

# Fort Collins City Council Agenda

## Regular Meeting

6:00 p.m., Tuesday, January 16, 2024

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

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

### NOTICE:

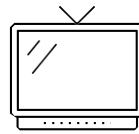
Regular meetings of the City Council are held on the 1st and 3rd Tuesdays of each month in the City Council Chambers. Meetings are conducted in a hybrid format, with a Zoom webinar in addition to the in person meeting in Council Chambers.

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

### How to view this Meeting:



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



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



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



Meetings are livestreamed on the City's website, [fcgov.com/fctv](https://fcgov.com/fctv)

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

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



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

### **Comment in real time:**

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



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



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

Full instructions for online participation are available at [fcgov.com/councilcomments](http://fcgov.com/councilcomments).

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

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

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

Call in number: 720 928 9299

Meeting ID: 982 4141 6497

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

### **Submit written comments:**



Email comments about any item on the agenda  
to [cityleaders@fcgov.com](mailto:cityleaders@fcgov.com)



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

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

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



# City Council Regular Meeting Agenda

January 16, 2024 at 6:00 PM

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

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

Carrie Daggett  
City Attorney

Kelly DiMartino  
City Manager

Anissa Hollingshead  
City Clerk

## PROCLAMATIONS & PRESENTATIONS 5:00 PM

### A) PROCLAMATIONS AND PRESENTATIONS

[PP 1.](#) Declaring January 28 through February 3, 2024 as National Catholic Schools Week.

[PP 2.](#) Declaring January 2024 as National Skating Month.

## REGULAR MEETING 6:00 PM

### B) CALL MEETING TO ORDER

### C) PLEDGE OF ALLEGIANCE

### D) ROLL CALL

### E) CITY MANAGER'S AGENDA REVIEW

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

### F) COMMUNITY REPORTS – None.

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

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

- *Those who wish to speak are required to sign up using the online sign-up system available at [www.fcgov.com/council-meeting-participation-signup/](http://www.fcgov.com/council-meeting-participation-signup/)*

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

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

## **H) PUBLIC COMMENT FOLLOW-UP**

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

### **CONSENT CALENDAR**

*The Consent Calendar is intended to allow Council to spend its time and energy on the important items on a lengthy agenda. Staff 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 December 19, 2023 Regular Meeting and the January 9, 2024 Special Meeting.**

The purpose of this item is to approve the minutes of the December 19, 2023 regular meeting and the January 9, 2024 special meeting.

**2. First Reading of Ordinance No. 001, 2024, Appropriating Prior Year Reserves in the Transportation Capital Expansion Fee Fund for Eligible Reimbursement to the Waterfield Fourth Filing Developer for Construction of Suniga Road, Vine Drive, and Merganser Street Improvements as Part of Waterfield Fourth Filing Phases 1 through 4; and for the Dedication of Suniga Road Right-of-Way.**

The purpose of this item is to appropriate \$1,413,645 of Transportation Capital Expansion Fee (TCEF) Funds for expenditure from the Transportation Capital Expansion Fee Program Budget to reimburse the Waterfield Fourth Filing developer, DFC Waterfield, LLC (Developer), for its oversizing construction of Suniga Road, Vine Drive, and Merganser Drive. As part of Phases 1 through 4 of the Waterfield Fourth Filing, the Developer has constructed Suniga Road as a four-lane arterial, Vine Drive as a collector, and Merganser Drive to City standards as part of its development requirements. Per Section 24-112 of the City Code, the Developer is eligible for reimbursement from TCEF funds for the oversized, non-local portion of Suniga Road, Vine Drive, and Merganser Drive not attributed to the local portion obligation. Additionally, the Developer has dedicated Suniga Road right-of-way as a four-lane arterial from its western boundary to Timberline Road and is also eligible for reimbursement from TCEF funds for the oversized, non-local portion of Suniga Road right-of-way.

**3. First Reading of Ordinance No. 002, 2024, Appropriating Funds for Change Management Resources to Support Legislative Management Software Implementation Funds.**

The purpose of this item is to appropriate \$375,000 of general fund reserves to contract with Prosci, Inc., to provide change management support for the Legislative Management Software project throughout its implementation in 2024. Council Finance Committee recommended this move forward to Council at their December 19 meeting.

**4. First Reading of Ordinance No. 003, 2024, Authorizing Transfers and Reappropriation of Funds Previously Appropriated for the Utilities' Grid Flexibility Programs.**

The purpose of this item is to receive approval for the funding of grid flexibility programs through the appropriation of prior year reserves and reappropriation of previously approved Light and Power funds. The ordinance does not appropriate any new funding, but rather optimizes previously appropriated funds to accelerate progress toward Our Climate Future (OCF) goals.

**5. First Reading of Ordinance No. 004, 2024, Authorizing Transfers of Appropriations and Appropriating Related Funds for the Environmental Services Radon Program.**

The purpose of this item is to support the City's Environmental Services Radon program by:

- Appropriating \$9,000 of unanticipated grant revenue awarded by the Colorado Department of Public Health and Environment (CDPHE) and
- Utilizing matching funds in the amount of \$6,000 from existing 2024 appropriations for this grant project.

In December 2023, CDPHE awarded the City \$9,000 under the CDPHE Indoor Radon grant program. The City will provide an additional \$6,000 in required matching funds. The award funds and City's matching funds will support radon testing and mitigation programs to protect public health for the Fort Collins community.

Pursuant to the State of Colorado Purchase Order Terms and Conditions, and in accordance with Section 1-22 of the City Code, the City Manager has accepted the grant agreement. The \$9,000 are federal funds from the Environmental Protection Agency being passed through to the City by CDPHE.

**6. First Reading of Ordinance No. 005, 2024, Authorizing Transfers of Appropriations and Appropriating Related Funds for the Timberline Recycling Center Infrastructure and Efficiency Improvements.**

The purpose of this item is to support Timberline Recycling Center (TRC) infrastructure and efficiency improvements by:

- Appropriating \$294,853 of unanticipated revenue awarded by the Colorado Departments of Public Health and Environment's Front Range Waste Diversion Enterprise (FRWD), and
- Transfer \$28,393 matching funds from existing appropriations in the Capital Projects Business Unit for the project

The grant funds and matching funds will support replacement of equipment that has exceeded its useful life, as well as incorporation of new infrastructure to provide a safe, accessible and functional recycling facility. Contribution to the Art in Public Places (APP) Program is not required due to grant restrictions.

**7. First Reading of Ordinance No. 006, 2024, Authorizing Transfers and Appropriating Related Funds for the Oak Street Stormwater Improvements Project.**

The purpose of this item is to request an appropriation to fund the construction of the Oak Street Stormwater Improvements Project. It will fund the construction contract with the general contractor; contracts for resident engineering and construction management services, permitting and internal project support and management; construction contingency (~4%) and funding for the Art in Public Places (APP) program. The construction contingency included herein is less than the typical amount that would normally be associated with this size of contract (10-15% is typical). If additional contingency funds are needed in the future, those funds would be requested to be appropriated from the Stormwater Reserve Fund.

The total amount being requested for appropriation is \$39,962,815:

- Construction Contract \$36,645,015
- Construction Support (Resident Engineer, Construction Manager, Permitting and Internal Support) \$1,720,000
- Construction Contingency \$1,550,000
- APP Program \$47,800

The Stormwater Utility Enterprise Board adopted Ordinance No. 011, 2023 (First Reading on September 19, 2023, and Second Reading on October 3, 2023) authorizing bond issuance in the Stormwater Fund for the construction of the Oak Street Stormwater Improvements project. Following the sale and closing of the bonds, gross proceeds in the amount of \$40.4M were deposited into the Stormwater Fund reserves on October 31, 2023.

**8. First Reading of Ordinance No. 007, 2024, Amending Article II of Chapter 5 of the Code of the City of Fort Collins to Exempt Plumbing Fixtures from Permits and Inspections.**

The purpose of this item is to request a Code amendment to exempt plumbing fixture replacements, such as sinks, faucets, drains, showers, tubs, and toilets from the permit requirements under Chapter 5 of the City Code, for the following reasons: Colorado State does not require permits for this type of work, very few fixture replacements are currently done with a permit, there are no concerns with life or safety, and requiring permits creates additional barriers and cost impacts to improving indoor water efficiency.

**9. First Reading of Ordinance No. 008, 2024, Authorizing the Conveyance of a Permanent Non-Exclusive Utility Easement on Property Jointly Owned by the City of Fort Collins and the City of Loveland at the Northern Colorado Regional Airport for the New Airport Terminal Facility.**

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

**10. Resolution 2024-001 Supporting a Grant Application for Co-responder/Community Based Alternative Response Support Funding for Fort Collins Police Services.**

The purpose of this item is to obtain support and approval for the City to apply in partnership with UC Health for grant funds in support of Fort Collins' Police Services Mental Health Response Team.

**11. Resolution 2024-002 Authorizing the Mayor to Execute an Intergovernmental Agreement with Larimer County to Continue Support for the Larimer County Conservation Corps Energy and Water Program.**

The purpose of this item is to seek approval of an intergovernmental agreement (IGA) between the City and Larimer County for funding of the Larimer County Conservation Corp (LCCC) Water and Energy Program ("Program"). The agreement would allow for four annual renewals for a total potential term of five years, subject to annual appropriations.

The City of Fort Collins Utilities (FCU) has partnered with Larimer County to fund the LCCC since 2010 with tremendous success. LCCC crews have supported local resource conservation by providing home efficiency assessments to customers of FCU and Loveland Water and Power. These free home efficiency assessments include an on-site assessment, customer education, and direct installation of energy and water saving equipment such as LED lightbulbs, showerheads, and high-efficiency toilets. From 2010 to 2023, LCCC crews assessed over 4,000 homes served by FCU and provided resources and services that enabled these customers to save on their utility bills.

Due to its success, the Program is now part of the City's Utilities Affordability Portfolio which provides a mechanism for low to moderate income customers to control their energy use and costs.

**12. Resolution 2024-003 Authorizing the City Manager to Enter into an Agreement with Various Entities Regarding the Upper Poudre Watershed Source Water Protection Plan (Phase 1 – Plan Development).**

The purpose of this item is to request approval for the City, through Fort Collins Utilities (“Utilities”), to enter into an agreement for cost-sharing the development of a regional Source Water Protection Plan (“SWPP”) with the City of Greeley, Soldier Canyon Water Treatment Authority, Northern Colorado Water Conservancy District (“Northern Water”), and the City of Thornton.

Utilities’ Cache la Poudre River (“Poudre River”) and Horsetooth Reservoir source watersheds provide high quality raw water for water treatment. Protecting these source water supplies from pollution is key to providing our community with reliable, safe, and high-quality drinking water. There are significant challenges associated with monitoring and protecting water quality in these source watersheds. Utilities’ 2016 SWPP has guided Utilities’ source water protection activities to date but needs to be updated. The Cities of Fort Collins (through Utilities), Greeley, and Thornton as well as Soldier Canyon Water Treatment Authority and Northern Water use water from the Poudre River and Horsetooth Reservoir. Staff from Utilities’ Watershed Program and these entities are seeking to develop a collaborative SWPP to improve communication, alignment, promote cost-sharing and implementation of source water protection projects. The proposed Agreement Regarding the Upper Poudre Watershed Source Water Protection Plan (Phase 1 – Plan Development) (“SWPP Agreement”) outlines terms and conditions of developing a collaborative SWPP. On December 7, 2023, the Water Commission formally recommended that Council authorize the City Manager to sign the SWPP Agreement.

**13. Resolution 2024-004 Making Appointments to the Housing Catalyst Board.**

The purpose of this item is to fill vacancies on the Housing Catalyst Board that exist due to the expiration of certain members’ terms.

**14. Resolution 2024-005 Making an Appointment to the Platte River Power Authority Board.**

The purpose of this item is to appoint a new City representative to the Platte River Power Authority Board to fill the vacancy created by Kendall Minor’s resignation from the Board.

**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.*

**15. Second Reading of Ordinance No. 175, 2023, Repealing Ordinance No. 136, 2023, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Revised Land Use Code and Separately Codifying the 1997 Land Use Code as the “Pre-2024 Transitional Land Use Regulations,” and Related Ordinance No. 137, 2023, and Ordinance No. 138, 2023.**

This Ordinance adopted on First Reading on December 19, 2023, by a vote of 3-2 (Ayes: Mayor Arndt, Mayor Pro Tem Francis, and Councilmember Canonico; Nays: Councilmembers Gutowsky and Ohlson; Absent: Councilmember Peel; and Remote (non-voting): Councilmember Pignataro), includes language repealing the associated Ordinance Nos. 137, 2023, and 138, 2023, that respectively made updates to City Code to align with the revised Land Use Code and renamed the Neighborhood Conservation zone districts to the Old Town zone district in alignment with the revised Land Use Code.

**16. First Reading of Ordinance No. 009, 2024, Amending Section 2-596 of the Code of the City of Fort Collins and Setting the Salary of the City Manager.**

The purpose of this item is to amend City Code to establish the 2024 salary of the City Manager. Council met in executive session on December 19, 2023, to conduct the performance review of Kelly DiMartino, City Manager, and to consider the salary market analysis for this position.

**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**

**The January 16, 2024 Work Session to Immediately Follow in the Council Information Center (CIC), **new location**.**

Work Session Meeting Link:

<https://fortcollins-co.municodemeetings.com/bc-citycouncil/page/city-council-work-session-24>

*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**, since 1974, National Catholic Schools Week is the annual celebration of Catholic education in the United States; and

**WHEREAS**, it starts the last Sunday in January and runs all week, which in 2024 is January 28 through February 3; and

**WHEREAS**, the theme for National Catholic Schools Week 2024 is “Catholic Schools: United in Faith and Community;” and

**WHEREAS**, schools typically observe the annual celebration week with Masses, open houses and other activities for students, families, parishioners and community members; and

**WHEREAS**, through these events, schools focus on the value Catholic education provides to young people and its contributions to our church our communities and our Nation; and

**WHEREAS**, each day a different entity is celebrated: Sunday, our school parish; Monday, our community; Tuesday, our students; Wednesday, our Nation; Thursday, our vocations; Friday, our faculty, staff and volunteers; and Saturday, our families.

**NOW, THEREFORE**, I, Jeni Arndt, Mayor of the City of Fort Collins, do hereby proclaim January 28 through February 3, 2024, as

## NATIONAL CATHOLIC SCHOOLS WEEK

**IN WITNESS WHEREOF**, I have hereunto set my hand and the seal of the City of Fort Collins this 16th day of January, 2024.

\_\_\_\_\_  
Mayor

ATTEST:

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



## PROCLAMATION

**WHEREAS**, the month of January is celebrated as the U.S. Figure Skating National Skating Month; and

**WHEREAS**, the City of Fort Collins, is recognizing this celebration; and

**WHEREAS**, we recognize and support the mission of U.S. Figure Skating to create and cultivate opportunities for participation and achievement in figure skating. To foster fun and inspire a lifelong passion for skating while developing champions on and off the ice; and

**WHEREAS**, we thank the coaches who dedicate their time to create an incredible environment for our athletes to reach their fullest potential, learn valuable skills, and create a sense of belonging to grow the skating community; and

**WHEREAS**, we celebrate and recognize the EPIC team and Fort Collins Figure Skating Club programs offered at the City of Fort Collins' Edora Pool Ice Center (EPIC); and

**WHEREAS**, we thank the support of the community, Fort Collins Figure Skating, U.S. Figure Skating and local coaches to host a free Public Skate session on January 27, from 12:15 p.m. to 2:00 p.m., to celebrate National Skating Month at Edora Pool Ice Center; and

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

## NATIONAL SKATING MONTH

**IN WITNESS WHEREOF**, I have hereunto set my hand and the seal of the City of Fort Collins this 16th day of January, 2024.

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Mayor

ATTEST:

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City Clerk

January 16, 2024

## AGENDA ITEM SUMMARY

City Council



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### STAFF

Anissa N. Hollingshead, City Clerk

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### SUBJECT

**Consideration and Approval of the Minutes of the December 19, 2023 Regular Meeting and the January 9, 2024 Special Meeting.**

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### EXECUTIVE SUMMARY

The purpose of this item is to approve the minutes of the December 19, 2023 regular meeting and the January 9, 2024 special meeting.

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### STAFF RECOMMENDATION

Staff recommends approval of both sets of minutes.

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### ATTACHMENTS

1. Draft Minutes, December 19, 2023
2. Draft Minutes, January 9, 2024

December 19, 2023

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

**Council-Manager Form of Government**

**Regular Meeting – 6:00 PM**

**PROCLAMATIONS AND PRESENTATIONS  
5:00 PM**

**A) PROCLAMATIONS AND PRESENTATIONS**

None scheduled.

**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 (remote and not voting)  
Councilmember Tricia Canonico  
Councilmember Shirley Peel (left the meeting at 7:44 pm)  
Councilmember Kelly Ohlson

**STAFF PRESENT**

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

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

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

- All items on the consent agenda were recommended for approval.
- One minor wording error was corrected in the November 21, 2023 minutes.
- The items on the discussion agenda were reviewed.

**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.)*

Doug Bartlett, Fort Collins resident, agreed the Land Use Code is due for an update and more affordable housing, both for rent and purchase, is needed in Fort Collins but disagreed that stating the proposed regulations related to accessory dwelling units (ADUs) are not appropriate for Fort Collins as many homeowners have purchased homes with the expectation that the existing zoning would ensure that the lots and homes around them would retain their style and density.

Vicki Rossen, Fort Collins resident, requested Council place the Land Use Code on the ballot or repeal it and amend it to exempt existing established residential neighborhoods then place it on the ballot. Stated the divisiveness that has resulted from this process could be avoided by placing the Land Use Code on the ballot.

Ronald Hanser, Fort Collins resident, supported referring the Land Use Code to the ballot stating it will reflect what the voters want. Feels that the Land Use Code is not too complicated for residents to understand, and such far-reaching changes should be voted upon.

Susan Woods, Fort Collins resident, reviewed the history of the Land Use Code Ordinance and indicated the successful citizen petitions are a clear message to Council, stating support for placing the item on the ballot.

Marsha Mulroney, Fort Collins resident, supported placing the item on the ballot and commented on the increased traffic that would result from the changes and on Fort Collins losing its character.

William Dieterich, Fort Collins resident, discussed the fact that both candidates in District 4 were in favor of the new Land Use Code; therefore, those residents were not able to vote for a candidate opposed to the Codem and stated support for putting the item on the ballot.

Tom Griggs, Fort Collins resident, stated how we deal with growth has everything to do with who we are as a community, then questioned what the ultimate response will be to the unquestionable need for affordable housing and ensuring a responsible approach to climate change.

Bill King, Fort Collins resident, stated community members actively sought out petition locations and signers were adamantly opposed to the proposed Land Use Code changes and the impact the changes will have on quality of life. Specifically, concerns were brought up about increased density, increased traffic, environmental damage, a lack of adequate infrastructure, and increasing crime. King expressed support for placing this issue on the ballot.

Christopher Conway, Fort Collins resident and lead for YIMBY ("yes in my back yard") Fort Collins, supported the updated Land Use Code and noted that every pro-housing candidate won the recent Council election.

Katie McMahon, Fort Collins resident, supported the reinstatement of the revised Land Use Code and stated there are not enough viable housing options in Fort Collins.

Vivian Bust, Fort Collins resident, opposed the Land Use Code changes and stated there appears to be undue urgency to implement the revised Code without giving citizens the opportunity to vote. Bust also commented on wildfire danger related to higher density housing.

Michelle Haefele, Fort Collins resident, urged Council to take public input into account and either place the item on the ballot or repeal the proposed Code all together.

Mary Alice Grant, Fort Collins resident, supported placing the item on the ballot. Grant agreed that affordable housing is needed and stated a solution that will result in affordable housing needs to be developed. Additionally, a solution needs to be developed that takes into account the goals of the people who live in or moved to Fort Collins.

Susan Sires, Fort Collins resident, stated she was an active participant in the second petition effort citing extreme proposed revisions. Sires supported placing the item on the ballot.

Adam Eggleston, Fort Collins resident, commended the staff outreach and engagement on the Land Use Code and commented on past major decisions that have benefited the City. Eggleston suggested possibly removing the ADU aspect and adding increased density bonuses for affordable housing before re-adopting the Land Use Code and also encouraged bringing forth phase two of the revisions as soon as possible.

Kate Conley, Fort Collins resident, requested Council reinstate the revised Land Use Code immediately.

Lisa Dunckel Koepke, Fort Collins resident, stated the changes that would result from the updated Land Use Code would adversely affect the community and its inhabitants in terms of overwhelmed infrastructure and possible water and noise issues. Koepke supported placing the item on the ballot.

Larry Grant, Fort Collins resident, supported referring the item to the ballot. Grant expressed support for affordable housing but stated the proposed changes rely too heavily on aspirational language with no specifics and stated citizens have a right of expectation and predictability.

Charles Kopp, Fort Collins resident, supported referring the item to the ballot and stated the Code is not too complicated for the public to decide.

Bill Fairbank, Fort Collins resident, supported referral of the item to the ballot. Fairbank stated the new Code threatens the quality of life in Fort Collins.

Margit Hentschel, Fort Collins resident, stated voting is necessary for peace and democracy. Hentschel discussed comments made by Geoff Wilson, the hearing officer for the protest hearing, and supported placing the item on the ballot.

Peter Connelly, Fort Collins resident, stated it is abundantly clear that the revised Land Use Code is not acceptable to residents. Connelly commented on a recent Travel and Leisure Magazine article honoring Fort Collins as the most peaceful place to live in the United States which cited low noise levels, outdoor spaces, high numbers of bicycle commuters, and parks.

Linda Hall, Fort Collins resident, quoted from the First Amendment and stated the last five minutes of the December 5 Council meeting was a direct assault on those rights.

Stephanie Berganini, Fort Collins resident, supported the amendments related to mobile home park management and livability. Additionally, Berganini supported repealing and readopting the Land Use Code rather than placing it on the ballot and noted all the candidates who support the Land Use Code were elected in the recent Council election.

Jason Knebel, Fort Collins resident, requested Mayor Pro Tem Francis recuse herself from any future votes on the Land Use Code as she is a founding member of the FoCo Forward Coalition which is affiliated with YIMBY Fort Collins. Knebel stated it is not the purpose of the City to provide housing for everyone who wants to live here then commented on the power of recall in the City Charter.

Beth Goodwin, Fort Collins resident, expressed support for increased density and stated the voters have spoken as they voted for candidates who support the new Land Use Code.

Paul Anderson, Fort Collins resident, opposed the Land Use Code updates and stated ADUs should be removed from RL zones.

Barbara Denny, Fort Collins resident, supported referring the item to the ballot. Denny noted collecting signatures for the petition effort and referenced the signers expressing desire to slow density and preserve Fort Collins' current character.

Trudy Haines, Fort Collins resident, stated it is not a small fraction of individuals who want to see this item on the ballot. Haines stated the HOA (homeowners association) coalition represents 8,500 households and approximately 18,000 residents across all Council districts; however, the coalition feels its input continues to be ignored. Further noting the Council election was not a vote for the Land

Use Code as there was only one competitive race where the candidates had a difference of opinion. Haines stated the Code is not too complex to put on the ballot.

Jerry Gavaldon, Fort Collins resident, stated this disagreement could have been avoided if everyone had worked together, stating no one is an expert on the topic and suggesting many have been excluded from the process.

Dawn Cramer, Fort Collins resident, stated many have not felt heard and expressed support for placing the item on the ballot.

Martha Hedrick, Fort Collins resident, stated all petition signers have a right to be heard and stated the item should be placed on the ballot to allow voters to decide.

Tom Farnsworth, Fort Collins resident, stated he collected petition signatures, and the major concern of signers was Old Town. Farnsworth requested Council not allow the Land Use Code to change the character of Old Town and stated the focus should be on development of communities, not redevelopment of existing neighborhoods.

Colleen Hoffman, Fort Collins resident, stated the issue of water limitation is a major concern and has not been fully addressed, requesting the item be placed on the ballot.

Jeff Gantman, Fort Collins resident, expressed support for affordable housing but does not agree with the inclusion of ADUs in single family neighborhoods, and stated Council needs to do a better job of both advocating for more housing and protecting single family neighborhoods. Gantman suggested existing commercial areas with vast areas of surface parking could be rezoned for significant amounts of housing.

Patricia Babbitt, Fort Collins resident, expressed concern about the effects of increased density on urban wildlife and support for placing the item on the ballot.

Nicole Swan, Fort Collins resident, supported the new Land Use Code and stated a small percentage of signatures should not derail the process. Swan stated this change is important and the City needs to plan for changes.

Tyler G., Fort Collins resident, opposed referring the item to the ballot and expressed support for the revised Land Use Code.

Johanna Loury, Fort Collins resident, shared pride in the efforts of Preserve Fort Collins in their successful effort of petition and requested Council focus its efforts to address the need for affordable housing on vacant land available for development.

Tamra Meurer, Fort Collins resident, stated housing prices have never fallen in Fort Collins and expressed support for referring the item to the ballot, stating developers should be held accountable to affordable housing requirements.

Dianna Murphy, Fort Collins resident, asked about the immigration legal fund budget and whether there has been an update on the progress of the program. Murphy asked if Council has considered if the funds could be better allocated to the quality-of-life needs, rental assistance, or other immediate needs of undocumented residents.

William Whitley, Fort Collins resident, spoke in favor of ADUs but was opposed to scraping existing houses to build mansions to line developers' pockets. Whitley supported the placement of the item on the ballot.

Sara Brooks, Fort Collins resident, stated the revised Code will permanently alter the strength of neighborhoods. Brooks requested the placement of the item on the ballot.

Alan Braslau, Fort Collins resident and member of Energy Board, discussed the effects of increasing density with inadequate public transit. Additionally, Braslau stated the proposed Code seeks to reduce the requirements for residential parking which goes against encouraging the ownership of electric vehicles.

Rich Stave, Fort Collins resident, spoke regarding better public accessibility for participating in Council meetings, including questioning why the reserved parking spaces at City Hall indicate they are reserved until 6:00 p.m. when meetings start at 6:00 p.m., also sharing public transit needs to be available for the duration of Council meetings, and expressing the need for a public comment sign up kiosk to be available ahead of a public meeting. Stave also expressed interest in the consolidation of City departments for the interest of the public to see ongoing in a more cohesive manner as well as sharing concerns with Boards and Commissions having ex officio members.

Public comment concluded at 7:20 p.m.

## **H) PUBLIC COMMENT FOLLOW-UP**

Mayor Arndt asked about the next update regarding the immigration legal defense fund. City Manager DiMartino noted the next performance assessment will be in January.

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

None.

## **J) CONSENT CALENDAR**

- 1. Consideration and Approval of the Minutes of the November 21, 2023 Regular Meeting, the November 28, 2023 Adjourned Meeting, and the December 5, 2023 Regular Meeting.**

*The purpose of this item is to approve the minutes of the November 21, 2023 regular meeting, the November 28, 2023 adjourned meeting, and the December 5, 2023 regular meeting.*

***Approved.***

- 2. Second Reading of Ordinance No. 163, 2023, Appropriating Unanticipated Revenue in the Transportation Services Fund for "Work For Others" Program Expenses.**

*This Ordinance, unanimously adopted on First Reading on December 5, 2023, appropriates \$700,000 in unanticipated revenue in the Transportation Services Fund received for work to be completed through the Planning, Development, and Transportation's "Work for Others" program. This appropriation will be used for costs corresponding to the program and the generated revenue.*

***Adopted on Second Reading.***

- 3. Second Reading of Ordinance No. 164, 2023, Appropriating Prior Year Reserves for the Golf Enterprise.**

*This Ordinance, unanimously adopted on First Reading on December 5, 2023, considers an appropriation of \$185,000 from golf reserves to the 2023 budget associated with the additional costs in golf related to higher revenues.*

***Adopted on Second Reading.***

- 4. Second Reading of Ordinance No. 165, 2023, Appropriating Prior Year Reserves and New Philanthropic Revenue Received through City Give for Various Programs and Services as Designated by the Donors.**

*This Ordinance, unanimously adopted on First Reading on December 5, 2023, requests an appropriation of \$11,968.53 in philanthropic revenue received through City Give. These*

*miscellaneous gifts to various City departments support a variety of programs and services and are aligned with both the City's strategic priorities and the respective donors' designation.*

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

***Adopted on Second Reading.***

**5. Second Reading of Ordinance No. 166, 2023, Amending Chapters 18 and 26 of the Code of the City of Fort Collins Regarding Mobile Home Park Management and Livability.**

*This Ordinance, unanimously adopted on First Reading on December 5, 2023, presents Municipal Code updates related to the livability issues identified by residents, property managers, and owners of manufactured housing communities/mobile home parks in our community. This item also addresses analysis of unmet needs in the State of Colorado Mobile Home Park Oversight Program.*

*Staff's recommendation includes the following Code changes:*

- *Expansion of authorization to conduct inspections in mobile home parks to include not only the Building Official, but also Specially Commissioned Officers under the Chief of Police.*
- *Establishment of protection for use and installation of clotheslines by residents in mobile home parks in Section 18-6(g).*
- *Establishment of protection for use and installation of window-mounted air conditioning units or evaporative coolers on homes within mobile home parks in Section 18-6(h).*
- *Establishment of new water utility billing/rebilling transparency requirements for Fort Collins Utility mobile home park water customers including:*
  - *Require as a condition of mobile home park service from the City's water utility that a mobile home park customer directly provide a designated Specially Commissioned Officer, or authorize such Officer to obtain, a copy of a notice, correspondence, invoice, and water leak notice from the water utility within seven days of receipt in Section 18-7(c).*
  - *Require as a condition of mobile home park service from the City's water utility that a mobile home park customer participates in the continuous consumption of water usage/leak notifications system through Fort Collins Utilities in Section 18-7(c).*
  - *Authorize the City's water utility in serving a mobile home park to provide the designated Specially Commissioned Officer a copy of any notice, correspondence, invoice, and water leak notice sent to the mobile home park in Section 18-7(c). Add a cross-reference to these changes to Section 26-97 (water utility lines; general regulations).*
  - *Acknowledge, as a condition of service, the designated Specially Commissioned Officer may exercise the power to audit and collaborate with the City's water utility to verify and maintain accuracy of water rebilling by the mobile home park.*

***Adopted on Second Reading.***

6. **Second Reading of Ordinance No. 167, 2023, Amending Chapters 3 and 17 of the Code of the City of Fort Collins to Update and Align City Code Regarding Alcohol Beverages with State Law Changes and Adding Municipal Code Violations for Certain Alcohol-Related Offenses.**

*This Ordinance, unanimously adopted on First Reading on December 5, 2023, requests approval of the proposed amendments to Chapter 3 (Alcohol Beverages) and Chapter 17 (Miscellaneous Offenses).*

**Adopted on Second Reading.**

7. **Second Reading of Ordinance No. 168, 2023, Amending Article III of Chapter 25 of the Code of City of Fort Collins for the Voter Approved One-Half Cent Sales Tax Rate Increase Effective January 1, 2024.**

*This Ordinance, unanimously adopted on First Reading on December 5, 2023, amends Section 25-75 of City Code to reflect the 0.50% sales and use tax approved by the voters at the City's November 7, 2023, election. The City of Fort Collins tax rate will increase from 3.85% to 4.35% beginning January 1, 2024. The use of the revenue is specifically identified in the ballot measure and, in general, may be used for parks and recreation facilities, environmental sustainability, and for public transit system improvements. The tax will not apply to: (1) items exempt from sales and use tax under the City Code; (2) food for home consumption; and (3) for the use tax only, manufacturing equipment.*

*The Ordinance would also amend Section 25-75 to remove reference to a 0.85% sales and use tax that expired at midnight on December 31, 2020. City staff is recommending this change as a clean-up item to remove extraneous provisions from the City Code*

**Adopted on Second Reading.**

8. **Second Reading of Ordinance No. 169, 2023, Amending Chapter 2, Article III of the Code of the City of Fort Collins to Update Ex-officio Member Provisions for Various Boards and Commissions.**

*This Ordinance, unanimously adopted on First Reading on December 5, 2023, considers an amendment to add an ex-officio seat for the Housing Catalyst to the Affordable Housing Board and to eliminate ex-officio members from the Art in Public Places Board and Water Commission.*

**Adopted on Second Reading.**

9. **Second Reading of Ordinance No. 170, 2023, Authorizing the Conveyance of a Permanent Non-Exclusive Utility Easement on Property Jointly Owned by the City of Fort Collins and the City of Loveland at the Northern Colorado Regional Airport to the Fort Collins-Loveland Water District.**

*This Ordinance, unanimously adopted on First Reading on December 5, 2023, authorizes a permanent non-exclusive utility easement over a portion of the Northern Colorado Regional Airport property to allow for the installation and maintenance of a regional waterline to serve the Fort Collins-Loveland Water District's (the "District") public water system. This project will directly benefit the Airport by providing water infrastructure to areas that currently lack it and service connection points, which have been strategically located to serve future Airport development.*

**Adopted on Second Reading.**

**10. Second Reading of Ordinance No. 171, 2023, Vacating a Portion of Public Right-of-Way Dedicated by the Redwood Village PUD Phase II Plat.**

*This Ordinance, unanimously adopted on First Reading on December 5, 2023, approves the vacation of a portion of public right-of-way that has never been used for street purposes. Once this right-of-way area is vacated, the property will be privately developed as a multifamily housing project, and new public right-of-way will be dedicated to support the housing project and provide public street connections to the adjacent Northfield subdivision.*

***Adopted on Second Reading.***

**11. Second Reading of Ordinance No. 172, 2023, Adopting the 2024 Classified Employee Pay Plan.**

*This Ordinance, unanimously adopted on First Reading on December 5, 2023, recommends the 2024 City Classified Employee Pay Plan. Classified jobs are grouped according to job functions, a business practice commonly used by both the public and private sectors. Pay ranges are developed by career group (management, professional, administrative, operations and trades) and level for each job function. The result of this work is a City Classified Employee Pay Plan (Pay Plan) which sets the minimum, midpoint, and maximum pay ranges for the level within each career group and function. Actual employee pay increases are awarded through a separate administrative process in accordance with the budgeted amount approved by Council.*

***Adopted on Second Reading.***

**12. Second Reading of Ordinance No. 173, 2023, Amending Section 2-606 of the Code of the City of Fort Collins and Setting the Salary of the Chief Judge.**

*This Ordinance, unanimously adopted on First Reading on December 5, 2023, amends City Code to establish the 2024 compensation of the Chief Judge. Council met in executive session on November 28, 2023, to conduct the performance review of Jill Hueser, Chief Judge, and to consider the salary market analysis for this position.*

***Adopted on Second Reading.***

**13. Second Reading of Ordinance No. 174, 2023, Amending Section 2-581 of the Code of the City of Fort Collins and Setting the Salary of the City Attorney.**

*This Ordinance, unanimously adopted on First Reading on December 5, 2023, amends City Code to establish the 2024 compensation of the City Attorney. Council met in executive session on November 28, 2023, to conduct the performance review of Carrie Daggett, City Attorney, and to consider the salary market analysis for this position.*

***Adopted on Second Reading.***

**14. Resolution 2023-112 Approving an Intergovernmental Agreement with Poudre School District and Poudre River Public Library District to Acquire Land and Construct the Southeast Community Center.**

*The purpose of this item is to review the terms of a draft intergovernmental agreement (the IGA) covering land acquisition, constructions, and operation of the Southeast Community Center (SCC).*

*Poudre School District (PSD) intends to convey to the City at no charge a parcel of land adjacent to Fossil Ridge High School as the site for the SCC. This no-charge conveyance is contingent*

upon PSD's full funding of a 15% cost share of the indoor swim lanes construction, operation, and maintenance, includes of the value of the land.

This IGA is a critical first agreement, and throughout 2024 there will be additional agreements drafted and executed:

- *Purchase and Sale Agreement between the City and PSD for the land acquisition (PSA, April 2024), subject to Council approval;*
- *Facility Use Agreement between the City and PSD governing PSD's use of City aquatic facilities (subsequent to November 2024 elections); subject to City Manager approval;*
- *Separate IGA between the City and Poudre River Public Library District (PRPLD) (TBD 2024) governing the Library's property interest, the facility design, cost sharing, and ongoing operations, subject to Council approval.*

*The facility was first conceived as a leisure-swim and maker/creator community space with no lane-swim capacity as part of the April 2015 Community Capital Improvement Plan ballot initiative. Subsequent efforts around community engagement, the 2022 Aquatics Study, and the recently passed 2023 ½-cent sales tax have surfaced an opportunity for an expanded recreation facility combined with a library branch. PSD and PRPLD have been highly collaborative partners with staff in drafting this agreement and working toward the full-featured community center proposed within the IGA.*

**Adopted.**

**15. Resolution 2023-113 Making Appointments to the Cultural Resources Board.**

*The purpose of this item is to fill vacancies on the Cultural Resources Board.*

**Adopted.**

**16. Resolution 2023-114 Making an Appointment to the Parks and Recreation Board.**

*The purpose of this item is to fill a vacancy on the Parks and Recreation Board.*

**Adopted.**

**END OF CONSENT CALENDAR**

**Mayor Pro Tem Francis moved, seconded by Councilmember Peel, to approve the recommended actions on items 1-16 on the Consent Calendar.**

Councilmember Canonico congratulated the City and the School District on partnering to move the Southeast Community Center forward, as per Item No. 14, *Resolution 2023-112 Approving an Intergovernmental Agreement with Poudre School District and Poudre River Public Library District to Acquire Land and Construct the Southeast Community Center.*

**The motion carried 6-0.**

**Not voting: Councilmember Pignataro.**

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

None.

**STAFF REPORTS**

None.

**M) COUNCILMEMBER REPORTS**

None.

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

None.

**O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION****19. Resolution 2023-117 Expressing Gratitude and Appreciation to Shirley Peel for her Service and Contributions to the Community as City Councilmember.**

*The purpose of this item is to recognize the work and contributions of Councilmember Shirley Peel during her time on Council.*

Mayor Arndt read Resolution 2023-117 in its entirety.

**PUBLIC COMMENT**

Adam Eggleston, Fort Collins resident, thanked Councilmember Peel for her service, particularly the numerous listening sessions she held.

Rich Stave, Fort Collins resident, appreciated the community content provided by Councilmember Peel and thanked her for making herself publicly available.

Jerry Gavaldon, Fort Collins resident, complimented Councilmember Peel on the dignity and compassion she brought to her office and stated she set the bar for councilmembers.

Martha Hedrick, Fort Collins resident, commended Councilmember Peel for her ability to listen and actively participate with all participants regardless of whether she supported an issue or not.

Johanna Lowry, Fort Collins resident, thanked Councilmember Peel for offering a compromise on the Land Use Code.

Tom Mulroney, Fort Collins resident, thanked Councilmember Peel for her service.

**COUNCIL DISCUSSION**

Councilmember Ohlson commended Councilmember Peel for serving her district and the community with enthusiasm, determination, and integrity. He commended her preparation and accessibility to constituents.

Councilmember Canonico thanked Councilmember Peel for her service and stated she has been honored to serve with her.

Mayor Arndt stated Councilmember Peel has been an asset to Council and commended her preparedness, work ethic, voice, and integrity.

Councilmember Pignataro thanked Councilmember Peel for being a cohesion builder and commended her ability to disagree without being disagreeable.

Councilmember Gutowsky commended Councilmember Peel on being intellectual, brave, intuitive, tenacious, collaborative, inquisitive, creative, and kind. She stated Councilmember Peel brought a sense of balance to Council and enriched its work.

Mayor Pro Tem Francis commended Councilmember Peel for being a hard worker and on truly listening to people. She stated she is the kindest, warmest, most welcoming human.

**Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, to adopt Resolution 2023-117 Expressing Gratitude and Appreciation to Shirley Peel for her Service and Contributions to the Community as City Councilmember.**

Councilmember Peel thanked her family for their support and expressed appreciation for each member of Council. She stated serving on Council has been the best job and she has loved serving the residents of District 4. She stated she has met with Councilmember-elect Potyondy, and she will continue the work of the district. She expressed appreciation for City staff and stated serving in this role has provided her the opportunity to get to know the community. She stated she is exploring options for a future role allowing her to continue serving the community.

**The motion carried 6-0.**

**Clerk's Note: Mayor Arndt called for a break at 7:44 p.m., noting the meeting would resume at 8:00 p.m. Councilmember Peel did not return to the meeting after the break.**

17. **Reconsideration of Ordinance No. 136, 2023, Repealing and Reenacting Section 20-1 of the Code of the City of Fort Collins to Adopt the Land Development Code and Separately Codifying the 1997 Land Use Code as "2023 Transitional Land Use Regulations," Following a Successful Referendum Petition.**

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

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

First Reading of Ordinance No. 175, 2023, Repealing Ordinance No. 136, 2023, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Revised Land Use Code and Separately Codifying the 1997 Land Use Code as the "Pre-2024 Transitional Land Use Regulations", and Related Ordinance No. 137, 2023, and Ordinance No. 138, 2023.

- *This option includes language repealing the associated Ordinance Nos. 137, 2023, and 138, 2023, that respectively made updates to City Code to align with the revised Land Use Code and renamed the Neighborhood Conservation zone districts to the Old Town zone district in alignment with the revised Land Use Code.*
- *If this option is approved, Council may choose to discuss next steps regarding a revised version of the repealed Land Use Code.*

or

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

Resolution 2023-115 Referring Ordinance No. 136, 2023, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Revised Land Use Code and Separately Codifying the 1997 Land Use Code as the "Pre-2024 Transitional Land Use Regulations" to a Vote of the Registered Electors of the City at the Next Municipal Election.

- *This would refer the Ordinance to the November 4, 2025, Regular Municipal Election or the next special election called for any purpose prior to that date.*

*and, if desired,*

● **OPTION 2A: *Calling a Special Election***

*First Reading of Ordinance No. 176, 2023, Calling a Special Municipal Election for the Purpose of Submitting to the Registered Electors a Citizen Referendum of Ordinance No. 136, 2023, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Revised Land Use Code and Separately Codifying the 1997 Land Use Code as the "Pre-2024 Transitional Land Use Regulations."*

City Clerk Anissa Hollingshead stated the petition was found sufficient and the protest of that finding went before a hearing officer who determined the petition should be certified as sufficient. She stated Council must reconsider the ordinance and either repeal it or refer it to the registered electors. She noted Council does have the ability to call a special election should it so choose specifically for referring this ordinance; however, given there will be three election events in 2024, the windows that are available for holding a special election are limited.

Caryn Champine, Planning, Development, and Transportation Director, discussed the summary of the potential Code revisions that were presented to Council at its December 5 meeting. She detailed three types of regulations that help to achieve the guiding principle goal of providing housing choice in the community and discussed the basic changes to the Code. Additionally, she discussed items that did not change from the 1997 Code, including the review process, the applicability of the types of review processes, environmental and natural resource protection regulations, regulations pertaining to adequate public facilities requirements, and occupancy regulations.

Champine discussed the timeline for bringing forth a revised Code in January and outlined other options available for Council to consider revising different elements of the Land Use Code.

**PUBLIC COMMENT**

Liz Young Winne, Fort Collins resident, stated they are a certified urban planner and supports the revised Land Use Code. Winne opposed sending issue to the ballot and believes the revised code improves housing availability and helps achieve Our Climate Goals.

Peter O'Neill, Fort Collins resident, supported referring the issue to the ballot.

Wayne Brothers, Fort Collins resident and HOA Coalition organizer, stated Council did not follow policy during the development and approval of the Land Use Code stating it is inconsistent with the zoning referenced in the City Plan and supported placing the item on the ballot.

Ross Cunniff, Fort Collins resident and Preserve Fort Collins Chair, stated the community has exercised its right to petition Council on the Land Use Code issue. Cunniff thanked the City Clerk's Office for fairly handling and certifying the petition and thanked the hearing officer for fairly hearing the protest. Cunniff stated a request that any revisions resulting from a repealed Code be placed on the ballot.

Glen Colton, Fort Collins resident and member of numerous Boards and Commissions, supported referring the issue to the ballot or repeal it and exempt existing neighborhoods, stating that most petition signers were upset about rapid growth and change and were opposed to any increase in density. Colton stated rapid growth is not desired by the community.

Joe Rowan, Fort Collins resident, stated citizens vote with their emotions and he does not support referring the item to the ballot. Rowan expressed support for a repeal.

Jim Miles, Fort Collins resident, supported repealing and rescoping the Code, and stated there is a glaring lack of consideration of ancillary costs, water availability, and infrastructure impacts. Miles stated the issue is conflating availability and affordability.

Eric Sutherland, Fort Collins resident, opposed the revised Code and stated he is proud to be a resident witnessing fellow individuals exercising their rights. Sutherland believes that City staff should not be relied upon to revise the Code stating they're not equipped to understand the needs of the community and claimed that they serve the development community.

Edward Serr, Fort Collins resident, stated the Land Use Code promotes a rapid increase in growth and expressed concern about the impacts on infrastructure.

Dianna Murphy, Fort Collins resident, discussed her experience collecting signatures for the petition and shared concerns of residents who signed the petition, including that the risk of losing the historic and future value of the unique identity of Fort Collins is at risk, this action is being fast tracked without explanation, there are discriminatory requirements, and that Council is potentially setting itself up for legal action.

Ryan Walker, Fort Collins resident, opposed sending the issue to voters stating Council has received plenty of input from petition signers. Walker suggested petition signers should be involved in Code revisions and that the decision regarding HOA's and ADUs be a neighborhood-by-neighborhood decision. Also, Walker believes this Code will not meet affordable housing needs, and requests 'teeth' be placed in the repealed code.

Paul Patterson, Fort Collins resident, requested Council honor the request of petitioners to send the item to the ballot as soon as possible.

Kathryn Dubiel, Fort Collins resident, disagreed with a citizen who stated there is not a process to support Council's decision to enact a revised Land Use Code. Dubiel supported referring the measure to voters.

Rich Stave, Fort Collins resident, stated members of the public who do not agree with some of the decisions have been left out. Stave stated the Land Use Code will change the character of HOAs in ways that aren't going to help the residents who live in them.

Don Stepp, Fort Collins resident, thanked staff for their efforts to update the Land Use Code. Stepp stated it is important to do what is best for the entire City, not just the loudest voices.

Simon Cecil, Portland, Oregon resident and Fort Collins native, stated their inability to afford to move to Fort Collins and those who want to move to Fort Collins should have that opportunity. Cecil opposed referring the item to the ballot.

Robin Hutchinson, Fort Collins resident, stated their friends are becoming homeless because there are not enough affordable places to live. Hutchinson stated opponents of the Land Use Code are demonizing those that want to come here.

**Public Comment ended 8:45 p.m.**

#### COUNCIL DISCUSSION

Councilmember Gutowsky stated support for staff and their efforts, stating they are bright and dedicated professionals who will be part of the solution.

Mayor Pro Tem Francis asked if staff has reached out to Preserve Fort Collins. Champine replied in the affirmative noting all meetings and events have been open to the public. She stated most of the input was reflected in the list provided today and the major theme of the feedback was around additional housing choices in single-family zone districts. There were also concerns about the development review process and the involvement of neighborhoods in public hearings.

Mayor Pro Tem Francis suggested Council could examine the most contentious points at a work session and send those comments to the Planning and Zoning Commission followed by another examination by Council.

Mayor Arndt commented on the Council election and discussed the value of the new Council being presented with new options. She supported repeal and reexamination under the new Council.

Councilmember Ohlson supported referring the item to the voters. He stated opposition to the new Code because the rules of neighborhoods should not be changed for those that bought into a certain neighborhood type. Additionally, he stated it is not easy to circulate a petition and it requires incredible organization and dedication.

Councilmember Canonico noted there are many aspects of the Code that are agreeable to all. She asked what would occur should a referred Land Use Code ordinance be voted down. City Attorney Daggett replied that Council would not be limited in its future actions and there would be room for Council, from a legal standpoint, to continue working toward a Land Use Code supported by Council.

Councilmember Canonico asked if any future changes to the Land Use Code would also have to go to the ballot if it is adopted by a referred measure. City Attorney Daggett replied the Charter distinguishes between initiated measures and referred measures. With respect to initiated measures, the Council would not be able to make changes in the future without going back to voters for approval. With respect to referred measures, Council can make changes after voters have voted on the item, and that would be the case in this instance.

Councilmember Gutowsky supported placing the item on the ballot whether it is repealed and revised or not.

Mayor Pro Tem Francis stated she is more comfortable with Council revisiting the item because Land Use Codes are always changing.

Councilmember Gutowsky noted she did not support the updated Code because it did not include parking and developer requirements for affordable housing.

***Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, to adopt Ordinance No. 175, 2023, Repealing Ordinance No. 136, 2023, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Revised Land Use Code and Separately Codifying the 1997 Land Use Code as the “Pre-2024 Transitional Land Use Regulations”, and Related Ordinances No. 137, 2023 and No. 138, 2023, on First Reading.***

Mayor Arndt noted the Land Use Code is a living document that will make the City great in the future. She stated there are many agreeable parts of the new Code and the discussion on the more contentious parts can continue.

Councilmember Ohlson stated the number of people who signed the petition is quite large and stated he would prefer to see what the full electorate feels.

***The motion carried 3-2, (Nays: Ohlson, Gutowsky).***

***Ayes: Mayor Arndt, Mayor Pro Tem Francis, Councilmember Canonico.***

***Nays: Councilmembers Ohlson and Gutowsky.***

***Absent: Councilmember Peel.***

***Not voting: Councilmember Pignataro.***

18. **Resolution 2023-116 Authorizing the Execution of an Intergovernmental Agreement Between the City of Fort Collins, the City of Loveland, and the Federal Aviation Administration for Continued Federal Funding of Air Traffic Control Services at the Northern Colorado Regional Airport.**

*The purpose of this item is to authorize the City Manager to execute an agreement with the City of Loveland and the Federal Aviation Administration (FAA) for the Northern Colorado Regional Airport (Airport) to enter the FAA Contract Tower (FCT) Program. The FCT Program will result in the Airport continuing to receive federally funded Air Traffic Control services (ATC Services). ATC Services are currently funded through FAA's Next Gen office as part of the Remote Tower Project. However, that funding will be ending December 31, 2023, and entering the FCT Program will provide a continuation of ATC Services paid for by FAA. Acceptance in the Contract Tower Program ensures ATC Services for a period of 60 months while a permanent facility is constructed.*

*By executing this agreement, the Cities will be committing to take steps toward the design and construction of a brick-and-mortar tower along certain milestones set by the FAA. This agreement does not prohibit the Airport from continuing to pursue in parallel a remote tower project. Despite the Cities' commitment under the agreement, the Cities will be able to terminate the agreement on 90 days written notice with or without cause, and any financial commitment by the Cities is subject to appropriation by their respective City Councils.*

Francis Robbins, Operations and Maintenance Manager for the Northern Colorado Regional Airport, discussed the airport's air traffic control solution that was established in March 2020 as part of the remote tower pilot program. Robbins noted the funding for the remote tower pilot program ends at the end of the calendar year and the agreement presented by the FAA allows for funding of the air traffic controllers to continue directly from the FAA in the federal contract tower program. Robbin stated the agreement also includes a site evaluation for a permanent control facility and requires certain services to be provided by the airport or the FAA.

#### PUBLIC COMMENT

None.

#### COUNCIL DISCUSSION

Mayor Arndt stated there is no financial commitment from either of the Cities at this point, however there is a commitment to move forward on the design and construction of the tower. This commitment could be cancelled with 90-days' notice. Robbins concurred and stated capital projects are subject to Council appropriations so additional notice would be provided with future agreements.

***Mayor Pro Tem Francis moved, seconded by Councilmember Gutowsky, to adopt Resolution 2023-116 Authorizing the Execution of an Intergovernmental Agreement Between the City of Fort Collins, the City of Loveland, and the Federal Aviation Administration for Continued Federal Funding of Air Traffic Control Services at the Northern Colorado Regional Airport.***

***The motion carried 5-0.  
Absent: Councilmember Peel.  
Not voting: Councilmember Pignataro.***

**P) OTHER BUSINESS**

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

None.

- OB 2. **Consideration of motion to call a special meeting for the Council Organizational Meeting.**

***Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, to call a special meeting for the purpose of the Council Organizational Meeting, which will include swearing in of those elected at the November 2023 municipal election and selection of a Mayor Pro Tem.***

***The motion carried 5-0.  
Absent: Councilmember Peel.  
Not voting: Councilmember Pignataro.***

- OB 3. **Consideration of a motion to go into executive session.**

This motion is to consider going into executive session to conduct the annual evaluation of the City Manager.

"I move that the City Council go into executive session, as permitted under Article Two, Section Eleven of the City Charter, Section 2-31(a)(1) of the City Code and Colorado Revised Statutes Section 24-6-402(4)(f)(roman numeral one), for the purpose of conducting annual performance review of City Manager."

**City Manager:** 75 minutes

**Note:** Time is approximate with breaks, as necessary.

Councilmember Pignataro indicated she would not be joining the executive session and wished everyone happy holidays.

***Mayor Pro Tem Francis moved, seconded by Councilmember Gutowsky, that the City Council go into executive session, as permitted under Article II, Section 11 of the City Charter, Section 2-31(a)(1) of the City Code and Colorado Revised Statutes Section 24-6-402(4)(f)(I), to go into executive session for the purpose of conducting the annual performance review of the City Manager.***

***The motion carried 5-0.  
Absent: Councilmember Peel.  
Not voting: Councilmember Pignataro.***

The Council met in executive session beginning at 9:26 p.m. with a recording made. Present were:

- Mayor Jeni Arndt
- Mayor Pro Tem Emily Francis
- Councilmember Susan Gutowsky

- Councilmember Tricia Canonico
- Councilmember Kelly Ohlson
- City Manager Kelly DiMartino
- Jennifer Volmer, Investigations Law Group
- Anne Rooney McCord, Investigations Law Group

City Manager Kelly DiMartino entered the executive session at 9:36 p.m. Volmer, McCord and DiMartino left the executive session at 10:38 p.m. and Human Resources Executive Teresa Roche entered.

The executive session concluded at 10:48 p.m. and Council returned to the open meeting in Council Chambers.

#### **Q) ADJOURNMENT**

There being no further business before the Council, the meeting was adjourned at 10:50 p.m.

\_\_\_\_\_  
Mayor

ATTEST:

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

January 9, 2024

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

**Council-Manager Form of Government**

**Special Council Organizational Meeting – 6:00 PM**

**Prior to the meeting being called to order, City Manager Kelly DiMartino read the City of Fort Collins Land Acknowledgement.**

**A) CALL MEETING TO ORDER**

Mayor Jeni Arndt called the special organizational meeting to order at 6:02 p.m. in the City Council Chambers at 300 Laporte Avenue, Fort Collins, Colorado, with hybrid participation available via the City's Zoom platform.

**B) PLEDGE OF ALLEGIANCE**

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

**C) ROLL CALL**

**PRESENT**

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

**ABSENT**

Councilmember Shirley Peel

**STAFF PRESENT**

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

**D) CONSIDERATION OF ITEMS IDENTIFIED IN THE CALL OF SPECIAL MEETING**

**1. Oaths of Office.**

*The purpose of this item is the administration of the Oaths of Office to the newly elected Mayor and Councilmembers for Districts 2, 4 and 6.*

City Clerk Anissa Hollingshead administered the Oaths of Office to the newly elected Mayor and City Councilmembers:

- Mayor Jeni Arndt,
- District 6 Councilmember Emily Francis,
- District 2 Councilmember Julie Pignataro, and
- District 4 Councilmember Melanie Potyondy.

Following taking the Oath of Office, District 4 Councilmember Melanie Potyondy was seated at the dais to begin her service on the City Council.

## 2. **Council Consideration of Motion to Elect a Mayor Pro Tem.**

*The purpose of this item is to consider a motion to elect a Mayor Pro Tem.*

Mayor Arndt introduced the item and reviewed the responsibilities of the Mayor Pro Tem, as well as the recommended process for electing the Mayor Pro Tem, to include:

- a. Accept input from the public.
- b. Individual Councilmembers may announce their interest in the position.
- c. I will request a motion to elect a candidate.
- d. If motion is seconded, Council will move forward with discussion and a vote.
- e. Process continues until a candidate gets four votes.

There being no objections to the proposed process, Mayor Arndt asked if any members of the public would like to speak on this item. There was no public comment.

Mayor Arndt asked if any Councilmembers were interested in the position of Mayor Pro Tem.

District 6 Councilmember Emily Francis indicated her interest in serving again in the position.

No other members of Council indicated interest in serving in the position, so Mayor Arndt asked for a motion to elect a candidate.

***Councilmember Tricia Canonico moved, seconded by Councilmember Julie Pignataro, to elect Emily Francis to the office of Mayor Pro Tem.***

Councilmember Pignataro offered thanks to Councilmember Francis for her service as Mayor Pro Tem over the prior two years and noted her ability to both listen and work together with others.

Mayor Arndt shared in serving together over the past two years, Councilmember Francis has been a stalwart partner as Mayor Pro Tem, serving with alacrity and capability.

Councilmember Canonico stated Councilmember Francis has done an incredible job of representing the entire Council to City leadership, including consistently bringing ideas from other Councilmembers forward, and she looks forward to having her continue in that role.

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

## G) **ADJOURNMENT**

There being no further business before the Council, the meeting was adjourned at 6:14 p.m.

\_\_\_\_\_  
Mayor

ATTEST:

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

January 16, 2024

## AGENDA ITEM SUMMARY

City Council



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### STAFF

Marc Virata, Civil Engineer  
Dana Hornkohl, Capital Projects Manager  
Monica Martinez, Financial Planning & Analysis Manager

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### SUBJECT

**First Reading of Ordinance No. 001, 2024, Appropriating Prior Year Reserves in the Transportation Capital Expansion Fee Fund for Eligible Reimbursement to the Waterfield Fourth Filing Developer for Construction of Suniga Road, Vine Drive, and Merganser Street Improvements as Part of Waterfield Fourth Filing Phases 1 through 4; and for the Dedication of Suniga Road Right-of-Way.**

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### EXECUTIVE SUMMARY

The purpose of this item is to appropriate \$1,413,645 of Transportation Capital Expansion Fee (TCEF) Funds for expenditure from the Transportation Capital Expansion Fee Program Budget to reimburse the Waterfield Fourth Filing developer, DFC Waterfield, LLC (Developer), for its oversizing construction of Suniga Road, Vine Drive, and Merganser Drive. As part of Phases 1 through 4 of the Waterfield Fourth Filing, the Developer has constructed Suniga Road as a four-lane arterial, Vine Drive as a collector, and Merganser Drive to City standards as part of its development requirements. Per Section 24-112 of the City Code, the Developer is eligible for reimbursement from TCEF funds for the oversized, non-local portion of Suniga Road, Vine Drive, and Merganser Drive not attributed to the local portion obligation. Additionally, the Developer has dedicated Suniga Road right-of-way as a four-lane arterial from its western boundary to Timberline Road and is also eligible for reimbursement from TCEF funds for the oversized, non-local portion of Suniga Road right-of-way.

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### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

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### BACKGROUND / DISCUSSION

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

This reimbursement is for the Developer's construction above the local street access standards of Suniga Road, Vine Drive, and Merganser Drive as part of Waterfield Fourth Filing Phases 1 through 4. Suniga Road was built by the Developer as a four-lane arterial street including the completion of construction of

the median landscape and irrigation installation for the center median. Vine Drive was built by the developer as a collector street and Merganser Drive was realigned from its original curved alignment to a north-south street.

This reimbursement also includes the dedication of Suniga Road right-of-way beyond the local access standard width for the overall development from Waterfield Fourth Filing's western boundary to Timberline Road. The Developer dedicated Suniga Road right-of-way totaling approximately 295,000 square feet, with 56% of that amount attributable to oversizing beyond local access standard, and the remaining 44% attributable to local access requirements. Reimbursement for Suniga Road right-of-way accounts for the 56%/44% split between the City and Developer, with a land cost of \$2.32/square foot. This right-of-way includes the remaining portion of Suniga to be built to Timberline Road in a future phase.

Staff has reviewed the documentation provided by the Waterfield Fourth Filing developer and agrees that the requested reimbursement meets the requirements under City Code Section 24-112 for appropriation from TCEF funds. There is no metro district for Waterfield in which the developer may also seek reimbursement. Council consented to the dissolution of Waterfield Metropolitan Districts Nos. 1-3 by adopting Resolution 2021-086 on September 21, 2021. The Larimer County District Court approved the dissolution of the Waterfield Metropolitan Districts Nos. 1-3 on November 8, 2021.

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

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

### **CITY FINANCIAL IMPACTS**

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This item appropriates \$1,413,645 of TCEF Funds into the Transportation Capital Expansion Fee Program Budget for reimbursement to the Waterfield Fourth Filing developer.

### **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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Council Finance Committee recommended approval at its December 14, 2023, meeting.

### **PUBLIC OUTREACH**

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

### **ATTACHMENTS**

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1. Ordinance for Consideration
2. Waterfield Fourth Filing Phases 1 through 4 – TCEF Cost Allocation

ORDINANCE NO. 001, 2024  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
APPROPRIATING PRIOR YEAR RESERVES IN THE  
TRANSPORTATION CAPITAL EXPANSION FEE FUND FOR  
ELIGIBLE REIMBURSEMENT TO THE WATERFIELD FOURTH  
FILING DEVELOPER FOR CONSTRUCTION OF SUNIGA ROAD,  
VINE DRIVE, AND MERGANSER STREET IMPROVEMENTS AS  
PART OF WATERFIELD FOURTH FILING PHASES 1 THROUGH 4;  
AND FOR THE DEDICATION OF SUNIGA ROAD RIGHT-OF-WAY

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

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

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

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

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

F. DFC Waterfield, LLC is the developer of the Waterfield Fourth Filing development (“Developer”) and as part of that development, has constructed portions of Suniga Road as a four-lane arterial street, Vine Drive as a collector street, realigned Merganser Drive from a curved alignment to a north-south orientation, and has dedicated right-of-way for Suniga Road beyond local access standards to facilitate the future construction of Suniga Road to Timberline Road (collectively, “Road Improvements”).

G. The Developer has submitted its request to the City for a reimbursement of \$1,413,645 representing its costs for the oversized portions of the Road Improvements (the “Reimbursement Request”).

H. The City Engineer has reviewed the Reimbursement Request and determined it meets the requirements of Division 2 and that the Developer is eligible to

be reimbursed for the amount requested in its Reimbursement Request, but City Code Section 24-112(c) provides that all reimbursements under Division 2 must first be appropriated from the TCEF fund by City Council.

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

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

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

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

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that there is hereby appropriated from prior year reserves in the Transportation Capital Expansion Fee Fund the sum of ONE MILLION FOUR HUNDRED THIRTEEN THOUSAND SIX HUNDRED FORTY-FIVE DOLLARS (\$1,413,645) to be expended in the Transportation Capital Expansion Fee Fund for eligible reimbursement of the Developer for construction of Suniga Road, Vine Drive, and Merganser Street improvements and for the dedication of right-of-way for Suniga Road beyond local access standards.

Introduced, considered favorably on first reading on January 16, 2024, and approved on second reading for final passage on February 6, 2024.

\_\_\_\_\_  
Mayor

ATTEST:

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

Effective Date: February 16, 2024  
Approving Attorney: Ryan Malarky

Waterfield 4th Phases 1-4 TCEF Reimbursement Summary of Costs

Suniga - Merganser - Vine  
1/2/2024

Line Item		Description	Total Costs	TCEF		Developer		Comments
				Quantity	Cost	Quantity	Cost	
1		Hard Costs	\$1,880,509	53%	\$1,006,071	47%	\$874,438	Crow Creek
2		Design Costs & CA	\$19,089	46%	\$8,750	54%	\$10,339	Northern Engineering
3 *		Construction Manage/Development Fee	\$33,110	53%	\$17,548	47%	\$15,562	Post Modern
4		ROW Land Cost @ \$2.32/sf (295.3K total sq. ft., 56% TCEF/44% Developer)	\$685,105	56%	\$381,276	44%	\$303,829	Developer and City Engineering/ City Real Estate confirmed \$
Total:			\$2,617,813		\$1,413,645		\$1,204,168	

\*Line Item 3 total costs based on the overall construction cost for all of Phases 1-4 to be \$10,660,264 (\$11,789,264 per the contract with Crow Creek, subtracting \$1,126,000 for pumphouse, structures, and equipment located in Phases 5-8). The ratio of the street hard costs of \$1.88M to the overall \$10.66M established a 18% attributable to the total CM fee of \$187,751, or \$33,110.



7251 W. 20th St., Bldg. L, Suite 101B  
Greeley, Colorado 80634  
Phone: (970) 330-5070  
Fax: (970) 330-6044

Waterfield Subdivision  
Fort Collins, Colorado  
357 Single Family Lots; 140 MF Units

### CITY REIMBURSEMENT

To: Post Modern Development  
Attention: JD Padilla  
970.407.7808  
[jd@postmoderndevelopment.com](mailto:jd@postmoderndevelopment.com)

From: Joe Schumacher (cell) 970.397.9880  
Justin Marshall (cell) 970.397.9875  
John Hart (cell) 970.301.0416

Estimate Date: September 14, 2023

Plans Dated: February 6th, 2020 Northern Engineering

#### Crow Creek Construction, LLC:

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Attest: \_\_\_\_\_  
Date: \_\_\_\_\_

#### Accepted:

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Attest: \_\_\_\_\_  
Date: \_\_\_\_\_

EAST VINE DR	UNIT	QUANTITY	UNIT COST	TOTAL	City Responsibility	Post Modern Responsibility
Surveying	LS	1.0	\$9,746.00	\$9,746.00	\$4,873.00	\$4,873.00
Signs & Striping	LS	1.0	\$11,784.00	\$11,784.00	\$5,892.00	\$5,892.00
Traffic Control	DAYS	25.0	\$456.00	\$11,400.00	\$5,700.00	\$5,700.00
Landscaping/ Irrigation	LS	1.0	\$47,255.00	\$47,255.00	\$0.00	\$47,255.00
Earthwork Mobilization	LS	1.0	\$4,500.00	\$4,500.00	\$2,250.00	\$2,250.00
Onsite Cut To Fill	CY	1,085.0	\$3.10	\$3,363.50	\$1,681.75	\$1,681.75
Import Dirt	CY	4,312.0	\$6.65	\$28,674.80	\$14,337.40	\$14,337.40
Place Import Material	CY	4,312.0	\$2.48	\$10,693.76	\$5,346.88	\$5,346.88
30" Vertical Curb - Post Modern	LF	928.0	\$27.32	\$25,352.96	\$0.00	\$25,352.96
5' Sidewalk	LF	915.0	\$30.39	\$27,806.85	\$0.00	\$27,806.85
Concrete Prep	LS	1.0	\$7,973.97	\$7,973.97	\$0.00	\$7,973.97
Paving Local 4"/6" ABC (50% City, 50% PMD)	SY	3,145.0	\$34.22	\$107,621.90	\$53,810.95	\$53,810.95
Asphalt Mob	EA	1.0	\$2,070.00	\$2,070.00	\$1,035.00	\$1,035.00
Asphalt Subgrade Prep	SY	4,556.0	\$2.95	\$13,440.20	\$6,720.10	\$6,720.10
MERGENSER DR.	UNIT	QUANTITY	UNIT COST			
Surveying	LS	1.0	\$4,966.00	\$4,966.00	\$1,415.31	\$3,550.69
Signs	LS	1.0	\$1,000.00	\$1,000.00	\$285.00	\$715.00
Traffic Control	DAYS	15.0	\$456.00	\$6,840.00	\$1,949.40	\$4,890.60
Asphalt Curb and Gutter Demo	LS	1.0	\$47,493.00	\$47,493.00	\$13,535.51	\$33,957.50
Landscaping/ Irrigation	LS	1.0	\$19,560.00	\$19,560.00	\$0.00	\$19,560.00
Strip site 4" Stockpile	CY	450.0	\$2.16	\$972.00	\$277.02	\$694.98

Item 2.

On	CY	725.0	\$3.10	\$2,247.50	\$640.54	\$1,606.96
Import Dirt	CY	150.0	\$6.65	\$997.50	\$284.29	\$713.21
Place Import Material	CY	150.0	\$2.48	\$372.00	\$106.02	\$265.98
30" Vertical Curb	LF	406.0	\$27.32	\$11,091.92	\$0.00	\$11,091.92
4.5' Sidewalk	LF	406.0	\$27.14	\$11,018.84	\$0.00	\$11,018.84
Cross Pan	SY	12.0	\$74.93	\$899.16	\$256.26	\$642.90
Paving Local 4"/6" ABC (28.5% City, 71.5% PMD)	SY	1,072.0	\$34.22	\$36,683.84	\$10,454.89	\$26,228.95
Fly Ash 12" Depth	SY	1,230.0	\$9.74	\$11,980.20	\$3,414.36	\$8,565.84
Asphalt Mob	EA	1.0	\$2,070.00	\$2,070.00	\$589.95	\$1,480.05
Additional Base For Under Curbs	SY	160.0	\$8.56	\$1,369.60	\$0.00	\$1,369.60
Adjust Manholes	EA	3.0	\$649.00	\$1,947.00	\$554.90	\$1,392.11
Adjust Water Valves	EA	3.0	\$413.00	\$1,239.00	\$353.12	\$885.89
Asphalt Subgrade Prep	SY	1,072.0	\$2.95	\$3,162.40	\$901.28	\$2,261.12
SUNIGA ROAD		UNIT	QUANTITY	UNIT COST		
Surveying	LS	1.0	\$17,428.00	\$17,428.00	\$7,319.76	\$10,108.24
Signs & Striping	LS	1.0	\$20,673.00	\$20,673.00	\$8,682.66	\$11,990.34
15" RCP Class III	LF	35.0	\$46.09	\$1,613.15	\$1,613.15	\$0.00
Landscaping/ Irrigation	LS	1.0	\$282,722.00	\$282,722.00	\$226,177.60	\$56,544.40
Strip site 4" Stockpile	CY	2,250.0	\$2.16	\$4,860.00	\$2,041.20	\$2,818.80
Onsite Cut To Fill	CY	1,650.0	\$3.10	\$5,115.00	\$2,148.30	\$2,966.70
Import Dirt	CY	7,450.0	\$6.65	\$49,542.50	\$20,807.85	\$28,734.65
Place Import Material	CY	7,450.0	\$2.48	\$18,476.00	\$7,759.92	\$10,716.08
30" Vertical Curb	LF	2,574.0	\$27.32	\$70,321.68	\$0.00	\$70,321.68
18" Double Curb and Gutter	LF	2,662.0	\$80.24	\$213,598.88	\$213,598.88	\$0.00
Additional Prep for 3.5' Bike Buffer	LF	1,975.0	\$9.76	\$19,276.00	\$19,276.00	\$0.00
3.5' Bike Buffer - Broom Finish - Silversmoke Carbon	LF	1,975.0	\$22.38	\$44,200.50	\$44,200.50	\$0.00
6' Bike Lane - Silversmoke Carbon	LF	1,958.0	\$63.98	\$125,272.84	\$125,272.84	\$0.00
6' Sidewalk	LF	2,006.0	\$36.47	\$73,158.82	\$0.00	\$73,158.82
Inlet Tie In	EA	2.0	\$1,534.00	\$3,068.00	\$0.00	\$3,068.00
Concrete Prep	LS	1.0	\$82,334.51	\$82,334.51	\$34,580.49	\$47,754.01
Paving Local 4"/6" ABC (42% City, 58% PMD)	SY	7,002.0	\$34.22	\$239,608.44	\$100,635.54	\$138,972.90
Asphalt Mob	EA	1.0	\$2,070.00	\$2,070.00	\$869.40	\$1,200.60
Fly Ash 12" Depth	SY	8,605.0	\$9.74	\$83,812.70	\$35,201.33	\$48,611.37
Additional Base For Under Curbs	SY	1,603.0	\$8.56	\$13,721.68	\$5,763.11	\$7,958.57
Adjust Manholes	EA	8.0	\$649.00	\$5,192.00	\$2,180.64	\$3,011.36
Adjust Water Valves	EA	15.0	\$413.00	\$6,195.00	\$2,601.90	\$3,593.10
Asphalt Subgrade Prep	SY	7,002.0	\$2.95	\$20,655.90	\$8,675.48	\$11,980.42
Subtotal:				\$1,880,509.50	\$1,006,071.47	\$874,438.03

EAST VINE DR		UNIT	QUANTITY	UNIT COST	TOTAL
Paving Local - 4" Asphalt	SY	3,145.0	\$23.72	\$74,599.40	
Paving Local - 6" ABC	SY	3,145.0	\$10.50	\$33,022.50	
MERGENSER DR.		UNIT	QUANTITY	UNIT COST	TOTAL
Paving Local - 4" Asphalt	SY	1,072.0	\$23.72	\$25,427.84	
Paving Local - 6" ABC	SY	1,072.0	\$10.50	\$11,256.00	
SUNIGA ROAD		UNIT	QUANTITY	UNIT COST	TOTAL
Paving Local - 4" Asphalt	SY	7,002.0	\$23.72	\$166,087.44	
Paving Local - 6" ABC	SY	7,002.0	\$10.50	\$73,521.00	

# SOUTHERN EXPOSURE

landscape management, inc.

November 9, 2023

Crow Creek Construction, LLC  
c/o Blake Bell  
7251 West 20<sup>th</sup> Street, L-101B  
Greeley, CO

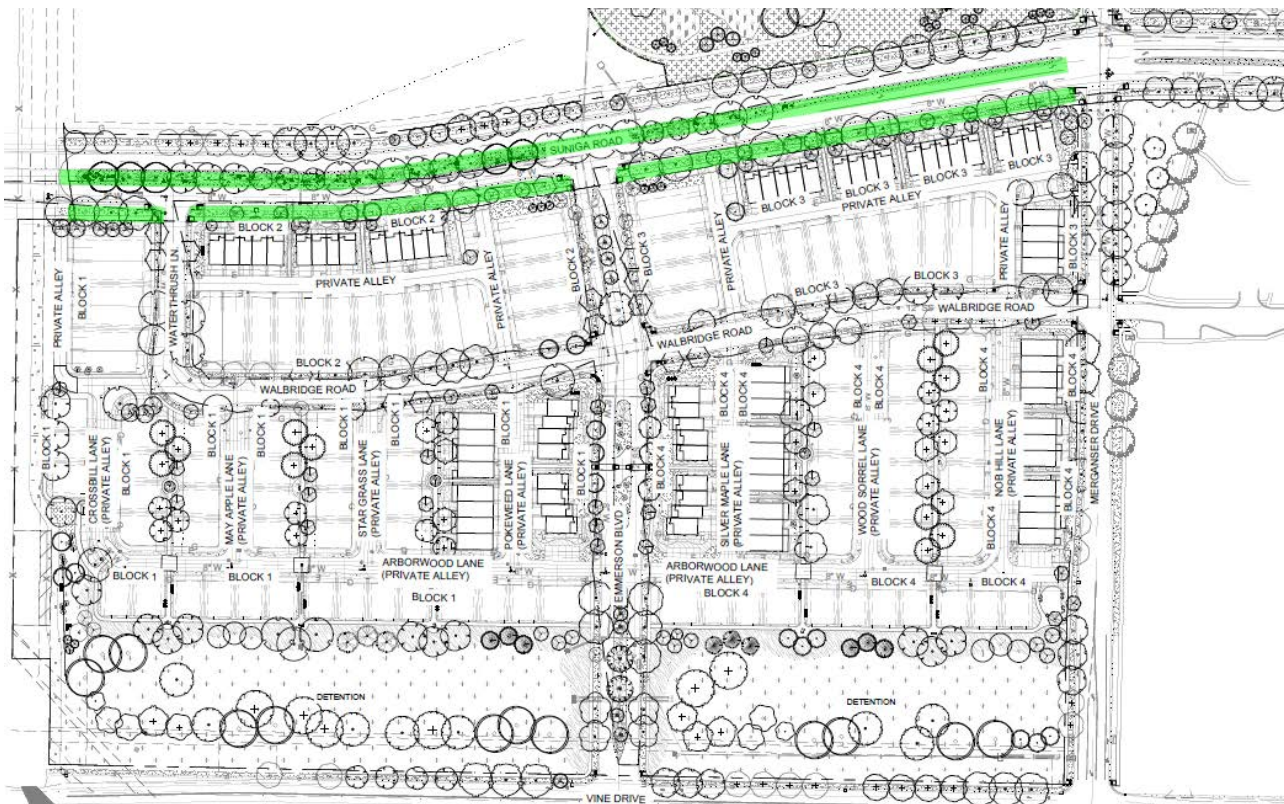
The following is a breakdown of Landscape and Irrigation costs for Suniga Dr., separating City vs. Developer.

- Developer cost is attributable to all the trees in the south parkways between the Suniga Road and Suniga sidewalk, and 6.5 feet of width of the south parkway sod landscaping between the Suniga Road and Suniga sidewalks
- City cost is attributable to the remaining 3 feet of width of the south parkway landscaping between the Suniga Road and Suniga sidewalks (not of the parkway trees), and the City cost is attributable to all of the landscaping and irrigation in the Suniga Road median

Suniga Dr - Southside and Median Island

City Portion \$217,524.00

Developer Portion \$65,198.00



Work included is only that which is completed in Sept 2023.

Regards,

Russell A Hoff, GM  
Southern Exposure Landscape Management, Inc.

November 15, 2023  
JD Padilla  
Post Modern Development  
144 N. Mason St Unit 4  
Fort Collins, CO 80524

**RE: WATERFIELD 4<sup>TH</sup> FILING – TCEF ENGINEERING FEES**

Dear JD,

Based on the overall original contract between Thrive and Northern Engineering, Post Modern Development is eligible for soft costs repayment through the TCEFF program. Soft costs include preliminary design, final design, and construction assistance. Therefore, Post Modern should be eligible for \$8,603 reimbursement from the City of Fort Collins for the soft costs associated with a portion of the design of Suniga Road, Vine Dive, and Merganser Drive.

Sincerely,  
**NORTHERN ENGINEERING SERVICES, INC.**



**Blaine Mathisen, PE**  
Project Manager

Attachment 1: Waterfield 4<sup>th</sup> Filing Soft Cost Breakdown

Attachment 2: ROW Reimbursement Exhibit

cc: Jeff Jensen, Jensen Laplante Development



### Attachement 1: Waterfield 4th Filing Soft Cost Breakdown

Total Budget (Preliminary, Final, Construction Admin)	\$319,407.00
Budget for All Road Designs (Roughly 31% of Total Budget)	\$99,016.17
Total LF of All Roads	27,310

Street	LF	% of Overall Road Design	Total Cost	Total Cost Paid By Developer	Total Cost Paid By City
Suniga	2,605	9.54%	\$9,445	\$4,439	\$5,384
Merganser	465	1.70%	\$1,686	\$1,366	\$320
Vine	2,050	7.51%	\$7,433	\$4,534	\$2,899
			<b>\$18,563</b>	<b>\$10,339</b>	<b>\$8,603</b>

#### Notes:

1. Percentages in Total Cost By Developer Vs City comes from TCEF exhibit.
2. 57% cost paid by City for Suniga
3. 19% cost paid by City for Merganser
4. 33% cost paid by City for Vine



## Statement of Services

INVOICE #03-2216

4/4/2023

From: Post Modern Development, LLC  
 144 N. Mason Street Unit #4  
 Fort Collins, CO 80524

To: DFC Waterfield, LLC  
 14701 Philips Highway, Suite 300  
 Jacksonville, Florida 32256

Project: Waterfield Subdivision - Phase 1-4  
 Fort Collins, CO

Item	Services	Description	QTY	Unit	Amount
1	Development Management	Development Management Fee Phase 1-4	1	LS	\$187,751
2	Reimbursements				
Total Amount Due:					\$187,751

**PAID**

 A large, red, outlined stamp with the word 'PAID' in all caps. Overlaid on the stamp is a handwritten signature in blue ink, which appears to be 'J. [unclear]'.

## REQUEST FOR PAYMENT

From: Crow Creek Construction LLC  
7251 West 20th Street, L 101B  
Greeley, CO 80634

To: Post Modern Development  
144 N. Mason St, Suite 44  
Fort Collins, CO 80524

Invoice: 6012024203081  
Draw: 21-02610041  
Invoice date: 11/30/2023  
Period ending date: 11/30/2023

Contract For:

## Request for payment:

Original contract amount \$12,826,735.24  
Approved changes -\$1,037,470.64

**Revised contract amount \$11,789,264.60**

Project: 21-026  
Waterfield Phases 1-4

Contract completed to date \$11,641,782.24

Contract date:

Add-ons to date \$0.00  
Taxes to date \$0.00  
Less retainage \$0.00

Architect:

Total completed less retainage \$11,641,782.24

Scope:

Less previous requests \$11,640,632.24

Current request for payment \$1,150.00

Current billing \$1,150.00

Current additional charges \$0.00

Current tax \$0.00

Less current retainage \$0.00

Current amount due **\$1,150.00**

Remaining contract to bill \$147,482.36 **cost code 30.01 Phase 1-4**

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Changes approved in previous months by Owner	1,672,490.98	-2,709,961.62
Total approved this Month		
<b>TOTALS</b>	<b>1,672,490.98</b>	<b>-2,709,961.62</b>
<b>NET CHANGES by Change Order</b>		<b>-1,037,470.64</b>

I hereby certify that the work performed and the materials supplied to date, as shown on the above represent the actual value of the accomplishment under the terms of the Contract (and all authorized changes thereof) between the undersigned and the Post Modern Development relating to the above referenced project. I also certify that the contractor has paid all amounts previously billed and paid by the owner.

CONTRACTOR: Crow Creek Construction LLC

State Of CO

County Of LARIMER

By: [Signature]

Subscribed and sworn to before me this 5th day of Dec, 2023

Date: 12-5-23

Notary Public Kim Monahan

My commission expires: 6/28/2026

**KIM MONAHAN**  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 19944010571  
MY COMMISSION EXPIRES 06/28/2026

## REQUEST FOR PAYMENT DETAIL

Project: 21-026 / Waterfield Phases 1-4

Invoice: 6012024203042

Draw: 21-02610037

Period Ending Date: 10/10/2023 Detail Page 6 of 7 Pages

Item ID	Description	Unit of Measure	CONTRACTED			CURRENT		TOTAL TO DATE		Units to Finish
			Bid Quantity	Unit Price	Amount	Quantity	Amount	Quantity	Amount	
133	Cross Pan	SY	161.00	74.93	12,063.73			161.00	12,063.73	
134	Square Radii with Spandrel	EA	12.00	2,891.00	34,692.00			12.00	34,692.00	
135	Radius	EA	10.00	1,416.00	14,160.00			10.00	14,160.00	
136	Inlet Tie In	EA	11.00	1,534.00	16,874.00			11.00	16,874.00	
137	Bus Stop Pad	LS	1.00	5,745.42	5,745.42			1.00	5,745.42	
138	Colored Crosswalk	SY	2,000.00	10.03	20,060.00			2,000.00	20,060.00	
139	Concrete Prep	LS	1.00	326,372.68	326,372.68			1.00	326,372.68	
140	10' Tra	SY	1,800.00		109,386.00			1,800.00	109,386.00	
141					0.00					
142	Asphalt Paving				0.00					
143	Paving Local 4 1/2" ABC	SY	18,665.00	28.62	534,192.30			18,665.00	534,192.30	
144	Concrete Parking Slabs/Alleys	SY	6,140.00	56.64	347,769.60			6,140.00	347,769.60	
145	Paving Minor 5 1/2" ABC	SY	1,612.00	34.22	55,162.64			1,612.00	55,162.64	
146	Arterial Paving 6 1/2" ABC	SY	14,850.00	44.55	661,567.50			14,850.00	661,567.50	
147	Fire Access Road 6"	SY	7,339.00	11.25	82,563.75			7,339.00	82,563.75	
148	6' Bike Path	SY	3,550.00	31.27	111,008.50			3,550.00	111,008.50	
149	Fly Ash 12" Depth	SY	44,817.00	9.74	436,517.58			44,817.00	436,517.58	
150	Additional Base for Under Curbs	SY	9,604.00	8.56	82,210.24			9,604.00	82,210.24	
151	Adjust Manholes	EA	68.00	649.00	44,132.00			68.00	44,132.00	
152	Adjust Water Valves	EA	35.00	413.00	14,455.00			35.00	14,455.00	
153	Asphalt Subgrade Prep	SY	44,817.00	2.95	132,210.15			44,817.00	132,210.15	
154					0.00					
200	CO #001 Fire Service	LS			164,271.19				164,271.19	
201	CO #002 Weather Delays	LS			0.00					
202	CO #003 Weather Delays	LS			0.00					
203	CO #004 Deduct Conc in Asph	LS			-152,635.01				-152,635.01	
204	CO #005 Asphalt Increase	LS			34,770.00				34,770.00	
205	CO #006 Weather Delays	LS			0.00					
206	CO #007 Colored Conc	LS			159,012.17				159,012.17	
207	CO #008 Switch Alleys to Conc	LS			112,919.02				112,919.02	
208	CO #009 Non Potable Pumphouse	LS			1,125,641.33		70,641.33		1,120,641.33	
209					1,769,764.42				1,769,764.42	
210					788,888.19				788,888.19	

January 16, 2024

## AGENDA ITEM SUMMARY

### City Council



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#### STAFF

Tyler Marr, Deputy City Manager

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#### SUBJECT

**First Reading of Ordinance No. 002, 2024, Appropriating Funds for Change Management Resources to Support Legislative Management Software Implementation Funds.**

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#### EXECUTIVE SUMMARY

The purpose of this item is to appropriate \$375,000 of general fund reserves to contract with Prosci, Inc., to provide change management support for the Legislative Management Software project throughout its implementation in 2024. Council Finance Committee recommended this move forward to Council at their December 19 meeting.

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#### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

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#### BACKGROUND / DISCUSSION

The City organization is actively pursuing at various stages a number of projects that seek to modernize our digital footprint for the community and the internal operations of the organization. These projects span many city services, including:

- Customer information system for utility billing
- Licensing, permitting, and inspection software
- Recreation registration system
- Legislative management software - including council agenda packets
- Enterprise Resource Planning

Taken individually, each of these projects represent different degrees of resourcing, both in terms of dollars and staff time, complexities and process or operational changes that will be required to be successful. A critical component staff believes applies to each project is our ability to effectively manage the change from current state operations to the future state under new tools and systems. Previous examples where we have not invested in adequate change management support and a holistic project management approach have resulted in suboptimal outcomes. While the City has invested in staff capacity and in creating positions

For change practitioners to some degree, it is leadership's opinion that each of the projects above will require dedicated change management support which simply does not exist in the organization today.

The legislative management software specifically is a near term project which has critical milestones in 2024. These milestones carry significant changes related to how staff will perform their work and the change management support needed is not currently able to be absorbed in the project costs that were originally budgeted primarily for software costs alone. More details on the project are provided below.

### Project Details

Legislative management software (LMS) is a tool to improve efficiencies and transparency of the legislative process which includes Council agendas and minutes, in addition to materials for boards and commissions and Council subcommittees. Council approved a 2023-2024 Budget Offer for \$250,000 (\$150,000 in 2023 and \$100,000 in 2024) to fund implementation of a new LMS. This proposal was included in a larger Digital Transformation Request for Proposal (RFP) to include a new citywide website. Staff wanted to consolidate multiple applications into a single, streamlined resident and community experience. Staff are currently in the final stages of selecting a vendor.

Executive leadership felt that this project was a critical one to provide dedicated change management support to; given the scale of the project, the number of staff that interact with the LMS, the critical functions pertaining to agenda management, record keeping, and the associated risks to public trust if the project does not go successfully.

The requested appropriation of \$375,000 includes dedicated support for project execution, training in change management to upskill impacted groups across the organization, and building capability in change management execution for the organization more broadly.

If appropriated, staff is planning on exercising an existing contract option with Prosci, Inc., to provide these services. Prosci is a locally based global thought leader in the practice of organizational change management. With over twenty years of research backing its industry leading methodology, their advisors have extensive experience both leading change initiatives and developing organizational capabilities related to organizational change management to successfully deliver results for organizations. The proposal Prosci, Inc., has provided the City offers project execution support to successfully implement solutions that will assist staff and the community in engaging with City organization. In addition, the experienced Prosci Change Advisors will develop staff's ability to manage change on an ongoing basis through coaching and training. This additional service supports the City's enterprise wide capability in organizational change management.

There is a possibility that the chosen LMS vendor will also offer assistance with change management services. If this is the case, staff's intent would not be to fund duplicative contracted help. Rather, staff will analyze the vendor's offerings with Prosci's proposal and reduce the scope of the contract with Prosci accordingly, up to potentially not using any additive services. Given the intended project timelines of trying to launch the software this year, however, staff feels it's important to appropriate these dollars so work can begin as soon as possible with either the LMS vendor or Prosci.

### Other Information

Staff acknowledges that the cost of these change management resources can seem severe when compared to existing project budgets. This is partially a function of historically budgeting only what the product being implemented costs. In the future, it is executive leadership's expectation that software budget offers are more holistic in nature, including any needed staff backfill for project work and dedicated change or project management support. This is undoubtedly a change in philosophy that staff believes provides greater transparency into what it actually takes to get software migrations across the finish line and that will ensure the organization delivers on committed projects to better serve the community.

Leadership is also committed to continuing to develop these change management skills internally as a staff team, so that internal support might be better leveraged to reduce the need for contracted help in the future. This is a multi-year process to achieve results, however, and with the number of digital transformation efforts underway and on the horizon, staff believes the organization will need contracted assistance on these bigger software projects for some time to come.

### **CITY FINANCIAL IMPACTS**

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This ordinance will reduce General Fund Reserves by \$375,000.

### **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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Council Finance Committee favorably considered this item at their December 19, 2023, meeting. One important difference to note from that item to what is presented here is that staff also presented a resourcing need for change management support for the Daysmart Recreation Registration system. Given the timeline of that project, current status, and the earliest availability of funds from this appropriation, staff is not recommending proceeding with an appropriation for that particular project.

### **PUBLIC OUTREACH**

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None.

### **ATTACHMENTS**

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1. Ordinance for Consideration
2. Council Finance Committee Meeting Draft Minutes, December 19, 2023

ORDINANCE NO. 002, 2024  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
APPROPRIATING FUNDS FOR CHANGE MANAGEMENT  
RESOURCES TO SUPPORT LEGISLATIVE MANAGEMENT  
SOFTWARE IMPLEMENTATION FUNDS

A. City staff is actively pursuing several projects, which span many City services and functions, seeking to modernize the City's internal operations and digital footprint for the community.

B. A critical component of each of these projects will be management of the change from current state operations to the future state under new tools and systems.

C. Legislative Management Software (LMS) is used to improve efficiency and transparency of the City's legislative processes, including Council agendas and minutes as well as agendas and minutes for Council committees and City boards and commissions.

D. Due to the scope, scale and importance of the project to replace and implement new LMS, the City Manager has recommended that the project include dedicated support for project execution, training in change management and capacity building in managing change throughout the organization.

E. This appropriation is to fund consulting services to provided that dedicated support.

F. This appropriation benefits the public health, safety and welfare of the residents of Fort Collins and serves the public purpose of effectively and efficiently implementing and transitioning to a new LMS, to improve and streamline the resident and community experience and overall efficiency of the legislative support processes for the City Council and other City bodies.

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

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

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

FORT COLLINS that there is hereby appropriated from prior year reserves in the General Fund the sum of THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$375,000) to be expended in the General Fund for the Contracted Change Management Resources to Support Legislative Management Software Implementation:

Introduced, considered favorably on first reading on January 16, 2024, and approved on second reading for final passage on February 6, 2024.

\_\_\_\_\_  
Mayor

ATTEST:

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

Effective Date: February 16, 2024  
Approving Attorney: Carrie Daggett

January 16, 2024

## AGENDA ITEM SUMMARY

City Council



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### STAFF

Brian Tholl, Utilities, Energy Services Manager  
Phil Ladd, Utilities, Utilities Finance Manager

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### SUBJECT

**First Reading of Ordinance No. 003, 2024, Authorizing Transfers and Reappropriation of Funds Previously Appropriated for the Utilities' Grid Flexibility Programs.**

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### EXECUTIVE SUMMARY

The purpose of this item is to receive approval for the funding of grid flexibility programs through the appropriation of prior year reserves and reappropriation of previously approved Light and Power funds. The ordinance does not appropriate any new funding, but rather optimizes previously appropriated funds to accelerate progress toward Our Climate Future (OCF) goals.

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### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

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### BACKGROUND / DISCUSSION

Fort Collins Utility Services ("Utilities") has 10+ years of implementing grid flexibility programs, which have been branded as "Peak Partners." Utilities has regularly included both ongoing and enhancement offers through the Budgeting for Outcomes (BFO) process to build a portfolio of capabilities for grid flexibility. Grid flexibility is the ability to develop and utilize technology and systems to match community electricity load with available energy resources for economic, distribution, grid benefits, or carbon reduction purposes. This capability is foundational to the continued development of a virtual power plant in partnership with Platte River Power Authority.

Utilities staff is proposing a series of transfers of previously appropriated funds within the Light and Power Fund to further ongoing grid flexibility efforts. The total amount of funding across the two-year cycle of 2023/2024 will not change under the proposal, rather, it would be repurposed for implementation of similar technologies and will result in similar outcomes. The goal of the funding reallocation is to better align the approved 2023/2024 budget with the business needs and in response to changing program, business, and customer dynamics, while achieving the grid flexibility goals in Our Climate Future.

Staff recently proactively stopped work on a project that was identified and approved in the 2023/2024 budget process as offer, "Grid Flexibility Communication Protocol," due to the absence of technologies available in the market. While initiating the project, staff learned that solar/battery manufacturers have inconsistent technical capabilities which could have prevented staff from effectively communicating with customer installed solar/battery equipment. Staff assessed the risk of continuing the project, determined it

to be too high, and made the recommendation to cancel work immediately. Any negative impacts attributable to the unforeseen challenges of this project have been mitigated.

Additionally, customers unexpectedly oversubscribed to the approved 2023 thermostat replacement budget offer, creating a waitlist of over 380 customers. Staff proposes to transfer funds to the thermostat offer from other technology asset offers, taking advantage of customer's thermostat demand to increase progress towards meeting 2030 OCF goals.

A summary of the funds redistribution is provided in Table 1 below, and followed by a narrative and justification.

Offer Description	Offer Type	Original 2023 Budget	Original 2024 budget	2024 Budget Difference	2024 Revised Budget
Ongoing Demand Response	Ongoing	\$ 860,000	\$ 900,000	\$ 291,202	\$ 1,191,202
Water Heaters	Capital	\$ 175,000	\$ 355,000	\$ (148,985)	\$ 206,015
Electric Vehicles	Enhancement	\$ 100,000	\$ 100,000	\$ -	\$ 100,000
Thermostats	Capital	\$ 100,000	\$ 100,000	\$ 107,783	\$ 207,783
Communication Protocol	Enhancement	\$ 200,000	\$ 50,000	\$ (250,000)	\$ -
<b>Total</b>				\$ -	\$ 1,705,000

Staff recommends redeploying the following appropriated 2023/2024 funds to support a faster and larger implementation of proven technologies that minimizes risk to Utilities:

- \$250,000 from Budget offer "Utilities: Light and Power: Grid Flexibility Communication Protocol Project" and
- \$148,985 from offer "Utilities: Light and Power - Grid Integrated Water Heater Installations"

This requires reappropriating \$200,000 from 2023 approved budget in Light and Power reserves and redeploying \$50,000 from the 2024 budget offers through the following funding allocations:

- \$107,783 to Offer "Utilities: Light and Power - Direct Install Demand Response Thermostat Replacement." This recommendation better leverages the fixed cost of standing up a technology refresh program by increasing the overall number of units deployed in the same period, and
- \$291,202 to Offer "Utilities: Light and Power - Demand Response." The extra funds will be used to expanded hosting software services, expanded project management, customer care, and field services.

## CITY FINANCIAL IMPACTS

The Ordinance does not appropriate any new funding. The Ordinance provides for the use of existing appropriations for similar intended purposes which would otherwise be paid from Light and Power reserves.

## BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The proposed strategy for 2024 funding was presented to the Energy Board on October 12, 2023. A motion was made to support and was unanimously supported.

## PUBLIC OUTREACH

None.

## ATTACHMENTS

1. Ordinance for Consideration

ORDINANCE NO. 003, 2024  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING TRANSFERS AND REAPPROPRIATION  
OF FUNDS PREVIOUSLY APPROPRIATED FOR THE  
UTILITIES' GRID FLEXIBILITY PROGRAMS

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

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

C. Utilities staff has determined that the amounts to be reappropriated and redeployed as described herein are available and currently encumbered.

D. This reappropriation benefits public health, safety and welfare of the citizens of Fort Collins and benefits City electric utility ratepayers by leveraging utility reserves and unexpended funds to efficiently improve the flexibility of the local electric distribution grid using current technologies.

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

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

G. Article V, Section 10 of the City Charter authorizes the City Council, upon recommendation by the City Manager, to transfer by ordinance any unexpended and unencumbered appropriated amount or portion thereof from one fund or capital project to another fund or capital project, provided that the purpose for which the transferred funds are to be expended remains unchanged, the purpose for which the funds were initially appropriated no longer exists, or the proposed transfer is from a fund or capital project in which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance.

H. The City Manager has recommended the transfer of \$148,985 from the Light and Power Fund Water Heater Program Project Budget and \$250,000 from the Light and Power Fund Communication Protocol Project Budget to the Light and Power Fund Ongoing Demand Response Project Budget, in the amount of \$291,202 and Thermostat Program Project Budget, in the amount of \$107,783; and determined that the following purpose for which the transferred funds are to be expended remains unchanged: to provide customer programs for the transition to the next generation electricity system outlined in Our Climate Future (OCF), focusing on mitigation, resilience, and equity.

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

J. The City Council wishes to designate the appropriation herein for the Light and Power Fund Ongoing Demand Response Project and Light and Power Fund Thermostat Program Project Budget as an appropriation that shall not lapse until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

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

Section 1. The unexpended and unencumbered appropriated amount of ONE HUNDRED FORTY-EIGHT THOUSAND NINE HUNDRED EIGHTY-FIVE DOLLARS (\$148,985) and TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) respectively, totaling THREE HUNDRED NINETY-EIGHT THOUSAND NINE HUNDRED EIGHTY-FIVE DOLLARS (\$398,985), is authorized for transfer from the Light and Power Fund Water Heater and Communication Protocol Project Budgets for the following purposes and appropriated therein to be expended for Utilities Grid Flexibility programs projects as follows:

- |  |                  |
|--|------------------|
| - Light and Power Fund Ongoing Demand Response | \$291,202        |
| - Thermostat Program                           | <u>\$107,783</u> |

GRID FLEXIBILITY PROGRAM TOTAL: \$398,985

Section 2. The appropriation herein for Light and Power Ongoing Demand Response Project and the Light and Power Thermostat Program is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the completion of the projects.

Introduced, considered favorably on first reading on January 16, 2024, and approved on second reading for final passage on February 6, 2024.

\_\_\_\_\_  
Mayor

ATTEST:

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

Effective Date: February 16, 2024  
Approving Attorney: Cyril Vidergar

January 16, 2024

## AGENDA ITEM SUMMARY

City Council



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### STAFF

Selina Lujan Albers, Environmental Services  
Kerri Ishmael, Grants Administration

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### SUBJECT

**First Reading of Ordinance No. 004, 2024, Authorizing Transfers of Appropriations and Appropriating Related Funds for the Environmental Services Radon Program.**

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### EXECUTIVE SUMMARY

The purpose of this item is to support the City's Environmental Services Radon program by:

- Appropriating \$9,000 of unanticipated grant revenue awarded by the Colorado Department of Public Health and Environment (CDPHE) and
- Utilizing matching funds in the amount of \$6,000 from existing 2024 appropriations for this grant project.

In December 2023, CDPHE awarded the City \$9,000 under the CDPHE Indoor Radon grant program. The City will provide an additional \$6,000 in required matching funds. The award funds and City's matching funds will support radon testing and mitigation programs to protect public health for the Fort Collins community.

Pursuant to the State of Colorado Purchase Order Terms and Conditions, and in accordance with Section 1-22 of the City Code, the City Manager has accepted the grant agreement. The \$9,000 are federal funds from the Environmental Protection Agency being passed through to the City by CDPHE.

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### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

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### BACKGROUND / DISCUSSION

Radon is a priority indoor air quality pollutant in Fort Collins, as it is the leading cause of lung cancer in non-smokers, and the second leading cause for smokers (after smoking). Radon tests show that sixty-five percent of homes in Fort Collins test higher than the Environmental Protection Agency's (EPA) defined "action levels" for mitigating radon gas. The Environmental Services Department will use these grant funds to augment existing programs for education and outreach to raise awareness of the health risks, provision of low-cost radon test kits to residents, and information to help mitigate high radon levels.

## **CITY FINANCIAL IMPACTS**

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This item appropriates \$9,000 in unanticipated revenue from the CDPHE in support of the Environmental Services Radon Program.

Required matching funds in the amount of \$6,000 have already been appropriated in the General Fund, specifically in the 2024 operating budget for Environmental Services. The \$6,000 will be transferred to the grant in the General Fund.

## **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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Radon is a priority pollutant identified by the Air Quality Advisory Board, but no formal recommendation was sought for appropriation of the grant funds to augment existing radon program efforts.

## **PUBLIC OUTREACH**

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Public outreach regarding radon will be conducted throughout the year with radon presentations, provision of outreach materials and radon test kit sales.

## **ATTACHMENTS**

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1. Ordinance for Consideration
2. CDPHE Purchase Order and Corresponding State of Colorado Purchase Order Terms and Conditions

ORDINANCE NO. 004, 2024  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING TRANSFERS OF APPROPRIATIONS AND  
APPROPRIATING RELATED FUNDS FOR THE  
ENVIRONMENTAL SERVICES RADON PROGRAM

A. The City has been awarded a Colorado Department of Public Health and Environment grant in the amount of \$9,000 for the Environmental Services Radon Program (the “Program”).

B. The grant will be used to support radon testing and mitigation programs.

C. The grant requires \$6,000 in matching funds from the City, which have been appropriated and are available in the General Fund for this purpose.

D. Radon is a priority indoor air quality pollutant in Fort Collins and is the leading cause of lung cancer in non-smokers.

E. Radon tests show that sixty-five percent of homes in Fort Collins test higher than the Environmental Protection Agency’s defined “action levels” for mitigating radon gas.

F. The Program provides education and outreach to raise awareness of the health risks and provides low-cost radon test kits to residents.

G. This appropriation benefits public health, safety, and welfare of the citizens of Fort Collins and serves a public purpose by helping to raise awareness about radon in Fort Collins homes.

H. 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.

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

J. 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.

K. The City Manager has recommended the transfer of \$6,000 from the Environmental Services operating budget in the General Fund to the Environmental Services Radon Program in the General Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged.

L. 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 donation or the City's expenditure of all funds received from such grant or donation.

M. The City Council wishes to designate the appropriation herein for the Colorado Department of Public Health and Environment grant as an appropriation that shall not lapse until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

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

Section 1. There is hereby appropriated from new revenue or other funds in the General Fund the sum of NINE THOUSAND DOLLARS (\$9,000) to be expended in the General Fund for the Environmental Services Radon Program.

Section 2. The unexpended and unencumbered appropriated amount of SIX THOUSAND DOLLARS (\$6,000) is authorized for transfer from the Environmental Services operating budget in the General Fund to the Environmental Services Radon Program in the General Fund.

Section 3. The appropriation herein for the Colorado Department of Public Health and Environment grant is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

Introduced, considered favorably on first reading on January 16, 2024, and approved on second reading for final passage on February 6, 2024.

\_\_\_\_\_  
Mayor

ATTEST:

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

Effective Date: February 16, 2024  
Approving Attorney: Ted Hewitt



# STATE OF COLORADO

## Department of Public Health & Environment

<b>ORDER</b>		<b>*****IMPORTANT*****</b>				
<b>Number:</b>	PO,FEEA,202400007134	The order number and line number must appear on all invoices, packing slips, cartons, and correspondence.				
<b>Date:</b>	12/13/23	<b>BILL TO</b>				
<b>Description:</b>	HAZ 5001 City of Fort Collins Radon Grant FY24	HAZ.MAT. CONTROL DIV B-200 4300 CHERRY CREEK DRIVE SOUTH DENVER, CO 80246-1530				
<b>Effective Date:</b>	12/14/23					
<b>Expiration Date:</b>	09/30/24					
<b>BUYER</b>		<b>SHIP TO</b>				
<b>Buyer:</b>		HAZ.MAT. CONTROL DIV B-200 4300 CHERRY CREEK DRIVE SOUTH DENVER, CO 80246-1530				
<b>Email:</b>						
<b>VENDOR</b>		<b>SHIPPING INSTRUCTIONS</b>				
CITY OF FORT COLLINS Finance Department PO BOX 580 FORT COLLINS, CO 80522-0580		Delivery/Install Date: - FOB:				
<b>Contact:</b>	EFT REMIT					
<b>Phone:</b>	NA					
<b>VENDOR INSTRUCTIONS</b>						
<b>EXTENDED DESCRIPTION</b>						
HAZ 5001 City of Fort Collins Radon Grant FY24. This Purchase Order shall not exceed \$9,000.00. No work may be performed prior to an approved Purchase Order being in place. CDPHE's Purchase Order Federal Provisions have been uploaded with this submission and are applicable to this Purchase Order. Colorado terms and conditions supersede.						
<b>Line Item</b>	<b>Commodity/Item Code</b>	<b>UOM</b>	<b>QTY</b>	<b>Unit Cost</b>	<b>Total Cost</b>	<b>MSDS Req.</b>
1	962		0	0.00	\$9,000.00	<input type="checkbox"/>
Description: HAZ 5001 City of Fort Collins Radon Grant FY24						
Service From: 12/14/23			Service To: 09/30/24			
<b>TERMS AND CONDITIONS</b>						
<a href="https://www.colorado.gov/osc/purchase-order-terms-conditions">https://www.colorado.gov/osc/purchase-order-terms-conditions</a>						
<b>DOCUMENT TOTAL = \$9,000.00</b>						

## State of Colorado Purchase Order Terms and Conditions

- 1. Offer/Acceptance.** This Purchase Order, together with these terms and conditions (including, if applicable, Addendum 1: Additional Terms and Conditions for Information Technology, below), and any other attachments, exhibits, specifications, or appendices, whether attached or incorporated by reference (collectively the "PO") shall represent the entire and exclusive agreement between the State and the Vendor. If this PO refers to Vendor's bid or proposal, this PO is an ACCEPTANCE of Vendor's OFFER TO SELL in accordance with the terms and conditions of this PO. If a bid or proposal is not referenced, this PO is an OFFER TO BUY, subject to Vendor's acceptance, demonstrated by Vendor's performance or written acceptance of this PO. Any COUNTER-OFFER TO SELL automatically CANCELS this PO, unless a change order accepting the counter-offer is issued in accordance with §4 accepting a counter-offer. The State shall not be responsible or liable for goods or services delivered or performed prior to issuance of this PO.
- 2. Order of Precedence.** In the event of a conflict or inconsistency within this PO, such conflict or inconsistency shall be resolved by giving preference to the documents in the following order of priority: **(a)** the Purchase Order document; **(b)** these Terms and Conditions (including, if applicable, Addendum 1: Additional Terms and Conditions for Information Technology below); and **(c)** any attachments, exhibits, specifications, or appendices, whether attached or incorporated by reference. Any terms and conditions included on Vendor's forms or invoices not included in this PO are void.
- 3. Safety Information.** All chemicals, equipment, and materials proposed or used in the performance of this PO shall conform to the requirements of the Occupational Safety and Health Act of 1970. Vendor shall furnish all Material Safety Data Sheets (MSDS) for any regulated chemicals, equipment, or hazardous materials at the time of delivery.
- 4. Changes.** Vendor shall furnish goods or services in strict accordance with the specifications and price set forth for each item. This PO shall not be modified, superseded or otherwise altered, except in writing signed by the State and accepted by Vendor. If this PO is for goods only and Vendor has not delivered the goods prior to the expiration of this PO, but Vendor delivers all of the goods to the State only after expiration of this PO, then the State, in its sole discretion, may accept the goods under this PO by extending this PO and delivering the modification to Vendor; however, regardless of anything to the contrary, if the State does not extend this PO for any reason then the goods delivered after expiration of this PO shall be deemed rejected, Vendor shall arrange the return of all delivered goods at Vendor's sole expense, and the State shall have no liability for any such goods.
- 5. Delivery.** Unless otherwise specified in this PO, delivery shall be FOB destination, freight prepaid and allowed. The State is relying on the promised delivery date and any installation or service performance set forth in this PO as material and basic to the State's acceptance. If Vendor fails to deliver or perform as and when promised, the State, in its sole discretion, may cancel its order, or any part thereof, without prejudice to its other rights, return all or part of any shipment so made, and charge Vendor with any loss or expense sustained as a result of such failure to deliver or perform as promised. Time is of the essence.
- 6. Rights to Materials.** *[Not Applicable to POs issued either in whole or in part for Information Technology, as defined in CRS § 24-37.5-102(2); which shall be governed by Addendum 1 §B.]* Unless specifically stated otherwise in this PO, all materials, including without limitation supplies, equipment, documents, content, information, or other material of any type, whether tangible or intangible (collectively "Materials"), furnished by the State to Vendor or delivered by Vendor to the State in performance of its obligations under this PO shall be the exclusive property of the State. Vendor shall return or deliver all Materials to the State upon completion or termination of this PO.
- 7. Reporting.** If Vendor 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 PO or may affect Vendor's ability to perform its obligations under this PO, Vendor shall, within

ys after being served, notify the State of such action and deliver copies of such pleading or document to the State. Vendor shall disclose, in a timely manner, in writing to the State all violations of federal or state criminal law involving fraud, bribery, or gratuity violations potentially affecting this PO. The State may impose any remedies available, which may include, without limitation, suspension or debarment.

**8. Conflicts of Interest.** Vendor acknowledges that with respect to this PO, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Vendor shall refrain from any practices, activities, or relationships that reasonably may appear to be in conflict with the full performance of Vendor's obligations to the State hereunder. If a conflict or appearance of a conflict of interest exists, or if Vendor is uncertain as to such, Vendor 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 with respect to the actual or apparent conflict constitutes a breach of this PO. Vendor acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Vendor further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this PO.

**9. Warranties.** All provisions and remedies of the Colorado Uniform Commercial Code, CRS, Title 4 ("UCC"), relating to implied or express warranties for goods are incorporated herein, in addition to any warranties contained in this PO.

**10. Inspection and Acceptance.** The State's final acceptance of goods or services is contingent upon completion of all applicable inspection procedures. All goods delivered shall be newly manufactured and the current model, unless otherwise specified. The State shall have the right to inspect goods or services provided under this PO at all reasonable times and places. The State shall be the sole judge in determining "equals" with regard to conformance with the specifications outlined in this PO for quality, price, and performance. If any of the goods or services do not conform to this PO, the State, at its sole discretion, may require Vendor to either **(a)** replace the goods specified by the State or **(b)** perform the services again, without additional payment from the State. When defects in the quality or quantity of goods or services cannot be corrected by replacement or re-performance, the State may **(c)** require Vendor to take necessary action to ensure that future performance conforms to this PO and **(d)** equitably reduce the payment due Vendor to reflect the reduced value of the goods or services performed. These remedies do not limit the remedies otherwise available in this PO, at law, or in equity.

**11. Taxes.** The State is exempt from federal excise taxes and from State and local sales and use taxes.

**12. Payment.** The State shall not pay Vendor any amount for performance under this PO in excess of the Document Total set forth on the Purchase Order document. The State shall pay Vendor for all amounts due within 45 days after the State's receipt of goods or services and acceptance of a correct invoice of amount due. Amounts not paid by the State within 45 days of the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate set forth in CRS §24-30-202(24) until paid in full. Interest shall not accrue if a good faith dispute exists as to the State's obligation to pay all or a portion of the amount due. Vendor shall invoice the State separately for interest on delinquent amounts due, referencing the delinquent payment, number of day's interest to be paid, and applicable interest rate. The State may benefit from any early payment discount offered by Vendor by making payment within the timeframes required by Vendor to be eligible for such discount. If Vendor offers an early payment discount, then the discount shall be shown on Vendor's invoices to the State, and if the State makes payment on the invoice within the time frame for the discount, Vendor shall either **(a)** accept the payment amount less the appropriate discount or **(b)** refund the discount back to the State. Except as specifically agreed in this PO, Vendor shall be solely responsible for all costs, expenses, and other charges it incurs in connection with its performance under this PO.

**Assignment.** Vendor's rights and obligations under this PO shall not be transferred or assigned without the prior, written consent of the State and execution of a new PO. Any attempt at assignment or transfer without such consent and new PO shall be void. Any new PO approved by the State shall be subject to the same terms and conditions as those set forth in this PO.

**14. Subcontracts.** Unless otherwise specified in this PO, Vendor shall not enter into any subcontract in connection with its obligations under this PO without the prior, written approval of the State. Vendor shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Vendor in connection with this PO 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 PO.

**15. Severability.** The invalidity or unenforceability of any provision of this PO shall not affect the validity or enforceability of any other provision of this PO, which shall remain in full force and effect, provided, that the parties can continue to perform their obligations in accordance with the intent of this PO.

**16. Survival of Certain PO Terms.** Any provision of this PO that imposes an obligation on a party after termination or expiration of this PO shall survive the termination or expiration of this PO and shall be enforceable by the other party.

**17. Third Party Beneficiaries.** Except for the parties' respective successors and assigns, this PO does not and is not intended to confer any rights or remedies upon any person or entity other than the parties. Enforcement of this PO and all rights and obligations hereunder is reserved solely to the parties. Any services or benefits which third parties receive as a result of this PO are incidental to this PO, and do not create any rights for such third parties.

**18. Waiver.** A party's failure or delay in exercising any right, power, or privilege under this PO, 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.

**19. Indemnification. [Not Applicable to Inter-governmental POs]** Vendor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Vendor, or its employees, agents, subcontractors, or assignees in connection with this PO. This shall include, without limitation, any and all costs, expenses, claims, damages, liabilities, court awards and other amounts incurred by the Indemnified Parties in relation to any claim that any work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right or any claim for loss or improper disclosure of any confidential information or personally identifiable information.

**20. Notice.** All notices given under this PO shall be in writing, and shall be delivered to the contacts for each party listed on the Purchase Order document. Either party may change its contact or contact information by notice submitted in writing to the other party without a formal modification to this PO.

**21. Insurance.** Except as otherwise specifically stated in this PO, Vendor shall obtain and maintain insurance as specified in this section at all times during the term of this PO: **(a)** workers' compensation insurance as required by state statute, and employers' liability insurance covering all Vendor employees acting within the course and scope of their employment; **(b)** Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: \$1,000,000 each occurrence; \$1,000,000 general aggregate; \$1,000,000 products and completed operations aggregate; and \$50,000 any one fire; and **(c)** Automobile liability insurance covering any auto

Item 5. ding owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit. If Vendor will or may have access to any protected information, then Vendor shall also obtain and maintain insurance covering loss and disclosure of protected information and claims based on alleged violations of privacy right through improper use and disclosure of protected information with limits of \$1,000,000 each occurrence and \$1,000,000 general aggregate at all times during the term of this PO. Additional insurance may be required as provided elsewhere in this PO. All insurance policies required by this PO shall be issued by insurance companies with an AM Best rating of A-VIII or better. This insurance requirement shall not apply if this PO is solely for goods, as determined by the State, unless specifically stated otherwise in this PO or any attachment or exhibit to this PO. If Vendor is a public agency within the meaning of the Colorado Governmental Immunity Act, then this section shall not apply and Vendor shall instead comply with the Colorado Governmental Immunity Act. The State shall be named as additional insured on all commercial general liability policies required of Vendor. All insurance policies secured or maintained by Vendor in relation to this Purchase Order shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Vendor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

**22. Termination Prior to Vendor Acceptance.** If Vendor has not begun performance under this PO, the State may cancel this PO by providing written notice to the Vendor.

**23. Termination for Cause.** (a) If Vendor refuses or fails to timely and properly perform any of its obligations under this PO with such diligence as will ensure its completion within the time specified in this PO, the State may notify Vendor in writing of non-performance and, if not corrected by Vendor within the time specified in the notice, terminate Vendor's right to proceed with this PO or such part thereof as to which there has been delay or a failure. Vendor shall continue performance of this PO to the extent not terminated. (b) Vendor shall be liable for excess costs incurred by the State in procuring similar goods or services and the State may withhold such amounts as the State deems necessary. (c) If after rejection, revocation, or other termination of Vendor's right to proceed under the UCC or this clause, the State determines for any reason that Vendor was not in default or the delay was excusable, the rights and obligations of the State and Vendor shall be the same as if the notice of termination had been issued pursuant to termination under §24.

**24. Termination in Public Interest.** The State is entering into this PO for the purpose of carrying out the public interest of the State, as determined by its Governor, General Assembly, or Courts. If this PO ceases to further the public interest of the State as determined by its Governor, General Assembly, or Courts, the State, in its sole discretion, may terminate this PO in whole or in part and such termination shall not be deemed to be a breach of the State's obligations hereunder. This section shall not apply to a termination for cause, which shall be governed by §23. A determination that this PO should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. The State shall give written notice of termination to Vendor specifying the part of this PO terminated and when termination becomes effective. Upon receipt of notice of termination, Vendor shall not incur further obligations except as necessary to mitigate costs of performance. For services or specially manufactured goods, the State shall pay (a) reasonable settlement expenses, (b) this PO price or rate for supplies and services delivered and accepted, (c) reasonable costs of performance on unaccepted supplies and services, and (d) a reasonable profit for the unaccepted work. For existing goods, the State shall pay (e) reasonable settlement expenses, (f) the PO price for goods delivered and accepted, (g) reasonable costs incurred in preparation for delivery of the undelivered goods, and (h) a reasonable profit for the preparatory work. The State's termination liability under this section shall not exceed the total PO price. As a condition for payment under this section, Vendor shall submit a termination proposal and reasonable supporting documentation, and cost and pricing data as requested by the State.

**25. Funds Availability.** Financial obligations of the State payable after the State's current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made

ble. If this PO is funded in whole or in part with federal funds, this PO is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. The State represents that it has set aside sufficient funds to make payment for goods delivered in a single installment, in accordance with the terms of this PO.

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

**27. Independent Contractor.** Vendor shall perform its duties under this PO as an independent contractor and not as an employee. Neither Vendor nor any agent or employee of Vendor shall be deemed to be an agent or employee of the State. Vendor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Vendor 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 Vendor or any of its agents or employees. Vendor shall pay when due all applicable employment taxes, income taxes and local head taxes incurred pursuant to this PO. Vendor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.**

**28. Compliance with Law.** Vendor 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.

**29. Choice of Law, Jurisdiction and Venue. [Not Applicable to Inter-governmental POs]** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this PO. The UCC shall govern this PO in the case of goods unless otherwise agreed in this PO. 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 PO shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver. Any provision incorporated herein by reference which purports to negate this or any other provision in this PO in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Vendor shall exhaust administrative remedies in CRS §24-109-106, prior to commencing any judicial action against the State.

**30. Prohibited Terms.** Nothing in this PO shall be construed as a waiver of any provision of CRS §24-106-109. Any term included in this PO that requires the State to indemnify or hold Vendor harmless; requires the State to agree to binding arbitration; limits Vendor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with that statute in any way shall be void ab initio.

**31. Vendor Offset and Erroneous Payments. [Not Applicable to Inter-governmental POs or to POs issued solely for goods]** The State Controller may withhold payment under the State's Vendor offset intercept system for debts owed to State agencies for: **(a)** unpaid child support debts or child support arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, *et seq.*; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Vendor in error for any

Item 5. n, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Vendor by deduction from subsequent payments under this PO, deduction from any payment due under any other contracts, grants or agreements between the State and Vendor, or by any other appropriate method for collecting debts owed to the State.

## ADDENDUM 1: Additional Terms & Conditions for Information Technology

IF ANY PART OF THE SUBJECT MATTER OF THIS PO IS INFORMATION TECHNOLOGY, AS DEFINED IN  
CRS § 24-37.5-102 (2), THE FOLLOWING PROVISIONS ALSO APPLY TO THIS PO.

**A. Definitions.** The following terms shall be construed and interpreted as follows: **(a) “Business Day”** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in CRS §24-11-101(1); **(b) “CJI”** means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended, and all Criminal Justice Records as defined under CRS §24-72-302; **(c) “HIPAA”** means the federal Health Information Portability and Accountability Act; **(d) “Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, pursuant to CRS §§24-37.5-401 *et seq.*; **(e) “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; **(f) “PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual including, without limitation, any information defined as Individually Identifiable Health Information by HIPAA; **(g) “PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records, including, without limitation, all information defined as personally identifiable information in CRS §24-72-501. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, *et. seq.*, C.R.S. ; **(h) “State Confidential Information”** means any and all State Records not subject to disclosure under the Colorado Open Records Act, CRS §§24-72-200.1, *et seq.* (“CORA”), and includes, without limitation, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA; **(i) “State Records”** means any and all State data, information, and records, regardless of physical form; **(j) “Tax Information”** means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation, including, without limitation all information defined as federal tax information in Internal Revenue Service Publication 1075; and **(k) “Work Product”** means the tangible and intangible results of the delivery of goods and performance of services, whether finished or unfinished, including drafts.

**B. Intellectual Property.** Except to the extent specifically provided elsewhere in this PO, any State information, including without limitation pre-existing State software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials; or Work Product prepared by Vendor in the performance of its obligations under this PO shall be the exclusive property of the State (collectively, “State Materials”). Vendor shall deliver all State Materials to the State upon completion or termination of this PO. The State’s exclusive rights in any Work Product prepared by Vendor shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Vendor shall not use, willingly allow, cause or permit any State Materials to be used for any purpose other than the performance of Vendor’s

ligations hereunder without the prior written consent of the State. The State shall maintain complete and accurate records relating to **(a)** its use of all Vendor and third party software licenses and rights to use any Vendor or third party software granted under this PO and its attachments to which the State is a party and **(b)** all amounts payable to Vendor pursuant to this PO and its attachments and the State's obligations under this PO or to any amounts payable to Vendor in relation to this PO, which records shall contain sufficient information to permit Vendor to confirm the State's compliance with the use restrictions and payment obligations under this PO or to any third-party use restrictions to which the State is a party. Vendor retains the exclusive rights, title and ownership to any and all pre-existing materials owned by or licensed to Vendor including, but not limited to all pre-existing software, licensed products, associated source code, machine code, text images, audio, video, and third-party materials, delivered by Vendor under this PO, whether incorporated in a deliverable or necessary to use a deliverable (collectively, "Vendor Property"). Vendor Property shall be licensed to the State as set forth in a State-approved license agreement: **(c)** entered into as exhibits or attachments to this PO, **(d)** obtained by the State from the applicable third-party Vendor, or **(e)** in the case of open source software, the license terms set forth in the applicable open source license agreement. Notwithstanding anything to the contrary herein, the State shall not be subject to any provision incorporated in any exhibit or attachment attached hereto, any provision incorporated in any terms and conditions appearing on any website, any provision incorporated into any click through or online agreements, or any provision incorporated into any other document or agreement between the parties that **(i)** requires the State to indemnify Vendor or any other party, **(ii)** is in violation of State laws, regulations, rules, fiscal rules, policies, or other State requirements as deemed solely by the State, or **(iii)** is contrary to this PO.

**C. License or Use Audit Rights.** If this PO includes any license or other right to use Vendor's intellectual property, Vendor shall have the right, at any time during and throughout the term of this PO, but not more than once during any State fiscal year, to request via written notice in accordance with the notice provisions of this PO that the State audit its use of Vendor's intellectual property and certify as to its compliance with any applicable license or use restrictions and limitations contained in this PO (an "Audit Request"). The Audit Request shall specify the time period to be covered by the audit, which shall not include any time periods covered by a previous audit. The State shall complete the audit and provide certification of its compliance to Vendor ("Audit Certification") within 120 days following the State's receipt of the Audit Request. If upon receipt of the State's Audit Certification, the parties reasonably determine that: **(a)** the State's use of licenses, use of software, use of programs, or any other use of intellectual property during the audit period exceeded the use restrictions and limitations contained in this PO ("Overuse") and **(b)** the State would have been or is then required to purchase additional rights to use Vendor's intellectual property ("Additional Rights"), Vendor shall provide written notice to the State in accordance with the notice provisions of this PO identifying any Overuse or required Additional Rights and request that the State bring its use into compliance with such use restrictions and limitations. Notwithstanding anything to the contrary in this PO, or incorporated as a part of Vendor's or any subcontractor's website, click-through or online agreements, third-party agreements, or any other documents or agreements between the parties, the State shall not be liable for the costs associated with any Overuse or Additional Rights, during the audit period regardless of whether the State may have been notified in advance of such costs.

**D. Vendor Records.** Vendor shall maintain a file of all documents, records, communications, notes, and other materials relating to the work (the "Vendor Records"). Vendor Records shall include all documents, records, communications, notes and other materials maintained by Vendor that relate to any work performed by Subcontractors, and Vendor shall maintain all records related to the work performed by Subcontractors required to ensure proper performance of that work. Unless a longer period is required in this PO or any attachment or exhibit to this PO, Vendor shall maintain Vendor Records until the last to occur of: **(a)** the date 3 years after the date this

Purchase Order expires or is terminated, **(b)** final payment under this Purchase Order is made, **(c)** the resolution of any pending Purchase Order matters, or **(d)** if an audit is occurring, or Vendor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the "Record Retention Period"). Vendor shall permit the State, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy, and transcribe Vendor Records during the Record Retention Period. Vendor shall make Vendor Records available during normal business hours at Vendor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 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. The State, in its discretion, may monitor Vendor's performance of its obligations under this Purchase Order using procedures as determined by the State. The State shall monitor Vendor's performance in a manner that does not unduly interfere with Vendor's performance of the work. Vendor shall promptly submit to the State a copy of any final audit report of an audit performed on Vendor's records that relates to or affects this Purchase Order or the work, whether the audit is conducted by Vendor or a third party.

**E. Information Confidentiality.** Vendor shall keep confidential, and cause all subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Vendor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this PO, permitted by law, or approved in writing by the State. Vendor shall provide for the security of all State Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. If Vendor or any of its subcontractors will or may have access to any State Confidential Information or any other protected information, Vendor shall comply with all Colorado Office of Information Security (OIS) policies and procedures which OIS has issued pursuant to CRS §§24-37.5-401 through 406, and 8 CCR §1501-5 and posted at <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>, all information security and privacy obligations imposed by any federal, state, or local statute or regulation, or by any industry standards or guidelines, as applicable based on the classification of the data relevant to Vendor's performance under this PO. Such obligations may arise from HIPAA; IRS Publication 1075; Payment Card Industry Data Security Standard (PCI-DSS); Federal Bureau of Investigation Criminal Justice Information Service Security Addendum; Centers for Medicare & Medicaid Services (CMS) Minimum Acceptable Risk Standards for Exchanges; and Electronic Information Exchange Security Requirements and Procedures for State and Local Agencies Exchanging Electronic Information With The Social Security Administration. Vendor shall immediately forward any request or demand for State Records to the State's purchasing agent.

**F. Other Entity Access and Nondisclosure Agreements.** Vendor 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 PO. Vendor shall ensure all such agents, employees, assigns, and subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this PO, and that the nondisclosure provisions are in force at all times the agent, employee, assign or subcontractor has access to any State Confidential Information. Vendor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions if requested by the State.

**G. Use, Security, and Retention.** Vendor shall use, hold, and maintain State Confidential Information in compliance with all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information. Vendor shall provide the State with access, subject to Vendor'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 PO, Vendor shall return State Records provided to Vendor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Vendor is prevented by law or regulation from returning or destroying State Confidential Information, Vendor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

**H. Incident Notice and Remediation.** If Vendor 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 Vendor can establish none of Vendor or any of its agents, employees, assigns, or subcontractors are the cause or source of the Incident, Vendor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Vendor 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. The State may adjust or direct modifications to this plan, in its sole discretion and Vendor shall make all modifications as directed by the State. If Vendor cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Vendor shall reimburse the State for the reasonable actual costs thereof.

**I. Data Protection and Handling.** Vendor shall ensure that all State Records and Work Product in the possession of Vendor or any subcontractors are protected and handled in accordance with the requirements of this PO at all times. Upon request by the State made any time prior to 60 days following the termination of this PO for any reason, whether or not this PO is expiring or terminating, Vendor shall make available to the State a complete and secure download file of all data that is encrypted and appropriately authenticated. This download file shall be made available to the State within 10 Business Days following the State's request, and shall contain, without limitation, all State Records, Work Product, and system schema and transformation definitions, or delimited text files with documents, detailed schema definitions, and attachments in its native format. Upon the termination of Vendor's services under this PO, Vendor shall, as directed by the State, return all State Records provided by the State to Vendor, and the copies thereof, to the State or destroy all such State Records and certify to the State that it has done so. If legal obligations imposed upon Vendor prevent Vendor from returning or destroying all or part of the State Records provided by the State, Vendor shall guarantee the confidentiality of all State Records in Vendor's possession and will not actively process such data. The State retains the right to use the established operational services to access and retrieve State Records stored on Vendor's infrastructure at its sole discretion and at any time.

**J. Compliance with OIS Policies and Procedure.** Vendor shall review, on a semi-annual basis, all Colorado Office of Information Security ("OIS") policies and procedures which OIS has promulgated pursuant to CRS §§ 24-37.5-401 through 406 and 8 CCR § 1501-5 and posted at <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>, to ensure compliance with the standards and guidelines published therein. Vendor shall cooperate, and shall cause its subcontractors to cooperate, with the performance of security audit and penetration tests by OIS or its designee.

**K. Safeguarding PII.** If Vendor or any of its subcontractors will or may receive PII under this PO, Vendor shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, all State requirements relating to non-disclosure, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Vendor shall be a "Third-Party Service Provider" as defined in CRS §24-73-103(1)(i) and shall maintain security procedures and practices consistent with CRS §§24-73-101. In addition, as set forth in § 24-74-102, et. seq., C.R.S., Contractor, including, but not limited to, Contractor's employees,

ents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Contractor is given direct access to any State databases containing PII, Contractor shall execute, on behalf of itself and its employees, the certification [PII Individual Certification Form](#) or [PII Entity Certification Form](#) [Download form from Hyperlink] on an annual basis and Contractor's duty and obligation to certify shall continue as long as Contractor has direct access to any State databases containing PII. If Contractor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Contractor shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

**L. Software Piracy Prohibition.** State or other public funds payable under this PO shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Vendor hereby certifies and warrants that, during the term of this PO and any extensions, Vendor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Vendor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this PO, including, without limitation, immediate termination of this PO and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**M. Information Technology.** To the extent that Vendor provides physical or logical storage of State Records; Vendor creates, uses, processes, discloses, transmits, or disposes of State Records; or Vendor is otherwise given physical or logical access to State Records in order to perform Vendor's obligations under this PO, Vendor shall, and shall cause its subcontractors, to: **(a)** provide physical and logical protection for all hardware, software, applications, and data that meets or exceeds industry standards and the requirements of this PO; **(b)** maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), annual security testing, and improvements or enhancements consistent with evolving industry standards; **(c)** comply with State and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing; **(d)** provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments; **(e)** promptly report all Incidents, including Incidents that do not result in unauthorized disclosure or loss of data integrity, to a designated representative of the OIS; and **(f)** comply with all rules, policies, procedures, and standards issued by the Governor's Office of Information Technology (OIT), including project lifecycle methodology and governance, technical standards, documentation, and other requirements posted at <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>. Vendor shall not allow remote access to State Records from outside the United States, including access by Vendor's employees or agents, without the prior express written consent of OIS. Vendor shall communicate any request regarding non-U.S. access to State Records to the State. The State, acting by and through OIS, shall have sole discretion to grant or deny any such request.

**N. Accessibility.** Vendor shall comply with and the Work Product provided under this PO shall be in compliance with all applicable provisions of §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability*, as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S. Vendor 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. Vendor shall indemnify, save, and hold harmless the Indemnified Parties against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to Vendor's failure to comply with §§24-85-101, *et seq.*, C.R.S., or the *Accessibility Standards for Individuals*

Item 5. *th a Disability* as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S. The State may require Vendor's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Vendor'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.

January 16, 2024

## AGENDA ITEM SUMMARY

City Council



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### STAFF

Caroline Mitchell, Environmental Services  
Kerri Ishmael, Grants Administration

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### SUBJECT

**First Reading of Ordinance No. 005, 2024, Authorizing Transfers of Appropriations and Appropriating Related Funds for the Timberline Recycling Center Infrastructure and Efficiency Improvements.**

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### EXECUTIVE SUMMARY

The purpose of this item is to support Timberline Recycling Center (TRC) infrastructure and efficiency improvements by:

- Appropriating \$294,853 of unanticipated revenue awarded by the Colorado Departments of Public Health and Environment's Front Range Waste Diversion Enterprise (FRWD), and
- Transfer \$28,393 matching funds from existing appropriations in the Capital Projects Business Unit for the project

The grant funds and matching funds will support replacement of equipment that has exceeded its useful life, as well as incorporation of new infrastructure to provide a safe, accessible and functional recycling facility. Contribution to the Art in Public Places (APP) Program is not required due to grant restrictions.

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### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

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### BACKGROUND / DISCUSSION

The Front Range Waste Diversion (FRWD) grant is funded by a fee on landfill tip fees and is available to communities in the Front Range to support recycling and composting. It is administered by the Colorado Department of Public Health and the Environment (CDPHE). Fort Collins applied for a grant in June 2023 to support the City's Timberline Recycling Center and was awarded the grant. The contract (Attachment 2) confirms the details and commitments of CDPHE and Fort Collins.

The grant of \$294,853, with an additional \$28,393 in City match, will fund:

- A new compactor for collecting cardboard to add recycling capacity to the site
- Three new roll-off bins to replace aging equipment on the site

- Internet fiber connection for the gatehouse and security cameras
  - Security cameras for the site to support site safety and for remote monitoring of the site
  - A larger equipment storage shed
  - A battery storage container
  - New platforms to access the recycling containers
  - Developing ADA access to the recycling containers

A contribution to the Art in Public Places (APP) Program is not required due to restrictions in place from the grant award and the \$28,393 being transferred from the Capital Projects Fund having already made the 1% contribution.

### **CITY FINANCIAL IMPACTS**

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This item appropriates \$294,853 in unanticipated revenue from FRWD in support of the TRC Project in the General Fund.

Required matching funds in the amount of \$28,393 have already been appropriated in the Capital Projects Business Unit as part of the Integrated Recycling Facility project. The \$28,393 will be transferred from the Capital Projects Business Unit to the Grants Business Unit in the General Fund for the TRC Grant Project.

### **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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None.

### **PUBLIC OUTREACH**

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None.

### **ATTACHMENTS**

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1. Ordinance for Consideration
2. Front Range Waste Diversion Grant Agreement

ORDINANCE NO. 005, 2024  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING TRANSFERS OF APPROPRIATIONS AND  
APPROPRIATING RELATED FUNDS FOR THE  
TIMBERLINE RECYCLING CENTER INFRASTRUCTURE  
AND EFFICIENCY IMPROVEMENTS

A. The Colorado Department of Public Health and Environment (“CDPHE”) administers the Front Range Waste Diversion grant program, which is available to communities on Colorado’s Front Range to support recycling and composting.

B. CDPHE has awarded the City of Fort Collins a Front Range Waste Diversion grant of \$294,853, in reimbursement funding, with a City match of \$28,393, to support the City’s Timberline Recycling Center (the “Grant”). The City will use the Grant to procure and install: a new cardboard compactor; three new roll-off bins; an internet fiber connection; security cameras; an equipment storage shed; a battery storage container; new platforms for accessing recycling containers; and accessibility improvements to the recycling containers.

C. The City Council supports the goals of the Grant, including to improve the capacity of the Timberline Recycling Center, and through this Ordinance seeks to appropriate sufficient funds to reach those goals as detailed in the City’s agreement with CDPHE, which has been executed by the City Manager on behalf of the City.

D. All 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 Front Range Waste Diversion grant program.

E. The funds being transferred from the Capital Projects Fund to the Grants Business Unit in the General Fund are ineligible for use in the APP Program due to previously being used for the contribution in a prior appropriation.

F. This appropriation benefits the public health, safety and welfare of the residents of Fort Collins and serves the public purpose of improving public recycling facilities.

G. 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.

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

to exceed the current estimate of actual and anticipated revenues and all other funds to be received in this Fund during this fiscal year.

I. 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.

J. The City Manager has recommended the transfer of \$28,393 from the Integrated Recycling Facility project in the Capital Projects Fund to the General Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged.

K. 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 donation or the City's expenditure of all funds received from such grant or donation.

L. The City Council wishes to designate the appropriation herein for the Front Range Waste Diversion grant as an appropriation that shall not lapse until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

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

Section 1. There is hereby appropriated from new revenue or other funds in the General Fund the sum of TWO HUNDRED NINETY-FOUR THOUSAND EIGHT HUNDRED FIFTY-THREE DOLLARS (\$294,853) to be expended in the General Fund for the Timberline Recycling Center Infrastructure and Efficiency Improvements.

Section 2. The unexpended and unencumbered appropriated amount of TWENTY-EIGHT THOUSAND THREE HUNDRED NINETY-THREE DOLLARS (\$28,393) is authorized for transfer from the Integrated Recycling Facility project in the Capital Projects Fund to the Timberline Recycling Center Infrastructure and Efficiency Improvements project in the General Fund and appropriated therein to be expended for improvements at the Timberline Recycling Center.

Section 3. The appropriation herein for the Front Range Waste Diversion grant is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an

appropriation that shall not lapse at the end of this fiscal year but continue until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

Introduced, considered favorably on first reading on January 16, 2024, and approved on second reading for final passage on February 6, 2024.

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Mayor

ATTEST:

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City Clerk

Effective Date: February 16, 2024

Approving Attorney: Ted Hewitt

Item 6.

# STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT

## SIGNATURE AND COVER PAGE(S)

<b>State Agency</b> Front Range Waste Diversion Enterprise ("FRWD"), an enterprise for the purposes of Section 20 of Article X of the Constitution Colorado Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, Colorado 80246	<b>Contractor</b> City of Fort Collins PO Box 580 Fort Collins, CO 80522
<b>Original Contract Number</b> 2024*3148	<b>Contract Performance Beginning Date</b> <b>The later of the Effective date or December 18, 2023</b>
<b>Contract Maximum Amount</b> <b>Initial Term</b> 12/18/2023-08/31/2026 <span style="float: right;">\$294,853.00</span>  <b>Contract Maximum Amount</b> <span style="float: right;">\$294,853.00</span>	<b>Contract Expiration Date</b> <b>August 31, 2026</b>  Except as stated in §2.D., the total duration of this Contract, including the exercise of any options to extend, shall not exceed <b>5 years</b> from its Performance Beginning Date.
<b>Pricing/Funding</b> <b>Price Structure:</b> Cost Reimbursement <b>Contractor Shall Invoice:</b> Upon Delivery and acceptance of performance <b>Funding Source:</b> FRWD Enterprise \$294,853.00	<b>Miscellaneous</b> Authority to enter into this Contract exists in: CRS 25-1.5-101 - CRS 25-1.5-113 and CRS 25-16.5-111(3) The Enterprise is and operates as a government-owned business within the Department of Public Health and Environment for the purpose of collecting the fee charged to waste generators and using the fee to provide grants and technical assistance to promote waste diversion. See §25-16.5-111(3), C.R.S.  The enterprise is overseen by the FRWD Board of Directors. The department administers the grant program on behalf of the enterprise.  Procurement Method: Request for Application (RFA) Solicitation Number (if any): SF061423
<b>State Representative</b> Kendra Appelman-Eastvedt Recycling Grants Manager Division of Environmental Health and Sustainability Colorado Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246 Email: frwd.program@state.co.us	<b>Contractor Representative</b> Molly Saylor Lead Specialist, Waste Reduction and Recycling City of Fort Collins Environmental Services PO Box 580 Fort Collins, CO 80522 Email: msaylor@fcgov.com
<b>Exhibits</b> <b>The following Exhibits and Attachments are attached and incorporated into this Contract:</b> Exhibit A, Additional Provisions Exhibit B, Statement of Work Exhibit C, Budget Exhibit D, Sample Option Letter	
<b>Contract Purpose</b> To purchase equipment such as a stationary compactor, roll-off containers, walkway platforms for visitors, and a battery storage container. Funds will also be used to hire subcontractors to build a new equipment storage shed, for site connection, to install electrical to the stationary compactor, and to ensure ADA accessibility at the facility.	

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SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that he or she is duly authorized to execute this Contract and to bind the Party authorizing his or her signature.

<p><b>CONTRACTOR</b> City of Fort Collins</p> <p>DocuSigned by: <i>Kelly DiMartino</i> 0B86D5871D89400...</p> <p>By: Signature Kelly DiMartino</p> <p>Name of Person Signing for Contractor</p> <p>City Manager</p> <p>Title of Person Signing for Contractor</p> <p>Date: 2023-11-30</p>	<p><b>STATE OF COLORADO</b> <b>Jared S. Polis, Governor</b> Front Range Waste Diversion Enterprise Laurie Johnson, Chairperson, FRWD Board of Directors</p> <p>DocuSigned by: <i>Laurie Johnson</i> 769B2563B5074CB...</p> <p>By: Laurie Johnson, Chairperson, FRWD Board of Directors</p> <p>Date: 2023-11-30</p>
<p>In accordance with §24-30-202 C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p><b>STATE CONTROLLER</b> <b>Robert Jaros, CPA, MBA, JD</b></p> <p>DocuSigned by: <i>Jannette Scarpino</i> 8CA04B14546748A...</p> <p>By: Signature</p> <p>Contract Effective Date: 2023-11-30</p>	

-- Signature and Cover Pages End --

**1. PARTIES**

This Contract is entered into by and between Contractor named on the Signature and Cover Page for this Contract (the “Contractor”), and the STATE OF COLORADO acting by and through the Front Range Waste Diversion Enterprise within the Department of Public Health and Environment (the “State” or “FRWD” or “CDPHE”). Contractor and the State agree to the terms and conditions in this Contract.

**2. TERM AND EFFECTIVE DATE****A. Effective Date**

This Contract shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Contract before the Effective Date and shall have no obligation to pay Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Contract.

**B. Initial Term**

The Parties’ respective performances under this Contract shall commence on the Contract Performance Beginning Date shown on the Signature and Cover Pages for this Contract and shall terminate on the Initial Contract Expiration Date shown on the Signature and Cover Pages for this Contract (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Contract.

**C. Extension Terms - State’s Option**

The State, at its discretion, shall have the option to extend the performance under this Contract beyond the Initial Term for a period, or for successive periods, at the same rates and under the same terms specified in the Contract (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to the Sample Option Letter attached to this contract. Except as stated in **§2.D**, the total duration of this Contract, including the exercise of any options to extend, shall not exceed 5 years from its Effective Date absent prior approval from the FRWD Board of Directors.

**D. End of Term Extension**

If this Contract approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor as provided in **§14**, may unilaterally extend such Initial Term or Extension Term for a period not to exceed 2 months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not. The provisions of this Contract in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of the Contract.

**E. Early Termination in the Public Interest**

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in whole or in part. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not

Item 6.

apply to a termination of this Contract by the State for breach by Contractor, which shall be governed by **§12.A.i.**

i. Method and Content

The State shall notify Contractor of such termination in accordance with **§14**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Contractor shall be subject to **§12.A.i.a.**

iii. Payments

If the State terminates this Contract in the public interest, the State shall pay Contractor an amount equal to the percentage of the total reimbursement payable under this Contract that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Contract is less than 60% completed, as determined by the State, the State may reimburse Contractor for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Contract, incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor hereunder.

### 3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **"Breach of Contract"** means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor 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. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- B. **"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.
- C. **"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.
- D. **"Contract"** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto. For purposes of clarification and the removal of any doubt, subject to

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any future modifications thereto, the Signature and Cover Pages and Sections 1 through 18 shall constitute the “main body” of this Contract exclusively.

- E. **“Contract Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.
- F. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.
- G. **“Deliverable”** means the outcome to be achieved or output to be provided, in the form of a tangible object or software that is produced as a result of Contractor’s Work that is intended to be delivered to the State by Contractor.
- H. **“Effective Date”** means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature and Cover Page for this Contract.
- I. **“End of Term Extension”** means the time period defined in **§2.D**.
- J. **“Exhibits”** means the exhibits listed on the Signature and Cover Pages and attached to this Contract.
- K. **“Extension Term”** means the time period defined in **§2.C**.
- L. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- M. **“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.
- N. **“Initial Term”** means the time period defined in **§2.B**.
- O. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- P. **“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.
- Q. **“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.
- R. **“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

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information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S.

- S. **“Services”** means the services to be performed by Contractor as set forth in this Contract and shall include any services to be rendered by Contractor in connection with the Goods.
- T. **“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, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- U. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).
- V. **“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.
- W. **“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.
- X. **“Subcontractor”** means third parties, if any, engaged by Contractor to aid in performance of the Work.
- Y. **“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.
- Z. **“Work”** means the delivery of the Goods and performance of the Services described in this Contract.
- AA. **“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 Contract that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

#### 4. STATEMENT OF WORK

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**A. Completion of Work**

Contractor shall complete the Work as described in this Contract and in accordance with the provisions of the Exhibits. The State shall have no liability to compensate Contractor for the delivery of any goods or the performance of any services that are not specifically set forth in this Contract.

**5. PAYMENTS TO CONTRACTOR****A. Maximum Amount**

Payments to Contractor are limited to the unpaid, obligated balance of the Contract Funds. The State shall not pay Contractor any amount under this Contract that exceeds the Contract Maximum for that term shown on the Signature and Cover Pages for this Contract.

**B. Payment Procedures****i. Invoices and Payment**

- a. The State shall pay Contractor in the amounts listed in and in accordance with the Exhibits.
- b. Contractor 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 Contractor 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 Contractor 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 Contract.

**ii. Interest**

Amounts not paid by the State within 45 days of the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate 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. Contractor shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

**iii. Payment Disputes**

If Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the State in writing of its dispute within 30 days following the earlier to occur of Contractor'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 Contractor 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

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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

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Contractor beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year (as provided in the Colorado Special Provisions). If FRWD funds (which are not subject to state fiscal year appropriations), or if federal funds or funds from any other non-State funds constitute all or some of the Contract Funds, the State's obligation to pay Contractor shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Contract shall be made only from Contract Funds, and the State's liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may, upon written notice, terminate this Contract, 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 Contract were terminated in the public interest as described in §2.E.

## 6. REPORTING - NOTIFICATION

### A. Litigation Reporting

If Contractor 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 Contract or may affect Contractor's ability to perform its obligations under this Contract, Contractor shall, within 5 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 on the Signature and Cover Page.

### B. Performance Outside the State of Colorado or the United States, §24-102-206 C.R.S.

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State, in accordance with §14, in a form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this §6.B shall constitute a breach of this Contract. This section shall not apply if the Contract Funds include any federal funds.

## 7. CONTRACTOR RECORDS

### A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all

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records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: (i) the date 3 years after the date this Contract expires or is terminated, (ii) final payment under this Contract is made, (iii) the resolution of any pending Contract matters, or (iv) if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed, and its findings have been resolved (the "Record Retention Period").

**B. Inspection**

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 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, in its discretion, may monitor Contractor's performance of its obligations under this Contract using procedures as determined by the State. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

**D. Final Audit Report**

Contractor shall promptly submit to the State a copy of any final audit report of an audit performed on Contractor's records that relates to or affects this Contract or the Work, whether the audit is conducted by Contractor or a third party.

**8. CONFIDENTIAL INFORMATION-STATE RECORDS**

**A. Confidentiality**

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Contract, permitted by law, or approved in writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor 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 Contract 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 Contract, if applicable. Contractor shall

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immediately forward any request or demand for State Records to the State's principal representative.

**B. Other Entity Access and Nondisclosure Agreements**

Contractor 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 Contract. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements at least as protective as this Contract, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Contractor shall provide copies of those signed nondisclosure agreements to the State upon request.

**C. Use, Security, and Retention**

Contractor 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. Contractor shall provide the State with access, subject to Contractor'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 Contract, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

**D. Incident Notice and Remediation**

If Contractor 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 Contractor can establish that none of Contractor or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor 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. The State may, in its sole discretion and at Contractor's sole expense, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with the results of such audit and evidence of Contractor's planned remediation in response to any negative findings.

**E. Data Protection and Handling**

Contractor shall ensure that all State Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

**F. Safeguarding PII**

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate

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technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Contractor shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 et seq., C.R.S. In addition, as set forth in §24-74-102, et. seq., C.R.S., Contractor, including, but not limited to, Contractor's employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Contractor is given direct access to any State databases containing PII, Contractor shall execute, on behalf of itself and its employees, the certification available here: <https://osc.colorado.gov/spco/central-contracts-unit/contract-grant-forms> on an annual basis. Contractor's duty and obligation to certify shall continue as long as Contractor has direct access to any State databases containing PII. If Contractor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Contractor shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

## 9. CONFLICTS OF INTEREST

### A. Actual Conflicts of Interest

Contractor 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 Contractor under this Contract. Such a conflict of interest would arise when a Contractor 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 Contract.

### B. Apparent Conflicts of Interest

Contractor acknowledges that, with respect to this Contract, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations under this Contract.

### C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor 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 Contract.

### D. Contractor acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Contractor further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Contract.

## 10. INSURANCE

Contractor 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 Contract. All insurance policies required by this Contract shall be issued by insurance companies approved by the State.

### A. Contractor Insurance

The Contractor is a "public entity" within the meaning of the Colorado Governmental

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Immunity Act, §24-10-101, *et seq.*, C.R.S. (the “GIA”) and shall maintain at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

**B. Subcontractor Requirements**

Contractor 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 Contract, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor’s obligations under the GIA. Contractor 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 Contract all of the following insurance policies:

**i. Workers’ Compensation**

Workers’ compensation insurance as required by state statute, and employers’ liability insurance covering all Contractor or Subcontractor employees acting within the course and scope of their employment.

**ii. General Liability**

Commercial general liability insurance written 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.

**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 Contractor and Subcontractors.

**D. Primacy of Coverage**

Coverage required of Contractor and each Subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the State.

**E. Cancellation**

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days

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prior notice to Contractor and Contractor shall forward such notice to the State in accordance with **§15** within 7 days of Contractor's receipt of such notice.

**F. Subrogation Waiver**

All insurance policies secured or maintained by Contractor or its Subcontractors in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

**G. Certificates**

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract by the effective date of the contract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within 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 **§10**.

## **11. BREACH OF CONTRACT**

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in **§12** for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in the Contract in order to protect the public interest of the State; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

## **12. REMEDIES**

**A. State's Remedies**

If Contractor is in breach under any provision of this Contract and fails to cure such breach, the State, following the notice and cure period set forth in **§11**, shall have all of the remedies listed in this **§12.A.** in addition to all other remedies set forth in this Contract 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 Contractor's uncured breach, the State may terminate this entire Contract or any part of this Contract. Contractor shall continue performance of this Contract to the extent not terminated, if any.

**a. Obligations and Rights**

To the extent specified in any termination notice, Contractor 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, Contractor shall complete and deliver to the State all Work not cancelled by the termination notice and may incur obligations as necessary to do so within this Contract's terms. At the request of the State, Contractor shall assign

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to the State all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor but in which the State has an interest. At the State's request, Contractor shall return materials owned by the State in Contractor's possession at the time of any termination. Contractor 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 Contractor for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Contractor was not in breach or that Contractor'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 Contract had been terminated in the public interest under **§2.E**.

c. Damages and Withholding

To the fullest extent of the law, notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor, and the State may withhold payment to Contractor for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Contractor is determined. The State may withhold any amount that may be due Contractor 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 Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor 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 Contractor after the suspension of performance.

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Contractor'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

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Demand immediate removal of any of Contractor'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 Contract 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, Contractor shall, as approved by the State, (a) secure that right to use such Work for the State or Contractor; (b) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (c) remove any infringing Work and refund the amount paid for such Work to the State.

B. Contractor's Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Contractor, following the notice and cure period in §11 and the dispute resolution process in §13, shall have all remedies available at law and equity.

### 13. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

If the initial resolution described in §13.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of CDPHE as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109 and 24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

### 14. NOTICES AND REPRESENTATIVES

Each individual identified on the Signature and Cover Pages shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's principal representative at the address set forth on the Signature and Cover Pages for this Contract or (C) as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Signature and Cover Pages for this Contract. 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

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or principal representative contact information by notice submitted in accordance with this section without a formal amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

## **15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION**

### **A. Work Product**

Contractor 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 Contractor is under contract with the State at the time, Contractor 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, Contractor 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 Contractor cannot make any of the assignments required by this section, Contractor 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, Contractor 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 Contractor 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 Contractor is under contract with the State at the time, Contractor 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. To the extent that Work Product would fall under the definition of “works made for hire” under 17 U.S.C.S. §101, the Parties intend the Work Product to be a work made for hire. Contractor 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,

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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 Contract, 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"). Contractor shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor's obligations in this Contract without the prior written consent of the State. Upon termination of this Contract for any reason, Contractor 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 Contractor**

Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor 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 Contractor under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Contractor Property"). Contractor Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: **(i)** entered into as exhibits to this Contract; **(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.

**16. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

**17. GENERAL PROVISIONS**

**A. Assignment**

Contractor's rights and obligations under this Contract 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 Contractor's rights and obligations approved by the State shall be subject to the provisions of this Contract

**B. Subcontracts**

Unless other restrictions are required elsewhere in this Contract, Contractor shall not enter into any subcontract in connection with its obligations under this Contract without providing notice to the State. The State may reject any such subcontract, and Contractor shall terminate any subcontract that is rejected by the State and shall not allow any Subcontractor to perform any Work after that Subcontractor's subcontract has been rejected by the State. Contractor

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shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Contract 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 Contract.

C. Binding Effect

Except as otherwise provided in §17.A, all provisions of this Contract, 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 Contract and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract 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 Contract 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. Entire Understanding

This Contract 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 Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or effect whatsoever, unless embodied herein.

H. 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.

I. Modification

Except as otherwise provided in this Contract, any modification to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies promulgated by the Colorado State Controller.

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

Any reference in this Contract 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

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changed or amended since the Effective Date of this Contract.

K. Order of Precedence

In the event of a conflict or inconsistency between this Contract and any Exhibits or options such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions in **§18** of the main body of this Contract.
- ii. The provisions of the other sections of the main body of this Contract.
- iii. Any other Exhibit(s) shall take precedence in alphabetical order.

L. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Contract.

M. Severability

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

N. Survival of Certain Contract Terms

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

O. 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 Colorado 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 Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Contract.

P. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§17.A.**, this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result

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of this Contract are incidental to the Contract, and do not create any rights for such third parties.

**Q. Waiver**

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

**R. CORA Disclosure**

To the extent not prohibited by federal law, this Contract and the performance measures and standards required under §24-103.5-101 C.R.S., if any, are subject to public release through the CORA.

**S. Standard and Manner of Performance**

Contractor shall perform its obligations under this Contract in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

**T. Licenses, Permits, and Other Authorizations.**

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Contract, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Contract, 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 Contract.

**U. Accessibility**

- i. Contractor shall comply with and the Work Product provided under this Contract 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. Contractor 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. The State may require Contractor's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Contractor'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 the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S.

**18. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)**

These Special Provisions apply to all contracts except where noted in italics.

**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.**

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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.

**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

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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.

**ADDITIONAL PROVISIONS**  
**To Original Contract Routing Number 2024\*3148**

**These provisions are to be read and interpreted in conjunction with the provisions of the Contract specified above.**

1. To receive compensation under the Contract, the Contractor shall submit a signed Reimbursement Form. This form is titled Reimbursement Form and will be emailed to the Contractor by the Contract Monitor upon contract execution. The form is incorporated and made part of this Contract by reference. The Reimbursement Form must be submitted no later than **forty-five (45)** calendar days after the end of the billing period for which services were rendered. Expenditures shall be in accordance with the Statement of Work and Budget. The Contractor shall submit the invoice using the method listed below.

The Contractor shall submit the following documentation with the completed invoice; copies of timesheets\paystubs, credit card receipts, copies of cleared checks, invoices with zero balance shown, etc.

Combine the completed and signed Reimbursement Form and supporting documentation into an electronic document. Email the combined invoice and supporting documentation to: CDPHE FRWD Program, [cdphe\\_recycling\\_grants@state.co.us](mailto:cdphe_recycling_grants@state.co.us).

Final billings under the Contract must be received by the State within a reasonable time after the expiration or termination of the Contract; but in any event no later than **forty-five (45)** calendar days from the effective expiration or termination date of the Contract.

2. Time Limit For Acceptance Of Deliverables.
  - a. Evaluation Period. The State shall have **thirty (30)** calendar days from the date a deliverable is delivered to the State by the Contractor to evaluate that deliverable, except for those deliverables that have a different time negotiated by the State and the Contractor.
  - b. Notice of Defect. If the State believes in good faith that a deliverable fails to meet the design specifications for that particular deliverable, or is otherwise deficient, then the State shall notify the Contractor of the failure or deficiencies, in writing, within **seven (7)** calendar days of: 1) the date the deliverable is delivered to the State by the Contractor if the State is aware of the failure or deficiency at the time of delivery; or 2) the date the State becomes aware of the failure or deficiency. The above time frame shall apply to all deliverables except for those deliverables that have a different time negotiated by the State and the Contractor in writing pursuant to the State's fiscal rules.
  - c. Time to Correct Defect. Upon receipt of timely written notice of an objection to a completed deliverable, the Contractor shall have a reasonable period of time, not to exceed **thirty (30)** calendar days, to correct the noted deficiencies.
3. The State has determined that this Contract does not constitute a Business Associate relationship under HIPAA.
4. Five percent (5%) of each reimbursement request, but not to exceed \$14,742.65 will be withheld until all project objectives have been achieved, as determined by the CDPHE Contract Monitor.
5. This award does not include funds for Research and Development.
6. Contractor shall manage all budget lines as they appear in Exhibit C, Budget. Contractor is authorized to move funds among budget lines only with the prior, express written permission of the CDPHE Contract

Monitor. A request to move funds shall be accompanied by an updated budget and justification for the move. This may be accomplished electronically.

7. Contractor shall not sell, transfer, abandon, dispose of equipment, or otherwise allow the equipment or materials to become unavailable for use during the term of the contract, without prior written authorization from the CDPHE Contract Monitor.
8. Contractor shall notify CDPHE via email if the project goals change or if the Contractor is unable to utilize the expenses outlined in Exhibit C, Budget due to a change of business status.
9. Pursuant to section 25-16.5-111(6)(f)(II), C.R.S., if a grantee is in noncompliance with the grant terms and the parties are unable to agree to a contract amendment, CDPHE may demand full repayment of grant funds spent, in part or in total, through conversion of the funds to a loan with interest and designate the repayment terms that do not require the grantee to seek advance voter approval under Article X, Section 20 of the Colorado Constitution. For example, if project goals cannot be met or if the Contractor is unable to fulfill contract deliverables or utilize the materials or equipment due to a change in business status, CDPHE reserves the right to demand full repayment of all grant funds spent. CDPHE may allow the Contractor to allocate the equipment to another organization or to secure a buyer, with prior written approval. If CDPHE approves the disposition of equipment to a buyer, the Contractor shall first determine the equipment's value by hiring a third-party appraiser. The Contractor shall submit the appraiser's report to CDPHE for review. The Contractor shall locate and secure a buyer. The Contractor may use an auction house with prior CDPHE approval. CDPHE maintains the first right of refusal if a buyer's offer is considerably lower than the appraised value. If CDPHE agrees to the offer made, the buyer shall pay CDPHE the approved purchase price within **thirty (30)** calendar days. CDPHE must receive payment before the buyer can take possession of the equipment. Payment must be mailed to:

Colorado Department of Public Health and Environment  
 Mailstop: DEHS-A2  
 Attn: Kendra Appelman-Eastvedt, Recycling Grants Supervisor  
 4300 Cherry Creek Drive South  
 Denver, CO 80246

Freight and other associated costs to transfer the equipment from the Contractor to the buyer must not be subtracted from the sale price.

10. Contractor acknowledges and agrees that CDPHE may, at its sole discretion, execute a security lien against any piece of equipment purchased by Contractor pursuant to this contract. Any such lien shall remain in place until CDPHE determines that Contractor has satisfied all obligations of the contract, and CDPHE acknowledges and releases Contractor by written notice.
11. Contractor acknowledges and agrees that CDPHE may, at its sole discretion, request a signed attestation or other documentation certifying the Contractor's matching contribution to this project.
12. At the end of the term of this Contract, the State shall approve the disposition of all equipment.

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STATEMENT OF WORK  
To Original Contract Number 2024\*3148

These provisions are to be read and interpreted in conjunction with the provisions of the contract specified above.

I. Project Description:

This project serves to protect both public health and the environment in the Front Range of Colorado by increasing recycling capacity at Timberline Recycling Center (TRC). The City of Fort Collins owns and operates TRC and serves residents, businesses, and contractors from multiple counties in the Northern Colorado area. Due to an increased number of visitors and volume of recycled material, TRC is in need of new and replacement infrastructure to provide full service and maintain a safe environment for visitors and operators.

The City of Fort Collins will use grant funds to purchase equipment such as a stationary compactor, roll-off containers, walkway platforms for visitors, and a battery storage container. Grant funds will also be used to hire subcontractors to build a new equipment storage shed, for site connection, to install electrical to the stationary compactor, and to ensure ADA accessibility at the facility. Upon completion, this project is expected to increase recycling capacity at TRC.

The Front Range Waste Diversion (FRWD) enterprise is supporting this project because it meets the legislation approved in 2019 to increase waste diversion along the Front Range in Colorado and because it improves conditions for Colorado residents through benefits achieved by incorporation the three pillars of sustainability, which focus on social equity, the environment, and economics.

II. Definitions:

1. CDPHE:

Colorado Department of Public Health and Environment
2. Stationary Compactor

Equipment primarily used for the purpose of packing dry waste material, such as cardboard, mixed paper, and plastic into a compaction trailer or container

III. Work Plan:

Goal #1: To protect Colorado’s environment and human health by implementing sustainable waste diversion practices in the Front Range region.	
Objective #1: No later than the expiration date of this contract increase capacity at Timberline Recycling Center.	
Primary Activity #1	Contractor shall attend a kick-off meeting.
Primary Activity #2	Contractor shall attend a baseline metrics meeting.
Primary Activity #3	Contractor shall provide project management oversight to implement the project.
Sub-Activities #3	<div><div>1. Contractor shall assign tasks to City of Fort Collins Operation Service’s employees to conduct project management oversight.</div><div>2. Contractor shall provide proof of completion for each project management service to include the following:<div><div>a. Hours worked by City of Fort Collins Operation Service’s employees</div><div>b. Explanation of the completed work’s relation to the project.</div></div></div></div>

<b>Primary Activity #4</b>	Contractor shall obtain infrastructure.
<b>Sub-Activities #4</b>	<ol style="list-style-type: none"> <li>3. Contractor shall obtain one (1) stationary compactor to include at a minimum: <ol style="list-style-type: none"> <li>a. Enclosed doghouse with front opening</li> <li>b. Photo eye upgraded auto start</li> <li>c. Receiver box with hook lift</li> </ol> </li> <li>4. Contractor shall provide photos of the stationary compactor onsite to CDPHE.</li> <li>5. Contractor shall rent a 10,000 pound telehandler to install the stationary compactor.</li> <li>6. Contractor shall provide proof of operation of the stationary compactor onsite to CDPHE.</li> <li>7. Contractor shall obtain roll-off containers including the following at minimum: <ol style="list-style-type: none"> <li>a. Two (2) 40-yard gable top roll-off containers</li> <li>b. One (1) 30-yard gable top roll-off container</li> </ol> </li> <li>8. Contractor shall provide photos of the roll-off containers onsite to CDPHE.</li> <li>9. Contractor shall obtain stair platforms to include the following: <ol style="list-style-type: none"> <li>a. Four (4) stair platforms to access gable top roll-off containers</li> <li>b. Three (3) stair platforms to access stationary compactors</li> </ol> </li> <li>10. Contractor shall provide photos of the stair platforms onsite to CDPHE.</li> <li>11. Contractor shall obtain one (1) 20-foot battery storage container.</li> <li>12. Contractor shall provide photos of the battery storage container onsite to CDPHE.</li> </ol>
<b>Primary Activity #5</b>	Contractor shall hire subcontractors.
<b>Sub-Activities #5</b>	<ol style="list-style-type: none"> <li>1. Contractor shall hire subcontractor(s) to build an equipment storage shed onsite to include the following: <ol style="list-style-type: none"> <li>a. Architectural design services</li> <li>b. Construction</li> <li>c. Installation of electrical</li> </ol> </li> <li>2. Contractor shall obtain a building permit for the equipment storage shed.</li> <li>3. Contractor shall hire subcontractor(s) to perform site connection to include the following: <ol style="list-style-type: none"> <li>a. Installation of camera raceways</li> <li>b. Cabling for cameras</li> <li>c. Data enclosure for information technology</li> </ol> </li> <li>4. Contractor shall hire subcontractor(s) to install electrical connection to the stationary compactor.</li> <li>5. Contractor shall hire subcontractor(s) to install ADA accessibility infrastructure to access the following: <ol style="list-style-type: none"> <li>a. Stationary compactors</li> <li>b. Roll-off containers</li> </ol> </li> <li>6. Contractor shall provide subcontractor agreements to CDPHE.</li> <li>7. Contractor shall provide proof of completion of the subcontractor work to CDPHE.</li> </ol>
<b>Primary Activity #6</b>	Contractor shall comply with CDPHE logo requirements on marketing material.
<b>Primary Activity #7</b>	Contractor shall participate in a project field audit.
<b>Primary Activity #8</b>	Contractor shall create reports.
<b>Sub-Activities #9</b>	<ol style="list-style-type: none"> <li>1. Contractor shall create a monthly email.</li> <li>2. Contractor shall record data in the <a href="#">Municipal Measurement Program (MMP)</a>, incorporated and made part of this contract by reference, annually for the life of this contract.</li> <li>3. Contractor shall create progress report #1 via online reporting template.</li> <li>4. Contractor shall create progress report #2 via online reporting template.</li> </ol>

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**EXHIBIT B**

	<ol style="list-style-type: none"> <li>Contractor shall create progress report #3 via online reporting template.</li> <li>Contractor shall create progress report #4 via online reporting template.</li> </ol>
<b>Standards and Requirements</b>	<ol style="list-style-type: none"> <li>CDPHE will schedule the contract kick-off meeting via email no later than 15 business days of this contract's execution.</li> <li>The contract kick-off meeting shall be conducted via virtual meeting software.</li> <li>CDPHE will schedule a baseline metrics meeting no later than 60 business days of this contract's execution.</li> <li>CDPHE will provide access to online reporting templates via email to the Contractor 30 calendar days prior to each report's submittal deadline.</li> <li>Contractor shall notify CDPHE via email within three (3) business days of identifying any project completion delays.</li> <li>Contractor shall respond to CDPHE emails within three (3) business days.</li> <li>CDPHE will notify the contractor no less than 2 (two) weeks prior to the anticipated project field audit date.</li> <li>CDPHE will send a project field audit agenda via email ten (10) business days prior to the audit.</li> <li>CDPHE will respond to draft language requests within 3 business days for marketing material.</li> <li>CDPHE will provide logo upon approval for marketing material.</li> <li>Contractor shall include the following at a minimum in each monthly update: <ol style="list-style-type: none"> <li>Activities completion details.</li> <li>Any anticipated delays related to this project.</li> <li>Explanation of incomplete work related to this project.</li> <li>Completion details for the City of Fort Collins project management services as outlined in Primary Activity #3.</li> <li>List of purchases made within the month.</li> </ol> </li> <li>Contractor shall include the following at a minimum in each progress report: <ol style="list-style-type: none"> <li>Tons of material collected.</li> <li>Number of customers served.</li> <li>Number of jobs created.</li> <li>Responses to narrative questions.</li> </ol> </li> <li>Contractor shall comply with permitting requirements to include at a minimum: <ol style="list-style-type: none"> <li>City</li> <li>County</li> <li>Federal</li> <li>State</li> </ol> </li> <li>Contractor shall provide proof of equipment purchase cost increases before submitting a reimbursement request to use the contingency as specified in Exhibit C, Budget.</li> <li>Contractor shall operate the following equipment according to manufacturer safety instructions: <ol style="list-style-type: none"> <li>Stationary Compactor</li> </ol> </li> </ol>
<b>Expected Results of Activity(s)</b>	<ol style="list-style-type: none"> <li>Increase waste diversion at Timberline Recycling Center.</li> </ol>
<b>Measurement of Expected Results</b>	<ol style="list-style-type: none"> <li>Tons of material diverted from Timberline Recycling Center as a result of this project.</li> </ol>
	<b>Completion Date</b>
<b>Deliverables</b>	<ol style="list-style-type: none"> <li>Contractor shall submit monthly updates on all work completed during the previous month to the CDPHE Contract Monitor via email.</li> </ol>

Item 6.

**EXHIBIT B**

	2. Contractor shall submit data in the Municipal Measurement Program (MMP).	No later than July 31 annually for the life of this contract.
	3. Contractor shall submit photos of the stationary compactor onsite to the CDPHE Contract Monitor via email.	No later than ten (10) calendar days after the stationary compactor is delivered, not to exceed January 31, 2025.
	4. Contractor shall submit rental agreement of 10,000 pound Telehandler to the CDPHE Contract Monitor via email.	No later than ten (10) calendar days after renting the Telehandler, not to exceed January 31, 2025.
	5. Contractor shall submit proof of operation of the stationary compactor onsite to the CDPHE Contract Monitor via email.	No later than ten (10) calendar days after installation of the stationary compactor.
	6. Contractor shall submit photos of the roll-off containers onsite to the CDPHE Contract Monitor via email.	No later than ten (10) calendar days after roll-off containers are delivered, not to exceed January 31, 2025.
	7. Contractor shall submit photos of the stair platforms onsite to the CDPHE Contract Monitor via email.	No later than ten (10) calendar days after the stair platforms are delivered, not to exceed January 31, 2025.
	8. Contractor shall submit photos of the battery storage container onsite to the CDPHE Contract Monitor via email.	No later than ten (10) calendar days after the battery storage container is delivered, not to exceed January 31, 2025.
	9. Contractor shall submit the approved building permit for the equipment storage shed to the CDPHE Contract Monitor via email.	No later than ten (10) calendar days after receiving the building permit.
	10. Contractor shall submit the subcontractor agreements to the CDPHE Contract Monitor via email.	No later than ten (10) calendar days after signing the subcontractor agreements.
	11. Contractor shall submit proof of completion of the subcontractor work to the CDPHE Contract Monitor via email.	No later than ten (10) calendar days after subcontractor work is complete, not to exceed July 31, 2025.
	12. Contractor shall submit progress report #1 via online reporting template.	No later than January 31, 2025.
	13. Contractor shall submit progress report #2 via online reporting template.	No later than July 31, 2025.
	14. Contractor shall submit progress report #3 via online reporting template.	No later than January 31, 2026.
	15. Contractor shall submit progress report #4 via online reporting template.	No later than July 31, 2026.

**IV. Monitoring:**

CDPHE's monitoring of this contract for compliance with performance requirements will be conducted throughout the contract period by the Contract Monitor. Methods used will include a review of documentation determined by CDPHE to be reflective of performance to include progress reports and other fiscal and programmatic documentation as applicable. The Contractor's performance will be evaluated at set intervals and communicated to the contractor. A Final Contractor Performance Evaluation will be conducted at the end of the life of the contract.

Item 6.

**EXHIBIT B****V. Resolution of Non-Compliance:**

The Contractor will be notified in writing within **15** calendar days of discovery of a compliance issue. Within **30** calendar days of discovery, the Contractor and the State will collaborate, when appropriate, to determine the action(s) necessary to rectify the compliance issue and determine when the action(s) must be completed. The action(s) and time line for completion will be documented in writing and agreed to by both parties. If extenuating circumstances arise that requires an extension to the time line, the Contractor must email a request to the Contract Monitor and receive approval for a new due date. The State will oversee the completion/implementation of the action(s) to ensure time lines are met and the issue(s) is resolved. If the Contractor demonstrates inaction or disregard for the agreed upon compliance resolution plan, the State may exercise its rights under the provisions of this contract.

Item 6.

**EXHIBIT C****BUDGET**

To Original Purchase Order Routing Number 2024\*3148

These provisions are to be read and interpreted in conjunction with the provisions of the Contract specified above.

**I. Budget Table**

<b>Budget Category</b>	<b>Award Amount</b>	<b>Matching/ In Kind Amount</b>	<b>Total Amount</b>
<b>Personal Services</b>			
Project Management Services	\$9,002.00	\$190.00	\$9,192.00
<b>Sub-Total</b>	<b>\$9,002.00</b>	<b>\$190.00</b>	<b>\$9,192.00</b>
<b>Equipment and Infrastructure</b>			
Stationary Compactor	\$61,398.00	\$0.00	\$61,398.00
Roll-Off Containers	\$44,843.00	\$2,230.00	\$47,073.00
Stair Platforms	\$76,510.00	\$0.00	\$76,510.00
Battery Storage Container	\$8,911.00	\$0.00	\$8,911.00
<b>Sub-Total</b>	<b>\$191,662.00</b>	<b>\$2,230.00</b>	<b>\$193,892.00</b>
Contingency	\$8,803.00	\$0.00	\$8,803.00
<b>Sub-Total w/ Contingency</b>	<b>\$200,465.00</b>	<b>\$2,230.00</b>	<b>\$202,695.00</b>
<b>Contractual</b>			
Equipment Storage Shed	\$38,995.00	\$0.00	\$38,995.00
Site Connection	\$15,938.00	\$4,062.00	\$20,000.00
Electrical for Compactor	\$1,081.00	\$10,759.00	\$11,840.00
ADA Accessibility	\$27,972.00	\$0.00	\$27,972.00
<b>Sub-total</b>	<b>\$83,986.00</b>	<b>\$14,821.00</b>	<b>\$98,807.00</b>
<b>Other Direct Costs</b>			
Telehandler Rental	\$900.00	\$1,328.00	\$2,228.00
Building Permit Fees	\$500.00	\$9,824.00	\$10,324.00
<b>Sub-Total</b>	<b>\$1,400.00</b>	<b>\$11,152.00</b>	<b>\$12,552.00</b>
<b>Total Project Cost</b>	<b>\$294,853.00</b>	<b>\$28,393.00</b>	<b>\$323,246.00</b>

## II. Budget Narrative

### *Personal Services:*

1. **Project Management Services** – The cost for project management oversight to be conducted by City of Fort Collins's Operation Service's employees.

### *Equipment and Infrastructure:*

1. **Stationary Compactor** – The cost to purchase one (1) stationary compactor to include enclosed doghouse with front opening, photo eye upgraded auto start, receiver box with hook lift, freight, installation, and steel surcharge fee.
2. **Roll-Off Containers** – The cost to purchase two (2) 40-yard gable top roll-off containers, one (1) 30-yard gable top roll-off container, and freight.
3. **Stair Platforms** – The cost to purchase four (4) stair platforms to access gable top roll-off containers, three (3) stair platforms to access stationary compactors, and freight.
4. **Battery Storage Container** – The cost to purchase one (1) 20-foot battery storage container including freight.
5. **Contingency** – To be used only in case of increased equipment costs. This amount cannot be reallocated to other budget line items or categories.

### *Contractual:*

1. **Equipment Storage Shed** – The cost to hire subcontractor(s) to design an equipment storage shed, build the equipment storage shed, and install electrical connection to the equipment storage shed.
2. **Site Connection** – The cost to hire subcontractor(s) to install camera raceways, cabling for cameras, and data enclosure for information technology.
3. **Electrical for Compactor** – The cost to hire subcontractor(s) to install electrical connection for the stationary compactor.
4. **ADA Accessibility** – The cost to hire subcontractor(s) to install ADA accessibility infrastructure to access the stationary compactors and roll-off containers.

### *Other Direct Costs*

1. **Telehandler Rental** – The cost for the rental of a 10,000 pound Telehandler for the installation of the stationary compactor.
2. **Building Permit Fees** – The cost for building permit fees for the equipment storage shed.

Item 6.

## EXHIBIT D

**OPTION LETTER #: Click here to enter text.**

State Agency :  <b>Front Range Waste Diversion Enterprise (FRWD) Colorado Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246</b>				Original Contract # <b>Click here to enter text.</b>		
Contractor (Name and Address) <b>Click here to enter text.</b>				Option Contract Number <b>Click here to enter text.</b>		
Contract Performance Beginning Date : <b>Click here to enter a date.</b>				Current Contract Expiration Date : <b>Click here to enter a date.</b>		
<b>CONTRACT MAXIMUM AMOUNT TABLE</b>						
Document Type	Contract Routing #	FRWD Funding Amount	State Funding Amount	Other Funding Amount	Term (dates)	Total
OL #1						\$
Original						\$
<b>Current Contract Maximum Amount (YTD)</b>						\$

**1) OPTIONS**

- A. Option to extend for an Extension Term
- B. Option to change quantity of goods under the Contract
- C. Option to change quantity of services under the Contract
- D. Option to change Contract rates
- E. Option to initiate next phase of Contract

**2) REQUIRED PROVISIONS:**

- A. In accordance with Section(s) **Click here to enter text.** of the Original Contract referenced above the State hereby exercises its option for an additional term, beginning **Click here to enter a date.** and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.
- B. In accordance with Section(s) **Click here to enter text.** of the Original Contract referenced above, the State hereby exercises its option to **Choose an item.** the quantity of **Choose an item.** at the rates stated in the Original Contract as amended for the following reason: **Click here to enter text.**
- C. In accordance with Section(s) **Click here to enter text.** of the Original Contract referenced above the State hereby exercises its option to modify the Contract rates specified in **Click here to enter text.** for the following reason: **Click here to enter text.** The Contract rates attached to this Option Letter replace the rates in the Original Contract as of the Option Effective Date of this Option Letter.
- D. In accordance with Section(s) **Click here to enter text.** of the Original Contract referenced above, the State hereby exercise its option to initiate Phase **Click here to enter text.**, which shall begin on **Click here to enter a date.** and end on **Click here to enter a date.** at the cost/price specified in Section **Click here to enter text.**
- E. The Contract Maximum Amount table is deleted and replace with the Current Contract Maximum Amount Maximum Amount table shown above.

**3) OPTION EFFECTIVE DATE:**

- A. The effective date of this Option Letter is upon approval of the State Controller or **Click here**

Item 6.

## EXHIBIT D

to enter a date. whichever is later.

<p><b>STATE OF COLORADO</b>  <b>Jared S. Polis, Governor</b>  Front Range Waste Diversion Enterprise  Click here to enter Board Chairperson name  Chairperson, FRWD Board of Directors</p> <hr/> <p>By: Signature</p> <hr/> <p>Click here to enter name of person signing  for FRWD</p> <hr/> <p>Click here to enter the title of person signing  for FRWD</p> <hr/> <p>Date: _____</p>	<p>In accordance with §24-30-202 C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.  <b>STATE CONTROLLER</b>  <b>Robert Jaros, CPA, MBA, JD</b></p> <hr/> <p>By: Signature</p> <hr/> <p>Option Effective Date: _____</p>
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**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

**CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract 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 Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.**

**STATE CONTROLLER**  
**Robert Jaros, CPA, MBA, JD**

By: \_\_\_\_\_

Date: \_\_\_\_\_

January 16, 2024

## AGENDA ITEM SUMMARY

City Council



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### STAFF

Lance Smith, Senior Director of Finance for Utilities  
Heather McDowell, Special Projects Manager

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### SUBJECT

**First Reading of Ordinance No. 006, 2024, Authorizing Transfers and Appropriating Related Funds for the Oak Street Stormwater Improvements Project.**

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### EXECUTIVE SUMMARY

The purpose of this item is to request an appropriation to fund the construction of the Oak Street Stormwater Improvements Project. It will fund the construction contract with the general contractor; contracts for resident engineering and construction management services, permitting and internal project support and management; construction contingency (~4%) and funding for the Art in Public Places (APP) program. The construction contingency included herein is less than the typical amount that would normally be associated with this size of contract (10-15% is typical). If additional contingency funds are needed in the future, those funds would be requested to be appropriated from the Stormwater Reserve Fund.

The total amount being requested for appropriation is \$39,962,815:

- Construction Contract \$36,645,015
- Construction Support (Resident Engineer, Construction Manager, Permitting and Internal Support) \$1,720,000
- Construction Contingency \$1,550,000
- APP Program \$47,800

The Stormwater Utility Enterprise Board adopted Ordinance No. 011, 2023 (First Reading on September 19, 2023, and Second Reading on October 3, 2023) authorizing bond issuance in the Stormwater Fund for the construction of the Oak Street Stormwater Improvements project. Following the sale and closing of the bonds, gross proceeds in the amount of \$40.4M were deposited into the Stormwater Fund reserves on October 31, 2023.

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### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

## BACKGROUND / DISCUSSION

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The Oak Street Stormwater Improvement Project is a priority stormwater project for the City because it will contribute to resolving the urban flooding and stormwater quality issues in downtown Fort Collins. The Oak Street project supports Strategic Objective SAFE 5.5 to address flooding risk for the protection of people, property, and the environment.

The Oak Street project is one of several projects developed as part of the Downtown Stormwater Improvement Program (DSIP). The DSIP was recently created (2017-2019) as a basin-wide evaluation of existing stormwater systems and is the development of a comprehensive strategy to mitigate flood risk and damages in the Old Town Basin. The project will provide stormwater infrastructure including a combination of grey and green infrastructure to reduce flooding impacts along the Oak Street corridor and adjacent blocks. Large diameter storm pipes ranging in size from 48" to 78" will extend from the previously constructed Oak Street Outfall, starting at Mason Street and extending to Jackson Street near City Park. There will be approximately 8,500 linear feet of new stormwater mains along Oak Street and cross streets that extend north to Mountain Avenue and/or south to Olive Street. Green infrastructure includes water quality ponds, or "rain gardens" in three locations along the Oak Street corridor to filter street runoff.

Addressing flooding issues in downtown Fort Collins will provide resilience for the future of the community, improve public safety, avoid costly flood damages in the future and address recurring street and intersection flooding.

The design for this project was completed in June of 2023 and solicitation for a general contractor for construction began at that time. The general contractor is anticipated to be under contract in early 2024, which will allow for a preconstruction timeframe of approximately 6 months and construction start timeframe in mid to late summer 2024. The total duration for construction of the project is anticipated to be 24-30 months.

## CITY FINANCIAL IMPACTS

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The appropriation for the debt service on the bonds associated with this project was adopted through the 2023-2024 Biennial Budget. The bonds were then issued following the adoption of Ordinance No. 011, 2023. As such, there is no request for use of additional reserves in this request beyond the appropriation of the realized bond proceeds.

Ahead of the 2023-2024 Biennial Budget the long-term strategic financial plan for the Stormwater Enterprise Fund was presented to the Council Finance Committee. The financial impact of issuing this debt was considered as part of that plan. This project, along with the overall stormwater capital improvement plan, resulted in the need to increase rates for monthly stormwater services by 3.0% in 2023 and 2024.

Art in Public Places Breakdown: Stormwater has a total cap for APP contribution of \$94,800 based off 0.5% of total budgeted revenue for 2024. Forty-seven thousand dollars (\$47,000) was appropriated during 2023-2024 Budgeting for Outcomes (BFO) process. This project will allocate the remaining amount of \$47,800 and will put Stormwater at the cap for APP contributions for fiscal year 2024.

The contribution will be as follows: \$37,284 will remain in the Stormwater fund for APP artwork and \$10,516 will be transferred to the Cultural Services and Facilities fund for operations and maintenance respectively.

## BOARD / COMMISSION / COMMITTEE RECOMMENDATION

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At the August 3, 2023, meeting, the Council Finance Committee supported proceeding to First Reading for the Debt Ordinance with the full Council.

At the Stormwater Utility Enterprise Board meeting on September 19, 2023, the Board unanimously adopted Ordinance No. 011 on First Reading and Resolution No. 002, relating to Authorization and Issuance of Revenue Bonds in the Stormwater Utility Fund and the Determination of Sale of those Bonds.

At the Stormwater Utility Enterprise Board meeting on October 3, 2023, the Board unanimously adopted Ordinance No. 011 on Second Reading.

#### **PUBLIC OUTREACH**

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None.

#### **ATTACHMENTS**

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1. Ordinance for Consideration
2. Project Location Map

ORDINANCE NO. 006, 2024  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING TRANSFERS AND APPROPRIATING  
RELATED FUNDS FOR THE OAK STREET  
STORMWATER IMPROVEMENTS PROJECT

A. On October 3, 2023, the Stormwater Utility Enterprise Board adopted Ordinance No. 11, 2023 authorizing the issuance of bonds in the Stormwater Fund for the construction of the Oak Street Stormwater Improvements Project (the "Project").

B. The Project is a priority project among several the City has developed as part of the Downtown Stormwater Improvement Program, which is a basin-wide evaluation of existing stormwater systems and the development of a comprehensive strategy to mitigate flood risk and damages in the Old Town Basin.

C. The City closed on the bonds on October 31, 2023, and the gross proceeds of approximately \$40.4 million have been deposited in the Stormwater Fund.

D. This requested appropriation of \$39,962,815 will allow the City to pay the costs of construction of the Project, including but not limited to the construction contract price, construction support (resident engineering, construction management, permitting, and internal support), a contingency amount, and costs for the City's Art in Public Places program.

E. This appropriation benefits the public health, safety and welfare of the residents and Stormwater Utility ratepayers of Fort Collins and serves the public purpose of the City paying the necessary expenses to construct the Project, which will mitigate flood risk and damages in the Old Town Basin.

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

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

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

I. Contributions to the APP Program by each City utility for art projects is kept and spent in such utility's own fund, and the utility contributes its share of the APP Program's costs for maintenance, administration, repair, and display to the Cultural Services and Facilities Fund as provided in City Code Section 23-303(c).

J. In accordance with Article V, Section 10 of the City Charter, the appropriation for the Oak Street Stormwater Improvement Project from the Stormwater Fund and the transfer of a portion of those unexpended and unencumbered appropriated funds to the APP Program as provided in City Code Section 23-304(c) will be used for Stormwater Fund purposes and improvements in connection with the Project that provide a betterment to the Utility.

K. 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 0.5% Contribution Cap based on the year's revenue in the Stormwater Fund.

L. The amount to be contributed in this Ordinance to the APP Program will be \$47,800 with \$10,516 to be transferred to the Cultural Services and Facilities Fund.

M. Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds for a capital project, that such appropriation shall not lapse at the end of the fiscal year in which the appropriation is made but continue until the completion of the project.

N. The City Council wishes to designate the appropriation herein for the Oak Street Stormwater Improvement Project as an appropriation that shall not lapse until the completion of the project.

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

Section 1. There is hereby appropriated from new revenue or other funds in the Stormwater Fund the sum of THIRTY-NINE MILLION NINE HUNDRED SIXTY-TWO THOUSAND EIGHT HUNDRED FIFTEEN DOLLARS (\$39,962,815) to be expended in the Stormwater Fund for the Oak Street Stormwater Improvements Project.

Section 2. The unexpended and unencumbered appropriated amount of NINE THOUSAND FIVE HUNDRED SIXTY DOLLARS (\$9,560) in the Stormwater 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 3. The unexpended and unencumbered appropriated amount of NINE HUNDRED FIFTY-SIX DOLLARS (\$956) in the Stormwater 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 4. The appropriation herein for the replacement of the Oak Street Stormwater Improvements Project is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the completion of the project.

Introduced, considered favorably on first reading on January 16, 2024, and approved on second reading for final passage on February 6, 2024.

\_\_\_\_\_  
Mayor

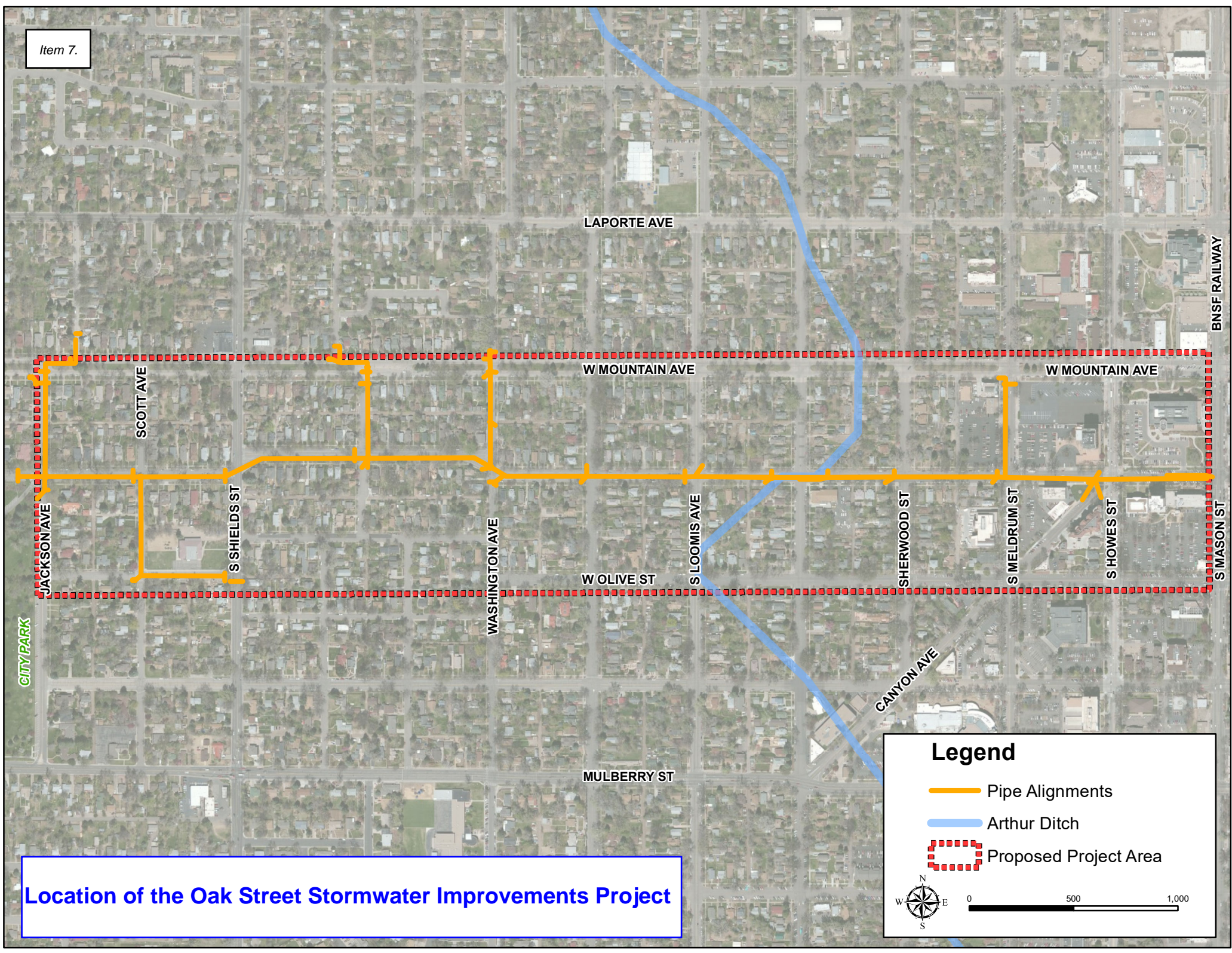
ATTEST:

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

Effective Date: February 16, 2024

Approving Attorney: Ryan Malarky

Item 7.



January 16, 2024

## AGENDA ITEM SUMMARY

City Council



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### STAFF

Marcus Coldiron, Chief Building Official  
Mariel Miller, Water Conservation Manager

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### SUBJECT

**First Reading of Ordinance No. 007, 2024, Amending Article II of Chapter 5 of the Code of the City of Fort Collins to Exempt Plumbing Fixtures from Permits and Inspections.**

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### EXECUTIVE SUMMARY

The purpose of this item is to request a Code amendment to exempt plumbing fixture replacements, such as sinks, faucets, drains, showers, tubs, and toilets from the permit requirements under Chapter 5 of the City Code, for the following reasons: Colorado State does not require permits for this type of work, very few fixture replacements are currently done with a permit, there are no concerns with life or safety, and requiring permits creates additional barriers and cost impacts to improving indoor water efficiency.

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### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

### BACKGROUND / DISCUSSION

Chapter 5 of the City Code requires a permit for the replacement of new fixtures, including new, high efficiency toilets and showerheads. The Colorado State Plumbers Practice Act, however, does not require permits for this type of work. Plumbing contractors and the public frequently replace toilets and other fixtures in the City without first receiving a permit; it is not commonly known that a permit is required and historically, this requirement was not enforced by Building Services. Staff believe a permit exemption for this type of activity is warranted; it would not impact life or safety, aligns with the State's requirements, and would minimize barriers to improved indoor water efficiency throughout the city.

Replacing toilets and showerheads with high efficiency models are the most cost-effective water efficiency measures available to reduce residential indoor water use. The cost and effort required to upgrade fixtures to high efficiency models is often a barrier for residents and businesses; one that Fort Collins Utilities Water Conservation and Larimer County have worked to minimize. There are several programs provided by Fort Collins Utilities and one that is in partnership with Larimer County, which provide incentives to replace toilets and showerheads with high efficiency models, either in the form of free direct installations or rebates to residential and commercial customers. The requirement for permits impacts these programs by adding additional cost and complexity (i.e. a permit cost of \$65 and having to receive an inspection of the installed fixture. By removing the permit requirement for new plumbing fixture replacements, this Code amendment would alleviate these additional barriers to improving indoor water efficiency.

Given that permits for these installations have not historically been enforced and are not a well-known requirement, this code amendment aims to align the community's expectation and historical lack of enforcement by exempting the installation of these replacement fixtures from having to receive a permit.

There is little concern that eliminating a permit system for replacement of existing fixtures would result in installation of higher water use fixtures for the following reasons:

- A large majority of fixture replacements currently occur without a permit.
- In 2016, Colorado became a Water Sense state, which means only high efficiency fixtures can be sold by Colorado retailers and wholesalers, helping to ensure that products purchased and installed without a permit are efficient.
- The hundreds of fixtures installed by water conservation programs each year either meet or exceed the City's efficiency requirement and require review and approval of the efficiency rate to be eligible for such programs.

This Code amendment furthers the Citywide initiative to minimize barriers to improving indoor water efficiency and lowering water use as supported by the current Water Efficiency Plan, Our Climate Future, and the City Strategic Plan, Objective 4.4 Environmental Health, which states, "provide a resilient, reliable, and high-quality water supply."

#### **CITY FINANCIAL IMPACTS**

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None.

#### **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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On December 14, 2023, the Building Review Commission recommended (6-0) that Council adopt staff's request to amend the City Code, by removing the requirement for a permit for plumbing fixture replacements, such as toilets, faucets and other similar work.

#### **PUBLIC OUTREACH**

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Various stakeholders such as Larimer County Conservation Corps, plumbers, and the Chamber of Commerce have been engaged related to this code change.

#### **ATTACHMENTS**

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1. Ordinance for Consideration
2. Building Review Commission Draft Meeting Minutes, December 14, 2023

ORDINANCE NO. 007, 2024  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING ARTICLE II OF CHAPTER 5 OF THE CODE OF  
THE CITY OF FORT COLLINS TO EXEMPT PLUMBING  
FIXTURES FROM PERMITS AND INSPECTIONS

A. On April 5, 2022, City Council adopted Ordinance No. 021, 2022, and Ordinance No. 023, 2022, adopting the *2021 International Building Code* (the “IBC”) and the *2021 International Residence Code* (the “IRC”), respectively, with local amendments thereto.

B. Section 105.2 of the IBC and Section R105.2 of the IRC, codified at Sections 5-26 and 5-30 of the City Code, respectively, require permits for the replacement of new plumbing fixtures, including new high efficiency toilets.

C. The *Colorado State Plumbers Practice Act*, Colorado Revised Statutes Sections 12-155-101 *et seq.*, does not require a permit for plumbing fixture replacements.

D. Requiring a permit to install high efficiency toilets and other plumbing fixtures is cost-prohibitive, and plumbing contractors and the public frequently replace toilets and other plumbing fixtures without obtaining permits.

E. Installing high efficiency toilets and fixtures provides significant value in terms of cost-savings to the resident and furthering the City’s Our Climate Future goals.

F. City staff has recommended a proposed exemption to the IBC’s and IRC’s permitting requirements for the replacement of plumbing fixtures, including toilets, provided the repairs do not involve the replacement or rearrangement of valves or pipes.

G. The proposed permit exemption would not raise life or safety concerns and would minimize barriers and cost impacts to improving indoor water efficiency throughout the City.

H. City Council finds that the proposed code amendments set forth in this Ordinance are in the best interests of the City.

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

Section 1. Section 5-27 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 5-27. Amendments and Deletions to the 2021 International Building Code.**

The 2021 *International Building Code* adopted in §5-26 is hereby amended to read as follows:

...

4. **Section 105.2 Work exempt from permit, regarding Building and Plumbing subsections**, is hereby amended to read as follows; however, the subsections for **Electrical, Gas, and Mechanical** and **Plumbing** are retained in their entirety:

**105.2 Work exempt from permit.** Exemptions from *permit* requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this *jurisdiction*. *Permits* shall not be required for the following:

**Building:**

...

**Plumbing**

1. The stopping of leaks in drains, water, soil, waste or vent pipe; provided, however, that if any concealed trap, drainpipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a *permit* shall be obtained and inspection made as provided in this code.

2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures, and the repair and replacement of garbage disposal units and dishwashers directly connected to the sanitary sewer system, including the necessary replacement of all tail pipes and traps, or the repair, maintenance, and replacement of sinks, faucets, drains, showers, tubs, and toilets, provided such repairs do not involve or require the replacement or rearrangement of valves or pipes.

...

Section 2. Section 5-30 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 5-30. Amendments and Deletions to the 2021 International Residential Code.**

The *2021 International Residential Code* adopted in Section 5-26 is hereby amended to read as follows:

...

4. **Section R105.2 Work exempt from permit, regarding Building and Plumbing subsections**, is amended to read as follows; however, the subsections for **Electrical, Gas, and Mechanical and Plumbing** are retained in their entirety:

**R105.2 Work exempt from permit.** Exemption from *permit* requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this *jurisdiction*. *Permits* shall not be required for the following:

**R105.2 Building:**

...

**Plumbing**

1. The stopping of leaks in drains, water, soil, waste or vent pipe; provided, however, that if any concealed trap, drainpipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a *permit* shall be obtained and inspection made as provided in this code.

2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures, and the repair and replacement of garbage disposal units and dishwashers directly connected to the sanitary sewer system, including the necessary replacement of all tail pipes and traps, or the repair, maintenance, and replacement of sinks, faucets, drains, showers, tubs, and toilets, provided such repairs do not involve or require the replacement or rearrangement of valves or pipes.

...

Introduced, considered favorably on first reading on January 16, 2024, and approved on second reading for final passage on February 6, 2024.

\_\_\_\_\_  
Mayor

ATTEST:

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

Effective Date: February 16, 2024

Approving Attorney: Madelene Shehan



Alan Cram, Chair  
Gabe Dunbar  
Shaun Moscrip  
Eric Richards, Vice Chair  
Casey Roberts  
Mark Teplitsky  
Ronnie Zimmerman

Council Chambers  
300 Laporte Avenue  
Fort Collins, CO

Staff Liaison:  
Marcus Coldiron  
Chief Building Official

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## Meeting Minutes December 14, 2023

A regular meeting of the Building Review Commission was held on Thursday, December 14, 2023, at 9:00 a.m. It was remote only via Zoom.

- **CALL TO ORDER**

Chair Cram called the meeting to order at 9:00 a.m.

- **ROLL CALL**

PRESENT: Cram, Dunbar, Moscrip, Richards, Teplitsky, Zimmerman

ABSENT: Roberts

STAFF: Coldiron, Yatabe, Shehan, Matsunaka

- **PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA**

None.

- **DISCUSSION AGENDA**

1. CONSIDERATION AND APPROVAL OF THE MINUTES OF THE OCTOBER 26, 2023 MEETING.

*Commissioner Richards moved to approve the minutes of the October 26, 2023, meeting. Commissioner Teplitsky seconded. The motion passed 6-0.*

*[Timestamp: 9:03 a.m.]*

2. PROPOSED MIDCYCLE CODE CHANGE: PLUMBING FIXTURE PERMIT EXEMPTION

**DESCRIPTION:** Staff are requesting a code amendment to exempt toilets and other plumbing fixture replacements from the permit process due to the following: Colorado State Plumbers Practice Act doesn't require permits for this type of work, very few fixture replacements currently apply for a permit, there are no concerns with life/safety, and requiring permits create additional barriers and cost impacts to improving indoor water efficiency.

**STAFF:** Marcus Coldiron, Chief Building Official

### Staff Presentation

Marcus Coldiron, Chief Building Official, provided background on Chapter 5 of the Municipal Code. He discussed that Chapter 5 requires a permit for the replacement of new fixtures, including new, high efficiency toilets. Plumbing contractors and the public frequently replace toilets and other fixtures without first receiving a permit; it is not commonly known that a permit is required. He noted that Staff believes a permit exemption for this type of activity is warranted; it would not create life/safety issues and aligns with the state's requirements. It would also minimize barriers to improved indoor water efficiency throughout the city.

Mr. Coldiron noted that one example of how the requirement for permits impacts water efficiency is the County's Water and Energy program offered through a partnership with Fort Collins Utilities. The program provides energy efficiency and water conservation assessments and direct installation of various fixtures and products through the Larimer County Conservation Corp (LCCC). He explained that this no-cost program includes replacing toilets with high efficiency models (0.8 gallons per flush). While this program is available to all community members within Fort Collins, the priority is low-income households to best meet the needs of some of our most vulnerable residents.

He further discussed that every year, LCCC sets goals for home assessments to be completed each season. For the 2023-2024 season, the goal is to have 150 high efficiency toilets installed within the Fort Collins Utilities water service area. These toilets are purchased in bulk by LCCC and are installed by Corp members who have been trained in proper installation techniques.

After becoming aware of the requirement to have a permit and inspection for toilet replacements, it was deemed to be cost prohibitive to proceed with toilet replacements with this program, costing up to \$9,750 (\$65 per permit) per season for permits. The permit cost would not be passed on to individual households, so City staff would need to determine budget adjustments.

Mr. Coldiron explained that there is significant value in installing high efficiency toilets and fixtures and educating households on water conservation, not only for cost-savings to the resident, but to continue to meet the City's Our Climate Future goals. The proposed code change will also align with the State of Colorado's Plumber's Practice Act.

Mr. Coldiron presented the 2021 IRC and IBC with proposed changes read as follows:

"105.2 Work exempt from permit. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

~

Plumbing

1. The stopping of leaks in drains, water, soil, waste or vent pipe; provided, however, that if any concealed trap, drainpipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the

same with new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this code.

2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures, ~~and the removal and reinstallation of water closets~~ and the repair and replacement of garbage disposal units and dishwashers directly connected to the sanitary sewer system, including the necessary replacement of all tail pipes and traps, or the repair, maintenance, and replacement of sinks, faucets, drains, showers, tubs, and toilets, provided such repairs do not involve or require the replacement or rearrangement of valves or pipes ~~or fixtures.~~"

[Timestamp: 9:07 a.m.]

#### Commission Questions and Discussion

Commissioner Teplitsky and Mr. Coldiron discussed the City's low water usage fixture requirements and the possibility that individuals could purchase and install a fixture that does not meet requirements. Mr. Coldiron noted that regardless of whether a permit is required or not, Code states that an individual is required to meet any laws or ordinances of the jurisdiction. The new fixtures would not be inspected or verified by the Building Department. However, there is a process in place through the Utilities' rebate program that verifies and ensures the correct fixtures are installed.

Commissioner Richards asked for clarification on the total amount of toilet fixtures that are replaced versus permitted to be replaced. Mr. Coldiron noted that only a tiny number of the toilet fixtures that get replaced are pulling permits for the installation or replacement. He estimated that less than one percent (<1%) of toilets replaced are being permitted. He noted that the proposed code change will be recognizing a trend in the community.

Commissioner Richards and Mr. Coldiron discussed that the proposed code change will be effective for both commercial and residential buildings.

Chair Cram asked for the Commission to make a motion.

***Commissioner Teplitsky moved that the Building Review Commission recommend that City Council adopt the Chief Building Official's request to amend the Code, removing the requirement for a permit for plumbing fixture replacements, such as toilets, faucets, and other similar work. Commissioner Dunbar seconded. The motion passed 6-0.***

[Timestamp: 9:13 a.m.]

#### ● **OTHER BUSINESS**

Brad Yatabe, Sr. Assistant City Attorney, introduced Madelene Shehan, Assistant City Attorney, who will be advising the Building Review Commission. Commissioner Richards and Mr. Yatabe discussed the CAO's practice of drafting motions and legal memos prior to the meeting.

Chair Cram noted that application process for reapplying for the BRC. Commissioner Teplitsky's term expires in March 2024 and indicated he will be reapplying for another term.

#### ● **ADJOURNMENT**

Chair Cram adjourned the meeting at 9:16 am.

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*Minutes prepared by and respectfully submitted by Melissa Matsunaka.*

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January 16, 2024

## AGENDA ITEM SUMMARY

City Council



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### STAFF

Aaron Ehle, Airport Planning & Development Specialist

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### SUBJECT

**First Reading of Ordinance No. 008, 2024, Authorizing the Conveyance of a Permanent Non-Exclusive Utility Easement on Property Jointly Owned by the City of Fort Collins and the City of Loveland at the Northern Colorado Regional Airport for the New Airport Terminal Facility.**

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### EXECUTIVE SUMMARY

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

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### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

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### BACKGROUND / DISCUSSION

Northern Colorado Regional Airport is a public facility jointly owned and operated by the Cities of Fort Collins and Loveland. In 2015, the Cities entered into an intergovernmental agreement ("IGA") that formed the Northern Colorado Regional Airport Commission, which delegated certain powers and authority to operate and maintain the Airport. However, only the Cities Councils have the authority to grant easements as permanent property rights at the Airport.

In connection with the new terminal, the City of Loveland has requested a permanent non-exclusive easement for the installation and maintenance of electrical infrastructure (the "Easement") to serve the facility. The total area of the easement is 4,483 square feet.

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

- (1) *The use to which the property will be put promotes health, safety or general welfare and benefits a significant segment of the citizens of Fort Collins;*

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

- (2) *The use to which the property will be put supports one (1) or more of the City Council's goals, adopted policies, projects or plans;*

The Easement will allow for public development of the site in alignment with the Airport Master Plan, which was approved by City Council.

- (3) *The financial support provided by the City through the below-market disposition of the property will be leveraged with other funding or assistance;*

The City is benefiting from the grant of the Easement by allowing its partner, the City of Loveland, to install and maintain utilities necessary for the terminal project. In addition to federal grant funding and Airport revenue being used for the terminal, both Cities individually contributed \$1,000,000 towards the project.

- (4) *The sale or lease will not result in any direct financial benefit to any private person or entity, except to the extent such benefit is only an incidental consequence and is not substantial relative to the public purpose being served; and*

The Easement will simply allow the City of Loveland to provide electrical service to the new public terminal, which will add value to the Airport.

- (5) *Selling or leasing the property for less than fair market rent will not interfere with current City projects or work programs, hinder workload schedules or divert resources needed for primary City functions or responsibilities.*

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

As the Easement meets the above criteria, Airport staff and the Airport Commission recommend approval of the Easement as it allows for the electrical infrastructure required to serve the new public facility to be installed and maintained. The new terminal is in alignment with the Airport Master Plan, which has been approved by Council.

## **CITY FINANCIAL IMPACTS**

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The Easement does not have material financial impacts on the Airport or City.

## **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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

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

The Airport Commission unanimously voted at its November 16, 2023, meeting to recommend the City Council approve the utility easement.

## **PUBLIC OUTREACH**

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The development of the 2020 Airport Master Plan, which took more than two years to complete, included numerous public meetings and significant outreach by the Airport, far exceeding what is recommended by the Federal Aviation Administration (FAA).

## **ATTACHMENTS**

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1. Ordinance for Consideration
2. Exhibit A to Ordinance

ORDINANCE NO. 008, 2024  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING THE CONVEYANCE OF A PERMANENT  
NON-EXCLUSIVE UTILITY EASEMENT JOINTLY OWNED  
BY THE CITY OF FORT COLLINS AND THE CITY OF  
LOVELAND AT THE NORTHERN COLORADO REGIONAL  
AIRPORT FOR THE NEW AIRPORT TERMINAL FACILITY

A. The City of Fort Collins ("City") and the City of Loveland ("Loveland") (collectively, the "Cities") jointly own property located in Loveland (the "Property") known as the Northern Colorado Regional Airport (the "Airport").

B. The Cities currently operate and maintain the Airport pursuant to that certain Amended and Restated Intergovernmental Agreement for the Joint Operation of the Fort Collins-Loveland Airport dated January 22, 2015, as amended (the "IGA").

C. In connection with the ongoing construction of the new airport terminal facility project, Loveland Utilities has requested a permanent non-exclusive easement for installation of Loveland-owned utility systems to serve the terminal (the "Easement") over and across that portion of the Airport property legally described and depicted on Exhibit A attached hereto and incorporated herein by this reference (the "Easement Property").

D. The Cities desire to grant the Easement on the terms and conditions more fully set forth in the Grant of Utility Easement attached hereto as Exhibit A and incorporated herein by this reference (the "Easement Agreement").

E. City Code Section 23-111(a) authorizes the City Council to sell, convey or otherwise dispose of any interest in real property owned by the City, provided the City Council first finds, by ordinance, that such sale or other disposition is in the best interest of the City.

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

Section 1. The City Council hereby finds that the City's conveyance of the Easement on the terms and conditions set forth in the Easement Agreement for less than fair market value serves a bona fide public purpose and is in the best interests of the City as required by City Code Section 23-114 because:

a. The use to which the Easement Property will be put promotes health, safety or general welfare and benefits a significant segment of the citizens of Fort Collins by facilitating public investment in and improvement of the Airport and the users it serves, and will allow utility service for the new public terminal facility currently being constructed;

b. The use to which the Easement Property will be put supports one (1) or more of the City Council's goals, adopted policies, projects or plans, including the Airport Master Plan, which was approved by Council;

c. The financial support provided by the City through the below-market disposition of the Easement Property will be leveraged with other funding or assistance enabling the construction and operation of the new terminal facility, which the City has partnered with the City of Loveland to complete;

d. The sale or lease will not result in any direct financial benefit to any private person or entity, except to the extent such benefit is only an incidental consequence and is not substantial relative to the public purpose being served because it will enable development of the new public terminal facility for the benefit of the Cities and the greater public; and

e. Granting the Easement for less than fair market value will not interfere with current City projects or work programs, hinder workload schedules, or divert resources needed for primary City functions or responsibilities and will ultimately benefit the Airport and the Cities.

Section 2. The City Council hereby authorizes the Mayor to execute the Easement Agreement substantially in the form attached hereto as Exhibit "A" with such modifications or additional terms and conditions as the City Manager, in consultation with the City Attorney, determines are necessary or appropriate to protect the interests of the City or effectuate the purposes of this Ordinance.

Introduced, considered favorably on first reading on January 16, 2024, and approved on second reading for final passage on February 6, 2024.

\_\_\_\_\_  
Mayor

ATTEST:

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

Effective Date: February 16, 2024  
Approving Attorney: Ryan Malarky

**GRANT OF UTILITY EASEMENT**

THIS GRANT OF UTILITY EASEMENT is made and entered into by and between the CITY OF LOVELAND, COLORADO, a municipal corporation, with an address of 500 E. Third Street, Loveland, CO 80537, and the CITY OF FORT COLLINS, COLORADO, a municipal corporation (“Grantor”), with an address of 300 Laporte Ave, Fort Collins, CO 80521, and the CITY OF LOVELAND, COLORADO, a Colorado home rule municipal corporation (“City”), with an address of 500 E. Third Street, Loveland, Colorado 80537. This Grant of Utility Easement is effective as of the date of the City’s Official Acceptance in the City’s signature block below.

**WITNESSETH:**

FOR GOOD AND VALUABLE CONSIDERATION, the adequacy and receipt of which is hereby acknowledged, Grantor has this day bargained, sold, conveyed, transferred, and delivered unto the City, its successors, and assigns, in perpetuity, a non-exclusive easement in, over, under, through, and across the real property described below for purposes of constructing, repairing, replacing, relocating, inspecting, operating, maintaining, and accessing City-owned utility systems across, through, upon, and under the real property described on the attached Exhibits A and B (the “Easement Area”); provided, however, that the City shall restore the ground surface to its prior condition after any disturbance of such surface. The term “City-owned utility systems,” means above and below ground wires, lines, cables, ducts, conduits, pipes, pumps, pedestals, risers, poles, vaults, manholes, fire hydrants, pull boxes, and any other equipment, appurtenances, and structures associated with electric, water, wastewater, communications, and stormwater systems that are owned and operated by the City.

Grantor is prohibited from constructing or placing on any part of the Easement Area without prior written approval from the City any fence or gate, building, above or below ground utility systems or appurtenances not owned or maintained by the City, or any other permanent or substantial structure. Grantor is prohibited from making or permitting any use of the Easement Area that would impair, impede, or interfere with the City’s access to or along the easement, or the City’s full free use and exercise of the easement. The City shall be permitted to immediately remove without liability for damages any obstruction prohibited by this easement that interferes with the City’s access to the City-owned utility systems or impairs the City’s full free use and exercise of the easement.

The Grantor or their successors and assigns owns the trees and other vegetation on the Easement Area, and the Grantor acknowledges, for itself and for all successors and assigns, that this easement provides the City with the authority to cut and remove trees and other vegetation that encroaches upon the Easement Area if, in the sole discretion of the City, such trees or vegetation interfere with the City’s use and enjoyment of this easement.

The Easement Area hereby granted, situated in Larimer County, Colorado, is described as follows:

Exhibit A – Easement Description

Exhibit B – Easement Drawing

TO HAVE AND TO HOLD said easement unto the City, its successors, and assigns forever. This perpetual easement and the rights, benefits, and obligations created hereby constitute a burden upon the estate of Grantor in the underlying lands and shall run with the land and be binding upon Grantor and its successors, personal representatives, assigns, and heirs. Grantor does hereby covenant with the City that it is lawfully seized and possessed of the real property above described, that it has a good and lawful right to convey the easement herein granted, that the easement is free and clear of all liens and encumbrances, and that it will forever warrant and defend the title thereto against lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, Grantor has executed this Grant of Utility Easement on the date below.

**GRANTOR:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

State of \_\_\_\_\_ )  
 ) ss  
 County of \_\_\_\_\_ )

Acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

(Name) \_\_\_\_\_ as (Title) \_\_\_\_\_.

Witness my hand and seal. My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
 Notary Public

(S E A L)

**OFFICIAL ACCEPTANCE BY THE CITY OF LOVELAND**

APPROVED AS TO FORM:

\_\_\_\_\_  
 Stephen C. Adams, City Manager

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

ATTEST:

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

\_\_\_\_\_  
 Date

(S E A L)



Item 9.

EXHIBIT B

A TRACT OF LAND BEING A PORTION OF TRACT "B" OF BARNSTORM SECOND ADDITION, BEING SITUATE WITHIN SECTIONS 28 & 33, TOWNSHIP 6 NORTH, RANGE 68 WEST OF THE 6th P.M., CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

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.



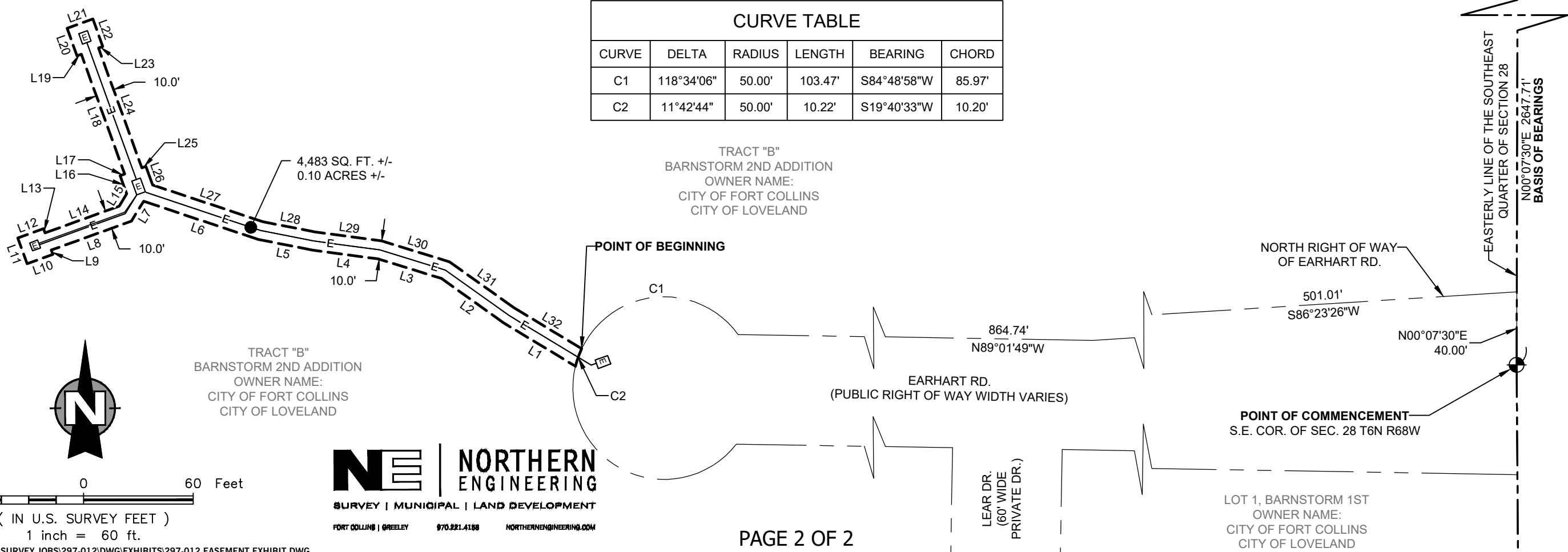
LINE TABLE		
LINE	BEARING	LENGTH
L1	N58° 52' 32"W	45.90'
L2	N54° 29' 20"W	41.93'
L3	N72° 52' 32"W	36.35'
L4	N82° 18' 50"W	36.39'
L5	N78° 52' 32"W	29.97'
L6	N71° 34' 33"W	66.11'
L7	S31° 34' 41"W	12.79'
L8	S70° 07' 28"W	46.59'
L9	S19° 52' 32"E	2.50'
L10	S70° 07' 28"W	15.00'
L11	N19° 52' 32"W	15.00'

LINE TABLE		
LINE	BEARING	LENGTH
L12	N70° 07' 28"E	15.00'
L13	S19° 52' 32"E	2.50'
L14	N70° 07' 28"E	43.10'
L15	N31° 34' 41"E	7.92'
L16	N19° 52' 32"W	10.59'
L17	N70° 07' 28"E	2.59'
L18	N19° 52' 32"W	69.71'
L19	S70° 07' 28"W	2.50'
L20	N19° 52' 32"W	16.00'
L21	N70° 07' 28"E	15.00'
L22	S19° 52' 32"E	16.00'

LINE TABLE		
LINE	BEARING	LENGTH
L23	S70° 07' 28"W	2.50'
L24	S19° 52' 32"E	69.71'
L25	N70° 07' 28"E	2.41'
L26	S19° 52' 32"E	10.89'
L27	S71° 34' 33"E	63.56'
L28	S78° 52' 32"E	29.03'
L29	S82° 18' 50"E	36.92'
L30	S72° 52' 32"E	38.79'
L31	S54° 29' 20"E	43.16'
L32	S58° 52' 32"E	43.49'

SYMBOL LEGEND	
	SECTION CORNER
	ELECTRIC EQUIPMENT

LINE LEGEND	
	EASEMENT LINE
	RIGHT OF WAY
	PROPOSED ELECTRIC CONDUIT
	SECTION LINE



January 16, 2024

## AGENDA ITEM SUMMARY

City Council



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### STAFF

Andrew Leslie, Sergeant, Police Services  
Kerri Ishmael, Senior Analyst, Grants Administration

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### SUBJECT

**Resolution 2024-001 Supporting a Grant Application for Co-responder/Community Based Alternative Response Support Funding for Fort Collins Police Services.**

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### EXECUTIVE SUMMARY

The purpose of this item is to obtain support and approval for the City to apply in partnership with UC Health for grant funds in support of Fort Collins' Police Services Mental Health Response Team.

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### STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

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### BACKGROUND / DISCUSSION

Police Services operates the Mental Health Response Team (MHRT) with the mission to provide professional, compassionate, and comprehensive services through the collaboration of police and mental health professionals. MHRT conducts on-scene assessments and follow-up aligned with the agency's de-escalation philosophy. UC Health supports MHRT by partnering with Police Services in this mission and goals to:

- Increase on-scene safety for all parties involved;
- Route citizens to the most appropriate level of care;
- Avoid unnecessary referrals to hospital emergency rooms;
- Reduce incarceration related to crimes secondary to mental illness;
- Provide follow-up care coordination to ensure community members can access appropriate care; and
- Create a culture of police and mental health professionals' collaboration focusing on community needs and collaboration.

MHRT has been serving the community in collaboration with the support and partnership of UC Health since 2018.

UC Health licensed clinicians work alongside sworn Police Services officers assigned to MHRT. This partnership benefits the Fort Collins community by partnering law enforcement and behavioral health professionals to further the mission to provide compassionate, collaborative, and professional assessment and follow-up for community members suffering from behavioral health issues. Currently, UC Health provides the City with four professional full-time staff members for MHRT at no cost.

Considering the beneficial impact MHRT provides to the Fort Collins community, the City, in its capacity as an eligible applicant, is pursuing funding opportunities, that will support both Police Services and UC Health in furthering the goals of MHRT.

Through the Colorado Department of Local Affairs (DOLA) **FY2023-2024 Peace Officers Behavioral Health Support and Community Partnerships Grant Program** funding is available for Co-Responder/Community Based Alternative Response Support, which directly aligns with operations of MHRT. The DOLA grant program supports funding for “Co-responder community response,” defined under Colorado Revised Statute § 24-32-3501 as a model of criminal justice diversion that pairs law enforcement and behavioral health providers to intervene and respond to behavioral health-related calls for police service, utilizing the combined expertise of the law enforcement officer and behavioral health specialist to de-escalate situations and help link individuals with behavioral health issues to appropriate services. Police Services, in partnership with UC Health, intends to apply for grant funds under this DOLA grant program to cover personnel and equipment costs of UC Health professionals supporting MHRT, training, and community outreach.

#### **CITY FINANCIAL IMPACTS**

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Support of Police Services, in partnership with UC Health, applying to this DOLA grant program does not impact City finances. If the grant is awarded, the City will serve as the fiscal agent for the grant funds and will seek appropriation of such grant funds from City Council.

#### **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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None.

#### **PUBLIC OUTREACH**

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None.

#### **ATTACHMENTS**

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1. Resolution for Consideration

RESOLUTION 2024-001  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
SUPPORTING A GRANT APPLICATION FOR CO-RESPONDER/  
COMMUNITY BASED ALTERNATIVE RESPONSE SUPPORT  
FUNDING FOR FORT COLLINS POLICE SERVICES

A. Fort Collins Police Services (“FCPS”), in partnership with UC Health, is applying for a grant from the State of Colorado Department of Local Affairs (“DOLA”) Peace Officers Behavioral Health Support and Community Partnerships Grant Program (the “Program”) to provide additional funding to support the Fort Collins Police Services Mental Health Response Team (“MHRT”).

B. The MHRT was formed to provide community members with increased on-scene safety, to route them to the most appropriate level of care, avoid unnecessary referrals to hospital emergency rooms, reduce incarceration related to crimes that are secondary to mental illness, provide follow up care coordination, and create a culture of collaboration between police and UC Health mental health professionals that focuses on community needs.

C. The state law that created the Program encourages law enforcement agencies to apply for grants in collaboration with behavioral health providers. The City is an eligible applicant and is therefore pursuing funding opportunities that will support both Police Services and UC Health in furthering the goals of the MHRT.

D. As part of the Program grant application process, DOLA requires that the governing body of any entity applying for grant funds takes official action to approve and authorize the application.

E. The grant will provide funds to cover personnel and equipment costs of UC Health professionals who support MHRT, training, and community outreach to provide professional assessment and follow-up for community members suffering from behavioral health issues.

F. The grant money would allow FCPS to continue to provide professional, compassionate, and comprehensive services to community members through the collaboration of police and mental health professionals.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the City Council hereby supports, approves of, and authorizes submission of, the City’s application for a grant from DOLA to fund MHRT.

Passed and adopted on January 16, 2024.

\_\_\_\_\_  
Mayor

ATTEST:

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

Effective Date: January 16, 2024  
Approving Attorney: Dawn Downs

January 16, 2024

## AGENDA ITEM SUMMARY

City Council



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### STAFF

Alice Conovitz, Water Conservation Specialist, Utilities  
Shannon Ash, Affordability Program Manager, Utilities  
Brian Tholl, Energy Services Manager, Utilities

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### SUBJECT

**Resolution 2024-002 Authorizing the Mayor to Execute an Intergovernmental Agreement with Larimer County to Continue Support for the Larimer County Conservation Corps Energy and Water Program.**

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### EXECUTIVE SUMMARY

The purpose of this item is to seek approval of an intergovernmental agreement (IGA) between the City and Larimer County for funding of the Larimer County Conservation Corp (LCCC) Water and Energy Program ("Program"). The agreement would allow for four annual renewals for a total potential term of five years, subject to annual appropriations.

The City of Fort Collins Utilities (FCU) has partnered with Larimer County to fund the LCCC since 2010 with tremendous success. LCCC crews have supported local resource conservation by providing home efficiency assessments to customers of FCU and Loveland Water and Power. These free home efficiency assessments include an on-site assessment, customer education, and direct installation of energy and water saving equipment such as LED lightbulbs, showerheads, and high-efficiency toilets. From 2010 to 2023, LCCC crews assessed over 4,000 homes served by FCU and provided resources and services that enabled these customers to save on their utility bills.

Due to its success, the Program is now part of the City's Utilities Affordability Portfolio which provides a mechanism for low to moderate income customers to control their energy use and costs.

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### STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

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### BACKGROUND / DISCUSSION

The mission of the Program is to positively impact the local community and the environment by promoting energy and water conservation education and practices. The Program has implemented a workforce development model of training young adults in the efficiency industry while increasing accessibility to conservation measures and education for the community's low-income population.

This Program is an important component within a portfolio of programs and services that support progress towards City goals set forth in the Energy Policy, Our Climate Future and Water Efficiency Plan.

The City, through FCU, has partnered with the LCCC since 2010. Home efficiency assessments performed by LCCC include an on-site assessment, energy and water saving retrofits and customer education. By the end of the 2023 spring season, LCCC crews assessed over 4,016 homes in Fort Collins. Each year, participation in the LCCC program is estimated to save an average of over 270 customers a combined \$20,000 on electric bills and \$10,000 on water bills, for an average annual utility bill savings of approximately \$110 for each household participating in the program. Annual energy savings average 180,000 kWh and annual water savings average over 2,000,000 gallons; this is equivalent to the average annual electric use and water use for approximately 25 homes.

In 2023, LCCC installed 3,739 LED lightbulbs, 108 furnace air filters, 127 high-efficiency toilets, 172 water-saving showerheads, and additional equipment such as faucet aerators and carbon monoxide detectors. In 2024 the Program has a target to serve between 250 and 300 Fort Collins households, specifically through working with customers enrolled in the Utilities Income Qualified Assistance program. This engagement will build on 2023 successes to further assist in reducing regional greenhouse gas (GHG) emissions and water consumption through electric and water resource savings.

The Program is a proven model serving the interests of the City, the County, and citizens to provide services efficiently and cost-effectively, and to minimize overhead expenditures for administration. The Program is also a successful example of collaboration between FCU, Loveland Water and Power, and Larimer County. Larimer County also brings funding from local, State and Federal sources through the LCCC. FCU funds are only used to serve Fort Collins' electric and water customers. The Program is completely free to customers. While it is available to all FCU electric and water customers, it is most heavily marketed to customers enrolled in the income-qualified assessment program.

## **CITY FINANCIAL IMPACTS**

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The IGA commits FCU to \$232,998 from December 2023 through May 2024, based on the LCCC meeting requirements for the minimum number of assessments. FCU has budgeted funds within the Energy Services and Water Conservation divisions for the provision of efficiency audits and directly installed efficiency equipment. No additional funding or appropriation is required to meet the City's contribution. Future agreements for services from LCCC will be dependent upon efficiency funding appropriations separately brought for Council approval.

## **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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For informational purposes only, Fort Collins Utilities has presented results of efficiency programs annually to Energy Board, including the LCCC progress. Staff have also presented annual updates for program achievements and Utilities Affordability Portfolio of programs to Energy Board. Staff has not sought board actions or recommendations to Council yet for these programs.

## **PUBLIC OUTREACH**

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In conjunction with periodic status updates on the Utilities Affordability Portfolio programs, FCU staff has also published Program achievements in an annual Energy Achievements infographic posted to Utilities webpage. The implementation of this ongoing program aligns with City policies and supports progress toward goals identified in Our Climate Future and the Water Efficiency Plan.

## **ATTACHMENTS**

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1. Resolution for Consideration
2. Exhibit A to Resolution

RESOLUTION 2024-002  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING THE MAYOR TO EXECUTE AN  
INTERGOVERNMENTAL AGREEMENT WITH LARIMER COUNTY  
TO CONTINUE SUPPORT FOR THE LARIMER COUNTY  
CONSERVATION CORPS ENERGY AND WATER PROGRAM

A. Since 2010, the Fort Collins Utility Services has partnered with the Larimer County Conservation Corp Energy and Water Program (the “LCCC Program”) to support local resource conservation programming.

B. The LCCC Program includes performing home efficiency assessments for customers of Fort Collins Utilities and Loveland Water and Power, including on-site evaluations, energy and water saving retro-fits, and customer education.

C. The LCCC Program also trains young adults in the efficiency industry and improves access for low-income populations to conservation measures and education.

D. The LCCC Program is an important component of support for the goals of the City’s Energy Policy, Our Climate Future, and Water Conservation Plan.

E. The LCCC Program has also become an element of the City’s Utilities Affordability Portfolio, which provides a mechanism for low-to-moderate-income utility customers to control their energy use and costs through a suite of education and efficiency retro-fits tools.

F. Since inception in 2010 through 2023, the LCCC Program has provided assessments and education for over 4,016 homes in Fort Collins, resulting in an estimated annual savings to customers of a \$20,000 on electric bills and \$10,000 on water bills, with an average annual utility bill savings of approximately \$110 for each household participating in the program.

G. The proposed 2024-2025 LCCC Program cycle will serve 250-300 additional Fort Collins Utility customers, requiring the City to commit \$232,998.13 to continue its support of the LCCC Program.

H. The City Council has determined it is in the best interests of the City and beneficial to Fort Collins Utility ratepayers that the City execute an intergovernmental agreement with Larimer County for the purpose of continuing the City’s support of the LCCC Program in the 2024-2025 cycle, with the option to renew the City’s support for up to four additional program cycles, subject to amendments approved by the City Manager and annual appropriations.

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

Section 1. The Mayor is hereby authorized to execute an intergovernmental agreement with Larimer County in support of the Larimer County Conservation Corp Energy and Water Program (IGA), in substantially the form of Exhibit "A", with such modifications and additional terms and conditions not inconsistent with this Resolution 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, and with the City to provide funds in the amount of \$232,998.13 from existing appropriations in the Energy Services and Water Conservation Divisions budgets in furtherance of the services described in the IGA.

Section 2. In addition, the City Manager is authorized, during the term of the IGA and in consultation with the City Attorney, to approve and execute such amendments to the IGA in furtherance thereof as the City Manager determines to be reasonably necessary and appropriate to: (a) protect the City's interests or to effectuate the purposes of this Resolution; (b) provide a benefit to the City; and (c) limit the City's financial obligation to expenditure of funds already appropriated and approved by Council or conditioned upon such appropriation.

Passed and adopted on January 16, 2024.

\_\_\_\_\_  
Mayor

ATTEST:

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

Effective Date: January 16, 2024  
Approving Attorney: Cyril Vidergar

## EXHIBIT A TO RESOLUTION 2024-002

**AGREEMENT FOR EMPLOYMENT AND TRAINING SERVICES**

This Agreement is made this as the date of the last signature below ("Effective Date"), by and between the City of Fort Collins, Colorado, a municipal corporation (hereinafter called the "City") and Larimer County, Colorado, through Larimer County Economic and Workforce Development Department, Conservation Corps, 200 West Oak Street, Suite 5000, Fort Collins, Colorado 80521 (hereinafter called the "Provider" or "LCCC").

**WITNESSETH**

WHEREAS, the City wishes to promote development of job skills in the efficiency industry for young adults in Larimer County while increasing availability of energy and water conservation measures and education to low-income electric customers of Fort Collins Utilities ("Utilities"); and

WHEREAS, the City and Provider have successfully partnered on delivery of energy and water assessments since 2010; and

WHEREAS, the Provider wishes to continue its established Conservation Corps program for another cycle to provide such opportunities through the LCCC Water & Energy Program; and

WHEREAS, it is in the best interests of the City, the County, and their taxpayers to provide services efficiently and cost-effectively, and to minimize overhead expenditures for administration and program creation.

NOW, THEREFORE, in consideration of the mutual covenants herein, the parties agree as follows:

1. Services. The Provider agrees to provide services generally described as providing assessments and completion of energy and water savings product installations for Utilities customers, including purchasing and providing of materials, marketing, training employees, performing scheduling and customer service, and progress reporting, as set forth in Exhibit "A". The Provider will also provide related conservation education, assistance and promotion of the City's home energy, water conservation, and affordability programs. Provider services are more fully described in Exhibit "A", incorporated herein by this reference.

2. Time of Commencement and Completion of Services. The services to be performed pursuant to this Agreement shall be initiated as of the Effective Date and completed no later than May 31, 2024. This Agreement shall automatically renew for up to four additional one-year terms, to conclude no later than May 31, 2028, unless earlier terminated. Either party may terminate for convenience upon thirty (30) days written notice to the other party.

3. Compensation. In consideration for Provider's services, the City agrees to pay Provider according to the schedule set forth in Exhibit "B", consisting of one (1) page and incorporated herein by this reference, in an amount not to exceed the budget described in Exhibit A. Provider shall submit itemized invoices for payment in accordance with Exhibit B. The City will

## EXHIBIT A TO RESOLUTION 2024-002

make payments within thirty (30) days after receiving a properly documented invoice from Provider.

4. No Joint Employer Relationship. All staff employed shall remain at all times subject to the sole and exclusive control, supervision, and direction of the Provider. The Provider shall have sole and exclusive control over the selection, hiring, discipline, firing, and assignment of such employees. The Provider shall also have the sole and exclusive authority to determine the method, means, and manner of performance of such employees, and to establish their wages, hours and working conditions. The Provider shall be the sole employer of all employees providing services pursuant to this Agreement. This Agreement shall not be construed as creating a "joint-employer" relationship between the Provider and the City.

5. Payroll Processing. The Provider agrees to perform all necessary payroll processing and personnel administration with respect to employees hired or retained pursuant to this Agreement in compliance with all applicable federal and state laws and local ordinances, including but not limited to the maintenance of all employment-related records, the issuance of payroll checks and the withholding of FICA and applicable federal and state taxes. The City agrees not to provide anything of value to any employee of the Provider performing services under this Agreement, whether in the form of a gift or compensation, without prior written approval from the Provider.

6. Worker's Compensation. The Provider agrees to provide workers' compensation coverage for employees pursuant to this Agreement. It is the intent of the Provider and the City that the Provider's workers' compensation insurance carrier shall be liable for any benefits awarded to any injured employee under the terms of this Agreement.

7. Indemnification and Hold Harmless. Each party hereto agrees to release the other party, and be responsible and assume liability for its own wrongful or negligent acts or omissions, and those of its officers, agents and employees to the extent required by law. No term or condition of this Agreement shall be construed or interpreted as a waiver, either expressed or implied, of any of the immunities, rights, benefits or protections available to any party under the Colorado Governmental Immunity Act.

As the sole employer of all employees providing services pursuant to this Agreement, Provider agrees that the City shall have no obligation or liability in connection with: (a) the selection, hiring, discipline, firing or assignment of such employees; (b) the method, means or manner of performance of such employees; (c) the wages, hours or working conditions of such employees; (d) negligent conduct, intentional conduct, and criminal conduct, including commissions and omissions, of such employees; and (e) the employment relationship between the Provider and such employees.

8. Additional Provider Obligations.

8.01 No person with responsibilities in the provision of services or the operation of any program referred to in this Agreement will unlawfully discriminate with respect to any program participant or any applicant for participation on the basis of race, color, national origin, age, sex, religion, handicap, political affiliation or beliefs.

## EXHIBIT A TO RESOLUTION 2024-002

8.02 No services provided under this Agreement shall involve political activities and no funds made available under this Agreement shall be used for lobbying activities.

8.03 No person with responsibilities in the provision of the services or the operation of any program referred to in this Agreement will use his or her position for his or her own private gain or for the gain of any person with whom (s)he has a relationship by blood or marriage or a close business, political or personal association.

8.04 Provider agrees to complete background checks reasonably satisfactory to the City on all staff or other employees of Provider prior to participation in the Program, and to limit participation to persons shown through said checks to be reliable and reasonably suited for work in the homes of Utilities customers. Any such checks shall be completed in accordance with applicable laws.

9. Information Available to Provider. The City agrees to make available to Provider such information as is required to enable Provider to provide its services in compliance with local, state and federal laws, and subject to the following:

9.01 Provider must implement reasonable policies and procedures to detect, prevent and the risk of identity theft in compliance with the Identity Theft Red Flags Rules found at 16 Code of Federal Regulations Part 681, including requiring any Conservation Corp Energy Program employees to sign a confidentiality agreement as a condition of employment. Further, Provider must notify the City in writing of any information leading Service Provider to believe identity theft has occurred regarding a City covered account and must take appropriate steps to mitigate identity theft if it occurs with one or more of the City's covered accounts.

9.02 In connection with the Services to be provided to the City pursuant to this Agreement, the Provider hereby acknowledges that it has been informed that the City has established policies and procedures with regard to the handling of confidential information and other sensitive materials, including but not limited to all name, address, telephone number, and personal information of all customers receiving services from Provider hereunder.

In consideration of access to certain information, data and material (hereinafter individually and collectively, regardless of nature, referred to as "information") that are the property of and/or relate to the City or its employees, customers or suppliers, which access is related to the performance of services that the Provider has agreed to perform, including but not limited to any information generated by the Provider in connection with the performance of services under this Agreement, the Service Provider hereby acknowledges and agrees as follows:

That information that has or will come into its possession or knowledge in connection with or as a result of the performance of services for the City may be confidential and/or proprietary. The Provider agrees to treat as confidential (a) all information that is owned by the City, or that relates to the business of the City, or that is used by the City in carrying on business, (b) all information that is proprietary to a third party (including but not limited to customers and suppliers of the City); and (c) all information generated by Provider in the course of or in

## EXHIBIT A TO RESOLUTION 2024-002

connection with the provision of services under the Agreement. The Provider shall not disclose any such information to any person except as authorized by the City. Further, the Provider shall not use such information to obtain any economic or other benefit for itself, or any third party, except as specifically authorized by the City.

The foregoing to the contrary notwithstanding, the Provider understands that it shall have no obligation under this Agreement with respect to information and material that is required by law, regulation or court order to be disclosed, provided that the request for such disclosure is proper and the disclosure does not exceed that which is required. In the event of any such disclosure, Provider shall furnish a copy of this Agreement to anyone to whom it is required to make such disclosure and shall promptly advise the City in writing of each such disclosure.

If Provider ceases to perform services for the City, or the City so requests for any reason, Provider shall promptly return to the City all information described hereinabove, including all copies, notes and/or summaries (handwritten or mechanically produced) thereof, in its possession or control or as to which it otherwise has access.

Provider understands and agrees that the City's remedies at law for a breach of Provider's obligations under this Confidentiality provision may be inadequate and that the City shall, in the event of any such breach, be entitled to seek equitable relief (including without limitation preliminary and permanent injunctive relief and specific performance) in addition to all other remedies provided hereunder or available at law.

10. Parties' Representatives. For the purposes of this Agreement, Provider hereby designates Maelly Oropeza, Corps Manager ([moropeza@larimer.org](mailto:moropeza@larimer.org), 970-498-6630) as its representative. The City designates Brian Tholl, Energy Services Manager ([btholl@fcgov.com](mailto:btholl@fcgov.com), 970-416-2539) as its representative.

11. City Responsibilities. In addition to providing payment as set forth above, the City shall further be obligated to provide the following for use by Provider in performing Provider's obligations hereunder, and as described in more detail in Exhibits A and B:

1. At Utilities' discretion, either provide materials for direct installation into the assessed homes or for products not provided, Utilities will reimburse LCCC for materials that LCCC has purchased and installed. ;
2. At Utilities' discretion, assist LCCC with marketing efforts in seeking participants and promoting LCCC's services ;
3. Provide training related to City programs and support Provider staff development. Examples of activities could include networking, shadowing, informational interviews, sitting on an industry panel for questions and answers, or site visits of the crew in the field.
4. Offer annual written or verbal feedback upon completion of the program.

12. Default. Each and every term and condition of this Agreement shall be deemed to be a material element of this Agreement. In the event either party shall fail or refuse to perform according to the terms of this Agreement, such party may be declared in default thereof.

## EXHIBIT A TO RESOLUTION 2024-002

13. Remedies upon Default. In the event a party has been declared in default hereof, such defaulting party shall be allowed a period of five (5) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to: (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) seek any other remedy available at law or equity.

14. Compliance with Laws/Nondiscrimination. Provider shall strictly comply with all applicable federal and state laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices and to the origination of mortgage loans and other credit and lending activities. Provider shall deliver all services hereunder in a manner consistent with all laws and requirements pertaining to civil rights, nondiscrimination and constitutionally protected classes and rights, applicable to the provision of municipal services to members of the public.

15. Entire Agreement. This instrument and its exhibits constitute and contain the entire agreement and understanding of the parties hereto concerning the employee's employment and the other subject matters addressed herein, and supersedes and replaces all prior negotiations, agreements, understandings, warranties, promises or otherwise between the parties hereto, whether written, spoken or implied from the conduct of the parties hereto, concerning the subject matters hereof.

16. Severability of Invalid Provisions. In the event any covenant, condition or provision of this Agreement or the application thereof, is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall not in any way affect any of the other covenants, conditions or provisions of this Agreement, provided that the invalidity of any such covenant, condition or provision does not materially prejudice either the City or Provider in their or either of their respective rights and obligations under the valid covenants, conditions or provisions of the Agreement.

17. Governing Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Colorado.

18. Waiver of Breach -- Effect. No waiver of any breach of any term of provision of this Agreement by the City or Provider shall be construed to be, nor shall be, for any purpose, a waiver of any breach of any other provision hereof or of a continuing or subsequent breach of the same provision. No waiver shall be valid unless in writing and signed by the party waiving the breach.

19. Binding Effect. This Agreement shall be binding upon the parties hereto and their heirs, administrators, personal representatives, successors and assigns of each respectively.

20. Headings. Paragraph headings contained herein are for convenience and reference, and are not intended to define or limit the scope of any provisions of this Agreement.

EXHIBIT A TO RESOLUTION 2024-002

21. Appropriation of Funds. Obligations of the City hereunder are contingent upon appropriation of funds sufficient and intended for this purpose by the City Council of the City, in its sole discretion.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective, as of January 1, 2024.

Larimer County, Colorado

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chair, Board of County Commissioners

Date: \_\_\_\_\_

By: \_\_\_\_\_

CITY OF FORT COLLINS, COLORADO

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jeni Arndt, Mayor

ATTEST:

APPROVED AS TO FORM:

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

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

## **Exhibit A: Scope of Services and Costs**

### **BACKGROUND**

The Larimer County Conservation Corps (LCCC) has existed for over twenty years in our local community. During this tenure, LCCC has specifically focused on providing workforce development programming for young adults, focusing on conservation. Since 2008, the LCCC– Water & Energy Program has implemented a workforce development model of training young adults in the efficiency industry while addressing the community’s low-income population’s accessibility to energy and water conservation equipment and education. LCCC is excited that the City of Fort Collins Utilities (Utilities) sees the value of this partnership with the LCCC – Water & Energy Program to meet the needs of Fort Collins’ (City’s) residents and further expose the next generation of young adult workers to careers in the utility industry in Northern Colorado. This Exhibit A addresses the objectives of the Water & Energy Program, the scope of services, training, roles and responsibilities, and benefits of this partnership continuing into 2024.

### **OBJECTIVE**

Implement the LCCC – Water & Energy Program within Fort Collins, Colorado in an effort to assess and further complete energy and water savings product installations for 250 to 300 residences through service-learning opportunities for Corpsmember development. Additionally, LCCC will target completing 125 to 150 toilet installations, for a maximum of approximately 450 total customer site visits. The program will target low to moderate income communities for participation; however, all Fort Collins Utilities water and/or electric customers are eligible to participate (only Fort Collins Utilities Water customers are eligible for a toilet). In addition, LCCC- Water & Energy Program will also provide conservation education, tips, and rebate and affordability program opportunities to residents during assessments. The LCCC is solely responsible for program oversight and implementation of targeted goals and will be leading the collaboration with various stakeholders to seek opportunities for leveraged funding or co-promotion.

### **SCOPE OF SERVICES**

In furtherance of the 2024 Agreement for Employment and Training Services (Agreement), the LCCC’s responsibilities towards the program include:

1. Outreach and assessments
  - A. Aim to perform assessments and complete product installations for 250 to 300 residences;
  - B. Aim to complete 125 to 150 installations of high-efficiency toilets;
  - C. Aim to achieve the following equity goals during the 2024 program year:
    - a. 25% of assessments are income qualified participants (Income-Qualified Assistant Program rate code or LEAP eligible (gross income is 60% State Median Income), self-reported in the post-assessment survey)
    - b. 10% of assessments are black, indigenous, people of color (BIPOC) participants (self-reported in post-assessment survey)
  - D. Lead all outreach and marketing efforts to promote the program, with a focus on low-income residents and partners that serve such populations to drive assessments and participation in the program. Typical outreach activities may include print materials, phone calls, emails, social media posts, language translations, or event tabling. LCCC will participate in at least

## EXHIBIT A TO RESOLUTION 2024-002

one (1) meeting per year with City staff to outline a marketing plan and tasks, roles, and responsibilities. LCCC will request City support with outreach as needed.

- E. In collaboration with Utilities, develop and pilot new approaches to increase opportunities for community members most in need to participate in the program.
- F. Schedule home efficiency assessments, verifying that homes are served by Utilities water and/or electric.
- G. Source appropriate materials for direct installation as identified in the equipment requirements below.
- H. Manage the funding of the water efficiency products through the Northern Colorado Water Conservancy District.
- I. LCCC crews will perform in-home assessments and educate residents about conservation techniques, installing efficiency equipment and promoting additional Utility services, if interested.
- J. Gather data from assessments to compile energy and water conservation measures installed and associated savings (e.g. kilowatt-hours saved, and gallons).
- K. Gather demographic information from participants to align with income guidelines for County services and help evaluate whether the participants receiving an assessment are meeting the race/ethnicity and income goals for the 2024 program year, as stated above.

## 2. Auditor/Staff

- A. Train up to 9 (nine) Corpsmember in home efficiency assessments and conservation equipment installation.
- B. Encourage Corpsmember to seek professional development opportunities through peer mentoring, networking within industry, or facilitating group activities.
- C. Work with internal and external partners including the City of Fort Collins Utilities to help Corpsmember better understand the utilities industry and future career opportunities through networking, shadowing, informational interviews, and site visits.
- D. Provide monthly reports on residential assessment data to Utilities
- E. Send materials satisfaction survey 1 month following each assessment,
- F. Complete a final report summarizing all activities and results within 30 days of program completion and provide the final assessment data export for Fort Collins Utilities in an Excel format.
- G. Upon program completion, Corpsmember will present their findings to utility staff and/or City advisory boards at a quarterly meeting.

## H. Installation Requirements:

Materials:	Installation Requirement	Installation limit	Installation Goal
Toilet	New toilets will only replace toilets greater than 1.28 GPF (1.28 GPF toilets are not eligible). This will be validated by either identifying the GPF rating indicated on the toilet or by measuring the GPF using an accurate methodology.	2 toilets per unit	125-150

## EXHIBIT A TO RESOLUTION 2024-002

Aerator	New aerators will only replace existing aerators greater than 1.5 GPM in the kitchen and 1.0 GPM in the bathroom.	No limit per unit	Bathroom Aerators: 0.5 gpm = 100 1.0 gpm = 300  Kitchen Aerators: 0.5-1.5 gpm = 100
Showerheads	New showerheads will only replace existing showerheads greater than 2.0 GPM	No limit per unit	1-1.5 gpm = 175
Outdoor hose timers	New hose timers will be provided to participants who indicate they use a hose for non-automated outdoor irrigation, such as watering gardens or trees. Timers will be provided to customer but will not be installed by LCCC.	1 per outdoor spigot, maximum of 2 per unit	50 – 100
Outdoor hose shutoff nozzles	New outdoor hose shutoff nozzles will be provided to participants who indicate they use a hose for outdoor water uses, such as watering gardens or trees, vehicle washing, or equipment cleaning. Nozzles will be provided to customer but will not be installed by LCCC.	1 per outdoor spigot, maximum of 2 per unit	75 – 125
LEDs	All LEDs will only replace incandescent, halogen or CFL lamps, to be validated by collecting individual existing types or wattages.	No maximum	
Clotheslines	Offer installation of Clothesline at property	1 per unit	Up to qty 100
Furnace Filters	Offer installation of a new furnace filter for customers, with LCCC stocking various common sizes	2 per unit (1 installed, 1 left for customer replacement)	Up to qty 150
Carbon Monoxide detectors	Installed in absence of detector	1 per unit	
Weatherstripping	Weatherstripping on up to 2 exterior doors per unit; window sealing kit installation; limited to mobile homes	Maximum of 2 weatherstripping and 2 window sealing kits per unit; mobile homes only	Up to qty 60 each

## EXHIBIT A TO RESOLUTION 2024-002

**CITY/UTILITIES RESPONSIBILITIES**

The Utilities' responsibilities towards the program include:

1. At Utilities' discretion, either provide materials for direct installation into the assessed homes or for products not provided, Utilities will reimburse LCCC for materials that LCCC has purchased and installed.
2. At Utilities' discretion assist LCCC with marketing efforts in seeking participants and promoting LCCC's services through handouts, mailings, social media posts, materials, community partners, online or other means;
3. Provide training related to City programs and support Corpsmember development. Examples of activities could include networking, shadowing, informational interviews, sitting on an industry panel for questions and answers, or site visits of the crew in the field. Offer annual written or verbal feedback upon completion of the Program.

**BENEFITS**

When the 2024 LCCC Water & Energy Program is complete, the Fort Collins community will collectively have 250-300 residences assessed and retrofitted with basic efficiency products. The program will be targeting low income and BIPOC populations for participation but may provide services to any Utilities water and/or electric customer. Benefits will also include timely, accurate and usable data, and a willing and able workforce that may act as a feeder program for utility opportunities in the near future to better train and employ the next generation of utility workers.

**PROGRAM COSTS**

Program costs are summarized below. LCCC will not incur additional programs costs without written prior approval.

Description	Budget	Notes
Installation supplies and toilet permit fees	\$53,700.00	Efficiency products will be purchased primarily by LCCC, in some cases using remaining inventory from previous season or Utilities inventory first. Reference resources and materials may be provided by the City upon request.
2024 Program Support	\$179,298.10	Total administrative costs
Total	\$232,998.13	Total may vary based on actual cost of purchases by LCCC, but will not exceed budget identified

**Exhibit B: Payment Schedule**

The payment amounts and schedule in this Exhibit B identify the manner in which the parties agree to distribute the compensation described in Section 3 of the 2024 Agreement for Employment and Training Services (Agreement).

Compensation.

A. In consideration for Provider's services, the City agrees to pay Provider for the program costs summarized in Exhibit A to the Agreement, with a maximum amount not to exceed Two Hundred Thirty-Two Thousand, Nine Hundred and Ninety-Eight Dollars and Thirteen Cents (\$232,998.13).

B. Provider shall submit a final invoice for 2024 program support budget after completion of assessments performed from the Agreement Effective Date through May 31, 2024 and delivery to Utilities of compiled final installation data collected.

January 16, 2024

## AGENDA ITEM SUMMARY

City Council



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### STAFF

Richard Thorp, Lead Specialist, Sciences  
Leslie Hill, Director Sciences  
Jill Oropeza, Senior Director, Water Planning and Sciences

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### SUBJECT

**Resolution 2024-003 Authorizing the City Manager to Enter into an Agreement with Various Entities Regarding the Upper Poudre Watershed Source Water Protection Plan (Phase 1 – Plan Development).**

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### EXECUTIVE SUMMARY

The purpose of this item is to request approval for the City, through Fort Collins Utilities (“Utilities”), to enter into an agreement for cost-sharing the development of a regional Source Water Protection Plan (“SWPP”) with the City of Greeley, Soldier Canyon Water Treatment Authority, Northern Colorado Water Conservancy District (“Northern Water”), and the City of Thornton.

Utilities’ Cache la Poudre River (“Poudre River”) and Horsetooth Reservoir source watersheds provide high quality raw water for water treatment. Protecting these source water supplies from pollution is key to providing our community with reliable, safe, and high-quality drinking water. There are significant challenges associated with monitoring and protecting water quality in these source watersheds. Utilities’ 2016 SWPP has guided Utilities’ source water protection activities to date but needs to be updated. The Cities of Fort Collins (through Utilities), Greeley, and Thornton as well as Soldier Canyon Water Treatment Authority and Northern Water use water from the Poudre River and Horsetooth Reservoir. Staff from Utilities’ Watershed Program and these entities are seeking to develop a collaborative SWPP to improve communication, alignment, promote cost-sharing and implementation of source water protection projects. The proposed Agreement Regarding the Upper Poudre Watershed Source Water Protection Plan (Phase 1 – Plan Development) (“SWPP Agreement”) outlines terms and conditions of developing a collaborative SWPP. On December 7, 2023, the Water Commission formally recommended that Council authorize the City Manager to sign the SWPP Agreement.

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### STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

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### BACKGROUND / DISCUSSION

Fort Collins Utilities’ (“Utilities”) Watershed Program staff are seeking Council’s adoption of the Resolution to authorize the City entering into an intergovernmental agreement (“SWPP Agreement”) to develop a collaborative Source Water Protection Plan (SWPP) with other regional water providers. These providers include the City of Greeley, Soldier Canyon Water Treatment Authority (composing the East Larimer

County Water District, Fort Collins-Loveland Water District, and North Weld County Water District), the Northern Colorado Water Conservancy District (“Northern Water”), and the City of Thornton. Utilities’ source water supplies provide high quality raw water for drinking water treatment and include the Cache la Poudre River Watershed upstream of the canyon mouth and Horsetooth Reservoir Watershed. Wildfires, algae blooms, chemical spills, and other pollution events continue to threaten the quality of these water supplies. Protecting the quality of the City’s source water supplies is key to providing our community with reliable, safe, and high-quality drinking water.

The mission of the Utilities’ Watershed Program is to monitor and protect Utilities’ source water supplies and the overall health of the upper Cache la Poudre Watershed. Accordingly, staff developed Utilities’ first SWPP in 2016 with assistance from the Colorado Rural Water Association and the Colorado Department of Public Health and Environment (“CDPHE”). The 2016 SWPP delineates the footprint of Utilities’ source water supplies, identifies and ranks threats to water quality, and provides a range of best practices intended for threat mitigation. The 2016 SWPP has guided Utilities’ source water protection priorities for eight years and needs to be updated to account for changes to the watershed following the Cameron Peak Wildfire.

Both of Utilities’ water supplies are shared by the above listed regional water providers. Although we rely on common water resources, it is important to note that very little land within these source watersheds is owned or managed by these entities. Utilities’ staff regularly collaborate with these entities on a range of cost-share water quality monitoring and protection programs and projects in cooperation with land management agencies like the U.S. Forest Service. Developing an updated and collaborative SWPP for the Poudre River and Horsetooth Reservoir will enable increased cost-effectiveness, alignment around priorities and best practices for mitigating water quality threats and facilitate the implementation of needed source water protection projects. All the identified regional water providers agree that there is significant value in moving forward with this collaborative project.

Over the past year, a project team comprised of representatives from each participating entity created a detailed scope of work for developing the SWPP. The SWPP will delineate each water provider’s source water supply boundary and identify where there is overlap between two or more partners. Water quality pollution threats within the contributing watershed areas will be identified and prioritized based on relative risk. Pollution mitigation best practices will be selected by the project team using feedback from a diverse set of watershed stakeholders. The SWPP will support and align with existing watershed protection programs and projects and, as a result, will be highly implementable. Shared watershed protection programmatic metrics will be developed to help evaluate the effectiveness of watershed protection efforts.

The project budget has been set at \$150,000, including \$10,000 from each of the five project partners; \$50,000 in grant funding from the CDPHE’s Source Water Assessment and Protection Program; and \$50,000 from the Colorado Water Conservation Board’s Water Plan Grant Program. Northern Water will be the grant recipient on behalf of the project partners. Utilities plan to dedicate \$10,000 to support this project from previously allocated funding for watershed protection. The project budget will be used to hire a consultant to facilitate development of the SWPP. The project is expected to begin in Q3 of 2024. Note that this agreement does not obligate any party to fund future project implementation.

## **CITY FINANCIAL IMPACTS**

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There are no cost impacts associated with the proposed Resolution.

## **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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### **Water Commission Regular Meeting, December 7, 2023**

Commissioner Tarry moved that the Water Commission recommend Council formally approve of the Utilities’ Watershed Program entering into the agreement regarding the Upper Poudre Watershed Source Protection Plan. Vice Chairperson Herman seconded the motion. Vote on the Motion: Passed unanimously, 5-0.

## **PUBLIC OUTREACH**

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None.

## **ATTACHMENTS**

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1. Resolution for Consideration
2. Exhibit A to Resolution

RESOLUTION 2024-003  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING THE CITY MANAGER TO ENTER INTO AN  
AGREEMENT WITH VARIOUS ENTITIES REGARDING  
THE UPPER POUDDRE WATERSHED SOURCE WATER  
PROTECTION PLAN (PHASE 1 – PLAN DEVELOPMENT)

A. The Cache la Poudre Watershed (“Poudre Watershed”) headwaters begin within the Arapaho-Roosevelt National Forest and drains through Fort Collins and urban areas of the Front Range until its confluence with the South Platte River, east of Greeley.

B. The Poudre Watershed is a valuable asset to local municipalities, agriculture, and recreational stakeholders due to, among other reasons, the large geographic area of the watershed, prominence through urban areas, and high-quality drinking water supply.

C. The upper portions of the Poudre Watershed are those portions above the canyon mouth (“Upper Poudre Watershed”) and Horsetooth Reservoir, which are relied upon for water supply by various entities, and have historically been the principal sources of raw water for, among others, the City’s Fort Collins Utilities and the Soldier Canyon Water Treatment Authority, which includes water districts serving portions of Fort Collins.

D. Water quality in the Upper Poudre Watershed faces various challenges, including risks from wildfires and climate change, and protecting water quality within the Poudre Watershed is a high priority for the City and other entities relying on Poudre Watershed to, among other things, ensure all current and future water demands are met, and to continue providing communities with reliable, safe, and high-quality drinking water.

E. The State of Colorado has a Source Water Assessment and Protection Program, which is a voluntary, non-regulatory program intended to assist water utilities with conducting assessments and developing targeted Source Water Protection Plans for water quality.

F. The City, the City of Greeley, the City of Thornton, the Northern Colorado Water Conservancy District, and the Soldier Canyon Water Treatment Authority (collectively, “Parties”) are pursuing a Source Water Protection Plan for the Upper Poudre Watershed (“Plan”), which comprises two general phases: Phase 1 – Plan Development; and Phase 2 – Plan Implementation.

G. The City and the other Parties have negotiated an agreement regarding Phase 1 of the Plan (the “Agreement”), the form of which is attached hereto as Exhibit “A,” and incorporated herein by reference.

H. The City Manager and City staff have recommended approval of the Agreement by the City Council.

I. City Council finds that entering into the Agreement regarding Phase 1 of the Plan is in the best interests of the City.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the City Manager is hereby authorized to execute an Agreement substantially in the form of Exhibit "A," with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

Passed and adopted on January 16, 2024.

\_\_\_\_\_  
Mayor

ATTEST:

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

Effective Date: January 16, 2024  
Approving Attorney: Eric Potyondy

**AGREEMENT REGARDING THE  
UPPER Poudre WATERSHED SOURCE WATER PROTECTION PLAN  
(Phase 1 – Plan Development)**

This Agreement (“Agreement”) is entered into by and between the following Parties, which are listed in no particular order:

- Northern Colorado Water Conservancy District, a quasi-municipal entity and political subdivision of the State of Colorado (“Northern Water”);
- City of Fort Collins, a municipal corporation (“Fort Collins”);
- City of Greeley, a municipal corporation (“Greeley”);
- City of Thornton, a municipal corporation (“Thornton”); and
- Soldier Canyon Water Treatment Authority, a political subdivision of the state of Colorado (“Soldier Canyon”).

**RECITALS**

A. The Cache la Poudre Watershed (“Poudre Watershed”) headwaters begin within the Arapaho-Roosevelt National Forest and drains through Fort Collins and urban areas of the Front Range until its confluence with the South Platte River, east of Greeley. The Poudre Watershed is a valuable asset to local municipalities, agriculture, and recreational stakeholders due to, among other reasons, the large geographic area of the watershed, prominence through urban areas, and high-quality drinking water supply.

B. The upper portions of the Poudre Watershed are those portions above the canyon mouth (“Upper Poudre Watershed”). The Upper Poudre Watershed are and have historically been a principal source of raw water for Fort Collins, Greeley, and Soldier Canyon. Northern Water and Thornton also rely on the Upper Poudre Watershed to meet future demand.

C. Water quality in the Upper Poudre Watershed faces various challenges, including<sup>1</sup> risks from wildfires and climate change. Protecting water quality within the Poudre Watershed is a high priority for the Parties to, among other things, ensure all current and future water demands are met, and to continue providing communities with reliable, safe, and high-quality drinking water.

D. The State of Colorado has a Source Water Assessment and Protection Program, which is a voluntary, non-regulatory program intended to assist water utilities with conducting assessments and developing targeted Source Water Protection Plans for water quality. Related to the State’s program, the Parties are pursuing a Source Water Protection Plan for the Upper Poudre Watershed (“Plan”).

E. The Parties’ efforts comprise two general phases:

Phase 1 – Plan Development

Phase 2 – Plan Implementation

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<sup>1</sup> In this Agreement, “include” signifies a list that is not necessarily exhaustive. *E.g., Lyman v. Town of Bow Mar*, 188 Colo. 216, 222, 533 P.2d 1129, 1133 (1975).

This Agreement concerns Phase 1. The Parties anticipate that a separate agreement may be desirable for Phase 2.

F. The purpose of this Agreement is to coordinate the Parties' joint efforts related to developing the Plan, including funding a consultant to assist with the development of the Plan.

G. As governmental entities, the Parties are authorized to enter into the following intergovernmental agreement pursuant to C.R.S. §29-1-203.

### **AGREEMENT**

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated as if fully restated in their entirety.

2. **Meetings and Schedule.**

2.1. **Meetings.** The Parties will meet at least quarterly at an agreed upon time and place. Each Party will designate at least one representative who will attend the meetings, either in person or by teleconference when available. Should the representative(s) be changed, a Party shall provide fourteen (14) calendar days written notice of the change to the other Parties. Party representatives will, when possible, be staff members and not members of the governing body of a Party. Persons associated with the Parties other than the representative may attend the meetings upon invitation by the appropriate Party.

2.2. **Schedule.** The Parties currently intend to follow the schedule set forth in the Scope of Work, attached as Exhibit A. The Parties may modify the schedule of tasks as appropriate to effectuate the purposes of this Agreement.

2.3. **Consensus Decision-making.** The Parties shall operate by consensus in making decisions for the purposes of this Agreement. To this end, the Parties shall make a good faith effort to reach consensus, propose alternative solutions, and otherwise work to resolve any issues that prevent consensus.

3. **Funding.** The Parties intend to budget \$150,000 for the retention of a consultant to assist with the development of the Plan.

3.1. **Party Contributions and CDPHE Grants.** On or before April 1<sup>st</sup>, 2024, each of the five Parties will contribute \$20,000 to Northern Water for the purposes of this Agreement. The Parties will seek grants from the State of Colorado Department of Public Health and Environment ("CDPHE") for funds to comprise a portion of these contributions. The CDPHE grants will be attributed equally to the five Parties. The CDPHE grants are currently anticipated to total \$50,000 (i.e., half of the sum total of \$100,000 of contributions from the Parties), with a pro rata \$10,000 attributed to each of the Parties. The Parties may, in writing, extend the deadline included in this paragraph.

3.2. **CWCB Grant.** The Parties will seek a grant from the Colorado Water Conservation Board (“CWCB”) for the remaining \$50,000 of the budgeted amount, which would be held by Northern Water. If such a grant is not acquired on or before April 1<sup>st</sup>, 2024, each of the Parties will contribute an additional \$6,000, unless the Parties identify another source of funding or agree that the Plan can be completed without the funds contemplated in this paragraph. The Parties may, in writing, extend the deadline included in this subparagraph.

4. **Northern Water’s Role.**

4.1. **Funds.** Northern Water will hold the budgeted funds described in Paragraph 3 for purposes of this Agreement. If there are any unused funds, they will be returned to the Parties in equal amounts, or may be retained by Northern Water for Phase 2 pursuant to an amendment to this Agreement or subsequent agreement regarding such funds.

4.2. **Consultant.** Northern Water will retain the consultant to assist with the development of the Plan. The Parties will jointly select which consultant will be retained and manage the same, pursuant to Paragraph 2.3. The Parties acknowledge Northern Water will contract with and have sole responsibility for directing the selected consultant, consistent with the determination of the Parties pursuant to Paragraph 2.3 and the objectives of this Agreement.

4.3. **Sharing Consultant Work Product.** Northern Water will provide to the other Parties copies of all reports, data, drawings, computer programs, or other reproducible, tangible things developed by the consultant in connection with this Agreement (“Consultant Work Product”). Each Party will be entitled to review and provide feedback on the Consultant Work Product, which Northern Water will communicate to the consultant. Northern Water will obtain the consultant’s agreement for each Party to use Consultant Work Product for purposes connected to this Agreement.

5. **Term, Withdrawal, and Termination.**

5.1. **Term and Termination.** This Agreement will be in effect on the last date it is signed by the Parties until:

- (1) September 30, 2025;
- (2) Northern Water withdraws;
- (3) all but one of the parties withdraws;
- (4) the Parties otherwise agree in writing to terminate this Agreement; or
- (5) Phase 1 is completed.

5.2. **Withdrawal.** Any Party may withdraw from this Agreement by providing written notice to the other Parties. Any Party may also withdraw from this Agreement for failure to appropriate funds pursuant to Paragraph 5. Withdrawal from this Agreement shall not: entitle the withdrawing Party to reimbursement for previously contributed funds; or relieve the withdrawing Party from any obligations resulting from the Party’s previous

participation, including responsibilities for costs, and shall not waive the withdrawing Party's right to the receipt of documents resulting from the Party's previous participation.

6. **Claimed Confidential Information.**

6.1. **CORA.** The Parties acknowledge that the majority of documents and communications created under this Agreement will be subject to the Colorado Open Records Act, C.R.S. §§24-72-101 *et seq.* ("CORA").

6.2. **Confidential Information Procedures.** If a Party ("Providing Party") desires to provide documents or information to the other Parties ("Receiving Parties") that the Providing Party claims to be confidential ("Confidential Information"), the Providing Party may invoke the terms and conditions of this Paragraph 6.2.

6.2.1. If the Providing Party intends to claim that certain information is confidential under this Paragraph 6.2 and desires to have the Receiving Parties take certain precautions under this Agreement with such claimed Confidential Information, then within three calendar days of when the Providing Party provides the claimed Confidential Information to the Receiving Parties, the Providing Party shall provide written notice to the Receiving Parties containing the following:

- (i) an identification of each piece of information that is claimed to be Confidential Information;
- (ii) for each piece of such information, an identification of the documents, files, or other forms of communication provided to the Receiving Parties in which the claimed Confidential Information is located; and
- (iii) for each piece of such information, a brief statement identifying the basis for which the Providing Party may claim the information to be confidential.

6.2.2. With respect to the claimed Confidential Information identified pursuant to Paragraph 6.2.1, the Receiving Parties hereby agree:

- (i) to hold the claimed Confidential Information in confidence and to take all reasonable precautions to protect such Confidential Information from inadvertent or accidental disclosure; and
- (ii) to not disclose any such claimed Confidential Information to any third person, except pursuant to Paragraph 6.2.4.

In the normal course of business, the Receiving Parties may also dispose of any documents containing claimed Confidential Information.

6.2.3. The obligations of the Receiving Parties with respect to claimed Confidential Information under this Paragraph 6.2 shall not apply to:

- (i) Claimed Confidential Information beginning six months after the termination of this Agreement pursuant to Paragraph 5.1;

- (ii) Claimed Confidential Information that the Receiving Party can document:
  - (A) is or has become (through no improper action or inaction by the Receiving Party or any affiliate, agent, consultant or employee) generally available to the public;
  - (B) was in its possession prior to receipt from the Providing Party under Paragraph 6.2.1, except to the extent that such information was unlawfully appropriated by the Receiving Party;
  - (C) was independently developed by the Receiving Party without use of any claimed Confidential Information of the Providing Party under Paragraph 6.2.1; or
  - (D) was disclosed pursuant to the requirements of law, subject to Paragraph 6.2.4.

6.2.4. Nothing herein shall affect the obligations of a Receiving Party to either make disclosures or preserve the confidentiality of claimed Confidential Information to the extent required by law or court order, including, but not limited to, requirements under the Colorado Open Records Act, CRS §24-72-201 *et seq.*, and other Colorado and federal statutes, court rules, and administrative rules and regulations. If a Receiving Party receives a request under law for the Providing Party's claimed Confidential Information, or if a Receiving Party would otherwise be required to disclose the Providing Party's claimed Confidential Information pursuant to law, the Receiving Party shall notify the Providing Party as soon as practicable of the request or pending disclosure, and in such event, upon the request of the Receiving Party, the Providing Party may take such timely action as may be required to obtain a declaratory judgment as to the confidential status of the Confidential Information, and, if the Providing Party elects not to do so, then the Receiving Party's obligation to preserve that Confidential Information shall have been waived hereunder, except as otherwise provided by law.

6.2.5. The Providing Party shall have the right to require the return and destruction of claimed Confidential Information in the possession of a Receiving Party as set forth in this paragraph. Such right shall exist from the effective date of this Agreement through six months after the date of termination of this Agreement pursuant to Paragraph 5.1. If claimed Confidential Information has been copied or transcribed into another document, such documents will be destroyed, erased, or modified to remove the claimed Confidential Information.

7. **Fiscal Contingency.** Notwithstanding any other provisions of this Agreement to the contrary, the obligations of the Parties in fiscal years after the initial fiscal year of this Agreement shall be subject to appropriation of funds sufficient and intended therefor, with the Party having the sole discretion to determine whether the subject funds are sufficient and intended for use under this Agreement. The failure of a Party to appropriate such funds shall be grounds for termination of this Agreement as to such Party upon written notice pursuant to Paragraph 11.

8. **No Third-Party Beneficiaries.** This Agreement is entered into between the Parties for the purposes set forth herein. It is the intent of the Parties that they are the only beneficiaries of this Agreement and that the Parties are benefitted only to the extent provided under the express terms and conditions of this Agreement.

9. **Governing Law and Enforceability.** This Agreement shall be construed in accordance with the laws of the State of Colorado. The Parties recognize that the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, as well as the Parties' respective bylaws, city charters and codes, and rules and regulations, impose certain legal constraints on each Party and that the Parties intend to carry out the terms and conditions of this Agreement subject to those constraints. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law.

10. **Waiver.** A waiver of a breach of any of the provisions of this Agreement shall not constitute a waiver of any subsequent breach of the same or another provision of this Agreement. Nothing in this Agreement shall be construed as any waiver of governmental immunity of the Parties who are governments or any other governmental provisions of State law. Specifically, by entering into this Agreement, no Party waives the monetary limitations on liability or any other rights, immunities, or protections provided by the Colorado Government Immunity Act, C.R.S. § 24-10-101, *et seq.*, or any successor or similar statutes of the State of Colorado.

11. **Notices.** All notices or other communications hereunder shall be sufficiently given and shall be deemed given (i) when personally delivered; (ii) on the date and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the party to whom notice is given at the address specified below; (iii) on the date and at the time shown on the electronic mail if sent by electronic transmission at the email addresses set forth below and receipt of such electronic mail is acknowledged by the intended recipient thereof; or (iv) after the lapse of five business days following mailing by certified mail-return receipt requested, postage prepaid, addressed as follows:

To Fort Collins:

City Manager  
City Hall West  
300 LaPorte Avenue; P.O. Box 580  
Fort Collins, Colorado 80522-0580

With copy to:

Fort Collins City Attorney  
300 LaPorte Avenue; P.O. Box 580  
Fort Collins, Colorado 80522-0580  
epotyondy@fcgov.com

and:

Fort Collins Utilities  
Attn: Sr. Director of Water Planning and Sciences  
4316 LaPorte Ave.  
Fort Collins, Colorado 80521

To Northern Water: Northern Colorado Water Conservancy District  
Attn: Kimberly Mihelich  
220 Water Avenue  
Berthoud, CO 80513

With copy to: Northern Water Counsel  
Trout Raley  
1120 Lincoln Street, Suite 1600  
Denver, CO 80203

To Greeley: City of Greeley  
Attn: Director of Water & Sewer  
1001 11<sup>th</sup> Ave, 2nd Floor,  
Greeley, Colorado 80631

With a copy to:  
City Attorney  
1100 10th Street, Suite 401  
Greeley, Colorado 80631  
Jerrae.Swanson@greeleygov.com

To Thornton: City Manager  
9500 Civic Center Dr  
Thornton CO, 80029

With a copy to: City of Thornton Senior Assistant Attorney Water  
9500 Civic Center Dr  
Thornton CO, 80029  
Kara.Godbehre@ThorntonCO.gov

To Soldier Canyon: Soldier Canyon Water Treatment Authority  
Attn: Authority Manager  
4424 LaPorte Ave  
Fort Collins, CO 80521  
Telephone: (970) 482-3143  
mkempton@soldiercanyon.com

12. **Construction.** This Agreement shall be construed according to its fair meaning as it was prepared by the Parties. Headings in this Agreement are for convenience and reference only and shall in no way define, limit, or prescribe the scope or intent of any provision of this Agreement.

13. **Representations.** Each Party represents to the other parties that it has the power and authority to enter into this Agreement and the individual signing below on behalf of that Party has the authority to execute this Agreement on its behalf and legally bind that Party.

14. **Assignment.** No Party may assign any rights or delegate any duties under this Agreement without the written consent of all other Parties.

15. **Severability.** If any provision of this Agreement shall prove to be illegal, invalid, unenforceable or impossible of performance, the remainder of this Agreement shall remain in full force and effect.

**[Remainder of Page Left Blank Intentionally]**

**NORTHERN COLORADO WATER CONSERVANCY DISTRICT, a quasi-municipal  
entity and political subdivision of the State of Colorado**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF FORT COLLINS, a municipal corporation**

By: \_\_\_\_\_  
Kelly DiMartino, City Manager

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney's Office

**CITY OF GREELEY, a municipal corporation**

APPROVED AS TO SUBSTANCE:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
City Manager

AVAILABILITY OF FUNDS:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Director of Finance

APPROVED AS TO LEGAL FORM

By: \_\_\_\_\_ Date: \_\_\_\_\_  
City Attorney's Office

**CITY OF THORNTON, a Colorado home-rule municipal corporation**

By: \_\_\_\_\_  
Kevin Woods, City Manager

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:  
Temi Yellico, City Attorney

By: \_\_\_\_\_  
Senior Assistant City Attorney - Water

**SOLDIER CANYON WATER TREATMENT AUTHORITY, a political subdivision of the  
state of Colorado**

By: \_\_\_\_\_

Date: \_\_\_\_\_

January 16, 2024

## AGENDA ITEM SUMMARY

### City Council



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#### STAFF

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Davina Lau, Public Engagement Specialist

#### SUBJECT

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**Resolution 2024-004 Making Appointments to the Housing Catalyst Board.**

#### EXECUTIVE SUMMARY

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The purpose of this item is to fill vacancies on the Housing Catalyst Board that exist due to the expiration of certain members' terms.

#### STAFF RECOMMENDATION

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Staff recommends adoption of this Resolution.

#### BACKGROUND / DISCUSSION

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Housing Catalyst Board members Cathy Mathis and Jennifer Wagner both have terms that expire on December 31, 2023. Cathy Mathis is term limited, but Jennifer Wagner is not, and she has applied to serve another term. Karen Dunbar serves on the Audit and Finance Committee of the Housing Catalyst Board and has expressed interest in also serving on the Housing Catalyst Board.

#### CITY FINANCIAL IMPACTS

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None.

#### BOARD / COMMISSION / COMMITTEE RECOMMENDATION

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None.

#### PUBLIC OUTREACH

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None.

#### ATTACHMENTS

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1. Resolution for Consideration
2. Wagner Volunteer Application
3. Dunbar Volunteer Application

RESOLUTION 2024-004  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
MAKING APPOINTMENTS TO THE HOUSING CATALYST BOARD

A. The Housing Catalyst Board has vacancies due to the expiration of terms of Cathy Mathis who is term limited and Jennifer Wagner.

B. The City Council desires to make appointments to fill these vacancies on the Housing Catalyst Board.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the following named persons are hereby appointed to fill the open vacancies on the Housing Catalyst Board with a term to begin and expire as noted below next to each appointee's name:

**Housing Catalyst**

<b>Appointments</b>	<b>Term Effective Date</b>	<b>Expiration of Term</b>
Karen Dunbar (Seat C)	Immediately upon adoption of this Resolution	December 31, 2028
Jennifer Wagner (Seat D)	Immediately upon adoption of this Resolution	December 31, 2028

Passed and adopted on January 16, 2024.

\_\_\_\_\_  
Mayor

ATTEST:

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

Effective Date: January 16, 2024  
Approving Attorney: Carrie Daggett

# VOLUNTEER APPLICATION

Jennifer Wagner

12/28/2023 12:02 PM

Application: **HC - Housing Catalyst**

## Applicant Information

Birthday: [REDACTED] Gender: Female Education Level: College degree  
 Address: [REDACTED] Phone: [REDACTED] <<

## Volunteer Groups Applied For

Housing Catalyst

## Job Description

☒ I have read the job description

## Questions

Which Council District do you live in? Please refer to the map at: <a href="https://gisweb.fcgov.com/HTML5Viewer/Index.html?Viewer=FCMaps&amp;layerTheme=Council%20Districts">https://gisweb.fcgov.com/HTML5Viewer/Index.html?Viewer=FCMaps&amp;layerTheme=Council%20Districts</a>	GMA
I acknowledge I am available when the Housing Catalyst meets: 3rd Thursday of each month at 7:30 a.m.	YES
Current Occupation:	Commercial Lender/Banker
Current Employer:	Bank of Colorado
Prior work experience (please include dates):	See attached resume
Volunteer experience (please include dates):	See attached resume
Are you currently serving on a City board or Commission? If so, which one?	Yes; Housing Catalyst
Why do you want to become a member of this particular board or commission?	I would like to continue as a board member to support the affordable housing initiative in Fort Collins and Northern Colorado.
Have you already had any formal public housing authority commissioners training? (This is not a requirement)	YES
Have you had any exposure to the board or commission you are applying for? If yes, please explain:	Yes; I have been a board member since 2019 and am the current board chair.
Specify any activities which might create a serious conflict of interest if you are appointed:	My company may respond to RFP's for financing. I do not participate in responding to those RFP's.
Are you willing to complete the required training if appointed?	YES
How did you learn of a vacancy on this board or commission?	Other (please specify); I am a current board member.

#### OBJECTIVE

A challenging position where my contributions have meaning. Success in my desired role will maximize my persuasive communication skills, problem solving abilities, sales experience and financial background. Results will reflect achievement of established goals and attainment of a superior level of customer satisfaction.

#### SUMMARY OF QUALIFICATIONS

- 25+ years of progressively responsible experience in all aspects of loan production in two growth focused financial institutions
- Skilled at troubleshooting and problem solving. Strong mental reasoning skills to work through issues and obstacles
- Extensive experience in real estate related disciplines
- Strong mathematical and financial analysis abilities
- Relationship oriented approach to communication and work relationships
- Innovative thinker with a results-oriented focus

#### WORK HISTORY

- Senior Vice President. Bank of Colorado, Fort Collins, CO January 2019 – present
- Vice-President, Real Estate/Construction. Home State Bank/Guaranty Bank and Trust, Fort Collins, CO November 2012 – December 2018
- Vice-President, Special Asset Officer. First National Bank, Fort Collins, CO May 2009 – November 2012
- Vice-President, Real Estate/Construction. First National Bank, Fort Collins, CO April, 2004 – May, 2009
- Vice-President and Manager, Loan and Credit Administration. First National Bank, Fort Collins, CO November 2001 – September 2003
- AVP and Manager, Retail Credit, Commercial Credit and Mortgage Loans. First National Bank, Fort Collins, CO January 2000 – November 2001
- AVP and Manager, Retail Credit. First National Bank, Fort Collins, CO August 1998 – January 2000
- AVP and Branch Manager, Southwest Office. First National Bank Fort Collins, CO July 1996 – August 1998
- AVP and Manager, Mortgage Loans. First National Bank, Fort Collins, CO July 1994 – July 1996
- Mortgage Loan Processor and Mortgage Loan Originator. First National Bank, Fort Collins, CO July 1993 – July 1994
- Instructor. Center for Financial Training, Denver, CO 2000 – 2002 (Contract Position)
- Mortgage Loan Processor. CTX Mortgage Company, Fort Collins, CO June 1992 – July 1993
- Sales Secretary/Receptionist. Re/Max Advanced, Fort Collins, CO April 1991 – October 1991
- Audit Assistant. KPMG Peat Marwick, Denver CO January 1991 – April 1991 (College Internship)
- Broker Assistant and Sales Secretary. Van Schaack of Fort Collins, Fort Collins CO November 1988 – January 1991

#### EDUCATION AND TRAINING

- Degree in Business Administration, Colorado State University. Concentration: Accounting Other emphasis: Finance
- Graduate School of Banking Degree, Graduate School of Banking, University of Colorado, Boulder
- Licensed Colorado Real Estate Agent (inactive)
- Financial Institution Related Training. Multiple courses in Commercial Lending Analyzing Financial Statements, Bankruptcy and Foreclosure, Sales and Business Development

#### MEMBERSHIPS AND ACTIVITIES

- Housing Catalyst Board Member (2019- present), current Board Chair (2023)
- Commercial Real Estate Women of Northern Colorado. Founding Member (2006), 2008 President
- Villages, LTD. Board Member (2015 – 2018). Attended NAHRO Fundamentals Course, 8/17. Member of a Joint Committee with Housing Catalyst (Finance Committee)
- Community Development Block Grant Commission. Commission Member 2004 – 2011
- Partners Mentoring Youth. Board Member (2007 – 2008), Programs Committee Chair (2008), Party for Partners Committee Member (2004 – 2007), Party for Partners Committee Co-Chair (2008)
- Leadership Fort Collins. 2003 Graduate
- United Way Finance Committee. Past Board Member
- Neighbor to Neighbor, Inc. Past Board Member
- Poudre High School. Poudre Impala Fund (Foundation), Past Board Member
- Poudre High School. Pathways Day Organizer, 1997. PACE Program Speaker

# VOLUNTEER APPLICATION

Karen Dunbar

12/26/2023 4:00 PM

Application: **HC - Housing Catalyst**

## Applicant Information

Birthdate: [REDACTED] Gender: Female Education Level: Bachelors degree

Address: [REDACTED] Phone: [REDACTED] <<

## Volunteer Groups Applied For

Housing Catalyst

## Job Description

☒ I have read the job description

## Questions

Which Council District do you live in? Please refer to the map at: <https://gisweb.fcgov.com/HTML5Viewer/Index.html?Viewer=FCMaps&layerTheme=Council%20Districts> 6

I acknowledge I am available when the Housing Catalyst meets: 3rd Thursday of each month at 7:30 a.m. YES

Current Occupation: CPA, fundraiser for higher education -

Current Employer: 2016 - current Colorado State University

Prior work experience (please include dates): 1993 - 2016 Colorado State University Foundation. VP, Treasurer

Volunteer experience (please include dates): 1984 - present American Institute of CPAs  
1984 - present Colorado Society of CPAs  
2023 - present Housing Catalyst Audit/ Finance Committee and attendance at monthly board meetings  
Other professional organizations related to higher education fundraising

Are you currently serving on a City board or Commission? If so, which one? No

Why do you want to become a member of this particular board or commission? I would like to be a part of the Housing Catalyst because of the mission of providing affordable housing to our community. Our community is enriched because of Housing Catalyst provides sustainable, long-term and affordable housing opportunities. I am particularly impressed by the efforts exhibited toward improving the lives of all individuals by additional services geared toward stabilizing families, individuals with disabilities, children and seniors. The comprehensive nature of this organization has a mission that I care deeply about.

Have you already had any formal public housing authority commissioners NO

training? (This is not a requirement)

Have you had any exposure to the board or commission you are applying for? If yes, please explain:

Yes;  
During most of 2023, I've been a member of the Audit and Finance Committee at the Housing Catalyst.

Specify any activities which might create a serious conflict of interest if you are appointed:

I don't believe I have any conflicts.

Are you willing to complete the required training if appointed?

YES

How did you learn of a vacancy on this board or commission?

Other (please specify);  
By serving on the Audit/Finance Committee of the Housing Catalyst.

## **Karen L. Dunbar, CPA**

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• Fort Collins • CO • 80521 •

**Objective**     **My skillset with financial accounting and strong fiduciary management matters has served me well throughout many years of working in highly regulated, accountable and visible industries. I have learned that an ideal position for me is to use that same skill set in assisting others to realize and recognize their passion for giving. I have successfully directed millions of dollars toward CSU throughout my 31 years of service.**

### **Employment**

#### **Colorado State University (CSU)**

Fort Collins, Colorado

- 2016 – present – Associate Vice President, Gift Planning  
Responsible for managing all gift planning functions for CSU. With a staff of four, we manage all revocable gift commitments, close all charitable gift annuities, meet with legal counsel, tax counsel, financial advisors and others as needed to successfully close gifts on behalf of CSU. My skillset with gift transactions has allowed me to negotiate and close multiple eight-figure cash gifts with donors throughout the years, and frankly I get a kick out of being involved and helping in this way. We have robust marketing efforts and an extremely successful program and it's an absolute passion of mine to help people realize their passions as they align with the needs of CSU.

#### **Colorado State University Foundation (CSUF)**

Fort Collins, Colorado

- 1993 – 2016 – Chief Financial Officer  
Responsibilities included sound fiduciary controls and fiscal management of CSUF assets (in excess of \$500,000,000), investment manager review and asset allocation management. Serve as Corporate Secretary/Treasurer for Board of Directors. Specifically responsible for annual audit, budget preparation and oversight, personnel issues, estate collections, benefit plans, and supervising staff of 11. Throughout these 23 years, served as primary liaison with regard to all planned gifts. Report directly to CSUF President/CEO.
- 2002 – 2008 Director of Planned Giving Services (interim capacity, reported to VP for University Advancement)  
Responsible for planned giving program which includes:
  - Administration and review of all estate gifts;

- Coordinating visits with potential planned giving donors;
- Continuing education on all technical aspects of planned giving;
- Review and maintenance over web site specific to planned giving (including responses to inquiries);
- Maintenance of Frontier Society member records;
- Coordination of annual Frontier Society recognition luncheon;
- Development and maintenance of 50 member Planned Giving Advisory Council (allied professionals – CPAs, attorneys, estate planning services, etc);
- Various mailings to selected constituency (7,000)
- Selection and ordering planned giving brochures and disseminating to college, units and donors;
- Creation and dissemination of planned giving marketing materials for use by all college and units.

### **JP Morgan/Chase Fort Collins/Loveland**

Formerly Bank One and Affiliated Bankshares of Colorado

- 1984 – 1993 Various roles including Assistant Chief Financial Officer, Compliance Officer and Auditor. Responsibilities included operation and maintenance of general ledger, tax, financial and cost accounting functions, as well as supervising the accounting department operations. Duties included extensive budgeting and financial analysis, as well as training and review of multiple staff functions

### **Education Colorado State University, Fort Collins, Colorado**

- Bachelor of Science in Business Administration
- Double concentration: Accounting and Industrial Relations
- Member, Beta Alpha Psi Professional Accounting Fraternity
- Graduate studies in taxation
- Achieved honor roll status each semester

### **Eastern Michigan University, Ypsilanti, Michigan**

- Primarily core and accounting coursework
- Member, Beta Alpha Psi Professional Accounting Fraternity
- Member, Women's varsity tennis team
- Achieved honor roll status each semester

### **Professional Development**

- Active CPA certificate holder
- American Institute of CPAs, member
- Colorado Society of CPAs, member
- Housing Catalyst, Fort Collins – Audit/Finance Committee (2023-present)
- Annual attendance, National Conference on Planned Giving (1993-present)
- Annual attendance, Rocky Mountain Endowment Conference

- Attend various CASE conferences (national, regional, local)
- Attend various NACUBO Endowment Conferences

**Activities**

- CASE – Member, National Board for Institutionally Related Foundations (2012 – 2018)
- Former Board Member, Fort Collins Country Club (2012-2015)
- Former Board Member, Poudre School District Foundation
- Former Endowment Committee, Our Saviours Lutheran Church
- Former volunteer, CSU Women's Association
- Former volunteer, Poudre Schools
- Former Board Member, Red Cross
- Former Finance/Budget Committee, Trinity Lutheran Church
- University of Michigan Athletic Award – Annual award by the University of Michigan Alumni Association to a high school senior exhibiting scholastic and academic achievement

Karen Dunbar (brief bio December 2023)

Since 2016, Karen has served CSU as Associate Vice President for Gift Planning and is responsible for the leadership and fundraising in the Gift Planning office in Advancement at CSU.

In 2022 and 2023, Karen served as Interim Vice President for University Advancement with service to three CSU presidents during a period of transition for the university.

For 23 years, Karen served as the Vice President, Treasurer and CFO of Colorado State University Foundation. Prior to that time, she worked for 9 years in the banking industry for a national bank and holding company as a controller, compliance officer, and auditor.

Karen received her B.S. in Business Administration with a concentration in accounting from CSU. She is a CPA, a member of the American Institute of CPAs, Colorado Society of CPAs, Colorado Planned Giving Roundtable, National Association of Gift Planners and CASE (Council for Advancement and Support of Education). As a member of CASE, she served 6 years (2012 – 2018) on the National Committee for College and University Foundations (formerly National Board for Institutionally Related Foundations). She is currently serving as a member of the Audit/Finance Committee for the Housing Catalyst in Fort Collins.

January 16, 2024

## AGENDA ITEM SUMMARY

City Council



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### STAFF

Kelly DiMartino, City Manager

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### SUBJECT

**Resolution 2024-005 Making an Appointment to the Platte River Power Authority Board.**

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### EXECUTIVE SUMMARY

The purpose of this item is to appoint a new City representative to the Platte River Power Authority Board to fill the vacancy created by Kendall Minor's resignation from the Board.

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### STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

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### BACKGROUND / DISCUSSION

Under the intergovernmental agreement establishing the Platte River Power Authority (PRPA), Fort Collins is represented by two members of the eight member PRPA Board, including the Mayor and a second appointee appointed by Council.

On May 18, 2021, Council adopted Resolution 2021-060 making appointments of Councilmembers and other City representatives to various boards and committees, including the appointment of Mayor Jeni Arndt and Councilmember Julie Pignataro to the PRPA Board.

On March 31, 2022, Councilmember Pignataro resigned her appointment to the PRPA Board. This item permits Council to appoint a new representative to the PRPA Board.

On April 5, 2022, Council adopted Resolution 2022-041, appointing Kendall Minor to join the Mayor on the PRPA Board.

Kendall Minor's last day of employment with the City will be January 23, 2024. This resolution appoints Tyler Marr to the vacated seat on the PRPA Board.

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### CITY FINANCIAL IMPACTS

There are no financial impacts to the City in connection with this appointment.

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### BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

## **PUBLIC OUTREACH**

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None.

## **ATTACHMENTS**

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1. Resolution for Consideration

RESOLUTION 2024-005  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
MAKING AN APPOINTMENT TO THE PLATTE  
RIVER POWER AUTHORITY BOARD

A. Pursuant to the intergovernmental agreement establishing the Platte River Power Authority ("PRPA"), the City is entitled to representation on the eight-member Board of Directors of PRPA by its mayor and a second appointee, to be designated by the City Council.

B. On April 5, 2022, by adoption of Resolution 2022-041 the City Council appointed Kendall Minor to serve as the City's appointed representative to the PRPA Board.

C. Kendall Minor's last day of employment with the City will be January 23, 2024.

D. The Council desires to appoint a second City representative to the PRPA Board, effective immediately.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the Council hereby appoints Tyler Marr to serve as the City's representative on the Platte River Power Authority Board (in addition to the Mayor), effective immediately, until such time as the Council acts to modify this appointment.

Passed and adopted on January 16, 2024.

\_\_\_\_\_  
Mayor

ATTEST:

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

Effective Date: January 16, 2024

Approving Attorney: Carrie Daggett

January 16, 2024

## AGENDA ITEM SUMMARY

City Council



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### STAFF

Anissa Hollingshead, City Clerk  
Carrie Daggett, City Attorney  
Caryn Champine, Director of Planning, Development & Transportation  
Sylvia Tatman-Burruss, Senior Project Officer

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### SUBJECT

**Second Reading of Ordinance No. 175, 2023, Repealing Ordinance No. 136, 2023, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Revised Land Use Code and Separately Codifying the 1997 Land Use Code as the “Pre-2024 Transitional Land Use Regulations,” and Related Ordinance No. 137, 2023, and Ordinance No. 138, 2023.**

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### EXECUTIVE SUMMARY

This Ordinance adopted on First Reading on December 19, 2023, by a vote of 3-2 (Ayes: Mayor Arndt, Mayor Pro Tem Francis, and Councilmember Canonico; Nays: Councilmembers Gutowsky and Ohlson; Absent: Councilmember Peel; and Remote (non-voting): Councilmember Pignataro), includes language repealing the associated Ordinance Nos. 137, 2023, and 138, 2023, that respectively made updates to City Code to align with the revised Land Use Code and renamed the Neighborhood Conservation zone districts to the Old Town zone district in alignment with the revised Land Use Code.

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### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

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### BACKGROUND / DISCUSSION

On November 28, 2023, a referendum petition was filed with the City Clerk seeking to repeal Ordinance No. 136, 2023, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Revised Land Use Code and Separately Codifying the 1997 Land Use Code as the “Pre-2024 Transitional Land Use Regulations.”

On November 28, 2023, a protest was filed regarding the signatures of the petition. A hearing was held on December 13, 2023, to consider the protest and the hearing officer issued a decision denying the protest on December 14, 2023 (attached to this Agenda Item Summary for reference).

On December 14, 2023, following the completion of the protest process, the City Clerk presented the Council with her certification of the determination that the referendum petition contains a sufficient number of signatures (more than the required 4,228) to require further action by the Council. This certification is also attached to this Agenda Item Summary for reference.

Upon presentation to the Council of the petition certified as sufficient for referendum on December 14, 2023, the operation of Ordinance No. 136, 2023, was automatically suspended pending repeal by the Council or final determination by the voters. If the Ordinance is not repealed, Council must refer the ordinance to a vote of the registered electors of the City at the next regular election or special election scheduled for any other purpose. Council may call a special election for this specific purpose. Because of existing election events in 2024, there is a limited range of possible dates for a special election. This includes between April 9 and May 21, and then again between July 30 and August 6. It is also possible to call a special election that would be conducted as a coordinated election with Larimer County on November 5, 2024, if no other special election is held before that time.

Two main options available to the Council are presented here as Option 1 and Option 2. If Council chooses to call a special election now for this purpose, Council will also need to adopt the ordinance provided as Option 2A and will need to insert the date of the special election into the body of the Ordinance calling a special election. Without adopting this ordinance, the referendum on Ordinance No. 136, 2023, would need to occur whenever the next City election is, whether that is the regular election in November of 2025 or any special election called before that time for another purpose.

#### OPTION 1 – REPEAL THE ORDINANCE

If Council chooses to repeal the protested Ordinance, it can do so by adopting on First Reading Ordinance No. 175, 2023, Repealing Ordinance No. 136, 2023, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Revised Land Use Code and Separately Codifying the 1997 Land Use Code as the “Pre-2024 Transitional Land Use Regulations”. When the revised Land Use Code was adopted, Ordinance No. 137, 2023, Updating City Code References to Align with the Adoption of the Revised Land Use Code, and Ordinance No. 138, 2023, Amending the Zoning Map of the City of Fort Collins to Rename All Neighborhood Conservation Low Density, Neighborhood Conservation Medium Density, and Neighborhood Conservation Buffer zone districts to the Old Town Zone District In Conjunction with the Adoption of the Revised Land Use Code, were concurrently adopted. Adoption of the ordinance repealing the revised Land Use Code includes language also repealing Ordinance Nos. 137 and 138, 2023.

If this option is approved, Council may choose to discuss next steps regarding a revised version of the repealed Land Use Code. Staff has attached information to assist with any discussion.

#### OPTION 2 – REFER THE ORDINANCE TO FORT COLLINS VOTERS AT THE NEXT ELECTION

If Council chooses not to repeal the protested Ordinance, it must refer it to the voters of Fort Collins by resolution. Council would refer the protested Ordinance to the voters by adopting Resolution 2023-115 Referring Ordinance No. 136, 2023, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Revised Land Use Code and Separately Codifying the 1997 Land Use Code as the “Pre-2024 Transitional Land Use Regulations” to a Vote of the Registered Electors of the City at the Next Municipal Election. The Resolution directs that staff present at the next regular Council meeting a resolution to set the ballot title for this question to voters.

#### AND IF DESIRED, OPTION 2A – CALL A SPECIAL ELECTION

If it is desired to call a special election at this time, that is done by ordinance in addition to the resolution referring the Ordinance to the voters. If Council intends to call a special election, the process would be done by adopting Ordinance No. 176, 2023, Calling a Special Election for the Purpose of Submitting to the Registered Electors a Citizen Referendum of Ordinance No. 136, 2023, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Revised Land Use Code and Separately Codifying the 1997 Land Use Code as the “Pre-2024 Transitional Land Use Regulations”. At the time of second reading of this Ordinance a resolution would also be provided to set the ballot title for this question to voters.

## **CITY FINANCIAL IMPACTS**

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There will be what are likely negligible costs associated with referring Ordinance No. 136, 2023, to the next regular municipal election on November 4, 2025 or a potential special election called for another purpose to be conducted as part of the coordinated election on November 5, 2024.

A special election called for the purpose of submitting a referendum of Ordinance No. 136, 2023, is estimated to cost in the likely range of \$300,000-\$400,000.

## **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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None.

## **PUBLIC OUTREACH**

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None.

## **ATTACHMENTS**

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First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 175, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
REPEALING ORDINANCE NO. 136, 2023, REPEALING AND REENACTING  
SECTION 29-1 OF THE CODE OF THE CITY OF FORT COLLINS TO ADOPT THE  
REVISED LAND USE CODE AND SEPARATELY CODIFYING THE 1997 LAND  
USE CODE AS THE “PRE-2024 TRANSITIONAL LAND USE REGULATIONS,”  
ORDINANCE NO. 137, 2023, UPDATING CITY CODE REFERENCES TO ALIGN  
WITH THE ADOPTION OF THE REVISED LAND USE CODE AND ORDINANCE NO. 138,  
2023, AMENDING THE ZONING MAP OF THE CITY OF FORT COLLINS TO RENAME  
ALL NEIGHBORHOOD CONSERVATION LOW DENSITY, NEIGHBORHOOD  
CONSERVATION MEDIUM DENSITY, AND NEIGHBORHOOD CONSERVATION  
BUFFER ZONE DISTRICTS TO THE OLD TOWN ZONE DISTRICT IN CONJUNCTION  
WITH THE ADOPTION OF THE REVISED LAND USE CODE

WHEREAS, on October 17, 2023, the City Council adopted on second reading Ordinance No. 136, 2023, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Revised Land Use Code and Separately Codifying the 1997 Land Use Code as the “Pre-2024 Transitional Land Use Regulations” (the “Ordinance”); and

WHEREAS, on October 27, 2023, a registered elector commenced referendum proceedings by filing with the City Clerk a notice of protest against the Ordinance; and

WHEREAS, on November 8, 2023, the City Clerk approved the form of the referendum petition relating to the Ordinance (the “Referendum Petition”); and

WHEREAS, on November 28, 2023, the petition representatives filed the Referendum Petition with the City Clerk; and

WHEREAS, on December 14, 2023, the City Clerk issued and provided to the City Council her certification that the Referendum Petition contained the requisite number of signatures (at least 4,228) to require further action by the City Council; and

WHEREAS, under Article X, Section 2(e) of the City Charter, the presentation to the City Council of a petition certified by the City Clerk as sufficient for referendum automatically suspends the operation of the Ordinance pending repeal by the Council or final determination by the electors; and

WHEREAS, under Article X, Section 2(e) of the City Charter, if the Ordinance is not repealed, the Council must refer the same to a vote of the registered electors at the next regular or special city election, or, in the alternative, call a special election for that purpose; and

WHEREAS, Council has determined that the Ordinance should be repealed; and

WHEREAS, Council has also determined that Ordinance 137, 2023, and Ordinance 138, 2023, both adopted concurrent with Ordinance 136, 2023, and respectively making conforming changes to City Code. in light of the adoption of the revised Land Use Code and rezoning the

Neighborhood Conservation zone districts to rename them as the Old Town zone district in alignment with the revised Land Use Code, should also be repealed.

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 Ordinance No. 136, 2023, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Revised Land Use Code and Separately Codifying the 1997 Land Use Code as the “Pre-2024 Transitional Land Use Regulations”, is hereby repealed in its entirety.

Section 3. That Ordinance No. 137, 2023, Updating City Code References to Align with the Adoption of the Revised Land Use Code, is hereby repealed in its entirety.

Section 4. That Ordinance No. 138, 2023, Amending the Zoning Map of the City of Fort Collins to Rename All Neighborhood Conservation Low Density, Neighborhood Conservation Medium Density, and Neighborhood Conservation Buffer Zone Districts to the Old Town Zone District in Conjunction with the Adoption of the Revised Land Use Code, is hereby repealed in its entirety.

Introduced, considered favorably on first reading, and ordered published this 19th day of December, 2023, and to be presented for final passage on the 16th day of January, 2024.

\_\_\_\_\_  
Mayor

ATTEST:

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

Passed and adopted on final reading this 16th day of January, 2024.

\_\_\_\_\_  
Mayor

ATTEST:

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

January 16, 2024

## AGENDA ITEM SUMMARY

City Council



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### STAFF

Teresa Roche, Human Resources Executive

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### SUBJECT

**First Reading of Ordinance No. 009, 2024, Amending Section 2-596 of the Code of the City of Fort Collins and Setting the Salary of the City Manager.**

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### EXECUTIVE SUMMARY

The purpose of this item is to amend City Code to establish the 2024 salary of the City Manager. Council met in executive session on December 19, 2023, to conduct the performance review of Kelly DiMartino, City Manager, and to consider the salary market analysis for this position.

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### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

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### BACKGROUND / DISCUSSION

Council is committed to compensating employees in a manner which is market based, competitive and based on performance. The goal as an employer is to attract, retain, engage, develop and reward a diverse and competitive workforce to meet the needs of the community now and in the future.

The 2023 salary for the City Manager was \$305,325.

Based on the market analysis for this position and guided by the City's compensation principles and Council's discussion during recent performance review, staff has recommended the 2024 salary for this position.

Resolution 2019-099 establishes the process for evaluating the performance of the City Manager, City Attorney, and Chief Judge. It states that any change in compensation for these employees will be adopted by Council by Ordinance. This Ordinance will amend City Code to establish the 2024 compensation for the City Manager.

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### CITY FINANCIAL IMPACTS

The City financial impact will be the new base salary for the City Manager as approved by Council.

## **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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None.

## **PUBLIC OUTREACH**

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None.

## **ATTACHMENTS**

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1. Ordinance for Consideration
2. Benchmark Cities (National and Regional) Market Information

ORDINANCE NO. 009, 2024  
OF THE COUNCIL OF THE CITY OF FORT  
COLLINS AMENDING SECTION 2-596 OF THE  
CODE OF THE CITY OF FORT COLLINS AND  
SETTING THE SALARY OF THE CITY MANAGER

A. Pursuant to Article III, Section 1 of the City Charter, the City Council is responsible for fixing the compensation of the City Manager.

B. The City is committed to compensating its employees in a manner that is fair, competitive and understandable.

C. The City Council supports a compensation philosophy of paying employees a competitive salary based on established market data and performance, and may adjust the salary of the City Manager to bring that salary more in line with the approved market data.

D. The City Council met with the City Manager to conduct a review and establish next year's goals.

E. The City Council believes that the base salary of the City Manager should be established at the amount of \$314,987 effective January 8, 2024.

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

Section 1. Section 2-596 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 2-596. Salary of the City Manager.**

The base salary to be paid the City Manager shall be ~~three hundred five thousand three hundred twenty-five dollars (\$305,325)~~ **three hundred fourteen thousand nine hundred eighty-seven dollars (\$314,987)** per annum, payable in biweekly installments. Forty (40) percent of such sum shall be charged to the city electric utility, twenty (20) percent to the city water utility and forty (40) percent to general government expense.

Section 2. The effective date of the salary adjustment shall be January 8, 2024, and will be paid retroactively with the February 23, 2024, paycheck.

Introduced, considered favorably on first reading on January 16, 2024, and approved on second reading for final passage on February 6, 2024.

\_\_\_\_\_  
Mayor

ATTEST:

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

Effective Date: February 16, 2024  
Approving Attorney: Aaron Guin

**City Manager**  
**Benchmark Cities Market Information**  
**November 2023**

National Base Salary Percentiles					
	10th	25th	50th	75th	90th
<b>2023</b>	\$250,000	\$265,200	\$297,733	\$314,987	\$350,002
<b>2022</b>	\$231,323	\$254,925	\$293,027	\$332,784	\$379,553

Regional Base Salary Percentiles					
	10th	25th	50th	75th	90th
<b>2023</b>	\$238,900	\$272,072	\$282,389	\$304,325	\$309,590
<b>2022</b>	\$243,400	\$258,479	\$270,907	\$291,899	\$295,523

**City Manager**  
**Benchmark Cities (National) Market Information**  
**November 2023**

Peer City	Specific Plan	Plan Type	Employer %	Employee %	Social Security	Defined Benefit Available	Retiree Healthcare	Eligibility	Match	Total Contributions <sup>1</sup>	Vesting Schedule (Years)	Car or Car Allowance	Salary	Year of Last Increase	Annual/ Retention Bonus	Length of Service
Fort Collins, CO	Exec. Plan	401a	10%	0%	Yes	No	No	Immediate	3%	28.4%	Immediate	\$12,000	\$305,325	2023	No	1 year
Anaheim, CA	Exec. Plan	401a	5%	5%	No	Yes	Yes	Yes	No	10% + Healthcare	Immediate		\$314,987	2023		
Ann Arbor, MI	Yes	401a	15%	7.5%	Yes	No	Yes	Yes	No	34.9% + Healthcare	3		\$250,000	2022		
Asheville, NC		State DB	12.1%	6%	Yes	Yes	No	Immediate	No	30.5%	5	\$6,000	\$254,829	2023	No	5 years
Austin, TX		DB	12%	10%	No	Yes	Yes	Immediate	DROP	22% + Healthcare	5	No	\$350,002	2023	No	<1 year
Boulder, CO	Exec. Plan <sup>2</sup>	401a	14%	8%	No	No	No	Immediate	No	22%	5		\$297,733	2023	\$3,000	2 years
Durham, NC		State DB	12.1%	6%	Yes	Yes	No	Immediate	No	30.5%	5	\$6,000	\$265,200	2023	No	2 years
Eugene, OR	Exec. Plan	401a	5%	5%	No	Yes	No	Immediate	No	10%	Immediate		\$261,305			
Greensboro, NC		State DB	12.1%	6%	Yes	Yes	No	Immediate	No	30.5%	5		\$312,000			
Hayward, CA	Exec. Plan	401a	6%	0%	No	Yes	No	Immediate	No	6%	Immediate		\$302,619			
Irving, TX	Exec. Plan	401a	5%	5%	No	Yes	No	Immediate	DROP	10%	Immediate		\$293,896			
Mesa, AZ	Exec. Plan	401a	Max	0%	Yes	Yes	yes- 20 years	Immediate	\$8,000	Max + 12.4 + \$8,000 + Healthcare	Immediate		\$304,907	2023		
Naperville, IL	Exec. Plan	401a	\$20,000	0%	Yes	Yes	No	Immediate	No	\$20,000 + 12.4%	Immediate	No	\$227,938	2023	No	19 years
Oklahoma City, OK	Exec. Plan	401a	8%	8%	No	Yes	Yes	Immediate	No	16% + Healthcare	Immediate	\$7,000	\$288,102	2023	No	4 years
Palo Alto, CA	Yes	401a	75% of Max	0%	No	Yes	Yes	Immediate	No	75% of Max + Healthcare	5	No	\$381,372	2022	No	5 years
Plano, TX	Exec. Plan	401a	5%	5%	No	Yes	Yes	Immediate	No	10% + Healthcare	Immediate	\$12,000	\$333,583	2023	No	4 years
Saramento, CA	Exec. Plan	401a	10%	0%	No	Yes	Yes	Immediate	No	10% + Healthcare	Immediate	\$6,000	\$400,652	2022	No	6 years
Santa Monica, CA	Exec. Plan	401a	5%	5%	No	Yes	No	Immediate	No	10%	Immediate		\$347,059			
Savannah, GA											Immediate	\$7,200	\$289,099	2023	No	2 years
Tallahassee, FL	Exec. Plan	401k	5%	Elective	No	Yes	No	Immediate	Deferred Match	5%	Immediate	No	\$272,935	2023	No	5 years
Wilmington, NC		State DB	12.1%	6%	Yes	Yes	No	Immediate	No	30.5%	5	\$6,000	\$245,700	2023	No	2 years

<sup>1</sup> Total Contributions into Retirement assumes the Employer and Employee contribution, plus the match (assuming they take advantage of it), plus Social Security (if included) and Retiree Healthcare.

<sup>2</sup> Can choose between/either the Statewide Defined Benefit Plan or the Executive 401a Plan.

Blank cells indicate data points not provided through any of our data collection sources.

**City Manager**  
**Benchmark Cities (Regional) Market Information**  
**November 2023**

Local Entity	Specific Plan	Plan Type	Employer %	Employee %	Social Security	Defined Benefit Available	Retiree Healthcare	Eligibility	Match	Total Contributions <sup>1</sup>	Vesting Schedule (Years)	Car or Car Allowance	Salary	Year of Last Increase	Annual/Retention Bonus	Length of Service
Fort Collins, CO	Exec. Plan	401a	10%	0%	Yes	No	No	Immediate	3%	28.4%	Immediate	\$12,000	\$305,325	2023	No	1 year
Arvada, CO	Exec. Match	401a	11%	8%	No	No	Yes	Immediate	Exec ~\$25,000	19% + \$25,000 + Healthcare	Immediate	\$6,000	\$275,600	2022	No	11 months
Aurora, CO	Exec. Plan	401a	10%	10%	Yes	No	\$244/mo	Immediate	~\$15,000	32.4% + \$15,000 + \$244/mo Healthcare	3	\$6,000	\$274,500	2022	No	5 Months; interim started 4/8/2023
Boulder, CO	Exec. Plan <sup>2</sup>	401a	14%	8%	No	No	No	Immediate	No	22%	5	\$0	\$297,733	2023	\$3,000	1.8 years
Broomfield, CO	No	401a	6%	6%	Yes	No/Frozen	Yes	Immediate	No	24.4% + Healthcare	5	\$8,400	\$303,992	2023	No	4 years
Greeley, CO	No	401k	6%	4%	Yes	No	No	Immediate	2%	26.4%	5		\$274,429	2023	\$10,000	2 years
Lakewood, CO	No	401a	13%	11%	No	No	Yes	Immediate	No	24% + Healthcare	5	\$8,400	\$310,064	2023	No	14 years
Larimer County	No	401a	8%	8%	Yes	No	Yes	Immediate	No	28.4% + Healthcare	5		\$263,681	2022	No	11 years
Littleton, CO	Exec. Match	401a	8%	5%	Yes	No	No	Immediate	~\$11,250	25.4% + ~\$11,250	5		\$236,000	2022	No	1 year
Longmont, CO <sup>3</sup>	No	401a	5%	6%	No	Yes	Yes	Immediate	No	11% + Healthcare	3	\$5,000	\$289,177	2023	\$40,000	11 years
Loveland, CO	No	401a	9%	3%	Yes	No	No	6 mos.	No	24.4%	3		\$230,642	2023	No	7 years
Thornton, CO	Exec. Plan	401a	8%	12.6%	Yes	No	Yes	Immediate	1%	35%	5	\$7,008	\$314,070	2023	No	5.8 years
Westminster, CO	No	401a	11.25%	11%	No	No	Part of 401h	Immediate	No	22.25%	5	\$7,500	\$265,000	2023	No	1 year

<sup>1</sup> Total Contributions into Retirement assumes the Employer and Employee contribution, plus the match (assuming they take advantage of it), plus Social Security (if included) and Retiree Healthcare.

<sup>2</sup> Can choose between/either the Statewide Defined Benefit Plan or the Executive 401a Plan.

<sup>3</sup> Longmont Retention Bonus of \$40k given if employed end of 2023 and \$20k given if employed end of 2024.

Blank cells indicate data points not provided through any of our data collection sources.