approved, the item will: (1) authorize the Mayor to execute an IGA with CDOT for the Project (the CDOT IGA); (2) authorize the Mayor to execute an IGA with CSU for the Project (the CSU IGA); (3) appropriate $651,628 from Transportation Capital Expansion Fee and unanticipated revenue from Transfort funds, $616,124 of matching CSU-provided funds, and $1,232,248 of Multi-Modal Options Funding grant funds for the Project; and (4) appropriate $6,516 to the Art in Public Places Program.

8. **First Reading of Ordinance No. 070, 2023, Vacating a Portion of Impala Circle Right-of-Way.**

The purpose of this item is to approve the vacation of Impala Circle right-of-way that is no longer desirable or necessary to retain for street purposes. Portions of the right-of-way area, once vacated, will be retained as public access and emergency access easements to the City to provide continued access for the neighboring properties.

9. **Resolution 2023-043 Approving Expenditures From the Art in Public Places Water Utility Account to Commission an Artist to Create Art in Public Places for the Water Treatment Facility Project.**

The purpose of this item is to approve expenditures from the Art in Public Places (APP) Water Utility Account to commission an artist to create a sculpture for the Water Treatment Facility Project. The expenditures of $45,000 will be for design, engineering, materials, signage, fabrication, delivery, installation, and contingency for Todd Kundla to create the entrance artwork for the Water Treatment Facility Project that honors the staff, the process, and facility that provides clean water to the community.

10. **Resolution 2023-044 Approving Expenditures from the Art in Public Places Stormwater and Water Utility Account to Commission an Artist to Create Art in Public Places Relating to Stream Rehabilitation.**

The purpose of this item is to approve expenditures from the Art in Public Places (APP) Stormwater and Water Utility Accounts to commission an artist to create art for the Stream Rehabilitation Project. The expenditure of $191,800 will be for construction final design, engineering, materials, signage, fabrication, delivery, installation, and contingency for Andy Dufford and Chevos Studios to create the artworks for the Stream Rehabilitation Project.

END OF CONSENT CALENDAR

J) ADOPTION OF CONSENT CALENDAR

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

L) STAFF REPORTS - None.

M) COUNCILMEMBER REPORTS

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

O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION

The method of debate for discussion items is as follows:

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

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

11. **First Reading of Ordinance No. 071, 2023, Amending the Land Use Code to Include Regulations for Areas and Activities of State Interest**

The purpose of this ordinance is to amend the Fort Collins Land Use Code to include 1041 regulations. 1041 powers give local governments the ability to regulate particular development projects occurring within their jurisdiction, even when the project has broader impacts. The 1041 regulations would allow for reviewing and permitting of two designated areas and activities of statewide interest - (1) major domestic water, sewage treatment and (2) highway projects. Staff has included five decision points for Council's consideration based on feedback from stakeholder meetings since Council's previous consideration of 1041 regulations on February 7, 2023.

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.)

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, ongoing research reminds us that our historic places are the keystone of the economic, social and environmental wellbeing of our community both present and future; and

WHEREAS, the National Trust for Historic Preservation has established the theme for Preservation Month 2023 as People Saving Places; and

WHEREAS, historic places in Fort Collins reflect the contributions, large and small, of people throughout our community who have shaped the City since before its foundation, and have cared for its historic places since the City established an historic preservation program in 1968; and

WHEREAS, the stewardship of historic places contributes to the economic, environmental, and social vitality of Fort Collins by advancing the conservation of building materials, support of local businesses and trades, and a sense of connection and belonging; and

WHEREAS, historic places can remind us of the important role underrepresented and historically marginalized people have played in Fort Collins history, including women like Alice Edwards, African Americans like Mattie Lyle, Latinx residents like Jovita Vallecillo Lobato, and many others; and

WHEREAS, Fort Collins Historic Preservation Services is recognized as a leader both regionally and nationally for its innovative and interdisciplinary approach to preservation and support for property owners, occupants, and business owners in our historic buildings.

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

FORT COLLINS ARCHAEOLOGY AND HISTORIC PRESERVATION MONTH

and call upon the citizens of Fort Collins to join in recognizing and participating in the preservation of our heritage.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 2nd day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

May 2, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Anissa N. Hollingshead, City Clerk

SUBJECT

Consideration and Approval of the Minutes of the April 18, 2023 Regular Meeting.

EXECUTIVE SUMMARY

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

STAFF RECOMMENDATION

Staff recommends approval of the minutes.

ATTACHMENTS

1. Draft Minutes, April 18, 2023

April 18, 2023

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

PROCLAMATIONS & PRESENTATIONS
5:00 PM

A) PROCLAMATIONS AND PRESENTATIONS

PP 1. **Declaring April 23-29, 2023 as Crime Victim Rights Week.**

PP 2. **Declaring April 28, 2023 as Arbor Day.**

PP 3. **Declaring April 2023 as Asian Pacific Islander Desi American (APIDA) Heritage Month.**

PP 4. **Declaring April 2023 as National Volunteer Month.**

PP 5. **Declaring May 7-13, 2023 as Drinking Water Week.**

PP 6. **Declaring May 2023 as Mental Health Awareness Month.**

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

REGULAR MEETING
6:00 PM

B) CALL MEETING TO ORDER

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

C) PLEDGE OF ALLEGIANCE

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

D) ROLL CALL

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

STAFF PRESENT
City Manager Kelly DiMartino
City Attorney Carrie Daggett
City Clerk Anissa Hollingshead

E) CITY MANAGER'S AGENDA REVIEW

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

- Noting there were no substantive changes to the published agenda and a scrivener's error was corrected on item 13 relating to the rental housing program after its initial publication to note the ordinances were adopted on first reading by a 4-3 vote.
- Request to shift the planned Poudre Fire Authority Annual Report from the Staff Report portion of the agenda to the Community Report section.
- All items on the consent agenda were recommended for approval.
- The items on the discussion agenda were reviewed.

F) COMMUNITY REPORTS

A. **Poudre Fire Authority Annual Report.**

The purpose of this staff report is to discuss the Poudre Fire Authority's overall performance in fulfilling its responsibilities under the intergovernmental Agreement Between its parent organization, the Fort Collins (City) Council and the Poudre Valley Fire Protection (District) Board.

The Mayor, with the consent of the Council, moved this report to the Community Report section of the agenda. Fire Chief Derek Bergsten presented the annual report as set forth in the slide deck in the agenda packet.

Mayor Arndt offered appreciation to the Fire Authority and Chief Bergsten on behalf of the Council, City organization, and community.

Councilmember Gutowsky asked if the Chief would like to provide an update on the work on the 9/11 memorial. Chief Bergsten provided a brief update, noting the hope the memorial will be ready to unveil by this year's anniversary.

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

Adam Eggleston, Fort Collins resident, spoke regarding the City budget and what is being heard about the potential shortfall in revenue for meeting budgetary needs, noting statistics showing people spend money where they live rather than where they work and currently 30,000 people come into the city to work, exacerbating revenue shortfalls because of housing issues that need to be addressed to remove barriers to more people living in Fort Collins. Also noted were past poor financial planning, particularly around parks maintenance, and concern was expressed about things that have been funded via short term ARPA (American Rescue Plan Act) dollars.

Jerry Gavaldon, Fort Collins resident, spoke regarding the proposed rental registration program expressing concerns about what the registration program will do, with likely increasing costs, and the potential impacts to tenants trying to live in Fort Collins.

Ian Mayhew, student at CSU, spoke about Fort Collins being a beautiful city with significant bicycle infrastructure while expressing concern about increasing congestion in neighborhood roads in the sprawl surrounding the city center, and resulting common road widening rather than increasing investments in walking and cycling infrastructure.

Mark Valdez spoke about questions that should be asked when implementing a new program that cannot be answered positively regarding the rental licensing program and referenced math regarding the program presented at prior meetings.

Evan Welch, director of governmental affairs at ASCSU, spoke about U+2, noting this is a second appearance after doing so on April 4, urging the Council to consider changes to the occupancy requirements and encouraging respectful disagreement and dialogue.

Scott Holmes, Fort Collins resident, spoke in opposition to the rental housing ordinance, noting it is a solution looking for a problem as a property owner and manager for over 22 years.

Madeleine Kamberg Jennings spoke, reiterating comments from two weeks ago about putting the repeal of U+2 on the ballot, noting the work being led now with the submission of a notice of intent regarding this repeal. Concerns were also shared about the negative side of how U+2 is being utilized and negative assumptions being made about residents.

Kareen Larsen, Realtor and president-elect of the Fort Collins Board of Realtors, urged Council to consider that all those speaking about the proposed rental licensing program have spoken in opposition out of concern for the availability and affordability for housing. Also expressed were concerns about mandatory inspections and potential legal liability, instead urging improving the current system, including having inspections by request only, and funding for a computer system for tracking purposes and data collection.

Kathleen Attridge, Fort Collins resident and property owner and manager, urged the Council to look at other options including education for both bad landlords and bad tenants, including young tenants.

Jorge Garcia, CSU student and director of Housing Securities for ASCSU, shared happiness regarding the Councilmembers who came out yesterday to speak with students and spoke regarding housing as well as an event being planned for May 2 at the next Council meeting to have double the number of students from the last meeting. He also noted how difficult it can be for students to find housing.

Charles Hubbeling, a small landlord with four properties in Fort Collins, spoke against the ordinance for rental inspections, asking how these inspections help and how it lowers the rent for people who are cost-burdened. Also noted was the large expense on the City at a time when costs should be cut.

Benton Roesler, Fort Collins resident, spoke about U+2, sharing a story about a lawsuit in the City of Santa Barbara in the 1970s and the subsequent removal of these regulations in the 1980s. It was noted as well that other regulations, already in place, address the concerns that occupancy regulations seek to address.

Kelly Evans, Fort Collins resident, spoke on two things relating to housing, including: the celebration of Fair Housing Month in April, providing information about the Fair Housing Act and its passage in 1968 to prohibit discrimination in the sale and leasing of housing, which still persists today with long term impacts. Regarding the rental registration program, there has not been support heard for these efforts by any stakeholders nor the need to explore solutions to address the limited bad actors in this space.

Joyce Pratt, Fort Collins resident, spoke as a landlord and HOA president in concurring with previous remarks regarding rental registration, asking why not address issues with violations rather than creating a whole new registration program that impacts everyone.

Tom Thompson, Clerk of the Fort Collins Friends Meeting and member of other organizations primarily dealing with the disadvantaged and older community, noted the reliance of many seniors and others on various forms of assistance, and the challenges any obstacles to these programs will cause to those individuals. Also noted was the need for teeth in the current enforcement-based system.

Laurie Pasricha, Fort Collins resident also with Fuerza Latina, noted the organization has received eviction prevention funds from the City and urged the Council to vote no on the proposed rental housing program in its current form due to the unintended consequences.

Gayle Kwan, Fort Collins resident, spoke with concerns about the Habitat Heart for Odell project being slated for rezoning for the proposed project that will build 140 units, with 30 Habitat units and the remaining units being sold at market value despite being advertised as an affordable housing project.

Patricia Alvarez Harrell spoke on behalf of several residents from five mobile home parks in the North College corridor that are uncomfortable speaking out about rental registration and fears about the potential of strangers coming into their homes for inspections.

Nate Miller (not on the sign in sheet), property owner in Fort Collins, spoke in opposition to the rental registration program, sharing his father's prior experience as a building inspector in Larimer County and surrounding communities as well as in Bloomington, Indiana, which is also a college community, where he had a negative experience with how that rental inspection program was implemented in the 1970s.

Don Siler (not on the sign in sheet), spoke about the rental ordinance being proposed and how it is short sighted to call $37 a year a minimal cost, as well as expressing concerns about the underestimation of costs in the program development.

Tom Rhodes, Fort Collins resident (not on the sign in sheet), spoke about the rental inspection program and noted the proposal does almost nothing to increase the safety of rentals in the face of a housing shortage and will raise housing costs.

Don Dunn, spoke regarding the rental registration program and the information heard at the last meeting and the lack of firm answers, urging Council not to adopt the program.

Greg Anderson (not on the sign in sheet), a Fort Collins resident who has been a landlord for 33 years, asked Council six questions, including what are: the evidence, the alternatives, the budget, the litigation contingency, the homeless and low income population input, and last what is it all about.

Ray Martinez, Fort Collins resident, brought up questions for Council to ask itself, including who is asking for this and what its impact will be on low-income housing, as well as whether we really want to create a new housing department at the City and what the costs of this will be as the city continues fully building out. Also expressed were concerns about the proactive inspection requirement which is essentially legalized warrantless searches.

Daniela Gonzalez, navigator at Alianza NORCO as well as a CSU student voter encouraged Council to vote no on the proposed renter registration. While working at both Crossroads Safehouse and Alianza NORCO, it has been possible to see the predisposed housing insecurities that already exist without the rental registration program. Requiring low-income property owners to register, get inspections and fix outstanding issues under penalty of a misdemeanor charge will have the opposite effect that the proposal seeks to address today. The renter registration policy contains extremely punitive measures and will further alienate vulnerable communities and create fear among renters, particularly immigrants.

Myron Lloyd spoke as a landlord in opposition to the proposed registration program.

Lisa Carlson, Executive Director of Tribal Experience Korner in Larimer County spoke with questions about a program that provides assistance with housing to identify resources regarding what is required in response to a letter sent about the need for testing of a home following certain events happening in the home. The speaker was connected with a member of City staff for assistance in navigating the question.

Joe Hubbeling, a landlord in Fort Collins in opposition to the rental registration program, asked what the source of need is for this program.

David Rout, Fort Collins resident and Executive Director of Homeward Alliance, thanked the Mayor and members of Council and City staff for the work that has been done collaboratively to create this ordinance, while also expressing concerns about potential unintended consequences of the program in its current form. Questions asked included: If there is a plan to help low-income property owners make needed repairs; if there is a plan to help low-income renters who are forced to leave current residences; and, if the City is worried about compounding the COVID cliff in the marketplace with the end of rental supports.

Jason Knebel, Fort Collins resident, encouraged residents fed up with their representation to take advantage of the recall process. Also addressed were concerns about the use of eminent domain along Laporte Avenue as a resident of Laporte Avenue.

John Bodenhamer, Fort Collins resident, offered comments regarding rental registration, asking where the public mandate is for this sort of an initiative.

Shirley Malin, Fort Collins resident and 30-year landlord, shared thanks to the Council for their thoughtful work in the realm of rental housing and in opposition to the rental registration program.

Public comment concluded at 7:42 p.m.

H) PUBLIC COMMENT FOLLOW-UP

Mayor Pro Tem Francis asked for clarification regarding the scope of the use of eminent domain along Laporte Avenue. City Manager DiMartino noted it is solely for temporary easements along Laporte Avenue for use during construction.

Councilmember Pignataro thanked everyone for coming out.

I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

None.

J) CONSENT CALENDAR

1. **Consideration and Approval of the Minutes of the April 4, 2023 Regular Meeting.**

   The purpose of this item is to approve the minutes of the April 4, 2023 regular meeting.

   Approved.

2. **Second Reading of Ordinance No. 047, 2023, Authorizing Transfers of Appropriations for the Renovation of the Carnegie Center for Creativity.**

   This Ordinance, unanimously adopted on First Reading on April 4, 2023, is to transfer $2,400,000 appropriated in the Cultural Services & Facilities Fund to the Capital Projects Fund.

   Adopted on Second Reading.

3. **Second Reading of Ordinance No. 048, 2023, Authorizing the City Manager to Accept a Grant Award and Comply with the Terms of a Grant From the Colorado Water Conservation Board, Making Supplemental Appropriations in the Water Fund and Authorizing Transfers from the Water Fund, for the Xeriscape Incentive Program.**

This Ordinance, unanimously adopted on First Reading on April 4, 2023, supports businesses, homeowner associations, other commercial properties, and residential properties pursuing costly landscape projects that reduce water use long-term through the Xeriscape Incentive Program by:

● Appropriating $100,000 of unanticipated grant revenue, awarded by the Colorado Water Conservation Board, to the Water Fund;
● Appropriating $65,890 from the Water Fund reserves; and
● Utilizing matching funds in the amount of $57,220 from existing 2023 appropriations into this new grant project.

This item would also authorize the City Manager or their designee to accept the grant award and comply with the terms of the grant application and award.

Adopted on Second Reading.

4. **Second Reading of Ordinance No. 049, 2023, Annexing the Property Known as the Thompson Thrift Spaulding Addition Annexation to the City of Fort Collins, Colorado.**

This Ordinance, unanimously adopted on First Reading on April 4, 2023, is to annex a 3.743-acre property located off Terry Lake Road/Highway 1 on Spaulding Lane, closest to the Spaulding Lane and Valley View Lane intersection. A specific project development plan proposal is not included with the annexation application. The Initiating Resolution was adopted by City Council on February 21, 2023. A separate related item to amend the Zoning Map and classify for zoning purposes 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.

Adopted on Second Reading.

5. **Second Reading of Ordinance No. 050, 2023, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the Thompson Thrift Spaulding Addition Annexation to the City of Fort Collins and Approving Corresponding Changes to the Residential Neighborhood Sign District Map and Lighting Context Area Map.**

This Ordinance, unanimously adopted on First Reading on April 4, 2023, zones the property included in the Thompson Thrift Spaulding Addition Annexation into the Low Density Mixed-Use (L-M-N) zone district and place the property into the LC1 Lighting Context Area.

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.

Adopted on Second Reading.

6. **Second Reading of Ordinance No. 051, 2023, Making Supplemental Appropriations for the Carpenter and Timberline Intersection Project.**

This Ordinance, unanimously adopted on First Reading on April 4, 2023, enables the City to receive and expend Federal and Colorado Department of Transportation (CDOT) funds for the

Carpenter and Timberline Intersection Project (the Project). The funds will be used for design and construction of improvements at the intersection of Carpenter Road and Timberline Road. If approved, the item will appropriate $696,285 of Highway Safety Improvement Program (HSIP) grant funds for the Project. This Project will not appropriate any money to Art in Public Places Program as the Project is 100% federally funded.

Adopted on Second Reading.

7. **Items Relating to the Repeal and Reenactment of Certain Ordinances.**

A. Second Reading of Ordinance No. 052, 2023, Repealing Ordinance No. 024, 2023, and Appropriating Philanthropic Revenue Received by City Give for Fort Collins Police Services for the Safe Futures Initiative.

B. Second Reading of Ordinance No. 053, 2023, Repealing Ordinance No. 025, 2023, and Appropriating Prior Year Reserves and Unanticipated Revenue from Philanthropic Donations Received Through City Give for Various Programs and Services as Designated by the Donors.

C. Second Reading of Ordinance No. 054, 2023, Repealing Ordinance No. 027, 2023, and Amending Chapter 12, Article II and Chapter 15, Article XV of the Code of the City of Fort Collins to Allow for the Establishment of a City Waste Collection Program and Generally Updating Provisions of the Code Governing Waste Collection Within the City.

D. Second Reading of Ordinance No. 055, 2023, Repealing Ordinance No. 028, 2023, and Authorizing the City Manager to Enter Into a Contract for the Provision of Residential Waste Collection Services.

E. Second Reading of Ordinance No. 056, 2023, Repealing Ordinance No. 029, 2023, and Appropriating Prior Year Reserves for Start-up Costs to Create a Contracted Residential Waste Collection Program.

F. Second Reading of Ordinance No. 057, 2023, Repealing Ordinance No. 030, 2023, and Adopting the North College MAX BRT Plan as a Component of City Plan.

Due to a publication error, staff requests Council repeal and reenact each Ordinance as they were adopted on March 7, 2023. These Ordinances were unanimously adopted on First Reading on April 4, 2023.

Adopted All Ordinances on Second Reading.

8. **Second Reading of Ordinance No. 062, 2023, Submitting to a Vote of the Registered Electors of the City of Fort Collins Proposed Amendments to Article II of the City Charter Conforming the Limits on Holding Council Office to the Limits in the Colorado Constitution Applicable to Those With Disqualifying Felony Convictions.**

This Ordinance, unanimously adopted on First Reading on April 4, 2023, sets the ballot language regarding making candidate qualifications comport with the Colorado Constitution.

Adopted on Second Reading.

9. **First Reading of Ordinance No. 063, 2023, Appropriating Prior Year Reserves in the Natural Areas Fund and the Sales and Use Tax Fund for the Purpose of Land Conservation, Visitor Amenities, Restoration and Other Related Natural Areas Stewardship Activities Not Included in the 2023 Adopted City Budget.**

The purpose of this item is to appropriate $10,844,479 in prior year reserves in the Natural Areas Fund and $1,258,071 in prior year reserves in the Sales and Use Tax fund to be transferred to the Natural Areas Fund. These appropriations are for land conservation, visitor amenities

and restoration of wildlife habitat, as well as other Natural Areas Department stewardship activities to benefit the residents of Fort Collins.

Adopted on First Reading.

10. **First Reading of Ordinance No. 064, 2023, Appropriating Unanticipated Grant Revenue from the Colorado Energy Office's Community Access to Electric Bicycles Grant Program for the Choose Your Ride, Shift Your Ride Program.**

The purpose of this item is to support the Choose Your Ride, Shift Your Ride project being administered by FC Moves in collaboration with Colorado State University in support of affordable active modes of transportation for low-income individuals by appropriating $148,350 of unanticipated grant revenue, awarded by the Colorado Energy Office, to the Transportation Fund.

Adopted on First Reading.

11. **First Reading of Ordinance No. 065, 2023, Authorizing the Acquisition by Eminent Domain Proceedings of Temporary Easements on Certain Lands Necessary to Construct Public Improvements for the Eastern Segment of the Laporte Corridor Improvement Project.**

The purpose of this item is to authorize the use of eminent domain, if deemed necessary, to acquire temporary construction easements needed for constructing improvements for the Laporte Corridor Project.

Adopted on First Reading.

12. **Resolution 2023-040 Approving Fort Fund Grant Disbursements – Project Support.**

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

Adopted.

END OF CONSENT CALENDAR

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to approve the recommended actions on items 1-12 on the Consent Calendar.

The motion carried 7-0.

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

Councilmember Gutowsky drew attention to item 12 and the disbursement of Fort Fund grants, reading the description of the grants being made and highlighting the work done by the board that makes grant award decisions.

L) STAFF REPORTS

A. **Poudre Fire Authority Annual Report.**

Presented during the Community Report section of the agenda.

COUNCILMEMBER REPORTS

Councilmember Julie Pignataro

- Shared concerns with the process of registering for a summer camp for her child and asked for an update about the process of implementing a new system for such registrations. City Manager DiMartino noted the City is in the process of going through a request for proposal process to get that system updated.
- Shared an announcement from a constituent about a program on April 26 at the Chilson Center in Loveland that will be a Resource Connections event for seniors and caregivers from the Office on Aging through Larimer County.

Councilmember Shirley Peel

- Reminded everyone of the celebration of Earth Day on April 22 that will also include listening sessions with herself and Councilmember Ohlson.
- Attended an energy symposium this past week in Rifle, Colorado, with a balanced approach to energy issues with operators and regulators.
- Discussed being invited by a landlord to go visit properties and see the work being done to rent below market values, including visiting with a tenant who falls through the cracks for services.

Councilmember Tricia Canonico

- Attended kickoff to Think Bike workshop today with the Mayor and another councilmember. This Thursday night the public is invited to attend the screening of "Together We Cycle" at New Belgium Brewery, with online sign up available.

Councilmember Susan Gutowsky

- Also spoke regarding the Energy Symposium and noted what the gas and oil money does for towns in Garfield County, as well as appreciation for the balanced approach of the event.
- Noted the Behavioral Health Center will be in operation before the end of the year.
- Shared about the invitation to join ASCSU for dinner yesterday to join students in robust discussions.

Clerk's Note: Mayor Arndt called for a break at 7:54 p.m., noting the meeting would resume at 8:10 p.m.

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

None.

O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION

13. **Items Relating to Rental Housing Program.**

A. Second Reading of Ordinance No. 058, 2023, Adopting a Rental Housing Program as an Implementation Action of the Housing Strategic Plan and the Our Climate Future Plan.

B. Second Reading of Ordinance No. 059, 2023, Appropriating Prior Year Reserves in the General Fund for the Start Up Phase of the Rental Housing Program.

These Ordinances, both adopted on First Reading on April 4, 2023 by a vote of 5-2 (Nays: Francis, Ohlson), establish a Rental Housing Program that begins with registration and adds proactive rental inspections after one year of full implementation and approve an off-cycle general fund appropriation in the amount of $1.1 million over a 2-year period ($421,583 in 2023 and $669,500

in 2024) to support the start-up phase of the proposed program. The development of a Rental Housing Program implements policy direction in both the Housing Strategic Plan (2021) and the Our Climate Future Plan (2021):

● Housing Strategic Plan, Strategy 20 – Explore the option of a mandated rental license/registry program for long-term rentals and pair with best practice rental regulations.

● Our Climate Future Plan, Strategy HAH6 – Explore the option of mandated rental licensing/rental registry with minimum standards for health, safety, stability, and efficiency.

If adopted by Council on Second Reading, staff recommends that the proposed Rental Housing Program commence the start-up phase by Q1 2024. The period between adoption and start-up will be used to hire and train staff, implement new software, and conduct education and outreach with landlords, tenants, property managers, and others impacted by the Rental Housing Program.

Caryn Champine, PDT Director, introduced this topic. Housing Manager Meaghan Overton led the main presentation for the item, presenting as set forth in the slide deck in the agenda packet. Additional slides were added to the presentation to address questions raised during this week's Leadership Planning Team (LPT) meeting that were reviewed by Director Champine.

Also assisting during the presentation and in answering questions were Marcy Yoder, Neighborhood Services Manager, Marcus Coldiron, Chief Building Official, and Assistant City Attorney II Holly Coulehan.

PUBLIC COMMENT

Adam Eggleston, Fort Collins resident, spoke about three troublesome components of this proposal, including the budgetary appropriation request being made outside of the BFO process; the potential legal challenges the City could face from proactive inspections; and concerns about the program being based on fear.

Joliann Beck expressed concerns with the cost of the program when just an update to the software system for better tracking was stated at potentially $50,000, as well as concerns about the City overstepping in promoting health and safety in one area over other areas.

Matthew Beck, Fort Collins resident, spoke about not hearing one person speak in support of this since it came to Council in January and in subsequent hearings, noting the existence of processes to file complaints.

Amber Kelley spoke as a landlord, expressing appreciation for being able to participate in this discussion and the attention shown by the Council, then speaking about how education does work and the value of the landlord education program she was able to take advantage of.

Steve Gearing, Fort Collins resident and landlord, spoke in opposition to the ordinance while noting a measure of who we are is how we protect those who are most vulnerable, sharing concerns about unintended consequences that could displace vulnerable people from their homes.

Arpi Miller, Fort Collins resident who works with ISAAC (Interfaith Solidarity and Accompaniment Coalition) of Northern Colorado representing both low- and fixed-income landlords as well as tenants, shared about a spirit of due diligence in really working together, especially through the pandemic, to create a different way of doing things together in Fort Collins. She also expressed a need for outreach and education policies, with a realistic budget.

Madeleine Kamberg Jennings, Fort Collins resident, shared about having spoken on this topic two weeks ago as a tenant and reiterated that tenants are at a standstill on trying to get their needs met already, noting she did not know a complaint-based system already exists and there is a need for education about these resources.

Jayme Bailey, Fort Collins resident and renter, spoke in support of this program and shared an experience using the complaint-based system that resulted in an inspection occurring after the property's condition caused lifelong health issues for multiple family members living in the home due to the lack of maintenance being done, and noted the homeowner did no repairs from the report the inspector provided.

COUNCIL DISCUSSION

In response to a question from Council, staff reviewed the public engagement that occurred over the last couple of years on this topic, including reviewing slide 10 in the presentation again.

Councilmember Ohlson thanked everyone for the input received on this topic and shared his conclusions in response to some feedback about why the Council is interested in moving forward with this sort of initiative, noting rental property is a business that is appropriate to be subject to regulation and inspection as with many other types of businesses. He stated his disagreement that this will raise rents more than a miniscule amount or that costs will automatically be passed on to tenants, while noting rents could possibly be impacted if minimal habitability standards are not met on matters of life and safety which is necessary especially for the most vulnerable among us.

Mayor Pro Tem Francis shared the goal of getting to an environment of safe and affordable housing, however there are unintended consequences with this program. She stated landlord registration can help with making contact with landlords, as well as increasing education efforts and access to mediation services. She stated support for bringing this back with a registration program with all of these enhanced components, as well as looking at a revolving loan fund as part of the midyear appropriation for helping property owners bring homes up to standard.

Councilmember Pignataro stated the shared desire to do the best thing for the habitability of our renters and thanked everyone for being engaged in these conversations. She also shared agreement with more information in the dialogue that has occurred that a year to 18 months is not enough time to gather enough information to move forward with more comprehensive measures and instead supported a two-to-three-year term to continue gathering data to better shape a program. She spoke in support of voting the ordinance in front of Council down tonight to bring back a revised ordinance for registration only on May 2 for first reading.

Councilmember Canonico spoke in support of Councilmember Pignataro's statement, emphasizing the importance of including robust education and focus on mediation as part of the program being developed.

Councilmember Gutowsky stated we need to get back to basics and need a robust data gathering system as part of any efforts going forward to better keep track of complaints, including multiple complaints, voicing support for registration.

In response to a question about what would be included in a revised ordinance, Director Champine shared staff is working through what would be included in the ordinance versus what would be captured in the agenda item summary (AIS). There was conversation about timing, including bringing back a revised ordinance on May 2 versus providing more time to allow incorporating more into the ordinance directly. It was also requested that as part of an action, there be a check in point established for staff to come back to Council on this program after implementation.

Mayor Arndt voiced support for bringing back an ordinance on May 2 with registration only, with a focus on a more hopeful ordinance.

Mayor Pro Tem Francis requested to have a revised budget come back as well that reflects more robust education.

Councilmember Ohlson stated a request to see a more robust timeline for implementing the registration element when it is adopted.

In response to questions about the software updates needed, it was noted that it is included in the first appropriation now under consideration and work has already been underway with the software provider on what systems will be needed.

City Manager DiMartino noted with the discussion occurring about what Council members may wish to see as part of this item coming back with a revised ordinance, an additional two weeks beyond May 2 would be helpful. The May 2 timing for a revised first reading would be appropriate for bringing back essentially the same ordinance without proactive inspections. There was consensus to bring back a revised ordinance on May 16.

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to postpone indefinitely Ordinance No. 058, 2023.

The motion carried 7-0.

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to postpone indefinitely Ordinance No. 059, 2023.

The motion carried 7-0.

14. **Items Relating to the Repeal and Reenactment of Certain Ordinances.**

A. Second Reading of Ordinance No. 060, 2023, Repealing Ordinance No. 026, 2023, and Appropriating Philanthropic Revenue Received Through City Give for The Gardens on Spring Creek for General Operations as Designated by the Donor.

B. Second Reading of Ordinance No. 061, 2023, Repealing Ordinance No. 031, 2023, and Appropriating Prior Year Reserves for a Capital Contribution of $1,000,000 for Construction of a New Public Terminal Facility at the Northern Colorado Regional Airport.

Due to a publication error, staff requests Council repeal and reenact each Ordinance as they were adopted on March 7, 2023. These Ordinances were placed on discussion because the votes adopting these items originally were not unanimous.

Ordinance No. 060, 2023 was adopted by a unanimous vote on April 4, 2023.
Ordinance No. 061, 2023 was adopted by a vote of 5-2 (Nays: Francis and Ohlson)

Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, to adopt on second reading Ordinance No. 060, 2023.

The motion carried 7-0.

Councilmember Pignataro moved, seconded by Councilmember Gutowsky, to adopt on second reading Ordinance No. 061, 2023.

The motion carried 5-2.
Ayes: Councilmembers Gutowsky, Pignataro, Canonico, Peel, and Mayor Arndt.
Nays: Councilmember Ohlson and Mayor Pro Tem Francis.

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 go into Executive Session Relating to the Land Acquisition for the Southeast Community Center:**

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, that Council go into executive session to discuss REAL PROPERTY ACQUISITION for the Southeast Community Center, as permitted under:

- City Charter Article Roman Numeral Two, Section 11(3),
- City Code Section 2-31(a)(3), and
- Colorado Revised Statutes Section 24-6-402(4)(a).

Councilmember Francis moved, seconded by Councilmember Pignataro, to go in to executive session.

The motion carried 7-0.

The Council met in executive session beginning at 9:47 p.m. with a recording made. Present were:

- Mayor Jeni Arndt
- Mayor Pro Tem Emily Francis
- Councilmember Susan Gutowsky
- Councilmember Julie Pignataro
- Councilmember Canonico
- Councilmember Shirley Peel
- Councilmember Kelly Ohlson
- City Manager Kelly DiMartino
- City Attorney Carrie Daggett
- City Clerk Anissa Hollingshead
- Deputy City Manager Tyler Marr
- Chief Financial Officer Travis Storin
- Community Services Director Dean Klingner
- Recreation Director Leann Williams
- Community Services Financial Manager Victoria Shaw
- Interim Real Estate Manager Jonathan Pfiefer

All the same attendees were present at the conclusion of the executive session at 10:59 p.m.

Q) ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at 11:01 p.m.

_____
Mayor

ATTEST:

_____

City Clerk

May 2, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Katie Donahue, Director, Natural Areas Department
Barb Brock, Financial Analyst II, Natural Areas Department
Ingrid Decker, Legal

SUBJECT

Second Reading of Ordinance No. 063, 2023, Appropriating Prior Year Reserves in the Natural Areas Fund and the Sales and Use Tax Fund for the Purpose of Land Conservation, Visitor Amenities, Restoration and Other Related Natural Areas Stewardship Activities Not Included in the 2023 Adopted City Budget.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on April 18, 2023, appropriates $10,844,479 in prior year reserves in the Natural Areas Fund and $1,258,071 in prior year reserves in the Sales and Use Tax fund to be transferred to the Natural Areas Fund. These appropriations are for land conservation, visitor amenities and restoration of wildlife habitat, as well as other Natural Areas Department stewardship activities to benefit the residents of Fort Collins.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

The Ordinance appropriates $12,102,550 in unspent funds and unanticipated revenues in the Natural areas Fund to fund land conservation, restoration of wildlife habitat, trails and visitor amenities, special projects and other NAD needs to benefit the residents of Fort Collins. Funding for the Natural Areas Department (NAD) for purposes other than capital projects lapses each year if not spent. Unspent prior year funds and unanticipated revenues need to be appropriated into the following year's budget before they can be used.

In addition, the sales and use tax revenue received in 2022 was higher than projected and existing appropriations were not adequate to make the full transfer from the Sales and Use Tax Fund to the Natural Areas Fund for the one quarter cent Natural Areas tax in the amount of $1,258,071.

Of the total appropriation $10,100,000 will be used for land conservation. With over $10 million in land acquisitions under negotiation, it is likely that most of these funds specifically for land conservation will be spent in 2023.

The funds for NAD come from the following designated sources of revenue: the City - Open Space Yes! Quarter Cent sales tax; the Larimer County - Help Preserve Open Space ¼ cent sales tax; and miscellaneous anticipated and unanticipated revenues. All these funds are restricted to the purposes of

the NAD, including unanticipated revenues, which consist generally of income from sales tax revenues, sale of easements and leases, and grants. The prior year reserve funds being appropriated in this Ordinance are more specifically described as:

$ 8,788,361	Unspent 2022 Budgeted Funds – appropriated for same purpose.
$ 2,056,118	Unanticipated Revenues & Unspent Funds – appropriated for new purposes.
$ 1,258,071	Transfer from Sales and Use Tax Fund
$12,102,550	Total Appropriation from 2022 Prior Year Reserves

The anticipated use of these funds is as follows:

- **Land Conservation** - $10,100,000: $7,034,186 in unspent land conservation funds plus $3,065,814 in new funds for land conservation efforts per the Natural Areas Master Plan.
- **Resource Management -** $400,700: $55,700 to carryover the unspent donation from the West Vine neighborhood for the restoration of Kestrel Fields; $100,000 for demolition of structures, when needed, for new acquisitions, $40,000 for additional fencing needs, $60,000 for breeding bird data analysis and $145,000 in restoration seed purchases.
- **Planning and Special Projects -** $816,850: $804,000 for future major restoration projects and $12,850 in undistributed Enhancement Grant Funds.
- **Trails and Visitor Amenities (TVA) -** $660,000 in unspent TVA funds for improvements at Gateway Natural area, opening of Kestrel Fields Natural area and other minor TVA projects.
- **Rangers -** $100,000: Communication equipment replacing seven Motorola pac set radios, and eight mobile mounted Motorola radios no longer supported for service and one DVRS repeater to allow radio communication to and from Gateway Natural Area for the first time.
- **Department Management -** $25,000 for additional furniture for reconfigured new spaces.

CITY FINANCIAL IMPACTS

The appropriation Ordinance increases 2023 appropriations in the City's Natural Areas Fund by $12,102,550. The requested total appropriation of $12,102,550 in the Natural Areas Fund represents 2022 appropriations that were unspent and unencumbered at year-end in addition to 2022 unanticipated revenues and new appropriations from the Natural Areas Fund Balance. The proposed Ordinance also increases the total appropriations in the Sales and Use Tax Fund by $1,258,071 to be transferred to the Natural Areas Fund. All these funds are restricted to the purposes of the Natural Areas Fund.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The Land Conservation and Stewardship Board met on April 12, 2023 and unanimously recommended that Council approve this appropriation.

PUBLIC OUTREACH

Natural Areas Funds will be spent in alignment with the Natural Areas Master Plan, which was extensively reviewed by the public prior to its adoption in October 2014.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 063, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES IN THE NATURAL AREAS FUND AND THE SALES AND USE TAX FUND FOR THE PURPOSE OF LAND CONSERVATION, VISITOR AMENITIES, RESTORATION AND OTHER RELATED NATURAL AREAS STEWARDSHIP ACTIVITIES NOT INCLUDED IN THE 2023 ADOPTED CITY BUDGET

WHEREAS, the City is committed to preserving natural areas and providing educational, interpretive and appropriate recreational opportunities to the public; and

WHEREAS, Natural Areas programming implements open land conservation priorities identified in the City's Comprehensive Plan by purchasing conservation easements or other interests in key natural areas, community separators, or other open lands; providing stewardship for lands purchased; public engagement and educational programs; and developing trails, interpretive features and other amenities for public use; and

WHEREAS, the Natural Areas Department is funded primarily through the collection of City Open Space – Yes! sales and use tax revenue, as well as revenues from the Larimer County Help Preserve Open Space sales and use tax, investment earnings, and other miscellaneous revenues deposited in the Natural Areas Fund; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon the recommendation of the City Manager, to make supplemental appropriations by ordinance at any time during the fiscal year of such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated; and

WHEREAS, Article V, Section 11 of the City Charter requires all appropriations unexpended or unencumbered at the end of the fiscal year lapse to the applicable general or special revenue fund, except appropriations for capital projects and federal or state grants do not lapse until completion of the capital project or expiration of the respective grant; and

WHEREAS, the City Manager has recommended the appropriation from prior year reserves in the Natural Areas Fund of $10,844,479, comprised of unspent and unencumbered appropriations from 2022, and

WHEREAS, the City Manager has recommended this appropriation and determined that this appropriation is available and previously unappropriated from the Natural Areas Fund and will not cause the total amount appropriated in the Natural Areas Fund to exceed the current estimate of actual and anticipated revenues and all other funds to be received in this Fund during this fiscal year; and

WHEREAS, Article V, Section 10 of the City Charter authorizes the City Council, upon recommendation by the City Manager, to transfer by ordinance any unexpended and unencumbered appropriated amount or portion thereof from one fund or capital project to another fund or capital project, provided that the purpose for which the transferred funds are to be expended

remains unchanged, the purpose for which the funds were initially appropriated no longer exists, or the proposed transfer is from a fund or capital project in which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance; and

WHEREAS, the City Manager has recommended the transfer of $1,258,071 from the Sales and Use Tax Fund to the Natural Areas Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

WHEREAS, the appropriations described herein shall be used for land conservation, resource management, planning, construction of trails and other visitor amenities, restoration of wildlife habitat, and other Natural Areas Department programs and activities to benefit the residents of the City, in accordance with the Natural Areas Master Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from prior year reserves in the Natural Areas Fund the sum of TEN MILLION EIGHT HUNDRED FORTY-FOUR THOUSAND FOUR HUNDRED SEVENTY-NINE DOLLARS ($10,844,479) to be expended in the Natural Areas Fund for land conservation, resource management, planning, construction of trails and other visitor amenities, restoration of wildlife habitat, and other Natural Areas Department programs and activities to benefit the residents of the City, in accordance with the Natural Areas Master Plan.

Section 3. That there is hereby appropriated from prior year reserves in the Sales and Use Tax Fund for transfer to the Natural Areas Fund the sum of ONE MILLION TWO HUNDRED FIFTY-EIGHT THOUSAND SEVENTY-ONE DOLLARS ($1,258,071) and appropriated therein to be expended in the Natural Areas Fund for land conservation, resource management, planning, construction of trails and other visitor amenities, restoration of wildlife habitat, and other Natural Areas Department programs and activities to benefit the residents of the City, in accordance with the Natural Areas Master Plan.

Introduced, considered favorably on first reading, and ordered published this 18th day of April, 2023, and to be presented for final passage on the 2nd day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading on the 2nd day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

May 2, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Rachel Ruhlen, Transportation Planner
Kerri Ishmael, Senior Analyst, Grant Administration
Aaron Guin, Legal

SUBJECT

Second Reading of Ordinance No. 064, 2023, Appropriating Unanticipated Grant Revenue from the Colorado Energy Office's Community Access to Electric Bicycles Grant Program for the Choose Your Ride, Shift Your Ride Program.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on April 18, 2023, supports the Choose Your Ride, Shift Your Ride project being administered by FC Moves in collaboration with Colorado State University in support of affordable active modes of transportation for low-income individuals by appropriating $148,350 of unanticipated grant revenue, awarded by the Colorado Energy Office, to the Transportation Fund.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

The Choose Your Ride, Shift Your Ride project (the "Project") supports electric micromobility, including shared micromobility for the most impoverished and marginalized of the Fort Collins population. Specifically, the Project, operated in collaboration with Colorado State University (CSU), does this by providing e-bikes or Spin e-bike/e-scooter share passes to people with low incomes in Fort Collins. Choose Your Ride, Shift Your Ride recognizes that everyone has unique transportation needs and so it is tailored to the individual. Each participant will be paired with a "Bike Buddy" who will work with the participants and project managers to select the right package, whether that is e-bike ownership or a multi-year Spin pass, including proper accessories, and will receive customized training from their Bike Buddy. In addition, there will be group rides and conversations to build a community network among participants that will last beyond the one-year Project where participants can continue to support each other.

The Colorado Energy Office (CEO) recently awarded a Community Access to Electric Bicycles Grant to FC Moves to support Choose Your Ride, Shift Your Ride.

The award is based on total project costs of $163,330, with CEO providing $148,350 in funds and the remaining $14,980 being provided by FC Moves as a grant match. As presented in the project Statement of Work, total project costs ($163,330) funding for purchase of e-bikes, SPIN passes, and personalized accessories for safety and needs, costs associated with personnel time for Bike Buddies to train and

support participants, and gift card incentives to encourage participation in classes, group rides and surveys to gather project information. Notably, CEO grant funds may be expended toward a SPIN pass for up to one year; however, to make the SPIN pass option more appealing to participants, the Project intends to fund SPIN passes for participants who choose SPIN (over e-bike ownership) for up to 3 years (but this additional funding is not included as part of this appropriation item).

The required match of $14,980 will be provided by FC Moves staff in managing this project and required reporting to CEO throughout the project period. The term of performance for the Project is from May 2023 through April 2024.

Pursuant to the State of Colorado Small Dollar Grant Terms and Conditions, and in accordance with Section 1-22 of the City Code, the City Manager has accepted the grant agreement.

CITY FINANCIAL IMPACTS

This item appropriates $148,350 in project costs for the Choose Your Ride, Shift Your Ride project from unanticipated grant revenue from CEO.

Additionally, required matching funds in the amount of $14,980 have already been appropriated in the 2023 Transportation Fund in the FC Moves operating budget. The total project cost is $163,330.

This grant from the CEO is a reimbursement type grant, meaning Transportation Fund expenses will be reimbursed up to $148,350.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

N/A

PUBLIC OUTREACH

N/A

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 064, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING UNANTICIPATED GRANT REVENUE FROM THE
COLORADO ENERGY OFFICE'S COMMUNITY ACCESS TO ELECTRIC BICYCLES
GRANT PROGRAM FOR THE CHOOSE YOUR RIDE, SHIFT YOUR RIDE PROGRAM

WHEREAS, FC Moves is a department within the City's Planning, Development, and Transportation division that exists to advance mobility solutions to increase walking, bicycling, transit use, shared modes, and environmentally sustainable modes; and

WHEREAS, advancing clean and affordable transportation options like e-scooters and e-bikes is an important element in achieving FC Moves' mission; and

WHEREAS, the FC Moves Choose Your Ride, Shift Your Ride project (the "Project") supports electric micromobility, including shared micromobility, for the most impoverished and marginalized of the Fort Collins population; and

WHEREAS, the Project, operated in collaboration with Colorado State University, seeks to support electric micromobility and shared micromobility options by providing e-bikes or SPIN e-bike/e-scooter share passes to individuals with low incomes in Fort Collins; and

WHEREAS, the City of Fort Collins applied for and was awarded $148,350 from the Colorado Energy Office ("CEO") and its Community Access to Electric Bicycles Grant Program for the Project; and

WHEREAS, the CEO grant is a reimbursement type grant, meaning Transportation Fund expenses will be reimbursed up to $148,350; and

WHEREAS, the CEO grant requires a local match of $14,980, which already has been appropriated in the 2023 Transportation Fund in the FC Moves operating budget; and

WHEREAS, the CEO grant funds will enable the Project to subsidize micromobility and educational programming for up to forty participants who meet selection criteria that prioritizes the lowest income individuals and transportation needs that can be addressed by the Project; and

WHEREAS, the CEO grant funds will be used to provide selected participants with either e-bike ownership or free access to SPIN e-bikes and e-scooters for a one-year period; and

WHEREAS, Project funding also will be used to develop and provide supportive and educational programing to the participants; and

WHEREAS, subsidizing sustainable transportation options and providing hands-on education are proven strategies to encourage people to try and utilize other modes of transportation besides driving automobiles alone; and

WHEREAS, this appropriation benefits the public health, safety and welfare of the residents of Fort Collins and serves the public purposes of promoting environmentally sustainable mobility solutions and serving lower income members of our community; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon recommendation of the City Manager, to make supplemental appropriations by ordinance at any time during the fiscal year, provided that the total amount of such supplemental appropriations, in combination with all previous appropriations for that fiscal year, does not exceed the current estimate of actual and anticipated revenues and all other funds to be received during the fiscal year; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Transportation Services Fund and will not cause the total amount appropriated in the Transportation Services Fund to exceed the current estimate of actual and anticipated revenues to be received in that fund during any fiscal year; and

WHEREAS, Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds for a federal, state or private grant, that such appropriation shall not lapse at the end of the fiscal year in which the appropriation is made, but continue until the earlier of the expiration of the federal, state or private grant or the City's expenditure of all funds received from such grant; and

WHEREAS, the City Council wishes to designate the appropriation herein from the Colorado Community Revitalization Grant Program as an appropriation that shall not lapse until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from new revenue or other funds in the Transportation Services Fund the sum of ONE HUNDRED FORTY-EIGHT THOUSAND THREE HUNDRED FIFTY DOLLARS ($148,350) to be expended in the Transportation Services Fund for the Choose Your Ride, Shift Your Ride Program.

Section 3. That the appropriation herein from the Colorado Energy Office's Community Access to Electric Bicycle Grant Program is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

Section 4. That the City Council has reviewed the Colorado Energy Office's Community Access to Electric Bicycle Grant Program and approves of such funding and further authorizes City staff to take appropriate action necessary to be able to expend the grant funds as contemplated by the Grant Program.

Introduced, considered favorably on first reading, and ordered published this 18th day of April, 2023, and to be presented for final passage on the 2nd day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading on the 2nd day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

May 2, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Tim Sellers, Project Manager
Dana Hornkohl, Capital Projects Manager
Jonathan Piefer, Real Estate Interim Manager
Ryan Malarky, Legal

SUBJECT

Second Reading of Ordinance No. 065, 2023, Authorizing the Acquisition by Eminent Domain Proceedings of Temporary Easements on Certain Lands Necessary to Construct Public Improvements for the Eastern Segment of the Laporte Corridor Improvement Project.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on April 18, 2023, authorizes the use of eminent domain, if deemed necessary, to acquire temporary construction easements needed for constructing improvements for the Laporte Corridor Project.

STAFF RECOMMENDATION

Staff recommend adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

Laporte Ave is a two lane east-west arterial roadway that serves as a route to school for Poudre High School students and as an important connection to northwestern Fort Collins. Most of the roadway within the Project lacks adequate bicycle and pedestrian facilities including sidewalks, bike lanes, curb and gutter. The roadway experiences heavy bicycle and pedestrian traffic especially with Poudre High School and many residential neighborhoods and businesses being located adjacent to the Project limits. Several near misses and at least one serious vehicle-pedestrian accident have occurred within the Project limits. The corridor currently experiences a higher-than-expected volume of traffic accidents due to the lack of adequate infrastructure. Laporte Avenue is master planned to be on the City's low-stress bicycle network.

Staff, following recommendations in the Active Modes Plan, has initiated the Laporte Corridor Project, CDOT Project No. TAP M455-133 (the "Project"), to construct protected bike and pedestrian facilities along Laporte from Fishback Ave. in the east to Sunset St. in the west. Initial outreach and planning began in 2019, and the Project is funded through design and partial construction via various federal grant programs, including Transportation Alternatives, Multi-modal Options Fund, and Revitalizing Main Streets, as well as local funding. The property interests to be acquired for the Project are set forth more particularly in the attached Vicinity Map. All the property interests are temporary construction easements, which are necessary for access during construction of the Project and for minor adjustments to pavement and grade on private property.

Project construction is planned in two segments: the “East Segment”, which is east of Grandview Avenue, and the “West Segment”, which is west of Taft Hill Rd. The East Segment is fully funded and targeted to have design completed and construction beginning by the fall of 2023. At this time, staff is seeking authorization for eminent domain authority to be used in any subsequent condemnation proceedings for the temporary easements located only in the East Segment. Staff will return for authorization for the West Segment once its design has progressed and its funding is in place. CDOT has been involved in the discussions of and planning for this manner of separation and completion of the Project and takes no exception to this delivery method.

The entire acquisition process will be conducted according to federal and state eminent domain requirements, which must be followed for all property interests throughout the entire acquisition process. The process will be done in coordination with CDOT because of the federal funding component. Staff intend to negotiate in good faith with the affected property owners and will work with them to address individual site considerations and project specifications.

City staff are currently engaged in pre-negotiation activities, such as preliminary due-diligence and finalization of design and construction elements. Staff have been meeting with the affected property owners to discuss the project design and the potential impacts to their respective properties. Prior to the first reading of this Ordinance, the property owners have been notified by mail of this request to Council for eminent domain authorization. The adoption of this Ordinance will permit the City to officially begin negotiations with the property owners by issuing the Notice of Intent letters, discussed below.

Eminent domain authorization is necessary to ensure that the Project can proceed on schedule in the event the City is unable to obtain voluntary conveyances from all Property Owners. Staff are optimistic that all property negotiations can be completed prior to the start of construction on the Project. However, staff anticipates that a voluntary agreement may not be reached in a timely manner with one or more of the property owners and that the use of eminent domain may be necessary.

How and When City Staff Uses Eminent Domain

When a large capital improvement project is planned, it must determine whether the City will need to acquire private property if an agreement cannot be reached with a landowner. If so, staff will request Council to authorize the use of eminent domain for the potential acquisition of such property by the subsequent initiation of condemnation proceedings, if necessary. Once an ordinance is adopted, the team continues to coordinate with the impacted property owners to finalize the project plans. Once plans are finalized, the City sends the property owner a Notice of Intent letter, which explains what property interests must be acquired. The City then must determine the fair market value of the property, which will require the review and evaluation of one or more appraisals and/or waiver valuations. For higher valued properties, the owners will usually be entitled to reimbursement for their appraisal costs. Once the City determines fair market value and makes an offer, the parties will negotiate to reach an agreement to buy the necessary property interests.

Only if a voluntary agreement cannot be reached may the City exercise its eminent domain authority by filing condemnation proceedings in a court of competent jurisdiction. The filing of such an action will permit the City to seek the immediate use and possession of the property so that the project may proceed on schedule. Prior to obtaining possession of the property, the City must deposit the estimated fair market value into an escrow account for the benefit of the landowners. The primary issue the court will determine at trial is what constitutes just compensation for the property interests acquired. Even though most condemnation cases are dismissed after the parties reach a settlement agreement, it must be anticipated that some cases will proceed to trial.

Staff recommends that Council authorize the use of eminent domain for this Project to provide a fair and equitable process that will allow the City to meet project design and construction deadlines while still ensuring all property owners are fairly compensated for their property interests. Condemnation will only be

used as necessary if the City is unable to reach an agreement with a property owner through good faith negotiations.

Obtaining eminent domain authority will:

- Allow staff to develop project timelines with more certainty;
- Help keep a planned property acquisition schedule, reducing the risk and cost of unexpected future delays; and
- Ensure consistent messaging to affected property owners.

CITY FINANCIAL IMPACTS

This action will not authorize any new funding for the project but will only authorize acquisition of the identified parcels. The existing funding in place for the design, acquisition and construction of the improvements is as follows:

Funds Appropriated in Prior Actions		
Transportation Alternatives (TA) Grant	$	750,000
Multimodal Transportation and Mitigation Options Fund (MMOF) Grant	$	250,000
Revitalizing Main Streets (RMS) Grant	$	1,437,500
Transportation Capital Expansion Fee (TCEF)	$	389,142
Transportation Fund	$	858
Community Capital Improvement Program - Pedestrian Sidewalk	$	300,000
Total Appropriations in Prior Actions	**$**	**3,127,500**

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

City staff presented this project to the Council Finance Committee on August 11, 2021. The Laporte Project was also presented to the Transportation Board as well as the Bicycle Advisory Committee in 2020.

PUBLIC OUTREACH

Staff 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.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 065, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE ACQUISITION BY EMINENT DOMAIN PROCEEDINGS OF TEMPORARY EASEMENTS ON CERTAIN LANDS NECESSARY TO CONSTRUCT PUBLIC IMPROVEMENTS FOR THE EASTERN SEGMENT OF THE LAPORTE CORRIDOR IMPROVEMENT PROJECT

WHEREAS, the City is in the process of planning improvements to the Laporte Avenue corridor from Fishback Avenue in the east to Sunset Street in the west to include sidewalk, bicycle lanes, and curb and gutter for the purpose of improving bicycle and pedestrian facilities (the "Project"); and

WHEREAS, the Project is necessary to address increased bicycle and pedestrian use of Laporte Avenue, which has led to higher-than-expected traffic accidents, and several near misses and at least one serious vehicle-pedestrian accident within the Project limits, and to address anticipated future use needs as growth continues in the region; and

WHEREAS, the Project is planned in two segments: the East Segment is that portion of Laporte Avenue east of Grandview Avenue and the West Segment is that portion of Laporte Avenue west of Taft Hill Road; and

WHEREAS, the East Segment is fully funded and targeted to complete design and commence construction by fall 2023; and

WHEREAS, to construct the East Segment of the Project, the City will need to acquire temporary construction easements from eighteen property owners (referenced as "TE-02," "TE-03," "TE-04," "TE-05," "TE-06," "TE-07," "TE-10," "TE-11," "TE-12," "TE-13," "TE-14," "TE-15," "TE-16," "TE-17," "TE-18," "TE-20," "TE-21," and "TE-22") as described on Exhibit "A", attached hereto and incorporated herein by this reference (the "Property Interests"); and

WHEREAS, the City will negotiate in good faith for the acquisition of the Property Interests from the owners thereof; and

WHEREAS, the acquisition of the Property Interests is desirable and necessary for the construction of the Project, is in the City's best interest, and enhances public health, safety, and welfare because it will allow for the construction of needed public infrastructure within the City; and

WHEREAS, the acquisition of the Property Interests may, by law, be accomplished through eminent domain.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby authorizes the City Attorney and other appropriate officials of the City to acquire the Property Interests for the City by eminent domain proceedings.

Section 3. That the City Council further finds that, in the event acquisition by eminent domain of the Property Interests or any of them is commenced, immediate possession is necessary for the public's health, safety and welfare.

Introduced, considered favorably on first reading, and ordered published this 18th day of April, 2023, and to be presented for final passage on the 2nd day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading on this 2nd day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

EXHIBIT A

PROJECT NUMBER: TAP M455-133
PARCEL NUMBER: TE-02
PROJECT CODE: 23630
DATE: MARCH 31, 2023

TEMPORARY EASEMENT NO. TE-02 OF THE CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO, PROJECT NO. TAP M455-133 CONTAINING 8,977 SQ. FT. (0.206 ACRES); LOCATED IN THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; SAID EASEMENT BEING LOCATED WITHIN THAT TRACT OF LAND DESCRIBED IN THE SPECIAL WARRANTY DEED RECORDED NOVEMBER 23, 2021 AT RECEPTION NO. 20210106983 IN THE OFFICE OF THE LARIMER COUNTY CLERK AND RECORDER (HEREINAFTER KNOWN AS PARCEL 2); BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 10; THENCE N67°35'24"W, A DISTANCE OF 663.46 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 2 (ALSO BEING A POINT ON THE WESTERLY BOUNDARY OF THE LEEPER SUBDIVISION), SAID POINT BEING THE **POINT OF BEGINNING**;

1. THENCE ALONG THE EASTERLY BOUNDARY OF SAID PARCEL 2, S00°23'47"W, A DISTANCE OF 214.84 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL 2;

2. THENCE ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF LAPORTE AVENUE, N89°14'43"W, A DISTANCE OF 173.24 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL 2;

3. THENCE ALONG THE WESTERLY BOUNDARY OF SAID PARCEL 2 (ALSO BEING THE EASTERLY BOUNDARY OF THE STODGY BREWING SUBDIVISION), N23°23'17"W, A DISTANCE OF 13.15 FEET;

4. THENCE S89°14'43"E, A DISTANCE OF 70.36 FEET;

5. THENCE S00°45'17"W, A DISTANCE OF 8.50 FEET;

6. THENCE S89°14'43"E, A DISTANCE OF 70.81 FEET;

7. THENCE N00°45'17"E, A DISTANCE OF 212.17 FEET TO A POINT ON THE NORTHERLY BOUNDARY OF SAID PARCEL 2;

8. THENCE ALONG SAID NORTHERLY BOUNDARY, S87°54'19"E, A DISTANCE OF 36.12 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 8,897 SQUARE FEET (0.206 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

THE PURPOSE OF THE ABOVE-DESCRIBED TEMPORARY EASEMENT IS FOR

EXHIBIT A

ACTIVITIES ASSOCIATED WITH SIDEWALK AND ROADWAY CONSTRUCTION.

BASIS OF BEARINGS: CONSIDERING THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 10, T7N, R69W OF THE 6TH P.M. TO BEAR N89°14'43"W, SAID LINE BEING MONUMENTED ON ITS EAST END BY A 3-1/4" ALUMINUM CAP STAMPED LS 17497, AND ON ITS WEST END BY A 2-1/2" ALUMINUM CAP STAMPED LS 14823, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO

I HEREBY STATE THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF, AND OPINION.

JOHN STEVEN VON NIEDA, COLORADO P.L.S. 31169
FOR AND ON BEHALF OF THE CITY OF FORT COLLINS
P.O. BOX 580, FORT COLLINS, CO 80522

EXHIBIT A

PROJECT NUMBER: TAP M455-133
PARCEL NUMBER: TE-03
PROJECT CODE: 23630
DATE: MARCH 31, 2023

TEMPORARY EASEMENT NO. TE-03 OF THE CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO, PROJECT NO. TAP M455-133 CONTAINING 5,376 SQ. FT. (0.123 ACRES); LOCATED IN THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; SAID EASEMENT BEING LOCATED WITHIN LOT 1 OF THE LEEPER SUBDIVISION RECORDED SEPTEMBER 5, 1969 IN BOOK 1417, PAGE 222 IN THE OFFICE OF THE LARIMER COUNTY CLERK AND; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 10; THENCE N67°35'24"W, A DISTANCE OF 663.46 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID LOT 1 (ALSO BEING THE NORTHEAST CORNER OF THAT TRACT OF LAND DESCRIBED IN THE SPECIAL WARRANTY DEED RECORDED NOVEMBER 23, 2021 AT RECEPTION NO. 20210106983), SAID POINT BEING THE **POINT OF BEGINNING**;

1. THENCE S87°54'19"E, A DISTANCE OF 13.89 FEET;

2. THENCE S00°45'17"W, A DISTANCE OF 183.51 FEET;

3. THENCE S89°14'43"E, A DISTANCE OF 272.18 FEET TO A POINT ON THE EASTERLY BOUNDARY OF SAID LOT 1 (ALSO BEING THE WESTERLY BOUNDARY OF THAT TRACT OF LAND DESCRIBED AT RECEPTION NO. 20150003372);

4. THENCE ALONG SAID EASTERLY BOUNDARY, S00°23'53"W, A DISTANCE OF 10.28 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1;

5. THENCE ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF LAPORTE AVENUE AS SHOWN ON SAID LEEPER SUBDIVISION, N89°14'43"W, A DISTANCE OF 284.92 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1;

6. THENCE ALONG THE WESTERLY BOUNDARY OF SAID LOT 1, N00°23'47"E, A DISTANCE OF 194.12 FEET TO THE POINT OF BEGINNING.

CONTAINING 5,376 SQUARE FEET (0.123 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

THE PURPOSE OF THE ABOVE-DESCRIBED TEMPORARY EASEMENT IS FOR ACTIVITIES ASSOCIATED WITH SIDEWALK AND ROADWAY CONSTRUCTION.

BASIS OF BEARINGS: CONSIDERING THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 10, T7N, R69W OF THE

EXHIBIT A

6TH P.M. TO BEAR N89°14'43"W, SAID LINE BEING MONUMENTED ON ITS EAST END BY A 3-1/4" ALUMINUM CAP STAMPED LS 17497, AND ON ITS WEST END BY A 2-1/2" ALUMINUM CAP STAMPED LS 14823, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO

I HEREBY STATE THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF, AND OPINION.

JOHN STEVEN VON NIEDA, COLORADO P.L.S. 31169
FOR AND ON BEHALF OF THE CITY OF FORT COLLINS
P.O. BOX 580, FORT COLLINS, CO 80522

EXHIBIT A

PROJECT NUMBER: TAP M455-133
PARCEL NUMBER: TE-04
PROJECT CODE: 23630
DATE: MARCH 10, 2023

TEMPORARY EASEMENT NO. TE-04 OF THE CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO, PROJECT NO. TAP M455-133 CONTAINING 1,452 SQ. FT. (0.033 ACRES); LOCATED IN THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; SAID EASEMENT BEING LOCATED WITHIN THAT TRACT OF LAND DESCRIBED IN THE WARRANTY DEED RECORDED JANUARY 20, 2015 AT RECEPTION NO. 20150003372 IN THE OFFICE OF THE LARIMER COUNTY CLERK AND RECORDER (HEREINAFTER KNOWN AS PARCEL 4); BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 10; THENCE N81°34'34"W, A DISTANCE OF 333.44 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID PARCEL 4 (ALSO BEING THE EASTERLY BOUNDARY OF THE LEEPER SUBDIVISION), SAID POINT BEING THE **POINT OF BEGINNING**;

1. THENCE S89°14'43"E, A DISTANCE OF 100.00 FEET TO A POINT ON THE EASTERLY BOUNDARY OF SAID PARCEL 4 (ALSO BEING THE WESTERLY BOUNDARY OF THAT TRACT OF LAND DESCRIBED AT RECEPTION NO. 20120024747);

2. THENCE ALONG SAID EASTERLY BOUNDARY, S00°23'53"W, A DISTANCE OF 14.52 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL 4;

3. THENCE ALONG THE NORTH RIGHT-OF-WAY LINE OF LAPORTE AVENUE, N89°14'43"W, A DISTANCE OF 100.00 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL 4;

4. THENCE N00°23'53"E, A DISTANCE OF 14.52 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 1,452 SQUARE FEET (0.033 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

THE PURPOSE OF THE ABOVE-DESCRIBED TEMPORARY EASEMENT IS FOR ACTIVITIES ASSOCIATED WITH SIDEWALK AND ROADWAY CONSTRUCTION.

BASIS OF BEARINGS: CONSIDERING THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 10, T7N, R69W OF THE 6TH P.M. TO BEAR N89°14'43"W, SAID LINE BEING MONUMENTED ON ITS EAST END BY A 3-1/4" ALUMINUM CAP STAMPED LS 17497, AND ON ITS WEST END BY A 2-1/2" ALUMINUM CAP STAMPED LS 14823, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO

EXHIBIT A

I HEREBY STATE THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF, AND OPINION.

JOHN STEVEN VON NIEDA, COLORADO P.L.S. 31169
FOR AND ON BEHALF OF THE CITY OF FORT COLLINS
P.O. BOX 580, FORT COLLINS, CO 80522

EXHIBIT A

PROJECT NUMBER: TAP M455-133
PARCEL NUMBER: TE-05
PROJECT CODE: 23630
DATE: MARCH 10, 2023

TEMPORARY EASEMENT NO. TE-05 OF THE CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO, PROJECT NO. TAP M455-133 CONTAINING 1,574 SQ. FT. (0.036 ACRES); LOCATED IN THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; SAID EASEMENT BEING LOCATED WITHIN THAT TRACT OF LAND DESCRIBED IN THE WARRANTY DEED RECORDED APRIL 13, 2012 AT RECEPTION NO. 201224747 IN THE OFFICE OF THE LARIMER COUNTY CLERK AND RECORDER (HEREINAFTER KNOWN AS PARCEL 5); BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 10; THENCE N70°41'12"W, A DISTANCE OF 186.94 FEET TO A POINT ON THE EASTERLY BOUNDARY OF SAID PARCEL 5 (ALSO BEING THE WESTERLY BOUNDARY OF THE TRACT DESCRIBED AT REC. NO. 20120049971), SAID POINT BEING THE **POINT OF BEGINNING**;

1. THENCE S00°23'36"W, A DISTANCE OF 29.52 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL 5;

2. THENCE ALONG THE NORTH RIGHT-OF-WAY LINE OF LAPORTE AVENUE, N89°14'43"W, A DISTANCE OF 53.33 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL 5;

3. THENCE ALONG THE WESTERLY BOUNDARY OF SAID PARCEL 5 (ALSO BEING THE EASTERLY BOUNDARY OF THAT TRACT DESCRIBED AT RECEPTION NO. 20150003372), N00°23'53"E, A DISTANCE OF 29.52 FEET;

4. THENCE S89°14'43"E, A DISTANCE OF 53.33 FEET TO THE **POINT OF BEGINNING**.

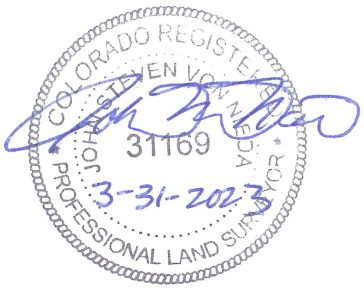
CONTAINING 1,574 SQUARE FEET (0.036 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

THE PURPOSE OF THE ABOVE-DESCRIBED TEMPORARY EASEMENT IS FOR ACTIVITIES ASSOCIATED WITH SIDEWALK AND ROADWAY CONSTRUCTION.

BASIS OF BEARINGS: CONSIDERING THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 10, T7N, R69W OF THE 6TH P.M. TO BEAR N89°14'43"W, SAID LINE BEING MONUMENTED ON ITS EAST END BY A 3-1/4" ALUMINUM CAP STAMPED LS 17497, AND ON ITS WEST END BY A 2-1/2" ALUMINUM CAP STAMPED LS 14823, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

EXHIBIT A

I HEREBY STATE THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF, AND OPINION.



JOHN STEVEN VON NIEDA, COLORADO P.L.S. 31169
FOR AND ON BEHALF OF THE CITY OF FORT COLLINS
P.O. BOX 580, FORT COLLINS, CO 80522

EXHIBIT A

PROJECT NUMBER: TAP M455-133
PARCEL NUMBER: TE-06
PROJECT CODE: 23630
DATE: MARCH 10, 2023

TEMPORARY EASEMENT NO. TE-06 OF THE CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO, PROJECT NO. TAP M455-133 CONTAINING 1,574 SQ. FT. (0.036 ACRES); LOCATED IN THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; SAID EASEMENT BEING LOCATED WITHIN THAT TRACT OF LAND DESCRIBED IN THE WARRANTY DEED RECORDED JULY 26, 2012 AT RECEPTION NO. 20120049971 IN THE OFFICE OF THE LARIMER COUNTY CLERK AND RECORDER (HEREINAFTER KNOWN AS PARCEL 6); BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 10; THENCE N70°41'12"W, A DISTANCE OF 186.94 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID PARCEL 6 (ALSO BEING THE EASTERLY BOUNDARY OF THE TRACT OF LAND DESCRIBED AT RECEPTION NO. 20120024747), SAID POINT BEING THE **POINT OF BEGINNING**;

1. THENCE S89°14'43"E, A DISTANCE OF 53.33 FEET TO A POINT ON THE EASTERLY BOUNDARY OF SAID PARCEL 6 (ALSO BEING THE WESTERLY BOUNDARY OF THE TRACT OF LAND DESCRIBED AT RECEPTION NO. 20210085370);

2. THENCE S00°23'36"W, A DISTANCE OF 29.52 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL 6;

3. THENCE ALONG THE NORTH RIGHT-OF-WAY LINE OF LAPORTE AVENUE, N89°14'43"W, A DISTANCE OF 53.33 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL 6;

4. THENCE N00°23'36"E, A DISTANCE OF 29.52 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 1,574 SQUARE FEET (0.036 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

THE PURPOSE OF THE ABOVE-DESCRIBED TEMPORARY EASEMENT IS FOR ACTIVITIES ASSOCIATED WITH SIDEWALK AND ROADWAY CONSTRUCTION.

BASIS OF BEARINGS: CONSIDERING THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 10, T7N, R69W OF THE 6TH P.M. TO BEAR N89°14'43"W, SAID LINE BEING MONUMENTED ON ITS EAST END BY A 3-1/4" ALUMINUM CAP STAMPED LS 17497, AND ON ITS WEST END BY A 2-1/2" ALUMINUM CAP STAMPED LS 14823, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO

EXHIBIT A

I HEREBY STATE THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF, AND OPINION.

JOHN STEVEN VON NIEDA, COLORADO P.L.S. 31169
FOR AND ON BEHALF OF THE CITY OF FORT COLLINS
P.O. BOX 580, FORT COLLINS, CO 80522

EXHIBIT A

PROJECT NUMBER: TAP M455-133
PARCEL NUMBER: TE-07
PROJECT CODE: 23630
DATE: MARCH 10, 2023

TEMPORARY EASEMENT NO. TE-07 OF THE CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO, PROJECT NO. TAP M455-133 CONTAINING 774 SQ. FT. (0.018 ACRES); LOCATED IN THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; SAID EASEMENT BEING LOCATED WITHIN THAT TRACT OF LAND DESCRIBED IN THE WARRANTY DEED RECORDED SEPTEMBER 13, 2021 AT RECEPTION NO. 20210085370 IN THE OFFICE OF THE LARIMER COUNTY CLERK AND RECORDER (HEREINAFTER KNOWN AS PARCEL 7); BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 10; THENCE N69°28'26"W, A DISTANCE OF 131.55 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID PARCEL 7 (ALSO BEING THE EASTERLY BOUNDARY OF THAT TRACT OF LAND DESCRIBED AT RECEPTION NO. 20120049971), SAID POINT BEING THE **POINT OF BEGINNING**;

1. THENCE S89°14'43"E, A DISTANCE OF 53.33 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF FISHBACK AVENUE;

2. THENCE ALONG SAID WEST RIGHT-OF-WAY LINE, S00°23'36"W, A DISTANCE OF 14.52 FEET TO ITS POINT OF INTERSECTION WITH THE NORTH RIGHT-OF WAY LINE OF LAPORTE AVENUE;

3. THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE, N89°14'43"W, A DISTANCE OF 53.33 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL 7;

4. THENCE N00°23'36"E, A DISTANCE OF 14.52 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 774 SQUARE FEET (0.018 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

THE PURPOSE OF THE ABOVE-DESCRIBED TEMPORARY EASEMENT IS FOR ACTIVITIES ASSOCIATED WITH SIDEWALK AND ROADWAY CONSTRUCTION.

BASIS OF BEARINGS: CONSIDERING THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 10, T7N, R69W OF THE 6TH P.M. TO BEAR N89°14'43"W, SAID LINE BEING MONUMENTED ON ITS EAST END BY A 3-1/4" ALUMINUM CAP STAMPED LS 17497, AND ON ITS WEST END BY A 2-1/2" ALUMINUM CAP STAMPED LS 14823, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO

EXHIBIT A

I HEREBY STATE THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF, AND OPINION.

JOHN STEVEN VON NIEDA, COLORADO P.L.S. 31169
FOR AND ON BEHALF OF THE CITY OF FORT COLLINS
P.O. BOX 580, FORT COLLINS, CO 80522

EXHIBIT A

PROJECT NUMBER: TAP M455-133
PARCEL NUMBER: TE-10
PROJECT CODE: 23630
DATE: MARCH 31, 2023

TEMPORARY EASEMENT NO. TE-10 OF THE CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO, PROJECT NO. TAP M455-133 CONTAINING 1,882 SQ. FT. (0.043 ACRES); LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; SAID EASEMENT BEING LOCATED WITHIN THAT TRACT OF LAND DESCRIBED IN THE WARRANTY DEED RECORDED DECEMBER 12, 2019 AT RECEPTION NO. 20190079014 IN THE OFFICE OF THE LARIMER COUNTY CLERK AND RECORDER (HEREINAFTER KNOWN AS PARCEL 10); BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 10; THENCE S64°43'34"W, A DISTANCE OF 121.92 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID PARCEL 10 (ALSO BEING THE EASTERLY BOUNDARY OF THAT TRACT OF LAND DESCRIBED AT RECEPTION NO. 20150006199), SAID POINT BEING THE **POINT OF BEGINNING**;

1. THENCE N00°45'17"E, A DISTANCE OF 23.44 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 10;

2. THENCE ALONG THE SOUTH RIGHT-OF-WAY LINE OF LAPORTE AVENUE, S89°14'43"E, A DISTANCE OF 100.00 FEET TO ITS INTERSECTION WITH THE WEST RIGHT-OF-WAY LINE OF FISHBACK AVENUE;

3. THENCE ALONG SAID WEST RIGHT-OF-WAY LINE, S00°45'17"W, A DISTANCE OF 15.44 FEET;

4. THENCE N89°14'43"W, A DISTANCE OF 57.75 FEET;

5. THENCE S00°45'17"W, A DISTANCE OF 8.00 FEET;

6. THENCE N89°14'43"W, A DISTANCE OF 42.25 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 1,882 SQUARE FEET (0.043 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

THE PURPOSE OF THE ABOVE-DESCRIBED TEMPORARY EASEMENT IS FOR ACTIVITIES ASSOCIATED WITH SIDEWALK AND ROADWAY CONSTRUCTION.

BASIS OF BEARINGS: CONSIDERING THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, T7N, R69W OF THE 6TH P.M. TO BEAR N89°14'43"W, SAID LINE BEING MONUMENTED ON ITS EAST END BY A 3-1/4" ALUMINUM CAP STAMPED LS 17497, AND ON ITS WEST END

EXHIBIT A

BY A 2-1/2" ALUMINUM CAP STAMPED LS 14823, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO

I HEREBY STATE THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF, AND OPINION.

JOHN STEVEN VON NIEDA, COLORADO P.L.S. 31169
FOR AND ON BEHALF OF THE CITY OF FORT COLLINS
P.O. BOX 580, FORT COLLINS, CO 80522

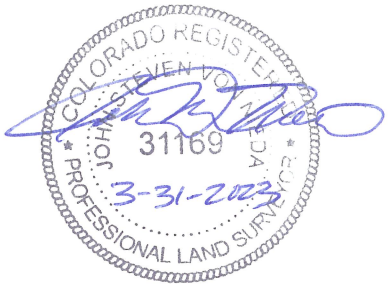


EXHIBIT A

PROJECT NUMBER: TAP M455-133
PARCEL NUMBER: TE-11
PROJECT CODE: 23630
DATE: MARCH 10, 2023

TEMPORARY EASEMENT NO. TE-11 OF THE CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO, PROJECT NO. TAP M455-133 CONTAINING 494 SQ. FT. (0.011 ACRES); LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; SAID EASEMENT BEING LOCATED WITHIN THAT TRACT OF LAND DESCRIBED IN THE SPECIAL WARRANTY DEED RECORDED FEBRUARY 3, 2015 AT RECEPTION NO. 20150006199 IN THE OFFICE OF THE LARIMER COUNTY CLERK AND RECORDER (HEREINAFTER KNOWN AS PARCEL 11) ; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 10; THENCE S75°30'15"W, A DISTANCE OF 165.38 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID PARCEL 11 (ALSO BEING THE EASTERLY BOUNDARY OF THAT TRACT OF LAND DESCRIBED AT RECEPTION NO. 90042923), SAID POINT BEING THE **POINT OF BEGINNING**;

1. THENCE N00°45'17"E, A DISTANCE OF 13.44 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 11;
2. THENCE ALONG THE SOUTH RIGHT-OF-WAY LINE OF LAPORTE AVENUE, S89°14'43"E, A DISTANCE OF 50.00 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 11;
3. THENCE ALONG THE EASTERLY BOUNDARY OF SAID PARCEL 11 (ALSO BEING THE WESTERLY BOUNDARY OF THAT TRACT OF LAND DESCRIBED AT RECEPTION NO. 20190079014), S00°45'17"W, A DISTANCE OF 5.44 FEET;
4. THENCE N89°14'43"W, A DISTANCE OF 15.66 FEET;
5. THENCE S00°45'17"W, A DISTANCE OF 8.00 FEET;
6. THENCE N89°14'43"W, A DISTANCE OF 10.50 FEET;
7. THENCE N00°45'17"E, A DISTANCE OF 8.00 FEET;
8. THENCE N89°14'43"W, A DISTANCE OF 6.57 FEET;
9. THENCE S00°45'17"W, A DISTANCE OF 8.00 FEET;
10. THENCE N89°14'43"W, A DISTANCE OF 17.27 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 494 SQUARE FEET (0.011 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

EXHIBIT A

THE PURPOSE OF THE ABOVE-DESCRIBED TEMPORARY EASEMENT IS FOR ACTIVITIES ASSOCIATED WITH SIDEWALK AND ROADWAY CONSTRUCTION.

BASIS OF BEARINGS: CONSIDERING THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, T7N, R69W OF THE 6TH P.M. TO BEAR N89°14'43"W, SAID LINE BEING MONUMENTED ON ITS EAST END BY A 3-1/4" ALUMINUM CAP STAMPED LS 17497, AND ON ITS WEST END BY A 2-1/2" ALUMINUM CAP STAMPED LS 14823, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO

I HEREBY STATE THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF, AND OPINION.

JOHN STEVEN VON NIEDA, COLORADO P.L.S. 31169
FOR AND ON BEHALF OF THE CITY OF FORT COLLINS
P.O. BOX 580, FORT COLLINS, CO 80522

EXHIBIT A

PROJECT NUMBER: TAP M455-133
PARCEL NUMBER: TE-12
PROJECT CODE: 23630
DATE: MARCH 10, 2023

TEMPORARY EASEMENT NO. TE-12 OF THE CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO, PROJECT NO. TAP M455-133 CONTAINING 480 SQ. FT. (0.011 ACRES); LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; SAID EASEMENT BEING LOCATED WITHIN THAT TRACT OF LAND DESCRIBED IN THE WARRANTY DEED RECORDED SEPTEMBER 17, 1990 AT RECEPTION NO. 90042923 IN THE OFFICE OF THE LARIMER COUNTY CLERK AND RECORDER (HEREINAFTER KNOWN AS PARCEL 12); BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 10; THENCE S79°01'39"W, A DISTANCE OF 214.02 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID PARCEL 12 (ALSO BEING THE EASTERLY BOUNDARY OF THAT TRACT OF LAND DESCRIBED AT RECEPTION NO. 20030015809), SAID POINT BEING THE **POINT OF BEGINNING**;

1. THENCE N00°45'17"E, A DISTANCE OF 13.44 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 12;

2. THENCE ALONG THE SOUTH RIGHT-OF-WAY LINE OF LAPORTE AVENUE, S89°14'43"E, A DISTANCE OF 50.00 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 12;

3. THENCE ALONG THE EASTERLY BOUNDARY OF SAID PARCEL 12 (ALSO BEING THE WESTERLY BOUNDARY OF THAT TRACT OF LAND DESCRIBED AT RECEPTION NO. 20150006199), S00°45'17"W, A DISTANCE OF 5.44 FEET;

4. THENCE N89°14'43"W, A DISTANCE OF 16.51 FEET;

5. THENCE S00°45'17"W, A DISTANCE OF 8.00 FEET;

6. THENCE N89°14'43"W, A DISTANCE OF 10.50 FEET;

7. THENCE N00°45'17"E, A DISTANCE OF 8.00 FEET;

8. THENCE N89°14'43"W, A DISTANCE OF 7.46 FEET;

9. THENCE S00°45'17"W, A DISTANCE OF 8.00 FEET;

10. THENCE N89°14'43"W, A DISTANCE OF 15.53 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 480 SQUARE FEET (0.011 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

EXHIBIT A

THE PURPOSE OF THE ABOVE-DESCRIBED TEMPORARY EASEMENT IS FOR ACTIVITIES ASSOCIATED WITH SIDEWALK AND ROADWAY CONSTRUCTION.

BASIS OF BEARINGS: CONSIDERING THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, T7N, R69W OF THE 6TH P.M. TO BEAR N89°14'43"W, SAID LINE BEING MONUMENTED ON ITS EAST END BY A 3-1/4" ALUMINUM CAP STAMPED LS 17497, AND ON ITS WEST END BY A 2-1/2" ALUMINUM CAP STAMPED LS 14823, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO

I HEREBY STATE THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF, AND OPINION.

JOHN STEVEN VON NIEDA, COLORADO P.L.S. 31169
FOR AND ON BEHALF OF THE CITY OF FORT COLLINS
P.O. BOX 580, FORT COLLINS, CO 80522

EXHIBIT A

PROJECT NUMBER: TAP M455-133
PARCEL NUMBER: TE-13
PROJECT CODE: 23630
DATE: MARCH 10, 2023

TEMPORARY EASEMENT NO. TE-13 OF THE CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO, PROJECT NO. TAP M455-133 CONTAINING 458 SQ. FT. (0.011 ACRES); LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; SAID EASEMENT BEING LOCATED WITHIN THAT TRACT OF LAND DESCRIBED IN THE WARRANTY DEED RECORDED FEBRUARY 7, 2003 AT RECEPTION NO. 20030015809 IN THE OFFICE OF THE LARIMER COUNTY CLERK AND RECORDER (HEREINAFTER KNOWN AS PARCEL 13); BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 10; THENCE S81°14'26"W, A DISTANCE OF 263.17 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID PARCEL 13 (ALSO BEING THE EASTERLY BOUNDARY OF THAT TRACT OF LAND DESCRIBED AT RECEPTION NO. 20180024989), SAID POINT BEING THE **POINT OF BEGINNING**;

1. THENCE N00°45'17"E, A DISTANCE OF 13.44 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 13;
2. THENCE ALONG THE SOUTH RIGHT-OF-WAY LINE OF LAPORTE AVENUE, S89°14'43"E, A DISTANCE OF 50.00 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 13;
3. THENCE ALONG THE EASTERLY BOUNDARY OF SAID PARCEL 13 (ALSO BEING THE WESTERLY BOUNDARY OF THAT TRACT OF LAND DESCRIBED AT RECEPTION NO. 90042923), S00°45'17"W, A DISTANCE OF 4.44 FEET;
4. THENCE N89°14'43"W, A DISTANCE OF 15.82 FEET;
5. THENCE S00°45'17"W, A DISTANCE OF 9.00 FEET;
6. THENCE N89°14'43"W, A DISTANCE OF 11.00 FEET;
7. THENCE N00°45'17"E, A DISTANCE OF 9.00 FEET;
8. THENCE N89°14'43"W, A DISTANCE OF 7.94 FEET;
9. THENCE S00°45'17"W, A DISTANCE OF 9.00 FEET;
10. THENCE N89°14'43"W, A DISTANCE OF 15.24 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 458 SQUARE FEET (0.011 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

EXHIBIT A

THE PURPOSE OF THE ABOVE-DESCRIBED TEMPORARY EASEMENT IS FOR ACTIVITIES ASSOCIATED WITH SIDEWALK AND ROADWAY CONSTRUCTION.

BASIS OF BEARINGS: CONSIDERING THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, T7N, R69W OF THE 6TH P.M. TO BEAR N89°14'43"W, SAID LINE BEING MONUMENTED ON ITS EAST END BY A 3-1/4" ALUMINUM CAP STAMPED LS 17497, AND ON ITS WEST END BY A 2-1/2" ALUMINUM CAP STAMPED LS 14823, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO

I HEREBY STATE THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF, AND OPINION.

JOHN STEVEN VON NIEDA, COLORADO P.L.S. 31169
FOR AND ON BEHALF OF THE CITY OF FORT COLLINS
P.O. BOX 580, FORT COLLINS, CO 80522

Laporte-Sunset to Fishbach and New Mercer Ditch\Legals\ 23630ROW_Legals-13-TE.doc

EXHIBIT A

PROJECT NUMBER: TAP M455-133
PARCEL NUMBER: TE-14
PROJECT CODE: 23630
DATE: MARCH 10, 2023

TEMPORARY EASEMENT NO. TE-14 OF THE CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO, PROJECT NO. TAP M455-133 CONTAINING 434 SQ. FT. (0.010 ACRES); LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; SAID EASEMENT BEING LOCATED WITHIN THAT TRACT OF LAND DESCRIBED IN THE WARRANTY DEED RECORDED APRIL 30, 2018 AT RECEPTION NO. 20180024989 IN THE OFFICE OF THE LARIMER COUNTY CLERK AND RECORDER (HEREINAFTER KNOWN AS PARCEL 14); BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 10; THENCE S82°45'20"W, A DISTANCE OF 312.59 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID PARCEL 14 (ALSO BEING THE EASTERLY BOUNDARY OF THAT TRACT OF LAND DESCRIBED AT RECEPTION NO. 20090028005), SAID POINT BEING THE **POINT OF BEGINNING**;

1. THENCE N00°45'17"E, A DISTANCE OF 13.44 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 14;

2. THENCE ALONG THE SOUTH RIGHT-OF-WAY LINE OF LAPORTE AVENUE, S89°14'43"E, A DISTANCE OF 50.00 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 14;

3. THENCE ALONG THE EASTERLY BOUNDARY OF SAID PARCEL 14 (ALSO BEING THE WESTERLY BOUNDARY OF THAT TRACT OF LAND DESCRIBED AT RECEPTION NO. 20030015809) S00°45'17"W, A DISTANCE OF 4.44 FEET;

4. THENCE N89°14'43"W, A DISTANCE OF 26.48 FEET;

5. THENCE S00°45'17"W, A DISTANCE OF 9.00 FEET;

6. THENCE N89°14'43"W, A DISTANCE OF 23.52 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 434 SQUARE FEET (0.010 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

BASIS OF BEARINGS: CONSIDERING THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, T7N, R69W OF THE 6TH P.M. TO BEAR N89°14'43"W, SAID LINE BEING MONUMENTED ON ITS EAST END BY A 3-1/4" ALUMINUM CAP STAMPED LS 17497, AND ON ITS WEST END BY A 2-1/2" ALUMINUM CAP STAMPED LS 14823, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO

EXHIBIT A

I HEREBY STATE THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF, AND OPINION.

JOHN STEVEN VON NIEDA, COLORADO P.L.S. 31169
FOR AND ON BEHALF OF THE CITY OF FORT COLLINS
P.O. BOX 580, FORT COLLINS, CO 80522

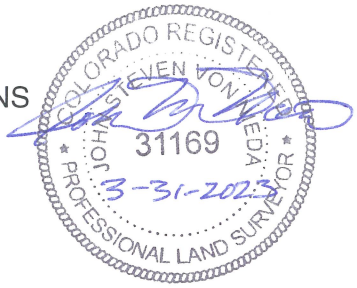


EXHIBIT A

PROJECT NUMBER: TAP M455-133
PARCEL NUMBER: TE-15
PROJECT CODE: 23630
DATE: MARCH 10, 2023

TEMPORARY EASEMENT NO. TE-15 OF THE CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO, PROJECT NO. TAP M455-133 CONTAINING 606 SQ. FT. (0.014 ACRES); LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; SAID EASEMENT BEING LOCATED WITHIN THAT TRACT OF LAND DESCRIBED IN THE WARRANTY DEED RECORDED MAY 4, 2009 AT RECEPTION NO. 20090028005 IN THE OFFICE OF THE LARIMER COUNTY CLERK AND RECORDER (HEREINAFTER KNOWN AS PARCEL 15); BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 10; THENCE S84°23'43"W, A DISTANCE OF 311.47 FEET TO A POINT ON THE EASTERLY BOUNDARY OF SAID PARCEL 15 (ALSO BEING THE WESTERLY BOUNDARY OF THAT TRACT OF LAND DESCRIBED AT RECEPTION NO. 20180024989), SAID POINT BEING THE **POINT OF BEGINNING**;

1. THENCE N89°14'43"W, A DISTANCE OF 33.26 FEET;
2. THENCE S00°45'17"W, A DISTANCE OF 9.00 FEET;
3. THENCE N89°14'43"W, A DISTANCE OF 18.00 FEET;
4. THENCE N00°45'17"E, A DISTANCE OF 9.00 FEET;
5. THENCE N89°14'43"W, A DISTANCE OF 48.74 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF BRYAN AVENUE;
6. THENCE ALONG SAID EAST RIGHT-OF-WAY LINE, N00°45'17"E, A DISTANCE OF 4.44 FEET TO ITS INTERSECTION WITH THE SOUTH RIGHT-OF-WAY LINE OF LAPORTE AVENUE;
7. THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE, S89°14'43"E, A DISTANCE OF 100.00 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 15;
8. THENCE S00°45'17"W, A DISTANCE OF 4.44 FEET TO THE **POINT OF BEGINNING**.

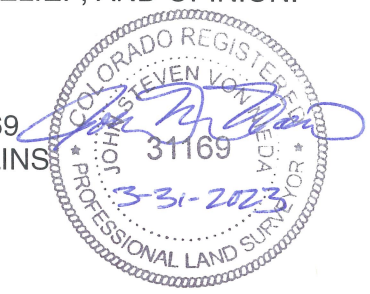
CONTAINING 606 SQUARE FEET (0.014 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

THE PURPOSE OF THE ABOVE-DESCRIBED TEMPORARY EASEMENT IS FOR ACTIVITIES ASSOCIATED WITH SIDEWALK AND ROADWAY CONSTRUCTION.

EXHIBIT A

BASIS OF BEARINGS: CONSIDERING THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, T7N, R69W OF THE 6TH P.M. TO BEAR N89°14'43"W, SAID LINE BEING MONUMENTED ON ITS EAST END BY A 3-1/4" ALUMINUM CAP STAMPED LS 17497, AND ON ITS WEST END BY A 2-1/2" ALUMINUM CAP STAMPED LS 14823, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO

I HEREBY STATE THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF, AND OPINION.



JOHN STEVEN VON NIEDA, COLORADO P.L.S. 31169
FOR AND ON BEHALF OF THE CITY OF FORT COLLINS
P.O. BOX 580, FORT COLLINS, CO 80522

EXHIBIT A

PROJECT NUMBER: TAP M455-133
PARCEL NUMBER: TE-16
PROJECT CODE: 23630
DATE: MARCH 10, 2023

TEMPORARY EASEMENT NO. TE-16 OF THE CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO, PROJECT NO. TAP M455-133 CONTAINING 953 SQ. FT. (0.022 ACRES); LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; SAID EASEMENT BEING LOCATED WITHIN THAT TRACT OF LAND DESCRIBED IN THE WARRANTY DEED RECORDED SEPTEMBER 25, 2018 AT RECEPTION NO. 20180058908 IN THE OFFICE OF THE LARIMER COUNTY CLERK AND RECORDER (HEREINAFTER KNOWN AS PARCEL 16); BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 10; THENCE S86°05'14"W, A DISTANCE OF 571.45 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID PARCEL 16 (ALSO BEING THE EASTERLY BOUNDARY OF THAT TRACT OF LAND DESCRIBED AT RECEPTION NO. 20030150557), SAID POINT BEING THE **POINT OF BEGINNING**;

1. THENCE N00°45'17"E, A DISTANCE OF 16.44 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 16;

2. THENCE ALONG THE SOUTH RIGHT-OF-WAY LINE OF LAPORTE AVENUE, S89°14'43"E, A DISTANCE OF 100.00 FEET TO ITS INTERSECTION WITH THE WEST RIGHT-OF-WAY LINE OF BRYAN AVENUE;

3. THENCE ALONG SAID WEST RIGHT-OF-WAY LINE, S00°45'17"W, A DISTANCE OF 5.44 FEET;

4. THENCE N89°14'43"W, A DISTANCE OF 62.81 FEET;

5. THENCE S00°45'17"W, A DISTANCE OF 11.00 FEET;

6. THENCE N89°17'59"W, A DISTANCE OF 37.26 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 953 SQUARE FEET (0.022 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

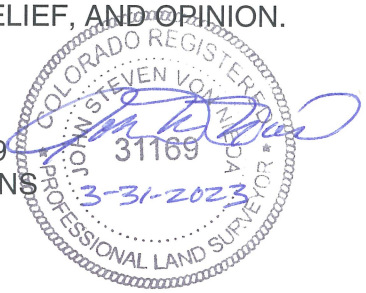
THE PURPOSE OF THE ABOVE-DESCRIBED TEMPORARY EASEMENT IS FOR ACTIVITIES ASSOCIATED WITH SIDEWALK AND ROADWAY CONSTRUCTION.

BASIS OF BEARINGS: CONSIDERING THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, T7N, R69W OF THE 6TH P.M. TO BEAR N89°14'43"W, SAID LINE BEING MONUMENTED ON ITS EAST END BY A 3-1/4" ALUMINUM CAP STAMPED LS 17497, AND ON ITS WEST END

EXHIBIT A

BY A 2-1/2" ALUMINUM CAP STAMPED LS 14823, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO

I HEREBY STATE THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF, AND OPINION.



JOHN STEVEN VON NIEDA, COLORADO P.L.S. 31169
FOR AND ON BEHALF OF THE CITY OF FORT COLLINS
P.O. BOX 580, FORT COLLINS, CO 80522

EXHIBIT A

PROJECT NUMBER: TAP M455-133
PARCEL NUMBER: TE-17
PROJECT CODE: 23630
DATE: MARCH 10, 2023

TEMPORARY EASEMENT NO. TE-17 OF THE CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO, PROJECT NO. TAP M455-133 CONTAINING 901 SQ. FT. (0.021 ACRES); LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; SAID EASEMENT BEING LOCATED WITHIN THAT TRACT OF LAND DESCRIBED IN THE WARRANTY DEED RECORDED DECEMBER 2, 2003 AT RECEPTION NO. 20030150557 IN THE OFFICE OF THE LARIMER COUNTY CLERK AND RECORDER (HEREINAFTER KNOWN AS PARCEL 17); BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 10; THENCE S84°43'29"W, A DISTANCE OF 633.05 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID PARCEL 17 (ALSO BEING THE EASTERLY BOUNDARY OF THAT TRACT OF LAND DESCRIBED AT RECEPTION NO. 20170059155), SAID POINT BEING THE **POINT OF BEGINNING**;

1. THENCE N00°45'17"E, A DISTANCE OF 36.44 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 17;

2. THENCE ALONG THE SOUTH RIGHT-OF WAY LINE OF LAPORTE AVENUE, S89°14'43"E, A DISTANCE OF 60.00 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 17;

3. THENCE ALONG THE EASTERLY BOUNDARY OF SAID PARCEL 17 (ALSO BEING THE WESTERLY BOUNDARY OF THAT TRACT OF LAND DESCRIBED AT RECEPTION NO. 20180058908), S00°45'17"W, A DISTANCE OF 2.44 FEET;

4. THENCE N89°14'43"W, A DISTANCE OF 37.77 FEET;

5. THENCE S00°45’17"W, A DISTANCE OF 34.00 FEET;

6. THENCE N89°14'43"W, A DISTANCE OF 22.23 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 901 SQUARE FEET (0.021 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

THE PURPOSE OF THE ABOVE-DESCRIBED TEMPORARY EASEMENT IS FOR ACTIVITIES ASSOCIATED WITH SIDEWALK AND ROADWAY CONSTRUCTION.

BASIS OF BEARINGS: CONSIDERING THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, T7N, R69W OF THE 6TH P.M. TO BEAR N89°14’43"W, SAID LINE BEING MONUMENTED ON ITS EAST

EXHIBIT A

END BY A 3-1/4" ALUMINUM CAP STAMPED LS 17497, AND ON ITS WEST END BY A 2-1/2" ALUMINUM CAP STAMPED LS 14823, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO

I HEREBY STATE THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF, AND OPINION.

JOHN STEVEN VON NIEDA, COLORADO P.L.S. 31169
FOR AND ON BEHALF OF THE CITY OF FORT COLLINS
P.O. BOX 580, FORT COLLINS, CO 80522

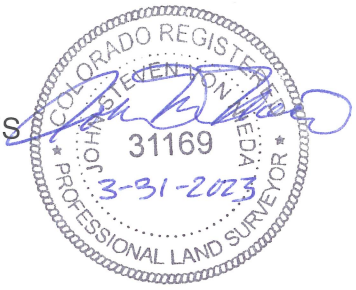


EXHIBIT A

PROJECT NUMBER: TAP M455-133
PARCEL NUMBER: TE-18
PROJECT CODE: 23630
DATE: MARCH 10, 2023

TEMPORARY EASEMENT NO. TE-18 OF THE CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO, PROJECT NO. TAP M455-133 CONTAINING 1,241 SQ. FT. (0.028 ACRES); LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; SAID EASEMENT BEING LOCATED WITHIN THAT TRACT OF LAND DESCRIBED IN THE SPECIAL WARRANTY DEED RECORDED SEPTEMBER 1, 2017 AT RECEPTION NO. 20170059155 IN THE OFFICE OF THE LARIMER COUNTY CLERK AND RECORDER (HEREINAFTER KNOWN AS PARCEL 18); BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 10; THENCE S87°27'36"W, A DISTANCE OF 756.91 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID PARCEL 18 (ALSO BEING THE EASTERLY BOUNDARY OF TRACT A OF THE CITY PARK NORTH SUBDIVISION RECORDED AT RECEPTION NO. 20110014248), SAID POINT BEING THE **POINT OF BEGINNING**;

1. THENCE N29°25'53"W, A DISTANCE OF 15.55 FEET TO THE NORTHWEST CORNER OF SAID PARCEL18;

2. THENCE ALONG THE SOUTH RIGHT-OF-WAY LINE OF LAPORTE AVENUE, S89°14'43"E, A DISTANCE OF 133.92 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 18;

3. THENCE ALONG THE EASTERLY BOUNDARY OF SAID PARCEL 18 (ALSO BEING THE WESTERLY BOUNDARY OF THAT TRACT OF LAND DESCRIBED AT RECEPTION NO. 20030150557), S00°45'17"W, A DISTANCE OF 3.44 FEET;

4. THENCE N89°14'43"W, A DISTANCE OF 36.08 FEET;

5. THENCE S00°45'17"W, A DISTANCE OF 10.00 FEET;

6. THENCE N89°14'43"W, A DISTANCE OF 26.00 FEET;

7. THENCE N00°45'17"E, A DISTANCE OF 10.00 FEET;

8. THENCE N89°14'43"W, A DISTANCE OF 14.61 FEET;

9. THENCE S00°45'17"W, A DISTANCE OF 10.00 FEET;

10. THENCE N89°14'43"W, A DISTANCE OF 49.41 FEET TO THE **POINT OF BEGINNING**.

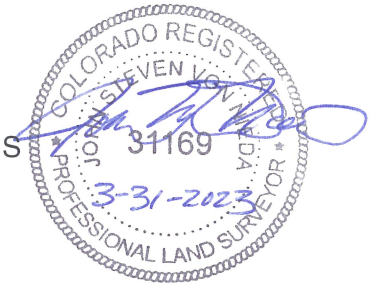
CONTAINING 1,241 SQUARE FEET (0.028 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

EXHIBIT A

THE PURPOSE OF THE ABOVE-DESCRIBED TEMPORARY EASEMENT IS FOR ACTIVITIES ASSOCIATED WITH SIDEWALK AND ROADWAY CONSTRUCTION.

BASIS OF BEARINGS: CONSIDERING THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, T7N, R69W OF THE 6TH P.M. TO BEAR N89°14'43"W, SAID LINE BEING MONUMENTED ON ITS EAST END BY A 3-1/4" ALUMINUM CAP STAMPED LS 17497, AND ON ITS WEST END BY A 2-1/2" ALUMINUM CAP STAMPED LS 14823, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO

I HEREBY STATE THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF, AND OPINION.



JOHN STEVEN VON NIEDA, COLORADO P.L.S. 31169
FOR AND ON BEHALF OF THE CITY OF FORT COLLINS
P.O. BOX 580, FORT COLLINS, CO 80522

EXHIBIT A

PROJECT NUMBER: TAP M455-133
PARCEL NUMBER: TE-20
PROJECT CODE: 23630
DATE: MARCH 10, 2023

TEMPORARY EASEMENT NO. TE-20 OF THE CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO, PROJECT NO. TAP M455-133 CONTAINING 475 SQ. FT. (0.011 ACRES); LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; SAID EASEMENT BEING LOCATED WITHIN THAT TRACT OF LAND DESCRIBED IN THE QUIT CLAIM DEED RECORDED JUNE 13, 1990 AT RECEPTION NO. 90025433 IN THE OFFICE OF THE LARIMER COUNTY CLERK AND RECORDER (HEREINAFTER KNOWN AS PARCEL 20); BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 10; THENCE S88°31'48"W, A DISTANCE OF 1,017.59 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID PARCEL 20 (ALSO BEING THE EASTERLY BOUNDARY OF LOT 17, BLOCK 1 OF THE FREY SUBDIVISION RECORDED IN BOOK 4, PAGE 73 IN THE LARIMER COUNTY CLERK AND RECORDER'S OFFICE), SAID POINT BEING THE **POINT OF BEGINNING**;

1. THENCE N00°34'34"E, A DISTANCE OF 9.50 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 20;

2. THENCE ALONG THE SOUTH RIGHT-OF-WAY LINE OF LAPORTE AVENUE, S89°14'43"E, A DISTANCE OF 50.00 FEET TO ITS INTERSECTION WITH THE WEST RIGHT-OF-WAY LINE OF FREY AVENUE;

3. THENCE ALONG SAID WEST RIGHT-OF-WAY LINE, S00°34'34"W, A DISTANCE OF 9.50 FEET;

4. THENCE N89°14'43"W, A DISTANCE OF 50.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 475 SQUARE FEET (0.011 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

THE PURPOSE OF THE ABOVE-DESCRIBED TEMPORARY EASEMENT IS FOR ACTIVITIES ASSOCIATED WITH SIDEWALK AND ROADWAY CONSTRUCTION.

BASIS OF BEARINGS: CONSIDERING THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, T7N, R69W OF THE 6TH P.M. TO BEAR N89°14'43"W, SAID LINE BEING MONUMENTED ON ITS EAST END BY A 3-1/4" ALUMINUM CAP STAMPED LS 17497, AND ON ITS WEST END BY A 2-1/2" ALUMINUM CAP STAMPED LS 14823, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO

EXHIBIT A

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JOHN STEVEN VON NIEDA, COLORADO P.L.S. 31169
FOR AND ON BEHALF OF THE CITY OF FORT COLLINS
P.O. BOX 580, FORT COLLINS, CO 80522

EXHIBIT A

PROJECT NUMBER: TAP M455-133
PARCEL NUMBER: TE-21
PROJECT CODE: 23630
DATE: MARCH 10, 2023

TEMPORARY EASEMENT NO. TE-21 OF THE CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO, PROJECT NO. TAP M455-133 CONTAINING 587 SQ. FT. (0.013 ACRES); LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; SAID EASEMENT BEING LOCATED WITHIN LOT 17, BLOCK 1 OF THE FREY SUBDIVISION RECORDED JULY 9, 1924 IN BOOK 4, PAGE 73 IN THE OFFICE OF THE LARIMER COUNTY CLERK AND RECORDER; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 10; THENCE S88°31'48"W, A DISTANCE OF 1,017.59 FEET TO A POINT ON THE EASTERLY BOUNDARY OF SAID LOT 17, SAID POINT BEING THE **POINT OF BEGINNING**;

1. THENCE N89°14'43"W, A DISTANCE OF 33.92 FEET;
2. THENCE S00°34'34"W, A DISTANCE OF 7.00 FEET;
3. THENCE N89°14'43"W, A DISTANCE OF 16.08 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID LOT 17;
4. THENCE N00°34'34"E, A DISTANCE OF 16.50 FEET TO THE NORTHWEST CORNER OF SAID LOT 17;
5. THENCE ALONG THE SOUTH RIGHT-OF-WAY LINE OF LAPORTE AVENUE, S89°14'43"E, A DISTANCE OF 50.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 17;
6. THENCE S00°34'34"W, A DISTANCE OF 9.50 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 587 SQUARE FEET (0.013 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

THE PURPOSE OF THE ABOVE-DESCRIBED TEMPORARY EASEMENT IS FOR ACTIVITIES ASSOCIATED WITH SIDEWALK AND ROADWAY CONSTRUCTION.

BASIS OF BEARINGS: CONSIDERING THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, T7N, R69W OF THE 6TH P.M. TO BEAR N89°14'43"W, SAID LINE BEING MONUMENTED ON ITS EAST END BY A 3-1/4" ALUMINUM CAP STAMPED LS 17497, AND ON ITS WEST END BY A 2-1/2" ALUMINUM CAP STAMPED LS 14823, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO

EXHIBIT A

I HEREBY STATE THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF, AND OPINION.

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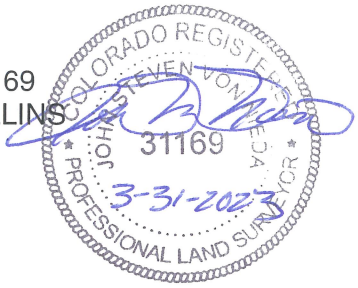


EXHIBIT A

PROJECT NUMBER: TAP M455-133
PARCEL NUMBER: TE-22
PROJECT CODE: 23630
DATE: MARCH 10, 2023

TEMPORARY EASEMENT NO. TE-22 OF THE CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO, PROJECT NO. TAP M455-133 CONTAINING 594 SQ. FT. (0.014 ACRES); LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; SAID EASEMENT BEING LOCATED WITHIN LOT 16, BLOCK 1 OF THE FREY SUBDIVISION RECORDED JULY 9, 1924 IN BOOK 4, PAGE 73 IN THE OFFICE OF THE LARIMER COUNTY CLERK AND RECORDER; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 10; THENCE S88°43'45"W, A DISTANCE OF 1,117.53 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID LOT 16, SAID POINT BEING THE **POINT OF BEGINNING**;

1. THENCE N00°34'34"E, A DISTANCE OF 9.50 FEET TO THE NORTHWEST CORNER OF SAID LOT 16;

2. THENCE ALONG THE SOUTH RIGHT-OF-WAY LINE OF LAPORTE AVENUE, S89°14'43"E, A DISTANCE OF 50.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 16;

3. THENCE ALONG THE EASTERLY BOUNDARY OF SAID LOT 16, S00°34'34"W, A DISTANCE OF 16.50 FEET;

4. THENCE N89°14'43"W, A DISTANCE OF 16.92 FEET;

5. THENCE N00°34'34"E, A DISTANCE OF 7.00 FEET;

6. THENCE N89°14'43"W, A DISTANCE OF 33.08 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 594 SQUARE FEET (0.014 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

THE PURPOSE OF THE ABOVE-DESCRIBED TEMPORARY EASEMENT IS FOR ACTIVITIES ASSOCIATED WITH SIDEWALK AND ROADWAY CONSTRUCTION.

BASIS OF BEARINGS: CONSIDERING THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, T7N, R69W OF THE 6TH P.M. TO BEAR N89°14'43"W, SAID LINE BEING MONUMENTED ON ITS EAST END BY A 3-1/4" ALUMINUM CAP STAMPED LS 17497, AND ON ITS WEST END BY A 2-1/2" ALUMINUM CAP STAMPED LS 14823, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO

EXHIBIT A

I HEREBY STATE THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF, AND OPINION.

JOHN STEVEN VON NIEDA, COLORADO P.L.S. 31169
FOR AND ON BEHALF OF THE CITY OF FORT COLLINS
P.O. BOX 580, FORT COLLINS, CO 80522

May 2, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Beth Rosen, Grants Compliance and Policy Manager
Ted Hewitt, Legal

SUBJECT

Items Relating to the Appropriation of Federal Funds in the Community Development Block Grant and HOME Investment Partnership (HOME) Program Funds.

EXECUTIVE SUMMARY

A. First Reading of Ordinance No. 066, 2023, Making Supplemental Appropriations in the Community Development Block Grant Fund.

B. First Reading of Ordinance No. 067, 2023, Making Supplemental Appropriations in the HOME Investment Partnerships Grant Fund.

The purpose of this item is to appropriate the City's FY2023 Community Development Block Grant (CDBG) Entitlement Grant and Fiscal Year (FY) 2023 Home Investment Partnerships Program (HOME) Participating Jurisdiction Grant from the Department of Housing and Urban Development (HUD), and CDBG program income from FY2021 and FY2022 and HOME Program Income from FY2021 and FY2022.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinances on First Reading.

BACKGROUND / DISCUSSION

The Community Development Block Grant (CDBG) Entitlement Program provides annual grants on a formula basis to eligible cities and counties to improve the living conditions for low- and moderate- income persons. Recipient communities develop their own programs and funding priorities. In the 2020-2024 Consolidated Plan submitted to HUD, the City prioritized the use of these funds to further its affordable housing goals and provide public services for persons experiencing homelessness and persons most at risk of homelessness.

The HOME Investment Partnership Program (HOME) provides annual grants on a formula basis to Participating Jurisdictions to implement local housing strategies designed to increase homeownership and housing opportunity for low and very low-income residents. These funds are used annually to further the affordable housing goals outlined in the Housing Strategic Plan.

On February 27, 2023, HUD notified the City of its formula allocations for both the CDBG and HOME programs. This appropriation includes $1,107,281 for CDBG and $669,292 for HOME. Additionally, the City receives annual repayments into the CDBG and HOME programs, referred to as Program Income (PI),

through the payoffs of Home Buyer Assistance (HBA) loans and loan payments on affordable housing projects. These payments go back to their respective programs for re-allocation to eligible projects. Since April 1, 2022, the CDBG program has received $53,860 in Program Income and the HOME Program has received $281,806 in Program Income.

Ordinance A appropriates a total of $1,161,141 into the CDBG Program, which includes the Entitlement Award of $1,107,281 and $53,860 from Program Income.

Ordinance B appropriates a total of $951,098 into the HOME Program, which includes the Entitlement Award of $669,292 and $281,806 from Program Income.

These funds are allocated through an annual Competitive Process, with funding recommendations being made to Council by the Human Services and Housing Funding Board. Recommendations for the use of these funds will be presented to Council at its regular meeting on June 6, 2023.

CITY FINANCIAL IMPACTS

This item will appropriate $2,112,239 in federal funding to the City which will be allocated to housing and community development related programs and projects, and the administration of the funds, thereby reducing the demand on the City's General Fund budget to address such needs.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Ordinance A for Consideration
2. Ordinance B for Consideration
3. HUD FY2023 Award Letter

ORDINANCE NO. 066, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING SUPPLEMENTAL APPROPRIATIONS IN THE
COMMUNITY DEVELOPMENT BLOCK GRANT FUND

WHEREAS, the City estimates it will receive in federal fiscal year 2023-2024 unanticipated revenue in the form of federal Community Development Block Grant ("CDBG") funds from Housing and Urban Development ("HUD") totaling $1,107,281; and

WHEREAS, the City received unanticipated CDBG Program income in the amount of $53,860; and

WHEREAS, this appropriation benefits the public health, safety and welfare of the residents of Fort Collins and serves the public purpose of providing affordable housing and human services for city residents; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon recommendation of the City Manager, to make a supplemental appropriation by ordinance at any time during the fiscal year, provided that the total amount of such supplemental appropriation, in combination with all previous appropriations for that fiscal year, do not exceed the current estimate of actual and anticipated revenues and all other funds to be received during the fiscal year; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Community Development Block Grant Fund and will not cause the total amount appropriated in the Community Development Block Grant Fund to exceed the current estimate of actual and anticipated revenues and all other funds to be received in this Fund during this fiscal year; and

WHEREAS, Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds for a federal grant, that such appropriation shall not lapse at the end of the fiscal year in which the appropriation is made, but continue until the earlier of the expiration of the federal grant or the City's expenditure of all funds received from such grant; and

WHEREAS, the City Council wishes to designate the appropriation herein for the Community Development Block Grant Entitlement Program as an appropriation that shall not lapse until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from new revenue or other funds from HUD in the Community Development Block Grant Fund, the sum of ONE MILLION ONE

HUNDRED SEVEN THOUSAND TWO HUNDRED EIGHTY-ONE DOLLARS ($1,107,281), to be expended in the Community Development Block Grant Fund upon receipt thereof for federal fiscal year 2023-2024 Community Development Block Grant projects.

Section 3. That there is hereby appropriated from new revenue or other funds from program income in the Community Development Block Grant Fund, the sum of FIFTY-THREE THOUSAND EIGHT HUNDRED SIXTY DOLLARS ($53,860), to be expended in the Community Development Block Grant Fund for approved Community Development Block Grant projects.

Section 4. That the appropriation herein for the Community Development Block Grant Entitlement Program is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

Introduced, considered favorably on first reading, and ordered published this 2nd day of May, 2023, and to be presented for final passage on the 16th day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading on the 16th day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

ORDINANCE NO. 067, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING SUPPLEMENTAL APPROPRIATIONS IN THE
HOME INVESTMENT PARTNERSHIPS GRANT FUND

WHEREAS, the Home Investment Partnerships Program (the "HOME Program") was authorized by the National Affordable Housing Act of 1990 to provide funds in the form of Participating Jurisdiction Grants for a variety of housing-related activities that would increase the supply of decent, safe, and affordable housing; and

WHEREAS, on March 1, 1994, the City Council adopted Resolution 1994-042 authorizing the Mayor to submit to the Department of Housing and Urban Development ("HUD") a notification of intent to participate in the HOME Program; and

WHEREAS, on May 26, 1994, HUD designated the City as a Participating Jurisdiction in the HOME Program, allowing the City to receive an allocation of HOME Program funds as long as Congress re-authorizes and continues to fund the program; and

WHEREAS, the City estimates it will receive in federal fiscal year 2023-2024 unanticipated revenue in the form of HOME Program funds from HUD totaling is $669,292; and

WHEREAS, the City received unanticipated HOME Program income in the amount of $281,806; and

WHEREAS, this appropriation benefits the public health, safety and welfare of the residents of Fort Collins and serves the public purpose of providing affordable housing for city residents; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon recommendation of the City Manager, to make a supplemental appropriation by ordinance at any time during the fiscal year, provided that the total amount of such supplemental appropriation, in combination with all previous appropriations for that fiscal year, do not exceed the current estimate of actual and anticipated revenues and all other funds to be received during the fiscal year; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Home Investment Partnerships Grant Fund and will not cause the total amount appropriated in the Home Investment Partnerships Grant Fund to exceed the current estimate of actual and anticipated revenues and all other funds to be received in this Fund during this fiscal year; and

WHEREAS, Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds for a federal grant, that such appropriation shall not lapse at the end of the fiscal year in which the appropriation is made, but continue until the earlier of the expiration of the federal grant or the City's expenditure of all funds received from such grant; and

WHEREAS, the City Council wishes to designate the appropriation herein for the Home Investment Partnerships Program as an appropriation that shall not lapse until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from new revenue or other funds from HUD in the HOME Investment Partnerships Grant Fund the sum of SIX HUNDRED SIXTY-NINE THOUSAND TWO HUNDRED NINETY-TWO DOLLARS ($669,292), to be expended in the HOME Investment Partnerships Grant Fund upon receipt from federal fiscal year 2023-2024 HOME Participating Jurisdiction Grant Funds.

Section 3. That there is hereby appropriated from new revenue or other funds from program income in the HOME Investment Partnerships Grant Fund the sum of TWO HUNDRED EIGHTY-ONE THOUSAND EIGHT HUNDRED SIX DOLLARS ($281,806), to be expended in the HOME Investment Partnerships Grant Fund for approved HOME Program projects.

Section 4. That the appropriation herein for HOME Investment Partnerships Grant Entitlement Program is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

Introduced, considered favorably on first reading, and ordered published this 2nd day of May, 2023, and to be presented for final passage on the 16th day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading on the 16th day of May, 2023.

_____
Mayor

ATTEST:

_____

City Clerk

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

PRINCIPAL DEPUTY ASSISTANT SECRETARY
FOR COMMUNITY PLANNING AND DEVELOPMENT

February 27, 2023

The Honorable Jeni Arndt
Mayor of Fort Collins
PO Box 580
Fort Collins, CO 80522

Dear Mayor Arndt:

Congratulations! I am pleased to inform you of your jurisdiction's Fiscal Year (FY) 2023 allocations for the Office of Community Planning and Development's (CPD) formula programs. Your jurisdiction's FY 2023 available amounts are as follows:

CPD Programs:	**Amount**
Community Development Block Grant (CDBG)	$1,107,281
Emergency Solutions Grant (ESG)	$0
HOME Investment Partnerships (HOME)	$669,292
Housing Opportunities for Persons With AIDS (HOPWA)	$0
CDBG Recovery Housing Program (RHP)	$0

These grant funds provide the financial tools to support individuals, families, and communities to address homelessness, affordable housing challenges, aging infrastructure, and economic hardships. CPD is committed to being your partner throughout the process of using these funds. Our local office will assist in finalizing grant agreements, offer technical assistance and training when needed, and monitor and implement grant funds for eligible projects in a timely manner. We will work with you to ensure proper reporting in the Integrated Disbursement and Information System (IDIS) so we can together improve performance data on how these programs are benefitting and touching people's lives, build trust with stakeholder groups and Congress, and amplify the success stories that you and your jurisdiction are able to accomplish with these vital resources.

Based on your jurisdiction's CDBG allocation for this year and outstanding Section 108 balances as of February 27, 2023, you also have $5,536,405 in available Section 108 borrowing authority. Since Section 108 loans are federally guaranteed, this program can leverage your jurisdiction's existing CDBG funding to access low-interest, long-term financing to invest in your jurisdiction.

Thank you for your continued interest in CPD programs, I greatly appreciate your leadership in using these funds to address your most urgent housing and community development needs, including preventing and reducing homelessness. If you or any member of your staff have questions, please contact your local CPD Field Director.

Sincerely,

Marion Mollegen McFadden
Principal Deputy Assistant Secretary
for Community Planning and Development

May 2, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Ryan Mounce, City Planner
Heather Jarvis, Legal

SUBJECT

Public Hearing and First Reading of Ordinance No. 068, 2023 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the North College Mobile Home Park Rezoning.

EXECUTIVE SUMMARY

The purpose of this item is to amend the Zoning Map and rezone the North College Mobile Home Park (the "Property") from the Service Commercial (CS) and Low Density Mixed-Use Neighborhood (LMN) zone districts to the Manufactured Housing (MH) zone district. Half the Property is the CS zone district, and the other half is the LMN zone district. With the proposed rezoning both of those would change to the MH zone district, which would cover the entirety of the property. The 33-acre Property is located southwest of the North College Avenue and Willox Lane intersection. The proposed rezoning was initiated by the City and continues a series of rezonings begun in 2020 to rezone existing mobile home parks to the MH zone district to promote the preservation of existing manufactured housing communities.

The rezoning request is subject to Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Commission. The Planning and Zoning Commission voted 5 to 1 at their March 23, 2023, hearing to recommend approval of the rezoning.

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

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

REZONING REQUEST

The proposed rezoning was initiated by the City and is involuntary on the part of the property owner. In 2020, the City created the Manufactured Housing (MH) zone district and rezoned a majority of the City's existing mobile home parks to the MH district to promote the preservation of manufactured housing, a policy goal found in both City Plan and the 2022 Strategic Plan.

The rezoning of the Property was considered for rezoning in late 2020 along with other mobile home parks; however, deteriorating COVID conditions and the lack of technology and internet access for the park's senior residents to participate in remote meetings led staff to delay the process. An end to pandemic conditions and renewed policy guidance for rezoning in the recently adopted North College MAX Plan once again present an opportunity to consider rezoning the Property to the MH zone district.

MANUFACTURED HOUSING PRESERVATION AND POLICY GOALS

Manufactured housing is an important source of naturally occurring affordable housing in the community. Many of the City's manufactured housing communities feature housing costs that are comparable to or even below other forms of subsidized and deed-restricted affordable housing. Manufactured housing also offers similar benefits to "stick-built" single-family dwellings, including greater privacy and personal space and a strong sense of community.

While a unique form of housing, manufactured housing is also limited, representing less than 2% of all housing units in Fort Collins. Over the past 20 years, five manufactured housing communities have closed in Fort Collins, mostly due to redevelopment, which resulted in the loss of hundreds of affordable and attainable units and the displacement of many residents. As a result, many City policy documents, including City Plan and the 2022 Strategic Plan, include policies and goals to preserve existing manufactured housing communities.

After the closing of several manufactured housing communities between 2008 and 2012, the City adopted the Affordable Housing Redevelopment Displacement Mitigation Strategy Report, which included a recommendation to create a new manufactured housing zone district to support manufactured housing preservation. In 2020, the MH zone district was created, and the City rezoned six of the largest mobile home parks in the community to the MH designation.

PROPERTY CONTEXT AND HISTORY

The Property includes three parcels totaling approximately 33 acres on the west side of North College Avenue south of Willox Lane. The eastern half of the Property was annexed into the City in 1959 as part of the North College Annexation, while the western half was annexed into the City in 1971 as part of the North College Mobile Plaza Annexation. The park was also developed in multiple phases, with the eastern (front) half being developed before the western (back) half.

The Property has featured many different zoning designations and the current split zoning has been a feature since the original development of the North College Corridor Plan and adoption of the Land Use Code in the 1990's. While the western half of the property features a residential designation (LMN zone district), the eastern half carries a commercial designation (CS zone district). The CS designation is consistent with the broader North College Corridor Plan land-use guidance for commercial zoning along the College Avenue frontage. More recent policy plans including City Plan and the North College MAX Plan now provide land use guidance indicating the entirety of the Property should fall under a residential designation and/or be rezoned to the MH zone district to reflect its longstanding use as a manufactured housing community.

The CS designation on the eastern half of the property also renders the mobile home park a nonconforming use because a manufactured housing community is not a permitted land use in the CS zone district.

REZONING CRITERIA AND STAFF EVALUATION

A rezoning is governed by criteria in Land Use Code Subsections 2.9.4(H)(2) and 2.9.4(H)(3). A rezoning must demonstrate compliance with either criterion one or two, while three additional criteria are listed for additional considerations by the Planning and Zoning Commission and Council. These five criteria can be paraphrased as:

1. Consistent with the Comprehensive Plan;
2. Warranted by Changed Conditions;
3. Compatible with Surrounding Uses;
4. Impacts to the Natural Environment; and
5. Logical and Orderly Development Pattern

Staff is recommending the rezoning primarily in consideration of consistency with the comprehensive plan, but a full staff evaluation of compliance or non-applicability to all criteria can be found below and in the attached Planning and Zoning Commission staff report.

Criterion One: Consistent with the Comprehensive Plan

In evaluating consistency with City Plan, staff analyzed both the land use and policy guidance found in City Plan as well as the North College Corridor Plan and the North College MAX Plan, each of which was adopted as an element of City Plan.

Land Use Guidance

The City Plan Structure Plan Map identifies the Property under the “Mixed Neighborhood” place type designation, which aligns with the proposed MH zone district in terms of land use character (primarily residential), density, and proximity to transit and services. The most recent City Plan update in 2019 changed the designation for the eastern half of the property from commercial to residential to better align with policy guidance to preserve and protect manufactured housing communities and in recognition of the longstanding residential use of the property.

The Mixed Neighborhood place type also specifically refers to manufactured housing within existing neighborhoods, indicating, “while reinvestment in existing mobile home parks is encouraged, redevelopment of existing parks is not.” The MH district is designed to discourage redevelopment and further addresses the Mixed Neighborhood place type description found in City Plan.

Within the North College Corridor Plan, the land use framework map identifies the eastern half of the Property under a commercial designation, reflecting the broader North College Avenue frontage that is primarily intended for commercial land uses. The Property is unique along the North College frontage as one of a small handful of properties that contain residential dwellings that are currently nonconforming under CS zone district standards as being within 200-feet of College Avenue. Under the proposed rezoning of the Property to the MH zone district, this nonconformity would be eliminated.

The North College MAX Plan contains the most recent land use guidance for the Property. The Plan recommendations include preserving the Property by rezoning it to the MH zone district and excluding the Property from a proposed Transit Oriented Development Overlay, which seeks to spur intensification in the corridor to support additional transit service. A rezoning to the MH zone district is in alignment with these Plan goals and strategies.

When looking at all three plans together, the balance of land use guidance supports the rezoning, especially when considering the two most recent plans include specific recommendations to change the land use designation of the Property.

Policy Guidance

Manufactured housing preservation and housing affordability and attainability are important community priorities and reflect policy goals in multiple policy plans, including:

> (City Plan) LIV 5.2 – Supply of Attainable Housing
> *Encourage public and private sectors to maintain and develop a diverse range of housing options, including housing that is attainable (30% or less of monthly income) to residents earning the median income. Options could include [accessory dwelling units], duplexes, townhomes, mobile homes, manufactured housing and other "missing middle" housing types.*

Manufactured housing represents one of the most affordable types of housing in Fort Collins, comparable to subsidized and deed-restricted housing for those earning between 30% and 60% of the area median income. As a naturally occurring source of affordable housing, manufactured housing communities represent a comparable number of dwelling units to Fort Collins' entire deed-restricted affordable housing supply. Preserving manufactured housing helps protect and maintain an important supply of affordable housing in Fort Collins.

In addition to its affordability, manufactured housing is a unique and limited type of housing that has been in decline over the past several decades due to community closures and redevelopment. The goal of preservation through rezoning to the MH district is designed to protect and promote the ongoing operation of this limited housing resource, which has proven to be difficult to expand via new manufactured housing development.

> (City Plan) LIV 6.4 – Permanent Supply of Affordable Housing
> *Create and maintain an up-to-date inventory of affordable housing in the community. Pursue policy and regulatory changes that will encourage the rehabilitation and retention of affordable housing in perpetuity.*

The preservation of manufactured housing through rezoning represents a similar effect to the regulatory changes envisioned by City Plan for the City's subsidized and deed-restricted affordable housing. While most units in manufactured housing communities are private and not publicly subsidized, they have consistently provided an important source of housing at similar pricing levels. While rezoning alone does not guarantee affordability, it promotes the long-term operation of these communities and reduces the likelihood of redevelopment and the loss of some of the community's most affordable housing options.

> (City Plan) LIV 6.9 – Prevent Displacement
> *Build the capacity of homeowner groups, affordable housing providers and support organizations to enable the purchase, rehabilitation and long-term management of affordable housing. Particular emphasis should be given to mobile home parks located in infill and redevelopment areas.*

Many of the community's manufactured housing communities are located within or adjacent to commercial areas, or along corridors with existing or planned transit services, which encourages redevelopment to higher intensities. Rezoning properties containing manufactured housing to the MH district provides an important regulatory and policy signal that manufactured housing is encouraged and its continued operation is desired even amongst areas otherwise anticipated to experience infill and redevelopment.

This policy signal may also bolster the efforts of residents, local organizations, and the City to support and reinvest in these communities, including the potential for future acquisition of the underlying property by residents through a resident-owned community if a property owner elects to sell a property in the future.

Criterion Two: Warranted by Changed Conditions

Ongoing infrastructure enhancements and evolving policy goals related to infill and intensification may be creating additional pressure and incentive for properties to redevelop along the North College Corridor. Both the City and nearby stakeholders anticipate or encourage a certain level of redevelopment and intensification in the corridor to support future transit services.

Of the handful of mobile home parks that have closed over the last two decades in Fort Collins, many share similarities with the Property in that their location in commercial zone districts along arterial streets led to greater redevelopment opportunities and thus park closures and displacement of residents. Having identified this condition, the recently adopted North College MAX Plan makes specific recommendations to rezone the Property and exclude the property from a potential expansion of the Transit Oriented Development Overlay Zone, which could further add redevelopment incentive within the corridor.

Criterion Three: Compatible with Surrounding Uses

The proposed rezoning would not alter the long-established mix of land uses on the Property or nearby vicinity, because no physical change is proposed. The close proximity of residential and commercial uses is common to most of Fort Collins's commercial and residential zone districts and generally viewed as compatible with appropriate mitigation measures if future redevelopment near the Property is proposed in the future.

Criterion Four: Impacts to the Natural Environment

The proposed rezoning is not anticipated to result in impacts to the natural environment, because no physical changes are proposed with the rezoning. To the extent redevelopment of a property could positively benefit the natural environment through the application of more recent Land Use Code standards (habitat buffers, mitigation measures, etc.) the rezoning and preservation of the current use may have long-term impacts, but no sensitive natural features are presently identified on the Property.

Criterion Five: Logical and Orderly Development Pattern

The proposed rezoning is not anticipated to result in development pattern changes. While the existing mobile home park predates many of the individual standards of the Land Use Code for orderly development (e.g. street connectivity standards) preserving the existing development provides benefits from broader growth framework goals by providing for a variety of housing options and prices in the community that would otherwise result in additional demand for regional commuting and a decrease in the City's housing opportunities and social connectivity.

CITY FINANCIAL IMPACTS

There are no direct financial impacts associated with the proposed rezoning.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The Planning and Zoning Commission voted 5 to 1 at their March 23, 2023, hearing to recommend approval of the rezoning to Council. An excerpt of the draft minutes of the Commission's discussion is attached. The dissenting vote was primarily related to the involuntary aspect of the rezoning and impacts on private property rights.

PUBLIC OUTREACH

A neighborhood meeting discussing the rezoning proposal was held on February 5, 2023. Residents of the North College Mobile Home Park were the primary attendees of the meeting and were largely in support of the proposed rezoning and manufactured housing preservation. A summary of the neighborhood meeting and the public comments are attached.

Staff has been in contact with the Property owners to relay information about the proposal and process steps; however, no formal comment has been received in opposition or support of the proposed rezoning.

ATTACHMENTS

1. Ordinance for Consideration
2. Zoning and Aerial Vicinity Map
3. Rezoning Narrative
4. Planning and Zoning Commission Staff Report
5. Neighborhood Meeting Summary
6. Public Comment
7. Planning and Zoning Commission Minutes, March 23, 2023 (excerpt)
8. Affordable Housing Redevelopment Displacement Mitigation Strategy Report
9. Presentation

ORDINANCE NO. 068, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE ZONING MAP OF THE
CITY OF FORT COLLINS BY CHANGING THE ZONING
CLASSIFICATION FOR THAT CERTAIN PROPERTY KNOWN
AS THE NORTH COLLEGE MOBILE HOME PARK REZONING

WHEREAS, Division 1.3 of the Fort Collins Land Use Code (the "Land Use Code") establishes the Zoning Map and Zone Districts of the City; and

WHEREAS, Division 2.9 of the Land Use Code establishes procedures and criteria for reviewing the rezoning of land; and

WHEREAS, City Council seeks to preserve and support existing manufactured housing communities in Fort Collins such as the North College Mobile Home Park; and

WHEREAS, the Planning and Zoning Commission voted at their March 23, 2023, hearing to recommend approval of the rezoning of the North College Mobile Home Park (the "Property:) to City Council; and

WHEREAS, in accordance with the foregoing, the City Council has conducted a public hearing, considered the staff report, the Planning and Zoning Commission recommendation and findings, and evidence provided for and at the public hearing, and has determined that the Property should be rezoned as hereinafter provided; and

WHEREAS, the City Council finds that the proposed rezoning satisfies the requirements Division 2.9 of the Land Use Code as follows:

The rezoning is consistent with the City's Comprehensive Plan and is warranted by changed conditions within the neighborhood surrounding and including the Property; and

The proposed rezoning would be compatible with existing and proposed uses surrounding the Property and is the appropriate zone district for the Property; would not result in significant adverse impacts on the natural environment; and would result in a logical and orderly development pattern; and is in the best interests of the City.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS:

Section 1. That the findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

Section 2. That the Zoning Map adopted by Division 1.3 of the Land Use Code is hereby amended by changing the zoning classifications from Service Commercial (C-S) Zone

District and Low Density Mixed-Use Neighborhood (L-M-N) Zone District, to the Manufactured Housing (M-H) Zone District, for the following described Property in the City:

PARCEL 9702100021:
BEG AT PT 657.02 FT S OF NE COR OF NE 1/4 2-7-69, W 1320 FT M/L TO W LN OF E 1/2 OF NE 1/4, S 328.5 FT, E 1127.1 FT M/L TO W LN K BAR D SUB, N 219 FT, E 198.9 FT, N 109.5 FT TPOB; LESS ROW TO CITY PER 20140040137

PARCEL 9702100025:
BEG 492.76 FT S AND 240 FT W OF NE COR OF NE 1/4 2-7-69, S 164.25 FT, W 1127.1 FT TO W LN E 1/2 OF NE 1/4, N 164.25 FT, E 1127.1 FT TPOB (AD), FTC; ALSO POR NE 1/4 OF NE 1/4 2-7-69 LYING S OF FOL DESC LN: COM E 1/16 COR

PARCEL 9702100028:
BEG AT N 1/4 COR 2-7-69, TH ALG N LN S 89 59' E 1317 FT TO NE COR OF W 1/2 OF NE 1/4, TH ALG E LN OF W 1/2 OF NE 1/4 S 0 3' 20" W 405 FT TPOB, TH CONT ALG SD E LN S 0 3' 20" W 1956.97 FT, N 89 59' W 2.67 FT M/L TO ERLY L

Section 3. That the City Manager is hereby authorized and directed to amend the Zoning Map in accordance with this Ordinance.

Section 4. That the Sign District Map adopted pursuant to Section 3.8.7.1(M) of the Land Use Code is hereby changed and amended by showing that the above-described Property is included in the Residential Neighborhood Sign District.

Section 5. That the Lighting Context Area Map adopted pursuant to Section 3.2.4(H) of the Land Use Code is hereby changed and amended by showing that the above-described Property is included in the LC1 Lighting Context Area.

Introduced, considered favorably on first reading, and ordered published this 2nd day of May, 2023, and to be presented for final passage on the 16th day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

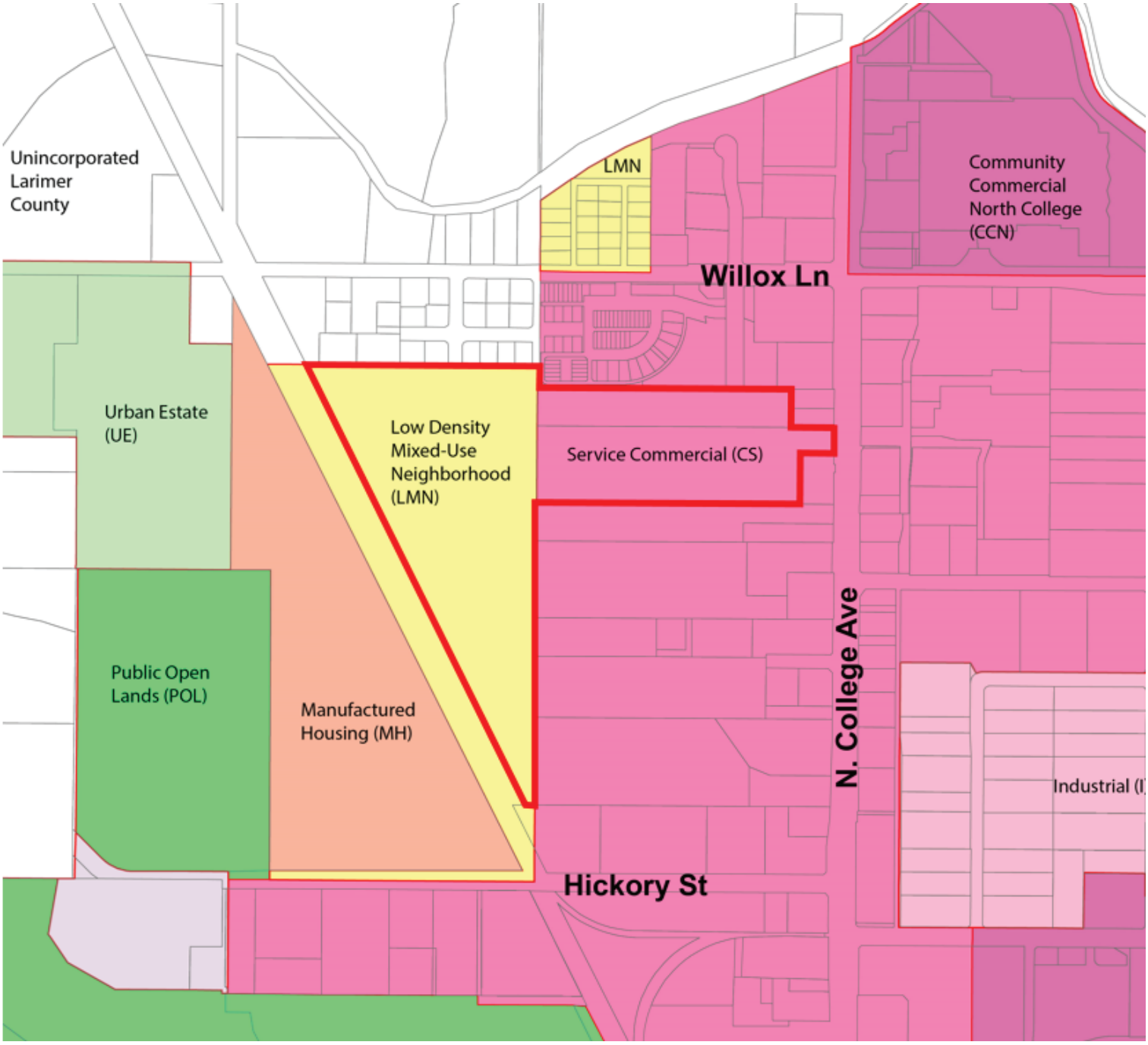
Passed and adopted on final reading on this 16th day of May, 2023.

_____
Mayor

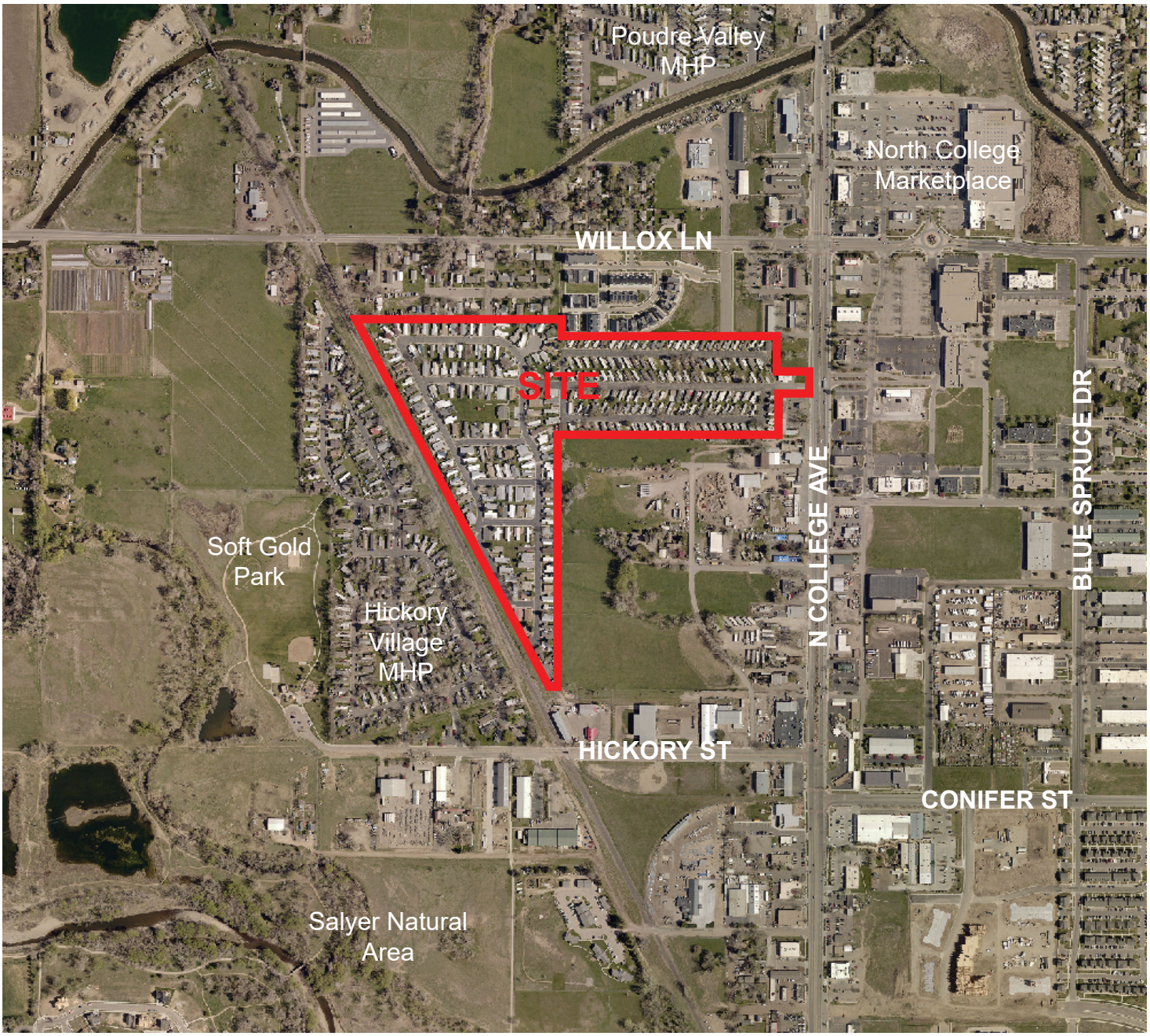
ATTEST:

_____
City Clerk

North College Mobile Home Park Rezoning
Zoning Vicinity Map



North College Mobile Home Park Rezoning
Aerial Vicinity Map



REASON FOR REQUEST

This City-initiated rezoning request for the North College Mobile Home Park continues community efforts to rezone the community's major mobile home parks to the new Manufactured Housing (MH) zone district. In 2020 the City began rezoning large manufactured housing communities to the MH district to implement policy goals in City Plan to preserve and protect this unique and affordable type of housing and to prevent future displacement of residents.

The MH zone district is designed to discourage redevelopment of existing manufactured housing communities and ensure existing parks are located in zone districts where the land use is explicitly permitted Preserving manufactured housing communities advances multiple policy goals, including:

City Plan: LIV 5.2 – Supply of Attainable Housing
Encourage public and private sectors to maintain and develop a diverse range of housing options, including housing that is attainable (30% or less of monthly income) to residents earning the median income. Options could include ADUs, duplexes, townhomes, mobile homes, manufactured housing and other "missing middle" housing types.

City Plan: LIV 6.4 – Permanent Supply of Affordable Housing
Create and maintain an up-to-date inventory of affordable housing in the community. Pursue policy and regulatory changes that will encourage the rehabilitation and retention of affordable housing in perpetuity.

2022 Strategic Plan – Neighborhood Livability & Social Health 1.8
Preserve and enhance mobile home parks as a source of affordable housing and create a safe and equitable environment for residents.

PROPERTY LEGAL DESCRIPTION

Parcel 1 (9702100025)
BEG 492.76 FT S AND 240 FT W OF NE COR OF NE 1/4 2-7-69, S 164.25 FT, W 1127.1 FT TO W LN E 1/2 OF NE 1/4, N 164.25 FT, E 1127.1 FT TPOB (AD), FTC; ALSO POR NE 1/4 OF NE 1/4 2-7-69 LYING S OF FOL DESC LN: COM E 1/16 COR

Parcel 2 (9702100021):
BEG AT PT 657.02 FT S OF NE COR OF NE 1/4 2-7-69, W 1320 FT M/L TO W LN OF E 1/2 OF NE 1/4, S 328.5 FT, E 1127.1 FT M/L TO W LN K BAR D SUB, N 219 FT, E 198.9 FT, N 109.5 FT TPOB; LESS ROW TO CITY PER 20140040137

Parcel 3 (9702100028)
BEG AT N 1/4 COR 2-7-69, TH ALG N LN S 89 59' E 1317 FT TO NE COR OF W 1/2 OF NE 1/4, TH ALG E LN OF W 1/2 OF NE 1/4 S 0 3' 20" W 405 FT TPOB, TH CONT ALG SD E LN S 0 3' 20" W 1956.97 FT, N 89 59' W 2.67 FT M/L TO ERLY L

Development Review Staff Report

Agenda Item 4

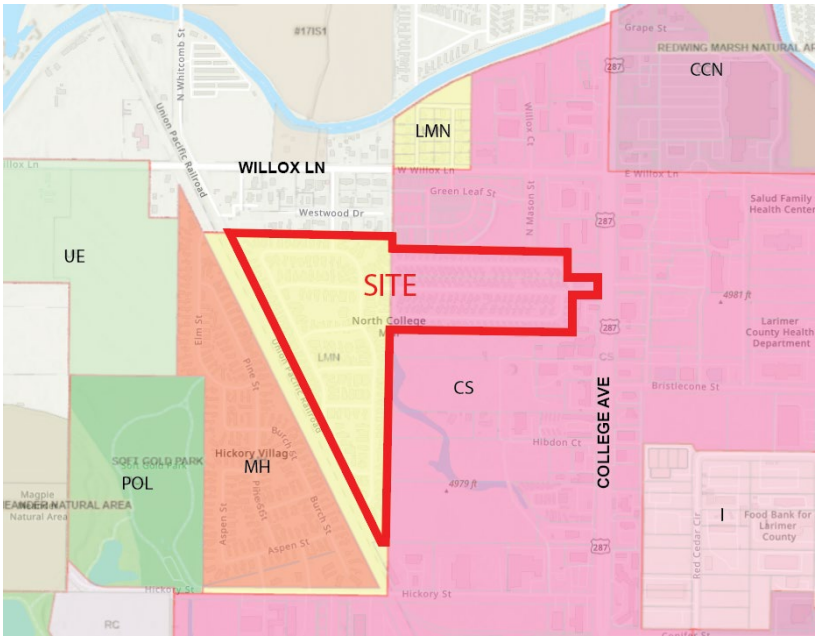
Planning and Zoning Commission Hearing: March 23, 2023

North College Mobile Home Park Rezoning, #REZ230002

Summary of Request

This is a City initiated request to rezone 32.8 acres from the Low Density Mixed-Use Neighborhood (LMN) and Service Commercial (CS) zone districts to the Manufactured Housing (MH) zone district. The rezoning is a continuation of City efforts began in 2020 to preserve and protect existing manufactured housing communities.

Zoning Map



Next Steps

After receiving a recommendation from the Planning and Zoning Commission, the proposed rezoning will be presented to City Council for consideration of approval via ordinance.

Site Location

Located at 1601 N College Avenue, southwest of the intersection of College Avenue and Willox Lane. Parcel #s: 9702100021, 9702100025, 9702100028

Petitioner

City of Fort Collins
PO Box 580
Fort Collins, CO 80522

Owners

North College LLC
1601 N College Avenue Office
Fort Collins, CO 80524

Staff

Ryan Mounce, City Planner

Contents

Recommendation

Approval

anning Services Fort Collins, Colorado 80521 p. 970-416-4311 f. 970.224.6134 www.**fcgov.com**

1. Project Introduction

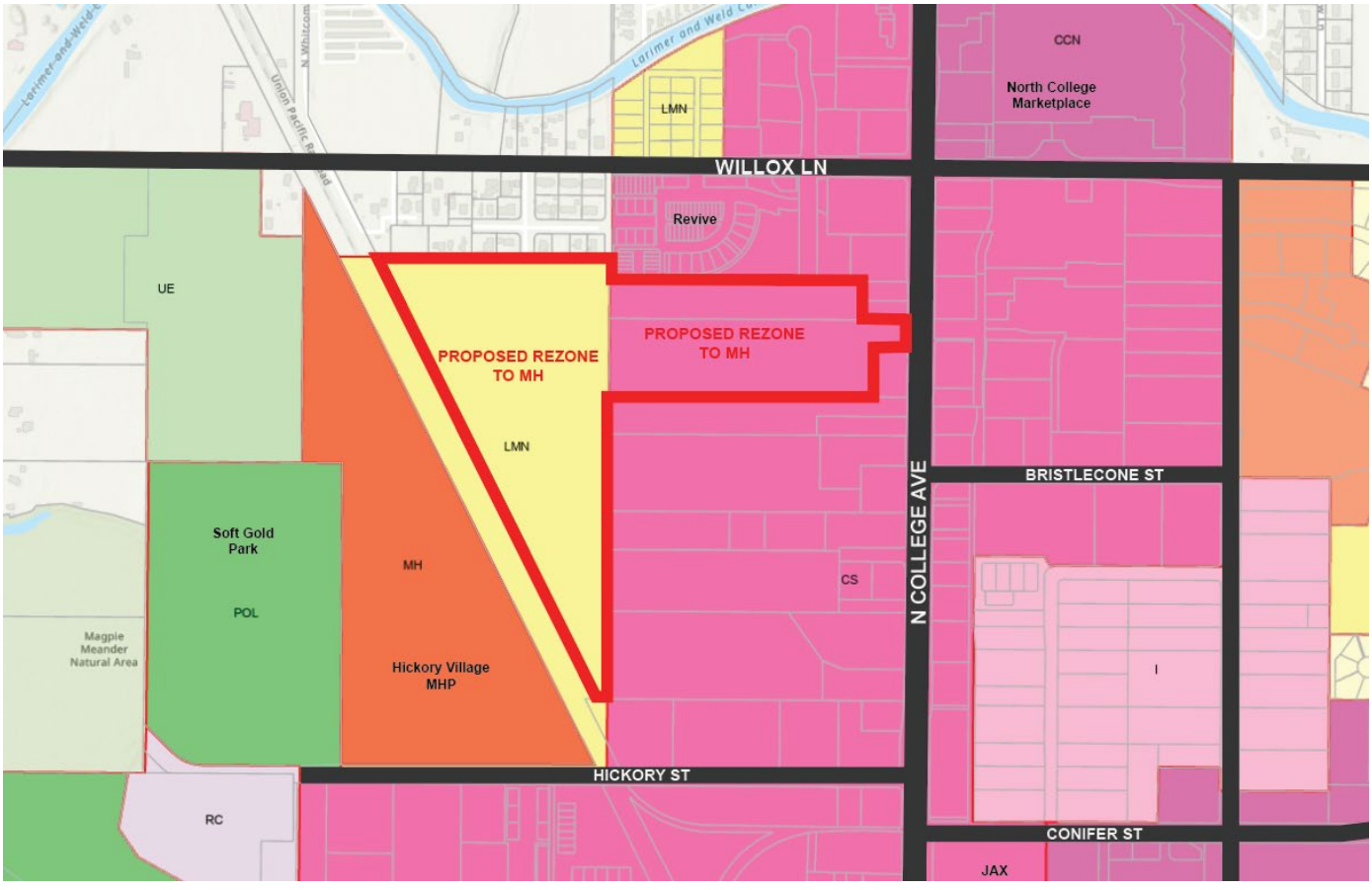
A. PROJECT DESCRIPTION

This is City initiated request to rezone the North College Mobile Home Park to the Manufactured Housing (MH) zone district. The park is comprised of three parcels totaling approximately 32.8 acres with split zoning. The western half of the site is presently zoned Low Density Mixed-Use Neighborhood (LMN) while the eastern half is zoned Service Commercial (CS).

In 2020 the City created the MH zone district to help preserve and protect existing mobile home parks, which represent some of the most affordable housing options in the community. The MH district promotes the ongoing operation of existing parks by discouraging redevelopment to other land uses. The rezoning of parks to the MH district also seeks to ensure mobile home parks are located in zone districts where manufactured housing is a permitted land use and to reduce instances of nonconforming uses, as is currently the case for the portion of the North College Mobile Home Park located in CS zoning.

The majority of the largest mobile home parks in Fort Collins were rezoned to the MH district in 2020, however, the North College Mobile Home Park rezoning was delayed several times over the course of the pandemic due to health and public participation concerns for the senior population of the North College Mobile Home Park. Staff was also awaiting renewed policy guidance from the North College Bus Rapid Transit Study, recently passed by City Council, that recommends rezoning of the park and adjustments to the future transportation network around the property that better align with the zone districts and expectations for limited redevelopment.

Site & Zoning Vicinity Map



B. SITE BACKGROUND & CONTEXT

The eastern half of the site was annexed into the City in 1959 as part of the North College Annexation, while the western half was annexed in 1971 as part of the North College Mobile Plaza Annexation. The park was also developed in multiple phases, with the eastern (front) half being developed prior to the western (back) half.

The property has featured many different zoning designations over the decades and the current split zoning has been a feature since the original development of the North College Corridor Plan and adoption of the Land Use Code beginning in the mid-1990s. While the western half of the property features a residential designation, the eastern half carries a commercial designation that is consistent with the broader North College Corridor Plan land-use guidance for Service Commercial along the College Avenue frontage. More recent policy plans including City Plan and the North College Bus Rapid Transit Study now indicate the entirety of the property should fall under a residential designation and/or be rezoned to the MH zone district.

The CS designation for the eastern half of the property renders the front half of the mobile home park a nonconforming use as manufactured housing communities is not permitted in the CS zone district, and while the CS zone district does permit other types of residential dwellings, they are prohibited within 200ft of North College Avenue.

Surrounding Zoning and Land Use

	North	South	East	West
Zoning	**Service Commercial (CS); O-Open (Larimer County)**	**Service Commercial (CS); Manufactured Housing (MH)**	**Service Commercial (CS)**	**Manufactured Housing (MH)**
Land Uses	**Single Family Detached & Attached Dwelling**	**Various retail, office, and light industrial uses; Hickory Village Mobile Home Park**	**Various retail, office/medical office uses**	**Hickory Village Mobile Home Park**

C. MANUFACTURED HOUSING PRESERVATION & POLICY GOALS

Manufactured housing preservation is a Council priority and preventing the displacement of residents is emphasized as a policy goal in the City's comprehensive plan. Over the past several years, the City has initiated a number of new programs, tools, and policy goals to further these efforts, including the recent creation of the Manufactured Housing zone district to help preserve and protect existing manufactured housing communities. These local efforts are taking place at the same time the State of Colorado is reviewing manufactured housing issues, including recent state legislation to create additional resident protections and updates to the Colorado Mobile Home Park Act which encourages local jurisdictions to enact and enforce their own regulations related to manufactured housing.

Manufactured housing is an important source of naturally occurring affordable housing for those earning below the area median income. Many of the City's manufactured housing communities feature housing costs which are comparable to or even below other forms of subsidized and deed-restricted affordable housing.

In addition to its affordability, manufactured housing also offers similar benefits to 'stick-built' single-family dwellings, including greater privacy and personal space, semi-private garden areas, and a strong sense of community. While a unique form of housing, it is also limited in Fort Collins, representing less than 2% of all housing units. Over the past 20 years, five manufactured housing communities have closed in Fort Collins,

mostly due to redevelopment, which resulted in the loss of hundreds of units and the displacement of residents.

After the closing of several manufactured housing communities between 2008-2012, the City adopted the Affordable Housing Redevelopment Displacement Mitigation Strategy Report in 2013, which included a recommendation to create a new manufactured housing zone district to support manufactured housing preservation. In 2020, the City created a new Manufactured Housing zone district to support preservation efforts and has thus far rezoned six of the largest mobile home parks in the community.

D. OVERVIEW OF MAIN CONSIDERATIONS

Property rezonings and amendments to the zoning map are governed by Division 2.9 of the Land Use Code and include specific criteria for rezonings of land less than 640 acres in size (quasi-judicial rezonings). Quasi-judicial rezoning requests shall be recommended by the Planning and Zoning Commission and approved by City Council only if the proposal is consistent with the City's comprehensive plan and/or warranted by changed conditions within the neighborhood surrounding and including the subject property. In addition, the Planning and Zoning Commission and City Council can also consider additional criteria which can be paraphrased as 'compatible with surrounding uses'; 'having limited impact to the natural environment'; and 'facilitating a logical and orderly development pattern'.

While many rezoning requests are initiated by property owners, this proposal has been initiated by the City to advance community and Council priorities, as well as policy and implementation goals found in City Plan, the 2022 Strategic Plan, and the North College Bus Rapid Transit Study. As such, this rezoning justification relies primarily on compliance with the comprehensive plan rather than specific changed conditions within and surrounding the property.

While the goal of many rezoning requests is typically to facilitate additional development, the effect of this rezoning is primarily to discourage redevelopment and promote the ongoing operation of an existing use. While the policy goals supporting the change in zoning are well articulated in the comprehensive plan, the change in zoning represents a large impact on development potential for this site and a restriction for the property owners. The balance between community priorities to protect an important source of housing and property owner rights was a consistent theme heard during the original public process to develop the MH zone district in 2020 and its initial application to the first six mobile home parks rezoned to that zone district.

2. Public Outreach

A. NEIGHBORHOOD MEETING

A neighborhood meeting for the rezoning was held February 6, 2023, and a meeting summary is attached. The meeting was primarily attended by residents of the North College Mobile Home Park who were broadly supportive of the effort to rezone the property for preservation purposes.

An earlier neighborhood meeting seeking input on rezoning only the western half of the property was held in the Fall of 2022. At this meeting, residents indicated a strong preference that the entirety of the park should be rezoned together at once and the split zoning designation for the property should be removed.

B. PROPERTY OWNER COMMUNICATION

Staff has also been in communication with the property owners to share information about the proposed rezoning, process, and hearing dates. No declarative comment has been received regarding opposition or support to the rezoning.

3. Land Use Code Article 2 Procedural Standards

A. PROCEDURAL OVERVIEW

1. Petition – REZ230002

The application and rezoning petition were submitted on February 23, 2023.

2. Neighborhood Meeting

An in-person neighborhood meeting was held on February 6, 2023.

3. Notice (Posted, Written and Published)

Posted Notice: January 20, 2023, Sign # 643

Written Hearing Notice: March 9, 2023 706 addresses mailed.

Published Hearing Notice: March 5, 2023

4. Land Use Code Article 2 Standards

A. DIVISION 2.9 – AMENDMENT TO ZONING MAP

Applicable Code Standard	Summary of Code Requirement and Analysis	Staff Findings
2.9.4 – Map Amendment Review Procedures	This Code Section enables City Council to approve a change to the zoning map after receiving a recommendation from the Planning and Zoning Commission; and contains the applicable standards governing rezoning of property, as follows: Any amendment to the Zoning Map involving the rezoning of land shall be recommended for approval by the Planning and Zoning Commission or approved by the City Council only if the proposed amendment is: • Consistent with the City's Comprehensive Plan; and/or • Warranted by changed conditions within the neighborhood surrounding and including the subject property. Additional considerations for rezoning parcels less than 640 acres (quasi-judicial): • Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zone district for the land. • Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment. • Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern. Staff Analysis: Staff analysis follows for each criterion.	Complies
Staff Analysis: Is the proposed rezoning "Consistent with the City's Comprehensive Plan"?	Consistency with City Plan, Fort Collins' comprehensive plan, can come through both the land use guidance provided by the Structure Plan Map and City Plan principles and policies. City Plan also encourages the review of subarea and policy plans for contextual purposes. In this circumstance, both the North College Corridor Plan and the North College Bus Rapid Transit Study provide relevant information as adopted elements of City Plan.	Complies

Applicable Code Standard	Summary of Code Requirement and Analysis	Staff Findings
	Land Use Guidance: The City Plan Structure Plan Map identifies the site under the 'Mixed Neighborhood' place type designation, which aligns with the proposed Manufactured Housing zone district in terms of land-use character (residential), density, and proximity to transit and services. The most recent City Plan update in 2019 changed the designation for the eastern half of the property from commercial to residential to better align with policy guidance to preserve and protect manufactured housing communities and in recognition of the longstanding residential use of the site. The Mixed Neighborhood place type also specifically references manufactured housing within existing neighborhoods, indicating, "while reinvestment in existing mobile home parks is encouraged, redevelopment of existing parks is not." The MH district is designed to discourage redevelopment and further addresses the Mixed Neighborhood place type description found in City Plan. Within the North College Corridor Plan, the land use framework map identifies the eastern half of the site under a commercial designation, reflecting the broader North College Avenue frontage which is primarily intended for commercial purposes but doesn't necessarily acknowledge the nonconformity between the current commercial zoning and the preexisting residential use of the site nor the potential impacts of redevelopment and displacement of residents, which is a growing area of policy in more recent City plans since the last update to the North College Corridor Plan. The North College Bus Rapid Transit Study contains the most recent land use guidance for the site. Study recommendations include preserving the North College Mobile Home Park by rezoning it to the Manufactured Housing zone district and to exclude the site from a proposed Transit Oriented Development Overlay seeking to spur intensification in the corridor to support additional transit service. While the guidance in the North College Corridor Plan is somewhat contradictory on the eastern half of the site, on the whole between City Plan and the North College Bus Rapid Transit Study, there are appropriate levels of land-use guidance in place to support a rezoning of the property to the Manufactured Housing zone district, especially when considering the most two most recent plans identify residential zoning for the site. **Policy Guidance:** Housing affordability and attainability is a top community issue which is reflected in City Plan through a number of policy goals. The preservation of manufactured housing communities, including the recent development of the Manufactured Housing zone district and the proposed rezoning of properties containing manufactured housing directly support the following City Plan policies: *LIV 5.2 – Supply of Attainable Housing* *Encourage public and private sectors to maintain and develop a diverse range of housing options, including housing that is attainable (30% or less of monthly income) to residents earning the median income. Options could include ADUs, duplexes, townhomes, mobile homes, manufactured housing and other "missing middle" housing types.* Manufactured housing represents one of the most affordable types of housing in Fort Collins, comparable to subsidized and deed-restricted housing for those earning between 30-60% area median income. As a naturally occurring source of affordable housing, manufactured housing communities represent a comparable number of dwelling units to Fort Collins' entire deed-restricted affordable housing supply.	

Applicable Code Standard	Summary of Code Requirement and Analysis	Staff Findings
	Preserving manufactured housing helps protect and maintain an important supply of affordable housing in Fort Collins. In addition to its affordability, manufactured housing is a unique and limited type of housing that has been in decline over the past several decades due to community closures and redevelopment. The goal of preservation through rezoning to the MH district is designed to protect and promote the ongoing operation of this limited housing resource which has proven to be difficult to expand via new manufactured housing development. *LIV 6.4 – Permanent Supply of Affordable Housing* *Create and maintain an up-to-date inventory of affordable housing in the community. Pursue policy and regulatory changes that will encourage the rehabilitation and retention of affordable housing in perpetuity.* The preservation of manufactured housing through rezoning represents a similar effect to the regulatory changes envisioned by City Plan for the City's subsidized and deed-restricted affordable housing. While most units in manufactured housing communities are private and not publicly subsidized, they have consistently provided an important source of housing at similar pricing levels. While rezoning does not guarantee affordability alone, it promotes the long-term operation of these communities and reduces the likelihood of redevelopment and the loss of some of the community's most affordable housing options. *LIV 6.9 – Prevent Displacement* *Build the capacity of homeowner groups, affordable housing providers and support organizations to enable the purchase, rehabilitation and long-term management of affordable housing. Particular emphasis should be given to mobile home parks located in infill and redevelopment areas.* Many of the community's manufactured housing communities are located within or adjacent to commercial areas, or along corridors with existing or planned transit service which encourage redevelopment to higher intensities. Rezoning properties containing manufactured housing to the MH district provides an important regulatory and policy signal that manufactured housing is encouraged and its continued operation is desired even amongst areas otherwise anticipated to experience infill and redevelopment. This policy signal may also bolster the efforts of residents, local organizations, and the City to support and reinvest in these communities, including the potential for future acquisition of the underlying property by residents through a resident-owned community (ROC) if a property owner elects to sell a property in the future. **Summary:** The proposed rezoning is consistent with the land use designation on the City Plan Structure Plan Map and policy goals of City Plan and the recently adopted North College Bus Rapid Transit Study. Encouraging the ongoing operation of the North College Mobile Home Park helps protect an existing source of affordable housing and prevents displacement.	
Staff Analysis: Is the proposed rezoning "Warranted by Changed Conditions Within the	Staff is recommending the proposed change in zoning based primarily on consistency with the comprehensive plan, rather than specific changed conditions in the neighborhood. From a policy standpoint, there are changed conditions since the property's current zoning was established prior to policy goals found in both City Plan and the North College Bus Rapid Transit Plan supporting both redevelopment and infill at higher	Complies

Applicable Code Standard	Summary of Code Requirement and Analysis	Staff Findings
Neighborhood Surrounding and Including the Subject Property"?	intensities along the corridor and protections for existing affordable housing options to prevent displacement. The City can also draw upon local experience of past mobile home park closures, which tend to occur for those areas in commercial corridors under commercial zoning, which is a condition the eastern half of the North College Mobile Home Park falls under.	
Staff Analysis: "… Compatible with Existing and Proposed Uses… and is the Appropriate Zone District for the Land"	The proposed rezoning does not alter the existing composition of land uses and their compatibility in the immediate vicinity since most properties have already been developed and no physical or land use changes are anticipated as a result of the rezoning. The mobile home park has existed side-by-side to other commercial uses for decades and it is anticipated this condition will continue for years to come. There are many instances of higher intensity residential zone districts adjacent to commercial zones throughout the community. Further, the existing portion of the site that is zoned CS would also permit residential land-uses if not for current standards limiting it to within 200-ft of the College Avenue frontage, a restriction that is proposed to be removed as a recommendation of the North College Bus Rapid Transit Plan.	Complies
Staff Analysis: "…Adverse Impacts on the Natural Environment…"	The proposed rezoning is not anticipated to result in negative or positive impacts on the natural environment, as it seeks to preserve existing development. To the extent redevelopment of a property could positively benefit the natural environment through the application of more recent Land Use Code standards (habitat buffers, mitigation measures, etc.) the rezoning may have some long-term impacts, however, nearby sensitive natural features around the site are generally already protected through the City's acquisition of land via parks, natural areas, and open space.	Complies
Staff Analysis: "…a Logical and Orderly Development Pattern"	The proposed rezoning is not anticipated to result in changes to development patterns given the site is already developed and the rezoning seeks the continuance of this land use. The site predates many of the individual standards of the Land Use Code for orderly development (e.g. street connectivity and spacing requirements); however, the properties fulfill other growth framework and logical development goals, including providing for a variety of housing options and prices in the community that would otherwise result in additional demand for regional commuting and a decrease in the City's housing opportunities and social connectivity. An update to the Master Street Plan is forthcoming as a result of the North College Max Bus Rapid Transit Plan, which recommends re-aligning a future extension of Mason Street north of Hickory Street to turn 90-degrees and intersect with the intersection of North College Avenue and Bristlecone Drive. This would eliminate a future collector street running through both the North College and Poudre Valley Mobile Home Parks, which is inconsistent with guidance to preserve and protect these properties, and thus less likely to see redevelopment that would trigger the street's construction.	Complies

5. Findings of Fact/Conclusion

In evaluating the petition for the North College Mobile Home Park Rezoning from the Low Density Mixed-Use Neighborhood (LMN) and Service Commercial (CS) Zone Districts to the Manufactured Housing (MH) Zone District, staff finds that the petition complies with the standards in Section 2.9 of the Land Use Code.

6. Recommendation

Staff recommends that the Planning and Zoning Commission approve a motion to recommend that City Council approve the North College Mobile Home Park Rezoning, #REZ230002, based on the Findings of Fact in the Staff Report.

7. Attachments

1. Rezoning Justification & Map
2. February 2023 Neighborhood Meeting Summary
3. August 2021 Neighborhood Meeting Summary
4. Affordable Housing Redevelopment Displacement Mitigation Strategy Report
5. Staff presentation

Community Development and Neighborhood Services

Planning Services
281 North College Ave.
P.O. Box 580
Fort Collins, CO 80522
970.221.6750
970.224.6134 - fax
fcgov.com/developmentreview

North College Mobile Home Park Rezoning
Neighborhood Meeting Summary

Neighborhood Meeting Date: February 6, 2023

City Staff – Attendees:

Em Myler – Development Review Liaison
Ryan Mounce – City Planner
JC Ward – City Planner, Neighborhood Services
Emily Olivo – Neighborhood Liaison, Neighborhood Services
Seth Lorson – Transit Planner, FCMoves

Applicant Team:

The City of Fort Collins is the project applicant

Project Information Presented:

- Em Myler provided an overview of the neighborhood meeting process and next steps after the meeting.
- City Planner Ryan Mounce provided an overview of the proposed rezoning of the North College Mobile Home Park to the Manufactured Housing (MH) Zone District. Details were also shared recent work over the past two years by the City to create a preservation-focused zone district for manufactured housing and the rezoning of other mobile home park properties in late 2020 which implements many policies and goals found in the comprehensive plan and the recently adopted North College Bus Rapid Transit Study.

Questions/Comments and Answers (answers primarily provided by City staff unless otherwise noted).

- **Is the rezoning a formality given Council voted to rezone the other mobile home parks several years ago?**
  The rezoning has a lot of alignment with mobile home park preservation goals in City Plan, the recently adopted North College Bus Rapid Transit Study and identified priorities in the 2020 and 2022 Strategic Plan, however the ultimate decision will be up to City Council with a recommendation from the Planning and Zoning Commission. Since the original mobile home park rezonings occurred there are new members to both bodies and unique circumstances for any project that may influence a final Council decision.

- **Is the reason the eastern half of the property wasn't rezoned considered for rezoning because it is commercial, like the remainder of the North College frontage?**
  That existing commercial designation for the eastern half of the site does differ compared to the other parks that were rezoned in 2020 as they all carried residential zoning designations. Alongside delays due to pandemic conditions, staff wanted to work through the policy alignment implications in the North College Bus Rapid Transit Study which was forthcoming. The most recent guidance from both City Plan and the North College Bus Rapid Transit Study indicate the full site should receive residential zoning designation.

- **What happens after rezoning? Could the park be sold?**
  A rezoning doesn't put any restrictions or limitations on a sale of the property, rather the intent behind the change in zoning is it would limit redevelopment potential to encourage the ongoing operation of the park, even if sold to another owner.

- **Are the owners aware of the rezoning?**
  The owners have been contacted and informed about the proposed rezoning but there has not yet been a conversation or written comments in support or opposition to the rezoning. When the other parks were rezoned several years ago, most owners were neutral or opposed. At that time, all owners indicated they did not have plans to redevelop their properties but also recognized a rezoning put limitations on their future options.

- **What would be arguments against rezoning?**
  With some of the earlier mobile home park rezonings there were comments and concerns about infringing too much on private property rights, or that the zone district itself was too static in nature and doesn't necessarily allow for options such as partial redevelopment to other forms of affordable housing.

- **Would owner comments be made public?**
  If the owners provided written comments in advance of hearings or provided testimony at the hearings those comments would be public. We encourage anyone who wishes to comment to do so in writing because we're able to include those verbatim to decision-makers as part of their packet of information for a project, and all of those materials are available to view online for anyone interested in the proposal.

- **Does the rezoning impact the future of Mason Street?**
  The rezoning itself doesn't impact the future of Mason Street, however, we did work through options during the North College Bus Rapid Transit Study to identify alternatives given the goal of rezoning is to limit redevelopment of the site and thus it would be less likely Mason Street would ever extend through this site. Within the new Bus Rapid Transit Study it's recommended Mason Street would turn and reconnect with College Avenue at Bristlecone south of the North College Mobile Home Park. That change is proposed to be formalized in the near future with updates to the Master Street Plan.

- **Comment: This is one of the best mobile home parks in Fort Collins and I'm concerned about impacts of the proposed homeless shelter nearby.**

- **When will the meeting for the homeless shelter proposal take place?**
  The neighborhood meeting is scheduled for March 2nd. Residents of the North College Mobile Home Park are likely in close enough proximity to the site that you will receive a mailed letter about the meeting.

- **Comment: I think many of us would appreciate an email follow-up after this meeting with details on the homeless shelter proposal.**

- **Several additional comments were shared about potential crime/vandalism concerns associated with a homeless shelter nearby.**

- **What are some of the reasons or issues that could hold up the rezoning?**
  Goal is to move the rezoning proposal forward to decision-makers quickly this spring. While dates have not been formalized it's likely the rezoning will reach the Planning and Zoning Commission in March and City Council in April. Can't speak on behalf of those decision-makers, however from a staff perspective there appears to be a lot of policy alignment between the rezoning and City Plan / Strategic Plan, and the rezoning of the other parks several years ago was a unanimous decision at the time.

- **Comment: I appreciate that the City is moving forward with the rezoning of the park.**

- **How many 55+ mobile home parks are there in Fort Collins?**
  Within City limits there are only two – North College as well as Skyline Mobile Home Park.

- **If Council decides against the full rezoning, is there potential just part of the park could be rezoned?**
  Plan is to move a forward with a rezoning of the entire property. During a previous neighborhood meeting when it was discussed to start with a rezoning of just the back half of the park, residents indicated they were against that idea and desired the entire property to be unified under the MH district at the same time. Those comments will be communicated in materials to decision-makers.

- **Who is our Council member?**
  The Councilmember for the park is Emily Francis. The City recently reworked some of the Council boundaries and this area is just on the line between several districts. Councilmember Gutowsky has also frequently been involved with residents of North College Mobile Home Park as well.

- **What language exists in Fort Collins Municipal Code about mobile home parks? Is there overlap with state laws?**
  Section 18 is all about mobile home parks. There are some additional changes moving forward this year related to billing transparency/auditing and clothes lines. If you're interested in learning more about local and state laws, the City has a webpage with flyers explaining all mobile home park requirements and who enforces those codes.

- **Who is responsible for enforcing locally?**
  It depends on what the potential issue is, but some of the key departments would be building inspection, zoning, and code enforcement.

- **Are there other parks that have not been rezoned?**
  There are a small number of parks without any proposed rezoning, and it's uncertain if those parks will be rezoned. They differ from the other parks in that they are much smaller, tend to be fully under

commercial zoning designations and they have other uses on their properties, such as hotels/motels that conflict with the MH district.

- **Is it correct that the current eastern half of the park is considered nonconforming?**
  Yes, the eastern half is zoned Service Commercial (CS), which is a primarily commercial/light industrial zone district. While it does permit some forms of residential development, manufactured housing is not a permitted use and is considered a nonconforming use. Nonconforming uses have some restrictions on their ability to expand, and there may be issues for property owners of nonconforming uses if they are seeking financing or insurance for the property.

- **When will Connexion come to the park?**
  Connexion has representatives that work to bring the service to mobile home parks and multifamily projects, however they need an agreement and consent of the owners of those properties and we're continuing to talk with those properties to explore how service can be provided.

- **Participant discussion began to take place about what types of easements already exist within the property for water utilities and if those could be used to install future Connexion services.**

- **Comment: It's frustrating we're paying taxes for Connexion but not able to receive service.**

- **Have many members of the current City Council have been involved in this rezoning?**
  As a development review proposal, Council members are typically restricted from being directly involved as they are either a final decision maker or decision maker for appeals. From a policy perspective many of them have been involved in efforts supporting mobile home park issues and preservation. Council decides their priorities at the beginning of each term and lead development of the Strategic Plan, which currently includes priorities for mobile home park preservation.

Ryan Mounce

From: Deb & Chris Bobowski <bobowski.col@gmail.com>
Sent: Friday, March 17, 2023 1:36 PM
To: Ryan Mounce
Subject: [EXTERNAL] North College Manufactured Home Community

Ryan, please forward this email to members of the Planning & Zoning Commission as they consider the rezoning of the North College Manufactured Home Community from its current split zoning condition to that of a single zoning district - Manufactured Housing.

Over the years, as a Fort Collins resident who has provided input to the city plan and housing strategic plan process, I've watched the city move positively forward towards its goal of preserving and increasing its stock of affordable housing. I am fully supportive of this latest rezoning initiative that will enable preservation of one of the city's largest manufactured housing communities, enabling it to continue to house those not otherwise able to afford standard stick-built housing or even most types of rental housing elsewhere in our town. This is one of many moves that will help keep this type of housing affordable in our high-priced town.

Deborah Bobowski
2001 Rosen Drive, #3-212
Fort Collins, CO 80528

Planning and Zoning Commission Minutes

David Katz, Chair
Julie Stackhouse, Vice Chair
Michelle Haefele
Samantha Stegner
Adam Sass
York
Ted Shepard

City Council Chambers
City Hall West
300 Laporte Avenue
Fort Collins, Colorado

Cablecast on FCTV, Channel 14 on Connexion &
Channels 14 & 881 on Comcast

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Regular Hearing
March 23, 2023

Chair Katz called the meeting to order at 6:00 p.m.

Roll Call: Stegner, Katz, York, Shepard, Stackhouse, Haefele

Absent: Sass

Staff Present: Frickey, Yatabe, Guin, Axmacher, Schumann, Myler, Keith, Sizemore, Mounce, Gilchrest, Buckingham, Betley, Claypool and Manno

Chair Katz provided background on the Commission's role and what the audience could expect as to the order of business. He described the following procedures:

- While the City staff provides comprehensive information about each project under consideration, citizen input is valued and appreciated.
- The Commission is here to listen to citizen comments. Each citizen may address the Commission once for each item.
- Decisions on development projects are based on judgment of compliance or non-compliance with city Land Use Code.
- Should a citizen wish to address the Commission on items other than what is on the agenda, time will be allowed for that as well.
- This is a legal hearing, and the Chair will moderate for the usual civility and fairness to ensure that everyone who wishes to speak can be heard.

Agenda Review

Community Development and Neighborhood Services Director Paul Sizemore reviewed the items on the Consent and Discussion agendas, stating that all items will be heard as originally advertised.

Discussion Agenda:

4. North College Mobile Home Park Rezoning

Project Description: This is a City-initiated request to rezone 32.8 acres from the Low-Density Mixed-Use Neighborhood (LMN) and Service Commercial (CS) zone districts to the Manufactured Housing (MH) zone district. The rezoning is a continuation of City efforts begun in 2020 to preserve and protect existing manufactured housing communities.

Recommendation: Approval

(**Secretary's Note: Member Stegner withdrew from the discussion of this item due to a conflict of interest.)

Member Stackhouse disclosed that her brother-in-law is a resident of the North College Mobile Home Park; however, she has not discussed this proposal with him nor does she believe it would impact her decision-making. Additionally, she noted City Council will make the final decision on this proposal.

Staff Presentation

Ryan Mounce, City Planner, stated this item is a request for a rezoning of approximately 33 acres of the North College Mobile Home Park from the Low-Density Mixed-Use Neighborhood (LMN) and Service Commercial (CS) zone districts to the newly created Manufactured Housing (MH) zone district. He noted this is a City-initiated request with the goal of continuing some of the City's policy and preservation work regarding mobile home parks and is involuntary on the part of the property owners. Additionally, he noted the final decision maker will be City Council.

Mounce showed a map of the property and further detailed the mobile home preservation work which started in 2020. He discussed the staff analysis of the rezoning criteria which relate to consistency with the City's Comprehensive Plan, whether the proposed rezoning is compatible with existing land uses around the site, whether there would be impacts on the natural environment, and the extent to which the amendment would result in a logical and orderly development pattern. He stated the majority of policy guidance supports the zoning change and staff is recommending its approval.

Commission Questions

Chair Katz asked if there is a current fear of redevelopment of the property or if this is a proactive protective measure. Mounce replied no plans for redevelopment have been discussed; however, the rezoning would send the strong policy signal that the City values the existing use of the property and desires its protection even with changes that may come to the corridor.

Public Input

Mary (no last name given) expressed support for mobile home parks and affordable housing, but asked if any consideration has been given to making the parks more attractive.

Chair Katz stated that issue is not being considered.

Commission Questions and Deliberation

Member Shepard commended the staff report and stated he is comfortable with the staff findings that this rezoning is compliant with plans and policies adopted by Council.

Vice Chair Stackhouse concurred and noted this action continues a series of rezoning decisions.

Members York and Haefele also concurred.

Chair Katz stated affordable housing stock is important; however, he fundamentally opposes over-regulation and fears the placement of roadblocks that may need to be undone in the future. He stated he would strongly consider the property rights of the owners if they were in opposition.

Member Shepard made a motion that the Planning and Zoning Commission recommend that City Council approve the rezoning of the North College Mobile Home Park to the Manufactured Housing zone district consistent with the staff recommendation finding the rezoning is consistent with the Comprehensive Plan, is warranted by changed conditions within the neighborhood surrounding and including the property, the rezoning would be compatible with existing and proposed uses surrounding the property and is the appropriate zone district for the property. Further, the rezoning would not result in significant adverse impacts on the natural environment, and the rezoning would result in a logical and orderly development pattern. This decision is based upon the agenda materials, the information and materials presented during the work session and this hearing, and the Commission discussion on this item. Member York seconded the motion. Yeas: Haefele, Stackhouse, York, and Shepard. Nays: Katz.

THE MOTION CARRIED.

City of Fort Collins

Affordable Housing Redevelopment Displacement Mitigation Strategy

City of Fort Collins
In Association with
Clarion Associates and
National Manufactured Home Owners Association

March 26, 2013

TABLE OF CONTENTS

Affordable Housing Redevelopment Displacement Mitigation Strategy

I. INTRODUCTION / DEFINING THE ISSUE

Affordable rental units and mobile home parks are two important sources of housing for lower income working families, seniors, and people with disabilities living in Fort Collins. While redevelopment of older or underutilized properties for higher intensity uses is part of a healthy urban economy (and supported by *City Plan,* the City of Fort Collins' comprehensive plan), redevelopment of affordable rental units and mobile home parks can create unusual hardships if the residents cannot afford to pay to move their units or belongings or cannot find affordable replacement housing.

Affordable multi-family rental units are the more common form of lower-income housing, and Fort Collins has several programs in place to acquire, manage, and preserve apartment buildings on a non-profit basis in order to keep rents at affordable levels. In addition, some for-profit apartment projects have received Low Income Housing Tax Credits (LIHTC) in return for commitments to maintain affordable rents in at least some of the units. Data on these projects provides a snapshot of the city's current supply of committed affordable rental units, and a possible focus for efforts to protect these units or mitigate impacts on their tenants if they are redeveloped. However, many renters live in for-profit apartment complexes that have not used LIHTC and are not managed with a specific intent to preserve affordability (in other words, units are rented at market rates, which may or may not be affordable to low-income residents). This strategic plan addresses mitigation strategies for low-income residents in those market rate rental complexes in Recommendations 1, 2, 4, and 7 below..

Another form of housing that provides opportunities for lower income household is mobile/manufactured homes. Some residents rent while others own their mobile/manufactured homes. Mobile/manufactured homeowners are in a unique situation because they are both homeowners (because they own their individual home) and tenants (because they do not own the land on which their home is located). Typically, the decision of a mobile home park owner to close the park and/or redevelop it for other uses is made without the involvement of the mobile/manufactured home owners. Unlike an apartment tenant whose lease expires or is terminated, a mobile/manufactured home owner must not only move their personal belongings, but must also move the house itself or find another form of replacement housing (e.g., a rental apartment, a townhouse/condo affordable for purchase, etc.). This situation is complicated by three factors:

- Some mobile/manufactured homes are worth so little that it is not cost-effective to move them;
- Some mobile/manufactured homes are so old that they would not withstand a relocation because of likely structural damage during the move; and
- Some local governments (but not the City of Fort Collins) and some mobile home park communities prohibit the siting of mobile homes constructed before 1976 because they predate federal safety standards, which may leave the mobile home owner with no viable

place to move the unit. In Fort Collins, all mobile homes are inspected when they are set. The State requires a foundation set inspection and the City will release utilities only after the State inspection approval.

For a variety of reasons, the Fort Collins community has seen the closure of several mobile home parks that displaced park residents. The following table provides a list of park closures and the reasons for those closures.

Park Name	Reason for Closure
Pioneer Mobile Home Park	Commercial redevelopment
Johnson Mobile Home Park	Natural flood disaster
Dry Creek Mobile Home Park	Property subdivided into single-family lots
Grape Street	Commercial redevelopment
Bender Mobile Home Park	Residential redevelopment

In all of these cases, City staff provided support and collaborated with other agencies, such as the Fort Collins Housing Authority, Federal Emergency Management Association (FEMA), Neighbor-to Neighbor, the Colorado Department of Local Affairs, and the U.S. Department of Housing and Urban Development, to relocate or find other types of replacement housing for park residents. However, the City's involvement was different in each case. The City followed an ad hoc, case-by-case approach to mitigate the impacts of each situation. This strategic plan addresses mitigation strategies for residents of mobile/manufactured home parks in recommendations 1 through 7 below.

The City Council placed the development of an "Affordable Housing Relocation Strategic Plan" on their 2012 Work Plan. The purpose of the strategic plan is to develop City policies and requirements applicable to redevelopment projects by defining the City's role, responsibilities, obligations, and involvement in redevelopment projects that cause the displacement of low-income people from their homes (with an emphasis on mobile home parks), whether they are located inside the City limits or within the Growth Management Area (GMA), within the restrictions of the City Charter. The strategic plan establishes policies and procedures for the next time redevelopment causes displacement of residents of affordable housing, and also sets forth strategies to preserve existing affordable housing.

Throughout this document, the following definitions are used to describe several key terms:

- ***"Mobile home"*** means a factory built and transportable dwelling unit constructed before June 15, 1976 – the date that the federal Manufactured Home Act became effective and required that all manufactured homes meet federal safety standards.

- ***"Manufactured home"*** means a factory built and transportable dwelling unit that was constructed after June 15, 1976 to meet the standards of that Act.
- ***"Mobile/Manufactured home"*** means a factory built and transportable dwelling unit regardless of the date when it was manufactured.
- ***"Mobile home park"*** means a residential area containing manufactured homes, mobile homes, or both, and in which at least some of those homes are owned by individuals other than the mobile home park owner. If the mobile home park owner also owns all of the individual mobile/manufactured homes and rents them to others, the tenants are in the same situation as apartment renters, because they have not invested to purchase the mobile/manufactured home and are not responsible for moving it upon park closure.[1]
- ***Affordable housing*** means a dwelling unit that is available for rent or ownership on terms that would be affordable to households earning 80% or less of the median income of city residents, adjusted for family size, and paying either (a) for a renter, less than 30% percent of gross income for total housing costs, including rent and utilities, or (b) for an owner, less than 38% of gross income for total housing costs, including principal, interest, taxes, insurance, utilities, and homeowners' association fees.

Two additional facts are important to note.

First, under Colorado law, a mobile or manufactured home that is installed on a permanent foundation becomes both "real estate" (for taxation purposes), and a "single family home" (for zoning purposes). So, for example, the Sunflower retirement community located on the south side of East Mulberry Street, east of Interstate 25 is not technically a mobile home park but a single family residential subdivision with lots designed to accommodate manufactured housing units.

Second, despite their name, most mobile and manufactured homes are not very mobile. Although designed for transport from the factory to a residential lot, most mobile and manufactured homes never move from the lot where they are originally installed. Many modern zoning and building codes encourage this result by requiring removal of wheels or tongues and by requiring skirting, anchoring, and semi-permanent utility hookups, all of which make it less likely that the unit will be moved in the future.

[1] The use of these definitions will generally parallel those used in Colorado Revised Statutes as they relate to land use law. Although Colorado law includes several different definitions for these terms (including those in CRS 5-1-301 (29), 24-32-3302(13) and (24), 38-12-201.5 (2), 38-29-102 (6), 42-1-102 (106) (b)), many of those definitions concern matters unrelated to land use and housing, such as the homestead tax exemption, regulation of security deposits, or the allocation of regulatory powers between state agencies.

II. EXECUTIVE SUMMARY

As detailed in the City of Fort Collins' *Affordable Housing Strategic Plan*, affordable rental units (apartments and homes), mobile homes (pre-1976), and manufactured homes (1976 and later, which meet HUD safety standards) provide important sources of affordable housing in Fort Collins and Larimer County. When affordable residential units are lost, they compound the difficulty of meeting the City's affordable housing needs.

Many of the existing affordable units are located in mobile home parks, which raise challenges when mobile home parks are redeveloped for other uses. Mobile/manufactured home owners own their homes but rent the spaces where they are located. When mobile home parks close, residents need to move their homes to other locations, which is complicated by the fact that many homes are old and difficult to move and spaces in mobile home parks are often in short supply (particularly for older homes). If the mobile/manufactured home cannot be moved, the owner faces the loss of not just a place to live but an asset that they have purchased. In recent years, Fort Collins has experienced several mobile home park closures, has been asked to assist in relocating residents, and has done so on an ad-hoc basis. This document sets a strategic policy direction for the City to address these issues in a more consistent way in the future.

This strategic plan recommends that Fort Collins take the following seven steps to address these issues, each of which is described in more detail in the pages that follow.

1. Continue to expand the inventory of "designated affordable" dwelling units, buildings, and complexes through current programs administered by the Fort Collins Housing Authority, other non-profit affordable housing agencies, and private developers.
2. Continue to offer relocation assistance to those residents of affordable units redeveloped with the use of federal, Fort Collins Urban Renewal Authority (FCURA), or other City funds, but do not extend a requirement to pay relocation expenses in private redevelopment projects that do not use public funds and do not require a discretionary land use decision by the City.[2]
3. Draft a Manufactured Home Park Zoning District and rezone into that district those mobile home parks that are relatively large and can serve as significant sources of affordable housing for the long term. From 1965 to 1997 the City of Fort Collins had two mobile home park zoning districts and most of the existing mobile home parks located inside the city limits were zoned in one of those districts. A copy of the City's former M-M Medium Density Mobile Home Park district is attached for reference.
4. Create a loan or grant program, or use the existing financial assistance competitive process, that would be available to finance significant investments in new or existing affordable

[2] The Fort Collins Urban Renewal Authority is currently considering narrowing its relocation assistance policies to apply only when there is an eminent domain/condemnation action by the URA. This policy change would have a significant impact on mobile/manufactured home owners, since they do not own the land that is the subject of the condemnation action and generally do not participate in the negotiations. This represents a departure from federal Uniform Relocation Act requirements followed by the Fort Collins URA in the past, which were designed to protect renters in these types of situations.

housing infrastructure that would be available to those larger mobile home parks willing to commit to continuing operation of their mobile home parks for a at least 10 years.[3]

5. Require a one (1) year notice of closure period for mobile home parks (rather than the 6 month minimum notice required by the state). As an alternative, allow a six (6) month closure notice if the park owner delivers to each resident on or before the notice date a detailed Relocation Report listing all available mobile home park spaces available within 25 miles, providing the contact information for each of those park owners, and including documented estimates of the costs of moving mobile/manufactured homes to those locations. In addition, the notice provision shall also alert residents that the park may be closed before the mandatory notice period has expired if all park residents have been successfully relocated to each party's mutual satisfaction.[4]
6. Require that redevelopment projects involving City financial assistance or a discretionary land use decision by the City pay (a) actual costs of relocating owner occupied mobile/manufactured homes to a new site within a 25 mile radius of the mobile home park, up to a maximum of $6,000 for a single-wide home and $8,000 for a double-wide home, and (b) the actual value (as determined by the County Assessor) of any home that is structurally able to be moved but that cannot be moved due to the unavailability of any spaces within 25 miles, and (c) one-half of the actual value (as determined by the County Assessor) of any mobile/manufactured homes that cannot be moved due to structural weakness or poor condition.[5]
7. Build the capacity of homeowner groups, non-profit affordable housing providers, and support organizations to purchase affordable housing types, including mobile home parks, offered for redevelopment and manage them as long-term sources of affordable housing.[6]

[3] Wording revised to broaden applicability to all affordable housing infrastructure, as recommended by Planning and Zoning Board.
[4] Wording revised to reflect recommendations of the Affordable Housing Board.
[5] Affordable Housing Board recommended that this provision be strengthened, and Planning and Zoning Board recommended that it be deleted. Recommendation remains unchanged from Public Review Draft, except that relocation cost caps recommended by the AHB have been included.
[6] Wording revised to reflect Planning and Zoning Board recommendation to broaden impact to include purchase of all types of affordable housing.

III. CURRENT CITY POLICIES

The City of Fort Collins has adopted several policies that underlie this strategic plan and influence the above recommendations discussed in greater detail in this document.

A. FROM CITY PLAN

Policy LIV 7.2 – Develop an Adequate Supply of Housing

Encourage public and private for-profit and non-profit sectors to take actions to develop and maintain an adequate supply of single- and multiple-family housing, including mobile homes and manufactured housing.

Policy LIV 8.6 – Mitigate Displacement Impacts

Explore ways to mitigate the impact upon residents displaced through the closure of manufactured housing parks or conversion of rental apartments, including single room occupancy units, to condominiums or other uses.

Near-Term Implementation Actions: 2011 And 2012

24. Relocation Plan - Develop a proactive plan to address the issue of resident displacement due to redevelopment activities.

B. FROM THE AFFORDABLE HOUSING STRATEGIC PLAN 2010-2014

Priority #2: Preserve existing affordable housing units.

IV. INVENTORY AND ANALYSIS

A. APARTMENTS WITH INCOME CONTROLS

The following table identifies properties that have received Low Income Housing Tax Credits (LIHTC) to aid in the development of affordable multi-family housing units. To be eligible for the program, LIHTC properties must include income restrictions, rent restrictions, and extended-use requirements. At a minimum, at least 40 percent of the property must be set aside for families earning below 60 percent of Area Median Income (AMI), or at least 20 percent of the property must be set aside for families earning below 50 percent of the AMI. Rents are restricted by income group, bedroom size, and AMI, and rents must include utility costs. All developments must maintain the rent and income requirements through a 15-year compliance period and a 15-year extended-use period, for a minimum total of 30 years (many projects have a total of 40 years). The requirements are enforced by the Colorado Housing Finance Authority (CHFA) through a Land Use Restriction Agreement that is recorded against the property.

Apartment Complex Name	Number of Units	LIHTC Land Use Restriction Agreement Expiration Date
Hickory Hill Village 3425 Windmill Drive	92	?[7]
Rose Tree Village Apts. 1000 W. Horsetooth Road	120	?
CARE Housing/Greenbriar Village 400 Butch Cassidy Drive	40	2025
Buffalo Run Apartments 1245 E. Lincoln Avenue	144	2037
CARE Housing at Eagle Tree 6675 S. Lemay Avenue	36	2037
Reflections Senior (aka JFK Sr. Apts.) 321 E. Troutman Parkway	72	2038
Elizabeth St. Senior Apartments 1508 W. Elizabeth Street	50	2039
CARE Housing/Windtrail Park Apartments 2120 Bridgefield Land	50	2039
Northern Hotel 172 N. College Avenue	47	2040

[7] Hickory Hill Village and Rose Tree Village Apartments were acquired from private investors by the Fort Collins Housing Authority on December 31, 2012. At this time, it is not known what the new affordability expiration dates will be for these complexes.

Apartment Complex Name	Number of Units	LIHTC Land Use Restriction Agreement Expiration Date
CARE Housing/Fairbrooke Heights 1827 Somerville Drive	36	2041
CARE Housing/Provincetowne 626 Quaking Aspen Drive	85	2041
Bull Run 820 Merganser Drive	176	2042
Country Ranch 2921 Timberwood Drive	118	2042
Fox Meadows Apartments 3644 S. Timberline Road	138	2042
Oakbrook/Manor Apartments 3200 Stanford Road	107	2042
Residence at Oak Ridge 4750 Wheaton Drive	44	2042
Woodland Apartments 1025 Wakerobin Lane	116	2042
CARE Housing/Swallow 1303 W. Swallow Road	40	2045
Springfield Court 3851 S. Taft Hill Road	63	2045
Caribou Apartments 4135 Verbena Way	97	2047
Village on Elizabeth 2217 W. Elizabeth	48	2047
Village on Stanford 2631 Stanford Road	82	2048
Caribou Apartments - Phase II 4125 S. Timberline Road	96	2051
Legacy Senior Residences (Proposed) 411 Linden Street	72	2051
TOTAL	**1,969**	

The table above shows that there will not be a significant loss of LIHTC-protected affordable units within the next decade.

In addition, the Fort Collins Housing Authority's current Strategic Plan calls for its "Villages Program" to acquire approximately 40 additional rental units each year for rehabilitation and preservation as affordable housing. The Authority is generally meeting this goal, and has

additional goals of developing 60 new permanent supportive housing units in 2013, preserving another existing 70 units in 2014, and preserving an additional 70 new townhouses in 2015. Obtaining the funds to achieve these goals may require selling off some single-family units currently owned by the Authority (which are more expensive to manage but will result in a net gain of preserved affordable housing units).

Maps showing the locations of the above-listed affordable housing complexes are provided as attachments.

B. MOBILE HOME PARKS

The current inventory of mobile home parks in Fort Collins and the Growth Management Area (GMA) are shown in the table below. The table distinguishes between mobile home parks that are located:

1. Within the Fort Collins City limits – which would be subject to any new relocation mitigation policies and strategies adopted by City Council; or
2. Within the GMA and adjacent to the City limits – which would require Fort Collins' annexation and approval of any redevelopment proposal under the terms of the GMA agreement with Larimer County, but would not be subject to any mitigation strategies intended to be applied before annexation and redevelopment; or
3. Within the GMA and not adjacent to City limits, which would not be subject to any relocation mitigation strategies adopted by the Fort Collins City Council.

Mobile Home Park Name	Number of Units	Owner Units	Owner Percentage	Renter Units	Current Zoning	Targeted Redevel-opment Area?	Park Ownership Location
WITHIN CITY LIMITS							
Cottonwood 1330 Laporte Avenue	13	12	92%	1	LMN		CO
Harmony 2500 E. Harmony Road	451	352	78%	99	LMN	Yes	Other
Meldrum/Cherry St. 329 N. Meldrum Street	5	0	0%	5	NCB	Yes	FC
Hickory Village 400 Hickory Street	205	146	71%	59	LMN	Yes	CO
Montclair Motel 1405 N. College Avenue	10	0	0%	10	CS	Yes	FC
North College (East) 1601 N. College Avenue	96	35	36%	61	CS	Yes	FC
North College East) 1601 N. College Avenue	46	8	18%	38	CS	Yes	FC
North College (West) 1601 N. College Avenue	166	148	89%	18	LMN	Yes	FC

Mobile Home Park Name	Number of Units	Owner Units	Owner Percentage	Renter Units	Current Zoning	Targeted Redevel-opment Area?	Park Ownership Location
Northstar 1700 Laporte Avenue	35	32	91%	3	LMN		CO
Northstar 1700 Laporte Avenue	15	12	80%	3	LMN		CO
Pleasant Grove 517 E. Trilby Road	106	76	72%	30	LMN		Other
Skyline 2211 W. Mulberry Street	61	58	95%	3	LMN		Other
Skyline 2211 W. Mulberry Street	102	98	96%	4	LMN		Other
Stonecrest 1303 N. College Avenue	25	0	0%	25	CS	Yes	CO
TOTAL (IN CITY)	***1,336***	***977***	***73%***	***359***			
CONTIGUOUS TO CITY LIMITS							
Collins Aire North 401 N. Timberline Road	159	111	70%	48	O		Other
Collins Aire South 401 N. Timberline Road	121	104	86%	17	O		Other
Highland Manor 301 Spaulding Lane	5	5	100%	0	M1		FC
Highland Manor 301 Spaulding Lane	30	30	100%	0	M1		FC
Poudre Valley 2025 N. College Avenue	332	286	86%	46	M1		CO
Spaulding Lane 242 Spaulding Lane	7	7	100%	0	M1		FC
Timberridge North 3717 S. Taft Hill Road	281	228	81%	53	M1		Other
TOTAL (CONTIGUOUS)	***935***	***771***	***82%***	***164***			
IN GROWTH MANAGEMENT AREA AND NOT CONTIGUOUS TO CITY LIMITS							
Aspen 400 S. Overland Trail	25	14	56%	11	M1		CO
Blue Spruce 2704 N. Shields Street	24	24	99%	0	FA		FC
Equestrian Center 2024 N. Whitcomb St.	3	1	33%	2	O		Other
Highland Manor 301 Spaulding Lane	17	17	99%	0	M1		FC

Mobile Home Park Name	Number of Units	Owner Units	Owner Percentage	Renter Units	Current Zoning	Targeted Redevel-opment Area?	Park Ownership Location
Mountainview 3109 E. Mulberry Street	30	15	50%	15	R-2		CO
Parklane 411 S. Court Street	62	44	71%	18	C	Yes	CO
Terry Cove 221 W. Douglas Road	24	3	12%	21	R		FC
Terry Lake 437 N. Hoghway 287	27	2	7%	25	O		FC
Timberridge South 2300 W. County Rd 38E	293	214	73%	79	M1		Other
White's 2131 W. County Rd 38E	5	0	0%	5	R		FC
TOTAL (GMA)	***510***	***334***	***65%***	***176***			

To summarize:

- There are currently 1,336 mobile homes within the Fort Collins City limits, 935 inside the GMA and contiguous to the City limits, and 510 inside the GMA but not contiguous to the City limits.[8]
- The percentage of owner-occupied homes in these parks varies significantly. It averages 73% in the City, 82% in parks contiguous to the City limits, and 65% in the remainder of the GMA.
- Eight of the 14 mobile home parks within Fort Collins are located in a targeted redevelopment area.
- For those parks located within the Fort Collins City limits, 24% of the mobile/manufactured home sites are owned by Fort Collins owners, 22% by owners based elsewhere in Colorado, and 54% by out-of-state owners.
- For those parks located contiguous to the Fort Collins City limits, out-of-state ownership predominates: 4% are owned by Fort Collins individuals or entities, 36% by Colorado owners, and 60% by out-of-state entities or individuals.
- The vast majority (86%) of the mobile home parks within Fort Collins are currently zoned LMN Low Density Mixed Use Neighborhood, and almost all of the remainder are in the C-S Service Commercial district. Five units are in the NCB Neighborhood Conservation Buffer district. The Fort Collins Land Use Code allows new mobile home parks to be created in either the LMN or E Employment districts, but no parks currently exist in the E district. New parks require a public hearing and approval by the Planning and Zoning Board.

[8] In addition, the Cloverleaf Mobile Home Park contains 480 units contiguous to the city limits, but those units are not included in these totals because they are located in Timnath's GMA.

The City of Fort Collins tracks activity in locating (new or used) mobile/manufactured homes in (new or existing) mobile home parks. Since 2006 there have been no new mobile home parks created in Fort Collins. Activity in existing mobile home parks varies significantly from year to year as shown in the table below.

Year	Manufactured Home Setups
2006	34
2007	14
2008	12
2009	27
2010	28
2011	63

A more complete inventory of mobile home park conditions and maps showing the location of each park is attached to this strategic plan document.

Unfortunately, it has not been possible to gather reliable information about the income levels, rental charges, or the relative burden of incomes to rents and utilities in any of the existing mobile home park communities. Anecdotal information from the various stakeholder meetings indicates that the majority of residents living in the mobile home park communities in and near Fort Collins are lower-income residents but that accurate and detailed income data would be difficult to obtain.

V. PUBLIC INVOLVEMENT

Three key stakeholder groups were convened three times during the preparation of this strategic plan document. The three identified stakeholder groups included (1) Mobile home park property owners, (2) Mobile home park residents (both home owners and renters), and (3) Affordable housing and human service agencies.

Each group was convened in September 2012 to introduce the project, review preliminary research regarding mobile home park preservation techniques and relocation assistance, and request input for this strategic plan. On October 23, 2012, the results of initial research and stakeholder meetings were reported to the Fort Collins City Council in a work session. At that time, City Council neither eliminated nor endorsed any of the approaches used to mitigate the impacts of affordable housing dislocations in other communities, but rather asked that the planning team outline the pros and cons of each approach that it deemed worthy of consideration and directed the planning team to make recommendations based on its evaluation of those advantages and disadvantages. In November 2012, the three stakeholder groups were re-convened to communicate City Council's reaction and direction.

Finally, on January 24, 2013, an open house meeting was held to introduce and solicit comments on the draft strategic plan document in anticipation of the further public review of the document by the Affordable Housing Board, Planning and Zoning Board, and City Council. In preparation for the January open house, individual notices were mailed to each the address of each mobile/manufacture home and each mobile home park owner. Approximately 80 mobile/manufactured homeowners, park owners or representatives, and interested citizens attended the open house. In addition, an on-line survey describing the seven recommendations in the Public Review Draft of this report was designed and data collected from January 16 through February 14, 2013.

The major themes emerging from stakeholder consultations in October, November, and January are summarized below:

- None of the mobile home parks listed in the inventory have an operating homeowners' association, so residents participated individually. Despite attempts to reach residents through printed notices (Spanish and English), e-mail notifications, and relying on resident champions (although not through an individualized notice to each homeowner), attendance by mobile/manufactured home residents was light, but attendance at the January open house was significantly higher. Mobile/manufactured home residents are very apprehensive about the disruption to their lives, the expense of relocation, and the potential impossibility of finding mobile/manufactured home relocation sites if their parks are redeveloped in the future. While interested in potential relocation assistance, they are more interested in steps that could be taken to keep the existing mobile home parks in operation as mobile home parks and/or allow the residents to purchase the parks if the park is proposed for redevelopment.
- Mobile home park owners were well represented both individually and by a representative of the Rocky Mountain Home Association. While particularly interested in the ability to continue operating the existing mobile home parks and to reposition those parks for different

configurations of lots (for example, to convert two single-wide lots to a double-wide lot) and willing to discuss City incentives to reinvest in the parks to keep them financially viable, several owners felt it would be inappropriate for the City to take steps to discourage or prevent the redevelopment of mobile home parks for other uses dictated by market forces, or to require the payment of relocation expenses when redevelopment occurs

- Affordable housing advocates and social service agencies indicated that although there are currently no non-profit developers or housing management agencies engaged in purchasing mobile home parks in order to preserve the existing housing, that approach might be worth discussing. The agencies expressed support for the long-term possibility of non-profit purchase and ownership of mobile home park(s), but none felt they had the expertise to undertake such a project in the near-term. Similarly, CHFA indicated that it had never assisted in financing the purchase of a mobile home park for the purpose of preserving affordable housing, but that there appears to be no legal prohibition on their doing so if resources were available.
- In addition, Fort Collins staff has kept the Larimer County Planning Department, the Larimer County Health Department, the Fort Collins Affordable Housing Board, and the Planning and Zoning Board informed about this project. The Affordable Housing Board discussed this project on October 4, 2012, and generally commented that:
  - An extended (12 month) notice-of-closure requirement would be helpful;
  - Some parks do not have long-term viability and should be allowed to redevelop with some requirements for including affordable housing and/or incentives for the inclusion of that housing;
  - Incentives that would allow additional density for inclusion of affordable housing when mobile home parks are redeveloped;
  - Organizing and supporting resident-owned parks is difficult, and would require strengthening non-profit groups to support them; and
  - The creation of incentives is preferable to the creation of a Manufactured Home Park zoning district.
- The Affordable Housing Board discussed the Public Review Draft of this strategic plan a second time on February 7, 2013, and made the following two specific recommendations for changes to the document
  - First, the AHB recommended that plan recommendation 5 (concerning expanded notices of closure) be reworded to require that notices make the residents aware that the park might be closed earlier than the closure notice period if all residents had been relocated to their mutual satisfaction. That recommendation was incorporated into this document.
  - Second, the AHB recommended that plan recommendation 6 (concerning payment of redevelopment costs) be revised so that (a) payment of relocation costs is an obligation of the mobile home park owner or redeveloper, (b) payment of actual relocation costs be capped at $6,000 for a single-wide and $8,000 for a double-wide, (c) the mobile home park owner be required to pay full (rather than half) of the actual value of the home (as determined by the County Assessor) if it cannot be relocated due to its poor structural condition, and (d) the obligation to pay relocation or unit purchase costs apply regardless

of whether the redevelopment project involved City financial assistance or a discretionary land use decision by the City. Only AHB recommendation (b) was incorporated into this document.

- The results of the on-line survey included the following:
  - 45 persons completed the survey. Of that number 35.5% were residents of a mobile home park (all but one were unit owners); 22.6% were owners or managers of mobile home parks; the rest were either residents of affordable housing units, employees of affordable housing organizations, or "other."
  - 69.9% were residents of Fort Collins, and 41.1% had lived in Fort Collins for over 10 years.
  - 84.2% of survey respondents indicated they had read the Draft Strategy.
  - Support and opposition to each of the proposed strategies varied significantly. For purposes of this summary, responses of "support" or "strongly support" are combined, as are "oppose" and "strongly oppose."
    - 76.7% support creating a loan or grant program available for reinvestment in water, sewer, and road infrastructure for mobile home parks that agree to continue in operation for a period of time; 102% oppose; and 13.3% were neutral.
    - 66.6% support continuing to offer relocation assistance when redevelopment projects use public (federal, URA, or City) funds, but not extending that duty to private redevelopment projects that do not use public funds and do not require a discretionary land use decision by the City; 23.4% oppose; and 10.0% were neutral.
    - 64.5% support continued efforts to expand the inventory of affordable housing units in Fort Collins through existing programs; 16.2% oppose; and 19.4% were neutral.
    - 50% support creation of a Manufactured Home Park District that would limit options for redevelopment of existing parks without City Council approval; 43.4 oppose; and 6.7% were neutral.
    - 46.6% support a requirement that redevelopments projects with City involvement should be required to pay mobile home relocation costs within 25 miles, to pay market value of homes that cannot be moved because no spaces are available, and to pay 50% of the market value of homes that cannot be moved due to structural condition; 40% oppose; and 13.3 were neutral.
    - 43.3% support requiring a one-year notice of closure (rather than the state minimum six month notice), but allowing a six month notice of the mobile home park owner gives each resident a relocation report identifying available spaces within 25 miles; 60% oppose; and 6.7% were neutral.
    - 46.7% support building the capacity of homeowner groups, non-profits, and support organization to purchase mobile home parks and manage them as affordable housing. 30.0% oppose; and 23.3% were neutral.

VI. STABILIZATION TECHNIQUES

There are numerous steps that the City of Fort Collins could take to either (a) discourage the redevelopment of existing affordable housing units (either rental complexes or mobile home parks) in ways that would dislocate the current residents, or (b) assist in the relocation of residents when affordable housing units are redeveloped, or (c) both. Before outlining these options, however, it is important to clarify that these options would apply only when the proposed redevelopment of affordable housing units does not involve funding from either the federal government or the Fort Collins Urban Renewal Authority (FCURA).

- When federal funds are involved in a redevelopment project, the City is obligated to provide assistance outlined in the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act (the "Federal Uniform Relocation Act" or "FURA"). That assistance includes a minimum 90 day notice prior to displacement, provision of relocation advisory services, payment of moving expenses, and payments for the added costs of renting or purchasing adequate replacement housing. Additional provisions apply if federal funds are used to acquire real estate (not just supporting its redevelopment).
- When the Fort Collins Urban Renewal Authority (FCURA) assists in redevelopment, its relocation policies would apply. The FCURA recently updated its relocation assistance policies and decided to follow the requirements of the FURA in most major respects, with one exception: FCURA established a $50,000 cap on moving expenses for business relocations.[9]

Because these two situations are covered by existing policies and legal requirements, this strategic plan document focuses on situations in which redevelopment is being completed either (a) privately, without any financial involvement by the City or (b) with City involvement using non-FCURA assistance. Different policies may be needed in these two situations.

Options for mitigating the impacts of dislocation through the redevelopment of affordable rentals and mobile home parks can generally be categorized as either (a) strategies to discourage or prevent the dislocation (which generally means reducing opportunities for redevelopment), or (b) strategies to mitigate the impacts of dislocation when it occurs. Each of these is discussed separately.

A. OPTIONS TO DISCOURAGE THE LOSS OF AFFORDABLE HOUSING

The first set of options involve discouraging the loss of affordable housing units by discouraging the redevelopment of the property or by requiring that any redevelopment project incorporate replacement affordable housing. It is important to note that there is no parallel to these options in either the FURA or the modified version of the FURA policies

[9] The Fort Collins Urban Renewal Authority is currently considering narrowing its relocation assistance policies to apply only when there is an eminent domain/condemnation action by the URA. This policy change would have a significant impact on mobile/manufactured homeowners, since they do not own the land that is the subject of the condemnation action and generally do not participate in the negotiations. This represents a departure from federal Uniform Relocation Act requirements followed by the Fort Collins URA in the past, which were designed to protect renters in these types of situations.

adopted by the Fort Collins Urban Renewal Authority (FCURA). Those policies and requirements only address relocation assistance when the dislocation of residents occurs.

1. Affordable Rental Units

Two main categories of affordable rental units (generally, apartments) exist in Fort Collins:

- Designated affordable units; and
- Market rate units.

Strategies to discourage the loss of affordable rental units for each category are discussed below.

Designated Affordable Units

Designated affordable units receive some form of public assistance or benefit (e.g., LIHTCs or grant funding) in exchange for maintaining a commitment to affordability. The City works with its partners in affordable housing, including private developers, non-profit affordable housing providers, the Fort Collins Housing Authority, and financial institutions to maintain the supply of designated affordable rental units in the community.

The *Affordable Housing Strategic Plan 2010-2014* establishes goals and strategies for affordable housing in Fort Collins, with an emphasis on designated affordable units. The strategic plan identifies four goals: (1) Increase the inventory of affordable rental housing units, (2) Preserve existing affordable housing units, (3) Increase housing and facilities for people with special needs, and (4) Provide financial assistance for first-time homebuyers.

As discussed in the *Affordable Housing Strategic Plan*, the City employs an array of financial resources including federal grants (Community Development Block Grant [CDBG] and Home Investment Partnership Grant [HOME]), the City's Affordable Housing Fund (AHF), Private Activity Bond (PAB) financing, and development incentives to preserve and increase the inventory of designated affordable rental housing units. If federal funds or the FCURA are involved with any redevelopment project impacting designated affordable rental units, the FURA requirements would apply.

On the other hand, if federal funds or the FCURA are not involved with a redevelopment project that affects designated affordable rental units, then the terms of the rental lease would apply (pursuant to Colorado Rental Agreement Laws). While there may be concern about the long-term loss of designated affordable units, data shows that while some designated affordable rental units may be lost any given year (due to closure, the expiration of tax credits or rent limits, or other factors), the overall inventory of designated affordable rental units continues to increase, with new and/or rehabilitated units added each year. Moreover, the City and its partner affordable housing agencies are typically aware of potential redevelopment or expiration of designated affordable units, and because their missions are to provide affordable housing, they have worked to find creative solutions long before those situations affect residents. That collaborative approach, along with continued implementation of the strategies identified in the

Affordable Housing Strategic Plan will likely help the City achieve its goals related to preserving existing and increasing the inventory of designated affordable rental units.

Market Rate Units

In addition to designated affordable rental units, there are many other market rate units that do not receive public assistance or tax credits but that provide unofficial "affordable housing" to lower income households. If federal funds or the FCURA are not involved with a redevelopment project impacting market rate rental units, then the terms of the rental lease would apply (pursuant to Colorado Rental Agreement Laws). Because rental rates in these units vary with market demand, different (generally apartment) buildings and complexes can fluctuate in and out of the "affordable" category over time. In addition, individual units within a building (for example, basement, smaller units, or poorly located units) may move in and out of the "affordable" category within a single building or complex. Because of the difficulty of identifying which units are "affordable" in any given year, because that inventory changes from year to year, and because it is difficult to develop tools that would preserve individual "affordable" units (rather than a building or complex) from redevelopment, the City's affordable housing strategy has not targeted market rate units for preservation except through designating the building or complex for assistance through the "designated affordable" tools discussed above, and this strategic plan recommends no change to that policy. However, recommendations 1 and 7 could result in some of these market rate buildings being acquired by affordable housing entities through voluntary transactions and then added to the City's "designated affordable" housing stock.

2. Mobile Home Parks

At the outset, it is clear that any strategy to discourage or prevent the relocation of existing mobile home parks must acknowledge the wide range of size, location, infrastructure quality, and long-term housing potential of different parks, as well as the City's plans for the area in which the park is located. On one hand, there are several large mobile home parks that have good water and sewer infrastructure and are located in areas of Fort Collins not targeted for redevelopment. On the other hand, some of the parks have a limited number of spaces (e.g., 5 to 15 spaces), have aging water and sewer lines (or only septic systems), and/or are located in areas of Fort Collins designated for redevelopment.

As a result, any redevelopment displacement mitigation strategies should include a different mix of tools depending on (1) the number of affordable housing units at risk, (2) the amount of infrastructure investment (if any) required to keep the park as a viable source of housing over the mid- to long-term, and (3) the location of the park in a targeted redevelopment area (if any). This strategic plan recommends that the mitigation strategies be organized around a three-tier approach:

- **Tier 1 – Zoning for Preservation,** which would generally be applied to those mobile home parks that contain a relatively large number of mobile/manufactured home spaces (e.g., over 50) and could serve as a significant source of affordable housing over the mid- to- long term, that do not require significant investment to install or replace water and sewer infrastructure, and where there have been significant park

and home owner investments based on its future use as a mobile home park, regardless of whether they are located in a targeted redevelopment area.

- **Tier 2 –Financial Assistance for Preservation,** which would generally be available to the owners of those mobile home parks that contain a relatively large number of mobile home spaces (over 50), but that may require significant investment in infrastructure in order to remain viable, whether or not they are located in targeted redevelopment areas.
- **Tier 3 – Resident Relocation Assistance,** which would be required of all redevelopment projects with City involvement that result in the displacement of residents from a mobile home park.

Option 1: Rezoning to a Manufactured/Mobile Home Park District

Some local governments create a zoning district specifically designed for mobile home parks. These districts are usually applied to existing parks in order to help preserve them, but they are also available for the creation of new mobile home parks. These districts permit only mobile/manufactured home residences and uses closely related to the operation of the park (e.g., clubhouses and pools), and include the same types of layout, circulation, and utility service standards discussed above. Although a number of alternative uses of the property are often listed to allow the owner flexibility, major commercial and residential uses are generally not allowed. The amount of flexibility for alternative uses is generally tailored – and may in some cases involve options to redevelop portions of the property if the remainder is preserved as a park.

For example, Snohomish County, WA, has created a Mobile Home Park zone district that allows:

- As Permitted Uses: Agriculture, boarding house, clubhouse, community club, community facility for juveniles, mobile/manufactured home dwelling, single-family dwelling, family day care home, foster home, guesthouse, Level 1 health or social service facility, mobile home park, retirement apartments, retirement housing, small personal storage, and swimming pool.
- As Conditional Uses: Bed and breakfast guest house, Level 2 or 3 health or social service facility, personal wireless communication facility, recreational vehicle park, large personal storage, and primary use utilities.
- As Accessory Uses: Day care center, garage, home occupation, small personal storage facility, and support utilities.[10]

Until 1997 the City of Fort Collins land development regulations contained two similar districts, the M-L Low Density Mobile Home Park district and the M-M Medium Density Mobile Home Park district. A copy of the M-M district is attached to this document for reference.

In contrast, Fort Collins' current LMN zoning district (where most of the mobile home parks are located) allows a broader range of redevelopment uses subject only to

[10] The cities of Lynnwood, Marysville, and Tumwater, Washington, have adopted similar ordinances.

administrative review, including multi-family dwellings, public and private schools and universities, retail stores, offices, and financial services. The impact of rezoning (downzoning) some of the existing mobile home parks into a new and more restricted manufactured/mobile home park district would limit owners to a narrower range of options for redevelopment of the property. A rezoning from a more restricted manufactured/mobile home park district to a zone that permits a wider range of land uses is always a future possibility for the property owner, but any such rezoning would require approval from the City Council.

This option could only apply in the short run to those mobile home parks located within the boundaries of Fort Collins. However, the City could adopt a policy listing the names or types of mobile home parks located within the GMA to which it intends to apply this tool upon annexation or application for redevelopment, which could have the effect of discouraging applications for annexation and redevelopment for other uses. In addition, Larimer County could adopt a similar district for use in the unincorporated areas of the county.

While these types of ordinances are sometimes legally challenged as "takings" of private property rights, they have generally been upheld by the courts because they leave the property owner with a "reasonable economic use" of the property, especially if that use is a mobile home park that has existed on the property for many years. Most recently, the U.S. 9th Circuit Court of Appeals upheld a challenge to a mobile home park ordinance similar to the Snohomish County ordinance in Laurel Park Community, LLC v. City of Tumwater.[11]

Option 2: Incentives to Preserve or Improve the Mobile Home Park

A second alternative is to offer mobile home park owners financial incentives in return for agreements to keep the park in operation for a period of years.[12] For example, some local governments offer grants or loans to mobile home park owners to invest in infrastructure maintenance and upgrades as a way to stabilize and support mobile home communities. Grants or loans are sometimes made available to pave (or repave) roadways, upgrade water and/or sewer systems, replace failing septic systems, improve site drainage, or to make other improvements that would prolong the useful life of the mobile home park and/or reduce threats to public health and safety within the park.

City financial assistance for infrastructure replacement could be made available from the federal CDBG and/or HOME Programs or the City's Affordable Housing Fund (AHF), and those funds could be used to leverage additional private financing to cover project costs and to keep lot rents affordable. Applications to use the City's AHF for this purpose would, of course, need to compete with other proposals through a competitive process, and would need to contain commitments from the park owner to keep at least a portion of the lot rentals affordable to low income families for a defined length of time. The City's *Affordable Housing Strategic Plan 2010-2014* also contains an implementation action

[11] No 11-35466, D.C. No. 3:09-cv-05312-BHS, October 29, 2012.

[12] Chapter 18 of the *Code of the City of Fort Collins* contains regulations and standards for mobile home parks and mobile homes in the city limits. These regulations include park maintenance requirements for utilities including electric, water, sewer, and gas, as well as trash removal.

item to investigate the establishment of a permanent funding source for the AHF, which would enhance its value as a potential source of future funding for infrastructure improvements and mobile home park purchases.

The available information on potential infrastructure investments needed to keep the existing parks viable suggest that only 2 of the 14 mobile home parks located within Fort Collins, with a combined 311 mobile/manufactured homes, have a likely need to invest in on-site infrastructure improvements (sewer). While 4 of the parks located in the City limits currently have dirt roads that may need to be upgraded and paved, all of those are small parks (under 25 units) where the potential for preserving significant amounts of affordable housing is likewise small. In addition, failure to upgrade substandard roads would seldom lead to the closure of a mobile home park, while failure to upgrade sewer or septic systems could lead to health risks that force the closure of the park. Two of the 7 mobile home parks located contiguous to the City boundaries, with a combined 613 mobile/manufactured homes, may need investments in either storm or sanitary sewer infrastructure. While more detailed information is certainly needed, the data above suggests that infrastructure-based incentives based on assistance in upgrading sewer infrastructure might have larger impacts in preserving mobile home parks that are located on parcels contiguous to the City boundaries (when and if they apply for redevelopment) than in preserving mobile home parks within the City boundaries.

As an alternative example, Bend, OR, has adopted a Manufactured Park Redevelopment Overlay Zone that offers existing manufactured home parks several incentives if the redevelopment preserves all or part of the existing mobile home spaces. For example, Bend offers increased density, allowance to remove up to 10% of otherwise-protected trees if necessary to accommodate increased density, and additional building height if necessary to increase the number of affordable units in the redeveloped park and to avoid tree removal. If surrounding properties are developed at higher densities, then the redevelopment may also include some neighborhood-scale commercial uses if they can be served from an existing street. To reduce impacts on surrounding residential properties, setbacks and lot sizes within 100 feet of the property perimeter must match or exceed those of the adjacent residential development. Interestingly, if the redeveloped park accepts manufactured homes from other (closing) mobile home parks that need a place to relocate, the owners will not in the future be responsible for providing relocation benefits to those relocated tenants if their park later closes.

In practice, redevelopment incentives such as those in Bend, OR, could be combined with a Manufactured Home Park zoning district. For example, the Manufactured Home Park district could offer additional options for non-residential development if the redevelopment proposal includes affordable residential units.

Obviously, many different types of incentives could be offered in return for preservation of a mobile home park or redevelopment that incorporates mobile/manufactured home spaces or affordable housing for existing residents. However, incentives only constitute an effective mitigation strategy if they are in fact valuable to the mobile home park owners and/or redeveloper. In practice, this means they need to be more valuable than the returns that can be achieved by selling the park for redevelopment with more valuable uses.

This type of incentive approach would only apply to those 14 parks located within Fort Collins – at least until such time as those parks located contiguous to the City boundary apply for annexation. However, Larimer County could decide to offer identical or similar incentives to the 7 parks along the Fort Collins boundary or the 10 parks located elsewhere in the GMA if it wished.

Option 3: Right of Current Residents to Purchase the Park

Some states and local governments provide mobile/manufactured homeowners a "first right of refusal" to buy the mobile home park from the owner at a reasonable price if the owner intends to sell the park. Several variations of requirement can also be found. In Malibu, CA, for example, the home owners are given the right to match the final market offer on the mobile home park before the property owner may accept that offer (i.e., a "right of last offer"). Typically, this right only applies to mobile home owners that are organized into a recognized homeowners' association registered with the state that can obtain financing as the purchasing entity. As an alternative, a right of first refusal could be granted to a housing authority or a non-profit affordable housing entity that agrees to allow the mobile/manufactured homes to remain in the park at affordable land rent rates. The right does not usually apply to individuals or groups of individuals who are park residents, but who are not members of an approved homeowners association. Ownership of the park itself grants a very high level of security to the residents that they will not be dislocated in the future without their consent.

Of course, the right to purchase a mobile home park will not significantly reduce dislocation of the residents unless they are willing and able to complete the purchase, and that requires both organization and financing. States that want to encourage this outcome have generally developed some level of financial assistance to help mobile/manufactured home owners in this effort. For example, the State of Washington established a $4 million statewide fund that can provide at least partial financing for those purchases. Rhode Island exempts sales of mobile home parks to residents' associations from tax on the sale, and Washington does the same for sales to homeowners' associations, housing authorities, or non-profit housing agencies.

In addition, a national non-profit organization named Resident Owned Communities USA (ROC USA) has assisted numerous mobile/manufactured homeowners to organize and purchase their parks. The New Hampshire Community Loan Fund, the precursor to ROC USA, has helped with the conversion of more than 100 mobile home park communities to resident ownership. To date, none of those resident-owned communities has defaulted on loans that enabled it to purchase the park. ROC USA has certified technical assistance providers across the country who are available to assist home owners with the purchase of their community and ROC USA can also help with the financing. Without these forms of organizational or financial assistance, however, it is doubtful that a right-of-first refusal will act as a significant disincentive to redevelopment of the mobile home park, since the value of mobile home park land for an alternative multi-family or commercial use may well exceed its value as a mobile home park, and thus exceed the value of any offer that even organized residents can make to purchase the park.

While the State of Colorado does not currently grant this right to mobile/manufactured home owners associations, this could be an area for potential changes to state law. For example, state law could be amended to require that mobile home park owners grant their tenants or non-profit affordable housing entities a right of first refusal or by requiring a delay (for example, 90 days) before closing of a sale to a third party to allow time for negotiation with the owners or a third party, such as a land trust, to offer a competitive sale price. Again, Fort Collins would only have the ability to impose this requirement on the 14 parks within its boundaries until such time as the owners of other parks along the City limits decide to annex.

Option 4: Encouraging Purchase of the Park by a Third Party

In addition, or as an alternative, Fort Collins could establish a process to encourage sale of existing mobile home parks to a non-profit housing provider or land trust committed to managing the property as a source of affordable housing. For example, when the Mapleton Mobile Home Park in Boulder was threatened with redevelopment and dislocation of its residents, the City of Boulder was able to encourage purchase of the park by the Thistle Communities Land Trust in order to preserve it as a mobile home park. In Fort Collins, Funding Partners is aware of this technique and could potentially offer financing for a non-profit housing entity to purchase an existing mobile home park.

Option 5: Encourage the Creation of New Mobile Home Parks

Finally, Fort Collins could encourage the creation of new mobile home parks, both as an efficient source of affordable housing and to increase the number of mobile home sites available for potential relocation from existing mobile home parks when they redevelop. This could be done through a partnership with housing developers, both private and non-profit agencies, and/or the use of the City's Land Bank Program properties. While not reducing the costs of moving a mobile/manufactured home, the availability of more park spaces could reduce instances where homes cannot be moved simply because there are no spaces available.

B. Options to Mitigate the Impacts of Dislocation from Affordable Housing

Whether or not Fort Collins decides to implement any of the tools discussed in section VI.a above to discourage redevelopment of affordable housing units in ways that would dislocate the residents, it may want to consider assisting affordable apartment renters or mobile/ manufactured home owners when dislocation occurs.

1. Affordable Rental Units

In evaluating options for relocation assistance for those displaced from affordable housing units, it is important to realize that the City's *Affordable Housing Strategic Plan*'s four goals and strategies for affordable housing in Fort Collins do not include providing relocation assistance to individual households dislocated by redevelopment. It is also helpful to distinguish between four different situations.

- First, as noted above, when federal funds or FCURA funds are involved in the redevelopment of affordable rental units, some version of the FURA requirements will apply, and relocation assistance will be available. This strategic plan need not address those situations in any further detail.
- Second, when federal and FCURA funds are not involved, but other City funds are used to support the redevelopment, or when the redeveloper requires a discretionary land use decision from the City (such as a rezoning or approval of a Project Development Plan), the City could require that the property owner/redeveloper pay relocation/moving expenses (up to a cap) in order to assist lower income residents with the financial burden of relocating to other units in a different building or complex. If that course is taken, it is likely that some or all of those relocation expenses will be considered expenses of the redevelopment project itself. As a result, the redevelopment project costs will potentially increase, the gap between the developer's available financing and project costs may increase, and the amount of assistance requested from the City may also increase. This is not always the case, however, and in some situations a potential redeveloper will be able to absorb the relocation assistance costs (or the increased private financing may be able to cover those costs) without increasing its request for City assistance.
- Third, when a designated affordable housing project is redeveloped – regardless of whether federal or FCURA funds are involved, the non-profit entity owning or managing that project almost inevitably provides relocation assistance as part of its mission or operating procedures, because failure to do so would undermine its affordable housing mission.

  Fourth, when market rate housing projects are financed without any federal, FCURA, or City financial assistance (a private project), and without the need for a discretionary land use approval by the City, it would be relatively difficult to impose an obligation to pay relocation expenses on the redeveloper. While many forms of redevelopment may require administrative, Planning and Zoning Board, or City Council approval, the criteria governing those decisions generally involves land use impacts on surrounding areas (not the impacts on past or future project residents). If relocation costs were to be imposed on private redevelopers, the information required for those approvals would have to be revised to include information on the rental rates of individual apartments and/or the incomes of renters in those apartments in order to target relocation assistance to lower income households. And since there may be "affordable" units or lower income households in any apartment (or other residential) building or complex seeking redevelopment approval, this additional level of information would need to be required for all redevelopments of existing housing projects. Finally, either the redeveloper or a financial institution would have to cover the relocation assistance costs, which would increase the costs of redevelopment (although the amount of increase would likely be small compared to the costs of the redevelopment). For all of these reasons, this strategic plan does not recommend that the City impose relocation assistance requirements on private redevelopments that do not involve City, FCURA, or federal funds and do not require a discretionary land use approval from the City.

2. Mobile Home Parks

Option 1: Additional Notice of Closure

Colorado law currently requires that owners of mobile home parks provide their residents at least six months' notice before closing the park or redeveloping it for another purpose. Length of closure notice requirements in some other states are summarized in the table below.

State	Notice of Closure Requirement
MA	24 Months
CT	± 19 Months (565 Days)
NH	18 Months
DE, IL, NJ, OR, RI, WA	12 Months
AK, MN, UT	9 Months
AZ, CA, CO, MT, ND, OH	6 Months
Others	None

Although there are many variations of this requirement, CA and CO laws require notice to the homeowner, UT requires notice to the resident (regardless of whether or not they are the unit owner), and AZ, OR, WA, and ME require notice to the tenant. The purpose is two-fold: First, to give the recipient of the notice a fair opportunity to participate in any local approval process for the proposed redevelopment; and second, to provide adequate time for the home owner, resident, or tenant to find new housing in case the proposed redevelopment is approved. In UT, CA, OR, and WA, the park owner is prohibited from raising the rent on tenants during the notice period.

In practice, it is often difficult for mobile/manufactured homeowners to find a mobile home park within a reasonable distance of their job to which the mobile/manufactured home can be moved. This is particularly true if the unit is a pre-1976 mobile home (which many parks and local governments will not accept). For that reason, several states require more than 6 months' notice of closure, and one option would be for Fort Collins to increase the required notice of closure to 9 or 12 months. There is no indication that the Colorado General Assembly was attempting to pre-empt this field of law or to prohibit local governments (particularly home rule cities) from enacting notice periods longer than 6 months.

Option 2: Require a Relocation Report

A second option would be for Fort Collins to require the mobile home park owner to produce a relocation report well in advance of park closure. The cities of Kent, WA, and Eugene, OR, require a relocation report that includes information such as: the number of residents to be displaced, an inventory of mobile/manufactured home spaces available

within a certain distance (e.g. 25 miles) of the park, rent schedules for those spaces, the assistance that the park owner will provide to help relocate the residents, and other resources from which residents can get financial, legal, and logistical help. The report must generally be approved by the local government, sometimes after a public hearing, and a copy of the report must be provided to each resident in the park. In Kent, WA, that report must be completed and approved before the park owner may give the mandatory 12 month notice of park closure.

Option 3: Require Payment of Relocation Costs

A third option would be for the City to require mobile home park owners or redevelopers to pay some or all of the costs of relocating mobile/manufactured homes when a park is closed or redeveloped. When payment of relocation costs is required, they are generally required to cover, but not exceed, the reasonable amount needed to relocate displaced park residents to a location of equal quality. In some cases, such as Santa Barbara County, CA, and Wilsonville, OR, the relocation amount is determined on a case-by-case basis, but in other cases it is set or capped by state statute (AZ, WA, OR), or a lump sum payment is required by the local government. The table below summarizes some of the known relocation payment provisions.

Jurisdiction	Relocation Cost Payment Requirements (Actual costs up to these caps)			
	Ground-set or Triple-wide	Double-wide	Single-wide	Comments
AZ	$12,500	$10,000	$5,000	
WA		$12,000	$7,500	Funded by statewide $100 title transfer fee on units over $5,000 in value
CT	$10,000 for all			
OR	$9,000	$7,000	$5,000	
MN		$8,000	$4,000	
RI	$4,000 for all			
FL		$3,750	$2,750	From state fund collected from park owners who change their use of land
MA	Actual relocation cost or appraised value of the home			
MD	10 months site rent for all			
NV	Actual costs for move up to 150 miles			
DE	Maximum cost set by state fund			
NJ	Only requires payments in special circumstances			
Eugene, OR	$21,000 OR actual cost of move up to 60 miles OR market value of unit that cannot be moved plus flat fee for moving personal property	$17,000	$11,000	

Jurisdiction	Relocation Cost Payment Requirements (Actual costs up to these caps)			
	Ground-set or Triple-wide	Double-wide	Single-wide	Comments
Wilsonville, OR	Actual costs of move up to 100 miles OR market value of unit that cannot be moved			
Santa Barbara County, CA	Determined on a case-by-case basis, but includes increased rent in new location for 12 months			

The definition of "actual expenses" differs by state or community, but is sometimes defined to include not only the costs paid to the mobile/manufactured home moving company but also return of damage deposits, return/payment of first/last month's rent (so the homeowner may use those funds to pay similar costs at the new location), utility re-connection fees at the new location, and temporary housing during the time the mobile/manufactured home is in transit.

Based on inquiries to two mobile/manufactured home moving companies in Colorado, it appears that the costs to move a single-wide mobile/manufactured home range from $3,500-$4,000, and costs for moving a double-wide can range from $7,500-$8,000 for short distance relocations, but both companies indicated costs could be higher based on individual circumstances and the difficulty of moving the unit. A review of relocation expenses paid to 13 mobile/manufactured home owners at the time the Bender Mobile Home Park was redeveloped shows that 12 of them provided expenses invoices equaling or exceeding the $2,000 maximum relocation payment made available to them from the City of Fort Collins.

While relocation payments are of significant value to park residents who are dislocated, it is unclear who will bear those costs in the end. Experience suggests that many mobile home park owners do not raise rents in an attempt to recoup those expenses but instead attempt to have those costs covered by the purchaser of the mobile home park land when redevelopment occurs. However, if demand for mobile/manufactured home spaces is high and vacancy rates are low, it is possible that some mobile/manufactured home park space rents could rise. To avoid the risk of having relocation costs passed on through higher site rents, the State of Washington currently funds its relocation fund through a statewide $100 transfer charge on all sales of mobile/manufactured homes located in mobile home parks.[13] The planning team contacted mobile/manufactured home park insurers to determine whether mobile home park owners or mobile/manufactured home owners could purchase insurance to cover relocation costs in the event a mobile home park is closed, but were told that type of coverage is not available.

Option 4: Require Payment of Increased Rental Costs

[13] Although the Colorado constitution currently prohibits the imposition of real estate transfer fees by local governments, mobile home units are not currently titled or taxed as real estate, so this option might be available.

A few local governments require that – in addition to relocation costs – the mobile home park owner or redeveloper pay any costs of increased mobile/manufactured home space rent that the relocated resident experiences for a period of time. As noted above, Santa Barbara County, CA, requires that type of assistance for 12 months. The federal Uniform Relocation Act (FURA) and the modified version of those requirements endorsed by the Fort Collins Urban Renewal Authority (FCURA) generally require payment of additional rent for a period of 42-48 months.

C. TRIGGERS AND EXCEPTIONS

If Fort Collins decides to pursue any of the options outlined in Section VI.A (to decrease the loss of affordable housing) and VI.B (to mitigate the impacts of dislocation) above, two of the key questions to be answered are:

- What redevelopment projects would be subject to these new requirements (i.e. what are the "triggers" for the application of the new requirements)? and
- Should some forms of development or redevelopment be exempt from these requirements?
- As noted above, this document addresses potential mitigation strategies when closure and redevelopment of an affordable housing project or mobile home park does not involve federal or Fort Collins Urban Renewal Authority financial assistance, since those are covered by existing legal requirements and policies. Even in this case, however, the City may want to distinguish between cases in which (a) the property owner or redeveloper is proposing redevelopment that does not involve any City financial assistance or a discretionary land use decision (a "private redevelopment"_, or (b) the property owner or redeveloper is applying for City funds or requires a discretionary land use approval (a "City supported redevelopment"). City-supported redevelopment might include projects that request:Financial assistance from the City for the use of Affordable Housing Fund (AHF) dollars;
- Rezoning to foster a redevelopment activity; or
- Approval of an Overall Development Plan (ODP) or Project Development Plan (PDP).

Based on the distinction between private redevelopment and City-supported redevelopment, three potential "trigger" options are:

- **Trigger Option 1:** The mitigation strategies apply to City-supported redevelopment, but not to private redevelopment:
- **Trigger Option 2**: The mitigation strategies to discourage redevelopment apply only to City-supported redevelopment, but the strategies to offer relocation assistance apply to all redevelopment; and
- **Trigger Option 3**: The mitigation strategies apply to both City-sponsored and private redevelopment.

We recommend that Trigger Option 1 be adopted, with one exception. If the City decides to proceed with the creation of a manufactured home park zoning district, it should do so in

advance of specific applications for redevelopment or requests for financial assistance in order to allow the owners of the parks that are rezoned into that new district to plan for future management and investment in light of the more limited redevelopment options available to them.

For those mobile home parks located outside the boundaries of Fort Collins, the most logical "trigger" would be a petition for annexation (whether for redevelopment, as required by the Fort Collins-Larimer County UGA Agreement, or otherwise). In other words, the City would adopt a policy that any annexation of land containing an income-restricted rental property or a mobile home park would – through the terms of an annexation agreement – be subject to the same mitigation strategies applicable to other Fort Collins properties in the same "Tier" of affordable housing potential (see discussion in Section VII b. below).

Most redevelopment projects produce significant benefits for Fort Collins – whether in increased sales and property tax, or by removing blighted or underused properties, or by generating jobs or employment – so it is always wise to consider whether some types of redevelopment should be exempted from these mitigation strategies because they produce benefits to the City that offset (or more than offset) the costs they impose on current residents of the property. Because the purpose of this strategic plan is to reduce the adverse impacts of redevelopment on affordable housing residents, however, this document only considers whether these mitigation strategies should not apply to redevelopment that creates more affordable housing than it removes.

The planning team recommends that redevelopment projects creating new affordable housing not be exempted from the mitigation strategies for mobile/manufactured homeowners recommended in this document, because the creation of new affordable housing does not address the unique challenges facing mobile/manufactured homeowners. More specifically, projects that result in a net increase in affordable rental units in Fort Collins still leave mobile/manufactured homeowners with the prospects of moving their mobile/manufactured home at significant expense or (if they cannot find an alternative space or the unit cannot be moved) abandoning the home on-site and losing the value of that asset. In other words, the unique nature of mobile/manufactured homes as an owned housing asset means that it is not fungible with other forms of affordable housing. Rather than exempting affordable housing redevelopment projects from these requirements, the costs involved in implementing the recommended mitigation strategies should be integrated into the costs of the proposed redevelopment.

D. SUMMARY TABLE

Strategy	Potential Benefits	Potential Challenges
Options to Discourage the Loss of Affordable Housing		
Tools to discourage redevelopment of affordable units not in "designated affordable" developments	• Preservation of additional affordable housing units beyond those in designated affordable buildings or complexes	• Commingling of affordable and non-affordable units in a single building or project • Individual units move in and out of affordable category with market forces • Existing programs focus on management of entire buildings or complexes (as "designated affordable"), not individual units within larger complexes
Manufactured Home Park Zone District	• Effective in preserving existing mobile home parks with long term potential • Adds land use predictability	• May run counter to long-term redevelopment goals for surrounding area • Restricts property owner options
Incentives to preserve or improve mobile home park	• Property owner free to accept or reject the incentive • Could alter economics of park operation enough to extend life of the park • Could influence redevelopment plan to include more affordable housing	• Few larger parks within the city appear to need extensive investments to stay in operation • Need to identify a source of funding for incentives • Potential profits from redevelopment may significantly outweigh incentives
Right of current residents to purchase the park (first right of refusal)	• Occupant ownership provides long-term stability for affordable units	• Requires significant organization and probably financial support for homeowners association • Value as a mobile home park may be significantly lower than value for other uses, making it difficult to arrange financing for a competitive offer
Encourage purchase of mobile home park by third party housing entity	• Likely to protect affordability over the long term • Avoids need for mobile/manufactured home owners to organize and qualify for purchase financing	• Lack of experience in purchasing or managing mobile home parks among current non-profit housing providers • Value as a mobile home park may be significantly lower than value for other uses, making it difficult to arrange financing for a competitive offer

Strategy	Potential Benefits	Potential Challenges
Encourage the creation of new mobile home parks	• Efficient source of affordable housing • Increase the number of mobile home sites available	• May be difficult to find suitable properties (e.g., adequate size, utilities, access, etc.) • Could face resistance from nearby property owners
Options to Mitigate the Impacts of Dislocation from Affordable Housing		
Require private apartment redevelopers to pay relocation costs	• Reduces burden of relocation on lower income households	• Would require collection of significant additional information to determine which residents are eligible for assistance • May slightly increase redevelopment costs
Require longer notice of closure for mobile home parks	• Provides added time for residents to find replacement housing	• May delay development projects that could have proceeded earlier but for the notice period
Require a relocation report for mobile home parks	• Provides mobile/manufactured home unit owners information about alternative housing options	• Cost of researching and preparing the report
Require payment of mobile/manufactured home moving expenses or purchase of mobile/ manufactured home at assessed value if move is impossible	• Addresses unique challenge of mobile/manufactured home ownership – investment in an asset whose value could otherwise be lost or seriously reduced • Recognizes that many mobile/manufactured homes are not in fact mobile due to age, deterioration, or lack of available spaces to relocate them	• Increases redevelopment costs • Requires mobile home park owners to operate a park with increasing vacancy rates (as residents move out) over a longer period of time. • May be passed on in increased rents to mobile home park tenants when redevelopment is anticipated and market forces will support those higher rents • May be paid by redeveloper, but that may increase amounts of City assistance required for the redevelopment or (if no City assistance is required) could affect viability and timing of redevelopment.
Require payment of increased rent in new housing location	• Addresses costs of relocation other than moving expenses	• Increases costs of redevelopment • Likely to be passed on in increased rents to mobile home park tenants when redevelopment is anticipated and market forces will support those higher rents

VII. RECOMMENDATIONS

A. GENERAL

For the reasons outlined in sections I through VI above, the planning team recommends that the City of Fort Collins take the following steps to both (a) discourage the loss of current affordable rental units and mobile home parks and (b) reduce the financial burden on lower income households when dislocation from affordable units and mobile home parks occurs.

1. Continue to expand the inventory of "designated affordable" dwelling units, buildings, and complexes through current programs administered by the Fort Collins Housing Authority, other non-profit affordable housing agencies, and private developers; but do not attempt to delay or prevent the redevelopment of market rate rental buildings or complexes that have not received government assistance because of the administrative difficulty of identifying and protecting individual affordable units to be protected and the fluctuation of the affordability of those units with market forces.
2. Continue to offer relocation assistance to those residents of affordable units redeveloped with the use of federal, FCURA, or City funds, but do not extend a requirement to pay relocation expenses in private redevelopment projects that do not use public funds and do not require a discretionary land use decision by the City because of the significant additional administrative burden of identifying those eligible for relocation assistance each time residential units are proposed for private redevelopment.
3. Draft a Manufactured Home Park Zoning District and rezone into that district those mobile home parks that are relatively large and can serve as significant sources of affordable housing for the long term without the need for significant infrastructure investment, as identified in subsection VII.B below. This district would also be available for voluntary rezonings by mobile home parks that were not recommended for mandatory rezoning because they contain less than 50 mobile/manufactured home spaces.
4. Create a loan or grant program available to finance significant investments in new or existing affordable housing infrastructure that would be available to affordable housing and larger mobile home parks both within and contiguous to Fort Collins that are in the Manufactured Home Park Zone and need this assistance to remain financially viable sources of affordable housing over the long term, as identified in subsection VII.B below.[14]
5. Require a one year notice of closure period for mobile home parks (rather than the 6 month minimum notice required by the state). As an alternative, offer a six (6) month closure notice if the park owner delivers to each resident on or before the notice date a detailed Relocation Report listing all available mobile home park spaces available within 25 miles, providing the contact information for each of those park owners, and including documented estimates of the costs of moving mobile/manufactured homes to those locations. In addition, the notice provision shall also alert residents that the park may be

[14] Wording revised to broaden applicability to all affordable housing infrastructure, as recommended by Planning and Zoning Board.

closed before the mandatory notice period has expired if all park residents have been successfully relocated to each party's mutual satisfaction.[15]

6. Require that mobile home park owners or redevelopers pay (a) actual costs of relocating mobile/manufactured homes to a new site within 25 miles of the redevelopment site, up to a maximum of $6,000 for a single-wide home and $8,000 for a double-wide home, and (b) the actual value (as determined by the County Assessor) of any home that is structurally able to be moved but that cannot be moved due to the unavailability of any spaces within 25 miles, and (c) one-half of the actual value (as determined by the County Assessor) of any mobile/manufactured homes that cannot be moved due to structural weakness or poor condition.[16]
7. Build the capacity of homeowner groups, non-profit affordable housing providers, and support organizations to purchase affordable housing types, including mobile home parks, offered for redevelopment and manage them as long-term sources of affordable housing.[17]

B. Potential Application to Existing Mobile Home Parks

As noted earlier, different mobile home parks require different levels of protection depending on their size, age, location (within a targeted redevelopment area, or not, and within, contiguous to, or separated from the City), level of current investment in homeowner and park community amenities, and potential future investments required to address known infrastructure issues. The following table indicates how the tools recommended above could be applied to each of the existing mobile home parks. A more detailed explanation of the reasons behind this categorization of the existing mobile home parks is attached as an appendix to this document.

[15] Wording revised to reflect recommendations of the Affordable Housing Board.
[16] Affordable Housing Board recommended that this provision be strengthened, and Planning and Zoning Board recommended that it be deleted. Recommendation remains unchanged from Public Review Draft, except that relocation cost caps recommended by the AHB have been included, and revisions to how the value of the property is determined.
[17] Wording revised to reflect Planning and Zoning Board recommendation to broaden impact to include purchase of all types of affordable housing.

Mobile Home Park	MHP Zone District	Loan/ Grant Support	1 Year Notice of Closure	Payment of Relocation Expenses
Within the City Limits				
Hickory Village 400 Hickory Street	✓	✓	✓	✓
Harmony 2500 E. Harmony Road	✓		✓	✓
Skyline 2211 W. Mulberry Street	✓		✓	✓
Northstar 1700 Laporte Avenue	✓		✓	✓
North College (Far West Portion) 1601 N. College Avenue	✓		✓	✓
Cottonwood 1330 Laporte Avenue			✓	✓
Meldrum/Cherry Street MHP 329 N. Meldrum Street			✓	✓
Pleasant Grove 517 E. Trilby Road	✓	✓	✓	✓
Stonecrest MHP 1303 N. College Avenue			✓	✓
Montclair Motel 1405 N. College Avenue			✓	✓
North College (Eastern Portion) 1601 N. College Avenue			✓	✓
In GMA – Contiguous to City Limits *(Tools would apply upon adoption by Larimer County or annexation to City)*				
Timberridge North 3717 S. Taft Hill Road	✓	✓	✓	✓
Poudre Valley 2025 N. College Avenue	✓	✓	✓	✓
Collins Aire 401 N. Timberline Road	✓		✓	✓
Highland Manor (includes 2 non-contiguous parcels) 301 Spaulding Lane	✓		✓	✓
Spaulding Lane 242 Spaulding Lane			✓	✓
In GMA-Not Contiguous to City Limits **(Tools would apply upon adoption by Larimer County or annexation to City)**				
Timberridge South MHP 2300 W. County Road 38E	✓	✓	✓	✓
Blue Spruce MHP 2704 N. Shields Street	✓		✓	✓

Mobile Home Park	MHP Zone District	Loan/ Grant Support	1 Year Notice of Closure	Payment of Relocation Expenses
Whites MHP 2131 W. County Road 38E			✓	✓
Equestrian Center MHP 2024 N. Whitcomb Street			✓	✓
Terry Lake MHP 437 N. Highway 287			✓	✓
Terry Cove 221 W. Douglas Road			✓	✓
Aspen 400 S. Overland Trail			✓	✓
Parklane 411 S. Court Street		✓	✓	✓
Mountainview 3109 E. Mulberry Street			✓	✓

C. Comparison to Relocation Assistance Available Under FURA

The relocation mitigation strategies differ significantly from those available under the Federal Uniform Relocation Act (FURA). Most importantly, four of the tools recommended – the creation of a Manufactured Home Park Zoning District and the offer of financial assistance to upgrade mobile home park infrastructure – are designed to limit or delay redevelopment, while FURA only addresses what happens when dislocation of residents occurs.

Once a decision to redevelop a mobile home park is made, the relocation assistance outlined in subsection VII.A above is not as extensive as that offered under FURA. It does not include a requirement that the mobile home park owner or redeveloper provide relocation advisory services or obligate the park owner or redeveloper to pay any portion of added costs of renting or purchasing adequate replacement housing.

VIII. IMPLEMENTATION ACTIONS

A. SHORT TERM ACTIONS (IMPLEMENT AT PLAN ADOPTION OR COMPLETION WITHIN 1 YEAR)

Action	Responsibility
1. Review, modify if necessary, and adopt this strategic plan document.	• Social Sustainability Department after conducting a public involvement process which included key stakeholder groups, City advisory boards, and the general public. • The City Council has the ultimate adoption authority after conducting a Public Hearing and after receiving recommendations from the Affordable Housing Board, the Planning and Zoning Board, and City staff.
2. Draft and adopt an ordinance requiring payment of relocation expenses by the mobile home park owner or redeveloper, up to a cap, or payments of market value (or partial market value) of manufactures/mobile homes that cannot be moved.	• The City Attorney's Office has the responsibility to prepare the ordinance after receiving assistance from the Social Sustainability Department. • The City Council has the ultimate adoption authority after conducting a Public Hearing and after receiving recommendations from the Affordable Housing Board and City staff. • If adopted by the Council, the Social Sustainability Department shall work with the Larimer County Planning Department to determine if Larimer County is willing to adopt similar requirements.
3. Draft and adopt a new Manufactured/Mobile Home Park zoning district that would limit redevelopment options but make mobile home parks eligible for grant or loan programs to upgrade failing or substandard infrastructure. Consider including incentives for long-term preservation of the park, for example, waiver of some requirements to pay relocation expenses at the end of that period.	• The City Attorney's Office has the responsibility to draft the ordinance after receiving assistance from the City's Land Use Code Team and the Social Sustainability Department. • The City Council has the ultimate adoption authority after conducting a Public Hearing and after receiving recommendations from the Affordable Housing Board, the Planning and Zoning Board, and City staff. • If adopted by the Council, the Community Development and Neighborhood Services - Advance Planning Department shall work with the Larimer County Planning Department to see if Larimer County is willing to adopt similar zoning requirements.

B. LONG TERM ACTIONS (REQUIRING MORE THAN 1 YEAR FOR COMPLETION)

Action	Responsibility
1. Explore potential sources of funding for a grant/loan fund for investments in infrastructure upgrades in existing mobile home parks (including but not limited to CDBG funds, HOME funds, and the Affordable Housing Fund (AHF).	• Primary responsibility rests with the Social Sustainability Department, which may need to investigate a permanent funding source for the Affordable Housing Fund, as called for in the City's *Affordable Housing Strategic Plan 2010-2014*. • Mobile home park property owners would need to complete applications for submittal and review through the City's competitive process for allocating financial assistance to affordable housing projects.
2. Review the preliminary list of mobile home parks eligible for rezoning into the Manufactured Home Park zoning district in section VII.b above for long-term affordable housing potential and consistency with the City's other plans and redevelopment strategies, and rezone those parks on the resulting list into the Manufactured Home Park district.	• Community Development and Neighborhood Services - Current Planning Department based on the preliminary recommendations contained in this document. • If the Council rezones some mobile home parks inside the City limits, the Community Development and Neighborhood Services – Advance Planning Department shall work with the Larimer County Planning Department to see if Larimer County is willing to rezone certain mobile home parks located outside of the City limits.
3. Identify homeowner groups, non-profit housing owners and operators, and support groups to jointly explore (with the City) opportunities to achieve some affordable housing goals by purchasing and preserving existing mobile home parks, as well as potential sources of purchase financing.	• Mobile home unit owners within a specific park, non-profit affordable housing agencies (e.g., Fort Collins Housing Authority, CARE Housing, etc.), financial assistance agencies (e.g., Funding Partners, CHFA, etc.), City departments (e.g., Neighborhood Services, Social Sustainability, etc.) and/or national support groups (e.g., Resident Owned Communities – USA) would need to collaborate to form a legal entity. • Negotiations would be necessary with willing property-owner sellers of mobile home parks.

C. Revisions to Colorado's Manufactured Home Act

Consider supporting Colorado legislation to reduce the burden of mobile home park closures on mobile home owners. Potential areas for amendments to C.R.S. 38-12-200 (the Mobile Home Park Act) and other laws regulating the status of real property could be amended to include some or all of the following:

- Increased notice-of-closure periods (beyond the six months currently required);
- Designating manufactured homes as real property rather than personal property (based on uniform legislation recently released by the Uniform Law Commission);
- Requiring or encouraging the establishment of Homeowners Associations (HOA) in mobile home park communities;
- Creating a fund to support (a) purchases of mobile home parks by mobile home HOAs or third-party owners able to preserve housing affordability, and (b) mobile home relocations when redevelopment occurs;
- Granting mobile home park HOAs a right of first refusal to purchase the park prior to redevelopment, or clarifying that Colorado cities and counties can adopt that requirement on a local option basis.

ATTACHMENTS

The following are attached as reference materials:

1. Former M-M Medium Density Mobile Home Park Zoning District
2. Zoning Recommendations
    a. MHPs Located Inside the City Limits
        i. Candidates for Exclusive MHP Zone District
        ii. Candidates to Maintain Current Zoning
    b. MHPs Located In the GMA and Contiguous to the City Limits
        i. Candidates for Exclusive MHP Zone District After Annexation
    c. MHPs Located In the GMA and Not Contiguous to the City Limits
        i. Candidates for Exclusive MHP Rezoning in the County or After Annexation
        ii. Candidates to Maintain Current Zoning
3. Mobile Home Park Inventory
    a. Parks are listed in 3 groups:
        i. Inside the City Limits
        ii. Contiguous to the City Limits
        iii. Not Contiguous
    b. Inventory data includes:
        i. Park Name
        ii. Number of units
        iii. Size in Acres
        iv. Density (Units/Acre)
        v. Year Built
        vi. Number of Owner Units
        vii. Owner Percentage
        viii. Number of Renter Units
        ix. Renter Percentage
        x. Current Zoning
        xi. Targeted Redevelopment Area
        xii. Former City Zoning District
        xiii. Dirt Streets
        xiv. Wet Utility Issues
        xv. Recreational Amenities
        xvi. Ownership Location
4. Map showing locations of Multi-Family Affordable Housing (North of Drake Road)
5. Map showing locations of Multi-Family Affordable Housing (South of Drake Road)
6. Map showing location of Mobile Home Parks (North of Drake Road)
7. Map showing location of Mobile Home Parks (South of Drake Road)

1. Former M-M Medium Density Mobile Home Zoning District

The following zoning district for mobile home parks was included in the City of Fort Collins' Zoning Ordinance from the mid-1960s to 1997.

M-M Medium Density Mobile Home District

Sec. 29-271. Purpose

The M-M Medium Density Mobile Home Park District is for areas for mobile homes.

Sec. 29-272. Uses permitted.

The uses permitted in the M-M District are as follows:

(1) Any use permitted in an R-M Medium Density Residential District, subject to all of the use and density requirements of such district.
(2) Mobile homes on individual lots subject to all density requirements specified for a single-family dwelling in an R-M Medium Density Residential District.
(3) Mobile home parks containing independent mobile homes not exceeding eight (8) units per net acre with accessory buildings and uses for storage, service and recreation.
(4) Mobile home parks containing independent mobile homes not exceeding twelve (12) units per net acre with accessory buildings and uses for storage, service and recreation, provided that the plan for such mobile home park is shown on a Planned Unit Development plan processed, approved and recorded according to the PUD code..

Sec. 29-273. Bulk and area requirements.

The bulk and area requirements in the M-M District are as follows:

(1) Each mobile home park established in the M-M District shall contain a minimum of five (5) acres.
(2) Each mobile home park established in this district shall contain a minimum width of two hundred (200) feet. In addition, there shall be a minimum width of sixty (60) feet which shall front on a public street to provide access to the mobile home park.
(3) Minimum yard requirements in this district are as follows:
    a. The minimum distance of any building or mobile home from any exterior lot line of the mobile home park shall be thirty (30) feet. In addition, the minimum distance of any building or mobile home from any public dedicated street shall be twenty (20) feet.
    b. The minimum distance allowed between mobile homes and the buildings in a mobile home park shall be ten (10) feet.

MHPS LOCATED IN THE FORT COLLINS CITY LIMITS	
Candidates for Exclusive MHP Zoning District	**Justifications**
Harmony MHP	• Largest park (451 units, 69 acres) • High percentage owner-occupied (78%) • Single- and Double-wide units • Owner unit improvements – carports • Recreational amenity – swimming pool • Former MM Zoning
Skyline MHP	• Large park (163 units, 26 acres) • High percentage owner-occupied (96%) • Single- and Double-wide units • Owner unit improvements – carports • Recreational amenity – swimming pool • Former ML Zoning
Northstar MHP	• Large park (50 units, 4.5 acres) • High percentage owner-occupied (88%) • Single- and Double-wide units • Owner unit improvements – carports
Hickory Village	Reasons For MHP Zoning: • Large park (205 units, 32 acres) • High percentage owner-occupied (71%) • Owner unit improvements – fences • Former MM Zoning Reasons Against MHP Zoning: • Located in a Targeted Redevelopment Area • Sewer problems
North College MHP (Far West Portion)	Reasons For MHP Zoning: • Large park (166 units, 19 acres) • High percentage owner-occupied (89%) • Owner unit improvements – garages and carports • Former MM Zoning Reasons Against: MHP Zoning • Located in a Targeted Redevelopment Area
Cottonwood MHP	• High percentage owner-occupied (92%) • Previous Zoning = RM
Meldrum/Cherry Street MHP	• Small park (5 units, Less than ½ acre) • All rental units (100%) • Dirt streets/parking lot • Current NCB Zoning • Former C Zoning
Stonecrest MHP	• Small park (25 units, 2 acres) • All rental units (100%) • Dirt streets/parking lot • Located in a Targeted Redevelopment Area • Current CS Zoning • Former HB Zoning

MHPS LOCATED IN THE FORT COLLINS CITY LIMITS	
Candidates to Maintain Current Zoning District	**Justifications**
Montclair Motel	• Small park (10 units, 1.25 acres) • All rental units (100%) • Dirt streets/parking lot • Located in a Targeted Redevelopment Area • Current CS Zoning • Former HB Zoning
North College (Eastern Portions)	• Large percentage of rental units (70%) • Current CS Zoning • Located in a Targeted Redevelopment Area

MHPS LOCATED IN THE GMA BOUNDARY CONTIGUOUS TO THE FORT COLLINS CITY LIMITS	
Candidates for Exclusive MHP Zoning District After Annexation into the City	**Justifications**
Pleasant Grove MHP	• Large park (106 units, 13 acres) • High percentage owner-occupied (72%) • Single- and Double-wide units • Owner unit improvements – carports
Timberridge North MHP	• Large park (281 units, 40 acres) • High percentage owner-occupied (81%) • Single- and Double-wide units • Owner unit improvements – carports • Recreational amenity – swimming pool
Collins Aire MHP	• Large park (280 units, 52 acres) • High percentage owner-occupied (77%) • Single- and Double-wide units • Owner unit improvements – fences • Recreational amenity – swimming pool
(Spaulding Lane)	• High percentage owner-occupied (100%)
Poudre Valley MHP	• Large park (332 units, 39 acres) • High percentage owner-occupied (86%) • Single- and Double-wide units • Owner unit improvements – carports, fences
Highland Manor MHP	• High percentage owner-occupied (100%) • Single- and Double-wide units • Owner unit improvements – carports

MHPS LOCATED IN THE GMA BOUNDARY NOT CONTIGUOUS TO THE FORT COLLINS CITY LIMITS	
Candidates for Exclusive MHP Zoning District Rezoning in the County orAfter Annexation into the City	**Justifications**
Timberridge South MHP	• Large park (293 units, 40 acres) • High percentage owner-occupied (73%) • Single- and Double-wide units • Owner unit improvements – carports • Recreational amenity – swimming pool
Blue Spruce MHP	• High percentage owner-occupied (99%) • Owner unit improvements – carports
Highland Manor MHP	• High percentage owner-occupied (99%) • Single- and Double-wide units • Owner unit improvements – carports

MHPS LOCATED IN THE GMA BOUNDARY NOT CONTIGUOUS TO THE FORT COLLINS CITY LIMITS	
Maintain Current Zoning	**Justifications**
Whites MHP	• Small park (5 units, 1 acre) • High percentage renter-occupied (100%) • Dirt streets
Equestrian Center MHP	• Small park (3 units, 9 acres) • Higher percentage renter-occupied (67%) • Dirt streets
Terry Lake MHP	• High percentage renter-occupied (93%) • Dirt streets • Septic system
Terry Cove MHP	• High percentage renter-occupied (88%) • Dirt streets
Aspen MHP	• Higher percentage renter-occupied (56%) • Sewer issues
Parklane MHP	• Located in a Targeted Redevelopment Area • Sewer issues
Mountainview MHP	• Percentage owner-occupied (50%) and renter-occupied (56%)

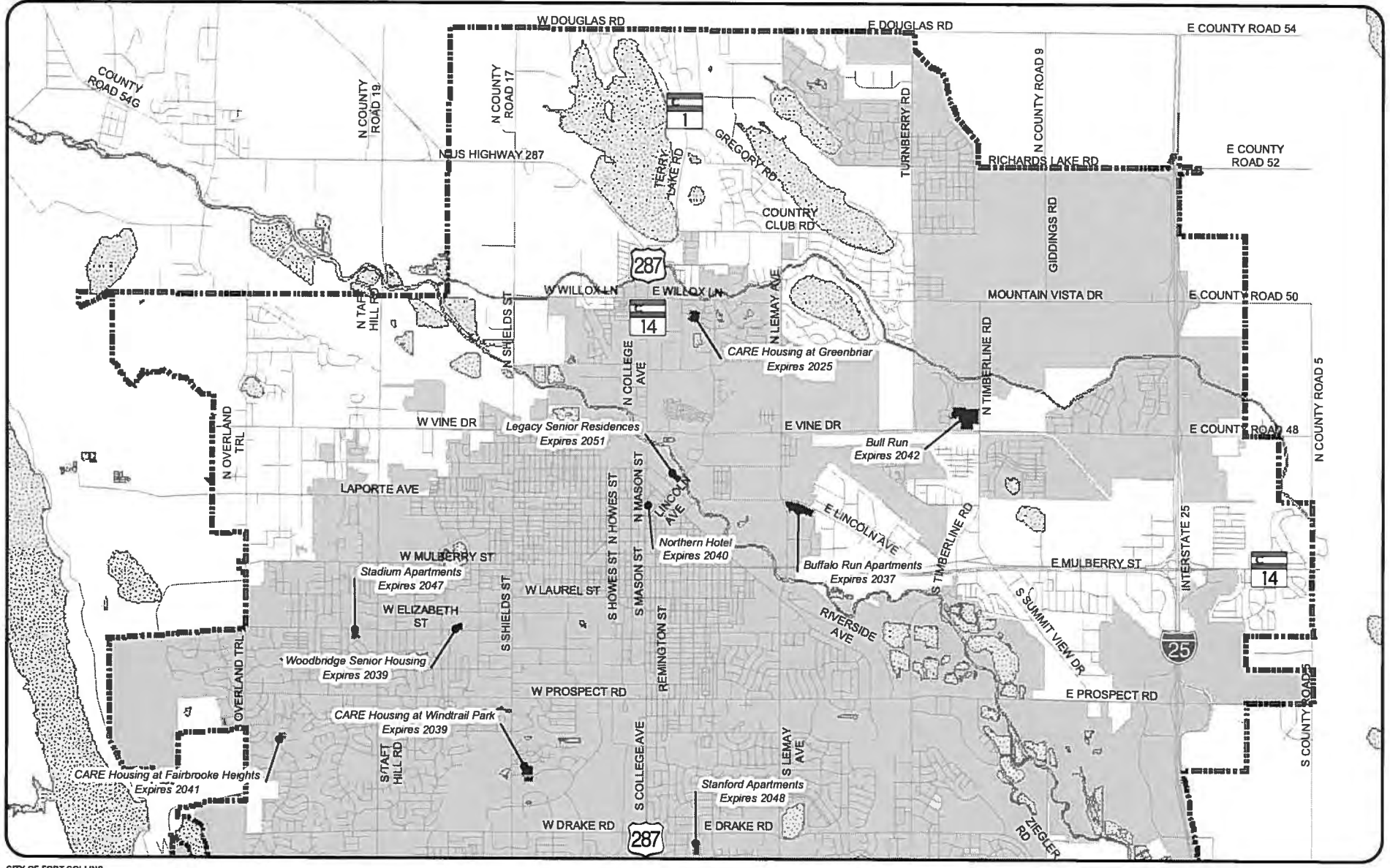
Park Name (Inside City Limits)	Assessor's Number of Units	Size in Acres	City Limits (CL) or GMA	Density (Uniys/Acre)	Contiguious to City Limits	Year Built	Number of Owner Units	Owner Percentage	Number of Renter Units	Renter Percentage	Current Zoning	Targeted Redevelopment Area	Former City Zoning District	Dirt (D) Streets	Wet Utilities Issues	Recreational Amenities	Ownership Location
Harmony MHP	451	68.78	CL	6.6		1972	352	78%	99	22%	LMN	Yes	MM			Pool	Chicago, IL
Skyline MHP	61	9.95	CL	6.1		1976	58	95%	3	5%	LMN		ML			Pool	Clearwater, FL
Skyline MHP	102	16.49	CL	6.2		1984	98	96%	4	4%	LMN		ML			Pool	Clearwater, FL
Northstar MHP	35	3.27	CL	10.7		1957	32	91%	3	9%	LMN		NCL				Golden, CO
Northstar MHP	15	1.08	CL	13.9		1957	12	80%	3	20%	LMN		NCL				Golden, CO
Cottonwood MHP	13	0.77	CL	16.9		1979	12	92%	1	8%	LMN		RM	D			Laporte, CO
(Meldrum/Cherry St.)	5	0.38	CL	13.2		1960	0	0%	5	100%	NCB	Yes	C	D			Fort Collins
Hickory Village MHP	205	32.11	CL	6.4		1972	146	71%	59	29%	LMN	Yes	MM		Sewer		Wheat Ridge, CO
North College MHP	96	8.98	CL	10.7		1964	35	36%	61	64%	CS	Yes	MM				Fort Collins
North College MHP	46	4.40	CL	10.5		1968	8	18%	38	72%	CS	Yes	MM				Fort Collins
North College MHP	166	19.40	CL	8.6		1972	148	89%	18	11%	LMN	Yes	MM				Fort Collins
Pleasant Grove MHP	106	12.97	CL	8.2		1970	76	72%	30	28%	M1				Sewer		Chicago, IL
Stonecrest MHP	25	1.91	CL	13.1		1960	0	0%	25	100%	CS	Yes	HB	D			Loveland, CO
Montclair Motel	10	1.25	CL	8.0		0	0	0%	10	100%	CS	Yes	HB	D			Fort Collins
	1336						976	73%	360	27%							

Park Name (Contiguous to City Limits)	Assessor's Number of Units	Size in Acres	City Limits (CL) or GMA	Density (Uniys/Acre)	Contiguious to City Limits	Year Built	Number of Owner Units	Owner Percentage	Number of Renter Units	Renter Percentage	Current Zoning	Targeted Redevelopment Area	Former City Zoning District	Dirt (D) Streets	Wet Utilities Issues	Recreational Amenities	Ownership Location
Timberridge North MHP	281	40.43	GMA	7.0	Yes	1972	228	81%	53	19%	M1				Sewer	Pool	Southfield, MI
Collins Aire North MHP	159	23.09	GMA	6.9	Yes	1972	111	70%	48	30%	O					Pool	Paauilo, HI
Collins Aire South MHP	121	28.75	GMA	4.2	Yes	1972	104	86%	17	14%	O					Pool	Paauilo, HI
(Spaulding Lane)	7	1.52	GMA	4.6	Yes	0	7	100%	0	0%	M1						Fort Collins
Poudre Valley MHP	332	39.22	GMA	8.5	Yes	1968	286	86%	46	14%	M1				Storm		Evergreen, CO
Highland Manor MHP	5	0.50	GMA	10.0	Yes	1969	5	100%	0	0%	M1						Fort Collins
Highland Manor MHP	30	3.18	GMA	9.4	Yes	1969	30	100%	0	0%	M1						Fort Collins
	935						770	82%	165	18%							

Park Name (Not Contiguous)	Assessor's Number of Units	Size in Acres	City Limits (CL) or GMA	Density (Uniys/Acre)	Contiguious to City Limits	Year Built	Number of Owner Units	Owner Percentage	Number of Renter Units	Renter Percentage	Current Zoning	Targeted Redevelopment Area	Former City Zoning District	Dirt (D) Streets	Wet Utilities Issues	Recreational Amenities	Ownership Location
Timberridge South MHP	293	40.62	GMA	7.2	No	1972	214	73%	79	27%	M1				Sewer	Pool	Southfield, MI
White's MHP	5	1.12	GMA	4.5	No	1989	0	0%	5	100%	R			D			Fort Collins
Aspen MHP	25	1.75	GMA	14.3	No	1970	14	56%	11	44%	M1				Sewer		Greenwood Village, CO
Parklane MHP	62	7.31	GMA	8.5	No	1958	44	71%	18	29%	C	Yes			Sewer		Boulder, CO
Mountainview MHP	30	4.34	GMA	6.9	No	1966	15	50%	15	50%	R-2						Watkins, CO
Equestrian Center MHP	3	9.52	GMA	0.3	No	0	1	33%	2	67%	O			D			Dublin, CA
Terry Lake MHP	27	4.30	GMA	6.3	No	1962	2	7%	25	93%	O			D	Septic		Fort Collins
Blue Spruce MHP	24	5.92	GMA	4.1	No	1966	24	99%	0	1%	FA						Fort Collins
Highland Manor MHP	17	3.34	GMA	5.1	No	1969	17	99%	0	1%	M1						Fort Collins
Terry Cove MHP	24	4.01	GMA	6.0	No	1970	3	12%	21	88%	R			D			Fort Collins
	510						333	65%	177	35%							

City of Fort Collins

Multi-Family Affordable Housing (North of Drake Rd)



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N W E S

0 0.5 1 Miles

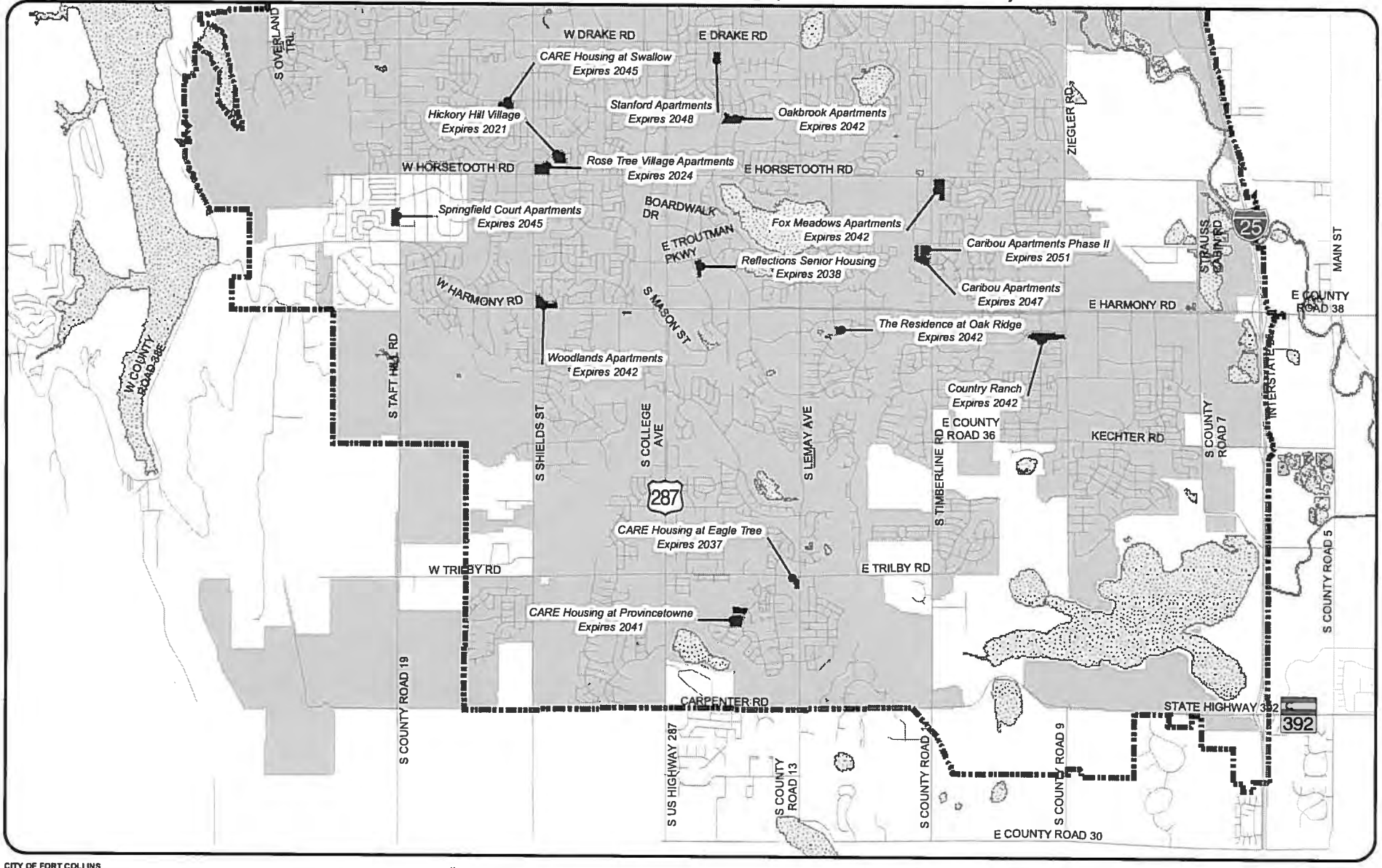
Streets
Affordable Housing Complexes
Water Features
GMA
City Limits

City of Fort Collins GIS

Printed: January 02, 2013

City of Fort Collins

Multi-Family Affordable Housing (South of Drake Rd)



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N W E S

0 0.5 1 Miles

Streets
Affordable Housing Complexes
Water Features
GMA
City Limits

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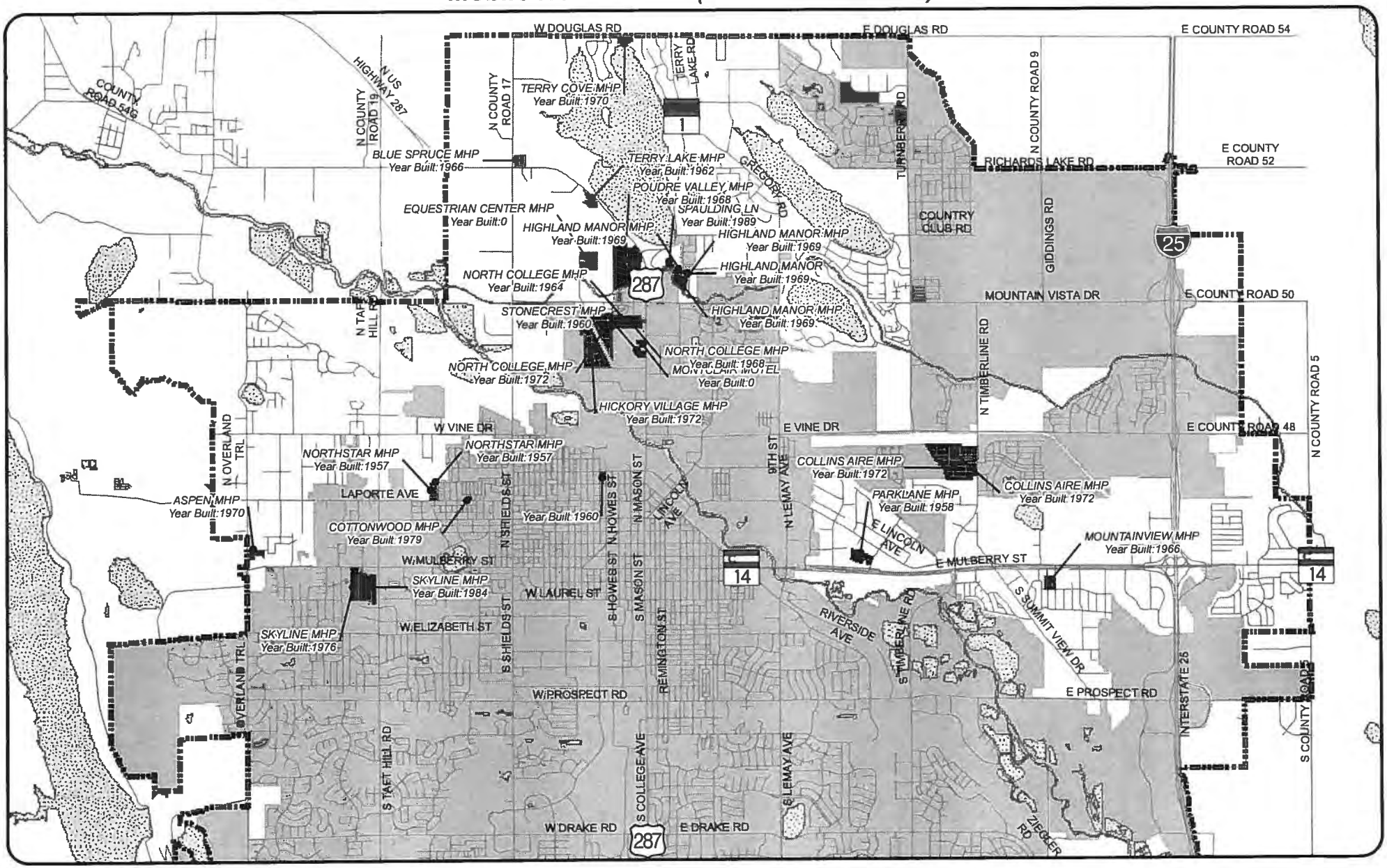
Item 6.

City of Fort Collins

Mobile Home Parks (North of Drake Rd)



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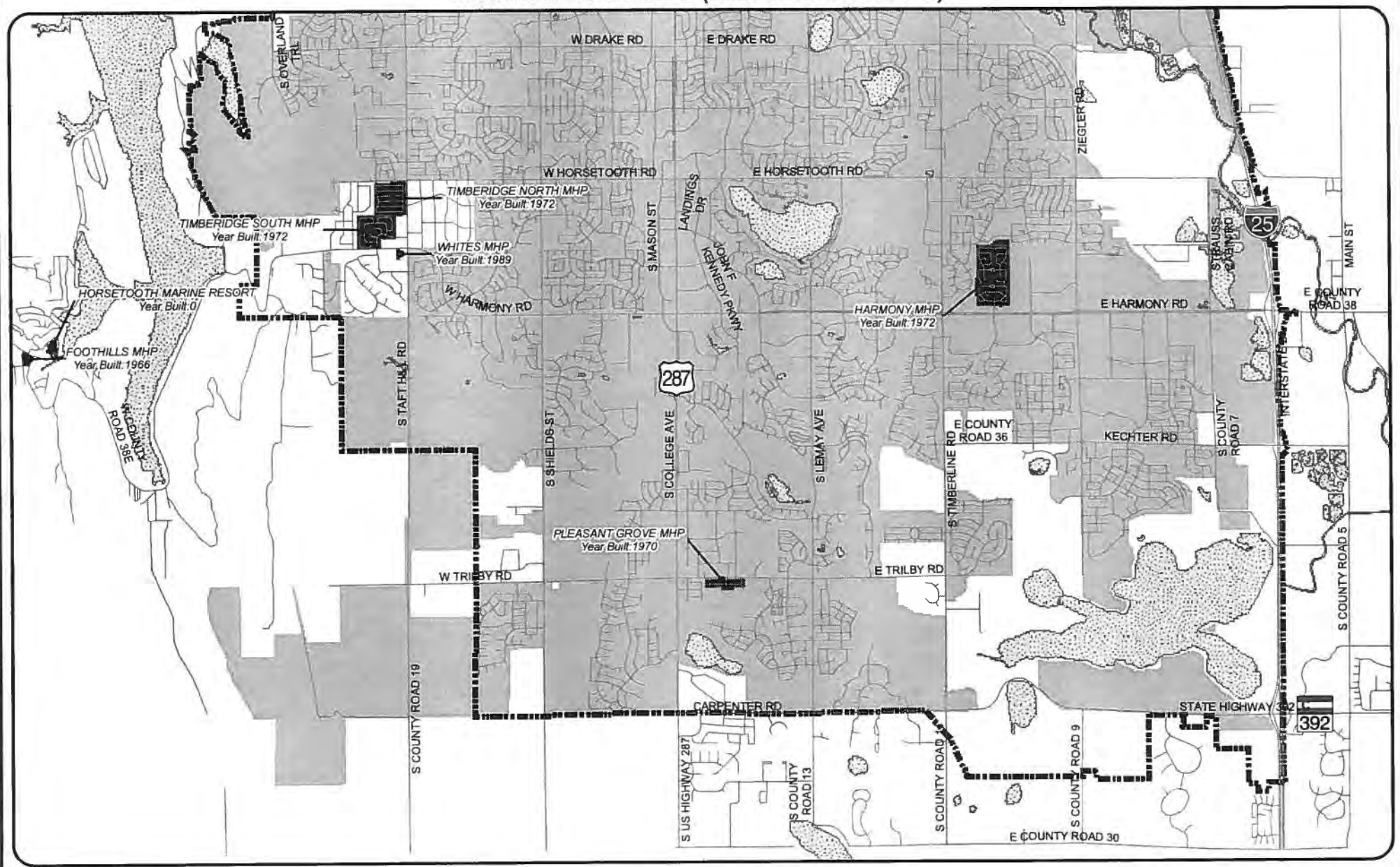
Mobile Home Parks
Streets
GMA
Water Features
City Limits

City of Fort Collins GIS

Printed: October 12, 2012

City of Fort Collins

Mobile Home Parks (South of Drake Rd)



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Mobile Home Parks
Streets
GMA
Water Features
City Limits

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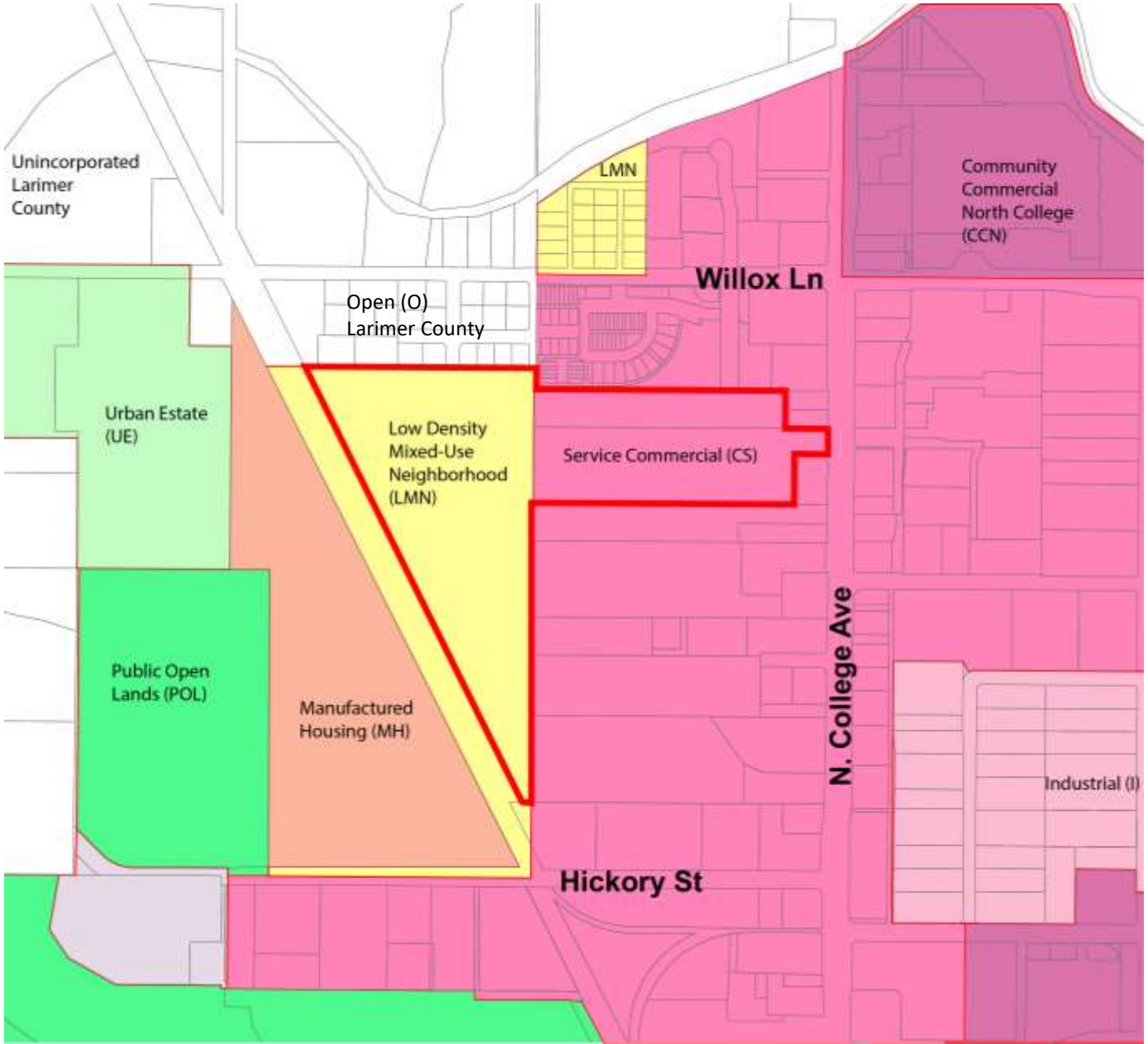
North College Mobile Home Park Rezoning - #REZ230002

City Council – 05.02.23

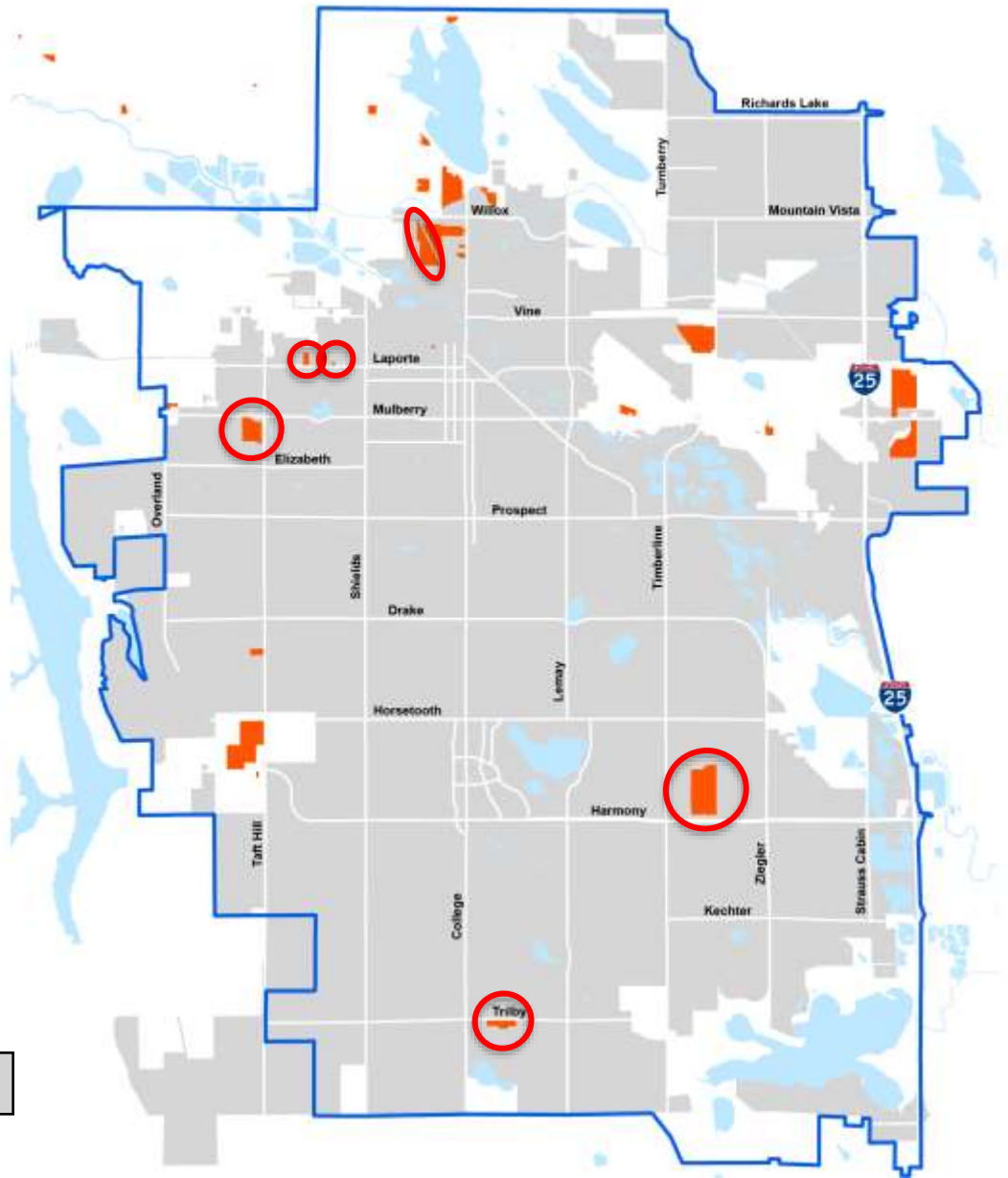
Proposal

- Rezone 32.8 acres from (LMN) & (CS) to (MH) zone district
- City initiated request
- Continues City policy goals for mobile home park rezoning & preservation began in 2020

Zoning Context



Fort Collins Manufactured Housing Communities & Rezonings



	City	GMA	Total
Communities	9	14	23
Home Sites	1,400	2,137	3,537

City Limits

Manufactured Home Community

GMA Boundary

Previous MHC Rezoning

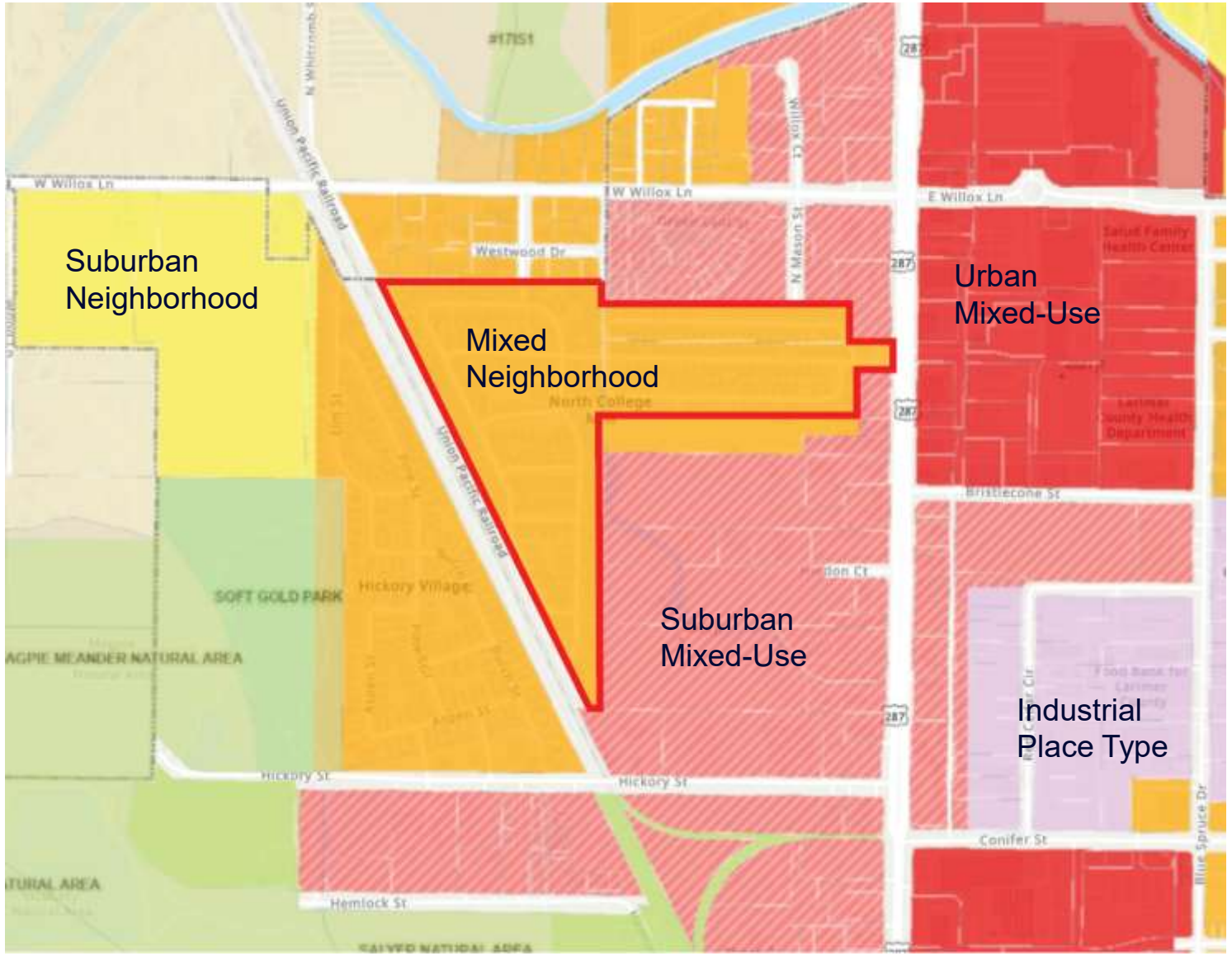
Any amendment to the Zoning Map involving the rezoning of land shall be recommended for approval by the Planning and Zoning Commission or approved by the City Council only if the proposed amendment is:

- Consistent with the City's Comprehensive Plan; and/or
- Warranted by changed conditions within the neighborhood surrounding and including the subject property.

Additional considerations for rezoning parcels less than 640 acres (quasi-judicial):

- Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zone district for the land.
- Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment.
- Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.

Criterion 1: City Plan Structure Plan Map



Criterion 1: City Plan Mixed Neighborhood Place Type

Mixed

Principal Land Use
Single-family detached homes, duplexes, triplexes and townhomes

Supporting Land Use
ADUs, small scale multifamily buildings, small-scale retail, restaurants/cafes, community and public facilities, parks and recreational facilities, schools, places of worship

Density
Between five and 20 principal dwelling units per acre (typically equates to an average of seven to 12 dwelling units per acre)

Key Characteristics/Considerations
(New Neighborhoods)

- Provide opportunities for a variety of attached and detached housing options and amenities in a compact neighborhood setting; some neighborhoods also include (or have direct access to) small-scale retail and other supporting services.
- Neighborhood Centers should serve as focal points within Mixed-Neighborhoods (see Neighborhood Mixed-Use District).
- Typically located within walking/biking distance of services and amenities, as well as high-frequency transit.
- Mixed-Neighborhoods built in a greenfield context should include a mix of housing options (lot size, type, range, etc.).

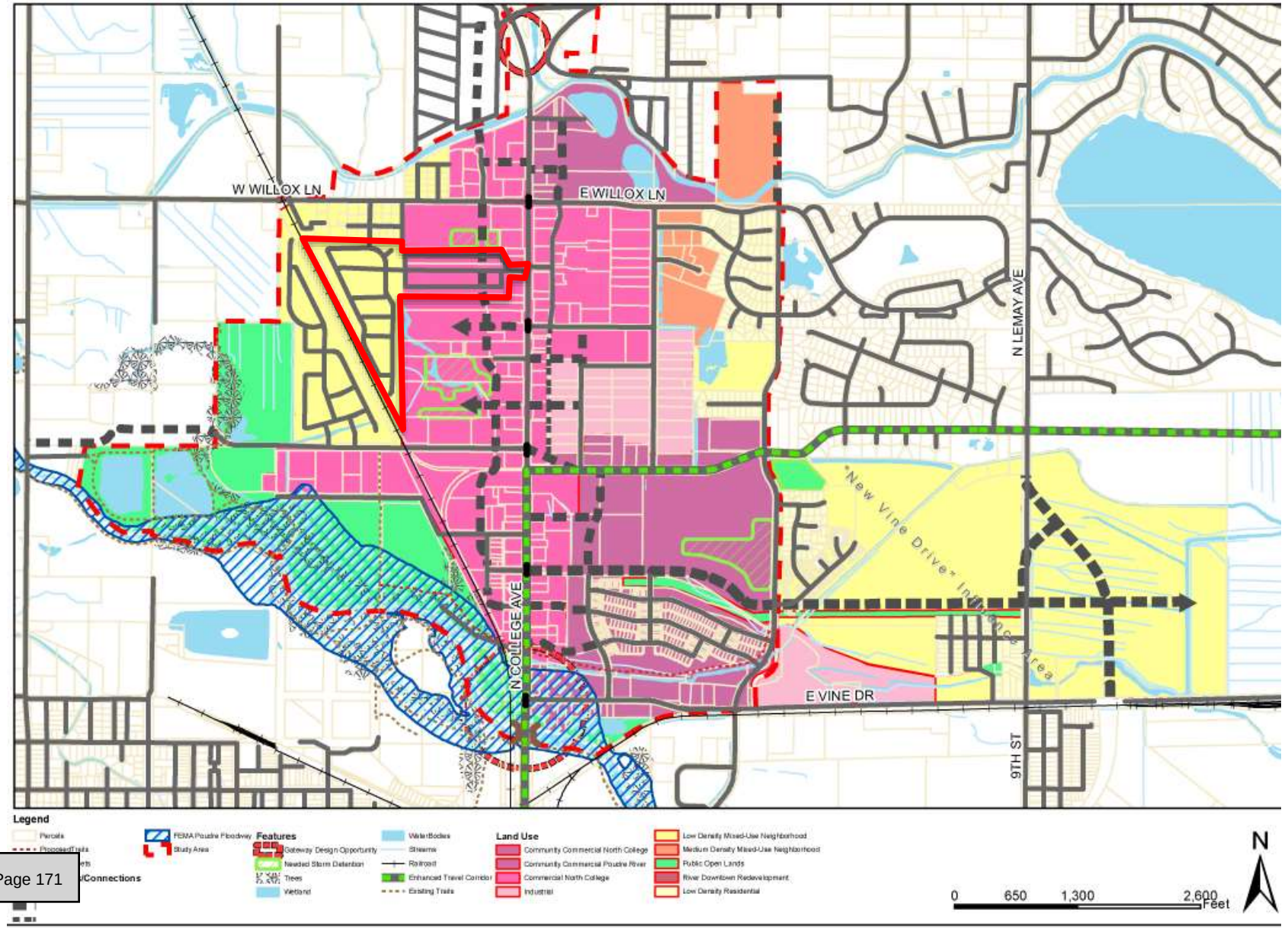
(Existing Neighborhoods)

- While many existing Mixed-Neighborhoods may consist predominantly of single-family detached homes today, opportunities to incorporate ADUs or other attached housing options of a compatible scale and intensity may be feasible in some locations.
- The introduction of larger townhome or multifamily developments into existing single-family neighborhoods should generally be limited to edge or corner parcels that abut and/or are oriented toward arterial streets or an adjacent Neighborhood Mixed-Use District where transit and other services and amenities are available.
- Where townhomes or multifamily buildings are proposed in an existing neighborhood context, a transition in building height, massing and form should be required along the shared property line or street frontage.
- As existing neighborhoods change and evolve over time, rezoning of some areas may be appropriate when paired with a subarea or neighborhood planning initiative. See the Priority Place Types discussion on page 107 for more details about changes in existing neighborhoods over time.
- While reinvestment in existing mobile home parks is encouraged, redevelopment of existing parks is not.

Typical Types of Transit
In areas on the lower end of the density range, service will be similar to Suburban Neighborhoods; as densities approach 20 dwelling units per acre, fixed-route service at frequencies of between 30 and 60 minutes becomes viable.

- Consistent with Mixed Neighborhood Place Type land uses, density, proximity to services/transit
- Mixed neighborhood encourages preservation of existing mobile home parks

Criterion 1: North College Corridor Plan



- Consistent with residential designation on western half of property
- Conflicts with commercial designation on eastern half of property

North College BRT Study

- Recommends rezoning the North College Mobile Home Park to MH District
- Recommends amendments to the Master Street Plan to shift the extension of Mason Street so it no longer travels through the North College & Poudre Valley Mobile Home Parks
- Recommends excluding the site from inclusion in a proposed expanded Transit Oriented Development Overlay
- Most recent land use policy guidance relevant to property

AFFORDABLE HOUSING STRATEGIES AND INCENTIVES

PRESERVATION OF MOBILE HOME PARKS

The City has already taken an important step in maintaining the affordable housing inventory in the corridor by rezoning the existing Hickory Village mobile home park to Manufactured Housing District (MH). The other mobile home park in the North College area, North College Mobile Home Park, is currently zoned as Low Density Mixed-Use. To help maintain the existing affordable housing inventory in the corridor, the North College Mobile Home Park is also recommended to be rezoned to MH. This zoning action would give greater protection to this inventory of affordable housing and would require a landowner or developer to rezone the property if it were to propose redevelopment.

- North College MAX BRT Study

City's Manufactured Housing Preservation Goals:

- Identified as policy priority in City Plan and 2022 Strategic Plan
    - Help preserve an affordable, unique, and limited type of housing
    - Address community concerns about displacement / redevelopment of parks
- Complements other recent local & state efforts to address manufactured housing issues

City Plan

LIV 5.2 – Supply of Attainable Housing

Encourage public and private sectors to maintain and develop a diverse range of housing options, including housing that is attainable (30% or less of monthly income) to residents earning the median income. Options could include ADUs, duplexes, townhomes, mobile homes, manufactured housing and other “missing middle” housing types.

LIV 6.4 – Permanent Supply of Affordable Housing

Create and maintain an up-to-date inventory of affordable housing in the community. Pursue policy and regulatory changes that will encourage the rehabilitation and retention of affordable housing in perpetuity.

2022 Strategic Plan

Neighborhood Livability & Social Health – 1.8

Preserve and enhance mobile home parks as a source of affordable housing and create a safe and equitable environment for residents.

Criterion 2: Warranted by Changed Conditions

- Five mobile home parks have closed since 2008, primarily due to redevelopment
  - Led to study on manufactured housing displacement
    - Recommendation to create a mobile home zone district
- Land use guidance for the North College corridor encouraging infill and redevelopment
- New policy goals also seeking preservation of existing affordable housing and mobile home parks

Criterion 3: Compatible with Existing Uses

- No proposed changes to long-established development and land-uses with the rezoning
- Surrounding zoning and current zoning permit a mix of residential and commercial land-uses

Criterion 4: Impacts to Natural Environment

- No proposed changes or new development as a result of rezoning
- No sensitive natural features located within site

Criterion 5: Logical & Orderly Development Pattern

- Maintains existing pattern of development and use
- Maintains options for a limited type and price-point of housing
- North College Bus Rapid Transit study recommends changes to Master Street Plan to shift alignment of future Mason Street extension.
    - Aligns with goals to discourage redevelopment of the site

Rezoning Criteria	Staff Evaluation
Consistent with the City's Comprehensive Plan	Complies
Warranted by changed conditions within the neighborhood surrounding and including the subject property	Complies
Proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zone district for the land	Complies / N/A
Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment	Complies / N/A
Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern	Complies / N/A

RESOURCES

CS (east half)

- 95 permitted land uses; mostly commercial & light industrial
- No density maximum
- 3-story height limit

LMN (west half)

- 43 permitted land uses; mostly residential
- Up to 9 units/acre
- 3-story height limit

MH (proposed)

- 17 permitted land uses; manufactured housing & accessory uses
- Up to 12 units/acre
- 3-story height limit

Standards closely mirror the City's former mobile home park zone districts

Current Zoning

- MHCs in city limits located predominantly in two zone districts:
  Low Density Mixed-Use Neighborhood (LMN) & Service Commercial (CS)
- These zone districts permit a broad range of uses and intensities:

RESIDENTIAL USES	NONRESIDENTIAL USES	INSTITUTIONAL USES
▪ Single-family ▪ Duplex ▪ Townhomes ▪ Mobile Home Parks ▪ Multifamily ▪ Group Homes	▪ Childcare ▪ Retail ▪ Office/clinics ▪ Gas stations ▪ Restaurants / Brewpubs ▪ Indoor Recreation ▪ Light Industrial (CS only) ▪ Workshops (CS only)	▪ Parks ▪ Schools ▪ Community Facilities ▪ Places of worship

Manufactured Housing Zoning

- Manufactured housing zoning permits a narrow range of land uses and intensities:

RESIDENTIAL USES	NONRESIDENTIAL USES	MISC. USES
▪ Manufactured Housing Communities ▪ Group Homes / Domestic Violence Shelter	▪ Childcare ▪ Respite Care Centers	▪ Parks ▪ Schools ▪ Community Facilities ▪ Places of worship

M-H Zone District

Zone Standards

- Set base levels for intensity, compatibility, safety
- Designed to reduce nonconformities (match existing development)
- General Development Standards (Article 3) also apply

Density:	6 – 12 dwelling units per acre
Setbacks:	15’ front, 10’ side/rear, 10’ between units
Height:	3-stories max.
Footprint:	5,000 sf max. (nonresidential)
Parking:	1-space per unit in manufactured housing community

May 2, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Spencer M. Smith, Special Projects Engineer
Monica Martinez, Financial Planning and Analysis Manager
Heather N. Jarvis, Legal

SUBJECT

Items Relating to the West Elizabeth Corridor Final Design.

EXECUTIVE SUMMARY

A. First Reading of Ordinance No. 069, 2023, Making Supplemental Appropriations, Appropriating Prior Year Reserves, and Authorizing Transfers of Appropriations for the West Elizabeth Corridor Final Design and Related Art in Public Places.

B. Resolution 2023-041, Authorizing the Execution of an Intergovernmental Agreement Between the City of Fort Collins and Colorado State University for the West Elizabeth Corridor Final Design.

C. Resolution 2023-042, Authorizing the Execution of an Intergovernmental Agreement Between the City of Fort Collins and the Colorado Department of Transportation for the West Elizabeth Corridor Final Design.

The purpose of this item is to appropriate local match funds and approve two intergovernmental agreements (IGAs) for the West Elizabeth Corridor Final Design (the Project) and enable the City to receive and expend Federal and Colorado Department of Transportation (CDOT) funds for and to proceed forward with the Project. The funds will be used for the final 100% design and outreach regarding improvements along West Elizabeth Street from Mason Street and the Colorado State University (CSU) campus to Overland Drive. If approved, the item will: (1) authorize the Mayor to execute an IGA with CDOT for the Project (the CDOT IGA); (2) authorize the Mayor to execute an IGA with CSU for the Project (the CSU IGA); (3) appropriate $651,628 from Transportation Capital Expansion Fee and unanticipated revenue from Transfort funds, $616,124 of matching CSU-provided funds, and $1,232,248 of Multi-Modal Options Funding grant funds for the Project; and (4) appropriate $6,516 to the Art in Public Places Program.

STAFF RECOMMENDATION

Staff recommend adoption of both Resolutions and the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The West Elizabeth travel corridor is currently the highest priority pedestrian and alternative travel mode area for improvement in the City and was highlighted in City Plan and the Transit Master Plan. The vision for the West Elizabeth Street enhanced travel corridor is to be an easily accessible and reliable multimodal corridor with an emphasis on connectivity (including bus rapid transit stations) between CSU's Foothills Campus on the west and CSU's Main Campus on the east. The corridor will be well-integrated and well-connected within the City, with a focus on improving transit, walking, and biking. The corridor will foster existing business and future infill and redevelopment to accommodate the growing number and diversity of users in the corridor, which include students, families, commuters, and seniors.

The City was awarded a $1,232,248 Multi-Modal Options Funding (MMOF) grant from the North Front Range Metropolitan Planning Organization (NFRMPO) for final design of the Project. The grant award requires a local match of $1,232,248. CSU has committed to funding 50% of the local match requirement and has appropriated $616,124 for that purpose. The City will be required to contribute 50% of the local match funds as well as the local overmatch funds. The local overmatch is the difference between the grant award plus the local match and the total 100% design cost estimate. This total Project estimate is $2,500,000. The City's financial commitment to the final design will be $616,124 in local match funds and $35,504 in local overmatch funds for a total of $651,628. Funds from the Transportation Capital Expansion Fee (TCEF) and unanticipated revenue from Transfort will be used in equal amounts to support this supplemental appropriation request ($325,814 each).

This project involves estimated construction costs of more than $250,000, and under Section 23-304 of the City Code one percent of qualified appropriations are required to be transferred to the Cultural Services and Facilities Fund for a contribution to the Art in Public Places (APP) program. One percent of the total City local match, a total of $6,516, has been identified as the recommended transfer from the Capital Projects Fund to the Cultural Services and Facilities Fund to meet this APP requirement. Neither the MMOF grant nor the CSU funding is eligible to be used for art and is excluded from the calculation.

CSU partnered with the City on the 30% design of the West Elizabeth Corridor and split the grant local match funding with the City for that design effort. CSU has agreed to continue a similar partnership and has committed to splitting the grant local match with the City for this Project as well. The CSU IGA documents and details this commitment. The CSU IGA is very similar to the IGA that was used for the 30% design phase.

The CDOT IGA is required because CDOT is administering the MMOF grant funds for the Project. CDOT administered the grant of state MMOF funds for the 30% design. This CDOT IGA (Amendment and Restatement No. 1) is an amendment and restatement of the IGA used for the 30% design. The Amendment and Restatement No. 1 format is necessary because the final design Project MMOF grant sources the monies from federal funds, adds American Rescue Plan Act funds, and includes contract provisions and exhibits required for projects using federal funds.

CITY FINANCIAL IMPACTS

This Ordinance seeks to appropriate MMOF (Multi-Modal Options Funding) grant funding, local match, local overmatch, and APP amounts. The following table is a summary of the funding sources for the West Elizabeth Corridor Final Design:

Funds to be Appropriated with this Action	Amount
Multi-Modal Options Funding (grant)	$1,232,248
CSU (½ of local match)	$616,124
TCEF (¼ of local match and ½ of overmatch)	$325,814
Transfort Unanticipated Revenue (¼ of local match and ½ of overmatch)	$325,814
Total Funds Projected for the Project	**$2,500,000**
Art in Public Places	$6,516

The required one percent to the Cultural Services and Facilities Fund ($6,516) will be appropriated to meet the Art in Public Places requirement in City Code Section 23-304.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The Project was presented to the Council Finance Committee (CFC) on April 6, 2023. The CFC was in favor of staff bringing the Project to Council for the 100% design local match fund appropriations. Please note that the APP appropriation amount ($6,516) was not included in the presentation to CFC. The APP appropriation does not change the overall appropriation amount for the Project.

PUBLIC OUTREACH

The City worked with a consultant (Felsburg, Holt and Ullevig) to perform an extensive public outreach campaign during the 30% design process. The City will continue public outreach efforts throughout the Project.

ATTACHMENTS

1. Ordinance for Consideration
2. Resolution B for Consideration (CSU IGA)
3. Exhibit A to Resolution B
4. Resolution C for Consideration (CDOT IGA)
5. Exhibit A to Resolution C
6. Council Finance Committee Minutes, April 6, 2023 (excerpt)
7. Vicinity Map
8. Presentation

ORDINANCE NO. 069, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING SUPPLEMENTAL APPROPRIATIONS, APPROPRIATING PRIOR YEAR RESERVES, AND AUTHORIZING TRANSFERS OF APPROPRIATIONS FOR THE WEST ELIZABETH CORRIDOR FINAL DESIGN AND RELATED ART IN PUBLIC PLACES

WHEREAS, the City has identified the West Elizabeth Street travel corridor as the highest priority pedestrian and alternative travel mode area for improvement in the City as highlighted in City Plan and the Transit Master Plan; and

WHEREAS, the vision for the West Elizabeth corridor is to be an easily accessible and reliable enhanced multimodal corridor with an emphasis on connectivity between the Colorado State University ("CSU") Foothills Campus on the west and CSU's Main Campus on the east; and

WHEREAS, the West Elizabeth corridor is further envisioned to focus on improving transit (including bus rapid transit stations), vehicle lanes, and walking and biking pathways; and

WHEREAS, the West Elizabeth corridor is further envisioned to foster existing business and future infill and redevelopment to accommodate the growing number and diversity of users in the corridor, which include students, families, commuters, and seniors; and

WHEREAS, in 2020, the City initiated the thirty percent design process for the West Elizabeth corridor pursuant to Resolution 2020-072, which authorized the execution of an intergovernmental agreement (the "IGA") with the Colorado Department of Transportation ("CDOT") for collaboration on the thirty percent design efforts, Resolution 2020-071, which authorized the execution of an IGA with CSU for collaboration on the thirty percent design efforts, and Ordinance No. 097, 2020, which appropriated the funding for the thirty percent design; and

WHEREAS, the thirty percent design process is complete, and the City seeks to proceed forward with the final 100% design and outreach regarding the improvements along West Elizabeth Street from Mason Street and the CSU campus to Overland Trail that comprise the West Elizabeth Corridor Final Design (the "Project"); and

WHEREAS, the City was awarded a $1,232,248 Multi-Modal Options Funding ("MMOF") grant from the North Front Range Metropolitan Planning Organization ("NFRMPO") for the Project, which grant is managed by CDOT, and CDOT has proposed an IGA with the City to fund the Project and to outline the terms and conditions of the use of the funds; and

WHEREAS, the MMOF grant award requires a local match of $1,232,248, half of which the City will provide from Transportation Capital Expansion Fee funds and unanticipated revenue from Transfort, and half of which CSU has committed to funding similar to its agreement for the thirty percent design, and for which CSU has appropriated $616,124 and has proposed an IGA with the City to confirm; and

WHEREAS, the City is adopting the proposed IGAs with CSU and CDOT simultaneously with this Ordinance to confirm the funding; and

WHEREAS, the total design cost estimate for the Project is $2,500,000; and

WHEREAS, the City will be required to contribute half of the local match funds as well as the local overmatch funds, which are the difference between the grant award plus the local match and the total design cost estimate, making the City's financial commitment to the final design $616,124 in local match funds plus $35,504 in local overmatch funds, for a total of $651,628; and

WHEREAS, this Project involves construction estimated to cost more than $250,000, and City Code Section 23-304 requires one percent of qualified appropriations to be transferred to the Cultural Services and Facilities Fund for a contribution to the Art in Public Places program (the "APP Program"); and

WHEREAS, 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 the CDOT MMOF grant, and the CSU half local match; and

WHEREAS, the Project cost of $651,628 has been used to calculate the contribution to the APP Program; and

WHEREAS, the amount to be contributed in this Ordinance will be $6,516; and

WHEREAS, the purpose of this Ordinance is to enable the City to receive and expend the $1,232,248 in grant funds available, to appropriate those funds, the CSU half local match funds, Transportation Capital Expansion Fee funds, and Transit Services ("Transfort") funds for the Project, and to appropriate Capital Projects funds to satisfy the APP Program contribution requirement; and

WHEREAS, this appropriation benefits public health, safety, and welfare of the residents of Fort Collins and the traveling public and serves the public purpose by improving multimodal transportation infrastructure, safety, and accessibility within the City; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon recommendation of the City Manager, to make a supplemental appropriation by ordinance at any time during the fiscal year, provided that the total amount of such supplemental appropriation, in combination with all previous appropriations for that fiscal year, does not exceed the current estimate of actual and anticipated revenues and all other funds to be received during the fiscal year; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon the recommendation of the City Manager, to make supplemental appropriations by ordinance at any time during the fiscal year of such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that these appropriations are available and previously unappropriated from the Transportation Capital Expansion Fee Fund, the Transit Fund, and the Capital Projects Fund, as applicable, and will not cause the total amount appropriated in the Transportation Capital Expansion Fee Fund, the Transit Fund, or the Capital Projects Fund, as applicable, to exceed the current estimate of actual and anticipated revenues and all other funds to be received in this Fund during this fiscal year; and

WHEREAS, Article V, Section 10 of the City Charter authorizes the City Council, upon recommendation by the City Manager, to transfer by ordinance any unexpended and unencumbered appropriated amount or portion thereof from one fund or capital project to another fund or capital project, provided that the purpose for which the transferred funds are to be expended remains unchanged, the purpose for which the funds were initially appropriated no longer exists, or the proposed transfer is from a fund or capital project in which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance; and

WHEREAS, the City Manager has recommended the transfer of $325,814 from the Transportation Capital Expansion Fee Fund to the Capital Projects Fund and the transfer of $325,814 from the Transit Fund to the Capital Projects Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

WHEREAS, Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds for a capital project or 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 completion of the capital project or until the earlier of the expiration of the federal, state or private grant or donation or the City's expenditure of all funds received from such grant or donation; and

WHEREAS, the City Council wishes to designate the appropriations herein for the Project and the MMOF grant as appropriations that shall not lapse until the completion of the Project or until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from new revenue or other funds from the MMOF grant in the Capital Projects Fund the sum of ONE MILLION TWO HUNDRED THIRTY-TWO THOUSAND TWO HUNDRED FORTY-EIGHT DOLLARS ($1,232,248) to be expended in the Capital Projects Fund for the Project.

Section 3. That there is hereby appropriated from new revenue or other funds from the CSU Half Local Match funds in the Capital Projects Fund the sum of SIX HUNDRED SIXTEEN

THOUSAND ONE HUNDRED TWENTY-FOUR DOLLARS ($616,124) to be expended in the Capital Projects Fund for the Project.

Section 4. That there is hereby appropriated from prior year reserves in the Transportation Capital Expansion Fee Fund the sum of THREE HUNDRED TWENTY-FIVE THOUSAND EIGHT HUNDRED FOURTEEN DOLLARS ($325,814) and to be expended in the Transportation Capital Expansion Fee Fund for transfer to the Capital Projects Fund and appropriated therein to be expended for the Project.

Section 5. That there is hereby appropriated from new revenue or other funds in the Transit Services Fund the sum of THREE HUNDRED TWENTY-FIVE THOUSAND EIGHT HUNDRED FOURTEEN DOLLARS ($325,814) to be expended in the Transit Services Fund for transfer to the Capital Projects Fund and appropriated therein to be expended for the Project.

Section 6. That the unexpended and unencumbered appropriated amount of FIVE THOUSAND EIGHTY-THREE DOLLARS ($5,083) in the Capital Projects Fund is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein to fund art projects under the APP Program.

Section 7. That the unexpended and unencumbered appropriated amount of ONE THOUSAND THREE HUNDRED THREE DOLLARS ($1,303) in the Capital Projects Fund is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the operation costs of the APP Program.

Section 8. That the unexpended and unencumbered appropriated amount of ONE HUNDRED THIRTY DOLLARS ($130) in the Capital Projects Fund is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the maintenance costs of the APP Program.

Section 9. That the appropriations herein for the Project 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 shall continue until the completion of the Project.

Section 10. That the appropriation herein from the MMOF 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 shall continue until the completion of the Project or the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

Introduced, considered favorably on first reading, and ordered published this 2nd day of May, 2023, and to be presented for final passage on the 16th day of May, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 16th day of May, 2023.

Mayor

ATTEST:

City Clerk

RESOLUTION 2023-041
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF FORT COLLINS AND COLORADO STATE UNIVERSITY FOR THE WEST ELIZABETH CORRIDOR FINAL DESIGN

WHEREAS, the City has identified the West Elizabeth Street travel corridor as the highest priority pedestrian and alternative travel mode area for improvement in the City as highlighted in *City Plan* and the *Transit Master Plan*; and

WHEREAS, the vision for the West Elizabeth corridor is to be an easily accessible and reliable enhanced multimodal corridor with an emphasis on connectivity between the Colorado State University ("CSU") Foothills Campus on the west and CSU's Main Campus on the east; and

WHEREAS, the West Elizabeth corridor is further envisioned to focus on improving transit (including bus rapid transit stations), vehicle lanes, and walking and biking pathways; and

WHEREAS, the West Elizabeth corridor is further envisioned to foster existing business and future infill and redevelopment to accommodate the growing number and diversity of users in the corridor, which include students, families, commuters, and seniors; and

WHEREAS, in 2020, the City initiated the thirty percent design process for the West Elizabeth corridor pursuant to Resolution 2020-072, which authorized the execution of an intergovernmental agreement (the "IGA") with the Colorado Department of Transportation ("CDOT") for collaboration on the thirty percent design efforts, Resolution 2020-071, which authorized the execution of an IGA with CSU for collaboration on the thirty percent design efforts, and Ordinance No. 097, 2020, which appropriated the funding for the thirty percent design; and

WHEREAS, the thirty percent design process is complete, and the City seeks to proceed forward with the final 100% design and outreach regarding the improvements along West Elizabeth Street from Mason Street and the CSU campus to Overland Trail that comprise the West Elizabeth Corridor Final Design (the "Project"); and

WHEREAS, the City was awarded a $1,232,248 Multi-Modal Options Funding ("MMOF") grant from the North Front Range Metropolitan Planning Organization ("NFRMPO") for the Project, which grant is managed by CDOT; and

WHEREAS, the MMOF grant award requires a local match of $1,232,248, half of which the City will provide from Transportation Capital Expansion Fee funds and unanticipated revenue from Transfort, and half of which CSU has committed to funding similar to its agreement to split the local grant match for the thirty percent design and for which it has appropriated $616,124; and

WHEREAS, CSU has proposed an IGA between CSU and the City to confirm its commitment to the Project and to splitting the local match funding requirement; and

WHEREAS, Colorado Revised Statutes Section 29-1-203 provides that governments may cooperate or contract with one another to provide certain services or facilities when the cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve; and

WHEREAS, City Charter Article II, Section 16 empowers the City Council, by ordinance or resolution, to enter into contracts with governmental bodies to furnish governmental services and make charges for such services, or enter into cooperative or joint activities with other governmental bodies; and

WHEREAS, City Code Section 1-22 requires the City Council to approve intergovernmental agreements that require the City to make a direct, monetary payment in excess of $50,000, and the proposed IGA requires the City to provide matching funds that exceed $50,000; and

WHEREAS, the City Council has determined that the Project and the MMOF grant funding are in the best interests of the City and that the Mayor be authorized to execute the IGA between the City and CDOT in support thereof.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council authorizes the Mayor to execute, on behalf of the City, the IGA with CSU, in substantially the form attached hereto as Exhibit A, with additional or modified terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

Section 3. That during the term of the IGA, the City Manager, in consultation with the City Attorney, is authorized to approve and execute amendments to the IGA consistent with this Resolution so long as the City Manager determines the amendments: (a) are reasonably necessary and appropriate to protect the City's interests or provide a benefit to the City, (b) effectuate the purposes of this Resolution, and (c) limit the City's financial obligation to expenditure of funds already appropriated and approved by City Council or conditioned upon such appropriation.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 2nd day of May, 2023.

_____
Mayor

ATTEST:

City Clerk

INTERGOVERNMENTAL AGREEMENT FOR WEST ELIZABETH CORRIDOR FINAL DESIGN

THIS AGREEMENT (the "Agreement") is made and entered into this __day of April, 2023, by and between the **CITY OF FORT COLLINS, COLORADO, a Municipal Corporation, (**the City) and the **BOARD OF GOVERNORS of the COLORADO STATE UNIVERSITY SYSTEM, acting by and through COLORADO STATE UNIVERSITY (**the University) (collectively, the parties).

Recitals

A. The City and the University are working together on a final design for the overall development of the section of the West Elizabeth Corridor from the University's Foothills Campus, adjacent to Overland Trail, to the existing transit center on the University's Main Campus and the MAX Bus Rapid Transit (BRT) Corridor. This design is intended to integrate current and proposed City and University multi-modal infrastructure into the overall West Elizabeth Corridor Concept Design, including improvements to the transit system, enhanced facilities for pedestrians and bicyclists, improved traffic safety, and coordination with all City and University Master Plans (the Project).

B. The West Elizabeth Corridor provides a critical transportation connection for a growing business district; high-density housing area; and transit-dependent residents while serving as a link for students, faculty and staff accessing the CSU Main and Foothills Campuses. The corridor contains over 24,000 residents and supports 20,000 jobs. The corridor needs increased levels of transit capacity, contiguous sidewalks, and multi-modal infrastructure improvements.

C. The parties desire to enter into this Agreement to collaborate concerning the financing for an effort to complete final design drawings for the Project (the Design).

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. **Long-Term Purpose.** The overall purpose of this Agreement is to establish and formalize a basic understanding between the parties regarding their efforts to develop the Design to be used for the benefit of the City and the University. The City and the University agree to collaborate on the development of the Design, including financing, award, and the overall requirements for submitting a Federal Transit Administration (FTA) Small Starts funding

grant (https://www.transit.dot.gov/funding/grant-programs/capital-investments/about-program) consistent with the following criteria:

- Total project cost is less than $300 million and total Small Starts funding of less than $100 million
- Project must:
  - Be located in a corridor that is at or over capacity or will be in five years
  - Increase capacity by 10%
  - "Not include project elements designated to maintain a state of good repair"
- New fixed guideway systems (light rail, commuter rail etc.)
- Extension to existing system
- Fixed guideway bus rapid transit (BRT) system
- Corridor-based BRT system
- Substantial corridor-based investment in existing fixed guideway system

The City and University, as part of this Agreement, also agree to collaborate on the long-term plans for development of the West Elizabeth Corridor.

2. **Immediate Purpose.** The goal of this immediate effort is to generate and fund a final design that will enable the parties to get cost estimates, pursue right-of-way acquisition and bid the project for construction. The City and University will then seek this additional funding, through the FTA, to execute the overall West Elizabeth Corridor Project.

3. **West Elizabeth Corridor Final Design Process.**
   - **a.** The City agrees to include University personnel in regular (at least monthly) project meetings throughout the design process, including the final design effort. The City will share minutes of these meetings with the University.
   - **b.** The University will provide committee members to support the review, rating, and selection of the consulting firm(s) chosen to deliver goals outlined in the General Purpose and the Immediate Purpose above.
   - **c.** Design coordination and reviews. The City and University further agree to work together on detailed review and approval of design plans for the Corridor.
     - **i.** The City agrees to solicit University input during all design phases. The University agrees to provide input, including design standards and specifications as needed within the reasonable schedule provided by the City.
     - **ii.** Design plans will be routed for review by applicable University departments and review committees. This includes, but is not limited to, formal review by the University Facilities Management Department, Physical Development Committee, Design Review Committee, CSURF/STRATA, CSU Board of Governors, and the President's Executive Leadership Team.
     - **iii.** The University Primary Contact will be responsible for coordinating design review and approvals.

iv. The University will designate project representatives to be involved in community engagement and public outreach efforts throughout the design process.

4. Finance. The cost of the final design will be paid by a combination of funding sources. The overall cost to develop the final design drawings for the Project is $2,500,000. Of this total, $1,232,248 is being funded by the Colorado Department of Transportation (CDOT) through award to the City of a Multimodal Options Fund Grant in the amount of $1,232,248 (the MOF Grant). The MOF Grant will be made to the City, with funding available immediately, and requires a 50% "local match" as well as a "local overmatch" of $35,504. Of the required $1,232,248 local match funding for the final design, the University agrees to pay $616,124, and the City agrees to pay $616,124, plus the $35,504 for the "local overmatch." The parties shall seek appropriation of all funding to be made available before the City signs the MOF Grant award that requires commitment on the part of the parties to provide the $1,232,248 in local matching funds. The University agrees to pay its contribution of $616,124 in two installments: the first installment shall be paid to the City upon completion of this Agreement between the parties, and the second installment shall be paid to the City by no later than October 1, 2023.

5. Completion of Improvements. The Project, as defined herein, does not include the construction or final completion of improvements to the West Elizabeth Corridor, and no portion of the combined contributions of the parties shall be used for construction unless otherwise agreed by the parties in writing. The parties have discussed, and it is anticipated, that upon completion of the Project, the parties may, by amendment to this Agreement or by a separate agreement, establish mutually agreeable terms upon which the parties will later cooperatively provide for the final planning, construction and completion of proposed improvements to the West Elizabeth Corridor consistent with the Project.

6. Appropriation. All financial obligations of the City or the University arising under this Agreement are contingent upon funds for that purpose being annually appropriated, budgeted, or otherwise made available by the governing bodies of the City or the University, and do not establish debts or other multi-fiscal year obligations thereof.

7. Assignment. Neither party may assign any rights or delegate any duties under this Agreement without the written consent of the other party.

8. Jurisdiction/Severability. This Agreement shall be governed in all respects by the laws of the State of Colorado. In the event of any dispute between the Parties, the exclusive venue for dispute resolution shall be the District Court for and in Larimer County, Colorado. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other

provision of this Agreement. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and, in such event, the parties shall negotiate in good faith to replace such invalidated provision in order to carry out the intent of the parties in entering into this Agreement.

9. Miscellaneous.

a. Other than the final design funding commitment and its attendant coordination, either party shall have the right to terminate any obligations hereunder for convenience upon ninety (90) days written notice.

b. For the purpose of this Agreement, the University designates Aaron Fodge (contact information below) as its representative. The City designates Spencer M. Smith (contact information below) as its representative. If either representative receives communication from the other, they shall respond within five business days.

c. All notices, certificates or other communications to be given hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified, registered or overnight mail, postage prepaid, addressed as follows:

If to Colorado State University:

Ashraf Fouad
Assistant Director for Engineering and Capital Construction
Campus Delivery 6030
Fort Collins, CO 80523-6030
(970) 837-6402
ashraf.fouad@colostate.edu

With Copy to:

Office of the General Counsel
Campus Delivery 0006
Fort Collins, CO 80523-0006

If to Fort Collins:
Spencer M. Smith, P.E.
Special Projects Engineer, City of Fort Collins
281 North College Avenue
Fort Collins, CO 80524

970-416-8054
smsmith@fcgov.com

d. Except as otherwise provided in this Agreement, any modifications to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved by the designated representative for each party with the requisite signature authority.

10. **Headings.** The headings and captions in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

11. **No Partnership or Agency.** Notwithstanding any language in this Agreement or any representation or warranty to the contrary, the parties shall not be deemed or constitute partners, joint venture participants, or agents of the other. Any actions taken by the parties pursuant to this Agreement shall be deemed actions as an independent contractor of the others.

12. **No Third-Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the parties. It is the express intention of the parties that any person or entity other than the Parties shall be deemed to be only an incidental beneficiary under this Agreement.

13. **Governmental Immunity.** Nothing in this Agreement or in any actions taken by the parties or their respective elected officials, directors, officers, agents and employees pursuant to this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., C.R.S.

14. **No Personal Liability.** No elected official, director, officer, agent or employee of the parties shall be charged personally or held contractually liable under any term or provision of this Agreement, or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

15. **No Waiver.** No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

16. **Binding Contract.** This Agreement shall inure to and be binding on the successors and permitted assigns of the Parties.

17. **Entire Contract.** This Agreement constitutes the entire agreement between the Parties with regard to the Project as defined above and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement with regard to the Project are of no force and effect.

18. **Counterpart Execution.** This Agreement may be executed in multiple counterparts; all counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written. By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

[SIGNATURE PAGE FOLLOWS]

CITY OF FORT COLLINS, COLORADO

By: _____
Kelly DiMartino, City Manager

ATTEST:

By: _____
Anissa Hollingshead, City Clerk

Approved as to form:

By: _____
Heather N. Jarvis, Assistant City Attorney

THE BOARD OF GOVERNORS OF THE COLORADO STATE UNIVERSITY SYSTEM, ACTING BY AND THROUGH COLORADO STATE UNIVERSITY

Date: _____

By: _____
Amy Parsons, President

Legal Review:

Date: _____

By: _____
Grant N. Calhoun, Associate Legal Counsel
Colorado State University System

RESOLUTION 2023-042
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF FORT COLLINS AND THE COLORADO DEPARTMENT OF TRANSPORTATION FOR THE WEST ELIZABETH CORRIDOR FINAL DESIGN

WHEREAS, the City has identified the West Elizabeth Street travel corridor as the highest priority pedestrian and alternative travel mode area for improvement in the City as highlighted in *City Plan* and the *Transit Master Plan*; and

WHEREAS, the vision for the West Elizabeth corridor is to be an easily accessible and reliable enhanced multimodal corridor with an emphasis on connectivity between the Colorado State University ("CSU") Foothills Campus on the west and CSU's Main Campus on the east; and

WHEREAS, the West Elizabeth corridor is further envisioned to focus on improving transit (including bus rapid transit stations), vehicle lanes, and walking and biking pathways; and

WHEREAS, the West Elizabeth corridor is further envisioned to foster existing business and future infill and redevelopment to accommodate the growing number and diversity of users in the corridor, which include students, families, commuters, and seniors; and

WHEREAS, in 2020, the City initiated the thirty percent design process for the West Elizabeth corridor pursuant to Resolution 2020-072, which authorized the execution of an intergovernmental agreement (the "IGA") with the Colorado Department of Transportation ("CDOT") for collaboration on the thirty percent design efforts, Resolution 2020-071, which authorized the execution of an IGA with CSU for collaboration on the thirty percent design efforts, and Ordinance No. 097, 2020, which appropriated the funding for the thirty percent design; and

WHEREAS, the thirty percent design process is complete, and the City seeks to proceed forward with the final 100% design and outreach regarding the improvements along West Elizabeth Street from Mason Street and the CSU campus to Overland Trail that comprise the West Elizabeth Corridor Final Design (the "Project"); and

WHEREAS, the City was awarded a $1,232,248 Multi-Modal Options Funding ("MMOF") grant from the North Front Range Metropolitan Planning Organization ("NFRMPO") for the Project; and

WHEREAS, CDOT manages the MMOF grant funding for NFRMPO for the Project; and

WHEREAS, CDOT has proposed an IGA between CDOT and the City (the "CDOT IGA") to fund the Project; and

WHEREAS, the CDOT IGA is an Amendment and Restatement No.1 of the IGA used for the thirty percent design that outlines the terms and conditions of the use of the MMOF grant funds, which include federal funds, American Rescue Plan Act funds, and contract provisions and exhibits required for projects using federal funds; and

WHEREAS, the MMOF grant award requires a local match of $1,232,248, half of which the City will provide from Transportation Capital Expansion Fee funds and unanticipated revenue from Transfort, and half of which CSU has committed to funding similar to its agreement for the thirty percent design, and for which CSU has appropriated $616,124 and has proposed an IGA with the City to confirm its commitment to the Project and to splitting the local match funding requirement (the "CSU IGA"); and

WHEREAS, Colorado Revised Statutes Section 29-1-203 provides that governments may cooperate or contract with one another to provide certain services or facilities when the cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve; and

WHEREAS, City Charter Article II, Section 16 empowers the City Council, by ordinance or resolution, to enter into contracts with governmental bodies to furnish governmental services and make charges for such services, or enter into cooperative or joint activities with other governmental bodies; and

WHEREAS, City Code Section 1-22 requires the City Council to approve intergovernmental agreements that require the City to make a direct, monetary payment in excess of $50,000, and the proposed IGA requires the City to provide matching funds that exceed $50,000; and

WHEREAS, the City Council has determined that the Project and the MMOF grant funding are in the best interests of the City and that the Mayor be authorized to execute the IGA between the City and CDOT in support thereof.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council authorizes the Mayor to execute, after the execution of the CSU IGA, on behalf of the City, the CDOT IGA, in substantially the form attached hereto as Exhibit A, with additional or modified terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

Section 3. That during the term of the CDOT IGA, the City Manager, in consultation with the City Attorney, is authorized to approve and execute amendments to the CDOT IGA consistent with this Resolution so long as the City Manager determines the amendments: (a) are reasonably necessary and appropriate to protect the City's interests or provide a benefit to the City, (b) effectuate the purposes of this Resolution, and (c) limit the City's financial obligation to expenditure of funds already appropriated and approved by City Council or conditioned upon such appropriation.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 2nd day of May, 2023.

Mayor

ATTEST:

City Clerk

OLA #: 331002225
Routing #: 21-HA4-XC-03122-M0002
Additional PO Reference: 400001621
Cobblestone #: TBD

STATE OF COLORADO AMENDMENT

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT
Amendment and Restatement No. 1 **Project #: MTF M455-138 (23934)**
SIGNATURE AND COVER PAGE

State Agency Department of Transportation		**Amendment and Restatement Routing Number** 21-HA4-XC-03122-M0002
Local Agency CITY OF FORT COLLINS		**Original Agreement Routing Number** 21-HA4-XC-03122
Agreement Maximum Amount	$3,964,496.00	**Original Agreement Beginning Date** October 26, 2020
		Original Agreement Expiration Date July 27, 2030

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

Each person signing this Amendment and Restatement No.1 represents and warrants that he or she is duly authorized to execute this Amendment and Restatement No.1 and to bind the Party authorizing his or her signature.

STATE OF COLORADO
Jared S. Polis, Governor
Department of Transportation
Shoshana M. Lew, Executive Director

_____
Keith Stefanik, P.E., Chief Engineer

Date: _____

LOCAL AGENCY CITY OF FORT COLLINS	**LOCAL AGENCY** **(2nd Signature if Necessary)**
_____ Signature	_____ Signature
_____ By: Jeni Arndt, Mayor	_____ By: Anissa Hollingshead, City Clerk
Date: _____	Date: _____

In accordance with §24-30-202 C.R.S., this Amendment and Restatement No.1 is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By:_____
Office of the State Controller, Controller Delegate

Amendment and Restatement No. 1 Execution Date:_____

1) PARTIES

This Amendment and Restatement No.1 to the Original Agreement shown on the Signature and Cover Page for this Amendment and Restatement No.1 is entered into by and between the Local Agency and the State.

2) TERMINOLOGY

All terms used in this Amendment and Restatement that are defined shall be construed and interpreted in accordance with this Amendment and Restatement.

3) PURPOSE AND MODIFICATION

A. History

1. On October 26, 2020, the Parties executed an Intergovernmental Agreement, in the amount of $1,500,000.00.
2. On January 21, 2022, CDOT executed Option Letter #1 to encumber $750,000.00 in Design funds.

B. The Parties are amending and restating the Original Agreement through this Amended and Restated Intergovernmental Agreement while retaining the Original Agreement Beginning Date of October 26, 2020, shown on the Signature and Cover Page, and all Option Letters to the Original Agreement, and the Original Agreement Expiration Date of July 27, 2030, as shown on the Signature and Cover Page.

C. The Parties hereby revoke all provisions of the Original Agreement in its entirety, except for the Original Agreement Beginning Date of October 26, 2020 and Expiration Date of July 27, 2030 and the Option Letters referenced in §3.A. above. This Amendment and Restatement No.1, without reference to those provisions revoked, shall hereafter constitute the Intergovernmental Agreement as amended and restated.

4) TERM AND EFFECTIVE DATE

A. This Amendment and Restatement No.1 shall not be valid or enforceable until signed and dated by the State Controller or an authorized delegate. The Beginning Date of the Original Agreement remains unchanged. The State shall not be bound by any provision of this Amendment and Restatement before this Amendment and Restatement No.1 is executed by the State Controller or an authorized delegate and shall have no obligation to pay the Local Agency for any Work performed or expense incurred under this Amendment and Restatement either before or after the Amendment and Restatement No.1 term shown in §3.C of this Amendment and Restatement No.1.

B. The Parties' respective performances under this Amendment and Restatement No.1 and the changes to the Original Agreement contained herein shall continue from the Original Agreement Beginning Date shown on the Signature and Cover Page and shall terminate on the Original Agreement Expiration Date shown on the Signature and Cover Page.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

OLA #: 331002225
Routing #: 21-HA4-XC-03122-M0002
Additional PO Reference: 400001621
Cobblestone #: TBD

TABLE OF CONTENTS

1. PARTIES

This Agreement is entered into by and between Local Agency named on the Signature and Cover Page for this Agreement ("Local Agency"), and the STATE OF COLORADO acting by and through the State agency named on the Signature and Cover Page for this Agreement (the "State" or "CDOT"). Local Agency and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and Agreement Funds shall be expended within the dates shown in **Exhibit C** for each respective phase ("Phase Performance Period(s)"). The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Local Agency for any Work performed or expense incurred before 1) the Effective Date of this original Agreement; except as described in **§7.D**; 2) before the encumbering document for the respective phase *and* the official Notice to Proceed for the respective phase; or 3) after the Final Phase Performance End Date, as shown in **Exhibit C**. Additionally, the State shall have no obligation to pay Local Agency for any Work performed or expense incurred after the Agreement Expiration Date or after required billing deadline specified in **§7.B.i.e**., or the expiration of "Special Funding" if applicable, whichever is sooner. The State's obligation to pay Agreement Funds exclusive of Special Funding will continue until the Agreement Expiration Date. If Agreement Funds expire before the Agreement Expiration Date, then no payments will be made after expiration of Agreement Funds.

B. Initial Term and Extension

The Parties' respective performances under this Agreement shall commence on the Agreement Effective Date shown on the Signature and Cover Page for this Agreement and shall terminate on July 27, 2030 as shown on the Signature and Cover Page for this Agreement, unless sooner terminated or further extended in accordance with the terms of this Agreement. Upon request of Local Agency, the State may, in its sole discretion, extend the term of this Agreement by Option Letter pursuant **§7.E.iv**. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in **Exhibit C**.

C. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, and this ARPA Award is not appropriated, or otherwise become unavailable to fund this ARPA Award the State, in its discretion, may terminate this Agreement in whole or in part. This subsection shall not apply to a termination of this Agreement by the State for breach by Local Agency, which shall be governed by **§14.A.i.**

i. Method and Content

The State shall notify Local Agency by providing written notice to Local Agency of the termination and be in accordance with **§16.** The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Local Agency shall be subject to **§14.A.i.a**

iii. Payments

If the State terminates this Agreement in the public interest, the State shall pay Local Agency an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the State, the State may reimburse Local Agency for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Local Agency which are directly attributable to the uncompleted portion of Local Agency's obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Local Agency hereunder. This subsection shall not apply to a termination of this ARPA Award by the State for breach by Local Agency.

D. Local Agency Termination Under Federal Requirements

Local Agency may request termination of the ARPA Award by sending notice to the State, which includes the effective date of the termination. If this ARPA Award is terminated in this manner, then Local Agency

shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. AUTHORITY

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

A. Federal Authority

Pursuant to Title I, Subtitle A, of the "Fixing America's Surface Transportation Act" (FAST Act) of 2015, and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the "Federal Provisions"), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration ("FHWA").

Pursuant to Title VI of the Social Security Act, Section 602 of the "Coronavirus State and Local Fiscal Recovery Funds", a part of the American Rescue Plan, provides state, local and Tribal governments with the resources needed to respond to the pandemic and its economic effects and to build a stronger, more equitable economy during the recovery.

B. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-104.5.

4. PURPOSE

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT's Stewardship Agreement with the FHWA and/or USDT as shown in **Exhibit C**.

5. DEFINITIONS

The following terms shall be construed and interpreted as follows:

A. "**Agreement**" means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.

B. "**Agreement Funds**" means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.

C. "**ARPA**" means American Rescue Plan Act, funded by the US Department of the Treasury ("USDT"). See "SLFRF" below.

D. "**Award**" means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.

E. "**Budget**" means the budget for the Work described in **Exhibit C**.

F. "**Business Day**" means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S..

G. "**Chief Procurement Officer**" means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202 to procure or supervise the procurement of all supplies and services needed by the State.

H. "**CJI**" means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice

Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.

I. "**Consultant**" means a professional engineer or designer hired by Local Agency to design the Work Product.

J. "**Contractor**" means the general construction contractor hired by Local Agency to construct the Work.

K. "**CORA**" means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.

L. "**Effective Date**" means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature and Cover Page for this Agreement.

M. "**Evaluation**" means the process of examining Local Agency's Work and rating it based on criteria established in **§6, Exhibit A** and **Exhibit E**.

N. "**Exhibits**" means the following exhibits attached to this Agreement:

i. **Exhibit A**, Scope of Work.
ii. **Exhibit B**, Sample Option Letter.
iii. **Exhibit C**, Funding Provisions
iv. **Exhibit D**, Local Agency Resolution
v. **Exhibit E**, Local Agency Contract Administration Checklist
vi. **Exhibit F**, Certification for Federal-Aid Contracts
vii. **Exhibit G**, Disadvantaged Business Enterprise
viii. **Exhibit H**, Local Agency Procedures for Consultant Services
ix. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts
x. **Exhibit J**, Additional Federal Requirements
xi. **Exhibit K**, The Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions
xii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form
xiii. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the "Uniform Guidance")
xiv. **Exhibit N**, Federal Treasury Provisions
xv. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds
xvi. **Exhibit P**, SLFRF Subrecipient Quarterly Report
xvii. **Exhibit Q**, SLFRF Reporting Modification Form
xviii. **Exhibit R**, Applicable Federal Awards
xix. **Exhibit S**, PII Certification
xx. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source

O. "**Expiration Date**" means the date on which this Agreement expires, as shown on the Signature and Cover Page for this Agreement.

P. "**Extension Term**" means the period of time by which the ARPA Expiration Date is extended by the State through delivery of an updated ARPA Letter.

Q. "**Federal Award**" means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. "Federal Award" also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

R. "**Federal Awarding Agency**" means a Federal agency providing a Federal Award to a Recipient. The US Department of the Treasury is the Federal Awarding Agency for the Federal Award, which may be the subject of this Agreement.

S. "**FHWA**" means the Federal Highway Administration, which is one of the twelve administrations under the Office of the Secretary of Transportation at the U.S. Department of Transportation. FHWA provides stewardship over the construction, maintenance and preservation of the Nation's highways and tunnels. FHWA is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.

T. "**Goods**" means any movable material acquired, produced, or delivered by Local Agency as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Local Agency in connection with the Services.

U. "**Incident**" means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.

V. "**Initial Term**" means the time period defined in **§2.B**.

W. "**Local Funds**" means the funds provided by the Local Agency as their obligated contribution to the federal and/or State Awards to receive the federal and/or State funding.

X. "**Notice to Proceed**" means the letter issued by the State to the Local Agency stating the date the Local Agency can begin work subject to the conditions of this Agreement.

Y. "**OMB**" means the Executive Office of the President, Office of Management and Budget.

Z. "**Oversight**" means the term as it is defined in the Stewardship Agreement between CDOT and the FHWA.

AA. "**Party**" means the State or Local Agency, and "**Parties**" means both the State and Local Agency.

BB. "**PCI**" means payment card information including any data related to credit card holders' names, credit card numbers, or the other credit card information as may be protected by state or federal law.

CC. "**PHI**" means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.

DD. "**PII**" means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual‘s identity, such as name, social security number, date and place of birth, mother‘s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S. "PII" shall also mean "personal identifying information" as set forth at § 24-74-102, et. seq., C.R.S.

EE. "**Recipient**" means the Colorado Department of Transportation (CDOT) for this Federal Award.

FF. "**Services**" means the services to be performed by Local Agency as set forth in this Agreement and shall include any services to be rendered by Local Agency in connection with the Goods.

GG. "**SLFRF**" means State and Local Fiscal Recovery Funds, provided by ARPA, funded by the US Treasury Department.

HH. "**Special Funding**" means an award by Federal agency or the State which may include but is not limited to one or a combination of Multimodal Transportation & Mitigation Options Funding, Revitalizing Main Streets, Safer Main Streets, Stimulus Funds, Coronavirus Response and Relief Supplemental Funds, ARPA, SLFRF, or COVID Relief.

II. "**State Confidential Information**" means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII and State personnel records not subject to disclosure under CORA.

JJ. "**State Fiscal Rules**" means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).

KK. "**State Fiscal Year**" means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.

LL. "**State Purchasing Director**" means the position described in the Colorado Procurement Code and its implementing regulations.

MM. "**State Records**" means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.

NN. "**Sub-Award**" means this Award by the State to Local Agency funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to this Sub-Award unless the terms and conditions of the Federal Award specifically indicate otherwise.

OO. "**Subcontractor**" means third parties, if any, engaged by Local Agency to aid in performance of the Work.

PP. "**Subrecipient**" means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency.

QQ. "**Tax Information**" means Federal and State of Colorado tax information including, without limitation, Federal and State tax returns, return information, and such other tax-related information as may be protected by Federal and State law and regulation. Tax Information includes but is not limited to all information defined as Federal tax Information in Internal Revenue Service Publication 1075.

RR. "**Uniform Guidance**" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.

SS. "**USDT**" The United States Department of the Treasury (**USDT**) is the national treasury and finance department of the federal government of the United States where it serves as an executive department. The USDT funds ARPA.

TT. "**Work**" means the delivery of the Goods and performance of the Services in compliance with CDOT's Local Agency Manual described in this Agreement.

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

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

6. STATEMENT OF WORK

Local Agency shall complete the Work as described in this Agreement and in accordance with the provisions of **Exhibit A**, and the Local Agency Manual. The State shall have no liability to compensate Local Agency for the delivery of any Goods or the performance of any Services that are not specifically set forth in this Agreement. Work may be divided into multiple phases that have separate periods of performance. The State may not compensate for Work that Local Agency performs outside of its designated phase performance period. The performance period of phases, including, but not limited to Design, Construction, Right of Way, Utilities, or Environment phases, are identified in **Exhibit C**. The State may unilaterally modify **Exhibit C** from time to time, at its sole discretion, to extend the Agreement Expiration Date and/or to extend the period of performance for a phase of Work authorized under this Agreement. To exercise these options to extend the Agreement Expiration

Date and/or to update the phase performance period extension option, the State will provide written notice to Local Agency in a form substantially equivalent to **Exhibit B.** The State's unilateral extension of the Agreement Expiration Date and/or the phase performance periods will not amend or alter in any way the funding provisions or any other terms specified in this Agreement, notwithstanding the options listed under **§7.E**

A. Local Agency Commitments

i. Design

If the Work includes preliminary design, final design, design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), Local Agency shall ensure that it and its Contractors comply with and are responsible for satisfying the following requirements:

a. Perform or provide the Plans to the extent required by the nature of the Work.

b. Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.

c. Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.

d. Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.

e. Stamp the Plans as produced by a Colorado registered professional engineer.

f. Provide final assembly of Plans and all other necessary documents.

g. Ensure the Plans are accurate and complete.

h. Make no further changes in the Plans following the award of the construction contract to Contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT, and when final, they will be deemed incorporated herein.

ii. Local Agency Work

a. Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA) 42 U.S.C. § 12101, et. seq., and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".

b. Local Agency shall afford the State ample opportunity to review the Plans and shall make any changes in the Plans that are directed by the State to comply with FHWA requirements.

c. Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit H**. If Local Agency enters into a contract with a Consultant for the Work:

1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, Local Agency shall not enter into such Consultant contract.

2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.

3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.

4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit H** to administer the Consultant contract.

5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from Local Agency's attorney/authorized representative certifying compliance with **Exhibit H** and 23 C.F.R. 172.5(b)and (d).

6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:

(a) The design work under this Agreement shall be compatible with the requirements of the contract between Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.

(b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.

(c) The consultant shall review the construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.

(d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

iii. Construction

If the Work includes construction, Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing construction Contractor claims; construction supervision; and meeting the quality control requirements of the FHWA/CDOT Stewardship Agreement, as described in **Exhibit E**.

a. The State may, after providing written notice of the reason for the suspension to Local Agency, suspend the Work, wholly or in part, due to the failure of Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.

b. Local Agency shall be responsible for the following:

1) Appointing a qualified professional engineer, licensed in the State of Colorado, as Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures, as defined in the CDOT Local Agency Manual (https://www.codot.gov/business/localagency/manual).

2) For the construction Services, advertising the call for bids, following its approval by the State, and awarding the construction contract(s) to the lowest responsible bidder(s).

(a) All Local Agency's advertising and bid awards pursuant to this Agreement shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that Local Agency and its Contractor(s) incorporate Form 1273 (Exhibit I) in its entirety, verbatim, into any subcontract(s) for Services as terms and conditions thereof, as required by 23 C.F.R. 633.102(e).

(b) Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. Local Agency must accept or reject such bids within three (3) working days after they are publicly opened.

(c) If Local Agency accepts bids and makes awards that exceed the amount of available Agreement Funds, Local Agency shall provide the additional funds necessary to complete the Work or not award such bids.

(d) The requirements of **§6.A.iii.b.2** also apply to any advertising and bid awards made by the State.

(e) The State (and in some cases FHWA) must approve in advance all Force Account Construction, and Local Agency shall not initiate any such Services until the State issues a written Notice to Proceed.

iv. Right of Way (ROW) and Acquisition/Relocation

a. If Local Agency purchases a ROW for a State highway, including areas of influence, Local Agency shall convey the ROW to CDOT promptly upon the completion of the project/construction.

b. Any acquisition/relocation activities shall comply with all applicable federal and State statutes and regulations, including but not limited to, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.

c. The Parties' respective responsibilities for ensuring compliance with acquisition, relocation and incidentals depend on the level of federal participation as detailed in CDOT's Right of Way Manual (located at http://www.codot.gov/business/manuals/right-of-way); however, the State always retains oversight responsibilities.

d. The Parties' respective responsibilities at each level of federal participation in CDOT's Right of Way Manual, and the State's reimbursement of Local Agency costs will be determined pursuant the following categories:

1) Right of way acquisition (3111) for federal participation and non-participation;

2) Relocation activities, if applicable (3109);

3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

v. Utilities

If necessary, Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company that may become involved in the Work. Prior to the Work being advertised for bids, Local Agency shall certify in writing to the State that all such clearances have been obtained.

vi. Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, Local Agency shall make timely application to the Public Utilities Commission ("PUC") requesting its order providing for the installation of the proposed improvements. Local Agency shall not proceed with that part of the Work before obtaining the PUC's order. Local Agency shall also establish contact with the railroad company involved for the purpose of

complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities, and:

a. Execute an agreement with the railroad company setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.

b. Obtain the railroad's detailed estimate of the cost of the Work.

c. Establish future maintenance responsibilities for the proposed installation.

d. Proscribe in the agreement the future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.

e. Establish future repair and/or replacement responsibilities, as between the railroad company and the Local Agency, in the event of accidental destruction or damage to the installation.

vii. Environmental Obligations

Local Agency shall perform all Work in accordance with the requirements of current federal and State environmental regulations, including the National Environmental Policy Act of 1969 (NEPA) as applicable.

viii. Maintenance Obligations

Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. Local Agency shall conduct such maintenance and operations in accordance with all applicable statutes, ordinances, and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

ix. Monitoring Obligations

Local Agency shall respond in a timely manner to and participate fully with the monitoring activities described in **§7.F.vi.**

B. State's Commitments

i. The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.

ii. Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any Work constituting major structures designed by, or that are the responsibility of, Local Agency, as identified in **Exhibit E**.

7. PAYMENTS

A. Maximum Amount

Payments to Local Agency are limited to the unpaid, obligated balance of the Agreement Funds set forth in **Exhibit C**. The State shall not pay Local Agency any amount under this Agreement that exceeds the Agreement Maximum set forth in **Exhibit C**.

B. Payment Procedures

i. Invoices and Payment

a. The State shall pay Local Agency in the amounts and in accordance with conditions set forth in **Exhibit C**.

b. Local Agency shall initiate payment requests by invoice to the State, in a form and manner approved by the State.

c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Local Agency and previously accepted by the State during the term that the invoice covers. If the State determines that the amount

of any invoice is not correct, then Local Agency shall make all changes necessary to correct that invoice.

d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.

e. If a project is funded in part with Federal or State special funding there may be an expiration date for the funds. The expiration date applies to grants and local funds used to match grants. To receive payment or credit for the match, Work must be completed or substantially completed, as outlined in the terms of the grant, prior to the expiration date of the special funding and invoiced in compliance with the rules outlined in the award of the funding. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.

ii. Interest

Amounts not paid by the State within 45 days after the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 46th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Local Agency shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Payment Disputes

If Local Agency disputes any calculation, determination, or amount of any payment, Local Agency shall notify the State in writing of its dispute within 30 days following the earlier to occur of Local Agency's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Local Agency and may make changes to its determination based on this review. The calculation, determination, or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

a. The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Local Agency beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Agreement Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Agreement Funds, the State's obligation to pay Local Agency shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Agreement Funds, and the State's liability for such payments shall be limited to the amount remaining of such Agreement Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in **§2.C**.

b. If the agreement funds are terminated, the State can terminate the contract early. Payment due for work done to the date of termination will be processed in a manner consistent with **§2.C**.

v. Erroneous Payments

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

owed to the State. The close out of a Federal Award does not affect the right of FHWA or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period (as defined below in **§9.A**.).

vi. Federal Recovery

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. Local Agency Funds

Local Agency shall provide their obligated contribution funds as outlined in **§7.A**. and **Exhibit C**. Local Agency shall have raised the full amount of their funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Local Agency and paid into Local Agency's treasury. Local Agency represents to the State that the amount designated "Local Agency Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. Local Agency may evidence such obligation by an appropriate ordinance/resolution or other authority letter expressly authorizing Local Agency to enter into this Agreement and to expend its match share of the Work. A copy of any such ordinance/resolution or authority letter is attached hereto as **Exhibit D** if applicable. Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of Local Agency. Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes, or penalties of any nature, except as required by Local Agency's laws or policies.

D. Reimbursement of Local Agency Costs

The State shall reimburse Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and **§7**. However, any costs incurred by Local Agency prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. The State shall pay Local Agency for costs or expenses incurred or performance by the Local Agency prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules, and regulations applicable to the Work provide for such retroactive payments to the Local Agency. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement. The applicable principles described in 2 C.F.R. Part 200 shall govern the State's obligation to reimburse all costs incurred by Local Agency and submitted to the State for reimbursement hereunder, and Local Agency shall comply with all such principles. The State shall reimburse Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit C**. Local Agency costs for Work performed prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. Local Agency costs for Work performed after any Performance Period End Date for a respective phase of the Work, is not reimbursable. Allowable costs shall be:

i. Reasonable and necessary to accomplish the Work and for the Goods and Services provided.

ii. Actual net cost to Local Agency (i.e. the price paid minus any items of value received by Local Agency that reduce the cost actually incurred).

E. Unilateral Modification of Agreement Funds Budget by State Option Letter

The State may, at its discretion, issue an "Option Letter" to Local Agency to add or modify Work phases in the Work schedule in **Exhibit C** if such modifications do not increase total budgeted Agreement Funds. Such Option Letters shall amend and update **Exhibit C**, Sections 2 or 4 of the Table, and sub-sections B and C of the **Exhibit C**. Option Letters shall not be deemed valid until signed by the State Controller or an authorized delegate. **This is NOT a Notice to Proceed**. Modification of **Exhibit C** by unilateral Option Letter is permitted only in the specific scenarios listed below. The State will exercise such options by providing Local

Agency a fully executed Option Letter, in a form substantially equivalent to **Exhibit B**. Such Option Letters will be incorporated into this Agreement. This applies to the entire Scope of Work.

i. Option to Begin a Phase and/or Increase or Decrease the Encumbrance Amount

The State may require by Option Letter that Local Agency begin a new Work phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous Work (but may not include Right of Way Acquisition/Relocation or Railroads) as detailed in **Exhibit A.** Such Option Letters may not modify the other terms and conditions stated in this Agreement and must decrease the amount budgeted and encumbered for one or more other Work phases so that the total amount of budgeted Agreement Funds remains the same. The State may also change the funding sources so long as the amount budgeted remains the same and the Local Agency contribution does not increase. The State may also issue a unilateral Option Letter to increase and/or decrease the total encumbrance amount of two or more existing Work phases, as long as the total amount of budgeted Agreement Funds remains the same, replacing the original Agreement Funding exhibit (**Exhibit C**) with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.).

ii. Option to Transfer Funds from One Phase to Another Phase.

The State may require or permit Local Agency to transfer Agreement Funds from one Work phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another phase as a result of changes to State, federal, and local match funding. In such case, the original funding exhibit (**Exhibit C**) will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The Agreement Funds transferred from one Work phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within thirty (30) days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iii. Option to Exercise Options i and ii.

The State may require Local Agency to add a Work phase as detailed in **Exhibit A**, and encumber and transfer Agreement Funds from one Work phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The addition of a Work phase and encumbrance and transfer of Agreement Funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within 30 days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iv. Option to Extend Agreement/Phase Term and/or modify the OMB Uniform Guidance. The State, at its discretion, shall have the option to extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.). In order to exercise this option, the State shall provide written notice to the Local Agency in a form substantially equivalent to **Exhibit B**.

F. Accounting

Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

i. Local Agency Performing the Work

If Local Agency is performing the Work, it shall document all allowable costs, including any approved Services contributed by Local Agency or subcontractors, using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

ii. Local Agency-Checks or Draws

Checks issued or draws made by Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. Local Agency shall keep on file all checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents in the office of Local Agency, clearly identified, readily accessible, and to the extent feasible, separate and apart from all other Work documents.

iii. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. Local Agency shall reimburse the State for the costs of any such services from the budgeted Agreement Funds as provided for in **Exhibit C**. If FHWA Agreement Funds are or become unavailable, or if Local Agency terminates this Agreement prior to the Work being approved by the State or otherwise completed, then all actual incurred costs of such services and assistance provided by the State shall be reimbursed to the State by Local Agency at its sole expense.

iv. Local Agency-Invoices

Local Agency's invoices shall describe in detail the reimbursable costs incurred by Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and Local Agency shall not submit more than one invoice per month.

v. Invoicing Within 60 Days

The State shall not be liable to reimburse Local Agency for any costs invoiced more than 60 days after the date on which the costs were incurred, including costs included in Local Agency's final invoice. The State may withhold final payment to Local Agency at the State's sole discretion until completion of final audit. Any costs incurred by Local Agency that are not allowable under 2 C.F.R. Part 200 shall be Local Agency's responsibility, and the State will deduct such disallowed costs from any payments due to Local Agency. The State will not reimburse costs for Work performed after the Performance Period End Date for a respective Work phase. The State will not reimburse costs for Work performed prior to Performance Period End Date, but for which an invoice is received more than 60 days after the Performance Period End Date.

vi. Risk Assessment & Monitoring

Pursuant to 2 C.F.R. 200.331(b), – CDOT will evaluate Local Agency's risk of noncompliance with federal statutes, regulations, and terms and conditions of this Agreement. Local Agency shall complete a Risk Assessment Form (**Exhibit L**) when that may be requested by CDOT. The risk assessment is a quantitative and/or qualitative determination of the potential for Local Agency's non-compliance with the requirements of the Federal Award. The risk assessment will evaluate some or all of the following factors:

- Experience: Factors associated with the experience and history of the Subrecipient with the same or similar Federal Awards or grants.
- Monitoring/Audit: Factors associated with the results of the Subrecipient's previous audits or monitoring visits, including those performed by the Federal Awarding Agency, when the Subrecipient also receives direct federal funding. Include audit results if Subrecipient receives single audit, where the specific award being assessed was selected as a major program.
- Operation: Factors associated with the significant aspects of the Subrecipient's operations, in which failure could impact the Subrecipient's ability to perform and account for the contracted goods or services.
- Financial: Factors associated with the Subrecipient's financial stability and ability to comply with financial requirements of the Federal Award.
- Internal Controls: Factors associated with safeguarding assets and resources, deterring and detecting errors, fraud and theft, ensuring accuracy and completeness of accounting data, producing reliable and timely financial and management information, and ensuring adherence to its policies and plans.

- Impact: Factors associated with the potential impact of a Subrecipient's non-compliance to the overall success of the program objectives.
- Program Management: Factors associated with processes to manage critical personnel, approved written procedures, and knowledge of rules and regulations regarding federal-aid projects.

Following Local Agency's completion of the Risk Assessment Tool (**Exhibit L**), CDOT will determine the level of monitoring it will apply to Local Agency's performance of the Work. This risk assessment may be re-evaluated after CDOT begins performing monitoring activities.

G. Close Out

Local Agency shall close out this Award within 90 days after the Final Phase Performance End Date. If SLFRF Funds are used the Local Agency shall close out that portion of the Award within 45 days after the ARPA Award Expiration Date. Close out requires Local Agency's submission to the State of all deliverables defined in this Agreement, and Local Agency's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If FHWA or US Treasury has not closed this Federal Award within one (1) year and 90 days after the Final Phase Performance End Date due to Local Agency's failure to submit required documentation, then Local Agency may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

8. REPORTING - NOTIFICATION

A. Quarterly Reports

In addition to any reports required pursuant to **§19** or pursuant to any exhibit, for any contract having a term longer than 3 months, Local Agency shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than ten (10) Business Days following the end of each calendar quarter or at such time as otherwise specified by the State. If SLFRF Funds are used the report must be in the format of **Exhibit P**.

B. Litigation Reporting

If Local Agency is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Local Agency's ability to perform its obligations under this Agreement, Local Agency shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified in **§16**.

C. Performance and Final Status

Local Agency shall submit all financial, performance and other reports to the State no later than 60 calendar days after the Final Phase Performance End Date or sooner termination of this Agreement, containing an Evaluation of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

D. Violations Reporting

Local Agency must disclose, in a timely manner, in writing to the State and FHWA, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. Penalties for noncompliance may include suspension or debarment (2 CFR Part 180 and 31 U.S.C. 3321).

9. LOCAL AGENCY RECORDS

A. Maintenance

Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Local Agency shall maintain such records for a period (the "Record Retention Period") pursuant to the requirements of the funding source and for a minimum of

three (3) years following the date of submission to the State of the final expenditure report, whichever is longer, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Local Agency in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three (3) years following final disposition of such property.

B. Inspection

Records during the Record Retention Period. Local Agency shall make Local Agency Records available during normal business hours at Local Agency's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two (2) Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Local Agency's performance of its obligations under this Agreement using procedures as determined by the State. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. Local Agency shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Local Agency. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. If Local Agency enters into a subcontract with an entity that would also be considered a Subrecipient, then the subcontract entered into by Local Agency shall contain provisions permitting both Local Agency and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

D. Final Audit Report

Local Agency shall promptly submit to the State a copy of any final audit report of an audit performed on Local Agency's records that relates to or affects this Agreement or the Work, whether the audit is conducted by Local Agency or a third party. Additionally, if Local Agency is required to perform a single audit under 2 CFR 200.501, *et seq.*, then Local Agency shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

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

the HIPAA Business Associate Agreement attached to this Award, if applicable. Local Agency shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Local Agency may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. Local Agency shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements with provisions at least as protective as those in this Agreement, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Local Agency shall provide copies of those signed nondisclosure agreements to the State upon request.

C. Use, Security, and Retention

Local Agency shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Local Agency shall provide the State with access, subject to Local Agency's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Local Agency shall return State Records provided to Local Agency or destroy such State Records and certify to the State that it has done so, as directed by the State. If Local Agency is prevented by law or regulation from returning or destroying State Confidential Information, Local Agency warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Local Agency becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Local Agency can establish that none of Local Agency or any of its agents, employees, assigns, or Subcontractors are the cause or source of the Incident, Local Agency shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Local Agency shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing, and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding Personally Identifying Information "PII"

If Local Agency or any of its Subcontractors will or may receive PII under this agreement, Local Agency shall provide for the security for such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Local Agency shall be a "Third Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 et seq., C.R.S. In addition, as set forth in § 24-74-102, et. seq., C.R.S., Local Agency and Contractor, including, but not limited to, Local Agency and Contractor's employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Local Agency and Contractor is given direct access to any State databases containing PII, Local Agency and Contractor shall execute, on behalf of itself and its employees, the certification attached hereto as **Exhibit S** on an annual basis Local Agency and Contractor's duty and obligation to certify as set forth in **Exhibit S** shall continue as long as Local Agency and Contractor has direct access to any State databases containing PII. If Local Agency and Contractor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Local Agency and Contractor shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Local Agency shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Local Agency under this Agreement. Such a conflict of interest would arise when a Local Agency or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement. Officers, employees, and agents of Local Agency may neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.

B. Apparent Conflicts of Interest

Local Agency acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Local Agency shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Local Agency's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Local Agency is uncertain whether a conflict or the appearance of a conflict has arisen, Local Agency shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

12. INSURANCE

Local Agency shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies with an AM Best rating of A-VIII or better.

A. Local Agency Insurance

Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA") and shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

B. Subcontractor Requirements

Local Agency shall ensure that each Subcontractor that is a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA. Local Agency shall ensure that each Subcontractor that is not a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement all of the following insurance policies:

i. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Local Agency or Subcontractor employees acting within the course and scope of their employment.

ii. General Liability

Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

a. $1,000,000 each occurrence;

b. $1,000,000 general aggregate;

c. $1,000,000 products and completed operations aggregate; and

d. $50,000 any 1 fire.

iii. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of $1,000,000 each accident combined single limit.

iv. Protected Information

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

a. $1,000,000 each occurrence; and

b. $2,000,000 general aggregate.

v. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

a. $1,000,000 each occurrence; and

b. $1,000,000 general aggregate.

vi. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

a. $1,000,000 each occurrence; and

b. $1,000,000 general aggregate.

vii. Cyber/Network Security and Privacy Liability

Liability insurance covering all civil, regulatory and statutory damages, contractual damages, data breach management exposure, and any loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of breach, violation or infringement of right to privacy rights through improper use or disclosure of protect consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

a. $1,000,000 each occurrence; and

b. $2,000,000 general aggregate.

C. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Local Agency and Subcontractors. In the event of cancellation of any commercial general liability policy, the carrier shall provide at least 10 days prior written notice to CDOT.

D. Primacy of Coverage

Coverage required of Local Agency and each Subcontractor shall be primary over any insurance or self-insurance program carried by Local Agency or the State.

E. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Local Agency and Local Agency shall forward such notice to the State in accordance with **§16** within 7 days of Local Agency's receipt of such notice.

F. Subrogation Waiver

All commercial insurance policies secured or maintained by Local Agency or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Local Agency or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

G. Certificates

For each commercial insurance plan provided by Local Agency under this Agreement, Local Agency shall provide to the State certificates evidencing Local Agency's insurance coverage required in this Agreement within seven (7) Business Days following the Effective Date. Local Agency shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following the Effective Date, except that, if Local Agency's subcontract is not in effect as of the Effective Date, Local Agency shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following Local Agency's execution of the subcontract. No later than 15 days before the expiration date of Local Agency's or any Subcontractor's coverage, Local Agency shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Local Agency shall, within seven (7) Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§12**.

13. BREACH

A. Defined

The failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner, shall be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization, or similar law, by or against Local Agency, or the appointment of a receiver or similar officer for Local Agency or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in **§14** for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in the Agreement in order to protect the public interest of the State.

14. REMEDIES

A. State's Remedies

If Local Agency is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in **§13.B,** shall have all of the remedies listed in this **§14.A.** in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Local Agency's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Local Agency shall not incur further obligations or render further performance past the effective date of such notice and shall terminate outstanding orders and subcontracts with third parties. However, Local Agency shall complete and deliver to the State all Work not canceled by the termination notice and may incur obligations as necessary to do

so within this Agreement's terms. At the request of the State, Local Agency shall assign to the State all of Local Agency's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Local Agency shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Local Agency but in which the State has an interest. At the State's request, Local Agency shall return materials owned by the State in Local Agency's possession at the time of any termination. Local Agency shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Local Agency for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Local Agency was not in breach or that Local Agency's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under **§2.C**.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Local Agency shall remain liable to the State for any damages sustained by the State in connection with any breach by Local Agency, and the State may withhold payment to Local Agency for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Local Agency is determined. The State may withhold any amount that may be due Local Agency as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Local Agency's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Local Agency to an adjustment in price or cost or an adjustment in the performance schedule. Local Agency shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Local Agency after the suspension of performance.

b. Withhold Payment

Withhold payment to Local Agency until Local Agency corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Local Agency's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal from the Work of any of Local Agency's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes a patent, copyright, trademark, trade secret, or other intellectual property right, Local Agency shall, as approved by the State (a) secure that right to use such Work for the State or Local Agency; (b) replace the Work with non infringing Work or modify the Work so that it becomes non infringing; or, (c) remove any infringing Work and refund the amount paid for such Work to the State.

B. Local Agency's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Local Agency, following the notice and cure period in **§13.B** and the dispute resolution process in **§15** shall have all remedies available at law and equity.

15. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Local Agency for resolution.

B. Resolution of Controversies

If the initial resolution described in §15.A fails to resolve the dispute within 10 Business Days, Local Agency shall submit any alleged breach of this Contract by the State to the Procurement Official of CDOT as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, 24-109-101.1, 24-109-101.5, 24-109-106, 24-109-107, 24-109-201 through 24-109-206, and 24-109-501 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Local Agency wishes to challenge any decision rendered by the Procurement Official, Local Agency's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Local Agency pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

C. Questions of Fact

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

16. NOTICES AND REPRESENTATIVES

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered **(i)** by hand with receipt required, **(ii)** by certified or registered mail to such Party's principal representative at the address set forth below or **(iii)** as an email with read receipt requested to the principal representative at the email address, if any, set forth below. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this **§16** without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

For the State

Colorado Department of Transportation (CDOT)

Jake Oneal, EIT II
CDOT Region 4
10601 10th Street
Greeley, CO 80634
970-515-2731
jake.oneal@state.co.us

For the Local Agency

City of Fort Collins
Spencer M. Smith, Special Projects Engineer
281 North College Avenue
Fort Collins, CO 80524
970-416-8054
smsmith@fcgov.com

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Local Agency hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Local Agency or any Subcontractors. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Local Agency is under contract with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Local Agency hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Local Agency cannot make any of the assignments required by this section, Local Agency hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Patents

In addition, Local Agency grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Local Agency that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

iii. Assignments and Assistance

Whether or not the Local Agency is under Agreement with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives, or other documents, drawings, models, materials, data, and information shall be the exclusive property of the State (collectively, "State Materials"). Local Agency shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Local Agency's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Local Agency shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Local Agency

Local Agency retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Local Agency including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Local Agency under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Local Agency Property"). Local Agency Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

18. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the GIA; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. The following applies through June 30, 2022: no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Local Agency under this Agreement is $100,000 or greater, either on the Effective Date or at any time thereafter, this **§19** shall apply. Local Agency agrees to be governed by and comply with the provisions of §24-106-103, §24-102-206, §24-106-106, §24-106-107 C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Local Agency's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

20. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

Local Agency shall not enter into any subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Local Agency shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Local Agency in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement.

C. Binding Effect

Except as otherwise provided in **§20.A.** all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

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

F. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Digital Signatures

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

H. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

I. Jurisdiction and Venue

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

J. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than contract amendments, shall conform to the policies promulgated by the Colorado State Controller.

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

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

L. Order of Precedence

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

i. The provisions of the other sections of the main body of this Agreement.
ii. **Exhibit N**, Federal Treasury Provisions.
iii. **Exhibit F**, Certification for Federal-Aid Contracts.
iv. **Exhibit G**, Disadvantaged Business Enterprise.
v. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts.
vi. **Exhibit J**, Additional Federal Requirements.
vii. **Exhibit K**, Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions.
viii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form.
ix. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the "Uniform Guidance").
x. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds.
xi. **Exhibit R**. Applicable Federal Awards.
xii Colorado Special Provisions in the main body of this Agreement.
xiii. **Exhibit A**, Scope of Work.
xiv. **Exhibit H**, Local Agency Procedures for Consultant Services.
xv. **Exhibit B**, Sample Option Letter.
xvi. **Exhibit C**, Funding Provisions.
xvii. **Exhibit P**, SLFRF Subrecipient Quarterly Report.
xviii. **Exhibit Q**, SLFRF Reporting Modification Form.
xix. **Exhibit D**, Local Agency Resolution.
xx. **Exhibit E**, Local Agency Contract Administration Checklist.
xxi. **Exhibit S**, PII Certification.
xxii. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source.
xxiii. Other exhibits in descending order of their attachment.

M. Severability

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

N. Survival of Certain Agreement Terms

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

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§20.C,** this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

P. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107 C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Local Agency shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Local Agency's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations.

Local Agency shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

T. Compliance with State and Federal Law, Regulations, and Executive Orders

Local Agency shall comply with all State and Federal law, regulations, executive orders, State and Federal Awarding Agency policies, procedures, directives, and reporting requirements at all times during the term of this Agreement.

U. Accessibility

i. Local Agency shall comply with and the Work Product provided under this Agreement shall be in compliance with all applicable provisions of §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability, as established by the Governor's Office of Information Technology (OIT), pursuant to Section §24-85-103 (2.5), C.R.S. Local Agency shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.

ii. Each Party agrees to be responsible for its own liability incurred as a result of its participation in and performance under this Agreement. In the event any claim is litigated, each Party will be responsible for its own attorneys' fees, expenses of litigation, or other costs. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to either the Local Agency or the State by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. and Article XI of the Colorado Constitution. Nothing in the Agreement shall be construed as a waiver of any provision of the State Fiscal Rules.

iii. The State may require Local Agency's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Local Agency's Work Product and software is in compliance with §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

V. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.,* C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Local Agency. Local Agency shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Local Agency may wish to have in place in connection with this Agreement.

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

These Special Provisions apply to all contracts. Contractor refers to Local Agency.

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

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

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

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

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the Parties, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

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

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

22. FEDERAL REQUIREMENTS

Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and State laws, and their implementing regulations, as they currently exist and may hereafter be amended. A summary of applicable federal provisions are attached hereto as **Exhibit F**, **Exhibit I**, **Exhibit J**, **Exhibit K**, **Exhibit M, Exhibit N** and **Exhibit O** are hereby incorporated by this reference.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Local Agency will comply with all requirements of **Exhibit G** and **Exhibit E,** Local Agency Contract Administration Checklist, regarding DBE requirements for the Work, except that if Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If Local Agency uses any State- approved DBE program for this Agreement, Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of Local Agency's DBE program does not waive or modify the sole responsibility of Local Agency for use of its program.

EXHIBIT A-1

SCOPE OF WORK

Name of Project: West Elizabeth Corridor
Project Number: MTF M455-138
SubAccount #: 23934

The Colorado Department of Transportation ("CDOT") will oversee the City of Fort Collins when City of Fort Collins designs the West Elizabeth Street Corridor (Hereinafter referred to as "this work"). CDOT and the City of Fort Collins believe it will be beneficial to perform this work to improve safety and reduce traffic congestion for the West Elizabeth Street Corridor.

The design will be completed in accordance with AASHTO design standards, the Americans with Disabilities Act, and all applicable state, federal and local rules and regulations. The design phase of the work will begin in the spring of 2023 and will identify more exact requirements, qualities, and attributes for this work.

If ARPA funds are used all ARPA funds must be encumbered by December 31, 2024. All work funded by ARPA must be completed by December 31, 2026 and all bills must be submitted to CDOT for payment by January 31, 2027. These bills must be paid by CDOT by March 31, 2027.

If this project is funded with Multimodal Transportation & Mitigation Options Funding (MMOF) these funding expenditures must be invoiced by June 1st of the year they expire.

By accepting funds for this Scope of Work, Local Agency acknowledges, understands, and accepts the continuing responsibility for the safety of the traveling public after initial acceptance of the project. **Local Agency is responsible for maintaining and operating the scope of work described in this Exhibit A-1 constructed under this Agreement at its own cost and expense during its useful life.**

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EXHIBIT B-1

SAMPLE IGA OPTION LETTER

Date	State Fiscal Year	Option Letter No.
Project Code	**Original Agreement #**	

Vendor Name:

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous and to update encumbrance amount(s).

Option to unilaterally transfer funds from one phase to another phase.

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous, to update encumbrance amount(s), and to unilaterally transfer funds from one phase to another phase.

Option to unilaterally extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify OMB Guidance.

Option A

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to authorize the Local Agency to add a phase and to encumber funds for the phase based on changes in funding availability and authorization. The total encumbrance is (or increased) by $0.00. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option B

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to transfer funds based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option C

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to 1) release the Local Agency to begin a phase; 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from phases based on variance in actual phase costs and

original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option D

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. This is made part of the original Agreement and replaces the Expiration Date shown on the Signature and Cover Page. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.).

The effective date of this option letter is upon approval of the State Controller or delegate.

STATE OF COLORADO
Jared S. Polis
Department of Transportation

By:_____
Keith Stefanik, P.E., Chief Engineer
(For) Shoshana M. Lew, Executive Director

Date: _____

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

STATE OF COLORADO
STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Colorado Department of Transportation

Date:_____

EXHIBIT C-2 - FUNDING PROVISIONS

City of Fort Collins - MTF M455-138 (23934)

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work to be $3,964,496.00, which is to be funded as follows:

1. FUNDING

a. Federal Funds ARPA **US Treasury Expenditure Category EC6** (50% of MMO-ARPA Award)	$1,232,248.00
b. Local Agency Funds (50% of MMO-ARPA Award)	$1,232,248.00
c. State Funds (50% of MMOF Award)	$750,000.00
d. Local Agency Funds (50% of MMOF Award)	$750,000.00
TOTAL FUNDS ALL SOURCES	**$3,964,496.00**

2. OMB UNIFORM GUIDANCE

a.	Federal Award Identification Number (FAIN):	TBD
b.	Name of Federal Awarding Agency:	USDT
c.	Local Agency Unique Entity Identifier	VEJ3BS5GK5G1
d.	Assistance Listing # Coronavirus State and Local Fiscal Recovery Funds	ALN 21.027
e.	Is the Award for R&D?	No
f.	Indirect Cost Rate (if applicable)	N/A
g.	Amount of Federal Funds Obligated by this Action:	$0.00
h.	Amount of Federal Funds Obligated to Date (including this Action):	$0.00

3. ESTIMATED PAYMENT TO LOCAL AGENCY

a.	ARPA Funds Budgeted		$1,232,248.00
b.	State Funds Budgeted		$750,000.00
c.	Less Estimated Federal Share of CDOT-Incurred Costs		$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY		**50%**	**$1,982,248.00**
TOTAL ESTIMATED FUNDING BY LOCAL AGENCY		**50%**	**$1,982,248.00**
TOTAL PROJECT ESTIMATED FUNDING		**100.00%**	**$3,964,496.00**

4. FOR CDOT ENCUMBRANCE PURPOSES

MMO-ARPA Funds

a.	Total Encumbrance Amount (Only ARPA funds are encumbered)	$1,232,248.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109	$0.00

MMOF State Funds

a.	Total Encumbrance Amount (Only State funds are encumbered)	$750,000.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109	$0.00

NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS **$1,982,248.00**

Note: Only $750,000.00 in Design funds are currently available. Additional Design and Construction funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.

MMO-ARPA Funds

WBS Element 23934.10.30	Performance Period Start*/End Date TBD-TBD	Design	3020	$0.00
WBS Element 23934.20.10	Performance Period Start*/End Date TBD-TBD	Const.	3301	$0.00
MMOF State Funds				
WBS Element 23934.10.30	Performance Period Start**/End Date N/A- N/A	Design	3020	$750,000.00
WBS Element 23934.20.10	Performance Period Start**/End Date N/A- N/A	Const.	3301	$0.00

* For MMO-ARPA Funds the Local Agency should not begin work until all three (3) of the following are in place: 1) Phase Performance Period Start Date; 2) the execution of the document encumbering funds for the respective phase; and 3) Local Agency receipt of the official Notice to Proceed. Any work performed these three (3) milestones are achieved will not be reimbursable.

**For MMOF State Funds the Local Agency should not begin work until both of the following are in place: 1) the execution of the document encumbering funds for the respective phase; and 2) Local Agency receipt of the official Notice to Proceed. Any work performed before these two (2) milestones are achieved will not be reimbursable

B. Funding Ratios

The funding ratio for the federal & State funds for this Work is 50% federal & State funds to 50% Local Agency funds, and this ratio applies only to the $3,964,496.00 that is eligible for federal & State funding. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds $3,964,496.00, and additional federal & State funds are not available, the Local Agency shall pay all such excess costs. If the total cost of performance of the Work is less than $3,964,496.00, then the amounts of Local Agency and federal & State funds will be decreased in accordance with the funding ratio described in **A1**. **This applies to the entire scope of Work.**

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be $1,982,248.00. For CDOT accounting purposes, the MMO-ARPA funds of $1,232,248.00 and State MMOF funds of $750,000.00 will be encumbered, but the Local Agency funds of $1,982,248.00 will NOT be encumbered. The total budget of this project is $3,964,496.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the State funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 6 of this contract. **This applies to the entire scope of Work. ARPA Funds can only originate from and after May 18, 2021.**

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving $750,000 or more from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of 2 CFR part 200, subpart F (Audit Requirements) see also, 49 CFR 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. **Expenditure less than $750,000**
If the Local Agency expends less than $750,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. **Expenditure of $750,000 or more-Highway Funds Only**
If the Local Agency expends $750,000 or more, in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. **Expenditure of $750,000 or more-Multiple Funding Sources**

If the Local Agency expends $750,000 or more in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

EXHIBIT D-1

LOCAL AGENCY RESOLUTION (IF APPLICABLE)

EXHIBIT E

LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST

COLORADO DEPARTMENT OF TRANSPORTATION

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

Project No.	STIP No.	Project Code	Region
MTF M455-138	**SR47007.024**	**23934**	**04**

Project Location	Date
West Elizabeth Corridor	**02/06/2023**

Project Description
Corridor transit, bicycle, and pedestrian improvements

Local Agency	Local Agency Project Manager
City of Fort Collins	**Spencer M. Smith**
CDOT Resident Engineer	CDOT Project Manager
Bryce Reeves	**Jake ONeal**

INSTRUCTIONS:
This checklist shall be used to establish the contractual administrative responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency Agreement. Section numbers (NO.) correspond to the applicable chapters of the *CDOT Local Agency Desk Reference (Local Agency Manual).* LAWR numbers correspond to the applicable flowchart in the Local Agency Web Resource.

The checklist shall be prepared by placing an X under the responsible party, opposite each of the tasks. The X denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, # will denote that CDOT must concur or approve.

Tasks that will be performed by Headquarters staff are indicated with an X in the CDOT column under Responsible Party. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.

The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.

Note:
Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	RESPONSIBLE PARTY CDOT
		TIP / STIP AND LONG-RANGE PLANS		
	2.1	Review Project to ensure it is consistent with Statewide Plan and amendments thereto		x
		FEDERAL FUNDING OBLIGATION AND AUTHORIZATION		
	4.1	Authorize funding by phases (Requires FHWA concurrence/involvement if Federal-aid Highway funded project.). *Please write in "NA", if Not Applicable.*		x
		PROJECT DEVELOPMENT		
1	5.1	Prepare Design Data - CDOT Form 463	X	#
	5.2	Determine Delivery Method	X	#
	5.3	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		x
2	5.4	Conduct Consultant Selection/Execute Consultant Agreement • Project Development • Construction Contract Administration (including Fabrication Inspection Services)	 X X	 # #
3,3A	5.5	Conduct Design Scoping Review Meeting	X	#
3,6	5.6	Conduct Public Involvement (If required)	X	#

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
3	5.7	Conduct Field Inspection Review (FIR)	X	#
4	5.8	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	#
5	5.9	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	#
3	5.10	Obtain Utility and Railroad Agreements	X	#
3	5.11	Conduct Final Office Review (FOR)	X	#
3A	5.12	Justify Force Account Work by the Local Agency	X	#
3B	5.13	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	#
3	5.14	Document Design Exceptions - CDOT Form 464	X	#
	5.15	Seek Permission for use of Guaranty and Warranty Clauses	X	#
3	5.18	Prepare Plans, Specifications, Construction Cost Estimates and Submittals	X	#
	5.19	Comply with Requirements for Off-and On-System Bridges & Other Structural Work	X	#
	5.20	Update Approvals on PS&E Package if Project Schedule Delayed	X	#
	5.21	Ensure Authorization of Funds for Construction	#	x
	5.22	Use Electronic Signatures	X	X
	5.23	File Project Development Records/Documentation in ProjectWise	#	x
	PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
3	6.1	Set Disadvantaged Business Enterprise (DBE) Goals for Consultant and Construction Contracts (CDOT Region Civil Rights Office).	#	x
	6.2	Determine Applicability of Davis-Bacon Act This project ☐ is ■ is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) **Bryce Reeves** **2/6/2023** CDOT Resident Engineer Date		x
	6.3	Set On-the-Job Training Goals (CDOT Region Civil Rights Office) *"NA", if Not Applicable*	#	x
	6.4	Enforce Prompt Payment Requirements	X	#
	6.5	Use Electronic Tracking and Submission Systems – B2GNow ☐ LCPtracker ☐	X	#
3	6.6	Prepare/submit Title VI Plan and Incorporate Title VI Assurances	X	#
6,7		Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)	X	#
	ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS Federal Project (use 7.1 series in Chapter 7) ■ Non-Federal Project (Use 7.2 series in Chapter 7) ☐			
6,7		Obtain Approval for Advertisement Period of Less Than Three Weeks;	X	#
7		Advertise for Bids	X	#
7		Concurrence to Advertise	#	X
7		Distribute “Advertisement Set” of Plans and Specifications	X	#
7		Review Worksite & Plan Details w/ Prospective Bidders While Project Is Under Ad	X	
7		Open Bids	X	
7		Process Bids for Compliance		
		Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets DBE goals. (*Please write in "NA", if Not Applicable)*		x
		Evaluate CDOT Form 1416 - Good Faith Effort Report and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals. *"NA", if Not Applicable.*		x
		Submit required documentation for CDOT award concurrence	X	
		Concurrence from CDOT to Award		x
		Approve Rejection of Low Bidder		x
7,8		Award Contract (federal)	X	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
8		Provide "Award" and "Record" Sets of Plans and Specifications (federal)	X	
	CONSTRUCTION MANAGEMENT			
8	Intro	File Project Construction Records/Documentation in ProjectWise or as directed	x	
8	8.1	Issue Notice to Proceed to the Contractor	X	#
8	8.2	Project Safety	X	
8	8.3	Conduct Conferences:		
		Pre-construction Conference (Appendix B) • Fabrication Inspection Notifications	X X	#
		Pre-survey • Construction staking • Monumentation	X X X	
		Partnering (Optional)	X	
		Structural Concrete Pre-Pour (Agenda is in *CDOT Construction Manual*) *(if applicable)*	X	
		Concrete Pavement Pre-Paving (Agenda is in *CDOT Construction Manual*) *(if applicable)*	X	
		HMA Pre-Paving (Agenda is in *CDOT Construction Manual*) *(if applicable)*	X	
8	8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
9	8.5	Supervise Construction		
		A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." **Timothy Sellers** — **(970) 280-6926** Local Agency Professional Engineer or CDOT Resident Engineer — Phone number	X	
		Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
		Construction inspection and documentation (including projects with structures)	X	#
		Fabrication Inspection and documentation (if applicable)	X	
9	8.6	Review and Approve Shop Drawings	X	
9	8.7	Perform Traffic Control Inspections	X	#
9	8.8	Perform Construction Surveying	X	
9	8.9	Monument Right-of-Way	X	#
9,9A	8.10	Prepare and Approve Interim and Final Contractor Pay Estimates. Collect and review CDOT Form 1418 (or equivalent) or use compliance software system. Provide the name and phone number of the person authorized for this task. **Timothy Sellers** — **(970) 280-6926** Local Agency Representative — Phone number	X	
9	8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	
9B	8.12	Prepare and Authorize Change Orders	x	#
9B	8.13	Submit Change Order Package to CDOT	x	
9A	8.14	Prepare Local Agency Reimbursement Requests	x	
9	8.15	Monitor Project Financial Status	X	
9	8.16	Prepare and Submit Monthly Progress Reports	X	
9	8.17	Resolve Contractor Claims and Disputes	X	
	8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. **Bryce Reeves** — **970.350.2126** CDOT Resident Engineer — Phone number		x
9	8.19	Ongoing Oversight of DBE Participation	x	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
	MATERIALS			
9,9C	9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel	X	
9,9C	9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	 X X	X
9C	9.3	Perform Project Acceptance Samples and Tests	X	
9C	9.4	Perform Laboratory Acceptance Tests	X	
9C	9.6	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X X	
9C	9.6	Approve Sources of Materials	X	
9C	9.7	Independent Assurance Testing (IAT) Local Agency Procedures ☐ CDOT Procedures ☒ • Generate IAT schedule • Schedule and provide notification • Conduct IAT	 X X	 X
9C	9.8	Approve mix designs • Concrete • Hot mix asphalt	 X X	 # #
9C	9.9	Check Final Materials Documentation	X	#
9C	9.10	Complete and Distribute Final Materials Documentation	X	#
	CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
9	10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
8,9	10.2	Process CDOT Form 205 - Sublet Permit Application and CDOT Form 1425 – Supplier Application Approval Request. Review & sign completed forms, or review/approve in compliance software system, as applicable, & submit to Region Civil Rights Office.	X	#
9	10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
9	10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	X	
9	10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. • Complete CDOT Form 1337 – Contractor Commitment to Meet OJT Requirements. • Complete CDOT Form 838 – OJT Trainee / Apprentice Record. • Complete CDOT Form 200 - OJT Training Questionnaire	 X X X	
9	10.6	Check Certified Payrolls (Contact the Region Civil Rights Office for training reqmts.)	X	#
9	10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
	10.8	Contract Compliance and Project Site Reviews		x
	FINALS			
	11.1	Conduct Final Project Inspection & Final Inspection of Structures, if applicable		x
10	11.2	Write Final Project Acceptance Letter	X	
10	11.3	Advertise for Final Settlement	X	
11	11.4	Prepare and Distribute Final As-Constructed Plans	X	
11	11.5	Prepare EEO Certification and Collect EEO Forms	X	
11	11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	#

LA WK	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
11	11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	#
	11.8	Review CDOT Form 1419		x
	11.9	Submit CDOT Professional Services Closeout Report Form	X	
	11.10	Complete and Submit CDOT Form 1212 LA – Final Acceptance Report (by CDOT)		x
11	11.11	Process Final Payment	X	#
	11.12	Close out Local Project	x	
	11.13	Complete and Submit CDOT Form 950 - Project Closure		x
11	11.14	Retain Project Records	X	
11	11.15	Retain Final Version of Local Agency Contract Administration Checklist	X	

cc: CDOT Resident Engineer/Project Manager
CDOT Region Program Engineer
CDOT Region Civil Rights Office
CDOT Region Materials Engineer
CDOT Contracts and Market Analysis Branch
Local Agency Project Manager

EXHIBIT F

CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such sub-recipients shall certify and disclose accordingly.

EXHIBIT G

DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal fundsunder this agreement, pursuant to 49 CFR Part 26. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) applyto this agreement.

SECTION 2. DBE Obligation.

The recipient or the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in theperformance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOTDBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

SECTION 3 DBE Program.

The Local Agency (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program ofthe Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the Local Agency

upon request: BusinessPrograms Office

Colorado Department of Transportation

2829 West Howard PlaceDenver,

Colorado 80204

Phone: (303) 757-9007

REQUIRED BY 49 CFR
PART 26

EXHIBIT H

LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded Local Agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states "The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost" and according to 23 CFR 172.5 "Price shall not be used as a factor in the analysis and selection phase." Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a Local Agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting Local Agency shall document the need for obtaining professional services.

2. Prior to solicitation for consultant services, the contracting Local Agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.

3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.

4. The Local Agency shall not advertise any federal aid contract without prior review by the CDOT Regional Civil Rights Office (RCRO) to determine whether the contract shall be subject to a DBE contract goal. If the RCRO determines a goal is necessary, then the Local Agency shall include the goal and the applicable provisions within the advertisement. The Local Agency shall not award a contract to any Contractor or Consultant without the confirmation by the CDOT Civil Rights and Business Resource Center that the Contractor or Consultant has demonstrated good faith efforts. The Local Agency shall work with the CDOT RCRO to ensure compliance with the established terms during the performance of the contract.

5. The Local Agency shall require that all contractors pay subcontractors for satisfactory performance of work no later than 30 days after the receipt of payment for that work from the contractor. For construction projects, this time period shall be reduced to seven days in accordance with Colorado Revised Statute 24-91-103(2). If the Local Agency withholds retainage from contractors and/or allows contractors to withhold retainage from subcontractors, such retainage provisions must comply with 49 CFR 26.29.

6. Payments to all Subconsultants shall be made within thirty days of receipt of payment from [the Local Agency] or no later than ninety days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify [the Local Agency] no later than the required date for payment. Such notification shall include the amount disputed and justification for the withholding. The Consultant shall maintain records of payment that show amounts paid to all Subconsultants. Good cause does not include the Consultant's failure to submit an invoice to the Local Agency or to deposit payments made.

7. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

a. Qualifications,

b. Approach to the Work,

c. Ability to furnish professional services.

d. Anticipated design concepts, and

e. Alternative methods of approach for furnishing the professional services. Evaluation factors for final selection are the consultant's:

a. Abilities of their personnel,

b. Past performance,

c. Willingness to meet the time and budget requirement,

d. Location,

e. Current and projected work load,

f. Volume of previously awarded contracts, and

g. Involvement of minority consultants.

8. Once a consultant is selected, the Local Agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than $50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.

9. A qualified Local Agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the Local Agency prepares a performance evaluation (a CDOT form is available) on the consultant.

CRS §§24-30-1401 THROUGH 24-30-1408, 23 CFR PART 172, AND P.D. 400.1, PROVIDE ADDITIONAL DETAILS FOR COMPLYING WITH THE PRECEEDING EIGHT (8) STEPS.

EXHIBIT I

FEDERAL-AID CONTRACT PROVISIONS FOR CONSTRUCTION CONTRACTS

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (*see* 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
(1) Withholding monthly progress payments;
(2) Assessing sanctions;
(3) Liquidated damages; and/or
(4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than $10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 “Contract provisions and related matters” with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding (29 CFR 5.5)

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records (29 CFR 5.5)

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or

subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees (29 CFR 5.5)

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility (29 CFR 5.5)

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1 of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section. 29 CFR 5.5.

* $27 as of January 23, 2019 (See 84 FR 213-01, 218) as may be adjusted annually by the Department of Labor; pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990).

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section. 29 CFR 5.5.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term “perform work with its own organization” in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
(2) the prime contractor remains responsible for the quality of the work of the leased employees;
(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance

with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of $150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.326.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.326.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1**. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. “First Tier Covered Transactions” refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant

who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (https://www.sam.gov/). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is

submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (https://www.sam.gov/), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(b) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(c) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier

subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B) This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXHIBIT J

ADDITIONAL FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of $10,000 by the Local Agencies and their contractors or the Local Agencies).

Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers).

Clean Air Act

Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts more than $100,000).

Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally assisted programs.

Nondiscrimination

The Local Agency shall not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color national origin, sex, age or disability. Prior to the receipt of any Federal financial assistance from CDOT, the Local Agency shall execute the attached Standard DOT Title VI assurance. As appropriate, the Local Agency shall include Appendix A, B, or C to the Standard DOT Title VI assurance in any contract utilizing federal funds, land, or other aid. The Local Agency shall also include the following in all contract advertisements:

> *The [Local Agency], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (79 Stat. 252, 42 US.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, DBEs will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for any award.*

ADA

In any contract utilizing federal funds, land, or other federal aid, the Local Agency shall require the federal-aid recipient or contractor to provide a statement of written assurance that they will comply with Section 504 and not discriminate on the basis of disability.

Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et. seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees, and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions §22

The Contractor will include the provisions of this Exhibit J in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

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SAMPLE

The United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination

Assurances for Local Agencies

DOT Order No. 1050.2A

The [Local Agency] (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Colorado Department of Transportation and the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

> *"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, "for which the Recipient receives Federal financial assistance from DOT, including the FHWA, FTA, or FAA.*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non- discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FHWA, FTA, and FAA assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated or will be (with regard to a "facility") operated or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests for Proposals for work, or material subject to the Acts and the Regulations made in connection with all FHWA, FTA and FAA programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:
3. "The [Local Agency] in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 US.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity

4. to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."
5. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.

6. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

7. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.

8. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.

9. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

    a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
    b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

10. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:

    a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
    b. the period during which the Recipient retains ownership or possession of the property.

11. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.

12. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the [Local Agency] also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA, FTA, and FAA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigationsconducted by CDOT, FHWA, FTA, or FAA. You must keep records, reports, and submit the material for review

upon request to CDOT, FHWA, FTA, or FAA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

[Local Agency] gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FHWA, FTA, and FAA. This ASSURANCE is binding on [Local Agency], other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FHWA, FTA, and FAA funded programs. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

_____

(***Name of Recipient***)

by_____

(***Signature of Authorized Official***)

DATED_____

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations**: The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, FHWA, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination**: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment**: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports**: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the [Local Agency], CDOT or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the [Local Agency], CDOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance**: In the event of a contractor's noncompliance with the non-discrimination provisions of this contract, the [Local Agency] will impose such contract sanctions as it, CDOT or FHWA may determine to be appropriate, including, but not limited to:

   a. withholding payments to the contractor under the contract until the contractor complies; and/or
   b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions**: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the [Local Agency], CDOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the [Local Agency] will accept title to the lands and maintain the project constructed thereon in accordance with (***Name of Appropriate Legislative Authority***), the Regulations for the Administration of (***Name of Appropriate Program***), and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the [Local Agency] all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto [Local Agency] and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the [Local Agency] its successors and assigns.

The [Local Agency], in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the [Local Agency] will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the [Local Agency] pursuant to the provisions of Assurance 7(a):

A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

    1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued. *

C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the [Local Agency] will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the [Local Agency] and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by [Local Agency] pursuant to the provisions of Assurance 7(b):

A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non- discrimination covenants, [Local Agency] will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued. *

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will there upon revert to and vest in and become the absolute property of [Local Agency] of Transportation and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination onthe basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601),(prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis ofsex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on thebasis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, orsex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability ofTitle VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all ofthe programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation,and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

EXHIBIT K

FFATA SUPPLEMENTAL FEDERAL PROVISIONS

State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. **Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. **"Award"** means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

1.1.1. Grants;
1.1.2. Contracts;
1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
1.1.4. Loans;
1.1.5. Loan Guarantees;
1.1.6. Subsidies;
1.1.7. Insurance;
1.1.8. Food commodities;
1.1.9. Direct appropriations;
1.1.10. Assessed and voluntary contributions; and
1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award ***does not*** include:

1.1.12. Technical assistance, which provides services in lieu of money;
1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
1.1.14. Any award classified for security purposes; or
1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

1.2. **"Contract"** means the contract to which these Supplemental Provisions are attached and includes all Award types in **§1.1.1** through **1.1.11** above.

1.3. **"Contractor"** means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

1.4. **"Data Universal Numbering System (DUNS) Number"** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet's website may be found at: http://fedgov.dnb.com/webform.

1.5. **"Entity"** means all of the following as defined at 2 CFR part 25, subpart C;

1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
1.5.2. A foreign public entity;
1.5.3. A domestic or foreign non-profit organization;

1.5.4. A domestic or foreign for-profit organization; and

1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.

1.6. **"Executive"** means an officer, managing partner or any other employee in a management position.

1.7. **"Federal Award Identification Number (FAIN)"** means an Award number assigned by a Federal agency to a Prime Recipient.

1.8. **"FFATA"** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109- 282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the "Transparency Act."

1.9. **"Prime Recipient"** means a Colorado State agency or institution of higher education that receives an Award.

1.10. **"Subaward"** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient's support in the performance of all or any portion of the substantive project or program for which the Award was granted.

1.11. **"Subrecipient"** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term "Subrecipient" includes and may be referred to as Subgrantee.

1.12. **"Subrecipient Parent DUNS Number"** means the subrecipient parent organization's 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient's System for Award Management (SAM) profile, if applicable.

1.13. **"Supplemental Provisions"** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.

1.14. **"System for Award Management (SAM)"** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at http://www.sam.gov.

1.15. **"Total Compensation"** means the cash and noncash dollar value earned by an Executive during the Prime Recipient's or Subrecipient's preceding fiscal year and includes the following:

1.15.1. Salary and bonus;

1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;

1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;

1.15.4. Change in present value of defined benefit and actuarial pension plans;

1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;

1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds $10,000.

1.16. "**Transparency Act**" means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.

1.17 "Vendor" means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**

   3.1. SAM. Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.

   3.2. DUNS. Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.

4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

   4.1. The total Federal funding authorized to date under the Award is $25,000 or more; and

   4.2. In the preceding fiscal year, Contractor received:

      4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

      4.2.2. $25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

   4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in **§2** above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at http://www.colorado.gov/dpa/dfp/sco/FFATA.htm.

6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is $25,000 or more. If the initial Award is below $25,000 but subsequent Award modifications result in a total Award of $25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds $25,000. If the initial Award is $25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below $25,000, the Award shall continue to be subject to the reporting requirements.

7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

7.1 **To SAM.** A Subrecipient shall register in SAM and report the following data elements in SAM ***for each*** Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

7.1.1 Subrecipient DUNS Number;

7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;

7.1.3 Subrecipient Parent DUNS Number;

7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

7.1.5 Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

7.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

7.2 **To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following dataelements:

7.2.1 Subrecipient's DUNS Number as registered in **SAM**.

7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

8.2 A Contractor with gross income from all sources of less than $300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

8.3 Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.

8.4 There are no Transparency Act reporting requirements for Vendors.

Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

EXHIBIT L

SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT

CDOT SUBRECIPIENT RISK ASSESSMENT	Date:	
Name of Entity (Subrecipient):		
Name of Project / Program:		
Estimated Award Period:		
Entity Executive Director or VP:		
Entity Chief Financial Officer:		
Entity Representative for this Self Assessment:		

Instructions: (See "Instructions" tab for more information) *1. Check only one box for each question. All questions are required to be answered.* *2. Utilize the "Comment" section below the last question for additional responses.* *3. When complete, check the box at the bottom of the form to authorize.*	Yes	No	N/A
EXPERIENCE ASSESSMENT	**Yes**	**No**	**N/A**
1 Is your entity new to operating or managing federal funds (has not done so within the past three years)?	☐	☐	
2 Is this funding program new for your entity (managed for less than three years)? *Examples of funding programs include CMAQ, TAP, STP-M, etc.*	☐	☐	
3 Does your staff assigned to the program have at least three full years of experience with this federal program?	☐	☐	
MONITORING/AUDIT ASSESSMENT	**Yes**	**No**	**N/A**
4 Has your entity had an on-site project or grant review from an external entity *(e.g., CDOT, FHWA)* within the last three years?	☐	☐	☐
5 a) Were there non-compliance issues in this prior review?	☐	☐	☐
b) What were the number and extent of issues in prior review?	☐ *1 to 2*	☐ *>3*	☐
OPERATION ASSESSMENT	**Yes**	**No**	**N/A**
6 Does your entity have a time and effort reporting system in place to account for 100% of all employees' time, that can provide a breakdown of the actual time spent on each funded project? *If No, in the comment section please explain how you intend to document 100% of hours worked by employees and breakdown of time spent on each funding project.*	☐	☐	
FINANCIAL ASSESSMENT	**Yes**	**No**	**N/A**
7 a) Does your entity have an indirect cost rate that is approved and current?	☐	☐	
b) If Yes, who approved the rate, and what date was it approved?			
8 Is this grant/award 10% or more of your entity's overall funding?	☐ *>10%*	☐ *<10%*	
9 Has your entity returned lapsed* funds? **Funds "lapse" when they are no longer available for obligation.*	☐	☐	☐
10 Has your entity had difficulty meeting local match requirements in the last three years?	☐	☐	☐
11 What is the total federal funding your entity has been awarded for the last federal fiscal year, and what is your entity's fiscal year end?			

INTERNAL CONTROLS ASSESSMENT		Yes	No	N/A
12	Has your entity had any significant changes in key personnel or accounting system(s) in the last year? *(e.g., Controller, Exec Director, Program Mgr, Accounting Mgr, etc.) If Yes, in the comment section, please identify the accounting system(s), and / or list personnel positions and identify any that are vacant.*	☐	☐	☐
13	Does your entity have financial procedures and controls in place to accommodate a federal-aid project?	☐	☐	
14	Does your accounting system identify the receipts and expenditures of program funds separately for each award?	☐	☐	
15	Will your accounting system provide for the recording of expenditures for each award by the budget cost categories shown in the approved budget?	☐	☐	
16	Does your agency have a review process for all expenditures that will ensure that all costs are reasonable, allowable and allocated correctly to each funding source? *If Yes, in the comment section, please explain your current process for reviewing costs.*	☐	☐	☐
17	How many total FTE perform accounting functions within your organization?	☐ ≥6	☐ 2 to 5	☐ < 2
IMPACT ASSESSMENT		**Yes**	**No**	**N/A**
18	For this upcoming federal award or in the immediate future, does your entity have any potential conflicts of interest* in accordance with applicable Federal awarding agency policy? *If Yes, please disclose these conflicts in writing, along with supporting information, and submit with this form. (*Any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Subrecipient's obligations to the State.)*	☐	☐	
19	For this award, has your entity disclosed to CDOT, in writing, violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award? *Response options:* ***YES** = Check if have one or more violation(s) and have either disclosed previously to CDOT or as part of this form. In the comment section, list all violations with names of supporting documentation and submit with this form.* ***NO** = Check if have one or more violation(s) and have not disclosed previously or will not disclose as part of this form. Explain in the comment section.* ***N/A** = Check if have no violations.*	☐	☐	☐
PROGRAM MANAGEMENT ASSESSMENT		**Yes**	**No**	**N/A**
20	Does your entity have a written process/procedure or certification statement approved by your governing board ensuring critical project personnel are capable of effectively managing Federal-aid projects? *If Yes, please submit with this form.*	☐	☐	☐
21	Does your entity have written procurement policies or certification statement for consultant selection approved by your governing board in compliance with 23 CFR 172*? *If Yes, please submit with this form. (*The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications, at a fair and reasonable price.)*	☐	☐	☐
22	a) Is your staff familiar with the relevant CDOT manuals and federal program requirements?	☐	☐	☐
	b) Does your entity have a written policy or a certification statement approved by your governing board assuring federal-aid projects will receive adequate inspections? *If Yes, please submit with this form.*	☐	☐	☐
	c) Does your entity have a written process or a certification statement approved by your governing board assuring a contractor's work will be completed in conformance with approved plans and specifications? *If Yes, please submit with this form.*	☐	☐	☐

	d) Does your entity have a written policy or certification statement approved by your governing board assuring that materials installed on the projects are sampled and tested per approved processes. *If Yes, please submit with this form.*	☐	☐	☐
	e) Does your entity have a written policy or certification statement approved by your governing board assuring that only US manufactured steel will be incorporated into the project *(Buy America requirements)? If Yes, please submit with this form.*	☐	☐	☐

***Comments** - As needed, include the question number and provide comments related to the above questions. Insert additional rows as needed.*

☐ ***By checking this box, the Executive Director, VP or Chief Financial Officer of this entity certifies that all information provided on this form is true and correct.***

Tool Version: v2.0 (081816)

EXHIBIT M

OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS

Subject to
The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and AuditRequirements for Federal Awards ("Uniform Guidance"),
Federal Register, Vol. 78, No. 248, 78590

The agreement to which these Uniform Guidance Supplemental Provisions are attached has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the agreement or any attachments or exhibits incorporated into and made a part of the agreement, the provisions of these Uniform Guidance Supplemental Provisions shall control. In the event of a conflict between the provisions of these Supplemental Provisions and the FFATA Supplemental Provisions, the FFATA Supplemental Provisions shall control.

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meaningsascribed to them below.

1.1. "Award" means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditionsof the Federal Award specifically indicate otherwise. 2 CFR §200.38

1.2. "Federal Award" means an award of Federal financial assistance or a cost-reimbursement contract underthe Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. "Federal Award"also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

1.3."Federal Awarding Agency" means a Federal agency providing a Federal Award to a Recipient. 2CFR §200.37

1.4. "FFATA" means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.

1.5. "Grant" or "Grant Agreement" means an agreement setting forth the terms and conditions of an Award. The term does not include an agreement that provides only direct Federal cash assistance to an individual,a subsidy, a loan, a loan guarantee, insurance, or acquires property or services for the direct benefit of use of the Federal Awarding Agency or Recipient. 2 CFR§200.51.

1.6. "OMB" means the Executive Office of the President, Office of Management and Budget.

1.7. "Recipient" means a Colorado State department, agency or institution of higher education that receives a Federal Award from a Federal Awarding Agency to carry out an activity under a Federal program. The term does not include Subrecipients. 2 CFR §200.86

1.8. "State" means the State of Colorado, acting by and through its departments, agencies and institutions ofhigher education.

1.9. "Subrecipient" means a non-Federal entity receiving an Award from a Recipient to carry out part of aFederal program. The term does not include an individual who is a beneficiary of such program.

1.10. "Uniform Guidance" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A- 133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

1.11. "Uniform Guidance Supplemental Provisions" means these Supplemental Provisions for Federal Awards subject to the OMB Uniform Guidance, as may be revised pursuant to ongoing guidance from relevant Federal agencies or the Colorado State Controller.

2. Compliance. Subrecipient shall comply with all applicable provisions of the Uniform Guidance, including but notlimited to these Uniform Guidance Supplemental Provisions. Any revisions to such provisions automatically shall become a part of these Supplemental Provisions, without the necessity of either partyexecuting any further instrument. The State of Colorado may provide written notification to Subrecipient of suchrevisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

3. Procurement Standards.

3.1 Procurement Procedures. Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation,

§§200.318 through 200.326 thereof.

3.2 Procurement of Recovered Materials. If Subrecipient is a State Agency or an agency of a politicalsubdivision of a state, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in theEPA guidelines.

4. Access to Records. Subrecipient shall permit Recipient and auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).

5. Single Audit Requirements. If Subrecipient expends $750,000 or more in Federal Awards during Subrecipient's fiscal year, Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant tothe Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.

5.1 Election. Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514(Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Recipient. A program-specific audit may not be electedfor research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.

5.2 Exemption. If Subrecipient expends less than $750,000 in Federal Awards during its fiscal year, Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government

Accountability Office.

5.3 Subrecipient Compliance Responsibility. Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by UniformGuidance Part F-Audit Requirements.

6. Contract Provisions for Subrecipient Contracts. Subrecipient shall comply with and shall include all of thefollowing applicable provisions in all subcontracts entered into by it pursuant to this Grant Agreement.

6.1 Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

"During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments

under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice inconspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965,and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuantthereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled,

terminated or suspendedin whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided bylaw.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuantto section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction,the contractor may request the United States to enter into such litigation to protect the interests of the United States."

6.2 Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractorsmust be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination.The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40

U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is other wise entitled.

The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

6.3 Rights to Inventions Made Under a Contract or Agreement. If the Federal Award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," Subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6.4 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251- 1387), as amended. Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Actas amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection

Agency (EPA).

6.5 Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220)must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAMExclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well asparties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

6.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, oran employee of a member of Congress in connection with obtaining any Federal contract, grant or any otheraward covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non- Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

7. Certifications. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2CFR §200.208.Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level ofactivity or effort was not carried out, the amount of the Award must be adjusted.

7.1 Event of Default. Failure to comply with these Uniform Guidance Supplemental Provisions shall constitute anevent of default under the Grant Agreement (2 CFR §200.339) and the State may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

8. Effective Date. The effective date of the Uniform Guidance is December 26, 2013. 2 CFR §200.110. The procurement standards set forth in Uniform Guidance §§200.317-200.326 are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in Uniform Guidance Subpart F-Audit Requirements are applicable to audits of fiscal years beginning on or after December 26, 2014.

9. Performance Measurement. The Uniform Guidance requires completion of OMB-approved standard information collection forms (the PPR). The form focuses on outcomes, as related to the Federal Award Performance Goals that awarding Federal agencies are required to detail in the Awards.

Section 200.301 provides guidance to Federal agencies to measure performance in a way that will help theFederal awarding agency and other non-Federal entities to improve program outcomes.

The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones (200.210). Also, must require the recipient to relate financial data to performance accomplishments of the Federal award.

Exhibit N

Federal Treasury Provisions

1. APPLICABILITY OF PROVISIONS.

1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.

1.2. The State of Colorado is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's Final Rule, and reporting requirements, as applicable.

1.3. Additionally, any subrecipient that issues a subaward to another entity (2nd tier subrecipient), must hold the 2nd tier subrecipient accountable to these provisions and adhere to reporting requirements.

1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

2. DEFINITIONS.

2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.

2.1.1. "Award" means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.

2.1.2. "Data Universal Numbering System (DUNS) Number" means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet's website may be found at: http://fedgov.dnb.com/webform.

2.1.3. "Entity" means:

2.1.3.1. a Non-Federal Entity;

2.1.3.2. a foreign public entity;

2.1.3.3. a foreign organization;

2.1.3.4. a non-profit organization;

2.1.3.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);

2.1.3.6. a foreign non-profit organization (only for 2 CFR part 170) only);

2.1.3.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or

2.1.3.8. a foreign for-profit organization (for 2 CFR part 170 only).

2.1.4. "Executive" means an officer, managing partner or any other employee in a management position.

2.1.5. "Expenditure Category (EC)" means the category of eligible uses as defined by the US Department of Treasury in "Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

2.1.6. "Federal Awarding Agency" means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1

2.1.7. "Grant" means the Grant to which these Federal Provisions are attached.

2.1.8. "Grantee" means the party or parties identified as such in the Grant to which these Federal Provisions are attached.

2.1.9. "Non-Federal Entity means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.

2.1.10. "Nonprofit Organization" means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

2.1.10.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

2.1.10.2. Is not organized primarily for profit; and

2.1.10.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.

2.1.11. "OMB" means the Executive Office of the President, Office of Management and Budget.

2.1.12. "Pass-through Entity" means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.

2.1.13. "Prime Recipient" means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.

2.1.14. "Subaward" means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program.

2.1.15. "Subrecipient" or "Subgrantee" means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program.

2.1.16. "System for Award Management (SAM)" means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at http://www.sam.gov. "Total Compensation" means the cash and noncash dollar value earned by an Executive during the Prime Recipient's or Subrecipient's preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:

2.1.16.1. Salary and bonus;

2.1.16.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;

2.1.16.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;

2.1.16.4. Change in present value of defined benefit and actuarial pension plans;

2.1.16.5. Above-market earnings on deferred compensation which is not tax-qualified;

2.1.16.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds $10,000.

2.1.17. "Transparency Act" means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.

2.1.18. "Uniform Guidance" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

3. COMPLIANCE.

3.1. Grantee shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all applicable provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado, at its discretion, may provide written notification to Grantee of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

3.2. Per US Treasury Final Award requirements, grantee programs or services must not include a term or conditions that undermines efforts to stop COVID-19 or discourages compliance with recommendations and CDC guidelines.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REQUIREMENTS.

4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.

4.2. DUNS. Grantee shall provide its DUNS number to its Prime Recipient, and shall update Grantee's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Grantee's information.

5. TOTAL COMPENSATION.

5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

5.1.1. The total Federal funding authorized to date under the Award is $30,000 or more; and

5.1.2. In the preceding fiscal year, Grantee received:

5.1.2.1. 80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

5.1.2.2. $30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

5.1.2.3. 5.1.2.3 The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

6.1. If Grantee is a Subrecipient of the Award pursuant to the Transparency Act, Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is $30,000 or more. If the initial Award is below $30,000 but subsequent Award modifications result in a total Award of $30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds $30,000. If the initial Award is $30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below $30,000, the Award shall continue to be subject to the reporting requirements. If the total award is below $30,000 no reporting required; if more than $30,000 and less than $50,000 then FFATA reporting is required; and, $50,000 and above SLFRF reporting is required.

7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

8.1. Grantee shall report as set forth below.

8.1.1. Grantee shall use the SLFRF Subrecipient Quarterly Report Workbook as referenced in Exhibit P to report to the State Agency within ten (10) days following each quarter ended September, December, March and June. Additional information on specific requirements are detailed in the SLFRF Subrecipient Quarterly Report Workbooks and "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

EC 1 – Public Health

All Public Health Projects

a) Description of structure and objectives
b) Description of relation to COVID-19
c) Identification of impacted and/or disproportionately impacted communities
d) Capital Expenditures
    i. Presence of capital expenditure in project
    ii. Total projected capital expenditure
    iii. Type of capital expenditure
    iv. Written justification

v. Labor reporting

COVID-19 Interventions and Mental Health (1.4, 1.11, 1.12, 1.13)

a) Amount of total project used for evidence-based programs
b) Evaluation plan description

COVID-19 Small Business Economic Assistance (1.8)

a) Number of small businesses served

COVID-19 Assistance to Non-Profits (1.9)

a) Number of non-profits served

COVID-19 Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (1.10)

a) Sector of employer
b) Purpose of funds

EC 2 – Negative Economic Impacts

All Negative Economic Impacts Projects

a) Description of project structure and objectives
b) Description of project's response to COVID-19
c) Identification of impacted and/or disproportionately impacted communities
d) Amount of total project used for evidence-based programs and description of evaluation plan *(not required for 2.5, 2.8, 2.21-2.24, 2.27-2.29, 2.31, 2.34-2.36)*
e) Number of workers enrolled in sectoral job training programs
f) Number of workers completing sectoral job training programs
g) Number of people participating in summer youth employment programs
h) Capital Expenditures
    i. Presence of capital expenditure in project
    ii. Total projected capital expenditure
    iii. Type of capital expenditure
    iv. Written justification
    v. Labor reporting

Household Assistance (2.1-2.8)

a) Number of households served
b) Number of people or households receiving eviction prevention services (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*
c) Number of affordable housing units preserved or developed (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*

Healthy Childhood Environments (2.11-2.13)

a) Number of children served by childcare and early learning *(Federal guidance may change this requirement in July 2022)*
b) Number of families served by home visiting *(Federal guidance may change this requirement in July 2022)*

Education Assistance (2.14, 2.24-2.27)

a) National Center for Education Statistics ("NCES") School ID or NCES District ID
b) Number of students participating in evidence-based programs *(Federal guidance may change this requirement in July 2022)*

Housing Support (2.15, 2.16, 2.18)

a) Number of people or households receiving eviction prevention services *(Federal guidance may change this requirement in July 2022)*
b) Number of affordable housing units preserved or developed *(Federal guidance may change this requirement in July 2022)*

Small Business Economic Assistance (2.29-2.33)

a) Number of small businesses served

Assistance to Non-Profits (2.34)

a) Number of non-profits served

Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (2.35-2.36)

a) Sector of employer
b) Purpose of funds
c) If other than travel, tourism and hospitality (2.36) – description of hardship

EC 3 – Public Health – Negative Economic Impact: Public Sector Capacity

Payroll for Public Health and Safety Employees (EC 3.1)

a) Number of government FTEs responding to COVID-19

Rehiring Public Sector Staff (EC 3.2)

a) Number of FTEs rehired by governments

EC 4 – Premium Pay

All Premium Pay Projects

a) List of sectors designated as critical by the chief executive of the jurisdiction, if beyond those listed in the final rule
b) Numbers of workers served
c) Employer sector for all subawards to third-party employers
d) Written narrative justification of how premium pay is responsive to essential work during the public health emergency for non-exempt workers or those making over 150 percent of the state/county's average annual wage
e) Number of workers to be served with premium pay in K-12 schools

EC 5 – Infrastructure Projects

All Infrastructure Projects

a) Projected/actual construction start date (month/year)
b) Projected/actual initiation of operations date (month/year)
c) Location (for broadband, geospatial data of locations to be served)
d) Projects over $10 million
    i. Prevailing wage certification or detailed project employment and local impact report

ii. Project labor agreement certification or project workforce continuity plan
iii. Prioritization of local hires
iv. Community benefit agreement description, if applicable

Water and sewer projects (EC 5.1-5.18)

a) National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
b) Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)
c) Median Household Income of service area
d) Lowest Quintile Income of the service area

Broadband projects (EC 5.19-5.21)

a) Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
    i. If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
    ii. Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
b) Additional programmatic data will be required for broadband projects and will be defined in a subsequent version of the US Treasury Reporting Guidance, including, but not limited to *(Federal guidance may change this requirement in July 2022)*:
    i. Number of households (broken out by households on Tribal lands and those not on Tribal lands) that have gained increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, with the number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download and number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
    ii. Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) that have projected increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization, with the number of each type of institution with access to the minimum

speed standard of reliable 100 Mbps symmetrical upload and download; and number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

iii. Narrative identifying speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering, technology to be deployed, miles of fiber, cost per mile, cost per passing, number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download, number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload, and number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization. Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

All Expenditure Categories

a) Program income earned and expended to cover eligible project costs

8.1.2. A Subrecipient shall report the following data elements to Prime Recipient no later than five days after the end of the month following the month in which the Subaward was made.

8.1.2.1. Subrecipient DUNS Number;

8.1.2.2. Subrecipient DUNS Number if more than one electronic funds transfer (EFT) account;

8.1.2.3. Subrecipient parent's organization DUNS Number;

8.1.2.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

8.1.2.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

8.1.2.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.

8.1.3. To Prime Recipient. A Subrecipient shall report to its Prime Recipient, the following data elements:

8.1.3.1. Subrecipient's DUNS Number as registered in SAM.

8.1.3.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8.1.3.3. Narrative identifying methodology for serving disadvantaged communities. See the "Project Demographic Distribution" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. This requirement is applicable to all projects in Expenditure Categories 1 and 2.

8.1.3.4. Narrative identifying funds allocated towards evidenced-based interventions and the evidence base. See the "Use of Evidence" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. See section 8.1.1 for relevant Expenditure Categories.

8.1.3.5. Narrative describing the structure and objectives of the assistance program and in what manner the aid responds to the public health and negative economic impacts of COVID-19. This requirement is applicable to Expenditure Categories 1 and 2. For aid to travel, tourism, and hospitality or other impacted industries (EC 2.11-2.12), also provide the sector of employer, purpose of funds, and if not travel, tourism and hospitality a description of the pandemic impact on the industry.

8.1.3.6. Narrative identifying the sector served and designated as critical to the health and well-being of residents by the chief executive of the jurisdiction and the number of workers expected to be served. For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county's average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is higher, OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions, include justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19 but should not include personally identifiable information. This requirement applies to EC 4.1, and 4.2.

8.1.3.7. For infrastructure projects (EC 5), or capital expenditures in any expenditure category, narrative identifying the projected construction start date (month/year), projected initiation of operations date (month/year), and

location (for broadband, geospatial location data). For projects over $10 million:

8.1.3.8. Certification that all laborers and mechanics employed by Contractors and Subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the Agreement work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing (1) the number of employees of Contractors and sub-contractors working on the project; (2) the number of employees on the project hired directly and hired through a third party; (3) the wages and benefits of workers on the project by classification; and (4) whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.

8.1.3.8.1. A Subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing: (1) how the Subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project; (2) how the Subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and (3) how the Subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; (4) whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and (5) whether the project has completed a project labor agreement.

8.1.3.8.2. Whether the project prioritizes local hires.

8.1.3.8.3. Whether the project has a Community Benefit Agreement, with a description of any such agreement.

8.1.4. Subrecipient also agrees to comply with any reporting requirements established by the US Treasury, Governor's Office and Office of the State Controller. The State of Colorado may need additional reporting requirements after this agreement is executed. If there are additional reporting requirements, the State will provide notice of such additional reporting requirements via Exhibit Q – SLFRF Reporting Modification Form.

9. PROCUREMENT STANDARDS.

9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.

9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Agreements and purchase orders for work or products under this award.

9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS.

10.1. A Subrecipient shall permit Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

11. SINGLE AUDIT REQUIREMENTS.

11.1. If a Subrecipient expends $750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.

11.1.1. Election. A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance 2 CFR 200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with 2 CFR 200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.

11.1.2. Exemption. If a Subrecipient expends less than $750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.

11.1.3. Subrecipient Compliance Responsibility. A Subrecipient shall procure or otherwise arrange for the audit required by Subpart F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with 2 CFR 200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Subpart F-Audit Requirements.

12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

12.1. In addition to other provisions required by the Federal Awarding Agency or the Prime Recipient, Grantees that are Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all Subcontractors entered into by it pursuant to this Grant.

12.1.1. [Applicable to federally assisted construction Agreements.] Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all Agreements that meet the definition of "federally assisted construction Agreement" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.

12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).

12.1.3. Rights to Inventions Made Under a grant or agreement. If the Federal Award meets the definition of "funding agreement" under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Prime Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreements and Cooperative Agreements," and any implementing regulations issued by the Federal Awarding Agency.

12.1.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Agreements and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal awardees to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).

12.1.5. Debarment and Suspension (Executive Orders 12549 and 12689). A Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

12.1.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

12.1.7. Never Agreement with the enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing "Never Agreement with the enemy" in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed $50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

12.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

12.1.9. Title VI of the Civil Rights Act. The Subgrantee, Contractor, Subcontractor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S. C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CRF Part 22, and herein incorporated by reference and made part of this Agreement or agreement.

13. CERTIFICATIONS.

13.1. Subrecipient Certification. Subrecipient shall sign a "State of Colorado Agreement with Recipient of Federal Recovery Funds" Certification Form in Exhibit O and submit to State Agency with signed grant agreement.

13.2. Unless prohibited by Federal statutes or regulations, Prime Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

14.2. A Grantee with gross income from all sources of less than $300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

15. EVENT OF DEFAULT AND TERMINATION.

15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:

15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;

15.2.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

15.2.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;

15.2.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or

By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

EXHIBIT O

AGREEMENT WITH SUBSUBRECIPIENT OF FEDERAL RECOVERY FUNDS

Section 602(b) of the Social Security Act (the Act), as added by section 9901 of the American Rescue Plan Act (ARPA), Pub. L. No. 117-2 (March 11, 2021), authorizes the Department of the Treasury (Treasury) to make payments to certain Subrecipients from the Coronavirus State Fiscal Recovery Fund. The State of Colorado has signed and certified a separate agreement with Treasury as a condition of receiving such payments from the Treasury. This agreement is between your organization and the State and your organization is signing and certifying the same terms and conditions included in the State's separate agreement with Treasury. Your organization is referred to as a Subrecipient.

As a condition of your organization receiving federal recovery funds from the State, the authorized representative below hereby (i) certifies that your organization will carry out the activities listed in section 602(c) of the Act and (ii) agrees to the terms attached hereto. Your organization also agrees to use the federal recovery funds as specified in bills passed by the General Assembly and signed by the Governor.

Under penalty of perjury, the undersigned official certifies that the authorized representative has read and understood the organization's obligations in the Assurances of Compliance and Civil Rights Requirements, that any information submitted in conjunction with this assurances document is accurate and complete, and that the organization is in compliance with the nondiscrimination requirements.

Subrecipient Name _____

Authorized Representative: _____

Title: _____

Signature: _____

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS
TERMS AND CONDITIONS

1. Use of Funds.

   a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 602(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.

   b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.

2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Subrecipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.

3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award. Subrecipient also agrees to comply with any reporting requirements established by the Governor's Office and Office of the State Controller.

4. Maintenance of and Access to Records
   a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 602(c), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.

   b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.

   c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.

5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.

6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs. Subrecipient shall follow guidance on administrative costs issued by the Governor's Office and Office of the State Controller.

7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.

8. Conflicts of Interest. The State of Colorado understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy

is applicable to each activity funded under this award. Subrecipient and Contractors must disclose in writing to the Office of the State Controller or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112. The Office of the State Controller shall disclose such conflict to Treasury.

9. Compliance with Applicable Law and Regulations.
   a. Subrecipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

   b. Federal regulations applicable to this award include, without limitation, the following:

      i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

      ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.

      iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.

      iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (Agreements and Subcontractors described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

      i. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

      ii. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

      iii. New Restrictions on Lobbying, 31 C.F.R. Part 21.

      iv. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

v. Generally applicable federal environmental laws and regulations.

c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

10. Remedial Actions. In the event of Subrecipient's noncompliance with section 602 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.

11. Hatch Act. Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C.§§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

12. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or Agreements, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number SLFRF0126 awarded to the State of Colorado by the U.S. Department of the Treasury."

14. Debts Owed the Federal Government.
    a. Any funds paid to the Subrecipient (1) in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.

    b. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.
    a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or Subcontractor under this award.

    b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.

16. Protections for Whistleblowers.
    a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.

    b. The list of persons and entities referenced in the paragraph above includes the following:
        i. A member of Congress or a representative of a committee of Congress;
        ii. An Inspector General;

iii. The Government Accountability Office;
iv. A Treasury employee responsible for Agreement or grant oversight or management;
v. An authorized official of the Department of Justice or other law enforcement agency;
vi. A court or grand jury; or
vii. A management official or other employee of Subrecipient, Contractor, or Subcontractor who has the responsibility to investigate, discover, or address misconduct.

c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its Contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

1. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225(Oct. 6, 2009), Subrecipient should encourage its employees, Subrecipients, and Contractorsto adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of theTreasury, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and Agreements to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, aloan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass Agreements of guarantee or insurance,regulated programs, licenses, procurement Agreements by the Federal government at market value,or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Subrecipient's program(s) and activity(ies), so long as any portion of the Subrecipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.
3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit http://www.lep.gov.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.

5. Subrecipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Contractors, Subcontractors, successors, transferees, and assignees:

   The sub-grantee, Contractor, Subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.

7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.

8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.

9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of

discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub- Subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

EXHIBIT P

SLFRF SUBRECIPIENT QUARTERLY REPORT

1. SLFRF SUBRECIPIENT QUARTERLY REPORT WORKBOOK

1.1 The SLFRF Subrecipient Quarterly Report Workbook must be submitted to the State Agency within ten (10) days following each quarter ended September, December, March and June. The SLFRF Subrecipient Quarterly Report Workbook can be found at:
https://osc.colorado.gov/american-rescue-plan-act (see SLFRF Grant Agreement Templates tab)

EXHIBIT Q

SAMPLE SLFRF REPORTING MODIFICATION FORM

Local Agency:			Agreement No:		
Project Title:			Project No:		
Project Duration:	To:		From:		
State Agency:	CDOT				

This form serves as notification that there has been a change to the reporting requirements set forth in the original SLFRF Grant Agreement.

The following reporting requirements have been (add/ remove additional rows as necessary):

Updated Reporting Requirement **(Add/Delete/Modify)**	**Project Number**	**Reporting Requirement**

By signing this form, the Local Agency agrees to and acknowledges the changes to the reporting requirements set forth in the original SLFRF Grant Agreement. All other terms and conditions of the original SLFRF Grant Agreement, with any approved modifications, remain in full force and effect. Grantee shall submit this form to the State Agency within 10 business days of the date sent by that Agency.

_____ _____

Local Agency Date

_____ _____

CDOT Program Manager Date

EXHIBIT R

APPLICABLE FEDERAL AWARDS

FEDERAL AWARD(S) APPLICABLE TO THIS GRANT AWARD

Federal Awarding Office	US Department of the Treasury
Grant Program	Coronavirus State and Local Fiscal Recovery Funds
Assistance Listing Number	21.027
Federal Award Number	SLFRP0126
Federal Award Date *	May 18, 2021
Federal Award End Date	December 31, 2024
Federal Statutory Authority	Title VI of the Social Security Act, Section 602
Total Amount of Federal Award (this is not the amount of this grant agreement)	$3,828,761,790

* Funds may not be available through the Federal Award End Date subject to the provisions in §2 and §5 below.

EXHIBIT S

PII Certification

STATE OF COLORADO

LOCAL AGENCY CERTIFICATION FOR ACCESS TO PII THROUGH A DATABASE OR AUTOMATED NETWORK

Pursuant to § 24-74-105, C.R.S., I, _____, on behalf of _____ (legal name of Local Agency) (the "Local Agency"), hereby certify under the penalty of perjury that the Local Agency has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Local Agency.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT T

CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

Checklist for required exhibits due to funding sources. Required Exhibits are dependent on the source of funding. This is a guide to assist in the incorporation and completion of Exhibits in relation to funding sources.

Exhibit	Funding only from FHWA	Funding only from ARPA	FHWA and ARPA Funding
EXHIBIT A, SCOPE OF WORK	✓	✓	✓
EXHIBIT B, SAMPLE OPTION LETTER	✓	✓	✓
EXHIBIT C, FUNDING PROVISIONS	✓	✓	✓
EXHIBIT D, LOCAL AGENCY RESOLUTION (IF APPLICABLE)	✓	✓	✓
EXHIBIT E, LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST	✓	✓	✓
EXHIBIT F, CERTIFICATION FOR FEDERAL-AID AGREEMENTS	✓		✓
EXHIBIT G, DISADVANTAGED BUSINESS ENTERPRISE	✓		✓
EXHIBIT H, LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES	✓		✓
EXHIBIT I, FEDERAL-AID AGREEMENT PROVISIONS FOR CONSTRUCTION AGREEMENTS	✓		✓
EXHIBIT J, ADDITIONAL FEDERAL REQUIREMENTS	✓		✓
EXHIBIT K, FFATA SUPPLEMENTAL FEDERAL PROVISIONS	✓	✓	✓
EXHIBIT L, SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM	✓	✓	✓
EXHIBIT M, OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS	✓		✓

EXHIBIT N, FEDERAL TREASURY PROVISIONS		✓	✓
EXHIBIT O, AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS		✓	✓
EXHIBIT P, SLFRF SUBRECIPIENT QUARTERLY REPORT		✓	✓
EXHIBIT Q, SLFRF REPORTING MODIFICATION FORM		✓	✓
EXHIBIT R, APPLICABLE FEDERAL AWARDS		✓	✓
EXHIBIT S, PII CERTIFICATAION	✓	✓	✓
EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE	✓	✓	✓

Finance Administration
215 N. Mason
2nd Floor
PO Box 580
Fort Collins, CO 80522

970.221.6788
970.221.6782 - fax
fcgov.com

Council Finance Committee Meeting
April 6, 2023
222 Colorado River Room / Via Zoom

Council Attendees:	Mayor Arndt, Julie Pignataro, Emily Francis, Kelly Ohlson, Shirley Peel, Susan Gutowsky,
Staff:	Kelly DiMartino, Travis Storin, Tyler Marr, Rupa Venkatesh, John Duval, Teresa, Roche, Kelley Vodden, Ginny Sawyer Nina Bodenhamer, Blaine Dunn, Jo Cech, Randy Bailey, Renee Callas, Logan Bailor, Jen Poznanovic, Lawrence Pollack, Charles McNamee, Christina Taylor, Kendall Minor, Lance Smith, John Phelan Josh Birks, Beth Yonce, Meaghan Overton, SeonAh Kendall, Katie Geiger Caryn Champine, Monica Martinez, Spencer Smith, Drew Brooks Victoria Shaw, Dave Lenz, Kerri Ishmael, , Zack Mozer, Erik Martin, Adam Molzer, LeAnn William, Honore Depew, Javier Echeverria Diaz, Jill Wuertz, Carolyn Koontz
Others:	Kevin Jones, Chamber Molly Bohannon, Coloradoan Mark Houdashelt

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Meeting called to order at 4:00 pm

Approval of minutes from the March 2, 2023, Council Finance Committee Meeting. Emily Francis moved for approval of the minutes as presented. Kelly Ohlson seconded the motion. The minutes were approved unanimously via roll call by; Julie Pignataro, Kelly Ohlson and Emily Francis.

A. West Elizabeth Appropriation Request

Spencer Smith, P.E., Engineering – Special Projects Engineer
Monica Martinez, Planning Development & Transportation Finance Manager

EXECUTIVE SUMMARY

The West Elizabeth travel corridor is currently the highest priority pedestrian/alternative mode area for improvement in the City and was highlighted in City Plan and the Transit Master Plan. The City was awarded a $1,232,248 Multi-Modal Options Funding (MMOF) grant from the North Front Range Metropolitan Planning Organization (NFRMPO) for the final design of the project. The grant award requires a 50% local match of $1,232,248. Colorado State University (CSU) has committed to funding 50% of the local match requirement and has appropriated $616,124 for that purpose. The City will be required to contribute 50% of the local match funds

as well as the local overmatch funds. The City's financial commitment to the final design will be $616,124 in local funds and $35,504 in local overmatch funds for a total of $651,628 to complete the $2.5M final design.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED
Is Council Finance supportive of an out of cycle supplemental appropriation for the Multi-Modal Options Fund (MMOF) and required local match to complete Final design for West Elizabeth Corridor?

BACKGROUND/DISCUSSION
MMOF Background

In August 2022, the NFRMPO awarded the City with a MMOF grant for the final design of the West Elizabeth Corridor project.

The approved funding breakdown is as follows:

- MMOF grant $1,232,248
- Local Match (City/CSU) $1,232,248
- Local Overmatch (City) $35,504
- Total $2,500,000

The total local match requested from the City is $651,628. Funds from the Transportation Capital Expansion Fee (TCEF) and unanticipated revenue from Transfort will be used in equal amounts to support this supplemental appropriation request ($325,814 each).

West Elizabeth Corridor Background
The West Elizabeth Corridor is currently the most productive transit area and one of the highest pedestrian use areas within the City.

- It has more passengers per revenue hour than Max and there are often times where "trailer" buses are required in order to accommodate all the passengers.
- Most passengers are going to/from CSU. This includes CSU's foothills campus which is harder for Transit to access due to the limited ability to turn buses around at Overland Trail.
- Bike/ped count data show extremely high usage and potential for modal conflict at the major intersection of W. Elizabeth and City Park Ave.

The design along this corridor is expected to allow for safer travel for all modes and a more direct route for buses which will include a turnaround at the end of Elizabeth which could help lead to some route consolidation.

Due to the many factors and current condition of this corridor, it is one of the top priority areas for improvement within the City and has specifically been highlighted in the Transit Master Plan as the highest priority project.

West Elizabeth Corridor Project Status

- 30% Design - Completed (Summer 2022)
- Final Design – Summer 2023 to Summer 2024 (pending this appropriation of local match funds)
- RAISE grant – Submitted (February 2023)
    - Foothills Transit Center and Roundabout at Overland/Elizabeth
    - $10.7M requested

- Small Starts grant
    - Project Rating submittal (tentative) – Fall 2023

Staff is recommending appropriation of the City's final design local match and overmatch for several reasons:

- The project funds are highly leveraged in that CSU is contributing $616,124 to the project.
- Having a completed final design and this project at a "shovel ready" status could help secure construction funding.
- In line with guiding themes and principles of the City Strategic Plan:
    - Multimodal Transportation & Public Transit
    - Equity, Inclusion and Diversity
    - Environmental Sustainability

DISCUSSION / NEXT STEPS

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

Is Council Finance supportive of an out of cycle supplemental appropriation for the Multi-Modal Options Fund (MMOF) and required local match to complete Final design for West Elizabeth Corridor?

Kelly Ohlson; can you define Transit Center?

Drew Brooks; it will be a bit smaller – we are referring to it as more of a station instead of a center – it will include restrooms and six bays for buses to pull in and out of. Will be smaller because there won't be as many routes that connect to it.

Kelly Ohlson; will CSU be contributing their fair share to the ongoing costs?

Drew Brooks; that is the plan – we are having those discussions – we don't yet have the complete numbers as far as what those operating costs will be because we are going to be combining some routes. When we have those estimates, we will have negotiations with CSU.

Kelly Ohlson; Is the $20M for construction our share?

Spencer Smith; that amount is based on the Small Starts grants so it would be an 80/20 split. The local match would be 20% of the project costs.

Tyler Marr; that is another point of discussion that we are yet to have with CSU around what that local match looks like. A lot of us view that $20M collectively as a minimum. We are seeing a lot of Small Starts projects that are taking 30 – 40% match to be competitive. The goal will be a fair share split with CSU.

Kelly Ohlson; this is a lot of money – if this is a priority project - What would be one example of where we could come up with our portion after agreement with CSU? (let's say $15M)

Travis Storin; when we get past 100% design, the sustainable funding would be sort of Plan A to fund the capital project. Beyond that, we might look to the ¼ cent renewal on capital projects. Due to its size, it is not an ideal candidate for debt financing. This is a very different project from the Mason Station which was $86M – all of the city's match was in kind contributions of land and right of way. This is a project where we are going to have to

be producing cash for the local match. That is a major risk. We do know there are a lot of grant dollars out there that are going to be available for us to leverage, but for the local match portion and in order to meet the requirements of the grants, this would be a top priority for the sustainable funding conversation for Transit.

Kelly Ohlson; I am not used to the phrase 'unanticipated revenue'. Where did we get unanticipated Transfort revenue?

Travis Storin; the phrasing actually comes from our Charter, where any appropriation that is done outside of the budget cycle must be attached to either reserves or to unanticipated revenue (which is anything that was not in the budget). Transfort ended 2022 in a deficit position on reserves which is not uncommon. There is lead time for grants we have already been awarded to actually get the reimbursements. We get 'pre award' spending authority from the FTA for money we know is going to be there.

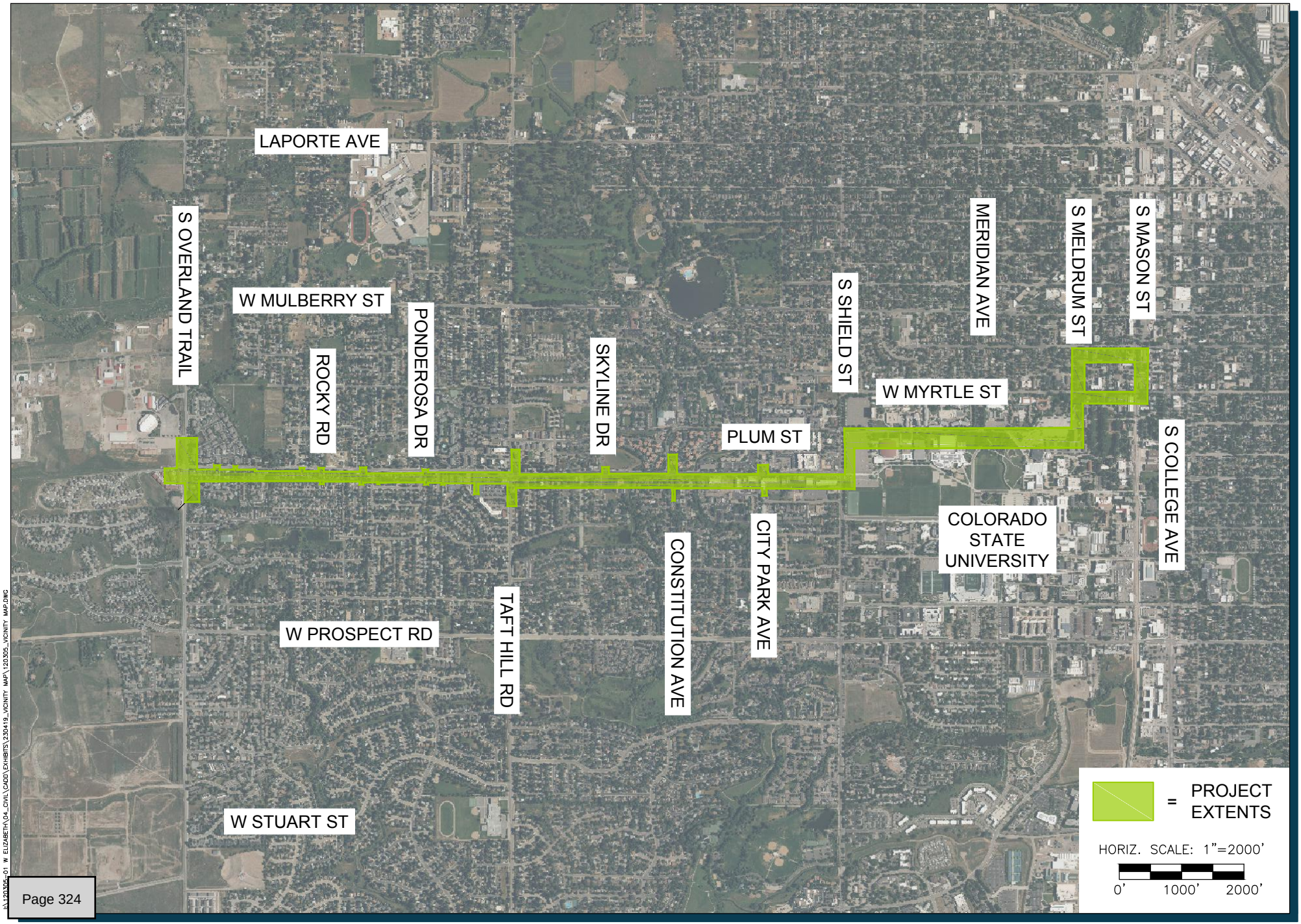
Emily Francis; no questions

Julie Pignataro; I am good too – those were great questions. Please move forward in bringing it to the full Council.

FELSBURG HOLT & ULLEVIG

West Elizabeth Corridor Project

Vicinity Map



City of Fort Collins

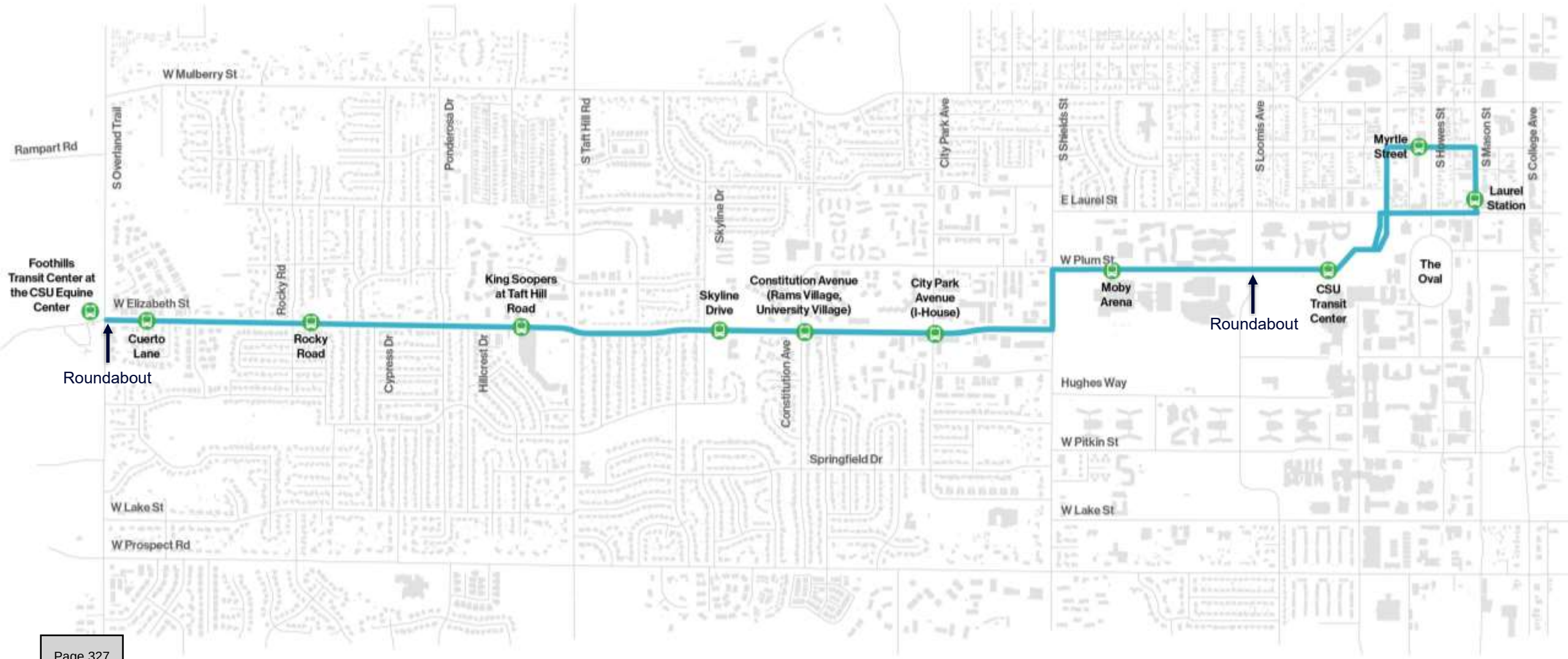
West Elizabeth 100% Design – City Council

Spencer Smith, Monica Martinez - May 2, 2023

Council Decision Sought

Is City Council supportive of an out of cycle supplemental appropriation for the Multi-Modal Option Fund (MMOF) and required local match to complete 100% design for the West Elizabeth Enhanced Travel Corridor?

Route Plan and Stop Locations



Project Status

- City Awarded MMOF Grant for 100% Design (Q2 2022)
- 30% Design Complete (Q3 2022)
- RAISE Grant Application Submitted (Q1 2023)
    - Overland Trail/Elizabeth St. Roundabout and Foothills Transit Station
- Begin Final Design (Q3 2023)
- Complete Final Design (Q1 2025)

Funding Source	30% Amount	100% Amount	Total
MMOF	$ 750,000	$ 1,232,248	$1,982,248
CSU	$ 375,000	$ 616,124	$ 991,124
Transfort Reserves	$ 375,000	$ -	$ 375,000
TCEF	$ -	$ 325,814	$ 325,814
Transfort Unanticipated Revenue	$ -	$ 325,814	$ 325,814

- Funding will complete 100% Design
- Keeps project on track to be eligible for FTA Small Starts Grant Funding (same grant that was utilized for MAX)
- Leveraged funds/partnership - CSU contributing $616k for 100% Design

Is Council supportive of an out of cycle supplemental appropriation for the Multi-Modal Option Fund (MMOF) and required local match to complete 100% design for West Elizabeth Enhanced Travel Corridor?

May 2, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Tim Dinger, Civil Engineer II
John Gerwel, Civil Engineer I
Aaron Guin, Legal

SUBJECT

First Reading of Ordinance No. 070, 2023, Vacating a Portion of Impala Circle Right-of-Way.

EXECUTIVE SUMMARY

The purpose of this item is to approve the vacation of Impala Circle right-of-way that is no longer desirable or necessary to retain for street purposes. Portions of the right-of-way area, once vacated, will be retained as public access and emergency access easements to the City to provide continued access for the neighboring properties.

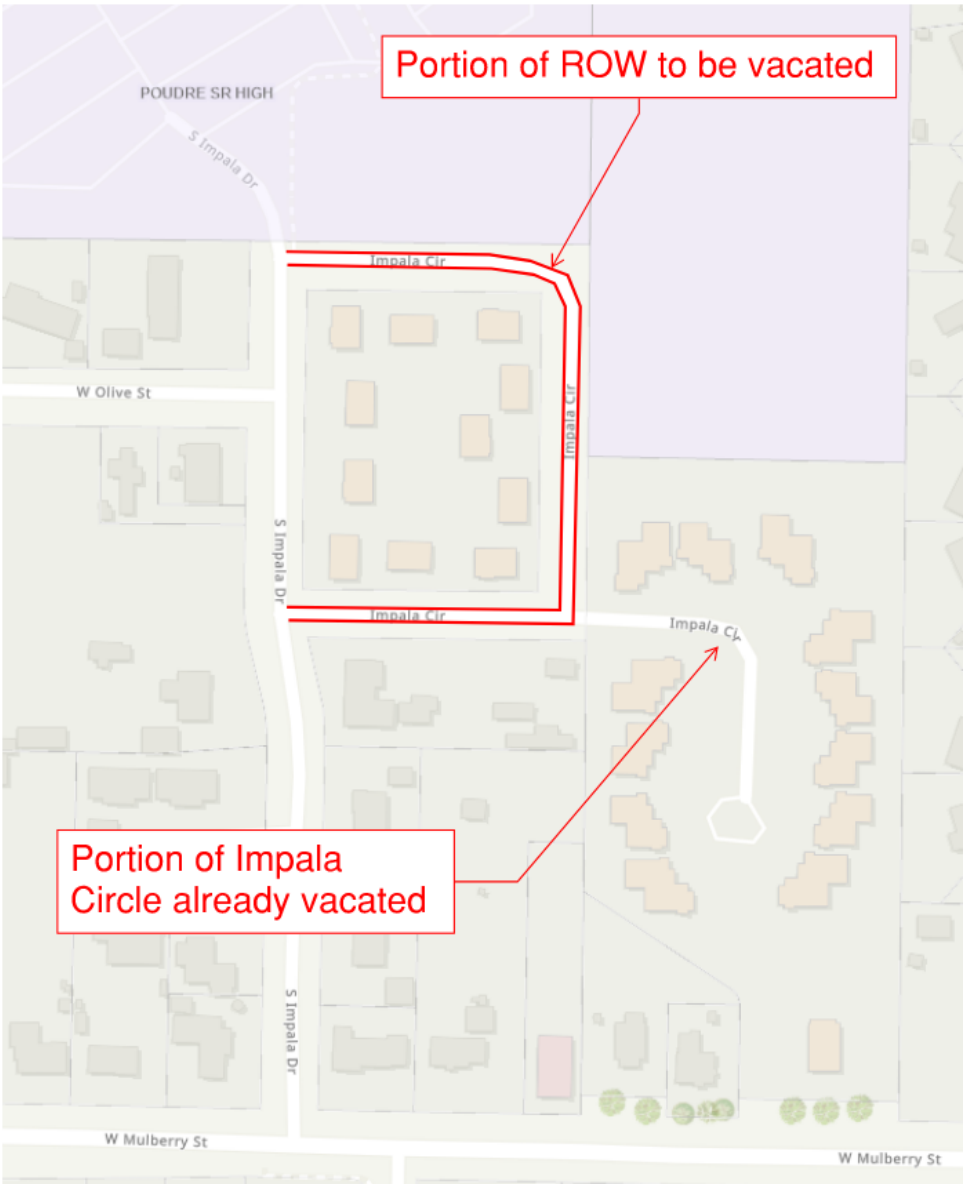
STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The portion of Impala Circle right-of-way is no longer desirable or necessary to retain for street purposes because the street does not provide street connectivity, and the dedication of public access easements to the City will fulfill the function of Impala Circle. Impala Circle currently does not meet Larimer County Urban Area Street Standards for minimum right-of-way width. Figure 1, below, shows an area map of the surrounding street network. The area of the vacated right-of-way will be dedicated to the City as a public access and emergency access easement. The City Engineer and the Director of Planning, Development and Transportation recommend vacating the right-of-way.

Figure 1. Area Map



CITY FINANCIAL IMPACTS

The City will have a net decrease of approximately 44,000 square feet of right-of-way to maintain with the vacation of the Impala Circle right-of-way.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Not applicable.

PUBLIC OUTREACH

In accordance with Section 23-115 of the City Code, potentially affected utility agencies, staff, and emergency service providers have been notified of the request for right-of-way vacation. Additionally, owners of adjacent properties in the vicinity, located at 408 Impala, 201 Impala and 400 Impala, have been notified of the proposed right-of-way vacation. Notification to the adjacent property owners includes a statement that the first reading of this Ordinance is scheduled for the Council meeting scheduled for May 2, 2023.

ATTACHMENTS

1. Ordinance for Consideration
2. Ordinance Exhibit A

ORDINANCE NO. 070, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
VACATING A PORTION OF IMPALA CIRCLE RIGHT-OF-WAY

WHEREAS, the plat of the Impala Subdivision included dedication to the public of right-of-way for Impala Circle; and

WHEREAS, Housing Catalyst Development Services, LLC, has requested that the City vacate the Impala Circle right-of-way; and

WHEREAS, pertinent City staff, potentially affected utility companies, and affected property owners in the vicinity of the right-of-way have been contacted and no objection has been reported to the proposed vacation; and

WHEREAS, the City Engineer and the Director of Community Development and Neighborhood Services recommend that the right-of-way be vacated; and

WHEREAS, portions of the right-of-way area, once vacated, shall be dedicated to the City, upon recording of the subdivision plat for "Impala Redevelopment," as public access and emergency access easements to provide continued access for neighboring properties; and

WHEREAS, the rights of the residents of Fort Collins will not be prejudiced or injured by the vacation of said street right-of-way; and

WHEREAS, said right-of-way is no longer necessary or desirable to retain for street purposes.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby finds and determines that the street right-of-way for Impala Circle, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Specified Street") is no longer needed for right-of-way purposes and that it is in the public interest to vacate the same.

Section 3. That the Specified Street is hereby vacated, abated and abolished, provided, that:

1) This vacation shall not take effect until this Ordinance is recorded with the Larimer County Clerk and Recorder.

2) This Ordinance shall be recorded concurrently with the subdivision plat for the development known as "Impala Redevelopment."

3) If this Ordinance is not recorded by December 31, 2023, then this Ordinance shall become null and void and of no force and effect.

Introduced and considered favorably on first reading and ordered published this 2nd day of May, 2023, and to be presented for final passage on the 16th day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading this 16th day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

EXHIBIT A

NORTHERN ENGINEERING

DESCRIPTION:

Impala Circle, Impala Subdivision, recorded as Book 1597, Page 700 of the Records of Larimer County and situate within the Southeast Quarter of Section Nine (9), Township Seven North (T.7N.), Range Sixty-nine West (R.69W.) of the Sixth Principal Meridian (6th P.M.), City of Fort Collins, County of Larimer, State of Colorado

The above-described parcel of land contains 44,038 square feet or 1.011 acres, more or less (±), and may be subject to easements and rights-of-way now on record or existing.

Exhibit attached hereto and made a part hereof.

SURVEYOR'S CERTIFICATE

I, Robert C. Tessely, a Colorado Registered Professional Land Surveyor do hereby state that this Property Description was prepared under my personal supervision and checking, and that it is true and correct to the best of my knowledge and belief.

Robert C. Tessely – for and on behalf of Northern Engineering
Colorado Registered Professional Land Surveyor #38470

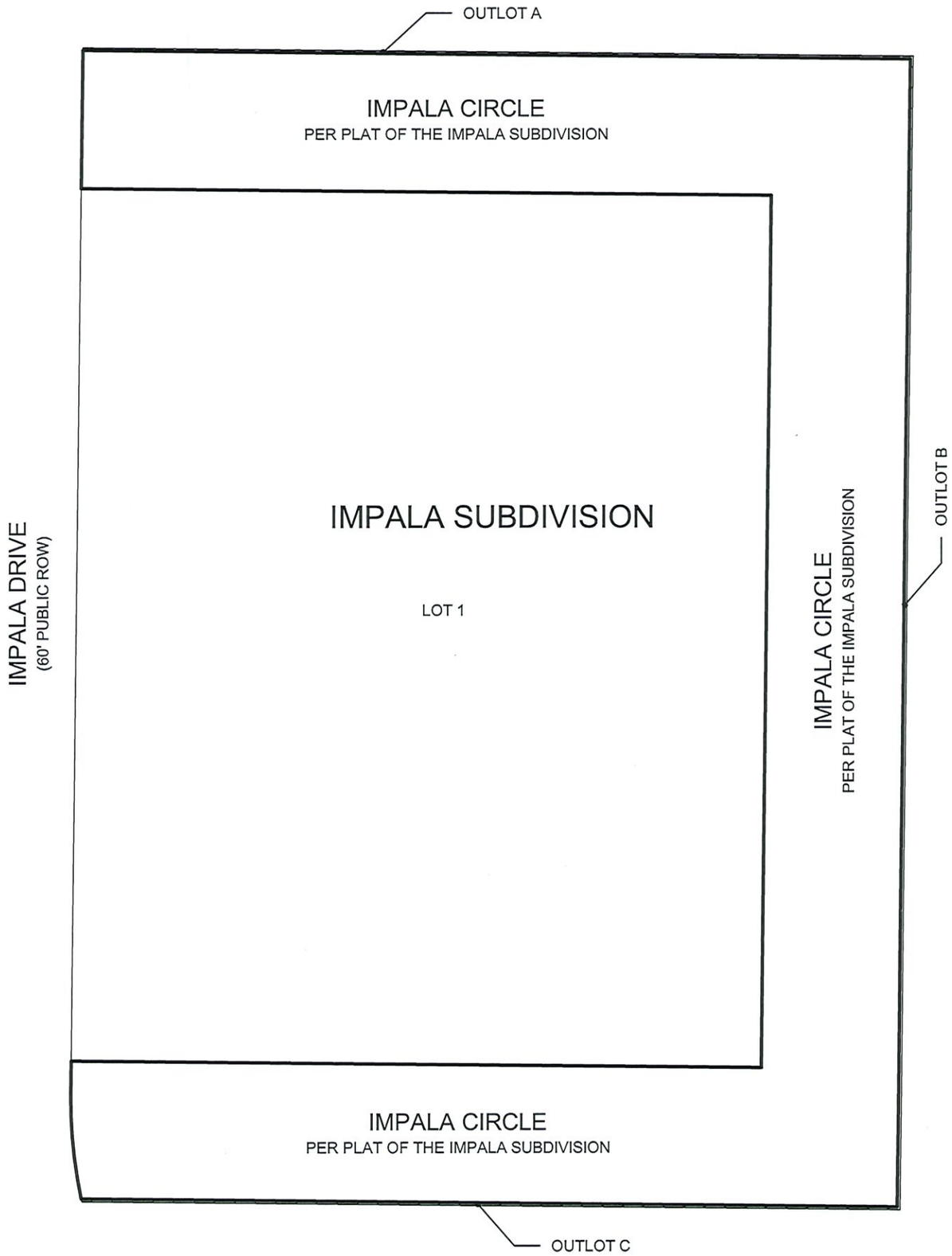
NORTHERN ENGINEERING
301 North Howes Street, Suite 100
Fort Collins, Colorado 80521
(970) 221-4158

April 5, 2023
LMS
S:\Survey Jobs\1914-001\Dwg\Exhibits\1914-001 Description.docx

EXHIBIT A

EXHIBIT

IMPALA CIRCLE, IMPALA SUBDIVISION, LOCATED IN THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE 6th P.M., CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO



COLORADO LICENSED
ROBERT C. TESSELY
38470
PROFESSIONAL LAND SURVEYOR
4-5-23

NOTE: THIS EXHIBIT 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 SUPERCEDES THE EXHIBIT DRAWING.

50 0 50 Feet

(IN U.S. SURVEY FEET)
1 inch = 50 ft.

NORTHERN ENGINEERING
SURVEY | MUNICIPAL | LAND DEVELOPMENT
FORT COLLINS | GREELEY 970.221.4158 NORTHERNENGINEERING.COM

S:\SURVEY JOBS\1914-001\DWG\EXHIBITS\1914-001 EXHIBIT.DWG

May 2, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Ellen Martin, Visual Arts Administrator
Ted Hewitt, Legal

SUBJECT

Resolution 2023-043 Approving Expenditures From the Art in Public Places Water Utility Account to Commission an Artist to Create Art in Public Places for the Water Treatment Facility Project.

EXECUTIVE SUMMARY

The purpose of this item is to approve expenditures from the Art in Public Places (APP) Water Utility Account to commission an artist to create a sculpture for the Water Treatment Facility Project. The expenditures of $45,000 will be for design, engineering, materials, signage, fabrication, delivery, installation, and contingency for Todd Kundla to create the entrance artwork for the Water Treatment Facility Project that honors the staff, the process, and facility that provides clean water to the community.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

Section 23-303 of the Code, which was added in 1995, established the Art in Public Places Reserve Account, and designated it for use in acquiring or leasing works of art, maintenance, repair or display of works of art, and administrative expenses related to the Art in Public Places (APP) Program, in accordance with the APP Guidelines adopted by the Council in Ordinance No. 20, 1995. In 2012, Council permanently adopted the APP Program, and reenacted City Code Chapter 23, Article IX, with certain modifications.

APP Artist Todd Kundla was selected through an RFQ process and collaborated with the Utility project team to develop an artwork that educates and tells the Utility story of the work at the city's water treatment facility on Laporte Street.

Located at the entrance to the facility, *Cascade* is designed to honor the staff, the process, and facility—which provides clean drinking water to the community. To honor this process, artist Todd Kundla has created a concept for a sculpture depicting steel "flowing" through steel rings to symbolize the purification process performed at the facility. This sculpture is not a water feature and does not include water.

Cascade is designed to convey the movement of water both through the landscape and the facility. The multiple sources and subsequent convergence acknowledge the two sources of our raw water, Horsetooth Reservoir, and the Cache la Poudre River. Polished stainless steel represents standing, purifying, and flowing water, while oxidized (rusted) steel represents raw non-potable water. This creates a duality with the stainless steel that represents purified drinking water. Both materials should require little to no maintenance. The dimensions of the piece are approximately 15' wide, 12' deep, and 8' tall.

CITY FINANCIAL IMPACTS

The funds for this item have been appropriated in the APP Water Utility Account. The APP program also has available maintenance funds for the long-term care of the subject artwork and the rest of the APP art collection.

The Water Treatment Facility art budget is $45,000 to be used for design, engineering, materials, signage, fabrication, delivery, installation, and contingency for this artwork.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The design concept and budget for the art project was reviewed and recommended for Council approval by the APP Board at the January 18, 2023, regular board meeting.

PUBLIC OUTREACH

The selected artist collaborates with the project team to develop concepts for the artwork based on the goals of the project and input from the team. The final design and budget are reviewed and approved by the project team and then the APP Board, who then recommends the project to Council for approval.

The APP Program promotes the project in development, fabrication, installation, and completion of the artwork on social media, website, and newsletters.

ATTACHMENTS

1. Resolution for Consideration
2. Written Description and Images of Proposed Artwork
3. Art in Public Places Board Minutes, January 18, 2023

RESOLUTION 2023-043
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING EXPENDITURES FROM THE ART IN PUBLIC PLACES WATER UTILITY ACCOUNT TO COMMISSION AN ARTIST TO CREATE ART IN PUBLIC PLACES FOR THE WATER TREATMENT FACILITY PROJECT

WHEREAS, pursuant to Sections 23-303 and 23-304 of the City Code, one percent of construction project funding is set aside for use in the acquisition and installation of works of art in accordance with the Art in Public Places Guidelines adopted by the City Council in Ordinance No. 047, 1998 (the "Guidelines"); and

WHEREAS, funding contributions to Art in Public Places for each City Utility are to be kept and spent in such Utility's own fund for the betterment of such utility or as otherwise determined by the City Council for a specific utility purpose; and

WHEREAS, Artist Todd Kundla was selected from a Request for Qualifications process to develop entrance artwork for the Water Treatment Facility Project (the "Art Project"); and

WHEREAS, the Art Project includes a sculpture depicting steel flowing through steel rings to symbolize the purification process performed at the Water Treatment Facility; and

WHEREAS, the Art in Public Places Board (the "Board") approved the design concept and budget for the Art Project and recommended Council approval of the same at the Board's January 18, 2023, regular meeting; and

WHEREAS, the budget for the Art Project is $45,000, which is to be used for design, engineering, materials, signage, fabrication, delivery, installation, and contingency; and

WHEREAS, funds sufficient for the Art Project have been appropriated in the Art in Public Places Water Utility Account; and

WHEREAS, City Code Section 23-308 requires that the Board's recommendation concerning the use of funds for the Art Project be presented for City Council review and approval as the cost of the Art Project exceeds $30,000.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals above.

Section 2. That the City Council hereby approves of the Art Project at the Water Treatment Facility described herein, the design for which was reviewed and approved by the Art in Public Places Board on January 18, 2023, and the use of previously appropriated funds in an amount not to exceed FORTY-FIVE THOUSAND DOLLARS ($45,000) from the Art in Public Places Water Utility Account for the Art Project.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 2nd day of May, 2023.

_____
Mayor

ATTEST:

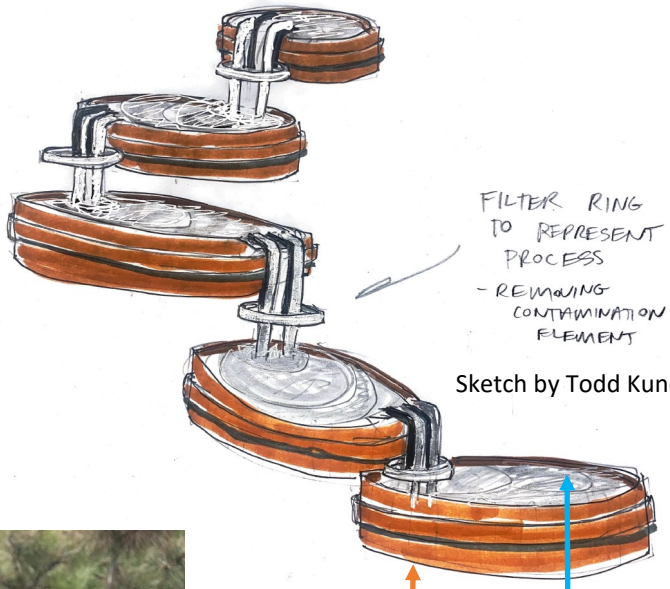
_____
City Clerk

ART IN PUBLIC PLACES

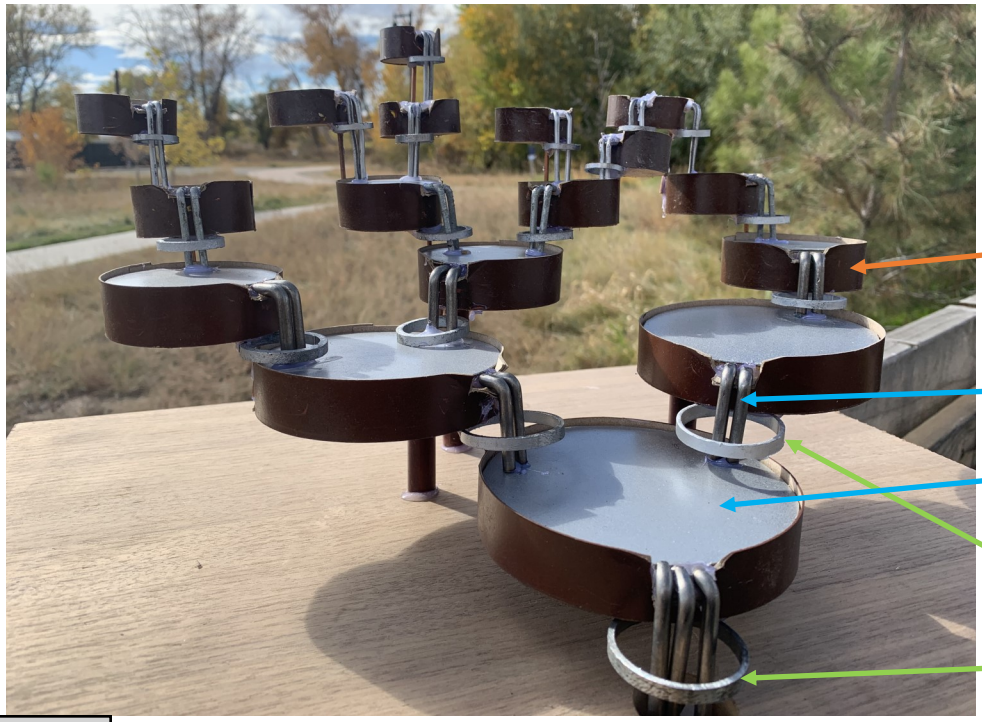
Water Treatment Facility
Cascade by Todd Kundla

Staffed 24 hours a day by state-certified operators, the Fort Collins Water Treatment Facility chemically and physically treats raw non-potable water to make it safe for the community to drink. To honor this function and educate the community about what goes on inside the facility, artist Todd Kundla has created a concept for a sculpture depicting steel "flowing" through steel rings to symbolize the purification processes that are required to produce clean drinking water. This sculpture is not a water feature and does not include water.

Located at the entrance of the facility, *Cascade* is designed to convey the movement of water both though the landscape and the facility. Polished stainless steel represents standing, purifying, and flowing water, while oxidized (rusted) steel represents raw non-potable water. This creates a duality with the stainless steel that represents purified drinking water. The artwork's multiple representational water and subsequent convergence acknowledge the two sources of our raw water, Horsetooth Reservoir and the Cache la Poudre River.



Sketch by Todd Kundla



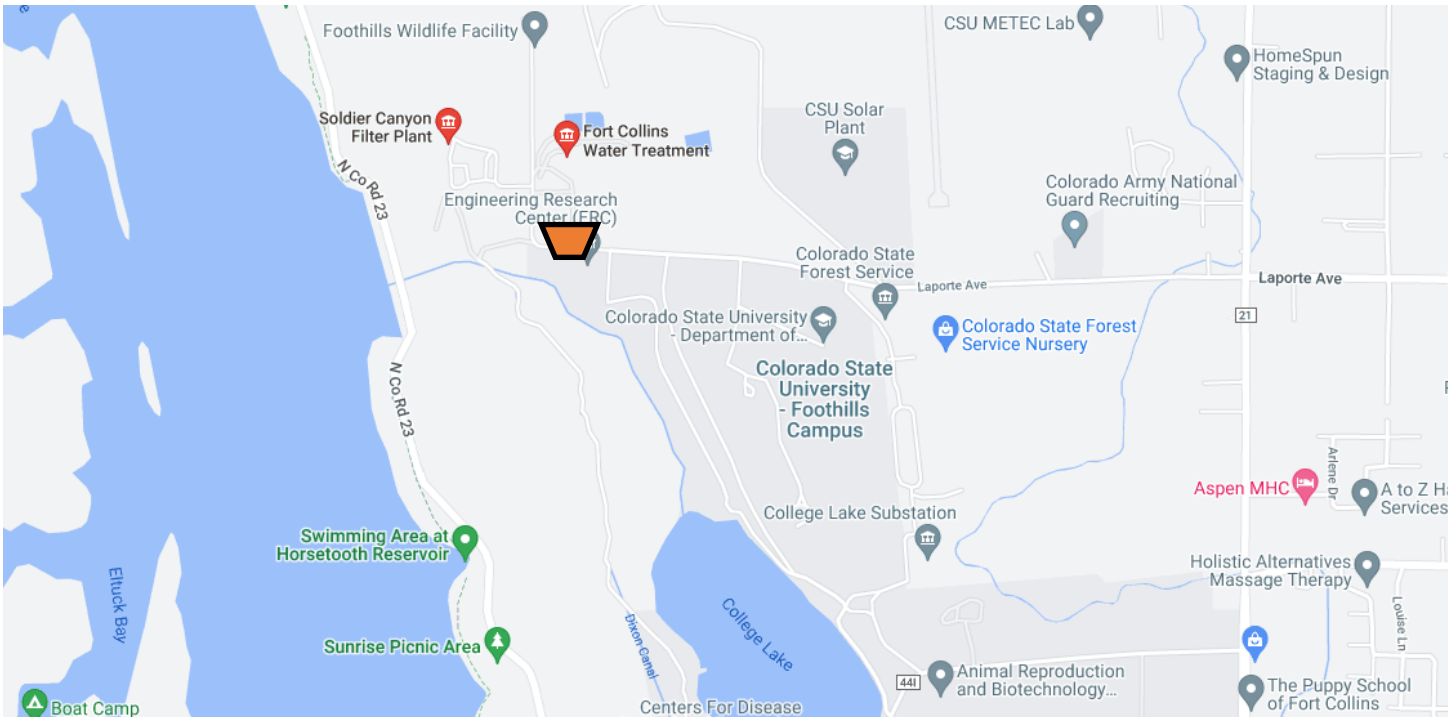
Oxidized (rusted) steel will represent raw non-potable water

Polished stainless steel will represent standing and flowing water

Polished stainless steel rings will represent the purification process

y artist Todd Kundla. Proposed dimensions: 15' wide, 12' deep, 8' tall.

Proposed location for Cascade by artist Todd Kundla to the left of the entrance to the Water Treatment Facility.



ART IN PUBLIC PLACES

City of Fort Collins Cultural Services

MINUTES

CITY OF FORT COLLINS • BOARDS AND COMMISSIONS

ART IN PUBLIC PLACES
REGULAR MEETING

Wednesday, January 18, 2023 – 3:30 PM

Virtual, Zoom

1. CALL TO ORDER: 3:34 PM

2. ROLL CALL

a. **INTRODUCTION OF BOARD MEMBERS**

b. **ELECTION OF TEMPORARY BOARD CHAIR**

Ms Bauer moved Heidi Shuff should be the temporary Board Chair
Ms. Sherman seconded.
Unanimously Approved

c. Board Members Present – Natalie Barnes, Kathy Bauer, Myra Powers, Renee Sherman, Heidi Shuff Christopher Staten, and Nancy Zola
d. Board Members Absent – None
e. Staff Members Present – Ellen Martin, Liz Good, Libby Colbert
f. Cultural Resources Board Liaison – Not Present
g. Guests – Todd Kundla

3. AGENDA REVIEW

4. PUBLIC PARTICIPATION

5. APPROVAL OF MINUTES

Ms. Bauer moved to approve the minutes of December 14, 2022.
Ms. Barnes seconded.
Approved by Ms. Barnes, Ms. Bauer, Ms. Shuff and Mr. Staten. Ms. Powers, and Ms. Sherman. Ms. Zola abstained.

6. NEW BUSINESS

a. **BOARD INFORMATION**

Ms. Martin shared highlights from the City Clerk's New Board Member Orientation presentation. The presentation and a recording of the orientation from the City Clerk's will be sent to the Board.

7. STAFF REPORTS

Ms. Martin shared highlights from the report. It will be emailed to the Board.

MINUTES

CITY OF FORT COLLINS • BOARDS AND COMMISSIONS

ART IN PUBLIC PLACES

REGULAR MEETING

6. NEW BUSINESS

b. **WATER TREATMENT FACILITY PROJECT DESIGN REVIEW**

Ms. Martin introduced Libby Colbert, APP Project Manager, and Todd Kundla, artist, to present the project. The art is a gateway piece just outside the gate to the facility, so it is accessible to the public. The work is intended to celebrate the importance of drinking water and honoring the people that work in the facility and represents the process of making raw water drinkable. There was discussion about signage explaining the symbolism in the artwork and accessibility of the location. There were questions about the placement of the sculpture and scale at the site. The handout will be updated. This project will go to City Council as the budget is over $30,000, so the Board is asked to recommend it to Council.

Ms Powers moved to recommend the design to City Council.
Ms. Bauer seconded.
Unanimously Approved

8. OTHER BUSINESS

a. There was a question about the regular meeting time of the Board, it is 3rd Wednesday of the month at 3:30. Ms. Martin when meetings will be virtual vs. in person. There is a conflict with location the February 15 meeting. There is a preference for in person or highbred if technology allows.

9. ADJOURNMENT: 4:54 PM

Minutes approved by the Chair and a vote of the Board/Commission on 02/15/23

May 2, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Ellen Martin, Visual Arts Administrator
Ted Hewitt, Legal

SUBJECT

Resolution 2023-044 Approving Expenditures from the Art in Public Places Stormwater and Water Utility Account to Commission an Artist to Create Art in Public Places Relating to Stream Rehabilitation.

EXECUTIVE SUMMARY

The purpose of this item is to approve expenditures from the Art in Public Places (APP) Stormwater and Water Utility Accounts to commission an artist to create art for the Stream Rehabilitation Project. The expenditure of $191,800 will be for construction final design, engineering, materials, signage, fabrication, delivery, installation, and contingency for Andy Dufford and Chevos Studios to create the artworks for the Stream Rehabilitation Project.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

Section 23-303 of the Code, which was added in 1995, established the Art in Public Places Reserve Account, and designated it for use in acquiring or leasing works of art, maintenance, repair or display of works of art, and administrative expenses related to the Art in Public Places (APP) Program, in accordance with the APP Guidelines adopted by the Council in Ordinance No. 20, 1995. In 2012, City Council permanently adopted the APP Program, and reenacted City Code Chapter 23, Article IX, with certain modifications.

APP Artist Andy Dufford was selected through an RFQ process and collaborated with the project team to develop artworks that help educate the community and tell the Stormwater Utility story of stream rehabilitation. Andy Dufford has developed concepts for two art components for the project.

One component is a temporary portable piece that will tell the story of Stormwater Utility's stream rehabilitation work. It will serve as an interpretive sculpture during the construction phase that speaks to the transformation from the degraded cut bank to a healthy ecosystem. The work will include references of cut stream banks with minimal habitat diversity to restored site with a riparian buffer and access to flood plain that is ecologically diverse. The temporary work will be created from cut metal panels and river boulders. Utilities will move this temporary sculpture to new sites as they begin work.

The second component is permanent creek-side seating to create a lasting amenity at each rehabilitated project site. The two hand-carved granite benches for each site will have low relief carving inspired by a healthy stream which includes riffles, pools, and runs. These will allow visitors to visit the site, sit on the benches, and create a direct connection with the stream rehabilitation projects. This budget includes a set of permanent benches at the stream habitation projects at the confluence of Fossil and Mail Creek near Fossil Creek Park and at Spring Creek in Edora Parks.

CITY FINANCIAL IMPACTS

The funds for this item have been appropriated in the APP Stormwater and Water Utility Account. The APP program also has available maintenance funds for the long-term care of the subject artwork and the rest of the APP art collection.

The Stream Rehabilitation art budget is $191,800 to be used for construction final design, engineering, materials, signage, fabrication, delivery, installation, and contingency for these multiple artworks. The APP funds are $72,019 from Stormwater and $119,781 from Water Utility funds.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The design concept and budget for the art project was reviewed and recommended for City Council approval by the APP Board at the March 22, 2023, regular board meeting.

PUBLIC OUTREACH

The selected artist collaborates with the project team to develop concepts for the artwork based on the goals of the project and input from the team. The final design and budget are reviewed and approved by the project team and then the APP Board, who then recommends the project to City Council for approval.

The APP Program promotes the project in development, fabrication, installation, and completion of the artwork on social media, website, and newsletters.

ATTACHMENTS

1. Resolution for Consideration
2. Written Description and Images of Proposed Artwork (PDF)
3. APP March 2023 Draft Minutes (PDF)

RESOLUTION 2022-044
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING EXPENDITURES FROM THE ART IN PUBLIC PLACES STORMWATER AND WATER UTILITY ACCOUNTS TO COMMISSION AN ARTIST TO CREATE ART IN PUBLIC PLACES RELATING TO STREAM REHABILITATION

WHEREAS, pursuant to Sections 23-303 and 23-304 of the City Code, one percent of construction project funding is set aside for use in the acquisition and installation of works of art in accordance with the Art in Public Places Guidelines adopted by the City Council in Ordinance No. 047, 1998 (the "Guidelines"); and

WHEREAS, funding contributions to Art in Public Places for each City Utility are to be kept and spent in such Utility's own fund for the betterment of such utility or as otherwise determined by the City Council for a specific utility purpose; and

WHEREAS, Artist Andy Dufford and Chevos Studios were selected from a Request for Qualifications process to develop art to tell the Stormwater Utility story of stream rehabilitation (the "Art Project"); and

WHEREAS, the Art Project includes a temporary sculpture to be used at the site of stream rehabilitation work conducted by the City and two permanent, hand-carved granite benches for creek-side seating with one at Fossil Creek Park and one at Edora Park; and

WHEREAS, the Art in Public Places Board (the "Board") approved the design concept and budget for the Art Project and recommended Council approval of the same at the Board's March 22, 2023, regular meeting; and

WHEREAS, the budget for the Art Project is $191,800, which is to be used for construction final design, engineering, materials, signage, fabrication, delivery, installation, and contingency, including $72,019 from the Art in Public Places Stormwater Utility Account and $119,781 from the Art in Public Places Water Utility Account; and

WHEREAS, funds sufficient for the Art Project have been appropriated in the Art in Public Places Stormwater and Water Utility Accounts; and

WHEREAS, City Code Section 23-308 requires that the Board's recommendation concerning the use of funds for the Art Project be presented for City Council review and approval as the cost of the Art Project exceeds $30,000.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals above.

Section 2. That the City Council hereby approves of the Art Project for stream rehabilitation work described herein, the design for which was reviewed and approved by the Art in Public Places Board on March 22, 2023, and the use of previously appropriated funds in an amount not to exceed SEVENTY-TWO THOUSAND NINETEEN DOLLARS ($72,019) from the Art in Public Places Stormwater Utility Account and ONE HUNDRED NINETEEN THOUSAND SEVEN HUNDRED EIGHTY-ONE DOLLARS ($119,781) from the Art in Public Places Water Utility Account for the Art Project.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 2nd day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

ART IN PUBLIC PLACES

Stream Rehabilitation
Andy Dufford and Chevo Studios

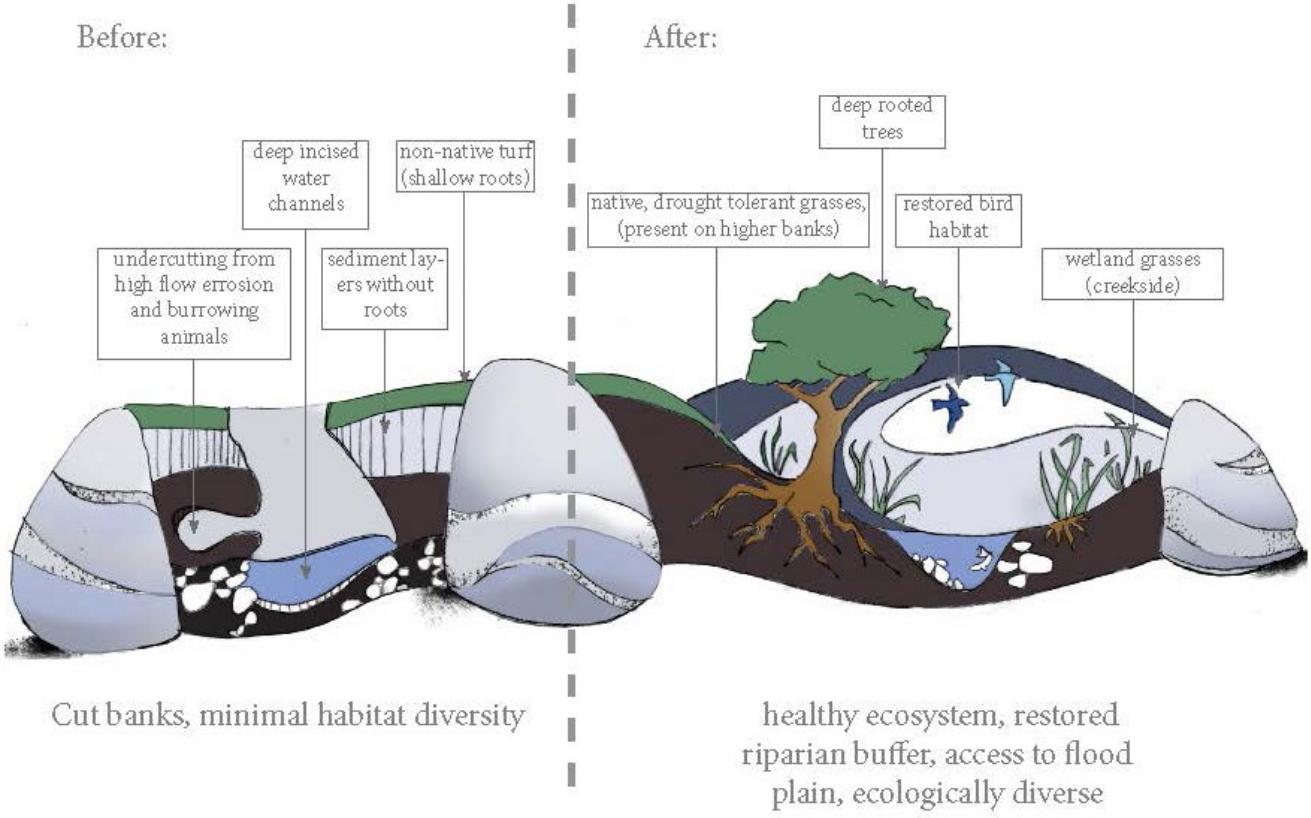
The Stormwater Utility's Stream Rehabilitation Program seeks to repair areas of streams that have been impacted by human use and growth, where the ecology, safety structure and water quality have changed over time.

Artist Andy Dufford and Chevo Studios worked with the Stormwater Utility project team to design artwork that educates and draws attention to the program. The proposed art project includes two components:

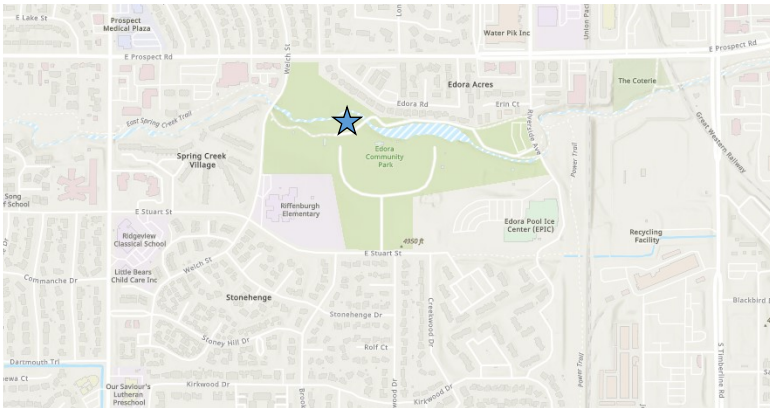
↑ A temporary portable educational art piece (above) that tells the story of stream rehabilitation at each site during the construction phase. The piece will bridge the gap for visitors by providing both an educational and artistic understanding of the stream rehabilitation work. This temporary sculpture will be moved to new stream rehabilitation project sites as they begin work.

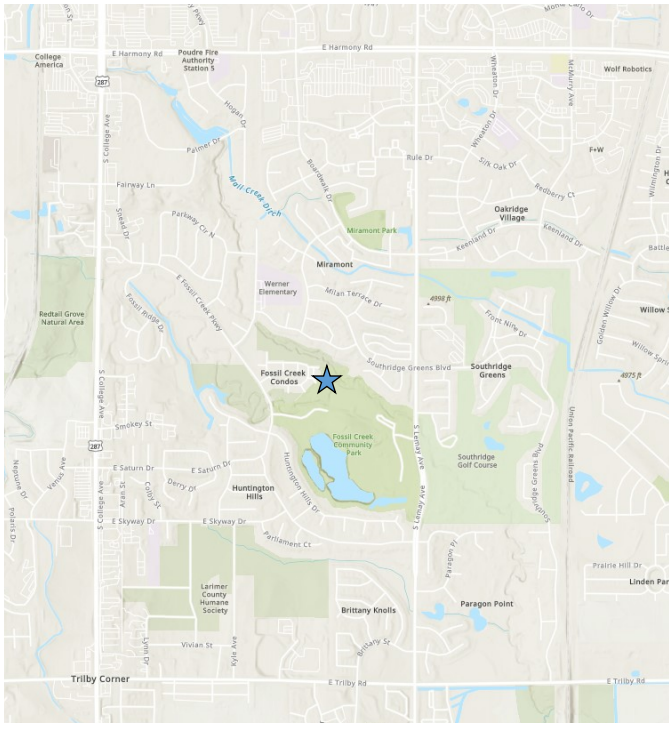
↑ A permanent creek-side seating space (above) that creates a seating at each completed site. The hand carved benches stone will feature low-relief carving inspired by a healthy, balanced stream which includes: riffles, pools, and runs. Each seating space will be composed of two carved granite seats.

This project includes one portable educational art piece and two permanent art-bench installations—one at the confluence of Fossil/Mail Creek near Fossil Creek Park and one at Spring Creek in Edora Park.



The temporary portable artwork is created from cut metal panels and river boulders.





Permanent creek-side seating spaces create a lasting amenity at each rehabilitated project site. The carved imagery is inspired by a healthy stream. This project includes two permanent art-bench installations, one at confluence of Fossil/Mail Creek near Fossil Creek Park and one at Spring Creek in Edora Park.

MINUTES

CITY OF FORT COLLINS • BOARDS AND COMMISSIONS

ART IN PUBLIC PLACES
REGULAR MEETING

Wednesday, March 22, 2023 – 3:30 PM

The Lincoln Center, Founders Room, 417 W. Magnolia

1. CALL TO ORDER: 3:33 PM

2. ROLL CALL

a. Board Members Present – Natalie Barnes, Kathy Bauer, Myra Powers, Renee Sherman, Heidi Shuff, Christopher Staten, and Nancy Zola
b. Board Members Absent – None
c. Staff Members Present – Ellen Martin, Liz Good, Jim McDonald, Ken Sampley
d. Cultural Resources Board Liaison – Not Present
e. Guests – Andy Dufford, William Seal, Krisa Knott

3. AGENDA REVIEW

4. PUBLIC PARTICIPATION

5. APPROVAL OF MINUTES

Ms. Powers pointed out that the motion was missing from the 6.f. Midtown Corridor Project item.

Ms. Powers moved to approve the minutes with the amendment of adding who made the motion for the Midtown Corridor Project
Ms. Zola seconded.
Unanimously approved

6. NEW BUSINESS

a. **STREAM REHABILITATION PROJECT**

Ms. Martin shared the background of the project. Ken Sampley, Director of Utilities Storm Water Engineering, presented an overview of the Stream Rehabilitation Program. Artist Andy Dufford and William Seal from Chevo Studios presented the artwork. The art project includes two components; a temporary portable artwork that will be located on site as the stream rehabilitation is under construction and permanent stone benches with carved water-inspired imagery that create seating areas to enjoy the rehabilitated streams. This project and budget include two permanent art-bench installations, one at confluence of Fossil/Mail Creek and one at Spring Creek in Edora Park. The Board discussed the text for the plaque.

Ms. Bauer moved that we accept the proposed Chevo Studios Stream

Rehabilitation project in conjunction with Utilities.
Ms. Sherman seconded.
Unanimously approved

c. **COLLEGE & TRILBY INTERSECTION**

Ms. Martin presented the project, which will upgrade and improve the intersection at College and Trilby. The reconstructed intersection will improve safety for current and future traffic levels and for growth in the region.

Ms. Sherman moved that we look at using the pre-approved list of artists based on the estimated budget
Ms. Powers seconded
Unanimously approved

b. **PIANOS ABOUT TOWN REVIEW**

Ms. Martin reviewed the selection process. Krisa Knott with the Downtown Development Authority participated on the Selection Committee and was present at the meeting. The Selection Committee submitted their voting earlier. The top scoring submissions were shared in a presentation. There was a vote to rank the tied artists for alternates.

Ms Zola moved to accept the top 13 designated and ranked alternates.
Ms. Bauer seconded
Unanimously approved

7. STAFF REPORTS

Ms. Martin shared highlights from the report. It will be emailed to the Board.

8. OTHER BUSINESS

a. There was a discussion about Transformer Cabinet Mural Artist and Pedestrian Paver selection for the April 19 Board meeting.

b. There was a request to avoid selection review over the week of Spring Break in the future.

c. There was a discussion about what materials are shared before the Board Meeting. It was discussed that the Board reviews project materials as an overview and will continue to receive materials at the meeting.

9. ADJOURNMENT 5:13 PM

Minutes approved by the chair and a vote of the Board/Commission on XX/XX/XX

May 2, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Kirk Longstein, Senior Environmental Planner
Clay Frickey, Interim Planning Manager
Paul Sizemore, Director, Community Development and Neighborhood Services
Brad Yatabe, Legal

SUBJECT

First Reading of Ordinance No. 071, 2023, Amending the Land Use Code to Include Regulations for Areas and Activities of State Interest

EXECUTIVE SUMMARY

The purpose of this ordinance is to amend the Fort Collins Land Use Code to include 1041 regulations. 1041 powers give local governments the ability to regulate particular development projects occurring within their jurisdiction, even when the project has broader impacts. The 1041 regulations would allow for reviewing and permitting of two designated areas and activities of statewide interest - (1) major domestic water, sewage treatment and (2) highway projects. Staff has included five decision points for Council's consideration based on feedback from stakeholder meetings since Council's previous consideration of 1041 regulations on February 7, 2023.

STAFF RECOMMENDATION

Planning staff recommends adoption of the Ordinance with the following amendments on first reading:

- Update the definition of designated activities to exclude public right-away and remove pipe-size diameter and add easement-size.

- Update the term Finding of Negligible Adverse Impact (FONAI) to a Finding of No Significant Impact (FONSI).

If Council directs staff to act on Decision Points 2 through 5, additional time is needed to prepare amendments to the Ordinance to be presented at the time of second reading.

BACKGROUND / DISCUSSION

The term “1041” refers to the number of the bill, House Bill 74-1041, that created the 1041 powers in 1974, and the statutes regarding 1041 powers are also referred to as the Areas and Activities of State Interest Act (“AASIA”). The statute authorizes local governments to regulate specified activities and areas, and the proposed regulations address three types of activities listed in the statute. In October 2021, Council adopted Ordinance No. 122, 2021, to designate the following activities as being subject to the City’s authority granted under the AASIA: 1) Domestic water and wastewater treatment facilities; and 2) Highways and Interchanges. In Ordinance No. 122, 2021, Council also imposed a moratorium on conducting such activities, with certain exceptions, until Land Use Code regulations to administer the designated activities were adopted or until December 31, 2022. The moratorium was extended in December 2022 until March 31, 2023, by Ordinance No. 139, 2022.

As directed by Council through a Resolution adopted May 2021, staff has sought input from engaged community partners; including utility providers and environmental advocacy groups on 1041 regulations for major domestic water, sewage treatment and highway projects as set forth in the AASIA. Generally, these types of projects are reviewed through the Site Plan Advisory Review (SPAR), and by adopting the 1041 powers, the City will leverage a regulatory framework to review projects as opposed to the SPAR advisory process, which is non-binding. Following Council feedback, regulatory goals have included defining a process that is (1) contextually appropriate to Fort Collins, (2) addresses deficiencies within the SPAR process, (3) provides predictability for developers and decision makers, (4) establishes a meaningful public process, and (5) incentivize project siting and design that avoid impacts to critical natural habitat, cultural resources, and disproportionately impacted communities.

1041 regulations align with City Plan environmental health policies and principles - by directing development away from natural features to the maximum extent feasible. Protecting and enhancing the environment is a core value in Fort Collins, and the community’s leadership on environmental stewardship and conservation reinforces that core value. Since 1997, the Fort Collins Land Use Code Section 3.4.1 has included development standards directed at protecting and enhancing natural habitat features through buffering, naturalistic design, and mitigation performance criteria. These same guiding principles are incorporated within the proposed 1041 regulations for activities of statewide interest.

What problem does 1041 regulations solve?

The Site Plan Advisory Review (SPAR) process requires the submittal and approval of a site development plan that describes the location, character and extent of improvements to parcels owned or operated by public entities. Projects subject to SPAR are reviewed by staff through an advisory process and the level of details provided through the SPAR process are limited in scope. Additionally, because the SPAR process is advisory and non-binding there may be projects that were not initiated by public entities through the SPAR development review process. The 1041 permitting process would give local control of these types of projects, allow greater transparency through enhanced public engagement opportunities, and through the permitting authority, impose higher standards and improved environmental protections across the City.

City Council Decision Points

As directed by the Council at their February 7, 2023 meeting, staff continued discussions with environmental groups and water utility providers on draft 1041 regulations. In response to these stakeholder discussions, staff suggests Council consider the following five decision points. Full staff analysis is provided under the attachments.

Decision Point 1 – Update Definitions

Council Action during the May 2 Council meeting:

- No Change to the Code

  OR

- (Staff recommendation) Amend the Code to remove pipe-size diameter and exclude projects within existing public Right of Way

- (Staff recommendation) Amend the Code to add a definition that redefines the Applicability of Standards determination from a FONAI to a FONSI

Decision Point 2 – Update Application Procedures

Council Action during the May 2 Council meeting:

- No change to the Code

  OR

- Adopt the Code and direct staff to bring forward an option for second reading amending the Code to do the following:
  a) Staff recommendation add conceptual submittal document that summarizes the potential for a significant impact.
  b) Staff recommendation Move neighborhood meeting requirements to after review of the applicability of standards (i.e., FONAI determination), and extend comment period during the pre-application activity review.
  c) Remove requirements that conceptual design be drafted at thirty-percent completeness;
  d) Optional Pre-Application Review by City Council; and
  e) Allow a process that allows a "limited scope resubmittal" after a final denial decision.

Decision Point 3 – Update Review Standards to account for construction activities outside the jurisdiction.

Council Action during the May 2 Council meeting:

- (Staff Recommendation) No change to the Code
  If Council is interested in exploring designating areas of statewide interest outside the jurisdiction and/or the Poudre River (other geographic limits) staff recommends a Work Session to analyze policy implications and establish parameters for a new work stream.

  OR

- Direct staff to bring forward options amending the Code to account for construction activities outside the jurisdiction.

Decision Point 4 - Consider Intergovernmental Agreement (IGA)

Council Action during the May 2 Council meeting:

- (Staff recommendation) No Change to the Code

  OR

- Postpone code adoption, schedule a work session to explore scope.

Decision Point 5 – Permit administration *(See City Financial Impacts)*

Council Action during the May 2 Council meeting:

- (Staff recommendation) Direct staff to bring back a supplemental appropriation for permit administration.

  OR

- Postpone adoption of the Code.

Costs for Third-Party Consultants

The proposed amendment to Land Use Code Section 2.2.3 to allow the City to retain the services of third-party consultants to assist in the review of development applications, including 1041 applications, has been removed from the Ordinance because the identical language was adopted as part of the oil and gas Land Use Code amendments adopted on second reading on April 4, 2023, Ordinance No. 151, 2022 (see Section 5 of Ordinance No. 151, 2022).

CITY FINANCIAL IMPACTS

Decision Point 5 – Permit Administration

With the information available to staff through a recent Request for Information (RFI), a full permit review (only) is estimated to cost between $20-30K per application reviewed. A Request for Proposal (RFP) will be issued shortly after the adoption of the Code for an on-call contractor servicing third party permit review of all phases of the 1041 permit. This would include conceptual, FONAI, and full permit review. All costs assessed by the contractor will pass through to the applicant and an additional staffing analysis is needed for ongoing management of the permitting program. The proposed program design will help staff get the program started soon after adoption with existing staff levels, and better prepare Community Development and Neighborhood Services for a future BFO offer. If Council adopts the ordinance on first reading, staff will prepare a supplemental appropriation for Council's consideration shortly after second reading of the Ordinance.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Staff met with several City Boards and Commissions prior to the February 7 Council meeting; however, has not met with Boards and Commissions since February 7 given that no changes have been made to the Code. During the Planning and Zoning Commission hearing on January 25, the Commission unanimously adopted the recommendation below:

The Planning and Zoning Commission recommend that City Council NOT ADOPT the proposed 1041 regulations until the public has sufficient time to review staff's Version 3 and to comment fully on its impact. The Planning and Zoning Commission believes the proposed regulation is directionally correct; however, additional input is needed by affected parties on at least the following areas:

- *Potential consequences of the proposed regulation, as currently written*
- *The extent to which the regulation could legally extend to impacts created by components of the project outside the jurisdictions but that affect the natural resources and natural areas of Fort Collins*
- *Whether the scope of projects to be regulated is appropriate, relative to what would be considered material in the scope of such projects.*

This recommendation could require that more time be allowed between first and second readings, or that the current moratorium be extended, if necessary. This decision is based upon the agenda materials, the information and materials presented during the work session and this hearing, and the Commission discussion on this item.

PUBLIC OUTREACH

Re-engagement summary and stakeholder feedback since February 7, 2023:

The 1041 regulations were released to the public on January 20, 2023, and incorporated changes based on public feedback themes discussed between November 2022 and January 2023. Following the November 2022 work session, public engagement tactics focused on working group meetings where policy issues were discussed but very few public comments regarding specific ordinance language were collected. Given the lack of access to actual code language ahead of the February 7, 2023 Council meeting, stakeholders expressed distrust in the process and requested more time to review. Based on the Planning and Zoning Commission's recommendation to allow more time for the public to deliberate, Council adopted a motion to extend the moratorium to June 30 and reschedule the first reading of 1041 regulations to May 2, 2023, and until stakeholders have an opportunity to understand the Code's full impact. Based on Council direction, staff prepared re-engagement questions, met with stakeholders, and consolidated feedback in a memo circulated to Council on April 14. Public comment and detailed transcripts from reengagement meetings with stakeholders is provided in the transcript.

As suggested by Council, staff reached out to Larimer County staff to seek feedback on implementation of their 1041 regulations and any lessons learned since its adoption. Larimer County staff have not provided comments since updated draft regulations were released in fall of 2022.

Date	Community Member Outreach Activities
4/17/2023	ELCO Water
4/7/2023	Ray Watts (environmental group member)
3/28/2023	Environmental Working Group
3/24/2023	Fort Collins-Loveland Water District (FCLWD)
3/20/2023	Boxelder Sanitation
3/17/2023	ELCO Water
3/15/2023	NWCWD
3/14/2023	Northern Water
3/10/2023	ELCO Water
3/10/2023	Fort Collins-Loveland Water District (FCLWD)
3/9/2023	Environmental Working Group
3/7/2023	Keith Meyer (Ditesco Services)
2/22/2023	Peggy Montano (Trout Law representing Northern Water)
2/7/2023	City Council Hearing
1/25/2023	Planning and Zoning Commission Hearing
1/19/2023	Disproportionately Impacted Communities - Open House
1/19/2023	Water Commission
1/13/2023	Planning and Zoning Commission work session
1/12/2023	Economic working group
1/11/2023	Fort Collins Utilities
1/11/2023	Water Provider Working Group
1/9/2023	Environmental Working Group
1/9/2023	Save the Poudre
1/6/2023	Boards and Commissions Working Group

1/5/2023	Fort Collins Sustainability Group
12/21/2022	Transportation Board
12/19/2022	Economic working group
12/16/2022	Natural Areas Department
12/15/2022	Natural Resources Advisory Board
12/14/2022	Northern Water
12/13/2022	Boards and Commissions Working Group
12/7/2022	CDOT
12/7/2022	Water Provider Working Group
12/6/2022	Environmental Working Group
12/5/2022	Boxelder Sanitation
11/17/2022	Water Commission
11/16/2022	Transportation Board
11/10/2022	Planning and Zoning Commission work session
11/9/2022	Land Conservation Stewardship Board
11/6/2022	City Council work session

ATTACHMENTS

1. Ordinance for Consideration
2. Decision Point 1
3. Decision Point 2
4. Decision Point 3
5. Decision Point 4
6. What Makes an Impact Significant?
7. Public Comments
8. Presentation

ORDINANCE NO. 071, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE LAND USE CODE TO INCLUDE GUIDELINES AND REGULATIONS FOR THE ADMINISTRATION OF DESIGNATED AREAS AND ACTIVITIES OF STATE INTEREST

WHEREAS, on December 2, 1997, by its adoption of Ordinance No. 190, 1997, the City Council enacted the Fort Collins Land Use Code (the "Land Use Code"); and

WHEREAS, at the time of the adoption of the Land Use Code, it was the understanding of staff and the City Council that the Land Use Code would most likely be subject to future amendments, not only for the purpose of clarification and correction of errors, but also for the purpose of ensuring that the Land Use Code remains a dynamic document capable of responding to issues identified by staff, other land use professionals and citizens of the City; and

WHEREAS, Colorado Revised Statutes ("'C.R.S.") Section 24-65.1-101 et seq, commonly referred to as 1041 statutes or powers, empowers the City to designate certain areas and activities to be matters of state interest subject to City regulation and to adopt guidelines and regulations for the administration of designated areas and activities; and

WHEREAS, on second reading on October 19th, 2021, City Council adopted Ordinance 122, 2021, designating two activities of state interest:

(1) the site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems; and
(2) the site selection of arterial highways and interchanges and collector highways

; and

WHEREAS, pursuant to C.R.S. Section 24-65.1-404(4) and the City's power to impose a moratorium on development activity pursuant to its home rule powers granted under Article XX of the Colorado Constitution, Ordinance 122, 2021, also imposed a moratorium on conducting the designated activities until December 31, 2022, to allow City staff time to draft guidelines and regulations for the administration of the designated activities; and

WHEREAS, pursuant to Ordinance 139, 2022, the moratorium was extended until March 31, 2023, to allow additional time for City staff to continue drafting guidelines and regulations; and

WHEREAS, pursuant to Ordinance No. 033, 2023, the moratorium was extended until June 30, 2023, to allow additional time for the public to evaluate the proposed

guidelines and regulations and for City staff to continue interacting with the public and continue drafting; and

WHEREAS, on January 25, 2023, the Planning and Zoning Commission reviewed the draft guidelines and regulations and recommended that City Council not adopt the draft guidelines and regulations until, among other issues mentioned in the recommendation, the public has sufficient time to review the draft guidelines and regulations and to comment fully on the impact of such guidelines and regulations; and

WHEREAS, notice of the May 2, 2023, Council hearing to adopt of 1041 guidelines and regulations and where the proposed guidelines and regulations could be examined was published in the Coloradoan; and

WHEREAS, City Council held a public hearing pursuant to C.R.S. 24-65.1-404 to consider the adoption of guidelines and regulations for the administration of the two activities designated pursuant to Ordinance 122, 2021; and

WHEREAS, after considering the Planning and Zoning Commission recommendation, public input, and the City staff recommendation, the City council has determined that the guidelines and regulations set forth in this Ordinance for the administration of the two activities designated pursuant to Ordinance 122, 2021, are in the best interests of the City and shall be adopted.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Division 1.1 of the Land Use Code is hereby amended to read as follows:

DIVISION 1.1 - ORGANIZATION OF LAND USE CODE

The City of Fort Collins Land Use Code is organized into ~~five (5)~~six (6) Articles as follows:

Article 1 General Provisions
Article 2 Administration
Article 3 General Development Standards
Article 4 District Standards
Article 5 Definitions
Article 6 Guidelines and Regulations for Areas and Activities of State Interest

The General Provisions contained in Article 1 address the organization of this Land Use Code; its title, purpose and authority; the establishment of the Zoning Map and Zone Districts; rules for interpretation and measurements; rules for nonconformities and legal matters.

Article 2, Administration, guides the reader through the procedural and decision-making process by providing divisions pertaining to general procedural requirements and a twelve-step common development review process, as well as providing a separate division for each type of development application and other land use requests.

The General Development Standards contained in Article 3 establish standards which apply to all types of development applications unless otherwise indicated. This article is divided into divisions addressing standards for site planning and design, engineering, environmental and cultural resource protection, compact urban growth, buildings, transportation and circulation, and supplemental uses.
All zone districts within the City of Fort Collins and their respective list of permitted uses, prohibited uses and particular development standards are located in Article 4, District Standards. These zone districts directly relate to the Zoning Map and Zone Districts established in Article 1.

Definitions of terms used throughout this Land Use Code are included in Article 5.

Article 6 sets forth guidelines and regulations for areas and activities of state interest adopted pursuant to Section 24-65.1-101, et seq., C.R.S.

This method of organization, which distinguishes and separates general provisions, administration, general development standards, and district standards, ~~and~~ definitions, and areas and activities of state interest, is intended to provide a user-friendly and easily accessible Land Use Code by consolidating most city regulations addressing land use and development, standardizing the regulatory format, providing common development review procedures, separating and clarifying standards and separating and clarifying definitions.

When this Land Use Code is amended, any amendments to procedural provisions will be made in Article 2, Administration. Amendments to general development standards will occur in Article 3, General Development Standards. Amendments to District Standards (Zone Districts) will be made in Article 4. ~~And~~ Article 5 will be the place to change or add definitions. Amendments to areas and activities of state interest will occur in Article 6.

For an overview on how to use this Land Use Code when applying for a development application or other request, reference should be made to Section 2.1.2, Overview of the Development Review Process.

This symbol:

Examples & Explanations

appears under selected subsections of the Land Use Code. It refers to a nonregulatory manual explaining the Land Use Code's approach to development using example pictures and diagrams. The manual, called the *Fort Collins Design Manual*, is available separately.

Section 3. That Division 2.1 of the Land Use Code is hereby amended to read as follows:

DIVISION 2.1 - GENERAL PROCEDURAL REQUIREMENTS

2.1.1 - Decision Maker and Administrative Bodies

The City Council, Planning and Zoning ~~Board~~Commission, ~~Zoning Board of Appeals~~Land Use Review Commission and Director are frequently referenced in this Land Use Code. Reference should be made to Chapter 2 of the City Code for descriptions of these and other decision makers and administrative bodies, and their powers, duties, membership qualifications and related matters.

The Director or the Planning and Zoning ~~Board~~Commission will consider, review and decide all development applications for permitted uses (overall development plans, PUD Overlays 640 acres or less, basic development review plans, project development plans and final plans) according to the provisions of this Land Use Code. For those development applications subject to basic development review, the Director (or the Director's subordinate) is the designated decision maker. For those development applications subject to administrative review (sometimes referred to as "Type 1 review"), the Director is the designated decision maker (see Section 2.2.7(A)(1)). For those development applications subject to P&Z review (sometimes referred to as "Type 2 review"), the Planning and Zoning ~~Board~~Commission is the designated decision maker (see Section 2.2.7(A)(2)). For PUD Overlays greater than 640 acres, the City Council is the designated decision maker after receiving a Planning and Zoning ~~Board~~Commission recommendation. The permitted use list for a particular zone district and the development review procedure "steps" for a particular development application identifies which review, Type 1 or Type 2, will apply. For building permit applications, the ~~Building and Zoning Director~~Chief Building Official is the decision maker (see Section 2.7.3). (See "Overview of Development Review Procedures," Section 2.1.2, below, for a further description of different levels of review.) City Council is the decision maker regarding the issuance of permits to conduct an activity or develop within an area of state interest pursuant to Article 6 after receiving a Planning and Zoning Commission recommendation.

2.1.2 – Overview of Development Review Procedures

This article establishes the development review procedures for different types of development applications and building permits within the city.

(A) ***Where is the project located?*** An applicant must first locate the proposed project on the Zoning Map. Once the proposed project has been located, the applicable zone district must be identified from the Zoning Map and legend. Then, by referring to Article 4, District Standards, of this Land Use Code, the applicant will find the district standards which apply to the zone district in which the proposed project is located. The city's staff is available to assist applicants in this regard.

(B) ***What uses are proposed?*** Next, an applicant must identify which uses will be included in the proposed project. If *all* of the applicant's proposed uses are listed as permitted uses in the applicable zone district for the project, then the applicant is ready to proceed with a development application for a permitted use. If *any* of the applicant's proposed uses are *not* listed as permitted uses in the applicable zone district for the project, then the applicant must either eliminate the nonpermitted uses from his or her proposal, seek the addition of a new permitted use pursuant to Section 1.3.4, seek a text amendment to this Land Use Code or a rezoning amendment to the Zoning Map pursuant to Division 2.9, or seek approval of a PUD Overlay pursuant to Divisions 2.15 and 4.29. Any use not listed as a permitted use in the applicable zone district is deemed a prohibited use in that zone district, unless it has been permitted pursuant to Section 1.3.4 for a particular development application or permitted as part of an approved PUD Overlay. Applications for permits pursuant to the Article 6 areas and activities of state interest provisions may be reviewed regardless of whether the zone district or districts in which the proposed project allow such a use or even expressly prohibit such use. Again, the city's staff will be available to assist applicants with their understanding of the zone districts and permitted uses.

(C) ***Which type of development application should be submitted?*** To proceed with a development proposal for permitted uses, the applicant must determine what type of development application should be selected and submitted. All development proposals which include only permitted uses must be processed and approved through the following development applications: first through a project development plan (Division 2.4), and then through a final plan (Division 2.5). If the applicant desires to develop in two (2) or more separate project development plan submittals, an overall development plan (Division 2.3) will also be required prior to or concurrently with the project development plan. Overall development plans, PUD Overlays, basic development reviews, project development plans and final plans are the five (5) types of development applications for permitted uses. Each successive development application for a development proposal must build upon the previously approved development application, as needed, by providing additional details (through the development application submittal requirements) and by meeting additional restrictions and standards (contained in the General Development Standards of Article 3 and the District Standards of Article 4). Overall development plans, basic development reviews and project development plans may

be consolidated into one (1) application for concurrent processing and review when appropriate under the provisions of Section 2.2.3. The purpose, applicability and interrelationship of these types of development applications are discussed further in Section 2.1.3. Applications for a permit pursuant to the Article 6 areas and activities of state interest provisions are addressed in Division 2.20 and Article 6.

(D) ***Who reviews the development application?*** Once an applicant has determined the type of development application to be submitted, ~~he or she~~he applicant must determine the appropriate level of development review required for the development application. To make this determination, the applicant must refer to the provisions of the applicable zone district in Article 4 and the provisions pertaining to the appropriate development application. These provisions will determine whether the permitted uses and the development application are subject to basic development review, administrative review ("Type 1 review"), Planning and Zoning ~~Board~~Commission review ("Type 2 review"), or City Council review in the case of PUD Overlays greater than 640 acres and permits to conduct a designated activity or develop in a designated area of state interest. Identification of the required level of development review will, in turn, determine which decision maker, the Director in the case of administrative review ("Type 1 review"), or the Planning and Zoning ~~Board~~Commission in the case of Planning and Zoning ~~Board~~Commission review ("Type 2 review"), or the City Council for PUD Overlays greater than 640 acres and permits pursuant to the areas and activities of state interest provisions, will review and make the final decision on the development application. When a development application contains both Type 1 and Type 2 uses, it will be processed as a Type 2 review.

(E) ***How will the development application be processed?*** The review of overall development plans, PUD Overlays, project development plans and final plans, and permits pursuant to the areas and activities of state interest provisions will each generally follow the same procedural "steps" regardless of the level of review (administrative review, ~~or~~ Planning and Zoning ~~Board~~Commission, or City Council review). The common development review procedures contained in Division 2.2 establish a twelve-step process equally applicable to all overall development plans, project development plans and final plans.

The twelve (12) steps of the common development review procedures are the same for each type of development application, whether subject to basic development review, administrative review, Planning and Zoning ~~Board~~Commission review, or City Council review in the case of PUD Overlays greater than 640 acres and permits pursuant to the areas and activities of state interest provisions unless an exception to the common development review procedures is expressly called for in the particular development application requirements of this Land Use Code. In other words, each overall development plan, each project development plan and each final plan will be subject to the twelve-step common procedure. The twelve (12) steps include: (1) conceptual review; (2) neighborhood meeting; (3) development application submittal; (4) determination of sufficiency; (5) staff report; (6) notice;

(7) public hearing; (8) standards; (9) conditions of approval; (10) amendments; (11) lapse; and (12) appeals.

However, Step 1, conceptual review, applies only to the initial development application submittal for a development project (i.e., overall development plan or PUD Overlay when required, or project development plan when neither an overall development plan nor a PUD Overlay is required). Subsequent development applications for the same development project are not subject to Step 1, conceptual review.

Moreover, Step 2, neighborhood meeting, applies only to certain development applications subject to Planning and Zoning ~~Board~~Commission and City Council review. Step 2, neighborhood meeting, does not apply to development applications subject to basic development review or administrative review. Step 3, application submittal requirements, applies to all development applications. Applicants shall submit items and documents in accordance with a master list of submittal requirements as established by the City Manager. Overall development plans must comply with only certain identified items on the master list, while PUD Overlays, project development plans, and final plans must include different items from the master list. This master list is intended to assure consistency among submittals by using a "building block" approach, with each successive development application building upon the previous one for that project. City staff is available to discuss the common procedures with the applicant.

(F) ***What if the development proposal doesn't fit into one of the types of development applications discussed above?*** In addition to the four (4) development applications for permitted uses, the applicant may seek approval for other types of development applications, including development applications for a modification of standards (Division 2.8), an amendment to the text of the Land Use Code and/or the Zoning Map (Division 2.9), a hardship variance (Division 2.10), an appeal of an administrative decision (Division 2.11), a permit to conduct an activity or develop in an area of state interest (Division 2.20 and Article 6), or other requests. These other types of development applications will be reviewed according to applicable steps in the common development review procedures.

(G) ***Is a building permit required?*** The next step after approval of a final plan is to apply for a Building Permit. Most construction requires a Building Permit. This is a distinct and separate process from a development application. The twelve (12) steps of the common development review procedures must be followed for the Building Permit process. Procedures and requirements for submitting a Building Permit application are described in Division 2.7.

(H) ***Is it permissible to talk with decision makers "off the record" about a development plan prior to the decision makers' formal review of the application?*** No. Development plans must be reviewed and approved in accordance with the provisions of this Land Use Code and the City's decision whether to approve or

deny an application must be based on the criteria established herein and on the information provided at the hearings held on the application. In order to afford all persons who may be affected by the review and approval of a development plan an opportunity to respond to the information upon which decisions regarding the plan will be made, and in order to preserve the impartiality of the decision makers, decision makers who intend to participate in the decisions should avoid communications with the applicant or other members of the public about the plan prior to the hearings in which they intend to participate.

2.1.3 - Types of Development Applications

(A) ***Applicability.*** All development proposals which include only permitted uses must be processed and approved through the following development applications: a basic development review; or through a project development plan (Division 2.4), then through a final plan (Division 2.5), then through a development construction permit (Division 2.6) and then through a building permit review (Division 2.7). If the applicant desires to develop in two (2) or more separate project development plan submittals, an overall development plan (Division 2.3) will also be required prior to or concurrently with the project development plan. A PUD Master Plan associated with a PUD Overlay may be substituted for an overall development plan (Divisions 2.15 and 4.29). Each successive development application for a development proposal must build upon the previously approved development application by providing additional details (through the development application submittal requirements) and by meeting additional restrictions and standards (contained in the General Development Standards of Article 3 and the District Standards of Article 4).

Permitted uses subject to administrative review or permitted uses subject to Planning and Zoning ~~Board~~Commission review listed in the applicable zone district set forth in Article 4, District Standards, shall be processed through an overall development plan, a project development plan or a final plan. If any use not listed as a permitted use in the applicable zone district is included in a development application, it may also be processed as an overall development plan, project development plan or final plan, if such proposed use has been approved, or is concurrently submitted for approval, in accordance with the requirements for an amendment to the text of this Land Use Code and/or the Zoning Map, Division 2.9, or in accordance with the requirements for the addition of a permitted use under Section 1.3.4. Development applications for permitted uses which seek to modify any standards contained in the General Development Standards in Article 3, or the District Standards in Article 4, shall be submitted by the applicant and processed as a modification of standards under Division 2.8. Hardship variances to standards contained in Article 3, General Development Standards, or Article 4, District Standards, shall be processed as hardship variances by the ~~Zoning Board of Appeals~~Land Use Review Commission pursuant to Division 2.10. Appeals of administrative/staff decisions shall be according to Division 2.11. PUD overlays shall be processed pursuant to Divisions 2.15, 4.29.

Applications to conduct an activity or develop within an area of state interest are addressed in Division 2.20 and Article 6.

(B) ***Overall Development Plan***.

(1) *Purpose and Effect*. The purpose of the overall development plan is to establish general planning and development control parameters for projects that will be developed in phases with multiple submittals while allowing sufficient flexibility to permit detailed planning in subsequent submittals. Approval of an overall development plan does not establish any vested right to develop property in accordance with the plan.

(2) *Applicability*. An overall development plan shall be required for any property which is intended to be developed over time in two (2) or more separate project development plan submittals. Refer to Division 2.3 for specific requirements for overall development plans.

(C) ***Project Development Plan and Plat***.

(1) *Purpose and Effect*. The project development plan shall contain a general description of the uses of land, the layout of landscaping, circulation, architectural elevations and buildings, and it shall include the project development plan and plat (when such plat is required pursuant to Section 3.3.1 of this Code). Approval of a project development plan does not establish any vested right to develop property in accordance with the plan.

(2) *Applicability*. Upon completion of the conceptual review meeting and after the Director has made written comments and after a neighborhood meeting has been held (if necessary), an application for project development plan review may be filed with the Director. If the project is to be developed over time in two (2) or more separate project development plan submittals, an overall development plan shall also be required. Refer to Division 2.4 for specific requirements for project development plans.

(D) ***Final Plan and Plat***.

(1) *Purpose and Effect*. The final plan is the site specific development plan which describes and establishes the type and intensity of use for a specific parcel or parcels of property. The final plan shall include the final subdivision plat (when such plat is required pursuant to Section 3.3.1 of this Code), and if required by this Code or otherwise determined by the Director to be relevant or necessary, the plan shall also include the development agreement and utility plan and shall require detailed engineering and design review and approval. Building permits may be issued by the Building and

Zoning Director only pursuant to an approved final plan or other site specific development plan, subject to the provisions of Division 2.8.

(2) *Applicability*. Application for a final plan may be made only after approval by the appropriate decision maker (Director for Type 1 review, or Planning and Zoning ~~Board~~Commission for Type 2 review) of a project development plan, unless the project development and final plans have been consolidated pursuant to Section 2.2.3(B). An approved final plan shall be required for any property which is intended to be developed. No development shall be allowed to develop or otherwise be approved or permitted without an approved final plan. Refer to Division 2.5 for specific requirements for final plans.

(E) ***Site Plan Advisory Review***.

(1) *Purpose and Effect*. The Site Plan Advisory Review process requires the submittal and approval of a site development plan that describes the location, character and extent of improvements to parcels owned or operated by public entities. In addition, with respect to public and charter schools, the review also has as its purpose, as far as is feasible, that the proposed school facility conforms to the City's Comprehensive Plan.

(2) *Applicability*. A Site Plan Advisory Review shall be applied to any public building or structure. For a public or charter school, the Planning and Zoning ~~Board~~Commission shall review a complete Site Plan Advisory Review application within thirty (30) days (or such later time as may be agreed to in writing by the applicant) of receipt of such application under Section 22-32-124, C.R.S. For Site Plan Advisory Review applications under Section 31-23-209, C.R.S., such applications shall be reviewed and approved or disapproved by the Planning and Zoning ~~Board~~Commission within sixty (60) days following receipt of a complete application.

Enlargements or expansions of public buildings, structures, schools and charter schools are exempt from the Site Plan Advisory review process if:

(a) The change results in a size increase of less than twenty-five (25) percent of the existing building, structure or facility being enlarged, whether it be a principal or accessory use; and

(b) The enlargement or expansion does not change the character of the building or facility.

Application for a Site Plan Advisory Review is subject to review by the Planning and Zoning ~~Board~~Commission under the requirements contained in Division 2.16 of this Code.

(F) ***PUD Overlay***.

(1) Purpose and Effect. The purpose of the PUD Overlay is to provide an avenue for property owners with larger and more complex development projects to achieve flexibility in site design by means of customized uses, densities, and Land Use Code and non-Land Use Code development standards. In return for such flexibility, significant public benefits not available through traditional development procedures must be provided by the development. A PUD Master Plan is the written document associated with a PUD Overlay and the PUD Master Plan sets forth the general development plan and the customized uses, densities, and Land Use Code and non-Land Use Code development standards. An approved PUD Overlay overlays the PUD Master Plan entitlements and restrictions upon the underlying zone district requirements.

(2) Applicability. A PUD Overlay is available to properties or collections of contiguous properties fifty (50) acres or greater in size. Refer to Divisions 2.15 and 4.29 for specific requirements and review of PUD Overlays and PUD Master Plans.

(G) **Areas and Activities of State Interest.**

(1) Purpose and Effect. The areas and activities of state interest guidelines and regulations set forth in Article 6 are adopted pursuant to Section 24-65.1-101, et seq., C.R.S., and provide the City with the ability to review and regulate matters of state interest. A permit issued pursuant to Article 6 is required in order for a proposed development plan related to a designated activity or within a designated area of state interest to be constructed and operate.

(2) Applicability. A permit to conduct a designated activity or to develop within a designated area of state interest within the City is required for all proposed development plans meeting the criteria set forth in Article 6 unless an exemption exists pursuant to Section 6.4.1 or a finding of negligible adverse impact is issued pursuant to Section 6.6.5.

. . .

2.1.6 - Optional Pre-Application Review

(A) ***Optional City Council Pre-Application Review of Complex Development Proposals:***

A potential applicant for development other than a PUD Overlay may request that the City Council conduct a hearing for the purpose of receiving preliminary

comments from the City Council regarding the overall proposal in order to assist the proposed applicant in determining whether to file a development application or annexation petition. Only one (1) pre-application hearing pursuant to this Subsection (A) may be requested. The following criteria must be satisfied for such a hearing to be held:

(a) The proposed development cannot have begun any step of the Common Development Review Procedures for Development Applications set forth in Article 2, Division 2.2.

(b) The proposed application for approval of a development plan must require City Council approval of an annexation petition, an amendment to the City's Comprehensive Plan, or some other kind of formal action by the City Council, other than a possible appeal under this Land Use Code.

(c) The City Manager must determine in writing that the proposed development will have a community-wide impact.

(B) ***Optional Pre-Application PUD Overlay Proposal Review:***

This optional review is available to potential PUD applicants that have not begun any step of the Common Development Review Procedures for Development Applications set forth in Article 2, Division 2.2. Such review is intended to provide an opportunity for applicants to present conceptual information to the Planning and Zoning ~~Board~~Commission for PUD Overlays between 50 and 640 acres in size, or to City Council for PUD Overlays greater than 640 acres in size, regarding the proposed development including how site constraints will be addressed and issues of controversy or opportunities related to the development. Applicants participating in such review procedure should present specific plans showing how, if at all, they intend to address any issues raised during the initial comments received from staff and affected property owners. In order for a pre-application hearing to be held, the Director must determine in writing that the proposed PUD will have a community-wide impact. Only one (1) pre-application hearing pursuant to this Subsection (B) may be requested.

(C) **Optional Pre-Application Area and Activity Proposal Review:**

A potential applicant to conduct a designated activity or develop within a designated area of state interest may request that the City Council conduct a hearing for the purpose of receiving preliminary comments from the City Council regarding the overall proposal in order to assist the proposed applicant. Only one (1) pre-application hearing pursuant to this Subsection (C) may be requested. The following criteria must be satisfied for such a hearing to be held:

(a) The proposed development cannot have begun any step of the Common Development Review Procedures for Development Applications set forth in Article 2, Division 2.2.

(b) The proposed application for a permit pursuant to Article 6 must require City Council approval of a permit for areas and activities of state interest.

(c) The City Manager must determine in writing that the proposed development will have a community-wide impact.

(~~C~~D) ***Notice and Hearing Procedure***.

All preapplication hearings under above Subsections (A), ~~or~~ (B), or (C) of this provision will be held in accordance with the provisions contained in Steps (6), (7)(B) and (7)(C) of the Common Development Review Procedures, except that the signs required to be posted under Step (6)(B) shall be posted subsequent to the scheduling of the session and not less than fourteen (14) days prior to the date of the hearing. At the time of requesting the hearing, the applicant must advance the City's estimated costs of providing notice of the hearing. Any amounts paid that exceed actual costs will be refunded to the applicant.

(~~D~~E) ***Input Non-Binding, Record.***

The Planning and Zoning ~~Board~~Commission or City Council as applicable pursuant to above Subsections (A), ~~or~~ (B), or (C) may, but shall not be required to, comment on the proposal. Any comment, suggestion, or recommendation made by any Planning and Zoning ~~Board~~Commission or City Council member with regard to the proposal does not bind or otherwise obligate any City decision maker to any course of conduct or decision pertaining to the proposal. All information related to an optional review shall be considered part of the record of any subsequent development review related to all or part of the property that was the subject of the optional review.

Section 4. That Section 2.2.4 of the Land Use Code is hereby amended to read as follows:

2.2.4 - Step 4: Review Of Applications

. . .

(B) ***Specialized Consultants to Assist With Review.*** As described in Section 2.2.3(D)(3), the City may retain the services of third-party consultants with specialized knowledge that the City requires to adequately evaluate whether an application is complete pursuant to above Subsection (A) or to assist in the review of a complete application, the costs of which must be paid by the applicant.

(~~B~~C) ***Processing of Incomplete Applications***. Except as provided below, if a submittal is found to be insufficient, all review of the submittal will be held in abeyance until the Director receives the necessary material to determine that the submittal is sufficient. The development application shall not be reviewed on its merits by the decision maker until it is determined sufficient by the Director. Notwithstanding the foregoing, if an application has been determined to be incomplete because the information provided to the Director shows that a portion of the property to be developed under the application is not yet under the ownership and control of the applicant or developer, the Director may nonetheless authorize the review of such application and the presentation of the same to the decision maker, as long as:

(1) the applicant, at the time of application, has ownership of, or the legal right to use and control, the majority of the property to be developed under the application;

(2) the Director determines that it would not be detrimental to the public interest to accept the application for review and consideration by the decision maker; and

(3) the applicant and developer enter into an agreement satisfactory in form and substance to the City Manager, upon consultation with the City Attorney, which provides that:

(a) until such time as the applicant has acquired full ownership and control of all property to be developed under the application, neither the applicant nor the developer will record, or cause to be recorded, in the office of the Larimer County Clerk and Recorder any document related to the City's review and approval of the application; and

(b) the applicant will indemnify and hold harmless the City and its officers, agents and assigns from any and all claims that may be asserted against them by any third party, claiming injury or loss of any kind whatsoever that are in any way related to, or arise from, the City's processing of the application.

The denial of an incomplete application that has been allowed to proceed to the decision maker under the provisions of this Section shall not cause a post denial re-submittal delay under the provisions of Paragraph 2.2.11(D)(9) for property that was not owned by the applicant or within the applicant's legal right to use and control at the time of denial of the application.

Section 5. That Section 2.2.6 of the Land Use Code is hereby amended to read as follows:

2.2.6 - Step 6: Notice

(A) ***Mailed Notice***. The Director shall mail written notice to the owners of record of all real property within eight hundred (800) feet (exclusive of public rights-of-way, public facilities, parks or public open space) of the property lines of the parcel of land for which the development is planned. Owners of record shall be ascertained according to the records of the Larimer County Assessor's Office, unless more current information is made available in writing to the Director prior to the mailing of the notices. If the development project is of a type described in the Supplemental Notice Requirements of subsection 2.2.6(D), then the area of notification shall conform to the expanded notice requirements of that Section. In addition, the Director may further expand the notification area. Formally designated representatives of bona fide neighborhood groups and organizations and homeowners' associations within the area of notification shall also receive written notice. Such written notices shall be mailed at least fourteen (14) days prior to the public hearing/meeting date. The Director shall provide the applicant with a map delineating the required area of notification, which area may be extended by the Director to the nearest streets or other distinctive physical features which would create a practical and rational boundary for the area of notification. The applicant shall pay postage and handling costs as established in the development review schedule.

(B) ***Posted Notice***. The real property proposed to be developed shall also be posted with a sign, giving notice to the general public of the proposed development. For parcels of land exceeding ten (10) acres in size, two (2) signs shall be posted. The size of the sign(s) required to be posted shall be as established in the Supplemental Notice Requirements of subsection 2.2.6(D). Such signs shall be provided by the Director and shall be posted on the subject property in a manner and at a location or locations reasonably calculated by the Director to afford the best notice to the public, which posting shall occur within fourteen (14) days following submittal of a development application to the Director.

(C) ***Published Notice***. Notice of the time, date and place of the public hearing/ meeting on the development application and the subject matter of the hearing shall be published in a newspaper of general circulation within the City at least seven (7) days prior to such hearing/meeting.

(D) ***Supplemental Notice Requirements***.

	Minimum Notice Radius	***Sign Size***
. . .	. . .	. . .
Area or activity of state interest.	1,000 feet in all directions of the location of a proposed development plan as determined by the	12 square feet, however, the Director may require an increased

	Director, this distance shall apply to mailed notice for neighborhood meetings, appeals of Director FONAI decisions, Planning and Zoning Commission permit recommendations, and City Council permit hearings	number of signs depending upon the size and configuration of the proposed development plan

(E) The following shall not affect the validity of any hearing, meeting or determination by the decision maker:

(1) The fact that written notice was not mailed as required under the provision of this Section.

(2) The fact that written notice, mailed as required under the provision of this Section, was not actually received by one (1) or more of the intended recipients.

(3) The fact that signage, posted in compliance with the provision of this Section, was subsequently damaged, stolen or removed either by natural causes or by persons other than the person responsible for posting such signage or his or her agents.

Section 6. That Section 2.2.12 of the Land Use Code is hereby amended to read as follows:

2.2.12 - Step 12: Appeals/Alternate Review

(A) *Appeals.* Appeals of any final decision of a decision maker under this Code shall be only in accordance with Chapter 2, Article II, Division 3 of the City Code, unless otherwise provided in this Section or Division 2.

(B) *Alternate Review*. Despite the foregoing, if the City is the applicant for a development project, there shall be no appeal of any final decision regarding such development project to the City Council. In substitution of an appeal of a development project for which the City is the applicant, the City Council may, by majority vote, as an exercise of its legislative power and in its sole discretion, overturn or modify any final decision regarding such project, by ordinance of the City Council. Any Councilmember may request that the City Council initiate this exercise of legislative power but only if such request is made in writing to the City Clerk within fourteen (14) days of the date of the final decision of the Planning and Zoning ~~Board~~ Commission. City Council shall conduct a hearing prior to the

adoption of the ordinance in order to hear public testimony and receive and consider any other public input received by the City Council (whether at or before the hearing) and shall conduct its hearing in the manner customarily employed by the Council for the consideration of legislative matters. When evaluating City projects under alternate review, the City Council may, in its legislative discretion, consider factors in addition to or in substitution of the standards of this Land Use Code.

(C) *Appeal of Minor Amendment, Changes of Use, and Basic Development Review Decisions by the Director*. The Director's final decision on a minor amendment or change of use application pursuant to Section 2.2.10(A) or basic development review application pursuant to Division 2.18 may be appealed to the Planning and Zoning ~~Board~~ Commission as follows:

(1) *Parties Eligible to File Appeal*. The following parties are eligible to appeal the Director's final decision on a minor amendment, change of use, or basic development review application:

(a) The applicant that submitted the application subject to the Director's final decision;

(b) Any party holding an ownership or possessory interest in the real or personal property that was the subject of the final decision;

(c) Any person to whom or organization to which the City mailed notice of the final decision;

(d) Any person or organization that provided written comments to the appropriate City staff for delivery to the Director prior to the final decision; and

(e) Any person or organization that provided written comments to the appropriate City staff for delivery to the decision maker prior to the final decision on the project development plan or final plan being amended or provided spoken comments to the decision maker at the public hearing where such final decision was made.

(2) *Filing Notice of Appeal*. An appeal shall be commenced by filing a notice of appeal with the Director within fourteen (14) calendar days after the date the written final decision is made that is the subject of the appeal. Such notice of appeal shall be on a form provided by the Director, shall be signed by each person joining the appeal ("appellant"), and shall include the following:

(a) A copy of the Director's final decision being appealed;

(b) The name, address, email address, and telephone number of each appellant and a description why each appellant is eligible to appeal the final decision pursuant to Subsection (C)(1) above;

(c) The specific Land Use Code provision(s) the Director failed to properly interpret and apply and the specific allegation(s) of error and/or the specific Land Use Code procedure(s) not followed that harmed the appellant(s) and the nature of the harm; and

(d) In the case of an appeal filed by more than one (1) person, the name, address, email address and telephone number of one (1) such person who shall be authorized to receive, on behalf of all persons joining the appeal, any notice required to be mailed by the City to the appellant.

(3) *Scheduling of Appeal*. A public hearing shall be scheduled before the Planning and Zoning ~~Board~~ Commission within sixty (60) calendar days of a notice of appeal being deemed complete unless the Planning and Zoning ~~Board~~ Commission adopts a motion granting an extension of such time period.

(4) *Notice*. Once a hearing date before the Planning and Zoning ~~Board~~ Commission has been determined, the Director shall mail written notice pursuant to Section 2.2.6(A). Notice requirements set forth in Section 2.2.6(B)-(D) shall not apply. The mailed notice shall inform recipients of:

(a) The subject of the appeal;

(b) The date, time, and place of the appeal hearing;

(c) The opportunity of the recipient and members of the public to appear at the hearing and address the Planning and Zoning ~~Board~~ Commission; and

(d) How the notice of appeal can be viewed on the City's website.

(5) *Planning and Zoning ~~Board~~ Commission Hearing and Decision.*

(a) The Planning and Zoning ~~Board~~ Commission shall hold a public hearing pursuant to Section 2.2.7 to decide the appeal, and City staff shall prepare a staff report for the Planning and Zoning ~~Board~~ Commission. The notice of appeal, copy of the Director's final decision, and the application and all application materials submitted to the Director shall be provided to the Planning and Zoning ~~Board~~ Commission for its consideration at the hearing.

(b) The hearing shall be considered a new, or *de novo*, hearing at which the Planning and Zoning ~~Board~~ Commission shall not be restricted to reviewing only the allegations of error listed in the notice of appeal, the Planning and Zoning ~~Board~~ Commission shall not give deference to the Director's final decision being appealed, and the applicant shall have the burden of establishing that the application complies with all relevant Land Use Code provisions and should be granted. The applicant, appellant or appellants, members of the public, and City staff may provide information to the Planning and Zoning ~~Board~~ Commission for its consideration at the appeal hearing that was not provided to the Director for his or her consideration in making the final decision being appealed.

(c) The Planning and Zoning ~~Board~~ Commission shall review the application that is the subject of the appeal for compliance with all applicable Land Use Code standards and may uphold, overturn, or modify the decision being appealed at the conclusion of the hearing and may impose conditions in the same manner as the Director pursuant to Section 2.2.10(A) and Division 2.18. The Planning and Zoning ~~Board~~ Commission decision shall constitute a final decision appealable to City Council pursuant to Section 2.2.12(A).

(D) *Appeal of FONAI Determination*. The Director's determination pursuant to Section 6.5.5 that a proposed development plan would have negligible adverse impact and would not require a permit pursuant to Article 6, or that a proposed development plan would cause more than a negligible adverse impact and must obtain a permit pursuant to Article 6, may be appealed to the Planning and Zoning Commission as follows:

(1) *Parties Eligible to File Appeal*. The applicant is the only party eligible to file an appeal of the Director’s determination that a proposed development plan would cause more than a negligible adverse impact and, therefore, a permit is required pursuant to Article 6.

Any person is eligible to file an appeal of the Director’s finding that a proposed development plan would cause only a negligible adverse impact and would not require a permit pursuant to Article 6.

(2) *Filing Notice of Appeal*. An appeal shall be commenced by filing a notice of appeal with the Director within fourteen (14) calendar days after the date of the written final determination on a FONAI application. Such notice of appeal shall be on a form provided by the Director, shall be signed by each person joining the appeal ("appellant"), and shall include the following:

(a) A copy of the Director's determination being appealed;

(b) The name, address, email address, and telephone number of each person joining the appeal;

(c) The specific reasons why the appellant believes the Director's determination is incorrect; and

(d) In the case of an appeal filed by more than one (1) person, the name, address, email address and telephone number of one (1) such person who shall be authorized to receive, on behalf of all persons joining the appeal, any notice required to be mailed by the City to the appellant.

The Director shall reject any notice of appeal that is not timely filed, does not contain the information set forth in (a) – (d) above, or is not filed by a party with standing to file an appeal. The decision to reject a notice of appeal is not subject to appeal. Should multiple notices of appeal be filed, a single hearing shall be held.

(3) *Scheduling of Appeal*. A public hearing shall be scheduled before the Planning and Zoning Commission as soon as practicable but not later than within sixty (60) calendar days of a complete notice of appeal being filed. In the instance that multiple notices of appeal are filed, the sixty days shall be counted from the date the first complete notice of appeal is filed.

(4) *Notice*. Once a hearing date has been determined, the Director shall mail written notice to the appellant and all parties to whom notice of the decision was mailed pursuant to Section 6.6.5(E)(3). The mailed notice shall inform recipients of:

(a) The subject of the appeal;

(b) The date, time, and place of the appeal hearing;

(c) The opportunity of the recipient and members of the public to appear at the hearing and address the Planning and Zoning Commission; and

(d) How the notice of appeal can be viewed on the City's website.

(5) *Planning and Zoning Commission Hearing and Decision.*

(a) The Planning and Zoning Commission shall hold a public hearing pursuant to Section 2.2.7 to decide the appeal with appellant being substituted for applicant in Section 2.2.7. In any appeal of a Director finding that a proposed development project would have a negligible adverse impact and is not required to obtain a permit, the procedure

set forth in Section 2.2.7 shall be modified to provide the FONAI applicant an opportunity equal to that of the appellant to address the Commission and respond to evidence and arguments raised by the appellant and members of the public. City staff shall prepare a staff report for the Commission. The notice of appeal, copy of the Director's final decision, and the application and all application materials submitted to the Director shall be provided to the Commission for its consideration at the hearing.

(b) The hearing shall be considered a new, or *de novo*, hearing at which the Planning and Zoning Commission shall not be restricted to reviewing only the allegations of error listed in the notice of appeal, the Planning and Zoning Commission shall not give deference to the Director's decision being appealed, and the burden shall be on the appellant to establish why the appeal should be granted. The applicant, appellant, members of the public, and City staff may provide information to the Planning and Zoning Commission for its consideration at the appeal hearing that was not provided to the Director for their consideration in making the decision being appealed.

(c) The Planning and Zoning Commission shall review the application that is the subject of the appeal for compliance with all applicable criteria set forth in Section 6.6.5(A) and shall uphold or overturn the Director's determination. The Planning and Zoning Commission decision shall constitute a final decision appealable to City Council pursuant to Section 2.2.12(A).

Section 7. That Section 2.17 of the Land Use Code is hereby amended to read as follows:

DIVISION 2.17 - CITY PROJECTS

Development projects for which the City is the applicant shall be processed in the manner described in this Land Use Code, as applicable, but shall be subject to review by the Planning and Zoning ~~Board~~Commission in all instances, except for permits pursuant to Article 6 in which City Council is the decision maker, despite the fact that certain uses would otherwise have been subject to administrative review.

Section 8. That Article II of the Land Use Code is hereby amended by the addition of a new Division 2.20 which reads in its entirety as follows:

DIVISION 2.20 - AREAS AND ACTIVITIES OF STATE INTEREST

(A) ***Purpose***. Pursuant to Colorado Revised Statutes Section 24-65.1-101, et. seq, the City is empowered to designate certain activities and areas to be matters of state

interest and to regulate designated activities and areas through adopted guidelines and regulations. The Land Use Code areas and activities of state interest provisions in Article 6 set forth procedures and requirements for the designation of activities and areas as matters of state interest, procedures for requesting a permit to conduct a designated activity or develop in a designated area, and criteria that must be met in order for a permit to be issued.

(B) ***Applicability***. These areas and activities of state interest provisions shall apply to all proceedings and decisions concerning identification, designation, and regulation of any development in any area of state interest or any activity of state interest that has been or may hereafter be designated by the City Council. To the extent a proposed development plan could be reviewed under another Land Use Code process, such plan shall be reviewed under Article 6 unless an exemption exists pursuant to Section 6.4.1 or the Director issues a finding of negligible adverse impact ("FONAI") pursuant to Section 6.6.5. Proposed development plans for which the Planning and Zoning Commission denied a Site Plan Advisory Review application prior to the effective date of Article 6 shall be subject to such regulations unless an exemption exists or a FONAI is issued.

A permit to conduct a designated activity or develop in an area of state interest may be issued for a proposed development plan that is to be located in one or more zone districts regardless of whether the zone district or districts list the use proposed by the proposed development plan as an allowed use or otherwise prohibit such use.

(C) ***Process***.

(1) ***Step 1*** (Conceptual Review): Applicable.

(Pre-Application Area or Activity Review): The Director shall require an additional pre-application areas and activities review pursuant to Section 6.6.3 for any proposed development plan that the Director determines may require a permit pursuant to Article 6. The purposes of the pre-application area or activity review are described in Section 6.6.3(A). The Director may retain the services of third-party consultants pursuant to the terms of Land Use Code Section 2.2.3(D)(3) to assist the Director during the pre-application areas and activities review.

(2) ***Step 2*** (Neighborhood Meeting): Applicable.

(3) ***Step 3*** (Development Application Submittal): Applicable. The simultaneous processing of development applications submitted in association with an application for a permit to conduct a designated activity or develop in an area of state interest is addressed in Section 6.6.9, and combined applications for a permit to conduct multiple activities or develop in multiple areas of state interest is addressed in Section 6.6.10.

(4) ***Step 4*** (Review of Application): Applicable except that Section 6.6.7 shall substitute for Land Use Code Section 2.2.4(A).

(5) ***Step 5*** (Staff Report): Applicable.

(6) ***Step 6*** (Notice): Applicable with particular timing for published and mailed notice as set forth in Section 6.6.11.

(7) ***Step 7*** (Public Hearing):

7(A) (Decision Maker): Not applicable and in substitution therefor, City Council is the decision maker on permits pursuant to Article 6 after receiving a Planning and Zoning Commission recommendation.

Steps 7(B) (Conduct of Public Hearing), ***7(C)*** (Order of Proceedings at Public Hearing):

Applicable to Planning and Zoning Commission hearings where a recommendation on a permit application will be made.

Not applicable to City Council hearings where a decision on a permit application will be made. City Council shall adopt into its rules of procedure a procedure for conducting such hearings.

Applicable to appeals of Director FONAI determinations to the Planning and Zoning Commission as modified pursuant to Section 2.2.12(D)(5).

Not applicable to appeals to City Council of Planning and Zoning Commission decisions on appeals of Director FONAI decisions. The procedures set forth in the Code of the City of Fort Collins Chapter 2, Article II, Division 3 shall apply.

7(D) (Decision and Findings): Not applicable and in substitution therefor, see Section 6.6.5 regarding Director FONAI determinations, Section 2.2.12(D) regarding appeals of Director FONAI decisions, and Section 6.6.11 regarding Planning and Zoning Commission recommendations on permits and City Council permit decisions.
7(E) (Notification to Applicant), ***7(F)*** (Record of Proceedings), ***7(G)*** (Recording of Decisions and Plat)**:** *Applicable.*

(8) ***Step 8*** (Standards): Applicable except that the applicable standards that must be met are set forth in Article 6.

(9) ***Step 9*** (Conditions of Approval): Applicable to Planning and Zoning Commission recommendations on permit applications and City Council decisions on permit applications as modified pursuant to Section 6.6.14.

(10) ***Step 10*** (Amendments): Not applicable and in substitution thereof, the requirements of Sections 6.12.3 and 6.12.4 shall apply

(11) ***Step 11*** (Lapse): Only 2.2.11(A) is applicable and approved permits for areas and activities of state interest are not eligible for vested rights pursuant to the Land Use Code. Sections 6.6.14 and 6.11.1 require that the permittee make substantial steps toward initiating and completing the proposed development plan or the permit may be subject to revocation.

(12) ***Step 12*** (Appeals): Applicable pursuant to Section 2.2.12(D).

Section 9. That the definitions of "Development", "Development application", and "Development plan" contained in Section 5.1.2 of the Land Use Code are hereby amended to read as follows:

Development shall mean the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or, except as is authorized in Section 1.4.7, the dividing of land into two (2) or more parcels.

(1) *Development* shall also include:

(a) Any construction, placement, reconstruction, alteration of the size, or material change in the external appearance of a structure on land;

(b) Any change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on a tract of land or a material increase in the intensity and impacts of the development;

(c) Any change in use of land or a structure;

(d) Any alteration of a shore or bank of a river, stream, lake, pond, reservoir or wetland;

(e) The commencement of drilling (except to obtain soil samples), mining, stockpiling of fill materials, filling or excavation on a parcel of land;

(f) The demolition of a structure;

(g) The clearing of land as an adjunct of construction;

(h) The deposit of refuse, solid or liquid waste, or fill on a parcel of land;

(i) The installation of landscaping within the public right-of-way, when installed in connection with the development of adjacent property;

(j) The construction of a roadway through or adjoining an area that qualifies for protection by the establishment of limits of development.

(2) Development shall not include:

(a) Work by the City, or by the Downtown Development Authority (if within the jurisdictional boundary of the Downtown Development Authority and if such work has been agreed upon in writing by the City and the Authority), or work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way, or on land adjacent to the right-of-way if such work is incidental to a project within the right-of-way. Notwithstanding, such work shall be considered development if it is determined to require a permit pursuant to Land Use Code Article 6 Guidelines and Regulations for Areas and Activities of State Interest;

(b) Work by the City or any public utility for the purpose of restoring or stabilizing the ecology of a site, or for the purpose of inspecting, repairing, renewing or constructing, on public easements or rights-of-way, any mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks or the like; provided, however, that this exemption shall not include work by the City or a public utility in constructing or enlarging mass transit or railroad depots or terminals or any similar traffic-generating activity. Notwithstanding, such work shall be considered development if it is determined to require a permit pursuant to Land Use Code Article 6, Guidelines and Regulations for Areas and Activities of State Interest;

(c) Work by any person to restore or enhance the ecological function of natural habitats and features, provided that such work does not result in adverse impacts to rivers, streams, lakes, ponds, wetlands other natural habitats or features, or adjacent properties as determined by the Director; and provided that all applicable State, Federal, and local permits or approvals have been obtained;

(d) The maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure;

(e) The use of any land for the purpose of growing plants, crops, trees and other agricultural or forestry products; for raising or feeding livestock (other than in feedlots); for other agricultural uses or purposes; or for the delivery of water by ditch or canal to agricultural uses or purposes, provided none of the above creates a nuisance, and except that an urban agriculture license is required in accordance with Section 3.8.31 of this Code;

(f) A change in the ownership or form of ownership of any parcel or structure;

(g) The creation or termination of rights of access, easements, covenants concerning development of land, or other rights in land;

(h) The installation, operation, maintenance, or upgrade of a small cell or broadband facility by a telecommunications provider principally located within a public highway as the terms small cell facility, telecommunications provider, and public highway are defined in Section 38-5.5-102, C.R.S. The regulation of such activities is addressed in Chapter 23 of the Code of the City of Fort Collins.

(3) When appropriate in context, development shall also mean the act of developing or the result of development.

Development application shall mean any application or request submitted in the form required by the Land Use Code and shall include only applications for an overall development plan, a PUD Overlay, a project development plan, a final plan, a basic development review, a Building Permit, a modification of standards, amendments to the text of this Code or the Zoning Map, a hardship variance, ~~or~~ an appeal from administrative decisions prescribed in Article 2, a minor or major plan amendment, or a permit application pursuant to the Article 6 areas and activities of state interest provisions.

. . .

Development plan shall mean an application submitted to the City for approval of a permitted use which depicts the details of a proposed development. *Development plan* includes an overall development plan, a project development plan, a final plan, a basic development review, and/or an amendment of any such plan. A PUD Overlay is also considered to be a *development plan* even though the PUD Overlay may request uses that are not permitted in the applicable underlying zone district. Additionally, an application for a permit pursuant to the Article 6 areas and activities of state interest provisions is considered a development plan even though the application may propose uses that are not permitted in the applicable zone district or districts.

. . .

Section 10. That the Land Use Code is hereby amended by the addition of a new Article 6 which reads in its entirety as follows:

ARTICLE 6
GUIDELINES AND REGULATIONS FOR AREAS AND ACTIVITIES OF STATE INTEREST

Division 6.13 Enforcement

DIVISION 6.1 INTRODUCTORY AND GENERAL PROVISIONS

6.1.1 Title and Citation

The various regulations constituting Divisions 1 through 13 of Article 6 are titled and may be cited as the "Guidelines and Regulations for Areas and Activities of State Interest of the City of Fort Collins," or "Regulations."

6.1.2 Purpose and Findings

(A) **Purpose.** The general purpose of these Regulations is to facilitate identification, designation, and administration of matters of state interest consistent with the statutory requirements and criteria set forth in Section 24-65.1-101, et seq., C.R.S. The specific purposes are to:

(1) Protect public health, safety, welfare, the environment, and historic, cultural, and wildlife resources;

(2) Implement the vision and policies of the City's Comprehensive Plan;

(3) Ensure that infrastructure, growth and development in the City occur in a planned and coordinated manner;

(4) Protect natural, historic, and cultural resources; protect and enhance natural habitats and features of significant ecological value as defined in Section 3.4.1; protect air and water quality; reduce greenhouse gas emissions and enhance adaptation to climate change;

(5) Promote safe, efficient, and economic use of public resources in developing and providing community and regional infrastructure, facilities, and services;

(6) Regulate land use on the basis of environmental, social and financial impacts of proposed development on the community and surrounding areas; and

(7) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, resources and other assets.

(B) **Findings.** The City Council of the City of Fort Collins finds that:

(1) The notice and public hearing requirements of Section 24-65.1-404, C.R.S., have been followed in adopting these Regulations;

(2) These Regulations are necessary because of the intensity of current and foreseeable development pressures on and within the City;

(3) These Regulations are necessary to protect the public health, safety, welfare, the environment, and historic, cultural and wildlife resources;

(4) These Regulations apply to the entire area within the incorporated municipal boundaries of the City; and

(5) These Regulations interpret and apply to any regulations adopted for specific areas of state interest and specific activities of state interest which have been or may be designated by the City Council.

6.1.3 Authority

These Regulations are authorized by, inter alia, Fort Collins City Charter Article I, Section 4, Colorado Constitution Article XX, and Section 24-65.1-101, et seq., C.R.S.

6.1.4 Applicability

These Regulations shall apply to all proceedings and decisions concerning identification, designation, and regulation of any development in any area of state interest or of any activity of state interest that has been or may hereafter be designated by the City Council.

(A) To the extent a development plan could be reviewed under these Regulations and also as a Site Plan Advisory Review, Overall Development Plan, Project Development Plan, Final Plan, Basic Development Review, or Minor or Major Amendment, or other site-specific development plan, such development plan shall only be reviewed under these Regulations unless the Director issues a FONAI pursuant to Section 6.6.5 or an exemption as set forth in Section 6.4.1 applies, in which case the development plan shall instead be reviewed under the other applicable review process.

(B) Development plans that have completed Site Plan Advisory Review pursuant to the Land Use Code prior to the effective date of these Regulations and been denied by the Planning and Zoning Commission shall be subject to these Regulations unless a FONAI is issued pursuant to Section 6.6.5 or an exemption applies pursuant to Section 6.4.1.

(C) Certain work exempt from the definition of development set forth in Article 5 may be subject to these Regulations as stated in the definition of development and these Regulations.

(D) City Council has designated as an activity of state interest subject to these Regulations, the Site Selection and Construction of Major New Domestic Water and Sewage Treatment Systems and the Major Extension of Existing Domestic Water and Sewage Treatment Systems. Definitions for major new domestic water systems and major new sewage treatment systems and major extensions of each are set forth in Section 6.1.10.

(E) City Council has also designated as an activity of state interest subject to these Regulations, the Site Selection of Arterial Highways and Interchanges and Collector Highways. Definitions for arterial highways, interchanges and collector highways are set forth in Section 6.1.10.

6.1.5 Permit Required; Allowed Use Not Required; Stay On Issuance of Easements and Other Permits

(A) **Permit Required.**

Other than as stated in Sections 6.1.4, 6.4.1, and 6.6.5, no person may conduct a designated activity of state interest or develop in a designated area of state interest within the City without first obtaining a permit or a permit amendment under these Regulations.

(B) Allowed Use in Zone District Not Required.

(1) Proposed development plans subject to these Regulations shall not be considered as an allowed use in any zone district unless a permit has been issued pursuant to these Regulations. However, as described in Section 6.4.1(A), any fully constructed and operating project or facility that was lawfully developed under prior law but would be subject to these Regulations if it were currently proposed may continue to operate pursuant to Division 1.5 as a nonconforming use or structure.

(2) A permit pursuant to these Regulations may be issued for a development plan that is to be located in one or more zone districts regardless of whether the zone district or districts list the use proposed by the development plan as an allowed use or otherwise prohibit such use.

(C) **Stay on Issuance of Easements and Other Permits.**

No easements on City-owned real property and no permits issued by the City other than under these Regulations, including but not limited to flood plain and right-of-way encroachment permits, shall be granted for any development plan subject to these Regulations without such development plan having first obtained a permit pursuant to these Regulations or as may otherwise allowed under these Regulations.

6.1.6 Relationship of Regulations to Other City, State and Federal Requirements

(A) Whenever these Regulations are found to be inconsistent with any other Land Use Code provision, the more stringent standard or requirement shall control.

(B) In the event these Regulations are found to be less stringent than the statutory criteria for administration of matters of state interest set forth in Section 24-65.1-202, C.R.S., the statutory criteria shall control.

(C) In the event these Regulations are found to be more stringent than the statutory criteria for administration of matter of state interest set forth in Sections 24-65.1-202 and 24-65.1-204, C.R.S., these Regulations shall control pursuant to the authority of Section 24-65.1-402 (3), C.R.S.

(D) Unless otherwise specified in these Regulations, these Regulations are intended to be applied in addition to, and not in lieu of, any other City regulations or policies, including, without limitation, the Land Use Code, Natural Areas Easement Policy, and regulations regarding flood plain and encroachment permits as set forth in the Code of the City of Fort Collins, all as currently in effect or hereafter amended.

(E) Permit requirements included in these Regulations shall be in addition to and in conformance with all applicable local, state, and federal water quality and air quality, and environmental laws, rules, and regulations.

(F) Review or approval of a development plan by a federal or state or local agency does not substitute for a permit under these Regulations. Any applicant for a permit under these Regulations that is also subject to the regulations of other agencies may request in writing that the City application and review process be coordinated with that of the other agency or agencies. If practicable, the Director, in their discretion, may attempt to eliminate redundant application submittal requests and may coordinate City review of the application with that of other agencies as appropriate. To the extent the Director determines that the City's authority is preempted with regards to any requirement under these Regulations, such requirement shall not be applicable to the proposed development plan to the extent of the preemption.

(G) These Regulations shall not be construed as modifying or amending existing laws or court decrees with respect to the determination and administration of water rights. To the extent the Director determines that any requirement under these Regulations would modify or amend existing laws or court decrees with respect to the determination and administration of water rights, such requirement shall not be applicable to the development plan to the extent of the modification or amendment of existing laws or court decrees.

6.1.7 Maps

(A) Each map referred to in designations and regulations for any particular matter of state interest adopted by the City Council is deemed adopted therein as if set out in full.

(B) Maps referred to in any such designations and regulations shall be available for inspection in the offices of the Community Development and Neighborhood Services Department.

6.1.8 Severability

If any division, section, clause, provision, or portion of these Regulations should be found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

6.1.9 Definitions

The words and terms used in these Regulations shall have the meanings set forth below subject to Section 1.4.9 regarding the rules of construction for text. The definitions set forth below are specifically applicable to this Article 6 and other Land Use Code provisions referencing Article 6, including Division 2.20, and are not otherwise generally applicable to the Land Use Code.

Adequate security shall mean such funds or funding commitments, whether in the form of negotiable securities, letters of credit, bonds or other instruments or guarantees, as are deemed sufficient, in the Director's discretion, and in a form approved by the City Attorney, to guarantee performance of the act, promise, permit condition or obligation to which it pertains.

Adverse impact shall mean the direct or indirect negative effect or consequence resulting from development. Adverse impact shall refer to the negative physical, environmental, economic, visual, auditory, or social consequences or effects that may or may not be avoidable or fully mitigable. Adverse impacts may include reasonably foreseeable effects or consequences caused by the development plan that may occur later in time or be cumulative in nature.

Aquifer recharge area shall mean any area where surface water may infiltrate to a water-bearing stratum of permeable rock, sand or gravel. This definition also applies to wells used for disposal of wastewater or toxic pollutants.

Arterial highway shall mean any limited access highway that is part of the federal-aid interstate system, any limited access highway constructed under the supervision of the Colorado Department of Transportation, or any private toll road constructed or operated under the authority of a private toll road company. Arterial highway does not include a city street or local service road or a county road designed for local service and constructed under the supervision of local government.

Collector highway shall mean a major thoroughfare serving as a corridor or link between municipalities, unincorporated population centers or recreation areas, or industrial centers, and constructed under guidelines and standards established by, or under the supervision of, the Colorado Department of Transportation. Collector highway does not include a city street or local service road or a county road designed for local service and constructed under the supervision of local government.

Collector sewer shall mean a network of pipes and conduits through which sewage flows to an interceptor main and/or a sewage treatment plant.

Cumulative impacts shall mean the impact on the environment and cultural impacts which result from the incremental impact of the development plan when added to other present, and reasonable future actions.

Designation shall mean only that legal procedure specified by Section 24-65.1-401, et seq., C.R.S., and carried out by the City Council.

Disproportionately impacted community or DIC shall mean a community that is in a census block group where the proportion of households that are low income, that identify as minority, or that are housing cost-burdened is greater than 40% as such terms are defined in Section 24-4-109(2)(b)(II), C.R.S., as amended.

Domestic water and sewage treatment system shall mean a wastewater treatment facility, water distribution system, or water treatment facility, as defined in Section 25-9-102(5), (6) and (7), C.R.S., and any system of pipes, structures and facilities through which wastewater is collected for treatment.

FONAI shall mean a finding of negligible adverse impact pursuant to Section 6.6.5.

High priority habitat shall mean habitat areas identified by City Natural Areas or Colorado Parks and Wildlife where measures to avoid, minimize, and mitigate adverse impacts to wildlife have been identified to protect breeding, nesting, foraging, migrating, or other uses by wildlife. Maps showing, and spatial data identifying, the individual and combined extents of the high priority habitats are provided by Colorado Parks and Wildlife and City Natural Areas.

Highways shall mean state and federal highways.

Historic and cultural resource shall mean a site, structure, or object, including archeological features, located on a lot, lots, or area of property and is (1) designated as a Fort Collins landmark; (2) a contributing resource to a designated Fort Collins landmark district; (3) designated on the State Register of Historic Properties or National Register of Historic Places; or (4) determined to be eligible for designation as a Fort Collins landmark.

Impact area shall mean the geographic areas within the City, including the development site, in which any adverse impacts are likely to be caused by the proposed development plan.

Interceptor main shall mean a pipeline that receives wastewater flows from collector sewers to a wastewater treatment facility or to another interceptor line or meeting other requirements of the Colorado Department of Public Health and Environment to be classified as an interceptor.

Interchange shall mean the intersection of two or more highways, roads or streets, at least one of which is an arterial highway or toll road where there is direct access to and from the arterial highway or toll road.

Major new sewage system shall mean:

(1) A new wastewater treatment plant;

(2) A new lift station; or

(3) An interceptor main or collector sewer used for the purposes of transporting wastewater that meets one or more of the following criteria:

(a) Transmission lines greater than 15" diameter pipe and 1,320 linear feet in the aggregate for the proposed development plan; or

(b) Will require a new easement 30-feet or greater in width and 1,320 linear feet in length in the aggregate for the proposed development plan.

Major new domestic water system shall mean:

(1) A system of wells, water diversions, transmission mains, distribution mains, ditches, structures, and facilities, including water reservoirs, water storage tanks, water treatment plants or impoundments and their associated structures, through which a water supply is obtained, stored, and sold or distributed for domestic uses; or

(2) A system of wells, water diversions, transmission mains, distribution mains, ditches, structures, and facilities, including water reservoirs, water storage tanks, water treatment plants or impoundments and their associated structures, through which a water supply is obtained that will be used directly or by trade, substitution, augmentation, or exchange for water that will be used for human consumption or household use;

And all or part of a system described in (1) or (2) above meets one or more of the following criteria:

(a) Distribution and transmission lines greater than 12" diameter pipe and 1,320 linear feet in the aggregate for the proposed development plan; or

(b) Will require a new easement of 30-feet or greater in width and 1,320 linear feet in length in the aggregate for the proposed development plan.

In determining whether a proposed development plan is a major new domestic water supply system, the Director may consider water rights decrees, pending water rights applications, intergovernmental agreements, treaties, water supply contracts and any other evidence of the ultimate use of the water for domestic, human consumption or household use. Domestic water supply systems shall not include that portion of a system that serves agricultural customers, irrigation facilities or stormwater infrastructure.

Major extension of an existing domestic water treatment system shall mean the expansion of an existing domestic water treatment plant or capacity for storage that will result in a material change, or the extension or upgrade of existing transmission mains, distribution mains, or new pump stations that will result in a material change. Major extension of an existing domestic water treatment system shall exclude the following:

(1) Any maintenance, repair, adjustment;

(2) Existing pipeline or the relocation, or enlargement of an existing pipeline within the same easement;

(3) Expanding any existing easement to a total width of 30-feet or less and for a distance of 1,320 linear feet or less; or

(4) Any facility or pump station or storage tank that does not increase the rated capacity from the Colorado Department of Public Health and Environment.

Major extension of an existing sewage treatment system shall mean any modification of an existing wastewater treatment plant or lift station that will result in a material change, or any extension or upgrade of existing interceptor main or collector sewer that will result in a material change. Major extension of an existing sewage treatment system shall exclude the following:

(1) Any maintenance, repair, adjustment;

(2) Existing pipeline or the relocation, or enlargement of an existing pipeline within the same easement;

(3) Expanding any existing easement to a total width of 30-feet or less and for a distance of 1,320 linear feet or less; or

(4) Any facility or lift station that does not increase the rated capacity from the Colorado Department of Public Health and Environment.

Material change shall mean any change in a development plan approved under these Regulations which significantly expands the scale, magnitude, or nature of the approved development plan or the adverse impacts considered by the Permit Authority in approval of the original permit.

Matter of state interest shall mean an area of state interest or an activity of state interest or both.

Mitigation shall mean avoiding an adverse impact or minimizing impacts by limiting the degree, magnitude, or location of the action or its implementation.

Natural features shall mean land area and processes present in or produced by nature, including, but not limited to, soil types, geology, slopes, vegetation, surface water, drainage patterns, aquifers, recharge areas, climate, flood plains, aquatic life, wildlife, and view corridors which present vistas to mountains and foothills, water bodies, open spaces and other regions of principal environmental importance, provided that such natural features are identified on the City's Natural Habitats and Features Inventory Map.

Permit shall mean a permit issued under these Regulations to conduct and develop an activity of state interest or to engage in development in an area of state interest, or both.

Permit Authority shall mean the City Council or, with respect to matters delegated by these Regulations, the Director and the Planning and Zoning Commission, as established and further described in Section 6.5.1.

Site selection of arterial highways and interchanges and collector highways shall mean the determination of a specific corridor or facility location which is made at the conclusion of the corridor location studies in which:

(1) Construction of an arterial highway, interchange, or collector highway is proposed; or

(2) Expansion or modification of an existing arterial highway, interchange or collector highway is proposed that would result in either (a) or (b), or both as follows:

(a) An increase in road capacity by at least one (1) vehicle lane through widening or alternative lane configuration.

(b) Expansion or modification of an existing interchange or bridge.

Transmission main shall mean a domestic water supply system's line that is designed to transport raw or treated water from a water source to a water treatment plant, storage facility or distribution systems.

Treatment System shall mean either, or both, the water distribution system and wastewater collection system.

Wastewater collection system means a system of pipes, conduits, and associated appurtenances that transports domestic wastewater from the point of entry to a domestic wastewater treatment facility. The term does not include collection systems that are within the property of the owner of the facility. The term is defined in Section 25-9-102(4.9), C.R.S., and as amended.

Wastewater treatment plant shall mean a facility or group of units used for treatment of industrial or domestic wastewater or the reduction and handling of solids and gases removed from such wastes, whether or not such facility or group of units discharges into state waters. Wastewater treatment plant specifically excludes individual wastewater disposal systems such as septic tanks or leach fields.

Water distribution main shall mean a domestic water supply system's pipeline that is designed to transport treated water from a transmission main to individual water customers through service laterals.

Water distribution system shall mean a network of pipes and conduits through which water is piped for human consumption or a network of pipes and conduits through which water is piped in exchange or trade for human consumption.

Water diversion shall mean removing water from its natural course or location or controlling water in its natural course or location by means of a control structure, canal, flume, reservoir, bypass, pipeline, conduit, well, pump or other structure or device or by increasing the volume or timing of water flow above its natural (pre-diversion) levels.

Water treatment plant shall mean the facilities within the domestic water supply system that regulate the physical, chemical or bacteriological quality of the water.

DIVISION 6.2 PROCEDURE FOR DESIGNATION OF MATTERS OF STATE INTEREST

6.2.1 City Council to Make Designations

Designations and amendments of designations may be initiated in three ways:

(A) The City Council may in its discretion designate and adopt regulations for the administration of any matter of state interest.

(B) The Planning and Zoning Commission may on its own motion or upon City Council request, recommend the designation of matters of state interest to City Council. The City Council shall decide, in its sole discretion, whether or not to designate any or all of the requested matters of state interest.

(C) City staff may request that City Council designate an area or activity of state interest and adopt regulations for the administration of the matter designated. The City Council shall decide, in its sole discretion, whether or not to designate any or all of the requested matters of state interest.

6.2.2 Public Hearing Required

The City Council shall hold a public hearing before designating any matter of state interest and adopting regulations for the administration thereof. Said hearing shall be held not less than thirty (30) days nor more than sixty (60) days after the giving of public notice of said hearing.

6.2.3 Notice of Public Hearing; Publication

(A) The City shall prepare a notice of the designation hearing which shall include:

(1) The time and place of the hearing;

(2) The place at which materials relating to the matter to be designated and any guidelines and regulations for the administration thereof may be examined;

(3) The telephone number and e-mail address where inquiries may be answered; and

(4) A description of the area or activity proposed to be designated in sufficient detail to provide reasonable notice as to property which would be included.

(B) At least thirty (30) days, but no more than sixty (60) days before the public hearing, the City shall publish the notice in a newspaper of general circulation in the City and shall mail the notice to each of the following as deemed appropriate in the City's discretion:

(1) State and federal agencies; and

(2) Any local government jurisdiction that would be directly or indirectly affected by the designation.

6.2.4 Matters to be Considered at Designation Hearing

At the public hearing, the City Council shall receive into the public record:

(A) Testimony and evidence from any and all persons or organizations desiring to appear and be heard, including City staff;

(B) Any documents that may be offered; and

(C) The recommendation of the Planning and Zoning Commission.

6.2.5 Adoption of Designations and Regulations

(A) City Council shall consider the following when determining whether to designate an area or activity to be of state interest:

(1) All testimony, evidence and documents taken and admitted at the public hearing;

(2) The intensity of current and foreseeable development pressures in the City;

(3) The matters and considerations set forth in any applicable guidelines or model regulations issued by the Colorado Land Use Commission and other State agencies; and

(4) Reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any such area or uncontrolled conduct of such activity, and the advantages of development of such area or conduct of such activity in a coordinated manner.

(B) Any City Council order designating an area or activity to be of state interest and the adoption of any regulations for the administration of an area or activity of state interest shall be by ordinance.

(C) In the event the City Council finally determines that any matter is a matter of state interest within the City, it shall be the City Council's duty to designate such matter and adopt regulations for the administration thereof.

(D) Each designation order adopted by the City Council shall:

(1) Specify the boundaries of the designated area of state interest or the boundary of the area in which an activity of state interest has been designated; and

(2) State reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any such area or uncontrolled conduct of such activity, and the advantages of development of such area or conduct of such activity in a coordinated manner.

6.2.6 Effect of Designation – Moratorium Until Final Determination

After a matter of state interest is designated, no person shall engage in development in such area and no such activity shall be conducted until the designation and regulations for such area or activity are finally determined as required by Section 24-65.1-404 (4), C.R.S.

6.2.7 Mapping Disputes

Where interpretation is needed as to the exact location of the boundary of any designated area and where there appears to be a conflict between a mapped boundary and actual field conditions, the City Council shall make the necessary boundary determination at a public hearing after providing notice pursuant to Section 6.2.3.

DIVISION 6.3 DESIGNATED ACTIVITIES OF STATE INTEREST

6.3.1 Designated Activities of State Interest

The City Council has designated the following matters of state interest for regulation:

(A) Site Selection and Construction of Major New Domestic Water and Sewage Treatment Systems and Major Extension of Existing Domestic Water and Sewage Treatment Systems (Ordinance No. 122, 2021)

(B) Site Selection of Arterial Highways and Interchanges and Collector Highways (Ordinance No. 122, 2021)

DIVISION 6.4 EXEMPTIONS

6.4.1 Exemptions

These Regulations are not applicable to the following:

(A) Any fully constructed and operating project or facility that was lawfully developed under prior law in effect before the effective date of these Regulations that would be subject to these Regulations if it were currently proposed, may continue to operate pursuant to Division 1.5, Nonconforming Uses and Structures, with the exception that enlargement or expansion of any such project or facility shall require a permit under these Regulations unless an exemption exists or a FONAI is issued. An enlargement or expansion requiring a permit shall not include the maintenance, repair or replacement of existing buildings or structures associated with an existing facility, including retrofitting or updating technology, provided any changes do not result in a material change as determined by the Director. Enlargements or expansions not requiring a permit may still be subject to Section 1.5.5 or an applicable Land Use Code development review process.

(B) Any site specific development plan that would be subject to these Regulations but has received final City approval as of the effective date of these Regulations so long as the vested rights for such approved site specific development plan have not expired. This exemption does not apply to any subsequent modifications to the approved site specific development plan or expansion of the development site that was not included within the City approved application and for which a new or revised development application is required.

(C) Any proposed development plan otherwise subject to these Regulations but such proposed development plan is (1) subject to review and approval as part of the review of a proposed residential, commercial, industrial or mixed-use project under a development review process other than Site Plan Advisory Review under the Land Use Code, including but not limited to a project development plan or basic development review, and (2) which proposed development plan is directly necessitated by a proposed residential, commercial, industrial or mixed-use development.

(D) Any project previously approved by the Planning and Zoning Commission pursuant to the Site Plan Advisory Review (SPAR) process.

(E) Any proposed development plan issued a FONAI pursuant to Section 6.6.5.

DIVISION 6.5 PERMIT AUTHORITY

6.5.1 Permit Authority Established

(A) The Fort Collins Permit Authority is hereby established consisting of the Fort Collins City Council, or with respect to matters delegated by these Regulations, the Director and the Planning and Zoning Commission.

(B) The Director shall be the decision maker regarding issuing or not issuing a FONAI.

(C) The Planning and Zoning Commission shall be the decision maker regarding appeals of Director decisions to issue or not issue a FONAI and regarding recommendations to City Council regarding permit applications.

(D) The City Council shall be the decision maker for approving or not approving a Permit. The City Council shall also be the decision maker regarding appeals of Planning and Zoning Commission decisions regarding the appeal of Director decisions to issue or not issue a FONAI. Permit applications are reviewed by the City Council pursuant to the procedure set forth in these Regulations.

DIVISION 6.6 PERMIT APPLICATION PROCEDURES

6.6.1 Application Procedures

The application procedures for activities and areas of state interest are described in Land Use Code Division 2.20 and in these Regulations.

6.6.2 Application Fee; Financial Security Waiver

(A) Each pre-application area or activity review application and development application for a permit submitted must be accompanied by the fees established pursuant to Section 2.2.3(D). The Director may determine at any time during the pre-application review and development application review process that it is necessary to retain a third-party consultant to assist in reviewing the application pursuant to Section 2.2.3(D). All costs incurred in the third-party consultant review shall be borne by the applicant in addition to the City's internal application review fees.

(B) A referral agency may impose a reasonable fee for the review of a development application and the applicant shall pay such fee which shall detail the basis for the fee imposed. No hearings by the Permit Authority will be held if any such referral agency's fee has not been paid.

6.6.3 Pre-Application Area or Activity Review

(A) The purpose of the pre-application area or activity review is to determine if a permit is required for the proposed development plan, application submittal requirements, procedural requirements, and relevant agencies to coordinate with as part of any permit

review process. Topics of discussion may include, as relevant to the specific application, but are not limited to:

(1) Characteristics of the activity, including its location, proximity to natural and human-made features; the size and accessibility of the site; surrounding development and land uses; and its potential impact on surrounding areas, including potential environmental effects and planned mitigation strategies.

(2) The nature of the development proposed, including land use types and their densities; placement of proposed buildings, pipelines, structures, operations, and maintenance; the protection of natural habitats and features, historic and cultural resources, and City natural areas, parks, or other City property or assets; staging areas during construction; alternatives considered; proposed parking areas and internal circulation system, including trails, the total ground coverage of paved areas and structures; and types of water and wastewater treatment systems proposed.

(3) Proposed mitigation of adverse impacts.

(4) Siting and design alternatives and reasons why such alternatives are not feasible.

(5) Community policy considerations, including the review process and likely conformity of the proposed development with the policies and requirements of these Regulations.

(6) Applicable regulations, review procedures and submission requirements.

(7) Other regulatory reviews or procedures to which the applicant is subject, the applicant's time frame for the proposed development plan, and other applicant concerns.

(B) To schedule the pre-application area or activity review, the applicant must first provide the Director with the following:

(1) Names and addresses of all persons proposing the activity or development;

(2) Name and qualifications of the person(s) responding on behalf of the applicant;

(3) A written summary of the desired location of the proposed development plan including a vicinity map showing the location of three (3) siting and design alternatives, one of which is the preferred location, drafted at approximately thirty percent (30%) completeness. One (1) of the three (3) alternatives submitted shall avoid natural features and historic and cultural resources and avoid the need for mitigation to the maximum extent feasible;

(4) A vicinity map of the preferred siting and proposed development plan projected at an easily readable scale showing the outline of the perimeter of the parcel proposed for the project site (for linear facilities, the proposed centerline and width of any corridor to be considered), property parcels, location of all residences and businesses, any abutting subdivision outlines and names, the boundaries of any adjacent municipality or growth management area, roads (clearly labeled) and natural features within a half

(1/2) mile radius and identified historic and cultural resources within a two hundred (200) foot radius of the project site boundary; an Ecological Characterization Study as defined by Land Use Code Section 3.4.1 within a half (1/2) mile radius of the impact area; and a cultural and historic resource survey documentation and determinations of Fort Collins landmark eligibility for resources within two hundred (200) feet of the project site boundary for each of the three siting alternatives. All final determinations of eligibility for designation as a Fort Collins landmark shall be made in the reasonable discretion of City Historic Preservation staff after reviewing the cultural and historic resource survey and such determinations are not subject to appeal.

(5) A written summary of the cumulative impacts on natural features within a half (1/2) mile radius and on historic and cultural features within 200 feet of the preferred location of the proposed development plan;

(6) Any required certificate of appropriateness pursuant to Chapter 14 of the Code of the City of Fort Collins allowing proposed alterations to any designated historic or cultural resource that may be affected by the proposed development plan.

(7) Any conceptual mitigation plans for the preferred location of the proposed development plan;

(8) The required application fee and applicant agreement to pay the costs of (1) the Director retaining third-party consultants necessary to assist the Director in making a FONAI determination pursuant to Section 6.6.5; (2) the Director retaining third-party consultants necessary to assist the Director with the completeness review of any submitted application pursuant to Section 6.6.7; and (3) the Director retaining third-party consultants necessary to assist City staff in reviewing a complete permit application or City Council in rendering a decision on a permit; and

(9) Any additional information requested by the Director as necessary to make a FONAI determination pursuant to Section 6.6.5.

6.6.4 Neighborhood meeting

(A) Prior to a written FONAI determination being issued pursuant to Section 6.6.5, a neighborhood meeting is required pursuant to Land Use Code Section 2.2.2 following the pre-application area or activity review document submittal to the Director being deemed complete.

(B) At the applicant's cost, notifications for the neighborhood meeting shall be mailed to the property owners and occupants within one thousand feet (1,000) in all directions of the location of the proposed development plan as determined by the Director in their reasonable discretion and shall also be posted on the City's website at www.fcgov.com.

6.6.5 Determination of Applicability of Regulations - FONAI

The Director shall determine the applicability of these Regulations only after a neighborhood meeting and based upon the pre-application area or activity review meeting described in Section 6.6.3.

(A) The Director shall make a finding related to whether the proposed development plan will result in adverse impacts. In order for the Director to determine that a proposed development plan will only result in negligible adverse impacts and to issue a FONAI, they must determine that the proposed project does not meet any of the below criteria (1) through (8). The decision by the Director of potential adverse impacts may or may not include consideration of proposed mitigation depending on factors that may include, but are not limited to, the scale, magnitude, and complexity of mitigation, and the sensitivity of the resource being mitigated. The FONAI shall be evaluated under the following criteria:

(1) Is located wholly or partly on, under, over or within an existing or planned future City natural area or park, whether developed or undeveloped;

(2) Is located wholly or partly on, under, over or within a City-owned, non-right-of-way, property or current or anticipated City building site, whether developed or undeveloped;

(3) Is located within a buffer zone of an existing natural habitat or feature, as defined in Land Use Code Section 3.4.1;

(4) Is located within a buffer of a high priority habitat as identified by Colorado Parks and Wildlife;

(5) Has potential to adversely impact a natural feature as defined by the Land Use Code;

(6) Has the potential to adversely impact natural habitat corridors identified by the City's Natural Area Department;

(7) Has potential to adversely impact historic or cultural resources within a two hundred (200) foot outer boundary of the proposed development plan; or

(8) Has potential to adversely impact disproportionally impacted communities.

(B) If the Director issues a FONAI, the applicant does not need to submit a permit application under these Regulations. However, issuance of a FONAI does not exempt the proposed development plan from all Land Use Code requirements, and an alternative review process may be required.

(C) If the Director issues a FONAI and the applicant subsequently makes material changes to the development plan, the applicant is required to schedule another pre-application area or activity review pursuant to Section 6.6.3 to discuss the changes. Based on the new information and whether the revised development could result in adverse impacts, the Director may rescind the FONAI by issuing a written determination pursuant to below Subsection (F) and require a permit under these Regulations.

(D) Permit Not Required. If the Director has made a finding of negligible adverse impacts, or FONAI, a permit pursuant to these Regulations is not required. However, the proposed development plan may be subject to a different Land Use Code development review process.

(E) Permit Required. If the Director determines a FONAI is not appropriate, the proposed development plan requires a permit and is subject to these Regulations. The Director shall provide the applicant with written comments, to the extent such comments differ from comments provided for any conceptual review, regarding the proposal to inform and assist the applicant in preparing components of the permit application; including a submittal checklist pursuant to Section 6.6.6, and additional research questions to address common review standards pursuant to Section 6.7.1.

(F) Notice of Director's Determination.

(1) The Director's determination to either issue a FONAI and not require a permit or to not issue a FONAI and require a permit shall be in writing and describe in detail the reasons for the determination. The Director shall make this determination within twenty-eight (28) days after the neighborhood meeting pursuant to Section 6.6.4 or the date of receipt of any requested additional information or third-party consultation.

(2) If a permit is required, the Director shall provide additional information needed to deem a permit application complete; including additional scope of analysis needed to review.

(3) The Director shall provide the written determination to the applicant by email if an email address has been provided and promptly mail a copy of the written determination, at the applicant's cost, to the applicant and to property owners within one-thousand (1000) feet in all directions of the location of the proposed development plan as determined by the Director in their reasonable discretion and shall also be posted on the City's website at www.fcgov.com.

(G) Appeal of the Director's Determination. The Director's determination whether to issue or not issue a FONAI is subject to appeal to the Planning and Zoning Commission pursuant to Land Use Code Section 2.2.12(D). The Planning and Zoning Commission decision on the appeal is further subject to appeal to City Council pursuant to the Code of the City of Fort Collins Ch. 2, Art. 2, Div. 3. After the filing of a timely notice of appeal pursuant to Section 2.2.12(D), the Director shall not accept any application that may be affected by an appeal decision and, if an application has been accepted, shall cease processing such application until the appeal has been decided, which in the case of an appeal to Council shall be the date of adoption of the appeal resolution. The filing of a timely notice of appeal shall reset any time period set forth in 6.6.7 and 6.6.11 and such time period shall begin from the date the appeal is decided as previously described.

6.6.6 Application Submission Requirements

In addition to specific submission requirements for the activities addressed in Divisions 6.8 and 6.9, all applications for a permit under these Regulations shall be accompanied by the following materials:

(A) Completed application form and submittal checklist in the format established by the Director.

(B) Any plan, study, survey or other information, in addition to the information required by this Section, at the applicant's expense, as in the Director's judgment is necessary to enable the Permit Authority to make a determination on the application. Such additional information may include applicant's written responses to comments by a referral agency.

Additional materials may be required by the Director for a particular type of proposed development plan. To the extent an applicant has prepared or submitted materials for a federal, state, county, or city permit which are substantially the same as required herein, a copy of those materials may be submitted to satisfy the corresponding requirement below.

6.6.7 Determination of Completeness

(A) No permit application may be processed, nor shall a permit be deemed received pursuant to Section 24-65.1-501(2)(a), C.R.S., until the Director has determined it to be complete. Following the pre-application areas and activities review meeting and neighborhood meeting, the applicant may submit a permit application only after at least fourteen (14) days have passed since the FONAI determination. Upon submittal of the application, the Director shall determine whether the application is complete or whether additional information is required, and if so, shall inform the applicant and pause the completeness review until information is received. Any request for waiver of a submission requirement shall be processed prior to the Director making a determination that an application is complete. The Director may retain at the applicant's cost third-party consultants necessary to assist the Director with the completeness review. If the Director retains a third-party consultant for permit review, the scope of work will be available for review by the applicant.

(B) No determination of completeness may exceed sixty (60) days unless one or more of the following occurs:

(1) The Director determines in writing that more than sixty (60) days is necessary to determine completeness in consideration of the size and complexity of the proposed development plan or available City resources. In such case, the Director shall determine how many additional days are needed, which shall not exceed sixty (60) additional days; or

(2) The Director and the applicant agree in writing to exceed sixty (60) days.

(C) When the Director has determined that a submitted application is complete, or the time limit for making the completeness determination has elapsed even though the application

may not be complete, the Director shall inform the applicant in writing of the date of its receipt. Only upon the Director's determination that an application is complete, or the time limit for making the completeness determination has elapsed even though the application may not be complete, may the City's formal review process commence pursuant to these Regulations.

6.6.8 Referral Agencies

All permit applications under these Regulations shall be referred to internal and external review agencies or City departments as determined by the Director, including for pre-application submittals, completeness reviews and final application submittals. Copies of any such referral agency comments received shall be forwarded to the applicant for its response at the time that comments are provided from City review staff.

6.6.9 Simultaneous Processing of Associated Development Applications

If a development plan subject to these Regulations contains project components not subject to these Regulations but subject to other requirements in the Land Use Code that result in an additional and separate development application, then both development applications can be processed simultaneously.

6.6.10 Combined Application for Multiple Activities or Development in More than One Area of State Interest

When approval is sought to conduct more than one activity of state interest, engage in development in more than one activity or area of state interest, or a combination of activities and areas, a combined application may be completed for all such activities or developments in areas of state interest and may be reviewed simultaneously and, if appropriate in the discretion of City Council, a single determination made to grant or deny permit approval. The City reserves the right to charge an application fee pursuant to Section 6.6.2 of these Regulations for each activity or area that is the subject of a combined application.

6.6.11 Permit Decision Making Procedures

When an application has been determined complete by the Director pursuant to Section 6.6.7 of these Regulations, or the time limit for making the completeness determination has elapsed even though the application may not be complete, then, and only then, shall the permit review process commence. At that time, the following schedule shall apply:

(A) No later than thirty (30) days after the receipt of a completed application, the Director will schedule a hearing before City Council. The thirty (30) day period to schedule the hearing may be extended if the applicant agrees to an extension in writing. Prior to such hearing, the Planning and Zoning Commission shall forward a recommendation to City Council to approve, approve with conditions, or deny the permit application.

(B) The Director may retain third-party consultants at the applicant's expense necessary to assist City staff in reviewing a complete permit application or assist City Council in rendering a decision on a permit.

(C) Upon setting a permit hearing date, the Director shall publish notice once in a newspaper of general circulation in the City of Fort Collins containing:

(1) The date, time, and place of the permit hearing not less than thirty (30) nor more than sixty (60) days before the date set for the hearing. The thirty (30) and sixty (60) day periods may be extended if the applicant agrees to an extension in writing.

(2) The date, time, and place of the Planning and Zoning Commission hearing where a recommendation will be made at least seven (7) days prior to the hearing.

(D) At least fourteen (14) days prior to the City Council permit hearing, the Director shall mail notice of the date, time, and place of the hearing to the applicant and to property owners pursuant to Section 2.2.6. Notice of the Planning and Zoning Commission hearing where a recommendation will be made shall also be mailed at least fourteen (14) days prior to such hearing pursuant to Section 2.2.6 and may be combined with the mailed notice for the City Council hearing.

6.6.12 Conduct of Permit Hearing.

(A) Planning and Zoning Commission hearings where a recommendation is made shall follow the requirements and procedures of Section 2.2.7.

(B) City Council shall adopt into its rules of procedure a procedure for conducting permit hearings. Upon the closing of the portion of a permit hearing to receiving comments and evidence from the public, agencies, and the applicant, no further comments or evidence will be received from the public, agencies or applicant, including at any general public comment period for a City Council meeting or public comment associated with a specific agenda item such as a designation associated with a permit application, unless specifically authorized by City Council by reopening the public hearing.

6.6.13 Approval or Denial of Permit Application

(A) The burden of proof shall be upon the applicant to show compliance with all applicable standards of the Regulations. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance.

(B) A permit application to conduct a designated activity of state interest or develop in a designated area of state interest may not be approved unless the applicant satisfactorily demonstrates that the development plan, in consideration of all proposed mitigation measures and any conditions, complies with all applicable standards. If City Council finds the development plan does not comply with all applicable standards, the permit shall be denied unless City Council, in its sole discretion, imposes conditions pursuant to Section 6.6.14 which if fulfilled would bring the development plan into compliance with all applicable standards, in which case City Council may approve the permit. City Council may also impose additional conditions pursuant to Section 6.6.14 on any permit.

(C) If City Council finds that there is insufficient information concerning any of the applicable standards to determine that such standards have been met, City Council may deny the

permit, may approve with conditions pursuant to Section 6.6.14 which if fulfilled would bring the development plan into compliance with all applicable standards, or may continue the public hearing or reopen a previously closed public hearing for additional information to be received. However, no continuance to receive additional evidence may exceed sixty (60) days unless agreed to by City Council and the applicant.

(D) City Council shall approve a permit application only if the proposed development plan satisfies all applicable standards of these Regulations in consideration of proposed mitigation measures and any conditions necessary to attain compliance with any standards. City Council may also impose additional conditions pursuant to Section 6.6.14 on any permit.

(E) City Council may close the public hearing and make a decision, or it may continue the matter for a decision only. However, City Council shall make a decision by majority vote within ninety (90) days after the closing of the public hearing, or the permit shall be deemed approved. To the extent the public hearing is reopened and closed, the closing date of the public hearing shall be measured from the most recent closing date.

(F) City Council shall adopt by resolution findings of fact in support of its decision and, if approved, the written permit shall be attached to such resolution. To the extent a permit is deemed approved because City Council has not made a decision, adoption of such a resolution is not required.

6.6.14 Issuance of Permit; Conditions

(A) City Council may attach conditions to the permit pursuant to Section 2.2.9 and additional conditions to ensure that the purpose, requirements, and standards of these Regulations are continuously met throughout the development, execution, operational life, and any decommissioning period. A development agreement between the City and the permittee may be required as a condition of approval.

(B) Issuance of a permit signifies only that a development plan has satisfied, or conditionally satisfied, the applicable Regulations, and prior to commencing any development, conditions of the permit, additional Land Use Code, Code of the City of Fort Collins, other City requirements, or other state or federal requirements, may need to be met.

(C) Subject to (D) below and Section 6.11.1, the permit may be issued for an indefinite term or for a specified period of time with such period depending upon the size and complexity of the development plan.

(D) If the permittee fails to take substantial steps to initiate the permitted development plan within twelve (12) months from the date of the approval of the permit or such other time period specified in the permit, or if such steps have been taken but the applicant has failed to complete the development with reasonable diligence, then the permit may be revoked or suspended in accordance with Section 6.11.1. This time may be extended by the Director for only one (1) additional year upon a showing of substantial progress.

DIVISION 6.7 COMMON REVIEW STANDARDS

6.7.1 Review Standards for All Applications

In addition to the review standards for specific activities listed at Divisions 6.8 and 6.9, all applications under these Regulations, in consideration of proposed mitigation measures, shall be evaluated against the following general standards, to the extent applicable or relevant to the development plan, in City Council's reasonable judgment. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance.

If City Council finds the development plan does not comply with all applicable standards, the permit shall be denied unless City Council, in its sole discretion, imposes conditions pursuant to Section 6.6.14 which if fulfilled would bring the development plan into compliance with all applicable standards, in which case City Council may approve the permit. City Council may also impose additional conditions pursuant to Section 6.6.14 on any permit. The common review standards are as follows:

(A) The applicant has obtained or will obtain all property rights, permits and approvals necessary for the proposal, including surface, mineral and water rights.

(B) The health, welfare and safety of the community members of the City will be protected and served.

(C) The proposed activity is in conformance with the Fort Collins Comprehensive Plan and other duly adopted plans of the City, or other applicable regional, state or federal land development or water quality plan.

(D) The development plan is not subject to risk from natural or human caused environmental hazards. The determination of risk from natural hazards to the development plan may include but is not limited to the following considerations:

(1) Unstable slopes including landslides and rock slides.

(2) Expansive or evaporative soils and risk of subsidence.

(3) Wildfire hazard areas.

(4) Floodplains.

(E) The development plan will not an adverse impact on the capability of local governments affected by the development plan to provide local infrastructure and services or exceed the capacity of service delivery systems. The determination of the effects of the development plan on local government services may include but is not limited to the following considerations:

(1) Current and projected capacity of roads, schools, infrastructure, drainage and/or stormwater infrastructure, housing, and other local government facilities and services necessary to accommodate development, and the impact of the development plan upon the current and projected capacity.

(2) Need for temporary roads or other infrastructure to serve the development plan for construction and maintenance.

(F) The development plan will not have an adverse impact on the quality or quantity of recreational opportunities and experience. The determination of impacts of the development plan on recreational opportunities and experience may include but is not limited to the following considerations:

(1) Changes to existing and projected visitor days.

(2) Changes in quality and quantity of fisheries.

(3) Changes in instream flows or reservoir levels.

(4) Changes in access to recreational resources.

(5) Changes to quality and quantity of hiking, biking, multi-use or horseback riding trails.

(6) Changes to regional open space.

(7) Changes to existing conservation easements.

(8) Changes to City parks, playgrounds, community gardens, recreation fields or courts, picnic areas, and other City park amenities.

(G) The development plan when completed will not have an adverse impact on existing visual quality. The determination of visual impacts of the development plan may include but is not limited to the following considerations:

(1) Visual changes to ground cover and vegetation, streams, or other natural features.

(2) Interference with viewsheds and scenic vistas.

(3) Changes in landscape character of unique land formations.

(4) Compatibility of structure size and color with scenic vistas and viewsheds.

(5) Changes to the visual character of regional open space.

(6) Changes to the visual character of existing conservation easements.

(7) Changes to the visual character of City parks, trails, natural areas, or recreation facilities.

(8) Changes to the visual character of historic and cultural resources.

(H) The development plan will not have an adverse impact on air quality. The determination of effects of the development plan on air quality may include but is not limited to the following considerations:

(1) Changes in visibility and microclimates.

(2) Applicable air quality standards.

(3) Increased emissions of greenhouse gases.

(4) Emissions of air toxics.

(I) The development plan will not have an adverse impact on surface water quality. The determination of impacts of the development plan on surface water quality may include but is not limited to the following considerations:

(1) Changes to existing water quality, including patterns of water circulation, temperature, conditions of the substrate, extent and persistence of suspended particulates and clarity, odor, color or taste of water;

(2) Applicable narrative and numeric water quality standards.

(3) Changes in point and nonpoint source pollution loads.

(4) Increase in erosion.

(5) Changes in sediment loading to waterbodies.

(6) Changes in stream channel or shoreline stability.

(7) Changes in stormwater runoff flows.

(8) Changes in trophic status or in eutrophication rates in lakes and reservoirs.

(9) Changes in the capacity or functioning of streams, lakes or reservoirs.

(10) Changes to the topography, natural drainage patterns, soil morphology and productivity, soil erosion potential, and floodplains.

(11) Changes to stream sedimentation, geomorphology, and channel stability.

(12) Changes to lake and reservoir bank stability and sedimentation, and safety of existing reservoirs.

(J) The development plan will not have an adverse impact on groundwater quality. The determination of impacts of the development plan on groundwater quality may include but is not limited to the following considerations:

(1) Changes in aquifer recharge rates, groundwater levels and aquifer capacity including seepage losses through aquifer boundaries and at aquifer-stream interfaces.

(2) Changes in capacity and function of wells within the impact area.

(3) Changes in quality of well water within the impacted area.

(K) The development plan will not have an adverse impact on wetlands and riparian areas (including riparian forests) of any size regardless of jurisdictional status. In determining impacts to wetlands and riparian areas, the following considerations shall include but not be limited to:

(1) Changes in the structure and function of wetlands.

(2) Changes to the filtering and pollutant uptake capacities of wetlands and riparian areas.

(3) Changes to aerial extent of wetlands.

(4) Changes in species' characteristics and diversity.

(5) Transition from wetland to upland species.

(6) Changes in function and aerial extent of floodplains.

(L) The development plan shall not have an adverse impact on the quality of terrestrial and aquatic animal life. In determining impacts to terrestrial and aquatic animal life, the following considerations shall include but not be limited to:

(1) Changes that result in loss of oxygen for aquatic life.

(2) Changes in flushing flows.

(3) Changes in species composition or density.

(4) Changes in number of threatened or endangered species.

(5) Changes to habitat and critical habitat, including calving grounds, mating grounds, nesting grounds, summer or winter range, migration routes, or any other habitat features necessary for the protection and propagation of any terrestrial animals.

(6) Changes to habitat and critical habitat, including stream bed and banks, spawning grounds, riffle and side pool areas, flushing flows, nutrient accumulation and cycling, water temperature, depth and circulation, stratification and any other conditions necessary for the protection and propagation of aquatic species.

(M) The development plan shall not have an adverse impact on the quality of terrestrial and aquatic plant life. In determining impacts to terrestrial and aquatic animal life, the following considerations shall include but not be limited to:

(1) Changes to high priority habitat identified by the Colorado Parks and Wildlife and the Fort Collins Natural Areas Department.

(2) Changes to the structure and function of vegetation, including species composition, diversity, biomass, and productivity.

(3) Changes in advancement or succession of desirable and less desirable species, including noxious weeds.

(4) Changes in threatened or endangered species.

(N) The development plan will not have an adverse impact on natural habitats and features as defined in Land Use Code Section 3.4.1.

(O) The development plan will not have an adverse impact on historic or cultural resources as defined in Section 6.1.9 of these Regulations.

(P) The development plan will not have an adverse impact on significant trees as defined in Land Use Code Section 3.2.1.

(Q) The development plan will not have an adverse impact on soils and geologic conditions. The determination of impacts of the development plan on soils and geologic conditions may include but is not limited to the following considerations:

(1) Loss of topsoil due to wind or water forces.

(2) Changes in soil erodibility.

(3) Physical or chemical soil deterioration.

(4) Compacting, sealing and crusting.

(R) The development plan will not cause a nuisance. The determination of nuisance impacts of the development plan may include but is not limited to the following considerations: increase in odors, dust, fumes, glare, heat, noise, vibration or artificial light.

(S) The development plan will not result in risk of releases of, or exposures to, hazardous materials or regulated substances. The determination of the risk of release of, or increased exposures to, hazardous materials or regulated substances caused by the development plan may include but is not limited to the following considerations:

(1) Plans for compliance with federal and state handling, storage, disposal, and transportation requirements.

(2) Use of waste minimization techniques.

(3) Adequacy of spill and leak prevention and response plans.

(T) The development plan will not have disproportionately greater adverse impact on disproportionately impacted communities within the City considering, for example, the distribution of impacts to the following:

(1) Air quality.

(2) Water quality.

(3) Soil contamination.

(4) Waste management.

(5) Hazardous materials.

(6) Access to parks, natural areas, trail, community services, cultural activities, and historic and cultural resources, and other recreational or natural amenities.

(7) Nuisances.

(U) The development plan shall include mitigation plans that avoid or minimize adverse impacts by limiting the degree or magnitude of the action. Mitigation plans shall include detailed information on how the proposed project will avoid or minimize adverse impacts identified and related to all applicable common and specific review standards, including but not limited to the following:

(1) Detailed information on how the proposed project will avoid or minimize adverse impacts on natural features must include an adaptive management plan and established performance criteria based on a local reference site and analogous habitat type. Plans submitted must address success criteria regarding quantity, quality, diversity and structure of vegetative cover or habitat value; and

(2) Detailed information on how the proposed project will avoid or minimize adverse impacts on historic and cultural features during the full span of ground disturbance and construction activities, to include an archeological monitoring plan that anticipates the possibility of new discoveries related to that activity; and plan(s) of protection that detail mitigation strategies for any identified historic and cultural resources.

DIVISION 6.8 Site Selection and Construction of Major New Domestic Water and Sewage Treatment Systems and Major Extensions of Such Systems

6.8.1 Applicability

These Regulations shall apply to the site selection and construction of all major new domestic water and sewage treatment systems, and major extensions of such systems within the municipal boundaries of the City.

6.8.2 Purpose and Intent

The specific purpose and intent of this Division are:

(A) To ensure that site selection and construction of major new domestic water and sewage treatment systems and major extensions of such systems are conducted in such a manner as to avoid or fully mitigate impacts associated with such development;

(B) To ensure that site selection and construction of major new domestic water and sewage treatment systems and major extensions of such systems are planned and developed in a manner so as not to impose an undue economic burden on existing or proposed communities within the City;

(D) To ensure that the off-site adverse impacts of new domestic water and sewage treatment systems are avoided or fully mitigated; and

(E) To ensure that the surface and groundwater resources of the City are protected from any adverse impact of the development of major water and sewage treatment systems and major extensions of such systems.

6.8.3 Specific Review Standards for Major New Domestic Water or Sewage Treatment Systems or Major Extensions

A permit application for the site selection and construction of a major new domestic water or sewage treatment system or major extension of such system shall be approved with or without conditions only if the development plan complies with the review standards in Section 6.7.1 and the below standards, to the extent applicable or relevant. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance. If City Council finds the development plan does not comply with all applicable standards, the permit shall be denied unless City Council, in its sole discretion, imposes conditions pursuant to Section 6.6.14 which if fulfilled would bring the development plan into compliance with all applicable standards, in which case City Council may approve the permit. City Council may also impose additional conditions pursuant to Section 6.6.14 on any permit. The specific review standards are:

(A) New domestic water and sewage treatment systems shall only be constructed in areas which will result in the proper use of existing treatment plants and the orderly development of domestic water and sewage treatment systems within the City; and

(B) Area and community development and population trends must demonstrate clearly a need for such development.

DIVISION 6.9 Site Selection of Arterial Highways and Interchanges and Collector Highways

6.9.1 Applicability

This Division shall apply to the site selection of all arterial highways and interchanges and collector highways within the municipal boundaries of the City.

6.9.2 Purpose and Intent

The specific purpose and intent of this Division are:

(A) To ensure that community traffic needs are met;

(B) To provide for the continuation of desirable community traffic circulation patterns by all modes;

(C) To discourage expansion of demand for government services beyond the reasonable capacity of the community or region to provide such services as determined by the City;

(D) To prevent direct conflicts with local, regional and state master plans;

(E) To ensure that highway and interchange development is compatible with surrounding land uses;

(F) To encourage the coordination of highway planning with community and development plans;

(G) To discourage traffic hazards and congestion;

(H) To minimize sources of traffic noise, air and water pollution; and

(I) To protect scenic, natural, historical and cultural resources from destruction.

6.9.3 Specific Review Standards for Arterial Highway, Interchange or Collector Highway Projects

A permit for the site selection of an arterial highway, interchange or collector highway shall be approved with or without conditions only if the proposed development plan complies with the review standards in Section 6.7.1 and the below standards, to the extent applicable or relevant. To

the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance. If City Council finds the development plan does not comply with all applicable standards, the permit shall be denied unless City Council, in its sole discretion, imposes conditions pursuant to Section 6.6.14 which if fulfilled would bring the development plan into compliance with all applicable standards, in which case City Council may approve the permit. City Council may also impose additional conditions pursuant to Section 6.6.14 on any permit. The specific review standards are:

(A) The proposed arterial highway, interchange or collector highway will be located so that natural habitats and features, historic and cultural resources, City natural areas and parks and other local government facilities and resources are protected to the maximum extent feasible;

(B) The proposed arterial highway or interchange or collector highway will be located only in a corridor for which a clear and reasonable local and regional need has been demonstrated;

(C) The location and access limitations for the arterial highway, interchange or collector highway will not isolate community neighborhoods from and, where practicable, will enhance access from community neighborhoods to public facilities including schools, hospitals, mass transit, pedestrian walkways and bikeways, recreational facilities and areas, community centers, government and social services provider offices and facilities, natural areas, and open spaces;

(D) The construction of the arterial highway and interchange or collector highway shall be phased to minimize interference with traffic movement;

(E) The location and access limitations for the arterial highway, interchange or collector highway will not restrict access to other roadways, mass transit facilities, pedestrian walkways and bikeways, local commercial services, residential developments, business and employment centers, and public facilities including schools, hospitals, recreational facilities and areas, natural areas, and open spaces;

(F) Alternative modes of transportation will be incorporated into the proposal to the extent feasible;

(G) If park-and-ride facilities are utilized, they shall be located in areas approved by the City;

(H) The location of the proposed new or expanded arterial highway, interchange or collector highway will not impede the delivery of essential community services and goods;

(I) Desirable local and regional community land use patterns will not be disrupted by the location of the proposed new or expanded arterial highway, interchange or collector highway;

(J) The location and access limitations for the arterial highway, interchange or collector highway will not create safety hazards to motorists, pedestrians or bicyclists by causing or contributing to overuse, improper use or congestion, or cause unnecessary diversion of

regional traffic onto other City roadways or inappropriate or inadequate connections to pedestrian and bicycle routes;

(K) The proposed location of the new or expanded arterial highway, interchange or collector highway will be located so as to complement the efficient extension of planned public services, utilities and development in general, both regionally and within the City;

(L) The proposed location of the new or expanded arterial highway, interchange or collector highway will adhere to the plan, process, procedure and requirements of the State and the Federal Highway Administration, and such construction, expansion or modification will be included in local and regional transportation plans;

(M) The proposed location of the new or expanded arterial highway, interchange or collector highway will not result in the destruction, impairment or significant alteration of sensitive, key commercial, tourist or visitor areas or districts within the City;

(N) The proposed location of the new or expanded arterial highway, interchange or collector highway will not contribute to a negative economic impact to residential, commercial, tourist or visitor areas or districts within the City;

(O) To the extent tolling is proposed, the use or level of tolling is appropriate in light of existing toll levels, if any, and any prior or projected public infrastructure investment;

(P) The proposed highways can be integrated into the regional transportation network;

(Q) The new or expanded arterial highway, or interchange or collector highway will not have an adverse impact on prime or unique farmland as defined by the U.S. Department of Agriculture, Natural Resources Conservation Service;

(R) The proposed location and design of the arterial highway, interchange or collector highway does not cause lighting impacts from headlights or streetlights to nearby residential neighborhoods or other developments or night sky objectives and plans;

(S) Noise levels caused by the new or expanded arterial highway, interchange or collector highway will follow federal noise regulations;

(T) Vertical structures will match the character of the City through materials and design; and

(U) The local air quality impacts of the new or expanded arterial highway, interchange or collector highway shall support attainment of federal and state ambient air quality standards and shall not increase risks to human health and the environment posed by air pollutants.

DIVISION 6.10 Financial Security

6.10.1 Financial Security

(A) Before any development occurs pursuant to an approved permit issued pursuant to these Regulations, the applicant shall provide the City with a guarantee of financial security deemed adequate by the Director to accomplish the purposes of this Section, in a form approved by the City Attorney and payable to the City of Fort Collins.

(B) The purpose of the financial guarantee is to ensure that the permittee shall faithfully perform all requirements of the permit and the Director shall determine the amount of the financial guarantee in consideration of the following standards, to the extent applicable or relevant to the approved development plan:

(1) The estimated cost of returning the site of the permitted development plan to its original condition or to a condition acceptable in accordance with standards adopted by the City for the matter of state interest for which the permit is being granted;

(2) The estimated cost of implementing and successfully maintaining any revegetation required by the permit.

(3) The estimated cost of completing the permitted development plan; and

(4) The estimated cost of complying with any permit conditions, including mitigation, monitoring, reporting, and City inspections to ensure compliance with the terms of the permit.

(C) Estimated cost shall be based on the applicant's submitted cost estimate. The Director shall consider the duration of the development plan and compute a reasonable projection of increases due to inflation over the entire life of the development plan. The Director may require, as a condition of the permit, that the financial security shall be adjusted upon receipt of bids.

(D) The financial guarantee may be released in whole or in part with the approval of the Director only when:

(1) The permit has been surrendered to the Director before commencement of any physical activity on the site of the approved development plan;

(2) The approved development plan has been abandoned and the site thereof has been returned to its original condition or to a condition acceptable to the Director in accordance with standards adopted by the Permit Authority for the matter of state interest for which the permit is being granted;

(3) The approved development plan has been satisfactorily completed; or

(4) Applicable guaranteed conditions have been satisfied.

(E) Any security may be cancelled by a surety only upon receipt of the Director's written consent which may be granted only when such cancellation will not detract from the purposes of the security.

(F) If the license to do business in Colorado of any surety upon a security filed pursuant to these Regulations is suspended or revoked by any State authority, then the permittee, within sixty (60) days after receiving notice thereof, shall substitute a good and sufficient surety licensed to do business in the State. Upon failure of the permittee to make substitution of surety within the time allowed, the Director shall suspend the permit until proper substitution has been made.

(G) No security is acceptable if signed by or drawn on an institution for or in which the permittee is an owner, shareholder, or investor other than simply an account holder.

(H) The Director may determine at any time that a financial guarantee should be forfeited because of any violation of the permit. The Director shall provide written notice of such determination to the surety and the permittee of their right to written demand of the Director within thirty (30) days of receiving written notice from the Director.

(1) If no demand is made within said period, then the Director shall order in writing that the financial guarantee be forfeited and provide a copy of such order to the surety and permittee.

(2) If a timely demand is received, the Director shall make good faith efforts to meet with the permittee and surety within thirty (30) days after the receipt of such demand. At the meeting the permittee and surety may present any information with respect to the alleged violation for the Director's consideration. At the conclusion of any meeting, the Director shall either withdraw the notice of violation or order in writing that the financial guarantee should be forfeited and provide a copy of such order to the surety and permittee.

(I) If the forfeiture results in inadequate revenue to cover the costs of accomplishing the purposes of the financial guarantee, the City Attorney shall take such steps as deemed proper to recover such costs, including imposing and foreclosing a City lien on real property and/or certifying the same to the County Treasurer for collection in the same manner as real property taxes, pursuant to Sections 31-20-105 and 106, C.R.S.

(J) The financial security under this Section may be waived, in the Director's sole discretion, if a proposed development plan is solely financed by state agencies, a political subdivision of the state, or a special or enterprise fund that has established to the Director's satisfaction the availability of funds required to complete the proposed development plan.

DIVISION 6.11 SUSPENSION OR REVOCATION OF PERMITS

6.11.1 Suspension or Revocation of Permits

(A) If the Director has reason to believe that the permittee has violated any provision of the permit or the terms of any regulation for administration of the permit, and such violation poses a danger to public health, safety, welfare, the environment or wildlife resources, the Director has the authority to order the immediate suspension of all operations associated with implementing the approved development plan and suspension of the permit until the danger has been eliminated. At such time as the Director has determined the danger is eliminated and any violations of the permit or the terms of any regulation for administration of the permit, the Director shall withdraw the suspension. Should the danger be eliminated but violations of the permit still exist, the Director shall suspend the permit for up to an additional one-hundred and eighty (180) days pursuant to (B)(3) below.

(B) If the Director has reason to believe that the permittee has violated any provision of any permit or the terms of any regulation for administration of the permit, and such violation does not pose a danger to public health, safety, welfare, the environment or wildlife resources, the Director may temporarily suspend the permit for an initial period of up to thirty (30) days or until the violation is corrected, whichever occurs first.

(1) Before imposing such temporary suspension, the Director shall provide written notice to the permittee of the specific violation and shall allow the permittee a period of at least fifteen (15) days to correct the violation from the date notice was provided.

(2) If the permit holder does not agree that there is a violation, the permittee shall, within fifteen (15) days of the date notice was provided, submit a written response to the Director detailing why the temporary suspension should not occur. Upon receiving such response, the Director shall within ten (10) days issue a written response either withdrawing the notice of violation or imposing the temporary permit suspension. The Director's decision is not subject to appeal.

(3) Should a violation remain uncorrected after the initial period of temporary suspension has elapsed, the Director shall extend in writing the period of temporary suspension for up to an additional one-hundred and eighty (180) days or until the violation is corrected, whichever occurs first. Notice of such extension shall be provided to the permittee and the extended suspension may be appealed pursuant to Chapter 2, Article VI, of the Code of the City of Fort Collins, however, pending such appeal hearing, the permit suspension shall remain in effect.

(C) Subsequent to any extended temporary suspension imposed under (B)(3) above, the Director may permanently revoke the permit upon a written determination that the violation for which the temporary suspension was premised remains uncorrected. The determination shall be provided to the permittee and such revocation may be appealed pursuant to Chapter

2, Article VI, of the Code of the City of Fort Collins, however, pending the decision of such appeal, the revocation shall remain in effect.

(D) The Director may permanently revoke a permit upon a written determination that the permittee has failed to take substantial steps to initiate the permitted development or activity within twelve (12) months from the date of the issuance of the permit or within the timeframe of any extensions granted, or, if such steps have been taken, the permittee has failed to complete or pursue completion of the development or activity with reasonable diligence. The determination shall be provided to the permittee and such revocation may be appealed pursuant to Chapter 2, Article VI, of the Code of the City of Fort Collins, however, pending such appeal hearing, the revocation shall remain in effect. The permanent revocation of a permit does not bar the future submittal of a new permit application for the same, or substantially the same, proposed development plan.

DIVISION 6.12 PERMIT REVIEW, RENEWAL, AMENDMENT, TRANSFER

6.12.1 Annual Review; Progress Reports

(A) Within thirty (30) days prior to each annual anniversary date of the granting of a permit, the permittee shall submit a report detailing any and all activities conducted by the permittee pursuant to the permit including, but not limited to, a satisfactory showing that the permit has complied with all conditions of the permit and applicable regulations for administration of the permit.

(B) Director shall review the report within thirty (30) days from the date of submittal thereof. If the Director determines, based upon its review, that the permittee was likely to have violated the provisions of the permit or applicable regulations, or both, the Director shall make a good faith effort to meet with the permittee to discuss the matter. If the Director determines after any meeting that the permittee has violated the provisions of the permit or applicable regulations, or both, the Director may suspend and/or revoke the permit in accordance with Section 6.11.1.

(C) Upon fulfillment of all permit conditions, this annual review requirement may be waived by the Director.

(D) At any time, the Director may require the permittee to submit an interim progress report.

6.12.2 Permit Renewal

Permits issued under these Regulations may be renewed following the same procedure for approval of new permits except the renewal process shall not include the Director's FONAI review pursuant to Section 6.6.5.

6.12.3 Permit Amendment

The Director shall require a permit amendment for any material change, as determined by the Director, in the construction, use, or operation of an approved development plan from the terms and conditions of an approved permit. The amendment shall be processed in accordance with and subject to the same procedures and requirements set forth herein for a permit except that the Director's FONAI review pursuant to Section 6.6.5 shall not occur.

6.12.4 Minor Revision Not Constituting a Material Change

The permittee may apply to the Director for minor revisions to an issued permit to correct errors or make other changes to conform the permit to actual conditions to the extent such minor revision is not a material change to the permit as determined by the Director. The Director is granted discretion to approve such minor revisions or to determine that a permit amendment is required

pursuant to Section 6.12.3. In reviewing a requested minor revision or revisions, the Director shall consider the request in the context of previously approved minor revisions to determine whether in the aggregate, the requested minor revision or revisions constitute a material change.

6.12.5 Transfer of Permits

A permit may be transferred only upon the Director's written consent. The Director must ensure in approving any transfer that the proposed transferee can and will comply with all the requirements, terms, and conditions contained in the permit and these regulations; that such requirements, terms, and conditions remain sufficient to protect the health, welfare, and safety of the public; and that an adequate guarantee of financial security can be made.

6.12.6 Inspection

The Director in their sole discretion is empowered to cause the inspection of any development, operation, or decommissioning activities related to a permit, including on or off-site mitigation activities, to ensure compliance with such permit and applicable laws and regulations. The permittee shall provide reasonable access to property for which the permittee has the authority to do so and shall make good faith efforts to coordinate access for other property. To the extent such inspection is ongoing or otherwise subject to advance planning, the Director shall consult with the permittee to coordinate inspection to minimize potential disruptions. The Director may retain a third-party consultant to conduct such inspections, including a consultant with specialized knowledge or training, and the cost of all such inspections shall be the responsibility of the permittee. The inspections provided for under this Section are in addition to Section 2.14.3.

DIVISION 6.13 ENFORCEMENT

6.13.1 Enforcement

Any person engaging in development in a designated area of a state interest or conducting a designated activity of state interest who does not first obtain a permit pursuant to these Regulations, who does not comply with permit requirements, or who acts outside the authority of the permit, is in violation of this Land Use Code and the City may take enforcement action pursuant to Division 2.14 and may additionally take any other action available under these Regulations and civil or criminal law, including seeking injunctive relief, or revoking or suspending any permit issued pursuant to these Regulations or any permit issued pursuant to the Land Use Code or the Code of the City of Fort Collins. These Regulations are not intended to create third party rights of enforcement.

Introduced, considered favorably on first reading and ordered published this 2nd day of May, 2023, and to be presented for final passage on the 16th day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading this 16th day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

ATTACHMENT – *Decision Point 1: Update Definitions*

The definitions included in the City's 1041 Regulations are similar to the Larimer County regulations as well as several other counties with 1041 regulations to align with a consistent approach. Additionally, the definitions provide a description for projects that would not be covered by the scope of the regulations. For example: the definition of major domestic water and wastewater excludes irrigation and stormwater related facilities. Additionally, work within an existing easement is excluded where the surface impact is not expanded beyond 30-feet wide by 1,320 linear feet in the aggregate. A specific set of exemptions are provided within the regulations and separate from the definitions (LUC 6.4.1). Examples of the specific exemptions include (1) any project previously approved by the Planning and Zoning Commission pursuant to the Site Plan Advisory Review (SPAR) process (e.g., NEWT 3 pipeline); and (2) a proposed development plan that is directly necessitated by a proposed residential, commercial, industrial or mixed-use development (e.g, Bloom pipeline).

- **Update project-size thresholds and exclude all projects in existing public right-of-way:**

As noted by stakeholders, the current definition's inclusion of pipe-size diameter is not the best proxy when determining significant impacts resulting from the project's scope. Additionally, when pipe-size diameter and easement width are both included within the definition for domestic water facilities there is less certainty for which projects that are covered by the Code's definition which potentially include projects not intended to be regulated by 1041 powers. The intent is to provide a definition that includes projects that have one acre of more of impact. While the city intends to incentivize project work within existing ROW and easements that were previously disturbed, if the project requires an extension of the ROW to greater than one acre, a FONAI review is required. To continue providing predictability for developers and decision makers, staff recommend removing pipe size diameter from the definition and keep easement width as a project size threshold. Staff recommend the following changes to the definitions to align with the code's intent, and if directed by Council have these changes ready during first reading:

Proposed Definitions Update:

Public right-of-way *shall mean an area dedicated to public use or impressed with an easement for public use which is owned or maintained by the City and is primarily used for pedestrian or vehicular travel or for public utilities or other infrastructure. Right-of-way shall include, but not be limited to, the street, gutter, curb, shoulder, sidewalk, sidewalk area, parking area and any other public way.*

Major new domestic water system shall mean:

A system of wells, water diversions, transmission mains, distribution mains, ditches, structures, and facilities, including water reservoirs, water storage tanks, water treatment plants or impoundments and their associated structures, through which a water supply is obtained, stored, and sold or distributed for domestic uses;

And all or part of a system described meet the following criteria:

(a) Will require a new public right-of-way or easement greater than 30-feet in width and 1,452 linear feet in length in the aggregate for the proposed development plan.
(b) Will require a new, or utilize an existing, easement within any City natural area or conserved land greater than 30-feet in width and 1,452 linear feet in length in the aggregate for the proposed development plan

In determining whether a proposed development plan is a major new domestic water supply system, the Director may consider water rights decrees, pending water rights applications, intergovernmental agreements, treaties, water supply contracts and any other evidence of the ultimate use of the water for domestic, human consumption or household use. Domestic water supply systems shall not include that portion of a system that serves agricultural customers, irrigation facilities or stormwater infrastructure.

Major new sewage system shall mean:

(1) A new wastewater treatment plant;
(2) A new lift station; or
(3) An interceptor main or collector sewer used for the purposes of transporting wastewater that meets the following criteria:

(a) Will require a new public right-of-way or easement greater than 30-feet in width and 1,452 linear feet in length in the aggregate for the proposed development plan.
(b) Will require a new, or utilize an existing, easement within any City natural area or conserved land greater than 30-feet in width and 1,452 linear feet in length in the aggregate for the proposed development plan

Major extension of an existing domestic water or sewage treatment system shall exclude the following:

(1) Any maintenance, repair, adjustment;

(2) Any existing facility or pipeline or the replacement or the relocation, or enlargement of an existing pipeline or facility within the same public right-of-way or easement not greater than 30-feet in width and for a distance of 1,452 linear feet or less;

(3) A new pipeline or facility within an existing public right-of-way;

(4) A new pipeline or facility within easements not greater than 30-feet in width and for a distance of 1,452 linear feet or less;

(5) A new pipeline or facility constructed partially within an existing public right-of-way and partially within adjoining easements that are not greater than 30-feet in width and for a distance of 1,452 linear feet or less; or

(6) Any sewage system facility that does not increase the rated capacity from the Colorado Department of Public Health and Environment.

- **Change FONAI to FONSI:**

Version three of the draft regulations uses the term “negligible” rather than “significant” based on Council direction during a June 2022 work session. “Negligible” is commonly used within federal agency National Environmental Protection Act (NEPA) guidance and methodology for conducting supplemental environmental assessment. When the proposed definition of ***Adverse Impact*** is paired with negligible, a Finding of Negligible Adverse Impact (FONAI) has the potential for impact at a lower intensity than major, and a higher standard than an impact deemed “significant”.

Based on stakeholder feedback from both environmental and water provider stakeholders, the term “Finding of No Significant Impact (FONSI)” is already a recognized standard, the term Negligible Adverse Impact (FONAI) is perceived as more subjective within the context of 1041 regulations. To provide predictability, staff recommend redefining the term Finding of Negligible Adverse Impact (FONAI) to a Finding of No Significant Impact (FONSI). In determining whether an impact is significant, the magnitude, duration, and likelihood of an impact is evaluated within context (geographic scope, setting, and scale) of the proposed project. The AIS attachment titled “What Makes an Impact Significant” describes this evaluation.

If directed by Council, Council may adopt the following amendment to the Code’s definition of **Adverse Impact. This change also applies to the common review standards.**

Current Definition:

> ***Adverse impact*** *shall mean the direct or indirect negative effect or consequence resulting from development. Adverse impact shall refer to the negative physical, environmental, economic, visual, auditory, or social consequences or effects that may or may not be avoidable or fully mitigable. Adverse impacts may include reasonably foreseeable effects or consequences caused by the development plan that may occur later in time or be cumulative in nature.*

Proposed Definition UPDATE:

- ***Impact*** *shall mean the direct or indirect negative effect or consequence resulting from development that may or may not be avoidable or fully mitigated.*

- ***Cumulative impacts*** *shall mean the impact on the environment and cultural impacts which result from the incremental impact of the development plan when added to other present, and reasonable future actions.*

- ***Finding of No Significant Impact (FONSI)*** *shall mean the decision by the Director as to whether a potential impact is not significant based on the scale and context of the proposed development plan as well as the magnitude, duration, or likelihood of an impact occurring.*

UPDATE: 6.7.1 Review Standards for All Applications

In addition to the review standards for specific activities listed at Divisions 6.8 and 6.9, all applications under these Regulations, in consideration of proposed mitigation measures, shall be evaluated against the following general standards, to the extent applicable or relevant to the development plan, in City Council's reasonable judgment. The standards shall be evaluated for significant impacts within the geographic context of the development plan, and relate to the magnitude, duration or likelihood of such an impact. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance. If City Council finds the development plan does not comply with all applicable standards, the permit shall be denied unless City Council, in its sole discretion, imposes conditions pursuant to Section 6.6.14 which if fulfilled would bring the development plan into compliance with all applicable standards, in which case City Council may approve the permit. City Council may also impose additional conditions pursuant to Section 6.6.14 on any permit.

UPDATE: 6.8.3 and 6.9.3 Specific Review Standards

The above highlighted language updating Section 6.7.1 would also be added to Section 6.8.3 which sets forth specific review standards for major new domestic water or sewage treatment systems or major extension and Section 6.9.3 which sets forth specific review standards for arterial highway, interchange, or collector highway projects.

Decision Point 2 – Update Application Procedures:

To address concerns that have been raised regarding application procedures, Council can address this feedback in multiple ways:

- **Limited scope resubmittal after final decision of denial:**

Water providers have suggested that the proposed decision-making process potentially discounts the staff analysis leading up to the Council hearing. Although an applicant will have the benefit of the review and recommendations during the pre-application FONAI determination, the time invested in the early phases of the process may not translate into the city council's concerns completely. Requiring an applicant to return to the beginning of a long process may delay the project and in the end, the applicant would like to know exactly what the Council is looking for before reentering the process.

The Intent of the proposed application review procedures is to work with an applicant to avoid adverse impacts identified by the common review standards. If the application does not meet the standards or the application is not "approved with conditions", the decision is final by the City Council.

If directed by Council, staff can update the regulations to include a process for Council to make a motion during a hearing to review a 1041 permit application that allow a "limited scope resubmittal" to narrowly addresses any issues identified by the Council. If Council chooses to include such a provision within the draft 1041 regulations, staff recommend the following parameters:

  - A limited scope resubmittal is a motion from the Council, and not administered by Staff.
  - A motion by the City Council shall not create new criteria; and any limited scope resubmittal shall be subject to the same review standards for all applications.
  - The motion by the Council may include a timeline no less than 90 days for Council to reconsider the proposed development plan.
  - If Council subsequently denies a limited scope resubmittal, a p*ost denial re-submittal delay* for designated areas and activities of statewide interest shall be no less than 24 months.

- **Remove requirements that conceptual designs be drafted at thirty-percent completeness.**

Water providers have shared pipeline projects that require permit review usually start with a routing study in order to come up with an approved project alignment or route prior to beginning design. Requiring approximately 30% design completion prior to having a finalized route is problematic because changes to the route will require changes to the design increasing costs and creating delays for the applicant, which are ultimately passed on to their customers in the form of higher rates.

In response to initial stakeholder feedback to version-two of the draft regulations, and in order to provide predictability for applicants, staff drafted a list of prescriptive submittal documents including a thirty-percent completeness requirement during the applicability of standards review. In order for staff to review an application through the criteria listed, the submittal documents

must provide a level of detail to determine any potential for an adverse impact and the proposed mitigation. Staff agree that submittal documents drafted at approximately thirty-percent completeness is an arbitrary threshold, and if Council wishes to remove this submittal document standard, such change will not change staff's ability to review the potential for adverse impacts through the initial applicability of standards and prior to a full permit review.

- **Move Neighborhood Meeting requirements to after FONAI determination and extend comment period prior to issuing a FONAI determination:**

The version-three of the proposed code currently requires notifications to be sent within 1-mile of the project vicinity and a neighborhood meeting prior to the Director reviewing applicability of the 1041 review standards and a Finding of Negligible Adverse Impact. Both environmental and potential applicants continue to weigh the trade-offs between one event to provide comments verse an extended time period which allows more comments for those who cannot attend a single event. Staff moved the neighborhood meeting requirements to before the applicability of standards under advisement from stakeholders to create additional opportunities for meaningful public engagement.

Recommendation: A neighborhood meeting could occur ahead of a hearing and would support hosting a neighborhood meeting before or after the Director's decision of applicability of standards and before a full permit review. Staff is seeking direction from Council.

Decision Point 3 – Update Review Standards:

- **Add a common review standard that analyzes activity causing an adverse impact on Fort Collins property regardless of where the construction takes place.**

Environmental stakeholders have suggested that the regulations do not account for construction activities outside the jurisdiction that have an adverse impact on resources within the jurisdiction. When reviewing a potential 1041 permit, and as a part of the common review standards, staff may identify natural features that are being adversely impacted within the city limits (not outside the city) and seek to understand portions of the project (outside the city) that are causing such adverse impacts. If directed by the Council, staff will research further how conditions of approval would apply to these types of scenarios.

Decision Point #3 is an opportunity for the Council to discuss stakeholder interest in this topic. At this time, it is not the position of the City's Executive Leadership Team to regulate activities outside the city limits (i.e., cross-jurisdictional authority). However, If Council wishes to direct staff to reevaluate that position, a future work session is suggested to explore parameters on how this policy should be applied to the Code.

Decision Point 4 - Consider Intergovernmental Agreement (IGA)

Staff recommended an Intergovernmental Agreement (IGA) within version-one of the draft regulations presented to Council during the June 2022 work session. The proposed language provided an option for an applicant and City to enter into an intergovernmental agreement (IGA) in lieu of the City issuing a 1041 permit. The IGA is considered a legislative act and would require City Council adoption by ordinance. Under the previous proposal, the IGA would still have to meet the purpose and intent of the 1041 regulations, however it would not be subject to the 90-day shot-clock.

During the phase II public engagement during the summer of 2022 several stakeholders from both the environmental community and potential applicants opposed the use of IGAs in lieu of 1041 permit a provided legal question related to the enforceability. Based on stakeholder feedback, staff removed Code language for Council to pursue IGA in lieu of a 1041 permit and received general support for the version-two draft presented during the November 2022 work session. Since the February 2023 Council meeting, water providers are requesting Council repeal the designation and moratorium ordinance, and rather than adopt 1041 regulations, these stakeholders have suggested that city staff propose an IGA for each major domestic water projects respectively. Staff do not recommend the use of IGAs in lieu of 1041 regulations given the direction from council to create a permit program that is binding in its decision-making authority.

ATTACHMENT – What Makes an Impact Significant?

The significance of an impact is decided by evaluating the magnitude, duration, or likelihood of an impact occurring within the context (geographic scope, setting, and scale) of the project and project area. Each of these is described as follows:

Magnitude:
For each potential impact being evaluated, the reviewing official decides if it will be moderate or large. Magnitude reflects both the area of land as well as the amount of a particular resource or the number of people being impacted.

Moderate Impact: These are impacts that are of a size that will likely result in more impacts on one or more environmental resources but are more localized. Moderate impacts can occur when the project affects a portion of a parcel or even a larger area extending to a small area just beyond the parcel. Moderate environmental impacts may be either isolated (only in one location), or of neighborhood concern. Size is not the only aspect of magnitude, however. If a project affects a small area of land, but the resource being impacted is locally rare, for example, then the actual impact may be large. When reviewing an impact's magnitude, the reviewing agency should consider the size of the impact and resource, as well as the scope and context of the project. A proposed project that impacts a small number of people may also be considered a moderate impact. The resources affected often have broad local or regional concern and often are activities or resources that are regulated or protected by some local, state, or national agency.

Large Impact: These are impacts that may cover larger areas beyond the development plan, neighborhood or community or impact larger numbers of people. The resources affected often have broad local or regional concerns and often are activities or resources that are regulated or protected by some local, state, or national agency.

Duration:
For each potential impact being evaluated, the reviewing official shall decide if it will be short-term, medium-term, long-term, or irreversible.

Short-term Impact: Some actions may have short-term impacts. These are often due to the initial land disturbance or construction phase. Short-term impacts can occur for a few days, weeks or several months, and then improve quickly. In this case, short-term impacts may be of minor or negligible importance in a long time frame. It is very important to evaluate the duration of an impact in the context and scope of a project. A short-term impact in one situation may not be significant, but in other cases, may be very significant.

An example of a short-term impact would be stock-piling topsoil and placement of erosion control methods in one location during construction of a structure. After construction, the topsoil would be graded and re-seeded or landscaped. Short-term impacts would occur due to the initial disturbance of soil and vegetation, but within several weeks, it would be replaced.

Medium-term Impact: Some actions may have impacts that last longer but that are still not permanent or irreversible. Medium-term impacts can be measured in months, over several seasons, or perhaps a few years, but have an end-point where the conditions improve and adverse impacts dissipate.

An example of a medium-term impact would be construction of an access way using a single culvert over a small, non-regulated stream that has wooded streambanks. Construction of the culvert and driveway will require removal of some additional stream-side vegetation and disturbance to the water flow. Thus it could affect water temperature (by removal of the trees), increase turbidity, change water flow, and reduce habitats for fish and invertebrates. In this example, there could be both short-term and medium-term impacts. After construction, the water flow and turbidity issues would dissipate, but the changes to the streambank and stream bottom habitats could last months or seasons before the vegetation returns and habitats re-formed. If the applicant included stream bank and stream bottom restoration, use of best management practices for stream corridors, and re-planting of deciduous trees, then the adverse impacts could be moderated in duration.

Long-term Impact: These are impacts that last for years, or last as long as the activity that generates the impact continues to take place. Some projects continually impact the environment in an adverse way while the activity takes place, but then the environment improves after the operation ceases. Other actions may occur only for a short period of time, but the impacts last a very long time and it takes years for the environment to recover.

Examples of long-term impacts could include adverse changes in air quality while a manufacturing use operates, or continual production of noise levels above ambient levels while the use operates. Should the manufacturing cease operations, the air pollution and noise impacts end. Removal of large acreages of forest lands on a portion of a parcel to be planted in grass would likely be considered long term impact but the forest could regenerate if maintenance of the lawn stopped and trees were allowed to re-grow. Another example of a long-term impact would be a chemical spill that pollutes water or soils that would take decades before the natural resources are recovered.

Irreversible Impact: These are impacts that occur where the environment can't return to its original state at any time or in any way. Use of nonrenewable resources may be irreversible since it is unlikely that the resource can be used again. Impacts that generally commit future generations to similar uses may also be considered irreversible impacts. Projects where there is no potential for future restoration are also considered irreversible. In some cases, there may be difficulty distinguishing between a long-term impact and one that is irreversible, but generally, irreversible impacts are those that permanently result in an adverse change.

Examples of irreversible impacts include:

The extinction of an animal or plant species

Demolition of existing historical structures

Conversion of prime farmland soils to residential use

Construction of a structure that permanently alters a scenic view in a negative way

Other impacts may not fit neatly in the short, medium, or long term categories because they may be continuous, or intermittent. The reviewing official should use their best judgment to determine the category that fits the duration of the potential impact.

Likelihood:

For each potential impact being evaluated, the reviewing official shall decide if it will be unlikely to occur, will possibly occur, or will probably occur. Given the nature of the project, some impacts may be very likely to occur while others may possibly occur, and others are unlikely to occur. The reviewing agency may decide that unlikely impacts may be of large magnitude or long duration but are ultimately not significant because they are so unlikely to actually occur. In other cases, an unlikely impact may carry such a high risk that the reviewing agency may decide it is very significant.

Unlikely to Occur: These are impacts that have a very low chance of occurring now or in the future.

An example of an impact that is unlikely to occur could be a spillage of a toxic chemical used in a manufacturing process. There is an extremely low probability of this occurring.

Possibly will Occur: These are impacts that are possible, but not likely occur.

An example of an impact that possibly could occur would be the growth inducing aspects of a new 28-lot subdivision development in a town that has had very slow growth and is not near an urbanized area. The residential development may create consumer demands that will influence and promote development in another location in the community. There is the potential for impacts to the community long-term, but it is less likely to occur given the character and economy of the area.

Probably will Occur: These are impacts that are very likely to occur.

An example of an impact that probably will occur would be loss of fisheries due to a dredging operation in a water body that supports warm water fish species that require shallow water to survive.

The Legal Case for 1041 Regulatory Authority Beyond Fort Collins City Limits

Preface

This document has been prepared by an ad hoc group of citizens of the City of Fort Collins. We advocate for strong regulatory authority for the City to protect the health, welfare, and safety of the City's people, their cultural and natural resources, and the quality of their environment. Colorado's Areas and Activities of State Interest Act, the AASIA (also known as "1041" from its original 1974 legislative designation, House Bill 74-1041) grants the needed regulatory powers to the City; it applies to classes of areas and development activities that are listed in the AASIA (and in Section 5.1 below), many of which are relevant to Fort Collins.

1041 powers are stronger than home-rule regulatory powers because they allow the City to regulate any party that proposes a development project—including private parties, state agencies, and federal agencies—when the project falls into one of the listed AASIA classes. Regulation is accomplished by requiring application for a permit issued by the City; the permit is granted if the applicant's project description meets all of the City's regulatory standards, and denied if it does not. If a 1041 permit is denied, then an applicant's only recourse is litigation; the City's regulations and regulatory decisions can be overridden by Colorado courts, but by no other actors. 1041 law has been in effect for nearly 50 years and its powers have been used by at least 37 Colorado counties and 62 municipalities. When 1041 matters have been tested in court, judges have consistently ruled in favor of local governments' regulations and regulatory procedures.

To exercise 1041 powers, Fort Collins must declare its intention to regulate one or more of the classes of areas or classes of activities of state interest (1041 law encourages, but does not require, cities to make these declarations). At the same time, it must adopt guidelines (regulatory objectives) that are at least as stringent as those contained in 1041 law itself; stronger guidelines are explicitly authorized. Then, at its discretion, the City may adopt detailed regulations; as a practical matter, however, the guidelines previously adopted do not define a due process, so detailed regulations are needed. Guidelines and regulations must be crafted consistently with the purposes of the AASIA, as stated in its legislative declaration: *to protect the health, welfare, and safety of the people of the state and for the protection of the environment of the state* (CRS § 24-65.1-101).

1 The purpose of this paper, and our position

We assert that 1041 law, when given modern and proper interpretation, authorizes Fort Collins to regulate a development project whose primary constructed elements lie beyond Fort Collins city limits, if:

- The project qualifies as a *matter of state interest* under 1041 law
- The project reasonably can be expected to diminish the health, welfare, or safety of Fort Collins citizens, or damage natural resources or environmental quality within the City.

This authority is in addition to the clearly stated authorities that apply to projects whose primary constructed elements lie within city limits.

2 AASIA interpretation that supports extra-jurisdictional authority

2.1 Legislative declaration: the purpose of 1041 law

When crafting 1041 regulations, it is important to bear in mind the **core legislative intention** of 1041. If locally adopted 1041 regulatory objectives or detailed regulations are not protective of the health, welfare, and safety of the people, or the protection of the environment, or both, then those adoptions deviate from the purposes of 1041.

1041 Legislative Declaration
…the state has responsibility for the health, welfare, and safety of the people of the state and for the protection of the environment of the state.

Relevant language from the legislative declaration, expressing the purposes of 1041 law (CRS § 24-65.1-101):

- *The protection of the utility, value, and future of all lands within the state, including the public domain as well as privately owned land, is a matter of public interest.*
- *It is the intent of the general assembly that land use, land use planning, and quality of development are matters in which the state has responsibility for the health, welfare, and safety of the people of the state and for the protection of the environment of the state.*
- *The general assembly shall describe areas which may be of state interest and activities which may be of state interest and establish criteria for the administration of such areas and activities.*
- *Local governments shall be encouraged to designate areas and activities of state interest and, after such designation, shall administer such areas and activities of state interest and promulgate guidelines for the administration thereof.*

The language of 1041 is convoluted from the outset. The state legislature, in 1041 law, describes classes of areas and classes of activities that "*may be of state interest*." In other words, the listed classes are recognized in 1041 as candidates for *state interest* status. The candidate designation recognizes some level of state interest in the listed classes, but it creates no regulatory authority.

Regulatory authority is established by *designation* of an area or activity of state interest by a local (county or municipal) government, and the authority applies locally. The geographic extent of local 1041 authority is subject to interpretation and is the central theme of this paper.

2.2 Delegation to local governments

The selection of areas and activities for regulation was delegated to local governments because Colorado is culturally and geographically diverse. One-size-fits-all regulation by a centralized agency was considered unworkable.

Local governments shall be encouraged to designate areas and activities of state interest. The legislature, perhaps out of respect for small jurisdictions with limited resources, did not make local designations under 1041 mandatory; rather, those designations are optional for local governments. The legislature's general intention, though, was to have local governments become active partners in the declared state *responsibility for the health, welfare, and safety of the people of the state and for the protection of the environment of the state*. When implementing 1041 in a local jurisdiction, it is sound practice—and perhaps necessary practice—to maintain a focus on these state-legislated principles.

Taken together, the intention of the state legislature was to create a mosaic of environmental protection across the state, implemented by local governments, and that local jurisdictions would administer the matters of state interest in ways that would protect the health, welfare, and safety of the people of neighboring jurisdictions, as well as of their own. The Colorado Court of Appeals stated that allowing one jurisdiction's development goals and projects to degrade conditions in another jurisdiction "would eviscerate a fundamental objective of the Land Use Act."[1]

The intention of the state legislature was to create a mosaic of environmental protection across the state, implemented by local governments.

2.3 Consideration of "state interest" as described in 1041 law

Conundrum #1. If a class of area or class of activity is listed in 1041 as a candidate for "state interest," the implication is strong that the listed class is intrinsically "of state interest," just temporarily immune from 1041 regulation until action is taken by a local jurisdiction. If it were not intrinsically "of state interest," then how could a mere local jurisdiction endow it with statewide interest with a local ordinance?

Conundrum #2. Assume that there are two adjacent local jurisdictions, A and B. Jurisdiction A designates, say, airport development (see Section 5.2 below) as a matter of state interest, and institutes regulations for airport development within its borders. Neighbor jurisdiction B is a legally constituted subdivision of the State of Colorado and can reasonably be assumed to have a legitimate interest, inherited from the state, in all matters that are of statewide interest. Jurisdiction B may, therefore, have a shared interest in the regulation of airport development, even within its neighbor's borders and beyond its own borders. Its interest is particularly clear if an airport is proposed close to the shared border. A legitimate logical and legal question is this: does designation by one local government, which elevates an area or activity to a matter of statewide interest, endow a second jurisdiction with 1041 regulatory authority over an activity that primarily takes place in the first jurisdiction?

Does designation by one local government, which elevates an area or activity to a matter of statewide interest, endow a second jurisdiction with 1041 regulatory authority over an activity that primarily takes place in the first jurisdiction?

The answer to this pivotal question may well be "yes." The question is untested, as far as these authors can determine, in practice and in court rulings. For now, the point to keep in mind is that **1041 law and court decisions are silent on this question**. One cannot legitimately assert that cross-jurisdictional authority is forbidden; it is not. On the other hand, as explained in Section 2.4 below, one finds specific authorization absent. The possible inheritance of regulatory authority, from another jurisdiction's elevation of a matter into the realm of statewide interest, may not be the strongest argument for cross-jurisdictional regulatory authority, as explained in the following sections.

[1] Colorado Springs v. Commissioners (of Eagle County), 895 P.2d 1105 (Colo. App. 1994). See also Section 3.3 below.

2.4 Where in 1041 is cross-jurisdictional authority prohibited?

Nowhere. The lack of authorization has been interpreted by some as prohibition, but it is not that.

Cross-jurisdictional authority appears not to be authorized (as opposed to prohibited) in the procedures for designating matters of state interest, as described in CRS § 24-65.1-401:

After public hearing, a local government may designate matters of state interest within its jurisdiction, taking into consideration the intensity of current and foreseeable development pressures.

A designation shall:

- *Specify the boundaries of the proposed area; and*
- *State reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any such area or uncontrolled conduct of such activity, and the advantages of development of such area or conduct of such activity in a coordinated manner.*

The phrase *within its jurisdiction* seemingly excludes a local government from regulating projects whose primary construction activities occur beyond its borders. That interpretation, however, depends on interpretation of one word, *site*, which appears in the listing of classes of activities of state interest, in the phrases "site selection" and "site selection and construction."

2.5 Proper interpretation of *site*

2.5.1 A necessary consideration of historical context

Colorado House Bill 74-1041 (the AASIA) was signed into law in 1974. This was early in the history of environmental protection law, and early in the general public's understanding (and, most likely, in legislators' understanding) of the lateral reach of environmental connectivity. It was, for example, before the nation recognized that coal-fired power plants in one state caused acid rain in other states and that interstate regulatory action was needed. Acid-rain regulations were passed in 1980.

So, in legislators' minds in 1974, the immediate area of construction of a water facility or an airport was the extent of their perception of the project's *site*. The word *site* is used in 1041 statutes without definition. We assert that the word *site* in the AASIA, interpreted with current (nearly 50 years later) general understanding about environmental connectivity, includes places that can reasonably be expected to suffer adverse impacts from the project.

> The word *site* in the AASIA, interpreted with current, general understanding about environmental connectivity, includes places that can reasonably be expected to suffer adverse impacts from the project.

Under this definition of *site*, a project whose primary scope of construction is outside of Fort Collins city limits, but whose adverse impacts extend into the city limits, is subject to 1041 regulation by the City.

How the *site* of a project plays into regulatory authorization is explained in Section 2.5.2.1 below with detailed reference to 1041 language.

2.5.2 Two examples illustrating lateral reach of environmental connectivity

2.5.2.1 Example 1

Suppose that a dam is proposed in county A to create a water-supply reservoir that would flood (upstream) part of county B. Authorization for 1041 regulation of this activity of state interest under 1041 is in CRS § 24-65.1-203, described as:

> Considering the *site* of a project to end at an administrative boundary, when natural processes do not end at that boundary, defies physical realities of the project.

Site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems.

This description is supported by a definition in CRS § 24-65.1-104:

"Domestic water and sewage treatment system" means a wastewater treatment facility, water distribution system, or water treatment facility, as defined in section 25-9-102(5), (6), and (7), C.R.S., and any system of pipes, structures, and facilities through which wastewater is collected for treatment.

Water distribution system is defined in CRS § 25-9-102(6):

"Water distribution system" means any combination of pipes, tanks, pumps, or other facilities that delivers water from a source or treatment facility to the consumer.

Is the area that would be flooded in county B part of the water distribution system? It is one segment of the part of the system that stores water for later distribution (i.e., one segment of the reservoir)—so yes, it is part of the distribution system. Is it part of the project's *site*? It might be excluded from the *site* by deeming the site to end artificially at the county line. Water impounded by the dam, however, will not heed the county boundary. To deem the county boundary as the limit of the *site*, therefore, defies the physical realities of the project. The *site*, in its physical reality, is partly in county B.

Our assertion is that this situation licenses county B to regulate the *site selection and construction* (per CRS § 24-65.1-203 cited above) of the dam in county A because part of the project *site*, in its physical reality—either in its construction or post-construction operation—is in county B and, therefore, is within county B's jurisdiction.

2.5.2.2 Example 2

The same is true of airport site selection. Noise and hazards from post-construction operation of an airport extend beyond the airport itself. If those adverse impacts extend to jurisdictions beyond the extent of the airport's concrete, then the adversely affected jurisdictions should qualify for 1041 regulatory authority, just as they would with dams. Noise and hazards from aircraft operations are, in fact, some of the most important considerations in airport siting, and they have no respect for administrative boundaries; again, 1041 authority and permitting should be based on the physical realities of the project.

The authority thus alleged parallels the principle of "standing" in torte law, although in torte law standing is established after harm is done. In a regulatory context, the purpose of regulation is prevention of harm, so reasonably anticipated harm establishes regulatory standing.

2.6 Intention for broad regulatory concern

We now show that 1041 language conveys the law's intention for cross-jurisdictional consideration and regulation of reasonably anticipated adverse impacts.

The minimal "criteria for administration" (regulatory objectives) for major extensions of (or new) water and sewer systems are stated in CRS § 24-65.1-204:

- *New domestic water and sewage treatment systems shall be constructed in areas which will result in the proper utilization of existing treatment plants and the orderly development of domestic water and sewage treatment systems of adjacent communities.*
- *Major extensions of domestic water and sewage treatment systems shall be permitted in those areas in which the anticipated growth and development that may occur as a result of such extension can be accommodated within the financial and environmental capacity of the area to sustain such growth and development.*

Both paragraphs mandate a concern for protecting nearby communities or jurisdictions with the words, "*orderly development of… systems of adjacent communities*," and "*the financial and environmental capacity of the area*."

The second paragraph is particularly relevant, as it establishes responsibility not to exceed the environmental capacity of the *area*, which means not only the host jurisdiction of a project, but also surrounding jurisdictions. *Orderly development* in the first paragraph mandates avoidance of environmental damage, because development that disregards environmental consequences can no longer be regarded as *orderly*.

Therefore, a jurisdiction issuing a permit under 1041 is obligated to protect not only its own systems and environment, but its nearby neighbors' as well.

A jurisdiction issuing a permit under 1041 is obligated to protect not only its own systems and environment, but its nearby neighbors' as well.

What was omitted from 1041 statutes was clarity about the mechanisms for implementing these objectives. Interpretations that invent prohibitions, where there are none, impede realization of the law's objectives. We continue by exploring mechanisms for implementing cross-jurisdictional implementation of 1041 without violating its language.

2.6.1 What if a jurisdiction without 1041 authority hosts a project that adversely impacts a neighbor?

In this case, the impacted neighbor exercises its 1041 regulatory authorities, requires a permit, and applies those parts of its 1041 regulations that relate to the reasonably anticipated adverse impacts. The host jurisdiction might challenge the right of the neighbor to regulate within the host jurisdiction's boundaries. If that challenge is settled in favor of the host, then the neighbor would still have rights for remedies under torte law, but possibly not until injury is sustained. The purpose of the AASIA is to avoid development activities approved in one jurisdiction causing harm in another, so this situation fails to meet the objectives of AASIA.

2.6.2 What if a jurisdiction issues a 1041 permit without adequate concern for impacts on neighbors?

If the host jurisdiction fails to protect the environmental capacity of another jurisdiction in the area, and grants a permit for a project that will damage the environment of a neighbor, then what remedy is available? Under 1041 law, this would be a failure to meet the minimum regulatory objectives presented

in Section 2.6 above. Furthermore, this may not be the only failure of the host jurisdiction in applying 1041 regulations. The host jurisdiction, per CRS § 24-65.1-301 is required to

- *Receive recommendations from state agencies and other local governments relating to matters of state interest.*

At the same time, the neighbor jurisdiction in the area, in anticipation of adverse impacts, is required to

- *Send recommendations to other local governments relating to matters of state interest.*

A host jurisdiction is thus obligated to notify neighboring jurisdictions that a 1041 application has been received and is under review, and to provide copies of the application materials. If a neighbor jurisdiction has sent recommendations to the host jurisdiction stating its anticipation of adverse impacts, and those concerns have been ignored or dismissed by the host jurisdiction when granting a permit, then the neighbor jurisdiction has standing for challenging the permit issued by the host. Under 1041 law, CRS § 24-65.1-502, a challenge to denial of a permit is filed in Colorado District Court. The law is silent on the venue for challenging an improperly granted permit, but the same court would be a logical place to start.

2.6.3 Cross-jurisdictional regulation is a better remedy

An alternative and better remedy is to interpret *site* in 1041 to mean all places that reasonably can be expected to suffer adverse impacts. With that interpretation, a jurisdiction that is not the host has regulatory authority, and the project applicant would be required to obtain permits from both jurisdictions. See the illustrative examples in Section 2.5.2 above. Taking the dam example from Section 2.5.2.1, the upstream county would require a permit, apply its 1041 regulations related to water impoundments or causation of flooding, and would not apply unrelated regulations. If the application met those regulatory standards, then it would issue a permit; if it did not meet those standards, then it would deny the permit.

Importantly, this mechanism would typically function without court intervention.

3 Court rulings supporting cross-jurisdictional authority

3.1 Colorado Land Use Commission v. Larimer County Board of Commissioners (1979)

On appeal, this case went to the Colorado Supreme Court. In its opinion, the court wrote:

The purpose of the article of the Colorado Land Use Act dealing with areas and activities of state interest, sections 24-65.1-101 et seq., C.R.S. 1973 (1978 Supp.), is to allow both state and local government to supervise land use which may have an impact on the people of Colorado beyond the immediate scope of the project.

The referenced law is the AASIA. The supervision of land use referred to by the court is the 1041 designation of matters of state interest by local governments; the receipt and evaluation of project applications; and issuance or denial of project permits.

What is most important in the court's words is its interpretation of the AASIA's purpose: *regulation of land use that may have an impact…beyond the immediate scope of the project*. With that understanding of AASIA, what should happen if the jurisdiction of *immediate scope* (i.e., the project's host jurisdiction) fails to protect its neighbors from the project's adverse impacts? A justifiable remedy would be for the affected neighbor(s) to apply their own 1041 regulations, thereby meeting the purposes

of AASIA. If one jurisdiction fails to satisfy the purpose of AASIA, then another jurisdiction may elect to do so, particularly if the second jurisdiction can thereby avert injury.

3.2 Denver v. Eagle and Grand Counties (1989)

Denver Water Board and Northern Water sued Eagle and Grand Counties, both of which had 1041 regulations in place for water systems. The water utilities claimed that their right to develop and utilize their water rights made them immune to 1041 regulation by the counties. The Supreme Court of Colorado found that the broad applicability of 1041 regulations was valid, and that the water districts were subject to the counties' 1041 regulations.

3.3 Colorado Springs v. Eagle County (1994)

The cities of Colorado Springs and Aurora held water rights in Eagle County, which they proposed to exercise by building a dam in the upper parts of the Eagle River basin. Their 1041 permit was denied by Eagle County. One of the arguments that the two cities presented to the courts in their appeal of Eagle County's permit denial was that Eagle County's decision had the effect of regulating growth and development in the two cities. This was the court's response to that argument:

Interpreting the statute to mean that the Board [of Commissioners of Eagle County] *cannot apply its regulatory criteria here because the Board cannot presume to control growth, development, and use of existing facilities in the cities would eviscerate a fundamental objective of the Land Use Act*.

In this case, Eagle County was regulating dam-building and pipeline installation activities within its own boundaries, and those regulations had effects in other Colorado jurisdictions. First, the court found that Eagle County had 1041 rights to regulate projects that delivered water elsewhere, i.e. to regulate a project that was only partly within its boundaries. Examined oppositely, the Colorado Court of Appeals found that the growth ambitions and rights of other jurisdictions did not supersede Eagle County's right to protect its environment under 1041 law and that the regulated activity was validly one of state interest. In other words, 1041 protections spanned across jurisdictions, and the court declared that span to be an essential attribute of the law, without which 1041 would be *eviscerated*.

4 We are not alone

Other Colorado local governments have adopted, or are planning to adopt, 1041 regulations to prevent damages within their boundaries that propagate from projects outside their boundaries. The central purpose of 1041 law is regulation that prevents exactly this sort of damage propagation (see Section 3.3 above).

4.1 Castle Rock

This is a real-world example of the approach suggested in Section 2.6.3 above.

The City of Castle Rock declared a Watershed Protection District under auspices of the federal Safe Drinking Water Act. This gave Castle Rock jurisdiction over activities in the District that could degrade quality of the city's drinking-water sources. Castle Rock then designated 1041 *activities of state interest* to eligible activities in the District. There is no legislated connection between federal watershed protection districts and 1041 designations. Castle Rock's claim to 1041 authority, in places that are in the District but outside the city limits, therefore rests on its partial jurisdiction over drinking-water-related activities in the District.

This is imaginative and novel application of 1041. In effect, Castle Rock is using 1041 authorities to protect itself from harms that can reasonably be expected to propagate from projects in Douglas County into the city (in this case, into its domestic water supply), which the county has not sufficiently regulated. These designations create dual regulatory authorities in parts of Douglas County. There is no prohibition of dual authorities in 1041 statutes.

4.2 San Luis Valley

News reports indicate that counties, and potentially cities, in the San Luis Valley are developing intergovernmental agreements for cooperative application of 1041 regulations to prevent export of groundwater from the valley's aquifers. The underlying philosophy is that harm to one jurisdiction is harm to all. There is no authorization in 1041 statutes for this sort of collaboration, but there is also no prohibition.

5 Reference

5.1 List of 1041 areas of state interest, CRS § 24-65.1-201

- Mineral resource areas
- Natural hazard areas
- Areas containing, or having a significant impact upon, historical, natural, or archaeological resources of statewide importance
- Areas around key facilities in which development may have a material effect upon the key facility or the surrounding community.

5.2 List of 1041 activities of state interest, CRS § 24-65.1-203

- Site selection and development of solid waste disposal sites except those sites specified in section 25-11-203(1), C.R.S., sites designated pursuant to part 3 of article 11 of title 25, C.R.S., and hazardous waste disposal sites, as defined in section 25-15-200.3, C.R.S.;
- Site selection of airports;
- Site selection of rapid or mass transit terminals, stations, and fixed guideways;
- Site selection of arterial highways and interchanges and collector highways;
- Site selection and construction of major facilities of a public utility;
- Site selection and development of new communities;
- Efficient utilization of municipal and industrial water projects;
- Conduct of nuclear detonations; and
- The use of geothermal resources for the commercial production of electricity.

5.3 Definitions related to areas and activities of state interest

- General definitions CRS § 24-65.1-102
- Definitions relating to natural hazards CRS § 24-65.1-103
- Definitions relating to other areas and activities CRS § 24-65.1-104

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10 Apr 2023

The 1041 Papers

1. What Colorado Problem was Solved by the 1041 Law?

It was 1974. The U.S. Congress had passed an unprecedented flurry of environmental-protection laws during the previous decade:

- The Wilderness Act — 1964
- National Environmental Policy Act (NEPA) — 1970
- Clean Water Act — 1972
- Clean Air Act — 1955 and 1970

Of particular importance was the Clean Air Act of 1970, because it deputized the States to develop and implement plans for compliance with national clean-air standards, with national oversight.

Colorado had a problem. The problem was Colorado's significant size and diversity, and the widespread desire of its citizens for State-level protection of its spectacular and varied natural resources, for the security of their continued health, recreational opportunities, and culture. A single State agency would be large and cumbersome, and it would be nearly impossible to write regulations that would fit well across Colorado's extremes of geography, ecology, and culture. City and county officials across the state were rightly concerned that their unique conditions and needs would be excluded from a monolithic statewide system.

House Bill 74-1041 was the solution. With the 1041 law, the legislature recognized:

- There are activities that can alter environmental conditions across multiple, sometimes dozens, of county and municipal jurisdictional boundaries: these are *activities of state interest*. The law enumerated these activities.
- There are areas that host ecological, recreational, and economic resources that are beneficial to the entire state: these are *areas of state interest*. The law enumerated these areas.
- Management of the activities of state interest and protection of the areas of state interest warranted a minimal set of environmental standards. The law established minimum standards.
- Local governments were encouraged—in effect, deputized—to recognize and administer matters of state interest within their jurisdictions. This was an echo of the 1970 Clean Air Act, which deputized the states to administer compliance with national clean-air standards.
- Local governments were invited to develop protective standards that met or exceeded the minimal state standards, through a defined public process.
- Local governments were authorized to require permits for resource-disturbing projects in areas or activities of state interest, and to deny permits for projects that did not fully meet local standards.

In deference to the staffing and financial limitations of small local jurisdictions, the legislature did not *require* local governments to adopt 1041 powers, but the overall intent of the law was for willing local governments to be the State's agents for environmental protection. **The 1041 law balanced State and local authority, and it has been effective in protecting local environments for nearly 50 years, wherever 1041 powers have been adopted.**

The 1041 Papers

2. Colorado Grants Environmental Regulatory Authorities to Local Governments

First, the legislature declares responsibilities of the State of Colorado (Colorado Revised Statutes § 24-65.1-101(1)(a,c)):

> *The protection of the utility, value, and future of all lands within the state, including the public domain as well as privately owned land, is a matter of public interest.*
>
> *It is the intent of the general assembly that land use, land use planning, and quality of development are matters in which the state has responsibility for the health, welfare, and safety of the people of the state and for the protection of the environment of the state.*

These sections clarify the **intent of 1041 statute**: to allow development while **protecting the health, welfare, and safety of Colorado's people and Colorado's environment**. To discriminate between developments that are of purely local concern or interest and developments of state-wide interest (CRS § 24-65.1-101(2)(a)),

> *The general assembly shall describe areas which may be of state interest and activities which may be of state interest*[1] *and establish criteria for the administration of such areas and activities.*

Second, **the legislature recruits local governments** for implementing 1041's objectives (CRS § 24-65.1-101(2)(b):

> *Local governments shall be encouraged to designate areas and activities of state interest and, after such designation, shall administer such areas and activities of state interest and promulgate guidelines for the administration thereof.*

Local governments are expected to participate in statewide efforts to protect the quality of the environment and the health, welfare, and safety of the people. Inaction of local governments is permissible—local governments can "opt out" of 1041 through inaction—but participation is clearly preferred (*"shall be encouraged"*) by the State legislature. The statute commits that *state agencies shall assist local governments* in their 1041 efforts. So, for example, if a local government needs to identify areas of significant wildlife habitat, it may call on the Colorado Division of Parks and Wildlife for assistance.

Definitions are provided (CRS § 24-65.1-102): *Development* means any construction or activity which changes the basic character or the use of the land on which the construction or activity occurs; *Local government* means a municipality or county. This section establishes **broad regulatory reach of 1041**:

> *"Person" means any individual, limited liability company, partnership, corporation, association, company, or other public or corporate body, including the federal government, and includes any political subdivision, agency, instrumentality, or corporation of the state.*

Local governments can regulate development activities proposed by anyone, including state and federal agencies, special districts (e.g., water districts), and utilities. Furthermore, they can adopt more stringent standards than those specified explicitly in the 1041 law; among other things, this allows for application of criteria specific to Areas of state interest to Activities of state interest and vice versa (CRS § 24-65.1-402(3)):

> *No provision in this article shall be construed as prohibiting a local government from adopting guidelines or regulations containing requirements which are more stringent than the requirements of the criteria listed in sections 24-65.1-202 and 24-65.1-204.*

[1] Areas and Activities of state interest that may be protected by local 1041 regulations are described later in the 1041 law.

The 1041 Papers

3. Regulation of Activities of State Interest Under 1041

1041 law allows local governments to regulate the following Activities of State Interest (CRS § 24-65.1-203); each of these activities of state interest can significantly affect nearby communities.

- Site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems
- Site selection and development of solid waste disposal sites [with certain exceptions]
- Site selection of airports,
- Site selection of rapid or mass transit terminals, stations, and fixed guideways
- Site selection of arterial highways and interchanges and collector highways
- Site selection and construction of major facilities of a public utility
- Site selection and development of new communities
- Efficient utilization of municipal and industrial water projects
- Conduct of nuclear detonations
- The use of geothermal resources for the commercial production of electricity.

Water systems

Regulatory guidance for new water systems:

> *New domestic water and sewage treatment systems shall be constructed in areas which will result in the proper utilization of existing treatment plants and the orderly development of domestic water and sewage treatment systems of adjacent communities.* CRS § 24-65.1-204(1)(a)

Orderly development is mandated, and "orderly" may be construed to include regard for environmental consequences in adjacent communities. Criteria for extensions of water-systems:

> *Major extensions of domestic water and sewage treatment systems shall be permitted in those areas in which the anticipated growth and development that may occur as a result of such extension can be accommodated within the financial and environmental capacity* ***of the area*** *to sustain such growth and development.* CRS § 24-65.1-204(1)(b)

By implication, these activities shall not be permitted in areas where they cannot be accommodated within the environmental capacity *of the area*. By cross-reference to the guidance for new systems (above), *area* at least includes adjacent communities, and probably more; for example, air quality degradations following population growth supported by new water systems is likely to be a regional, large-area effect.

Additional criteria can be imported from other 1041 sections by exercising the following general authority:

> *No provision in this article shall be construed as prohibiting a local government from adopting guidelines or regulations containing requirements which are more stringent than the requirements of the criteria listed in sections 24-65.1-202 and 24-65.1-204.* (CRS § 24-65.1-402(3))

Therefore, guidelines explicitly stated in the 1041 statutes for *areas* of state interest can be applied additionally to *activities* of state interest (and vice versa), and criteria for new water systems can be applied additionally to extensions of water systems (and vice versa).

(continued in 1041 Paper #4)

The 1041 Papers

4. Regulation of Activities of State Interest Under 1041

New water systems and extension of existing water systems (continued)

Local governments are authorized to adopt regulatory criteria more stringent than the criteria explicitly included in the 1041 law (see 1041 Papers #2 and #3). Criteria for *areas* of state interest can, therefore, be adopted into criteria for *activities* of state interest, such as development of new (or extension of existing) water systems. For example, the local resolution that designates water-system development as a matter of state interest might state, "If a proposed extension of a water system will affect resources described in CRS § 24-65.1-202(3), then a permit is required under this designation." That section reads:

> *Areas containing, or having a significant impact upon, historical, natural, or archaeological resources of statewide importance… shall be administered by the appropriate state agency in conjunction with the appropriate local government in a manner that will allow man to function in harmony with, rather than be destructive to, these resources. Consideration is to be given to the protection of those areas essential for wildlife habitat. Development in areas containing historical, archaeological, or natural resources shall be conducted in a manner which will minimize damage to those resources for future use.* CRS § 24-65.1-202(3)

Future use would generally be understood to include sustainable recreational use.

Efficient utilization of municipal and industrial water projects

> *Municipal and industrial water projects shall emphasize the most efficient use of water, including, to the extent permissible under existing law, the recycling and reuse of water. Urban development, population densities, and site layout and design of storm water and sanitation systems shall be accomplished in a manner that will prevent the pollution of aquifer recharge areas*. (CRS § 24-65.1-204)

The final sentence imposes restrictions on stormwater and sanitation water outfalls. One can reasonably infer, however, that the broad intent of the law is to protect recharge of aquifers, which involves both water quality (explicit in the law) and quantity (implicit). Management of water quality for recharge is an empty gesture if there is not sufficient water quantity to sustain aquifer recharge. It is possible, for example, to route stormwater discharge into a watercourse downstream of a recharge area, thus bypassing and not polluting the recharge area, but also depriving the aquifer of recharge. That strategy contrasts with on-site construction of detention ponds, routing of runoff through wetlands, and other means for delivering clean water to recharge areas. Bypassing recharge areas is inconsistent with the mandate for *most efficient use of water*.

Summary of regulation of water-related activities of state interest

Sustainability was not a term in general use in 1974 when the 1041 law was first passed. Reading the criteria together for new development and extension of water and sewage treatment systems, and efficient utilization of municipal and industrial water projects, and recognizing the authorization to impose standards more stringent than those contained in 1041 law itself, overall objectives of sustainability are evident:

- Sustain environmental conditions in the immediate area of a project and in its surrounding region
- Consider and avoid threats to economic and environmental sustainability in the area (and region) with attention to consequences of the project's stimulation of growth and development
- Under local option, extend these protections to natural, historic, recreational, and cultural resources.

The 1041 Papers

5. Regulation of Other Activities of State Interest Under 1041

Site selection of arterial highways and interchanges and collector highways

Specific criteria for highway expansion projects are stated in § 24-65.1-204(5):

> *Arterial highways and interchanges and collector highways shall be located so that:*
> - *Community traffic needs are met*
> - *Desirable community patterns are not disrupted*
> - *Direct conflicts with adopted local government, regional, and state master plans are avoided.*

As with water projects, more stringent criteria can be adopted from other sections of 1041 or elsewhere. For example, highway projects can be required to minimize adverse impacts on environmental quality and cultural resources. They can be required to be laid out so that they do not interrupt surface water flows that support aquifer recharge areas, and that runoff from impervious road surfaces does not pollute streams or aquifer recharge areas.

Site selection of rapid or mass transit terminals, stations, and fixed guideways

A light rail system like Denver's will not soon extend to Fort Collins. When that happens, though, protection using 1041 will be needed. Broad protections are given in 1041 law as follows, but specific protections added from other sections of 1041 or elsewhere would be needed to establish unambiguous standards.

> *Rapid or mass transit terminals, stations, or guideways shall be located in conformance with the applicable municipal master plan adopted pursuant to section CRS § 31-23-206, or any applicable master plan adopted pursuant to section CRS § 30-28-108. If no such master plan has been adopted, such areas shall be developed in a manner designed to minimize congestion in the streets; to secure safety from fire, floodwaters, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Activities shall be conducted with reasonable consideration, among other things, as to the character of the area and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdiction of the applicable local government.* (CRS § 24-65.1-204(4)(a))

Other activities of state interest

The remaining activities of state interest are not likely to need designation by Fort Collins:

- Site selection and development of solid waste disposal sites [with certain exceptions]
- Site selection of airports
- Site selection and construction of major facilities of a public utility
- Site selection and development of new communities.

The 1041 Papers

6. Designation and Regulation of Areas of State Interest Under 1041

The following types of areas are eligible for designation by local governments as areas of state interest (CRS § 24-65.1-201):

1. *Mineral resource areas*
2. *Natural hazard areas*
3. *Areas containing, or having a significant impact upon, historical, natural, or archaeological resources of statewide importance*
4. *Areas around key facilities in which development may have a material effect upon the key facility or the surrounding community.*

Of these, #3 in the above list is most relevant to Fort Collins. A definition is provided:

> *"Historical or archaeological resources of statewide importance" means resources which have been officially included in the national register of historic places, designated by statute, or included in an established list of places compiled by the state historical society.* (CRS § 24-65.1-104(6))

A 9-mile stretch of the Cache la Poudre River National Heritage Area, designated by the U.S. Congress in 2009, lies within Fort Collins city limits. The Heritage Area itself is defined by the 100-year floodplain of the river. The Heritage Area within Fort Collins unquestionably qualifies for designation as an *area of state interest*.

Relevant minimum administration guidelines are specified:

> *Areas containing, or having a significant impact upon, historical, natural, or archaeological resources of statewide importance, as determined by the state historical society, the department of natural resources, and the appropriate local government, shall be administered by the appropriate state agency in conjunction with the appropriate local government in a manner that will allow man to function in harmony with, rather than be destructive to, these resources. Consideration is to be given to the protection of those areas essential for wildlife habitat. Development in areas containing historical, archaeological, or natural resources shall be conducted in a manner which will minimize damage to those resources for future use.* (CRS § 24-65.1-202(3))

Importantly, there is an explicit call for protection of wildlife habitat and protection of the uses of the area, which would generally be understood to include sustainable recreational use.

One objective of the 1041 statutes is for local governments to serve as agents or deputies of the state in protecting areas of statewide importance. In this regard, the City of Fort Collins has an optional but unmet responsibility to protect its section of the Heritage Area on behalf of the State of Colorado.

For the sake of the City itself, designation of the parts of the city that lie within the Cache la Poudre River National Heritage Area, as an Area of State Interest under 1041, would provide strong protection for 18 Natural Areas, a large part of Lee Martinez Park, the City's new Whitewater Park, and the Poudre Trail. These assets represent tens of millions of dollars of Fort Collins citizens' investments. They deserve strong protections.

The 1041 Papers

7. Public Process for Designation of Matters of State Interest

Process for designation of matters (areas or activities) of state interest (CRS § 24-65.1-404):

- A public hearing is required
- Notice is to be made of hearing and availability of hearing materials 30-60 days before the hearing
- At local option, establish a mailing list of applicants for notifications of 1041 designation process
- Within 30 days following the hearing, reject, amend, or adopt the proposed designation(s)
- Simultaneously adopt guidelines for administration of designated areas and activities
- During the designation and guideline adoption process, no development can be conducted.

Required specification of the areas or activities (CRS § 24-65.1-401):

After public hearing, a local government may designate matters of state interest within its jurisdiction, taking into consideration the intensity of current and foreseeable development pressures. A designation shall:

- *Specify the boundaries of the proposed area*
- *State reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any such area or uncontrolled conduct of such activity, and the advantages of development of such area or conduct of such activity in a coordinated manner.*

Guidelines and regulations

The local regulatory process may occur in two phases (CRS § 24-65.1-402(1) and (2)):

The local government shall develop guidelines for administration of the designated matters of state interest. The content of such guidelines shall be such as to facilitate administration of matters of state interest consistent with sections 24-65.1-202 and 24-65.1-204.

Guidelines, but not detailed regulations, are required at the time of designation of matter(s) of state interest. Guidelines may apply to multiple matters.

A local government may adopt regulations interpreting and applying its adopted guidelines in relation to specific developments in areas of state interest and to specific activities of state interest.

Adoption of regulations specific to each area or activity are at local option and may be developed after designation and statement of general guidelines.

The 1041 Papers

8. Designation and Administration of Areas and Activities of State Interest

Permit required

Once an area or activity of state interest has been designated by a local jurisdiction, a permit is required:

> *Any person desiring to engage in development in an area of state interest or to conduct an activity of state interest shall file an application for a permit with the local government in which such development or activity is to take place. A reasonable fee determined by the local government sufficient to cover the cost of processing the application, including the cost of holding the necessary hearings, shall be paid at the time of filing such application.* (CRS § 24-65.1-501(1)(a))
>
> *"Person" means any individual, limited liability company, partnership, corporation, association, company, or other public or corporate body, including the federal government, and includes any political subdivision, agency, instrumentality, or corporation of the state.* (CRS § 24-65.1-102)

The phrase "*in which such development or activity is to take place*" (first sentence above) can be construed narrowly to mean the area and immediate vicinity of construction, or broadly to mean places significantly affected by the activity. Broad interpretation is supported and summarized in 1041 Paper #4 and is supported by Colorado Supreme Court decisions described in 1041 Paper #9.

If a project application is received before designation of an area or activity under 1041, then the local government may hold the application while it develops guidelines and holds the required designation hearing, and then grant or deny the permit. More often, a local government will designate its 1041 areas and activities, with guidelines, and afterwards receive applications. (CRS § 24-65.1-501(2)(b))

When a local government receives an application under 1041, it must schedule a hearing on the application within 30 days and make public notice of the hearing 30-60 days before the hearing (for a potential total of 90 days). Local governments may offer or require preliminary meetings, submissions, and reviews that precede the formal submission of an application; these are not prohibited by 1041 statutes. (CRS § 24-65.1-501(2)(a))

Full compliance with the guidelines and regulations is required

> *The local government may approve an application for a permit to engage in development in an area of state interest if the proposed development complies with the local government's guidelines and regulations governing such area. If the proposed development does not comply with the guidelines and regulations, the permit shall be denied.* (CRS § 24-65.1-501(3))
>
> *The local government may approve an application for a permit to conduct an activity of state interest if the proposed activity complies with the local government's regulations and guidelines for conduct of such activity. If the proposed activity does not comply with the guidelines and regulations, the permit shall be denied.* (CRS § 24-65.1-501(4))

Colorado courts have ruled that partial compliance is insufficient; failure to comply with any part of the regulatory standards requires denial of the permit.

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January 19, 2023

Land Conservation and Stewardship Board
c/o Katie Donahue, Natural Areas Department Director and LCSB Liaison
PO Box 580
Fort Collins, CO 80522

Dear Chair Elson, Vice Chair Cunniff, and Board Members:

On behalf of City Council, thank you for providing us with the January 11, 2023 memorandum regarding "1041 Regulations Recommendations" wherein you summarized the Board's recommendation to utilize the broader range of 1041 regulatory measures available to local governments to strengthen the City of Fort Collins' regulatory authority and commitment to protect public health, safety, welfare, the environment and wildlife resources.

We acknowledge that you are closely watching for the third iteration of the regulations to be provided before the January 25, 2023 Planning and Zoning Commission meeting. As you know, Council currently has this item scheduled for discussion on February 7, 2023 and we encourage you to view the proceedings in person at City Hall or online at fcgov.com.

Thank you for the expertise and perspectives that you bring to the Board and share with City Council.

Best Regards,

Jeni Arndt
Mayor

/sek

cc: City Council Members
Kelly DiMartino, City Manager

MEMORANDUM

Land Conservation & Stewardship Board

City of Fort Collins Boards & Commissions

To - Fort Collins City Council

From - Land Conservation and Stewardship Board (LCSB)

Date - January 11, 2023

Subject - 1041 Regulations Recommendations

While the Board appreciates that Natural Areas is of one of the three geographic areas to which the draft 1041 regulations apply, we recommend utilizing the broader range of 1041 regulatory measures available to local governments under C.R.C. § 24-65.1-101 et seq. and the City's Home Rule status to strengthen the regulatory authority and commitment of the City of Fort Collins to protect public health, safety, and welfare, the environment and wildlife resources within our city boundaries.

Please note that this memo was written in January 2023 prior to receiving the third major iteration of the 1041 draft regulations. Therefore, this memo is based on presentations and briefings from City Staff. As indicated by staff, the draft regulations will not be published for public review until just prior to the January 25, 2023, Planning and Zoning Commission meeting. The LCSB members intend to review any updates from staff, including the next major update of the draft regulations, and comment further as needed.

Concerns and Recommendations:

- Geographic Thresholds: The reduction in geographic scope from a city-wide application, inclusive of both city-owned property and property owned by private residents, to a substantially reduced scope is disappointing and **fails to comply** with original Ordinance, No. 122, 2021. While we appreciate that Natural Areas is of one of the three geographic areas that are protected by 1041 Powers, we also acknowledge that impacts to our Natural Areas can arise from projects occurring offsite of Natural Areas, for instance, with hazardous materials leaks from construction and maintenance operations, or upstream water diversions that affect historic downstream hydrological flows. Natural areas are inextricably interconnected with adjacent areas. **LCSB therefore recommends** that Council continue to develop and strengthen its 1041 regulations to the maximum extent permissible under State law.

- FONSI vs FONAI: The well-established "Finding of No Significant Impacts" (FONSI) process is well-understood in environmental law and practice. It has been used over many decades and has case law and regulatory interpretation supporting it. In contrast, the "Finding of Negligible Adverse Impacts" (FONAI) process is subjective and not widely used. **LCSB recommends** that Council retain the FONSI evaluation standard.

MEMORANDUM

Land Conservation & Stewardship Board

City of Fort Collins Boards & Commissions

- Activities and Areas of State Interest: The **LCSB recommends** that Council expand the covered 1041 Activities to include Mineral Resource Areas to strengthen the City's regulatory authority over any proposed mineral extraction development and operations related to siting of surface or subsurface oil and natural gas wells or conveyance pipelines, sand and gravel extraction, or other extractive Activities as allowed by State statute.

- Buffer Zones: The Buffer Zones that exist in the City Code today are too small with respect to adverse impacts and are frequently compromised by existing development. The existence of the built environment does not mitigate potential impacts of the covered 1041 Activities. **LCSB recommends** that an ecologically-sound Natural Resources Buffer Standard be developed that would protect Natural Areas from on- and off-site impacts and require complete remediation should such impacts occur despite the existence of these regulations.

- Outreach and Neighborhood Meeting: For each application, **LCSB recommends** that the City should conduct a robust outreach process and include responses to any concerns collected in the Neighborhood Meeting and public comment process as a distinct criterion for the initial FONSI or FONAI determination.

- Financial Security Requirements: An ad-hoc process is not predictable for applicants or residents. **LCSB recommends** that guidelines and expectations regarding Financial Security be codified in policy.

- **LCSB recommends** that all projects that impact Natural Areas require full review regardless of project thresholds, including modifications and enlargements.

Finally, although LCSB recognizes that Staff was constrained in which potential 1041 Activities and Areas of Interest it was allowed to explore, **we recommend** that Council continue to further develop 1041 regulations which cover all possible city-wide Activities and Areas of Interest as allowed by State statute.

BUILDING COMMUNITY
Fort Collins Area Chamber of Commerce

225 S Meldrum • Fort Collins, CO 80521
(970) 482-3746
www.FortCollinsChamber.com

March 21, 2023

Fort Collins City Council
300 Laporte Ave.
Fort Collins, CO 80521

To: Mayor Arndt, Mayor Pro Tem Francis, and Council Members Gutowsky, Pignataro, Canonico, Peel and Ohlson

Madam Mayor and Members of Council:

The Fort Collins Chamber of Commerce is committed to fostering a vibrant, resilient economy that provides equitable opportunity for success. Not just for our members, but for the benefit of all businesses, their employees, and all those that rely upon the goods and services they provide. As the leading voice in this space, our vision extends well beyond the city limits of Fort Collins to encompass the entire region. The business community of Fort Collins prospers as Northern Colorado prospers.

In this context, the Chamber is gravely concerned by the ongoing effort to institute the far-reaching regulatory powers encompassed under proposed 1041 powers. The rulemaking process has surfaced multi-layered complexities that have ensnared the routine delivery of water and wastewater services across the region. Moreover, the evolving scope and scale of the proposed regulations threaten the economic well-being of business and the very residents of disproportionately impacted communities the regulations are intended to protect.

A summary of our over-arching concerns are as follows:

- **Too Complex.** City staff has made clear that administration and oversight of 1041 powers well exceeds internal technical and personnel capacity. Therefore, outside consultants will be necessary to evaluate projects deemed to be significant. Project applicants will be expected to cover such expense, in addition to their own consultants, in developing a project plan that meets all regulatory standards. Not only does this

raise the cost and delay implementation of water projects, but the outcome will largely be determined through the consensus of consultants that have no vested interest in the prosperity of our community. Nor does this approach lend itself to uniform outcomes over time as consistency is lost to a revolving door of outside experts and their professional disposition.

- **Adversarial.** Applicants subject to 1041 are CDOT, Fort Collins Water Utility department, Northern Water, and the water and sanitation districts that serve over city residents and businesses – and all those located outside city limits, but within the growth management area (GMA). Each of these project sponsors hold a shared interest in providing a high-quality service that protects our natural resources while minimizing cost to the consumer. The proposed regulations cast these critical partners as adversaries in need of restraint.
- **Overreaching.** The enabling state statute limits the scope of 1041 powers to "developments of statewide significance". However, at each stage of its evolution, the draft regulations establish thresholds that reflect the routine placement of water lines intended to serve land uses permitted by code. As well, the regulations are triggered by encroachment upon areas that are already subject to extensive approval and remediation requirements at the federal, state, and local levels.

Based upon the substance of these concerns, we respectfully request the **repeal of Ordinance No. 122, 2021**, which designated areas of statewide interest, and replace Resolution 2021-055 with a revised resolution directing the City Manager to pursue intergovernmental agreements (IGAs) with Northern Water and all water and sanitation districts operating within the Fort Collins GMA. The Chamber does not believe either tool is necessary relative to highway projects pursued by CDOT.

Compelling reasons to pursue IGAs as a solution to perceived lapses in our current regulatory and approval process are as follows:

- IGAs have been utilized extensively across our state to guide the design, siting, installation, monitoring, and remediation of utility and other projects that have potential to disturb our natural environment or adversely impact the health and wellbeing of residents.
- IGAs allow the City and stakeholders to establish common standards of conduct, specific requirements for projects of elevated scope or scale, expectations of desired outcomes, enforcement process, and dispute resolution.
- IGAs provide all parties of interest greater predictability with uniform standards that help contain costs and project timelines.
- IGAs dramatically lower the potential of litigation to resolve conflicts.
- IGAs better establish the collaborative nature of serving the needs of our community without adversely impacting the interests of surrounding jurisdictions.

The work associated with constructing a well-designed IGA takes place upfront with the ability to refine the document as conditions evolve, rather than subjecting every utility project to special review and the potential for a protracted, arduous process that will deliver uneven outcomes.

- IGAs are not enforceable within the construct of 1041 powers and therefore, must be employed without that overhang.

The Chamber is fully vested in efforts to preserve and protect the natural environment that adds richness to our quality of life and overall wellbeing. Our members are among the most vocal champions of opportunities to elevate disproportionally impacted communities. Most importantly, the Chamber embraces the virtues of open space, recreational facilities, cultural amenities, and the quiet enjoyment of our natural areas that are all depend upon a dynamic, inclusive economy.

We stand as a trusted, engaged partner as you pursue an even better Fort Collins!

Respectfully,
Fort Collins Area Chamber of Commerce

Ann Hutchison, CAE
President & CEO

cc: Kelly DiMartino

Boxelder Sanitation District

3201 E. Mulberry Street, Unit Q
P.O. Box 1518
Fort Collins, CO 80522
Phone 970 498-0604

MEMORANDUM

From: Brian Zick

Date: March 24, 2023

Re: City of Fort Collins Draft Regulation Review

Boxelder Sanitation District was included on an email on February 10 from Kirk Longstein that asked for additional stakeholder input on the proposed version 3 of the 1041 regulations with specific responses to six policy issues, and provide input on project-sized thresholds.

Comments on Policy Issues

1. Should the code exclude an applicability of standards review (i.e., FONAI determination)?
    a. Comment: **No** and the terminology and the definitions should refer to FONSI *not* FONAI which is consistent with NEPA and other and regulations.

2. Should the Code allow council to deny a permit with conditions for re-submittal?
    a. Comment: Not sure of the intent of this item, but if a permit has conditions, those should be approved administratively.

3. Should the code regulate activity outside City that has impact inside?
    a. Comment: **No.** The City should not regulate projects that aren't in the City GMA.

4. Should work within existing easements that cross City Natural Areas be excluded?
    a. Comment: **Yes.** This is very important to Boxelder because of the number of sewers we have in natural areas**.**

5. Should the Code include the use of third-party contractors to support staff administration of permit applications?
    a. Comment: **No.** Outside consultants will increase the costs of the permitting process significantly and will create an unnecessary barrier for communication with the City.

6. Do project-size thresholds and exemptions for work within existing ROW reflect the intent to regulate "major" projects?
    a. Comment: **No.** Project threshold for sewer should be for pipes larger than 24 inches in diameter. This would be consistent with Colorado Department of Health and Environment Regulation 22 – Site Location and Design Regulations for Domestic Wastewater Treatment Works which defines interceptor sewers as 24-inch and larger with other factors as well.

Comments on potential impacted projects.

Boxelder has prepared Master Plans that define where sewer need to be located to provide service to properties in the Districts service area. The proposed 1041 regulations could affect how these projects are developed. One project that would be impacted is the Environment Regulation Boxelder Interceptor. This is a proposed 18-inch sewer that would be located on the east side of I-25 and generally follows Boxelder Creek. The attached map shows the general locations of the sewer. It has been planned for over 15 years but has not been extend north of Highway 14 because development has not occurred in that area. This sewer would be constructed as part of future development projects. The District would not build it in hopes of future development. Most of the Boxelder Creek is defined as wetlands or other natural vegetative areas. If enacted, these regulations may impede the District's ability to serve future development, pending determination on how the proposed regulation would affect this project. Without the regulation, this district would still have to comply with all NEPA requirements including wetland crossing, threatened and endangered species and archeological impacts. Also this is a relatively small sewer (18 inch) so it does not serve large statewide areas.

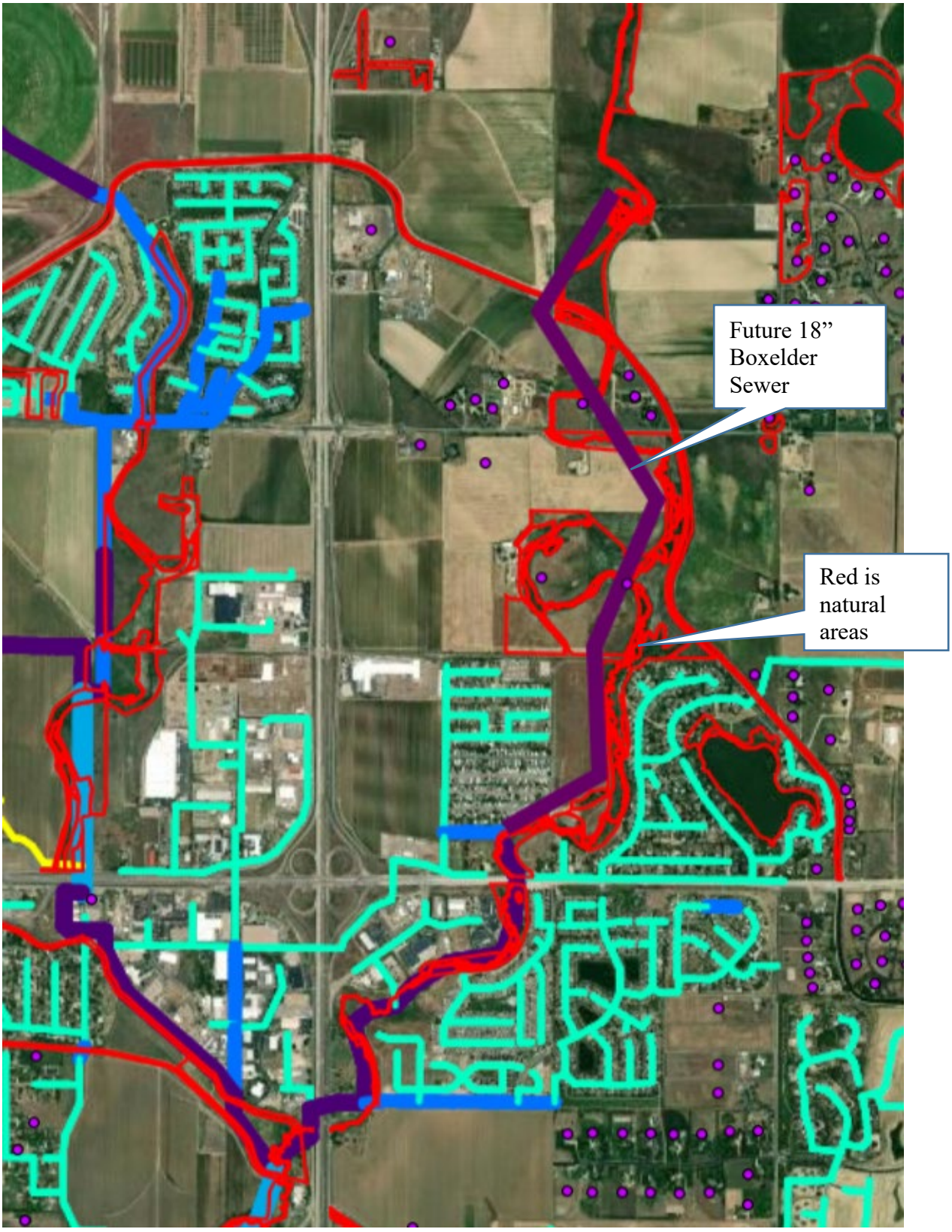
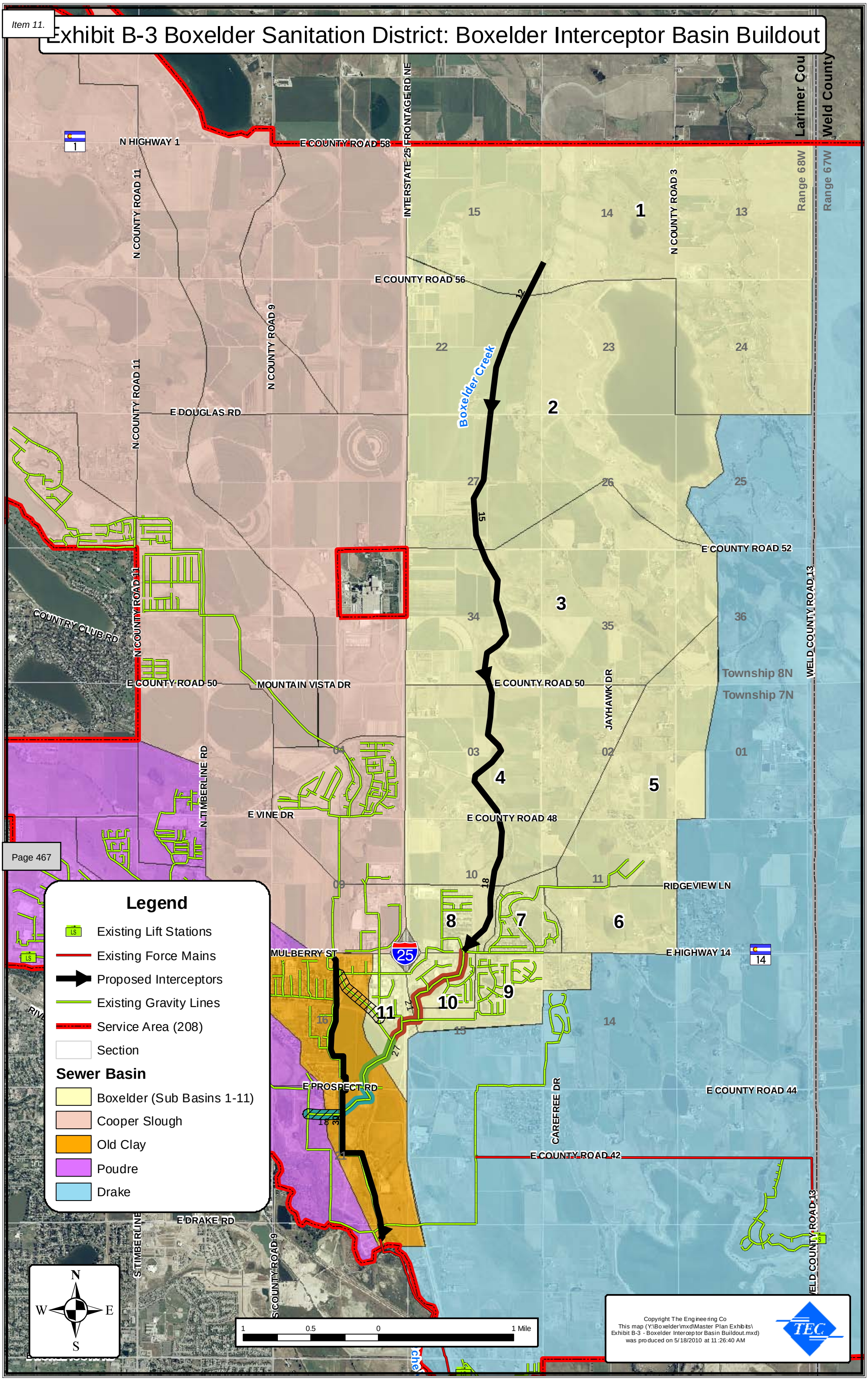

Future 18”
Boxelder
Sewer
Red is
natural
areas

Exhibit B-3 Boxelder Sanitation District: Boxelder Interceptor Basin Buildout



Legend

- Existing Lift Stations
- Existing Force Mains
- Proposed Interceptors
- Existing Gravity Lines
- Service Area (208)
- Section

Sewer Basin

- Boxelder (Sub Basins 1-11)
- Cooper Slough
- Old Clay
- Poudre
- Drake

Boxelder Sanitation District

March 21, 2023

Mayor Jeni Arndt and Fort Collins City Council
300 W. Laporte Avenue
Fort Collins, CO 80521

Via mail and individual emails

RE: 1041 Regulations

Dear Mayor Arndt and Council Members:

Boxelder Sanitation District's Board of Directors is pleased to have this opportunity to respond to Council's recent request for additional stakeholder input addressing six policy issues and project-sized thresholds on Version 3 of the City's proposed 1041 Regulation.

As an alternative, Boxelder Sanitation District requests that the City Council would repeal/withdraw Ordinance No. 122, 2021, and replace Resolution 2021-055 with a revised resolution directing the City Manager to pursue intergovernmental agreements (IGAs) with Northern Water and ALL other water and sanitation districts operating within the Fort Collins GMA.

Boxelder Sanitation District has requested this approach since the initial consideration of the proposed 1041 regulation as a better solution for these several reasons:

- IGAs are extensively used statewide in all phases of utility projects – from design, siting, installation, monitoring, and remediation - with the potential to disturb our shared natural areas or adversely impact the public health and well-being
- IGAs provide for cooperation between the City and stakeholders in setting standards of conduct, specific requirements and expectations, and outcomes along with measures for enforcement and dispute resolution.
- IGAs provide predictability with uniform standards that help contain costs and ensure timely project completion for all parties.
- IGAs protect the interests of surrounding jurisdictions through their collaborative nature.
- IGAs are tailored to the specific project allowing for refinement as conditions evolve rather than a potential for protracted, arduous, and uneven processes that the proposed 1041 Regulation could deliver.

3201 East Mulberry, Unit Q – P.O. Box 1518 • Fort Collins, Colorado 80522
(970) 498-0604 • boxeldersanitation.org • info@boxeldersanitation.org

The Boxelder Sanitation District Board of Directors shares a common environmental stewardship with the City and wider area community. It is our mission to "…responsibly provide wastewater treatment to protect the public health and our Poudre River…". The District, with the City, is fully vested in the requirement to preserve and protect our natural environment that adds richness to our shared quality of life and well-being.

We believe that using the IGA approach best addresses the longer term need to ensure that no part of our communities is disproportionately impacted while embracing the virtues of natural open space, recreational, and cultural amenities in the enjoyment of a dynamic and inclusive economy.

Sincerely,

Dennis Gatlin
Chair, Board of Directors
Boxelder Sanitation District

March 24, 2023

City of Fort Collins City Council;
300 Laporte Avenue
Fort Collins, Colorado 80521

RE: ELCO Comments on Version Three of the Proposed City of Fort Collins 1041 Regulations

Dear Council Members,

On behalf of the Board of Directors for East Larimer County Water District (ELCO) we are providing our additional written comments regarding the new proposed 1041 Regulations. ELCO reiterates that it appreciates the opportunity to provide its perspective on how the proposed Regulations will impact local water service providers and other stakeholders if adopted in their current form. ELCO is disappointed that there was not sufficient time to provide suggested redline changes to the Regulations. Yet it appreciates the alternative to provide its suggested changes in written form directly to City Council. In doing so, ELCO has not attempted to make every change that it would like to see made. Rather, it has focused on those provisions of the Regulations that will have the greatest adverse impact on ELCO and its ability to perform its statutory responsibilities.

ELCO again wishes to thank Staff and the members of the consulting group for listening to its concerns, even if they were unable to address those concerns. As instructed, ELCO is providing, as an attachment, its comments and suggested changes to language and standards that ELCO believes in practice will ultimately be found to be improvidently adopted. ELCO recognizes the difficulty in attempting to craft language that will be usable across various types of developments. The perspective of attempting to craft language applicable on a global basis may be in itself the greatest shortcoming of the Regulations. Water and wastewater providers, such as ELCO, are an extremely limited and highly specialized class of applicants. A separate set of regulations that apply only to such providers would seem to be better suited to accomplishing the Regulations' stated goals while balancing the needs and concerns of the special districts that the City now wishes to regulate.

ELCO remains uncertain of the basis of many of the standards that the Regulations create, and it was unable to obtain definitive answers from Staff or the consultants. It is apparent that the standards are not based on any discussion with or recommendations from the service providers who have the most experience or any objective criteria that takes into account, for example, the practical impact of the difference between a pipeline that is 12 inches in diameter and one that is 24 inches in diameter, or how a linear distance of 1,320 feet may have a materially greater impact than a linear distance of a mile, other than just the difference covered, which is obvious.

232 South Link Lane, P.O. Box 2044 • Fort Collins, Colorado 80522 • Phone (970) 493-2044 • Fax (970) 493-1801

As a result, the Regulations may ultimately prove to be so overly inclusive that they will become unworkable to apply and tortuous for the service providers who must attempt to follow them. Attached to this letter is an exhibit ELCO has prepared of the planned projects that likely will occur within a reasonable time that will be significantly impacted in terms of cost and time by the new Regulations. While ELCO would expect that it ultimately will be permitted to construct the projects, the time and resources that will be consumed will provide little benefit for anyone other than the consultants and other professionals that both ELCO and the City will need to retain to address the new Regulations. ELCO is also attaching its responses to the six questions Staff and the consultants provided, as instructed.

It is in the spirit of protecting the best interest of its customers by attempting to avoid what will become unproductive costs and delays that the Board provides ELCO's comments to City Council for its consideration. ELCO believes its recommendations are based upon years of experience in the construction, repair and replacement of pipelines and providing water service for customers within ELCO's water service area, which covers more than 50 square miles. ELCO believes that its comments and suggested changes, if considered and adopted, will have a significant benefit in reducing the expenditure of resources that will ultimately be borne by the taxpayers and others without materially reducing the goals the Regulations are attempting to achieve.

Sincerely,

Mike Scheid
General Manager
East Larimer County Water District

Encl.

ELCO Comments and Questions on the 3rd Draft of the City of Fort Collins Proposed 1041 Regulations
3-24-23

ELCO comments below are intended to address those provisions that will have, or have the potential to have, the greatest impact on the ability of ELCO to perform its responsibilities as a local water service provider. Others have indicated that they intend to comment on other provisions. ELCO may agree with those comments and upon ELCO's review of such may join in those comments. The comments provided below follow the format of citing to and quoting the relevant provision of the proposed draft Regulations followed by ELCO's comment in bold.

6.1.2 Purpose and Findings

(B) **Findings**

(2) These Regulations are necessary because of the intensity of current and foreseeable development pressures on and within the City

ELCO COMMENT: ELCO shares the concern with current and foreseeable development pressures as development continues to expand in northern Colorado. While the City may have determined some new regulations are required, it should be sensitive to the additional burdens the Regulations impose on ELCO and other service providers. The meetings with Staff and the City retained consultants have been helpful in addressing those concerns. The comments below are intended to attempt to balance the impact by suggesting minor language revisions, which if adopted, would significantly reduce the adverse impact the Regulations will have on ELCO. The City's legitimate concern with current and foreseeable development pressures within the City, in part, may be alleviated through better preplanning and coordination with service providers, such as ELCO, when land use plans are created or modified, and new development projects are proposed to better assess and understand the resources that will be necessary to provide service to a new development that the City is considering approving. The value and cost savings that can be achieved by City Planning Staff reaching out to the impacted water and wastewater districts that will be providing service to the planned development should not be supplanted by imposing new regulations that will increase the cost and hurdles on development without a careful balancing of the impact and a determination that less burdensome alternatives are not available. ELCO remains available to assist the City in better understanding the water infrastructure projects and the raw water supply that will be required to support a new City planned development within an ELCO service area. Attempting to address the impact of a development by imposing regulations on water and wastewater projects required to support a newly approved development within the City, rather than address those concerns on a case-by-case basis that addresses the particular impacts of that development before approval, is

problematic and appears to be out of order. Doing so will ultimately result in increased costs upon ELCO, which unfortunately will have to be passed through to ELCO customers and City residents. Such financial impact should be justified only if the benefit derived significantly outweighs the financial impact.

6.1.7 Maps

(B) Maps referred to in any such designations and regulations shall be available for inspection in the offices of the Community Development and Neighborhood Services Department.

ELCO COMMENT: The Maps, their accuracy and availability will be critical to the ability of service providers and stakeholders to determine whether a planned project is within an area designated as being an Area of State Interest. This information must be readily available and maintained current on the City's website so that stakeholders can rely on whether planned construction will lie within a location that the City has designated as being an Area of State Interest due to sensitive environmental or other features listed in 6.12(a)(4) and/or any associated buffers thereto, so they can consider possible alternative routes and plan accordingly.

6.1.9 Definitions

The definitions are important to allow service providers and others to understand the intent of the Regulations. Some of the definitions appear to be inconsistent with their use in the Regulations. A careful review of the definitions should be made prior to adoption to verify that they do not create ambiguity in the document as a whole. The following are definitions that ELCO currently has, and if adopted, will have difficulty understanding or applying:

ELCO COMMENT ON "DEVELOPMENT": ELCO suggests a definition may be needed for the term "Development." The undefined term "development" is used 177 times in the Regulations. Without a specific definition, ELCO must apply the general understanding of that term. Webster defines the word as "the act, process, or result of developing." That is not very helpful. Ultimately, ELCO will have to apply its own understanding, which may or may not agree with what Staff intended. If there is an intended understanding, a definition could be helpful.

ELCO COMMENT ON ADDING A TERM "PUBLIC RIGHT-OF-WAY." Based on discussions with Staff and other City representatives, ELCO understands that the intent is that any construction within a public Right-of-Way will not be subject to FONAI review. 6.6.5 references "non-right-of-way" but does not define or use the term public right-of-way. A public right-of-way has a different understanding than the type of easements ELCO typically obtains. Currently under C.R.S. §32-1-1006(1)(c)(I), ELCO, as a special district, has a right to install waterlines within a

public street or across a watercourse, subject only to certain restrictions, including the obligation to replace the streets when the construction requires cutting or excavation of a street. ELCO requests confirmation that the proposed Regulations are not intended to challenge or burden that State granted right. Having a definition of a Public Right-of-Way (which might reference the statute) would clarify that construction permitted under C.R.S. §32-1-1006(1)(c)(I) will not be subject to FONAI review. ELCO also suggests the draft provide a clear exemption for such construction. Whenever possible, ELCO uses this right at great savings to its customers. It does not believe that the City's intent is to restrict that right, but it would be helpful to clarify that intent.

Adverse impact shall mean the direct or indirect negative effect or consequence resulting from development. Adverse impact shall refer to the negative physical, environmental, economic, visual, auditory, or social consequences or effects that may or may not be avoidable or fully mitigable. Adverse impacts may include reasonably foreseeable effects or consequences caused by the development plan that may occur later in time or be cumulative in nature.

ELCO COMMENT: As defined, it appears that a finding of what qualifies as "adverse" will be made on a case-by-case basis. The term is inherently subjective. The definition is so broad that it is almost meaningless. The key to the definition is the use of the word "negative," which is synonymous with "bad." To make the application more difficult, the definition references "reasonably foreseeable effects or consequences," which itself is ambiguous. ELCO appreciates that creating a definition that best states what is intended is difficult. If the intent is that the determination will be a question of fact, that should be stated and the procedure for making that determination should be better defined. If it is a determination that cannot be made by service providers or other stakeholders without being subjected to FONAI review, service providers need to be aware of that fact at the planning stage so they can determine whether planned construction might be deemed to have a "negative" impact now or in the future so they can determine whether the risk of being subjected to FONAI review and the attendant costs should be avoided by altering, delaying or foregoing a planned project. That determination could impact the availability or financial viability of providing service to a planned development. It would be preferable if the determination were based on objective more concrete factors that would have greater reliability in application.

Cumulative impacts shall mean the impact on the environment and cultural impacts which result from the incremental impact of the development plan when added to other present, and reasonable future actions.

ELCO COMMENT: What is stated above for "adverse," applies more to this definition. The phrases "cultural impacts" and "incremental impact of the

development plan when added to other present and reasonable future actions" could literally mean anything. Who can state what other "future actions" may or may not occur or whether such action might be "reasonable"? It will not be possible for ELCO to understand or apply these standards with any degree of reasonable predictability. As such, it will have to be assumed that any project that is subject to FONAI review may be denied. It does not appear that the drafters have considered how this standard will apply in practice. Perhaps examples of how the City or a decision maker is intended to sum different impacts to derive a "cumulative impact" would be helpful. As currently drafted, it is difficult to see how the standard can be applied consistently and predictably over time.

Major new domestic water system shall mean:
(1) A system of wells, water diversions, transmission mains, distribution mains, ditches, structures, and facilities, including water reservoirs, water storage tanks, water treatment plants or impoundments and their associated structures, through which a water supply is obtained, stored, and sold or distributed for domestic uses; or

(2) A system of wells, water diversions, transmission mains, distribution mains, ditches, structures, and facilities, including water reservoirs, water storage tanks, water treatment plants or impoundments and their associated structures, through which a water supply is obtained that will be used directly or by trade, substitution, augmentation, or exchange for water that will be used for human consumption or household use;

And all or part of a system described in (1) or (2) above meets one or more of the following criteria:

(a) Distribution and transmission lines greater than 12" diameter pipe and 1,320 linear feet in the aggregate for the proposed development plan; or

(b) Will require a new easement of 30-feet or greater in width and 1,320 linear feet in length in the aggregate for the proposed development plan.

In determining whether a proposed development plan is a major new domestic water supply system, the Director may consider water rights decrees, pending water rights applications, intergovernmental agreements, treaties, water supply contracts and any other evidence of the ultimate use of the water for domestic, human consumption or household use. Domestic water supply systems shall not include that portion of a system that serves agricultural customers, irrigation facilities or stormwater infrastructure.

ELCO COMMENT: This definition is an example of imposing a standard without consideration of the impact of its application. Although ELCO was told Staff would not consider changes to the draft at this time, Staff and City representatives in telephone conversations did indicate changes to the standard may be considered.

Minor changes to the language in the draft could have substantial impact in application. To avoid extending application of this definition to projects that may not have been intended, ELCO suggests the following changes:

(1) Change "easement" to "permanent easement" to avoid including a temporary construction easement in the calculation. Including the width of a temporary constriction easement would have the effect of overstating any impact and unreasonably extend the applicability of the Regulations;

(2) Use width of easement as the determining criteria in lieu of pipeline diameter. Other than the NEWT 42" pipeline project, all of ELCO's water lines are located in permanent easements that are 30 feet in width or less. This includes pipelines from 2 to 24 inches in diameter. Easement width limits the area of disturbance a pipeline project will have and is generally independent of the diameter of the pipeline located within in the easement. ELCO recognizes and acknowledges that there may be a limit to the pipeline diameter that can be reasonably located within a 30-foot-wide permanent easement, but there is not a significant likelihood that service providers would attempt to place a line that was too large for the size of the easement acquired;

(3) Change 30 feet or greater to greater than 30 feet. Forcing service providers to reduce their standard 30-feet easements to 29 feet does not provide any benefit to anyone (ELCO understands that Staff now supports this change);

(4) Delete or rework the last paragraph. When considering the impact a pipeline project will have on the property and other features it will cross, allowing the Director to consider water rights decrees, pending water rights applications, intergovernmental agreements, treaties, water supply contracts and any other evidence of the ultimate use of the water for domestic, human consumption or household makes little sense. Is the intent to attempt to regulate the water supply that will be delivered by a water pipeline project? The City does not have the right or jurisdiction to determine what a water provider may or may not do with their own water resources. Such determinations are part of the powers granted by the State to water districts. Water districts, like ELCO, are in the best position to make any determinations regarding the amount of water that should be required for development. In addition, the determinations of the amount of water a developer will need for a development may be an issue that has already been determined in water court, if applicable. Will service providers now need to consider how the language in a court decree, intergovernmental agreement, treaties (ELCO does not enter into treaties [being a formally concluded and ratified agreement between countries]) or water supply contract might impact the later consideration of whether a project is a Major new domestic water system?

(5) Is there an intent for the phrase "ultimate use of the water for domestic, human consumption or household use"? ELCO, as a domestic water supplier, provides domestic (treated or potable) water service, which may include agricultural customers within its service area for domestic use. ELCO does not provide water service to "agricultural customers" for ag production (irrigation). For one, in most cases, it would be cost prohibitive for an ag producer to use potable water for ag production. Non-potable water is not provided by ELCO or other service providers. An owner secures water rights to non-potable water through other means. This phrase appears to reflect a lack of understanding of how water service is provided and is confusing. ELCO suggests that it be clarified or deleted.

Major extension of an existing domestic water <u>treatment</u> system shall mean the expansion of an existing domestic water treatment plant or capacity for storage that will result in a material change, or the extension or upgrade of existing transmission mains, distribution mains, or new pump stations that will result in a material change. Major extension of an existing domestic water treatment system shall exclude the following:

(1) Any maintenance, repair, adjustment;

(2) Existing pipeline or the relocation, or enlargement of an existing pipeline within the same easement;

(3) Expanding any existing easement to a total width of 30-feet or less and for a distance of 1,320 linear feet or less; or

(4) Any facility or pump station or storage tank that does not increase the rated capacity from the Colorado Department of Public Health and Environment.

ELCO COMMENT: The addition of the word "treatment" suggests there is an intended difference between a "domestic water system" and a "domestic water treatment system." If that is intended, some explanation should be provided of the difference.

There also appears to be an inconsistency in the requirements of the two definitions regarding easement width. Subsection (b) of the definition of "Major new domestic water system" refers to a "new easement <u>30-feet or greater</u> in width." The definition of "Major extension of an existing domestic water treatment system, exclusion (3)" refers to the expansion of any existing easement to a total width of 30 feet or less. ELCO suggests both definitions should use the same standard of a permanent easement greater than 30-feet in width. ELCO does not understand the basis of 1,320 linear feet in length in the aggregate…." ELCO would prefer the length to be more reasonable such as one mile in length.

Material change shall mean any change in a development plan approved under these Regulations which significantly expands the scale, magnitude, or nature of the approved development plan or the adverse impacts considered by the Permit Authority in approval of the original permit.

ELCO COMMENT: Change "original permit" to "original permit approved under these Regulations." This change will clarify that the change does not apply to a development plan (pipeline project) that was not part of a City permitting process under these Regulations (including because it was not required) and no original permit was previously issued. The language as drafted seems to reflect an attempt to apply the City review and permitting processes used for residential or non-residential development projects to linear pipeline projects, which historically has not been the case.

6.4.1 Exemptions

ELCO COMMENT: ELCO feels that it is imperative that the exemptions and exclusions included in any City 1041 regulation language be made abundantly clear to avoid confusion on the part of a potential applicant when considering any future projects that may be subject to the Regulations. Staff and other representatives for the City have indicated that they understand ELCO's concern that ELCO be able, by reviewing the exemptions, to determine itself whether the exemption applies. This is critical to allow ELCO to limit the impact of the Regulations on ELCO's daily operations, as they currently exist. If possible, the exemptions should be provided in an appendix to the Regulations and be written in concrete language and standards that are not subject to interpretation. ELCO suggests the following exemptions:

A. Any construction, repair, replacement, expansion, relocation of a pipeline within:

- **(1) a Public Right-of-Way or Right-of-Way shown on any recorded plat or development plan approved by the City,**
- **(2) an existing permanent easement,**
- **(3) a new permanent easement that is not greater than 30-feet width,**
- **(4) partially within a Public Right-of-Way and partially within a new permanent easement that is not greater than 30-feet in width; or**
- **(5) partially within an existing permanent easement and partially within a new permanent easement that is not greater than 30 feet in width.**

B. Any construction, repair, replacement, expansion or relocation of a pipeline that is not greater than 1 mile in length and greater than 24 inches in diameter. (24 inches is the industry standard diameter designation).

C. Any other construction, repair, replacement, expansion, relocation of a pipeline that is not within an area designated by the City as an Area of State Interest.

6.6.3 Pre-Application Area or Activity Review

(A) The purpose of the pre-application area or activity review is to determine if a permit is required for the proposed development plan, application submittal requirements, procedural requirements, and relevant agencies to coordinate with as part of any permit review process. Topics of discussion may include, as relevant to the specific application, but are not limited to:

(1) Characteristics of the activity, including its location, proximity to natural and human-made features; the size and accessibility of the site; surrounding development and land uses; and its potential impact on surrounding areas, including potential environmental effects and planned mitigation strategies.

(2) The nature of the development proposed, including land use types and their densities; placement of proposed buildings, pipelines, structures, operations, and maintenance; the protection of natural habitats and features, historic and cultural resources, and City natural areas, parks, or other City property or assets; staging areas during construction; alternatives considered; proposed parking areas and internal circulation system, including trails, the total ground coverage of paved areas and structures; and types of water and wastewater treatment systems proposed.

ELCO COMMENT: ELCO understands that this section is intended to apply to projects that could impact an area designated by the City as an Area of State Interest on the Map. If there are buffer areas to these designated areas, the distances should be stated in the Regulations or, if the distances will vary, be provided on the Map. In addition, consideration should be made for the fact that land use type and density do not apply to pipeline projects. Without this distinction, it is not clear whether standards developed for residential projects would be misapplied to a pipeline project. The "catch all approach," while convenient to the drafter, creates a high degree of uncertainty and unnecessary costs for a potential applicant.

6.6.3 Pre-Application Area or Activity Review (continued)

(B) To schedule the pre-application area or activity review, the applicant must first provide the Director with the following:

(1) Names and addresses of all persons proposing the activity or development;

(2) Name and qualifications of the person(s) responding on behalf of the applicant;

(3) A written summary of the desired location of the proposed development plan including a vicinity map showing the location of three (3) siting and design alternatives, one of which is the preferred location, drafted at approximately thirty percent (30%) completeness. One (1) of the three (3) alternatives submitted shall avoid natural features and historic and cultural resources and avoid the need for mitigation to the maximum extent feasible;

ELCO COMMENT: In ELCO's experience, pipeline projects that require review and potentially a City or County permit, start with a routing study in order to come up with an approved project alignment or route prior to beginning design. Requiring approximately 30% design completion prior to having a finalized route is problematic because changes to the route will require changes to the design increasing costs and creating delays for the applicant, which are ultimately passed on to their customers in the form of higher rates.

6.7.1 Review Standards for All Applications

In addition to the review standards for specific activities listed at Divisions 6.8 and 6.9, all applications under these Regulations, in consideration of proposed mitigation measures, shall be evaluated against the following general standards, to the extent applicable or relevant to the development plan, in City Council's reasonable judgment. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance. If City Council finds the development plan does not comply with all applicable standards, the permit shall be denied unless City Council, in its sole discretion, imposes conditions pursuant to Section 6.6.14 which if fulfilled would bring the development plan into compliance with all applicable standards, in which case City Council may approve the permit. City Council may also impose additional conditions pursuant to Section 6.6.14 on any permit. The common review standards are as follows: ….

ELCO COMMENT: ELCO questions whether any or most of these standards would apply to a pipeline project or construction of a new Domestic Water System or expansion of an existing Domestic Water System. Again the "catch all" approach can have the impact of causing unnecessary significant costs in attempting to apply standards that have no application. The language as currently drafted states that City Council must find all standards are met. It is difficult to see how these determinations might be applied without the establishment of baseline conditions. As a result, service providers subject to the process will be required to expend enormous costs in planning for any possibility. The process seems to have the potential of a significant waste of public funds as applied to special districts.

6.7.1 Review Standards for All Applications (cont.)

(A) The applicant has obtained or will obtain all property rights, permits and approvals necessary for the proposal, including surface, mineral and water rights.

(B) The health, welfare and safety of the community members of the City will be protected and served.

(C) The proposed activity is in conformance with the Fort Collins Comprehensive Plan and other duly adopted plans of the City, or other applicable regional, state or federal land development or water quality plan.

(D) The development plan is not subject to risk from natural or human caused environmental hazards. The determination of risk from natural hazards to the development plan may include but is not limited to the following considerations:

(1) Unstable slopes including landslides and rock slides.

(2) Expansive or evaporative soils and risk of subsidence.

(3) Wildfire hazard areas.

(4) Floodplains.

(E) The development plan will not [have] an adverse impact on the capability of local governments affected by the development plan to provide local infrastructure and services or exceed the capacity of service delivery systems. The determination of the effects of the development plan on local government services may include but is not limited to the following considerations:

(1) Current and projected capacity of roads, schools, infrastructure, drainage and/or stormwater infrastructure, housing, and other local government facilities and services necessary to accommodate development, and the impact of the development plan upon the current and projected capacity.

ELCO COMMENT: This is another example of the difficulty of applying the general standards to special districts, like ELCO. ELCO is itself a governmental entity. ELCO is charged with the responsibility to provide water service to customers within its service area. The City Council has no ability to determine whether ELCO's proposed project (development plan) is needed to provide infrastructure and services or whether ELCO's current infrastructure has reached capacity. Surely, the City would not deny a project because it determined that ELCO had sufficient capacity within its existing system. That may sound absurd, but it demonstrates the practical absurdities that ELCO will incur by attempting to force ELCO into these Regulations without careful consideration of the affect. The language states that the City is concerned with the potential impact a development plan may have on a local

governments' ability to provide local infrastructure and services. Yet, it does not appear that the City is concerned how application of the Regulations will impact ELCO's ability to provide local infrastructure and services to its customers, many of which are City residents. There is no doubt the impact will result in increased costs and delays, as well as the possible denial of water service delivery to future developments. These impacts could actually result in harming the State interest in providing affordable water service, which would greatly outweigh any benefit to any City determined State interest. ELCO is not arguing none of the Regulations should apply to Domestic Water Systems; it is only saying that careful consideration should be made as to potential adverse impact of the Regulations, which does not appear to have been fully considered.

6.8.3 Specific Review Standards for Major New Domestic Water or Sewage Treatment Systems or Major Extensions

A permit application for the site selection and construction of a major new domestic water or sewage treatment system or major extension of such system shall be approved with or without conditions only if the development plan complies with the review standards in Section 6.7.1 and the below standards, to the extent applicable or relevant. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance. If City Council finds the development plan does not comply with all applicable standards, the permit shall be denied unless City Council, in its sole discretion, imposes conditions pursuant to Section 6.6.14 which if fulfilled would bring the development plan into compliance with all applicable standards, in which case City Council may approve the permit. City Council may also impose additional conditions pursuant to Section 6.6.14 on any permit. The specific review standards are:

(A) New domestic water and sewage treatment systems shall only be constructed in areas which will result in the proper use of existing treatment plants and the orderly development of domestic water and sewage treatment systems within the City; and

(B) Area and community development and population trends must demonstrate clearly a need for such development.

ELCO COMMENT: It is questionable whether the City has the power to impose its determination on a special district as to whether there would be a "proper use of existing treatment plants and the orderly development of domestic water and sewage treatment systems within the City." If the City has this power, it must be apart from the adoption of these Regulations. These Regulations do not provide the City any new power or right that it does not possess from some other source. The City Planning Staff or a retained third-party consultant and/or the City Council have no power or

ability to make any determination regarding "the proper use of existing treatment plants and the orderly development of domestic water and sewage treatment systems." That decision would need to be made by a court if and when the matter became ripe for determination and was brought by parties having appropriate standing. The City does have the police power and the power granted by the legislature to designate Areas of State Interest and might be able to regulate construction of a new domestic water system to protect that interest. But it cannot restrict construction based on a determination that the construction is not needed because it will not result in the proper use of existing treatment plants and the orderly development of domestic water and sewage treatment systems within the City.

	FONAI	1041
ELCO Estimated Cost per 1041 Application:	**$50,000**	**$100,000**

ELCO Projects Potentially Subject to City of Fort Collins 1041 Regulations

Project	Dia.	Length (ft)	FONAI	1041
Extend 16" line from Brightwater Dr to the extension of an 8" line in Richard's Lake Rd/CR 52.	16	2,700	$50,000	
Install 12" line along Hwy 14 from 12" at Boxelder Cir east to LCR 3	12	3,560	$50,000	
Replace 2" line in the E. Frontage Rd with a 12" line from Mountain Vista to area N11	12	2,700	$50,000	
Extend the 12" line in Mountain Vista east of I-25 to CR 5	12	3,600	$50,000	
Extend 16" line from growth area O14 to the existing 2" line in CR 9	16	1,350		$100,000
Install a 12" line along Richards Lake Rd from Catamaran Cove to Abbotsford St	12	4,400		$100,000
Install a 12" line from CR 13/Inverness Rd to Abbotsford St, then south to Richards Lake Rd	12	4,915	$50,000	
Install a 12" line along Abbotsford St from Richards Lake Rd to Gregory Rd	12	2,050	$50,000	
Install a 16" line from PS 1 to Tank 2 parallel to the existing 12"/14" line	16	15,350		$100,000
Install 16" line in LCR 3 from 24" in Vine Dr. south to Hwy 14	16	5,280	$50,000	
Construct a 1.75 MG storage tank for Zone 1 storage				$100,000
10" AC upsize to 12" PVC west of Lemay - Lemay to Ford lane	12	2,600		$100,000
10" AC upsize to 12" PVC north of Ford Lane to Country Club Road	12	1,500	$50,000	
10" AC upsize to 12" PVC north of Country Club Rd to Highland Place Rd	12	2,000		$100,000
Lemay 10" AC Replacement - Upsize to 12" - Northfield Phase 2 Development	12	1,500	$50,000	
14" Replacement with 16" PVC through Lee Martinez Farm	16	2,700		$100,000
14" Replacement with 16" PVC on west side of Waterfield	16	2,500		$100,000
Pump Station 1 rebuild and upsizing				$100,000
12" or 16" line in Hwy 14 from CR5 to County Line	16	13,000	$50,000	
12" Segment in Douglas Rd.	12	225		$100,000
Replace 3" line in Evans Drive with 12" line	12	645	$50,000	
Install a 12" line in Cottonwood Shores from CR 58 to the last fire hydrant	12	3,960	$50,000	
ELCO Estimated Cost (by type):			**$ 600,000**	**$1,000,000**

Total ELCO Estimated Cost **$1,600,000**

ELCO Answers to City Policy Issues and Questions for Re-Engagement

1. Should the code exclude an applicability of standards review (i.e., FONAI determination)? – **Yes**
    a. Should full permit submittal documents be prescribed in detail? - **Yes**
    b. Should geographic thresholds move to common and general review standards? – **Yes**
    c. Should a neighborhood meeting be required? – **No**

2. Should the Code allow council to deny a permit with conditions for re-submittal? – **Yes**
    a. Should an applicant be allowed to return directly to a hearing or start at the beginning? **An applicant should be allowed to return directly to a hearing.**
    b. Should there be specific criteria for denial of a permit? – **Yes**

3. Should the code regulate activity outside City that has impact inside? – **No**
    a. No changes needed to the current version of the draft

4. Should work within existing easements that cross City Natural Areas be excluded? – **Yes**
    a. No changes needed to the current version of the draft

5. Should the Code include the use of third-party contractors to support staff administration of permit applications? – **No**
    a. Should council support a supplemental appropriation for 1.5 FTE to administer 1041 permit applications? – **Yes**

6. Do project-size thresholds and exemptions for work within existing ROW reflect the intent to regulate "major" projects? – **No**
    a. What additional exemptions should the Code add?
    If a water pipeline project is or will be located in an existing or City planned future ROW it should be exempt.
    b. What project size thresholds would appropriately reflect a "major" project under these regulations?
    Any water pipeline project greater than 1 mile in length and greater than 24 inches in diameter (industry standard diameter designation) and located outside a public ROW.

From: Ray Watts
To: Kirk Longstein; Barry Noon-Contact; Mark Houdashelt-Contact; lopez; Michelle Haefele; Ross Cunniff; Dawson Metcalf-Contact; Gary Wockner
Subject: [EXTERNAL] Re: FONAI vs. FONSI
Date: Thursday, April 13, 2023 1:16:05 PM

Hi Kirk,

We have had some email discussion, and the main question is about the "magnitude" term. What you have shown explicitly is geographic extent, and that is one factor that counts in evaluation of magnitude. There are other things, though, that should also count. One example that we came up with is the comparative magnitude of clearcutting a forest, as opposed to selective cutting.

Here are some of the dimensions that should enter into "magnitude":

- spatial extent (applies to all below)
- physical changes (e.g. impervious surfaces, water diversion)
- chemical changes (e.g. urban stormwater runoff)
- biological changes (e.g. habitat loss or degradation)
- ecological connections (e.g., habitat fragmentation)

We all liked the explicit call-out of *duration* and *likelihood* as FONSI factors.

Other group members are welcome to add more comments!

Ray

From: Kirk Longstein <klongstein@fcgov.com>
Sent: Wednesday, April 12, 2023 1:01 PM
To: Ray Watts <wattsray@comcast.net>; Barry Noon-Contact <barry.noon@colostate.edu>; Mark Houdashelt-Contact <mark.houdashelt@gmail.com>; lopez <lopez.apclass@gmail.com>; Michelle Haefele <michelle.haefele@outlook.com>; Ross Cunniff <rcunniff@gmail.com>; Dawson Metcalf-Contact <dawson.metcalf@colostate.edu>; Gary Wockner <gary.wockner@savethepoudre.org>
Subject: RE: FONAI vs. FONSI

Researching this question more, and curious if there are any thoughts on the proposed definitions as written below:

- ~~***Impact*** *shall mean the direct or indirect negative effect or consequence resulting from development that may or may not be avoidable or fully mitigated.*~~

- ***Cumulative impacts*** *shall mean the impact on the environment and cultural impacts which result from the incremental impact of the development plan*

when added to other present, and reasonable future actions.

- ***Significant** shall be determined within the geographic context of the development plan, and relate to the magnitude, duration and likelihood of an impact.*

- ***Finding of No Significant Impact (FONSI)** shall mean the decision by the Director of Community Development and Neighborhood Services as to whether a potential impact is not significant based on the scale and context of the proposed development plan as well as the magnitude, duration, and likelihood of an impact occurring.*

Magnitude of Impact	Duration of Impact	Likelihood of Impact
localized Beyond the boundaries of the development plan	Short-term Long-term Irreversible	Unlikely to occur Probably will occur

Thanks for your continued feedback.

Kirk

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(he/him/his)
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From: Ray Watts <wattsray@comcast.net>
Sent: Monday, February 13, 2023 6:21 PM
To: Barry Noon-Contact <barry.noon@colostate.edu>; Kirk Longstein <klongstein@fcgov.com>; Mark Houdashelt-Contact <mark.houdashelt@gmail.com>; lopez <lopez.apclass@gmail.com>; Michelle Haefele <michelle.haefele@outlook.com>; Ross Cunniff <rcunniff@gmail.com>; Dawson Metcalf-Contact <dawson.metcalf@colostate.edu>; Gary Wockner <gary.wockner@savethepoudre.org>
Subject: [EXTERNAL] Re: FONAI vs. FONSI

Hi Kirk et al,

I completely concur with Barry's thoughts. "Negligible" means "can be ignored." But one person would ignore an impact that another person would say could not be ignored. In fairness, the traditional FONSI or FONSAI uses the ambiguous word "significant," and that suffers the same problem. I wrote earlier to Kirk, that the more traditional term (FONSI or

FONSAI) at least has decades of interpretation by authors of EAs and EISs, by EPA, and by courts, and this adds some (small) degree of firmness to the standard. Barry is spot on, though: the best standards would be quantitative or expressed on a ranked scale. The Natural Areas Department has made steps in this direction with its standards for easements in Natural Areas (https://www.fcgov.com/naturalareas/files/2022-easement-application.pdf).

Ambiguity in 1041 code language might be reduced by referencing external standards documents. The Natural Areas easement standards does this, and specifies that "The City Manager or his or her designee shall develop and maintain a general list of resource protection standards that are applicable to natural areas and conserved lands" (p. 6). I note that in the pdf cited above there is neither a web reference to the standards list, nor specific identification of the City Manager's designee...so there is room there for improvement.

For those who have time, it is worth reviewing the Natural Areas standards. They contain many of the elements that are needed in 1041 regs.

Ray

From: Noon,Barry <Barry.Noon@colostate.edu>
Sent: Monday, February 13, 2023 10:36 AM
To: Kirk Longstein <klongstein@fcgov.com>; Mark Houdashelt-Contact <mark.houdashelt@gmail.com>; lopez <lopez.apclass@gmail.com>; Michelle Haefele <michelle.haefele@outlook.com>; Ross Cunniff <rcunniff@gmail.com>; Metcalf,Dawson <Dawson.Metcalf@colostate.edu>; Gary Wockner <gary.wockner@savethepoudre.org>; Ray Watts <wattsray@comcast.net>
Subject: RE: FONAI vs. FONSI

Hi Kirk and Committee Members

I do not like the term "**Finding of Negligible Adverse Impact** (FONAI)". If an action is deemed "adverse" how can is simultaneously be deemed "negligible"? In my opinion, pairing these two words together is a nonsequitur.

As you discuss, the term "adverse impact" can, and perhaps should be, qualified in terms of its intensity, reversibility, and cumulative impact. Qualifying terms should be those easily understood by the public—for example, low, medium, or high and the criteria used to assign a ranking made very transparent.

Barry

Barry R. Noon, PhD
Professor Emeritus
Department of Fish, Wildlife and Conservation Biology
Colorado State University

970-305-1581

From: Kirk Longstein <klongstein@fcgov.com>
Sent: Friday, February 10, 2023 1:42 PM
To: Mark Houdashelt-Contact <mark.houdashelt@gmail.com>; lopez <lopez.apclass@gmail.com>; Michelle Haefele <michelle.haefele@outlook.com>; Ross Cunniff <rcunniff@gmail.com>; Metcalf,Dawson <Dawson.Metcalf@colostate.edu>; Noon,Barry <Barry.Noon@colostate.edu>; Gary Wockner <gary.wockner@savethepoudre.org>; Ray Watts <wattsray@comcast.net>
Subject: FONAI vs. FONSI

**** Caution: EXTERNAL Sender ****
Hi everyone,

I hope folks had the opportunity to watch the Feb 7 Council meeting. At this point you may be aware that Council adopted a motion to delay the first reading of 1041 until May 2. This gives us the opportunity to continue our dialogue and work through some of the outstanding comments. Below are a few bullets of our next steps together:

Reengagement plan (TBD) - The purpose of this plan is to clearly outline questions for working group participants that will inform Council decision points ahead of May 2. Key milestones for reengagement:

- Feb 20 – Begin meeting with stakeholders
- March 24 - Stakeholder comment period ends
- April 14 - Council memo including key decision points.
- May 2 – First reading of 1041

Given our staffing capacity, I've engaged a third-party consultant to support the re-engagement plan. Logan-Simpson will continue to work on reengagement as they have supported the project since it began in 2021. Stay tuned and more to come on re-engagement.

I started diving deeper into the comments related to FONAI vs FONSI, and I want to hear people thoughts. We received pretty direct feedback from Council that whatever decision points are presented ahead of May 2, it should "not weaken" the current v3 1041 regs. As I start to look deeper into changing the definitions from "Negligible" to "Significant" – I'm concerned that this change does in fact weaken the code, and I want to confirm with my environmental stakeholders that this is not an unintended consequence from your letters to Council. A few thoughts to consider:

Many comments from stakeholders have stated that "Negligible" is not a term that has been tested in Court and not a term used by NEPA/CEQ or any other environmental impact analysis. However, "Negligible" is commonly used within federal agency NEPA guidance and methodology for conducting supplemental environmental assessment and Categorical Exclusion (CATEX). When

determining if a project has the potential for a "significant" adverse impact its evaluated within the context, intensity, duration, direct/indirect, cumulative impacts. When analyzing impact intensity, the definition of intensity is measured on a scale from **negligible, minor, moderate, or major.** Negligible being the lowest of intensity. Here is a legal framework from Congress to consider.

As currently written in the v3 1041 regulations, here is the definition of "Adverse Impact":

> ***Adverse impact*** *shall mean the direct or indirect negative effect or consequence resulting from development. Adverse impact shall refer to the negative physical, environmental, economic, visual, auditory, or social consequences or effects that may or may not be avoidable or fully mitigable. Adverse impacts may include reasonably foreseeable effects or consequences caused by the development plan that may occur later in time or be cumulative in nature.*

Also to consider is that v3 of the 1041 regs includes a definition for cumulative impacts:

> ***Cumulative impacts*** *shall mean the impact on the environment and cultural impacts which result from the incremental impact of the development plan when added to other present, and reasonable future actions*

When paired with negligible, one may interpret that a **Finding of Negligible Adverse Impact** (FONAI) is the potential for impact at a lower intensity than major, and a higher standards than an impact deemed "significant".

Please take a look and let me know if you think that FONSI is the appropriate term and level of impact that the City should be reviewing 1041 permit applications. And if you believe that changing the definition from "negligible" to "significant" will weaken or strengthen the Code as drafted.

As always, thank you for your continued feedback. I look forward to continuing our discussion.

Kirk

Kirk Longstein, AICP
(he/him/his)
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City of Fort Collins
Direct: 970-416-2865

Necessary Repairs to Draft 1041 Regulations and Review Procedures #3

1 Recognition of extramural jurisdiction

The *site* of a project is undefined in 1041 law. Given the overall purpose and intention of 1041 law:

- It is justifiable to define a project's *site* to include any place where significant adverse impacts reasonably can be anticipated.
- This may place part(s) of the *site* within jurisdiction(s) other than that where its major construction occurs (the host jurisdiction).
- The adversely affected jurisdictions can designate matters of state interest and require the applicant to obtain additional permit(s) from them. If the host jurisdiction has no applicable 1041 regulations, these may be the only required 1041 permits.
- Regulatory standards that apply (those that relate to reasonably anticipated adverse impacts) should be determined during application review (i.e., not selected or excluded *a priori*).

Version Three of Fort Collins draft 1041 regulations does not recognize the rights of Fort Collins to regulate projects based on reasonably anticipated adverse impacts on the City from external projects. There is no prohibition of such regulation in 1041 law. Although extramural regulation may be novel, 1041 authorizes local governments to adopt more stringent regulations and this is one way to do so.

2 No "approval with conditions" (p. 37, and maybe other places)

- 1041 statutes are explicit that the project must meet all regulatory requirements or it cannot be permitted. A permit that is approved without meeting all the requirements is not valid.
- If a permit is denied by staff and Planning and Zoning Commission recommendation and the denial is appealed to Council, then Council's review must find error in factual determinations. The regulations should say this.

3 Scope of application of review standards

- The entire city should be the scope.
- Places with elevated standards (e.g., Natural Areas) will have those higher standards applied as part of application review.
- Other places, not yet identified, may host protected assets; these should not be excluded before application review.
- Predetermined criteria may inadvertently and unfairly put some parts of the City at protective disadvantage.

An example. A two-mile flight is a "stroll" for most birds. A resident who lives two miles from the nearest mapped bird habitat feeds wild birds, including some that regularly commute from a nesting habitat to their feeder. If project construction occurs just over the fence from the feeder and interrupts the feeding, then it has an ecological impact on the population at the nesting habitat. The entire city is ecologically connected.

Developers' testimony and efforts to limit the geographic extent of 1041 regulation fly in the face of modern understanding of ecological and environmental connectivity and interdependence. For a City that hosts one of the foremost environmental research institutions of the nation, ecological gerrymandering is a shameful act.

4 Period of public comment should replace or supplement neighborhood meeting

- This should be a period for receipt of public comments, not a single meeting notified only to nearby residents.
- There should be opportunity for receipt of written as well as oral comments.
- Notification with one-mile radius and a neighborhood meeting is okay for projects in the City.
- FOR EXTRAMURAL PROJECT REGULATION this needs complete rewording.
- It would be good public process to tabulate the nature and sense (support/opposition) of comments. That tabulation should be considered in determination of FONSI.

5 FONSI or FONAI

- In the latest iteration of staff-recommended revisions to draft #3, the only review that precedes "FONAI" is geographic. First, we recommend eliminating geographic screening. This eliminates the need for FONAI or its alternative, FONSI.
- Permit matters may go to court, where there is a body of precedent for interpretation of FONSI and none for FONAI. If this decision point is to be used at some presently unknown stage of the process, then FONSI should be the term used.
- There is no discernible difference in intent or applicability of the terms.
- The term with precedent should prevail.

6 Regulatory size threshold for water projects

- 1041, in CRS § 24-65.1-104, refers to a CRS section that includes statutory definition of a small water project as one serving a population of 3,300 or less (CRS § 25-9-102(4.8)).
- Multiple local jurisdictions have used a much smaller population or household count, on the order of tens (not the roughly 800 for a population of 3,300).
- It is unknown whether this is the threshold of a "major water project" because the "major" threshold is not define in 1041 and statutes vary in terminology.
- Consider using this threshold in place of pipe diameters, but keeping disturbance width and length thresholds.

- So, the regulatory threshold would be ANY of:
  - New easement 30' wide or more, or widening of an existing easement to 30' wide or more.
  - New easement longer than 1,320' of any width
  - Serving population of (pick a number)
- An applicant might claim its project to be "not major" if it serves fewer than 3,300 persons. The City is allowed, however, under 1041, to use criteria more stringent than those articulated directly in 1041 statutes.

7 Cumulative impacts should have NO time limits

Old developments have permanent impacts. These do not fade away after ten years. Examples:

- Impervious surfaces installed 50 years ago cause the same adverse impacts as impervious surfaces installed one year ago.
- A dam or diversion installed 50 years ago has the same impact as one installed 1 year ago.
- Etc.

There is no physical or biological basis for a time threshold on cumulative impacts. They must ALL be considered.

8 Ecological Characterization

This is circular reasoning. The ECS is part of determining where adverse impacts may occur, yet the area of adverse impacts is here used to define limits of the ECS. Consider this adjustment:

- Areas of anticipated physical impacts may be identified first.
- An ECS shall include those physical impact areas with a minimum one-mile additional buffer. Places within that larger zone where biological impacts can be expected, and further zones where lateral ecological connections indicate further biological impacts, must be identified in the ECS. All the identified areas of ecological impact are to be added to the full area of anticipated adverse impacts.

  An example. Physical changes will dry a wetland that hosts redwing blackbirds. The birds in that wetland are known to migrate to and feed daily at another wetland 1.5 miles distant. Both wetlands must be included in the final area of anticipated adverse impacts.

9 Changes to development plan

If there is no FONSI, then the applicant is given a period to adjust the development plan. It is important here not to get into short cycles of review and adjustment; that would, in effect, put staff in the position of designing the project for the applicant. This should be a "one and done" process. If it does not get done in one pass, then there needs to be a substantial wait time before re-application for essentially the same project is allows.

Eliminate all loop-backs to pre-application review (see the above comment concerning staff involvement).

- Plan revisions must respond to something—what is it?
- What governs the degree to which public comments flow through into the requirements for revision?
- Who writes the requirements for revision and who approves the requirements?
- What determines the length of the adjustment period? If additional analysis is required, this could imply a long interval needed by the applicant. We suggest a 90-day adjustment period; if this is not adequate, then a long waiting period and full do-over is required.
- Presumably staff reviews the adjusted plan and recommends permit approval or denial. There should be notation in flow charts that ALL requirements under 1041 regs must be satisfied or the permit must be denied (per 1041 statute).

10 Historical and cultural resource definition

- Must include designation by Congress (that is how the Cache la Poudre National Heritage Area was established)

11 Public hearing required (p. 14)

- 1041 statutes require a hearing before designating a matter of state interest and adopting guidelines for administration (NOT regulations, those are optional for the local government to adopt and, because they are optional, the process and timing of adoption of regulations is totally under local-government control and unspecified in 1041 statutes)

12 Intensity of current and foreseeable development (p. 15)

- 1041 requires consideration of these pressures in the area, not only in the City (24-65.1-204)

13 Who is the Director?

- It must be stated in the Definitions (it is not).

14 Permit authority established (p. 20)

- The Director of the Planning and Zoning Commission does not exist!

15 Missing word (p. 30)

- The development plan will not cause an adverse impact. “cause” is missing.

16 River recreation (p. 31)

- "Changes to access to recreational resources" does not capture changes to the resources themselves. Impacts on kayaking, tubing, standup paddleboarding, and other moving-water activities should be explicitly listed (these are major river uses).

17 Connection of surface water and groundwater (p. 32-33)

- Recharge of aquifers incorporates all the surface waters that inundate the recharge areas. These include contaminated water from urban runoff. Those contaminated inputs to aquifer recharge are diluted (not always simultaneously) by high-volume flows of uncontaminated water from spring snowmelt runoff. Thus, reducing uncontaminated high flows has an inverse impact on the quality, as well as the quantity, of aquifer recharge waters. Models are required to demonstrate "no significant impact."

From: Ray Watts
To: Kirk Longstein; Ross Cunniff
Cc: lopez
Subject: [EXTERNAL] Re: Land Conservation Stewardship Board recommendation re: 1041 regulations
Date: Wednesday, March 15, 2023 8:26:12 PM

Hi Kirk,

Welcome back!

As various people have learned more about 1041 and what it can regulate, some have gotten interested in applying 1041 powers in more ways. This may be an inevitable consequence of greater awareness.

I am one of those who think that the City should at least explore the possibility of designating an "Area containing, or having a significant impact upon, historical, natural, or archaeological resources of statewide importance" (CRS § 24-65.1-201(c)), namely that part of Fort Collins that coincides geographically with the Cache la Poudre National Heritage Area. We need to be careful not to say that we are designating the Cache la Poudre National Heritage Area per se, because it is not only a place, but also an institution whose federal charter does not embrace involvement in local government affairs. The Heritage Area's mission is "to inspire learning, preservation, recreation, and stewardship," clearly overlapping with potential 1041 protections, but the Heritage Area pursues its mission in ways that are policy neutral with respect to local government.

I favor a shorthand and will use it here: call *the part of Fort Collins that coincides geographically with the Cache la Poudre National Heritage Area* (too big of a mouthful) "the Fort Collins Poudre Heritage District"—or, once introduced, just "The Poudre Heritage District." It coincides geographically with the National Heritage Area but is a separate entity designated by the City.

First, the Poudre Heritage District clearly qualifies for *area of state interest* designation under the 1041 definition

> *"Historical or archaeological resources of statewide importance" means resources which have been officially included in the national register of historic places, designated by statute, or included in an established list of places compiled by the state historical society.* CRS § 24-65.1-104(6)

The Poudre Heritage District is a place designated by the U.S. Congress as having historical importance, so it has been designated by statute.

The City is not obligated to designate all possible things under 1041 (like nuclear detonations!). For me, the reason to designate the Heritage District is the protective language that is "baked into" 1041 statutes:

Areas containing, or having a significant impact upon, historical, natural, or archaeological resources of statewide importance, as determined by the state historical society, the department of natural resources, and the appropriate local government, shall be administered by the appropriate state agency in conjunction with the appropriate local government in a manner that will allow man to function in harmony with, rather than be destructive to, these resources. Consideration is to be given to the protection of those areas essential for wildlife habitat. Development in areas containing historical, archaeological, or natural resources shall be conducted in a manner which will minimize damage to those resources for future use. (CRS § 24-65.1-202(3))

These protections harmonize perfectly with management objectives of Natural Areas, 18 of which along the Poudre River would be wholly or partly within the Heritage District. These protections are far broader than anything to be found in the 1041 language for water and sewage systems. Of particular importance is the protection of future use, which would generally be understood to include recreational use. Regulations for the Heritage District could include numerous things in addition to pipes and roads (the two designated activities)—light and noise pollution, for example. Protection under the 1041 umbrella is legally far stronger and more enforceable than regulation under Natural Area Department policies, such as its management plans and easement policies, even if the language is identical. The Poudre corridor, or the Heritage District if it is so called, is the ecological and recreational gem of Fort Collins. It contains the City's only native forest, its largest contiguous wildlife habitat, the new Whitewater Park, a significant part of the regional Poudre Trail, and numerous historical sites. Its protection is worth the effort.

My discussion with the Land Conservation and Stewardship Board, making the points of the previous paragraph, contributed to Ross's note to Council.

As I think you know, I am taking an educational approach. If people fully understand the process, perhaps they will slow down and work at a measured pace. I am in the process of explaining, to those with whom I correspond, that 1041 regulation follows steps:

1. Designation of an area or activity, simultaneously with required guidelines.
2. OPTIONAL development and adoption of detailed regulations, which may include moratoriums on activities of state interest or projects within the designated areas of state interest.

Designation is relatively simple. Then, because detailed regulations are not required by 1041

statutes, the procedures for their development and adoption are totally under City control—and that process, as we fully realize at this point, can get messy. In my thinking, there is no reason to stop, slow down, or reverse the two activity designations that are under way. Let's deal with the complexities of those regs and get them done. Designation of the Heritage District (the first, simple step) can be done simultaneously, and development of detailed regulations can follow later when staff and funding allow.

Onward through the fog,

Ray

From: Kirk Longstein <klongstein@fcgov.com>
Sent: Wednesday, March 15, 2023 9:56 AM
To: Ross Cunniff <rcunniff@gmail.com>
Cc: Ray Watts <wattsray@comcast.net>; lopez <lopez.apclass@gmail.com>
Subject: Land Conservation Stewardship Board recommendation re: 1041 regulations

Hi Ross, I'm back from leave and reading through notes. Curious if you want to try and meet up (or connect over the phone) next week to create a plan for how we can set this idea in motion. In addition to adding the national heritage area, I've also heard folks express interest to designating "Utilities" "geothermal site selection" "Mineral resource areas".

Adding an Area of State Interest (as suggested) must go through a separate Designation & Moratorium process with the City Council (C.R.S. 24-65.1-404). The Code's current Section 6.2 (Procedure for Designation of Matters of State Interest) lays out the administrative process to designate additional Activities or Areas of State Interest after adoption if council so chooses. The 1041 regulations cannot include additional Activities or Areas of State Interest until designated through such a process – which would require additional stakeholder engagement, staff analysis, and another moratorium. At minimum the House Bill requires 30 day notice prior to a hearing of any additional designation which would mean a separate hearing prior to the one scheduled May 2 …this delay would further extend the current moratorium – which is scheduled (March 21 hearing) to be extended to June 30.

Let me know your thoughts – look forward to connecting soon.

Kirk

. . . . . .
Kirk Longstein, AICP
(he/him/his)
Senior Environmental Planner
City of Fort Collins
Direct: 970-416-2865

From: Ross Cunniff <rcunniff@gmail.com>

Sent: Tuesday, March 14, 2023 1:19 PM
To: City Leaders <CityLeaders@fcgov.com>
Subject: [EXTERNAL] Land Conservation Stewardship Board recommendation re: 1041 regulations

Mayor Arndt, Councilmembers,

Last week, the Land Conservation Stewardship Board passed a motion regarding 1041 regulations that I wanted you to be aware of:

> The Board recommends that the City Council designate the Cache la Poudre River National Heritage Area as an area of statewide interest, with respect to 1041 regulations consistent with Colorado Revised Statutes 24-65.1.

This is in addition to, and parallel with, any other 1041 regulations the Council may be adopting. I would be glad to talk with you more if you have any questions.

Thank you,
Ross Cunniff
Chair, Land Conservation Stewardship Board

MEMORANDUM

DATE: April 20, 2023

TO: Mayor and City Councilmembers

FROM: Land Conservation & Stewardship Board

RE: 1041 Regulations

Please see the attached memos from January 11, 2023 and March 8, 2023 which the LCSB is re-submitting to City Council in advance of the May 2, 2023 City Council meeting agenda item regarding 1041 Regulations.

Thank you.

MEMORANDUM

Land Conservation & Stewardship Board

City of Fort Collins Boards & Commissions

To - Fort Collins City Council

From - Land Conservation and Stewardship Board (LCSB)

Date - January 11, 2023

Subject - 1041 Regulations Recommendations

While the Board appreciates that Natural Areas is of one of the three geographic areas to which the draft 1041 regulations apply, we recommend utilizing the broader range of 1041 regulatory measures available to local governments under C.R.C. § 24-65.1-101 et seq. and the City's Home Rule status to strengthen the regulatory authority and commitment of the City of Fort Collins to protect public health, safety, and welfare, the environment and wildlife resources within our city boundaries.

Please note that this memo was written in January 2023 prior to receiving the third major iteration of the 1041 draft regulations. Therefore, this memo is based on presentations and briefings from City Staff. As indicated by staff, the draft regulations will not be published for public review until just prior to the January 25, 2023, Planning and Zoning Commission meeting. The LCSB members intend to review any updates from staff, including the next major update of the draft regulations, and comment further as needed.

Concerns and Recommendations:

- Geographic Thresholds: The reduction in geographic scope from a city-wide application, inclusive of both city-owned property and property owned by private residents, to a substantially reduced scope is disappointing and **fails to comply** with original Ordinance, No. 122, 2021. While we appreciate that Natural Areas is of one of the three geographic areas that are protected by 1041 Powers, we also acknowledge that impacts to our Natural Areas can arise from projects occurring offsite of Natural Areas, for instance, with hazardous materials leaks from construction and maintenance operations, or upstream water diversions that affect historic downstream hydrological flows. Natural areas are inextricably interconnected with adjacent areas. **LCSB therefore recommends** that Council continue to develop and strengthen its 1041 regulations to the maximum extent permissible under State law.

- FONSI vs FONAI: The well-established "Finding of No Significant Impacts" (FONSI) process is well-understood in environmental law and practice. It has been used over many decades and has case law and regulatory interpretation supporting it. In contrast, the "Finding of Negligible Adverse Impacts" (FONAI) process is subjective and not widely used. **LCSB recommends** that Council retain the FONSI evaluation standard.

- Activities and Areas of State Interest: The **LCSB recommends** that Council expand the covered 1041 Activities to include Mineral Resource Areas to strengthen the City's regulatory authority over any proposed mineral extraction development and operations related to siting of surface or subsurface oil and natural gas wells or conveyance pipelines, sand and gravel extraction, or other extractive Activities as allowed by State statute.

- Buffer Zones: The Buffer Zones that exist in the City Code today are too small with respect to adverse impacts and are frequently compromised by existing development. The existence of the built environment does not mitigate potential impacts of the covered 1041 Activities. **LCSB recommends** that an ecologically-sound Natural Resources Buffer Standard be developed that would protect Natural Areas from on- and off-site impacts and require complete remediation should such impacts occur despite the existence of these regulations.

- Outreach and Neighborhood Meeting: For each application, **LCSB recommends** that the City should conduct a robust outreach process and include responses to any concerns collected in the Neighborhood Meeting and public comment process as a distinct criterion for the initial FONSI or FONAI determination.

- Financial Security Requirements: An ad-hoc process is not predictable for applicants or residents. **LCSB recommends** that guidelines and expectations regarding Financial Security be codified in policy.

- **LCSB recommends** that all projects that impact Natural Areas require full review regardless of project thresholds, including modifications and enlargements.

Finally, although LCSB recognizes that Staff was constrained in which potential 1041 Activities and Areas of Interest it was allowed to explore, **we recommend** that Council continue to further develop 1041 regulations which cover all possible city-wide Activities and Areas of Interest as allowed by State statute.

MEMORANDUM

Land Conservation & Stewardship Board

City of Fort Collins Boards & Commissions

To - Fort Collins City Council

From - Land Conservation and Stewardship Board (LCSB)

Date - March 8, 2023

Subject - Land Conservation and Stewardship Board input on Draft 1041 Regulations

This memo is to provide City Council with an update on the discussion of the 1041 regulations and the federally designated Cache la Poudre River National Heritage Area during the Land Conservation and Stewardship Board (LCSB) meeting on March 8, 2023. 1041 Draft Regulations are scheduled to be discussed at the May 2, 2023, City Council meeting.

Chair Cunniff made a motion that the Land Conservation and Stewardship Board recommend that City Council designate the Cache la Poudre River National Heritage Area as an area of statewide interest, with respect to 1041 regulations consistent with Colorado Revised Statutes 24-65.1. Member Elson seconded the motion. The motion was approved unanimously 7-0.

NORTH WELD COUNTY WATER DISTRICT

32825 CR 39 LUCERNE, CO 80646

P.O. BOX 56 BUS: 970-356-3020 FAX: 970-395-0997

WWW.NWCWD.ORG EMAIL: WATER@NWCWD.ORG

City of Fort Collins
City Council
300 Laporte Avenue
Fort Collins, CO 80521

RE: Comments and Concerns on the Guidelines and Regulations for Areas and Activities of State Interest of the City of Fort Collins

Dear Council Members:

The North Weld County Water District ("District") appreciates the opportunity to provide comments and participate in the stakeholder process for the proposed 1041 regulations ("Regulations"). The District has reviewed the third version of the proposed Regulations and has identified some continuing concerns with the language. This letter does not address all of the issues or concerns the District has identified with the current draft of the Regulations but sites some examples of problematic language issues and inconstancies. The District believes that the language as provided needs additional revisions, and additional stakeholder time to review and comment on subsequent language modifications. There are currently issues with inconsistent definitions throughout the document, but more importantly the review process under the Regulations is unclear, and the Regulations do not align with the stated purpose of the program.

One example of process issue is related to language in Division 6.6 of the Regulations, the pre-application procedures. City staff recommends alternatives analysis, ecological characterization, conceptual mitigation plans and cumulative impact analysis before a project can even be considered for a FONAI. In addition, City staff suggested that the Regulations will be fully administered by a third-party consultant and all costs associated with this administration to be passed along to the applicant, with completion determined by Director. Under this structure, costs can go unchecked and make projects more expensive to the District

and ultimately to the public they are intended to benefit. Finally, the Regulations, as currently drafted, are not complete. City staff committed to providing a checklist of application materials necessary to meet the minimum thresholds of an application to meet "completeness" review. A checklist is requested by stakeholders in order to provide clarity about the Regulations requirements and avoid unnecessarily costly third-party reviews with no constraints on requests for additional information that could lead to a potential for a perceived arbitrary review process. We suggest that prior to acceptance of these Regulations the completeness checklist be developed and incorporated in the Regulations.

As another example, potions of the Regulations do not support the stated purpose of the Regulations as outlined in Division 6.1.2, Purpose and Findings. In brief, the purpose stated is to protect the environment, promote efficient use of public resources, protect natural and cultural resources, and ensure planned and coordinated development of infrastructure. The Regulations, however, require approvals through the proposed 1041 process for existing system changes such as pressurization of existing lines and upsizing existing infrastructure that lie in existing ROW or existing easements. The purpose and the process are inconsistent. The purpose is to limit impact to the natural areas, however, the Regulations as drafted may force applicants to seek new infrastructure alternatives and cause impacts by finding alternative routing or developing additional infrastructure to meet the system capacity requirements. The no-impact alternatives, such as upsizing pumpstations or upsizing lines during replacement programs, should be exempt from this complicated process and used as alternatives to new infrastructure which would otherwise be subject to the Regulations.

The District believes that the current version of the Regulations requires additional language revisions to support both process efficiencies and clarity and support the stated purpose of the Regulations. The District request that prior to approval of the Regulation language, a fourth version be shared, and stakeholders should be given appropriate time to review and provide comment should be allowed.

We appreciate the opportunity to participate in the stakeholder process.

Sincerely,

Eric Reckentine

Eric Reckentine
General Manager
NWCWD

From: Peggy Montano
To: Kirk Longstein
Cc: Stephanie Cecil; Carl Brouwer
Subject: [EXTERNAL] Response to your email. See the green text below.
Date: Monday, April 10, 2023 5:07:24 PM
Attachments: image001.png

I'm glad we are having this conversation because we may be thinking about this differently, and if our team needs to add clarity, then let's make sure we get this cleared up so that the intent matches the language in the Code. The Intent: applications pursuant Article 6 (activities of statewide interest) which are not "approved with conditions" by the decision maker may seek an appeal (also, all FONAI determinations will have an opportunity to an administrative appeal) outlined by Article 2 of the Land Use Code. If the applicant is pursuing an appeal then the 90 day shot clock (60 days for completeness check following a FONAI determination) is waived by the applicant. The final decision of denial is when the City Council upholds their decision not to "approve with conditions" following an appeal of such decision – final decision of denial. **Here is where there is confusion-Can the applicant modify the proposal during this process? That was my thought initially- if there is something the applicant can modify (self-imposed conditions?) then the Applicant should have an opportunity to do so.**

AGREE-This will be helpful-please include if possible.

Fort Collins existing general procedures LUC 2.1.6 Optional Pre-application Review

> Well in advance of thinking about conditions with approval, denials and appeals – please consider the value of an optional pre-application review. As I've said in the past, the intent of the 1041 review procedures is to avoid/mitigate the potential for adverse impacts and so to the extent that we can solve these issues early in the process, the less likely we will continue to have issues at the end of the process.

This is ok. If the conditions imposed are reasonable I suspect that is ok. The internal appeal is not unlike those I have seen in other municipalities. The proposed article 6 addition to the land use code 6.6.13 approval or denial of permit application:

> *(C) If City Council finds that there is insufficient information concerning any of the applicable standards to determine that such standards have been met, City Council may deny the permit, may approve with conditions pursuant to Section 6.6.14 which if fulfilled would bring the development plan into compliance with all applicable standards, or may continue the public hearing or reopen a previously closed public hearing for additional information to be received. However, no continuance to receive additional evidence may exceed sixty (60) days unless agreed to by City Council and the applicant.*

Fort Collins existing appeal procedures are outlined in LUC 2.2.12.

Strongly Disagree - Essential services like water supply are very different than oil and gas development on a particular property or a housing development – those may wait some time for a revisit through the process. Also, the language in the statute is directly contrary to this " cooling off period" particularly if it is very long. The statute says clearly that nothing should be construed as modifying or amending the court decrees and the decrees have no "waiting period" at all.

Fort Collins existing "cooling off period" in LUC 2.2.11(e)(9)

Post denial re-submittal delay. Property that is the subject of an overall development plan or a project development plan that has been denied by the decision maker or denied by City Council upon appeal, or withdrawn by the applicant, shall be ineligible to serve, in whole or in part, as the subject of another overall development plan or project development plan application for a period of six (6) months from the date of the final decision of denial or the date of withdrawal (as applicable) of the plan unless the Director determines that the new plan includes substantial changes in land use, residential density and/or nonresidential intensity.

Trout Raley
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From: Kirk Longstein
To: Peggy Montano
Cc: Stephanie Cecil; Carl Brouwer; bwind@northernwater.org
Subject: RE: 1041 regulation comment
Date: Friday, April 7, 2023 10:32:00 AM
Attachments: image001.png

Thank you for the follow up, Peggy. A public memo to City Council is planned for next Thursday that will include choices/policy direction for the Council consideration during the May 2 hearing, including your questions related to resubmittal after a final decision of denial. Let me take a closer look at your proposed language with the team and get back to you.

I'm glad we are having this conversation because we may be thinking about this differently, and if our team needs to add clarity, then let's make sure we get this cleared up so that the intent matches the language in the Code. The Intent: applications pursuant Article 6 (activities of statewide interest) which are not "approved with conditions" by the decision maker may seek an appeal (also, all FONAI determinations will have an opportunity to an administrative appeal) outlined by Article 2 of the Land Use Code. If the applicant is pursuing an appeal then the 90 day shot clock (60 days for completeness check following a FONAI determination) is waived by the applicant. The final decision of denial is when the City Council upholds their decision not to "approve with conditions" following an appeal of such decision – final decision of denial.

Fort Collins existing general procedures LUC 2.1.6 Optional Pre-application Review

> Well in advance of thinking about conditions with approval, denials and appeals – please consider the value of an optional pre-application review. As I've said in the past, the intent of the 1041 review procedures is to avoid/mitigate the potential for adverse impacts and so to the extent that we can solve these issues early in the process, the less likely we will continue to have issues at the end of the process.

The proposed article 6 addition to the land use code 6.6.13 approval or denial of permit application:

> *(C) If City Council finds that there is insufficient information concerning any of the applicable standards to determine that such standards have been met, City Council may deny the permit, may approve with conditions pursuant to Section 6.6.14 which if fulfilled would bring the development plan into compliance with all applicable standards, or may continue the public hearing or reopen a previously closed public hearing for additional information to be received. However, no continuance to receive additional evidence may exceed sixty (60) days unless agreed to by City Council and the applicant.*

Fort Collins existing appeal procedures are outlined in LUC 2.2.12.

Fort Collins existing "cooling off period" in LUC 2.2.11(e)(9)

> *Post denial re-submittal delay. Property that is the subject of an overall development*

plan or a project development plan that has been denied by the decision maker or denied by City Council upon appeal, or withdrawn by the applicant, shall be ineligible to serve, in whole or in part, as the subject of another overall development plan or project development plan application for a period of six (6) months from the date of the final decision of denial or the date of withdrawal (as applicable) of the plan unless the Director determines that the new plan includes substantial changes in land use, residential density and/or nonresidential intensity.

I've never worked in Weld County and so admittedly I'm not an expert – in our recent video meeting, I was referring to the following Code section which in my understanding would occur after the appeals period that you cite below, and following the final decision of denial:

WELD COUNTY LAND USE CODE REFERENCE Sec. 2-3-10. - Previously denied applications for land use matters.
Except in those cases to which the requirements of Subsection B below apply, neither an applicant nor his or her successors in interest in property for which a land use application was denied within the preceding five (5) years may submit a land use application or request a rehearing on a previously submitted application for any portion of the property contained in the original application unless the Board of County Commissioners has determined that, based upon a showing by the applicant, there has been a substantial change in the facts and circumstances regarding the application subsequent to the original decision of denial by the Board of County Commissioners or that there is newly discovered evidence which would have been likely to affect the outcome of the original decision that the applicant could not have discovered with diligent effort prior to the original decision of denial.

Please let me know if you have any thoughts or recommendations.

Kirk

. . . . . .
Kirk Longstein, AICP
(he/him/his)
Senior Environmental Planner
City of Fort Collins
Direct: 970-416-2865

From: Peggy Montano <pmontano@troutlaw.com>
Sent: Friday, April 7, 2023 8:02 AM
To: Kirk Longstein <klongstein@fcgov.com>
Cc: Stephanie Cecil <scecil@northernwater.org>; Carl Brouwer <cbrouwer@northernwater.org>; bwind@northernwater.org
Subject: [EXTERNAL] 1041 regulation comment

Kirk , thank you for the continued opportunity to comment on the draft 1041 regulations. In our recent video meeting, you asked specifically for a discussion of the

following provision in Northern's January letter.:

> **2. Avoiding Application of Regulation that Effectively Prevents or Delays Use of Water Rights**. Not only should specific criteria for denial of a permit be made public if a permit is denied, but an applicant should be given an opportunity to return directly to council if the applicant can cure the perceived deficiency. Requiring an applicant to return to the beginning of a long process could prevent or needlessly delay the exercise of water rights, is punitive, and a waste of taxpayer resources.

After our discussion of concerns about a modification of a development proposal possible creating new adverse effects, I suggested a limited reconsideration and have drafted some proposed language below.

> Whenever City Council determines that a permit will be denied, the denial must specify the criteria used in evaluating the development plan, the criteria the development plan fails to satisfy, the reasons for denial, and the development plan modification needed to satisfy permit requirements. The denial document will be served upon the applicant and the applicant may, within sixty (60) days of such service, be allowed a limited modification(s) of the development plan. A modification(s) is limited to changes which would not cause the need for an additional scope of analysis. A determination of the scope of analysis will be subject to a completeness judgement of the Director under 6.6.5 (F) . If the limited modification development plan is determined to be complete, the City Council will then re-consider the proposal with such modification(s). If a permit application is denied after such reconsideration, no new application for the same or substantially similar proposal shall be filed for at least 30 days from the date of the final decision denying the application or proposal.

You suggested we look at the Weld County regulations for a cooling off period. I did review them, and below is what is current in Weld County on that issue. I did not find a "cooling off period" for oil and gas 1041 regulations. To the contrary, the appeal is fast.:

- *Motion for reconsideration.* A motion for reconsideration may be considered by the Hearing Officer in cases where a 1041 WOGLA Permit has been denied. Such motion must be filed no later than ten (10) days after the Applicant has received notice of the denial. A motion for reconsideration must state, with sufficient clarity, the specific reason(s) the Applicant believes the denial was the incorrect decision.

Right to appeal. The appellant must file a written notice with the OGED Director within

ten (10) days of receiving the Hearing Officer's final order. The notice of appeal must specifically state what part of the decision the appellant believes the Hearing Officer either misinterpreted the facts presented in the Application and/or in the 1041 WOGLA Hearing, or misapplied the regulations set forth in Article V. The notice shall not exceed five (5) pages in length. The OGED Director may submit a memorandum brief but must do so within ten (10) working days of receiving the notice of appeal. Any such memorandum brief shall not exceed five (5) pages in length.

Review of appeal and decision. The OGED Director shall transmit the Hearing Officer's order, the notice of appeal and any memorandum brief to the Board of County Commissioners for review within twenty-one (21) days of receiving the notice of appeal. The Board of County Commissioners may affirm the Hearing Officer's order, modify it in whole or in part, or remand the matter to the Hearing Officer for further fact-finding. A modification may only be made if, based upon the Hearing Officer's findings of fact, the order clearly shows the Hearing Officer either misinterpreted the facts presented in the Application and/or in the 1041 WOGLA Hearing, or misapplied the regulations set forth in Article V. The Board of County Commissioners may review the entire 1041 WOGLA Hearing record upon a majority vote of the Board of County Commissioners. The Board of County Commissioners shall transmit a written decision on the appeal to the OGED Director within ten (10) working days after receiving the notice of appeal and other documents allowed herein. The OGED Director shall thereafter communicate the decision to the Applicant and the Hearing Officer within five (5) working days of receiving the Commissioners' decision.

(Weld County Code Ordinance 2020-12 ; Weld County Code Ordinance 2021-17)

Please advise if there is any other input that may be helpful.
Peggy

Peggy E. Montaño

Trout Raley
Montaño • Freeman • Sinor • Thompson P.C.

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Northern Water
Northern Colorado Water Conservancy District
220 Water Avenue • Berthoud, Colorado 80513
800-369-7246 • www.northernwater.org

March 22, 2023

Honorable Jeni Arndt, Mayor
P.O. Box 580
Fort Collins, CO 80522
jarndt@fcgov.com

Fort Collins City Council
P.O. Box 580
Fort Collins, CO 80522
cityleaders@fcgov.com

Re: 1041 Regulations Comments

Dear Mayor Arndt and Councilors Gutowsky, Pignataro, Canonico, Peel, Ohlson, and Francis:

Following the February 7, 2023, Council hearing regarding proposed 1041 regulations, stakeholders were asked to respond to a series of comments compiled by Fort Collins staff. We have done so and also recognize that a multitude of comments have been made. For this reason, we are streamlining our comments in this letter to focus on a select few issues.

The reliability of water supplies for all Coloradoans is imperative and is recognized by statute in 1041 saying that "nothing in this article (the article being the Areas and Activities of State Interest statute) shall be construed as "Modifying or amending existing laws or court decrees with respect to the determination and administration of water rights"[1]. Some of the provisions of the regulations as proposed appear to conflict with this statute and exceed the authority provided by the 1041 statutes, and other provisions will undercut that reliability and conflict with this statutory provision if they are applied in an uneven or subjective manner. Either result will lead to expensive and needless litigation.

With those overarching considerations in mind, the following three issues in the 1041 proposal and discussions are most key to regulation by Fort Collins of the development of water facilities.

1. **Geographic Scope is Limited to the Area of Construction or Activity**. Whatever review standards are applied to the facilities, the criteria are to be applied "on the land where the construction or activity occurs"[2]. Not outside the city boundaries or even across town. This was clearly demonstrated in the *Thornton* opinion where the court overturned the application of a

[1] C.R.S.§ 24-65.1-106
[2] C.R.S. §24-65.1-102

criteria by Larimer County looking at agriculture across the county rather than at the site of proposed facilities.[3]

2. Avoiding Application of Regulation that Effectively Prevents or Delays Use of Water Rights. Not only should specific criteria for denial of a permit be made public if a permit is denied, but an applicant should be given an opportunity to return directly to council if the applicant can cure the perceived deficiency. Requiring an applicant to return to the beginning of a long process could prevent or needlessly delay the exercise of water rights, is punitive, and a waste of taxpayer resources.

3. 1041 Cannot Modify the Water Rights Granted Through Colorado's Water Courts. We urge rejection of arguments regarding a "down the river" alternative. Opponents of water projects on the Poudre have advocated publicly for water to be run down the Poudre past Fort Collins and then pumped back for use. Continuing in this argument, the same opponents recently, in litigation against the NISP 1041 permit issued by Larimer County, argue in their brief for a "down the river" alternative to be imposed by the district court and the opponents make the unprecedented claim that the 1041 statute grants the power to local governments to select the diversion point of a water project over the project owner's water right decree. They then insert a footnote stating that the Colorado Court of Appeals was wrong in a decision ruling that 1041 does not grant that power.[4] This brief is publicly available, and if this argument is asserted in this rulemaking before you, we urge that you consult with your own attorneys regarding this unprecedented claim of authority. A change of a point of diversion of a water right is a highly regulated and litigated matter in Colorado's Water Courts.

In closing, we request that you extend the time 45 to 60 days for further consideration of this matter. Water facilities can and should be constructed and maintained in a reasonable manner with consideration for the concerns of the city as well as the water supply needs of the communities dependent upon the water and the water rights decrees they hold. All means and methods to arrive at a reasonable middle ground should be cautiously considered before moving forward.

Sincerely,

Peggy E. Montaño
for Trout Raley
General Counsel to
Northern Colorado Water Conservancy District

[3] See Thornton v. Larimer County slip opinion at 22 "First, the Board abused its discretion by effectively requiring Thornton to analyze the "cumulative impacts of irrigated farmland turning to dryland" as a result of the TWP. As the district court concluded, such considerations are beyond the Board's jurisdiction to regulate the "siting and development" of certain domestic water pipelines. See Land Use Code § 14.4(J); § 24-65.1-102(1), C.R.S. 2021 ("'Development' means any construction or activity which changes the basic character or the use of the land on which the construction or activity occurs.")

[4] See Plaintiff's Consolidated Reply Brief, No Pipe Dream Corporation v. Larimer County, Case No. 202CV30800

cc: City of Dacono
City of Evans
City of Fort Lupton
City of Fort Moran
City of Lafayette
Fort Collins Loveland Water District
Left Hand Water District
Morgan County Quality Water District
Town of Eaton
Town of Erie
Town of Severance
Town of Windsor
Weld County Water District

May 2, 2023

1041 Regulations

Local participation, Transparency & Improved Environmental Outcomes

Kirk Longstein, AICP
Senior Environmental Planner

City of Fort Collins

City Comprehensive Plan

Conserve, protect and enhance natural resources and high-value biological resources throughout the GMA by directing development away from natural features to the maximum extent feasible.

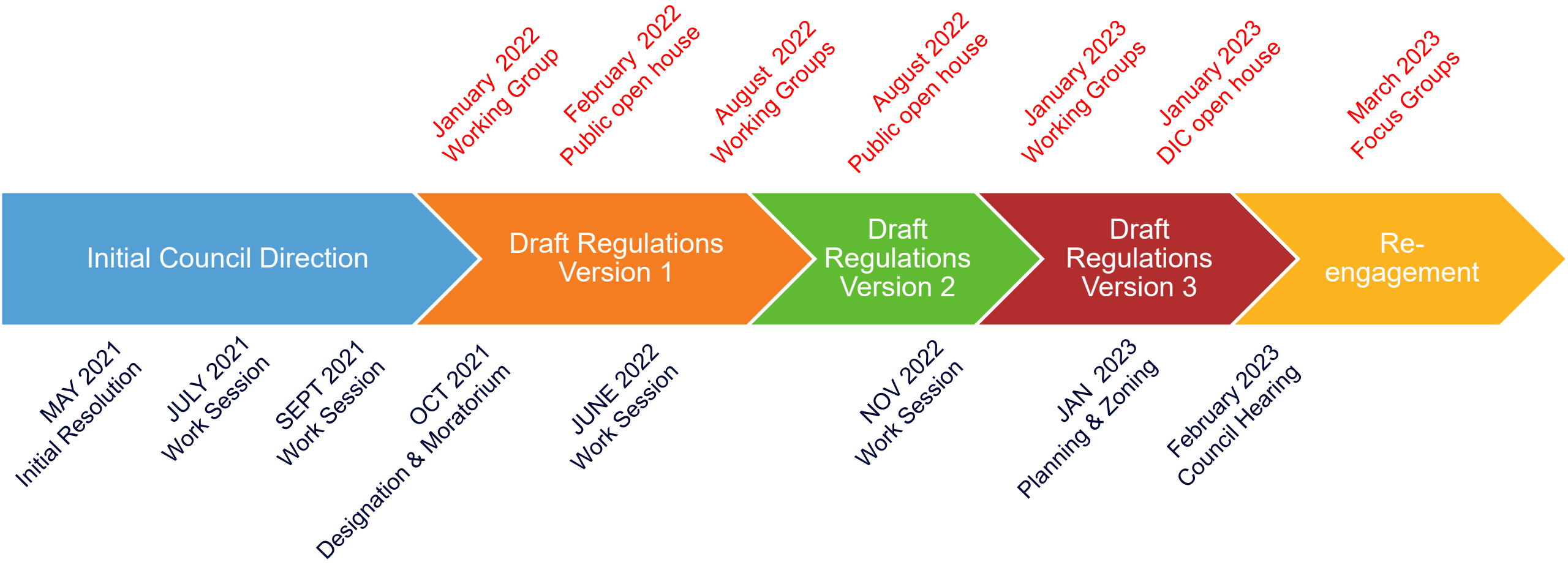
City Council Resolution

1041 Regulations may better allow the City to achieve its policy and regulatory goals in furtherance of the best interest of the citizens of Fort Collins.

City Regulatory Goals

- ✓ Address deficiencies with SPAR
- ✓ Establish applicant predictability
- ✓ Establish a meaningful public process
- ✓ Incentivize project designs that avoid impacts to critical natural habitat and cultural resources.

Where We've Been



Permit Overview

Applicability of Standards - FONAI

- Project size thresholds (Definitions)
- Conceptual Review
- Pre-submittal meeting
- Neighborhood meeting
- Director Decision (FONAI - evaluation critera inlcuding geograhic based thresholds)

Full Permit Review

- Application checklist
- Completeness Check
- Third-Party analysis
- Common Review Standards
- Exemptions

Permit Decision Making

- Planning and Zoning Commissions (Hearing)
- City Council (Hearing)
- Issuance of a permit; conditions

Designated Activities and Defined Project Size

Domestic Water

- •12” diameter pipe and 1,320 linear feet
- •New (or expanded) easement of 30-feet or greater in width and 1,320 linear feet
- •Increase the rated capacity from the Colorado Department of Public Health and Environment

Wastewater/Sewage

- 15” diameter pipe and 1,320 linear feet
- New (or expanded) easement of 30-feet or greater in width and 1,320 linear feet
- Increase the rated capacity from the Colorado Department of Public Health and Environment

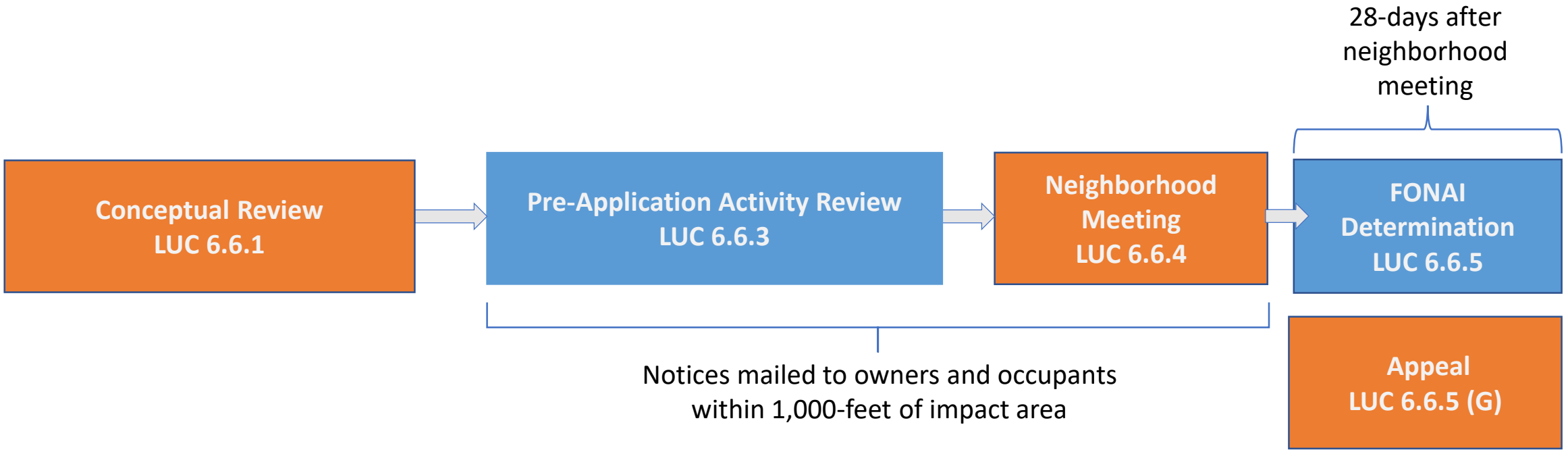
Highway Projects

- New Highways/ Interchanges/ Collector Highways
- Expansions by 1 Vehicular Lane
- Expansions of Interchanges or Bridges

Excluded

(1) Any maintenance, repair, adjustment;

(2) Existing pipeline or the relocation, or enlargement of an existing pipeline within the same easement.

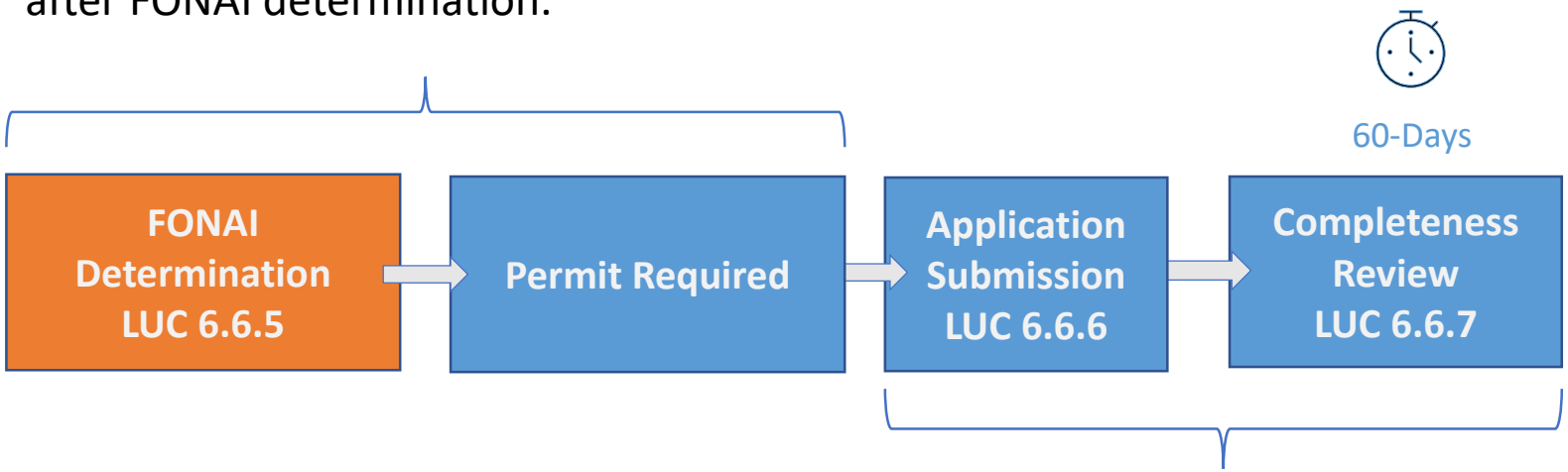


Key Submittal Requirements

1. Three (3) siting and design alternatives (including feasibility)
2. Ecological Characterization Study (1/2-mile radius)
3. Cumulative Impacts Summary (1/2-mile radius)
4. Conceptual mitigation plans
5. Historic documentation pursuant to Chapter 14 of the Code

Completeness Check

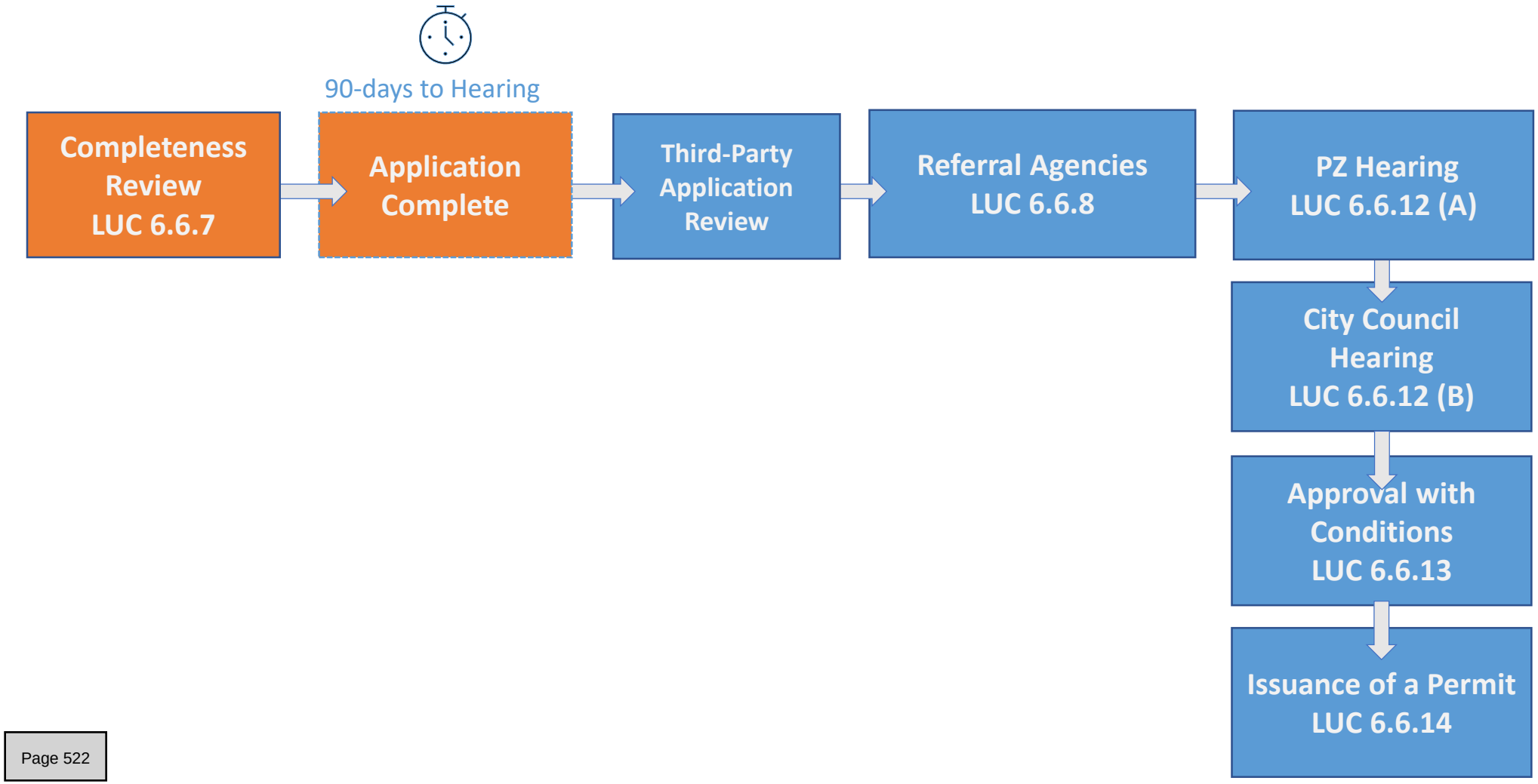
Permit Application Submittal 14-days after FONAI determination.



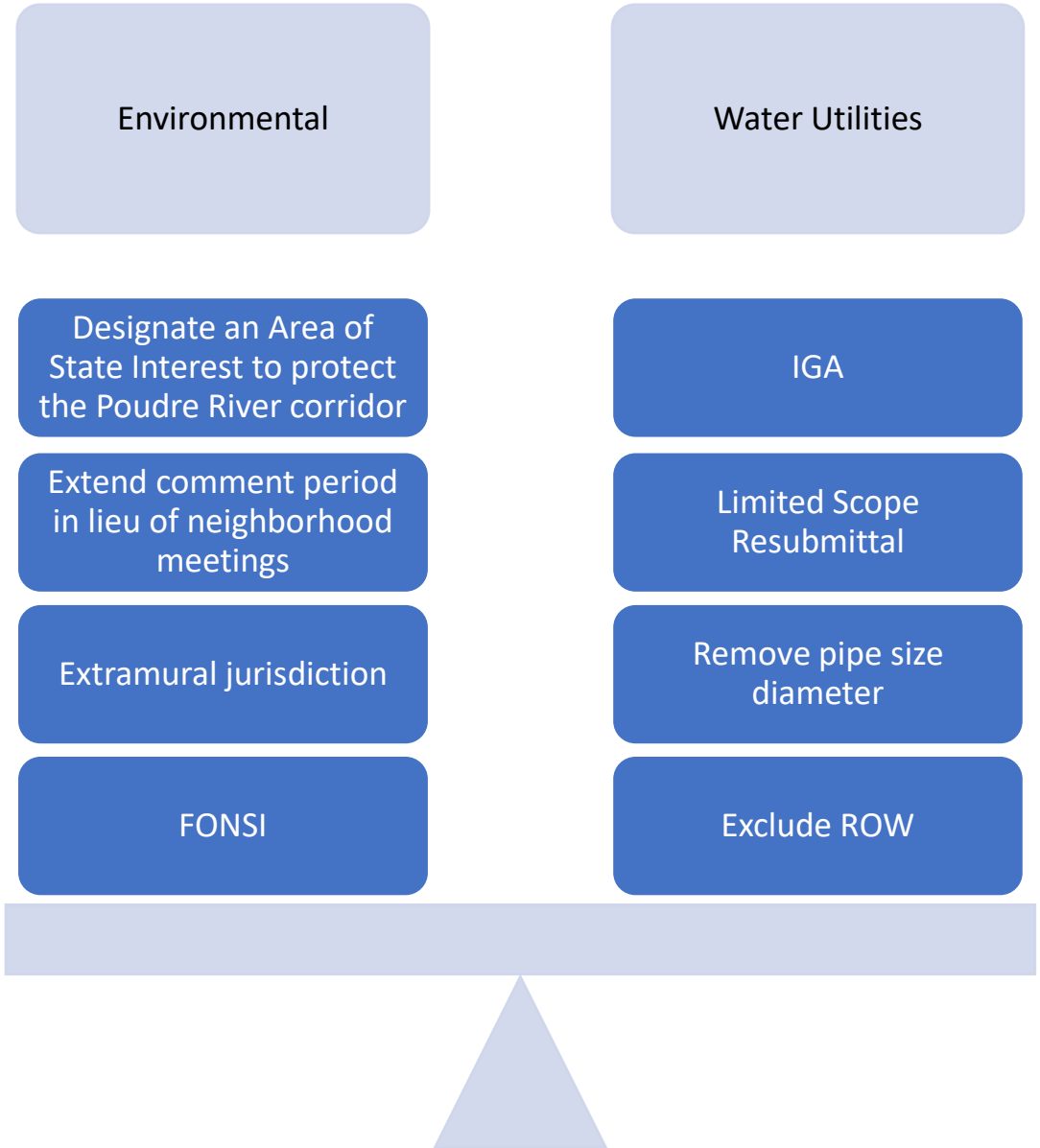
Administrative program design

- ✓ Submittal checklist provided by staff
- ✓ What makes an impact “significant”
- ✓ Additional analysis and third-party scope provided with FONAI determination

Full Permit Process



Feedback Themes



Decision Point #1 UPDATE Definitions

Council amendments ready to make changes

	Council Decision	Key Consideration
a.	**(Staff recommendation)** Remove pipe-size diameter from defined project thresholds	✓ Narrows the focus and reduces the number of potential projects. ✓ Major Project = one-acre of impact
b.	**(Staff recommendation)** Add definition for Public Right of Way and exclude projects in Public Right of Way from covered projects.	✓ Eliminating overlap with existing process (i.e., ROW permit) ✓ Also excludes existing Natural Area easements
c.	**(Staff recommendation)** Add definitions that redefine the Applicability of Standards determination (FONAI →FONSI) i. Impact ii. Cumulative impacts iii. Significant iv. Finding of No Significant Impact (FONSI)	✓ Aligns with stakeholder understanding of impact. ✓ Significant requires further staff analysis to determine *magnitude, duration or likelihood of an impact.*

Decision Point #2 - UPDATE Application Procedures

Adopt the Code and direct staff to amend the Code between first and second reading

	Council Decision	Key Consideration
a.	**(Staff recommendation)** Add conceptual submittal document that summarizes the potential for a significant impact.	✓ Aligns submittal documents with potential changes from FONAI to FONSI.
b.	**(Staff recommendation)** Move neighborhood meeting requirements to after review of the applicability of standards (i.e., FONAI determination), and extend comment period during the pre-application activity review.	✓ Shifting to a longer comment period rather than one singular event may allow for more meaningful public engagement.
c.	Remove requirements that conceptual design be drafted at thirty-percent completeness	✓ May require an earlier investment in design fees
d.	Add Optional Pre-Application Review by Council.	✓ Allows applicants early feedback directly from decision makers prior to submittal
e.	a “limited scope resubmittal” after a final denial decision.	✓ Discourages work with staff to mitigate potential adverse impacts prior to Council Hearing.

Decision Point #3 - Update Review Standards to account for construction activities outside the jurisdiction and designate Poudre River (other geographic limits).

	Council Decision	Key Consideration
a.	**(Staff Recommendation)** No Change to the Code *If Council is interested in exploring designating areas of statewide interest outside the jurisdiction and/or the Poudre River (other geographic limits) staff recommends a Work Session to analyze policy implications and establish parameters for a new work stream.*	✓ Council has not set parameters on how this provision should be applied to the Code. ✓ Peer communities that use this approach set geographic limits which Council has not done at this time.
b.	Direct staff to bring forward options amending the Code to account for construction activities outside the jurisdiction. *If Council is interested in exploring designating the Poudre River (other geographic limits), staff recommends a Work Session to establish parameters and advance setting those limits via ordinance*	

Decision Point #4 - Consider Intergovernmental Agreement in lieu of 1041 regulations

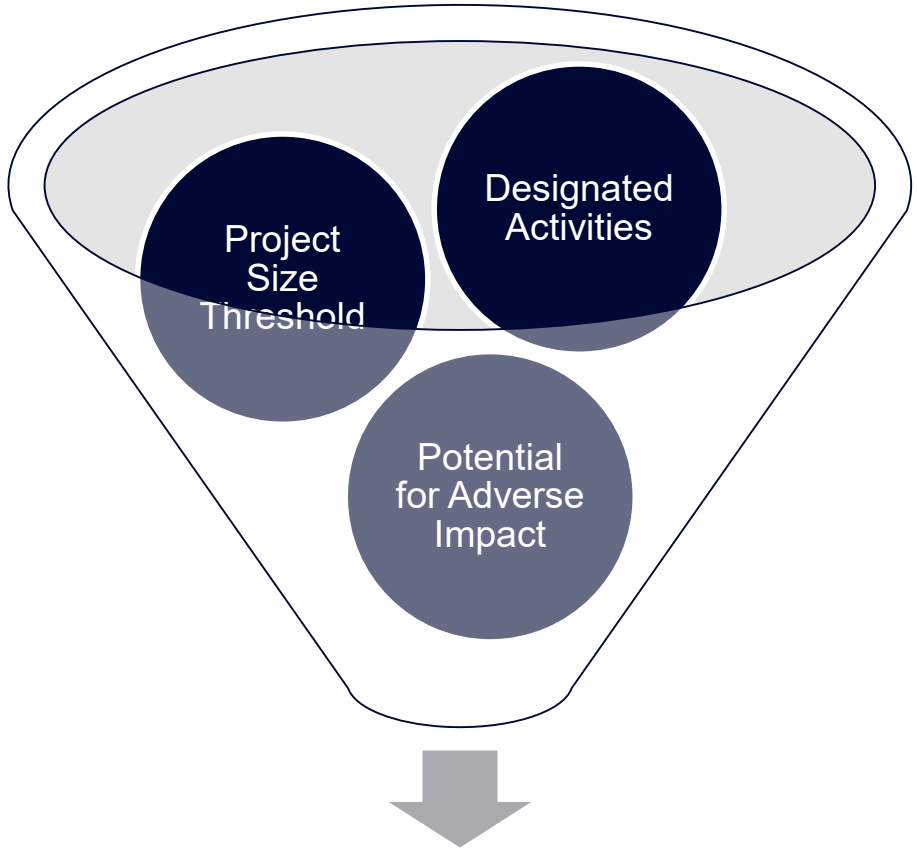
	Council Decision	Key Consideration
a.	**(Staff recommendation)** No Change to the Code	✓ Does not create a permit program that is binding in its decision-making authority. ✓ Time to implement such agreement ✓ Uncertain criteria
b.	Postpone adoption of the Code.	

Decision Point #5 - Consider Permit Administration

	Council Decision	Key Consideration
a	Direct staff to bring back a supplemental appropriation for permit administration.	Scope of Work: 1. On-call development review support 2. Tools to support customers 3. Annual program evaluation
b.	Postpone Adoption of the Code and provide direction to staff on how to proceed	

Back up Slides

Applicability of Standards



Finding of Negligible Adverse Impact (FONAI) OR FULL PERMIT

Is the project subject to a Fort Collins 1041 permit?

1. Is the project designated by the Fort Collins Code?
   - Major new (expansion) domestic water system
   - Major new (expansion) sewage system
   - Highways & Interchanges

2. Does the project meet the defined project size thresholds?
   - If yes; neighborhood meeting & FONAI review
   - If no; no additional action

3. Does the project intersect with a geographic thresholds?
   - if yes; no FONAI without mitigation
   - if no; no permit

Review Standards

- Consider anticipated adverse impacts + mitigation
- Conformance to City Plans and policies
- Natural hazard risk
- Nuisances
- Hazardous materials risk

Evaluate Impacts to:

- Local infrastructure and service delivery
- Recreational opportunities & experience
- Viewsheds & visual character
- Air quality
- Water quality
- Wetlands & riparian areas
- Terrestrial & aquatic animal life
- Terrestrial & aquatic plant life
- Other natural habitats & features
- Significant trees
- Historic & cultural resources
- Soils & geologic conditions
- Disproportionately impacted communities

LUC 6.4.1 - Exemptions

1. Nonconforming Uses and Structures with the exception of enlargement or expansion of any such project

2. Any project previously approved by the Planning and Zoning Commission pursuant to the Site Plan Advisory Review (SPAR) process.

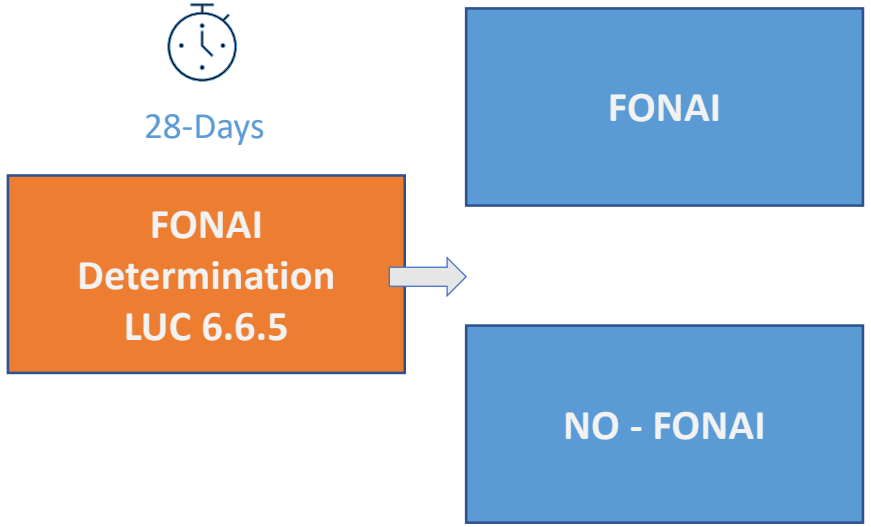
3. Proposed development plan otherwise subject to Development Review

4. Any proposed development plan issued a FONAI

LUC additions

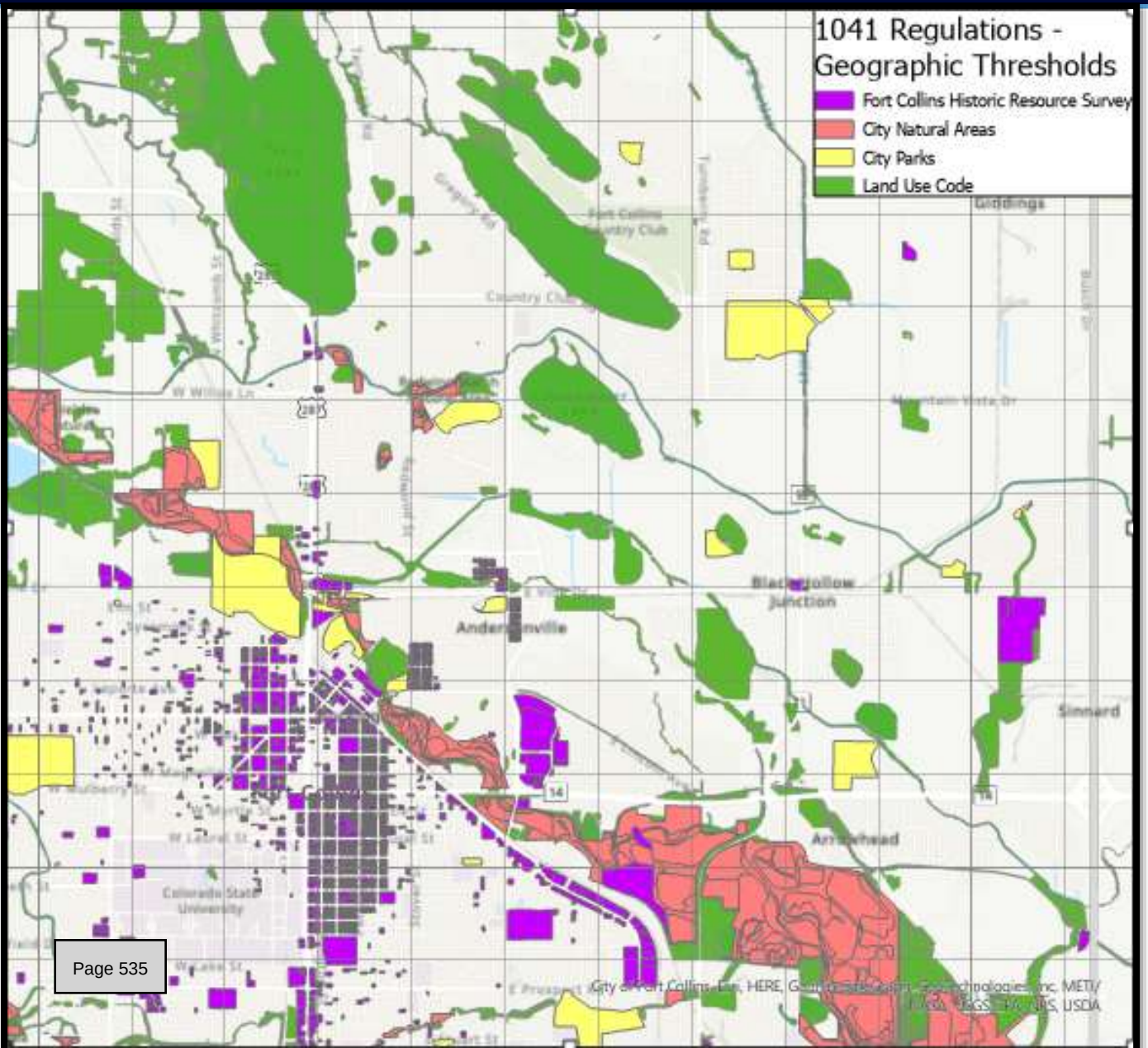
- ✓ City Council is the sole decision maker (Including City projects)
- ✓ Project not covered by Article 6 may be subject to SPAR (including FONAI determination)
- ✓ Optional Pre-Application Area and Activity Proposal Review
- ✓ Cost of specialized consultants
- ✓ Notice required – 1000-feet mailer
- ✓ FONAI Appeal
- ✓ Definition of Development

Finding of Negligible Adverse Impact Determination



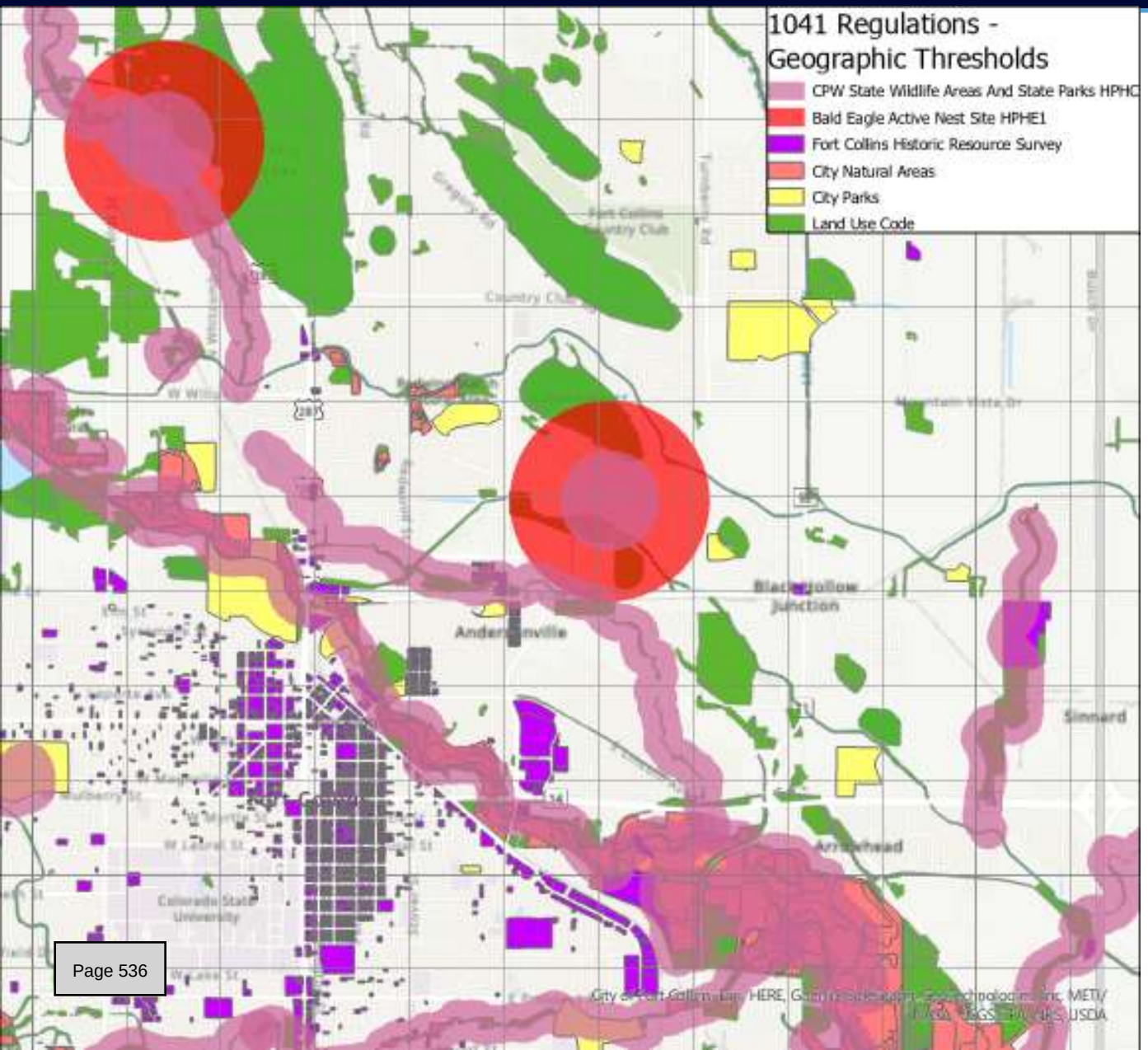
Has potential to adversely impact:

- City natural area or park
- City-owned property
- High Priority Habitat and Natural Habitat Corridors
- Natural habitat features and buffer zones
- Historic and cultural resources
- Disproportionally Impacted Communities



Geographic thresholds

FONAI Critera



The High Priority Habitat (HPH) table was developed by CPW to ensure that our land use development recommendations are consistent statewide.

- Aquatic Resources
- Migratory Birds
- Big Game

Planning and Zoning Commission Recommendation

The Planning and Zoning Commission recommend that City Council **NOT ADOPT** the proposed 1041 regulations until the public has sufficient time to review staff's Version 3 and to comment fully on its impact.

The Planning and Zoning Commission believes the proposed regulation is directionally correct; however, additional input is needed by affected parties on at least the following areas:

- Potential consequences of the proposed regulation, as currently written
- The extent to which the regulation could legally extend to impacts created by components of the project outside the jurisdictions but that affect the natural resources and natural areas of Fort Collins
- Whether the scope of projects to be regulated is appropriate, relative to what would be considered material in the scope of such projects.

This recommendation could require that more time be allowed between first and second readings, or that the current moratorium be extended, if necessary. This decision is based upon the agenda materials, the information and materials presented during the work session and this hearing, and the Commission discussion on this item.