

Fort Collins City Council Agenda

Regular Meeting

6:00 p.m. Tuesday, April 4, 2023

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

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

NOTICE:

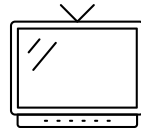
Regular meetings of the City Council are held on the 1st and 3rd Tuesdays of each month in the City Council Chambers. Meetings are conducted in a hybrid format, with a Zoom webinar in addition to the in person meeting in Council Chambers.

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

How to view this Meeting:



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



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



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



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

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

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



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

Comment in real time:

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



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



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

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

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

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

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

Call in number: 720 928 9299

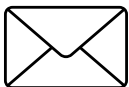
Meeting ID: 982 4141 6497

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

Submit written comments:



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



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

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

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



April 4, 2023 at 6:00 PM

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

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

Carrie Daggett
City Attorney

Kelly DiMartino
City Manager

Anissa Hollingshead
City Clerk

PROCLAMATIONS & PRESENTATIONS
5:00 PM

A) PROCLAMATIONS AND PRESENTATIONS

- [PP 1.](#) Proclaiming April 2023 as Donate Life Month.
- [PP 2.](#) Proclaiming April 2023 as Fair Housing Month.
- [PP 3.](#) Proclaiming April 2023 as Sexual Assault Awareness Month.
- [PP 4.](#) Proclaiming April 2023 as Southwest Asian North African Heritage Month (SWANA).
- [PP 5.](#) Proclaiming April 22, 2023 as Earth Day.

REGULAR MEETING
6:00 PM

B) CALL MEETING TO ORDER

C) PLEDGE OF ALLEGIANCE

D) ROLL CALL

E) CITY MANAGER'S AGENDA REVIEW

•City Manager Review of Agenda

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

F) COMMUNITY REPORTS - None

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

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

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

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

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

H) PUBLIC COMMENT FOLLOW-UP

I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

CONSENT CALENDAR

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

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

1. Consideration and Approval of the Minutes of the March 21, 2023 Regular Meeting.

The purpose of this item is to approve the minutes of the March 21, 2023 Regular meeting.

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

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

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

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

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

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

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

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

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

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

This Ordinance, unanimously adopted on First Reading on March 21, 2023, appropriates from reserves in the Light & Power, Water, Wastewater and Stormwater enterprise funds. The use of these reserves is necessary to implement a modern Utility Customer Information System – Customer Self Service Portal (CIS-CX) Solution. These funds are being requested to maintain project momentum as the City completes the selection of a solution partner and prepares to contract for professional services. This proposed appropriation will allow the City to secure CIS-CX project management and solution quality assurance services through go-live, provide legal review of professional services contracts, and provide funding to hire contractual staff throughout the implementation.

The total amount being recommended for appropriation is \$4,250,000 as detailed in the background section.

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

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

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

This Ordinance, unanimously adopted on First Reading on March 21, 2023, appropriates \$598,668 of which \$261,527 is proposed for Cultural Development and Programming Activities (Fort Fund), \$169,624 is proposed for Tourism Programming (Fort Fund), and \$167,517 is proposed for Convention and Visitors Bureau from a combination of 2022 Lodging Tax collections and Prior Year Reserves (unspent appropriations) in the General Fund Lodging Tax Reserves.

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

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

This Ordinance, unanimously adopted on First Reading on March 21, 2023, supports businesses, homeowner associations (“HOAs”) and other commercial properties pursuing costly landscape projects that reduce water use long-term through the Xeriscape Incentive Program by utilizing (1) \$75,000 in grant funds from the Bureau of Reclamation and (2) \$75,000 in matching funds from existing 2023 appropriations. This item would also authorize the City Manager or their designee to accept the grant award and comply with the terms of the grant application and award.

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

This Ordinance, unanimously adopted on First Reading on March 21, 2023, enables the City to receive and expend Colorado Department of Transportation (CDOT) funds and to appropriate development payment-in-lieu funds for the Timberline Mulberry Lincoln Intersection Project (the Project). The funds will be used for design, right-of-way acquisition, and construction of improvements at the intersection of Timberline Road, Mulberry Street, and Lincoln Avenue. If approved, the item will: (1) authorize the Mayor to execute an Intergovernmental Agreement for the Project with CDOT; (2) appropriate \$1,523,915 of Highway Safety Improvement Program (HSIP) grant funds for the Project; (3) appropriate \$23,651 from the Capital Funds Reserve received in 2020 as a development payment-in-lieu contributed to this Project by an adjacent development; and (4) appropriate \$237 (1% of the development payment-in-lieu amount) to the Art in Public Places Program.

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

This Ordinance, unanimously adopted on First Reading on March 21, 2023, appropriates \$260,000 from the Recreation Reserve to close the funding gap on the Childcare Space Modifications at Northside Aztlan Community Center and transfer 1% of the applicable construction costs to Art in Public Places.

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

This Ordinance, unanimously adopted on First Reading on March 21, 2023, reappropriates monies in 2023 that were previously authorized by City Council for expenditure in 2022 for various purposes. The authorized expenditures were not spent or could not be encumbered in 2022 because:

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

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

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

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

This Ordinance, unanimously adopted on First Reading on March 21, 2023, is an appropriation to purchase the land of the former Hughes Stadium.

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

This Ordinance, unanimously adopted on First Reading on March 21, 2023, adopts the Vision Zero Action Plan.

14. Items Related to Election Code Changes.

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

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

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

These Ordinances, unanimously adopted on First Reading on March 21, 2023, adopt changes to City Code required by the approval of Fort Collins voters to move the City's regular municipal election from April to November in odd-numbered years.

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

15. First Reading of Ordinance No. 047, 2023, Authorizing Transfers of Appropriations for the Renovation of the Carnegie Center for Creativity.

The purpose of this item is to transfer \$2,400,000 appropriated in the Cultural Services & Facilities Fund to the Capital Projects Fund.

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

The purpose of this item is to support businesses, homeowner associations, other commercial properties, and residential properties pursuing costly landscape projects that reduce water use long-term through the Xeriscape Incentive Program by:

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

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

17. Items Relating to the Thompson Thrift Spaulding Addition Annexation.

A. Resolution 2023-031 Setting Forth Findings of Fact and Determinations Regarding the Thompson Thrift Spaulding Addition Annexation.

B. Public Hearing and First Reading of Ordinance No. 049, 2023, Annexing the Property Known as the Thompson Thrift Spaulding Addition Annexation to the City of Fort Collins, Colorado.

The purpose of this item is to annex a 3.743-acre property located off Terry Lake Road/Highway 1 on Spaulding Lane, closest to the Spaulding Lane and Valley View Lane intersection. A specific project development plan proposal is not included with the annexation application. The Initiating Resolution was adopted by City Council on February 21, 2023. A separate related item to amend the Zoning Map and classify for zoning purposes the annexed property is presented as the next item on this Agenda.

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

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

The purpose of this item is to zone the property included in the Thompson Thrift Spaulding Addition Annexation into the Low Density Mixed-Use (L-M-N) zone district and place the property into the LC1 Lighting Context Area.

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

19. Items Relating to the Carpenter and Timberline Intersection Project.

A. Resolution 2023-032 Authorizing the Execution of an Intergovernmental Agreement Between the City of Fort Collins and the State of Colorado Department of Transportation for the Carpenter and Timberline Intersection Project.

B. First Reading of Ordinance No. 051, 2023, Making Supplemental Appropriations for the Carpenter and Timberline Intersection Project.

The purpose of this item is to enable the City to receive and expend Federal and Colorado Department of Transportation (CDOT) funds for the Carpenter and Timberline Intersection Project (the Project). The funds will be used for design and construction of improvements at the intersection of Carpenter Road and Timberline Road. If approved, the item will: 1) authorize the Mayor to execute an Intergovernmental Agreement (IGA) for the Project with CDOT; and 2) appropriate \$696,285 of Highway Safety Improvement Program (HSIP) grant funds for the Project. This Project will not appropriate any money to Art in Public Places Program as the Project is 100% federally funded.

20. Items Relating to the Repeal and Reenactment of Certain Ordinances.

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

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

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

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

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

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

Due to a publication error, staff requests Council repeal and reenact each Ordinance as they were adopted on March 7, 2023.

21. Resolution 2023-033 Terminating the Oil and Gas Operator Agreement between the City of Fort Collins and Prospect Energy.

The purpose of this item is to consider termination of the Oil and Gas Operator Agreement between the City and Prospect Energy, which was originally executed in 2013 and is eligible for termination in May 2023. This is recommended as the Operator Agreement is outdated and indicates that the operator is not required to go through the City's Development Review Process for approvals prior to modifications to existing sites.

22. Items Relating to FLEX Route Regional Transit Services Intergovernmental Agreements.

A. Resolution 2023-034 Authorizing the Execution of an Intergovernmental Agreement between the City of Fort Collins, Colorado and the City of Loveland for FLEX Route Regional Transit Services.

B. Resolution 2023-035 Authorizing the Execution of an Intergovernmental Agreement between the City of Fort Collins, Colorado and the Town of Berthoud for FLEX Route Regional Transit Services.

C. Resolution 2023-036 Authorizing the Execution of an Intergovernmental Agreement between the City of Fort Collins, Colorado and the County of Boulder for FLEX Route Regional Transit Services.

D. Resolutions 2023-037 Authorizing the Execution of an Intergovernmental Agreement between the City of Fort Collins, Colorado and the City of Boulder for FLEX Route Regional Transit Services.

E. Resolution 2023-038 Authorizing the Execution of an Intergovernmental Agreement between the City of Fort Collins, Colorado and the City of Longmont for FLEX Route Regional Transit Services.

The purpose of these items is to authorize the City Manager to sign separate Intergovernmental Agreements (“IGAs”) with the City of Loveland, the Town of Berthoud, the City of Boulder, the County of Boulder, and the City of Longmont (collectively, the “FLEX Partners”) by which the FLEX Partners will contribute funds toward the operating cost of the FLEX Route Regional Transit Service bus route to further the goals of regional connectivity through transit.

23. Resolution 2023-039 Making an Appointment to the General Employees Retirement Committee.

The purpose of this item is to fill a vacancy on the General Employee’s Retirement Committee.

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.

24. Second Reading of Ordinance No. 151, 2022, Amending the Land Use Code to Regulate Oil and Gas Facilities and Pipelines.

This Ordinance, unanimously adopted on First Reading on December 20, 2022, updates the Land Use Code (LUC) to regulate new oil and gas facilities and pipelines within City limits. These regulations include zoning, setbacks, development standards and a process for development review which limits new Oil and Gas facilities to less than 1% of available land. Per new authority granted through Senate Bill 19-181, these local regulations exceed Colorado Oil and Gas Conservation Commission (COGCC) requirements related to surface oil and gas activities and are designed to ensure the protection of public health, safety, welfare, the environment, and wildlife resources.

25. Items Relating to Rental Housing Program.

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

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

The purpose of this item is to consider the adoption of a Rental Housing Program that begins with registration and adds proactive rental inspections after one year of full implementation and to consider an off-cycle general fund appropriation in the amount of \$1.1 million over a 2-year period (\$421,583 in 2023 and \$669,500 in 2024) to support the start-up phase of the proposed program. The development of a Rental Housing Program implements policy direction in both the Housing Strategic Plan (2021) and the Our Climate Future Plan (2021):

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

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

26. Items Relating to the Repeal and Reenactment of Certain Ordinances.

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

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

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

27. Items Relating to a City-Initiated Charter Amendment Regarding Making Candidate Qualifications Comport with the State Constitution.

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

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

The purpose of this item is to set the ballot language regarding making candidate qualifications comport with the Colorado Constitution.

Any protest of the proposed ballot language must be received no later than Monday, April 3, 2023, at noon. Protest(s) shall be heard, considered, and resolved by the Council prior to adoption of the related Ordinance. If protests are received, copies will be included in Council's "Read Before the Meeting" packet.

P) OTHER BUSINESS

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

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

Q) ADJOURNMENT

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

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



PROCLAMATION

WHEREAS, this April 2023 is 20th National Donate Life Month with a goal to raise awareness about organ, eye and tissue donation, encourage Americans to register as donors and honor those that have saved lives through the gift of donation; and

WHEREAS, Colorado has the nation’s highest-performing state donor registry with 67% of driver license/ID card applicants signing up to be organ and tissue donors—a decision that reflects deep commitment to one another and confirms that there is good inside all of us; and

WHEREAS, one donor can save up to 8 lives through organ donation and save and heal more than 75 lives through tissue donation; and

WHEREAS, a record 278 heroic organ donors saved 740 lives in 2022, a 29% increase from 2021; and Donor Alliance recovered tissue for transplant from 1,911 heroic tissue donors saving and healing with nearly 144,000 tissue grafts; and

WHEREAS, there are nearly 1,500 people waiting for a lifesaving organ transplant in Colorado and Wyoming. Of those waiting, nearly 1,200 are waiting for a kidney—the organ most in need—and nearly 120 are waiting for a liver; and

WHEREAS, the U.S. has officially achieved its 1 millionth organ transplant, including the more than 42,800 organ transplants performed in 2022, another historic first for the nation which is a testament to the lifesaving work being done day by day by Donor Alliance and all organ procurement organizations across America; and

WHEREAS, Donor Alliance’s Donor Service Area serves 6.3 million residents and covers 184,151 square miles – this includes all of Colorado and most of Wyoming.

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

NATIONAL DONATE LIFE MONTH

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk



PROCLAMATION

WHEREAS, Title VIII of the Civil Rights Act, which guarantees fair housing for all residents of the United States, was signed into law in April 1968; and

WHEREAS, the month of April is nationally recognized as Fair Housing Month as a time to reflect on and reaffirm our national commitment to the ideal that fair housing opportunity is available to everyone in the United States without regard to race, color, religion, national origin, sex, familial status and disability; and

WHEREAS, this year celebrates the 55th anniversary of the Fair Housing Act and reflects on our current efforts to foster sustainable, inclusive communities of opportunity for all; and

WHEREAS, on April 10, 1959 the State of Colorado was the first state in the U.S. to pass fair housing laws, preceding the federal Fair Housing Act by nearly a decade; and

WHEREAS, the City of Fort Collins City Code prohibits discriminatory housing practices; and

WHEREAS, the City welcomes this opportunity to acknowledge our many community partners who are committed to addressing barriers to fair housing choice and educating all citizens concerning their rights regarding equal housing opportunity; and

WHEREAS, this year, those partners are represented by the entities that assisted Nueva Vida (New Life) Mobile Home Park in becoming the 6th resident-governed mobile home park in Colorado to be acquired since the Mobile Home Park Act Residents Opportunity to Purchase was signed into Law in 2020. Ownership by United Neighbors/Vecinos Unidos nonprofit will ensure long-term affordability and sustainability for 68 low-income households. These partners include: Nueva Vida residents, Bohemian Foundation, Larimer County, Impact Development Fund, University of Colorado Sustainable Community Development Legal Clinic, Craig Hau and Blas Estrada with the Group Real Estate, and Beth Hutchinson of Tally Services.

NOW THEREFORE, I, Jeni Arndt, Mayor of the City of Fort Collins, do hereby decree that every person should live free from the fear of housing discrimination, and I declare April 2023 as

FAIR HOUSING MONTH

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk



PROCLAMACIÓN

CONSIDERANDO QUE, el Título VIII de la Ley de Derechos Civiles, que garantiza la equidad de vivienda para todos los habitantes de los Estados Unidos, se convirtió en ley en abril de 1968; y

CONSIDERANDO QUE, el mes de abril es reconocido a nivel nacional como el Mes de la Equidad de Vivienda; un momento para reflexionar y reafirmar nuestro compromiso nacional con el ideal de que la oportunidad de una vivienda justa está disponible para todos en los Estados Unidos sin distinción de raza, color, religión, nacionalidad, sexo, situación familiar o discapacidad; y

CONSIDERANDO QUE, este año se celebra el 55.º aniversario de la Ley de Equidad de Vivienda y refleja nuestros esfuerzos actuales para fomentar comunidades sostenibles e inclusivas con oportunidades para todos; y

CONSIDERANDO QUE, el 10 de abril de 1959, el estado de Colorado fue el primer estado de los EE. UU. en aprobar leyes de vivienda justa, precediendo a la Ley Federal de Equidad de Vivienda por casi una década; y

CONSIDERANDO QUE, el Código de la Ciudad de Fort Collins prohíbe las prácticas de vivienda discriminatorias; y

CONSIDERANDO QUE, la Ciudad agradece esta oportunidad para reconocer a nuestros tantos miembros de la comunidad que están comprometidos a abordar las barreras para la elección de una vivienda justa y a educar a todos los ciudadanos sobre sus derechos con respecto a la igualdad de oportunidades de vivienda; y

CONSIDERANDO QUE, este año, esos miembros están representados por las entidades que ayudaron al *Mobile Home Park Nueva Vida* a convertirse en el 6.º parque de casas móviles en Colorado regido por los habitantes, adquirido desde que se firmó la Ley de Oportunidades de Compra para Habitantes del Parque de Casas Móviles en 2020. La propiedad de la Organización sin fines de lucro Vecinos Unidos (*United Neighbors*) garantizará la asequibilidad y la sostenibilidad a largo plazo para 68 hogares de bajos ingresos. Dentro de los socios se incluyen: Habitantes de Nueva Vida, *Bohemian Foundation*, el condado de Larimer, *Impact Development Fund*, la *Sustainable Community Development Legal Clinic* de la Universidad de Colorado, Craig Hau y Blas Estrada con el *Group Real Estate* y Beth Hutchinson de *Tally Services*.

POR LO TANTO, yo, Jeni Arndt, alcaldesa de la Ciudad de Fort Collins, decreto por la presente que todas las personas deben vivir libres del temor a la discriminación en materia de vivienda, y declaro abril de 2023 como el

MES DE LA EQUIDAD DE VIVIENDA

EN FE DE LO CUAL, firmo la presente y hago estampar el sello de la Ciudad de Fort Collins este 4 de abril de 2023 d. C.

 Alcaldesa

CERTIFICO:

 Secretario Municipal



PROCLAMATION

WHEREAS, Sexual Assault Awareness Month (SAAM) calls attention to the fact that sexual violence is widespread and impacts every person in the community. SAAM aims to raise public awareness about sexual violence and educate communities about how to prevent it; and

WHEREAS, systems of oppression such as racism, sexism, classism, heterosexism, ageism, ableism, etc. contribute to higher rates of sexual harassment, assault, and abuse. Unfortunately, those same groups are also the most impacted by inequitable systems of oppression in our society, and statistics show: more than 1 in 4 non-Hispanic Black women in the United States were raped in their lifetime, more than 4 in 5 American Indian and Alaska Native women have experienced violence in their lifetime, 1 in 3 Hispanic women reported unwanted sexual contact in their lifetime, 32.9% of adults with intellectual disabilities have experienced sexual violence, 47% of all transgender people have been sexually assaulted at some point in their lives; and

WHEREAS, we recognize that it will take ending all forms of oppression to end sexual violence worldwide. Making a connection between various forms of oppression and the underlying cause of sexual assault is crucial to making holistic and lasting change. However, we cannot do this without recognizing historical injustice and realizing how privilege and complacency reinforces oppression; and

WHEREAS, we can trace a line from sexual violence to systems of oppression – the theme of this year’s Sexual Assault Awareness Month campaign is *Drawing Connections: Prevention Demands Equity*. The campaign calls on all individuals, communities, organizations, and institutions to change the systems surrounding us to build equity and respect within the community, workplace, and the future our youth hold; and

WHEREAS, I join advocates and communities across the country in taking action to prevent sexual violence. April is Sexual Assault Awareness Month, and each day of the year is an opportunity to create change for the future.

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

SEXUAL ASSAULT AWARENESS MONTH

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk



PROCLAMATION

WHEREAS, Southwest Asian North African (SWANA) Heritage Month will celebrate, honor, and recognize the SWANA community in Northern Colorado; and

WHEREAS, on April 1, 2021, the United States recognized National Arab American Heritage Month to honor the community’s steadfast dedication to family values and education and sharing a strong immigrant history, strong work ethic, and rich diversity in faith; and

WHEREAS, the City of Fort Collins recognizes SWANA as a decolonized and inclusive term which expands the Arab American diaspora and centers geography in a non-political, non-religious, and non-Eurocentric way, highlighting the region’s varied languages, religions, and cultures, and acknowledging that not everyone in the region is Arab, Muslim, or shares identical practices; and

WHEREAS, the City acknowledges the growing SWANA community and their contributions to Fort Collins and American culture, including individuals who have settled here through asylum/refugee seeking or through naturalization, and who have thrived despite challenges from limited visibility, with the community opening Oasis International Market in 1985, now known as The Olive Tree Market; and

WHEREAS, the Fort Collins City Council commits to making Fort Collins a welcoming place for *all* and invites the community to celebrate the rich and vibrant cultural tapestry, diversity, resiliency, and triumphs of the SWANA community, recognizing CSU’s Asian Pacific American Cultural Center and its student success coordinator, Hiba Abdeljalil, and its staff.

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

SOUTHWEST ASIAN NORTH AFRICAN HERITAGE MONTH

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk



PROCLAMATION

WHEREAS, the first Earth Day was celebrated on April 22, 1970, to inspire environmental awareness and encourage conservation, protection, and appreciation of our rich and diverse natural environment; and

WHEREAS, the Fort Collins community and its leaders have a legacy of regional, national, and global leadership in addressing environmental sustainability priorities; and

WHEREAS, City Council has placed a high priority on advancing the community's environmental health objectives, including twelve Council priorities that aim to make the ambitions of Earth Day an everyday experience for all community members in Fort Collins; and

WHEREAS, inclusive outreach, engagement, and representation are crucial to ensure sustainability efforts are equitable, just, and consistent with the community's adopted zero waste, renewable electricity, climate action, water conservation, sustainable land use and transportation, and land conservation goals and policies; and

WHEREAS, all parts of the Fort Collins community have pivotal roles and expertise that contributes to a more equitable, sustainable, and regenerative future, including leadership, traditional knowledge, cultural wisdom, creativity, and innovative solutions; and

WHEREAS, Earth Day offers the Fort Collins community an opportunity to make, renew, and celebrate commitments to each other, and to future generations, that will protect and improve the quality of life on Earth for generations to come; and

WHEREAS, Fort Collins is a sponsor of the Sustainable Living Association's annual Earth Day Celebration on April 22, 2023 and encourages all community members to join in celebration at that event or other events, programs, and celebrations throughout the community.

NOW, THEREFORE, I, Jeni Arndt, Mayor of the City of Fort Collins, do hereby observe this day and celebrate April 22, 2023 as

EARTH DAY

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk



AGENDA ITEM SUMMARY

City Council

STAFF

Anissa N. Hollingshead, City Clerk

SUBJECT

Consideration and Approval of the Minutes of the March 21, 2023 Regular Meeting.

EXECUTIVE SUMMARY

The purpose of this item is to approve the minutes of the March 21, 2023 regular meeting.

STAFF RECOMMENDATION

Staff recommends approval of the minutes.

ATTACHMENTS

1. Draft Minutes, March 21, 2023

March 21, 2023

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

PROCLAMATIONS & PRESENTATIONS
5:00 PM

A) PROCLAMATIONS AND PRESENTATIONS

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

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

REGULAR MEETING
6:00 PM

B) CALL MEETING TO ORDER

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

C) PLEDGE OF ALLEGIANCE

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

D) ROLL CALL

PRESENT

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

STAFF PRESENT

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

CITY MANAGER'S AGENDA REVIEW

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

- Tonight's agenda does include changes to the published agenda, including a recommendation that items 2-5 be removed from the consent calendar to allow for a motion to place those items on second reading on the April 4 Council agenda to ensure proper publication of notice. There was an issue with required publications after the March 7 meeting that impacted these four ordinances that were adopted on first reading. She also noted there were eight ordinances adopted on second reading at the March 7 meeting that will need to be reenacted starting with first reading at the April 4 meeting due to the same publication issue.
- The remainder of the consent calendar, including item 1 and items 6-16, is recommended for adoption.
- Highlighting the three discussion items for consideration:
 - a. The first discussion item is an appropriation to purchase the vacant land at the former Hughes Stadium Site. This item tonight addresses only the purchase of the land and does not make any determinations regarding use;
 - b. The next discussion item will be consideration of the adoption of the Vision Zero Plan; and
 - c. The final discussion item planned tonight will be a set of three ordinances related to Election Code Updates as part of the voter approved transition from April to November municipal elections.
- Under other business, Council will be considering whether to enter into an executive session in order to discuss legal questions related to City's water supply and potential litigation regarding the Northern Integrated Supply Project or the Halligan Reservoir Project.

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.)

Jorge Garcia, Director of Housing Security of Associated Students of Colorado State University (ASCSU), spoke to invite and encourage Councilmembers, as well as the full community, to attend a barbecue dinner in Washington Park prior the April 4 Council meeting.

Patricia Babbitt, Fort Collins resident, spoke about maintaining the former Hughes Stadium site as an open space and also suggested looking at converting the almost full Larimer County Landfill into a mountain biking park. She shared the example of the Red Rock Canyon open space as a repurposed landfill in the Colorado Springs area, along with similar examples outside of Buena Vista and Dillon.

Fred Schaulin, Fort Collins resident, spoke about his experience as a general aviation pilot and voiced his displeasure with the Northern Colorado Airport Commission's decision to decommission hangars without awareness of the problems this is creating for aviators. He requested more time, suggesting one year, to give tenants of hangars more time to make alternative plans.

Adam Eggleston, Fort Collins resident, spoke on two housing related items, sharing concerns with moving forward with rental licensure, asking if staff has developed a stopping point if the program proves it is not cost effective. He also requested a quantifiable measure for the success of the program. Relating to occupancy limits, he noted there may be changes made at the state level to using a definition of family in making such limits, and encouraged the City to move forward ahead of any action by the state to design shifts that make sense for the community before the City's hand is forced.

Oliver Richardson, Fort Collins resident, spoke in support of the NISP project, noting his step daughter helped design it and he knows it is a good project. He spoke to the amount of our water that goes out of state because there is no place to put it and encouraged the City to approve the pipeline needed for the project, speaking against any further roadblocks such as 1041 regulations that would hinder the project.

Public comment concluded at 6:18 p.m.

H) PUBLIC COMMENT FOLLOW-UP

Mayor Arndt noted the dinner hosted by ASCSU on April 4 will be at 4:30 p.m. She shared the Airport Commission has already taken action to postpone the closure of the hangars and is proceeding with an engineering report to determine the remaining life of the hangars.

I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

None.

J) CONSENT CALENDAR

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

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

Approved.

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

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

Postponed to April 4, 2023.

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

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

Postponed to April 4, 2023.

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

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

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

Postponed to April 4, 2023.

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

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

Postponed to April 4, 2023.

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

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

The total amount being recommended for appropriation is as follows:

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

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

Adopted on First Reading.

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

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

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

Adopted on First Reading.

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

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

Adopted on First Reading.

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

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

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

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

Adopted Resolution and Ordinance on First Reading.

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

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

Adopted on First Reading.

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

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

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

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

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

Adopted on First Reading.

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

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

Adopted.

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

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

Adopted.

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

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

Adopted.

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

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

Adopted.

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

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

Adopted.

END OF CONSENT CALENDAR

Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, to approve the recommended actions on items 1 and 6-16 on the Consent Calendar and to postpone the second readings of items 2-5 to the April 4 Council meeting.

The motion carried 7-0.

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

Councilmember Julie Pignataro congratulated those who were appointed to the Library Board, sharing her confidence they will do excellent work.

L) STAFF REPORTS

None.

M) COUNCILMEMBER REPORTS

Councilmember Susan Gutowsky

- Spoke about the Natural Area awards presented last week. She shared a few numbers about the volunteers who work in Natural Areas. A total of 759 volunteers help in this area, 292 are long term volunteers. The total volunteer hours dedicated to Natural Areas last year was 11,463, which equates to \$365,000 in savings doing the work of the equivalent of 5.5 full time employees.
- Regarding the use of the Hughes Stadium site, she referenced the saying “You don’t know where you’re going if you don’t know where you’ve been,” and there seems to be a shortage of history in this instance. The initial discussions of the site considered placement of 600 homes on the site, which then moved into an initiative process in the midst of the pandemic to put this issue on the

ballot with the purpose of hoping that the Hughes property would remain undisturbed, which was supported by 70% of voters.

Councilmember Shirley Peel

- Attended the CASA luncheon today for the Court Appointed Special Advocate program.
- Noted it is National Agriculture Week and our agriculture industry puts \$47 billion into our economy.

Mayor Jeni Arndt

- Noted next week the Council will be in recess to attend the National League of Cities conference and will not be holding its regular work session.
- The Cities Summit of the America, modeled on the national Summit of the Americas, will be held in Denver on April 16-28. The Secretary of State will be in attendance as well as Ambassador Nina Hachigian, named as a special ambassador to this work by the Biden Administration and previously served as a Deputy Mayor of Los Angeles. She also noted Fort Collins has been invited to participate in a round table led by the Department of Energy as part of the summit.
- Received an email this morning from the Global Parliament of Mayors providing a one-year honorary membership.

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

None.

O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION

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

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

Blaine Dunn, Accounting Director, presented as set forth in the slide deck in the agenda packet for this item.

PUBLIC COMMENT

Joe Rowan, Fort Collins resident, spoke about the future costs for this site, and the importance of considering what we are willing to give up in order to get what we want this site to be.

COUNCIL DISCUSSION

Mayor Pro Tem Francis asked about future costs. In addition to other costs, it cost the City approximately \$130,000 to take out the \$8.5M. Mayor Arndt requested follow up from staff on the total cost over the years plus interest in a memo before second reading.

Councilmember Pignataro requested Dunn provide an explanation for what a COP is. Dunn explained a Certificate of Participation (COP) is using an asset to borrow against, like a mortgage on a home.

Mayor Pro Tem Francis stated her desire to offer an amendment to the ordinance as was presented in the read before packet.

Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, to adopt on first reading Ordinance No. 042, 2023.

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to amend the motion to add a new Section 5, to read as follows: ‘That the City Council hereby directs the City Manager to advise Council regarding potential adjustment to the sources of funds used for the purchase of the former Hughes Stadium Site based on the planned use of the property, promptly after completion of a plan for the use of the property.’

The amendment to the motion carried 7-0.

The motion to adopt on first reading the ordinance as amended carried 7-0.

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

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

Tyler Stamey, City Traffic Engineer, and Rachel Ruhlen, Transportation Planner, presented as set forth in the slide deck in the agenda packet for this item.

PUBLIC COMMENT

There was no public comment.

COUNCIL DISCUSSION

Councilmember Pignataro asked City Manager DiMartino what the plan is for budget support for implementation of this plan. DiMartino noted Council can expect to see budget offers coming forward in the future based on this plan that will be part of the full budget process for consideration by budget teams, the public and ultimately Council. Related budget offers will clearly indicate their connection to this plan as well as identified City priorities.

Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, to adopt on first reading Ordinance No. 043, 2023.

The motion carried 7-0.

19. Items Related to Election Code Changes.

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

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

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

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

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

City Clerk Anissa Hollingshead presented as set forth in the slide deck in the agenda packet for this item.

PUBLIC COMMENT

There was no public comment.

COUNCIL DISCUSSION

Mayor Pro Tem Francis asked if the default with these changes would be for coordinated elections. Clerk Hollingshead confirmed that is how the language is written, with the option retained for Council to designate a specific regular municipal election not be coordinated and would need to do so by March of the year of the election.

In response to additional questions regarding when candidate information will be updated, Clerk Hollingshead noted once these ordinances are adopted, the Clerk team will be able to make those updates.

There was discussion around seeking a solution to paying for postage for returned ballots. Clerk Hollingshead clarified that the Uniform Election Code does not allow for postage to be paid on returned ballots, which prohibits doing so in coordinated elections. The Election Code Committee considered this issue and recommended still moving forward with coordinating elections. It was noted this is an issue the City could lobby around legislatively. There were also suggestions regarding working with the County to increase the number of drop boxes as another option for expanding access for voters in returning ballots without additional costs.

Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, to adopt on first reading Ordinance No. 044, 2023.

The motion carried 7-0.

Mayor Pro Tem Francis moved, seconded by Councilmember Peel, to adopt on first reading Ordinance No. 045, 2023.

The motion carried 7-0.

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to adopt on first reading Ordinance No. 046, 2023.

The motion carried 7-0.

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

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

None.

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

Mayor Pro Tem Francis moved, seconded by Councilmember Peel, that the City Council go into executive session pursuant to:

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

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

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

The motion carried 7-0.

At 7:06 p.m. the Council recessed to executive session.

The executive session began at 7:15 p.m. with a recording made. Present were:

- Mayor Jeni Arndt
- Mayor Pro Tem Emily Francis
- Councilmember Susan Gutowsky
- Councilmember Julie Pignataro
- Councilmember Canonico
- Councilmember Shirley Peel
- Councilmember Kelly Ohlson
- City Manager Kelly DiMartino
- City Attorney Carrie Daggett
- City Clerk Anissa Hollingshead
- Utilities Executive Director Kendall Minor
- Water Director Jason Graham
- Natural Areas Director Katie Donahue
- Senior Assistant City Attorney Brad Yatabe
- Assistant City Attorney Eric Potyondy

Item 1.

Following the determination of the City Attorney that the planned discussion constituted consideration of legal advice, the recorder was stopped at 7:16 p.m.

The recorder was turned back on at 9:09 p.m. All the same attendees were present at the conclusion of the executive session.

R) ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at 9:10 p.m.

Mayor

ATTEST:

City Clerk

DRAFT



AGENDA ITEM SUMMARY

City Council

STAFF

Beth Rosen, Grants Compliance and Policy Manager
Ingrid Decker, Legal

SUBJECT

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

EXECUTIVE SUMMARY

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

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

On September 1, 2020, the City of Fort Collins entered into a Development Contract for HOME Investment Partnership (HOME) funding with Fort Collins Habitat for Humanity. The contract provided \$80,000 in HOME funding to support the construction costs of a single-family home built in partnership with the Geometry in Construction program at Poudre High School (PHS). The contract funding was secured by a Promissory Note, Deed of Trust and Agreement of Restrictive Covenants ensuring the home would be transferred to an income eligible buyer and remain affordable for a period of 20 years.

At the time of contracting, an income eligible homeowner had been selected through Habitat’s rigorous selection process. The buyer began working with Habitat to complete the necessary sweat equity hours required by Habitat’s program. Unfortunately, construction on the home was delayed for the 2020/2021 school year due to the Covid pandemic. PHS students resumed work on the home when they returned to school in the Fall of 2021. It was moved to a permanent foundation at Harmony Cottages in the summer of 2022 where the selected homeowner worked alongside volunteers to complete the home on site. In October of 2021, the City paid \$75,000 of the contracted funds towards eligible construction related costs. The \$5,000 balance was retained until unit completion and final verification of occupancy by the HOME-eligible buyer.

The home was eventually completed in January 2023 and Habitat updated the income verification of the buyer as required by HUD. At that time, the household no longer met the HOME program income

requirements (although the household income is still below the area median income). This triggered the mandatory repayment of the \$75,000 to the City's line of credit with HUD and a cancellation of the project. The Deed of Trust was released upon repayment of the funds. The Release of the Agreement of Restrictive Covenants is the final outstanding item related to the cancellation the project.

CITY FINANCIAL IMPACTS

The \$75,000 in repaid HOME funds will go into the Spring 2023 Competitive Process to be re-allocated to another affordable housing project. Habitat for Humanity continues to build affordable home ownership units and has submitted an application requesting funding to support the development of 4 new units at Harmony Cottages.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Ordinance for Consideration

ORDINANCE NO. 032, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE RELEASE OF RESTRICTIVE COVENANTS ON PROPERTY AT
1947 PHIA WAY DEVELOPED BY FORT COLLINS HABITAT FOR HUMANITY

WHEREAS, on September 1, 2020, the City entered into a Development Contract with Fort Collins Habitat for Humanity (“Habitat”), through which Habitat received from the City a loan of \$80,000 in HOME Investment Partnership (HOME) funding from the federal Department of Housing and Urban Development (HUD) to support the cost of constructing a single-family home (the “Project”) at 1947 Phia Way in Fort Collins (the “Property”) for an income-eligible homeowner; and

WHEREAS, the HOME funding was secured by a promissory note, deed of trust, and an Agreement of Restrict Covenants on the Property ensuring the home would be transferred to an income-eligible buyer and remain affordable for 20 years (the “Covenant”); and

WHEREAS, Habitat constructed the project in partnership with the Geometry in Construction program at Poudre High School, which began work on the project offsite, but construction was delayed for the 2020-21 school year because of the Covid pandemic; and

WHEREAS, the home was moved to the Property in the summer of 2022 and the selected homeowner and volunteers worked to complete the home on site; and

WHEREAS, by the time the home was completed in January 2023 the homeowner no longer met HUD’s HOME income requirements, which triggered a mandatory repayment of the HOME funds by Habitat to the City, which has been completed; and

WHEREAS, the City will add the repaid HOME funding to the funds distributed through the Social Sustainability’s annual competitive process; and

WHEREAS, with the funding repaid the City has no reason to burden the Property with the Covenant, and staff has requested that the City Council authorize release of the Covenant; and

WHEREAS, the City’s right under the Covenant to restrict the use of the Property constitutes an interest in real property owned by the City that the City would be giving up by releasing the Covenant; and

WHEREAS, Section 23-111(a) of the City Code states that the City Council is authorized to sell, convey or otherwise dispose of any interest in real property owned by the City, provided that the City Council first finds, by ordinance, that such sale or other disposition is in the best interests of the City.

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

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

Section 2. That the City Council hereby finds that releasing the Covenant on the Property on the terms and conditions described herein is in the best interests of the City.

Section 3. That the City Council hereby authorizes the City Manager to execute such documents as are necessary to release the Property from the Covenant on terms and conditions consistent with this Ordinance, along with such other terms and conditions as the City Manager, in consultation with the City Attorney, determines are necessary and appropriate to protect the interests of the City or effectuate the purposes of this Ordinance.

Introduced, considered favorably on first reading, and ordered published this 7th day of March, 2023 and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk



AGENDA ITEM SUMMARY

City Council

STAFF

Paul S. Sizemore, Director of Community Development & Neighborhood Services
Brad Yatabe, Legal

SUBJECT

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

EXECUTIVE SUMMARY

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

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

During the Council meeting on February 7, 2023, the Council unanimously adopted a motion to postpone first reading of the 1041 regulations until May 2, 2023. This continuation by Council requires an extension of the Moratorium, and by extending the moratorium for three months through the end of June 30, 2023, staff has additional time to reengage stakeholders on the current version-three of the draft 1041 regulations. The City has received numerous requests from public entities that may be subject to the proposed 1041 regulations for additional time to review and comment on the regulations, including requests made at the January 25 Planning and Zoning Commission meeting and the Council February 7 meeting.

Procedure for the Designation of Areas and Activities and Adoption of Guidelines

In order to exercise 1041 powers, the Colorado Revised Statutes require the City to designate the areas and activities to be regulated and adopt guidelines to administer the designated areas and activities. The designation of areas and activities may occur only after a noticed public hearing where Council must consider, at a minimum, the intensity of current and foreseeable development pressures. Council must specify the boundaries of any designated area, why the designated area or activity is of state interest, the dangers from uncontrolled development of the area or conduct of such activity, and the advantages of developing such area or activity in a coordinated manner. The City may adopt guidelines, and regulations for carrying out such guidelines, for administering designated areas and activities that are more stringent than the criteria listed in the applicable state statutes.

Once the City holds a public hearing and initially designates an area or activity to be of state interest, no person may engage in development within the designated area or conduct the designated activity until the City has finally determined the designation and guidelines. In other words, a moratorium goes into effect on development within the initially designated area or on the initially designated activity until the City makes a final determination on the designation and the applicable guidelines.

To the extent a person proposes to engage in development in an area of state interest or conduct and activity of state interest that the City has not previously designated and for which guidelines have not been adopted, the City is authorized to hold a public hearing to designate such area or activity and to adopt guidelines under which to review the proposal. In other words, the City has an opportunity to exercise 1041 powers over proposals for areas and activities not previously anticipated as requiring regulations.

Alignment with Citywide Policy

In terms of policy alignment, both City Plan and the Strategic Plan identify policies and objectives that aim to direct development in a way that ensures compatibility between adjacent land uses, minimize infrastructure and resource needs, and protect historic and natural resources. Currently, the City's Land Use Code provides a limited local review process for public agency projects. As such, adopting 1041 regulations would offer the City greater authority over public development projects that qualify as areas or activities of statewide interest per House Bill 74-1041 and help the City achieve its stated policy objectives.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

During the Council meeting on February 7, 2023, the Council unanimously adopted a motion to postpone first reading of the 1041 regulations until May 2, 2023.

During the Planning and Zoning Commission hearing on January 25, 2023, the Commission unanimously adopted the recommendation:

The Planning and Zoning Commission recommend that City Council NOT ADOPT the proposed 1041 regulations until the public has sufficient time to review staff's Version 3 and to comment fully on its impact. The Planning and Zoning Commission believes the proposed regulation is directionally correct; however, additional input is needed by affected parties on at least the following areas:

- *Potential consequences of the proposed regulation, as currently written*
- *The extent to which the regulation could legally extend to impacts created by components of the project outside the jurisdictions but that affect the natural resources and natural areas of Fort Collins*
- *Whether the scope of projects to be regulated is appropriate, relative to what would be considered material in the scope of such projects.*

This recommendation could require that more time be allowed between first and second readings, or that the current moratorium be extended, if necessary. This decision is based upon the agenda materials, the information and materials presented during the work session and this hearing, and the Commission discussion on this item.

PUBLIC OUTREACH

Staff will implement an engagement plan with stakeholders during the three-month extension.

ATTACHMENTS

1. Ordinance for Consideration

ORDINANCE NO. 033, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
EXTENDING THE MORATORIUM ON CERTAIN ACTIVITIES OF
STATE INTEREST DESIGNATED IN ORDINANCE NO. 122, 2021

WHEREAS, pursuant to Colorado Revised Statutes (“C.R.S.”) Section 24-65.1-101 et seq., City Council adopted Ordinance No. 122, 2021, designating two activities of state interest: (1) the site selection and construction of major new domestic water and sewage treatment systems and major extensions of existing domestic water and sewage treatment systems; and (2) the site selection of arterial highways and interchanges and collector highways (the two designated activities hereafter referred to as the “Designated Activities”); and

WHEREAS, pursuant to C.R.S. Section 24-65.1-404(4) and the City’s power to impose a moratorium on development activity pursuant to its home rule powers granted under Article XX of the Colorado Constitution, City Council imposed a moratorium with certain exceptions (the “Moratorium”) on conducting the Designated Activities until December 31, 2022, or until City Council has finally determined and adopted guidelines for the administration of the Designated Activities; and

WHEREAS, to provide additional time for the drafting and consideration of guidelines for the administration of the Designated Activities, City Council thereafter extended the Moratorium for a three-month period through the end of March 31, 2022, pursuant to Ordinance No. 139, 2022; and

WHEREAS, City Council has received significant public input from entities that may be subject to the City’s proposed 1041 regulations requesting that the City allow for additional time for such entities to review and comment on the regulations; and

WHEREAS, to provide additional time for the drafting and consideration of guidelines for the administration of the Designated Activities, City Council finds it is in the best interest of the City to extend the Moratorium for a three-month period through the end of June 30, 2023, or until City Council has finally determined and adopted guidelines for the administration of the Designated Activities.

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

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

Section 2. That the City Council hereby extends the Moratorium on the same terms as set forth in Ordinance No. 122, 2021, for an additional three-month period through the end of June 30, 2023, or until City Council has finally determined and adopted guidelines for the administration of the Designated Activities.

Introduced, considered favorably on first reading, and ordered published this 7th day of March, 2023 and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

AGENDA ITEM SUMMARY

City Council



STAFF

Maribel Miller, Water Conservation Manager
 Kerri Ishmael, Senior Analyst, Grant Administration
 Eric Potyondy, Legal

SUBJECT

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

EXECUTIVE SUMMARY

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

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

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

The State requires Fort Collins Utilities and other water providers to update a Water Efficiency Plan every seven years. Fort Collins Utilities adopted the 2015 Water Efficiency Plan in 2016 (Attachment 2), which requires an update in 2023. Staff received approval from the State to extend the update to allow for more time to complete the plan. In preparation for this update, staff requested a one-time, two-year enhancement offer pursuant to Budget Offer 1.42 (Attachment 3). Council approved this offer as part of the 2023-2024 Adopted Budget, with \$100,000 being appropriated as part of the current 2023 fiscal year budget (and \$150,000 as part of the 2024 budget). Implications to year two of Offer 1.42 will be addressed during the 2024 Budget Revision process.

The Colorado Water Conservation Board (CWCB) recently awarded a Water Plan Grant to Fort Collins Utilities (Board's approval is reflected in meeting minutes in Attachment 4) to support updating the required Water Efficiency Plan by 2024. The award was based on total project costs of \$352,500, with the CWCB providing \$160,000 in funds and the remaining \$192,500 being provided by Fort Collins Utilities as grant match. The details of Utilities' grant match (Water Fund) over the projected two-year period are as follows:

Item 4.

- \$144,965 for consultant costs as cash match.
- \$47,535 for personnel costs as in-kind match.

This is \$105,035 less than requested from Budget Offer 1.42, over the two-year period.

The Water Efficiency Plan update will improve the existing plan. Grant funds will primarily be used to pay for consultants to help develop new plan elements, including the following:

- Model climate and water savings – evaluate potential for water savings under a range of current and potential conditions, including climate, population, and population density.
- Facilitate focus groups and meetings to identify One Water strategies – identify demand management strategies, further advance cross-departmental collaboration, and gather input on meaningful water demand goal(s) by engaging with internal City staff who influence the way water is used and/or work in the water field.
- Work with community partners on inclusive public engagement – identify demand management strategies, gather public input on meaningful water demand goal(s), and develop relationships with engaged community members to facilitate understanding and opportunities between the Utilities Water Conservation team and our community, especially marginalized communities.
- Analyze demand management strategies for equity – Perform equity gap analysis of current and potential water demand management strategies, to identify gaps or barriers to water efficiency opportunities, so that equity can be considered along with water savings efficacy and cost when prioritizing demand management strategies.

As presented in Attachment 5, Budget and Schedule for the Water Plan Grant, as approved by the CWCB, both the CWCB and Fort Collins Utilities will share costs for Task 1 through Task 4 on a cost share basis of 52.47/47.53%, respectively. These costs are for third-party consultant costs. In addition, Fort Collins Utilities will provide personnel time as described in Task 5. Costs for personnel time will be covered 100% by Fort Collins Utilities.

CITY FINANCIAL IMPACTS

This item appropriates \$225,795 in project costs for updating the 2024 Water Efficiency Plan from:

- \$160,000 in unanticipated grant revenue
- \$65,795 in Water Fund reserves to be used towards the required matching funds

Additionally, required matching funds in the amount of \$126,705 have already been appropriated in the 2023 Water Fund in the Water Conservation operating budget. The total project cost is \$352,500.

This grant from CWCB is a reimbursement type grant, meaning Water Fund expenses will be reimbursed up to \$160,000.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 034, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING SUPPLEMENTAL APPROPRIATIONS FROM THE COLORADO
WATER CONSERVATION BOARD GRANT AND WATER FUND RESERVES
AND AUTHORIZING TRANSFERS OF APPROPRIATIONS
FOR THE WATER EFFICIENCY PLAN UPDATE

WHEREAS, the City owns and operates Fort Collins Utilities (“Utilities”), which includes a water utility that provides water to customers in its service area; and

WHEREAS, water conservation and efficiency is a tool Utilities uses, primarily through the Utilities Water Conservation Division, to manage and reduce the demand for water service by Utilities customers, which is beneficial to the City, the water utility, and its ratepayers by, among other reasons, helping to ensure that the demand for water does not exceed supplies; and

WHEREAS, in 2016, pursuant to the Colorado Water Conservation Act of 2004 (“Act”), Utilities adopted the 2015 Water Efficiency Plan (“Plan”) as an update to the City’s 2010 Water Conservation Plan; and

WHEREAS, the Act requires the City to update its State approved water efficiency plan and required minimum plan elements every seven years, however, the Colorado Water Conservation Board (“CWCB”) recently granted the City an extension to update the City’s Plan in 2024; and

WHEREAS, in anticipation of updating the Plan, Utilities requested a one-time two-year budget enhancement of \$250,000 (Offer 1.42) (\$100,000 in 2023 and \$150,000 in 2024), which Council adopted as part of the City’s 2023-24 Approved Budget; and

WHEREAS, after Council adopted the 2023-24 Budget, the City received a Water Plan Grant from CWCB in support of updating the Plan by 2024; and

WHEREAS, CWCB awarded said grant in the amount of \$160,000 based on a total project cost of \$352,500 and pursuant to certain terms and conditions, including a local match requirement, memorialized in a purchase order issued by the State of Colorado; and

WHEREAS, said \$160,000 grant funds will provide funding to support third-party consultant expenses in 2023 and 2024; and

WHEREAS, said local match requirement is \$192,500 and includes \$144,965 for third-party consultant expenses and \$47,535 for personnel costs in 2023 and 2024; and

WHEREAS, City staff recommends that Council appropriate from new revenue or other funds in the Water Fund the sum of \$160,000 to be expended in the Water Fund for the Water Efficiency Plan Update project; and

WHEREAS, City staff recommends that Council approve transfer of unexpended and unencumbered appropriated amounts of \$126,705 from the Water Conservation operating budget in the Water Fund to the Water Efficiency Plan Update Project in the Water Fund therein to be expended for the plan update; and

WHEREAS, City staff recommends that Council appropriate from prior year reserves in the Water Fund the sum of \$65,795 in the Water Fund for the Water Efficiency Plan Update project; and

WHEREAS, these appropriations totaling \$225,795 and transfer of funds totaling \$126,705 benefit public health, safety and welfare of the citizens of Fort Collins, the water utility, and its ratepayers, and serves the public purpose of helping to ensure that monies in the Water Fund are efficiently applied to manage the demand for water within allocated supplies, which will reduce shortages and other adverse impacts; and

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

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

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

WHEREAS, the City Manager has recommended the transfer of \$126,705 from the Water Conservation operating budget in the Water Fund to the Water Efficiency Plan Update Project in the Water Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

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

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

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

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

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

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

Section 2. That there is hereby appropriated from new revenue or other funds in the Water Fund the sum of ONE HUNDRED SIXTY THOUSAND DOLLARS (\$160,000) to be expended in the Water Fund for the Water Efficiency Plan Update project.

Section 3. That the unexpended and unencumbered appropriated amount of ONE HUNDRED TWENTY-SIX THOUSAND SEVEN HUNDRED FIVE DOLLARS (\$126,705) is authorized for transfer from the Water Conservation operating budget in the Water Fund to the Water Efficiency Plan Update project in the Water Fund and appropriated therein to be expended for the plan update.

Section 4. That there is hereby appropriated from prior year reserves in the Water Fund the sum of SIXTY-FIVE THOUSAND SEVEN HUNDRED NINETY-FIVE DOLLARS (\$65,795) to be expended in the Water Fund for the Water Efficiency Plan Update project.

Section 5. That the appropriation herein for the Colorado Water Conservation Board grant is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

Introduced, considered favorably on first reading, and ordered published this 7th day of March, 2023 and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk



AGENDA ITEM SUMMARY

City Council

STAFF

Katie Donahue, Natural Areas Director
Matt Parker, Natural Areas Sr. Supervisor
Eric Potyondy, Legal

SUBJECT

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

EXECUTIVE SUMMARY

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

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

The Natural Areas Department became a 2/12th owner of the Ditch and its water right with the acquisition of Eagle View Natural Area in 2002. The other 10/12ths are owned by four others along the Ditch. This Ditch and its water right are not part of Fort Collins Utilities’ water supply system. The Ditch begins diverting seepage and other water near Zach Elementary and continues to the east along Eagle View Natural Area south of Fossil Creek Reservoir, later passing under I-25.

Unlike most ditches in the region, this Ditch is not “incorporated.” This means that its owners own fractional interests of the Ditch and water right. This makes coordination for work on the Ditch cumbersome because work on the Ditch must generally be approved by all of the owners. Even simple projects can thus confront a need for more and more complicated paperwork and agreements. Further, the unincorporated nature of the Ditch makes it more difficult to protect the City’s and other owners’ interest in the Ditch. When outside entities desire to do a project that could affect the Ditch, there is no single clear point of contact for the owners. For instance, it is difficult for outside entities to pursue mutually beneficial arrangements with the Ditch because there are so many decisionmakers involved. This can also result in projects proceeding without needed approvals.

There are a few recent projects that have become particularly challenging due to the Ditch's unincorporated status. For instance, routine maintenance work has been slowed by the need for numerous approvals from the various owners. Also, a developer is developing land east of I-25 (east of the City's GMA) that has historically been served by the Ditch. The developer desires to modify the Ditch and convey its interests to the other owners (including the City), all of which is far more complex due to the current ownership structure.

By contrast, most ditches in the region are incorporated. This means that the ditches and water rights are held by a ditch company for the benefit of the shareholders, which own the company. Ditch companies are governed by a board of directors and benefit from well-established legal and governance principles, thus providing internal organization for the owners and a single point of contact for non-owners. Ditch companies are basically a common and beneficial way that ditch owners organize themselves.

The recent challenges facing the Ditch have prompted conversations for the Ditch owners to pursue incorporation. This would involve each of the owners conveying their ownership interest in the Ditch and water right to the Ditch Company that will be formed for this purpose, in exchange for shares in the Ditch Company. Because this would involve the conveyance of City-owned property, City Council approval is required. However, this would be a unique transaction because, although there would be a conveyance, the City would still own the same amount of the Ditch and its water right; it would just be structured differently. Consequently, the City would receive a value in an amount equal to or greater than the fair market value of the Ditch and its water right because the City will retain the same proportional ownership, with the added benefits discussed above.

CITY FINANCIAL IMPACTS

Staff expect minimal financial impacts to the City associated with increased administrative duties. Staff will attend and/or conduct an annual shareholder meeting, with potential board responsibilities.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

On February 8, 2023, the Land Conservation and Stewardship Board voted unanimously to recommend City Council's approval of the Ordinance. An excerpt from the meeting minutes is attached.

PUBLIC OUTREACH

No public outreach accompanied this administrative pursuit.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 035, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS,
CONVEYANCES, AND OTHER DOCUMENTS TO INCORPORATE
THE SPRING CAÑON WASTE WAY DITCH

WHEREAS, the Spring Cañon Waste Way Ditch, a.k.a. Spring Cañon Waste Way Ditch (“Ditch”) is located in southeast Fort Collins, diverting water from a draw in the NE1/4 of Section 1, Township 6 North, Range 68 West of the 6th P.M., just south of Zach Elementary School, and continuing in a southeasterly direction; and

WHEREAS, a water right with an appropriation date of July 22, 1875, was decreed to the Ditch by the Larimer County District Court in Civil Action 2031 in the decree dated April 22, 1922 (“Water Right”); and

WHEREAS, the Ditch, Water Right, and associated structures and property and other legal rights, including easements (together, “Ditch Rights”) have historically been owned by various persons and entities as fractional interests, without these Ditch Rights being held by a mutual ditch company, which is a more common ownership model in this region; and

WHEREAS, as part of the City’s 2002 acquisition of the land and other property that became Eagle View Natural Area, the City acquired a 2/12th interest in the Ditch Rights; and

WHEREAS, the City currently uses the Water Right and water from the Ditch to irrigate Eagle View Natural Area; and

WHEREAS, the City’s portion of the Ditch Rights are not associated with the City’s water utility; and

WHEREAS, the City and the other fractional owners of the Ditch Rights (“Co-Owners”) periodically need to coordinate with respect to internal and external matters, including: maintenance of the Ditch, including paying for such maintenance; actions to protect the Ditch and Water Right; and consideration and execution of potential arrangements related to the Ditch and Water Right; and

WHEREAS, the historical and current fractional ownership model for the Ditch Rights makes this internal and external coordination among the City and the Co-Owners difficult for various reasons, including a lack of structure for decision making; and a lack of established principles related to ditch matters; and

WHEREAS, changing the ownership structure of the Ditch Rights from the historical and current fractional ownership model to a mutual ditch company model would benefit the City and the Co-Owners in various ways, including: providing internal organization among the City and the Co-Owners; a financial structure for maintenance and other costs; an established body of law (*see, e.g., Colorado Revised Statute Section 7-42-101 et seq.; Jacobucci v. Dist. Court, 541 P.2d 667,*

189 Colo. 380 (1975) (summarizing mutual ditch company law)); and a single point of contact for external matters; and

WHEREAS, the City and the Co-Owners desire to pursue the creation of a mutual ditch company to hold title to the Ditch Rights, which would require the City and the Co-Owners to execute agreements and other documents to establish the company and conveyances and associated agreements to convey their ownership interests in the Ditch Rights to the newly-formed mutual ditch company in exchange for shares of stock in the company that represent the City’s and the Co-Owners’ current proportional ownership interest in the Ditch Rights (“Incorporation Documents”); and

WHEREAS, Section 23-111(a) of the City Code authorizes City Council to sell, convey, or otherwise dispose of any interest in real property owned by the City, provided that City Council first finds, by ordinance, that such sale or other disposition is in the best interests of the City; and

WHEREAS, the execution of Incorporation Documents is in the best interest of the City because of the benefits described above; and

WHEREAS, the execution of Incorporation Documents will result in the City receiving a value in an amount equal to or greater than the fair market value of the Ditch Rights because the City will retain the same proportional ownership of the Ditch Rights, with the added benefits described above.

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

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

Section 2. That City Council finds, pursuant to Section 23-111(a) of the City Code, that the execution of Incorporation Documents and conveyance of the City’s interest in the Ditch Rights to a newly-formed mutual ditch company to hold title to the Ditch Rights is in the best interests of the City.

Section 3. That City Council finds, pursuant to Section 23-114 of the City Code, that the execution of Incorporation Documents will result in the City receiving stock of equal or greater value than the fair market value of the property interests conveyed.

Section 4. That City Council authorizes the City Manager to execute Incorporation Documents as described in this Ordinance and such other documents as may be necessary to carry out the transactions contemplated by this Ordinance, on terms and conditions consistent with this Ordinance, together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines are necessary or appropriate to protect the interests of the City.

Introduced, considered favorably on first reading, and ordered published this 7th day of March, 2023 and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk



AGENDA ITEM SUMMARY

City Council

STAFF

Lance Smith, Sr. Director of Finance for Utilities
Gretchen Stanford, Utilities Deputy Director - Customer Connections
Cyril Vidergar, Legal

SUBJECT

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

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on March 21, 2023, appropriates from reserves in the Light & Power, Water, Wastewater and Stormwater enterprise funds. The use of these reserves is necessary to implement a modern Utility Customer Information System – Customer Self Service Portal (CIS-CX) Solution. These funds are being requested to maintain project momentum as the City completes the selection of a solution partner and prepares to contract for professional services. This proposed appropriation will allow the City to secure CIS-CX project management and solution quality assurance services through go-live, provide legal review of professional services contracts, and provide funding to hire contractual staff throughout the implementation.

The total amount being recommended for appropriation is \$4,250,000 as detailed in the background section.

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

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

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

Replacing Fort Collins Utilities 22-year-old billing system is essential to providing our customers the safest and the best customer experience in interacting with their community owned utilities. Our priority is to provide accurate and convenient billing solutions; and comprehensive, real time customer data that enhances our customers’ understanding of how they use energy and water and how much it costs. Our goals are to:

- Improve billing and operations functionality for existing utility services.
- Enhance the online customer self-service portal capability with single sign on functionality.
- Incorporate flexible user interfaces with process workflows that increase employee efficiency and billing accuracy.
- Have the ability to manage complex rates such as net metering and time of use.
- Add a library of standard and user generated reports, including financials, customer transactions, key performance indicators and exceptions.

A team of staff from Utilities (billing, customers service and metering), IT and Purchasing are contributing to the selection of the solution. As of today, Fort Collins Utilities is in the process of conducting five weeks of onsite product demonstrations as the final review of proposals received for a modern Utility Customer Information System – Customer Self Service Portal (CIS-CX) Solution. The proposals were received after a deliberate 12-month process. The process focused on identifying solution requirements, scrutinizing and rating every proposal received, performing reference checks of each solution provider with other utilities that have implemented the proposed solutions, planning the solution implementation schedule, staffing needs and quality assurance milestones, and having employees involved in the solution selection throughout the process and asking questions of the solution providers. This due diligence and deliberation are necessary to ensure that the selected solution partner and their CIS-CX will serve our community and support the evolution of how we serve our ratepayers while enhancing their customer experience.

By Q3 2023, a solution partner or vendor of choice will be selected, at which time a second appropriation will be proposed Council before the 24-month solution implementation can begin. It is anticipated that the City will successfully implement the new CIS-CX within 24 months, at which point, the existing 22 year old system will be retired. The Capital Improvement Plans presented to Council ahead of the 2023-24 Budgeting for Outcomes included up to \$15M for this capital investment including the licensing and hardware.

This appropriation is being brought forward to maintain the continuity of the implementation schedule and to ensure that pricing reflected in recent vendor proposals remain current and complete. Momentum for this implementation is building, as staff is valuating the options and benefits to modernizing and enhancing our customer's experiences, focusing on simplifying the architecture and processes behind the ultimate customer interface, to provide a stable, upgradable platform.

There are three categories of funding in this next phase of the CIS-CX modernization.

I. Professional Quality Assurance and Project Management Services

While many existing City employees have worked for decades with the current customer information and billing system, operating such a system requires a different skill set than upgrading or implementing an existing system into a new system. The new system may be hosted "in the cloud" or a more traditional in-house physical solution with different hardware requirements and interfaces. It may include different modules for a customer portal, social media, bill printing, etc. To effectively implement these new features and ensure that the City is receiving the functionality it is expecting, professional software implementation project management and quality assurance are required.

A scope of work has been developed for these services with a maximum fee through the implementation and go-live of the new solution. Because most of this work will be done remotely, travel expenses have been excluded from the not-to-exceed price for these services. Estimating some travel will nevertheless be necessary, raising the amount being requested for these services to \$1,500,000.

II. Contract Review and Counsel

Prior to the City entering into a binding services agreement with the solution provider, specialized outside legal counsel will be retained as needed to ensure the terms of the final agreement are in the best interest of the City and ratepayers. It is requested that an amount of \$100,000 be appropriated for this purpose to cover these funds and related expenses.

III. Contract Staffing

Many of the City’s employees who work in and with the current customer information system will be involved in the implementation of the new solution. This is a best practice to ensure that the proposed solution is consistent with customer expectations and operational requirements. To have these employees available to focus on the implementation, staff will be augmented by contractual staff throughout the implementation, and post go-live quality assurance and testing. Based on the staffing plan developed for the solution implementation, the following contractual positions are needed before implementation:

4 Customer Service Providers	\$288,000 / year
1 Customer Experience Provider	\$64,000 / year
1 Billing & Accounts Receivable Specialist	\$80,000 / year
1 Field Service Lead	\$100,000 / year
5 Information Technology Solution Providers	<u>\$575,000 / year</u>
	\$1,107,000 / year (approx.)

Throughout the 24-month implementation, there is a need to retain some staff earlier in the project and retain others later in the project, depending on their respective scope of work. This anticipated work would total almost 2.5 years of augmentation:

Contractual Staffing Appropriation = \$2,650,000

In addition, there will be a need for additional staffing for the duration of the project to focus on leading solution testing, developing and engaging in training Utilities employees, implementing organizational change management, reviewing existing business processes, and developing business analytics for the future solution. Even though this additional support is not needed immediately, it is important to note that a request for additional staffing will be included in the later implementation appropriation after a solution partner is selected.

Appropriation by Enterprise Fund

As the customer information and billing system is needed by each City-owned utility (except FC Connexion) to generate monthly operating revenues, each utility should contribute to the upgrade or replacement of the system. While some rates are more complicated than others and some require meter consumption data to assess, billing for each utility requires much of the same information. Because electric monthly charges are more complicated than flat stormwater rates and unmetered wastewater use, there are additional billing components for billing electric customers. As such, it is appropriate to attribute more of the shared costs to Light & Power, and a similar argument applies to Water. The proposed annual subscription costs for this system are therefore divided between the four utilities as follows:

Light & Power	50.0%
Water	25.0%
Wastewater	12.5%
Stormwater	12.5%

This same cost sharing ratio is proposed for the implementation costs.

Light & Power	\$2,125,000
Water	\$1,062,500
Wastewater	\$531,250
Stormwater	\$531,250
	<hr/>
	\$4,250,000

CITY FINANCIAL IMPACTS

The Capital Improvement Plans included in the 2023 utility rate ordinances discussions assumed up to \$15M would be needed for this investment. As such, the financial impact of this investment is already included in the 10-year rate and debt issuance forecasts Council reviewed in 2023. The ongoing annual licensing and maintenance expenses associated with this solution are expected to be comparable to what the current solution costs. The funds being requested for appropriation herein would come from existing reserves of each utility. These funds are above and beyond funds set aside within the reserves to meet minimum fund balance requirements under the City Charter and any previous appropriations made but not yet spent. As the table below shows, each enterprise fund has sufficient available reserves for both anticipated appropriations related to modernizing the CIS-CX solution.

	Light & Power	Water	Wastewater	Stormwater
Available Reserves EOY 2021	\$41.4	\$41.3	\$19.1	\$14.5
Mid-year 2022 Appropriations	(\$26.1)	\$0.0	\$0.0	\$0.0
2023-24 BFO Use	(\$1.0)	(\$29.3)	(\$7.7)	(\$2.3)
2022 Revenues Above Budget	\$11.2	\$3.5	\$1.2	\$0.2
2022 Expenses Below Budget	\$1.9	\$7.4	\$1.8	\$2.2
Estimated Available Reserves	\$27.4	\$22.9	\$14.4	\$14.6
Amount Being Requested	(\$2.1)	(\$1.1)	(\$0.5)	(\$0.5)
Remaining Available Reserves (\$M)	\$25.3	\$21.8	\$13.9	\$14.1

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

This appropriation was presented to the Water Commission on March 9 and will be presented to the Energy Board on March 16, 2023, before First Reading but after the agenda materials are published. The meeting minutes will be included in the materials submitted for Second Reading.

This Ordinance was presented to the Council Finance Committee on March 2, 2023. The Committee had a full discussion of the proposal and supported bringing this appropriation forward for the full City Council’s consideration.

PUBLIC OUTREACH

Public outreach and a solid communications plan focused on the customer experience will be forthcoming. There are many enhancements we expect to see for our customers including a potential chat bot, better ways to educate and make informed decisions on consumption, a streamlined and more robust online billing portal, single sign on solutions and more. The intention is to rollout new functionality as it is available which may be before the full CIS-CX implementation is complete. Once we pick a vendor, we will work with them to include outreach, communications and change management to offer a good experience to our customers.

ATTACHMENTS

1. Ordinance for Consideration

ORDINANCE NO. 036, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES AND AUTHORIZING TRANSFERS OF
APPROPRIATIONS IN MULTIPLE UTILITY FUNDS FOR THE PURCHASE OF VENDOR
SERVICES TO SUPPORT A MAJOR UPGRADE TO THE UTILITIES BILLING SYSTEM

WHEREAS, twenty-two years ago, the City began implementation and operation of the current Banner software based customer information and billing system (CIS) to manage City Utility customer billing and account services; and

WHEREAS, since implementing the Banner CIS, Utilities staff have identified functionality and capabilities that are needed to modernize operations, improve billing accuracy, and better manage City rate and efficiency programs and services, including greater online customer access and tools to evaluate account information; and

WHEREAS, during 2021 and 2022, the City engaged TMG Utility Advisory Services, Inc., (“TMG”) to assist Utilities’ staff to prepare for the end of the useful life of the current CIS, and a 12-month process to identify the specific design scope and functionality for a replacement CIS solution; and

WHEREAS, in October 2022, the City issued RFP # 9659- Customer Information System, Related Systems, and Implementation Services, to solicit proposals for a new Customer Information System – Customer Self Service Portal (“CIS-CX”) solution, the proposal submission period for which closed on December 2, 2022; and

WHEREAS, as the City’s selection team, consisting of Utilities (Billing, Customer Service, and Metering), IT and Purchasing staff and TMG consultants, began reviewing RFP responses and selecting a CIS-CX solution provider, the costs to implement a replacement system became better understood; and

WHEREAS, during the 2023 Budgeting For Outcomes process, in preparation for an anticipated 24-month CIS-CX solution implementation, Utilities staff presented Capital Improvement Plans for a project cost of \$15,000,000, and staff has since identified the initial portion of which amount exceeds existing appropriations in the adopted 2023 Budget; and

WHEREAS, Utilities and Purchasing staff have identified a total of \$4,250,000 recommended for supplemental appropriation to address costs in the first phase of the CIS-CX development and implementation, including \$1,500,000 for project management and quality assurance, \$100,000 for contract review and specialized legal services, and \$2,650,000 for contract personnel services; and

WHEREAS, this proposed appropriation will benefit the public health, safety and welfare of the residents of Fort Collins and serve the utility purpose of enhancing the accuracy, functionality, and convenience of Utility ratepayer billing, as well as improve ratepayer access to consumption records, building utility utilization data, and customer service; and

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

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Light & Power Fund, Water Fund, Wastewater Fund, and the Stormwater Fund and will not cause the total amount appropriated in the Light & Power Fund, Water Fund, Wastewater Fund, or the Stormwater Fund, as applicable, to exceed the current estimate of actual and anticipated revenues and all other funds to be received in these funds during this fiscal year; and

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

WHEREAS, the City Manager has recommended the transfer of \$2,125,000 from the Electric Utility (aka "Light & Power") Enterprise Fund, \$1,062,500 from the Water Fund, \$531,250 from the Wastewater Fund, and \$531,250 from the Stormwater Fund to the Customer Service and Administration Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

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

WHEREAS, the City Council wishes to designate the appropriation herein for the purchase of vendor services to support the upgrade of the Utilities CIS as an appropriation that shall not lapse until the completion of the project.

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

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

Section 2. That there is hereby appropriated from prior year reserves in the Light & Power Fund the sum of TWO MILLION ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$2,125,000) to be expended in the Light & Power Fund for transfer to the Customer Service and Administration Fund and appropriated therein for expenditure toward the purchase of vendor services supporting an upgrade to the Utilities customer information and billing system (CIS).

Section 3. That there is hereby appropriated from prior year reserves in the Water Fund the sum of ONE MILLION SIXTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$1,062,500) to be expended in the Water Fund for transfer to the Customer Service and Administration Fund and appropriated therein for expenditure toward the purchase of vendor services supporting an upgrade to the Utilities CIS.

Section 4. That there is hereby appropriated from prior year reserves in the Wastewater Fund the sum of FIVE HUNDRED THIRTY-ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$531,250) to be expended in the Wastewater Fund for transfer to the Customer Service and Administration Fund and appropriated therein for expenditure toward the purchase of vendor services supporting an upgrade to the Utilities CIS.

Section 5. That there is hereby appropriated from prior year reserves in the Stormwater Fund the sum of FIVE HUNDRED THIRTY-ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$531,250) to be expended in the Stormwater Fund for transfer to the Customer Service and Administration Fund and appropriated therein for expenditure toward the purchase of vendor services supporting an upgrade to the Utilities CIS.

Section 6. That the appropriation herein for the purchase of vendor services to support the upgrade of the Utilities CIS is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the completion of the project.

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk



AGENDA ITEM SUMMARY

City Council

STAFF

Amanda King, Communications/Public Involvement Director
James McDonald, Cultural Services and Facility Director
Chris Martinez, IES Financial Planning and Analysis Manager
Ted Hewitt, Legal

SUBJECT

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

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on March 21, 2023, appropriates \$598,668 of which \$261,527 is proposed for Cultural Development and Programming Activities (Fort Fund), \$169,624 is proposed for Tourism Programming (Fort Fund), and \$167,517 is proposed for Convention and Visitors Bureau from a combination of 2022 Lodging Tax collections and Prior Year Reserves (unspent appropriations) in the General Fund Lodging Tax Reserves.

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

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

Section 25-244 of the City Code requires that 75% of the total lodging tax receipts be used for the promotion of convention and visitor activities in the City and 25% of receipts be used for cultural development and programming activities in the City. Actual revenue collected is appropriated based on this allocation formula and any excess revenue and budget savings are reserved for these activities in the General Fund.

Pursuant to a contract with the Fort Collins Convention and Visitors Bureau (FCCVB), the City has paid a portion of lodging tax receipts to the FCCVB since 2011 for delivery of convention and visitors programming services in furtherance of the City Code requirement. The amount due for convention and visitors programming is appropriated based on prior year receipts and paid annually to FCCVB after the close of the prior tax year.

When actual Lodging Tax receipts exceed the anticipated amount appropriated for cultural development and programming activities, the City also appropriates additional funds and adjusts the amount allocated for those activities in the year following the year in which the tax is collected. Appropriated Lodging Tax revenues remaining unspent at the end of the tax year lapse into the General Fund and may be appropriated the following year for the same purposes as they were originally appropriated.

The actual tax revenue collected during the 2022 tax year, as determined March 2023, was \$239,310 more than the Lodging Tax revenue anticipated and appropriated for expenditure in 2023. Accordingly, upward adjustments to the 2023 appropriations under Section 25-244 of the City Code are required. In addition, Budget staff has recommended unspent appropriations for convention and visitor activities and cultural development and programming activities that lapsed into the General Fund in 2022 be re-appropriated in 2023 for the same purposes as originally appropriated. These appropriation adjustments are described below.

CITY FINANCIAL IMPACTS

2023 LODGING TAX CLARIFICATION				
	75%		25%	
Section 25-44 of the City Code:	Promote Convention & Visitor Activities		Promote Cultural Development & Programming	
	503200	503202	503201	
Lodging Tax	Convention & Visitors Bureau 70%	Fort Fund (Tourism Programming) 5%	Fort Fund (Cultural Development & Programming) 25%	Total
Unanticipated Lodging Tax	\$ 167,517	\$ 11,966	\$ 59,827	\$ 239,310
Unspent Appropriations	\$ -	\$ 157,658	\$ 201,700	\$ 359,358
Total of Unanticipated Lodging Tax and Unspent Appropriations Available for 2023	\$ 167,517	\$ 169,624	\$ 261,527	\$ 598,668

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

N/A

PUBLIC OUTREACH

N/A

ATTACHMENTS

1. Ordinance for Consideration

ORDINANCE NO. 037, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES IN THE GENERAL FUND
FOR CULTURAL DEVELOPMENT AND PROGRAMMING ACTIVITIES,
TOURISM PROGRAMMING, AND CONVENTION AND VISITOR PROGRAM SERVICES

WHEREAS, Section 25-244 of the City Code requires that lodging tax revenue is to be allocated as follows: 75% for the promotion of convention and visitor activities and 25% for cultural development and programming activities; and

WHEREAS, Lodging Tax revenue was estimated at \$1,800,000 for 2022 and appropriated; however, actual Lodging Tax receipts were greater than projected; and

WHEREAS, at the end of 2022, a total of \$2,039,310 in Lodging Tax revenues had been collected and the unspent portions lapsed into the General Fund Reserves for Lodging Tax programs and activities; and

WHEREAS, unanticipated Lodging Tax revenue in the amount of \$239,310 held in the General Fund Reserves is to be appropriated for each of the Lodging Tax programs and activities as follows:

- Cultural Development and Programming \$59,827
- Tourism Programming \$11,966
- Fort Collins Convention and Visitors Bureau \$167,517

; and

WHEREAS, unexpended 2022 appropriations of Lodging Tax revenue in the amount of \$359,358 have lapsed and were returned to the General Fund, and are to be appropriated for Lodging Tax programs and activities based on the use specified when they were first appropriated, as follows:

- Cultural Development and Programming \$201,700
- Tourism Programming \$157,658

; and

WHEREAS, these additional funds will help support a future Fort Fund grant process; and

WHEREAS, this appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of promoting visitor activity and cultural development and programming activities; and

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

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the General Fund and will not cause the total amount appropriated in the General Fund to exceed the current

estimate of actual and anticipated revenues and all other funds to be received in this Fund during this fiscal year; and

WHEREAS, the City wishes to appropriate funds allocated for Cultural Development and Programming and Tourism Programming.

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

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

Section 2. That there is hereby appropriated for prior year reserves in the General Fund the sum of TWO HUNDRED SIXTY-ONE THOUSAND FIVE HUNDRED TWENTY-SEVEN DOLLARS (\$261,527) to be expended in the General Fund for Cultural Development and Programming activities.

Section 3. That there is hereby appropriated from prior year reserves in the General Fund the sum of ONE HUNDRED SIXTY-NINE THOUSAND SIX HUNDRED TWENTY-FOUR DOLLARS (\$169,624) to be expended in the General Fund for the Tourism Programming.

Section 4. That there is hereby appropriated from prior year reserves in the General Fund the sum of ONE HUNDRED SIXTY-SEVEN THOUSAND FIVE HUNDRED SEVENTEEN DOLLARS (\$167,517) to be expended in the General Fund for the Convention and Visitors Bureau.

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

AGENDA ITEM SUMMARY

City Council



STAFF

Katie Collins, Water Conservation Specialist
Kerri Ishmael, Senior Analyst, Grant Administration
Eric Potyondy, Legal

SUBJECT

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

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on March 21, 2023, supports businesses, homeowner associations (“HOAs”) and other commercial properties pursuing costly landscape projects that reduce water use long-term through the Xeriscape Incentive Program by utilizing (1) \$75,000 in grant funds from the Bureau of Reclamation and (2) \$75,000 in matching funds from existing 2023 appropriations. This item would also authorize the City Manager or their designee to accept the grant award and comply with the terms of the grant application and award.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

The Xeriscape Incentive Program (XIP) supports Fort Collins Utilities (Utilities) water customers by providing funding for landscape retrofit projects that reduce outdoor water use long-term. The typical existing commercial landscape in Fort Collins is made up mostly of bluegrass, which, on average, requires 15-18 gallons of supplemental irrigation water per square foot of area, per growing season. Reducing the total amount of bluegrass on a property along with reconfiguring irrigation systems may cut a property’s landscape water requirement by 30% or more, but retrofit projects are costly. XIP is one tool to help reduce barriers to landscape conversions, providing \$1.50 per square foot of area converted from high- to low-water landscape. More information about the Xeriscape Incentive Program can be found at fcgov.com: Xeriscape Incentive Program (XIP) - City of Fort Collins

Reducing outdoor water use is one of several effective water demand management tools. Since 2020, when Utilities started offering XIP funding for commercial water customers, XIP has funded 24 projects across HOAs, businesses and county properties. In total, 18 acres of bluegrass have been replaced with low-water landscape. The water savings potential for the 24 completed projects is estimated at 10.6 million gallons per year compared to pre-project water use. Based on the data, actual water savings for all XIP

projects is expected to exceed initial estimates. Funding for XIP has historically been through grant funds awarded by, among others, the Bureau of Reclamation (BOR), and City Council-approved budget offers for required matching funds. In support of the continued success of XIP, staff requested a continuing enhancement offer pursuant to Budget Offer 1.41 (Attachment 2). Council approved this offer as part of the 2023-2024 Adopted Budget, with \$75,000 being appropriated as part of the current 2023 fiscal year budget (and \$75,000 as part of the 2024 budget). Implications to year two of Offer 1.41 will be addressed during the 2024 Budget Revision process.

In support of XIP, BOR awarded a grant of \$75,000 in 2022 for Commercial XIP projects. The award requires a 50% match by Utilities. As discussed above, the required matching funds in the amount of \$75,000 have already been appropriated in the 2023 Water Fund, as part of the operating budget for Water Conservation.

The grant award does not require execution of a post-award agreement. In this type of grant, the City would need to comply with the terms of the grant application and award upon accepting the grant and drawing the grant funds. City staff recommends that City Council authorize the City Manager or their designee to accept the grant and comply with the terms of the grant application and award.

With the grant and matching funds, BOR and Utilities will fund a total of \$150,000 in rebates issued by commercial property owners under XIP, with BOR and Fort Collins Utilities splitting rebates on a 50/50 cost share basis.

CITY FINANCIAL IMPACTS

This item approves transfer of \$75,000 in unexpended and unencumbered appropriations from the Water Conservation operating budget in the Water Fund to the XIP program.

This grant from BOR is a reimbursement type grant, meaning Water Fund expenses will be reimbursed up to \$75,000.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

N/A

PUBLIC OUTREACH

N/A

ATTACHMENTS

First reading attachments not included.

- 1. Ordinance for Consideration
- 2. Ordinance Exhibit A

ORDINANCE NO. 038, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT AWARD AND
COMPLY WITH THE TERMS OF THE GRANT AND MAKING SUPPLEMENTAL
APPROPRIATIONS AND AUTHORIZING TRANSFERS FOR THE
XERISCAPE INCENTIVE PROGRAM

WHEREAS, the City owns and operates Fort Collins Utilities (“Utilities”), which includes a water utility that provides water to customers in its service area; and

WHEREAS, water conservation and efficiency is a tool Utilities uses, primarily through the Utilities Water Conservation Division, to manage and reduce the demand for water service by Utilities customers, which is beneficial to the City, the water utility, and its ratepayers by, among other reasons, reducing demand on water supplies and helping to ensure that the demand for water does not exceed supplies; and

WHEREAS, Utilities has developed the Xeriscape Incentive Program (“Program”) to support customers seeking to transform their largescale landscapes to use less water from Utilities, such as those of homeowners’ associations and commercial customers; and

WHEREAS, the United States Department of the Interior, Bureau of Reclamation has a Water SMART (Sustain and Manage America’s Resources for Tomorrow) Program that provides grants to water conservation programs; and

WHEREAS, such grants can provide significant funding for the Program, allowing it to expand beyond the scale that would otherwise be supported; and

WHEREAS, the Bureau of Reclamation awarded Utilities such a grant for \$75,000 for the Program, with said grant award, as amended, attached as Exhibit “A”; and

WHEREAS, the grant award requires \$75,000 in matching funds from the City, which have been appropriated and are available in the Water Fund for this purpose; and

WHEREAS, the grant award does not require execution of a post-award agreement and City staff recommends that City Council authorize the City Manager or their designee to accept the grant and comply with the terms of the grant application and award; and

WHEREAS, this appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of water conservation and efficiency, as discussed above; and

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

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

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

WHEREAS, the City Manager has recommended the transfer of \$75,000 from the Water Conservation operating budget in the Water Fund to the Xeriscape Incentive Program in the Water Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

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

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

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

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

Section 2. That there is hereby appropriated from new revenue or other funds in the Water Fund the sum of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000) to be expended in the Water Fund for the Xeriscape Incentive Program.

Section 3. That the unexpended and unencumbered appropriated amount of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000) is authorized for transfer from the Water Conservation operating budget in the Water Fund to the Xeriscape Incentive Program in the Water Fund and appropriated therein to be expended for water conservation grants under the Xeriscape Incentive Program.

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

Section 5. That the City Council authorizes the City Manager or their designee to accept the grant and comply with the terms of the grant application and award.

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

EXHIBIT A

NOTICE OF AWARD



AUTHORIZATION (Legislation/Regulations)

P.L. 111-11 Section 9504(a) Water Management Improvement of the Omnibus Lands Management Act of 2009

Item 8. SUEB MM/DD/YYYY 022
1a. SUPERSEDES AWARD NOTICE dated 022
 except that any additions or restrictions previously imposed remain in effect unless specifically rescinded

2. CFDA NO.
 15.507 - WaterSMART (Sustain and Manage America's Resources for Tomorrow)

3. ASSISTANCE TYPE Project Grant

4. GRANT NO. R22AP00103-00
Originating MCA #

5. TYPE OF AWARD
 Other

4a. FAIN R22AP00103
5a. ACTION TYPE New

6. PROJECT PERIOD MM/DD/YYYY
From 03/09/2022
Through 06/30/2023

7. BUDGET PERIOD MM/DD/YYYY
From 03/09/2022
Through 06/30/2023

8. TITLE OF PROJECT (OR PROGRAM)
 Xeriscape Incentive Program

9a. GRANTEE NAME AND ADDRESS
 Fort Collins, City Of
 300 LA PORTE AVE
 FORT COLLINS, CO 80521

9b. GRANTEE PROJECT DIRECTOR
 Katie Collins
 300 Laporte Ave
 Water Conservation
 Fort Collins, CO 80521-2719
 Phone: [NO PHONE RECORD]

10a. GRANTEE AUTHORIZING OFFICIAL
 Ms. Theresa Connor
 300 Laporte Ave
 Water Conservation
 Fort Collins, CO 80521-2719
 Phone: 970-224-2274

10b. FEDERAL PROJECT OFFICER
 Nicole McCann
 Bureau of Reclamation Main Interior Building
 1849 C Street NW
 Washington, DC 20240-1000
 Phone: 7196619412

ALL AMOUNTS ARE SHOWN IN USD

11. APPROVED BUDGET (Excludes Direct Assistance)

I Financial Assistance from the Federal Awarding Agency Only		II	
II Total project costs including grant funds and all other financial participation			
a. Salaries and Wages	\$	29,580.00	
b. Fringe Benefits	\$	0.00	
c. Total Personnel Costs	\$	29,580.00	
d. Equipment	\$	0.00	
e. Supplies	\$	0.00	
f. Travel	\$	0.00	
g. Construction	\$	0.00	
h. Other	\$	140,000.00	
i. Contractual	\$	0.00	
j. TOTAL DIRECT COSTS	\$	169,580.00	
k. INDIRECT COSTS	\$	0.00	
l. TOTAL APPROVED BUDGET	\$	169,580.00	
m. Federal Share	\$	75,000.00	
n. Non-Federal Share	\$	94,580.00	

12. AWARD COMPUTATION

a. Amount of Federal Financial Assistance (from item 11m)	\$	75,000.00
b. Less Unobligated Balance From Prior Budget Periods	\$	0.00
c. Less Cumulative Prior Award(s) This Budget Period	\$	0.00
d. AMOUNT OF FINANCIAL ASSISTANCE THIS ACTION	\$	75,000.00
13. Total Federal Funds Awarded to Date for Project Period	\$	75,000.00

14. RECOMMENDED FUTURE SUPPORT
 (Subject to the availability of funds and satisfactory progress of the project):

YEAR	TOTAL DIRECT COSTS	YEAR	TOTAL DIRECT COSTS
a. 2	\$	d. 5	\$
b. 3	\$	e. 6	\$
c. 4	\$	f. 7	\$

15. PROGRAM INCOME SHALL BE USED IN ACCORD WITH ONE OF THE FOLLOWING ALTERNATIVES:

- a. DEDUCTION
- b. ADDITIONAL COSTS
- c. MATCHING
- d. OTHER RESEARCH (Add / Deduct Option)
- e. OTHER (See REMARKS)

e

16. THIS AWARD IS BASED ON AN APPLICATION SUBMITTED TO, AND AS APPROVED BY, THE FEDERAL AWARDING AGENCY ON THE ABOVE TITLED PROJECT AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:

- a. The grant program legislation
- b. The grant program regulations.
- c. This award notice including terms and conditions, if any, noted below under REMARKS.
- d. Federal administrative requirements, cost principles and audit requirements applicable to this grant.

In the event there are conflicting or otherwise inconsistent policies applicable to the grant, the above order of precedence shall prevail. Acceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn or otherwise obtained from the grant payment system.

REMARKS (Other Terms and Conditions Attached - Yes No)
 See next page

GRANTS MANAGEMENT OFFICIAL:

Beverly Nelson, Chief Grants Officer
 Denver Federal Center,
 6th & Kipling (84-27130)
 Denver, CO 80225
 Phone: 303-445-2762

BEVERLY NELSON Digitally signed by BEVERLY NELSON
 Date: 2022.03.09 13:48:11 -08'00'

17. VENDOR CODE	0071330135	18a. UEI	18b. DUNS 078362597	19. CONG. DIST.	02	
LINE#	FINANCIAL ACCT	AMT OF FIN ASST	START DATE	END DATE	TAS ACCT	PO LINE DESCRIPTION
1	0051017650-00010	\$75,000.00	03/09/2022	06/30/2023	0680	R-DO-2021-000376 SWEP City of Ft. Collin

Item 8.

NOTICE OF AWARD (Continuation Sheet)

PAGE 2 of 3	DATE ISSUED 03/09/2022
GRANT NO. R22AP00103-00	

REMARKS:

No program income authorized.

Recipients are NOT required to sign the Notice of Award or any other award document. Recipients indicate their acceptance of an award, including award terms and conditions, by starting work, drawing down funds, or accepting the award via electronic means. Recipient acceptance of an award carries with it the responsibility to be aware of and comply with all terms and conditions applicable to the award. Recipients are responsible for ensuring that their subrecipients and contractors are aware of and comply with applicable award statutes, regulations, and terms and conditions. Recipient failure to comply with award terms and conditions can result in Reclamation taking one or more of the remedies and actions described in 2 CFR 200.339343.

Item 8.

NOTICE OF AWARD (Continuation Sheet)

PAGE 3 of 3

DATE ISSUED
03/09/2022

GRANT NO. R22AP00103-00

Federal Financial Report Cycle

Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
03/09/2022	09/30/2022	Annual	12/29/2022
10/01/2022	06/30/2023	Final	10/28/2023

Performance Progress Report Cycle

Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
03/09/2022	09/30/2022	Annual	12/29/2022
10/01/2022	06/30/2023	Final	10/28/2023

Item 8.

AWARD ATTACHMENTS

FORT COLLINS, CITY OF

R22AP00103-00

1. R22AP00103 Agreement

UNITED STATES DEPARTMENT OF THE INTERIOR

ASSISTANCE AGREEMENT

R22AP00103

**Between
Bureau of Reclamation
And
City of Fort Collins
For
Xeriscape Incentive Program**

TABLE OF CONTENTS

I. OVERVIEW AND SCHEDULE.....	4
1. AUTHORITY	4
2. PUBLIC PURPOSE OF SUPPORT OR STIMULATION	5
3. BACKGROUND AND OBJECTIVES	5
4. PERIOD OF PERFORMANCE AND FUNDS AVAILABILITY	6
5. SCOPE OF WORK AND MILESTONES	6
6. RESPONSIBILITY OF THE PARTIES	7
7. BUDGET	8
8. KEY PERSONNEL	10
9. LIMITATION OF AUTHORITIES	10
10. REPORTING REQUIREMENTS AND DISTRIBUTION.....	11
11. REGULATORY COMPLIANCE	14
II. RECLAMATION STANDARD TERMS AND CONDITIONS.....	15
1. REGULATIONS.....	15
2. PAYMENT	15
3. PROCUREMENT STANDARDS (2 CFR 200.317 through 200.327).....	19
4. EQUIPMENT (2 CFR 200.313)	30
5. SUPPLIES (2 CFR 200.314)	32
6. INSPECTION	32
7. AUDIT REQUIREMENTS (2 CFR 200.501).....	33
8. REMEDIES FOR NONCOMPLIANCE (2 CFR 200.339).....	34
9. TERMINATION (2 CFR 200.340).....	34
10. DEBARMENT AND SUSPENSION (2 CFR 1400)	35
11. DRUG-FREE WORKPLACE (2 CFR 182 and 1401)	35
12. ASSURANCES AND CERTIFICATIONS INCORPORATED BY REFERENCE	35
13. COVENANT AGAINST CONTINGENT FEES.....	36
14. TRAFFICKING VICTIMS PROTECTION ACT OF 2000 (2 CFR 175.15)	36
15. NEW RESTRICTIONS ON LOBBYING (43 CFR 18).....	38
16. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (URA) (42 USC 4601 <i>et seq.</i>).....	39

17. SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER
REQUIREMENTS (2 CFR 25, APPENDIX A) 40

18. PROHIBITION ON TEXT MESSAGING AND USING ELECTRONIC EQUIPMENT
SUPPLIED BY THE GOVERNMENT WHILE DRIVING 41

19. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (2 CFR 170
APPENDIX A)..... 41

20. RECIPIENT EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO
INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013) 44

21. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND
PERFORMANCE (APPENDIX XII to 2 CFR Part 200) 44

22. CONFLICTS OF INTEREST..... 46

23. DATA AVAILABILITY 47

24. PROHIBITION ON PROVIDING FUNDS TO THE ENEMY 48

25. ADDITIONAL ACCESS TO RECIPIENT RECORDS..... 48

26. PROHIBITION ON CERTAIN TELECOMMUNICATION AND VIDEO
SURVEILLANCE SERVICES OR EQUIPMENT 49

**III. DEPARTMENT OF THE INTERIOR STANDARD AWARD TERMS AND
CONDITIONS..... 50**

**Financial Assistance Agreement
Between
Bureau of Reclamation
And
City of Fort Collins
For
Xeriscape Incentive Program**

I. OVERVIEW AND SCHEDULE

1. AUTHORITY

This Financial Assistance Agreement (Agreement) is entered into between the United States of America, acting through the Department of the Interior, Bureau of Reclamation (Reclamation) and City of Fort Collins (Recipient), pursuant to Section 9504(a) of the SECURE WATER ACT, Subtitle F of Title IX of the OMNIBUS PUBLIC LAND MANAGEMENT ACT OF 2009, Public Law 111-11 (42 U.S.C. 10364) (the “Act”). The following section, provided in full text, authorizes Reclamation to award this financial assistance agreement:

SEC. 9504. WATER MANAGEMENT IMPROVEMENT.

(a) Authorization of grants and cooperative agreements.

(1) Authority of Secretary. The Secretary may provide any grant to, or enter into an agreement with, any eligible applicant to assist the eligible applicant in planning, designing, or constructing any improvement or carrying out any activity—

(A) to conserve water;

(B) to increase water use efficiency;

(C) to facilitate water markets;

(D) to enhance water management, including increasing the use of renewable energy in the management and delivery of water;

(E) to accelerate the adoption and use of advanced water treatment technologies to increase water supply;

(F) to assist States and water users in complying with interstate compacts or reducing basin water supply-demand imbalances;

(G) to achieve the prevention of the decline of species that the United States Fish and Wildlife Service and National Marine Fisheries Service have proposed for listing under the Endangered Species Act of 1973 ([16 U.S.C. 1531](#) et seq.) (or candidate species that are being considered by those agencies for such listing but are not yet the subject of a proposed rule);

(H) to achieve the acceleration of the recovery of threatened species, endangered species, and designated critical habitats that are adversely affected by Federal reclamation projects or are subject to a recovery plan or conservation plan under the Endangered Species Act of 1973 ([16 U.S.C. 1531](#) et seq.) under which the Commissioner of Reclamation has implementation responsibilities;

(I) to improve the condition of a natural feature; or

(J) to carry out any other activity—

(i) to address any climate-related impact to the water supply of the United States that increases ecological resiliency to the impacts of climate change;

(ii) to prevent any water-related crisis or conflict at any watershed that has a nexus to a Federal reclamation project located in a service area; or

(iii) to plan for or address the impacts of drought.

2. PUBLIC PURPOSE OF SUPPORT OR STIMULATION

The proposed **Xeriscape Incentive Program** (Project) will increase the reliability of water supplies, conserve water, and improve water management.

3. BACKGROUND AND OBJECTIVES

The U.S. Department of the Interior's (Department) WaterSMART (Sustain and Manage America's Resources for Tomorrow) Program provides a framework for Federal leadership and assistance to stretch and secure water supplies for future generations in support of the Department's priorities. Through WaterSMART, the Reclamation leverages Federal and non-Federal funding to work cooperatively with States, Tribes, and local entities as they plan for and implement actions to increase water supply sustainability through investments in existing infrastructure and attention to local water conflicts. Small-Scale Water Efficiency Projects provide support for priorities identified in Presidential Executive Order (E.O.) 14008: *Tackling the Climate Crisis at Home and Abroad* (E.O. 14008) and aligned with other priorities, such as those identified in Presidential Executive Order 13985: *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (E.O. 13985). Small-Scale Water Efficiency projects also support the goals of the Interagency Drought Relief Working Group established in March 2021 and the National Drought Resiliency Partnership.

Drought conditions across the West impact a wide range of communities and sectors, including agriculture, cities, Tribes, the environment, recreation, hydropower producers, and others. The western United States is experiencing its worst drought this century—historic in both duration and severity - threatening to kill crops, spark wildfires, and harm public health. As of July, the U.S. Drought Monitor indicates that more than 93% of the land in nine of the Western states is in drought conditions, and nearly 60% of the area is experiencing extreme or exceptional drought. Through WaterSMART, Reclamation provides financial assistance to water managers for projects that seek to conserve and use water more efficiently and accomplish other benefits that contribute to sustainability in the Western United States.

Through Small-Scale Water Efficiency Projects, Reclamation provides assistance to States, Tribes, irrigation districts, water districts, and other entities with water or power delivery authority to undertake small-scale water efficiency projects that have been prioritized through planning efforts led by the applicant. These projects conserve and use water more efficiently; mitigate conflict risk in areas at a high risk of future water conflict; and accomplish other benefits that contribute to water supply reliability in the western United States.

The City of Fort Collins, located in northern Colorado, will continue to offer their Xeriscape Incentive Program to commercial and homeowner association landscaping. This project will help the City reduce overall water demand through conversions to low water use landscaping and hardscaping. This project is supported by the City's 2016 Water Efficiency Plan.

4. PERIOD OF PERFORMANCE AND FUNDS AVAILABILITY

This Agreement becomes effective on the date shown in block 1 of the United States of America, Department of the Interior, Notice of Award (NOA). The Agreement shall remain in effect through the date shown in block 6 of the NOA. The project period for this Agreement may only be changed through written amendment of the Agreement by a Reclamation Grants Officer (GO).

No legal liability on the part of the Government for any payment may arise until funds are made available, in writing, to the Recipient by a Reclamation GO. The total estimated project cost for this Agreement is **\$169,580.00** and the total estimated amount of federal funding is **\$75,000.00**. The initial amount of federal funds available is limited to **\$75,000.00** as indicated by "Amount of Financial Assistance This Action" within block 12 of the NOA. Subject to the availability of Congressional appropriations, subsequent funds will be made available for payment through written amendments to this Agreement by a Reclamation GO.

5. SCOPE OF WORK AND MILESTONES

Under this Agreement, the Recipient shall provide rebates in the amount of \$1.50 per square foot of area converted from high- to low-water use landscape. Project management, completion and invoice payment will be completed by each rebate awardee. The rebate maximum per customer is \$15,000. The Recipient shall provide approximately \$70,000 in rebates under this Agreement, an amount that will be matched by rebate awardees.

Landscape conversions will take place within the Fort Collins Utilities service area boundaries. The project latitude is 40°35'N and the longitude is 105°5'W. The Recipient shall include in its records the locations of the landscape conversions carried out under this Agreement, in particular to ensure that those locations are distinct from the locations of landscape conversions carried out with WaterSMART Small-Scale Water Efficiency Projects funding under Agreement R19AP00169.

6. RESPONSIBILITY OF THE PARTIES

6.1 Recipient Responsibilities

6.1.1 The Recipient shall carry out the Scope of Work (SOW) in accordance with the terms and conditions stated herein. The Recipient shall adhere to Federal, state, and local laws, regulations, and codes, as applicable, and shall obtain all required approvals and permits. If the SOW contains construction activities, the Recipient is responsible for construction inspection, oversight, and acceptance. If applicable, the Recipient shall also coordinate and obtain approvals from site owners and operators.

6.1.2 Interim Performance Reports. The Recipient shall prepare and submit to Reclamation interim Project performance reports (Interim Performance Reports) as required by Section I.10 of this Agreement. Each Interim Performance Report will include (but is not limited to) the information identified in paragraph I.10.3 and will discuss the following:

- A comparison of actual accomplishments to the milestones established by the financial assistance agreement for the reporting period
- The reasons why established milestones were not met, if applicable
- The status of milestones from the previous reporting period that were not met, if applicable
- Whether the Project is on schedule and within the original cost estimate
- Any additional pertinent information or issues related to the status of the Project

6.1.3 Final Project Report. The Recipient shall prepare and submit to Reclamation a final Project performance report (Final Project Report) as required by Section I.10 of this Agreement. The Final Project Report will include (but is not limited to) the information identified in paragraph I.10.3 and will discuss the following:

- Whether the Project objectives and goals were met
- The benefits to the recipient's water supply delivery system
- Other benefits achieved through the project. Consider the following:
 - Whether the project has or will complement work done in collaboration with NRCS
 - The benefits to overall water supply reliability in the area

Photographs documenting the project are also appreciated. Recipient understands that Reclamation may print photos with appropriate credit to Recipient. Recipient also understands that the Final Project Report is a public document and may be made available on Reclamation's website, www.usbr.gov/watersmart/.

6.2 Reclamation Responsibilities

6.2.1 Reclamation will monitor and provide Federal oversight of activities performed under this Agreement. Monitoring and oversight includes review and approval of financial status and performance reports, payment requests, and any other deliverables identified as part of the SOW. Additional monitoring activities may include site visits, conference calls, and other on-site and off-site monitoring activities. At the Recipient's request, Reclamation may also provide technical assistance to the Recipient in support of the SOW and objectives of this Agreement.

7. BUDGET

7.1 Budget Estimate. The following is the estimated budget for this Agreement. As Federal financial assistance agreements are cost-reimbursable, the budget provided is for estimation purposes only. Final costs incurred under the budget categories listed may be either higher or lower than the estimated costs. All costs incurred by the Recipient under this Agreement must be in accordance with any pre-award clarifications conducted between the Recipient and Reclamation, as well as with the terms and conditions of this Agreement. Final determination of the allowability, allocability, or reasonableness of costs incurred under this Agreement is the responsibility of the GO. Recipients are encouraged to direct any questions regarding allowability, allocability or reasonableness of costs to the GO for review prior to incurrence of the costs in question.

BUDGET ITEM DESCRIPTION	TOTAL COST
SALARIES, WAGES, FRINGE BENEFITS	
All Salaries and Wages	\$29,580
OTHER	
Rebates	\$140,000
TOTAL DIRECT COSTS	\$169,580
INDIRECT COSTS	
NA	\$0
TOTAL ESTIMATED PROJECT COST	\$169,580

7.2 Cost Sharing Requirement

At least 50% non-Federal cost share is required for costs incurred under this Agreement. Based on the budget estimate reflected in Section 7.1 above, the estimated Federal share of allowable costs is **44% (\$75,000.00)** and the Recipient's estimated non-Federal cost share is **56% (\$94,580.00)**. The Federal share of allowable costs shall not be expended in advance of the Recipient's non-Federal share. It is expected that expenditure of Federal and non-Federal funds based upon the cost share percentage above shall occur concurrently.

If a bona fide need arises which requires the expenditure of Federal funds in advance of the Recipient share, then the Recipient must request written approval from the GO prior to the

expenditure. Recipient's may expend their agreed upon share of costs in advance of the expenditure of Federal funds without prior written approval.

7.3 Pre-Award Incurrence of Costs

The Recipient is not authorized to incur costs prior to the award of this Agreement. Costs incurred prior to the award of this Agreement are not allowable.

7.4 Allowable Costs

Costs incurred for the performance of this Agreement must be allowable, allocable to the project, and reasonable. The following regulations, codified within the Code of Federal Regulations (CFR), governs the allowability of costs for Federal financial assistance:

2 CFR 200 Subpart E, "Cost Principles"

Expenditures for the performance of this Agreement must conform to the requirements within this CFR. The Recipient must maintain sufficient documentation to support these expenditures. Questions on the allowability of costs should be directed to the GO responsible for this Agreement.

The Recipient shall not incur costs or obligate funds for any purpose pertaining to operation of the program or activities beyond the expiration date stated in the Agreement. The only costs which are authorized for a period of up to 120 days following the project period are those strictly associated with closeout activities for preparation of the final reports.

7.5 Revision of Budget and Program Plans

In accordance with 2 CFR 200.308(h) the recipient must request prior written approval for any of the following changes:

- (a) A change in the approved scope of work or associated tasks, even if there is no associated budget revisions.
- (b) Revisions which require additional Federal funds to complete the project.
- (c) Revisions which involve specific costs for which prior written approval requirements may be imposed consistent with OMB cost principles listed in 2 CFR 200 Subpart E "Cost Principles".

7.6 Amendments

Any changes to this Agreement shall be made by means of a written amendment. Reclamation may make changes to the Agreement by means of a unilateral amendment to address changes in address, no-cost time extensions, changes to Key Personnel, the addition of previously agreed upon funding, or administrative corrections which do not impact the terms and conditions of this agreement. Additionally, a unilateral amendment may be utilized by Reclamation if it should become necessary to suspend or terminate the Agreement in accordance with 2 CFR 200.340.

All other changes shall be made by means of a bilateral amendment to the Agreement. No oral statement made by any person, or written statement by any person other than the GO, shall be allowed in any manner or degree to amend, modify or otherwise effect the terms of the Agreement.

All requests for amendment of the Agreement shall be made in writing, provide a full description of the reason for the request, and be sent to the attention of the GO. Any request for project period extension shall be made at least 45 days prior to the end of the project period of the Agreement or the project period date of any extension that may have been previously granted. Any determination to extend the project period or to provide follow-on funding for continuation of a project is solely at the discretion of Reclamation.

8. KEY PERSONNEL

The Recipient's Project Manager for this Agreement shall be:

Katie Collins
 Water Conservation Coordinator
 300 Laporte Ave
 Fort Collins, CO 80521
 970-416-4378
 kcollins@fcgov.com

9. LIMITATION OF AUTHORITIES

9.1 Grants Officer (GO).

The Reclamation GO is the only official with legal delegated authority to represent Reclamation. The Reclamation GO's responsibilities include, but are not limited to, the following:

- (a) Formally obligate Reclamation to expend funds or change the funding level of the Agreement;
- (b) Approve through formal amendment changes in the scope of work and/or budget;
- (c) Approve through formal amendment any increase or decrease in the period of performance of the Agreement;
- (d) Approve through formal amendment changes in any of the expressed terms, conditions, or specifications of the Agreement;
- (e) Be responsible for the overall administration, management, and other non-programmatic aspects of the Agreement including, but not limited to, interpretation of financial assistance statutes, regulations, circulars, policies, and terms of the Agreement; Where applicable, ensures that Reclamation complies with the administrative requirements required by statutes, regulations, circulars, policies, and terms of the Agreement.

9.2 Grants Management Specialist (GMS).

The Reclamation Grants Management Specialist (GMS) is the primary administrative point of contact for this agreement and should be contacted regarding issues related to the day-to-day management of the agreement. Requests for approval regarding the terms and conditions of the agreement, including but not limited to amendments and prior approval, may only be granted, in writing, by a Reclamation GO. Please note that for some agreements, the Reclamation GO and the Reclamation GMS may be the same individual.

10. REPORTING REQUIREMENTS AND DISTRIBUTION

10.1 Noncompliance. Failure to comply with the reporting requirements contained in this Agreement may be considered a material noncompliance with the terms and conditions of the award. Noncompliance may result in withholding of payments pending receipt of required reports, denying both the use of funds and matching credit for all or part of the cost of the activity or action not in compliance, whole or partial suspension or termination of the Agreement, recovery of funds paid under the Agreement, withholding of future awards, or other legal remedies in accordance with 2 CFR 200.340.

10.2 Financial Reports. Federal Financial Reports shall be submitted by means of the SF-425 and shall be submitted according to the Report Frequency and Distribution schedule below. All financial reports shall be signed by an Authorized Certifying Official for the Recipient's organization.

10.3 Monitoring and Reporting Program Performance.

- (a) Monitoring by the non-Federal entity. The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also 2 CFR 200.332 Requirements for pass-through entities.
- (b) Non-construction performance reports. The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).
 - (1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding

agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 120 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.

- (2) The non-Federal entity must submit performance reports using OMB-approved governmentwide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:
- (i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.
 - (ii) The reasons why established goals were not met, if appropriate.
 - (iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
- (c) Construction performance reports. For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.
- (d) Significant developments. Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:
- (1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
 - (2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

Reclamation requires Performance reporting for all financial assistance awards, both Construction and non-Construction. Performance reports for Construction agreements shall meet the same minimum requirements outlined in paragraph (b)(2) above.

10.4 Report Frequency and Distribution. The following table sets forth the reporting requirements for this Agreement. Please note the first report due date listed for each type of report.

Required Reports	Interim Reports	Final Report
Performance Report		
Format	No specific format required. See content requirements within Section 10.3 and any program specific reporting requirements identified in Section 6.1 of this Agreement.	Summary of activities completed during the entire period of performance is required. See content requirements within Section 10.3 and any program specific reporting requirements identified in Section 6.1 of this Agreement.
Reporting Frequency	Annual	Final Report due within 120 days after the end of the period of performance.
Reporting Period	The Federal Fiscal Year, October 1 through September 30.	Entire period of performance
Due Date	For Annual Reporting: Within 90 days after the end of the Reporting Period.	Final Report due within 120 days after the end of the period of performance or completion of the project.
First Report Due Date	The first performance report is due for reporting period ending <i>September 30, 2022</i>	N/A
Submit to:	sha-dro-faoperations@usbr.gov or GrantSolutions	sha-dro-faoperations@usbr.gov or GrantSolutions
Federal Financial Report		
Format	SF-425 (all sections must be completed)	SF-425(all sections must be completed)
Reporting Frequency	Annual	Final Report due within 120 days after the end of the period of performance or completion of the project.
Reporting Period	The Federal Fiscal Year, October 1 through September 30.	Entire period of performance
Due Date	For Annual Reporting: Within 90 days after the end of the Reporting Period.	Final Report due within 120 days after the end of the period of performance or completion of project.
First Report Due Date	The first Federal financial report is due for reporting period ending September 30, 2022	N/A
Submit to:	sha-dro-faoperations@usbr.gov or GrantSolutions	sha-dro-faoperations@usbr.gov or GrantSolutions

11. REGULATORY COMPLIANCE

The Recipient agrees to comply or assist Reclamation with all regulatory compliance requirements and all applicable state, Federal, and local environmental and cultural and paleontological resource protection laws and regulations as applicable to this project. These may include, but are not limited to, the National Environmental Policy Act (NEPA), including the Council on Environmental Quality and Department of the Interior regulations implementing NEPA, the Clean Water Act, the Endangered Species Act, consultation with potentially affected Tribes, and consultation with the State Historic Preservation Office. If the Recipient begins project activities that require environmental or other regulatory compliance approval prior to receipt of written notice from a Reclamation GO that all such clearances have been obtained, then Reclamation reserves the right to initiate remedies for non-compliance as defined by 2 CFR 200.340 up to and including unilateral termination of this agreement.

II. RECLAMATION STANDARD TERMS AND CONDITIONS

1. REGULATIONS

The regulations at [2 CFR Subtitle A, Chapter II, Part 200](#) “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, are hereby incorporated by reference as though set forth in full text. Failure of a Recipient to comply with any applicable regulation or circular may be the basis for withholding payments for proper charges made by the Recipient and/or for termination of support.

2. PAYMENT

2.1 Payment (2 CFR 200.305).

(a) For states, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR part 205 and Treasury Financial Manual (TFM) 4A-2000, “Overall Disbursing Rules for All Federal Agencies”.

(b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also §200.302(b)(6). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved, governmentwide information collection requests to request payment.

(1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.

(2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the recipient.

(i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.

(ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used,

and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).

- (3) Reimbursement is the preferred method when the requirements in this paragraph (b) cannot be met, when the Federal awarding agency sets a specific condition per §200.208, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.
- (4) If the non-Federal entity cannot meet the criteria for advance payments and the Federal awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the Federal awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.
- (5) To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.
- (6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of §200.208, subpart D of this part, including §200.339, or one or more of the following applies:
 - (i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.
 - (ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Circular A-129, "Policies for Federal Credit Programs and Non-Tax Receivables." Under such conditions, the Federal awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for financial obligations incurred after a specified

date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

- (iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with §200.343.
 - (iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.
- (7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows.
- (i) The Federal awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for funds received, obligated, and expended.
 - (ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.
- (8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply:
- (i) The non-Federal entity receives less than \$250,000 in Federal awards per year.
 - (ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.
 - (iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.
 - (iv) A foreign government or banking system prohibits or precludes interest-bearing accounts.
- (9) Interest earned amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment.
- (i) For returning interest on Federal awards paid through PMS, the refund should:
 - (A) Provide an explanation stating that the refund is for interest;
 - (B) List the PMS Payee Account Number(s) (PANs);

- (C) List the Federal award number(s) for which the interest was earned; and
 - (D) Make returns payable to: Department of Health and Human Services.
- (ii) For returning interest on Federal awards not paid through PMS, the refund should:
- (A) Provide an explanation stating that the refund is for interest;
 - (B) Include the name of the awarding agency;
 - (C) List the Federal award number(s) for which the interest was earned; and
 - (D) Make returns payable to: Department of Health and Human Services.
- (10) Funds, principal, and excess cash returns must be directed to the original Federal agency payment system. The non-Federal entity should review instructions from the original Federal agency payment system. Returns should include the following information:
- (i) Payee Account Number (PAN), if the payment originated from PMS, or Agency information to indicate whom to credit the funding if the payment originated from ASAP, NSF, or another Federal agency payment system.
 - (ii) PMS document number and subaccount(s), if the payment originated from PMS, or relevant account numbers if the payment originated from another Federal agency payment system.
 - (iii) The reason for the return (e.g., excess cash, funds not spent, interest, part interest part other, etc.)
- (11) When returning funds or interest to PMS you must include the following as applicable:
- (i) For ACH Returns:
 Routing Number: 051036706
 Account number: 303000
 Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN
 - (ii) For Fedwire Returns¹:
 Routing Number: 021030004
 Account number: 75010501
 Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer Division New York, NY
- ¹Please note that the organization initiating payment is likely to incur a charge from their Financial Institution for this type of payment.
- (iii) For International ACH Returns:
 Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS)
 Bank: Citibank N.A. (New York)
 Swift Code: CITIUS33
 Account Number: 36838868
 Bank Address: 388 Greenwich Street, New York, NY 10013 USA
 Payment Details (Line 70): Agency Locator Code (ALC): 75010501
 Name (abbreviated when possible) and ALC Agency POC

- (iv) For recipients that do not have electronic remittance capability, please make check² payable to: “The Department of Health and Human Services.”
Mail Check to Treasury approved lockbox:
HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353-0231
- ²Please allow 4-6 weeks for processing of a payment by check to be applied to the appropriate PMS account.
- (v) Questions can be directed to PMS at 877-614-5533 or PMSSupport@psc.hhs.gov.

2.2 Payment Method.

Recipients must utilize the Department of Treasury Automated Standard Application for Payments (ASAP) payment system to request advance or reimbursement payments. ASAP is a Recipient-initiated payment and information system designed to provide a single point of contact for the request and delivery of Federal funds. ASAP is the only allowable method for request and receipt of payment. Recipient procedures must minimize the time elapsing between the drawdown of Federal funds and the disbursement for agreement purposes.

In accordance with 2 CFR 25.200(b)(2) the Recipient shall “Maintain an active SAM registration with current information, including information on a recipient's immediate and highest level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract or grant within the last three years, if applicable, at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. If the Recipient allows their SAM registration to lapse, the Recipient’s accounts within ASAP will be automatically suspended by Reclamation until such time as the Recipient renews their SAM registration.

3. PROCUREMENT STANDARDS (2 CFR 200.317 through 200.327)

§200.317 Procurements by States.

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by §200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§200.318 through 200.327.

§200.318 General procurement standards.

- (a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.
- (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

- (c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.
- (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

- (h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also 200.212 Suspension and debarment.
- (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- (j) (1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:
- (i) The actual cost of materials; and
 - (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
- (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- (k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

§200.319 Competition.

- (a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and §200.320.
- (b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing

for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
 - (2) Requiring unnecessary experience and excessive bonding;
 - (3) Noncompetitive pricing practices between firms or between affiliated companies;
 - (4) Noncompetitive contracts to consultants that are on retainer contracts;
 - (5) Organizational conflicts of interest;
 - (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
 - (7) Any arbitrary action in the procurement process.
- (c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- (d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
 - (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- (e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with §200.320(c).

§200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

- (a) Informal procurement methods. When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold (SAT), as defined in §200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:
- (1) Micro-purchases—(i) Distribution. The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of micro-purchase in §200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.
- (ii) Micro-purchase awards. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.
- (iii) Micro-purchase thresholds. The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.
- (iv) Non-Federal entity increase to the micro-purchase threshold up to \$50,000. Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with §200.334. The self-

certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

- (A) A qualification as a low-risk auditee, in accordance with the criteria in §200.520 for the most recent audit;
 - (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
 - (C) For public institutions, a higher threshold consistent with State law.
- (v) Non-Federal entity increase to the micro-purchase threshold over \$50,000. Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.
- (2) Small purchases—(i) Small purchase procedures. The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.
- (ii) Simplified acquisition thresholds. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.
- (b) Formal procurement methods. When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with §200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:
- (1) Sealed bids. A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for

bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

- (i) In order for sealed bidding to be feasible, the following conditions should be present:
 - (A) A complete, adequate, and realistic specification or purchase description is available;
 - (B) Two or more responsible bidders are willing and able to compete effectively for the business; and
 - (C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- (ii) If sealed bids are used, the following requirements apply:
 - (A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
 - (B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - (C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
 - (D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - (E) Any or all bids may be rejected if there is a sound documented reason.
- (2) Proposals. A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:
 - (i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - (ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

- (iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and
 - (iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.
- (c) Noncompetitive procurement. There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:
- (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);
 - (2) The item is available only from a single source;
 - (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
 - (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
 - (5) After solicitation of a number of sources, competition is determined inadequate.

§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

- (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

§200.322 Domestic preferences for procurements.

- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- (b) For purposes of this section:
 - (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

§200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§200.324 Contract cost and price.

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract amendments. The method and degree of analysis is dependent on the facts surrounding

the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

- (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§200.325 Federal awarding agency or pass-through entity review.

- (a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- (b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
 - (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
 - (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
 - (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

- (5) A proposed contract amendment changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- (c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
- (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
- (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§200.326 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in [appendix II](#) to this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014, and 85 FR 49506]

4. EQUIPMENT (2 CFR 200.313)

See also 200.439 Equipment and other capital expenditures.

- (a) Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further obligation to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:
- (1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.
 - (2) Not encumber the property without approval of the Federal awarding agency or pass-through entity.
 - (3) Use and dispose of the property in accordance with paragraphs (b), (c) and (e) of this section.
- (b) A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.
- (c) Use.
- (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:
 - (i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then
 - (ii) Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.
 - (2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other

programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.

- (3) Notwithstanding the encouragement in 200.307 Program income to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.
 - (4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.
- (d) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:
- (1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
 - (2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
 - (3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
 - (4) Adequate maintenance procedures must be developed to keep the property in good condition.
 - (5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- (e) Disposition. When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:
- (1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.
 - (2) Except as provided in 200.312 Federally-owned and exempt property, paragraph (b), or if the Federal awarding agency fails to provide requested disposition instructions within

120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

- (3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.
- (4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75884, Dec. 19, 2014]

5. SUPPLIES (2 CFR 200.314)

See also 200.453 Materials and supplies costs, including costs of computing devices.

- (a) Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. See 200.313 Equipment, paragraph (e)(2) for the calculation methodology.
- (b) As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

6. INSPECTION

Reclamation has the right to inspect and evaluate the work performed or being performed under this Agreement, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If Reclamation performs inspection or evaluation on the premises of the Recipient or a sub-Recipient, the Recipient shall furnish and shall require sub-recipients to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

7. AUDIT REQUIREMENTS (2 CFR 200.501)

- (a) Audit required. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.
- (b) Single audit. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with 200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.
- (c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with 200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.
- (d) Exemption when Federal awards expended are less than \$750,000. A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).
- (e) Federally Funded Research and Development Centers (FFRDC). Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.
- (f) Subrecipients and Contractors. An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section 200.331 Subrecipient and contractor determinations sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.
- (g) Compliance responsibility for contractors. In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

- (h) For-profit subrecipient. Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also 200.332 Requirements for pass-through entities.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49571, Aug. 13, 2020]

8. REMEDIES FOR NONCOMPLIANCE (2 CFR 200.339)

200.339 Remedies for noncompliance.

If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in 200.207 Specific conditions. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances.

- (a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.
- (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- (c) Wholly or partly suspend or terminate the Federal award.
- (d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
- (e) Withhold further Federal awards for the project or program.
- (f) Take other remedies that may be legally available.

9. TERMINATION (2 CFR 200.340)

- (a) The Federal award may be terminated in whole or in part as follows:
 - (1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;
 - (2) By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
 - (3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;

- (4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety; or
- (5) By the Federal awarding agency or pass-through entity pursuant to termination provisions included in the Federal award.
- (b) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in 200.344 Closeout and 200.345 Post-closeout adjustments and continuing responsibilities.

10. DEBARMENT AND SUSPENSION (2 CFR 1400)

The Department of the Interior regulations at 2 CFR 1400—Governmentwide Debarment and Suspension (Nonprocurement), which adopt the common rule for the governmentwide system of debarment and suspension for nonprocurement activities, are hereby incorporated by reference and made a part of this Agreement. By entering into this grant or cooperative Agreement with the Bureau of Reclamation, the Recipient agrees to comply with 2 CFR 1400, Subpart C, and agrees to include a similar term or condition in all lower-tier covered transactions. These regulations are available at <http://www.gpoaccess.gov/ecfr/>.

11. DRUG-FREE WORKPLACE (2 CFR 182 and 1401)

The Department of the Interior regulations at 2 CFR 1401—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), which adopt the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq, as amended) applicable to grants and cooperative agreements, are hereby incorporated by reference and made a part of this agreement. By entering into this grant or cooperative agreement with the Bureau of Reclamation, the Recipient agrees to comply with 2 CFR 182.

12. ASSURANCES AND CERTIFICATIONS INCORPORATED BY REFERENCE

The provisions of the Assurances, SF 424B or SF 424D as applicable, executed by the Recipient in connection with this Agreement shall apply with full force and effect to this Agreement. All anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, and cooperative Agreements, loans, and other forms of Federal assistance. The Recipient shall comply with Title VI or the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and any program-specific statutes with anti-discrimination requirements. The Recipient shall comply with civil rights laws

including, but not limited to, the Fair Housing Act, the Fair Credit Reporting Act, the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act.

Such Assurances also include, but are not limited to, the promise to comply with all applicable Federal statutes and orders relating to nondiscrimination in employment, assistance, and housing; the Hatch Act; Federal wage and hour laws and regulations and work place safety standards; Federal environmental laws and regulations and the Endangered Species Act; and Federal protection of rivers and waterways and historic and archeological preservation.

13. COVENANT AGAINST CONTINGENT FEES

The Recipient warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide offices established and maintained by the Recipient for the purpose of securing Agreements or business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement amount, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

14. TRAFFICKING VICTIMS PROTECTION ACT OF 2000 (2 CFR 175.15)

Trafficking in persons.

- (a) *Provisions applicable to a recipient that is a private entity.* You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not
- (1) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (2) Procure a commercial sex act during the period of time that the award is in effect; or
 - (3) Use forced labor in the performance of the award or subawards under the award.
- (b) We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
- (1) Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - (2) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either:
 - (i) Associated with performance under this award; or
 - (ii) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR part 1400.

(c) *Provision applicable to a recipient other than a private entity.* We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

- (1) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
- (2) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either:
 - (i) Associated with performance under this award; or
 - (ii) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR part 1400.

(d) *Provisions applicable to any recipient.*

- (1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
- (2) Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - (i) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - (ii) Is in addition to all other remedies for noncompliance that are available to us under this award.
- (3) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

(e) *Definitions.* For purposes of this award term:

- (1) “Employee” means either:
 - (i) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - (ii) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- (2) “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

- (3) “Private entity”:
- (i) Means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - (ii) Includes:
 - (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - (B) A for-profit organization.
- (4) “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

15. NEW RESTRICTIONS ON LOBBYING (43 CFR 18)

The Recipient agrees to comply with 43 CFR 18, New Restrictions on Lobbying, including the following certification:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or amendment of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying” in accordance with its instructions.
- (c) The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

16. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (URA) (42 USC 4601 *et seq.*)

- (a) The Uniform Relocation Assistance Act (URA), 42 U.S.C. 4601 *et seq.*, as amended, requires certain assurances for Reclamation funded land acquisition projects conducted by a Recipient that cause the displacement of persons, businesses, or farm operations. Because Reclamation funds only support acquisition of property or interests in property from willing sellers, it is not anticipated that Reclamation funds will result in any “displaced persons,” as defined under the URA.
- (b) However, if Reclamation funds are used for the acquisition of real property that results in displacement, the URA requires Recipients to ensure that reasonable relocation payments and other remedies will be provided to any displaced person. Further, when acquiring real property, Recipients must be guided, to the greatest extent practicable, by the land acquisition policies in 42 U.S.C. 4651.
- (c) Exemptions to the URA and 49 CFR Part 24
- (1) The URA provides for an exemption to the appraisal, review and certification rules for those land acquisitions classified as “voluntary transactions.” Such “voluntary transactions” are classified as those that do not involve an exercise of eminent domain authority on behalf of a Recipient, and must meet the conditions specified at 49 CFR 24.101(b)(1)(i)-(iv).
- (2) For any land acquisition undertaken by a Recipient that receives Reclamation funds, but does not have authority to acquire the real property by eminent domain, to be exempt from the requirements of 49 CFR Part 24 the Recipient must:
- (i) provide written notification to the owner that it will not acquire the property in the event negotiations fail to result in an amicable agreement, and;
 - (ii) inform the owner in writing of what it believes to be the market value of the property
- (d) Review of Land Acquisition Appraisals. Reclamation reserves the right to review any land appraisal whether or not such review is required under the URA or 49 CFR 24.104. Such reviews may be conducted by the Department of the Interior’s Appraisal Services Directorate or a Reclamation authorized designee. When Reclamation determines that a review of the original appraisal is necessary, Reclamation will notify the Recipient and provide an estimated completion date of the initial appraisal review.

17. SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS (2 CFR 25, APPENDIX A)

A. Requirement for System for Award Management

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain current information in the SAM. This includes information on your immediate and highest level owner and subsidiaries, as well as on all of your predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until you submit the final financial report required under this Federal award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another Federal award term.

B. Requirement for unique entity identifier

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its unique entity identifier to you.
2. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier to you. Subrecipients are not required to obtain an active SAM registration, but must obtain a Unique Entity Identifier.

C. Definitions

For purposes of this award term:

1. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <http://www.sam.gov>).
2. Unique entity identifier means the identifier required for SAM registration to uniquely identify business entities.
3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
 - a. A Governmental organization, which is a State, local government, or Indian Tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization; and
 - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward has the meaning given in 2 CFR 200.1.
5. Subrecipient has the meaning given in 2 CFR 200.1.

18. PROHIBITION ON TEXT MESSAGING AND USING ELECTRONIC EQUIPMENT SUPPLIED BY THE GOVERNMENT WHILE DRIVING

Executive Order 13513, *Federal Leadership On Reducing Text Messaging While Driving*, was signed by President Barack Obama on October 1, 2009 (ref: <http://edocket.access.gpo.gov/2009/pdf/E9-24203.pdf>). This Executive Order introduces a Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment. Additional guidance enforcing the ban will be issued at a later date. In the meantime, please adopt and enforce policies that immediately ban text messaging while driving company-owned or rented vehicles, government-owned or leased vehicles, or while driving privately owned vehicles when on official government business or when performing any work for or on behalf of the government.

19. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (2 CFR 170 APPENDIX A)

I. Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph e. of this award term).
2. Where and when to report.
 - i. The non-Federal entity or Federal agency must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. Reporting total compensation of recipient executives for non-Federal entities.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
 - i. The total Federal funding authorized to date under this Federal award equals or exceeds \$30,000 as defined in 2 CFR 170.320;

- ii. in the preceding fiscal year, you received—
 - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards), and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:
- i. As part of your registration profile at <https://www.sam.gov>.
 - ii. By the end of the month following the month in which this award is made, and annually thereafter.
- c. Reporting of Total Compensation of Subrecipient Executives.
- 1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier non-Federal entity subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
 - i. in the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards) and,
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:
 - i. To the recipient.
 - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions.

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
 - ii. The total compensation of the five most highly compensated executives of any subrecipient.
- e. Definitions. For purposes of this award term:
1. Federal Agency means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).
 2. Non-Federal entity means all of the following, as defined in 2 CFR part 25:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization; and,
 - iv. A domestic or foreign for-profit organization
 3. Executive means officers, managing partners, or any other employees in management positions.
 4. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.331).
 - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
 5. Subrecipient means a non-Federal entity or Federal agency that:
 - i. Receives a subaward from you (the recipient) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.

6. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)).

[85 FR 49526, Aug. 13, 2020]

20. RECIPIENT EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)

- (a) This award and employees working on this financial assistance agreement will be subject to the whistleblower rights and remedies in the pilot program on Award Recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub.L. 112-239).
- (b) The Award Recipient shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C 4712.
- (c) The Award Recipient shall insert the substance of this clause, including this paragraph (c), in all subawards or subcontracts over the simplified acquisition threshold. 48 CFR 52.203-17 (as referenced in 48 CFR 3.908-9).

21. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE (APPENDIX XII to 2 CFR Part 200)

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five-year period; and
- c. Is one of the following:

- (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
- (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
- (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
- (4) Any other criminal, civil, or administrative proceeding if:
 - (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
 - (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

- a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

- b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 - (1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 - (2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

[80 FR 43310, July 22, 2015, as amended at 85 FR 49582, Aug. 13, 2020]

22. CONFLICTS OF INTEREST

(a) Applicability.

- (1) This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
- (2) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.318 apply.

(b) Requirements.

- (1) Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.
- (2) In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or subrecipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or subrecipient or in development of the requirement leading to the funding announcement.
- (3) No actual or prospective recipient or subrecipient may solicit, obtain, or use non-public information regarding the evaluation, award, or administration of an award to that recipient or subrecipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or subrecipient.

(c) Notification.

- (1) Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of Interest.

- (2) Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients.
- (d) Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR Part 18 and 31 USC 1352.
- (e) Review Procedures. The Financial Assistance Officer will examine each conflict-of-interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.
- (f) Enforcement. Failure to resolve conflicts of interest in a manner that satisfies the Government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR 200.338, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR Part 180).

23. DATA AVAILABILITY

- (a) Applicability. The Department of the Interior is committed to basing its decisions on the best available science and providing the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department to inform its decisions.
- (b) Use of Data. The regulations at 2 CFR 200.315 apply to data produced under a Federal award, including the provision that the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award as well as authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- (c) Availability of Data. The recipient shall make the data produced under this award and any subaward(s) available to the Government for public release, consistent with applicable law, to allow meaningful third party evaluation and reproduction of the following:
- (i) The scientific data relied upon;
 - (ii) The analysis relied upon; and
 - (iii) The methodology, including models, used to gather and analyze data.

24. PROHIBITION ON PROVIDING FUNDS TO THE ENEMY

- (a) The recipient must—
- (1) Exercise due diligence to ensure that none of the funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through [2 CFR 180.300](#) prior to issuing a subaward or contract and;
 - (2) Terminate or void in whole or in part any subaward or contract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subaward or contract.
- (b) The recipient may include the substance of this clause, including paragraph (a) of this clause, in subawards under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.
- (c) The Federal awarding agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal awarding agency becomes aware that the recipient failed to exercise due diligence as required by paragraph (a) of this clause or if the Federal awarding agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

25. ADDITIONAL ACCESS TO RECIPIENT RECORDS

- (a) In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017 that will be performed in the United States Central Command (USCENTCOM) theater of operations.
- (b) The substance of this clause, including this paragraph (b), is required to be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

26. PROHIBITION ON CERTAIN TELECOMMUNICATION AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Federal award recipients are prohibited from using government funds to enter contracts (or extend or renew contracts) with entities that use covered telecommunications equipment or services as described in section 889 of the 2019 National Defense Authorization Act. This prohibition applies even if the contract is not intended to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services.

III. DEPARTMENT OF THE INTERIOR STANDARD AWARD TERMS AND CONDITIONS

The Department of the Interior (DOI) Standard Award Terms and Conditions found at <https://www.doi.gov/sites/doi.gov/files/uploads/doi-standard-award-terms-and-conditions-effective-december-2-2019-revised-june-19-2020.pdf> are hereby incorporated by reference as though set forth in full text. These terms and conditions are in addition to the assurances and certifications made as part of the award and terms, conditions or restrictions reflected on this Agreement. Recipient acceptance of this Agreement carries with it the responsibility to be aware of and comply with all DOI terms and conditions applicable to this Agreement. The Recipient is responsible for ensuring their subrecipients and contractors are aware of and comply with applicable statutes, regulations, and agency requirements.

Recipient and subrecipient failure to comply with the general terms and conditions outlined below and those directly reflected in this Agreement can result in the DOI taking one or more of remedies described in 2 Code of Federal Regulations parts 200.338 and 200.339. The DOI will notify the recipient whenever terms and conditions are updated to accommodate instances in the passage of a regulation or statute that requires compliance. Also, DOI will inform the Recipient of revised terms and conditions in the action of an Agreement amendment adding additional Federal funds. Reclamation will make such changes by issuing a Notice of Award amendment that describes the change and provides the effective date. Revised terms and conditions do not apply to the Recipient's expenditures of funds or activities the Recipient carries out before the effective date of the revised DOI terms and conditions.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

AMENDMENT 01

TO

ASSISTANCE AGREEMENT R22AP00103

A. PURPOSE OF THIS AMENDMENT:

The purpose of this amendment is to remove personnel costs from the budget, and to add rebate dollars to the budget. The Recipient cost share changes. Additionally, this amendment changes the Grantee Authorizing Official.

All other terms and conditions remain unchanged.

B. ADJUSTMENT OF AGREEMENT BUDGET AND COST SHARE:

As a result of this amendment, section 7.1 Budget Estimate is revised as follows, and as shown in the budget table below. Salary and wages of \$29,580 are removed. Rebates are increased from \$140,000 to \$150,000.

BUDGET ITEM DESCRIPTION	TOTAL COST
SALARIES, WAGES, FRINGE BENEFITS	
All Salaries and Wages	\$ 0.00
OTHER	
Rebates	\$150,000
TOTAL DIRECT COSTS	\$150,000
INDIRECT COSTS	
NA	\$0
TOTAL ESTIMATED PROJECT COST	\$169,580

As a result of this amendment, section 7.2 Cost Sharing Requirement is changed to the following.

At least 50% non-Federal cost share is required for costs incurred under this Agreement. Based on the budget estimate reflected in Section 7.1 above, the estimated Federal share of allowable costs is 50% (\$75,000.00) and the Recipient's estimated non-Federal cost share is 50% (\$75,000.00). The Federal share of allowable costs shall not be expended in advance of the Recipient's non-Federal share. It is expected that expenditure of Federal and non-Federal funds based upon the cost share percentage above shall occur concurrently.

If a bona fide need arises which requires the expenditure of Federal funds in advance of the Recipient share, then the Recipient must request written approval from the GO prior to the expenditure. Recipient's may expend their agreed upon share of costs in advance of the expenditure of Federal funds without prior written approval.

C. ADDITION OF KEY PERSONNEL:

As a result of this amendment, the Recipient's Grantee Authorizing Official is added as follows.

The Recipient's Authorizing Official for this Agreement shall be:

Kelly DiMartino
Interim City Manager
300 Laporte Ave
Fort Collins, CO 80521
970-416-2028
kdimartino@fcgov.com

Additionally, the Recipient's Project Manager Katie Collins' phone number is corrected from 970-416-4378 to 970-413-3775.

AGENDA ITEM SUMMARY

City Council



STAFF

Mark Laken, Project Manager
Dana Hornkohl, Capital Projects Manager
Heather Jarvis, Legal

SUBJECT

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

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on March 21, 2023, enables the City to receive and expend Colorado Department of Transportation (CDOT) funds and to appropriate development payment-in-lieu funds for the Timberline Mulberry Lincoln Intersection Project (the Project). The funds will be used for design, right-of-way acquisition, and construction of improvements at the intersection of Timberline Road, Mulberry Street, and Lincoln Avenue. If approved, the item will: (1) authorize the Mayor to execute an Intergovernmental Agreement for the Project with CDOT; (2) appropriate \$1,523,915 of Highway Safety Improvement Program (HSIP) grant funds for the Project; (3) appropriate \$23,651 from the Capital Funds Reserve received in 2020 as a development payment-in-lieu contributed to this Project by an adjacent development; and (4) appropriate \$237 (1% of the development payment-in-lieu amount) to the Art in Public Places Program.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

The intersection of Timberline Road, Mulberry Street, and Lincoln Avenue experiences significant congestion for northbound Timberline traffic turning onto westbound Lincoln. This congestion causes traffic to back up onto westbound Mulberry, east of Timberline. Southbound Timberline traffic also experiences congestion at the intersection with Mulberry that causes traffic to block the intersection with Lincoln. The proximity of these two intersections creates significant conflicts and crash problems. The intersection of Timberline and Lincoln is of particular concern as vehicles attempt to cross or turn from eastbound Lincoln through the congestion of queued vehicles on southbound Timberline with limited visibility of oncoming traffic. There have been 49 accidents reported from 2014 through April of 2019 at the intersection of Timberline and Lincoln.

The goal of the Project is to eliminate most of the conflicts that result in traffic accidents at this intersection. The proposed improvements will reconfigure medians on Timberline. The median modifications will create

space for double left turn lanes for southbound Timberline onto eastbound Mulberry, as well as create space for a channelized “T intersection” at Timberline and Lincoln. The Project will also install an innovative “P-Turn” (also referred to as a “Michigan Left Turn”) on the northwest corner of the Timberline and Lincoln intersection. The P-Turn is necessary to accommodate westbound through traffic and northbound left turns at the Timberline and Lincoln intersection.

Community Capital Improvement Program (CCIP) Arterial Intersection Improvement funds were appropriated to this Project in 2018 (\$50,000) and in 2021 (\$176,349). A portion of this funding was used to complete a feasibility study and conceptual design. In 2020, the City sought and was awarded fiscal year 2023 HSIP funds through the North Front Range Metropolitan Planning Organization (NFRMPO) and CDOT for the design, right-of-way acquisition, and construction of the Project. Local development also contributed \$23,651 in 2020 via payment-in-lieu funds towards this Project. The Project was then placed on hold during a portion of the pandemic due to staffing issues.

The HSIP funding became available to the City in the State fiscal year 2023 (July 2022). HSIP funding involves a 90%/10% (Federal/Local) match. The funding split for this award is \$1,523,915 Federal and \$169,324 Local. The remaining CCIP Arterial Intersection Improvement funds and development payment-in-lieu funds will fulfill the City’s Local funding obligation for this HSIP award.

Per Chapter 23 of the City Code, Article XII (addressing Art in Public Places), Section 23-304, all appropriations for construction projects estimated to a total cost of over \$250,000 shall include an amount equal to one percent of eligible funds for works of art. This appropriation includes a contribution of \$237 to the Art in Public Places Program which is 1% of the development payment-in-lieu contribution of \$23,651. The HSIP grant funds appropriated via this action are ineligible for use toward public art and, as such, are not subject to the 1% set aside. The previously appropriated CCIP Arterial Intersection Improvement funds already have satisfied the required contribution to the Art in Public Places Program.

The Project will require additional right-of-way acquisition for construction of the Project. Federal HSIP funds require the City to follow the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, as amended (the Uniform Act) when acquiring right-of-way. Staff will bring a request before City Council seeking authorization for acquisition and the potential use of eminent domain, as required by the Uniform Act, once the Project design is finalized.

CITY FINANCIAL IMPACTS

The following is a summary of the funding anticipated for design, right-of-way acquisition, and construction for the Timberline Mulberry Lincoln Intersection Project:

Funds Appropriated in Prior Actions	
CCIP Arterial Intersection Improvement Funds (2018)	\$50,000.00
CCIP Arterial Intersection Improvement Funds (2021)	\$176,349.00
Total Appropriations in Prior Actions	\$226,349.00

Item 9.

Funds to be Appropriated with this Action	
Development Payment-In-Lieu	\$23,651.00
HSIP Grant Award	\$1,523,915.00
Total Appropriations with this Action	\$1,547,566.00
Transfer to Art in Public Places	(\$237.00)

The total fund amount projected for this Project is \$1,773,678.49, composed of funds appropriated with prior actions and with this action.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

City staff will present this project to the Transportation Board as well as the Bicycle Advisory Committee in 2023 as the plans are developed.

PUBLIC OUTREACH

City staff will seek public input and present Project details via open house meetings as the Project moves forward. City staff will develop a Project web page in conjunction with a comprehensive communication plan.

ATTACHMENTS

First Reading attachments not included.

- 1. Ordinance for Consideration

ORDINANCE NO. 039, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING SUPPLEMENTAL APPROPRIATIONS, APPROPRIATING PRIOR YEAR
RESERVES AND AUTHORIZING TRANSFERS OF APPROPRIATIONS FOR THE
TIMBERLINE MULBERRY LINCOLN INTERSECTION PROJECT AND
RELATED ART IN PUBLIC PLACES

WHEREAS, the intersection of Timberline Road, Mulberry Street, and Lincoln Avenue experiences significant congestion for northbound Timberline Road traffic turning onto westbound Lincoln Avenue, causing traffic to back up onto westbound Mulberry Street, east of Timberline Road; and

WHEREAS, southbound Timberline Road traffic also experiences congestion at the intersection with Mulberry Street that causes traffic to block the intersection with Lincoln Avenue; and

WHEREAS, the intersection of Timberline Road and Lincoln Avenue is of particular concern as vehicles attempt to cross or turn from eastbound Lincoln Avenue through the congestion of queued vehicles on southbound Timberline Road with limited visibility of oncoming traffic; and

WHEREAS, the proximity of these two intersections creates significant conflicts and safety concerns; and

WHEREAS, the Timberline Mulberry Lincoln Intersection Project (the Project) has been developed to address these safety concerns eliminate most of the conflicts that result in traffic accidents at this intersection; and

WHEREAS, the Project’s proposed improvements will reconfigure medians on Timberline Road to create space for double left turn lanes for southbound Timberline Road onto eastbound Mulberry Street, as well as create space for a channelized “T intersection” at Timberline Road and Lincoln Avenue; and

WHEREAS, the Project improvements include installation of an innovative “P-Turn” (also referred to as a “Michigan Left Turn”) on the northwest corner of the Timberline Road and Lincoln Avenue intersection to accommodate westbound through traffic and northbound left turns at the Timberline Road and Lincoln Avenue intersection; and

WHEREAS, in 2018 and 2021, the City appropriated Community Capital Improvement Program (CCIP) Arterial Intersection Improvement funds to this Project in the amount of \$50,000 in 2018 and in the amount of \$176,349 in 2021, with a portion of this CCIP funding used to complete a feasibility study and conceptual design for the Project; and

WHEREAS, in 2020, an adjacent development contributed \$23,651 in Capital Projects Fund Reserves to this Project by paying funds in lieu of land dedication pursuant to the development review process; and

WHEREAS, in 2020, the Project was placed on hold during a portion of the pandemic due to staffing issues; and

WHEREAS, in 2020, the City was awarded fiscal year 2023 Highway Safety Improvement Program (HSIP) grant funds totaling \$1,523,915 through the North Front Range Metropolitan Planning Organization (NFRMPO) and the Colorado Department of Transportation (CDOT) for the design, right-of-way acquisition, and construction of the Project; and

WHEREAS, the HSIP grant funds for the Project are to be administered by CDOT with project delivery oversight pursuant to an Intergovernmental Agreement (IGA) with CDOT that requires the City to provide local matching funds of \$169,324; and

WHEREAS, the remaining CCIP Arterial Intersection Improvement funds from the prior appropriations in 2018 and 2021 and the development payment-in-lieu funds will fulfill the City's local matching funds obligation for the HSIP grant award; and

WHEREAS, the purpose of this Ordinance is to enable the City to receive and expend the \$1,523,915 in grant funds available, to appropriate those funds, the CCIP funds, and the Capital Projects Fund Reserves for the Project, and to appropriate Capital Projects Fund to satisfy the Art in Public Places program (APP Program) contribution requirement; and

WHEREAS, this Project involves construction estimated to cost more than \$250,000 and, as such, City Code Section 23-304 requires one percent of these appropriations to be transferred to the Cultural Services and Facilities Fund for a contribution to the APP Program; and

WHEREAS, the Project cost of \$226,349 contributed by the Community Capital Improvement Program Fund in prior appropriations has already satisfied the APP Program contribution; and

WHEREAS, the Project cost of \$23,651 in this Ordinance contributed by Capital Projects Fund Reserves is applicable for contribution to the APP Program; and

WHEREAS, a portion of the funds appropriated in this Ordinance for the Timberline Mulberry Lincoln Intersection Project are ineligible for use in the APP Program due to restrictions placed on them by the HSIP grant administered by the Colorado Department of Transportation; and

WHEREAS, the amount to be contributed by this Ordinance will be \$237; and

WHEREAS, this appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of improving transportation infrastructure within the City; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon recommendation of the City Manager, to make a supplemental appropriation by ordinance at any

time during the fiscal year, provided that the total amount of such supplemental appropriation, in combination with all previous appropriations for that fiscal year, do not exceed the current estimate of actual and anticipated revenues and all other funds to be received during the fiscal year; and

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

WHEREAS, the City Manager has recommended the appropriations described herein and determined that these appropriations are available and previously unappropriated from the Capital Projects Fund and will not cause the total amount appropriated in the Capital Projects Fund to exceed the current estimate of actual and anticipated revenues and all other funds to be received in this Fund during this fiscal year; and

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

WHEREAS, the City Manager has recommended the transfer of \$237 from the Capital Projects Fund to the Cultural Services & Facilities Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

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

WHEREAS, the City Council wishes to designate the appropriation herein from the HSIP grant as an appropriation that shall not lapse until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant; and

WHEREAS, the City Council wishes to designate the appropriation herein for the Project as an appropriation that shall not lapse until the completion of the Project.

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

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

Section 2. That there is hereby appropriated from new revenue or other funds from the Highway Safety Improvement Program (HSIP) grant in the Capital Projects Fund the sum of ONE MILLION FIVE HUNDRED TWENTY-THREE THOUSAND NINE HUNDRED FIFTEEN DOLLARS (\$1,523,915) to be expended in the Capital Projects Fund for the Project.

Section 3. That there is hereby appropriated from prior year reserves in the Capital Projects Fund the sum of TWENTY-THREE THOUSAND SIX HUNDRED FIFTY-ONE DOLLARS (\$23,651) to be expended in the Capital Projects Fund for the Project and appropriated therein.

Section 4. That the unexpended and unencumbered appropriated amount of ONE HUNDRED EIGHTY-FIVE DOLLARS (\$185) in the Capital Projects Fund is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein to fund art projects under the APP Program.

Section 5. That the unexpended and unencumbered appropriated amount of FORTY-SEVEN DOLLARS (\$47) in the Capital Projects Fund is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the operation costs of the APP Program.

Section 6. That the unexpended and unencumbered appropriated amount of FIVE DOLLARS (\$5) in the Capital Projects Fund is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the maintenance costs of the APP Program.

Section 7. That the appropriation herein from the HSIP grant is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

Section 8. That the appropriation herein for the Project is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the completion of the Project.

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

AGENDA ITEM SUMMARY

City Council



STAFF

LeAnn Williams, Director, Recreation
Tracy Ochsner, Director, Facilities & Fleet
Ted Hewitt, Assistant City Attorney

SUBJECT

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

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on March 21, 2023, appropriates \$260,000 from the Recreation Reserve to close the funding gap on the Childcare Space Modifications at Northside Aztlan Community Center and transfer 1% of the applicable construction costs to Art in Public Places.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

Budgeting for Outcomes Offer 43.23: ARPA Childcare Space Modifications at Northside Aztlan Community Center (NACC) was funded in 2023 for \$721,932. Recreation used 2022 year-end underspend to start the design process to ensure this project could be completed by September 2023.

After completion of the design, the RFP was released for construction. Operations Services projected the project to cost \$721,932 in spring 2022 and included cost escalation and contingency. The two proposals received came in approximately \$260,000 over the original construction estimate.

The childcare space modification project will address the numerous safety concerns at NACC. Specifically, the project will include three levels of security access control not found in the current facility. The project will also include emergency exit doors that are not currently available. Currently, all three childcare classrooms are accessible by the public, with no secure entry. Since January 2022, there were thirty-seven incidents recorded at NACC, including patrons bringing in weapons including a machete and an ax.

Impact if funding is not approved and project is delayed.

- Cost escalation
 - The construction of this project will continue to increase.
- Safety
 - Since October of 2022, there have been twenty-two misconduct related incidents reported. Of the twenty-two incidents, eight resulted in suspension, with five being arrested.

CITY FINANCIAL IMPACTS

Appropriating these funds will allow this project to move forward with current costs, prevent delay and potential further cost escalation.

Recreation Reserves as of March 2023	Contingency Funding for NACC Childcare Project	Recreation Reserves projection December 31, 2023
2,450,000	260,000	2,190,000

Staff is asking that any remaining ARPA funds at the end of 2023 be considered to replenish the Recreation Reserves appropriated with this ordinance since this was originally an ARPA funded project in the 2023-2024 budget.

This project will be contributing \$5,600 to Art in Public Places (APP). In the 2023-24 Offer #43.23, the \$300,000 that was used from the General Fund Reserves is applicable for the contribution and has not yet contributed, plus this additional \$260,000 from Recreation Reserves in this Ordinance, for a total of \$560,000. The contribution to APP is 1% of the total applicable amount.

The total amount to be appropriated from Recreation Fund Reserves is \$262,600 and the total amount to be appropriated from General Fund Reserves is \$3,000.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Because of the timing of board meetings, this need was not presented to the Parks and Recreation Board or to the City Council Finance Committee. They were very supportive of this project during the BFO process.

PUBLIC OUTREACH

N/A

ATTACHMENTS

1. Ordinance for Consideration

ORDINANCE NO. 040, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES AND AUTHORIZING TRANSFERS OF
APPROPRIATIONS FOR THE CHILDCARE SPACE MODIFICATIONS AT THE
NORTHSIDE AZTLAN COMMUNITY CENTER AND
RELATED ART IN PUBLIC PLACES

WHEREAS, the City Council appropriated \$721,932 for Childcare Space Modifications at the Northside Aztlan Community Center (the “Project”) for the 2023 fiscal year; and

WHEREAS, the City issued a Request for Proposals for the Project and the proposals received came in approximately \$260,000 over the original construction estimate; and

WHEREAS, the Recreation Fund currently contains sufficient reserves to fully fund the Project; and

WHEREAS, the Project is necessary to address safety concerns at the Northside Aztlan Community Center and delay in the Project will cause Project costs to continue to increase; and

WHEREAS, this appropriation benefits the public health, safety, and welfare of the residents of Fort Collins and serves the public purpose of making improvements to a public recreation center; and

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

WHEREAS, the project cost of \$421,932 contributed by the American Rescue Plan Act (ARPA) in the 2023-2024 Budget Offer #43.23 is not applicable for contribution to the APP Program due to the funding restrictions in place; and

WHEREAS, the project cost of \$300,000 contributed by General Fund Reserves in the 2023-2024 Budget Offer #43.23 is applicable for contribution to the APP Program and has not yet contributed; and

WHEREAS, the project cost of \$260,000 in this Ordinance contributed by Recreation Fund Reserves is applicable for contribution to the APP Program; and

WHEREAS, the total applicable project cost of \$560,000 has been used to calculate the contribution to the APP program; and

WHEREAS, the amount to be contributed in this Ordinance will be \$5,600; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon the recommendation of the City Manager, to make supplemental appropriations by ordinance at any

time during the fiscal year such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated; and

WHEREAS, the City Manager has recommended the appropriations described herein and determined that these appropriations are available and previously unappropriated from the Recreation Fund and the General Fund, as applicable, and will not cause the total amount appropriated in the Recreation Fund or the General Fund, as applicable, to exceed the current estimate of actual and anticipated revenues and all other funds to be received in these funds during this fiscal year; and

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

WHEREAS, the City Manager has recommended the transfer of \$3,000 from the General Fund to the Cultural Services & Facilities Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

WHEREAS, the City Manager has recommended the transfer of \$2,600 from the Recreation Fund to the Cultural Services & Facilities Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged.

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

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

Section 2. That there is hereby appropriated from prior year reserves in the Recreation Fund the sum of TWO HUNDRED SIXTY-TWO THOUSAND SIX HUNDRED DOLLARS (\$262,600) to be expended in the Recreation Fund for the Childcare Space Modifications at the Northside Aztlan Community Center project.

Section 3. That there is hereby appropriated from prior year reserves in the General Fund the sum of TWO THOUSAND THREE HUNDRED FORTY DOLLARS (\$2,340) is hereby authorized to be expended in the General Fund for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein to fund art projects under the APP Program.

Section 4. That there is hereby appropriated from prior year reserves in the General Fund the sum of SIX HUNDRED FORTY DOLLARS (\$640) is hereby authorized to be expended

in the General Fund for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the operation costs of the APP Program.

Section 5. That there is hereby appropriated from prior year reserves in the General Fund the sum of SIXTY DOLLARS (\$60) is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the maintenance costs of the APP Program.

Section 6. That the unexpended and unencumbered appropriated amount of TWO THOUSAND TWENTY-EIGHT DOLLARS (\$2,028) in the Recreation Fund is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein to fund art projects under the APP Program.

Section 7. That the unexpended and unencumbered appropriated amount of FIVE HUNDRED TWENTY DOLLARS (\$520) in the Recreation Fund is authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the operation costs of the APP Program.

Section 8. That the unexpended and unencumbered appropriated amount of FIFTY-TWO DOLLARS (\$52) in the Recreation Fund is authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the maintenance costs of the APP Program.

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

AGENDA ITEM SUMMARY

City Council



STAFF

Lawrence Pollack, Budget Director
John Duval, Legal

SUBJECT

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

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on March 21, 2023, reappropriates monies in 2023 that were previously authorized by City Council for expenditure in 2022 for various purposes. The authorized expenditures were not spent or could not be encumbered in 2022 because:

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

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

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

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

The Executive Team has reviewed the Reappropriation requests to ensure alignment with organization priorities and Budget staff reviewed the requests to verify that all met qualification requirements.

moneys reappropriated for each City fund by this Ordinance are:

General Fund	\$602,754
Transit Fund	55,750
Transportation Fund	100,000
Water Fund	52,500
Broadband Fund	4,361,774
Data & Communications Fund	86,000
UT Customer Service & Administration Fund	170,848
Total	\$5,429,626

The 2023 Reappropriation requests are as follows, by fund:

GENERAL FUND

Police Services

1) K9 Vests - \$3,520

Purpose for funds: \$3,520 was donated by a resident for the purpose of buying a protective vest for a K9. This has not yet been purchased and should be reappropriated according to the intent of the gift.

Reason funds not expensed in 2022: The reason that the gift was not expensed in 2022 was because the dog that it was intended for needed to be returned to the breeder because of behavioral issues. Another K9 has been purchased and the vest will be purchased later in the year when the dog is full grown.

2) Northern Colorado Regional Communication Network (NCRCN) - \$300,000

Purpose for funds: The funds are being drawn from NCRCN (Northern Colorado Regional Communication Network) reserves, a restricted portion of the General Fund. These funds were designated for the maintenance and replacement of the radio towers and equipment on top of the hospital and on Tower Road by Horsetooth Rock.

Reason funds not expensed in 2022: Because of the complexity of the scope of the project, and conflicting priorities with other projects, the Information Services Division in Police Services is still in the process of developing the RFP to bid out the work. This project will commence in 2023.

City Manager’s Office

3) Council High Performing Board - \$18,295

Purpose for funds: The previous City Council approved an offer for \$30,000 to support Council group and individual development. Strategies such as individual mentors/coaches and conferences are available with this funding. It can also be used for other training purposes, as well as participation with associations such as the Colorado Municipal League, National League of Cities, and Water Literate Leaders.

Reason funds not expensed in 2022: A portion of this funding was used in 2022, however, City Council did not fully utilize the available budget. A Council workshop in January of this year outlined further training and development needs for Council in 2023. These funds will be used towards those additional opportunities.

4) DEI Principles of Community - \$8,000

Purpose for funds: A key deliverable identified by Council to advance the Equity and Inclusion priority was to develop Principles of Community for the organization to foster and enhance a sense of belonging for coworkers and the community we serve. This funding will create the principles of community which developed as a mission, vision, values refresh project. Work was partially completed in Q4 of 2022 after extensive staff engagement. The Communications Department is working on creating a new poster and communications to be shared City-wide in 2023.

Reason funds not expensed in 2022: Not all funds were expenses in 2022 as the City-wide roll out of the new Mission, Vision and Values (MVV) was planned for Q2 2023. Messaging and development of the outreach materials is still in progress and expected to be completed and ready for outreach by the end of Q2. These funds will be used to pay for the final printing of materials and promoting the new MVV across all departments in 2023.

5) Land Acknowledgement Funding - \$16,065

Purpose for funds: Land Acknowledgement funds have been used to build trust with the Fort Collins Native American community in a land-focused way. Having a strong relationship with a foundation of trust is a crucial first step before we can begin the process of creating a written land acknowledgement. For example, funds have been used to provide space for the Northern Colorado Intertribal Powwow Association (NCIPA) Powwow, space and supplies for NCIPA culture classes, and space and supplies for the NCIPA winter drive celebration.

Reason funds not expensed in 2022: It was crucial to establish a strong relationship of trust and reciprocity before beginning the process of creating a land acknowledgment. There was some hesitancy in the Native American community about creating a land acknowledgment without understanding the City's commitment to the Native community, to ensure that the land acknowledgment was not merely a performative action. Over the last year, we have established that relationship and we now have a solid basis to create a written land acknowledgement in 2023. Quarterly meetings have been set up with the Native American community for 2023, and we are also establishing a Native American Advisory Circle this year. These spaces will be the mechanism through which the land acknowledgment is created.

Parks

6) Park Planning & Development Special Project Support - \$5,600

Purpose for funds: Special project support funding was appropriated in 2020 for Park Planning & Development staff to conduct site planning and prepare cost estimates for potential donor funded projects, enabling donors to move forward with fundraising efforts. To date, multiple projects have been completed utilizing this funding source, including Veteran's Plaza improvements, Eastside Park improvements, Sugar Beet Park art "The Hand that Feeds", a cyclo-cross training course in Rossborough Park, site planning for a pickleball complex, and a pledge from the mountain bike community to fund a feasibility study for a bike park as part of a GOCO grant.

Reason funds not expensed in 2022: Funding partnerships with potential donors are unpredictable. This funding enables the City to be responsive to potential donors when fundraising opportunities arise. The remaining funds will be used to complete projects currently underway.

Community Development & Neighborhood Services

7) Mediation and Restorative Justice Services - \$4,526

Purpose for funds: These funds were all donations made to support the Mediation and Restorative Justice programs. The programs were founded 22 years ago and provide community-based services to support residents in constructively facing conflict. Community Mediation is used to address all types of conflicts and supports citizens in resolving conflicts collaboratively. Youth (10-22) in our community can be referred to the Restorative Justice programs to take responsibility for, and help repair the harm of, crimes they have committed. Our team of over 50 trained volunteers makes these services free or low-cost and available for our community.

Planned uses for these donated funds include additional training and conferences for staff and volunteers; diversifying the Mediation and RJ volunteer pool; funding the RePay program where youth in the RJ programs who owe victim restitution can do community service to help pay the restitution.

Reason funds not expensed in 2022: In January 2022, two of the 4-person MRJ team left the organization so efforts were focused on maintaining core services, rather than pursuing special projects. New staff was hired in May 2022 and training, onboarding continued throughout much of the rest of the year. It is expected that these funds will be expended in 2023.

Social Sustainability

8) EV Credits - \$238,000

Purpose for funds: These funds address the cost differential between current Colorado Housing and Finance Authority requirements and the updated Building Code requirements for Electric Vehicle (EV) infrastructure for affordable developments. The program provides cost-sharing of these additional infrastructure requirements by providing credits of flat fees calculated per project based on eligible parking spaces.

Reason funds not expensed in 2022: The City did not receive any requests for EV infrastructure credits from qualifying projects in 2022. The parking standards in the Building Code that will be in place starting 2023 will allow all affordable housing projects to qualify for this credit. Staff expects the first request for a credit to be submitted Q1 2023.

Natural Areas

9) West Nile Virus - \$8,748

Purpose for funds: The West Nile Virus Program provides proactive mosquito management and seeks to reduce the risk of human contraction of West Nile Virus. The majority of the monies fund two contracts: (1) a contract with Vector Disease Control International providing mosquito larvae control and mosquito trapping, and (2) a contract with Colorado State University providing for testing West Nile Virus presence. The remaining funds provide for community education through various forms of advertisement and outreach.

Reason funds not expensed in 2022: During the budget process of 2023-2024 full funding for the WNV Program was not restored, yet looking ahead, it became clear that the inflation-related contract costs for the fundamental, contracted elements of the program would significantly exceed the budgeted increase for 2023 and 2024. To plan for this short-fall, remaining outreach funds (approximately \$5000) were coupled with unanticipated reimbursement money from the Town of Berthoud (approximately \$3000) not spent with the intention to carry them over to address the 8% increase in contractor costs. Without carrying these funds forward, the contracted elements of the program are likely to exceed the total program budget by roughly \$2000.

TRANSIT FUND**Transfort/Dial-A-Ride****10) Poudre School District (PSD) & Transfort Collaboration Study - \$55,750**

Purpose for funds: This funding allows for a study to determine areas of better collaboration for student transportation between Transfort and Poudre School District (PSD).

Reason funds not expensed in 2022: Staffing issues, contractor availability, as well as purchasing department capacity led to delays for this project until late November 2022. Staff currently has all of the work in place to sign a contract and begin work as soon as 2023 funding is confirmed. Multiple staff will be actively monitoring and guiding this work in 2023.

TRANSPORTATION FUND**Traffic****11) Neighborhood Traffic Mitigation Program Project Construction - \$100,000**

Purpose for funds: Traffic in neighborhoods can affect the quality of life for residents, bicycles, pedestrians and drivers. The Neighborhood Traffic Mitigation Program is a collaborative effort between neighborhoods and City staff to implement traffic calming options. In 2022, Traffic received \$130,000 additional funding for medians and/or pedestrian refuge islands, sidewalk curb extensions and traffic diverters in order to achieve a more "complete streets" approach to traffic calming. The offer included funding for professional (consulting) services and funding for the construction of traffic mitigation devices on neighborhood streets. Traffic is requesting \$100,000 to be re-appropriated from the 2022 budget to construct these mitigation improvements.

Reason funds not expensed in 2022: In 2022, evaluation of locations and public outreach was completed. Due to staffing changes and consultant availability, design of the mitigation improvements for Whedbee and Oak was not started until fall. Survey and design will be completed in the Spring of 2023 and the construction will start in the summer/fall.

WATER FUND**Utility Water Resources Division****12) Northern Integrated Supply Project (NISP) Response & Engagement - \$52,500**

Purpose for funds: Since 2008, the City has developed and contributed science-based input to the various planning stages of the Northern Integrated Supply Project (NISP) project with the goal of minimizing adverse impacts on the Poudre River and the Fort Collins community. The City's efforts have resulted in positive changes to this project which are reflected in the NISP operations and mitigation plan. Funding from this 2022 offer is intended to provide technical consulting and engineering support to inform the City's engagement in future NISP planning efforts. Specifically, City staff will engage in NISP adaptive management and master planning stakeholder processes; however, additional technical and consulting support will be needed to achieve the desired outcomes. Funds from this offer would support: 1) water resources engineering and analysis to advise the NISP flow operations and ensure the proposed flow mitigation program is realized; 2) advisement for the development of NISP's proposed Master Plan and Adaptive Management Program; and 3) additional discipline-specific representation on technical advisory groups and input for project infrastructure proposed within the City limits.

Reason funds not expensed in 2022: The NISP project Record of Decision (ROD) was not issued until late 2022, which was later than NISP project participants anticipated. Because of this permitting delay and

because staff at Northern Water were heavily involved in post-fire recovery from the 2020 East Troublesome Fire, Northern Water elected to postpone the Adaptive Management and River Master Planning discussions with stakeholders until after the ROD was released. Northern Water initiated conversations with potential project stakeholders, including City of Fort Collins, about the intended start of these planning efforts in early 2023. Funds from this budget offer will be used for the original intended purpose of developing science-based input with the assistance from technical and engineering consultants, on how the NISP project impacts should be managed, mitigated and monitored.

BROADBAND FUND

Broadband

13) Re-Deploy of Broadband Working Capital - \$4,361,774

Purpose for funds: Offer 63.1 encompassed the ramp up of Connexion core operations as the network build out was expected to be essentially complete by year-end 2022, and customer acquisition, servicing and network maintenance approached full targeted operating levels. This offer was for all 2022 ongoing expenditures which include personnel, operating costs, cost of goods sold (primarily internet and video content) and debt servicing requirements. This request seeks to reappropriate \$4.4 million in unspent 2022 funds into 2023 for completion of the primary network buildout, access to customer premises and continued customer installations.

Reason funds not expensed in 2022: Construction of the network, accessing commercial and residential multiple dwelling unit (MDU) accounts, and ramp-up of customer base has taken longer than expected due to supply chain cost increases, build-out complexity and installation labor shortage issues. These conditions have required appropriation of additional capital expenditures for the project by City Council in September 2021 and April 2022 totaling \$28 million. An additional \$5.4 million in unanticipated working capital savings (primarily from operating cost containment and interest income from the original bond proceeds) was reserved and targeted for re-deployment as part of the updated financing efforts. \$1.0 million of this amount was spent in 2022 on network buildout. This request seeks to reappropriate the remaining \$4.4 million from the \$5.4 million re-deployed amount to meet the increased capital requirements. This does not represent an increase in the capital budget estimate, just the formal transfer of reserved funds.

DATA AND COMMUNICATIONS FUND

Information Technology

14) Staff Augmentation for Network and Voice Operational Support - \$86,000

Purpose for funds: This request will fund additional hardware support and staff augmentation for Network and Voice support that will assist with the Webex rollout, voice enterprise support, Police Wi-Fi upgrades, and other enterprise network tasks and demands. These funds will allow the Information Technology (IT) department to contract with an experienced vendor to help manage operational and project workload. This will also allow time for IT to hire new Network/Voice personnel and get them up to speed, while not losing traction on enterprise support needs, project rollouts, and maintaining a proper work-life balance with an already overextended Network staff.

Reason funds not expensed in 2022: These funds were not expensed due to workload capacity, vacant positions, and expertise issues in the midst of the transition of Network and Voice operations between Connexion and the IT department that occurred in mid-2022. Upon transferring ownership of the Network and Voice operations, IT began evaluation of the current status of the operation and prioritized what needed most attention, which was delayed lifecycle switch replacement, ARPA-funded initiatives, and voice strategy which pushed the aforementioned initiatives and operational tasks to late 2022 and into 2023. IT has evaluated, rescope, and is currently posting the vacant Network positions to better address the needs of the City's Network and Voice systems to keep up with service needs, project demands, upgrades, and expansion.

UTILITY CUSTOMER SERVICE AND ADMINISTRATION FUND

Utility Technology and Customer Service

15) Utilities Information Technology Minor Capital - \$170,848

Purpose for funds: The funds are requested for replacement of departmental firewalls for 1) the Customer Information System (CIS) Utility billing system hosted onsite at Platte River Power Authority (PRPA) and 2) the Utilities Advanced Meter Fort Collins (AMFC) system. The firewalls are currently end-of-life, and thus end-of-support, and need to be replaced.

Reason funds not expensed in 2022: The downside to the departmental firewalls is that they are discrete stand-alone installations built as a pair for redundancy. The number of these types of discrete firewall installs across the City creates a large management burden, as well as a large and potentially inefficient use of funds. IT was exploring a new concept in which these disparate firewalls could be combined into a single on-premise redundant virtual environment with the expectation that the new environment would be easier to manage, provide better redundancy, and ultimately be a more cost-effective solution. However, due to other work priorities, the research and analysis into this proposal was not able to be completed in 2022. The research into this new firewall architecture should be completed in 2023, and the funds for these firewalls could be applied towards this new firewall architecture. If the new firewall architecture proves to be unfeasible, the funds would still need to be applied to the purchase of discrete firewalls.

CITY FINANCIAL IMPACTS

This Ordinance increases 2023 appropriations by \$5,429,626. A total of \$602,754 is requested for reappropriation from the General Fund, \$4,361,774 is requested from the Broadband Fund, and \$465,098 from other funds. Reappropriation requests represent amounts budgeted in 2022 that could not be encumbered at year-end. The appropriations are from prior year reserves.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

City staff presented this reappropriation to the Council Finance Committee on March 2, 2023 and was met with approval by the Committee.

PUBLIC OUTREACH

N/A

ATTACHMENTS

- 1. Ordinance for Consideration

ORDINANCE NO. 041, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
REAPPROPRIATING FUNDS PREVIOUSLY APPROPRIATED
IN 2022 BUT NOT EXPENDED AND NOT ENCUMBERED IN 2022

WHEREAS, City Council authorized expenditures in 2022 for various purposes in the General Fund, the Transit Fund, the Transportation Fund, the Water Fund, the Broadband Fund, the Data and Communications Fund, and the Utility Customer Service and Administration Fund, portions of which were not spent or encumbered in 2022; and

WHEREAS, Article V, Section 11 of the City Charter provides that all appropriations unexpended or unencumbered at the end of the fiscal year lapse to the applicable general or special fund, unless it is an appropriation for capital projects or for federal, state, or private grants or donations that has been previously designated by City Council as a non-lapsing appropriation; and

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

WHEREAS, the City Manager has recommended the appropriation described herein and has determined that the amounts to be appropriated as described herein are available and currently unappropriated and will not cause the total amount appropriated in the Funds as described herein to exceed the current estimate of actual and anticipated revenues and all other funds to be received in those Funds during this fiscal year; and

WHEREAS, it is in the best interests of the City and its residents to re-appropriate funds for the expenditures below, in furtherance of these expenditures and their respective public purposes authorized in 2022 for which such appropriated funds were not expended and not encumbered during 2022.

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

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

Section 2. That there is hereby appropriated from prior year reserves in the General Fund the sum of SIX HUNDRED TWO THOUSAND SEVEN HUNDRED FIFTY-FOUR DOLLARS (\$602,754) to be expended in the General Fund for the following purposes:

K9 Vests	\$3,520
NCRCN (Northern Colorado Regional Communication Network)	\$300,000
Council High Performing Board	\$18,295
DEI Principles of Community	\$8,000
Land Acknowledgment Funding	\$16,065

Park Planning & Development Special Project Support	\$5,600
Mediation and Restorative Justice Services	\$4,526
EV Credits	\$238,000
West Nile Virus	\$8,748
GENERAL FUND TOTAL	\$602,754

Section 3. That there is hereby appropriated from prior year reserves in the Transit Fund the sum of FIFTY-FIVE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$55,750) to be expended in the Transit Fund for the following purpose:

PSD & Transfort Collaboration Study	\$55,750
TRANSIT FUND TOTAL	\$55,750

Section 4. That there is hereby appropriated from prior year reserves in the Transportation Fund the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000) to be expended in the Transportation Fund for the following purpose:

Neighborhood Traffic Mitigation Program Project Construction	\$100,000
TRANSPORTATION FUND TOTAL	\$100,000

Section 5. That there is hereby appropriated from prior year reserves in the Water Fund the sum of FIFTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$52,500) to be expended in the Water Fund for the following purpose:

Northern Integrated Supply Project (NISP) Response & Engagement	\$52,500
WATER FUND TOTAL	\$52,500

Section 6. That there is hereby appropriated from prior year reserves in the Broadband Fund the sum of FOUR MILLION THREE HUNDRED SIXTY-ONE THOUSAND SEVEN HUNDRED SEVENTY-FOUR DOLLARS (\$4,361,774) to be expended in the Broadband Fund for the following purpose:

Re-Deploy of Broadband Working Capital	\$4,361,774
BROADBAND FUND TOTAL	\$4,361,774

Section 7. That there is hereby appropriated from prior year reserves in the Data and Communications Fund the sum of EIGHTY-SIX THOUSAND DOLLARS (\$86,000) to be expended in the Data and Communications Fund for the following purpose:

Staff Augmentation for Network and Voice Operational Support	\$86,000
DATA & COMMUNICATIONS FUND TOTAL	\$86,000

Section 8. That there is hereby appropriated from prior year reserves in Utility Customer Service and Administration Fund the sum of ONE HUNDRED SEVENTY THOUSAND EIGHT HUNDRED FORTY-EIGHT DOLLARS (\$170,848) to be expended in the Utility Customer Service and Administration Fund for the following purpose:

Utilities IT Minor Cap	\$170,848
605 – UTILITY CUSTOMER SERVICE AND ADMINISTRATION	<u>\$170,848</u>

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

AGENDA ITEM SUMMARY

City Council



STAFF

Tyler Marr, Deputy City Manager
Blaine Dunn, Accounting Director
Ingrid Decker, Legal

SUBJECT

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

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on March 21, 2023, is an appropriation to purchase the land of the former Hughes Stadium.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

Per a voter-approved ballot measure in April 2021, the former Hughes Stadium site was rezoned as open lands, and the City was directed to make a good-faith effort to purchase the 165-acre site from CSU within two years at fair market value. The City and the Board of Governors of the CSU System signed a contract on March 2, 2023, regarding the sale of the property to the City. The total cost of the purchase is \$12.7M; out of which \$2M each will come from the City's General Fund and Natural Area fund, respectively, and the remaining \$8.7M will be secured through the 2023 Certificates of Participation (COPs). Costs will be allocated proportionally to corresponding funds once land use is determined for the Hughes Stadium land.

CITY FINANCIAL IMPACTS

This Ordinance will increase appropriations in the General Fund and Natural Areas Fund. The City has sold the 2023 COPS and will finalize their issuance before Second Reading of the Ordinance. The City will use a combination of reserves and proceeds from the issuance of the 2023 COPs to finance the project. The ordinance will appropriate a total of \$12,690,894. The source and use of the funds are as follows:

<u>Source of Funds</u>		<u>Use of Funds</u>	
COPs	\$ 8,690,894	Payment to CSU	\$ 12,500,000
General Fund Reserves	2,000,000	Closing Costs - Land	10,000
Natural Area Reserves	2,000,000	Closing Costs - COPs	180,894
Total	<u><u>\$ 12,690,894</u></u>	Total	<u><u>\$ 12,690,894</u></u>

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

N/A

PUBLIC OUTREACH

N/A

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 042, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING SUPPLEMENTAL APPROPRIATIONS FROM LEASE FINANCING PROCEEDS
AND APPROPRIATING PRIOR YEAR RESERVES FOR THE PURCHASE OF
VACANT LAND AT THE FORMER HUGHES STADIUM SITE

WHEREAS, Colorado State University (“CSU”) is the owner of a parcel of land on the west side of Fort Collins that is the site of the former Hughes Stadium (the “CSU Property”); and

WHEREAS, in April 2021 Fort Collins voters approved a citizen-initiated ballot measure requiring the City to zone the CSU Property as open lands, and to make a good-faith effort to purchase the land from CSU; and

WHEREAS, on March 2, 2023, the City and the Board of Governors of the CSU system executed a purchase and sale agreement by which the City agreed to buy the CSU Property from CSU for \$12.5 million, contingent on the City Council’s appropriation of funds sufficient and intended for such purpose; and

WHEREAS, the City has sold its 2023 Lease Certificates of Participation (“2023 COPs”) and will finalize completion of the 2023 COPs transaction prior to the effective date of this Ordinance, and the COPs proceeds will be deposited in the General Fund; and

WHEREAS, the total cost of the purchase, including closing costs and the costs related to the issuance of the 2023 COPs to finance the purchase, is \$12.7 million; and

WHEREAS, this appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of acquiring vacant land for public purposes as approved by the voters; and

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

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

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

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

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

Section 2. That there is hereby appropriated from new revenue or other funds in the General Fund the sum of EIGHT MILLION SIX HUNDRED NINETY THOUSAND EIGHT HUNDRED NINETY-FOUR DOLLARS (\$8,690,894) to be expended in the General Fund for the purchase of the vacant land at the former Hughes Stadium Site.

Section 3. That there is hereby appropriated from prior year reserves in the General Fund the sum of TWO MILLION DOLLARS (\$2,000,000) to be expended in the General Fund for the purchase of the vacant land at the former Hughes Stadium Site.

Section 4. That there is hereby appropriated from prior year reserves in the Natural Areas Fund the sum of TWO MILLION DOLLARS (\$2,000,000) to be expended in the Natural Areas Fund for the purchase of the vacant land at the former Hughes Stadium Site.

Section 5. That the City Council hereby directs the City Manager to advise Council regarding potential adjustments to the sources of funds used for the purchase of the former Hughes Stadium Site based on the planned use of the property, promptly after completion of a plan for the use of the property.

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

AGENDA ITEM SUMMARY

City Council



STAFF

Tyler Stamey, City Traffic Engineer
Rachel Ruhlen, Transportation Planner
Aaron Guin, Legal

SUBJECT

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

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on March 21, 2023, adopts the Vision Zero Action Plan.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

Vision Zero is a vision of zero traffic deaths and serious injuries by 2032. The Vision Zero Action Plan (the "Plan") is a new approach to roadway safety that expands existing efforts to improve traffic safety. The Plan identifies key opportunities to significantly improve and expand the City's traffic safety efforts. Staff presented a draft of the Plan to City Council for review at its Work Session on February 14, 2023. Additional information on the Plan vision, goals, and actions are available in staff's Agenda Item Summary for the Work Session on February 14.

The following changes have been incorporated into the Plan to address feedback received from Councilmembers:

- Expanded the goal "Support Mode Shift" to "Support Mode Shift to Reduce Motor Vehicle Trips".
- Clarified in the Implementation Notes of the Transformative Actions in the "Support Mode Shift to Reduce Motor Vehicle Trips" goal area that implementation of other plans identified as Transformative Actions does not affect how those plans are carried out.
- Language around equity in "An Equitable Approach" and actions in the "Center Equity" goal were revised to clarify the balance of safety and equity.
- Clarified in the Implementation Notes of Transformative Actions 4 and 5 that infrastructure and quick-build treatments can be used to retrofit existing roads.

- Clarified in Supporting Action 1.2 the prioritization of trail investments as alternative routes to roads that are on the High Injury Network.
- Clarified Supporting Action 3.2 that media reporting of traffic crashes should humanize the people involved.
- Clarified Supporting Action 3.7 that fully staffing the Traffic Enforcement Unit means filling existing positions.
- Added Supporting Action 4.7, “Incorporate growth projections and anticipated development into safety planning.”
- Removed “in place of in-person traffic enforcement” from Supporting Action 5.3.
- Added Supporting Action 5.4, “Provide opportunities for community input on Vision Zero initiatives.”
- In response to a public comment that restricting the Vision statement to “streets” is confusing, the Vision statement was revised.

CITY FINANCIAL IMPACTS

Adoption of this Ordinance does not commit dedicated funding for implementation. As with any plan, policy change, or new program, future City investments in implementing the Plan actions should follow standard budget processes.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Staff engaged with five City Boards, Commissions, and Committees throughout the planning process, with three of them providing specific feedback on the Plan:

- On November 16, 2022, the Transportation Board provided feedback on the Plan.
- On November 28, 2022, the Bicycle Advisory Committee provided feedback on the Plan.
- On December 14, 2022, the Senior Advisory Board submitted a memo approving the concept of the Plan.

PUBLIC OUTREACH

Development of the Plan drew from community input received on recent related efforts such as the Active Modes Plan (a Vision Zero visioning question was included during Active Modes Plan engagement) and the Transportation Capital Projects Prioritization Study, as well as 1,118 service requests received on neighborhood safety concerns/issues, new signals or pedestrian crossings, roadway safety concerns, or school safety concerns through Access Fort Collins. The Plan received 43 comments during the public input phase from December 9, 2022 – January 13, 2023.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration
2. Ordinance Exhibit A

ORDINANCE NO. 043, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ADOPTING THE VISION ZERO ACTION PLAN AS A COMPONENT OF CITY PLAN

WHEREAS, the Mayor of the City of Fort Collins proclaimed on December 20, 2016, that the City of Fort Collins is a community committed to *Moving Towards Zero Deaths* and partnering with the Colorado Department of Transportation in its *Moving Towards Zero Deaths* initiative through the State's Strategic Highway Safety Plan; and

WHEREAS, the City's Traffic Operations Department, in partnership with Police Services, collects, compiles, analyzes, reports, utilizes and monitors crash data to support safety; and

WHEREAS, prioritizing transportation safety is a focus of City Plan and the City actively administers programs, conducts community outreach, and implements projects related to safety; and

WHEREAS, despite these efforts, people continue to suffer death and serious injury while traveling in Fort Collins, with 321 severe crashes occurring in 2021, including 11 fatalities; and

WHEREAS, eligibility for federal funding streams such as Safe Streets for All require communities to develop and adopt safety action plans; and

WHEREAS, the City's Comprehensive Plan, referred to as City Plan, was first adopted pursuant to Resolution 2019-048, was then subsequently ratified by Ordinance No. 040, 2020, and has since been updated to add plan elements as adopted by the City Council; and

WHEREAS, the Active Modes Plan adopted by City Council on December 20, 2022, committed to zero active modes deaths and serious injuries by the year 2032; and

WHEREAS, the Vision Zero Action Plan was developed after crash data analysis, public outreach, discussion and consideration of community needs and priorities; and

WHEREAS, the Vision Zero Action Plan identifies key opportunities to significantly improve traffic safety; and

WHEREAS, the Vision Zero Action Plan provides strategies for focusing efforts and funding towards building a safer transportation network; and

WHEREAS, at its work session on February 15, 2023, City Council reviewed the Vision Zero Action Plan and provided input that City staff incorporated, and a final version of the Vision Zero Action Plan reflecting the work session discussion is attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS, the City Council has determined that it is in the best interests of the residents of the City of Fort Collins to adopt formally the Vision Zero Action Plan as a component of City Plan.

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

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

Section 2. That the City Council hereby adopts the Vision Zero Action Plan, attached hereto as Exhibit "A," as a component of City Plan.

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

FORT COLLINS VISION ZERO ACTION PLAN

March 21, 2023 |

Table of Contents

Executive Summary	2
Introduction	5
What is Vision Zero?	7
The Fort Collins Vision.....	7
Goals of the Fort Collins Vision Zero Action Plan.....	8
Understanding Safety Issues in Fort Collins.....	11
Current Efforts.....	11
Stakeholder and Community Engagement	12
Best Practices.....	14
Crash Trends	15
High-Injury Network (HIN)	19
How Fort Collins Will Achieve Vision Zero	21
An Equitable Approach.....	21
Transformative Actions and Supporting Actions.....	23
Countermeasures	33
Implementation	36

Executive Summary

Any traffic deaths or life-changing injuries in Fort Collins are unacceptable. In 2021, there were 332 crashes in Fort Collins that resulted in a fatality or injury. In that year, 11 people lost their lives while traveling on Fort Collins' streets. These events bring immeasurable personal loss and negative community impacts.

The City of Fort Collins is taking the Vision Zero approach to transportation safety to renew its commitment to creating safer streets where no one is at risk of losing their life or being seriously injured. Fort Collins' priorities and commitment to Vision Zero are centered on the understanding that even a single traffic fatality or serious injury is unacceptable.

Many communities have made a formal commitment to Vision Zero but fewer have achieved it. Those that have achieved at least one year of Vision Zero, such as Boulder, Arvada, and Centennial in Colorado, and other cities with population similar to Fort Collins, such as Oxnard CA, Lansing MI, and Allentown PA, and hundreds of other town and cities around the world, are an inspiration and a model for Fort Collins.

Fort Collins' vision is that:

By 2032, no one dies or has a serious injury while traveling in Fort Collins.

The Fort Collins Vision Zero Action Plan takes a data-driven approach to analyze crash trends and identify a High-Injury Network (HIN) where a disproportionate number of crashes led to fatalities and serious injuries. It outlines specific actions for the City to take in the next ten years to achieve Vision Zero. The actions in the Plan address safety issues in these crash trends and the HIN.

Developing the Action Plan

The Fort Collins Vision Zero Action Plan was developed collaboratively by City staff across multiple departments. A Technical Advisory Group that represents a diverse cross-section of the Fort Collins government and local and statewide organizations was formed to guide the development of the Plan and prioritization of action items.

Additionally, feedback from the larger Fort Collins community has guided the development of the Plan. This included presentations to and feedback from various City boards and committees, an online public review of this Action Plan, and outreach efforts for previous plans of the Fort Collins' transportation system. These previous plans include the Transportation Capital Projects Prioritization Study and the Fort Collins Active Modes Plan. The Fort Collins Vision Zero Action Plan is tied to the City's existing plans and policies and identifies ways to reprioritize existing efforts to achieve Vision Zero.

What is a Serious Injury?

The United States Department of Transportation defines a serious injury or suspected serious injury as any injury other than fatal that results in one or more of the following:

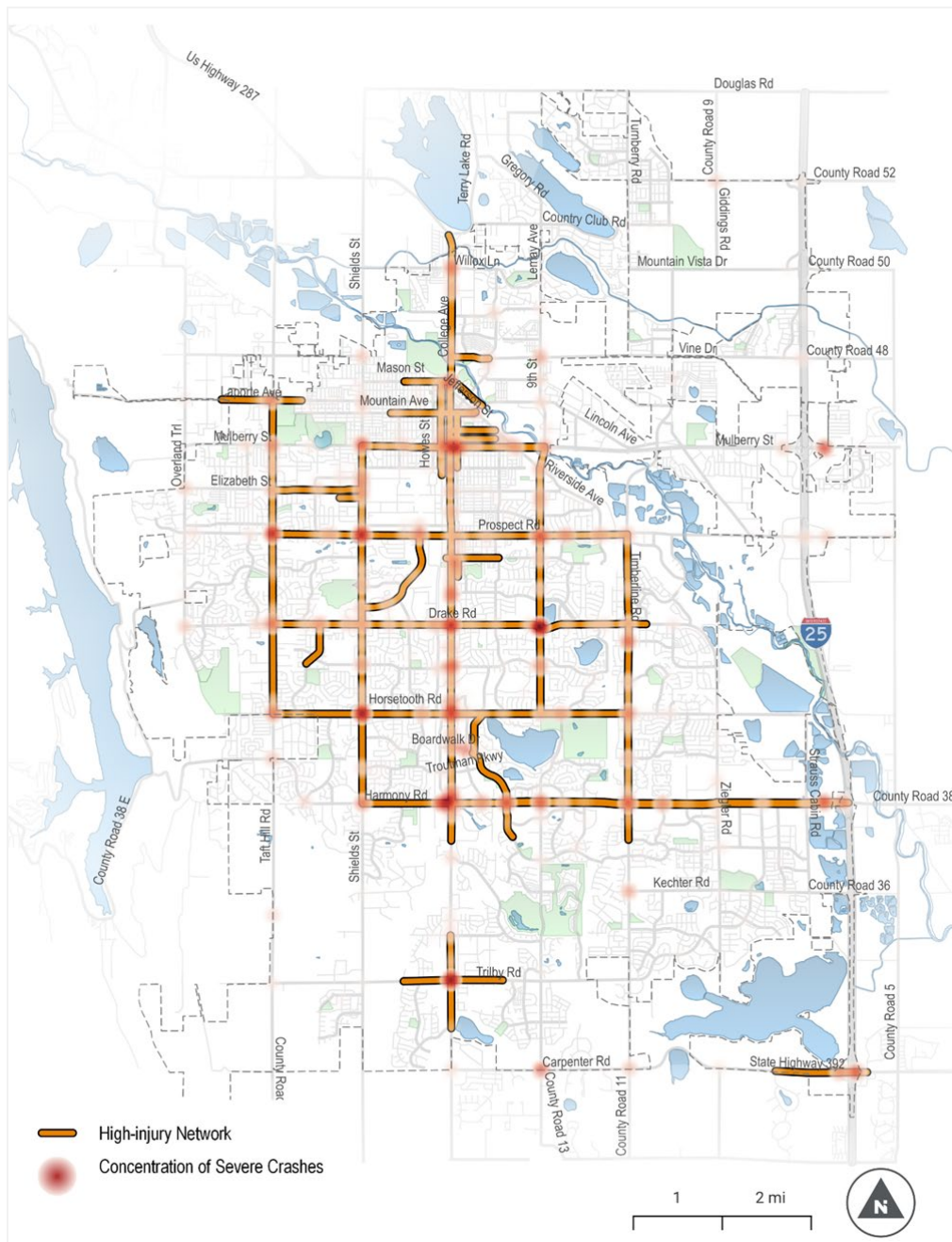
- Severe laceration resulting in exposure of underlying tissues/muscle/organs or resulting in significant loss of blood
- Broken or distorted extremity (arm or leg)
- Crush injuries
- Suspected skull, chest, or abdominal injury other than bruises or minor lacerations
- Significant burns (second and third degree burns over 10% or more of the body)
- Unconsciousness when taken from the crash scene
- Paralysis

Crashes that lead to fatal or serious injuries are referred in the Action Plan as "severe crashes"

EXHIBIT A

As part of the data-driven approach to develop the Fort Collins Vision Zero Action Plan, the street segments with the greatest share of severe crashes – those resulting in death or injury - were identified via a geospatial analysis of crash data.

These street segments make up the High-Injury Network (HIN) and are mapped below.



The HIN represents just eight percent (8%) of the streets in Fort Collins, however, those street segments account for sixty-three percent (63%) of all severe crashes in the city. Targeting safety investments to the HIN will have the greatest impact on reducing severe crashes.

Goals and Actions to Achieve Vision Zero

The goals in the Fort Collins Vision Zero Action Plan will guide the implementation of actions to achieve Vision Zero. The Action Plan establishes five individual goals plus one overarching goal for the City. Under each of the five individual goals are several action items to achieve that goal. Actions are categorized as Transformative – most impactful to help move Fort Collins towards achieving Vision Zero, or Supporting – less impactful actions that are important in complementing the transformative action items.

Focus on Vulnerable Users

The Action Plan has the overarching goal to focus on vulnerable road users as a fundamental part of making roads safer for all road users. Vulnerable road users are people using the transportation system outside of a motor vehicle. They may be riding a motorcycling, using a wheelchair, walking, bicycling, or using other micromobility devices. Making roads safer for vulnerable road users makes the roads safer for everyone.

Support Mode Shift to Reduce Motor Vehicle Trips

Promoting sustainable transportation such as walking, biking, and using public transit will help the Fort Collins community reduce dependency on motor vehicles. Motor vehicles are involved with nearly all severe traffic crashes; therefore, the development of safe multimodal street networks, and programs and policies that increase the use of sustainable modes and decrease the use of motor vehicles can help the community achieve Vision Zero.

Prioritize Safer Speeds and Multimodal Places

High motor vehicle speeds increase the risk of serious injury or death. Engineering solutions such as road diets, crossing improvements, and traffic signal optimization have been shown to slow speeds, create people-centric spaces, and reduce severe crashes.

Promote a Culture of Traffic Safety

Achieving zero traffic deaths and serious

injuries can only be successful if Fort Collins' street planners and designers, City leaders, and street users set priorities and make decisions that improve transportation safety and reduce severe crashes.

Increase Data Transparency and Partnerships

Improving the accuracy, timeliness, and quality of crash data helps planners, engineers, and policymakers make better decisions about resource allocation and facility design. Data on the locations of severe crashes will help in prioritizing, implementing, and evaluating projects that support Vision Zero.

Center Equity

A Vision Zero initiative is successful when everyone is safe using Fort Collins' streets. An equitable Vision Zero process helps ensure improvement projects and programs reduce harm without increasing the burden on historically underserved communities.

The proposed action items in the Plan are high-level and include a broad assessment of the high, medium, or low level of resources required. As the actions are developed, more specific cost estimates can be determined. Some actions can be accomplished with little to no additional expense or staff time while others require more funding. New federal funding streams that prioritize safety may help fund these actions, and the Vision Zero Action Plan and safety investments will be important for increasing Fort Collins' competitiveness to leverage this funding.

Introduction

The City of Fort Collins has taken safety seriously for decades. As the first public local entity to join the Colorado Department of Transportation (CDOT) Moving Towards Zero Deaths initiative to eliminate traffic-related deaths, the City of Fort Collins has developed a reputation for its dedication to traffic safety. Fort Collins has robust traffic enforcement, designs for traffic safety in road construction projects, and systemically encodes safety in traffic operations. City departments coordinate with each other and collaborate with outside agencies to promote traffic safety.

However, despite these efforts, traffic crashes continue to result in fatalities and serious injuries. An average of 285 crashes on Fort Collins' streets resulted in an injury or fatality every year from 2017 through 2021. Not only do these tragic events contribute to immeasurable personal loss, but they also put elevated pressure on the local emergency response, and the unsafe and uncomfortable environments that lead to severe crashes discourage the use of active modes, affecting communitywide health and mobility and our ability to meet climate goals.

Fort Collins needs a new approach to roadway safety, one that expands existing efforts to improve traffic safety. Therefore, the Fort Collins Vision Zero Action Plan builds on previous City plans and policies, and emphasizes:

- Making the existing road network **safer**
- Focusing on the safety of **all road users**
- Eliminating crashes that result in **fatalities and serious injuries**
- **Reducing conflicts** at intersections, along the high-injury network, and within historically underserved communities
- Planning for **ongoing evaluation** and monitoring of deployed strategies

Vision Zero is an opportunity to address traffic safety from a variety of angles and to guide City leadership in designing streets that emphasize safety, predictability, and comfort while recognizing the inevitability of human error.



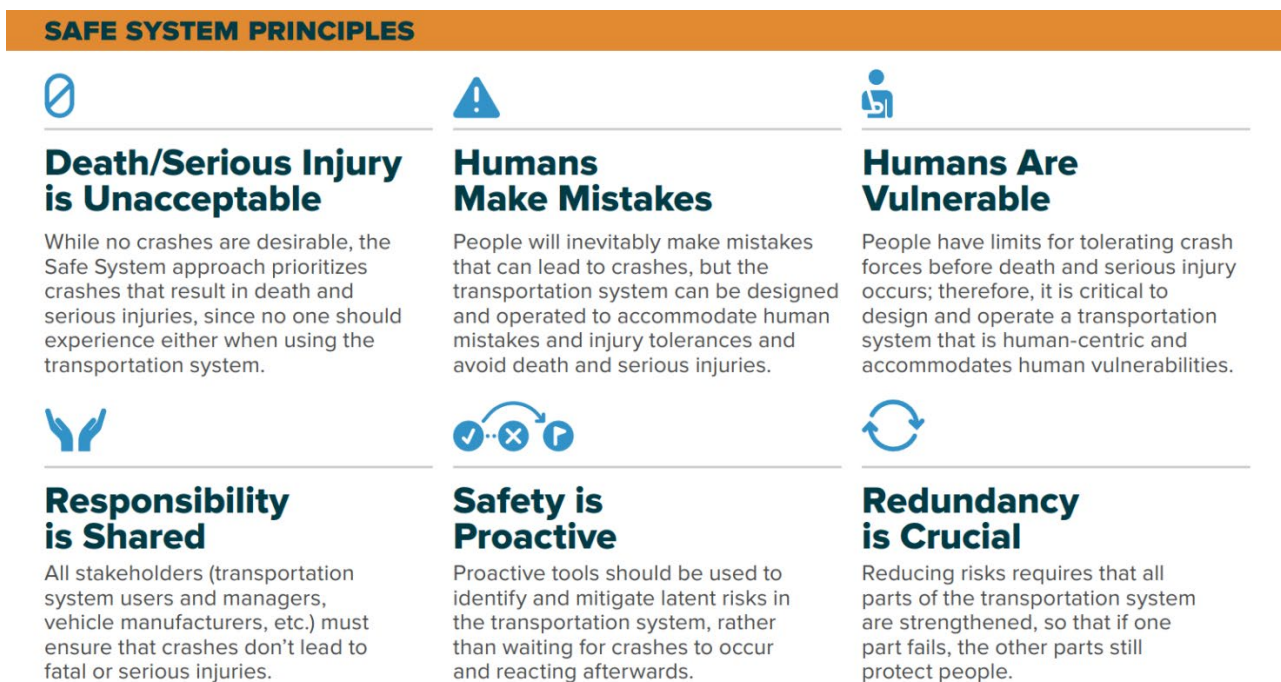
*A "ghost bike" marks the location where someone riding a bicycle was killed in a collision in 2021.
Source: City of Fort Collins*

What is Vision Zero?

Vision Zero is an approach to transportation safety that accepts no loss of life or serious injury on our transportation system. Vision Zero takes the *Safe System* approach to prioritize safety in decision-making processes. The *Safe System* approach is different from conventional ways of addressing traffic safety because it recognizes that while humans make mistakes when using our roads, death and serious injury are not acceptable outcomes. Responsibility for a safe road system should be shared, proactive, and redundant to prevent people from being killed or seriously injured on roadways. Under Vision Zero, City leadership, traffic engineers, transportation network designers, local enforcement, policymakers, and road users all have a shared responsibility to prevent fatal and serious injury crashes from occurring. The principle of redundancy recognizes that law enforcement cannot prevent all road user mistakes. Other layers of protection - in addition to law enforcement - are needed to prevent severe crashes.

The principles of the *Safe System* approach are outlined in Figure 1.

Figure 1: Principles of the *Safe System* Approach. Source: FHWA.



The Fort Collins Vision

Fort Collins' priorities and commitment to Vision Zero are centered on the understanding that even a single traffic fatality or serious injury is unacceptable. Fort Collins' vision for traffic safety is that: **By 2032, no one dies or has a serious injury while traveling in Fort Collins.**

Guided by this vision statement, Fort Collins created this Action Plan containing strategies to achieve Vision Zero. This vision statement supports and aligns with the *Active Modes Plan* vision horizon and statement, that the City will achieve 50 percent active mode share and eliminate active modes traffic fatalities and serious injuries by 2032.

Goals of the Fort Collins Vision Zero Action Plan

After initial stakeholder engagement, analysis of existing conditions and citywide goals, and a review of best practices in Vision Zero Action Plans from peer cities, six goals emerged.

Overarching Goal: Focus on Vulnerable Users

The overarching goal to focus on vulnerable road users is a fundamental part of making roads safer for all in Fort Collins. Vulnerable road users are people using the transportation system outside of a motor vehicle. They may be riding a motorcycle, using a wheelchair, walking, bicycling, or using other micromobility devices. People riding motorcycles, walking, or bicycling are disproportionately represented in severe crashes.

People with disabilities, young people, and the elderly face a high risk of traffic fatalities and injuries. People with disabilities and the elderly may walk or move more slowly, people in wheelchairs and children have a lower profile and are harder to see, and people with vision, hearing, or cognitive impairments may have difficulty accessing critical information on the transportation network.

A focus on vulnerable road users is embedded across all goals because measures to reduce severe crashes for vulnerable road users also reduce crashes for people in motor vehicles. However, measures to reduce severe crashes for people in motor vehicles do not necessarily reduce severe crashes for vulnerable road users. For example, seatbelts protect people in motor vehicles but do not protect people outside, while roundabouts protect people inside and outside of motor vehicles by reducing the number of conflict points and reducing motor vehicle speed.

Support Mode Shift to Reduce Motor Vehicle Trips

Promoting sustainable transportation such as walking, biking, and using public transit will help the Fort Collins community reduce dependency on motor vehicles. Motor vehicles are involved with nearly all severe traffic crashes; therefore, the development of safe multimodal street networks, and programs and policies that increase the use of sustainable modes and decrease the use of motor vehicles can help the community achieve Vision Zero.

Description

Historically, Fort Collins' transportation system has been built to prioritize the investment in movement of motor vehicles over all other modes, leading to an unbalanced transportation system and one that is potentially deadly for all road users. A continuation of efforts that direct funding towards improving efficiency for active modes users, increasing the frequency of transit, and supporting alternatives to driving will help Fort Collins reduce car use. Vulnerable road users directly benefit from strategies to reduce dependency on motor vehicles, and having fewer threats on the road benefits all road users.

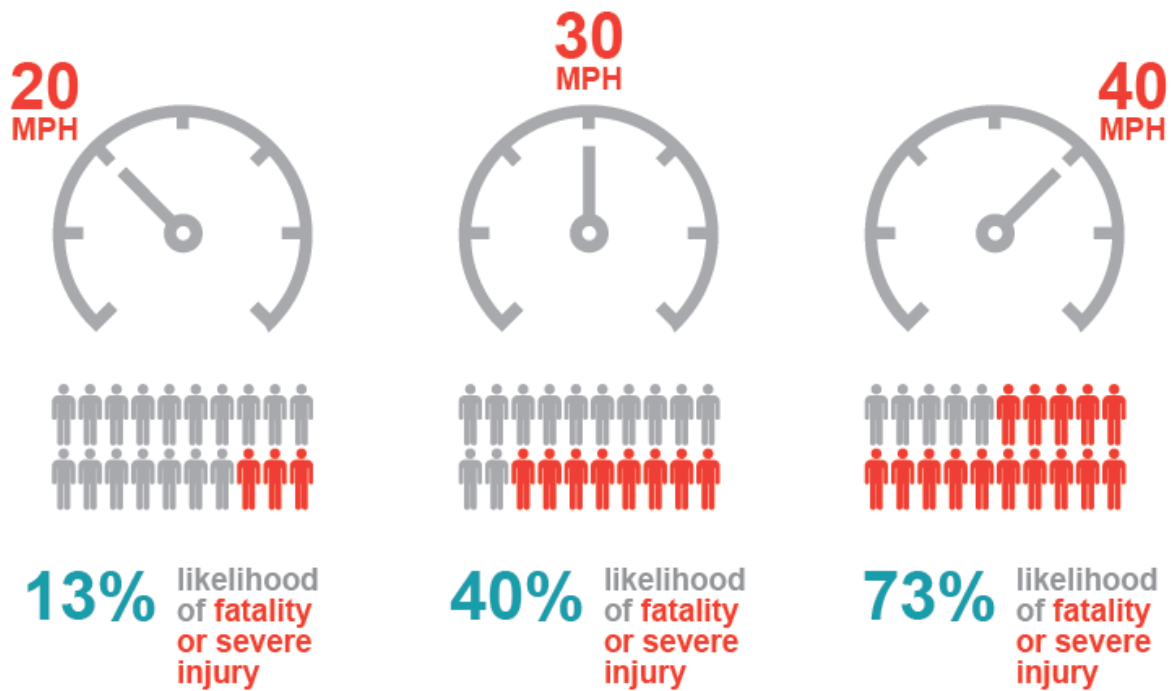
Prioritize Safer Speeds and Multimodal Places

High motor vehicle speeds increase the risk of serious injury or death. Engineering solutions such as road diets, crossing improvements, and traffic signal optimization have been shown to slow speeds, create people-centric spaces, and reduce severe crashes.

Description

Creating safe speeds involves designing streets to manage traffic speed. Slower speeds reduce the kinetic energy of crashes and result in a smaller chance of injury or death for people inside and outside of motor vehicles. National research indicates that the risk of death or severe injury (as defined in the report) increases for people walking when motorists' speed increases (Figure 2). Managing traffic speed through engineering improvements also makes streets safer and more inviting for people using active transportation.

Figure 2: Relation Between Motorist Speeds and Rate of Pedestrian Fatality or Severe Injury



Source: Tefft, B.C. (2011). *Impact Speed and a Pedestrian's Risk of Severe Injury or Death (Technical Report)*. Washington, D.C.: AAA Foundation for Traffic Safety.

Promote a Culture of Traffic Safety

Achieving zero traffic deaths and serious injuries can only be successful if Fort Collins' street planners and designers, City leaders, and street users set priorities and make decisions that improve transportation safety and reduce severe crashes.

Description

This goal includes shifting internal agency priorities and standards to the latest best practices to create and maintain safe roads, and community engagement so that there is an understanding of the dangers of unsafe streets and the need for roadway redesigns. It is a community-driven goal that requires buy-in and support from diverse stakeholders, the community, elected officials, interdepartmental agency staff, and the media. Vulnerable road users directly benefit from strategies to promote a culture of traffic safety because it establishes that vulnerable road users have a right to use the public right-of-way safely. People in motor vehicles benefit from a culture of traffic safety that results in fewer severe crashes.

Increase Data Transparency and Partnerships

Improving the accuracy, timeliness, and quality of crash data helps planners, engineers, and policymakers make better decisions about resource allocation and facility design. Data on the locations of severe crashes will help in prioritizing, implementing, and evaluating projects that support Vision Zero.

Description

Vision Zero is a data-driven effort that relies on up-to-date information to quickly identify areas that are high-risk, determine priorities, and mitigate risks before traffic fatalities and serious injuries can occur. Given limited City resources and funds to make improvements, it is important for the City to formulate a system for collecting, maintaining, sharing, and reviewing data to drive decision-making. Having consistent, publicly available, useable data is also critical for tracking progress, celebrating successes, and adjusting investments in Vision Zero projects. Severe crashes involving vulnerable road users are frequently unreported; additional data sources beyond police reports can fill in gaps.

Center Equity

A Vision Zero initiative is successful when everyone is safe using Fort Collins' streets. An equitable Vision Zero process helps ensure improvement projects and programs reduce harm without increasing the burden on historically underserved communities.

Description

National research shows that low-income communities and communities of color are disproportionately affected by traffic violence in their neighborhoods. Aiming for equitable implementation by providing more resources to historically underserved communities should be a priority. Vulnerable road users, especially those most reliant on walking and bicycling, are often people without access to motor vehicles, people with low income, and people with disabilities. People with low income, inside and outside of motor vehicles, can least bear the costs associated with severe crashes or the deaths of family members.

Understanding Safety Issues in Fort Collins

Vision Zero takes multiple approaches to understanding systemic factors behind traffic deaths and injuries. First, current efforts in the City of Fort Collins to promote traffic safety were reviewed. Second, in order to better understand community values and priorities around traffic safety and Vision Zero strategies, the City of Fort Collins conducted an extensive review of stakeholder and community feedback received from recent transportation-related planning efforts. Third, best practices from other cities with Vision Zero Action Plans were reviewed. Finally, successful Vision Zero programs are largely data-driven. Therefore, the City of Fort Collins also analyzed crash data to understand how and where people are killed or seriously injured while traveling on Fort Collins' streets. The locations, contributing factors, and demographic information will help Fort Collins target efforts to achieve Vision Zero.

Current Efforts

The City of Fort Collins' current efforts to promote traffic safety include robust traffic enforcement, designing safety in road construction projects, and systemically encoding safety in traffic operations. City departments coordinate and the City collaborates with other agencies to promote traffic safety.

The Fort Collins Police Department Traffic Enforcement Unit addresses the top road safety focus areas of speeding, red light and stop sign violations, following too closely, and distracted driving, issuing 7,550 traffic citations in 2021. Fort Collins has used automated enforcement since the first red light cameras in 1997. Today, there are four red light cameras and two camera radar vehicles. Revenue from automated enforcement is used for traffic calming and traffic enforcement equipment. Police Services has officers with specialized training and certification to conduct a commercial vehicle inspection. If a commercial vehicle is stopped and there are indications an inspection should be conducted, a trained certified inspector will conduct that inspection and may place the vehicle out of service until violations have been corrected. The Traffic Unit has not escaped the national shortage of police officers, however, and must be fully staffed for robust traffic enforcement.

Traffic safety is designed into road construction projects. Every ten years, the Transportation Capital Projects Prioritization Study ranks arterial intersection and corridor projects with safety as one of the highest criteria. Safety-specific funding opportunities are opportunities to implement projects with a safety focus sooner than others. One recent example of a safety-focused project is the addition of separated bicycle and pedestrian facilities at the Vine Drive and Lemay Avenue overpass, which has been a hot spot of severe crashes and had no sidewalks or bike lanes. Four capital projects with safety as the primary goal are currently underway at intersections around the city.

Traffic Operations Department systematically evaluates and adjusts operations to reduce crashes. For example, at College Avenue and Trilby Road, the city's top hot spot of severe crashes, the protected permissive left turn phase was changed to protected only left turns, with the result of a reduction in the number of crashes. Any intersection that has experienced at least three approach turn crashes is evaluated for changes to the left turn phasing, and signal timing through corridors is coordinated to reduce decision points that result in rear-end collisions.

Police and Traffic Operations departments coordinate to assess conditions leading to severe crashes. Police Services collects crash data and Traffic Operations has produced an annual analysis of crash data since 2015, "Safety in the City".

Other agencies in Northern Colorado are following Fort Collins' lead in Vision Zero. In 2019, after its first traffic death in twenty years, Colorado State University (CSU) made a commitment to Vision Zero, established the President's Vision Zero Task Force, and is developing a Vision Zero Action Plan parallel to the City's process.

Stakeholder and Community Engagement

To develop the Vision Zero Action Plan, Fort Collins engaged with a Vision Zero Technical Advisory Committee (TAC), met with select boards and commissions (the Youth Advisory Board, Senior Advisory Board, Disability Advisory Board, the Bicycle Advisory Committee, and the Transportation Board), held an online comment period for the community to review the draft Action Plan, and reviewed feedback from previous outreach efforts. Community input from a variety of past efforts and surveys that helped guide the goals and strategies of the Action Plan is summarized below.

Vision Zero Technical Advisory Committee (TAC)

The TAC was comprised of a group of stakeholders that represent a diverse cross-section of the Fort Collins government. The TAC included Fort Collins City staff from:

Community Development & Neighborhood Services, Economic Health Office, Engineering Department, FC Moves, Parking Services, Parks Department, Parks Planning & Development, Planning Department, Police Services, Streets Department, Traffic Operations, Transport, and Utilities Department

Local and statewide agencies and organizations that also were a part of the TAC included:

Bike Fort Collins, Colorado State University (CSU), Colorado Department of Transportation (CDOT), Larimer County, North Front Range Metropolitan Planning Organization (MPO), Poudre School District (PSD), Safe Kids Larimer County, and UC Health

During three TAC meetings, participants had in-depth discussions centered on:

Meeting #1: Existing conditions and vision, mission, and goals

Meeting #2: Draft Vision Zero strategies

Meeting #3: Prioritization of strategies

Transportation Capital Projects Prioritization Study (TCPPS)

The 2022 TCPPS, which analyzed safety and congestion data for intersections and arterial roadways in Fort Collins, consulted community members on their top traffic safety priorities and needs. Outreach activities revealed that crash reduction is the top priority for Fort Collins residents. The number of requests for traffic calming was far higher than the number of concerns regarding vehicle delays. The Fort Collins community expressed a desire for traffic calming measures along minor arterial roads to decrease crossing distances, reallocate lanes as bikeways and bus-only lanes, and better separation of motor vehicles and active modes users.

CDOT Region 4 Bicycle and Pedestrian Study

In 2021, CDOT released an online survey to understand what statewide pedestrian and bicycle improvements are needed on CDOT-owned roadways. In Fort Collins, CDOT found unsafe traffic conditions and crossings were a top concern, with many comments calling for more grade-separated crossings and better education for motorists.

Fort Collins Active Modes Plan (AMP)

To improve the environment for active modes users and encourage mode shift in Fort Collins, the 2022 AMP engaged the community on identifying current transportation patterns and needs. Results of outreach activities concluded that the community believes that to achieve Vision Zero, Fort Collins must manage traffic speed, focus on areas with many severe crashes, educate drivers and active modes users on safe practices, and make alternative modes easy and realistic options for everyday travel.

Fort Collins General Service Requests

More than three years of service requests submitted by Fort Collins residents were analyzed. Between January 2018 and March 2022, 1,118 service requests were received on neighborhood safety concerns/issues, new signals or pedestrian crossings, roadway safety concerns, or school safety concerns through Access Fort Collins. Over 900 of these requests were categorized by topic:

- 47% on vehicle speed concerns
- 15% on pedestrian traffic issues or crosswalks
- 14% signs and signals requests
- 8% traffic congestion concerns
- Other topics (<5% each) on parking in bike lanes, dangerous intersections, traffic violations, speed bump removal, restriping, line of sight, truck traffic, and noise



Asphalt Art projects are an opportunity to further engage the Fort Collins community in the design elements of the public right-of-way and can be implemented in the excess space created by safety treatments like bulb-outs and curb extensions. Source: City of Fort Collins.

Best Practices

The Vision Zero Network¹ guidelines for an effective Vision Zero Action Plan lays out two key components of a strong Action Plan: **foundational elements** and **actionable strategies**. These key components are underpinned by a process of continued community engagement and attention to equity.

Foundational elements are:

- Robust data framework
- Measurable goals with a clear timeline for implementation
- Accountability
- Transparency

Actionable strategies should:

- Prioritize roadway design
- Focus on speed management
- Utilize impactful education strategies
- Ensure enforcement is equitable.

Reviewing foundational elements and actionable strategies from other Colorado communities and national peer cities, including Boulder and Denver, as well as Ann Arbor MI, Austin TX, and Eugene OR, provided a strong starting point for understanding the strategies needed to address the safety issues in Fort Collins.



City and County of Denver has installed inexpensive treatments like bulb-outs and curb extensions using low-cost materials as part of its solutions to address roadway safety and help meet its Vision Zero goals.

¹ Vision Zero Network Guidelines for an Effective Vision Zero Action Plan https://visionzeronetwork.org/wp-content/uploads/2017/12/VZN_ActionPlan_FINAL.pdf

Crash Trends

Over the past five years (2017 through 2021), the total number of severe crashes that occur in Fort Collins has fluctuated. However, the number of fatal crashes has been on the rise since 2019 (see Figure 3). In *Safety in the City: Fort Collins 2021 Annual Roadway Safety Report*, crashes are categorized by severity. Severe crashes are those resulting in fatalities, minor or non-incapacitating injuries, and major or incapacitating injuries. The Fort Collins Vision Zero Action Plan focuses on severe crashes. Crash trends from the latest report are summarized below.

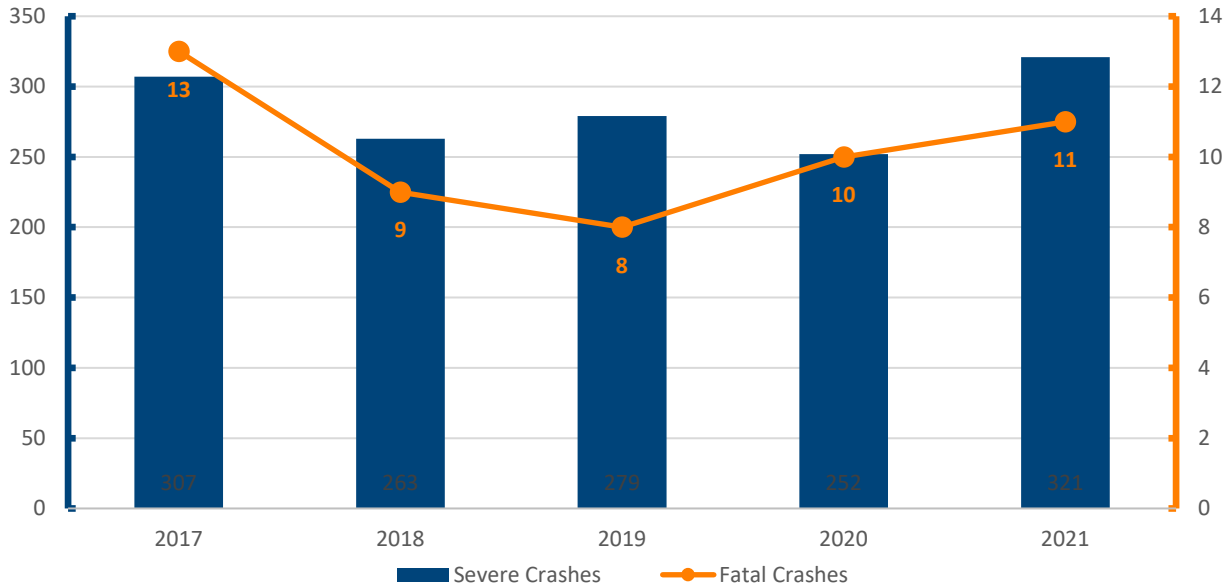


Figure 3: Severe Crashes and Fatal Crashes, 2017-2021.
 Source: *Safety in the City: Fort Collins 2021 Annual Roadway Safety Report*, August 2022.

Crashes in Fort Collins Occur Most Frequently at Intersections

More than three in every four crashes, or 78 percent, occur at an intersection, driveway, or alley access in Fort Collins (see Figure 4).

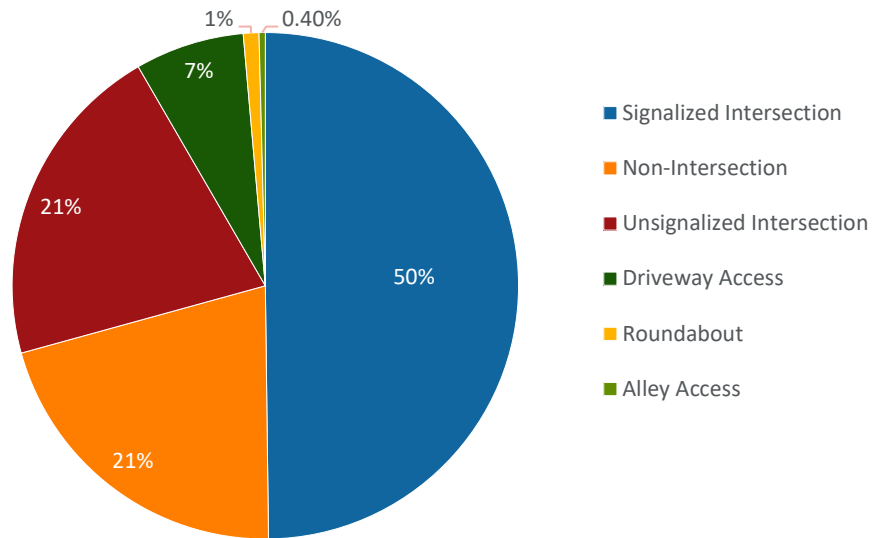


Figure 4: Crash Location Source: *Safety in the City: Fort Collins 2021 Annual Roadway Safety Report*, August 2022.

Vulnerable Road Users are Disproportionately Impacted by Severe Crashes

While most trips in Fort Collins are made in motor vehicles, travelers using other modes are at disproportionate risk of severe crashes. Crashes involving vulnerable road users account for only 6% of total crashes but make up 35% of all severe crashes and 47% of all fatal crashes (see Figure 5). When vulnerable road users are involved, crashes are more likely to be severe.

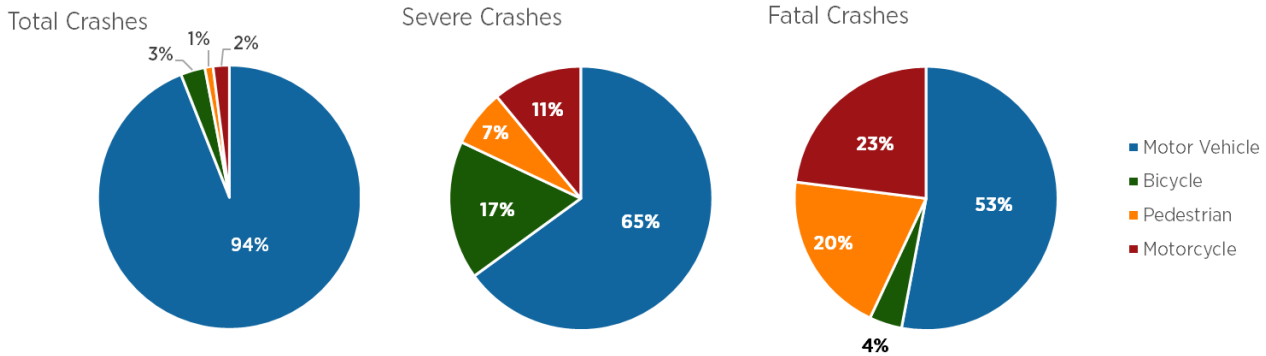


Figure 5: Severity Impact on Vulnerable Road Users.
 Source: *Safety in the City: Fort Collins 2021 Annual Roadway Safety Report*, August 2022.

Fatal Crashes in Fort Collins Increasing Recently

On average in the past five years, ten people have died in roadway crashes in Fort Collins annually. Overall, fatal crashes have increased steadily since 2019, with 10 total crashes occurring in Fort Collins in 2020 and 11 in 2021. Fatal crashes decreased from 2017 to 2019 but increased in 2020 and 2021, even while vehicle miles traveled (VMT), a measure of the amount of driving in a region, decreased in 2020 (see Figure 6).

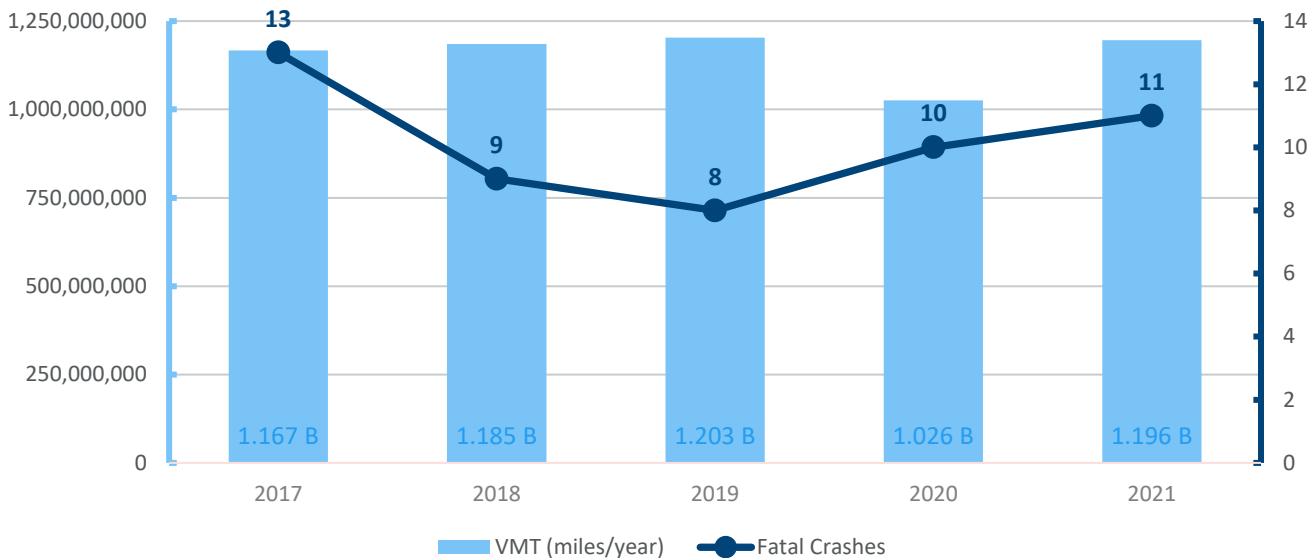


Figure 6: Fatal Crashes and Vehicle Miles Traveled Per Year (2017-2021) Crash Data Source: *Safety in the City: Fort Collins 2021 Annual Roadway Safety Report*, August 2022. VMT Data Source: Northern Front Range Metropolitan Planning Organization (NFRMPO).

The Rate of Fatal Crashes in Fort Collins is Similar to Other Places

Fort Collins' fatal crash rate is just below average for cities of similar size in Colorado (see Figure 7). When compared to peer cities across the United States, Fort Collins' fatal crash rate sits just above the average (see Figure 8). When it comes to traffic deaths and serious injuries, Fort Collins is doing about average. Fort Collins must do much better than average to achieve Vision Zero.

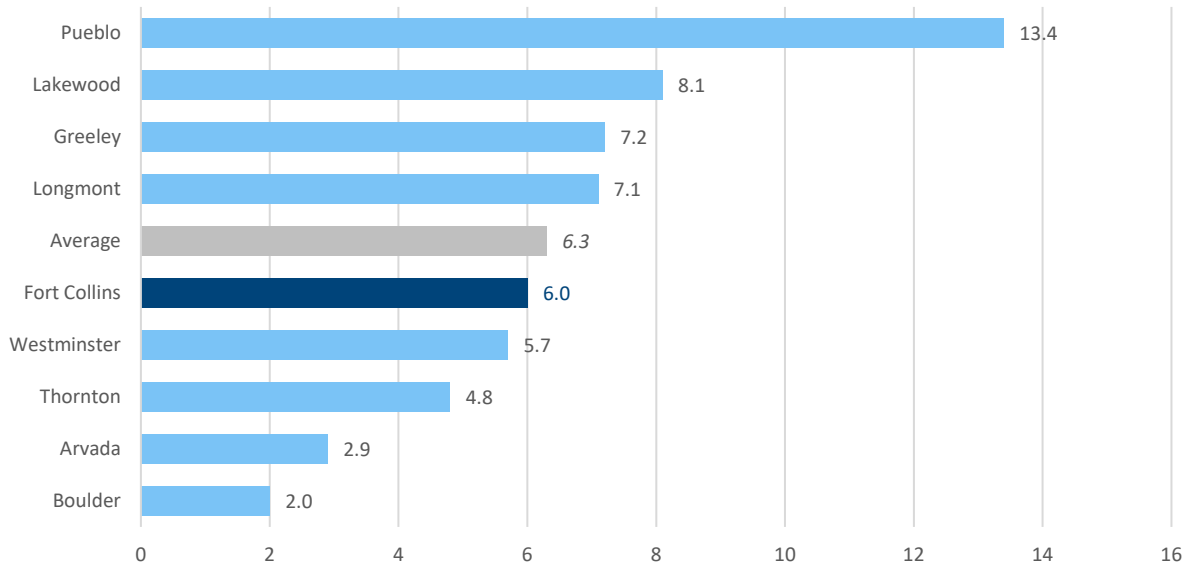


Figure 7: Fatal Crash Rate Comparison to Other Colorado Cities, based on 2017-2021 Data. Source: *Safety in the City: Fort Collins 2021 Annual Roadway Safety Report*, August 2022.

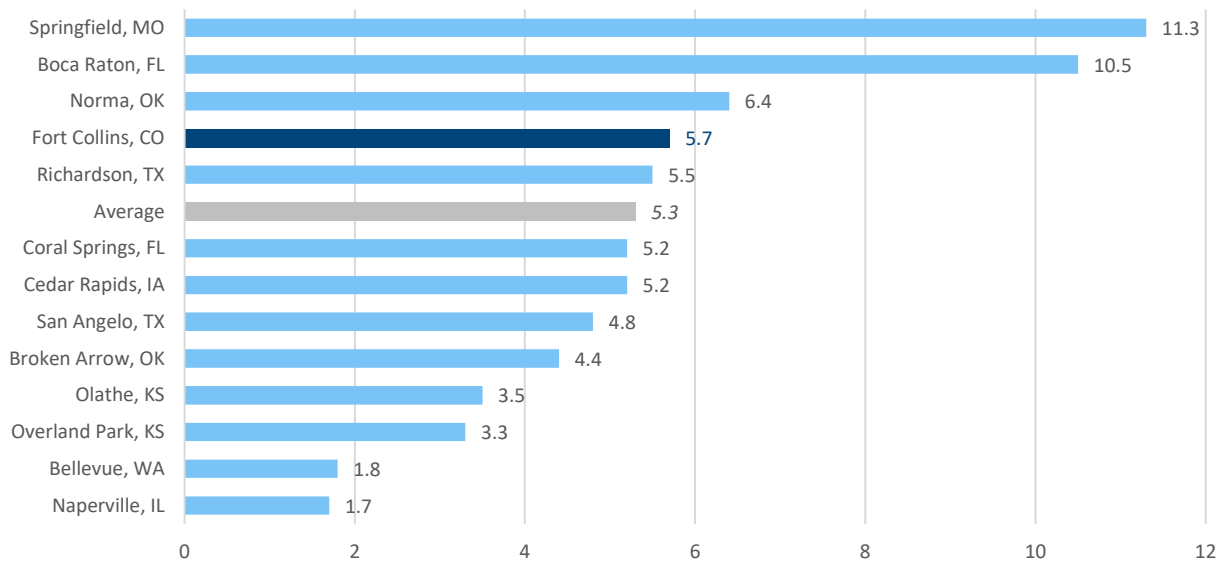


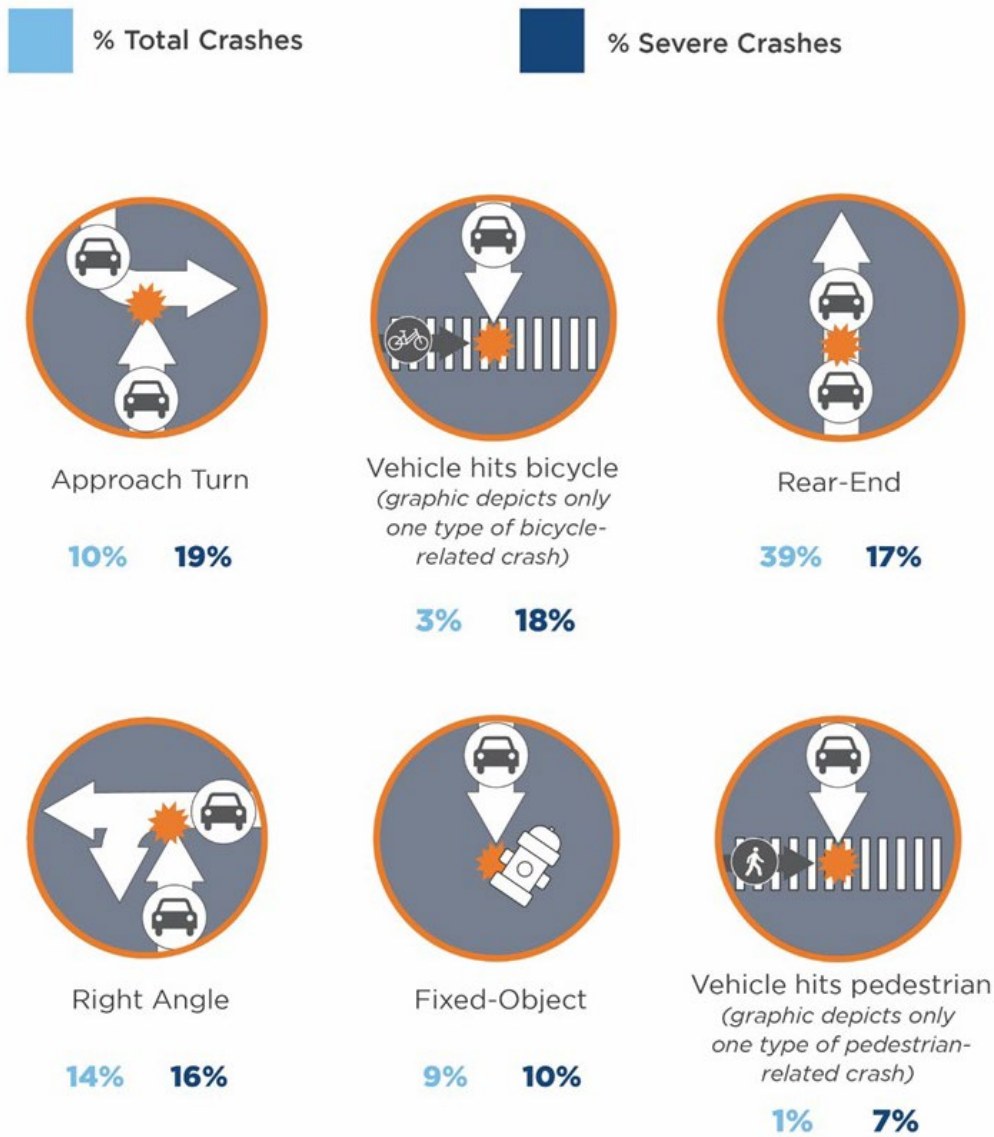
Figure 8: Fatal Crash Rate Comparison to Peer Cities, based on 2017-2020 Data (2021 data was not available for all peer cities). Source: *Safety in the City: Fort Collins 2021 Annual Roadway Safety Report*, August 2022.

Six Crash Types Make Up the Majority of Severe Crashes that Occur on Fort Collins' Roads

Six crash types comprise 87 percent of severe crashes. Figure 9 illustrates these crash types and the frequency of each crash type amongst all crashes and severe crashes. Countermeasures designed to address these crash types have the greatest potential for reduction in traffic deaths and serious injuries. The six prevalent crash types in severe crashes are:

- Approach Turn
- Bicycle-related
- Rear-end
- Right Angle
- Fixed-object
- Pedestrian-related

Figure 9: Top 6 Crash Types for Severe Crashes, 2019-2021



Source: Safety in the City: Fort Collins 2021 Annual Roadway Safety Report, August 2022.

High-Injury Network (HIN)

Looking for hot spots of severe crashes is limiting because severe crashes have a random element. For example, two intersections may share many of the same characteristics but only one of them has experienced severe crashes. If it is just chance that the severe crashes so far have happened at that intersection, severe crashes are likely to occur in the future at the intersection that has not yet experienced severe crashes. Countermeasures should be implemented at both intersections to prevent future severe crashes. The High-Injury Network (HIN) consists of the roads most likely to experience severe crashes based on, but not limited by, historical crash data.

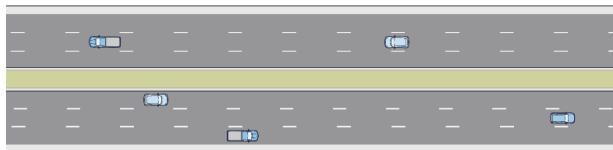
A geospatial crash analysis of the crash data from 2017 through 2021 was used to identify the HIN in Fort Collins—the street segments that had the greatest share of severe crashes.

Arterial roads represent 91 percent of the HIN, collector roads represent 6 percent, and local streets represent only 3 percent. The HIN includes just 8 percent of the roads in Fort Collins, however, those roads account for 63 percent of all severe crashes.

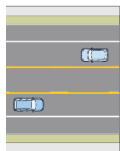
Map 1 on the next page shows the Fort Collins HIN. This is where the City should target Vision Zero strategies and countermeasures to reduce severe crashes.

Note, while the analysis does not indicate specific high-injury intersections, the analysis accounts for intersections with a high quantity of severe crashes because crashes at intersections are assigned to the roadway segments. More in-depth analysis of the HIN should be performed to identify countermeasures for specific locations.

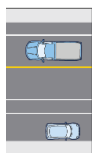
The **HIN** is Comprised of



91%
Arterials



6% Collectors



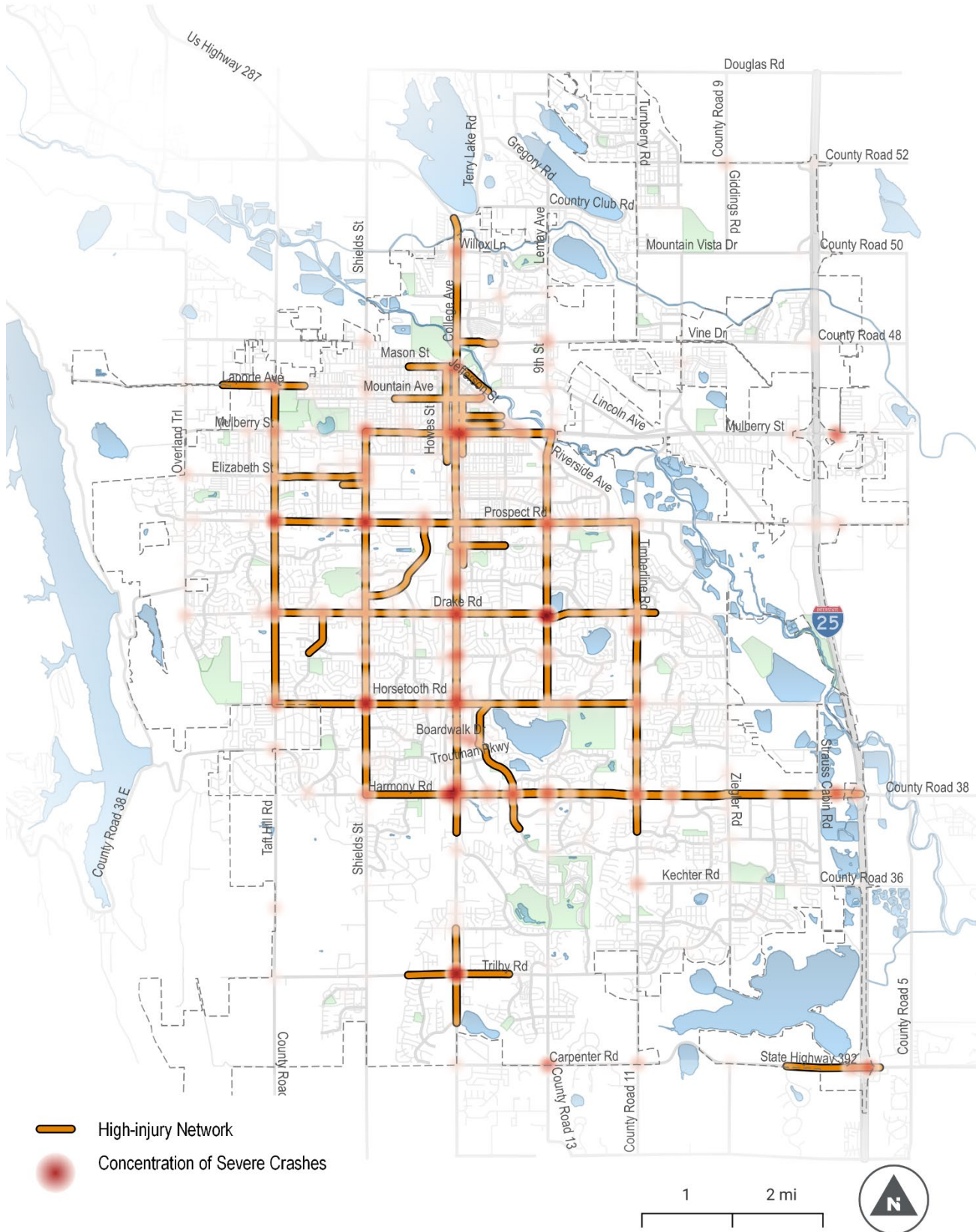
3% Local Roads

63% of all fatal and serious injury crashes



Occur on only **8%** of Fort Collins Road network

Map 1: Fort Collins High-injury Network (2017-2021)



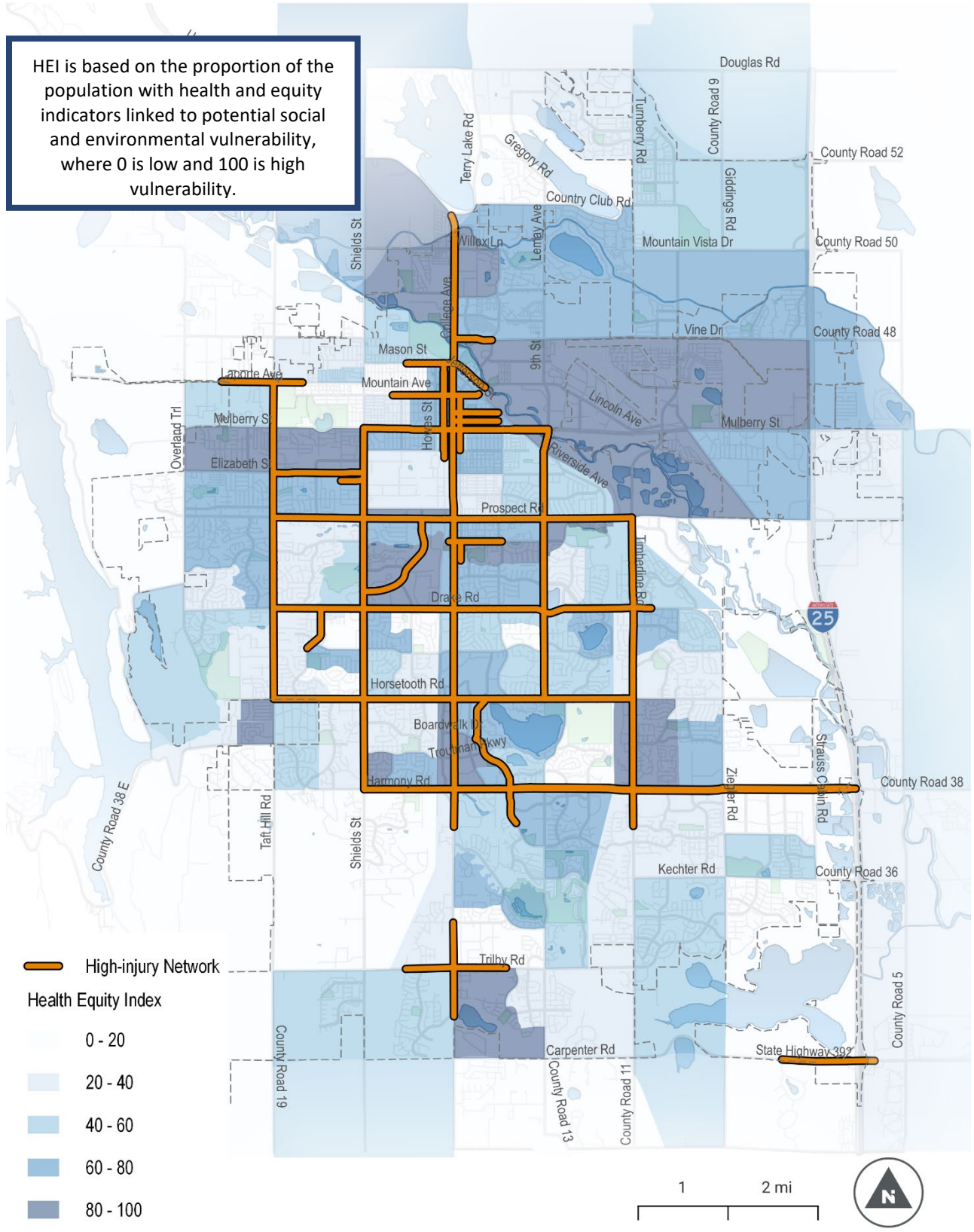
How Fort Collins Will Achieve Vision Zero

An Equitable Approach

An equitable approach is woven throughout Fort Collins' goals and strategies to achieve Vision Zero. While there is a goal to Center Equity, the approach to achieving every goal will be equitable. This approach includes emphasizing historically underrepresented communities in prioritization of safety improvements and using equitable engagement and outreach efforts to reach people, particularly those from historically underrepresented communities, in decision-making.

The Larimer County Department of Health and Environment's Health Equity Index (HEI) was used to assess the relationship between traffic safety and social and environmental vulnerability. The HEI uses eight indicators linked to the determinants of health and demographics to spatially understand factors that contribute to an individual or household's potential vulnerability: Youth, Older adults, Racial and ethnic minorities, People with disabilities, Households without a vehicle, Poverty, Poor mental health, Low physical activity and High rates of obesity. The HEI is on a scale of 0 to 100, with 100 having the greatest proportion of population with these indicators. The map on the next page illustrates the HEI in relation to the HIN to assist emphasizing historically underrepresented communities in prioritization of safety improvements (Map 2).

Map 2: 2020 Health Equity Index (HEI) Overlaid with HIN



Transformative Actions and Supporting Actions

The following actions were developed to guide Fort Collins' efforts towards achieving the goal of zero traffic deaths and serious injuries by 2032. These actions have been identified based on crash data analysis, stakeholder engagement, past community outreach, and guidance from City staff.

The Vision Zero actions are listed by the five goals and are broken into two categories:

- Transformative Actions and,
- Supporting Actions.

Transformative Actions

Transformative actions are identified to be the most impactful to move Fort Collins towards achieving Vision Zero. Work is already underway on some actions while others will require reorienting existing programs or allocating additional resources. Some actions can be accomplished with little to no additional expense or staff time while others require more funding. Several transformative actions may take some time to initiate, but all should be considered immediate actions and should be fully implemented by the timeline indicated.

Support Mode Shift to Reduce Motor Vehicle Trips

Support Mode Shift: Promoting sustainable transportation such as walking, biking, and using public transit will help the Fort Collins community reduce dependency on motor vehicles. Motor vehicles are involved with nearly all severe traffic crashes; therefore, the development of safe multimodal street networks, and programs and policies that increase the use of sustainable modes and decrease the use of motor vehicles can help the community achieve Vision Zero.

TRANSFORMATIVE ACTION 1 Increase transit frequency and make service improvements consistent with the actions for the Short-Term Transit Network in the Transit Master Plan	
Key Implementer(s):	Transfort
Resources:	<i>This will not require funding beyond what is necessary to carry out the Transit Master Plan.</i>
Timeline:	Near-term: 2023-2025
Implementation Notes:	<p>Relation to Vision Zero: Robust, frequent transit that is convenient and reliable enables people to travel without using motor vehicles.</p> <p>Inclusion of the Transit Master Plan elevates it as a key aspect of Vision Zero and does not require additional oversight or actions.</p>
Progress Metrics:	<ol style="list-style-type: none"> 1. Transit mode share. 2. The number of bus routes operating at a 15-minute frequency or better. 3. The number of transit service improvements implemented.

TRANSFORMATIVE ACTION 2	
Install or upgrade full pedestrian and bicycle networks and treatments consistent with the Active Modes Plan and Pedestrian Needs Assessment	
Key Implementer(s):	FC Moves Support: Traffic Operations, Streets Department, Engineering Department, Park Planning & Development Department
Resources:	<i>This will not require funding beyond what is necessary to carry out the Active Modes Plan.</i>
Timeline:	Long-term: 2030-2032
Implementation Notes	Relation to Vision Zero: Connected, low-stress active mode networks with reliable, safe crossings enable people to travel short distances without motor vehicles and access transit routes. Inclusion of the Active Modes Plan and Pedestrian Needs Assessment elevates them as a key aspect of Vision Zero and does not require additional oversight or actions.
Progress Metrics:	<ol style="list-style-type: none"> 1. Number of miles added to the low-stress bicycle network 2. Number of pedestrian and bicycle spot improvements completed along roadway and at intersections 3. Percent of miles of low-stress bicycle network or sidewalk on HIN 4. Pedestrian, bicycle, and micromobility mode share
TRANSFORMATIVE ACTION 3	
Promote alternatives to driving through the Shift Your Ride Program	
Key Implementer(s):	FC Moves Support: Environmental Services, Transfort, Community Development & Neighborhood Services
Resources:	<i>This will not require funding beyond what is necessary to carry out the Shift Your Ride program.</i>
Timeline:	Long-term: 2030-2032
Implementation Notes:	Relation to Vision Zero: The transportation demand management plan is in development. Encouraging and incentivizing alternatives to driving alone while discouraging and disincentivizing driving alone reduces the number of motor vehicles on the road. Inclusion of the Shift Your Ride program elevates it as a key aspect of Vision Zero and does not require additional oversight or actions.
Progress Metrics:	<ol style="list-style-type: none"> 1. Completion of the plan 2. Single-occupant vehicle mode share 3. Vehicle miles traveled

Prioritize Safer Speeds and Multimodal Places

Prioritize Safer Speeds and Multimodal Places: High motor vehicle speeds increase the risk of serious injury or death. Engineering solutions such as road diets, crossing improvements, and traffic signal optimization have been shown to slow speeds, create people-centric spaces, and reduce severe crashes.

TRANSFORMATIVE ACTION 4	
Implement engineering countermeasures and design streets to manage traffic speeds	
Key Implementer(s):	FC Moves Support: Traffic Operations, Streets Department, Engineering Department, Emergency Responders
Resources:	\$-\$\$\$ <i>Will require additional or reallocation of staff resources.</i>
Timeline:	Ongoing
Implementation Notes:	<ul style="list-style-type: none"> Implement countermeasures on the HIN, especially intersections with excess crash costs (Safety in the City: 2021 Annual Safety Report, page 36). Beyond large capital investments and projects identified in the Transportation Capital Projects Prioritization Study, improvements can be as simple as installing markings for bike lanes, edge lines, or flush medians to narrow lane widths. Seek opportunities to include countermeasures into routine maintenance (repaving, etc.), capital projects, development, and other opportunities. Seek new federal funding grants and programs that prioritize traffic safety. Plan for maintenance so that new treatments function as intended.
Progress Metrics:	<ol style="list-style-type: none"> 1. Number of projects implemented on the HIN 2. Reduction of speed at project locations
TRANSFORMATIVE ACTION 5	
Test solutions without a big time and cost commitment with temporary and quick-build treatments	
Key Implementer(s):	Traffic Operations Support: Engineering Department, FC Moves, Streets Department
Resources:	\$ <i>Will require additional or reallocation of staff resources.</i>
Timeline:	Ongoing
Implementation Notes:	<ul style="list-style-type: none"> Establish a framework for pilot projects with novel approaches. Plan for maintenance of quick-build treatments so that they function as intended. Temporary and quick-build treatments typically use lower cost materials like paint, rubber curbs, wheel stops, and planters to provide immediate safety benefits. Temporary treatments can provide proof-of-concept, test new designs, and build support for more permanent changes. They can also be used to implement systemic safety improvements across many locations in a cost-effective manner. They can be easily adjusted based on analysis and community feedback. They can be used to engage the community, for example through Asphalt Art. They can be used to retrofit existing roads.
Progress Metrics:	<ol style="list-style-type: none"> 1. Number of locations on the HIN receiving temporary and quick-build treatments 2. Collection of before/after data and public feedback to inform future decisions

Promote a Culture of Traffic Safety

Promote a Culture of Traffic Safety: Achieving zero traffic deaths and serious injuries can only be successful if Fort Collins' street planners and designers, City leaders, and street users set priorities and make decisions that improve transportation safety and reduce severe crashes.

TRANSFORMATIVE ACTION 6 Review and revise standards and policies that are roadblocks to Vision Zero goals	
Key Implementer(s):	FC Moves Support: Planning Department, Engineering Department, Traffic Operations
Resources:	\$ <i>Will require additional or reallocation of staff resources.</i>
Timeline:	Near-term: 2023-2025
Implementation Notes:	<ul style="list-style-type: none"> • Identify and revise standards and policies that prioritize automobile capacity and speed, and ensure standards and policies prioritize safety for all users. • Develop and adopt standards to replace guidance from the Manual on Uniform Traffic Control Devices that do not align with Vision Zero.
Progress Metrics:	<ol style="list-style-type: none"> 1. Number of standards and policies reviewed 2. Number of standards and policies revised
TRANSFORMATIVE ACTION 7 Include Vision Zero analysis as part of planning process for all infrastructure projects	
Key Implementer(s):	Engineering Department Support: FC Moves, Traffic Operations, Utilities, Park Planning and Development, Operations Services
Resources:	\$ <i>Will require additional or reallocation of staff resources.</i>
Timeline:	Ongoing
Implementation Notes:	<ul style="list-style-type: none"> • Create a Vision Zero checklist to institutionalize prioritizing safety first in all stages of capital project planning and development, and project review. • Hold quarterly workshops for design plans and retrospective review.
Progress Metrics:	<ol style="list-style-type: none"> 1. Creation of a Vision Zero checklist 2. Number of projects that include analysis of Vision Zero goals

Increase Data Transparency and Partnerships

Increase Data Transparency and Partnerships: Improving the accuracy, timeliness, and quality of crash data helps planners, engineers, and policymakers make better decisions about resource allocation and facility design. Data on the locations of severe crashes will help in prioritizing, implementing, and evaluating projects that support Vision Zero.

TRANSFORMATIVE ACTION 8

Create a Vision Zero program with dedicated staff who can apply a safety lens to all planning, design, and resource allocation decisions

Key Implementer(s):	Traffic Operations Support: FC Moves, Engineering Department
Resources:	\$\$ <i>Will require additional or reallocation of staff resources.</i>
Timeline:	Near-term: 2023-2025
Implementation Notes:	<ul style="list-style-type: none"> One full-time employee in Traffic Operations dedicated to Vision Zero and the equivalent of a full-time employee across multiple departments to coordinate the implementation, monitoring, and evaluation of the Vision Zero Action Plan. Grant funding could be sought for initial funding to establish program and staff. Dedicated staff should further develop the details of the Transformative and Supporting Actions and pursue implementation funding.
Progress Metrics:	<ol style="list-style-type: none"> 1. Programs, projects, and policies reviewed to incorporate Vision Zero safety approach 2. Number of equivalent full-time employees dedicated to Vision Zero

TRANSFORMATIVE ACTION 9

Perform annual analysis, before & after studies, and documentation on Vision Zero progress to celebrate successes and identify areas for improvement

Key Implementer(s):	Traffic Operations Support: FC Moves, Engineering Department
Resources:	\$ <i>Will require additional or reallocation of staff resources.</i>
Timeline:	Ongoing
Implementation Notes:	<ul style="list-style-type: none"> Collect data on conditions before countermeasures are implemented or deployed to compare to after conditions. Track projects and the implementation of countermeasures by developing a spatial database. Use this information to engage the community, local influencers, and media.
Progress Metrics:	<ol style="list-style-type: none"> 1. Number of before and after studies completed 2. Number of projects and types of countermeasures implemented 3. Number of community engagements and media stories

Center Equity

Center Equity: A Vision Zero initiative is successful when everyone is safe using Fort Collins' streets. An equitable Vision Zero process helps ensure improvement projects and programs reduce harm without increasing the burden on historically underserved communities.

TRANSFORMATIVE ACTION 10 Ensure HIN projects and routine maintenance are implemented in historically underserved communities, as well as the entire City, to create self-enforcing roadways and reduce reliance on in-person traffic enforcement	
Key Implementer(s):	Traffic Operations Support: FC Moves, Equity & Inclusion, Streets Department, Parks Department
Resources:	\$ <i>Will require additional or reallocation of staff resources.</i>
Timeline:	Near-term: 2023-2025
Implementation Notes:	<ul style="list-style-type: none"> • Use data to equitably direct funding and resources to eliminate crash disparities. • Increase maintenance staff dedicated to supporting the installation and maintenance of crosswalks, protected bike lanes, quick-build projects, and other safety improvements.
Progress Metrics:	<ol style="list-style-type: none"> 1. Percent of a two-year budget cycle of safety projects completed that benefit communities with a high Health Equity Index 2. Number of maintenance staff supporting safety improvements
TRANSFORMATIVE ACTION 11 Neighborhood/Community grants to fund infrastructure projects with community involvement and engage historically underserved communities	
Key Implementer(s):	FC Moves Support: Finance Department, Traffic Operations, Engineering Department
Resources:	\$ <i>Will require additional or reallocation of staff resources.</i>
Timeline:	Near-term: 2023-2025
Implementation Notes:	<ul style="list-style-type: none"> • Seek partnerships with community organizations to reach different groups
Progress Metrics:	<ol style="list-style-type: none"> 1. Number of people engaged 2. Number of people from historically underserved communities engaged

Supporting Actions

Complementing transformative actions are the supporting actions. While less impactful than the transformative actions, supporting actions will help reinforce the *Safe System* Approach and are vital to incrementally achieving Vision Zero over time. While some supporting actions may require additional funds, some do not require funding beyond what would be required for existing plans and programs, staff time, or a small amount of additional funding.

Supporting Action Description		Key Implementer(s) (lead in bold)
1 Support Mode Shift		
1.1	Continue fare-less transit services through Transfort and implement the Transit Master Plan	Transfort
1.2	Prioritize investments in trails that provide alternative routes to roads that are on the HIN	Park Planning & Development , Parks Department, Light & Power, Natural Areas, Traffic Operations
1.3	Evaluate night-time transit hours and transit stop amenities	Transfort , FC Moves
2 Prioritize Safer Speeds and Multimodal Places		
2.1	Implement geometric intersection treatments with proven safety benefits	Engineering Department , Traffic Operations
2.2	Implement signal and/or operational modifications that are proven to reduce severe crashes	Traffic Operations
2.3	Evaluate all bus stop locations for the installation of pedestrian crossings	Transfort , Traffic Operations, Engineering Department, FC Moves
3 Promote a Culture of Traffic Safety		
3.1	Work with a broad range of agencies and organizations to promote traffic safety, such as CSU, school resource officers, mental health organizations	FC Moves , Police Services
3.2	Work with the media to more accurately report traffic crashes and avoid victim-blaming, humanizing people who are involved in collisions	Communications & Public Involvement Office , FC Moves, Police Services
3.3	Pair roadway design changes with communication on why changes are needed, and include branded Vision Zero signage during project construction	FC Moves , Communications & Public Involvement Office, Engineering Department, Traffic Operations
3.4	Engage City staff in trainings and facilitated conversations to better understand Vision Zero goals, and roadblocks and opportunities for successful implementation	FC Moves , Traffic Operations, Police Services, Engineering Department, Streets Department, Transfort, Community Development & Neighborhood Services, Communication &

		Public Involvement Office, Poudre Fire Authority
3.5	Support the establishment of a victims' advocacy organization such as a local chapter of Families for Safe Streets	FC Moves, Bike Fort Collins
3.6	Incorporate safety features in City fleet vehicles and expand safe driver training and awareness among people who drive City fleet vehicles	FC Moves, Human Resources Department
3.7	Fill current vacancies to fully staff the Traffic Enforcement Unit	Police Services
4 Increase Data Transparency and Partnerships		
4.1	Expand current group of safety stakeholders into an interdisciplinary Vision Zero Task Force and continue regular meetings to review data and ongoing traffic safety performance and determine strategies for improvement	Traffic Operations, Police Services, FC Moves
4.2	Work with Colorado Department of Transportation (CDOT) and Larimer County to provide more timely statewide or region-wide crash data	Traffic Operations, Police Services, FC Moves, North Front Range Metropolitan Planning Organization, CDOT, Larimer County
4.3	Convene rapid response meetings after all severe crashes, investigate how roadway design contributed to the crashes, and implement near-term safety improvements as appropriate to subject location and locations with similar characteristics	Traffic Operations, Police Services, Engineering Department, FC Moves
4.4	Partner with medical and substance abuse organizations to share data and strategies	Social Sustainability, Police Services, Traffic Operations
4.5	Provide a dashboard with accessible data about traffic fatalities and serious injury crashes on the City's website and incorporate data and trends into the annual safety report	Police Services, Traffic Operations, Information Technology
4.6	Advocate for policies regulating automated vehicles that advance Vision Zero safety goals	City Manager's Office
4.7	Incorporate growth projections and anticipated development into safety planning	FC Moves, Community Development & Neighborhood Services
5 Center Equity		
5.1	Pilot a diversion program with education to encourage safe behaviors over more punitive measures such as fines	Police Services, FC Moves
5.2	Engage youth to raise awareness of Vision Zero and solicit their input on programs and street design projects	FC Moves

5.3	Expand use of automated traffic enforcement (speed, red-light cameras) and deploy throughout the HIN; any revenues received from fines should be used to improve traffic safety.	Police Services , Traffic Operations, FC Moves
5.4	Provide opportunities for community input on Vision Zero initiatives	FC Moves , Communication & Public Involvement Office

Countermeasures

Safety Countermeasures include street design treatments that address the top six severe crash types in Fort Collins. The majority of these countermeasures are included in the Federal Highway Administration Proven Safety Countermeasures Initiative and the Crash Modification Factor Clearing House (www.cmfclearinghouse.org). The crash modification factor (CMF) is used to compute the number of crashes expected after implementing a given countermeasure at a specific site. The CMF can help the City prioritize which countermeasures to prioritize for implementation. The table below alphabetically summarizes safety countermeasures that could help reduce the number of crashes in the top six severe crash types that occur in Fort Collins.

Safety Countermeasure	Description	Crash Type					
		Bicycle	Pedestrian	Approach Turn	Rear End	Right Angle	Fixed Object
Backplates with Retroreflective Borders	Backplates added to a traffic signal head improve the visibility of the illuminated face of the signal by introducing a controlled-contrast background and by framing it with a 1- to 3-inch yellow retroreflective border. Signal heads that have backplates equipped with retroreflective borders are more visible in both daytime and nighttime conditions.				X	X	
Bicycle Lanes	Providing bicycle facilities can mitigate or prevent interactions, conflicts, and crashes between bicyclists and motor vehicles, and create a network of safer roadways for bicycling. Dedicated facilities for the use of bicyclists along the roadway can take several forms, including separated bicycle lanes via curb, flex posts, or bollards.	X					
Bikeways at Intersections	The approaches to intersections should maintain continuity of bicycle facilities to the maximum extent possible and should allow visibility of all users, and separation of vulnerable roadway users. Continue the bike lane up to the intersection and provide bicycle signal detection. Where space is available, protected intersection elements should be installed to minimize conflicts. Where there are high volumes of turning movements by bicyclists, two-stage turn boxes can be installed.	X		X		X	
Chicanes and Pinch Points	Chicanes slow traffic by creating a serpentine travel path by alternating street features from one side of the street to the other. Curb extensions, on-street parking, or temporary materials such as planters and rubber speed bumps may be used to produce a chicane.	X	X		X	X	X
Corner Islands and Turn Wedges	A corner island is a raised area inside an intersection that decreases the corner radius and slows left or right turning movements for motor vehicles. These designs are typically constructed using concrete curbing. Turn wedges, on the other hand, can be constructed with low-cost materials such as paint, flex posts, and rubber speed cushions.	X	X	X		X	
Corridor Access Management	Access management refers to the design, application, and control of entry and exit points along a roadway. This includes intersections with other roads and driveways that serve adjacent properties. Thoughtful access management can simultaneously enhance safety for all modes, facilitate walking and biking, and reduce trip delay and congestion.	X	X	X	X	X	

Safety Countermeasure	Description	Crash Type					
		Bicycle	Pedestrian	Approach Turn	Rear End	Right Angle	Fixed Object
Crosswalk Lighting and Daylighting	Crosswalk lighting should illuminate with positive contrast to make it easier for a driver to visually identify pedestrians. This involves carefully placing the luminaires in forward locations to avoid a silhouette effect of the pedestrian. "Daylighting" restricts street parking in advance of intersections and crosswalk approaches to clear sight lines.	X	X	X		X	
Curb Extensions	Extending the curb beyond the sidewalk or buffer edge shortens crosswalk length and increases visibility of people walking and rolling, particularly where there is on-street parking. Curb extensions are also effective tools for narrowing streets or tightening intersections to reduce motor vehicle turning speeds.		X	X		X	
Hardened Centerlines	Hardened centerlines include vertical elements such as mountable curb or flex posts that force turning drivers to slow down when turning left. They can reduce motorist-pedestrian conflicts and reduce the speed of left-turning vehicles.	X	X	X			
Leading Pedestrian Interval	A leading pedestrian interval gives pedestrians the opportunity to enter the crosswalk at an intersection 3-7 seconds before vehicles are given a green indication. Pedestrians can better establish their presence in the crosswalk before vehicles begin turning right or left. Bicyclists may also use leading pedestrian intervals instead of waiting to move with vehicle traffic, which improves cyclist safety and mobility.	X	X				
Medians	Median barriers are longitudinal barriers that separate opposing traffic and can be designed to redirect vehicles striking either side of the barrier. Median barriers significantly reduce the number of cross-median crashes, and provide a refuge for pedestrians crossing. Accessible median refuges require a cut-through and tactile warning surfaces to accommodate people with disabilities.		X	X			X
No Turn on Red Restrictions	"No Turn on Red" signs are used to restrict motor vehicles from turning at signalized intersections during the red phase. Prohibiting turns on red helps prevent crashes where vehicles turning right on red collide with through vehicles on the cross street or with people walking. These should be considered at school crossings, intersections with high pedestrian volumes, skewed intersections, or intersections with inadequate sight distances.	X	X	X		X	
Pedestrian Hybrid Beacon	The pedestrian hybrid beacon is a traffic control device designed to help pedestrians safely cross higher-speed roadways at midblock crossings and uncontrolled intersections. The beacon head consists of two red lenses above a single yellow lens. The lenses remain "dark" until a pedestrian desiring to cross the street activates the beacon.	X	X				
Pedestrian Recall Signal Timing	Signals can be put in "recall" all the time or for key time periods of the day such as peak business hours or school drop-off /pick-up times. The "walk" signal would be displayed every signal cycle without prompting by a pedestrian push button.		X				

Safety Countermeasure	Description	Crash Type					
		Bicycle	Pedestrian	Approach Turn	Rear End	Right Angle	Fixed Object
Pedestrian Refuge Island	A pedestrian refuge island (or crossing area) is a median with a refuge area that is intended to help protect pedestrians who are crossing a road.	X	X				
Protected Turn Phase	Protected turns provide an exclusive phase for left- or right-turning vehicles to enter an intersection separate from conflicting vehicle or pedestrian movements.	X	X	X			
Raised Crossings and Intersections	Raised crossings and intersections are used to slow traffic and reduce conflicts between motorists and people walking, rolling, and biking on or across the street. These crossings are elevated to reduce or eliminate the vertical transition between the sidewalk and the street.	X	X				
Road Diet Roadway Reconfiguration	A Road Diet typically involves converting an existing four-lane undivided roadway to a three-lane roadway consisting of two through lanes and a center two-way left-turn lane, reducing lane widths, and addition of bicycle lanes and/or sidewalks.	X	X	X	X	X	X
Lane Narrowing	On roadways with speeding/speeding issues, where vehicle lane widths are greater than the recommended minimums, narrowing lane widths can help control speeding, shorten crossing distances, and improve safety for all users. Narrowing lanes can also create space to accommodate bicycle and pedestrian facilities.	X	X		X	X	X
Roundabouts	Roundabouts feature channelized, curved approaches that reduce vehicle speed, entry yield control that gives right-of-way to circulating traffic, and counterclockwise flow around a central island that minimizes conflict points. While roundabouts can reduce motorist speeds, which increases comfort and safety for people walking or bicycling, they can also increase crossing distances. Multilane roundabouts and roundabouts with slip lanes should be avoided. For high-traffic volume roundabouts, bicyclists should be provided a separate cycle track.			X		X	X
Speed Safety Cameras	Speed safety cameras are an effective and reliable technology to supplement more traditional methods of enforcement, engineering measures, and education to reduce motorist speeding. Speed safety cameras use measurement devices to detect speeding and capture photographic or video evidence of vehicles that are violating a set speed threshold. State law restricts the use of speed cameras in Colorado.	X	X		X	X	X
Traffic Signal Timing	Signals timed to a target limit can encourage motorists to drive at slower speeds because the signals are timed to maintain traffic flow.	X	X	X	X	X	X



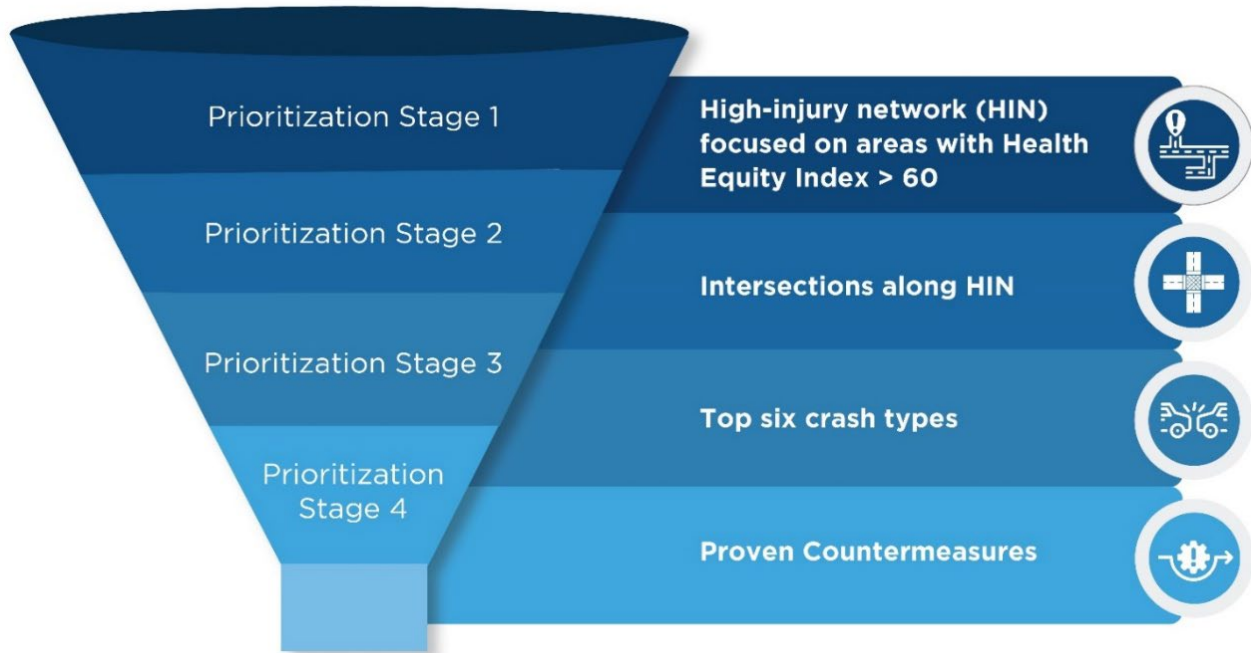
A bicycle roundabout created at CSU with rubber curbing and flexible bollards is an example of an innovative treatment using low-cost materials that are easily adjusted. Source: CSU.

Implementation

Implementing this Action Plan to achieve Vision Zero in Fort Collins will require a mechanism to prioritize roadway safety investments, funding to implement Vision Zero strategies, and regular evaluation and monitoring of progress.

Prioritization

A prioritization framework is needed as a decision-making guide to select where to first apply the limited resources available for implementing Vision Zero strategies and roadway safety countermeasures. The graphic summarizes the process that the City will take to prioritize roadway safety countermeasures. Through these prioritization stages, the City will identify the top locations along the HIN and crash types to address via proven countermeasures. Equity will be a focus by first prioritizing locations along the HIN in areas with Health Equity Index greater than 60.



Funding

Effective use of limited funding is a crucial requirement to implement the Fort Collins Vision Zero Action Plan. While some action items in the Plan may require additional funds, some do not require funding beyond what would be required for existing plans and programs, staff time, or a small amount of additional funding. For the action items that require additional funding, potential funding sources and strategies are outlined below, including leveraging new federal programs and grants to fund roadway safety projects. The Fort Collins Vision Zero Action Plan positions the City to prioritize its needs for roadway safety and seek funding from these sources.

One strategy to fund action items in this Action Plan is to create a dedicated and permanent program that funds new staff positions to coordinate the implementation of the Plan and fund large capital roadway investments. Dedicated Vision Zero staff should determine cost estimates (high level or detailed) and identify funding for actions in the Plan. In addition to the establishment of a dedicated funding program for Vision Zero, safety should be prioritized and embedded as the topmost need in already established local funding sources and programs. The reprioritization of funding in existing local sources and new federal funding streams that prioritize safety will support the success of the Plan. The Plan and local investments will be important for increasing Fort Collin’s competitiveness to leverage this funding.

The table below summarizes funding sources from local, state, federal, and non-traditional resources.

Funding Source	
<p>Local Funding</p> <p>Decision-making for use of local funding sources should put Vision Zero and roadway safety as top transportation factors.</p>	Budgeting for Outcomes: The City’s budgeting process, Budgeting for Outcomes (BFO), is designed to prioritize community goals, organized around seven Key Outcome Areas.
	Community Capital Improvement Program: A voter-approved quarter-cent sales tax renewal that includes dedicated funding for arterial intersection reconstruction, bicycle infrastructure expansion, and other multimodal improvements.
	Street Maintenance Program (SMP): The SMP has successfully implemented multimodal projects through regular maintenance and resurfacing projects, including striping bicycle lanes, repairing sidewalks and curbs, and reconstructing curb ramps for ADA compliance. Projects that can be implemented through regular operations and maintenance (e.g., lane diets and small concrete construction) may be good candidates to program via SMP.
<p>State Funding</p> <p>Funding programs primarily administered by CDOT.</p>	FASTER Transit Grants: These grants can be used to improve transit services, the rider experience, and for pedestrian and bicycle amenities or connections that support transit projects. These grants are administered by CDOT regional offices.
	FASTER Safety Program: To support construction, reconstruction, or maintenance of projects to enhance the safety of a state highway, county road, or city street. This program is administered by CDOT.
	Highway Safety Improvement Program (HSIP): The goal of this program is to achieve a significant reduction in severe crashes on all public roads. This is a federal program with a state allocation administered by CDOT.
	Revitalizing Main Streets: These grants can be used for safety and economic revitalization projects of state-owned roadways with dense commercial activities. This program is administered by CDOT.
	Multimodal Transportation and Mitigation Options Fund (MMOF): The goal of this program is a complete and integrated multimodal transportation system. This is a state program with allocation administered by the North Front Range Metropolitan Planning Organization.
<p>Federal Funding</p> <p>Programs administered by different federal administrations.</p>	Capital Investment Grant (CIG): This funding can be used for transit capital investments, including heavy rail, commuter rail, light rail, streetcars, and bus rapid transit. These grant funds can be used to improve active modes access to transit stations. This grant is administered by the Federal Transit Administration.
	Surface Transportation Block Grant (STBG) Program: This program funds projects that preserve and improve the conditions and performance on any Federal-aid highway, bridge and tunnel projects on any public road, pedestrian and bicycle infrastructure, and transit capital projects, including intercity bus terminals. In Larimer County, these funds are provided to CDOT and distributed through NFRMPO.
	Transportation Alternatives Program (TAP): TAP provides funding for programs and projects defined as transportation alternatives, including on- and off-road pedestrian and bicycle facilities, infrastructure projects for improving non-driver access to transit and enhanced mobility, community improvement activities, and environmental mitigation; recreational trail program projects; and projects for planning, designing, or constructing boulevards and other roadways. In Larimer County, these funds are provided to CDOT and distributed through NFRMPO.

Funding Source	
	Discretionary Grants: The US Department of Transportation administers several discretionary programs to fund local projects, such as the Safe Streets and Roads for All (SS4A), RAISE and INFRA grant programs.
Partnerships and Non-traditional Sources	Colorado State University Campus Projects: The university funds capital construction and maintenance of streets, sidewalks, and trails on campus, which includes many active modes routes.
	Development Review: Private developers provide both direct infrastructure investments and fees that support management of streets and right of way during the development review process.
	Larimer County Capital Improvement Plan: For projects falling outside City Limits but within the Growth Management Area, the City may partner with Larimer County to include projects in the County's five-year Capital Plan.
	Non-traditional Partnerships: There are other opportunities to seek funding for Vision Zero and roadway safety such as the Center for Disease Control (CDC) Active People, Healthy Nation program; and philanthropic organizations.

Evaluation

The Fort Collins Vision Zero Action Plan is focused on one key performance metric: reducing serious traffic injuries and deaths to zero by 2032. While this makes the success of Vision Zero fairly easy to measure, it is critically important for the City to continually evaluate the impact of various Vision Zero strategies over time, so that they can be refined, revised, and targeted for better outcomes.

The City will develop and publish a biannual report to summarize progress on Vision Zero activities. This report will draw on or amend the City's established Annual Roadway Safety Report to focus on trends in severe crashes, and report on the progress made towards each strategy based on the implementation progress metrics.

As part of the effort to implement this Action Plan, City staff will develop an evaluation framework to assess progress on Vision Zero and strive toward a balance of accountability and flexibility. The evaluation framework will be a guide to City staff to allow consistent and objective tracking of safety and safety-related actions within the City. The framework will include progress metrics such as:

- Metrics to track severe crashes
- Metrics to track street design projects to improve roadway safety
- Metrics to track the implementation of actions in the Plan

Vision Zero IS possible. Other nations and other cities have much lower rates of traffic injuries and fatalities overall, per capita, and per mile driven. Some have achieved zero and some are making progress. Any reduction in traffic deaths is a life saved; any reduction in traffic injuries is a person who walks away from a crash. With sufficient commitment, not just of resources, but commitment to a different way of approaching traffic safety, Fort Collins **can** achieve Vision Zero.



AGENDA ITEM SUMMARY

City Council

STAFF

Anissa Hollingshead, City Clerk
Rita Knoll, Chief Deputy City Clerk
Carrie Daggett, Legal

SUBJECT

Items Related to Election Code Changes.

EXECUTIVE SUMMARY

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

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

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

These Ordinances, unanimously adopted on First Reading on March 21, 2023, adopt changes to City Code required by the approval of Fort Collins voters to move the City’s regular municipal election from April to November in odd-numbered years.

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

STAFF RECOMMENDATION

Staff recommends adoption of these Ordinances on Second Reading.

BACKGROUND / DISCUSSION

Immediately following the passage last November of the ballot questions amending the City Charter relating to elections, staff began the process of evaluating what work would be necessary as a result of the approved Charter changes. Potential Code changes were identified needing Council action, including to candidate filing timelines and clarity on whether the regular November election would be conducted as a coordinated election with Larimer County or if the City would conduct its own election.

The Election Code Committee considered these topics at its January 13, 2023, meeting and made the determination to recommend that the 2023 municipal election should be coordinated with Larimer County. The Committee also expressed support for taking needed Code changes for the implementation of November elections coordinated with Larimer County forward to the full Council for consideration.

Coordinated Elections

In placing a ballot question before the voters to change the timing of regular municipal elections from April to November of odd-numbered years, Council moved forward in such a way that allows for making the determination of how the election is conducted separately from the timing of the election. There are potential advantages associated with both options. The Election Code Committee reviewed these advantages and determined relative to the 2023 municipal election coordinating made the most sense based upon its evaluation of which scenario provides the greatest benefits to Fort Collins voters. The review of these advantages is being provided to the full Council as it considers formalizing the recommendation of the Election Code Committee to ensure Council is fully informed regarding the decision being made, as well as the options that will exist in future election years if the Council wished to make a determination to have the City administer the regular municipal election in 2025 or thereafter.

Advantages of Coordinating Elections

- Registered voters will receive one November election ballot containing all contests and questions.
- Current ballot drop boxes have been designed to be used by both the County and the City for their elections, but not simultaneously. A coordinated election allows use of the same ballot drop boxes voters are accustomed to, without confusion or the need to determine protocols with Larimer County on how those drop boxes are accessed for picking up voted ballots and how ballots are distributed to the appropriate entities.
- Larimer County owns its own election equipment and has existing vendor relationships for supplies and system support centered around the November election timing. The City has rented equipment for its elections for several cycles, typically in April when demand from larger counties is not present. It is unknown at this time what type of equipment will be available for rental and what level of support from vendors is possible. As regular municipal elections are also conducted as mail ballot elections, the equipment typically used includes ballot tabulators and signature verification equipment. It is possible alternative vendors may need to be explored to avoid the need to hand count an election.
- Access to the statewide voter database is obtained through the County. Coordinating elections avoids challenges with navigating what that support can look like while the County is also administering an election simultaneously.
- Minimizes potential for voter confusion around which ballot needs to be returned to which jurisdiction, including keeping the correct ballot with the correct envelope and submitting to the correct jurisdiction via mail or drop box.
- Additional ballot contests, including school board races, can be an additional inducement to voters to participate in an election.

Advantages of City-run Elections

- The City currently pays for return postage on mail ballots to make it easier for voters who wish to mail their ballots back. Under the Uniform Election Code the County must follow in administering elections, it is not permitted for the County to pay return postage.
- Ability for the City to implement other measures it deems could assist in supporting voter participation.
- Ability for the City to establish parameters around the conduct of the election.
- Control over election costs and spending, with greater predictability possible of overall election-related costs in regular elections.

- City contests and questions are front and center on ballots, and the focus for voters leading up to and when voting is on City races.
- Once ranked-choice voting is implemented in 2025, ability to make determinations at the municipal level about ballot design, including number of rankings available to voters, how to interpret voter intent in a range of scenarios, and other implementation determinations.

Cost and Resource Considerations

Information about election costs was discussed by the Committee and the Council over the last year as potential ballot questions were considered. Despite its importance, this is a hard-to-define factor. There is not a lot of precision behind estimating costs because of the wide variances from election event to election event. For coordinated elections, costs are determined by Larimer County and split based on the cost sharing formula they have put in place without ability for participating jurisdictions to negotiate those levels. The County is authorized by state statute to pass election costs on to participating jurisdictions in coordinated elections and to develop any appropriate formulas for doing so. They apply these formulas to all jurisdictions that participate in a coordinated election. Because of the variabilities of both direct costs and what jurisdictions are participating in an election, it is not possible to estimate with a degree of accuracy what the cost of a future election will be.

High level, the biggest variances in the costs of coordinated elections include:

- Odd or even – even year elections have higher base costs because of higher requirements in Title 1 of the Uniform Election Code for more Voter Service Centers and other services mandated for state and federal elections; presidential years are also going to have higher administration costs for additional services and scope than other even years.
- In odd years, costs overall are less but will fluctuate most heavily based on whether either the State or Larimer County or both have questions on the ballot. If they do, costs will be significantly lower. If one or both do not, the City will pay the bulk of the costs for all election administration in those years as the largest jurisdiction participating in the election. The school districts do participate in odd years, which is a big help to sharing that cost, but other jurisdictions across the county are significantly smaller and will not pick up nearly as much of the costs. 2022 costs for the special election coordinated with Larimer County were substantially higher than initial estimates based on the City of Loveland not participating in that election.
- Any election with a City TABOR question will be substantially higher cost because of the additional TABOR requirements for the mailed notice, as those costs are not prorated but are passed on directly to involved jurisdictions.
- Starting in 2025, costs will also be significantly higher as all RCV related costs (staffing, equipment, software, supplies including the likely need for a second ballot card, voter education) will be passed on directly to Fort Collins.
- The other variable that is hard to start quantifying for is around rising supply costs. Supply chain issues combined with inflation combined with security and integrity concerns being promulgated around elections are creating a perfect storm of rapidly escalating prices for every part of the election process. 2022 county election costs far outpaced all prior years for similar election events. Vendors are raising prices rapidly to address their own constraints and needs. Additional legislative changes should be anticipated that continue placing more requirements around election administration, concurrently increasing costs. This factor will also impact City-administered election events.

The other aspect of resource considerations around election administration is in the opportunity costs for other activities and programs in the City Clerk's Office. Currently, the City Clerk and the Chief Deputy City Clerk are the primary individuals who work on elections-related needs year-round. There are 9 total FTEs now allotted to the Clerk's Office, with the addition in the 2023 budget of an Elections & Technology Analyst. These positions support five major program areas across the office, including Clerk to Council functions,

Elections, Records & Information Management, Regulatory Licensing, and central support for Boards & Commissions. Most of these programs have a single FTE allocated or parts of FTEs that also work in other programs. When an actual election event is underway, such as the recent referendum petition process or previously April Municipal Elections, the entire Clerk's Office shifts as much as possible to election-related work. The new Elections & Technology Analyst position is intended to both be a single point person for elections technology needs in particular, helping in that critical coordination for election events, as well as managing the City's robust campaign finance program that accompanies any election whether administered by the County or the City. That role has also been identified to play a primary role in the development and implementation of a major system in the Clerk's Office over the next year for agenda management as well. If the City administers an election in 2023, either for the regular November election or for any special election that may come up (which cannot be coordinated with Larimer County), there will be significant impacts to the possible work plans for all programs across the Clerk's Office because of the interdependencies involved.

Nomination Deadlines

Other potential Code changes in support of these transitions include changing the nomination deadlines for candidates for City Council in order to meet deadlines for submitting ballot content to the County if coordinated elections will be held, as well as other administration provisions.

Article VIII, Section 1 of the City Charter relating to Elections requires:

“The Council shall provide by ordinance for the manner of holding city elections. All ordinances regarding elections shall be consistent with the provisions of this Charter and the state Constitution. Any matter regarding elections not covered by the state Constitution, this Charter or ordinance of the Council shall be governed by the laws of the State of Colorado relating to municipal elections, or coordinated municipal elections, as applicable.”

In addition to establishing the Council's intent regarding the conduct of regular elections as coordinated elections with Larimer County, the most pressing potential shift needed in the City Code is to the timelines for filing for office. Under the provisions of the Charter, these timelines must be changed no later than 180 days prior to the election. Since the 2023 Regular Municipal Election will be on November 7, those changes must be in effect by May 11, 2023.

If the November election will be coordinated with Larimer County, the filing deadlines provided for in the Uniform Election Code and Municipal Election Code must be followed. Even if coordinated elections were not being held, it is still recommended to shift candidate filing timelines to mirror what is required for other November elections to minimize candidate confusion and ensure the City has enough time to prepare ballots in a busier season for election vendors.

The applicable provisions of the Uniform Election Code for the timing of filing by municipal candidates include:

C.R.S. 1-4-805. Petitions for nominating municipal candidates in coordinated elections. Any person who desires to be a candidate for a municipal office in a coordinated election shall, in lieu of the requirements of this article, comply with the nominating petition procedure set forth in the “Colorado Municipal Election Code of 1965”, article 10 of title 31, C.R.S.; except that part 11 or this article, concerning write-in candidate affidavits, shall apply in such municipal elections, and any nominating petition may be circulated and signed beginning on the ninety-first day prior to the election and shall be filed with the municipal clerk no later than the seventy-first day prior to the date of the election. The petition may be amended to correct or replace signatures that the clerk finds are not in apparent conformity with the requirements of the municipal election code at any time before the sixty-seventh day before the election.

C.R.S. 1-4-1101. Write-in candidate affidavit of intent. A person who wishes to be a write in candidate for an office in an election shall file an affidavit of intent stating that he or she desires the office and is qualified to assume its duties if elected. ... The affidavit shall be filed ... with the designated election official if it is for a local office.

C.R.S. 1-4-1102. Time of filing affidavit. (2) In a nonpartisan election, the affidavit of intent shall be filed by the close of business on the sixty-fourth day before the election. If the election is to be coordinated with the county clerk and recorder, the designated election official shall forward a copy of the affidavit of intent to the coordinated election official.

The following chart shows the differences between current City Code and provisions of Colorado Revised Statutes for these deadlines:

	Current City Code	State Statute
Earliest date to circulate nomination petitions	70 days before the election (Sec. 7-116)	91 days before the election (C.R.S. 1-4-805 & 31-10-302)
Deadline to submit nomination petitions	49 days before the election (Sec. 7-116)	71 days before the election (C.R.S. 1-4-805 & 31-10-302)
Deadline to submit amended nomination petitions	NA	67 days before the election (C.R.S. 1-4-805)
Deadline to withdraw from nomination for candidacy	42 days before the election (Sec. 7-116)	63 days before the election (C.R.S. 31-10-303)
Deadline for a write in candidate to submit an affidavit of intent to allow any votes to be counted	42 days before the election (Sec. 7-103)	64 days before the election (C.R.S. 1-4-1102)

Financial Disclosure Requirements

Currently, any candidate for office of Councilmember must file a written financial disclosure statement when accepting a nomination to run for office. Once elected, each member of Council must file another written disclosure statement following the election and annually thereafter. Previously, the date for this filing was set to be submitted no later than May 15 following their election in April, and then annually at the same time. With the shift to elections in November, it is recommended to shift this timing to be no later than January 10 to align with state law for other candidates elected in November elections.

CITY FINANCIAL IMPACTS

These changes are part of the required implementation of shifting from April to November regular municipal elections and do not have direct financial impacts on their own.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The Election Code Committee reviewed the nature of the shifts required to implement the timing shift to November regular elections and recommended proceeding with these changes, including the shift to coordinated elections with the ability for the Council to make a determination in the future if it decided not to coordinate a regular election.

PUBLIC OUTREACH

N/A

ATTACHMENTS

First Reading Attachments not included.

1. Ordinance A for Consideration
2. Ordinance B for Consideration
3. Ordinance C for Consideration

ORDINANCE NO. 044, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 7 OF THE CODE OF THE CITY OF FORT COLLINS
RELATING TO THE CONDUCT OF THE CITY’S REGULAR MUNICIPAL ELECTION

WHEREAS, on November 8, 2022, the voters of the city of Fort Collins approved Charter amendments revising the election provisions to move the City’s regular municipal election from April to November in odd-numbered years and to provide for the use of ranked voting methods beginning in 2025; and

WHEREAS, the shift of the City’s regular elections from April to November, at a time coinciding with the general election conducted by the Larimer County Clerk and Recorder, enables the City to coordinate with the Larimer County Clerk and Recorder in the conduct of regular City elections; and

WHEREAS, under Section 1 of Article VIII of the City Charter, the Council is to provide by ordinance for the manner of holding City elections; and

WHEREAS, Section 7.1 in Article I of Chapter 7 of the City Code provides if a City election is being conducted as a coordinated election, that election shall be governed by and conducted in accordance with the requirements and procedures of the Uniform Election Code of 1992, as amended, to the extent necessary for that election to be conducted as a coordinated election; and

WHEREAS, pursuant to the discussion of the Council Election Code Committee and the recommendation of staff, in order to formalize and enable planning for the manner in which City regular elections will be conducted, this Ordinance incorporates into the City Code an express provision that regular municipal elections shall be coordinated with the County unless otherwise provided by the Council by ordinance.

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

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

Section 2. That Chapter 7, Article II, Division 1 of the Code of the City of Fort Collins be amended by the addition of a new Section to read as follows:

Sec. 7-21. Administration of City-administered elections.

The provisions of this article apply to the administration of City-administered elections. Any election conducted as a coordinated election with the County is subject to the provisions of applicable state law.

Section 3. That Chapter 7, Article III, Division 1 of the Code of the City of Fort Collins be amended by the addition of a new Section to read as follows:

Sec. 7-56. Conduct of regular municipal election.

All regular municipal elections, held in November of odd-numbered years, shall be coordinated with the County, unless otherwise provided by the Council by ordinance prior to March 1 of the year in which the election is to be held.

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

ORDINANCE NO. 045, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 7 OF THE CODE OF THE CITY OF FORT COLLINS
RELATING TO CANDIDACY IN A MUNICIPAL ELECTION

WHEREAS, on November 8, 2022, the voters of the city of Fort Collins approved a Charter amendment moving the City’s regular municipal election from April to November in odd-numbered years; and

WHEREAS, the City Code contains provisions relating to the nomination of candidates, withdrawal from candidacy, and write-in candidates; and

WHEREAS, the deadlines contained in the City Code for these matters make it challenging to prepare ballots for mailing by the appropriate deadline; and

WHEREAS, regardless of whether the November regular election is conducted by the City or as an election coordinated with Larimer County, staff recommends amending the deadlines to conform to the requirements of the Colorado Uniform Election Code of 1992 (Colorado Revised Statutes Title 1, Articles 1 through 13) (the “UEC”); and

WHEREAS, conforming to the deadlines contained in the UEC will provide consistency for all candidates for municipal office under the provisions of the UEC, the Colorado Municipal Election Code of 1965 (Colorado Revised Statutes Title 31, Article 10), or the Fort Collins City Code; and

WHEREAS, conforming to the deadlines contained in the UEC also provides adequate time to certify candidates and prepare ballots, regardless of whether the election is conducted by the City or Larimer County.

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

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

Section 2. That Section 7-103 of the Code of the City of Fort Collins be amended to read as follows:

Sec. 7-103. Write-in candidates.

No write-in vote for a candidate for City Council office shall be counted unless the person whose name appears as the write-in vote has filed an affidavit of intent with the City Clerk, no later than the close of business ~~forty-two (42)~~ **sixty-four (64)** days before the election, indicating that such person desires and is qualified for the office.

Section 3. That Section 7-116 of the Code of the City of Fort Collins be amended to read as follows:

Sec. 7-116. Nomination of candidates; withdrawal from candidacy.

(a) A nominating petition required pursuant to Article VIII of the Charter may not be circulated earlier than ~~seventy (70)~~ **ninety-one (91)** days before the election and must be filed with the City Clerk not later ~~forty-nine (49)~~ **seventy-one (71)** days before the election. **The petition may be amended to replace signatures that the City Clerk finds are not in apparent conformity with the requirements of the City Charter at any time no later than sixty-seven (67) days before the election.**

(b) A person who has been nominated may, not later than ~~forty-two (42)~~ **sixty-three (63)** days before the election, withdraw by filing with the City Clerk a request therefor in writing, and no name so withdrawn shall be placed upon the ballot.

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

ORDINANCE NO. 046, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 7 OF THE CODE OF THE CITY OF FORT COLLINS
RELATING TO FINANCIAL DISCLOSURE REQUIREMENTS

WHEREAS, on November 8, 2022, the voters of the city of Fort Collins approved Charter amendments revising the election provisions to move the City’s regular municipal election from April to November in odd-numbered years and to provide for the use of ranked voting methods beginning in 2025; and

WHEREAS, with the shift of the City’s regular elections from April to November, the date for swearing in of City officials has shifted to a special Council meeting to take place on the second Tuesday of January following the November election; and

WHEREAS, the City Code requires each member of the City Council who is elected, re-elected, appointed or retained in office to file a written financial disclosure no later than May 15 of the year of election, re-election, appointment or retention in office; and

WHEREAS, with the change in the timing of regular elections and swearing in of Councilmembers, the Council has determined it will be beneficial to modify the deadline for filing of financial disclosures to shift accordingly; and

WHEREAS, in light of the foregoing, the Council desires to amend Section 2-636 of the City Code as set forth below.

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

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

Section 2. That Section 2-636 of the Code of the City of Fort Collins be amended to read as follows:

Sec. 2-636. Financial disclosure Required.

Any candidate for the office of City Councilmember shall, at the time of filing ~~their~~^{his or her} acceptance of nomination with the City Clerk, file with the City Clerk a written disclosure statement that conforms to the requirements of § 2-637. Such a written disclosure statement shall also be filed with the City Clerk by the City Manager and the City Attorney not later than thirty (30) days after their appointment ~~or retention in office~~, **and then each subsequent year in office no later than January 10**. Each member of the City Council who is elected, re-elected, appointed or retained in office shall also file such a written disclosure statement with the City Clerk not later than ~~May 15~~ **January 10** ~~of the year in which~~ **next after** their election, re-election, ~~or~~ **or** appointment **and then each subsequent year in office no later than January 10** ~~or retention in office occurs~~. However, any City Councilmember who is elected or re-elected and who has, prior to said election

or re-election, filed a written disclosure statement within ten (10) days after filing acceptance of nomination, may file an amended statement with the City Clerk or notify the City Clerk in writing that there has been no change in the disclosures made therein, since the date of filing of the same.

Introduced, considered favorably on first reading, and ordered published this 21st day of March, 2023, and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

AGENDA ITEM SUMMARY

City Council



STAFF

Kerri Ishmael, Senior Analyst, Grant Administration
Ted Hewitt, Legal

SUBJECT

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

EXECUTIVE SUMMARY

The purpose of this item is to transfer \$2,400,000 appropriated in the Cultural Services & Facilities Fund to the Capital Projects Fund.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The Carnegie Center for Creativity (CCC) is presently undergoing renovation, with City funds appropriated in the CCC renovation project within the Capital Projects Fund.

In late 2022, Cultural Services was awarded \$2,400,000 from the State of Colorado through the Colorado Creative Industries Office. By Ordinance No. 013, 2023 (attached) the \$2,400,000 was appropriated in the Cultural Services & Facilities Fund, with designation that such appropriation of funds not lapse until the expenditure of all funds received from the State of Colorado. To date, none of the \$2,400,000 has been spent for allowable CCC renovation activities.

Renovation of the CCC is being funded by the \$2,400,000 grant award from the State of Colorado and per the Community Capital Improvement Program (CCIP) ballot measure. City funds have been appropriated in the CCC renovation project within the Capital Projects Fund. To ensure that all expenses for the CCC renovation, regardless of funding source, are accounted for collectively as part of the CCC renovation project, the \$2,400,000 from the State of Colorado appropriated in the Cultural Services & Facilities Fund per Ordinance No. 013, 2023, should be transferred to the CCC renovation project within the Capital Projects Fund.

CITY FINANCIAL IMPACTS

The \$2,400,000 in resources for the CCC renovation appropriated in the Cultural Services & Facilities Fund will be transferred to the CCC renovation project within the Capital Projects Fund.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Item 15.

PUBLIC OUTREACH

N/A

ATTACHMENTS

- 1. Ordinance for Consideration
- 2. Ordinance No. 013, 2023

ORDINANCE NO. 047, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING TRANSFERS OF APPROPRIATIONS FOR THE RENOVATION OF THE
CARNEGIE CENTER FOR CREATIVITY

WHEREAS, in late 2022, the City of Fort Collins was awarded \$2,400,000 from the State of Colorado through the Colorado Creative Industries Office to renovate the Carnegie Center for Creativity (the “Grant”); and

WHEREAS, through Ordinance No. 013 adopted February 21, 2023, the City Council appropriated the Grant funds in the Cultural Services & Facilities Fund and designated the Grant as an appropriation that shall not lapse at the end of the 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; and

WHEREAS, to date, none of the \$2,400,000 Grant funds have been expended; and

WHEREAS, to ensure that all expenses for the Carnegie Center for Creativity renovation, regardless of funding source, are accounted for collectively as part of the CCC renovation project, the \$2,400,000 from the State of Colorado appropriated in the Cultural Services & Facilities Fund per Ordinance No. 013, 2023, should be transferred to the CCC renovation project within the Capital Projects Fund; and

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

WHEREAS, the City Manager has recommended the transfer of \$2,400,000 from the Cultural Services and Facilities Fund to the Capital Projects Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged.

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

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

Section 2. That the unexpended and unencumbered appropriated amount of TWO MILLION FOUR HUNDRED THOUSAND DOLLARS (\$2,400,000) is authorized for transfer from the Cultural Services and Facilities Fund to the Capital Projects Fund and appropriated therein to be expended for the renovation of the Carnegie Center for Creativity.

Section 3. That the appropriation herein for the Community Revitalization Grant from the State of Colorado and Carnegie Center for Creativity renovation 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 or the earlier of the expiration of the grant or the City’s expenditure of all funds received from such grant.

Introduced, considered favorably on first reading, and ordered published this 4th day of April, 2023, and to be presented for final passage on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

ORDINANCE NO. 013, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING UNANTICIPATED GRANT REVENUE FROM THE COLORADO
COMMUNITY REVITALIZATION GRANT PROGRAM IN THE CULTURAL SERVICES &
FACILITIES FUND FOR THE RENOVATION OF THE CARNEGIE CENTER FOR
CREATIVITY AND APPROVING THE ASSOCIATED GRANT AGREEMENT

WHEREAS, in 2015, the Fort Collins electorate approved the Community Capital Improvement Program Ballot Measure, which helped to support the renovation of the Carnegie Center for Creativity; and

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

WHEREAS, the Colorado Community Revitalization Grant Program is a State of Colorado grant program that provides funding for capital projects in creative districts, historic districts, main streets or neighborhood commercial centers; and

WHEREAS, the Colorado Community Revitalization Grant Program has awarded the City of Fort Collins \$2,400,000 to support the renovation of the Carnegie Center for Creativity; and

WHEREAS, the City and the State of Colorado, through the Colorado Creative Industries Office and its third-party administrator, Impact Development Fund, have entered into a grant agreement for the award, which is attached hereto as Exhibit "A" and which imposes no matching funds requirement on the City; and

WHEREAS, this appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of renovating the City's Carnegie Center for Creativity; and

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

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

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

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

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


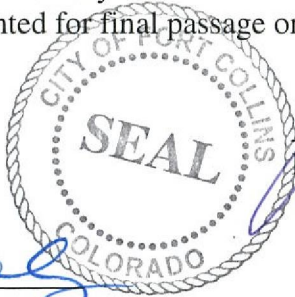
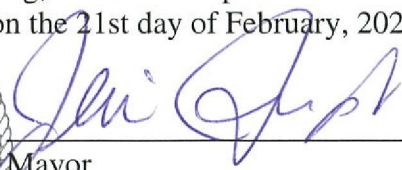
Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from new revenue or other funds in the Cultural Services and Facilities Fund the sum of TWO MILLION FOUR HUNDRED THOUSAND DOLLARS (\$2,400,000) to be expended in the Cultural Services and Facilities Fund for the renovation of the Carnegie Center for Creativity.



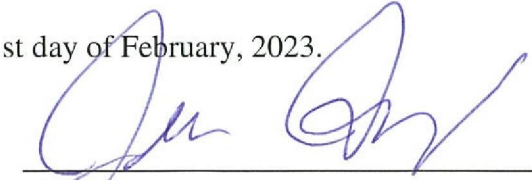
Section 3. That the appropriation herein from the Colorado Community Revitalization Grant Program is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the earlier of the expiration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

Section 4. That the City Council has reviewed the Colorado Community Revitalization Grant Program and the attached grant agreement and approves of such funding and the agreement and further authorizes City staff to take appropriate action necessary to be able to expend the grant funds as contemplated by the Grant Program.

Introduced, considered favorably on first reading, and ordered published this 7th day of February, 2023, and to be presented for final passage on the 21st day of February, 2023.

ATTEST:   
City Clerk Mayor

Passed and adopted on final reading on the 21st day of February, 2023.

ATTEST:   
City Clerk Mayor



Impact Development Fund
200 E. 7th Street, Suite 412
Loveland, CO 80537
Office: 970-494-2021
info@impactdf.org



Colorado Community Revitalization Grant Contract

Grantee Name	City of Fort Collins – Cultural Resources
Grantee Mailing Address	215 N. Mason Fort Collins, CO 80524
Grantee Contact Name	Jim McDonald
Grantee Phone	970-416-2935
Grantee Email	jmcdonald@fcgov.com
Project Name	Carnegie Center for Creativity
Project Location	200 Mathews St, Fort Collins, CO 80524
Grant Amount	\$2,400,000
Repayment Obligations	None
Funding Date	November 25, 2022
Community Revitalization Grant Application #	CCR21-9868602917

Colorado Community Revitalization Grant Terms

IDF has received authority to administration of payments and application review/grant underwriting for Community Revitalization Colorado grant program from the Colorado Office of Economic Development and International Trade through the authority of SB21-252. All provisions of the Colorado Special Provisions (Colorado Fiscal Rule 3-3) stated in “Exhibit A” apply IDF and to this Grant.

To assist IDF in administering the Grant to you, you agree to provide upon request all information reasonably deemed necessary by IDF to successfully complete administration of the Grant to you. You authorize IDF to commence Grant administration efforts immediately and agree to actively assist IDF in administering the Grant to you. IDF reserves the right (in consultation with you) to allocate the commitments offered by Community Revitalization Colorado Grant Program.

You hereby agree that IDF shall have the exclusive right to structure, arrange and administer the Grant to you and that no other Grant administrators will be engaged without IDF’s prior written consent.

You will make yourself available for meetings with IDF, Community Revitalization Colorado Grant Program and/or their affiliates during the Grant administration process. IDF and Community Revitalization Colorado Grant Program shall be expressly permitted to distribute any and all documents and information relating to the transactions contemplated hereby and received from you or any other source to any potential lender, grant administrator, participant, or assignee on a confidential basis.

In addition to the conditions to funding or closing set forth herein, the Grant award is subject to, among other conditions, (a) IDF and Community Revitalization Colorado Grant Program’s satisfactory completion of its final due diligence with respect to your application and Program materials, including the representations made within, (b) the negotiation and execution of any documentation necessary to fulfill this Grant award, (c) there being no material adverse change in your eligibility for the Program (d) there not having occurred a material disruption or material adverse change in the financial, banking or capital markets which, in IDF or Community Revitalization Colorado Grant Program’s reasonable judgment, could reasonably be expected to materially impair administration of the Grant.

In the event of a material disruption or material adverse change in the financial, banking or capital markets that could reasonably be expected to materially impair administration of the Grant, you hereby agree to enter into such modifications to the terms of the Grant award as IDF or Community Revitalization Colorado Grant Program may reasonably request as necessary for administering the Grant and, in the event that administration of the Grant shall prove to be impracticable in IDF or Community Revitalization Colorado Grant Program’s reasonable determination, such modifications to the Grant award as IDF or Community Revitalization Colorado Grant Program may reasonably request as necessary to make administration of the Grant reasonably practicable.

You hereby represent and covenant that (a) all written information (the “Information”) that has been or will be made available to IDF or Community Revitalization Colorado Grant Program by you or any of your representatives (in each case, with respect to Information furnished to IDF or

EXHIBIT A

Community Revitalization Colorado Grant Program prior to the date of commencement of administration of the Grant, as supplemented from time to time prior to such date) is or will be complete and correct in all material respects and does not or will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made and (b) all financial projections (“Projections”) that have been or will be made available to IDF or Community Revitalization Colorado Grant Program by you or any of your representatives have been or will be prepared in good faith based upon assumptions you believe to be reasonable (it being understood that the Projections are subject to significant uncertainties and contingencies, many of which are beyond your control, and that no assurance can be given that such Projections will be realized). You understand that in administering the Grant, IDF or Community Revitalization Colorado Grant Program may use and rely on the Information and Projections without independent verification thereof.

In consideration of the execution and delivery of this Grant Contract by IDF and the Grant awarded hereunder, you hereby agree to indemnify, exonerate and hold IDF and Community Revitalization Colorado Grant Program, and each of its officers, directors, employees, affiliates and agents (each an “Indemnified Party”) free and harmless from and against any and all actions, causes of action, suits, losses, liabilities, damages and expenses, including attorneys’ fees and expenses (including the allocated fees and disbursements of internal legal services) (collectively, the “Indemnified Liabilities”), incurred by the Indemnified Parties or any of them as a result of, or arising out of, or relating to the Grant or other similar transactions financed or proposed to be financed in whole or in part, directly or indirectly, with the proceeds of any of the Grant, or the execution, delivery, performance or enforcement of this Grant Contract, or administering the Grant, by any of the Indemnified Parties, except for any such Indemnified Liabilities arising on account of the applicable Indemnified Party’s gross negligence or willful misconduct as determined by a final, non-appealable judgment by a court of competent jurisdiction. If and to the extent that the foregoing undertaking may be unenforceable for any reason, you hereby agree to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. No Indemnified Party shall be liable for any damages arising from the use by others of any information or other materials obtained in connection with this Grant Contract, the Grant or administering the Grant, nor shall any Indemnified Party have any liability with respect to, and you hereby waive, release and agree not to sue for, any special, indirect or consequential damages relating to this Grant Contract or arising out of its activities in connection herewith or therewith (whether before or after administration of the Grant). Your obligations under this paragraph will survive administration of the Grant to you.

Each party acknowledges that this Grant Contract supersedes any and all discussions and understandings, written or oral, between or among you and IDF or Community Revitalization Colorado Grant Program, and any other person as to the subject matter hereof. This Grant Contract may only be amended, waived, or modified in writing and executed by the parties hereto.

The terms contained in this Grant Contract are confidential and, except for disclosure to professional advisors retained by you or as may be required by law or court order, may not be disclosed in whole or in part to any other person or entity without IDF and Community Revitalization Colorado Grant Program’s prior written consent; provided that any information with respect to the “tax treatment” or “tax structure” (in each case, within the meaning of Treasury Regulation Section 1.6011-4) of the

EXHIBIT A

transactions contemplated herein shall not be confidential and each party hereto may disclose without limitation of any kind any information with respect to the "tax treatment" or "tax structure" (in each case, within the meaning of Treasury Regulation Section 1.6011-4). No disclosure permitted above shall create any third-party beneficiary as to the Grant. This paragraph shall survive any termination of this Grant Contract.

You will provide any and all reporting and metrics as required by the Community Revitalization Colorado Grant Program including but not limited to additional sources of capital for project including public and or private, progress reports on project, number of jobs created by project, number of affordable housing units, efficiency upgrades including renewable or clean energy.

This Grant Contract shall be a contract made and governed by the internal laws of the State of Colorado applicable to contracts made and to be performed entirely within such state, without regard to conflict of laws principles.

Each of the parties hereto hereby waives any right to a trial by jury in any action or proceeding to enforce or defend any rights under this grant Contract and agrees that any such action or proceeding shall be tried before a court and not by a jury.

Any litigation based hereon, or arising out of, under, or in connection with this grant Contract, shall be brought and maintained exclusively in the courts of the State of Colorado or in the United States District Court for the 10th Circuit District of Colorado, provided that nothing in this grant Contract shall be deemed or operate to preclude IDF or Community Revitalization Colorado Grant program from bringing suite or taking other legal action in any other jurisdiction. Each party hereto expressly and irrevocably submits to the jurisdiction of the courts of the State of Colorado and of the United States District Court for the 10th Circuit District Court of Colorado for the purpose of any such litigation as set forth above. Each party hereto expressly and irrevocably waives, to the fullest extent permitted by law, any objection which may be now or hereafter have to the laying of venue of any such litigation brought in such court referred to above and any claim that any such litigation has been brought in an inconvenient forum.

Community Revitalization Colorado Grant Program and Impact Development Fund are pleased to have this opportunity and look forward to working with you!

Sincerely,



Connie Ealey
Director of Programs

Impact Development Fund
P: 970-494-2021 | F: 970-494-2022
Email: connie@impactdf.org

We, the undersigned Grantee, hereby accept all terms of this Grant Contract with the Colorado Community Revitalization Grant Program, including all terms set forth herein.

GRANTEE:

City of Fort Collins – Cultural Resources,
a Colorado body politic

By: Kelly DiMartino
Kelly DiMartino
Title: City Manager

EXHIBIT A

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

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

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

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

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

Financial obligations of the State payable after the current 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 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, §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 Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR

Grantee shall perform its duties hereunder as an independent contractor and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Grantee shall (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.

Grantee shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Agreement that requires the State to indemnify or hold Grantee harmless; requires the State to agree to binding arbitration; limits Grantee’s liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. SOFTWARE PIRACY PROHIBITION.

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

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 Agreement. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee’s services and Grantee shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State’s vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) 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 Grantee in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Grantee by deduction from subsequent payments under this Agreement,

deduction from any payment due under any other contracts, grants or agreements between the State and Grantee, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, et seq., C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a Subcontractor that fails to certify to Grantee that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Grantee (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Agreement is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within three days if Grantee has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Agreement, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Grantee participates in the Department program, Grantee shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Grantee fails to comply with any requirement of this provision or §§8-17.5-101, et seq., C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, Grantee shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, et seq., C.R.S.

Grantee, if a natural person 18 years of age or older, hereby swears and affirms under penalty of perjury that Grantee (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of §§24-76.5-101, et seq., C.R.S., and (iii) has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Agreement.

AGENDA ITEM SUMMARY

City Council



STAFF

Katie Collins, Water Conservation Specialist
Kerri Ishmael, Senior Analyst, Grant Administration
Eric Potyondy, Legal

SUBJECT

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

EXECUTIVE SUMMARY

The purpose of this item is to support businesses, homeowner associations, other commercial properties, and residential properties pursuing costly landscape projects that reduce water use long-term through the Xeriscape Incentive Program by:

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

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

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The Xeriscape Incentive Program (XIP) supports Fort Collins Utilities (Utilities) water customers by providing funding for landscape retrofit projects that reduce outdoor water use long-term. The typical existing landscape in Fort Collins is made up mostly of bluegrass, which, on average, requires 15-18 gallons of supplemental irrigation water per square foot of area, per growing season. Reducing the total amount of bluegrass on a property along with reconfiguring irrigation systems may cut a property's landscape water requirement by 30% or more, but retrofit projects are costly. XIP is one tool that reduces barriers to landscape conversions by providing rebates to customers - residential customers up to \$1,000 and commercial customers up to \$15,000 – for outdoor retrofit projects. More information about the

Landscape Incentive Program can be found here: [Xeriscape Incentive Program \(XIP\) - City of Fort Collins \(fcgov.com\)](https://www.fcgov.com/xeriscape).

Reducing outdoor water use is one of several effective water demand management tools identified in the Fort Collins Water Efficiency Plan. Through XIP, Utilities has been offering rebates to residential water customers since 2016 and to commercial water customers since 2020. Since 2016, over 400 landscape projects across 27 acres of Fort Collins have been supported by XIP – 390 projects on residential properties and 24 projects on commercial properties. The interest in landscape retrofit projects continues to grow as evidenced by the growing number of program participants.

The Colorado Water Conservation Board (CWCB) recently awarded a Water Plan Grant to Utilities (see attached meeting minutes) to support the XIP in relation to Utilities water customers for landscape retrofit projects on both commercial and residential properties that support reducing water use long-term. The award was based on total project costs of \$223,110, with the CWCB providing \$100,000 in funds and the remaining \$123,110 being provided by Fort Collins Utilities as grant match. Total project costs (\$223,110) pertain to funding for landscape retrofit projects.

As indicated in the Budget and Schedule for the Water Plan Grant (see attachment), both the CWCB and Utilities will share costs for the landscape retrofit projects on both commercial and residential properties on a cost basis of 44.8/55.2%, respectively. The basis for rebate amounts to Utilities water customers is based on program guidelines as developed by Utilities for the XIP. The period of performance a/k/a project period for such landscape retrofit projects is from May 2023 through May 1, 2028.

The grant award does not require execution of a post-award agreement. In this type of grant, the City would need to comply with the terms of the grant application and award upon accepting the grant and drawing the grant funds. City staff recommends that Council authorize the City Manager or their designee to accept the grant and comply with the terms of the grant application and award.

CITY FINANCIAL IMPACTS

This item appropriates \$165,890 in project costs for landscape retrofit projects completed on both commercial and residential properties of Utilities water customers from:

- \$100,000 in unanticipated grant revenue
- \$65,890 in Water Fund reserves to be used towards the required matching funds

Additionally, required matching funds in the amount of \$57,220 have already been appropriated in the 2023 Water Fund in the Water Conservation operating budget. The total project cost is \$223,110.

This grant from CWCB is a reimbursement type grant, meaning Water Fund expenses will be reimbursed up to \$100,000.

ATTACHMENTS

1. Ordinance for Consideration
2. Exhibit A to Ordinance
3. CWCB Minutes, September 20 & 21, 2022
4. State Approved Budget and Schedule for the Water Plan Grant

ORDINANCE NO. 048, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT AWARD AND COMPLY
WITH THE TERMS OF A GRANT FROM THE COLORADO WATER CONSERVATION
BOARD, MAKING SUPPLEMENTAL APPROPRIATIONS IN THE WATER FUND AND
AUTHORIZING TRANSFERS FROM THE WATER FUND,
FOR THE XERISCAPE INCENTIVE PROGRAM

WHEREAS, the City owns and operates Fort Collins Utilities (“Utilities”), which includes a water utility that provides water to customers in its service area; and

WHEREAS, water conservation and efficiency is a tool Utilities uses, primarily through the Utilities Water Conservation Division, to manage and reduce the demand for water service by Utilities customers, which is beneficial to the City, the water utility, and its ratepayers by, among other reasons, reducing demand on water supplies and helping to ensure that the demand for water does not exceed supplies; and

WHEREAS, Utilities has developed the Xeriscape Incentive Program (“Program”) to support customers seeking to transform their largescale landscapes to use less water from Utilities, such as those of homeowners’ associations and commercial customers; and

WHEREAS, the Colorado Water Conservation Board (also, “CWCB”) provides grants to water conservation programs; and

WHEREAS, such grants can provide significant funding for the Program, allowing it to expand beyond the scale that would otherwise be supported; and

WHEREAS, Utilities applied for such a grant, with the application attached hereto as Exhibit “A”; and

WHEREAS, the CWCB awarded Utilities such a grant for \$100,000 for the Program; and

WHEREAS, the grant requires \$123,110 in “matching funds” from the City, of which \$57,220 have already been appropriated in the 2023 Water Fund in the Water Conservation operating budget, and of which the remaining \$65,890 in Water Fund reserves is appropriated herein; and

WHEREAS, this appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of water conservation and efficiency, as discussed above; and

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

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

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

WHEREAS, the City Manager has recommended the transfer of \$57,220 from the Water Conservation operating budget in the Water Fund to the Xeriscape Incentive Program in the Water Fund to meet, in part, the City's required match under the grant with the CWCB for the Xeriscape Incentive Program Expansion project; and

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

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

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

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

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

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

Section 2. That there is hereby appropriated from new revenue or other funds in the Water Fund the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000) to be expended in the Water Fund for the Xeriscape Incentive Program.

Section 3. That the unexpended and unencumbered appropriated amount of FIFTY-SEVEN THOUSAND TWO HUNDRED TWENTY DOLLARS (\$57,220) is authorized for transfer from the Water Conservation operating budget in the Water Fund to the Xeriscape Incentive Program in the Water Fund and appropriated therein to be expended for the Xeriscape Incentive Program Expansion project, with period of performance from May 1, 2023 through May 1, 2028.

Section 4. That there is hereby appropriated from prior year reserves in the Water Fund the sum of SIXTY-FIVE THOUSAND EIGHT HUNDRED NINETY DOLLARS (\$65,890) to be expended in the Water Fund for the Xeriscape Incentive Program Expansion project, with period of performance from May 1, 2023, through May 1, 2028.

Section 5. That the appropriation herein from the Colorado Water Conservation Board grant is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the earlier of the expiration of the grant or the City’s expenditure of all funds received from such grant.

Section 6. That the City Council authorizes the City Manager or their designee to accept the grant and comply with the terms of the grant application and award.

Introduced, considered favorably on first reading, and ordered published this 4th day of April 2023, and to be presented for final passage on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

Colorado Water Conservation Board

Water Plan

Water Project Summary	
Name of Applicant	Fort Collins Utilities
Name of Water Project	Xeriscape Incentive Program Expansion
Grant Request Amount	\$100,000.00
Primary Category	\$100,000.00
<i>Conservation & Land Use Planning</i>	
Total Applicant Match	\$123,110.00
Applicant Cash Match	\$123,110.00
Applicant In-Kind Match	\$0.00
Total Other Sources of Funding	\$0.00
Total Project Cost	\$223,110.00

Applicant & Grantee Information	
Name of Grantee: Fort Collins Utilities	
Mailing Address: 222 Laporte Ave Fort Collins CO 80521	
FEIN: 846,000,587	
Organization Contact: Katie Collins	
Position/Title: Water Conservation Coordinator	Email: kcollins@fcgov.com
Phone: kcollins@fcgov.com	
Organization Contact - Alternate: Kelsey Doan	
Position/Title:	Email: kdoan@fcgov.com
Phone: 970-416-2410	
Grant Management Contact: Katie Collins	
Position/Title: Water Conservation Coordinator	Email: kcollins@fcgov.com
Phone: kcollins@fcgov.com	
Grant Management Contact - Alternate: Kelsey Doan	
Position/Title:	Email: kdoan@fcgov.com
Phone: 970-416-2410	

Description of Grantee/Applicant

Fort Collins Utilities (Utilities) is a municipal utility located in Fort Collins, Colorado, 65 miles north of Denver. Utilities serves about 35,500 water customers and delivers an average of 24,000 acre-feet per year.

Type of Eligible Entity

Public (Government)
 Public (District)
 Public (Municipality)

Item 16.

Ditch Company

- Private Incorporated
- Private Individual, Partnership, or Sole Proprietor
- Non-governmental Organization
- Covered Entity
- Other

Category of Water Project

- Agricultural Projects
Developing communications materials that specifically work with and educate the agricultural community on headwater restoration, identifying the state of the science of this type of work to assist agricultural users among others.
- Conservation & Land Use Planning
Activities and projects that implement long-term strategies for conservation, land use, and drought planning.
- Engagement & Innovation Activities
Activities and projects that support water education, outreach, and innovation efforts. Please fill out the Supplemental Application on the website.
- Watershed Restoration & Recreation
Projects that promote watershed health, environmental health, and recreation.
- Water Storage & Supply
Projects that facilitate the development of additional storage, artificial aquifer recharge, and dredging existing reservoirs to restore the reservoirs' full decreed capacity and Multi-beneficial projects and those projects identified in basin implementation plans to address the water supply and demand gap.

Location of Water Project

Latitude 40.585258
 Longitude -105.084419
 Lat Long Flag
 Water Source Utilities' water sources are the Poudre River and the Colorado-Big Thompson (C-BT) Project. We divert an average of 11,300 acre-feet from the Poudre and own 18,855 units of CB-T water.
 Basins Colorado; South Platte
 Counties
 Districts

Water Project Overview

Major Water Use Type Municipal
 Type of Water Project Education
 Scheduled Start Date - Design 7/1/2022
 Scheduled Start Date - Construction
 Description
 Fort Collins Utilities requests \$100,000 to expand the Xeriscape Incentive Program (XIP), a turf- replacement rebate program for residential and commercial water customers. All grant money will go directly to eligible Utilities customers in the form of rebates.

Measurable Results

Item 16.

- New Storage Created (acre-feet)
- New Annual Water Supplies Developed or Conserved (acre-feet), Consumptive or Nonconsumptive
- Existing Storage Preserved or Enhanced (acre-feet)
- New Storage Created (acre-feet)
- Length of Stream Restored or Protected (linear feet)
- Efficiency Savings (dollars/year)
- 4 Efficiency Savings (acre-feet/year)
- Area of Restored or Preserved Habitat (acres)
- Quantity of Water Shared through Alternative Transfer Mechanisms or water sharing agreement (acre-feet)
- Number of Coloradans Impacted by Incorporating Water-Saving Actions into Land Use Planning
- Number of Coloradans Impacted by Engagement Activity

Other

3.9 AF/Year is the anticipated water savings based on the minimum square feet of approximately 189,000 square feet that may be funded by the total program amount (\$223k) multiplied by the average water savings per square foot of area converted. Staff used the average savings calculated for residential projects of 6.8 gallons per square foot of area converted. There is more project data for residential projects, therefore a higher confidence of accuracy.

Water Project Justification

Colorado's Water Plan

The program supports the following statewide long-term goals outlined on page 6-59 in Chapter 6.3 of the Colorado Water Plan (CWP):

- Reduce overall future water needs through cost-effective water efficiency measures

The wall-to-wall turf aesthetic so commonly found on residential and commercial properties throughout Fort Collins does not fit the Colorado climate. Conversion of these spaces to drought resilient, low-water use landscapes will reduce future water needs and enhance urban landscapes with biodiversity and examples of Colorado-wise landscapes. Through analysis of past residential projects, we estimate an average savings of 6.8 gallons per square foot of area converted. Spending all funds available for rebates results in a minimum project transformation area of approximately 189,000 square feet, reducing total water use by no less than 1.3 million gallons annually (3.9 acre-feet/year). We anticipate additional savings knowing the average project size typically exceeds maximum rebate-able area. The Xeriscape Incentive Program (XIP) currently costs the Utility \$166 per 1,000 gallons saved, not including staff time. We anticipate staff time decreasing for this program as the it grows and more program efficiencies are established, making it even more cost effective.

- Promote water efficiency ethic throughout Colorado

The XIP Expansion promotes water efficiency ethic by supporting long-term landscape changes that reduce water use, increase resiliency to future climate conditions and act as demonstration sites to encourage water conservation. Word of mouth is increasingly becoming our number one marketing tool for this program. Projects funded by XIP are showcased in several ways such as photos on City websites, signs in project areas, a self-guided garden tour, one-time presentations requested by HOAs and other organizations, and individuals and groups working on the landscapes themselves, spreading the word as people walk by. The more projects Fort Collins Utilities (Utilities) supports, the more interest grows for water-wise landscapes. Additionally, earmarking a portion of funding for municipal projects encourages City-owned properties to get caught up with overdue water-wise landscape conversions and to be an example for the community.

The program supports the following action outlined on page 6-73 in Chapter 6.3 of CWP:

- Strengthen partnerships: The CWCB will create or renew partnerships between the CWCB and the following groups to reach water conservation goals:
 - (a) Local water providers and local governments to implement water conservation programs to the benefit their water systems

Utilities has an engaged customer base with a demonstrated need and interest in landscape transformation. Lessons learned from the current and past programs have helped staff determine what resources and support customers need to be successful while concurrently optimizing staff time. By partnering with CWCB through the grant process, the XIP Expansion helps Utilities address customer needs, supports the Fort Collins city council xeriscape priority, and advances two of the five areas of opportunity outlined in Utilities' Water Efficiency Plan (WEP): (1) promote and support greater outdoor water efficiency (2) expand commercial and industrial strategies. Additional benefits to the Utilities' water system include increased drought resiliency and lower peak demand.

The program supports the following actionable objective outlined on page 9-53 in Chapter 9.5 of CWP:

- Colorado's Water Plan provides technical and financial and assistance for high-quality, balanced, and grassroots water education and outreach efforts that inform Coloradans about the issues so that they may engage in determining Colorado's water future.

The XIP Expansion aligns with the CWP goal to increase water education. XIP is set up to engage customers in the "Seven Principles of Xeriscape" by incentivizing education and planning as the first steps in a project. Since 2016, staff have dedicated more than 300 in-class hours educating over 950 residential account holders through free classes on the topics of water sources, efficient landscape watering, and landscape and irrigation design considerations. In 2018, subject matter experts on staff began offering one-on-one appointments specific to irrigation, design, and native plants. The result has been higher quality designs and installations and more efficient irrigation retrofits. These efforts also address the fifth goal outlined in Utilities' WEP to increase community water literacy.

Commercial project participants are encouraged to work with certified landscape contractors to provide short-term and long-term water and landscape management plans that promote successful establishment. Utilities refers landscape contractors certified by the Irrigation Association and National Association of Landscape Professionals to encourage high-quality installations.

To help keep water use in check, Utilities provides all water users with tools to keep track of their own water use via the MyWater (WaterSmart Software) portal, including residential water budgets, leak alerts and access to AMI/billing data, plus customized water budgets for commercial customers through the Landscape Water Budget program.

The program supports the following actionable objectives outlined on page 10-5 in Chapter 10.2 of CWP:

- Supply-Demand Gap: Colorado's Water Plan sets a measurable objective of reducing the projected 2050 municipal and industrial (M&I) gap from as much as 560,000 acre-feet to zero acre-feet by 2030.

Colorado's water population is expected to double by 2050, thereby doubling the expected use in M&I. Even with passive conservation programs (e.g., fixture replacements), active conservation programs are necessary to address the gap. The XIP Expansion will help close the gap in the M&I sector by decreasing outdoor water use through conversion to water efficient urban landscapes, while also creating resources that encourage successful future landscape transformations throughout the state. While there are many established residential and commercial programs in Colorado, Utilities' XIP has long served as a resource to developing and existing

ams, and program managers.

- Conservation: Colorado's Water Plan sets a measurable objective to achieve 400,000 acre-feet of municipal and industrial water conservation by 2050.

Savings from the XIP Expansion will contribute directly to CWP's water conservation goal of saving 400,000 acre-feet by 2050 with an estimated annual reduction in water demand of 3.9 acre-feet for projects funded with the help of this grant. Projects that have received funding through XIP in the past are already contributing to water conservation goals. Water-use analysis of program participants show residents save an average of 6.8 gallons per square foot of area converted post-establishment, annually.* Since 2016, staff estimates XIP projects have contributed to a total of 17 million gallons in water savings, and counting. **

*Gallons saved per square foot based on analysis of actual water use across residential and commercial projects. AMI data was used.

**Based on a cumulative total through 2021 of estimated water savings at 6.8 gallons per square foot of area converted multiplied by area converted in a given project year. 2016 has six years of cumulative savings, 2017 has five years, and so on.

Related Studies

Fort Collins is one of the case studies in this publication and is a good example of a multi-source funded program. It supports CWCB's effort to provide information for future turf replacement programs in light of House Bill 22-1151.

- Financing the Future: How to Pay for Turf Replacement in Colorado

https://westernresourceadvocates.org/wp-content/uploads/2022/04/2022_0427_UTILITYTURFREPLACEMENT_FINAL.PDF

Fort Collins Xeriscape Incentive Program was a case study for this report:

- Alliance for Water Efficiency Landscape Transformation Study: 2018 Analytics Report.

https://www.allianceforwaterefficiency.org/sites/www.allianceforwaterefficiency.org/files/assets/LT_Analytics_Report.pdf

The Northern Water Grant is another local grant available to Utilities commercial water customers. Customers often leverage one funding source as match funding to secure funding from the other. This is especially helpful for participants who don't have the capital to do a project.

- Northern Water Conservancy Water-Efficient Landscape Grant and Landscape Consultation programs:

<http://www.northernwater.org/docs/WaterConservation/Northern%20Water%20grant%20program%20fact%20sheet.pdf>

Taxpayer Bill of Rights

As a public government entity, the Fort Collins Utilities complies with all state laws and regulations. Any funds obtained by this grant would be placed in the Utilities enterprise fund and would not be subject to TABOR restrictions.

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. The State shall not be liable for the payment of any excise, sales, or use taxes imposed on Vendor. A tax exemption certificate will be made available upon Vendor's request.

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

be solely responsible for all costs, expenses, and other charges it incurs in connection with its performance under this PO.

13. **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

occurrence; \$1,000,000 general aggregate; \$1,000,000 products and completed operations aggregate; and \$50,000 any one fire; and **(c)** Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit. If 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.

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 available. 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

EXHIBIT A

Item 16.

er 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 reason, 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

igations 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

urchase 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

mination 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,

Contractors 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 16.

with 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.

DRAFT

Summary Minutes and Record of Decisions

September 20 & 21, 2022 Board Meeting

A regular meeting of the Colorado Water Conservation Board (CWCB) convened at Fort Lewis College in Durango and virtually on zoom. The meeting was called to order by Chair Jackie Brown. 8 voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were: Robert Sakata, Paul Bruchez, Greg Felt, Celene Hawkins, Steven Anderson, Jessica Brody, and Heather Dutton, and ex-officio voting member Dan Gibbs, Executive Director of the Department of Natural Resources. Non-voting ex officio members present or represented were: Scott Steinbrecher, Attorney General's Office; Robert Harris, Colorado Parks and Wildlife; Kate Greenberg, Department of Agriculture; Kevin Rein, State Engineer and Rob Genualdi, Division Engineer, Division 7, and Rebecca Mitchell, Colorado Water Conservation Board Director. Counsel to the Board, Jen Mele, was also in attendance.

On the second day, the meeting was called to order by Chair Jaclyn Brown. 8 voting members were present at the call to order, so a quorum was present (at least 6 required). The voting members present were: Paul Bruchez, Jessica Brody, Steven Anderson, Robert Sakata, Greg Felt, Celene Hawkins, Jaclyn Brown, and Heather Dutton. Non-voting ex officio members present or represented were: Robert Harris, Colorado Parks and Wildlife; Kate Greenberg, Department of Agriculture; Kevin Rein, State Engineer; and Rebecca Mitchell, Colorado Water Conservation Board Director. Counsel to the Board, Jen Mele, was also in attendance.

Wednesday, September 20, 2022

1 Review /Approve Agenda

A motion to approve the agenda was made by Greg Felt, which was seconded by Heather Dutton. The motion was approved unanimously (8-0).

2 Review and Approve July 20 & 21, 2022 Board Meeting Minutes

A motion to approve the July 2022 Board minutes with the following corrections; add Paul Bruchez to the list of attendees at call to order on page 1, was made by Robert Sakata, which was seconded by Greg Felt. The motion was approved unanimously (8-0).

3 Approve and/or Remove Consent Agenda Items

A motion to approve the Consent Agenda Items CA1a-e, 2a, 3a-c, 4a-c, 5a-d and 5g-j was made by Greg Felt, which was seconded by Steve Anderson. The motion was approved unanimously (8-0). Consent agenda item 5e was moved to the end of the agenda on day 1 for more discussion, Celene Hawkins disclosed that her employer is a part of the project on CA 5e.

1. Statements of Opposition

Stream & Lake Protection Section

Staff recommends the Board ratify CWCB's filing of the following Statements of Opposition:

- a. Case No. 22CW3030 (Water Division 4): Application of Wolf Land Company, LP
- b. Case No. 22CW3042 (Water Division 5): Application of Red Mountain Ranch Partnership, LLLP
- c. Case No. 22CW3050 (Water Division 5): Application of Two Creeks Holdings LLC
- d. Case No. 22CW3053 (Water Division 5): Application of NamuRanch LLC
- e. Case No. 22CW3059 (Water Division 5): Application of Blue River Valley Ranch Lakes Association

2. Change of Grantee

Water Supply Planning Section

a. Arkansas Basin - Arkansas River Watershed Collaborative - Basin Implementation Plan
Education & Outreach

3. Water Supply Reserve Fund Application Grant

Water Supply Planning Section

Offerings

a. **Basin** - Rio Grande
Applicant - Colorado Master Irrigator
Name of Water Activity - Master Irrigator Program - Expanded Course
SLV
Account Request - \$94,112.50

and BH

b. **Basin** - South Platte
Applicant - Coalition for the Poudre River Watershed
Name of Water Activity - Phase 2 - Fish Passage Design for the Whitney Eaton Reach of the Cache la Poudre River
Account Request - \$72,970

c. **Basin** - Yampa/White/Green
Applicant - Nicholas & Ann Charchalis
Name of Water Activity - Drescher Dam Rehabilitation - Phase 2
Account Request - \$62,440

4. Floodplain Designations

Watershed and Flood Protection Section

- a. "Flood Insurance Study, Jefferson County and Incorporated Areas", by FEMA, dated August 2022
- b. "Flood Hazard Area Delineation, Cherry Creek Minor Tributaries in Arapahoe County", by Dewberry, dated October 2021
- c. "Flood Hazard Area Delineation, Weaver Creek", by Olsson, dated November 2021

5. Water Plan Grants

Operations Section

Agricultural Projects, a-c

a. **Applicant** - Crawford Clipper Ditch Company

Project - CCDC Upper West Lateral Pipeline and Water Optimization Project

- b. Applicant - Terrace Irrigation Company**
Project - Terrace Irrigation Water Efficiency Project
- c. Applicant - Delta County**
Project - Miners Trail - Short Ditch Extension

Conservation & Land Use Planning, d

- d. Applicant - Louviers Water and Sanitation District**
Project - Louviers Water and Sanitation - Water Service Meter Replacement

Watershed Health & Recreation, f - j

- f. Applicant - Colorado Youth Corps Association**
Project - 3 total projects - Project 1) Rio Grande National Forest Beaver Characterization, Restoration, and Reintroduction Project. Project 2) Alamosa Riparian Park Revegetation. Project 3) John Griffin Regional Park Fire Mitigation Project Phase 2
- g. Applicant - Conservation Resource Center**
Project - Private Lake and Reservoir Protection Initiative: Using Conservation Easements & Tax Credits to promote State Water Plan and Private Land Conservation Goals in the Arkansas, Rio Grande, and South Platte Water Basins
- h. Applicant - American Rivers**
Project - Uncompahgre River Multi-Benefit Project
- i. Applicant - River Science**
Project - River Watch: Collaboration and Outreach for Strategic Macroinvertebrate Data
- j. Applicant - Lyons Ute Hwy, LLC**
Project - Lyons Water Plant Stream Restoration

4	Directors' Reports
4a.	DNR Executive Director/IBCC Director - Dan Gibbs
4b.	CWCB Director - Rebecca Mitchell

- 4c. Agriculture Commissioner – Kate Greenberg
- 4d. State Engineer - Kevin Rein and Rob Genualdi
- 4e. Colorado Parks and Wildlife Director – Robert Harris
- 4f. Water Resource and Power Development Authority – Keith McLaughlin

5 Request for Authorization to Proceed to Trials in Stipulated Opposition Cases:

5a Case No. 18CW3193 (Water Division 1): Application of City of Loveland

Action: Report by CWCB staff member Colin Watson. A motion to approve the staff recommendation was made by Celene Hawkins, which was seconded by Heather Dutton. The motion was approved unanimously (8-0).

Staff Recommendation: Pursuant to ISF Rule 8j., Staff recommends that the Board authorize Staff to participate at trial, as necessary, to defend CWCB’s stipulation in each of the cases identified in Table 1. Table 1.

Item	Div.	Case No.	Applicant	Trial Date (No. of Days)	CWCB Stipulation Date	CWCB Statement of Opposition Date
5.a.	1	18CW3193	City of Loveland	October 10, 2022 (8 days)	January 22, 2020	January 30, 2019
5.b.	1	18CW3230	The Consolidated Mutual Water Company	October 24, 2022 (10 days)	April 26, 2022	February 27, 2019

5b Case No. 18CW3230 (Water Division 1): Application of The Consolidated Mutual Water Company

Action: Report by CWCB staff member Colin Watson. A motion to approve the staff recommendation was made by Celene Hawkins, which was seconded by Heather Dutton. The motion was approved unanimously (8-0).

Staff Recommendation: Pursuant to ISF Rule 8j., Staff recommends that the Board authorize Staff to participate at trial, as necessary, to defend CWCB’s stipulation in each of the cases identified in Table 1.

Item	Div.	Case No.	Applicant	Trial Date (No. of Days)	CWCB Stipulation Date	CWCB Statement of Opposition Date
5.a.	1	18CW3193	City of Loveland	October 10, 2022 (8 days)	January 22, 2020	January 30, 2019

5.b.	1	18CW3230	The Consolidated Mutual Water Company	October 24, 2022 (10 days)	April 26, 2022	February 27, 2019
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6 Proposed Acquisitions for Instream Flow Use
Stream and Lake Protection Section

6a Proposed Water Use Agreement with Colorado River District to Lease Ruedi Reservoir Water for Winter Intream Flow Use in the Fryingpan River, Water Division 5 (Pitkin and Eagle Counties)

Action: Report by CWCB staff member Pete Conovitz.

This is an informational item with no Board action required.

6b Cottonwood Irrigating Ditch No. 1 Expedited Loan of Water from Colorado Parks and Wildlife for Instream Flow Use on Cottonwood Creek, Water Division 2 (Chaffee County)

Action: Report by CWCB staff member Pete Conovitz. A motion to approve the staff recommendation was made by Greg Felt, which was seconded by Steve Anderson. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends that the Board ratify the CWCB Director’s decision to accept Colorado Parks and Wildlife’s offer of an expedited temporary loan of water for instream flow use on Cottonwood Creek in Water Division 2.

7 Water Plan Grants
Operations Section

Agricultural Projects, a-d

- a. Applicant - Colorado Rio Grande Restoration Foundation
 Project - Farmers Union Canal Diversion and Headgate

- b. Applicant - Colorado Ag Water Alliance
 Project - Agricultural Drought Resilience & Innovative Water Conservation

Action: Report by CWCB staff member Nora Flynn. Heather Dutton disclosed that she sits on the Board of the Colorado Rio Grande Restoration Foundation. Robert Sakata disclosed that he is a member of the CO Food Vegetables Association which is a part of CAWA. Celene Hawkins disclosed that her employer the Nature Conservancy is a partner on the CAWA application is providing match funding. Paul Bruchez disclosed that he gave presentations to the CAWA group but was not part of the

application process. A motion to approve the staff recommendation was made by Heather Dutton, which was seconded by Greg Felt. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends Board approval of agenda item 7a., \$600,000 to the Colorado Rio Grande Restoration Foundation for the Farmers Union Canal Diversion and Headgate Improvement Project. Staff recommends Board approval of agenda item 7b.\$183,700 to the Colorado Ag Water Alliance for the Agricultural Drought Resilience & Innovative Water Conservation Project.

Conservation & Land Use Planning, c-i

- c. Applicant - Resource Central
Project - Resource Central Landscape Change Program
- d. Applicant - San Miguel Watershed Coalition
Project - Integrated Hydrological Modeling of the San Miguel Watershed: A modern tool for water resource evaluations
- e. Applicant - Pacific Institute for Studies in Development, Environment, and Security
Project - Diversifying Colorado's Water Portfolio: The Potential for Stormwater Capture and Use to Contribute to a Water Resilient Future
- f. Applicant - Fort Collins Utilities
Project - Xeriscape Incentive Program Expansion
- g. Applicant - Fort Collins Utilities
Project - Fort Collins Utilities Water Efficiency Plan Update
- h. Applicant - University of Colorado Denver
Project - Examining the use of recycled water in agricultural production in Colorado
- i. Applicant - Aspen Global Change Institute Inc
Project - Roaring Fork Watershed - Evaluation of Soil

Action: Report by CWCB staff member Kevin Reidy. A motion to approve the staff recommendation was made by Jessica Brody, which was seconded by Robert Sakata. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the following Board action for activities listed in the following table regarding Colorado's Water Plan Grant Program funding.

Applicant	Project Name	Grant Request Amount	Staff Recommendation
c. Resource Central	Resource Central Landscape Change Program	\$110,070	\$110,070
d. San Miguel Watershed Coalition	Integrated Hydrological Modeling of the San Miguel Watershed: A modern tool for water resource evaluations	\$150,000	\$150,000
e. Pacific Institute for Studies in Development, Environment, and Security	Diversifying Colorado's Water Portfolio: The Potential for Stormwater Capture and Use to Contribute to a Water Resilient Future	\$209,744.75	\$209,744.75
f. Fort Collins Utilities	Xeriscape Incentive Program Expansion	\$100,000	\$100,000
g. Fort Collins Utilities	Fort Collins Utilities Water Efficiency Plan Update	\$200,000	\$160,000
h. - University of Colorado Denver	Examining the use of recycled water in agricultural production in Colorado	\$150,000	\$150,000
i. Aspen Global Change Institute Inc.	Roaring Fork Watershed - Evaluation of Soil Moisture for Water Planning	\$140,683	\$140,683
Total Recommended for Approval			\$1,020,497.75

Water Storage & Supply, j-p

- j. Applicant - Deutsch Domestic Water Company, Inc
Project - DDWC Water Storage and Efficiency Improvements

- k. Applicant - City of Grand Junction
Project - Gunnison River Reservoirs Project

- l. Applicant - Upper Arkansas Water Conservancy District

Project - Round Mountain Reservoir #2 Construction Project

- m. Applicant - Huerfano County Water Conservancy District
Project - 90% Design, Bruce Canyon Reservoir
- n. Applicant - North Poudre Irrigation Company
Project - The Park Creek Enlargement Modification
- o. Applicant - Farmers Reservoir & Irrigation Company
Project - Standley Lake Spillway Raise Evaluation
- p. Applicant - Dominion Water & Sanitation District
Project - Design and Construction of Regional Rainwater

Action: Report by CWCB staff member Matt Stearns. Greg Felt disclosed that he is the Director of the Upper Arkansas Water Conservancy District and a Chaffee County Commissioner. A motion to approve the staff recommendation was made by Celene Hawkins, which was seconded by Jessica Brody. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the following Board action for activities listed in the following table regarding Colorado’s Water Plan Grant Program funding.

Applicant	Project Name	Grant Request Amount	Staff Recommendation
j. Deutsch Domestic Water Company, Inc.	DDWC Water Storage and Efficiency Improvements	\$585,000	Approve \$585,000
k. City of Grand Junction	Gunnison River Reservoirs Projects	\$263,949	Approve \$263,949
l. Upper Arkansas Water Conservancy District	Round Mountain Reservoir #2 Construction Project	\$500,000	Approve \$500,000
m. Huerfano County Water Conservancy District	90% Design, Bruce Canyon Reservoir	\$172,500	Approve \$172,500
n. North Poudre Irrigation Company	The Park Creek Enlargement Modification	\$100,000	Approve \$100,000
o. Farmers Reservoir & Irrigation Company	Standley Lake Spillway Raise Evaluation	\$204,406	Approve \$204,406

p. Dominion Water & Sanitation District	Design and Construction of Regional Rainwater	\$200,000	Approve \$200,000
Total Recommended for Approval			\$2,025,855

Watershed Health & Recreation, q-r

- q. Applicant - Colorado Parks & Wildlife - Denver
Project - Kemp Breeze State Wildlife Area Habitat

- r. Applicant - Colorado State University
Project - Recovery and Resilience of the Cache la Poudre

Action: Report by CWCB staff member Chris Sturm. Jessica Brody disclosed that her employer Denver Water is providing resources for agenda item 7q. A motion to approve the staff recommendation was made by Robert Sakata, which was seconded by Heather Dutton. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the following Board actions for activities regarding the Colorado Water Plan Grant Program funding for the Watershed Health & Recreation category. Project approval is contingent upon the applicants’ abilities to resolve issues and additional needs discussed below.

Applicant	Project Name	Grant Request Amount	Staff Recommendation
q. Colorado Parks and Wildlife	Denver Kemp Breeze SWA Habitat Restoration	\$870,000	\$870,000
r. Colorado State University	Recovery and Resilience of the Poudre	\$472,520	\$315,171
Total Recommended for Approval			\$1,185,171

8 Financial Matters – Construction Fund and Severance Tax Perpetual Base Fund
Finance Section

8a. Financial Projections and Cash Management Report

Action: Report by CWCB staff member Kirk Russell.

This is an informational item with no Board action required.

9 Change to Existing Loan
Finance Section

9a. Genesee Water and Sanitation District, Genesee Reservoir No. 1 Enlargement Project

Action: Report by CWCB staff member Cole Bedford. A motion to approve the staff recommendation was made by Robert Sakata, which was seconded by Heather Dutton. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$5,555,000 (\$5,500,000 for Project costs and \$55,000 for the 1% service fee) to the Genesee Water and Sanitation District for costs related to the Genesee Reservoir No. 1 Enlargement, from the Construction Fund. This is an increase of \$1,313,000 (\$1,300,000 for Project costs and \$13,000 for the 1% service fee). The loan term shall remain 40 years at 2.50% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

10 Water Project Loans
Finance Section

10a Morrisania Water Supply Company – Ditch Rehabilitation Project

Action: Report by CWCB staff member Cole Bedford. A motion to approve the staff recommendation was made by Paul Bruchez, which was seconded by Steve Anderson. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$141,400 (\$140,000 for project costs and \$1,400 for the 1% service fee) to the Morrisania Water Supply Company for costs related to the Headgate Rehabilitation and Pipeline Installation Project, from the Severance Tax Perpetual Base Fund. The loan term will be 20 years at an interest rate of 2.45% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

10b Smith and Emmons Ditch Company – Diversion Structures Replacement Project

Action: Report by CWCB staff member Cole Bedford. A motion to approve the staff recommendation was made by Robert Sakata, which was seconded by Jessica Brody. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$414,100 (\$410,000 for project costs and \$4,100 for the 1% service fee) to the Smith and Emmons Ditch Company for costs related to the Diversion Structures Replacement Project, from the Severance Tax Perpetual Base Fund. The loan term will be 30 years at an interest rate of 3.90% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

10c Town of Keenesburg – Alluvial Water Rights Extension Project

Action: Report by CWCB staff member Joshua Godwin. A motion to approve the staff recommendation was made by Robert Sakata, which was seconded by Paul Bruchez. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$2,121,000 (\$2,100,000 for project costs and \$21,000 for the 1% service fee) to the Town of Keenesburg, operating by and through its water activity enterprise, for costs related to the Alluvial Water Rights Extension Project, from the Severance Tax Perpetual Base Fund. The loan term will be 30 years at an interest rate of 2.70% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

10d **Uncompahgre Valley Water Users Association – Taylor Park**

Action: Report by CWCB staff member Cole Bedford. Steve Pope addressed the Board. Jackie Brown disclosed that her employer Tri State Generation & Electric Assoc. supplies power to the partner company of this applicant. A motion to approve the staff recommendation was made by Steve Anderson, which was seconded by Heather Dutton. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$1,701,850 (\$1,685,000 for project costs and \$16,850 for the 1% service fee) to the Uncompahgre Valley Water Users Association for costs related to the Taylor Park Hydro Powerplant Project, from the Severance Tax Perpetual Base Fund. The loan term will be 30 years at an interest rate of 2.00% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5. Staff additionally recommends the following loan contract condition: 1. Prior to disbursement of funds, the Association shall provide documentation that all funding is secured and adequate to cover the Project cost estimate.

10e **North Poudre Irrigation Company – Park Creek Expansion Project**

Action: Report by CWCB staff member Cole Bedford. Jack Byers addressed the Board. A motion to approve the staff recommendation was made by Robert Sakata, which was seconded by Heather Dutton. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$6,544,800 (\$6,480,000 for project costs and \$64,800 for the 1% service fee) to the North Poudre Irrigation Company for costs related to the Park Creek Expansion Project, from the Severance Tax Perpetual Base Fund. The loan term will be 30 years at an interest rate of 2.55% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

11 **Attorney General's Report, Legal Briefing, and Executive Session**

Action: Report by Attorney General staff member Scott Steinbrecher and Counsel to the Board, Jen Mele. A motion to go into Executive Session was made by Jessica Brody, which was seconded by Steve Anderson. The motion was approved unanimously (8-0).

12 Executive Session

12a Colorado River Interstate Matters

12b 21CW3064 Cow Creek ISF Application

12c Assisting Basin Roundtables

Report from Executive Session

13

Action: Report by Counsel to the Board, Jen Mele. A motion to go out of Executive Session was made by Celene Hawkins, which was seconded by Heather Dutton. The motion was approved unanimously (8-0)

14 Colorado River Interstate Matters

Interstate, Federal, and Water Information Section

Action: Report by CWCB staff members Amy Ostdiek and Michelle Garrison.
This is an informational item with no Board action required.

CA Engagement & Innovation Activities

**item
5e**

- e. Applicant - Roaring Fork Conservancy**
- Project - Exploring social and environmental controls on the scalability of water conservation program**

Action: Report by CWCB staff member Amy Ostdiek. A motion to approve the staff recommendation was made by Paul Bruchez, which was seconded by Steve Anderson. The motion was approved unanimously (8-0).

Thursday, September 21, 2022

15	Basin Directors' Reports
15a	Rio Grande River Basin Director's Report – <i>Heather Dutton</i>
15b	Yampa-White River Basin Director's Report – <i>Jackie Brown</i>
15c	Colorado River (Mainstem) Basin Director's Report – <i>Paul Bruchez</i>
15d	San Juan/San Miguel-Dolores River Basin Director's Report – <i>Celene Hawkins</i>
15e	Gunnison River Basin Director's Report – <i>Steve Anderson</i>
15f	North Platte River Basin Director's Report – <i>Absent</i>
15g	South Platte River Basin Director's Report – <i>Robert Sakata</i>
15h	Arkansas River Basin Director's Report – <i>Greg Felt</i>
15i	City and County of Denver Director's Report – <i>Jessica Brody</i>

16 Program Guidance for the Special Release of the Colorado Watershed Restoration Program Watershed and Flood Protection Section

Action: Report by CWCB staff member Chris Sturm. A motion to approve the staff recommendation was made by Heather Dutton, which was seconded by Robert Sakata. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends that the Board Approve the Program Guidance for the Special Release of the Colorado Watershed Restoration Program. Introduction The Colorado Watershed Restoration Program (CWRP) is designed to provide capacity building, planning, engineering, and project implementation funding for stream restoration and watershed protection efforts. It also provides technical assistance for design review, engineering analysis, pre wildfire preparedness, post wildfire hazard analysis, fluvial hazard zone mapping development, construction oversight, adaptive management, and monitoring. The Board first approved the CWRP guidance document and application in September 2008. The Board approved revisions to the program in May 2012 and July 2015 before merging it with the Watershed Health and Recreation category of the Colorado Water Plan grant program in May of 2022. The program dispersed over \$15.5 million from 2009-2022, and it leveraged over \$46 million in match funding. The Board also approved a Special Release of the Colorado Watershed Restoration Program in October 2013 to address planning needs associated with the

September 2013 Front Range floods. Another Special Release was approved in March 2021 to disperse funds appropriated for fire recovery. Total funding administrated through the Special Releases of CWRP exceed \$100 million.

17 Wildfire Ready Watersheds Update
Watershed and Flood Protection Section

Action: Report by CWCB staff member Chris Sturm.

This is an informational item with no Board action required.

18 Water Supply Reserve Fund Applications – September 2022 Board Meeting
Water Supply Planning Section

18a. Basin - Arkansas
Applicant - Cross Creek Metropolitan District
Name of Water Activity - Hale Reservoir Renovation - Cross Creek Park
Account Request - \$100,000

Action: Report by CWCB staff member Ben Wade. A motion to approve the staff recommendation was made by Greg Felt, which was seconded by Steve Anderson. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends approval of up to \$100,000 from the Arkansas Basin Account to help fund the project: Hale Reservoir Renovation – Cross Creek Park. Project approval is contingent upon the applicants’ abilities to resolve issues and additional needs discussed below.
Water Activity Summary: The applicant proposes to achieve five goals with this project including: 1) rehabilitate Hale Reservoir dam, increasing the size of the lake and surrounding wetlands; 2) create a non-potable irrigation source for the park’s multi-use fields; 3) increase and improve environmental attributes and habitat; 4) create recreational amenities that allow open space access without damaging habitat; and 5) address and correct water quality and flood hazard issues with stormwater mitigation infrastructure.

18b. Basin - Yampa/White/Green
Applicant - Bear River Reservoir Company
Name of Water Activity - Stillwater Reservoir Repairs & Upgrades
Account Request - \$139,500

Action: Report by CWCB staff member Ben Wade. A motion to approve the staff recommendation was made by Heather Dutton, which was seconded by Paul Bruchez. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends approval of up to \$139,500 from the Yampa/White/Green Basin Account to help fund the project: Stillwater Reservoir Repairs & Upgrades. Project approval is contingent upon the applicants’ abilities to resolve issues and additional needs discussed below.

Water Activity Summary: If approved, WSRF funds would assist both phases of the applicant’s proposal. The first phase, involves the applicant obtaining accurate cost estimates for the alternatives to mitigate seepage from the left abutment of Stillwater Reservoir. The cost estimates will enable the applicant to select the most efficient and effective repair projects from a list of alternatives already presented to them that are acceptable to the Division of Dam Safety/Division of Water Resources (DWR). This will allow the applicant to develop a detailed design plan for submission to DWR for final approval of the repair projects. The second phase is to replace the outlet's hydraulic power unit, hydraulic reservoir and hydraulic lines with the recommended upgrades and encase the new lines in conduit. These upgrades to the original 1939 equipment will ensure that the outlet system has optimal capability for safe and efficient operation now and for the foreseeable future.

19 Water Supply Reserve Fund Criteria & Guidelines Update
Water Supply Planning Section

Action: Report by CWCB staff member Ben Wade. A motion to approve the staff recommendation with the Boards suggested edits was made by Celene Hawkins, which was seconded by Heather Dutton. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Colorado Water Conservation Board (CWCB) approve of the revised 2023 Water Supply Reserve Fund Criteria and Guidelines (Guidelines).

20 House Bill 22-1151 turf Replacement Program Update
Water Supply Planning Section

Action: Report by CWCB staff member Russ Sands.

This is an informational item with no Board action required.

21 Water Plan Update
Water Supply Planning Section

Action: Report by CWCB staff member Russ Sands. Molly Mugglestone, Josh Kuhn, and Abby Burk addressed the Board during public comment.

This is an informational item with no Board action required.

22 Table Topic - Innovative, Drought Resilient Agriculture
Focusing on farming and geography in the Southwest and Rio Grande Basins

Board members Celene Hawkins, Paul Bruchez, and Heather Dutton organized speakers from their basins to talk about innovative, drought resilient agriculture. Sheldon Rockey with Rockey Farms, Sara Jones with Jones Family Farm, Tessa Peters with the Land Institute, Mike Preston with Weenuch-u

Development Corporation, Jay Loschert with Montezuma Land Conservancy, and Jude Schuenemeyer with Montezuma Orchard Restoration Project addressed the Board.

This is an informational item with no Board action required.

ADJOURN

A motion to adjourn the September 2022 Board meeting was made by Steve Anderson, which was seconded by Greg Felt. The motion was approved unanimously (8-0).



COLORADO
Colorado Water Conservation Board
 Department of Natural Resources

Colorado Water Conservation Board

**Water Plan Grant - Exhibit C
 Budget and Schedule**

Prepared Date: 3/15/2023

Name of Applicant: Fort Collins Utilities

Name of Water Project: Xeriscape Incentive Program Expansion

Project Start Date: 5/1/2023

Project End Date: 5/1/2028

Task No.	Task Description	Task Start Date	Task End Date	Grant Funding Request	Match Funding	Total
1	Program Expansion Planning and Implementation	completed by City as part of XIP		0	0	\$0
2	Advertise and Recruit	May-23	May-28	\$0	\$0	\$0
3	Project Installation & Monitoring (Administrative)	May-23	May-28	\$0	\$0	\$0
4	Rebate Payment and Program Year Closeout	May-23	May-28	\$100,000	\$123,110	\$223,110
5	"Program In A Box" Development	May-23	May-28	\$0	\$0	\$0
Total				\$100,000	\$123,110	\$223,110



Colorado Water Conservation Board
Water Plan Grant - Detailed Budget Estimate
Fair and Reasonable Estimate

Prepared Date: 3/15/2023
 Name of Applicant: Fort Collins Utilities
 Name of Water Project: Xeriscape Incentive Program Expansion

Task 1 - Program Expansion Planning and Implementation *Completed, with 100% of costs covered by City of Fort Collins*
 Task 2 - Advertise and Recruit *Implemented and to continue through life of project. 100% of costs covered by City of Fort Collins*
 Task 4 - Rebate Payment and Program Year Closeout

Sub-task	Item	Item Cost	Item Quantity (min. square foot)		Sub-total	Total	CWCB Funds	Matching Funds
Task 4 - Rebate Payment and Program Year Closeout								
	Rebate per square foot native bonus - residential	\$ 1.00	40,000		\$ 40,000.00	\$ 40,000.00	\$ 17,928.38	\$ 22,071.62
	Rebate per square foot - residential	\$ 0.75	53,333		\$ 40,000.00	\$ 40,000.00	\$ 17,928.38	\$ 22,071.62
	Rebate per square foot - commercial	\$ 1.50	95,407		\$ 143,110.00	\$ 143,110.00	\$ 64,143.25	\$ 78,966.75
Task 5 - "Program in a Box" Development <i>Implemented and to continue through life of project. 100% of costs covered by City of Fort Collins</i>								
TOTAL						\$ 223,110.00	\$ 100,000.00	\$ 123,110.00
OVERALL TOTAL						\$ 223,110.00		
<i>% Share of Total Project Costs</i>							44.8%	55.2%

AGENDA ITEM SUMMARY

City Council



STAFF

Jenny Axmacher, Principal City Planner
 Megan Keith, Senior City Planner
 Aaron Guin, Legal

SUBJECT

Items Relating to the Thompson Thrift Spaulding Addition Annexation.

EXECUTIVE SUMMARY

A. Resolution 2023-031 Setting Forth Findings of Fact and Determinations Regarding the Thompson Thrift Spaulding Addition Annexation.

B. Public Hearing and First Reading of Ordinance No. 049, 2023, Annexing the Property Known as the Thompson Thrift Spaulding Addition Annexation to the City of Fort Collins, Colorado.

The purpose of this item is to annex a 3.743-acre property located off Terry Lake Road/Highway 1 on Spaulding Lane, closest to the Spaulding Lane and Valley View Lane intersection. A specific project development plan proposal is not included with the annexation application. The Initiating Resolution was adopted by City Council on February 21, 2023. A separate related item to amend the Zoning Map and classify for zoning purposes the annexed property is presented as the next item on this Agenda.

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

STAFF RECOMMENDATION

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

BACKGROUND / DISCUSSION

Contiguity

The Thompson Thrift Annexation has a total contiguous perimeter (2,506.31 feet) of 50.6%, which satisfies the requirement of one-sixth (1/6) contiguity to existing City limits from a common boundary on two sides as a result of the Willox Heights and Sherman-Lawler First Annexations.

Enclave Implications

Annexing the 3.743-acre property does not create an enclave and is a logical extension of municipal boundaries.

No Annexation Agreement

While the annexation petition mentions an “annexation agreement,” the petitioner’s attorney has confirmed that there is no annexation agreement associated with this annexation.

Conditional Withdrawal of Annexation Petition

The petitioner has requested that the annexation be conditional upon the final, non-appealable approval of the annexation and zoning, including challenges to the annexation or zoning resulting from a referendum or legal action filed in court. What this means is that until the time period to challenge the annexation or zoning have expired or any challenge that is timely initiated is resolved, the City Clerk will hold off on recording the annexation which is required to make the annexation effective. The City’s annexation petition form has a similar condition allowing the petitioner to withdraw the petition prior to the Council vote on second reading. While the requested condition is broader in scope than the condition the City normally allows, it accomplishes a similar purpose.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The Planning and Zoning Commission adopted as part of its consent agenda a recommendation that Council approve this annexation and zoning at its meeting on March 23, 2023.

CITY FINANCIAL IMPACTS

There are no City financial impacts related to this annexation.

PUBLIC OUTREACH

The neighborhood meeting requirement for this annexation and zoning was waived. A neighborhood meeting will be required for the associated future Watermark at Willox development to the east of and including the Thompson Thrift Annexation property. All applicable mailings and postings per Section 2.9 (Amending the Zoning Map) and 2.12 (Annexation of Land) of the Land Use Code have been followed.

ATTACHMENTS

1. Resolution for Consideration
2. Ordinance for Consideration
3. Vicinity Map
4. Annexation Petition
5. Annexation Plat Map

RESOLUTION 2023-031
OF THE COUNCIL OF THE CITY OF FORT COLLINS
SETTING FORTH FINDINGS OF FACT AND DETERMINATIONS
REGARDING THE THOMPSON THRIFT SPAULDING ADDITION ANNEXATION

WHEREAS, pursuant to Resolution 2023-021, annexation proceedings were initiated by the City Council for property to be known as the Thompson Thrift Spaulding Addition Annexation (the "Property"); and

WHEREAS, following notice given as required by law, the City Council held a hearing on said annexation on April 4, 2023.

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

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

Section 2. That the City Council hereby finds that the petition for annexation of the Property complies with the Municipal Annexation Act (the "Act"), Colorado Revised Statutes Section 31-12-101, et seq.

Section 3. That the City Council hereby finds that there is at least one-sixth (1/6) contiguity between the City and the Property proposed to be annexed; that a community of interest exists between the Property proposed to be annexed into the City; that said Property is urban or will be urbanized in the near future; and that the Property is integrated with or is capable of being integrated with the City.

Section 4. That the City Council further determines that the applicable parts of the Act have been met, that an election is not required under the Act, and that there are no other terms and conditions to be imposed upon said annexation.

Section 5. That the City Council further finds that notice was duly given, and a hearing was held regarding the annexation in accordance with the Act.

Section 6. That the City Council concludes that the Property is eligible for annexation to the City and should be so annexed.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

ORDINANCE NO. 049, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ANNEXING THE PROPERTY KNOWN AS THE
THOMPSON THRIFT SPAULDING ADDITION ANNEXATION
TO THE CITY OF FORT COLLINS, COLORADO

WHEREAS, on February 21, 2023, City Council adopted Resolution 2023-021 finding substantial compliance and initiating annexation proceedings for the Thompson Thrift Spaulding Addition Annexation, as defined therein and described below; and

WHEREAS, Resolution 2023-031 setting forth findings of fact and determinations regarding the Thompson Thrift Spaulding Addition Annexation was adopted concurrently with the first reading of this Ordinance; and

WHEREAS, the City Council has determined that it is in the best interests of the City to annex the property to be known as the Thompson Thrift Spaulding Addition Annexation as described below (the "Property") to the City.

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

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

Section 2. That the City Council hereby incorporates the findings of Resolution 2023-021 and Resolution 2023-031 and further finds that it is in the best interests of the City to annex the Property to the City.

Section 3. That the Property, more particularly described as:

A parcel of land situate in the Southwest Quarter of Section Thirty-six (36), Township Eight North (T.8N.), Range Sixty-nine West (R.69W.) of the Sixth Principal Meridian (6th P.M.) being more particularly described as follows:

BEGINNING AT THE NORTHEAST CORNER OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 8 NORTH RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, THENCE WEST 150 FEET; THENCE SOUTH 959 FEET MORE OR LESS, TO THE NORTH LINE OF RIGHT OF WAY OF THE LARIMER AND WELD RESERVOIR COMPANY CANAL; THENCE EASTERLY ALONG SAID RIGHT OF WAY TO A POINT DUE SOUTH OF THE POINT OF BEGINNING; THENCE NORTH 975 FEET, MORE OR LESS TO THE POINT OF BEGINNING,

EXCEPT THAT PORTION CONVEYED TO LARIMER COUNTY IN DEED RECORDED JULY 29, 1986 UNDER RECEPTION NO. 86040958, COUNTY OF LARIMER, STATE OF COLORADO.

Being more particularly described as follows:

A parcel of land being a part of the Southeast Quarter of the Southwest Quarter of Section 36, Township 8 North Range 69 West of the 6th P.M., City of Fort Collins, County of Larimer, State of Colorado, being more particularly described as follows:

Considering the South line of the Southeast Quarter of the Southwest Quarter of said Section 36, as bearing North 89°17'51" West, an assumed bearing, and with all bearing contained herein relative thereto:

Commencing at the Southwest corner of Willox Heights Annexation to the City of Fort Collins;

THENCE along the West line of said Willox Annexation North 00°39'21" East a distance of 174.71 feet to the POINT OF BEGINNING;

THENCE departing said line, North 51°19'10" West a distance of 56.19 feet;

THENCE North 76°29'10" West a distance of 108.46 feet;

THENCE North 00°39'21" East a distance of 1072.10 feet to a point on the South right-of-way line of Spaulding Lane, said line also being the South line of Sherman-Lawler First Annexation to the City of Fort Collins;

THENCE along said South line South 84°52'02" East a distance of 150.46 feet to a point on the West line of said Willox Heights Annexation;

THENCE along said line West line South 00°39'21" West a distance of 1119.10 feet to the POINT OF BEGINNING.

Said described track of land contains 163,045 square feet or 3.743 acres, more or less and may be subject to any rights-of-way or other easements as granted or reserved by instruments of record or as now existing on said described parcel of land,

is hereby annexed to the City of Fort Collins and made a part of said City, to be known as the Thompson Thrift Spaulding Addition Annexation, which annexation shall become effective upon completion of the conditions contained in Colorado Revised Statutes ("C.R.S.") Section 31-12-113, including, without limitation, all required filings for recording with the Larimer County Clerk and Recorder.

Section 4. That, in annexing the Property to the City, the City does not assume any obligation respecting the construction of water mains, sewer lines, gas mains, electric service lines, streets or any other services or utilities in connection with the Property hereby annexed except as may be provided by ordinances of the City.

Section 5. That the City hereby consents, pursuant to C.R.S. Section 37-45-136(3.6), to the inclusion of the Property into the Municipal Subdistrict, Northern Colorado Water Conservancy District, to the extent the Property is not already included.

Section 6. That the petitioner reserves the sole, exclusive and unilateral right, for the benefit of, and to be exercised solely by Thompson Thrift Development, Inc., or its successors and

assigns, to withdraw the annexation petition and terminate annexation proceedings by notifying the City Clerk in writing at any point prior to the latest to occur of:

- (a) The final, non-appealable approval of this Ordinance and the associated annexation findings resolution referenced in Section 2 of this Ordinance;
- (b) The final, non-appealable approval of the associated zoning ordinance of the Property to the LMN zone district; or
- (c) The final, non-appealable resolution of any legal challenge or other action that directly or indirectly challenges the approvals set forth in (a) or (b) or any petition for a referendum seeking to reverse or nullify any of the approvals set forth in (a) or (b).

The petitioner may waive its right to withdraw the annexation petition set forth in this Section at any time by notifying the City Clerk in writing of such waiver.

Introduced, considered favorably on first reading and ordered published this 4th day of April, 2023, and to be presented for final passage on the 18th day of April, 2023.

Mayor

ATTEST:

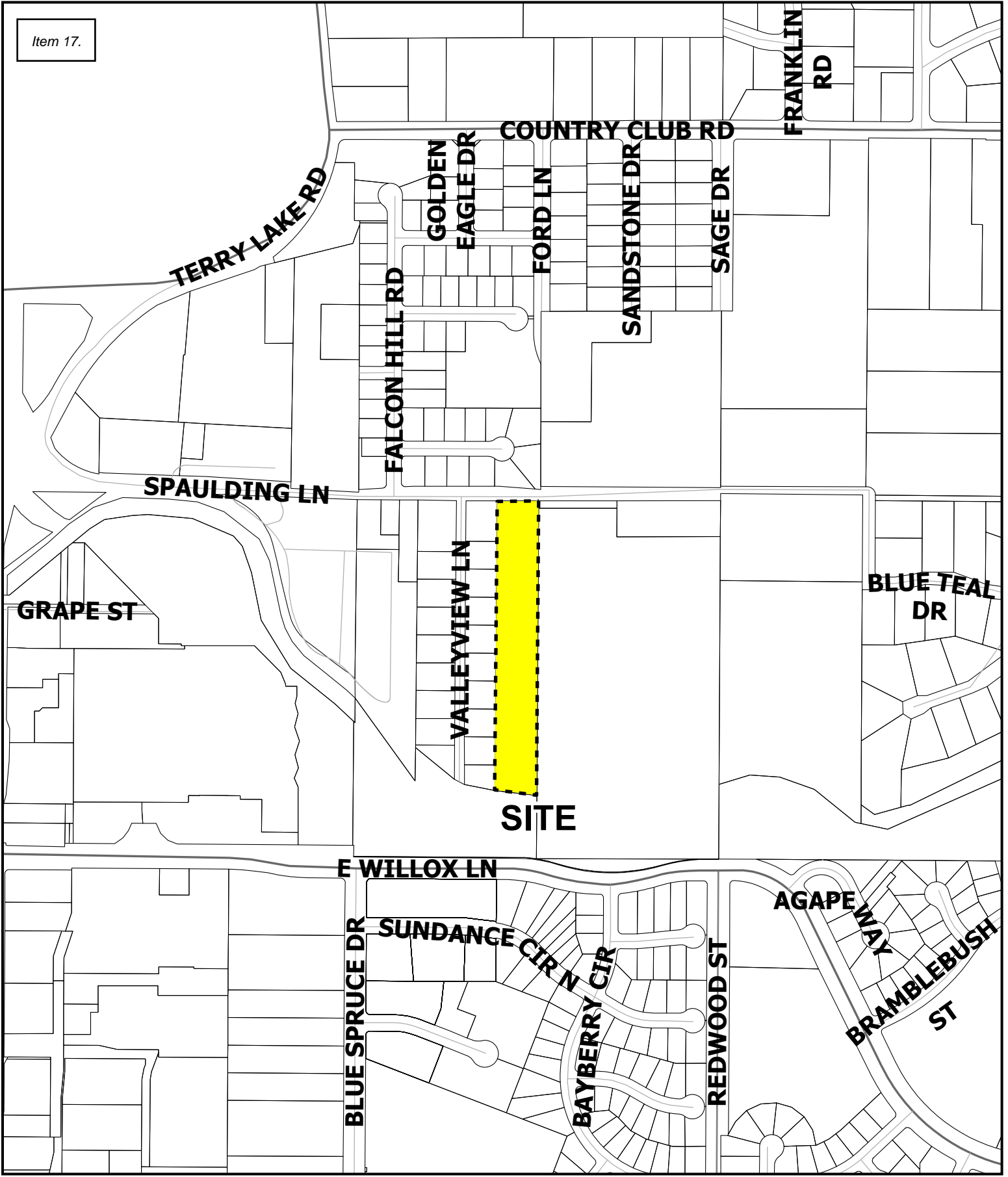
City Clerk

Passed and adopted on final reading this 18th day of April, 2023.

Mayor

ATTEST:

City Clerk



THOMPSON THRIFT ANNEXATION VICINITY MAP



PETITION FOR ANNEXATION

THE UNDERSIGNED (hereinafter referred to as “**Petitioner**”), hereby petitions (this “**Petition**”) the Council of the City of Fort Collins, Colorado for the annexation of an area in unincorporated Larimer County, as more particularly described by its legal description in Exhibit A, which is attached hereto and incorporated herein by this reference (the “**Property**”).

In support of this Petition, Petitioner alleges as follows:

1. That it is desirable and necessary that the Property be annexed to the City of Fort Collins.
2. That the condition set forth in Section 30(1)(b) of Article II of the Colorado Constitution has been met.
3. That the requirements of Sections 31-12-104 and 31-12-105, C.R.S., exist or have been met.
4. That not less than one-sixth (1/6) of the perimeter of the Property is contiguous with the boundaries of the City of Fort Collins.
5. That a community of interest exists between the Property and the City of Fort Collins.
6. That the Property is urban or will be urbanized in the near future.
7. That the Property is integrated with or is capable of being integrated with the City of Fort Collins.
8. That Petitioner comprises more than fifty percent (50%) of the landowners in the Property and own more than fifty percent (50%) of the Property, excluding public streets, alleys and lands owned by the City of Fort Collins.
9. That the City of Fort Collins shall not be required to assume any obligations respecting the construction of water mains, sewer lines, gas mains, electric service lines, streets or any other services or utilities in connection with the Property except as may be provided by the ordinance of the City of Fort Collins.
10. Accompanying this Petition are four copies of the annexation boundary map in the form required by C.R.S. Section 31-12-107(1)(d) containing the following information:
 - (a) A written legal description of the boundaries of the Property;
 - (b) A map showing the boundary of the Property, such map prepared and containing the seal of a registered engineer or land surveyor;

(c) Within the annexation boundary map there is shown the location of each ownership tract in unplatted land, and if part or all of the area be platted, then the boundaries and the plat number of plots or of lots and blocks are shown; and

(d) Next to the boundary of the Property is drawn the contiguous boundary of the City of Fort Collins and the contiguous boundary of any other municipality abutting the area proposed to be annexed.

11. Petitioner requests that the Council of the City of Fort Collins approve the annexation of the Property. Furthermore, Petitioner requests that said area be placed in the LMN Zone District pursuant to the Land Use Code of the City of Fort Collins.

12. Petitioner reserves the sole, exclusive and unilateral right, for the benefit of, and to be exercised solely by Thompson Thrift Development, Inc. (together with its successors and assigns, “**Purchaser**”) to withdraw this Petition by Purchaser so notifying the Clerk of the City of Fort Collins in writing at any point prior to the latest to occur of:

(a) The final, non-appealable approval of the final ordinance(s), resolutions and/or other final action(s) granting the annexation of the Property to the City of Fort Collins, zoning of the Property to the LMN Zone District, and execution of the annexation agreement; or

(b) Final, non-appealable resolution of any legal challenge or other action that directly or indirectly challenges the approvals set forth in Section 12(a) or any petition for a referendum seeking to reverse or nullify any of the approvals set forth in Section 12(a).

13. Prior to expiration of the period described in the foregoing Sections 12(a) and 12(b) without Purchaser having withdrawn this Petition, neither Purchaser, Petitioner nor the City shall cause or permit the occurrence of the conditions to effectiveness of the annexation as set forth in C.R.S. Section 31-12-113(2)(b).

THEREFORE, Petitioner requests that the Council of the City of Fort Collins approve the annexation of the Property.

[Signatures follow on next page]

PROPERTY OWNER/PETITIONER

MATTHEW R. BROWN

By: Matthew R. Brown
Name: Matthew R. Brown
Date: OCTOBER 3, 2022

Petitioner's mailing address: 423 SPAULDING LN FORT COLLINS CO 80524

Is Petitioner a resident of the Property?: YES

Legal description of land owned by Petitioner: See Exhibit A, Legal Description of Property

EXHIBIT A

Legal Description of Property and Land Owned by Petitioner

A parcel of land situate in the Southwest Quarter of Section Thrity-six (36), Township Eight North (T.8N.), Range Sixty-nine West (R.69W) of the Sixth Principal Meridian (6th P.M.) being more particularly described as follows:

BEGINNING AT THE NORTHEAST CORNER OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 8 NORTH RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, THENCE WEST 150 FEET; THENCE SOUTH 959 FEET MORE OR LESS, TO THE NORTH LINE OF RIGHT OF WAY OF THE LARIMER AND WELD RESERVOIR COMPANY CANAL; THENCE EASTERLY ALONG SAID RIGHT OF WAY TO A POINT DUE SOUTH OF THE POINT OF BEGINNING; THENCE NORTH 975 FEET, MORE OR LESS TO THE POINT OF BEGINNING,

EXCEPT THAT PORTION CONVEYED TO LARIMER COUNTY IN DEED RECORDED JULY 29, 1986 UNDER RECEPTION NO. 86040958, COUNTY OF LARIMER, STATE OF COLORADO.

Being more particularly described as follows:

A parcel of land being a part of the Southeast Quarter of the Southwest Quarter of Section 36, Township 8 North Range 69 West of the 6th P.M., City of Fort Collins, County of Larimer, State of Colorado, being more particularly described as follows:

Considering the South line of the Southeast Quarter of the Southwest Quarter of said Section 36, as bearing North 89°17'51" West, an assumed bearing, and with all bearings contained herein relative thereto:

Commencing at the Southwest corner of Willox Heights Annexation to the City of Fort Collins;
THENCE along the West line of said Willox Annexation North 00°39'21" East a distance of 174.71 feet to the **POINT OF BEGINNING**;
THENCE departing said line, North 51°19'10" West a distance of 56.19 feet;
THENCE North 76°29'10" West a distance of 108.46 feet;
THENCE North 00°39'21" East a distance of 1072.10 feet to a point on the South right-of-way line of Spaulding Lane, said line also being the South line of Sherman-Lawler First Annexation to the City of Fort Collins;
THENCE along said South line South 84°52'02" East a distance of 150.46 feet to a point on the West line of said Willox Heights Annexation;
THENCE along said line West line South 00°39'21" West a distance of 1119.10 feet to the **POINT OF BEGINNING**.

Said described tract of land contains 163,045 square feet or 3.743 acres, more or less and may be subject to any rights-of-way or other easements as granted or reserved by instruments of record or as now existing on said described parcel of land.

EXHIBIT B

Affidavit of Circulator

This petition has been circulated by the undersigned (the circulator) who attest that each signature thereon is that of the person whose name it purports to be. (Each circulator shall sign below in front of the same notary, or attach a separate Affidavit for each circulator).

Signature John C Brown

Initials JB

Print Name John C Brown

Title

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

Subscribed and sworn to before me this 3RD day of OCTOBER, 2020, by JOHN C. BROWN

WITNESS my hand and official seal.

My commission expires: 02/02/2025

Hannah Sauerland
Notary Public

HANNAH SAUERLAND
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20214004170
MY COMMISSION EXPIRES 02-02-2025

THOMPSON THRIFT SPAULDING ADDITION ANNEXATION MAP

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 8 NORTH,
RANGE 69 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO
(423 SPAULDING LANE)

DESCRIPTION: THOMPSON THRIFT SPAULDING ADDITION

A parcel of land situate in the Southwest Quarter of Section Thirty-six (36), Township Eight North (T.8N.), Range Sixty-nine West (R.69W) of the Sixth Principal Meridian (6th P.M.) being more particularly described as follows:

BEGINNING AT THE NORTHEAST CORNER OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 8 NORTH RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, THENCE WEST 150 FEET; THENCE SOUTH 959 FEET MORE OR LESS, TO THE NORTH LINE OF RIGHT OF WAY OF THE LARIMER AND WELD RESERVOIR COMPANY CANAL; THENCE EASTERLY ALONG SAID RIGHT OF WAY TO A POINT DUE SOUTH OF THE POINT OF BEGINNING, THENCE NORTH 975 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION CONVEYED TO LARIMER COUNTY IN DEED RECORDED JULY 29, 1986 UNDER RECEPTION NO. 86040958, COUNTY OF LARIMER, STATE OF COLORADO.

Being more particularly described as follows:

A parcel of land being a part of the Southeast Quarter of the Southwest Quarter of Section 36, Township 8 North Range 69 West of the 6th P.M., City of Fort Collins, County of Larimer, State of Colorado, being more particularly described as follows:

Considering the South line of the Southeast Quarter of the Southwest Quarter of said Section 36, as bearing North 89°17'51" West, an assumed bearing, and with all bearings contained herein relative thereto:

Commencing at the Southwest corner of Wilcox Heights Annexation to the City of Fort Collins; THENCE along the West line of said Wilcox Annexation North 00°39'21" East a distance of 174.71 feet to the **POINT OF BEGINNING**.

THENCE departing said line, North 51°19'10" West a distance of 56.19 feet;
THENCE North 76°29'10" West a distance of 108.46 feet;
THENCE North 00°39'21" East a distance of 1072.10 feet to a point on the South right-of-way line of Spaulding Lane, said line also being the South line of Sherman-Lawler First Annexation to the City of Fort Collins;
THENCE along said South line South 84°52'02" East a distance of 150.46 feet to a point on the West line of said Wilcox Heights Annexation;
THENCE along said line West line South 00°39'21" West a distance of 1119.10 feet to the **POINT OF BEGINNING**.

Said described tract of land contains 163,045 square feet or 3.743 acres, more or less and may be subject to any rights-of-way or other easements as granted or reserved by instruments of record or as now existing on said described parcel of land.

APPROVED

This plat to be known as THOMPSON THRIFT SPAULDING ADDITION to the City of Fort Collins, County of Larimer,

State of Colorado by Ordinance No. _____, passed and adopted on final reading at a regular meeting of the City Council of Fort Collins, Colorado held on the ____ day of _____, 20__.

City Clerk

APPROVED AS TO FORM

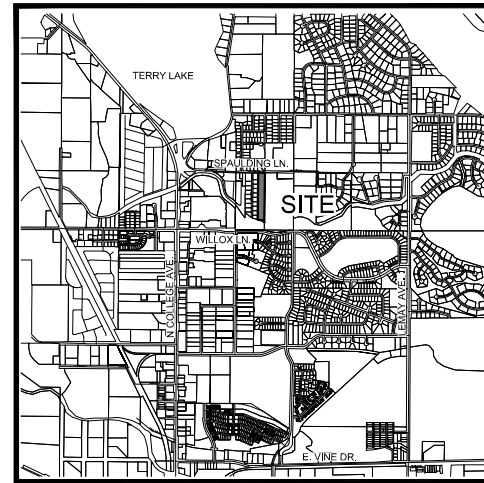
City Engineer

SURVEYOR'S STATEMENT

I, Robert C. Tessel, a Colorado Registered Professional Land Surveyor do hereby state that this map of land proposed to be Annexed to the City of Fort Collins, County of Larimer, State of Colorado was prepared under my direct supervision from existing documents of record, and that the same is true and correct to the best of my knowledge, information and belief.

I further state that not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous to the boundary line of the City of Fort Collins, County of Larimer, State of Colorado

For and on behalf of Northern Engineering Services, Inc.
Robert C. Tessel
Colorado Registered Professional Land Surveyor No. 38470



VICINITY MAP
1" = 3000'

SURVEYOR NOTES:

1. Basis of Bearing is the South line of the Southeast Quarter of the Southwest Quarter of Section 36, Township 8 North Range 69 West of the 6th P.M., as bearing North 89°17'51" West (assumed bearing), and monumented as shown hereon.
2. The lineal unit of measurement for this survey is U.S. Survey Feet.
3. Entire Parcel is currently zoned as Larimer County Zoning District CC - Commercial Corridor per Larimer County Online Assessor Property Records 9-29-2022.
4. A current title commitment was not provided. For all information regarding easements, rights-of-way or title of record, Northern Engineering relied upon the ALTA/NSPS Land Title Survey prepared by Majestic Surveying.
5. FLOOD ZONE DESIGNATION: According to FIRM Panel 08019C0977G for Larimer County, dated June 7, 2008, this tract lies within an area of minimal flood risk (Zone X).
6. Subject property address: 423 Spaulding Lane
7. Subject property owner: Matthew R. Brown.
8. The word "certify" or "certification" as shown and used hereon is an expression of professional opinion regarding the facts of the survey, and does not constitute a warranty or guaranty, expressed or implied. DORA Bylaws and Rules (4 CCR 730-1).
9. Adjacent property owner information per the Larimer County Land Information Locator.
10. The Professional opinion of the Surveyor is not a determination of law, nor a matter of fact.
11. All bearings and distances are derived from field measurements unless otherwise noted. The recorded bearings and or distances shown hereon are taken from existing public records and will not match the measured bearings and or distances due to differences in the datum and or projections used to complete the survey.
12. This Annexation Map is not a statutory monumented Land Survey as defined by the State of Colorado. Monuments shown hereon for reference purposes only.

NOTICE:
According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you discover such defect. In no event shall any action be commenced more than three years after the date of the certificate shown hereon.

SECTION: 36
TOWNSHIP: 8 N
RANGE: 69 W of the 6th PM

NORTHERN ENGINEERING
SURVEY | MUNICIPAL | LAND DEVELOPMENT
970.251.4188
NORTHERNENGINEERING.COM

PROJECT: 1791-002	DATE: 07/23/23	SCALE: As Shown	REVIEWED BY: R. Tessel
CLIENT: Thompson Thrift Residential			
DRAWN BY: M. Kinrade			

THOMPSON THRIFT SPAULDING ADDITION
ANNEXATION MAP
PART OF THE SW QUARTER OF S36-8N-R69W
LARIMER COUNTY, COLORADO

DRAFT
01-23-23
PRELIMINARY - NOT FOR CONSTRUCTION,
RECORDING PURPOSES OR IMPLEMENTATION

THOMPSON THRIFT SPAULDING ADDITION ANNEXATION MAP

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 8 NORTH,
RANGE 69 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO
(423 SPAULDING LANE)

THOMPSON THRIFT SPAULDING ADDITION ANNEXATION

TOTAL PERIMETER	2,506.31'
CONTIGUOUS BOUNDARY	1,269.56'
MINIMUM CONTIGUOUS PERIMETER FEET REQUIRED	417.72'
CONTIGUITY PERCENTAGE	50.6%
ANNEXATION AREA	163,045 sq. ft./3.743 acres

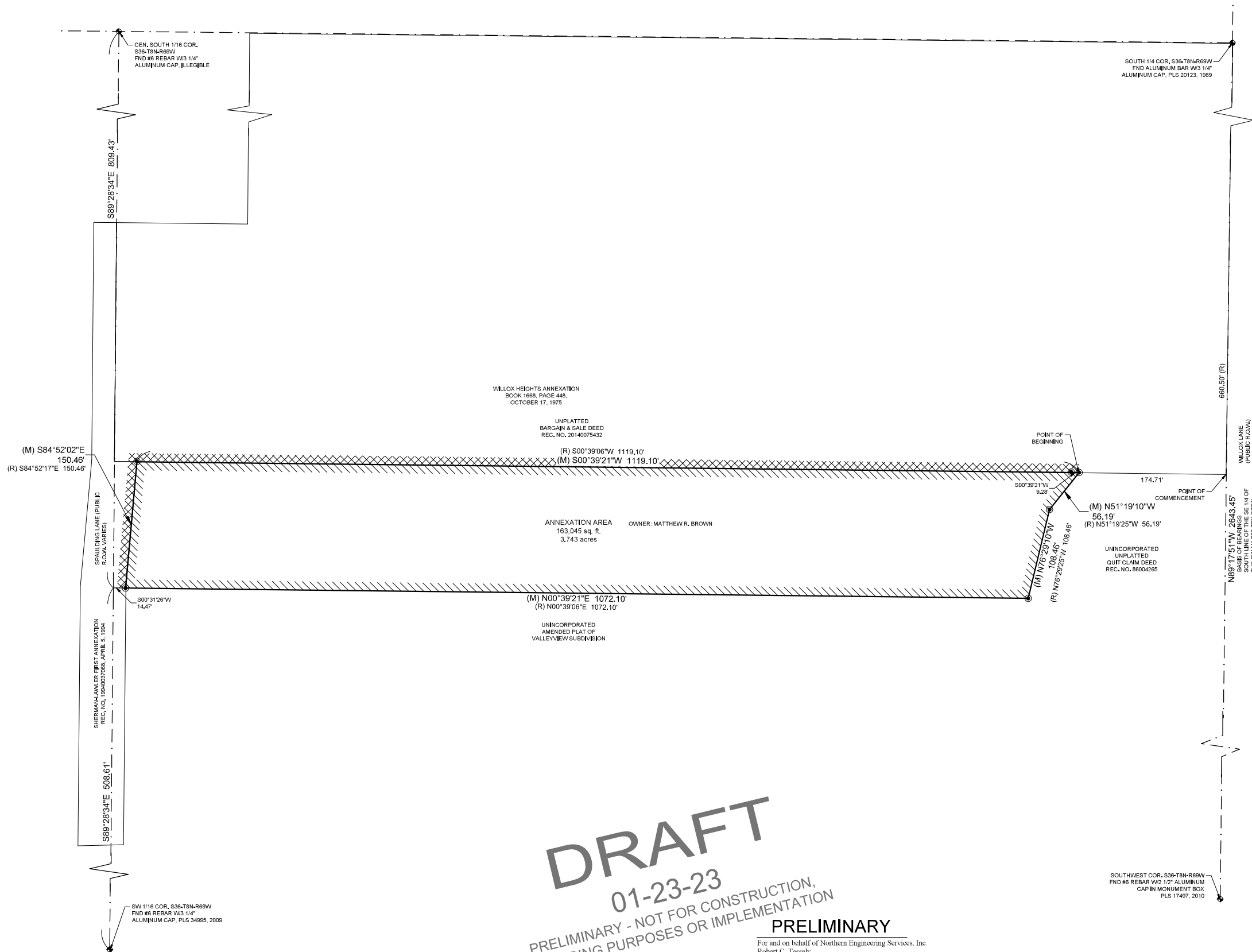
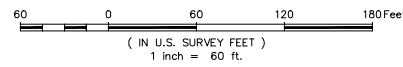
XXXXXXXXXXXX
INDICATES PRESENT CITY BOUNDARY LINE

Line Legend

	ANNEXATION BOUNDARY
	SECTION LINE
	(R) = RECORDED
	(M) = MEASURED
	(SEE NOTE #11)

Symbol Legend

	FOUND PROPERTY CORNER
	SECTION CORNER



NOTICE:
According to Colorado law you must commence any legal action based upon an error in this survey within three years after you discover such error or, if you were not the owner at the time of the survey, within three years after the date of the certificate shown hereon.

SECTION:	36
TOWNSHIP:	8 N
RANGE:	69 W of the 6th PM

NORTHERN ENGINEERING
SURVEY | MUNICIPAL | LAND DEVELOPMENT
970.231.4188
NORTH@NORTHERNENGINEERING.COM

DATE:	07/23/23
SCALE:	1\" = 60'
REVIEWED BY:	R. Tessely
PROJECT:	1791-002
CLIENT:	Thompson Thrift Residential
DRAWN BY:	M. Kinrade

THOMPSON THRIFT SPAULDING ADDITION ANNEXATION MAP PART OF THE SW QUARTER OF S36-8N-R69W LARIMER COUNTY, COLORADO

DRAFT
01-23-23
PRELIMINARY - NOT FOR CONSTRUCTION,
RECORDING PURPOSES OR IMPLEMENTATION
PRELIMINARY

For and on behalf of Northern Engineering Services, Inc.
Robert C. Tessely
Colorado Registered Professional Land Surveyor No. 38470



AGENDA ITEM SUMMARY

City Council

STAFF

Jenny Axmacher, Principal City Planner
Megan Keith, Senior Planner
Aaron Guin, Legal

SUBJECT

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

EXECUTIVE SUMMARY

The purpose of this item is to zone the property included in the Thompson Thrift Spaulding Addition Annexation into the Low Density Mixed-Use (L-M-N) zone district and place the property into the LC1 Lighting Context Area.

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

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The requested zoning for this annexation is Low Density Mixed Use (LMN), which is in alignment with the City of Fort Collins Structure Plan designation for this area. The Thompson Thrift Spaulding Addition property currently is and historically has been used in an estate/agricultural capacity. Directly west of the property is the unincorporated Valley View subdivision and directly north across Spaulding Lane is the Falcon Ridge subdivision, both within City limits. The property to the east currently is used in an estate/agricultural capacity and recently has been annexed and zoned Medium-Density Mixed-Use (MMN).

The surrounding zoning and land uses are as follows:

Direction	Zone District	Existing Land Use
N	Low Density Residential (RL)	Falcon Ridge neighborhood, single-family
S	Commercial Corridor (Larimer County)	Residential property
E	Medium Density Mixed Use (M-M-N)	Vacant (proposed to become Watermark at Willox)
W	Commercial Corridor (Larimer County)	Single-family neighborhood

City of Fort Collins Structure Plan

The Structure Plan map shows the Thompson Thrift annexation property as Suburban Neighborhood with a Structure Plan Place Type of Single-Family Neighborhood (see attached Structure Plan map). The Structure Plan future land use designations represent general citywide policy guidance.

Residential Sign District

Staff recommends that the property be placed within the Residential Neighborhood Sign District. The Sign Districts are established for the purpose of regulating signs for non-residential uses in areas of the community where the predominant character of the neighborhood is residential.

Lighting Context Area

On March 26, 2021, the City adopted new exterior lighting standards and established Lighting Context Areas that correspond to the City’s zone districts. The Lighting Context Area identified by Table 3.2.4-1 of the City’s lighting code for the L-M-N zone district is LC1. As part of this item, staff recommends placement of the property into the LC1 Lighting Context Areas.

- LC1 - Low ambient lighting. The vision of human residents and users is adapted to low light levels. Lighting may be used for safety and convenience, but it is not necessarily uniform or continuous. Typical locations include low and medium density residential areas, commercial or industrial areas with limited nighttime activity, and the developed areas in parks and other natural setting.

Conditional Zoning

As noted in the associated Thrift Spaulding Addition Annexation AIS, the annexation petition may be withdrawn and the annexation request terminated prior to any periods for challenges to the annexation or this zoning ending, or the resolution of any challenges that may occur such as a referendum or court challenge. Should the annexation petition be withdrawn, this zoning ordinance shall be null and void.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The Planning and Zoning Commission unanimously adopted as part of its consent agenda the recommendation that Council approve this zoning at its meeting on March 23, 2023.

CITY FINANCIAL IMPACTS

There are no City financial impacts related to the zoning of the subject property.

PUBLIC OUTREACH

The neighborhood meeting requirement for this annexation and zoning was waived. A neighborhood meeting will be required for the associated future Watermark at Willox development to the east of and including the Thompson Thrift Annexation property. All applicable mailings and postings per Section 2.9 (Amending the Zoning Map) and 2.12 (Annexation of Land) of the Land Use Code have been followed.

ATTACHMENTS

1. Ordinance for Consideration
2. Vicinity Map
3. Petition
4. Applicant Narrative
5. Annexation Map
6. Structure Plan
7. Existing Zoning Map
8. Lighting Context Area Map

ORDINANCE NO. 050, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE ZONING MAP OF THE CITY OF FORT COLLINS
AND CLASSIFYING FOR ZONING PURPOSES THE PROPERTY INCLUDED
IN THE THOMPSON THRIFT SPAULDING ADDITION ANNEXATION TO THE
CITY OF FORT COLLINS, COLORADO,
AND APPROVING CORRESPONDING CHANGES TO THE RESIDENTIAL
NEIGHBORHOOD SIGN DISTRICT MAP AND LIGHTING CONTEXT AREA MAP

WHEREAS, on April 18, 2023, the City Council adopted on second reading Ordinance No. XXX, 2023, annexing to the City of Fort Collins the property known as the Thompson Thrift Spaulding Addition Annexation (the “Property”); and

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

WHEREAS, Division 2.9 of the Land Use Code of the City of Fort Collins establishes procedures and criteria for reviewing the zoning of land; and

WHEREAS, pursuant to Land Use Code Section 2.9.2, the City Planning and Zoning Commission, at its meeting on March 23, 2023, unanimously adopted a recommendation on its consent agenda that Council should zone the Property as Low Density Mixed Use (L-M-N), as more particularly described below and determined that the proposed zoning is consistent with the City’s Comprehensive Plan; and

WHEREAS, the City Council has determined that the proposed zoning of the Property is consistent with the City’s Comprehensive Plan; and

WHEREAS, to the extent applicable, the City Council has also analyzed the proposed zoning against the applicable criteria set forth in Section 2.9.4(H)(3) of the Land Use Code and finds the proposed zoning to be in compliance with all such criteria; and

WHEREAS, in accordance with the foregoing, the City Council has considered the zoning of the Property as described below, finds it to be in the best interests of the City, and has determined that the Property should be zoned as hereafter provided.

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

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

Section 2. That the Zoning Map of the City of Fort Collins adopted pursuant to Section 1.3.2 of the Land Use Code of the City of Fort Collins is hereby changed and amended by including in the Low Density Mixed Use (L-M-N) zone district the Property more particularly described as:

A parcel of land situate in the Southwest Quarter of Section Thirty-six (36), Township Eight North (T.8N.), Range Sixty-nine West (R.69W.) of the Sixth Principal Meridian (6th P.M.) being more particularly described as follows:

BEGINNING AT THE NORTHEAST CORNER OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 8 NORTH RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, THENCE WEST 150 FEET; THENCE SOUTH 959 FEET MORE OR LESS, TO THE NORTH LINE OF RIGHT OF WAY OF THE LARIMER AND WELD RESERVOIR COMPANY CANAL; THENCE EASTERLY ALONG SAID RIGHT OF WAY TO A POINT DUE SOUTH OF THE POINT OF BEGINNING; THENCE NORTH 975 FEET, MORE OR LESS TO THE POINT OF BEGINNING,

EXCEPT THAT PORTION CONVEYED TO LARIMER COUNTY IN DEED RECORDED JULY 29, 1986 UNDER RECEPTION NO. 86040958, COUNTY OF LARIMER, STATE OF COLORADO.

Being more particularly described as follows:

A parcel of land being a part of the Southeast Quarter of the Southwest Quarter of Section 36, Township 8 North Range 69 West of the 6th P.M., City of Fort Collins, County of Larimer, State of Colorado, being more particularly described as follows:

Considering the South line of the Southeast Quarter of the Southwest Quarter of said Section 36, as bearing North 89°17'51" West, an assumed bearing, and with all bearing contained herein relative thereto:

Commencing at the Southwest corner of Willox Heights Annexation to the City of Fort Collins;

THENCE along the West line of said Willox Annexation North 00°39'21" East a distance of 174.71 feet to the POINT OF BEGINNING;

THENCE departing said line, North 51°19'10" West a distance of 56.19 feet;

THENCE North 76°29'10" West a distance of 108.46 feet;

THENCE North 00°39'21" East a distance of 1072.10 feet to a point on the South right-of-way line of Spaulding Lane, said line also being the South line of Sherman-Lawler First Annexation to the City of Fort Collins;

THENCE along said South line South 84°52'02" East a distance of 150.46 feet to a point on the West line of said Willox Heights Annexation;

THENCE along said line West line South 00°39'21" West a distance of 1119.10 feet to the POINT OF BEGINNING.

Said described track of land contains 163,045 square feet or 3.743 acres, more or less and may be subject to any rights-of-way or other easements as granted or reserved by instruments of record or as now existing on said described parcel of land.

Section 3. That the Sign District Map adopted pursuant to Section 3.8.7.1(M) of the Land Use Code of the City of Fort Collins is hereby changed and amended by showing that the Property described herein is included in the Residential Neighborhood Sign District.

Section 4. That the Lighting Context Area Map adopted pursuant to Section 3.2.4(H) of the Land Use Code of the City of Fort Collins is hereby changed and amended by showing that the Property described herein is included in the LC1 Lighting Context Area.

Section 5. That the City Manager is hereby authorized and directed to amend said Zoning Map in accordance with this Ordinance.

Section 6. That this Ordinance shall be null and void should the annexation petition for the Thompson Thrift Spaulding Addition Annexation be withdrawn pursuant to the terms stated in the ordinance approving such annexation.

Introduced, considered favorably on first reading and ordered published this 4th day of April, 2023, and to be presented for final passage on the 18th day of April, 2023.

Mayor

ATTEST:

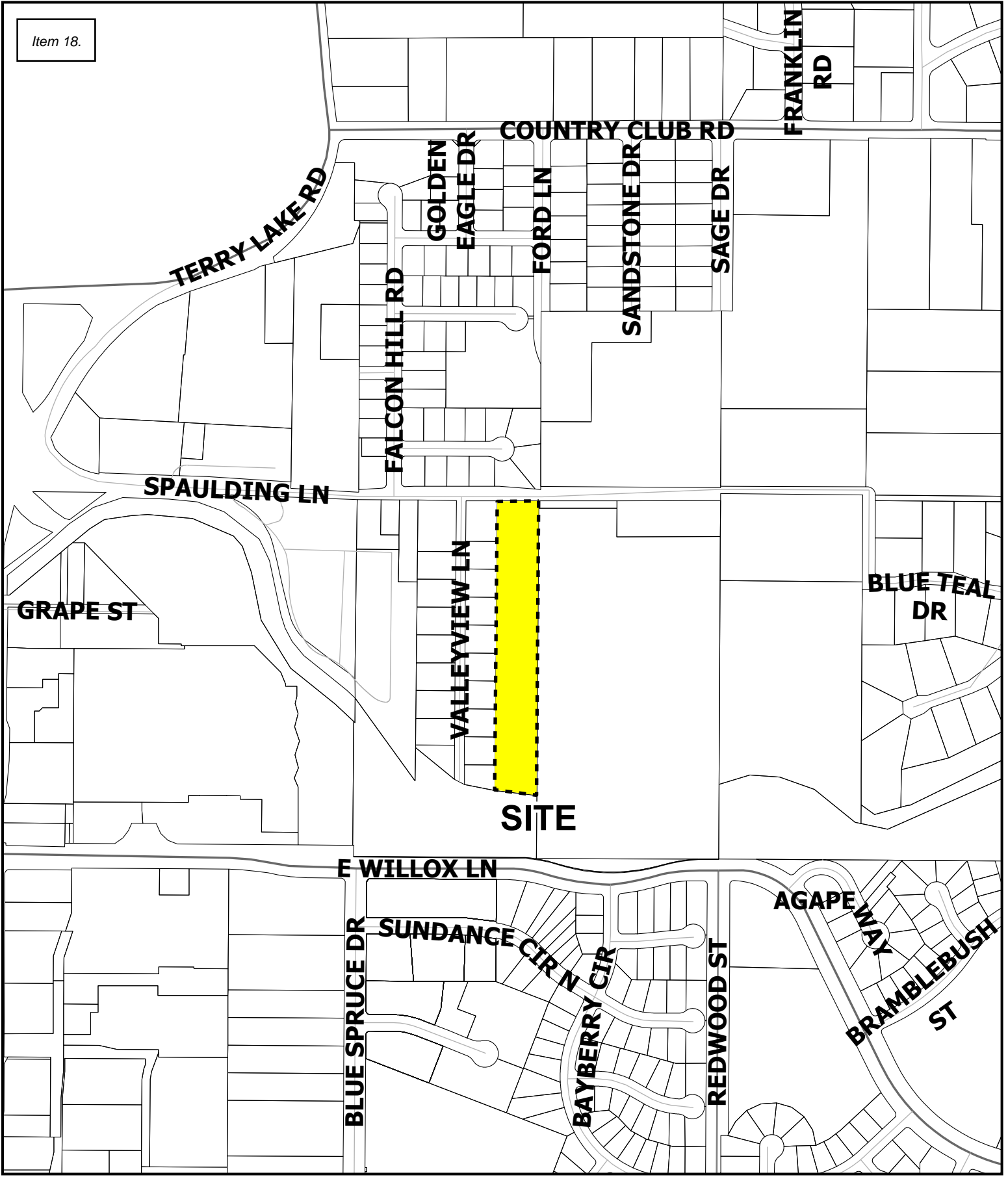
City Clerk

Passed and adopted on final reading this 18th day of April, 2023.

Mayor

ATTEST:

City Clerk



THOMPSON THRIFT ANNEXATION VICINITY MAP



PETITION FOR ANNEXATION

THE UNDERSIGNED (hereinafter referred to as “**Petitioner**”), hereby petitions (this “**Petition**”) the Council of the City of Fort Collins, Colorado for the annexation of an area in unincorporated Larimer County, as more particularly described by its legal description in Exhibit A, which is attached hereto and incorporated herein by this reference (the “**Property**”).

In support of this Petition, Petitioner alleges as follows:

1. That it is desirable and necessary that the Property be annexed to the City of Fort Collins.
2. That the condition set forth in Section 30(1)(b) of Article II of the Colorado Constitution has been met.
3. That the requirements of Sections 31-12-104 and 31-12-105, C.R.S., exist or have been met.
4. That not less than one-sixth (1/6) of the perimeter of the Property is contiguous with the boundaries of the City of Fort Collins.
5. That a community of interest exists between the Property and the City of Fort Collins.
6. That the Property is urban or will be urbanized in the near future.
7. That the Property is integrated with or is capable of being integrated with the City of Fort Collins.
8. That Petitioner comprises more than fifty percent (50%) of the landowners in the Property and own more than fifty percent (50%) of the Property, excluding public streets, alleys and lands owned by the City of Fort Collins.
9. That the City of Fort Collins shall not be required to assume any obligations respecting the construction of water mains, sewer lines, gas mains, electric service lines, streets or any other services or utilities in connection with the Property except as may be provided by the ordinance of the City of Fort Collins.
10. Accompanying this Petition are four copies of the annexation boundary map in the form required by C.R.S. Section 31-12-107(1)(d) containing the following information:
 - (a) A written legal description of the boundaries of the Property;
 - (b) A map showing the boundary of the Property, such map prepared and containing the seal of a registered engineer or land surveyor;

(c) Within the annexation boundary map there is shown the location of each ownership tract in unplatted land, and if part or all of the area be platted, then the boundaries and the plat number of plots or of lots and blocks are shown; and

(d) Next to the boundary of the Property is drawn the contiguous boundary of the City of Fort Collins and the contiguous boundary of any other municipality abutting the area proposed to be annexed.

11. Petitioner requests that the Council of the City of Fort Collins approve the annexation of the Property. Furthermore, Petitioner requests that said area be placed in the LMN Zone District pursuant to the Land Use Code of the City of Fort Collins.

12. Petitioner reserves the sole, exclusive and unilateral right, for the benefit of, and to be exercised solely by Thompson Thrift Development, Inc. (together with its successors and assigns, “**Purchaser**”) to withdraw this Petition by Purchaser so notifying the Clerk of the City of Fort Collins in writing at any point prior to the latest to occur of:

(a) The final, non-appealable approval of the final ordinance(s), resolutions and/or other final action(s) granting the annexation of the Property to the City of Fort Collins, zoning of the Property to the LMN Zone District, and execution of the annexation agreement; or

(b) Final, non-appealable resolution of any legal challenge or other action that directly or indirectly challenges the approvals set forth in Section 12(a) or any petition for a referendum seeking to reverse or nullify any of the approvals set forth in Section 12(a).

13. Prior to expiration of the period described in the foregoing Sections 12(a) and 12(b) without Purchaser having withdrawn this Petition, neither Purchaser, Petitioner nor the City shall cause or permit the occurrence of the conditions to effectiveness of the annexation as set forth in C.R.S. Section 31-12-113(2)(b).

THEREFORE, Petitioner requests that the Council of the City of Fort Collins approve the annexation of the Property.

[Signatures follow on next page]

PROPERTY OWNER/PETITIONER

MATTHEW R. BROWN

By: Matthew R. Brown
Name: Matthew R. Brown
Date: OCTOBER 3, 2022

Petitioner's mailing address: 423 SPAULDING LN FORT COLLINS CO 80524

Is Petitioner a resident of the Property?: YES

Legal description of land owned by Petitioner: See Exhibit A, Legal Description of Property

EXHIBIT A

Legal Description of Property and Land Owned by Petitioner

A parcel of land situate in the Southwest Quarter of Section Thrity-six (36), Township Eight North (T.8N.), Range Sixty-nine West (R.69W) of the Sixth Principal Meridian (6th P.M.) being more particularly described as follows:

BEGINNING AT THE NORTHEAST CORNER OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 8 NORTH RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, THENCE WEST 150 FEET; THENCE SOUTH 959 FEET MORE OR LESS, TO THE NORTH LINE OF RIGHT OF WAY OF THE LARIMER AND WELD RESERVOIR COMPANY CANAL; THENCE EASTERLY ALONG SAID RIGHT OF WAY TO A POINT DUE SOUTH OF THE POINT OF BEGINNING; THENCE NORTH 975 FEET, MORE OR LESS TO THE POINT OF BEGINNING,

EXCEPT THAT PORTION CONVEYED TO LARIMER COUNTY IN DEED RECORDED JULY 29, 1986 UNDER RECEPTION NO. 86040958, COUNTY OF LARIMER, STATE OF COLORADO.

Being more particularly described as follows:

A parcel of land being a part of the Southeast Quarter of the Southwest Quarter of Section 36, Township 8 North Range 69 West of the 6th P.M., City of Fort Collins, County of Larimer, State of Colorado, being more particularly described as follows:

Considering the South line of the Southeast Quarter of the Southwest Quarter of said Section 36, as bearing North 89°17'51" West, an assumed bearing, and with all bearings contained herein relative thereto:

Commencing at the Southwest corner of Willox Heights Annexation to the City of Fort Collins;
THENCE along the West line of said Willox Annexation North 00°39'21" East a distance of 174.71 feet to the **POINT OF BEGINNING**;
THENCE departing said line, North 51°19'10" West a distance of 56.19 feet;
THENCE North 76°29'10" West a distance of 108.46 feet;
THENCE North 00°39'21" East a distance of 1072.10 feet to a point on the South right-of-way line of Spaulding Lane, said line also being the South line of Sherman-Lawler First Annexation to the City of Fort Collins;
THENCE along said South line South 84°52'02" East a distance of 150.46 feet to a point on the West line of said Willox Heights Annexation;
THENCE along said line West line South 00°39'21" West a distance of 1119.10 feet to the **POINT OF BEGINNING**.

Said described tract of land contains 163,045 square feet or 3.743 acres, more or less and may be subject to any rights-of-way or other easements as granted or reserved by instruments of record or as now existing on said described parcel of land.

EXHIBIT B

Affidavit of Circulator

This petition has been circulated by the undersigned (the circulator) who attest that each signature thereon is that of the person whose name it purports to be. (Each circulator shall sign below in front of the same notary, or attach a separate Affidavit for each circulator).

Signature John C Brown

Initials JB

Print Name John C Brown

Title

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

Subscribed and sworn to before me this 3RD day of OCTOBER, 2020, by JOHN C. BROWN

WITNESS my hand and official seal.

My commission expires: 02/02/2025

Hannah Sauerland
Notary Public

HANNAH SAUERLAND
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20214004170
MY COMMISSION EXPIRES 02-02-2025

THOMPSON THRIFT SPAULDING ADDITION ANNEXATION

STATEMENT OF PRINCIPLES AND POLICIES

Thompson Thrift Development Inc. (the "Applicant") is requesting annexation of property located at 423 Spaulding Lane (the "Property") within unincorporated Larimer County (the "County") into the City of Fort Collins (the "City") in order to develop it for residential uses (the "Project"). The Property is located south and adjacent to Spaulding Lane, and approximately 0.35 miles east of North College Avenue. The Property is approximately 3.743 acres and is currently zoned CC Commercial Corridor under the County's Land Use Code. The existing and historical use of the Property is estate/agricultural. The surrounding land uses include the Valley View single-family residential subdivision to the west within unincorporated Larimer County, the Falcon Ridge PUD single-family residential subdivision to the north within the City limits, and an estate/agricultural use to the east that is also within the City and zoned M-M-N Medium Density Mixed-Use Neighborhood District. The Property is located less than a mile from the North College Marketplace, which includes a King Soopers, as well as retail pad sites.

ANNEXATION PETITION QUESTIONS

4(g) A statement as to why it is necessary and desirable for the City of Fort Collins to annex the area.

The Property is located directly adjacent to City limits to the north and east. It is also within the City's Growth Management Area (the "GMA"), and therefore subject to the Intergovernmental Agreement (the "IGA") between the City and the County. The IGA requires that prior to development of a property that is contiguous to City limits, an owner of such property pursue annexation to the City.

The applicant is requesting annexation into the City in order to develop the Property for residential uses. The historical use of the Property has been estate/agricultural; however development of the Property for residential uses is suitable at this time due to residential and commercial development within the vicinity of the Property. Because the Property is contiguous to City limits, and within the GMA, annexation of the Property is appropriate prior to development and is required by the IGA.

4(h) A description of the zoning classification being requested and any condition requested for that zone district classification.

The Applicant is requesting annexation of the Property, and zoning to the L-M-N Low Density Mixed-Use Neighborhood District (the "L-M-N District"). There are no conditions requested at this time.

4(i) A statement of consistency of the requested zoning to the Structure Plan.

The Property is located within the Suburban Neighborhood Place Type (the "Place Type") of the Fort Collins Structure Plan (the "Structure Plan"). The proposed Project seeks to develop single-family attached duplex residences (or villas). Although the Place Type recommends single-family detached homes as the principal land use, the proposed villas meet the intent of this Place Type through the development of low density residential units on the Property.

Policy LIV 1.1 of the Structure Plan recommends that the City continue to utilize the GMA as a tool to guide and manage growth outside of the City and delineate the extent of urban development in Fort Collins. As stated earlier, the Property is located within the GMA. Annexation of the Property aligns with this Policy by incorporating a property delineated for inclusion into the City, and for development, based upon the GMA.

The planned residential development for the Property will include the parcel to the east, which is already annexed into the City and will include a mix of apartments. By providing a mix of villas and multi-family residential, this development will help to implement Policy LIV 4.1 of the Structure Plan, which recommends creativity within new neighborhoods by expanding housing options, including higher-density and mixed-use

buildings. The proposed development also aligns with Policy LIV 5.1 of the Structure Plan, which is to create more opportunities for housing choices.

ADDITIONAL CONSIDERATIONS FOR QUASI-JUDICIAL ZONINGS OR REZONINGS

SECTION 2.9.4.H.3 OF THE FORT COLLINS LAND USE CODE

The Project complies with the following additional factors from the Fort Collins Land Use Code (the “Code”) that the City’s Planning and Zoning Board and City Council may consider when making a determination on a quasi-judicial zoning or rezoning (Code § 2.9.4.H.3):

1. Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zone district for the land.
 - The proposed zoning to the L-M-N District is appropriate for the proposed use, and compatible with the surrounding uses, which are residential and estate/agricultural. The proposed villas (duplexes) are a use permitted in the L-M-N District, subject to administrative review (Code § 4.5(2)(a)). Division 4.5(A) of the Code states that the main purpose of the L-M-N District is to meet a wide range of needs of everyday living in neighborhoods, including providing a variety of housing choices. The development of the Property for villas, which will be incorporated into a planned development of multifamily to the east, will meet the intent of the L-M-N District by providing a variety of housing choices, and will complement the surrounding residential uses.

2. Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment, including, but not limited to, water, air, noise, storm water management, wildlife, vegetation, wetlands and the natural functioning of the environment.
 - The Project will have similar impacts as adjacent residential development. Additionally, the majority of the Property has been cleared for agricultural uses, with the northern portion of the Property occupied with a single-family residential structure. Additional impacts will be addressed at time of development in coordination with the City.

3. Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.
 - The Project is a natural extension of adjacent residential uses. The development of villas will be complementary to the adjacent single-family residential uses to the north and west. Due to its location within close proximity of the North College Marketplace at the intersection of Willox Lane and North College Avenue, the development of additional residential in the area will fulfill the intent of the L-M-N District by creating a neighborhood that meets a wide range of everyday living through a variety of housing choices, with services and conveniences located nearby. The proposed project for residential villas is an appropriate development pattern for the surrounding area.

THOMPSON THRIFT SPAULDING ADDITION ANNEXATION MAP

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 8 NORTH,
RANGE 69 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO
(423 SPAULDING LANE)

DESCRIPTION: THOMPSON THRIFT SPAULDING ADDITION

A parcel of land situate in the Southwest Quarter of Section Thirty-six (36), Township Eight North (T.8N.), Range Sixty-nine West (R.69W) of the Sixth Principal Meridian (6th P.M.) being more particularly described as follows:

BEGINNING AT THE NORTHEAST CORNER OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 8 NORTH RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, THENCE WEST 150 FEET; THENCE SOUTH 959 FEET MORE OR LESS, TO THE NORTH LINE OF RIGHT OF WAY OF THE LARIMER AND WELD RESERVOIR COMPANY CANAL; THENCE EASTERLY ALONG SAID RIGHT OF WAY TO A POINT DUE SOUTH OF THE POINT OF BEGINNING, THENCE NORTH 975 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION CONVEYED TO LARIMER COUNTY IN DEED RECORDED JULY 29, 1986 UNDER RECEPTION NO. 86040958, COUNTY OF LARIMER, STATE OF COLORADO.

Being more particularly described as follows:

A parcel of land being a part of the Southeast Quarter of the Southwest Quarter of Section 36, Township 8 North Range 69 West of the 6th P.M., City of Fort Collins, County of Larimer, State of Colorado, being more particularly described as follows:

Considering the South line of the Southeast Quarter of the Southwest Quarter of said Section 36, as bearing North 89°17'51" West, an assumed bearing, and with all bearings contained herein relative thereto:

Commencing at the Southwest corner of Wilcox Heights Annexation to the City of Fort Collins; THENCE along the West line of said Wilcox Annexation North 00°39'21" East a distance of 174.71 feet to the **POINT OF BEGINNING**.

THENCE departing said line, North 51°19'10" West a distance of 56.19 feet;
THENCE North 76°29'10" West a distance of 108.46 feet;
THENCE North 00°39'21" East a distance of 1072.10 feet to a point on the South right-of-way line of Spaulding Lane, said line also being the South line of Sherman-Lawler First Annexation to the City of Fort Collins;
THENCE along said South line South 84°52'02" East a distance of 150.46 feet to a point on the West line of said Wilcox Heights Annexation;
THENCE along said line West line South 00°39'21" West a distance of 1119.10 feet to the **POINT OF BEGINNING**.

Said described tract of land contains 163,045 square feet or 3.743 acres, more or less and may be subject to any rights-of-way or other easements as granted or reserved by instruments of record or as now existing on said described parcel of land.

APPROVED

This plat to be known as THOMPSON THRIFT SPAULDING ADDITION to the City of Fort Collins, County of Larimer,

State of Colorado by Ordinance No. _____, passed and adopted on final reading at a regular meeting of the City Council of Fort Collins, Colorado held on the ____ day of _____, 20__.

City Clerk

APPROVED AS TO FORM

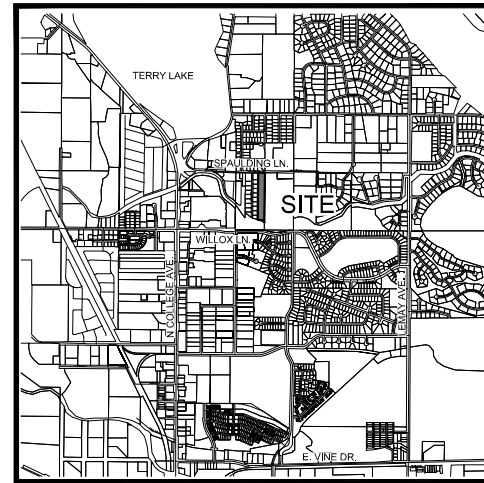
City Engineer

SURVEYOR'S STATEMENT

I, Robert C. Tessel, a Colorado Registered Professional Land Surveyor do hereby state that this map of land proposed to be Annexed to the City of Fort Collins, County of Larimer, State of Colorado was prepared under my direct supervision from existing documents of record, and that the same is true and correct to the best of my knowledge, information and belief.

I further state that not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous to the boundary line of the City of Fort Collins, County of Larimer, State of Colorado

For and on behalf of Northern Engineering Services, Inc.
Robert C. Tessel
Colorado Registered Professional Land Surveyor No. 38470



VICINITY MAP
1" = 3000'

SURVEYOR NOTES:

1. Basis of Bearing is the South line of the Southeast Quarter of the Southwest Quarter of Section 36, Township 8 North Range 69 West of the 6th P.M., as bearing North 89°17'51" West (assumed bearing), and monumented as shown hereon.
2. The lineal unit of measurement for this survey is U.S. Survey Feet.
3. Entire Parcel is currently zoned as Larimer County Zoning District CC - Commercial Corridor per Larimer County Online Assessor Property Records 9-29-2022.
4. A current title commitment was not provided. For all information regarding easements, rights-of-way or title of record, Northern Engineering relied upon the ALTA/NSPS Land Title Survey prepared by Majestic Surveying.
5. FLOOD ZONE DESIGNATION: According to FIRM Panel 08019C0977G for Larimer County, dated June 7, 2008, this tract lies within an area of minimal flood risk (Zone X).
6. Subject property address: 423 Spaulding Lane
7. Subject property owner: Matthew R. Brown.
8. The word "certify" or "certification" as shown and used hereon is an expression of professional opinion regarding the facts of the survey, and does not constitute a warranty or guaranty, expressed or implied. DORA Bylaws and Rules (4 CCR 730-1).
9. Adjacent property owner information per the Larimer County Land Information Locator.
10. The Professional opinion of the Surveyor is not a determination of law, nor a matter of fact.
11. All bearings and distances are derived from field measurements unless otherwise noted. The recorded bearings and or distances shown hereon are taken from existing public records and will not match the measured bearings and or distances due to differences in the datum and or projections used to complete the survey.
12. This Annexation Map is not a statutory monumented Land Survey as defined by the State of Colorado. Monuments shown hereon for reference purposes only.

NOTICE:
According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you discover such defect. In no event shall any action be commenced more than three years after the date of the certificate shown hereon.

SECTION: 36
TOWNSHIP: 8 N
RANGE: 69 W of the 6th PM

NORTHERN ENGINEERING
SURVEY | MUNICIPAL | LAND DEVELOPMENT
NORTHERNENGINEERING.COM
970.251.4188
FORT COLLINS | GREELEY

DATE: 07/23/23
SCALE: As Shown
REVIEWED BY: R. Tessel
PROJECT: 1791-002
CLIENT: Thompson Thrift Residential
DRAWN BY: M. Kinrade

THOMPSON THRIFT SPAULDING ADDITION
ANNEXATION MAP
PART OF THE SW QUARTER OF S36-8N-R69W
LARIMER COUNTY, COLORADO

Sheet
1
Of 2 Sheets

DRAFT
01-23-23
PRELIMINARY - NOT FOR CONSTRUCTION,
RECORDING PURPOSES OR IMPLEMENTATION

THOMPSON THRIFT SPAULDING ADDITION ANNEXATION MAP

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 8 NORTH,
RANGE 69 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO
(423 SPAULDING LANE)

THOMPSON THRIFT SPAULDING ADDITION ANNEXATION

TOTAL PERIMETER	2,506.31'
CONTIGUOUS BOUNDARY	1,269.56'
MINIMUM CONTIGUOUS PERIMETER FEET REQUIRED	417.72'
CONTIGUITY PERCENTAGE	50.6%
ANNEXATION AREA	163,045 sq. ft./3.743 acres

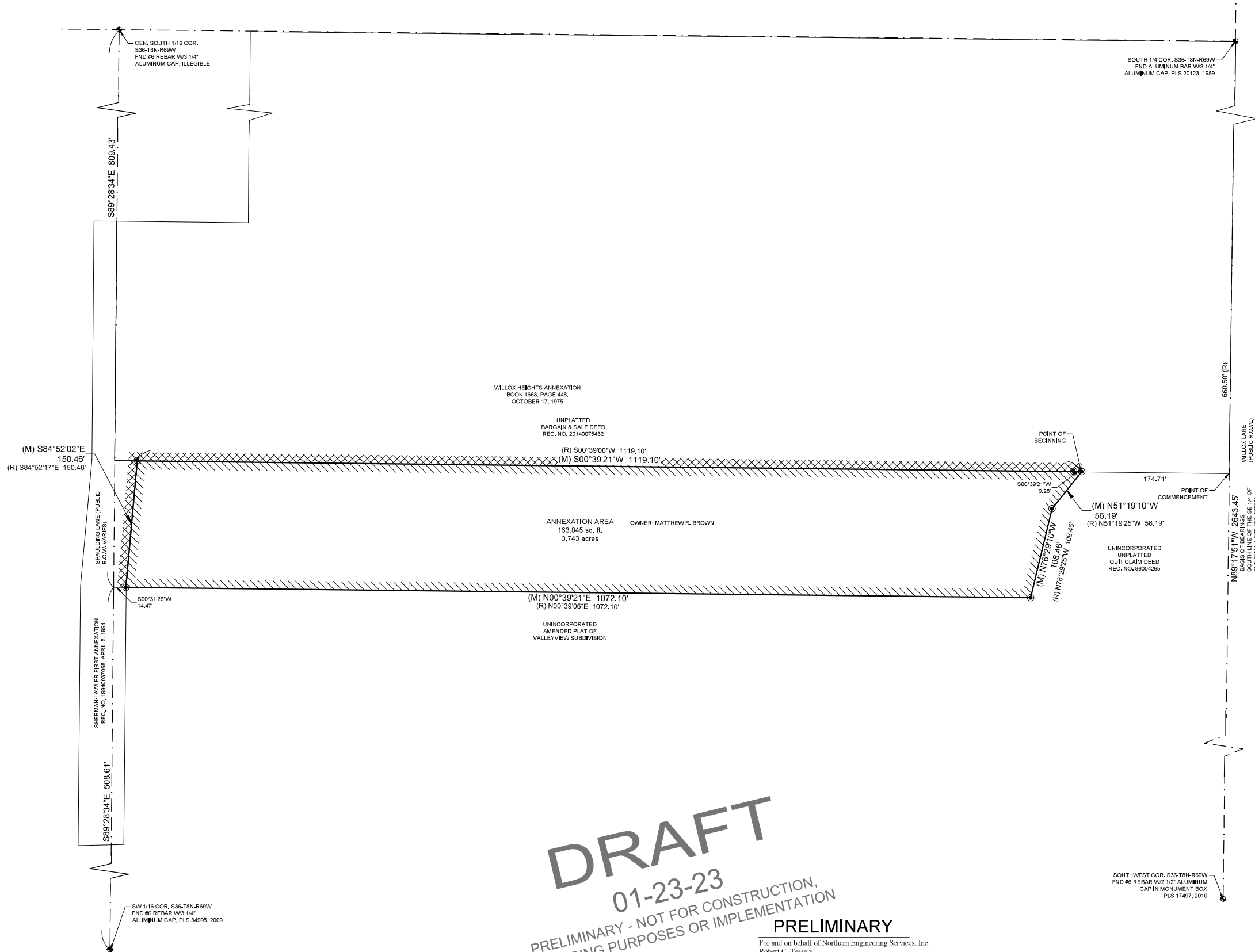
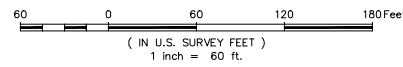
XXXXXXXXXX
INDICATES PRESENT CITY BOUNDARY LINE

Line Legend

	ANNEXATION BOUNDARY
	SECTION LINE
	(R) = RECORDED
	(M) = MEASURED
	(SEE NOTE #11)

Symbol Legend

	FOUND PROPERTY CORNER
	SECTION CORNER



NOTICE:
According to Colorado law you must commence any legal action based upon an error in this survey within three years after you discover such error. In no event shall any action be commenced later than three years after the date of the certificate shown hereon.

SECTION:	36
TOWNSHIP:	8 N
RANGE:	69 W of the 6th PM

NE NORTHERN ENGINEERING
SURVEY | MUNICIPAL | LAND DEVELOPMENT
PORT COLLINS | GREELEY
970.231.4188
NORTHERNENGINEERING.COM

DATE:	07/23/23
SCALE:	1" = 60'
REVIEWED BY:	R. Tessely
PROJECT:	1791-002
CLIENT:	Thompson Thrift Residential
DRAWN BY:	M. Kinrade

THOMPSON THRIFT SPAULDING ADDITION
ANNEXATION MAP
PART OF THE SW QUARTER OF S36-8N-R69W
LARIMER COUNTY, COLORADO

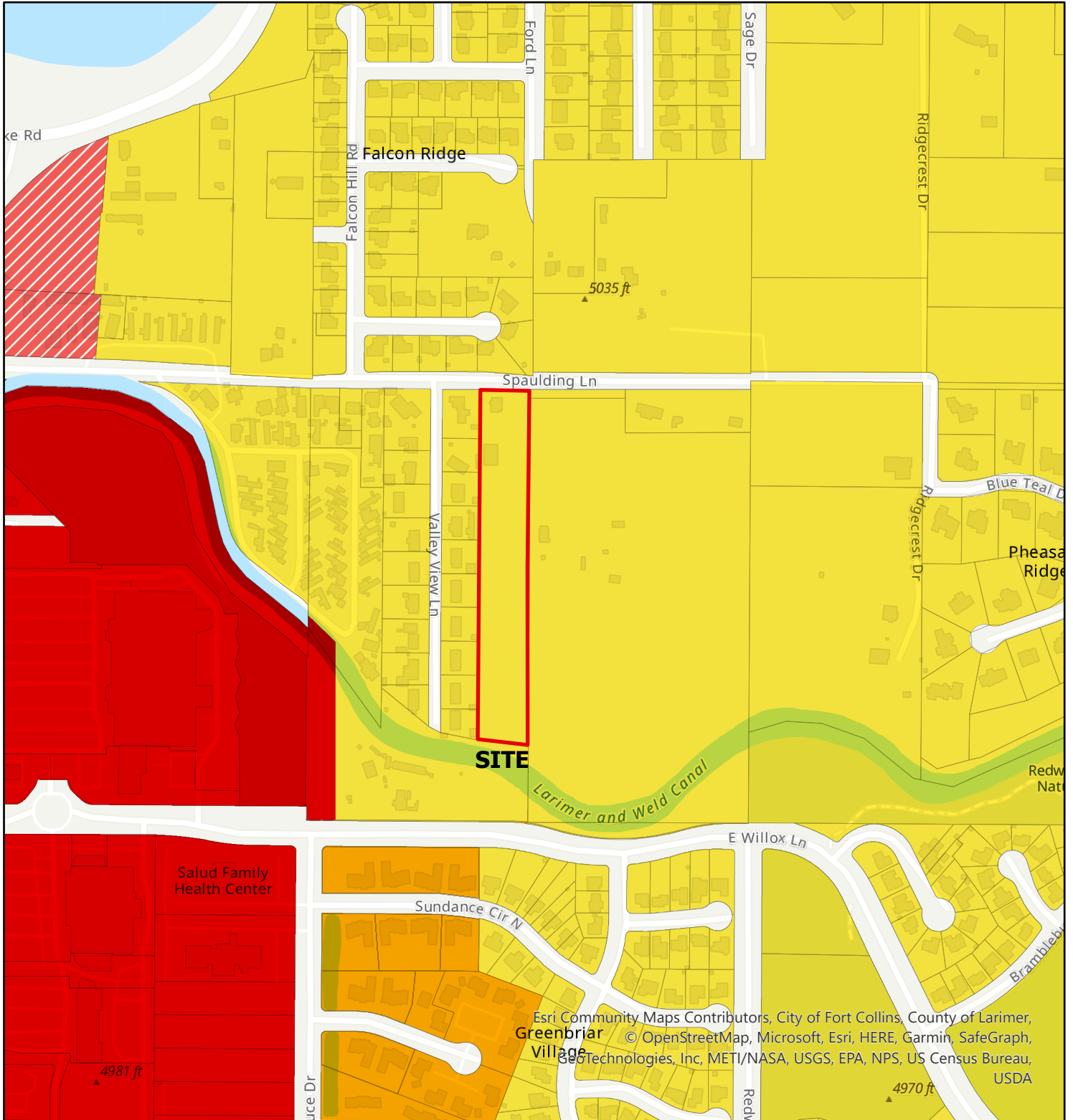
DRAFT
01-23-23
PRELIMINARY - NOT FOR CONSTRUCTION,
RECORDING PURPOSES OR IMPLEMENTATION
PRELIMINARY

For and on behalf of Northern Engineering Services, Inc.
Robert C. Tessely
Colorado Registered Professional Land Surveyor No. 38470

E:\CAD\18_Survey\181719-002\181719-002\Annexation\1791-002\Annexation.dwg L:\0717\Map\Sheet 2.dwg 23 Jul 2023 10:33am CAD 09/01/2023 - mka
 (R) (M) (SEE NOTE #11)

MPSON THRIFT SPAULDING ADDITION ANNEXATION

Structure Plan Map



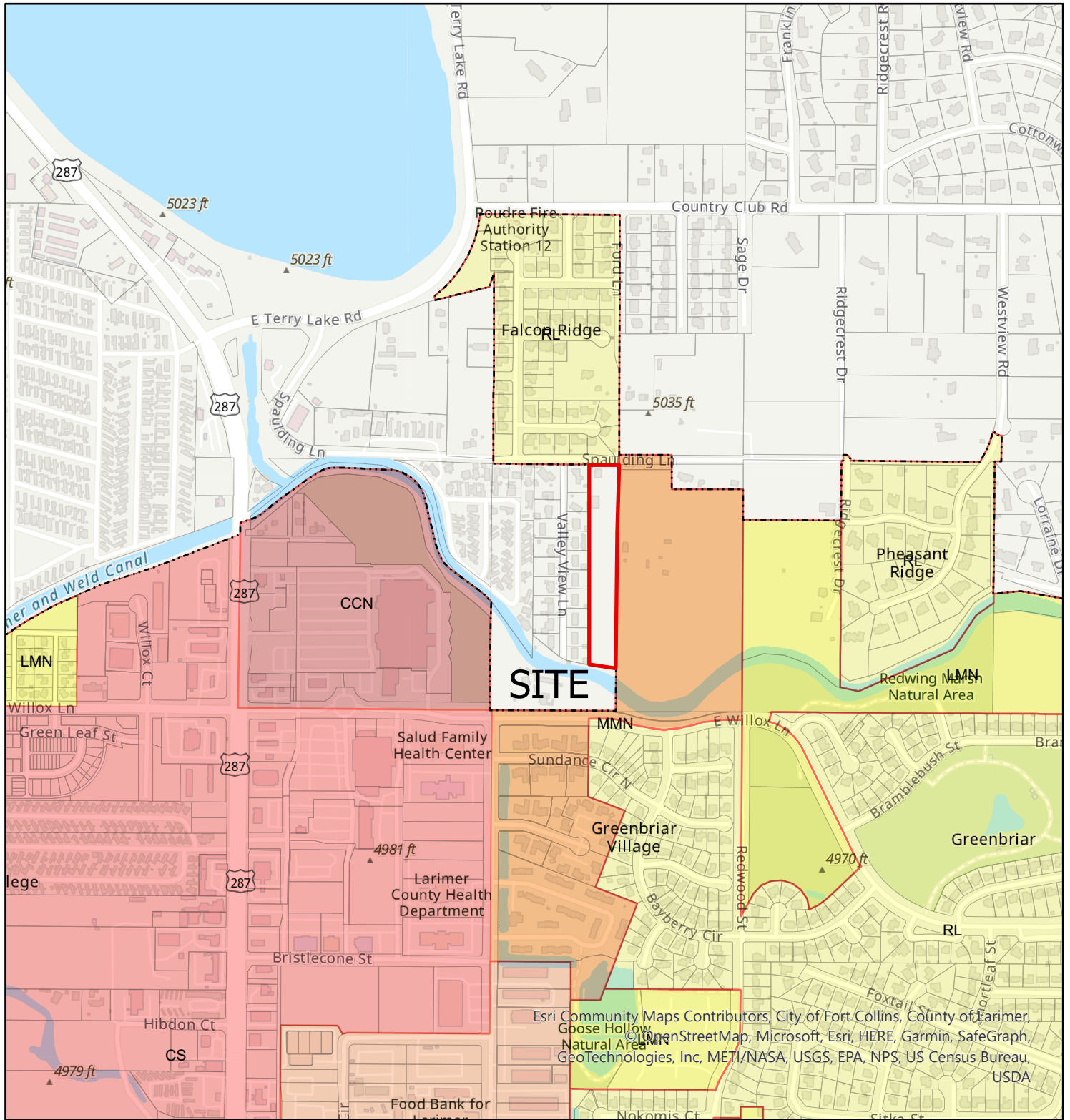
Esri Community Maps Contributors, City of Fort Collins, County of Larimer,
 © OpenStreetMap, Microsoft, Esri, HERE, Garmin, SafeGraph,
 GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau,
 USDA

Legend

Structure Plan

- Adjacent Planning Area
- Campus District
- Community Separator
- Downtown District
- Institutional District
- Mixed Employment District
- Mixed Neighborhood
- Neighborhood Mixed Use District
- Parks and Natural/Protected Lands
- R&D/Flex District
- Rural Neighborhood
- Single Family Neighborhood
- Suburban Mixed Use District
- Urban Mixed Use District
- parcels

IMPSON THRIFT SPAULDING ADDITION ANNEXATION Zoning Map



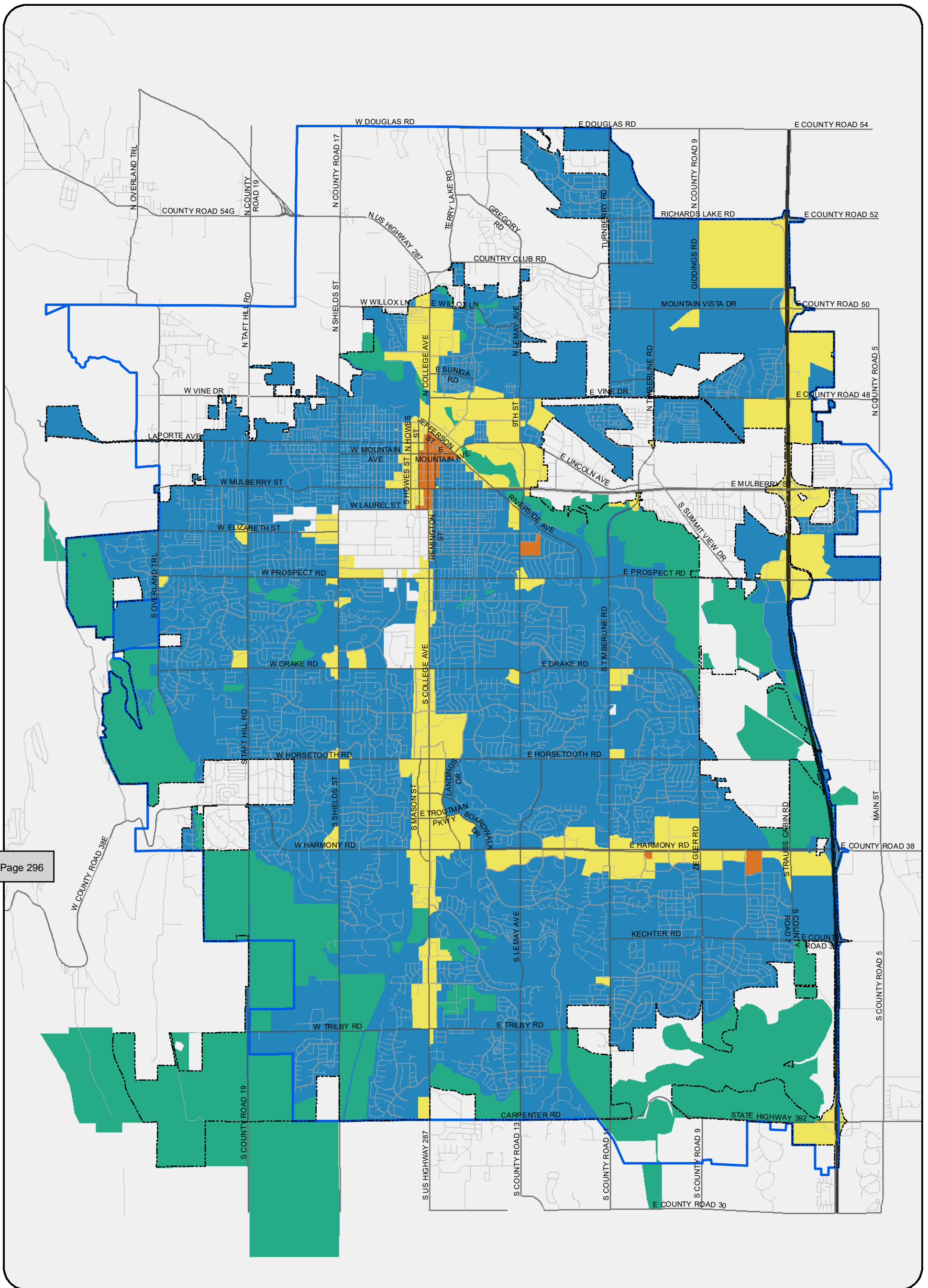
SITE

Legend







- Community Commercial North College (CCN)
- Service Commercial (CS)
- Industrial (I)
- Medium Density Mixed-Use Neighborhood (MMN)
- Low Density Residential (RL)
- parcels
- City Limits



Lighting Ordinance Planning - Draft



Lighting Ordinance Context Areas - Draft

-  City Limits - Outline
-  Growth Management Area
-  LC0
-  LC1
-  LC2
-  LC3



AGENDA ITEM SUMMARY

City Council



STAFF

Gunnar Hale, Civil Engineer
 Dana Hornkohl, Capital Projects Manager
 Heather Jarvis, Legal

SUBJECT

Items Relating to the Carpenter and Timberline Intersection Project.

EXECUTIVE SUMMARY

A. Resolution 2023-032 Authorizing the Execution of an Intergovernmental Agreement Between the City of Fort Collins and the State of Colorado Department of Transportation for the Carpenter and Timberline Intersection Project.

B. First Reading of Ordinance No. 051, 2023, Making Supplemental Appropriations for the Carpenter and Timberline Intersection Project.

The purpose of this item is to enable the City to receive and expend Federal and Colorado Department of Transportation (CDOT) funds for the Carpenter and Timberline Intersection Project (the Project). The funds will be used for design and construction of improvements at the intersection of Carpenter Road and Timberline Road. If approved, the item will: 1) authorize the Mayor to execute an Intergovernmental Agreement (IGA) for the Project with CDOT; and 2) appropriate \$696,285 of Highway Safety Improvement Program (HSIP) grant funds for the Project. This Project will not appropriate any money to Art in Public Places Program as the Project is 100% federally funded.

STAFF RECOMMENDATION

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

BACKGROUND / DISCUSSION

The intersection of Carpenter Road and Timberline Road has significant congestion for westbound Carpenter Road turning onto northbound Timberline Road. This congestion often causes traffic to backup westbound more than a half mile. The westbound right turn auxiliary lane creates significant conflicts and crash problems particularly during the congested time periods.

There were 61 reported accidents from 2016 thru 2018 at the intersection of Carpenter and Timberline. There were 42 reported accidents from 2020 thru 2022 at the intersection. A majority of the reported accidents at this intersection are rear end crashes that occurred when traffic was backed up.

The improvements proposed for this Project will create space intended to eliminate most of the conflicts that result in crashes at the Carpenter and Timberline Intersection.

Proposed improvements will lengthen the westbound right turn lane from 150 feet to more than 500 feet. The turn lane modification will create more space for cars queuing for the relatively heavy right turn movement and overall congestion. The related rear end crashes would be mitigated with this modification.

In 2020, the HSIP funds were awarded to the City through the North Front Range Metropolitan Planning Organization (NFRMPO) and the Colorado Department of Transportation (CDOT) for the design, right-of-way acquisition, and construction of the Project.

The HSIP funding became available to the City in the State fiscal year 2023 (July 2022). HSIP funding involves a 90/10% (Federal/Local) match. The funding split for this award is \$626,657 Federal and \$69,628 Local. The City’s local match is being covered by CDOT HSIP grant funds which are federal funds administered by the State, because Carpenter Road is on the State highway system.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

City staff will present this Project to the Transportation Board in 2023 as the plans are developed.

CITY FINANCIAL IMPACTS

The following is a summary of the funding anticipated for design and construction for the Carpenter and Timberline Intersection Project in the Capital Projects Fund:

Funds to be Appropriated with this Action	
HSIP Grant Funds	\$696,285
Total Funds to be Appropriated with this Action	\$696,285
Total Project Funds	\$696,285

PUBLIC OUTREACH

City staff will present Project details to the public as the Project is developed. Also, as the Project moves forward, a website will be available to the public and Staff will develop a comprehensive communication plan.

ATTACHMENTS

1. Resolution for Consideration
2. Resolution Exhibit A
3. Ordinance for Consideration
4. Vicinity Map

RESOLUTION 2023-032
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF FORT COLLINS AND THE
COLORADO DEPARTMENT OF TRANSPORTATION FOR THE
CARPENTER AND TIMBERLINE INTERSECTION PROJECT

WHEREAS, the intersection of Carpenter Road and Timberline Road has significant congestion for westbound Carpenter Road turning onto northbound Timberline Road, often causing traffic to back up westbound more than half a mile; and

WHEREAS, the westbound right turn auxiliary lane on Carpenter Road creates significant conflicts and crash problems particularly during the congested time periods, with a majority of the reported accidents being rear end crashes that occur when traffic is backed up; and

WHEREAS, the Carpenter and Timberline Intersection Project (the Project) has been developed to address these safety concerns and eliminate most of the conflicts presented by this intersection that result in crashes; and

WHEREAS, the Project’s proposed improvements will lengthen the westbound right turn lane on Carpenter Road from one hundred fifty feet to more than five hundred feet; and

WHEREAS, the turn lane modification will create more space for cars queuing for the relatively heavy right turn movement and overall congestion, thereby mitigating the related rear end crashes; and

WHEREAS, in 2020, the City was awarded fiscal year 2023 Highway Safety Improvement Program (HSIP) grant funds through the North Front Range Metropolitan Planning Organization (NFRMPO) and the Colorado Department of Transportation (CDOT) for the design, right-of-way acquisition, and construction of the Project; and

WHEREAS, the HSIP grant funding became available to the City in the State fiscal year 2023, which began July 2022, and which funding involves a ninety percent to ten percent federal to local funding split; and

WHEREAS, the funding split for this award is \$626,657 in federal funds and \$69,628 in local funds; and

WHEREAS, CDOT HSIP State funds will fulfill the City’s local funding match obligation for this HSIP award, because Carpenter Road is on the State highway system; and

WHEREAS, the total amount of funds associated with this Project is \$696,285.00, composed of federal HSIP funds of \$626,657, CDOT HSIP funds of \$69,628 and City funds of \$0; and

WHEREAS, CDOT has proposed an Intergovernmental Agreement (IGA) between CDOT and the City that outlines the terms and conditions of the use of the HSIP grant funds; and

WHEREAS, Colorado Revised Statutes Section 29-1-203 provides that governments may cooperate or contract with one another to provide certain services or facilities when the cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve; and

WHEREAS, City Charter Article II, Section 16 empowers the City Council, by ordinance or resolution, to enter into contracts with governmental bodies to furnish governmental services and make charges for such services, or enter into cooperative or joint activities with other governmental bodies; and

WHEREAS, Municipal Code Section 1-22 requires the City Council to approve intergovernmental agreements that require the City to make a direct, monetary payment over \$50,000, and the proposed IGA involves total project funding in the amount of \$696,285 and requires local matching funds in the amount of \$69,628 that CDOT HSIP will cover for the City; and

WHEREAS, the City Council has determined that the Project and the HSIP grant funding are in the best interests of the City and that the Mayor be authorized to execute the IGA between the City and CDOT in support thereof.

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

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

Section 2. That City Council authorizes the Mayor to execute, on behalf of the City, the Intergovernmental Agreement with the Colorado Department of Transportation, in substantially the form attached hereto as "Exhibit A," with additional or modified terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT
Signature and Cover Page

State Agency Department of Transportation		Agreement Routing Number 23-HA4-XC-00052	
Local Agency CITY OF FORT COLLINS		Agreement Effective Date The later of the effective date or February 23, 2023	
Agreement Description Carpenter and Timberline Intersection		Agreement Expiration Date February 22, 2033	
Project # SHO M455-136 (23881)	Region # 4	Contract Writer TCH	Agreement Maximum Amount \$696,285.00

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

LOCAL AGENCY CITY OF FORT COLLINS _____ Signature _____ By: (Print Name and Title) Date: _____	STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director _____ Keith Stefanik, P.E., Chief Engineer Date: _____
2nd State or Local Agency Signature if Needed _____ Signature _____ By: (Print Name and Title) Date: _____	LEGAL REVIEW Philip J. Weiser, Attorney General _____ Assistant Attorney General _____ By: (Print Name and Title) Date: _____
In accordance with §24-30-202 C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Department of Transportation Effective Date: _____	

TABLE OF CONTENTS

1. PARTIES2

2. TERM AND EFFECTIVE DATE2

3. AUTHORITY3

4. PURPOSE.....4

5. DEFINITIONS4

6. SCOPE OF WORK7

7. PAYMENTS.....11

8. REPORTING - NOTIFICATION15

9. LOCAL AGENCY RECORDS16

10. CONFIDENTIAL INFORMATION-STATE RECORDS17

11. CONFLICTS OF INTEREST.....18

12. INSURANCE18

13. BREACH.....20

14. REMEDIES20

15. DISPUTE RESOLUTION.....22

16. NOTICES AND REPRESENTATIVES22

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION23

18. GOVERNMENTAL IMMUNITY24

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM.....24

20. GENERAL PROVISIONS24

21. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)27

22. FEDERAL REQUIREMENTS29

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE).....29

- EXHIBIT A, SCOPE OF WORK
- EXHIBIT B, SAMPLE OPTION LETTER
- EXHIBIT C, FUNDING PROVISIONS (Budget)
- EXHIBIT D, LOCAL AGENCY RESOLUTION
- EXHIBIT E, LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST
- EXHIBIT F, CERTIFICATION FOR FEDERAL-AID AGREEMENTS
- EXHIBIT G, DISADVANTAGED BUSINESS ENTERPRISE
- EXHIBIT H, LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES
- EXHIBIT I, FEDERAL-AID AGREEMENT PROVISIONS FOR CONSTRUCTION AGREEMENTS
- EXHIBIT J, ADDITIONAL FEDERAL REQUIREMENTS
- EXHIBIT K, FFATA SUPPLEMENTAL FEDERAL PROVISIONS
- EXHIBIT L, SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM
- EXHIBIT M, OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS
- EXHIBIT N, FEDERAL TREASURY PROVISIONS
- EXHIBIT O, AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS
- EXHIBIT P, SLFRF SUBRECIPIENT QUARTERLY REPORT
- EXHIBIT Q, SLFRF REPORTING MODIFICATION FORM
- EXHIBIT R, APPLICABLE FEDERAL AWARDS
- EXHIBIT S, PII CERTIFICATION
- EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

1. PARTIES

This Agreement is entered into by and between Local Agency named on the Signature and Cover Page for this Agreement (“Local Agency”), and the STATE OF COLORADO acting by and through the State agency named on the Signature and Cover Page for this Agreement (the “State” or “CDOT”). Local Agency and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and Agreement Funds shall be expended within the dates shown in **Exhibit C** for each respective phase (“Phase Performance Period(s)”). The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Local Agency for any Work performed or expense incurred before 1) the Effective Date of this original Agreement; except as described in **§7.D**; 2) before the encumbering document for the respective phase *and* the official Notice to Proceed for the respective phase; or 3) after the Final Phase Performance End Date, as shown in **Exhibit C**. Additionally, the State shall have no obligation to pay Local Agency for any Work performed or expense incurred after the Agreement Expiration Date or after required billing deadline specified in **§7.B.i.e.**, or the expiration of “Special Funding” if applicable, whichever is sooner. The State’s obligation to pay Agreement Funds exclusive of Special Funding will continue until the Agreement Expiration Date. If Agreement Funds expire before the Agreement Expiration Date, then no payments will be made after expiration of Agreement Funds.

B. Initial Term and Extension

The Parties’ respective performances under this Agreement shall commence on the Agreement Effective Date shown on the Signature and Cover Page for this Agreement and shall terminate on February 22, 2033 as shown on the Signature and Cover Page for this Agreement, unless sooner terminated or further extended in accordance with the terms of this Agreement. Upon request of Local Agency, the State may, in its sole discretion, extend the term of this Agreement by Option Letter pursuant **§7.E.iv**. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in **Exhibit C**.

C. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, and this ARPA Award is not appropriated, or otherwise become unavailable to fund this ARPA Award the State, in its discretion, may terminate this Agreement in whole or in part. This subsection shall not apply to a termination of this Agreement by the State for breach by Local Agency, which shall be governed by **§14.A.i**.

i. Method and Content

The State shall notify Local Agency by providing written notice to Local Agency of the termination and be in accordance with **§16**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Local Agency shall be subject to **§14.A.i.a**

iii. Payments

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

D. Local Agency Termination Under Federal Requirements

Local Agency may request termination of the ARPA Award by sending notice to the State, which includes the effective date of the termination. If this ARPA Award is terminated in this manner, then Local Agency shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. AUTHORITY

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

A. Federal Authority

Pursuant to Title I, Subtitle A, of the “Fixing America’s Surface Transportation Act” (FAST Act) of 2015, and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the “Federal Provisions”), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration (“FHWA”).

Pursuant to Title VI of the Social Security Act, Section 602 of the “Coronavirus State and Local Fiscal Recovery Funds”, a part of the American Rescue Plan, provides state, local and Tribal governments with the resources needed to respond to the pandemic and its economic effects and to build a stronger, more equitable economy during the recovery.

B. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-104.5.

4. PURPOSE

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT’s Stewardship Agreement with the FHWA and/or USDT as shown in **Exhibit C**.

5. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “**Agreement**” means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. “**Agreement Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- C. “**ARPA**” means American Rescue Plan Act, funded by the US Department of the Treasury (“USDT”). See “SLFRF” below.
- D. “**Award**” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- E. “**Budget**” means the budget for the Work described in **Exhibit C**.
- F. “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S..
- G. “**Chief Procurement Officer**” means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202 to procure or supervise the procurement of all supplies and services needed by the State.
- H. “**CJI**” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- I. “**Consultant**” means a professional engineer or designer hired by Local Agency to design the Work Product.
- J. “**Contractor**” means the general construction contractor hired by Local Agency to construct the Work.

- K. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.
- L. **“Effective Date”** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature and Cover Page for this Agreement.
- M. **“Evaluation”** means the process of examining Local Agency’s Work and rating it based on criteria established in §6, **Exhibit A** and **Exhibit E**.
- N. **“Exhibits”** means the following exhibits attached to this Agreement:
- i. **Exhibit A**, Scope of Work.
 - ii. **Exhibit B**, Sample Option Letter.
 - iii. **Exhibit C**, Funding Provisions
 - iv. **Exhibit D**, Local Agency Resolution
 - v. **Exhibit E**, Local Agency Contract Administration Checklist
 - vi. **Exhibit F**, Certification for Federal-Aid Contracts
 - vii. **Exhibit G**, Disadvantaged Business Enterprise
 - viii. **Exhibit H**, Local Agency Procedures for Consultant Services
 - ix. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts
 - x. **Exhibit J**, Additional Federal Requirements
 - xi. **Exhibit K**, The Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions
 - xii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form
 - xiii. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the “Uniform Guidance”)
 - xiv. **Exhibit N**, Federal Treasury Provisions
 - xv. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds
 - xvi. **Exhibit P**, SLFRF Subrecipient Quarterly Report
 - xvii. **Exhibit Q**, SLFRF Reporting Modification Form
 - xviii. **Exhibit R**, Applicable Federal Awards
 - xix. **Exhibit S**, PII Certification
 - xx. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source
- O. **“Expiration Date”** means the date on which this Agreement expires, as shown on the Signature and Cover Page for this Agreement.
- P. **“Extension Term”** means the period of time by which the ARPA Expiration Date is extended by the State through delivery of an updated ARPA Letter.
- Q. **“Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- R. **“Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. The US Department of the Treasury is the Federal Awarding Agency for the Federal Award, which may be the subject of this Agreement.
- S. **“FHWA”** means the Federal Highway Administration, which is one of the twelve administrations under the Office of the Secretary of Transportation at the U.S. Department of Transportation. FHWA provides stewardship over the construction, maintenance and preservation of the Nation’s highways and tunnels. FHWA is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.
- T. **“Goods”** means any movable material acquired, produced, or delivered by Local Agency as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Local Agency in connection with the Services.

- U. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- V. **“Initial Term”** means the time period defined in **§2.B**.
- W. **“Local Funds”** means the funds provided by the Local Agency as their obligated contribution to the federal and/or State Awards to receive the federal and/or State funding.
- X. **“Notice to Proceed”** means the letter issued by the State to the Local Agency stating the date the Local Agency can begin work subject to the conditions of this Agreement.
- Y. **“OMB”** means the Executive Office of the President, Office of Management and Budget.
- Z. **“Oversight”** means the term as it is defined in the Stewardship Agreement between CDOT and the FHWA.
- AA. **“Party”** means the State or Local Agency, and **“Parties”** means both the State and Local Agency.
- BB. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- CC. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- DD. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, et. seq., C.R.S.
- EE. **“Recipient”** means the Colorado Department of Transportation (CDOT) for this Federal Award.
- FF. **“Services”** means the services to be performed by Local Agency as set forth in this Agreement and shall include any services to be rendered by Local Agency in connection with the Goods.
- GG. **“SLFRF”** means State and Local Fiscal Recovery Funds, provided by ARPA, funded by the US Treasury Department.
- HH. **“Special Funding”** means an award by Federal agency or the State which may include but is not limited to one or a combination of Multimodal Transportation & Mitigation Options Funding, Revitalizing Main Streets, Safer Main Streets, Stimulus Funds, Coronavirus Response and Relief Supplemental Funds, ARPA, SLFRF, or COVID Relief.
- II. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII and State personnel records not subject to disclosure under CORA.
- JJ. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).
- KK. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- LL. **“State Purchasing Director”** means the position described in the Colorado Procurement Code and its implementing regulations.

- MM. “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- NN. “**Sub-Award**” means this Award by the State to Local Agency funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to this Sub-Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- OO. “**Subcontractor**” means third parties, if any, engaged by Local Agency to aid in performance of the Work.
- PP. “**Subrecipient**” means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency.
- QQ. “**Tax Information**” means Federal and State of Colorado tax information including, without limitation, Federal and State tax returns, return information, and such other tax-related information as may be protected by Federal and State law and regulation. Tax Information includes but is not limited to all information defined as Federal tax Information in Internal Revenue Service Publication 1075.
- RR. “**Uniform Guidance**” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.
- SS. “**USDT**” The United States Department of the Treasury (**USDT**) is the national treasury and finance department of the federal government of the United States where it serves as an executive department. The USDT funds ARPA.
- TT. “**Work**” means the delivery of the Goods and performance of the Services in compliance with CDOT’s Local Agency Manual described in this Agreement.
- UU. “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

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

6. SCOPE OF WORK

Local Agency shall complete the Work as described in this Agreement and in accordance with the provisions of **Exhibit A**, and the Local Agency Manual. The State shall have no liability to compensate Local Agency for the delivery of any Goods or the performance of any Services that are not specifically set forth in this Agreement. Work may be divided into multiple phases that have separate periods of performance. The State may not compensate for Work that Local Agency performs outside of its designated phase performance period. The performance period of phases, including, but not limited to Design, Construction, Right of Way, Utilities, or Environment phases, are identified in **Exhibit C**. The State may unilaterally modify **Exhibit C** from time to time, at its sole discretion, to extend the Agreement Expiration Date and/or to extend the period of performance for a phase of Work authorized under this Agreement. To exercise these options to extend the Agreement Expiration Date and/or to update the phase performance period extension option, the State will provide written notice to Local Agency in a form substantially equivalent to **Exhibit B**. The State’s unilateral extension of the Agreement Expiration Date and/or the phase performance periods will not amend or alter in any way the funding provisions or any other terms specified in this Agreement, notwithstanding the options listed under **§7.E**

A. Local Agency Commitments

i. Design

If the Work includes preliminary design, final design, design work sheets, or special provisions and estimates (collectively referred to as the “Plans”), Local Agency shall ensure that it and its Contractors comply with and are responsible for satisfying the following requirements:

- a. Perform or provide the Plans to the extent required by the nature of the Work.
 - b. Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.
 - c. Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
 - d. Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.
 - e. Stamp the Plans as produced by a Colorado registered professional engineer.
 - f. Provide final assembly of Plans and all other necessary documents.
 - g. Ensure the Plans are accurate and complete.
 - h. Make no further changes in the Plans following the award of the construction contract to Contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT, and when final, they will be deemed incorporated herein.
- ii. Local Agency Work
- a. Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA) 42 U.S.C. § 12101, et. seq., and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
 - b. Local Agency shall afford the State ample opportunity to review the Plans and shall make any changes in the Plans that are directed by the State to comply with FHWA requirements.
 - c. Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit H**. If Local Agency enters into a contract with a Consultant for the Work:
 - 1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, Local Agency shall not enter into such Consultant contract.
 - 2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.
 - 3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
 - 4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit H** to administer the Consultant contract.
 - 5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from Local Agency's attorney/authorized representative certifying compliance with **Exhibit H** and 23 C.F.R. 172.5(b) and (d).
 - 6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
 - (a) The design work under this Agreement shall be compatible with the requirements of the contract between Local Agency and the State (which is incorporated herein by this

reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.

- (b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.
- (c) The consultant shall review the construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.
- (d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

iii. Construction

If the Work includes construction, Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing construction Contractor claims; construction supervision; and meeting the quality control requirements of the FHWA/CDOT Stewardship Agreement, as described in **Exhibit E**.

- a. The State may, after providing written notice of the reason for the suspension to Local Agency, suspend the Work, wholly or in part, due to the failure of Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
- b. Local Agency shall be responsible for the following:
 - 1) Appointing a qualified professional engineer, licensed in the State of Colorado, as Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures, as defined in the CDOT Local Agency Manual (<https://www.codot.gov/business/localagency/manual>).
 - 2) For the construction Services, advertising the call for bids, following its approval by the State, and awarding the construction contract(s) to the lowest responsible bidder(s).
 - (a) All Local Agency's advertising and bid awards pursuant to this Agreement shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that Local Agency and its Contractor(s) incorporate Form 1273 (Exhibit I) in its entirety, verbatim, into any subcontract(s) for Services as terms and conditions thereof, as required by 23 C.F.R. 633.102(e).
 - (b) Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. Local Agency must accept or reject such bids within three (3) working days after they are publicly opened.
 - (c) If Local Agency accepts bids and makes awards that exceed the amount of available Agreement Funds, Local Agency shall provide the additional funds necessary to complete the Work or not award such bids.
 - (d) The requirements of **§6.A.iii.b.2** also apply to any advertising and bid awards made by the State.

- (e) The State (and in some cases FHWA) must approve in advance all Force Account Construction, and Local Agency shall not initiate any such Services until the State issues a written Notice to Proceed.

iv. Right of Way (ROW) and Acquisition/Relocation

- a. If Local Agency purchases a ROW for a State highway, including areas of influence, Local Agency shall convey the ROW to CDOT promptly upon the completion of the project/construction.
- b. Any acquisition/relocation activities shall comply with all applicable federal and State statutes and regulations, including but not limited to, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.
- c. The Parties' respective responsibilities for ensuring compliance with acquisition, relocation and incidentals depend on the level of federal participation as detailed in CDOT's Right of Way Manual (located at <http://www.codot.gov/business/manuals/right-of-way>); however, the State always retains oversight responsibilities.
- d. The Parties' respective responsibilities at each level of federal participation in CDOT's Right of Way Manual, and the State's reimbursement of Local Agency costs will be determined pursuant the following categories:
 - 1) Right of way acquisition (3111) for federal participation and non-participation;
 - 2) Relocation activities, if applicable (3109);
 - 3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

v. Utilities

If necessary, Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company that may become involved in the Work. Prior to the Work being advertised for bids, Local Agency shall certify in writing to the State that all such clearances have been obtained.

vi. Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, Local Agency shall make timely application to the Public Utilities Commission ("PUC") requesting its order providing for the installation of the proposed improvements. Local Agency shall not proceed with that part of the Work before obtaining the PUC's order. Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities, and:

- a. Execute an agreement with the railroad company setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
- b. Obtain the railroad's detailed estimate of the cost of the Work.
- c. Establish future maintenance responsibilities for the proposed installation.
- d. Proscribe in the agreement the future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- e. Establish future repair and/or replacement responsibilities, as between the railroad company and the Local Agency, in the event of accidental destruction or damage to the installation.

vii. Environmental Obligations

Local Agency shall perform all Work in accordance with the requirements of current federal and State environmental regulations, including the National Environmental Policy Act of 1969 (NEPA) as applicable.

viii. Maintenance Obligations

Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. Local Agency shall conduct such maintenance and operations in accordance with all applicable statutes, ordinances, and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

ix. Monitoring Obligations

Local Agency shall respond in a timely manner to and participate fully with the monitoring activities described in §7.F.vi.

B. State’s Commitments

- i. The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.
- ii. Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any Work constituting major structures designed by, or that are the responsibility of, Local Agency, as identified in **Exhibit E**.

7. PAYMENTS

A. Maximum Amount

Payments to Local Agency are limited to the unpaid, obligated balance of the Agreement Funds set forth in **Exhibit C**. The State shall not pay Local Agency any amount under this Agreement that exceeds the Agreement Maximum set forth in **Exhibit C**.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Local Agency in the amounts and in accordance with conditions set forth in **Exhibit C**.
- b. Local Agency shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State’s receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Local Agency and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Local Agency shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.
- e. If a project is funded in part with Federal or State special funding there may be an expiration date for the funds. The expiration date applies to grants and local funds used to match grants. To receive payment or credit for the match, Work must be completed or substantially completed, as outlined in the terms of the grant, prior to the expiration date of the special funding and invoiced in compliance with the rules outlined in the award of the funding. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.

ii. Interest

Amounts not paid by the State within 45 days after the State’s acceptance of the invoice shall bear interest on the unpaid balance beginning on the 46th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Local Agency shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Payment Disputes

If Local Agency disputes any calculation, determination, or amount of any payment, Local Agency shall notify the State in writing of its dispute within 30 days following the earlier to occur of Local Agency's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Local Agency and may make changes to its determination based on this review. The calculation, determination, or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

- a. The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Local Agency beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Agreement Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Agreement Funds, the State's obligation to pay Local Agency shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Agreement Funds, and the State's liability for such payments shall be limited to the amount remaining of such Agreement Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in **§2.C**.
- b. If the agreement funds are terminated, the State can terminate the contract early. Payment due for work done to the date of termination will be processed in a manner consistent with **§2.C**.

v. Erroneous Payments

The State may recover, at the State's discretion, payments made to Local Agency in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Local Agency. The State may recover such payments by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Local Agency, or by any other appropriate method for collecting debts owed to the State. The close out of a Federal Award does not affect the right of FHWA or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period (as defined below in **§9.A.**).

vi. Federal Recovery

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. Local Agency Funds

Local Agency shall provide their obligated contribution funds as outlined in **§7.A.** and **Exhibit C**. Local Agency shall have raised the full amount of their funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Local Agency and paid into Local Agency's treasury. Local Agency represents to the State that the amount designated "Local Agency Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. Local Agency may evidence such obligation by an appropriate ordinance/resolution or other authority letter expressly authorizing Local Agency to enter into this Agreement and to expend its match share of the Work. A copy of any such ordinance/resolution or authority letter is attached hereto as **Exhibit D** if applicable. Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of

Local Agency. Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes, or penalties of any nature, except as required by Local Agency's laws or policies.

D. Reimbursement of Local Agency Costs

The State shall reimburse Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and §7. However, any costs incurred by Local Agency prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. The State shall pay Local Agency for costs or expenses incurred or performance by the Local Agency prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules, and regulations applicable to the Work provide for such retroactive payments to the Local Agency. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement. The applicable principles described in 2 C.F.R. Part 200 shall govern the State's obligation to reimburse all costs incurred by Local Agency and submitted to the State for reimbursement hereunder, and Local Agency shall comply with all such principles. The State shall reimburse Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit C**. Local Agency costs for Work performed prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. Local Agency costs for Work performed after any Performance Period End Date for a respective phase of the Work, is not reimbursable. Allowable costs shall be:

- i. Reasonable and necessary to accomplish the Work and for the Goods and Services provided.
- ii. Actual net cost to Local Agency (i.e. the price paid minus any items of value received by Local Agency that reduce the cost actually incurred).

E. Unilateral Modification of Agreement Funds Budget by State Option Letter

The State may, at its discretion, issue an "Option Letter" to Local Agency to add or modify Work phases in the Work schedule in **Exhibit C** if such modifications do not increase total budgeted Agreement Funds. Such Option Letters shall amend and update **Exhibit C**, Sections 2 or 4 of the Table, and sub-sections B and C of the **Exhibit C**. Option Letters shall not be deemed valid until signed by the State Controller or an authorized delegate. **This is NOT a Notice to Proceed.** Modification of **Exhibit C** by unilateral Option Letter is permitted only in the specific scenarios listed below. The State will exercise such options by providing Local Agency a fully executed Option Letter, in a form substantially equivalent to **Exhibit B**. Such Option Letters will be incorporated into this Agreement. This applies to the entire Scope of Work.

i. Option to Begin a Phase and/or Increase or Decrease the Encumbrance Amount

The State may require by Option Letter that Local Agency begin a new Work phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous Work (but may not include Right of Way Acquisition/Relocation or Railroads) as detailed in **Exhibit A**. Such Option Letters may not modify the other terms and conditions stated in this Agreement and must decrease the amount budgeted and encumbered for one or more other Work phases so that the total amount of budgeted Agreement Funds remains the same. The State may also change the funding sources so long as the amount budgeted remains the same and the Local Agency contribution does not increase. The State may also issue a unilateral Option Letter to increase and/or decrease the total encumbrance amount of two or more existing Work phases, as long as the total amount of budgeted Agreement Funds remains the same, replacing the original Agreement Funding exhibit (**Exhibit C**) with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.).

ii. Option to Transfer Funds from One Phase to Another Phase.

The State may require or permit Local Agency to transfer Agreement Funds from one Work phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another phase as a result of changes to State, federal, and local match funding. In such case, the original funding exhibit (**Exhibit C**) will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The Agreement Funds transferred from one Work phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a

fully executed Option Letter to Local Agency within thirty (30) days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iii. Option to Exercise Options i and ii.

The State may require Local Agency to add a Work phase as detailed in **Exhibit A**, and encumber and transfer Agreement Funds from one Work phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2, C-3**, etc.) attached to the Option Letter. The addition of a Work phase and encumbrance and transfer of Agreement Funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within 30 days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iv. Option to Extend Agreement/Phase Term and/or modify the OMB Uniform Guidance. The State, at its discretion, shall have the option to extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2, C-3**, etc.). In order to exercise this option, the State shall provide written notice to the Local Agency in a form substantially equivalent to **Exhibit B**.

F. Accounting

Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

i. Local Agency Performing the Work

If Local Agency is performing the Work, it shall document all allowable costs, including any approved Services contributed by Local Agency or subcontractors, using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

ii. Local Agency-Checks or Draws

Checks issued or draws made by Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. Local Agency shall keep on file all checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents in the office of Local Agency, clearly identified, readily accessible, and to the extent feasible, separate and apart from all other Work documents.

iii. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. Local Agency shall reimburse the State for the costs of any such services from the budgeted Agreement Funds as provided for in **Exhibit C**. If FHWA Agreement Funds are or become unavailable, or if Local Agency terminates this Agreement prior to the Work being approved by the State or otherwise completed, then all actual incurred costs of such services and assistance provided by the State shall be reimbursed to the State by Local Agency at its sole expense.

iv. Local Agency-Invoices

Local Agency's invoices shall describe in detail the reimbursable costs incurred by Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and Local Agency shall not submit more than one invoice per month.

v. Invoicing Within 60 Days

The State shall not be liable to reimburse Local Agency for any costs invoiced more than 60 days after the date on which the costs were incurred, including costs included in Local Agency's final invoice. The State may withhold final payment to Local Agency at the State's sole discretion until completion of final audit. Any costs incurred by Local Agency that are not allowable under 2 C.F.R. Part 200 shall be Local Agency's responsibility, and the State will deduct such disallowed costs from any payments due to Local Agency. The State will not reimburse costs for Work performed after the Performance Period End Date for a respective Work phase. The State will not reimburse costs for Work performed prior to Performance

Period End Date, but for which an invoice is received more than 60 days after the Performance Period End Date.

vi. Risk Assessment & Monitoring

Pursuant to 2 C.F.R. 200.331(b), – CDOT will evaluate Local Agency’s risk of noncompliance with federal statutes, regulations, and terms and conditions of this Agreement. Local Agency shall complete a Risk Assessment Form (**Exhibit L**) when that may be requested by CDOT. The risk assessment is a quantitative and/or qualitative determination of the potential for Local Agency’s non-compliance with the requirements of the Federal Award. The risk assessment will evaluate some or all of the following factors:

- Experience: Factors associated with the experience and history of the Subrecipient with the same or similar Federal Awards or grants.
- Monitoring/Audit: Factors associated with the results of the Subrecipient’s previous audits or monitoring visits, including those performed by the Federal Awarding Agency, when the Subrecipient also receives direct federal funding. Include audit results if Subrecipient receives single audit, where the specific award being assessed was selected as a major program.
- Operation: Factors associated with the significant aspects of the Subrecipient’s operations, in which failure could impact the Subrecipient’s ability to perform and account for the contracted goods or services.
- Financial: Factors associated with the Subrecipient’s financial stability and ability to comply with financial requirements of the Federal Award.
- Internal Controls: Factors associated with safeguarding assets and resources, deterring and detecting errors, fraud and theft, ensuring accuracy and completeness of accounting data, producing reliable and timely financial and management information, and ensuring adherence to its policies and plans.
- Impact: Factors associated with the potential impact of a Subrecipient’s non-compliance to the overall success of the program objectives.
- Program Management: Factors associated with processes to manage critical personnel, approved written procedures, and knowledge of rules and regulations regarding federal-aid projects.

Following Local Agency’s completion of the Risk Assessment Tool (**Exhibit L**), CDOT will determine the level of monitoring it will apply to Local Agency’s performance of the Work. This risk assessment may be re-evaluated after CDOT begins performing monitoring activities.

G. Close Out

Local Agency shall close out this Award within 90 days after the Final Phase Performance End Date. If SLFRF Funds are used the Local Agency shall close out that portion of the Award within 45 days after the ARPA Award Expiration Date. Close out requires Local Agency’s submission to the State of all deliverables defined in this Agreement, and Local Agency’s final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If FHWA or US Treasury has not closed this Federal Award within one (1) year and 90 days after the Final Phase Performance End Date due to Local Agency’s failure to submit required documentation, then Local Agency may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

8. REPORTING - NOTIFICATION

A. Quarterly Reports

In addition to any reports required pursuant to §19 or pursuant to any exhibit, for any contract having a term longer than 3 months, Local Agency shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than ten (10) Business Days following the end of each calendar quarter or at such time as otherwise specified by the State. If SLFRF Funds are used the report must be in the format of **Exhibit P**.

B. Litigation Reporting

If Local Agency is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Local Agency's ability to perform its obligations under this Agreement, Local Agency shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified in §16.

C. Performance and Final Status

Local Agency shall submit all financial, performance and other reports to the State no later than 60 calendar days after the Final Phase Performance End Date or sooner termination of this Agreement, containing an Evaluation of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

D. Violations Reporting

Local Agency must disclose, in a timely manner, in writing to the State and FHWA, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. Penalties for noncompliance may include suspension or debarment (2 CFR Part 180 and 31 U.S.C. 3321).

9. LOCAL AGENCY RECORDS**A. Maintenance**

Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Local Agency shall maintain such records for a period (the "Record Retention Period") pursuant to the requirements of the funding source and for a minimum of three (3) years following the date of submission to the State of the final expenditure report, whichever is longer, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Local Agency in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three (3) years following final disposition of such property.

B. Inspection

Records during the Record Retention Period. Local Agency shall make Local Agency Records available during normal business hours at Local Agency's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two (2) Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Local Agency's performance of its obligations under this Agreement using procedures as determined by the State. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. Local Agency shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Local Agency. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. If Local Agency enters into a subcontract with an entity that would also be considered a Subrecipient, then the subcontract entered into by Local Agency shall contain provisions permitting both Local Agency and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

D. Final Audit Report

Local Agency shall promptly submit to the State a copy of any final audit report of an audit performed on Local Agency's records that relates to or affects this Agreement or the Work, whether the audit is conducted

by Local Agency or a third party. Additionally, if Local Agency is required to perform a single audit under 2 CFR 200.501, *et seq.*, then Local Agency shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

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

B. Other Entity Access and Nondisclosure Agreements

Local Agency may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. Local Agency shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements with provisions at least as protective as those in this Agreement, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Local Agency shall provide copies of those signed nondisclosure agreements to the State upon request.

C. Use, Security, and Retention

Local Agency shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Local Agency shall provide the State with access, subject to Local Agency's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Local Agency shall return State Records provided to Local Agency or destroy such State Records and certify to the State that it has done so, as directed by the State. If Local Agency is prevented by law or regulation from returning or destroying State Confidential Information, Local Agency warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Local Agency becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Local Agency can establish that none of Local Agency or any of its agents, employees, assigns, or Subcontractors are the cause or source of the Incident, Local Agency shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Local Agency shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which

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

E. Safeguarding Personally Identifying Information “PII”

If Local Agency or any of its Subcontracts will or may receive PII under this agreement, Local Agency shall provide for the security for such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Local Agency shall be a “Third Party Service Provider” as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 et seq., C.R.S. In addition, as set forth in § 24-74-102, et. seq., C.R.S., Contractor, including, but not limited to, Contractor’s employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Contractor is given direct access to any State databases containing PII, Contractor shall execute, on behalf of itself and its employees, the certification attached hereto as **Exhibit S** on an annual basis Contractor’s duty and obligation to certify as set forth in **Exhibit S** shall continue as long as Contractor has direct access to any State databases containing PII. If Contractor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Contractor shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Local Agency shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Local Agency under this Agreement. Such a conflict of interest would arise when a Local Agency or Subcontractor’s employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement. Officers, employees, and agents of Local Agency may neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Local Agency is uncertain whether a conflict or the appearance of a conflict has arisen, Local Agency shall submit to the State a disclosure statement setting forth the relevant details for the State’s consideration. Failure to promptly submit a disclosure statement or to follow the State’s direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

12. INSURANCE

Local Agency shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies with an AM Best rating of A-VIII or better.

A. Local Agency Insurance

Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the “GIA”) and shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

B. Subcontractor Requirements

Local Agency shall ensure that each Subcontractor that is a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA. Local Agency shall ensure that each Subcontractor that is not a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement all of the following insurance policies:

i. Workers' Compensation

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

ii. General Liability

Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;
- c. \$1,000,000 products and completed operations aggregate; and
- d. \$50,000 any 1 fire.

iii. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Protected Information

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$2,000,000 general aggregate.

v. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$1,000,000 general aggregate.

vi. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$1,000,000 general aggregate.

vii. Cyber/Network Security and Privacy Liability

Liability insurance covering all civil, regulatory and statutory damages, contractual damages, data breach management exposure, and any loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of breach, violation or infringement of right to privacy rights through improper use or disclosure of protect consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

- a. \$1,000,000 each occurrence; and

b. \$2,000,000 general aggregate.

C. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Local Agency and Subcontractors. In the event of cancellation of any commercial general liability policy, the carrier shall provide at least 10 days prior written notice to CDOT.

D. Primacy of Coverage

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

E. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Local Agency and Local Agency shall forward such notice to the State in accordance with §16 within 7 days of Local Agency's receipt of such notice.

F. Subrogation Waiver

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

G. Certificates

For each commercial insurance plan provided by Local Agency under this Agreement, Local Agency shall provide to the State certificates evidencing Local Agency's insurance coverage required in this Agreement within seven (7) Business Days following the Effective Date. Local Agency shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following the Effective Date, except that, if Local Agency's subcontract is not in effect as of the Effective Date, Local Agency shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following Local Agency's execution of the subcontract. No later than 15 days before the expiration date of Local Agency's or any Subcontractor's coverage, Local Agency shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Local Agency shall, within seven (7) Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §12.

13. BREACH

A. Defined

The failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner, shall be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization, or similar law, by or against Local Agency, or the appointment of a receiver or similar officer for Local Agency or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §14 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in the Agreement in order to protect the public interest of the State.

14. REMEDIES

A. State's Remedies

If Local Agency is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in §13.B, shall have all of the remedies listed in this §14.A. in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Local Agency's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Local Agency shall not incur further obligations or render further performance past the effective date of such notice and shall terminate outstanding orders and subcontracts with third parties. However, Local Agency shall complete and deliver to the State all Work not canceled by the termination notice and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Local Agency shall assign to the State all of Local Agency's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Local Agency shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Local Agency but in which the State has an interest. At the State's request, Local Agency shall return materials owned by the State in Local Agency's possession at the time of any termination. Local Agency shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Local Agency for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Local Agency was not in breach or that Local Agency's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under §2.C.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Local Agency shall remain liable to the State for any damages sustained by the State in connection with any breach by Local Agency, and the State may withhold payment to Local Agency for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Local Agency is determined. The State may withhold any amount that may be due Local Agency as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Local Agency's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Local Agency to an adjustment in price or cost or an adjustment in the performance schedule. Local Agency shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Local Agency after the suspension of performance.

b. Withhold Payment

Withhold payment to Local Agency until Local Agency corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Local Agency's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal from the Work of any of Local Agency’s employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State’s best interest.

e. Intellectual Property

If any Work infringes a patent, copyright, trademark, trade secret, or other intellectual property right, Local Agency shall, as approved by the State (a) secure that right to use such Work for the State or Local Agency; (b) replace the Work with non infringing Work or modify the Work so that it becomes non infringing; or, (c) remove any infringing Work and refund the amount paid for such Work to the State.

B. Local Agency’s Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Local Agency, following the notice and cure period in §13.B and the dispute resolution process in §15 shall have all remedies available at law and equity.

15. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

If the initial resolution described in §15.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of CDOT as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, 24-109-101.1, 24-109-101.5, 24-109-106, 24-109-107, 24-109-201 through 24-109-206, and 24-109-501 through 24-109-505, C.R.S., (the “Resolution Statutes”), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor’s challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

C. Questions of Fact

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer’s decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

16. NOTICES AND REPRESENTATIVES

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) by hand with receipt required, (ii) by certified or registered mail to such Party’s principal representative at the address set forth below

or (iii) as an email with read receipt requested to the principal representative at the email address, if any, set forth below. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party’s principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §16 without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

For the State

Colorado Department of Transportation (CDOT)
Jake Oneal, EIT II
CDOT Region 4
10601 10th Street
Greeley, CO 80634
970-515-2731
jake.oneal@state.co.us

For the Local Agency

City of Fort Collins
Gunnar Hale, Civil Engineer I
281 North College Avenue
Fort Collins, CO 80524
970-817-0456
ghale@fcgov.com

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Local Agency hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Local Agency or any Subcontractors. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Local Agency is under contract with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Local Agency hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Local Agency cannot make any of the assignments required by this section, Local Agency hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Patents

In addition, Local Agency grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Local Agency that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

iii. Assignments and Assistance

Whether or not the Local Agency is under Agreement with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives, or other documents, drawings, models, materials, data, and information shall be the exclusive property of the State (collectively, "State Materials"). Local Agency shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Local Agency's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Local Agency shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Local Agency

Local Agency retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Local Agency including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Local Agency under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Local Agency Property"). Local Agency Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

18. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the GIA; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. The following applies through June 30, 2022: no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Local Agency under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this §19 shall apply. Local Agency agrees to be governed by and comply with the provisions of §24-106-103, §24-102-206, §24-106-106, §24-106-107 C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Local Agency's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

20. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

Local Agency shall not enter into any subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Local Agency shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Local Agency in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement.

C. Binding Effect

Except as otherwise provided in §20.A, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

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

F. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Digital Signatures

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

H. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

I. Jurisdiction and Venue

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

J. Modification

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

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

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

L. Order of Precedence

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

- i. The provisions of the other sections of the main body of this Agreement.
- ii. **Exhibit N**, Federal Treasury Provisions.
- iii. **Exhibit F**, Certification for Federal-Aid Contracts.
- iv. **Exhibit G**, Disadvantaged Business Enterprise.
- v. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts.
- vi. **Exhibit J**, Additional Federal Requirements.
- vii. **Exhibit K**, Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions.
- viii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form.
- ix. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the “Uniform Guidance”).
- x. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds.
- xi. **Exhibit R**, Applicable Federal Awards.
- xii. Colorado Special Provisions in the main body of this Agreement.
- xiii. **Exhibit A**, Scope of Work.
- xiv. **Exhibit H**, Local Agency Procedures for Consultant Services.
- xv. **Exhibit B**, Sample Option Letter.
- xvi. **Exhibit C**, Funding Provisions.
- xvii. **Exhibit P**, SLFRF Subrecipient Quarterly Report.
- xviii. **Exhibit Q**, SLFRF Reporting Modification Form.
- xix. **Exhibit D**, Local Agency Resolution.
- xx. **Exhibit E**, Local Agency Contract Administration Checklist.
- xxi. **Exhibit S**, PII Certification.
- xxii. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source.
- xxiii. Other exhibits in descending order of their attachment.

M. Severability

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

N. Survival of Certain Agreement Terms

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

O. Third Party Beneficiaries

Except for the Parties’ respective successors and assigns described in **§20.C**, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

P. Waiver

A Party’s failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107 C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Local Agency shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Local Agency’s industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations.

Local Agency shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

T. Compliance with State and Federal Law, Regulations, and Executive Orders

Local Agency shall comply with all State and Federal law, regulations, executive orders, State and Federal Awarding Agency policies, procedures, directives, and reporting requirements at all times during the term of this Agreement.

U. Accessibility

i. Local Agency shall comply with and the Work Product provided under this Agreement shall be in compliance with all applicable provisions of §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability, as established by the Governor’s Office of Information Technology (OIT), pursuant to Section §24-85-103 (2.5), C.R.S. Local Agency shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.

ii. Each Party agrees to be responsible for its own liability incurred as a result of its participation in and performance under this Agreement. In the event any claim is litigated, each Party will be responsible for its own attorneys’ fees, expenses of litigation, or other costs. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to either the Local Agency or the State by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. and Article XI of the Colorado Constitution. Nothing in the Agreement shall be construed as a waiver of any provision of the State Fiscal Rules.

iii. The State may require Local Agency’s compliance to the State’s Accessibility Standards to be determined by a third party selected by the State to attest to Local Agency’s Work Product and software is in compliance with §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

V. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), et seq., C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Local Agency. Local Agency shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Local Agency may wish to have in place in connection with this Agreement.

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

These Special Provisions apply to all contracts. Contractor refers to Local Agency.

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

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

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

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

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the Parties, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State’s risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor’s liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor’s liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

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

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

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

22. FEDERAL REQUIREMENTS

Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and State laws, and their implementing regulations, as they currently exist and may hereafter be amended. A summary of applicable federal provisions are attached hereto as **Exhibit F, Exhibit I, Exhibit J, Exhibit K, Exhibit M, Exhibit N** and **Exhibit O** are hereby incorporated by this reference.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Local Agency will comply with all requirements of **Exhibit G** and **Exhibit E**, Local Agency Contract Administration Checklist, regarding DBE requirements for the Work, except that if Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If Local Agency uses any State- approved DBE program for this Agreement, Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of Local Agency's DBE program does not waive or modify the sole responsibility of Local Agency for use of its program.

EXHIBIT A
SCOPE OF WORK

Name of Project: Timberline and Carpenter Intersection
Project Number: SHO M455-136
SubAccount #: 23881

The Colorado Department of Transportation (“CDOT”) will oversee the City of Fort Collins when City of Fort Collins designs the Timberline and Carpenter Intersection (Hereinafter referred to as “this work”). CDOT and the City of Fort Collins believe it will be beneficial to perform this work to improve intersection safety.

The design will be completed in accordance with AASHTO design standards, the Americans with Disabilities Act, and all applicable state, federal and local rules and regulations. The design phase of the work is anticipated to begin in the fall of 2023 and will identify more exact requirements, qualities, and attributes for this work (Herein after referred to as “the exact work”). The exact work shall be used to complete the construction phase of the project. The construction phase of the contract is anticipated to begin in 2024.

If ARPA funds are used all ARPA funds must be encumbered by December 31, 2024. All work funded by ARPA must be completed by December 31, 2026 and all bills must be submitted to CDOT for payment by January 31, 2027. These bills must be paid by CDOT by March 31, 2027.

By accepting funds for this Scope of Work, Local Agency acknowledges, understands, and accepts the continuing responsibility for the safety of the traveling public after initial acceptance of the project. **Local Agency is responsible for maintaining and operating the scope of work described in this Exhibit A constructed under this Agreement at its own cost and expense during its useful life.**

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EXHIBIT B

SAMPLE IGA OPTION LETTER

Date	State Fiscal Year	Option Letter No.
Project Code	Original Agreement #	

Vendor Name:

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous and to update encumbrance amount(s).

Option to unilaterally transfer funds from one phase to another phase.

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous, to update encumbrance amount(s), and to unilaterally transfer funds from one phase to another phase.

Option to unilaterally extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify OMB Guidance.

Option A

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to authorize the Local Agency to add a phase and to encumber funds for the phase based on changes in funding availability and authorization. The total encumbrance is (or increased) by \$0.00. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option B

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to transfer funds based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option C

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to 1) release the Local Agency to begin a phase; 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from phases based on variance in actual phase costs and

original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option D

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. This is made part of the original Agreement and replaces the Expiration Date shown on the Signature and Cover Page. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2, C-3**, etc.).

The effective date of this option letter is upon approval of the State Controller or delegate.

STATE OF COLORADO
Jared S. Polis
Department of Transportation

By: _____
Keith Stefanik, P.E., Chief Engineer
(For) Shoshana M. Lew, Executive Director

Date: _____

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

STATE OF COLORADO
STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Colorado Department of Transportation

Date: _____

EXHIBIT C - FUNDING PROVISIONS

City of Fort Collins - SHO M455-136 (23881)

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work to be \$696,285.00, which is to be funded as follows:

1. FUNDING		
a. Federal Funds (90% of HSIP Award)		\$626,657.00
b. State Funds (10% of HSIP Award)		\$69,628.00
TOTAL FUNDS ALL SOURCES		\$696,285.00
2. OMB UNIFORM GUIDANCE		
a. Federal Award Identification Number (FAIN):		TBD
b. Name of Federal Awarding Agency:		FHWA
c. Local Agency Unique Entity Identifier		VEJ3BS5GK5G1
d. Assistance Listing # Highway Planning and Construction		ALN 20.205
e. Is the Award for R&D?		No
f. Indirect Cost Rate (if applicable)		N/A
g. Amount of Federal Funds Obligated by this Action:		\$0.00
h. Amount of Federal Funds Obligated to Date (including this Action):		\$0.00
3. ESTIMATED PAYMENT TO LOCAL AGENCY		
a. Federal Funds Budgeted		\$626,657.00
b. State Funds Budgeted		\$69,628.00
c. Less Estimated Federal Share of CDOT-Incurred Costs		\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY	100.00%	\$696,285.00
TOTAL ESTIMATED FUNDING BY LOCAL AGENCY	0.00%	\$0.00
TOTAL PROJECT ESTIMATED FUNDING	100.00%	\$696,285.00
4. FOR CDOT ENCUMBRANCE PURPOSES		
a. Total Encumbrance Amount (Federal, State + Local Agency Funds)		\$696,285.00
b. Less ROW Acquisition 3111 and/or ROW Relocation 3109		\$0.00
NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS		\$696,285.00

Note: No funds are currently available. Design and Construction funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.

WBS Element 23881.10.30	Performance Period Start*/End Date TBD - TBD	Design 3020	\$0.00
WBS Element 23881.20.10	Performance Period Start*/End Date TBD - TBD	Const. 3301	\$0.00

*For SHO M455-136 (23881), the Local Agency should not begin work until all three (3) of the following are in place: 1) Phase Performance Period Start Date; 2) the execution of the document encumbering funds for the respective phase; and 3) Local Agency receipt of the official Notice to Proceed. Any work performed before these three (3) milestones are achieved will not be reimbursable.

B. Funding Ratios

The funding ratio for the federal funds for this Work is 100% federal & State funds to 0% Local Agency funds, and this ratio applies only to the \$696,285.00 that is eligible for federal & State funding. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$696,285.00, and additional federal funds and State funds are not available, the Local Agency shall pay all such excess costs. If the total cost of performance of the Work is less than \$696,285.00, then the amounts of Local Agency, State funds and federal funds will be decreased in accordance with the funding ratio described in **A1. This applies to the entire scope of Work.**

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$696,285.00. For CDOT accounting purposes, the federal funds of \$626,657.00, the State funds of \$69,628.00 and the Local Agency funds of \$0.00 will be encumbered for a total encumbrance of \$696,285.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total budget of this project is \$696,285.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the federal funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 7. E. of this contract. **This applies to the entire scope of Work.**

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving \$750,000 or more from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of 2 CFR part 200, subpart F (Audit Requirements) see also, 49 CFR 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. Expenditure less than \$750,000

If the Local Agency expends less than \$750,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure of \$750,000 or more-Highway Funds Only

If the Local Agency expends \$750,000 or more, in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure of \$750,000 or more-Multiple Funding Sources

If the Local Agency expends \$750,000 or more in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

EXHIBIT D

LOCAL AGENCY RESOLUTION (IF APPLICABLE)

LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST

COLORADO DEPARTMENT OF TRANSPORTATION			
LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. SHO M455-136	STIP No. SR46666.081	Project Code 23881	Region 04
Project Location Timberline and CO392 Intersection			Date 02/09/2023
Project Description Intersection Improvements			
Local Agency City of Fort Collins		Local Agency Project Manager Gunnar Hale	
CDOT Resident Engineer Bryce Reeves		CDOT Project Manager Jake Oneal	
<p>INSTRUCTIONS:</p> <p>This checklist shall be used to establish the contractual administrative responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency Agreement. Section numbers (NO.) correspond to the applicable chapters of the <i>CDOT Local Agency Desk Reference (Local Agency Manual)</i>. LAWR numbers correspond to the applicable flowchart in the Local Agency Web Resource.</p> <p>The checklist shall be prepared by placing an X under the responsible party, opposite each of the tasks. The X denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, # will denote that CDOT must concur or approve.</p> <p>Tasks that will be performed by Headquarters staff are indicated with an X in the CDOT column under Responsible Party. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.</p> <p>The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.</p> <p>Note: Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.</p>			

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
TIP / STIP AND LONG-RANGE PLANS				
	2.1	Review Project to ensure it is consistent with Statewide Plan and amendments thereto		x
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION				
	4.1	Authorize funding by phases (Requires FHWA concurrence/involvement if Federal-aid Highway funded project.). <i>Please write in "NA", if Not Applicable.</i>		x
PROJECT DEVELOPMENT				
1	5.1	Prepare Design Data - CDOT Form 463	X	#
	5.2	Determine Delivery Method	X	#
	5.3	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		x
2	5.4	Conduct Consultant Selection/Execute Consultant Agreement <ul style="list-style-type: none"> • Project Development • Construction Contract Administration (including Fabrication Inspection Services) 	X	#
3,3A	5.5	Conduct Design Scoping Review Meeting	X	#
3,6	5.6	Conduct Public Involvement (<i>If required</i>)	X	#

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
3	5.7	Conduct Field Inspection Review (FIR)	X	#
4	5.8	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	#
5	5.9	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	#
3	5.10	Obtain Utility and Railroad Agreements	X	#
3	5.11	Conduct Final Office Review (FOR)	X	#
3A	5.12	Justify Force Account Work by the Local Agency	X	#
3B	5.13	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	#
3	5.14	Document Design Exceptions - CDOT Form 464	X	#
	5.15	Seek Permission for use of Guaranty and Warranty Clauses	X	#
3	5.18	Prepare Plans, Specifications, Construction Cost Estimates and Submittals	X	#
	5.19	Comply with Requirements for Off-and On-System Bridges & Other Structural Work	X	#
	5.20	Update Approvals on PS&E Package if Project Schedule Delayed	X	#
	5.21	Ensure Authorization of Funds for Construction	#	X
	5.22	Use Electronic Signatures	X	X
	5.23	File Project Development Records/Documentation in ProjectWise	#	X
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE				
3	6.1	Set Disadvantaged Business Enterprise (DBE) Goals for Consultant and Construction Contracts (CDOT Region Civil Rights Office).	#	X
	6.2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input checked="" type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Bryce Reeves 2/9/2023 _____ CDOT Resident Engineer Date		X
	6.3	Set On-the-Job Training Goals (CDOT Region Civil Rights Office) "NA", if Not Applicable	#	X
	6.4	Enforce Prompt Payment Requirements	X	#
	6.5	Use Electronic Tracking and Submission Systems – B2GNow <input checked="" type="checkbox"/> LCPtracker <input checked="" type="checkbox"/>	X	#
3	6.6	Prepare/submit Title VI Plan and Incorporate Title VI Assurances	X	#
6,7		Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)	X	#
ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS				
Federal Project (use 7.1 series in Chapter 7) <input checked="" type="checkbox"/> Non-Federal Project (Use 7.2 series in Chapter 7) <input type="checkbox"/>				
6,7		Obtain Approval for Advertisement Period of Less Than Three Weeks;	X	#
7		Advertise for Bids	X	#
7		Concurrence to Advertise	#	X
7		Distribute "Advertisement Set" of Plans and Specifications	X	#
7		Review Worksite & Plan Details w/ Prospective Bidders While Project Is Under Ad	X	
7		Open Bids	X	
7		Process Bids for Compliance		
		Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets DBE goals. (Please write in "NA", if Not Applicable)		X
		Evaluate CDOT Form 1416 - Good Faith Effort Report and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals. "NA", if Not Applicable.		X
		Submit required documentation for CDOT award concurrence	X	
		Concurrence from CDOT to Award		X
		Approve Rejection of Low Bidder		X
7,8		Award Contract (federal)	X	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
8		Provide "Award" and "Record" Sets of Plans and Specifications (federal)	X	
CONSTRUCTION MANAGEMENT				
8	Intro	File Project Construction Records/Documentation in ProjectWise or as directed	X	
8	8.1	Issue Notice to Proceed to the Contractor	X	#
8	8.2	Project Safety	X	
8	8.3	Conduct Conferences:		
		Pre-construction Conference (Appendix B)	X	#
		<ul style="list-style-type: none"> Fabrication Inspection Notifications 	X	
		Pre-survey	X	
		<ul style="list-style-type: none"> Construction staking Monumentation 	X	
		Partnering (Optional)	X	
		Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>) (if applicable)	X	
		Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>) (if applicable)	X	
		HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>) (if applicable)	X	
8	8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
9	8.5	Supervise Construction		
		A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision."		
		Gunnar Hale 970-817-0456 _____ Local Agency Professional Engineer Phone number or CDOT Resident Engineer	X	
		Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
		Construction inspection and documentation (including projects with structures)	X	#
		Fabrication Inspection and documentation (if applicable)	X	
9	8.6	Review and Approve Shop Drawings	X	
9	8.7	Perform Traffic Control Inspections	X	#
9	8.8	Perform Construction Surveying	X	
9	8.9	Monument Right-of-Way	X	#
9,9A	8.10	Prepare and Approve Interim and Final Contractor Pay Estimates. Collect and review CDOT Form 1418 (or equivalent) or use compliance software system.		
		Provide the name and phone number of the person authorized for this task.		
		Gunnar Hale 970-817-0456 _____ Local Agency Representative Phone number	X	
9	8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	
9B	8.12	Prepare and Authorize Change Orders	X	#
9B	8.13	Submit Change Order Package to CDOT	X	
9A	8.14	Prepare Local Agency Reimbursement Requests	X	
9	8.15	Monitor Project Financial Status	X	
9	8.16	Prepare and Submit Monthly Progress Reports	X	
9	8.17	Resolve Contractor Claims and Disputes	X	
	8.18	Conduct Routine and Random Project Reviews		
		Provide the name and phone number of the person responsible for this task.		
		Bryce Reeves 970.350.2126 _____ CDOT Resident Engineer Phone number		X
9	8.19	Ongoing Oversight of DBE Participation	X	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
MATERIALS				
9,9C	9.1	Discuss Materials at Pre-Construction Meeting <ul style="list-style-type: none"> Buy America documentation required prior to installation of steel 	X	
9,9C	9.2	Complete CDOT Form 250 - Materials Documentation Record <ul style="list-style-type: none"> Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project Update the form as work progresses Complete and distribute form after work is completed 	X X	X
9C	9.3	Perform Project Acceptance Samples and Tests	X	
9C	9.4	Perform Laboratory Acceptance Tests	X	
9C	9.6	Accept Manufactured Products <p>Inspection of structural components:</p> <ul style="list-style-type: none"> Fabrication of structural steel and pre-stressed concrete structural components Bridge modular expansion devices (0" to 6" or greater) Fabrication of bearing devices 	X X X	
9C	9.6	Approve Sources of Materials	X	
9C	9.7	Independent Assurance Testing (IAT) <p>Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/></p> <ul style="list-style-type: none"> Generate IAT schedule Schedule and provide notification Conduct IAT 	X X	X
9C	9.8	Approve mix designs <ul style="list-style-type: none"> Concrete Hot mix asphalt 	X X	# #
9C	9.9	Check Final Materials Documentation	X	#
9C	9.10	Complete and Distribute Final Materials Documentation	X	#
CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE				
9	10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
8,9	10.2	Process CDOT Form 205 - Sublet Permit Application and CDOT Form 1425 – Supplier Application Approval Request. Review & sign completed forms, or review/approve in compliance software system, as applicable, & submit to Region Civil Rights Office.	X	#
9	10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
9	10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	X	
9	10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. <ul style="list-style-type: none"> Complete CDOT Form 1337 – Contractor Commitment to Meet OJT Requirements. Complete CDOT Form 838 – OJT Trainee / Apprentice Record. Complete CDOT Form 200 - OJT Training Questionnaire 	X X X	
9	10.6	Check Certified Payrolls (Contact the Region Civil Rights Office for training reqmts.)	X	#
9	10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
	10.8	Contract Compliance and Project Site Reviews		X
FINALS				
	11.1	Conduct Final Project Inspection & Final Inspection of Structures, if applicable		X
10	11.2	Write Final Project Acceptance Letter	X	
10	11.3	Advertise for Final Settlement	X	
11	11.4	Prepare and Distribute Final As-Constructed Plans	X	
11	11.5	Prepare EEO Certification and Collect EEO Forms	X	
11	11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	#

LA WK	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
11	11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	#
	11.8	Review CDOT Form 1419		x
	11.9	Submit CDOT Professional Services Closeout Report Form	X	
	11.10	Complete and Submit CDOT Form 1212 LA – Final Acceptance Report (by CDOT)		x
11	11.11	Process Final Payment	X	#
	11.12	Close out Local Project	x	
	11.13	Complete and Submit CDOT Form 950 - Project Closure		x
11	11.14	Retain Project Records	X	
11	11.15	Retain Final Version of Local Agency Contract Administration Checklist	X	

cc: CDOT Resident Engineer/Project Manager
 CDOT Region Program Engineer
 CDOT Region Civil Rights Office

CDOT Region Materials Engineer
 CDOT Contracts and Market Analysis Branch
 Local Agency Project Manager

EXHIBIT F
CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

EXHIBIT G
DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

SECTION 2. DBE Obligation.

The recipient or the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

SECTION 3 DBE Program.

The Local Agency (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the Local Agency

upon request: Business Programs Office

Colorado Department of Transportation

2829 West Howard Place Denver,

Colorado 80204

Phone: (303) 757-9007

REQUIRED BY 49 CFR
PART 26

EXHIBIT H

LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded Local Agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states “The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost” and according to 23 CFR 172.5 “Price shall not be used as a factor in the analysis and selection phase.” Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a Local Agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting Local Agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting Local Agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The Local Agency shall not advertise any federal aid contract without prior review by the CDOT Regional Civil Rights Office (RCRO) to determine whether the contract shall be subject to a DBE contract goal. If the RCRO determines a goal is necessary, then the Local Agency shall include the goal and the applicable provisions within the advertisement. The Local Agency shall not award a contract to any Contractor or Consultant without the confirmation by the CDOT Civil Rights and Business Resource Center that the Contractor or Consultant has demonstrated good faith efforts. The Local Agency shall work with the CDOT RCRO to ensure compliance with the established terms during the performance of the contract.
5. The Local Agency shall require that all contractors pay subcontractors for satisfactory performance of work no later than 30 days after the receipt of payment for that work from the contractor. For construction projects, this time period shall be reduced to seven days in accordance with Colorado Revised Statute 24-91-103(2). If the Local Agency withholds retainage from contractors and/or allows contractors to withhold retainage from subcontractors, such retainage provisions must comply with 49 CFR 26.29.
6. Payments to all Subconsultants shall be made within thirty days of receipt of payment from [the Local Agency] or no later than ninety days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify [the Local Agency] no later than the required date for payment. Such notification shall include the amount disputed and justification for the withholding. The Consultant shall maintain records of payment that show amounts paid to all Subconsultants. Good cause does not include the Consultant’s failure to submit an invoice to the Local Agency or to deposit payments made.
7. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,

- b. Approach to the Work,
- c. Ability to furnish professional services.
- d. Anticipated design concepts, and
- e. Alternative methods of approach for furnishing the professional services. Evaluation factors for final selection are the consultant's:

- a. Abilities of their personnel,
- b. Past performance,
- c. Willingness to meet the time and budget requirement,
- d. Location,
- e. Current and projected work load,
- f. Volume of previously awarded contracts, and
- g. Involvement of minority consultants.

8. Once a consultant is selected, the Local Agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.

9. A qualified Local Agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the Local Agency prepares a performance evaluation (a CDOT form is available) on the consultant.

CRS §§24-30-1401 THROUGH 24-30-1408, 23 CFR PART 172, AND P.D. 400.1, PROVIDE ADDITIONAL DETAILS FOR COMPLYING WITH THE PRECEEDING EIGHT (8) STEPS.

EXHIBIT I

FEDERAL-AID CONTRACT PROVISIONS FOR CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding (29 CFR 5.5)

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics,

including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records (29 CFR 5.5)

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or

subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees (29 CFR 5.5)

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State

Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor

set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility (29 CFR 5.5)

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1 of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section. 29 CFR 5.5.

* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) as may be adjusted annually by the Department of Labor; pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990).

3. Withholding for unpaid wages and liquidated damages.

The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section. 29 CFR 5.5.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or

equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on longstanding interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance

with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.326.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders

or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.326.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant

who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is

submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(b) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(c) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier

subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.
2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXHIBIT J
ADDITIONAL FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or the Local Agencies).

Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

Clean Air Act

Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts more than \$100,000).

Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally assisted programs.

Nondiscrimination

The Local Agency shall not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color national origin, sex, age or disability. Prior to the receipt of any Federal financial assistance from CDOT, the Local Agency shall execute the attached Standard DOT Title VI assurance. As appropriate, the Local Agency shall include Appendix A, B, or C to the Standard DOT Title VI assurance in any contract utilizing federal funds, land, or other aid. The Local Agency shall also include the following in all contract advertisements:

The [Local Agency], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (79 Stat. 252, 42 US.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, DBEs will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for any award.

ADA

In any contract utilizing federal funds, land, or other federal aid, the Local Agency shall require the federal-aid recipient or contractor to provide a statement of written assurance that they will comply with Section 504 and not discriminate on the basis of disability.

Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et. seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees, and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions §22

The Contractor will include the provisions of this Exhibit J in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

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SAMPLE**The United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination****Assurances for Local Agencies****DOT Order No. 1050.2A**

The [Local Agency] (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Colorado Department of Transportation and the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including the FHWA, FTA, or FAA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FHWA, FTA, and FAA assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated or will be (with regard to a "facility") operated or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests for Proposals for work, or material subject to the Acts and the Regulations made in connection with all FHWA, FTA and FAA programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:
3. "The [Local Agency] in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity

4. to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."
5. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
6. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
7. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
8. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
9. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
10. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
11. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
12. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the [Local Agency] also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA, FTA, and FAA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by CDOT, FHWA, FTA, or FAA. You must keep records, reports, and submit the material for review

upon request to CDOT, FHWA, FTA, or FAA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

[Local Agency] gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FHWA, FTA, and FAA. This ASSURANCE is binding on [Local Agency], other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FHWA, FTA, and FAA funded programs. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

(Name of Recipient)

by _____
(Signature of Authorized Official)

DATED _____

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, FHWA, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the [Local Agency], CDOT or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the [Local Agency], CDOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the non-discrimination provisions of this contract, the [Local Agency] will impose such contract sanctions as it, CDOT or FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the [Local Agency], CDOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B**CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the [Local Agency] will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), the Regulations for the Administration of (*Name of Appropriate Program*), and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the [Local Agency] all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto [Local Agency] and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the [Local Agency] its successors and assigns.

The [Local Agency], in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the [Local Agency] will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [,] and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the [Local Agency] pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued. *
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the [Local Agency] will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the [Local Agency] and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE
ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by [Local Agency] pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non- discrimination covenants, [Local Agency] will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued. *
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will there upon revert to and vest in and become the absolute property of [Local Agency] of Transportation and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

EXHIBIT K**FFATA SUPPLEMENTAL FEDERAL PROVISIONS**

State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. “Award” means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

1.1.1. Grants;

1.1.2. Contracts;

1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);

1.1.4. Loans;

1.1.5. Loan Guarantees;

1.1.6. Subsidies;

1.1.7. Insurance;

1.1.8. Food commodities;

1.1.9. Direct appropriations;

1.1.10. Assessed and voluntary contributions; and

1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award *does not* include:

1.1.12. Technical assistance, which provides services in lieu of money;

1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;

1.1.14. Any award classified for security purposes; or

1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

1.2. “Contract” means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.

1.3. “Contractor” means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.

1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpartC;

1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;

1.5.2. A foreign public entity;

1.5.3. A domestic or foreign non-profit organization;

- 1.5.4. A domestic or foreign for-profit organization; and
- 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109- 282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
- 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 1.17 **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
 - 3.1. **SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
 - 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 4.2. In the preceding fiscal year, Contractor received:
 - 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

7.1 To SAM. A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

- 7.1.1** Subrecipient DUNS Number;
- 7.1.2** Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
- 7.1.3** Subrecipient Parent DUNS Number;
- 7.1.4** Subrecipient’s address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 7.1.5** Subrecipient’s top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 7.1.6** Subrecipient’s Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

7.2 To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following dataelements:

- 7.2.1** Subrecipient’s DUNS Number as registered in **SAM**.
- 7.2.2** Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

- 8.1.** These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 8.2** A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 8.3** Effective October 1, 2010, “Award” currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates “Award” may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.
- 8.4** There are no Transparency Act reporting requirements for Vendors.

Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

EXHIBIT L

SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT

CDOT SUBRECIPIENT RISK ASSESSMENT		Date: _____		
Name of Entity (Subrecipient):				
Name of Project / Program:				
Estimated Award Period:				
Entity Executive Director or VP:				
Entity Chief Financial Officer:				
Entity Representative for this Self Assessment:				
Instructions: (See "Instructions" tab for more information) 1. Check only one box for each question. All questions are required to be answered. 2. Utilize the "Comment" section below the last question for additional responses. 3. When complete, check the box at the bottom of the form to authorize.		Yes	No	N/A
EXPERIENCE ASSESSMENT		Yes	No	N/A
1 Is your entity new to operating or managing federal funds (has not done so within the past three years)?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2 Is this funding program new for your entity (managed for less than three years)? <i>Examples of funding programs include CMAQ, TAP, STP-M, etc.</i>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3 Does your staff assigned to the program have at least three full years of experience with this federal program?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MONITORING/AUDIT ASSESSMENT		Yes	No	N/A
4 Has your entity had an on-site project or grant review from an external entity (e.g., CDOT, FHWA) within the last three years?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5 a) Were there non-compliance issues in this prior review?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) What were the number and extent of issues in prior review?		<input type="checkbox"/> <small>1 to 2</small>	<input type="checkbox"/> <small>>3</small>	<input type="checkbox"/>
OPERATION ASSESSMENT		Yes	No	N/A
6 Does your entity have a time and effort reporting system in place to account for 100% of all employees' time, that can provide a breakdown of the actual time spent on each funded project? <i>If No, in the comment section please explain how you intend to document 100% of hours worked by employees and breakdown of time spent on each funding project.</i>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FINANCIAL ASSESSMENT		Yes	No	N/A
7 a) Does your entity have an indirect cost rate that is approved and current?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) If Yes, who approved the rate, and what date was it approved?				
8 Is this grant/award 10% or more of your entity's overall funding?		<input type="checkbox"/> <small>>10%</small>	<input type="checkbox"/> <small><10%</small>	<input type="checkbox"/>
9 Has your entity returned lapsed* funds? *Funds "lapse" when they are no longer available for obligation.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10 Has your entity had difficulty meeting local match requirements in the last three years?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11 What is the total federal funding your entity has been awarded for the last federal fiscal year, and what is your entity's fiscal year end?				

INTERNAL CONTROLS ASSESSMENT				Yes	No	N/A
12	Has your entity had any significant changes in key personnel or accounting system(s) in the last year? (e.g., Controller, Exec Director, Program Mgr, Accounting Mgr, etc.) If Yes, in the comment section, please identify the accounting system(s), and / or list personnel positions and identify any that are vacant.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
13	Does your entity have financial procedures and controls in place to accommodate a federal-aid project?	<input type="checkbox"/>	<input type="checkbox"/>			
14	Does your accounting system identify the receipts and expenditures of program funds separately for each award?	<input type="checkbox"/>	<input type="checkbox"/>			
15	Will your accounting system provide for the recording of expenditures for each award by the budget cost categories shown in the approved budget?	<input type="checkbox"/>	<input type="checkbox"/>			
16	Does your agency have a review process for all expenditures that will ensure that all costs are reasonable, allowable and allocated correctly to each funding source? If Yes, in the comment section, please explain your current process for reviewing costs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
17	How many total FTE perform accounting functions within your organization?	<input type="checkbox"/> ≥ 6	<input type="checkbox"/> 2 to 5	<input type="checkbox"/> < 2		
IMPACT ASSESSMENT				Yes	No	N/A
18	For this upcoming federal award or in the immediate future, does your entity have any potential conflicts of interest* in accordance with applicable Federal awarding agency policy? If Yes, please disclose these conflicts in writing, along with supporting information, and submit with this form. (*Any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Subrecipient's obligations to the State.)	<input type="checkbox"/>	<input type="checkbox"/>			
19	For this award, has your entity disclosed to CDOT, in writing, violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award? Response options: YES = Check if have one or more violation(s) and have either disclosed previously to CDOT or as part of this form. In the comment section, list all violations with names of supporting documentation and submit with this form. NO = Check if have one or more violation(s) and have not disclosed previously or will not disclose as part of this form. Explain in the comment section. N/A = Check if have no violations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
PROGRAM MANAGEMENT ASSESSMENT				Yes	No	N/A
20	Does your entity have a written process/procedure or certification statement approved by your governing board ensuring critical project personnel are capable of effectively managing Federal-aid projects? If Yes, please submit with this form.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
21	Does your entity have written procurement policies or certification statement for consultant selection approved by your governing board in compliance with 23 CFR 172*? If Yes, please submit with this form. (*The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications, at a fair and reasonable price.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
22	a) Is your staff familiar with the relevant CDOT manuals and federal program requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	b) Does your entity have a written policy or a certification statement approved by your governing board assuring federal-aid projects will receive adequate inspections? If Yes, please submit with this form.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	c) Does your entity have a written process or a certification statement approved by your governing board assuring a contractor's work will be completed in conformance with approved plans and specifications? If Yes, please submit with this form.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		


d) Does your entity have a written policy or certification statement approved by your governing board assuring that materials installed on the projects are sampled and tested per approved processes. <i>If Yes, please submit with this form.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Does your entity have a written policy or certification statement approved by your governing board assuring that only US manufactured steel will be incorporated into the project (<i>Buy America requirements</i>)? <i>If Yes, please submit with this form.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments - As needed, include the question number and provide comments related to the above questions. Insert additional rows as needed.</p>			
<p><input type="checkbox"/> By checking this box, the Executive Director, VP or Chief Financial Officer of this entity certifies that all information provided on this form is true and correct.</p> <p style="text-align: right;"> Tool Version: v2.0 (081816)</p>			

EXHIBIT M**OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS**

**Subject to
The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and
Audit Requirements for Federal Awards (“Uniform Guidance”),
Federal Register, Vol. 78, No. 248, 78590**

The agreement to which these Uniform Guidance Supplemental Provisions are attached has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the agreement or any attachments or exhibits incorporated into and made a part of the agreement, the provisions of these Uniform Guidance Supplemental Provisions shall control. In the event of a conflict between the provisions of these Supplemental Provisions and the FFATA Supplemental Provisions, the FFATA Supplemental Provisions shall control.

- 1. Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.
- 1.1. “Award”** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise. 2 CFR §200.38
 - 1.2. “Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
 - 1.3. “Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. 2 CFR §200.37
 - 1.4. “FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
 - 1.5. “Grant” or “Grant Agreement”** means an agreement setting forth the terms and conditions of an Award. The term does not include an agreement that provides only direct Federal cash assistance to an individual, a subsidy, a loan, a loan guarantee, insurance, or acquires property or services for the direct benefit of use of the Federal Awarding Agency or Recipient. 2 CFR §200.51.
 - 1.6. “OMB”** means the Executive Office of the President, Office of Management and Budget.
 - 1.7. “Recipient”** means a Colorado State department, agency or institution of higher education that receives a Federal Award from a Federal Awarding Agency to carry out an activity under a Federal program. The term does not include Subrecipients. 2 CFR §200.86
 - 1.8. “State”** means the State of Colorado, acting by and through its departments, agencies and institutions of higher education.
 - 1.9. “Subrecipient”** means a non-Federal entity receiving an Award from a Recipient to carry out part of a Federal program. The term does not include an individual who is a beneficiary of such program.
 - 1.10. “Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

- 1.11. “Uniform Guidance Supplemental Provisions”** means these Supplemental Provisions for Federal Awards subject to the OMB Uniform Guidance, as may be revised pursuant to ongoing guidance from relevant Federal agencies or the Colorado State Controller.
- 2. Compliance.** Subrecipient shall comply with all applicable provisions of the Uniform Guidance, including but not limited to these Uniform Guidance Supplemental Provisions. Any revisions to such provisions automatically shall become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3. Procurement Standards.**
- 3.1 Procurement Procedures.** Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation,
 §§200.318 through 200.326 thereof.
- 3.2 Procurement of Recovered Materials.** If Subrecipient is a State Agency or an agency of a political subdivision of a state, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 4. Access to Records.** Subrecipient shall permit Recipient and auditors to have access to Subrecipient’s records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).
- 5. Single Audit Requirements.** If Subrecipient expends \$750,000 or more in Federal Awards during Subrecipient’s fiscal year, Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
- 5.1 Election.** Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program’s statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 5.2 Exemption.** If Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government

Accountability Office.

5.3 Subrecipient Compliance Responsibility. Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

6. Contract Provisions for Subrecipient Contracts. Subrecipient shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Grant Agreement.

6.1 Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

“During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments

under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled,

terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

6.2 Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40

U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

6.3 Rights to Inventions Made Under a Contract or Agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

6.4 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251- 1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection

Agency (EPA).

- 6.5 Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAMExclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 6.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 7. Certifications.** Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.
- 7.1 Event of Default.** Failure to comply with these Uniform Guidance Supplemental Provisions shall constitute an event of default under the Grant Agreement (2 CFR §200.339) and the State may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.
- 8. Effective Date.** The effective date of the Uniform Guidance is December 26, 2013. 2 CFR §200.110. The procurement standards set forth in Uniform Guidance §§200.317-200.326 are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in Uniform Guidance Subpart F-Audit Requirements are applicable to audits of fiscal years beginning on or after December 26, 2014.
- 9. Performance Measurement.** The Uniform Guidance requires completion of OMB-approved standard information collection forms (the PPR). The form focuses on outcomes, as related to the Federal Award Performance Goals that awarding Federal agencies are required to detail in the Awards.
- Section 200.301 provides guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes.
- The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones (200.210). Also, must require the recipient to relate financial data to performance accomplishments of the Federal award.

Exhibit N

Federal Treasury Provisions

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.
- 1.2. The State of Colorado is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury’s Final Rule, and reporting requirements, as applicable.
- 1.3. Additionally, any subrecipient that issues a subaward to another entity (2nd tier subrecipient), must hold the 2nd tier subrecipient accountable to these provisions and adhere to reporting requirements.
- 1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
 - 2.1.1. “Award” means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
 - 2.1.2. “Entity” means:
 - 2.1.2.1. a Non-Federal Entity;
 - 2.1.2.2. a foreign public entity;
 - 2.1.2.3. a foreign organization;
 - 2.1.2.4. a non-profit organization;
 - 2.1.2.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
 - 2.1.2.6. a foreign non-profit organization (only for 2 CFR part 170) only);
 - 2.1.2.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
 - 2.1.2.8. a foreign for-profit organization (for 2 CFR part 170 only).
 - 2.1.3. “Executive” means an officer, managing partner or any other employee in a management position.
 - 2.1.4. “Expenditure Category (EC)” means the category of eligible uses as defined by the US Department of Treasury in “Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds” report available at www.treasury.gov.

- 2.1.5. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
- 2.1.6. “Grant” means the Grant to which these Federal Provisions are attached.
- 2.1.7. “Grantee” means the party or parties identified as such in the Grant to which these Federal Provisions are attached.
- 2.1.8. “Non-Federal Entity” means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
- 2.1.9. “Nonprofit Organization” means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
- 2.1.9.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - 2.1.9.2. Is not organized primarily for profit; and
 - 2.1.9.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 2.1.10. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.11. “Pass-through Entity” means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 2.1.12. “Prime Recipient” means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.13. “Subaward” means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.14. “Subrecipient” or “Subgrantee” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.15. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:
- 2.1.15.1. Salary and bonus;
 - 2.1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the

fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;

- 2.1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 2.1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.16. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 2.1.17. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
- 2.1.18. “Unique Entity ID” means the Unique Entity ID established by the federal government for a Grantee at <https://sam.gov/content/home>.

3. COMPLIANCE.

- 3.1. Grantee shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all applicable provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado, at its discretion, may provide written notification to Grantee of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3.2. Per US Treasury Final Award requirements, grantee programs or services must not include a term or conditions that undermines efforts to stop COVID-19 or discourages compliance with recommendations and CDC guidelines.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND UNIQUE ENTITY ID (UEI) REQUIREMENTS.

- 4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually.
- 4.2. UEI. Grantee shall provide its Unique Entity ID to its Prime Recipient, and shall update Grantee’s information in Sam.gov at least annually.

5. TOTAL COMPENSATION.

- 5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 5.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and
 - 5.1.2. In the preceding fiscal year, Grantee received:

- 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.2.2. \$30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.2.3. 5.1.2.3 The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

- 6.1. If Grantee is a Subrecipient of the Award pursuant to the Transparency Act, Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements. If the total award is below \$30,000 no reporting required; if more than \$30,000 and less than \$50,000 then FFATA reporting is required; and, \$50,000 and above SLFRF reporting is required.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

- 8.1. Grantee shall report as set forth below.
 - 8.1.1. Grantee shall use the SLFRF Subrecipient Quarterly Report Workbook as referenced in Exhibit F to report to the State Agency within ten (10) days following each quarter ended September, December, March and June. Additional information on specific requirements are detailed in the SLFRF Subrecipient Quarterly Report Workbooks and "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

EC 1 – Public Health**All Public Health Projects**

- a) Description of structure and objectives
- b) Description of relation to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

COVID-19 Interventions and Mental Health (1.4, 1.11, 1.12, 1.13)

- a) Amount of total project used for evidence-based programs
- b) Evaluation plan description

COVID-19 Small Business Economic Assistance (1.8)

- a) Number of small businesses served

COVID-19 Assistance to Non-Profits (1.9)

- a) Number of non-profits served

COVID-19 Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (1.10)

- a) Sector of employer
- b) Purpose of funds

EC 2 – Negative Economic Impacts**All Negative Economic Impacts Projects**

- a) Description of project structure and objectives
- b) Description of project's response to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Amount of total project used for evidence-based programs and description of evaluation plan (*not required for 2.5, 2.8, 2.21-2.24, 2.27-2.29, 2.31, 2.34-2.36*)
- e) Number of workers enrolled in sectoral job training programs
- f) Number of workers completing sectoral job training programs
- g) Number of people participating in summer youth employment programs
- h) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

Household Assistance (2.1-2.8)

- a) Number of households served

- b) Number of people or households receiving eviction prevention services (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*
- c) Number of affordable housing units preserved or developed (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*

Healthy Childhood Environments (2.11-2.13)

- a) Number of children served by childcare and early learning *(Federal guidance may change this requirement in July 2022)*
- b) Number of families served by home visiting *(Federal guidance may change this requirement in July 2022)*

Education Assistance (2.14, 2.24-2.27)

- a) National Center for Education Statistics (“NCES”) School ID or NCES District ID
- b) Number of students participating in evidence-based programs *(Federal guidance may change this requirement in July 2022)*

Housing Support (2.15, 2.16, 2.18)

- a) Number of people or households receiving eviction prevention services *(Federal guidance may change this requirement in July 2022)*
- b) Number of affordable housing units preserved or developed *(Federal guidance may change this requirement in July 2022)*

Small Business Economic Assistance (2.29-2.33)

- a) Number of small businesses served

Assistance to Non-Profits (2.34)

- a) Number of non-profits served

Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (2.35-2.36)

- a) Sector of employer
- b) Purpose of funds
- c) If other than travel, tourism and hospitality (2.36) – description of hardship

EC 3 – Public Health – Negative Economic Impact: Public Sector Capacity

Payroll for Public Health and Safety Employees (EC 3.1)

- a) Number of government FTEs responding to COVID-19

Rehiring Public Sector Staff (EC 3.2)

- a) Number of FTEs rehired by governments

EC 4 – Premium Pay

All Premium Pay Projects

- a) List of sectors designated as critical by the chief executive of the jurisdiction, if beyond those listed in the final rule
- b) Numbers of workers served
- c) Employer sector for all subawards to third-party employers
- d) Written narrative justification of how premium pay is responsive to essential work during the public health emergency for non-exempt workers or those making over 150 percent of the state/county’s average annual wage

- e) Number of workers to be served with premium pay in K-12 schools

EC 5 – Infrastructure Projects

All Infrastructure Projects

- a) Projected/actual construction start date (month/year)
- b) Projected/actual initiation of operations date (month/year)
- c) Location (for broadband, geospatial data of locations to be served)
- d) Projects over \$10 million
 - i. Prevailing wage certification or detailed project employment and local impact report
 - ii. Project labor agreement certification or project workforce continuity plan
 - iii. Prioritization of local hires
 - iv. Community benefit agreement description, if applicable

Water and sewer projects (EC 5.1-5.18)

- a) National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
- b) Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)
- c) Median Household Income of service area
- d) Lowest Quintile Income of the service area

Broadband projects (EC 5.19-5.21)

- a) Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
 - i. If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
 - ii. Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
- b) Additional programmatic data will be required for broadband projects and will be defined in a subsequent version of the US Treasury Reporting Guidance, including, but not limited to (*Federal guidance may change this requirement in July 2022*):
 - i. Number of households (broken out by households on Tribal lands and those not on Tribal lands) that have gained increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, with the number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download and number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
 - ii. Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) that have projected increased access to broadband meeting the minimum speed standards in areas that previously

lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization, with the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

- iii. Narrative identifying speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering, technology to be deployed, miles of fiber, cost per mile, cost per passing, number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download, number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload, and number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization. Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

All Expenditure Categories

- a) Program income earned and expended to cover eligible project costs

8.1.2. A Subrecipient shall report the following data elements to Prime Recipient no later than five days after the end of the month following the month in which the Subaward was made.

- 8.1.2.1. Subrecipient Unique Entity ID;
- 8.1.2.2. Subrecipient Unique Entity ID if more than one electronic funds transfer (EFT) account;
- 8.1.2.3. Subrecipient parent’s organization Unique Entity ID;
- 8.1.2.4. Subrecipient’s address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

- 8.1.2.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
 - 8.1.2.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.
- 8.1.3. To Prime Recipient. A Subrecipient shall report to its Prime Recipient, the following data elements:
- 8.1.3.1. Subrecipient's Unique Entity ID as registered in SAM.
 - 8.1.3.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
 - 8.1.3.3. Narrative identifying methodology for serving disadvantaged communities. See the "Project Demographic Distribution" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. This requirement is applicable to all projects in Expenditure Categories 1 and 2.
 - 8.1.3.4. Narrative identifying funds allocated towards evidenced-based interventions and the evidence base. See the "Use of Evidence" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. See section 8.1.1 for relevant Expenditure Categories.
 - 8.1.3.5. Narrative describing the structure and objectives of the assistance program and in what manner the aid responds to the public health and negative economic impacts of COVID-19. This requirement is applicable to Expenditure Categories 1 and 2. For aid to travel, tourism, and hospitality or other impacted industries (EC 2.11-2.12), also provide the sector of employer, purpose of funds, and if not travel, tourism and hospitality a description of the pandemic impact on the industry.
 - 8.1.3.6. Narrative identifying the sector served and designated as critical to the health and well-being of residents by the chief executive of the jurisdiction and the number of workers expected to be served. For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county's average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is higher, OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions, include justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19 but should not include personally identifiable information. This requirement applies to EC 4.1, and 4.2.
 - 8.1.3.7. For infrastructure projects (EC 5), or capital expenditures in any expenditure category, narrative identifying the projected construction start date (month/year), projected initiation of operations date (month/year), and location (for broadband, geospatial location data). For projects over \$10 million:
 - 8.1.3.8. Certification that all laborers and mechanics employed by Contractors and Subcontractors in the performance of such project are paid wages at rates not less

than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the Agreement work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing (1) the number of employees of Contractors and sub-contractors working on the project; (2) the number of employees on the project hired directly and hired through a third party; (3) the wages and benefits of workers on the project by classification; and (4) whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.

- 8.1.3.8.1. A Subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing: (1) how the Subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project; (2) how the Subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and (3) how the Subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; (4) whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and (5) whether the project has completed a project labor agreement.
 - 8.1.3.8.2. Whether the project prioritizes local hires.
 - 8.1.3.8.3. Whether the project has a Community Benefit Agreement, with a description of any such agreement.
- 8.1.4. Subrecipient also agrees to comply with any reporting requirements established by the US Treasury, Governor's Office and Office of the State Controller. The State of Colorado may need additional reporting requirements after this agreement is executed. If there are additional reporting requirements, the State will provide notice of such additional reporting requirements via Exhibit G – SLFRF Reporting Modification Form.

9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
- 9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Agreements and purchase orders for work or products under this award.
- 9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS.

- 10.1. A Subrecipient shall permit Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

11. SINGLE AUDIT REQUIREMENTS.

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.

- 11.1.1. Election. A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance 2 CFR 200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with 2 CFR 200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2. Exemption. If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- 11.1.3. Subrecipient Compliance Responsibility. A Subrecipient shall procure or otherwise arrange for the audit required by Subpart F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with 2 CFR 200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Subpart F-Audit Requirements.

12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

- 12.1. In addition to other provisions required by the Federal Awarding Agency or the Prime Recipient, Grantees that are Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all Subcontractors entered into by it pursuant to this Grant.
 - 12.1.1. [Applicable to federally assisted construction Agreements.] Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all Agreements that meet the definition of "federally assisted construction Agreement" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.
 - 12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).

- 12.1.3. Rights to Inventions Made Under a grant or agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Prime Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreements and Cooperative Agreements,” and any implementing regulations issued by the Federal Awarding Agency.
- 12.1.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Agreements and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardees to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. Debarment and Suspension (Executive Orders 12549 and 12689). A Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 12.1.7. Never Contract with the Enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing “Never Contract with the Enemy” in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
- 12.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

12.1.9. Title VI of the Civil Rights Act. The Subgrantee, Contractor, Subcontractor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CRF Part 22, and herein incorporated by reference and made part of this Agreement or agreement.

13. CERTIFICATIONS.

- 13.1. Subrecipient Certification. Subrecipient shall sign a "State of Colorado Agreement with Recipient of Federal Recovery Funds" Certification Form in Exhibit E and submit to State Agency with signed grant agreement.
- 13.2. Unless prohibited by Federal statutes or regulations, Prime Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Grantee with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

15. EVENT OF DEFAULT AND TERMINATION.

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.
- 15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:
 - 15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
 - 15.2.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

- 15.2.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
- 15.2.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or
- 15.2.5. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

EXHIBIT O

AGREEMENT WITH SUBSUBRECIPIENT OF FEDERAL RECOVERY FUNDS

Section 602(b) of the Social Security Act (the Act), as added by section 9901 of the American Rescue Plan Act (ARPA), Pub. L. No. 117-2 (March 11, 2021), authorizes the Department of the Treasury (Treasury) to make payments to certain Subrecipients from the Coronavirus State Fiscal Recovery Fund. The State of Colorado has signed and certified a separate agreement with Treasury as a condition of receiving such payments from the Treasury. This agreement is between your organization and the State and your organization is signing and certifying the same terms and conditions included in the State’s separate agreement with Treasury. Your organization is referred to as a Subrecipient.

As a condition of your organization receiving federal recovery funds from the State, the authorized representative below hereby (i) certifies that your organization will carry out the activities listed in section 602(c) of the Act and (ii) agrees to the terms attached hereto. Your organization also agrees to use the federal recovery funds as specified in bills passed by the General Assembly and signed by the Governor.

Under penalty of perjury, the undersigned official certifies that the authorized representative has read and understood the organization’s obligations in the Assurances of Compliance and Civil Rights Requirements, that any information submitted in conjunction with this assurances document is accurate and complete, and that the organization is in compliance with the nondiscrimination requirements.

Subrecipient Name _____

Authorized Representative: _____

Title: _____

Signature: _____

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS
TERMS AND CONDITIONS

1. Use of Funds.
 - a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 602(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.
 - b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Subrecipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award. Subrecipient also agrees to comply with any reporting requirements established by the Governor's Office and Office of the State Controller.
4. Maintenance of and Access to Records
 - a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 602(c), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.
 - c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs. Subrecipient shall follow guidance on administrative costs issued by the Governor's Office and Office of the State Controller.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.
8. Conflicts of Interest. The State of Colorado understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy

is applicable to each activity funded under this award. Subrecipient and Contractors must disclose in writing to the Office of the State Controller or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112. The Office of the State Controller shall disclose such conflict to Treasury.

9. Compliance with Applicable Law and Regulations.

a. Subrecipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

b. Federal regulations applicable to this award include, without limitation, the following:

- i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
- ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (Agreements and Subcontractors described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
 - i. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - ii. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - iii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - iv. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

- v. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
 - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
10. Remedial Actions. In the event of Subrecipient's noncompliance with section 602 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.
11. Hatch Act. Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or Agreements, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number SLFRF0126 awarded to the State of Colorado by the U.S. Department of the Treasury.”
14. Debts Owed the Federal Government.
- a. Any funds paid to the Subrecipient (1) in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.
 - b. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury’s initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.
15. Disclaimer.
- a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or Subcontractor under this award.
 - b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.
16. Protections for Whistleblowers.
- a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.
 - b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;

- iii. The Government Accountability Office;
 - iv. A Treasury employee responsible for Agreement or grant oversight or management;
 - v. An authorized official of the Department of Justice or other law enforcement agency;
 - vi. A court or grand jury; or
 - vii. A management official or other employee of Subrecipient, Contractor, or Subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.
17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its Contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
1. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees, Subrecipients, and Contractorsto adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and Agreements to provide assistance to the Subrecipient’s beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass Agreements of guarantee or insurance, regulated programs, licenses, procurement Agreements by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Subrecipient’s program(s) and activity(ies), so long as any portion of the Subrecipient’s program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Subrecipient acknowledges that Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury’s implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury’s directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient’s programs, services, and activities.
3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Subrecipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Contractors, Subcontractors, successors, transferees, and assignees:

The sub-grantee, Contractor, Subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.
7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.
9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of

discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document. State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of sub-Subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurance document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

EXHIBIT P

SLFRF SUBRECIPIENT QUARTERLY REPORT

1. SLFRF SUBRECIPIENT QUARTERLY REPORT WORKBOOK

1.1 The SLFRF Subrecipient Quarterly Report Workbook must be submitted to the State Agency within ten (10) days following each quarter ended September, December, March and June. The SLFRF Subrecipient Quarterly Report Workbook can be found at:

<https://osc.colorado.gov/american-rescue-plan-act> (see SLFRF Grant Agreement Templates tab)

EXHIBIT Q

SAMPLE SLFRF REPORTING MODIFICATION FORM

Local Agency:		Agreement No:	
Project Title:		Project No:	
Project Duration:	To:	From:	
State Agency:	CDOT		

This form serves as notification that there has been a change to the reporting requirements set forth in the original SLFRF Grant Agreement.

The following reporting requirements have been (add/ remove additional rows as necessary):

Updated Reporting Requirement (Add/Delete/Modify)	Project Number	Reporting Requirement

By signing this form, the Local Agency agrees to and acknowledges the changes to the reporting requirements set forth in the original SLFRF Grant Agreement. All other terms and conditions of the original SLFRF Grant Agreement, with any approved modifications, remain in full force and effect. Grantee shall submit this form to the State Agency within 10 business days of the date sent by that Agency.

Local Agency

Date

CDOT Program Manager

Date

EXHIBIT R

APPLICABLE FEDERAL AWARDS

FEDERAL AWARD(S) APPLICABLE TO THIS GRANT AWARD

Federal Awarding Office	US Department of the Treasury
Grant Program	Coronavirus State and Local Fiscal Recovery Funds
Assistance Listing Number	21.027
Federal Award Number	SLFRP0126
Federal Award Date *	May 18, 2021
Federal Award End Date	December 31, 2024
Federal Statutory Authority	Title VI of the Social Security Act, Section 602
Total Amount of Federal Award (this is <u>not</u> the amount of this grant agreement)	\$3,828,761,790

* Funds may not be available through the Federal Award End Date subject to the provisions in §2 and §5 below.

EXHIBIT S

PII Certification

STATE OF COLORADO

**LOCAL AGENCY CERTIFICATION FOR ACCESS TO PII THROUGH A
DATABASE OR AUTOMATED NETWORK**

Pursuant to § 24-74-105, C.R.S., I, _____, on behalf of _____ (legal name of Local Agency) (the “Local Agency”), hereby certify under the penalty of perjury that the Local Agency has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Local Agency.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Checklist for required exhibits due to funding sources. Required Exhibits are dependent on the source of funding. This is a guide to assist in the incorporation and completion of Exhibits in relation to funding sources.

Exhibit	Funding only from FHWA	Funding only from ARPA	FHWA and ARPA Funding
EXHIBIT A, SCOPE OF WORK	✓	✓	✓
EXHIBIT B, SAMPLE OPTION LETTER	✓	✓	✓
EXHIBIT C, FUNDING PROVISIONS	✓	✓	✓
EXHIBIT D, LOCAL AGENCY RESOLUTION (IF APPLICABLE)	✓	✓	✓
EXHIBIT E, LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST	✓	✓	✓
EXHIBIT F, CERTIFICATION FOR FEDERAL-AID AGREEMENTS	✓		✓
EXHIBIT G, DISADVANTAGED BUSINESS ENTERPRISE	✓		✓
EXHIBIT H, LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES	✓		✓
EXHIBIT I, FEDERAL-AID AGREEMENT PROVISIONS FOR CONSTRUCTION AGREEMENTS	✓		✓
EXHIBIT J, ADDITIONAL FEDERAL REQUIREMENTS	✓		✓
EXHIBIT K, FFATA SUPPLEMENTAL FEDERAL PROVISIONS	✓	✓	✓
EXHIBIT L, SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM	✓	✓	✓
EXHIBIT M, OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS	✓		✓

EXHIBIT N, FEDERAL TREASURY PROVISIONS		✓	✓
EXHIBIT O, AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS		✓	✓
EXHIBIT P, SLFRF SUBRECIPIENT QUARTERLY REPORT		✓	✓
EXHIBIT Q, SLFRF REPORTING MODIFICATION FORM		✓	✓
EXHIBIT R, APPLICABLE FEDERAL AWARDS		✓	✓
EXHIBIT S, PII CERTIFICATAION	✓	✓	✓
EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE	✓	✓	✓

ORDINANCE NO. 051, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING SUPPLEMENTAL APPROPRIATIONS FOR THE CARPENTER AND
TIMBERLINE INTERSECTION PROJECT

WHEREAS, the intersection of Carpenter Road and Timberline Road has significant congestion for westbound Carpenter Road turning onto northbound Timberline Road, often causing traffic to back up westbound more than half a mile; and

WHEREAS, the westbound right turn auxiliary lane on Carpenter Road creates significant conflicts and crash problems particularly during the congested time periods, with a majority of the reported accidents being rear end crashes that occur when traffic is backed up; and

WHEREAS, the Carpenter and Timberline Intersection Project (the Project) has been developed to address these safety concerns and eliminate most of the conflicts presented by this intersection that result in crashes; and

WHEREAS, the Project’s proposed improvements will lengthen the westbound right turn lane on Carpenter Road from one hundred fifty feet to more than five hundred feet; and

WHEREAS, the turn lane modification will create more space for cars queuing for the relatively heavy right turn movement and overall congestion, thereby mitigating the related rear end crashes; and

WHEREAS, in 2020, the City was awarded fiscal year 2023 Highway Safety Improvement Program (HSIP) grant funds through the North Front Range Metropolitan Planning Organization (NFRMPO) and the Colorado Department of Transportation (CDOT) for the design, right-of-way acquisition, and construction of the Project; and

WHEREAS, the HSIP grant funds for the Project are to be administered by CDOT with project delivery oversight pursuant to an Intergovernmental Agreement (IGA) with CDOT that requires a ninety percent to ten percent federal to local funding split; and

WHEREAS, the funding split for this award is \$626,657 in federal funds and \$69,628 in local funds; and

WHEREAS, CDOT HSIP State funds will fulfill the City’s local funding match obligation for this HSIP award, because Carpenter Road is on the State highway system; and

WHEREAS, the total amount of funds associated with this Project is \$696,285.00, composed of federal HSIP funds of \$626,657, CDOT HSIP funds of \$69,628 and City funds of \$0; and

WHEREAS, the purpose of this Ordinance is to enable the City to receive and expend the \$696,285 in grant funds available and to appropriate those funds; and

WHEREAS, this appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of improving transportation infrastructure within the City; and

WHEREAS, the funds appropriated in this Ordinance for the Carpenter and Timberline Intersection Project are ineligible for use in the APP Program due to restrictions placed on them by the HSIP grant administered by CDOT; and

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

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

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

WHEREAS, the City Council wishes to designate the appropriation herein from the HSIP grant as an appropriation that shall not lapse until the earlier of the expiration of the grant or the City’s expenditure of all funds received from such grant.

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

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

Section 2. That there is hereby appropriated from new revenue or other funds from the Highway Safety Improvement Program (HSIP) grant in the Capital Projects Fund the sum of SIX HUNDRED NINETY-SIX THOUSAND TWO HUNDRED EIGHTY-FIVE DOLLARS (\$696,285) to be expended in the Capital Projects Fund for the Carpenter and Timberline Intersection project.

Section 3. That the appropriation herein from the HSIP grant is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the earlier of the expiration of the grant or the City’s expenditure of all funds received from such grant.

Introduced, considered favorably on first reading, and ordered published this 4th day of April, 2023, and to be presented for final passage on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 18th day of April, 2023.

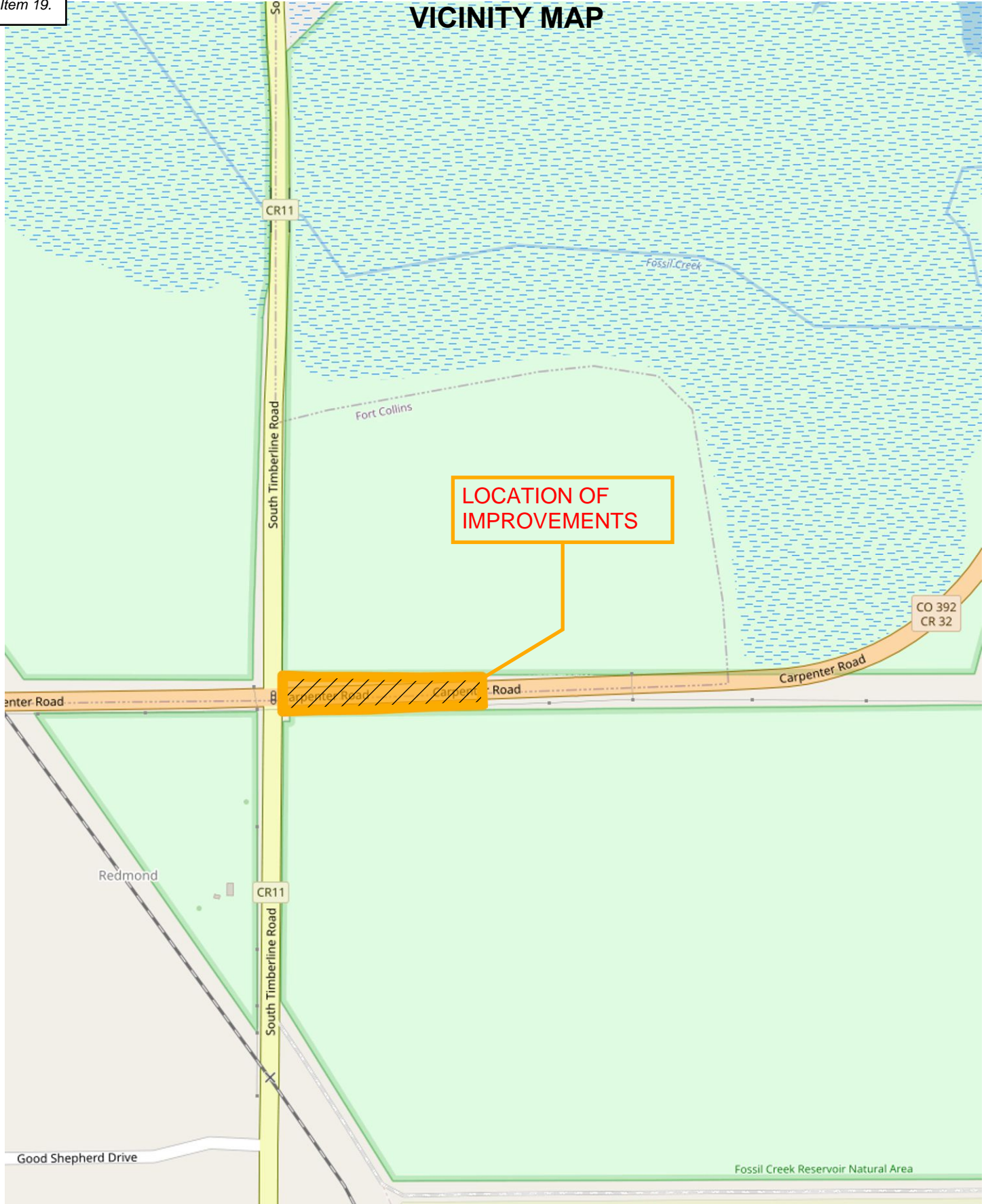
Mayor

ATTEST:

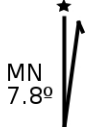
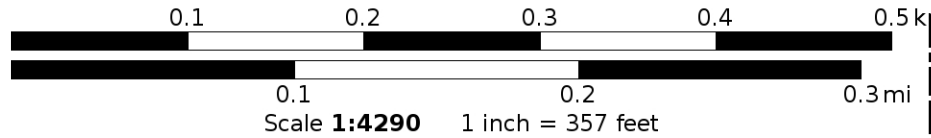
City Clerk

Item 19.

VICINITY MAP



Mercator Projection
 WGS84
 UTM Zone 13T



AGENDA ITEM SUMMARY

City Council



STAFF

Anissa Hollingshead, City Clerk

SUBJECT

Items Relating to the Repeal and Reenactment of Certain Ordinances.

EXECUTIVE SUMMARY

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

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

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

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

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

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

Due to a publication error, staff requests Council repeal and reenact each Ordinance as they were adopted on March 7, 2023.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinances on First Reading.

BACKGROUND / DISCUSSION

Following the March 7, 2023, City Council Meeting, an error occurred with the required publication of ordinances adopted on first and second reading in the Coloradoan. The City Charter requires in Article II, Section 7, that every ordinance be published in full on the City website and by number and title in a newspaper of general circulation both at least seven days prior to its final passage and within seven days

after its final passage. While all ordinances were published in full on the City website, there was no publication in the Coloradoan.

The Charter provides no mechanism to correct this sort of omission. Therefore, in order to ensure the ordinances adopted on second reading on March 7 are fully perfected, it is necessary to repeal the original ordinances and reenact that content in two readings of new ordinances. This is a purely procedural action.

CITY FINANCIAL IMPACTS

N/A

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

N/A

PUBLIC OUTREACH

N/A

ATTACHMENTS

1. Ordinance A for Consideration
2. Ordinance B for Consideration
3. Ordinance C for Consideration
4. Ordinance D for Consideration
5. Ordinance E for Consideration
6. Ordinance F for Consideration

ORDINANCE NO. 052, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
REPEALING ORDINANCE NO. 024, 2023, AND APPROPRIATING PHILANTHROPIC
REVENUE RECEIVED BY CITY GIVE FOR FORT COLLINS POLICE SERVICES FOR
THE SAFE FUTURES INITIATIVE

WHEREAS, like many law enforcement agencies across the nation, Fort Collins Police Services (FCPS) is adopting new industry practices for victim-centered services by hiring civilian professionals for forensics, fraud, and criminal investigations; and

WHEREAS, traditionally served by uniformed police officers, this new approach offers a proactive, comprehensive victim-centered approach to public safety and leverages candidates from accounting, criminal justice, and forensic disciplines, who desire to serve their community; and

WHEREAS, the Fort Collins Safe Futures Fund is a designated charitable fund to support the operational needs for innovative, victim-centered police services to address the impact crime has on victims, their families, and witnesses; leverage technology-based skilled investigative resources; and, assist in the identification of victims of human trafficking and prevent the sexual exploitation of the most vulnerable members of our community; and

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

WHEREAS, the charitable support represents a range of generous local giving: \$50,000 from the Blue Ocean Foundation, \$35,000 from UCount, Timberline Church, and \$1,000 from the Community Foundation of Northern Colorado, with all gifts designated for the sole purpose of the Safe Futures Initiative; and

WHEREAS, this appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves a public purpose of protecting our most vulnerable population of citizens by investigating crimes and holding perpetrators of those crimes accountable; and

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

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

WHEREAS, the City Council previously made these appropriations in Ordinance No. 024, 2023 (“Ordinance No. 024”) adopted at final reading on March 7, 2023, but Ordinance No. 024 was not published after such adoption as required by Section 7 in City Charter Article II; and

WHEREAS, it is therefore necessary that the City Council adopt this Ordinance No. 052, 2023, to both repeal Ordinance No. 024 and to authorize and approve these appropriations again; and

WHEREAS, the City has not expended any of the appropriations approved in Ordinance No. 024.

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

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

Section 2. That there is hereby appropriated from new philanthropic revenue in the General Fund the sum of EIGHTY-SIX THOUSAND DOLLARS (\$86,000) to be expended in the General Fund by Fort Collins Police Services for the Safe Futures Initiative.

Section 3. That Ordinance No. 024, 2023, is hereby repealed.

Introduced, considered favorably on first reading, and ordered published this 4th day of April, 2023, and to be presented for final passage on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

ORDINANCE NO. 053, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
REPEALING ORDINANCE NO. 025, 2023, AND APPROPRIATING PRIOR YEAR
RESERVES AND UNANTICIPATED REVENUE
FROM PHILANTHROPIC DONATIONS RECEIVED THROUGH CITY GIVE
FOR VARIOUS PROGRAMS AND SERVICES AS DESIGNATED BY THE DONORS

WHEREAS, the City has received in 2022 and 2023 numerous philanthropic donations of \$5,000 or less totaling \$19,692 and these funds are currently unappropriated; and

WHEREAS, these donations have been directed by the donors to be used by the City for certain designated uses within and for the benefit of certain City service areas and departments as each donation is described in Exhibit “A” attached hereto and incorporated herein by reference; and

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

WHEREAS, Section 52.2.C. of the City Give Policy authorizes the City Give Director to accept donations of \$5,000 or less for the City service area intended by the donor to be benefited; and

WHEREAS, as so authorized, the City Give Director has accepted for the benefited City service areas and departments, as applicable, the donations to be appropriated in this Ordinance to be used as directed by each donor as described in Exhibit “A”; and

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

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

WHEREAS, the City Manager has recommended the appropriations described in Sections 2 and 3 of this Ordinance and determined that the amount of each of these appropriations is available and previously unappropriated from the funds named in Sections 2 and 3 and will not cause the total amount appropriated in each such fund to exceed the current estimate of actual and anticipated revenues to be received in those funds during this fiscal year; and

WHEREAS, these appropriations will serve the public purpose of providing additional revenue to each of the benefited service areas to aid them in accomplishing the public purposes for which each service area is established thereby benefiting the public’s health, safety and welfare; and

WHEREAS, the City Council previously made these appropriations in Ordinance No. 025, 2023 (“Ordinance No. 025”) adopted at final reading on March 7, 2023, but Ordinance No. 025 was not published after such adoption as required by Section 7 in City Charter Article II; and

WHEREAS, it is therefore necessary that the City Council adopt this Ordinance No. 053, 2023, to both repeal Ordinance No. 025 and to authorize and approve these appropriations again; and

WHEREAS, the City has not expended any of the appropriations approved in Ordinance No. 025.

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

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

Section 2. That there is hereby appropriated from the following funds these amounts of philanthropic revenue held in prior year reserves to be expended as designate by the donors in support of the various City programs and services as described in Exhibit “A”:

Capital Projects Fund	\$ 500
Cultural Services and Facilities Fund	\$ 6,125
General Fund	\$ 2,285
Transportation Fund	\$ 1,000
Natural Areas Fund	\$ 2,575
Golf Fund	\$ 1,207

Section 3. That there is hereby appropriated from the following funds these amounts of philanthropic revenue received in 2023 to be expended as designated by the donors in support of the various City programs and services as described in Exhibit “A”:

Capital Projects Fund	\$ 5,000
General Fund	\$ 1,000

Section 4. That Ordinance No. 025, 2023, is hereby repealed.

Introduced, considered favorably on first reading, and ordered published this 4th day of April 2023, and to be presented for final passage on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

Appropriation of Misc. Philanthropic Revenue, Gift Listing

01/06/2023	\$ 5,000.00	Dellenbach Motors	9/11 Memorial
12/22/2022	\$ 500.00	RBC/DAF	9/11 Memorial
02/18/2022	\$ 3,500.00	Greer Foundation	APP, Cultural Services
10/31/2022	\$ 1,000.00	Bike Sports	FC Moves, PDT
12/27/2021	\$ 185.00	Steve and Bonny Crews	Forestry, Parks, Community Services
07/31/2022	\$ 625.00	Misc.	Lincoln Center, Cultural Services
10/21/2022	\$ 2,000.00	Shrader	Lincoln Center, Cultural Services
01/26/2023	\$ 500.00	Thomas Knebel	Living Tree, Forestry, Parks, Community Services
08/18/2022	\$ 500.00	Jon & Jean Geller	Living Tree, Forestry, Parks, Community Services
10/27/2022	\$ 500.00	Kendra Nash	Living Tree, Forestry, Parks, Community Services
11/02/2022	\$ 250.00	Misc.	Living Tree, Forestry, Parks, Community Services
12/02/2022	\$ 2,000.00	Lucille Khoury	Natural Areas
12/02/2022	\$ 300.00	Charlie Sturgill	Natural Areas
12/16/2022	\$ 275.00	Bill Hintze	Natural Areas
11/12/2019	\$ 60.00	Eric Nelson Tribute	Parks, Community Services
05/29/2019	\$ 100.00	Eric Nelson Tribute	Parks, Community Services
07/09/2019	\$ 20.00	Eric Nelson Tribute	Parks, Community Services
07/09/2019	\$ 100.00	Eric Nelson Tribute	Parks, Community Services
08/14/2019	\$ 50.00	Eric Nelson Tribute	Parks, Community Services
02/19/2020	\$ 20.00	Eric Nelson Tribute	Parks, Community Services
11/22/2021	\$ 500.00	Odell Brewing	Parks, Community Services
01/06/2023	\$ 500.00	David & Laurie Linam	Restorative Justice, CDNS
08/31/2021	\$ 355.00	Miscellaneous	Youth Golf Scholarship, Golf
12/31/2021	\$ 25.00	BOU	Youth Golf Scholarship, Golf
10/20/2022	\$ 230.00	Miscellaneous	Youth Golf Scholarship, Golf
10/20/2022	\$ 123.92	Miscellaneous	Youth Golf Scholarship, Golf
10/27/2022	\$ 265.00	Miscellaneous	Youth Golf Scholarship, Golf
10/27/2022	\$ 8.00	Miscellaneous	Youth Golf Scholarship, Golf
12/23/2022	\$ 150.00	Tom & Emma Dreiling	Youth Golf Scholarship, Golf
12/31/2022	\$ 50.00	Meg Thornbury	Youth Golf Scholarship, Golf

ORDINANCE NO. 054, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
REPEALING ORDINANCE NO. 027, 2023, AND AMENDING CHAPTER 12, ARTICLE II
AND CHAPTER 15, ARTICLE XV OF THE CODE OF THE CITY OF FORT COLLINS TO
ALLOW FOR THE ESTABLISHMENT OF A CITY WASTE COLLECTION PROGRAM
AND GENERALLY UPDATING PROVISIONS OF THE CODE GOVERNING
WASTE COLLECTION WITHIN THE CITY

WHEREAS, on December 17, 2013, City Council adopted Resolution 2013-011 recognizing that the City’s history of public education regarding recycling and solid waste reduction and waste reduction goals from 1985 through the adoption of Resolution 1999-139 and establishing the goal of diverting 50% of the community’s waste stream from landfill disposal by 2010; and

WHEREAS, on October 21, 2014, City Council adopted Resolution 2014-098, establishing the City’s Waste Diversion Policy with the goal of achieving “zero waste” by 2030 (with interim goals) and recognizing the City’s “Road to Zero Waste” plan created to achieve this policy goal and the resulting direct economic and environmental benefits to the local and global community; and

WHEREAS, on March 16, 2021, City Council adopted Resolution 2021-031 approving and adopting the Fort Collins Our Climate Future Plan as a combined and comprehensive update to the City’s Climate Action Plan, updated Energy Policy and Road to Zero Waste Plan articulating a commitment to mitigate climate change, and energy and waste reduction goals, including recycling and waste diversion as a vital strategy to reduce greenhouse gas emissions; and

WHEREAS, in 2021, the City Council directed City staff to examine ways to reduce the impacts of trash collection services in Fort Collins, including street wear, air quality, neighborhood aesthetics, noise, and other neighborhood impacts, and to identify ways to improve diversion rates for recyclable and compostable materials; and

WHEREAS, based on a study conducted by a contracted third party, having numerous heavy trash vehicles on City streets impedes the attainment of these goals and accelerates the deterioration of City streets, causing additional street maintenance costs of more than \$600,000 per year; and

WHEREAS, based on a study conducted by a contracted third party, having numerous trash vehicles on City streets impedes the attainment of greenhouse gas emission reduction goals by emitting an additional 1,200 metric tons of CO2e per year; and

WHEREAS, at least four residential trash haulers currently provide service within the community, resulting in at least four trash trucks and four recycling trucks using residential streets to provide residential collection services each week, causing increased street wear, air pollution, noise, potential safety concerns, and other neighborhood impacts; and

WHEREAS, analysis of open market residential trash bills in Fort Collins indicates that residents currently pay 50% - 100% different prices for the same service, even from the same company in the same area of town and a contracted system would provide predictable uniform rates across the community; and

WHEREAS, additional yard trimmings collection is a key step to achieving climate and waste reduction goals and a contracted system allows for the opportunity to expand yard trimmings collection for a more affordable price than open market collection; and

WHEREAS, Colorado Revised Statutes (“C.R.S.”) § 30-15-401(7.5) authorizes the City to establish a residential waste collection program (the “Program”), through which the City can require municipal residents in single-unit residences and multi-unit residences with seven or fewer dwelling units to use or pay user charges for residential waste services; and

WHEREAS, on July 19, 2022, in Resolution 2022-079, the City Council directed City staff to design and issue a request for proposals for residential waste collection services, including trash and recycling collection services for purposes of establishing a waste collection program as authorized by C.R.S. § 30-15-401(7.5); and

WHEREAS, adoption of the Program would improve waste collection in the City including by: increased equity and lower pricing; increased composting of yard trimmings; reducing greenhouse gas emissions; saving on street maintenance; fewer trucks will drive through neighborhoods; and the Program will help ensure high level of waste collection customer service with enforcement capability; and

WHEREAS, adoption of the Program requires a series of changes to Chapter 12, Article II and Chapter 15, Article XV of the City Code; and

WHEREAS, the Code Changes include: establishing that single-family homes and multi-unit residences with seven or fewer dwelling units are within the Program and Program customers must pay the applicable rates and fees; establishing Program exclusions, including homeowners’ associations that meet certain requirements; authorizing variances for sharing service or for producing excess waste; establishing the administrative fee to be set by the City Manager; and creating a civil infraction for failure to meet Program requirements; and

WHEREAS, the Code Changes in this Ordinance include a variety of related and conforming changes to the provisions governing waste collection and waste collector licensing, including: clarifying Pay-As-You-Throw requirements; clarifying limitations on which types of fees collectors may charge customers; providing that collectors take ownership of certain kinds of waste when it is loaded into a vehicle and providing that collectors do not take ownership of hazardous waste or other waste that is not accepted at disposal facilities; amending yard trimmings collection requirements for all collectors to align with yard trimming requirements in the Program; and expanding the City Manager’s authority to examine records required to be retained by collectors; and

WHEREAS, the Council adopted Ordinance No. 027, 2023 (“Ordinance No. 027”) to make these Code Changes, but Ordinance No. 027 was not published after adoption as required by the City Charter; and

WHEREAS, it is necessary that the Council repeal Ordinance No. 027 and adopt this Ordinance make the Code Changes effective; and

WHEREAS, the City has taken no action under the Code Changes made by Ordinance No. 027.

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

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

Section 2. That Section 12-16 of the Code of the City of Fort Collins is hereby amended by the addition of new definitions which read in their entirety as follows:

*Division 1
General Requirements*

Sec. 12-16. Definitions.

The following words, terms and phrases, when used in this Article shall have the meanings ascribed to them in this Section:

...

City’s contracted waste collector shall mean the person licensed pursuant to Chapter 15, Article XV of this Code who enters into a contract with the City to provide collection services under the City’s residential waste collection program and the City’s dumpster waste collection program.

City’s residential waste collection program or program shall mean the City’s provision of residential waste collection services within the City through the City’s contracted waste collector pursuant to §§ 12-28 through 12-33 of this Article.

City’s dumpster waste collection program or dumpster program shall mean the City’s provision of dumpster-based waste collection services to residential units, multi-family customers in dwellings with eight (8) or more units, and commercial customers who opt-in to the program by requesting dumpster service from the City’s contracted waste collector pursuant to §§ 12-28 through 12-33 of this Article.

Commercial customers shall have the meaning set forth in § 15-411 of this Code.

...

Director shall have the meaning set forth in § 15-411 of this Code.

Dumpster shall have the meaning set forth in § 15-411 of this Code.

...

Group account shall have the meaning set forth in § 15-411 of this Code.

...

Large capacity container(s) shall have the meaning set forth in § 15-411 of this Code.

Medium capacity container(s) shall have the meaning set forth in § 15-411 of this Code.

...

Multi-family customer shall have the meaning set forth in § 15-411 of this Code.

...

Poly-cart shall have the meaning set forth in § 15-411 of this Code.

Program customer shall mean the owner or occupant of a residential unit or any person who opts-in to receive residential waste collection services.

...

Recyclable materials shall have the meaning set forth in § 15-411 of this Code.

Recycling shall have the meaning set forth in § 15-411 of this Code.

...

Residential customer shall have the meaning set forth in § 15-411 of this Code.

Residential waste collection services shall mean the collection, transportation and disposal of residential solid waste, recyclable materials and yard trimmings by the City's contracted waste collector through the City's residential waste collection program.

Residential unit shall mean all single-unit residential buildings, and multi-unit residential buildings containing seven (7) dwelling units or fewer within the City, except for residential units excluded pursuant to § 12-29 and residential units for which a variance has been granted in accordance with § 12-30.

...

Small capacity container(s) shall have the meaning set forth in § 15-411 of this Code.

Solid waste shall have the meaning set forth in § 15-411 of this Code.

Solid waste collector shall have the meaning set forth in § 15-411 of this Code.

Volume capacity category of containers shall have the meaning set forth in § 15-411 of this Code.

Yard trimmings shall have the meaning set forth in § 15-411 of this Code.

Section 3. That Section 12-18 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 12-18. Collection and disposal of refuse and rubbish.

(a) The occupant and the owner of any premises wherein any refuse or rubbish is produced or accumulated shall be jointly and severally responsible to provide for collection service and removal of refuse and rubbish to the degree of service necessary to maintain the premises in a clean and orderly condition. They shall not contract or arrange for such collection and removal except with solid waste collectors licensed by the City under § 15-417 and, if applicable, as required by §§ 12-28 through 12-33 of this Article. An individual may dispose of his or her own refuse and rubbish, provided that it is properly disposed of at the Larimer County Landfill or at any other disposal site which is approved by the State, in conformity with all City and county regulations.

...

(d) When loaded into collector’s vehicle, collector shall acquire title to and ownership of all non-hazardous waste that is accepted at a waste processing or disposal facility. Title to, ownership of and liability for any hazardous waste or waste that is otherwise not accepted at a processing or disposal facility shall remain with the generator of the waste and shall at no time pass to the collector.

Section 4. That Section 12-19 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 12-19. Group accounts for collection.

(a) Any person who solicits refuse collection services from a collector for residential customers through a group account shall arrange for such services in a manner that offers residential customers:

- (1) Choices from amongst small, medium and large capacity containers for solid waste that are placed for collection by the residential customer;
- (2) Charges to residential customers that are based upon the small, medium or large capacity solid waste container, in a manner consistent with § 15-412(c);
- (3) Recycling services in a manner consistent with § 15-413; and

(4) Yard trimmings collection, in a manner consistent with § 15-414.

(b) Any person who is subject to the requirements of Subsection (a) above shall provide written notice consistent with the notice required in Subsection 15-413(e) to all residential customers served through the group account. Said notice shall be given to all such residential customers no more than thirty (30) days after notice of rates per volume capacity category of solid waste container and recyclable materials services and solid waste container options have been provided by the collector. In addition, written notices shall be sent to all new residential customers who join the group account after the date of the original notice. Said additional notices shall be given to each new member no more than ten (10) days after the new member joins the group account. Said notice shall also be provided to all residential customers once per calendar year. A copy of the form of each such notice, a list of recipients of the notice, and a record of the date and manner of distribution shall be retained by the person providing the notice for a period of five (5) years from the date each notice was provided, and shall be made available to the City for inspection upon request during said period of time.

(c) No person who is subject to the provisions of Subsection (a) above shall in any way discourage or provide disincentives to any current or prospective residential customer served through a group account who wishes to select a volume capacity category or level of recycling service that is different from that selected by other residential customers served through such account.

Section 5. That Section 12-22(b) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec 12-22 – Required recycling.

...

(b) *Cardboard.* No person shall place recyclable cardboard in solid waste containers for collection, nor shall any person bury or otherwise dispose of recyclable cardboard in or on private or public property within the City. All recyclable cardboard must either be stored and presented or delivered to a licensed solid waste collector for recycling in accordance with the provisions of Subsection 15-413(c) or delivered directly to a qualified recycling facility appropriate for recyclable cardboard.

Section 6. That Section 12-27 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 12-27. Violations and penalties.

Any person who violates § 12-18 of this Article, or who violates Subsection 12-22(b), or Subsection 12-22(c) as it relates to Subsection 12-22(b), commits a civil infraction and is subject to the penalty provisions of Subsection 1-15(f). Any person who violates any other provision of §§ 12-18 through 12-26 also commits a misdemeanor. All such misdemeanor violations are subject to a fine or imprisonment in accordance with § 1-15.

Section 7. That Chapter 12 of the Code of the City of Fort Collins is hereby amended by the addition of new Sections 12-28 through 12-33, which read in their entirety as follows:

*Division 2
City's Residential Waste Collection Program*

Sec. 12-28. City's residential waste collection program.

There is established the City's residential waste collection program to provide residential waste collection services for all program customers, except for those residences excluded pursuant to § 12-29 and those residences for which a variance has been granted in accordance with § 12-30.

Sec. 12-29. Program exclusions and opting-in to the program.

(a) All commercial customers and multi-unit residential buildings containing eight (8) dwelling units or more are excluded from the City's residential waste collection program, except that multi-unit residential buildings containing eight (8) dwelling units or more may elect to participate in the City's residential waste collection program subject to the requirements set forth in this Article.

(b) All residential units served by a dumpster are excluded from the City residential waste collection program.

(c) Commercial customers, multi-family customers, and owners or occupants of a residential unit served by a dumpster may elect to participate in the City's dumpster program by requesting service from the City's contracted waste collector subject to the program requirements set forth in the City's waste collection contract and as contained in this Article.

(d) Group accounts formed prior to ~~March 17~~ **April 28**, 2023, conforming with all applicable requirements of this Article and of Chapter 15, Article XV of the City Code, are excluded from the City's residential waste collection program while under an agreement with a solid waste collector. Such group accounts, however, may elect to participate in the City's residential waste collection program, subject to the requirements set forth in this Article. All group accounts formed on or after ~~March 17~~ **April 28**, 2023, shall be subject to the City's residential waste collection program, unless otherwise excluded.

Sec. 12-30. Variances.

(a) Program customers may request a variance from the program to apply to a residential unit pursuant to this Section. Program customers may request a shared service variance under Subsection (d)(1) of this Section or an excess waste variance under Subsection (d)(2) of this Section.

(b) Upon receipt of a request for variance, the Director shall either approve the variance or disapprove the variance based on the applicable standard provided in Subsection (d) of this

Section. A copy of the approved or disapproved variance shall be sent by the City to the requestor of the variance and to the City’s contracted solid waste collector.

(c) A variance granted under this Section shall be valid for twenty-four (24) months. A granted variance shall exclude the grantee’s residential unit from the City’s residential waste collection program for the duration of the variance and accordingly, the grantee shall not be subject to any of the requirements of §12-32 for that period, including any requirement to pay the City’s contracted waste collector any charge or fee under the City’s residential waste collection program.

(d) Program customers may request a variance from the program for the following situations:

(1) A shared service variance may be granted by the City in accordance with the following provisions:

a. A program customer may request from the City a variance for sharing residential waste collection services provided under the City’s residential waste collection program with one or more other program customers.

b. The variance shall only be granted if the program customer provides proof, to the reasonable satisfaction of the Director, that the program customer shares residential waste collection services with one or more other residential units and that the program customers together consistently produce combined total solid waste in an amount equal to or less than the smallest volume of solid waste service offered by the City’s contracted waste collector.

c. Only one (1) variance shall be granted per approved request, meaning that only one (1) program customer in a group of program customers sharing service is eligible to receive a variance. Program customers sharing service may collectively agree to how to share the financial benefit of the variance.

(2) An excess producer shall only be granted if the program customer provides proof, to the reasonable satisfaction of the Director, that the program customer consistently produces solid waste in an amount greater than the volume of the largest cart service offered by the City’s contracted waste collector.

Sec. 12-31. Freedom to contract; freedom to self-haul.

Nothing in this Article shall prohibit any program customer from contracting for or hauling their own solid waste, recyclable materials, or yard trimmings, provided it is collected and disposed of in conformity with all applicable City rules and regulations.

Sec. 12-32. City contract; City administrative fee; rates.

(a) The City may enter into an agreement with a licensed collector to become the City’s contracted waste collector. The City’s contracted waste collector shall provide residential waste

collection services under the City’s residential waste collection program and the dumpster program. The contract shall establish all appropriate terms and conditions, including rates for residential waste collection services, for the contracted waste collector’s provision of residential waste services to the City. The contract shall also establish all appropriate terms and conditions for the dumpster program. All rates under the contract shall be in amounts that reasonably relate to the services provided for such rates. The City Manager may approve and execute future amendments to the contract that the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to facilitate the program, so long as such amendments do not increase costs to program customers without a commensurate service improvement, substantially modify the purposes of the contract, or increase the obligations and responsibilities of the City as set forth in the contract.

(b) There is established a City administrative fee to be imposed on each program customer and dumpster program customer in the amount not to exceed one dollar and thirty-five cents (\$1.35) per month to defray the City costs of administering the program. The administrative fee shall be remitted to the City in accordance with the terms of the City’s contract with the collector. The administrative fee amount shall be determined by and adjusted as necessary by the City Manager in accordance with Chapter 7.5 of this Code, provided it does not exceed one dollar and thirty-five cents (\$1.35) per month.

(c) Each program customer shall pay to the City’s contracted waste collector the applicable rate for the solid waste, recyclable materials, and yard trimmings collection service provided, in addition to the administrative fee established under Subsection (b) of this Section.

(d) If a program customer who has not received a variance under §12-30 elects to not use the services provided by the City’s contracted waste collector, the program customer shall pay the City’s contracted waste collector the administrative fee established under Subsection (b) of this Section and the rate for the minimum level of solid waste service, which is nine dollars and seventy-five cents (\$9.75) per month for the period from September 30, 2024, to September 29, 2025, and which shall increase by three percent (3%) annually and as otherwise provided for by the City’s waste collection contract.

(e) Each dumpster program customer shall pay to the City’s contracted waste collector the applicable rate for the dumpster services, in addition to the administrative fee established under Subsection (b) of this Section. The dumpster program is only available if provided for pursuant to the contract. Pricing for such service through the dumpster program shall be as defined in the contract with the City’s residential waste collector.

(f) The City’s contracted waste collector shall not impose any rate, fee, charge, surcharge or any other assessment of any kind to any program customer except those expressly authorized in and pursuant to the contract. For clarity and without limitation, this Section prohibits the City’s contracted waste collector from imposing any charge authorized in Article XV of Chapter 15 of this Code to program customers.

Sec. 12-33. Violations and penalties.

Any person who violates any provision of §§ 12-28 through 12-32 of this Code, whether by acting in a manner declared to be unlawful or by failing to act as required, commits a civil infraction and shall be subject to the penalty provisions of Subsection 1-15(f) of this Code.

Section 8. That Section 15-411 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-411. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

...

City's residential waste collection program or program shall have the meaning set forth in § 12-16.

City's contracted waste collector shall have the meaning set forth in § 12-16.

Collector shall mean a person providing collection service for solid waste, recyclable materials, food scraps, or yard trimmings.

Commercial customers shall mean any premises utilizing collection service where a commercial, industrial or institutional enterprise is carried on, including, without limitation, retail establishments, restaurants, hospitals, schools, day care centers, office buildings, nursing homes, clubs, churches and public facilities. Customers, other than residential customers, serviced using any type of collection container, including without limitation poly-carts, dumpsters, or roll-off bins, are considered commercial customers unless the service is provided for an active construction or demolition project permitted by the City building department. Customers at residential properties who use a dumpster for solid waste collection are commercial customers.

Communal system for the collection of waste shall mean an arrangement for the collection of refuse from multiple properties or residences using collection containers shared by those properties or residences.

...

Extra-large capacity container shall mean two (2) large capacity containers or the equivalent volume thereof.

Extra-small capacity container shall mean container or solid waste service for a volume of solid waste less than that held by the small capacity container.

...

Group account shall mean a customer account for collection of refuse from multiple residential customers, regardless of the method by which such services are contracted or arranged. An account for service arranged by a single property owner for collection of solid waste from

multiple locations owned by that property owner shall not constitute a group account for the purposes of this Article.

...

Poly-cart shall mean a durable, watertight, plastic, wheeled container with a tightly fitting, rodent proof lid, manufactured and used for the collection of solid waste, recyclable materials, food scraps, or yard trimmings. For multi-family or commercial customers, a dumpster or roll-off bin with aggregate volume of multiple poly-carts shall be deemed to constitute one (1) or more poly-carts.

...

Recyclable materials shall mean materials which have been separated from solid waste and can be recovered as useful materials and are properly prepared for the purpose of recycling, provided that such materials have been designated by the City Manager as recyclable pursuant to § 15-416 of this Article.

Recycling shall mean the process of recovering useful materials from refuse, including items for reuse.

Recycling collector shall mean a person providing recyclable materials collection service.

...

Residential customer shall mean a customer at a residential property for which a communal system for the collection of waste is not employed and which does not use a dumpster for solid waste collection.

...

Solid waste shall mean all refuse, putrescible and nonputrescible waste, excluding discarded or abandoned vehicles or parts thereof, sewage, sludge, septic tank and cesspool pumpings or other sludge, discarded home or industrial appliances, hazardous wastes, materials used as fertilizers or for other productive purposes and recyclable materials or yard trimmings or food scraps that have been source separated for collection.

...

Source separation shall mean to separate recyclable materials, food scraps or yard trimmings from solid waste at the waste source.

Volume capacity category of containers shall mean extra-small capacity containers, small capacity containers, medium capacity containers, large capacity containers, or extra-large capacity containers placed for collection of solid waste, recyclable materials, food scraps or yard trimmings.

...

Section 9. That the definition “Existing customers” contained in Section 15-411 of the Code of the City of Fort Collins is hereby deleted.

Section 10. That Section 15-412 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-412. License requirement.

...

(b) *Exemptions.* The following persons or entities are not required to obtain a collection license:

- (1) A civic, community, benevolent or charitable nonprofit organization that collects, transports and markets materials for resource recovery solely for the purpose of raising funds for a charitable, civic or benevolent activity;
- (2) A person who transports refuse produced by such person;
- (3) A property owner or agent thereof who transports refuse left by a tenant upon such owner's property, so long as such property owner does not provide collection service for compensation for tenants on a regular or continuing basis;
- (4) A demolition or construction contractor or landscaper who produces and transports refuse in the course of such occupation, where the refuse produced is merely incidental to the particular demolition, construction or landscape work being performed by such person.

(c) *Volume-based rates for solid waste service.*

- (1) Any person licensed to operate as a solid waste collector within the City shall charge all residential customers, including, but not limited to, residential customers provided service through a group account, on the basis of the volume capacity category of the solid waste containers placed for collection by each residential customer. Solid waste collectors shall determine a rate for, and offer to residential customers, the small capacity container solid waste service, and that rate shall be used to determine the rates for all other service levels in accordance with the following:
 - a. Medium capacity container solid waste service shall be two (2) times the rate of the small capacity container solid waste service.
 - b. Large capacity container solid waste service shall be three (3) times the rate of the small capacity container solid waste service.
 - c. Extra-large capacity container solid waste service shall be six (6) times the rate of the small capacity container solid waste service.

d. A solid waste collector may offer extra-small capacity container solid waste service, the rate for which shall be less than the rate of the small capacity container solid waste service.

e. The City's contracted waste collector shall charge customers under the City's residential waste collection program the rates established in the City's contract with the City's contracted waste collector.

(2) The charge for solid waste placed for collection that exceeds the customer's service subscription level shall be proportional to the collector's standard rate for a small capacity container (for example, a customer who placed out an extra thirty-two (32) gallon bag of solid waste would be charged one-quarter ($\frac{1}{4}$) the monthly rate for the small capacity container service as the bag would be equivalent to the amount of small capacity container service volume provided per week).

a. A poly-cart in which the lid is unable to close due to the presence of solid waste is considered to contain excess solid waste and the solid waste collector must charge the customer accordingly.

b. Determining whether a customer has placed excess solid waste out for collection shall be made on an individual pick-up date basis. Solid waste collectors shall not "average" pick-up volumes (to allow for excess solid waste at one (1) time offset by a lower volume at another time).

(3) In order to further ensure that the charge for the collection of solid waste is based upon volume as required above, any solid waste collector may provide to each residential customer containers (which may include disposable bags), or labels to be attached to customer-provided disposable bags, showing the volume capacity category of such bags.

(4) A solid waste collector shall arrange for provision of service to each group account in a manner that results in an individual selection by each individual residential customer of a level of service that includes at a minimum the small, medium and large capacity containers and levels of service offered by the collector. In the case of a group account, the solid waste collector shall require a written contract that is compliant with the provisions of this Article and § 12-19.

(5) In offering or arranging for services, a collector shall provide reasonable notice of the range of volume capacity category container sizes or levels of service offered by the solid waste collector and shall provide to each residential customer that customer's requested volume capacity category container size or level of service.

(6) It shall be unlawful for any person to knowingly attach any label to a container exceeding in volume the volume capacity category shown on, or represented by, such label, and to place said container for collection.

(7) Residential solid waste shall be collected curbside. No collector shall collect or transport solid waste, recyclables, food scraps or yard trimmings which have not been placed for collection through such system or in containers upon which such labels have been attached.

(8) The provisions of this Subsection 15-412(c) shall not be construed as prohibiting any collector from also establishing policies regarding the maximum weight of containers of solid waste and/or recyclable materials.

(d) *Fixed fees for prepaid disposable bags or labels for solid waste service.*

(1) Where prepaid disposable bags or prepaid labels for customer-provided disposable bags (rather than reusable containers) are provided by a solid waste collector to its customers for solid waste collection services, solid waste collectors may, but are not required to, charge a fixed fee for the purpose of covering the fixed operational costs of routing service trucks for such collections in addition to the volume based rates for the prepaid bags or labels under Subsection 15-412(c) above.

...

(e) *Service surcharge for solid waste service.*

(1) In addition to the volume-based rates and excess solid waste charges required pursuant to Subsection 15-412(c), the charge allowed in Subsection 15-413(a)(4) and any fixed fees permitted under Subsection 15-412(d) for collection of prepaid disposable bags or prepaid labels for customer-provided disposable bags, collectors may, but are not required to, charge a service surcharge to residential customers. A service surcharge may be imposed only to cover fluctuating operational costs of doing business outside of a collector's control (such as, for example, fuel costs or market based recycling fees paid by collectors). A service surcharge shall be permitted and charged only as set forth in this Subsection 15-412(e).

...

(4) A collector may not impose any other rate, fee, charge, surcharge, or any other assessment of any kind to any customer. Fees, charges, surcharges etc. not allowed include without limitation those for service termination or for cart pickup.

...

(h) *Communications.* All oral and written communications with customers by or on behalf of a collector, whether in person, by telephone, in written form or through any other means, must be consistent with and clearly and accurately describe all:

(1) Components of the system for solid waste service, recyclable materials service, yard trimmings service and any other collection service provided by the collector; and

- (2) All applicable requirements of this Article and Article II of Chapter 12.

Section 11. That Section 15-413 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-413. Recycling requirement.

- (a) Curbside collection—Residential.

(1) Solid waste collectors shall provide residential solid waste customers curbside collection of recyclable materials for no additional charge. Such service shall include recyclable materials collection in an amount equal to at least eighteen (18) gallons and need not be more than two (2) large capacity containers. If a customer declines recyclable materials collection, solid waste collectors may not reduce the cost of collection service.

(2) Solid waste collectors shall provide curbside recyclable materials collection services on the same day of the week as they collect solid waste from the customer, except for residential customers located within mobile home parks.

(3) If solid waste collectors offer residential customers only the choice of an eighteen (18) gallon recycle tub, the solid waste collectors must provide recyclable materials collection at least once per week. Solid waste collectors that offer residential customers medium and/or large capacity containers for recycling must provide recyclable materials collection a minimum of two (2) times per month.

(4) When a residential customer has two (2) large capacity containers for recycling collection, collectors may require that all recyclable materials fit inside the provided containers or charge the customer an excess recyclable materials fee equivalent to the excess solid waste fee for recyclables placed for collection outside the recyclable materials cart.

- (b) *Multi-family and commercial solid waste and recyclable materials collection.*

(1) Each solid waste collector shall provide recyclable materials collection service to multi-family customers and commercial customers as a part of solid waste collection services. Solid waste collectors must charge multi-family and commercial customers for the minimum recycling service described in Subsection 15-413(b)(2), which may be itemized separately on bills. Solid waste collectors shall not exclude the cost of minimum recycling service unless such customer is granted a variance in accordance with Subsection 15-413(b)(3).

(2) The volume of recyclable materials collection service for service for multi-family and commercial customers shall be at least one-third ($\frac{1}{3}$) of the total collection volume (including both solid waste and recyclables) based on the size of solid waste containers and the service frequency provided to such customer ("minimum recycling service"). For example, if a customer is provided with pick-up of a 4-cubic-yard trash container that is

collected once per week, the collector shall also provide minimum recycling service in an amount equal to not less than a 2-cubic-yard recycling container as a part of such basic services (Two (2) cubic yards is one-third (1/3) of the total service volume (including both solid waste and recyclables) of six (6) cubic yards).

(3) The City may grant a commercial or multi-family recycling customer a variance from the recycling requirements in Subsections 15-413(b)(1) and (2) in accordance with the following provisions:

a. If a collector's multi-family customer or commercial customer seeks to not participate in minimum recycling collection services offered by a collector due to space constraints, self-hauling recyclables to recycling drop-off center, utilization of a separate licensed recycling collection provider other than the solid waste collector, failure to generate recyclables, or if only available location for recycling bin is not safely serviceable by hauler, the customer must submit a written request for variance on a form provided by the City and signed by the customer. A recycling bin location that is not safely serviceable is defined as a location that is substantially less safe to service than the trash bin service area for that location. Upon receipt of such a request for variance, the Director shall either approve the variance for good cause shown, or disapprove the variance. A copy of the approved or disapproved variance shall be sent by the City to the solid waste collector servicing that customer.

...

(c) *Recyclable materials collection containers, collection vehicles and related duties.* All licensed collectors of recyclable materials and solid waste operating within the City shall have the following duties:

(1) Except for materials that customers have not properly prepared for recycling, collectors may not commingle designated recyclable materials with solid waste, nor dispose of recyclable materials set out by recycling customers by any means other than at a qualified recycling facility.

(2) Any vehicle used for the collection of recyclable materials must be clearly and unambiguously marked as a recycling truck, whether by permanent decals or markings, or by signage or placards displayed at all times during such use.

(3) Collectors must provide a recyclable materials container to any customer at any time upon request within one (1) billing period after the request is made.

(4) The following requirements shall apply for residential customers:

a. Unless a customer expressly declines it, the collector must provide residential solid waste customers a poly-cart or eighteen (18) gallon tub for

recyclable materials that meets the requirements of this Subsection 15-413(c). The recyclable materials container must be clearly marked as a recyclables container with words or symbols or both and must be provided to the customer without additional charge.

b. Collectors must offer in writing the choice of a medium capacity or large capacity recycling container to each residential recycling customer annually.

(5) The following requirements shall apply for commercial customers:

a. Solid waste collectors shall provide recycling containers to multi-family and commercial customers (in the form of containers, dumpsters, or roll-off bins as deemed appropriate for servicing the location) and with a capacity sufficient to meet one-third ($\frac{1}{3}$) of service as recycling volume requirement.

b. Regardless of the type of recyclable materials container, it must be clearly identifiable as a recycling container and include the following:

1. A conspicuous chasing arrows decal on the side(s) of the container accessed by service or pedestrian access; and

2. Signage such as stickers or weather-resistant laminated posters or imprinting into the surface of the container during manufacture, of recyclable materials accepted in local collection programs, including graphics depicting acceptable materials. Such information may be delivered by use of City-provided graphics or graphics provided by the collector and approved by the City.

(d) *Recyclable materials preparation and ownership.*

(1) The collector may establish such reasonable and industry-accepted requirements for the preparation of materials for recycling as are necessary to provide for the orderly collection of recyclable materials, including requirements for source separation.

(2) All recyclable materials placed for collection shall be owned by and be the responsibility of the customer until the materials are collected by the collector. Upon collection, the collector shall take title to and ownership of the recyclable materials. Title to, ownership of and liability for any hazardous waste or waste that is otherwise not accepted at a processing or disposal facility shall remain with the generator of the waste and shall at no time pass to the collector. No person other than the customer or the collector of recyclable materials shall take physical possession of any recyclable materials placed for collection, with the exception of City staff or their agents who make take physical possession of de minimis amounts of recyclable materials to conduct informational studies. Such materials must be recycled properly after completion of a study.

(e) *Customer notification.*

(1) Upon the initial provision of collection services to new residential customers, and on or before December 31 of each year with respect to existing residential customers, collectors shall notify in writing such customers of:

...

d. Such policies and requirements as have been established by the collector for the orderly collection of recyclable materials as authorized pursuant to Subsection 15-412(c)(8) or 15-413(d)(1);

...

(2) For group accounts, the notices required hereunder may be sent to the group representative for said account, provided that such notice shall further notify said representative of its obligation to provide all individual residential customers within the group of this same information, pursuant to Subsection 12-19(b).

(3) The collector shall deliver to the Director a true and correct copy of each form of such notification sent on or before December 31 of each year.

Section 12. That Section 15-414 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-414. - Residential yard trimmings.

(a) *Residential service required.* Each solid waste collector licensed by the City shall make available to each residential customer receiving solid waste collection services, including customers receiving solid waste collection services through a group account, and shall provide to a residential customer upon request curbside collection of residential yard trimmings at least once per week from April 1 to November 30 of each year. As of September 30, 2024, each solid waste collector licensed by the City shall enroll each residential customer receiving solid waste collection services, including customers receiving solid waste collection services through a group account, in curbside collection of residential yard trimmings to be serviced at least once per week from April 1 to November 30 of each year and offer each residential customer the option to decline such service.

(b) *Rates.* Collectors shall be responsible for setting rates for collection of residential yard trimmings and such charges may be billed separately from charges for basic services. Beginning on September 30, 2024, collectors shall not list yard trimmings collection as a separate line item on customers' bills and beginning on that date yard trimmings collection shall be included within the charges for basic services, unless the customer has declined yard trimmings collection service.

(c) *Disposal of yard trimmings.* Collectors may not comingle yard trimmings with solid waste or recyclable materials, nor dispose of yard trimmings at a landfill. Yard trimmings shall

be disposed of by the collector at a location or facility permitted to collect yard trimmings for recycling, reuse or composting.

Section 13. That Section 15-415 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-415. Collection of food store food scraps.

(a) *Frequency of collection.* Collectors providing food scraps collection service to food stores shall provide collection with such frequency as is necessary to prevent overflow of containers. Service must be provided at least once per week, but no less frequently than may be required by the Larimer County Department of Health and Environment.

(b) *Collectors—Duties.* All licensed collectors of food scraps operating within the City shall have the following duties:

(1) Except as permitted by variance allowed under Subsection 12-23(a), collectors may not comingle food scraps with solid waste or recyclable material or dispose of food scraps by any means other than at a location or facility permitted by the State of Colorado to collect such material (but not to a landfill).

(2) A collector may establish such reasonable and industry-accepted requirements for the preparation of food scraps as are necessary to provide for the orderly collection of such materials, including requirements for source separation.

...

Section 14. That Section 15-417 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-417. - Application for license.

(a) Any person desiring to obtain a license to engage in the business of being a collector of solid waste, recyclable materials, food scraps, or yard trimmings within the City shall make written application to the Director on forms provided by the City. All applications for renewal of a license by a licensed collector must be submitted no later than November 30 in advance of the new license year. The application shall include, without limitation, the following information:

...

(3) A list of motor vehicles or fleets of human powered vehicles owned and/or operated by the applicant directly in the collection of solid waste, recyclable materials, food scraps, and/or yard trimmings, or operated or located at any time in the City during the current or pending license year, including vehicle make, color, year, U.S. Department

of Transportation safety inspection identification number, cubic yard capacity, Colorado license plate number and empty tare weight where applicable.

...

Section 15. That Section 15-420(d) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-420. - Plans, recordkeeping and reports.

...

(d) Each collector licensed pursuant to this Article shall maintain accurate and complete records of the service provided to each customer, the charges to such customer and payments received, the form and recipients of any notice required pursuant to this Article, and any underlying records, including any books, accounts, contracts for services, including contracts for group accounts, written records of individual level of service requests, invoices, route sheets or other records necessary to verify the accuracy and completeness of such records, and copies of all applications for and documentation pertaining to all requests for variance pursuant to Subsection 15-413 (b)(3). It shall be the duty of each collector to keep and preserve all such documents and records, including any electronic information, for a period of three (3) years from the end of the calendar year of such records, except for paper records of route sheets, which may be discarded one (1) year after the end of the calendar year of such route sheets. Notwithstanding any other requirement of this Article, a collector shall allow the City Manager, or their designee, to inspect any of the records referenced in this subsection when provided with seven (7) days advance written notice.

...

Section 16. That Section 15-422 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-422. Identification of vehicles.

Each vehicle used by a collector to provide services within the City pursuant to a license issued under this Article shall bear an identification sticker issued by the Financial Officer in a conspicuous place upon the vehicle, which identification sticker shall be issued by the Financial Officer at the time the license is granted.

Section 17. Ordinance No. 027, 2023, is hereby repealed.

Introduced, considered favorably on first reading and ordered published this 4th day of April, 2023, and to be presented for final passage on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

ORDINANCE NO. 055, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
REPEALING ORDINANCE NO. 028, 2023, AND AUTHORIZING THE CITY MANAGER
TO ENTER INTO A CONTRACT FOR THE PROVISION OF
RESIDENTIAL WASTE COLLECTION SERVICES

WHEREAS, Colorado Revised Statutes (“C.R.S.”) § 30-15-401(7.5) authorizes the City to establish a residential waste collection program (the “Program”), which may require municipal residents to use or pay user charges for residential waste services; and

WHEREAS, to establish the Program, C.R.S. § 30-15-401(7.5)(b)(I) requires the City to issue a Request for Proposals for such services, provide written notice of the Request for Proposals to City-licensed waste haulers, and publish a six-month public notice of the Request for Proposals in a newspaper of general circulation within the City prior to requiring the use of the services or the time of initial imposition of the user charges; and

WHEREAS, C.R.S. § 30-15-401(7.5) also requires the local governing body to award the contract for the Program; and

WHEREAS, on July 19, 2022, in Resolution 2022-079, the City Council directed City staff to design and issue a Request for Proposals for residential waste collection services, including trash and recycling collection services; and

WHEREAS, City staff designed a Request for Proposals and issued it on September 12, 2022, with an addendum added on October 24, 2022, which are attached hereto as Exhibit A, mailed a copy of the Request for Proposals to all waste haulers licensed by the City, a list of which is attached hereto as Exhibit B, and published the required notice in a local newspaper, as shown in the affidavit attached hereto as Exhibit C; and

WHEREAS, City staff received three proposals in response to the Request for Proposals and conducted a procurement process in accordance with the requirements of the City Code; and

WHEREAS, based on the outcome of the procurement process, the City has selected Allied Waste Systems, Inc., which does business as Republic Services of Colorado, to provide the Program; and

WHEREAS, Section 8-186(a) of the City Code requires that most contracts for services (including this one) with a term of more than five years in length be authorized by the City Council by ordinance; and

WHEREAS, the agreement negotiated with Allied Waste Systems, Inc., which is attached hereto as Exhibit D (the “Agreement”), will remain in effect for a period longer than five years, that is until September 30, 2029, unless the Agreement is modified or terminated early; and

WHEREAS, an extended duration of the Agreement provides the City and Allied Waste Systems, Inc., needed time to set up the Program and then allows for a five-year service period; and

WHEREAS, the Council adopted Ordinance No. 028, 2023 (“Ordinance No. 028”) to authorize the City Manager to enter into an agreement with Allied Waste Systems, Inc., to provide the Program, but Ordinance No. 028 was not published after adoption as required by the City Charter; and

WHEREAS, it is necessary that the Council repeal Ordinance No. 028 and adopt this Ordinance to allow the City Manager to enter into the agreement; and

WHEREAS, the City has taken no action under Ordinance No. 028.

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

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

Section 2. That the City Council, in accordance with C.R.S. § 30-15-401(7.5) and Section 8-186(a) of the City Code, hereby approves of the attached Agreement for Residential Solid Waste Services between the City and Allied Waste Services, Inc.

Section 3. That the City Manager is hereby authorized to execute the Agreement for Residential Waste Collection Services in substantially the form attached as Exhibit “D”, together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines are necessary or appropriate to protect the interests of the City.

Section 4. The City Manager may approve and execute future amendments to the Agreement for Residential Waste Collection Services in accordance with Section 12-32(a) of the City Code.

Section 5. Ordinance No. 028, 2023, is hereby repealed.

Introduced, considered favorably on first reading and ordered published this 4th day of April, 2023, and to be presented for final passage on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 18th day of April, 2023.

Mayor

ATTEST:

City Clerk



Financial Services
 Purchasing Division
 215 N. Mason St. 2nd Floor
 PO Box 580
 Fort Collins, CO 80522
 970.221.6775
 970.221.6707
fcgov.com/purchasing

**REQUEST FOR PROPOSAL
 9648 RESIDENTIAL SOLID WASTE COLLECTION SERVICES**

RFP DUE: 5:00 PM MT (RMEPS Clock), October 24, 2022

The City of Fort Collins is requesting proposals from qualified Contractors to provide collection of Solid Waste, Recyclable Materials, Yard Trimmings, Bulky Items and related services for single family homes and multi-family buildings of 7 or fewer units. Award of a contract for the Residential Solid Waste Collection initiative is subject to the City of Fort Collins Council approval by ordinance.

As part of the City's commitment to sustainability, proposals must be submitted online through the Rocky Mountain E-Purchasing System (RMEPS) at <http://www.bidnetdirect.com/colorado/city-of-fort-collins>. Note: please ensure adequate time to submit proposals through RMEPS. Proposals not submitted by the designated Opening Date and Time will not be accepted by RMEPS.

A pre-proposal meeting will be held at 1:00 PM MT on September 26, 2022. The pre-proposal meeting will be hosted on-line via Zoom. Select or copy/paste the below link into your browser for access to the meeting. Please add your name, email address, and organization name in the Zoom chat.

Click here for the meeting: <https://us02web.zoom.us/j/7056751403>
Meeting ID: 705 675 1403

All questions should be submitted, in writing via email, to Gerry Paul, Purchasing Director at gspaul@fcgov.com, no later than 5:00 PM MT on October 3, 2022. Please format your e-mail to include RFP 9648 Residential Solid Waste Collection Services in the subject line. Questions received after this deadline may not be answered. Responses to all questions submitted before the deadline will be addressed in an addendum and posted on the Rocky Mountain E-Purchasing System webpage.

Rocky Mountain E-Purchasing System hosted by BidNet

A copy of the RFP may be obtained at www.bidnetdirect.com/colorado/city-of-fort-collins.

This RFP has been posted utilizing the following Commodity Code(s):

91027	Garbage/Solid Waste Removal, Disposal and/or Treatment
92677	Recycling Services

Prohibition of Unlawful Discrimination: The City of Fort Collins, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The City strictly prohibits unlawful discrimination based on an individual's gender (regardless of gender identity or gender expression), race, color, religion, creed, national origin, ancestry, age 40 years or older, marital status, disability, sexual orientation, genetic information, or other characteristics protected by law. For the purpose of this policy "sexual orientation" means a person's actual or perceived orientation toward heterosexuality, homosexuality, and bisexuality. The City also strictly prohibits unlawful harassment in the workplace, including sexual harassment. Further, the City strictly prohibits unlawful retaliation against a person who engages in protected activity. Protected activity includes an employee complaining that he or she has been discriminated against in violation of the above policy or participating in an employment discrimination proceeding.

The City requires its Contractors to comply with the City's policy for equal employment opportunity and to prohibit unlawful discrimination, harassment and retaliation. This requirement applies to all third-party Contractors and their subcontractors at every tier.

Public Viewing Copy: The City is a governmental entity subject to the Colorado Open Records Act, C.R.S. §§ 24-72-200.1 et seq. ("CORA"). Any proposals submitted hereunder are subject to public disclosure by the City pursuant to CORA and City ordinances. Contractors may submit one (1) additional complete proposal clearly marked "FOR PUBLIC VIEWING." In this version of the proposal, Contractors may redact text and/or data that it deems confidential or proprietary pursuant to CORA. Contractors must submit a supplemental document explaining the justification for each redaction. Failure to provide a public viewing copy will be considered a waiver of any claim of confidentiality under CORA without regard to how the applicant's proposal or certain pages of the proposal are marked confidential, proprietary, or similar. Such statement does not necessarily exempt such documentation from public disclosure if required by CORA, by order of a court of appropriate jurisdiction, or other applicable law. Generally, under CORA trade secrets, confidential commercial and financial data information is not required to be disclosed by the City. Proposals may not be marked "Confidential" or 'Proprietary' in their entirety. By responding to this RFP, Contractors hereby waives any and all claims for damages against the City for the City's good faith compliance with CORA. **All provisions of any contract resulting from this request for proposal will be public information.**

Contractors Registration: The City requires new Contractors receiving awards from the City to submit IRS form W-9 or W-8BEN/W8-BEN-E (international firms) and requires all Contractors to accept Direct Deposit (Electronic) payment. If needed, the W-9 form and the Vendor Direct Deposit Authorization Form can be found on the City's Purchasing website at www.fcgov.com/purchasing under Vendor Reference Documents. **Please do not submit these documents with your proposal**, however, if you take exception to participating in Direct Deposit (Electronic) payments please clearly note such in your proposal as an exception. The City may waive the requirement to participate in Direct Deposit (Electronic) payments at its sole discretion.

Sales Prohibited/Conflict of Interest: No officer, employee, or member of City Council, shall have a financial interest in the sale to the City of any real or personal property, equipment, material, supplies or services where such officer or employee exercises directly or indirectly any decision-making authority concerning such sale or any supervisory authority over the services to be rendered. This rule also applies to subcontracts with the City. Soliciting or accepting any gift, gratuity favor, entertainment, kickback or any items of monetary value from any person who has or is seeking to do business with the City of Fort Collins is prohibited.

Collusive or Sham Proposals: Any proposal deemed to be collusive or a sham proposal will be rejected and reported to authorities as such. Your authorized signature of this proposal assures that such proposal is genuine and is not a collusive or sham proposal.

The City of Fort Collins reserves the right to reject any and all proposals and to waive any irregularities or informalities.

Utilization of Award by Other Agencies: The City of Fort Collins reserves the right to allow other state and local governmental agencies, political subdivisions, and/or school districts to utilize the resulting award under all terms and conditions specified and upon agreement by all parties. Usage by any other entity shall not have a negative impact on the City of Fort Collins in the current term or in any future terms.

The selected Contractors shall be required to sign the City's Agreement prior to commencing services (see sample attached to this document).

Sincerely,



Gerry Paul
Purchasing Director

1.0 INTRODUCTION

The City of Fort Collins is requesting proposals from qualified Contractors to provide collection of Solid Waste, Recyclable Materials, Yard Trimmings, Bulky Items and related services for single family homes and multi-family buildings of 7 or fewer units. Award of a contract for Residential Solid Waste Collection Services is subject to the Fort Collins City Council approval by ordinance.

Fort Collins has a long-standing commitment to waste reduction and has utilized a licensed open market collection system for decades.

Fort Collins' license requires haulers to report the materials collected from all sectors of the community, which is used to calculate various diversion rates. In 2020, the Community Diversion Rate (including residential, commercial, and industrial materials) was 52% and the Residential Diversion Rate was 29%. Details of Fort Collins diversion rates can be found in the annual reports at www.fcgov.com/recycling/publications-resources.php.

Fort Collins has adopted aggressive waste reduction goals, including working toward zero waste by 2030, and has identified a stagnant residential diversion rate as one of the challenges of making progress on that goal. Our Climate Future is the combined waste, climate and energy plan for Fort Collins and can be viewed at www.fcgov.com/climateaction/our-climate-future.

Fort Collins wishes to build upon the existing program by adding contracted collection for Residential Units. Fort Collins City Council has expressed support for a contracted system to help achieve the following goals:

- Reduce the number of trucks on residential streets and achieve street maintenance savings as well as increase safety in residential neighborhoods
- Reduce greenhouse gas emissions
- Increase diversion of Recyclable Materials and Yard Trimmings and encourage reuse of Bulky Items as much as possible
- Provide equitable pricing throughout the community
- Provide cost-effective pricing for Collection Services
- Provide a high level of customer service

2.0 GENERAL INFORMATION

Subject to Fort Collins City Council approval by ordinance and final negotiations with the awarded Contractor, definitions and general provisions of the contract will include the following:

Alley Service: Where alleys are the primary service option, Contractor shall provide Collection Services in alleys. Alleys are estimated to constitute 12-15% of the service area in Fort Collins. Further information on alleys is included in Section 3.0 below.

Bulky Items: Solid Waste that does not fit in a closed Solid Waste cart, excluding Hazardous Waste, Electronics, Yard Trimmings, Recyclable Cardboard, items that weigh over 60 pounds, and items larger than 6' x 6'.

Carts Terminology:

- "Small Cart" shall mean a cart with a capacity from 30-39 gallons
- "Medium Cart" shall mean a cart with a capacity from 60-69 gallons
- "Large Cart" shall mean a cart with a capacity from 90-99 gallons

City Limits: The boundary of the City of Fort Collins as identified via the City of Fort Collins GIS system (see details in section 3.0). City Limits does not include the Growth Management Area.

Collection Services: The collection, transportation, and delivery to an appropriate facility of Solid Waste, Recyclable Materials, Yard Trimmings, Bulky Items, and associated services for Residential Units conducted in a manner consistent with all applicable laws and regulations and the provisions of the executed Agreement.

Contract Term: The contract shall commence on the Effective Date and shall continue for five (5) years from the Service Commencement Date, unless terminated as provided under the contract.

Contractor: The firm selected by the City to provide Collection Services.

Core Service: Collection Services of Solid Waste, Recyclable Materials, and Yard Trimmings. At the City's option, Customers may elect to opt out of Yard Trimmings collection. Core Services may also include Bulky Items in the event the City elects to include Bulky Items in the contract.

Customer: An individual who contracts with the Contractor for Collection Services.

Door-to-Door Service: Contractor shall provide door-to-door service (in which Contractor's staff brings carts from the Customer's location to the curb or alley for servicing and returns the carts) for Customers with a disability upon request for no additional charge. Current estimated usage of this service is less than 1% of residential Customers.

Dumpster: Means a metal or plastic container, one (1) cubic yard to ten (10) cubic yards in volume, that is manufactured and used for the collection of Solid Waste or Recyclable Materials.

Effective Date: Means the effective date of the Agreement, which shall be the date stated in Section 4, Contract Period.

Electronics: Means any electronic device or electronic component as those terms are defined in the Colorado Hazardous Waste Regulations, 6 Code of Colorado Regulations 1007-3, Section 260.10.

Hazardous Waste: Any chemical, compound, substance or mixture that state or federal law designates as hazardous because it is ignitable, corrosive, reactive or toxic, including but not limited to solvents, degreasers, paint thinners, cleaning fluids, pesticides, adhesives, strong acids and alkalis and waste paints and inks.

Recyclable Cardboard: Means corrugated cardboard, and shall include, but not be limited to, materials used in packaging or storage containers that consist of three (3) or more layers of Kraft paper material, at least one (1) of which is rippled or corrugated. Cardboard shall be considered recyclable cardboard regardless of whether it has glue, staples or tape affixed, but not if it is permanently attached to other packing material or a non-paper liner, waxed cardboard or cardboard contaminated with oil, paint, blood or other organic material.

Recyclable Materials: Means the materials listed in Table 3 and any other materials identified by Contractor and approved by the City as recyclable materials, which have been separated from Solid Waste and can be recovered as useful materials and are properly prepared for the purpose of recycling.

Residential Units: Means and includes all single-unit residential buildings, and multi-unit residential buildings containing seven (7) dwelling units or fewer within the City, subject to certain exceptions and/or City-granted variances as stated herein, and any Service Opt-in Customers.

Exceptions:

- Residential Units served by Dumpsters;
- Home Owner Associations (HOAs) with existing Solid Waste and recycling collection contracts as of the Effective Date and that meet the requirements in Chapter 12, Article II and Chapter 15, Article XV of the City code.

Variances:

- **Shared Service** – A variance from paying the Service Opt-Out Fee may be granted by the City if a Residential Unit shares Collection Services with another Residential Unit and shows to the reasonable satisfaction of the City that the Residential Units with shared service consistently produce combined total waste in an amount equal to or less than is collected through the Super Saver Service. Variances for this reason are anticipated to apply to less than 0.5% of Customers.
- **Excess Producers** - A variance from paying the Service Opt-Out Fee may be granted by the City if a Residential Unit shows to the reasonable satisfaction of the City that the Residential Unit consistently produces waste in an amount greater than the XL cart service. Variances for this reason are anticipated to apply to less than 0.5% of Customers.

Service Commencement Date: The date Collection Services at the Residential Units begins. Such date shall be mutually agreed upon by the parties and will start not less than six (6) and not more than twenty-four (24) months from the Effective Date of the Agreement

Service Opt-in: HOAs that meet an exception to the definition of Residential Units and multi-unit residential buildings containing eight (8) or more dwelling units may opt in as a Customer.

Service Opt-Out Fee: Any Customer wishing to not receive the contracted service will be charged the Super Saver Service price in lieu of receiving service from the Contractor.

Service Suspension: Contractor shall allow Customers to suspend service once per year upon request for a minimum of one (1) and maximum of six (6) months. Customers who request a Service Suspension will be charged the Super Saver price during such period of time. Contractor may not charge the Customer to start or stop the Service Suspension.

Service Year: A period of 12 calendar months beginning on the Service Commencement Date.

Solid Waste: Means all refuse, putrescible and nonputrescible waste, excluding Electronics, discarded or abandoned vehicles or parts thereof, sewage, sludge, septic tank and cesspool pumpings or other sludge, discarded home or industrial appliances, hazardous wastes, materials used as fertilizers or for other productive purposes and Recyclable Materials or Yard Trimmings which have been source separated for collection.

Subcontractors: The Contractor may not subcontract any of the services without the prior written consent of the City. If any of the services are subcontracted with the consent of the City, the Contractor shall be solely responsible for the performance of all duties under the Agreement..

Super Saver Service: A Solid Waste service level that is less than the Small Cart service (but not necessarily 100% price differential) and is offered to Customers at a price less than the Small Cart service. Super Saver Service shall also include the same services as are included in the other Solid Waste service levels (Recyclable Materials, Yard Trimmings, and Bulky Items collection). Examples of Super Saver Service options are included in Section 4.1.

Wildlife-Resistant Carts: The City does not require wildlife-resistant carts.

Yard Trimmings: Means those materials included in Table 4, and any other similar organic materials identified by Contractor and approved by the City as yard trimmings.

3.0 DEMOGRAPHIC & CURRENT PROGRAM

Community Demographics

- Approximately 40,000-45,500 Residential Units in Fort Collins are eligible for Collection Services under this contracted service.
- Approximately 10,500 additional Residential Units are in HOAs with existing contracts for Solid Waste and Recyclable Materials collection.
 - Some of these HOAs may be found to have contracts that are not compliant with the City's requirements and may join the City's contract
 - These HOAs may be required to add Yard Trimmings collection service, which may be provided by the City's Contractor or the HOA's existing contracted hauler at each HOA's discretion. If the HOA chooses the City's Contractor, the HOA and the Contractor will individually negotiate the price for collection service. The requirement for Yard Trimmings collection is anticipated to begin concurrent with the Service Commencement Date. The HOA Yard Trimmings requirement may be considered by Fort Collins City Council as a code change along with adoption of the Residential Solid Waste Collection Agreement.

GIS / Geographic Information

City Limits

The Contractor shall provide Collection Services for Residential Units within the City Limits. The City Limits can be downloaded from the City's Geographic Information System (GIS) at <https://www.fcgov.com/gis/downloadable-data>.

Alleys

- City-maintained alleys can be viewed within the "Street Centerlines" GIS data download from www.fcgov.com/gis/downloadable-data. Filter data by STREETTYPE "Alley."
- Privately-maintained alleys include but are not limited to alleys in the following developments. These developments may or may not already have contracted collection via their Homeowners' Association (HOA):
 - Observatory Village
 - Harvest Park

- Old Town North
- Sienna (neighborhood east and west of Azuro Dr.)

Homeowner's Associations (HOAs) with Existing Contracts

A map of the location and relative size of the HOAs with existing Solid Waste and Recyclable Materials collection contracts as well as the Fort Collins City Limits are included in the Attachment 2.

Existing Program

Fort Collins currently has an open market system in which haulers are required to have a license. That license requires:

- Solid Waste
 - Weekly collection
 - Pay-As-You-Throw pricing with 100% price differential between three cart sizes including Small (\$X), Medium (\$2X), and Large (\$3X).
- Recyclable Materials
 - Minimum of every-other-week collection
 - Up to two Large Carts bundled with Solid Waste service for no additional charge
 - Hauler must offer choice of cart size to customer; including Large or Medium carts; some offer Small Carts or open-top 18-gallon tubs.
 - Current participation: 96% of households
- Yard Trimmings
 - Weekly collection from April – November
 - Residents must opt into the collection service and pay an additional fee
 - Current subscription rates: 23% of open market households, 5% of HOAs; a combined total of approximately 17% City-wide

Table 1 - 2021 Fort Collins Cart Distribution

	Super Saver Service	18-gal tub	Small Cart	Medium Cart	Large Cart
Open Market Solid Waste	1%	N/A	43%	41%	16%
Open Market Recycling	N/A	9%	0.1 %	53%	38%
Open Market Yard Trimmings	N/A	N/A	N/A	22%	1%
Contracted HOA Solid Waste	N/A	N/A	31%	36%	33%
Contracted HOA Recycling	N/A	17%	1%	42%	40%
Contracted HOA Yard Trimmings	N/A	N/A	N/A	3%	2%

4.0 SCOPE OF WORK/COLLECTION SERVICES

4.1 Solid Waste Collection

Core Service Rates proposed in the Price Sheet (Attachment 3) shall include the following Solid Waste Collection Service components.

Proposal Requirements - Solid Waste

Proposal shall include the following Solid Waste Collection Service components.

- Five service levels as described in Table 2
- Volume-based rates as described below
 - 100% price difference between cart sizes (except for Super Saver Service)
- Weekly collection
 - Super Saver Service may be less frequent
- Materials shall be collected from wheeled carts with lids as described below
- Any Solid Waste overflows shall be assessed an extra cost as described below
- At the City's sole option, Contractor shall dispose of all Solid Waste at the Larimer County Landfill or the permitted landfill of the Contractor's choice

Table 2
VOLUME-BASED SOLID WASTE SERVICE DETAILS

SOLID WASTE SERVICE LEVEL	CART SIZE	COLLECTION FREQUENCY	PRICING PER MONTH for CORE SERVICES
Super Saver Service	Less than Small service	To be described in proposal	Less than \$X
Small Service	30-39 gallon	Weekly	\$X
Medium Service	60-69 gallon	Weekly	\$2X
Large Service	90-99 gallon	Weekly	\$3X
XL Service	Two 90-99-gallon carts	Weekly	\$6X

Overflow Solid Waste

When a Customer sets out un-carted Solid Waste (including if a cart lid cannot fully close), the Contractor shall:

- Photograph the Solid Waste
- Affix an appropriately marked service tag to the Customer's Solid Waste cart
- Collect the overflow Solid Waste on the same day as Solid Waste cart
- Charge the Customer an extra cost as follows:
 - Cost for overflow shall be proportional to the volume of overflow solid waste
 - Fee per 32-gallon bag equivalent shall be proposed in the Price Sheet (Attachment 3)
 - Contractor will retain the additional cost paid by the Customer
- Note that if Contractor selects bag / tag / sticker Super Saver Service, pre-paid bags or tagged or stickered bags shall not be considered overflow Solid Waste

Blocked Carts

If the Contractor cannot access a cart to service it, the Contractor shall:

- Photograph the cause of the issue
- Affix an appropriately marked service tag to the Customer's Solid Waste cart (and any other carts out for service that day). If attaching a tag is not feasible / practical, Contractor shall contact the Customer via text, email, or phone call to notify them of the problem and when their carts will next be serviced
- Contractor may leave the cart un-serviced until the service day that follows the removal of the situation blocking access to the cart(s)
- The following regularly scheduled service day, the Customer may set out 2x the regular amount of materials that would have been initially collected for no additional charge to account for the missed service. In this circumstance, materials equivalent to the regular service level shall not be considered overflow and Customer shall not be charged extra.
- If the blockage remains on the next service day, Contractor shall notify the City Representative and does not have to service the location until the blockage is addressed

Other Prohibitions

City code prohibits Customers from disposing of Recyclable Cardboard in Solid Waste or Yard Trimmings carts or Electronics in any cart. When Recyclable Cardboard appears to constitute 25% or more of a Solid Waste or Yard Trimmings cart or when Electronics are observed in any cart, the Contractor shall:

- Photograph the item(s) in the cart
- Affix an appropriately marked service tag to the Customer's Solid Waste cart
- Not service the cart until the Recyclable Cardboard is removed
 - Contractor may leave the cart un-serviced until the service day that follows the removal of prohibited materials
 - The following week, the Customer may set out 2x the regular amount of Solid Waste for no additional charge to account for the missed service the week prior. In this circumstance, bags equivalent to the regular weekly service level of Solid Waste shall not be considered overflow Solid Waste.
- If Customer has not removed the materials by the next service day, Contractor shall notify the City Representative for compliance action

Super Saver Service

Contractor's proposal shall include the container type and service frequency for the proposed Super Saver Service level. The service must be offered at a cost less than the Small Service but does not have to be a 100% price differential. The Super Saver Service must also include the same services as the other Solid Waste service levels (Recyclable Materials, Yard Trimmings, and Bulky Items collection). Examples of programs that would qualify as Super Saver Service that are active in northern Colorado are stated below. Contractors are welcome to propose different approaches.

Examples in Northern Colorado:

- Pay by the bag / tag / sticker:
 - Base monthly service fee includes Core Services (including curbside collection of Recyclable Materials, Yard Trimmings and Bulky Items collection)
 - Resident purchases pre-paid trash bags / tags / stickers at the Contractor's office and then places the bags out for collection on service day as needed. If this option is proposed, the proposal shall identify the location(s) where bags / tags / stickers may be purchased by the Customer. The location(s) must not be a City facility and must be within City Limits. The Contractor must accept cash and credit card payments for this service.
- 16-gallon carts: An insert is placed inside a 32-gallon cart to reduce the functional size to a 16-gallon cart that can be serviced weekly with automated trucks
- Every other week service: Super Saver Small Solid Waste carts have a different color lid and are only serviced every other week.

4.2 Recyclable Materials Collection

Core Service Rates proposed in the Price Sheet (Attachment 3) shall include the following Recyclable Materials Collection Service components.

Proposal Requirements - Recyclable Materials

Proposals shall include the following Recyclable Materials Collection Service components regardless of service options:

- The cost of Recyclable Materials collection shall be bundled in the Core Service price (i.e. the Customer's bill shall not include a separate itemized line-item price for Recyclable Materials collection)
- Standard service shall be a Large Cart
 - Residents can select a Medium Cart for no change in their monthly cost
- Collection shall be on the same day as Solid Waste collection
- Materials shall be collected in wheeled carts with lids
 - Note: The City will not offer open-top 18-gallon tub service because the tubs require manual collection and are a source of pollution when Recyclable Materials blow out of them
- At the City's discretion, Contractor shall deliver Recyclable Materials to the Larimer County Recycling Center or the permitted recycling center of the Contractor's choice
- Contractor proposals may identify any proposed additions to the materials in Table 3.
- Recyclable Materials shall not be landfilled unless the load is rejected from the recycling center due to contamination. If that occurs, Contractor shall notify the City Representative immediately with details of the incident / cause of the contamination. Contractor shall also include details and cause of the contamination incident in the regular report to City.

**Table 3
MINIMUM LIST OF RECYCLABLE MATERIALS TO COLLECT**

Recyclable cardboard	Plastic bottles, tubs, jugs and jars (#1,2 and 5)
Office paper (white and colored)	Aluminum cans, foil & pie plates
Magazines	Steel / tin cans & empty aerosol cans
Paperboard	Glass bottles and jars
Kraft paper	Aseptic containers

See City recycling guidelines poster at http://www.fcgov.com/recycling/pdf/2018_recycle_guidelines.pdf.

Recyclable Materials Service Scenarios

Proposals shall assume provision of Recyclable Materials Service for 100% of Customers. Proposals must provide pricing for two distinct service scenarios stated below. Contractor costs for each scenario shall be proposed in the Pricing Sheet (Attachment 3).

- Recyclable Materials Service Scenario 1: Every-other-week collection of up to two Large Recyclable Materials Carts
- Recyclable Materials Service Scenario 2: Weekly collection of one Large Recyclable Materials Cart

Recyclable Materials Contamination

The Recyclable Materials contamination threshold shall be 10% by volume. When the Contractor encounters a cart with 10% or more contamination, the Contractor shall:

- Photograph the item(s) in the cart
- Affix an appropriately marked service tag to the Customer's Recyclable Materials cart
- Not service the cart until the contamination is removed
- Contractor may leave the cart un-serviced until the service day that follows the removal of the contamination
- The following regularly schedule service day, the Customer may set out 2x the regular amount of Recyclable Materials for no additional charge to account for the missed service. In this circumstance, Recyclable Materials may be placed in Recyclable Cardboard boxes and shall not be considered overflow Recyclable Materials
- If the Customer has not removed the contamination by the next service day, the Contractor shall affix a service tag to the cart, service the cart as Solid Waste, and charge the Customer the equivalent overflow Solid Waste fee

4.3 Yard Trimmings Collection

Core Service Rates proposed in the Price Sheet (Attachment 3) shall include the following Yard Trimmings Collection Service components.

Proposal Requirements – Yard Trimmings

Proposal shall include the following Yard Trimmings service components regardless of other service options:

EXHIBIT A

- The cost of Yard Trimmings collection shall be bundled in the Core Service price (i.e. the Customer’s bill shall not include a separate itemized line-item price for Yard Trimmings collection)
- Standard service shall be a Large Cart
 - Residents can select a Medium Cart for no change in their monthly price
- Materials shall be collected in the cart only (no loose materials will be accepted)
- Weekly service shall be provided seasonally from April 1st through November 30th each year
- Collection shall be on the same day as Solid Waste collection
- Materials shall be collected in wheeled carts with lids
- Contractor shall deliver Yard Trimmings to a permitted / licensed compost processing facility
 - Contractor shall receive approval from the City to take materials to a facility other than a permitted / licensed compost processing facility
 - Contractor proposals shall include the planned destination(s) for Yard Trimmings
 - Contractor proposals may identify any proposed additions to the materials included in Table 4
- Yard Trimmings may not be landfilled unless load is rejected from the Yard Trimmings destination due to contamination. If that occurs, Contractor shall notify City contact immediately with details of the incident / cause of the contamination. Contractor shall also include details and cause of the contamination incident in the regular report to City.

**Table 4
MINIMUM LIST OF YARD TRIMMINGS TO COLLECT**

Brush & Limbs sized to fit in the cart
Grass Clippings
Leaves
Garden Trimmings / Weeds / Plant Material

Yard Trimmings Service Scenarios

Proposals must provide pricing for two distinct service scenarios stated below. Contractor price for each scenario shall be proposed in the Pricing Sheet (Attachment 3).

- Yard Trimmings Service Scenario 1:
Bundled seasonal Yard Trimmings collection service for 100% of Customers.
- Yard Trimmings Service Scenario 2:
Optional seasonal Yard Trimmings collection service with estimated participation rate of 75% of Customers. In Scenario 2, Customers would be automatically enrolled in the service but could contact the Contractor to decline collection service and receive a predetermined reduction in the Core Service price.

Yard Trimmings Contamination

The Yard Trimmings contamination threshold shall be 10% by volume. When the Contractor encounters a cart with 10% or more contamination, the Contractor shall:

- Photograph the item(s) in the cart
- Affix an appropriately marked service tag to the Customer's Yard Trimmings cart
- Not service the cart until the contamination is removed
- Contractor may leave the cart un-serviced until the service day that follows the removal of the contamination
- The following week, the Customer may set out 2x the regular amount of Yard Trimmings for no additional charge to account for the missed service. In this circumstance, Yard Trimmings may be placed in paper yard waste bags and shall not be considered overflow Yard Trimmings.
- If the Customer has not removed the contamination by the next service day, the Contractor shall affix a service tag to the cart, service the cart as Solid Waste, and charge the Customer the equivalent overflow Solid Waste fee

4.4 Periodic Residential Bulky Items Collection

Proposal Requirements – Bulky Items

Proposal shall include the following Bulky Items service components regardless of other service options:

- Collection on an on-call basis
- Collection within one calendar week of request
- Collection need not be on the same day as regular Solid Waste services
- Contractor proposal shall include proposed collection equipment
- The City prefers but does not require proposal elements that encourage reuse of Bulky Items rather than landfilling them
- The Contractor shall track the number of and types of items collected (in categories mutually agreed upon by the Contractor and the City)
- Bulky Items shall be proposed in the Pricing Sheet (Attachment 3) in two categories:
 - 1) No Additional Fee Bulky Items

Shall include common household items, including but not limited to non-freon containing appliances and furniture, excluding the following:

 - Hazardous waste
 - Electronics
 - Yard waste
 - Recyclable Cardboard
 - Items that weigh over 60 pounds
 - Items larger than 6' x 6'

2) Additional Fee Bulky Items

Shall include items for which Customers will be charged an extra fee

- Contractor shall include in the Pricing Sheet (Attachment 3) any Additional Fee Bulky Items and the amount proposed for each of them.

Bulky Items Collection Scenarios

Proposals must provide pricing for two distinct service scenarios stated below. Contractor costs for each scenario shall be proposed in the Pricing Sheet (Attachment 3).

- Bulky Items Collection Scenario 1: Collection of up to two No Additional Fee Bulky Items / year for each Customer
 - The price of this Bulky Items Collection Scenario 1 shall be bundled in the Core Service price (i.e. the Customer's bill shall not include a separate itemized line-item price for Bulky Items collection)
 - Contractor can charge the Customer the additional price included in the contract for each Additional Fee Bulky Item.
 - Customer will pay Contractor directly for each Bulky Item collection requested beyond the two included items. Pricing for these additional Bulky Items shall be the pricing proposed in Bulky Items Service Scenario 2.
- Bulky Items Collection Scenario 2: Collection of unlimited Bulky Items for a separate price
 - Customer will pay Contractor directly for each item. The price will be separate from the Core Service price.

4.5 Dumpster Service for Multi-Unit Residential and Commercial Customers

In the Price Sheet (Attachment 3), proposals shall include pricing for Solid Waste and Recyclable Materials Dumpster service for multi-unit residential buildings or commercial buildings that opt in to receive such Dumpster service by Contractor. Service frequency and Dumpster sizes requested are included in the Price Sheet (Attachment 3).

4.6 Other Services or Additional Material Collections or Other Ways to Improve Program

Nothing in this Request for Proposals is intended to limit the Contractor from offering other services or collecting additional materials or other ideas for ways to improve the program subject to the following:

- Such supplemental service(s) enhances services under the City's Agreement and supports the City's sustainability goals
- Collection is compliant with the terms of the City's Agreement and all local, state and federal laws and regulations
- Materials are managed at appropriately licensed / permitted facility
- The City does not wish to pursue seasonal Yard Trimmings collection events or Bulky Items collection days as part of the scope of the RFP

5.0 OPERATIONAL SPECIFICATION

The Contractor shall provide all resources, equipment, and personnel necessary to perform all services described herein.

5.1 Carts

The Contractor shall purchase, assemble, and deliver all Solid Waste, Recyclable Materials, and Yard Trimmings carts as part of the City's contract. Cart ownership will transfer to the City at the end of the Agreement Term. The cost of the carts shall be itemized in the Price Sheet for purposes of this proposal. The Customer's bill shall not include a separate itemized line-item price for carts. The quoted price shall not include any grant funding. The final pricing for carts shall be reduced an amount equal to any grant funding provided by the City.

Carts shall be new, wheeled units that meet the following criteria:

- The cart body and lid shall be distinct for Solid Waste, Recyclable Materials and Yard Trimmings carts. Cart colors shall be:
 - Grey for Solid Waste (if grey carts significantly alter the cart price, Contractor can propose an alternative color other than blue or green)
 - Blue for Recyclable Materials
 - Green for Yard Trimmings
- Cart sizes available must be consistent with service levels in Section 4.
- Carts must be compatible with industry standard collection equipment
- Carts shall be manufactured with a minimum of five percent (5%) residential post-consumer recycled plastic content based on the weight of the entire mass of the body, lid and wheels
- Radio Frequency Identification (RFID) tags must be embedded in carts at the time of manufacturing
 - Contractor is not required to purchase RFID reading equipment or to use an RFID tracking or data management system
- Carts shall be hot-stamped with City logo, contact phone number, and have full-color guidelines for acceptable/unacceptable materials printed on the lids of the Recyclable Materials and Yard Trimmings carts
 - City will provide information and artwork for hot stamp and guidelines printing
 - Contractor information shall not be included on carts
- Contractor proposal shall include the proposed cart manufacturer, model number, and brief summary of the basis for the selected cart manufacturer and model.
 - The City retains the right to approve cart manufacturer
- Contractor proposal shall include details about the cart warranty, including length of warranty and transferability to the City at the end of the Agreement Term.

Grant Funding

The City has secured \$15 per Recyclable Materials cart in grant funding from The Recycling Partnership to offset part of the Recyclable Materials cart cost. The City continues to seek grant funding to offset other cart costs. The quoted price shall not include any grant funding. The final pricing for carts shall be reduced by an amount equal to any grant funding provided by the City.

Cart Exchanges and Replacement

Initial Service Start-Up:

- Existing service providers who are not awarded the contract will coordinate with the City to remove their carts from households shifting to the City contract in a timely manner and with no charge to the household, per City code
- Contractor proposal shall include a strategy for removing existing Customer carts and replacing with new carts as well as providing carts to new Customers during the transition period with no service disruption
- Initial cart delivery and collection of the Contractor's existing carts shall be at no charge to the Customer

Ongoing:

- The following cart services shall be provided to the Customer for no additional charge
 - Initial delivery of carts when a new Customer starts service
 - Collection of carts when a Customer ends service
 - Repairing or replacing broken or missing carts
 - Exchanging carts for a different service size
 - Cart delivery or exchange for any other reason
 - Contractor shall provide up to two delivery / exchange / repair instances per service address per year for no additional charge (each instance could involve one or more carts)
 - Contractor can charge Customer a delivery / exchange fee for delivery / exchange / repair needs beyond two instances per year
- Contractor shall deliver carts requested due to service level change requests, new service or replacements within 2 business days of request
- Contractor proposal shall provide an overview of the strategy for maintaining the optimum inventory and mix of cart sizes to support Customers

Cart Maintenance

Contractor shall provide routine cart maintenance, repair and replacement. The cost for such services shall be incorporated into the cart cost proposed in the Pricing Sheet (Attachment 3).

Contractor shall:

- Maintain carts graffiti-free and in good working condition
- Clean up any spills or litter caused by collection or transportation, regardless of whether it is on public or private property
- Repair any damaged carts that can reasonably be returned for regular service
- Replace carts that cannot reasonably be repaired
- Recycle any decommissioned carts

Contractor proposal shall include the proposed location(s) for ongoing cart storage, cleaning and repair.

5.2 Collection Vehicles

The Contractor shall provide all vehicles and equipment needed for materials collection and transportation in an efficient and environmentally-sensitive manner.

The Contractor's proposal shall include details regarding the vehicles it intends to use for the Collection Services. Details must include, but are not limited to the following:

- Vehicle type, manufacturer, and model number
- Number of vehicle by vehicle type
- Fuel by vehicle type
- Average vehicle age by vehicle type
- Overview of vehicle replacement schedule
- Overview of preventative and corrective maintenance programs

Provide the date, description and resolution/corrective action taken for any vehicle accidents, infractions, or overweight vehicles that occurred within the last three (3) years.

When operational, all collection and transfer vehicles shall:

- Cover their loads
- Be kept in good repair and appearance
- Be clean and sanitary
- Be compliant with all local, state and federal safety and inspection regulations

Any vehicle leaks or spills shall be cleaned up as soon as possible and no later than 24 hours after occurrence.

Contractor proposal shall include plan to track and address overweight vehicles. Instances of overweight vehicles shall be included in the regular report to the City.

Sustainable Vehicles

City goals include decreasing pollution and increasing sustainability. The City welcomes proposals that further these goals.

Proposals shall include the Contractor's level of commitment and timing to implement some or all of the following strategies to support greenhouse gas reduction.

- Convert to and/or expand alternative fuel vehicles, especially electric and/or natural gas vehicles utilized to provide Collection Services in the City
- Equip vehicle engines with emission-after-treatment devices such as NOx reduction catalysts and particulate filters
- Equip vehicles with operate-in-gear-at-idle technology and automatic engine shut-off systems
- Implement other reasonable mitigation or pollution prevention equipment or practices
- Implement noise reduction technology such as low-noise bin lifters and quiet work practices

An evaluation of fleet status will be a compulsory component of any consideration to a proposed change in pricing due to the cost of fuel.

5.3 Collection Personnel

The Contractor shall maintain staffing levels required to support the Collection Services on the schedules set forth herein. The Contractor shall have implemented a current Department of Transportation (DOT) compliance policy. Such policy shall be subject to audit and review by the City with reasonable prior notice.

At a minimum, all vehicle drivers shall be:

- Licensed by the State of Colorado with a valid Class B Commercial Driver License (CDL) with air brakes endorsement
- Alert, careful, courteous and competent
- Appropriately trained in operations and safety measures
- Provided with appropriate communication tools and Personal Protective Equipment (PPE)

Cell phones shall not be used in a moving vehicle.

5.4 SAFETY

The Contractor shall embrace a culture of safety to include a documented safety program for the Collection Services. The safety program must include as a minimum the following:

- Health and Safety Training
- Employee/Management Responsibility
- Hazard Recognition and Control
- Incident Reporting and Investigation

The Contractor shall track and report its Experience Modification Rate (EMR) on an annual basis. As part of the proposal please provide the EMR for the previous three (3) years. The Contractor shall track and report its OSHA Total Recordable Incident Rate (TRIR) and Days Away Restricted or Transferred (DART) calculated as follows:

$$\text{TRIR} = \frac{\text{Number of recordable cases} \times 200,000}{\text{Number of hours worked}} \qquad \text{DART} = \frac{\text{Number of DART cases} \times 200,000}{\text{Number of hours worked}}$$

5.5 Collection Schedule

Solid Waste, Recyclable Materials, and Yard Trimmings shall be collected from each Customer on the same day. On-call Bulky Items collections can be on a different day.

Hours and Holidays

All collections shall be conducted between 7 AM and 7 PM Monday through Friday and 7 AM to 7 PM on Saturdays during any week with a holiday. No collections shall occur on Sundays or holidays unless expressly authorized by the City Representative. Holidays shall include New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day and Christmas Day.

Severe Weather Protocol

Contractor may suspend service on days that the City closes or when the City declares a late start due to severe weather or other times authorized by the City Representative. In the event of a closure/late start due to severe weather, the City will post a notification by 5 AM.

Contractor shall collect any missed collections due to suspended service within one calendar day of City facilities opening unless otherwise approved by the City Representative. The resumed service may cause a similar delay to other service days throughout that service week. (For example, if service is suspended on a Tuesday and resumes on Wednesday, the Tuesday Customers would be serviced on Wednesday and so on, including Friday collections taking place on Saturday.)

5.6 Program Transition Services

The transition period will begin on the contract Effective Date and end on the Service Commencement Date.

City Responsibilities

- Collaborate with the Contractor to design public notifications and service tags for the Collection Services
- Provide City information for cart hot stamps and artwork for printed material guidelines on cart lids
- Help to resolve questions while Contractor develops service address list
- Determine whether HOAs with existing hauling contracts comply with City requirements (and thus are exempt from the City contracted hauling program) and share that information with the Contractor
- Provide a phone number that shall be routed to the Contractor and that the Contractor shall use for all customer service inquiries, requests, complaints and other as related to this contract. The City will keep the phone number for contract customer service, regardless of whether a different Contractor is selected in the future
- Coordinate removal of carts from Customers of other service providers
- Establish Customer billing rates based on the contract pricing and the City's administrative fee established by the City Council

Contractor Responsibilities

Contractor's proposal will include proposed dates for each of the following activities to be completed during the transition period and thereafter during the term of the contract:

- Develop, produce and distribute public notifications to Customers
 - Contractor shall collaborate with the City to design the public notifications and City shall have final approval authority
 - Contractor shall distribute public notifications at the following times at a minimum
 - During the initial start-up period
 - When new Customers start service (after the service start-up period)
 - When Customers change service levels at any time
 - Annually to all Customers at a time agreed upon with City Representative
 - The notification shall be in a multi-color, user-friendly format with any text in both English and Spanish and shall include:
 - Available service levels and rates
 - Annual collection calendar

- Set-out times and locations
 - Directions for changing service levels, managing overflow Solid Waste, contamination, and requesting additional services
 - Guidance on acceptable and unacceptable materials in Recyclable Materials and Yard Trimmings carts
- Develop service address list
 - Facilitate and manage Customer cart size selection
 - Conduct all billing set up
 - Develop and distribute a collection calendar(s) for all Customers
 - Produce service tags to address situations such as blocked carts, Solid Waste overflows, contaminated Recyclable Materials or Yard Trimmings, or other conditions that impact service or safety. Tags shall:
 - Include text in English and Spanish
 - Be made of durable, water-resistant material that can be written on
 - Be printed with 1 color
 - Have a mechanism for temporary attachment to carts
 - Be a minimum size of 5" x 10"
 - Remove all carts from existing Customers at no additional cost per Section 5.1
 - Provide all other services stated in the RFP and/or required to provide Collection Services in accordance with the terms of the Agreement.

5.7 Customer Billing

All Customer billing shall be conducted by the Contractor on behalf of the City.

Customer rates will be established by the City based on Contract pricing and City administrative fee. Rates and fees shall remain unchanged during each Service Year unless otherwise approved by an amendment to the Agreement. Customer bills may be on a monthly or quarterly schedule and can be assessed in advance or in arrears. Contractor proposal shall include the anticipated billing frequency and whether it will be assessed in advance or in arrears and why.

Contractor proposal shall address how the Contractor proposes to address the funding from Extended Producer Responsibility when it comes available. See C.R.S. 25-17-101 et seq.

All Customer bills shall include the following:

- Applicable Core Service rates
- Statement that Recyclable Materials collection (and seasonal Yard Trimmings collection if City selects Yard Trimmings collection scenario 1) are bundled services (i.e., Customer cannot elect not to receive)
 - City will provide text
- Separate itemization of any fees for overflow Solid Waste, contamination, Bulky Items collection and any other fees approved by the City
 - The only fees allowed on Customer bills are those described in this Request for Proposals and incorporated into the executed agreement. *All costs of service must be addressed in the Core Service rate or fees described in this Request for Proposals*

- City administrative fee(s) may be itemized separately or included with the Core Service price at the City's discretion. If itemized, the City will provide text to be included
- Bills shall include text in Spanish providing Customers with directions for requesting their full bill in Spanish

The Contractor shall provide Customer name, service address, billing address, phone number, Customer email, cart number and related cart sizes per service type to the City in an electronic format acceptable to both parties at the end of the Agreement.

5.8 Customer Service and Education

All customer service functions shall be provided starting in the transition period and shall continue through the Agreement Term. Contractor proposal shall include dates within the transition period when partial and/ or full Customer service capabilities will be provided that align the Contractor's proposed transition schedule.

Dedicated Customer Service Representatives

Prompt customer service from representatives that understand Fort Collins' program is very important to the City. Although the City prefers the Contractor's customer service office to be located in Fort Collins, the City will consider other approaches. However, all dedicated customer service staff shall have a comprehensive working knowledge of Fort Collins neighborhoods and the specific details of services and rates provided under the Agreement. Contractor proposal shall include the number of customer service representatives they will dedicate to service the Customers (distinct from centralized call center responsibilities that service many communities), where the customer service representatives will be located, and how Contractor will ensure customer service representatives are familiar with Fort Collins' contract and neighborhoods.

Customer Service Hours

Dedicated customer service staff shall be available at a minimum from 8 AM to 5 PM MST Monday through Friday and Saturdays during weeks when holidays or service suspensions require Saturday collections. Contractor proposal shall include the hours for which dedicated customer service representatives will be available for Customers. Contractor proposal may, but is not required to, propose roll over hours to national call centers to extend customer service hours (only outside of minimum business hours).

Customer Queries, Complaints and Service Change Requests

The Contractor shall detail in the RFP response their approach to effectively meet the following requirements:

- Address all issues directly
 - The City shall not be the default customer service provider
- Answer Customer contacts primarily with live personnel
 - When call volume is unexpectedly high and live personnel are addressing other City queries, Customers shall be able to leave direct voice mail message; Contractor shall respond to Customer query within 1 business day
 - Maintain an average hold time of two minutes or less for customer service over the phone
 - Maintain an average abandonment rate of less than one percent of customer calls for customer service over the phone

- Resolve any missed collection issues within 1 business day
 - Excluding delays associated with service suspensions
 - Excluding instances where Customer had late set-out, blocked cart or excessive contamination (all of which shall be resolved or referred to the City within 1 calendar week)
- Resolve any other Customer or City complaints within 2 business days
- Respond to any service change or Bulky Items collection requests within 2 business days
 - Actual change or collection shall be completed within 1 calendar week
- Resolve all complaints and requests to the satisfaction of Customers and the City
- City shall have access to the recording of any complaints received via phone (upon request)
- City Representative or their designate shall be copied on all responses to written complaints via email, forms, or other means. The original complaint shall be included in any response.
- Contractor proposal may include proposed Customer service metrics beyond those stated in Section 5.9

Public Outreach and Education

The City will conduct comprehensive public outreach and education activities throughout the Agreement Term. The Contractor shall support these efforts by:

- Producing and distributing Customer notifications as described in Section 5.6
- Maintaining a Fort Collins-specific website page(s) with the same information required for Customer notifications
- Providing Customers with the ability to request service changes online (such as start / stop service, cart size change, Bulky Items collection, report a missed collection, opt out of Yard Trimmings collection (if applicable) etc.)
- Providing service tags and utilizing them as noted throughout this RFP,
- Providing Customers with options for e-mail and text reminders prior to collection days
- Providing the City with information that will impact Customer service at least thirty days before any changes go into effect
 - Including changes in accepted Recyclable Materials or Yard Trimmings, equipment, routing, collection schedule etc.

Contractor proposal shall include examples of similar customer notifications, service tags, websites, and collection day reminders created for other communities it has serviced, if applicable.

5.9 Regular Reports

All reports shall be submitted electronically in a format and with a level of detail that is acceptable to the City. Each report shall include information since the last report (monthly / quarterly / annual). Monthly reports shall be submitted within 15 days of the end of the month. Quarterly and annual reports shall be submitted within 30 days of the end of the month / quarter / year. Information within each topic area shall be sorted by Customer address unless otherwise specified below. For the purpose of this section, service type shall mean Solid Waste, Recyclable Materials, or Yard Trimmings. All reporting periods shall be based on a calendar year. The City reserves the right to request additional information mutually agreed up on by the City Representative and the Contractor. Reports shall include the following:

Immediate Reporting

- Contaminated loads of Recyclable Materials or Yard Trimmings that include materials from Customers that are rejected from processing facilities.
 - Include date, service type, contamination type, situation that caused contamination, and any other relevant details
- Prohibited materials in carts or blocked carts that are not corrected within one week by Customer.

Monthly Report

- Materials collected
 - Scale-based weight data for Solid Waste, Recyclable Materials, Yard Trimmings and Bulky Items collections, including facilities where they were delivered for reuse, recycling, composting, disposal or other management.
 - The weight of City materials in any mixed loads that also includes non-City Solid Waste can be estimated using methodology acceptable to the City
 - If materials were delivered to more than one facility, include the scale-based weight data for each facility
- Customer complaints
 - Include date of complaint, service address, complaint type, resolution, and date resolved
 - For purposes of this report, a complaint is any customer contact other than a service change or information request
 - Contractor and City will develop list of complaint types that are mutually agreeable, and they may include missed pick up, unsafe driving, spills, operating outside permitted hours, customer service phone call hold times, other customer service issues, etc.
- Missed collection
 - Date of missed collection, date of resolution, service type missed, service address, and whether missed collection was due to Contractor or Customer (i.e. late set out, blocked cart etc.)
- Contaminated loads of Recyclable Materials or Yard Trimmings rejected from processing facilities
 - Include date, service type, contamination type, situation that caused contamination, and any other relevant details

Quarterly Report

- Number of Customers receiving Collection Services through the City contract
- Financials
 - Amount of administrative fee collected for remittance to the City
 - Any known performance violations and associated liquidated damages to be remitted to the City
 - Fees charged for the quarter sorted by fee type
 - Number of accounts over 90 days delinquent
- Special service situations and fees assessed
 - Include the incident date, service address, incident resolution and fee charged for the following incident types:
 - Overflow Solid Waste

- Prohibited items in Solid Waste carts (such as Recyclable Cardboard, Electronics, etc.)
 - Blocked carts
 - Contaminated Recyclable Materials carts
 - Contaminated Yard Trimmings carts
- Bulky Items collection
 - Service address, date service request received, date of bulky item pick up, and number of items by type (in categories agreed upon by Contractor and the City)
 - Customer service
 - Number of customer communications
 - Include date and type of customer service (complaint, service change, or information request)
 - Average hold times for phone calls
 - Average number of phone calls per time of day
 - Contractor and City shall mutually determine time categories, such as before 8 am, 8am-11am, 11am-1pm, 1pm to 3pm, 3pm -5pm, after 5pm
 - Cart activity (includes deliveries, replacements, repairs, removal or exchanges)
 - Include type of cart, type of action (delivery, repair, replacement, removal, exchange), request date, completion date, and service address. If Customer is changing cart size, include the initial and new cart size.
 - New opportunities: any new opportunities identified by Contractor to decrease materials landfilled, increase reuse, recycling or composting of materials
 - Number of Customers opting out of Collection Service

Annual Report

- Annual summary of the number of the following
 - Missed collections by Contractor*
 - Missed collections due to Customer (late set-out, blocked cart etc.)*
 - Number of contaminated loads of Recyclable Materials or Yard Trimmings rejected by processor with brief notes of the cause
 - Carts delivered, repaired, replaced, removed or exchanged, sorted by activity type as a number and as a percentage of carts serviced by Contractor's Collection Services
- * Express these data points as a raw number and as a percentage out of all the Customers receiving Collection Services through the City
- Annual summary of each of the following Financials
 - Amount of administrative fee remitted to the City
 - Amount of performance violations and associated liquidated damages remitted to the City
 - Amount of fees charged, sorted by fee type
 - Core Service rates charged to Customers
 - Summary of Bulky Item material collection by item type
 - Facilities where City Solid Waste, Recyclable Materials, Yard Trimmings and Bulky Items were delivered for reuse, recycling, composting, disposal or other management

- New opportunities: any new opportunities identified by Contractor to decrease materials landfilled, increase reuse, recycling or composting of materials

Available to City Upon Request

- Customer and service level details
 - Customer name, service address, billing address, phone number, Customer email, cart numbers and related cart sizes per service type
- Customer invoice
- Photograph of any incident of overflow solid waste, prohibited item in Solid Waste cart, blocked cart, contaminated Recyclable Materials cart, contaminated Yard Trimmings cart
- Recording of customer service interactions over the phone

Quarterly Meeting

City representative and Contractor contact shall meet quarterly to review and discuss Contractor performance. Either entity may also invite additional staff members as appropriate.

Records Retention and Auditing Rights

The Contractor shall maintain all records for a minimum of three (3) years from the end of the Agreement Term and any extension. Contractor records shall be available at all reasonable times for inspection by the City. The City will retain full auditing rights of the Contractor's accounting records as they pertain to the City's contract.

5.10 Solid Waste, Recyclable Materials and Yard Trimmings Composition Analysis

If the City or any agent hired by the City conducts a composition analysis of Solid Waste, Recyclable Materials, Yard Trimmings or other materials, the Contractor shall support by diverting loads identified by the City Representative or their agent to the designated sort site (within Larimer County) during the composition analysis.

Contractor proposals may include a description and prices (see the Pricing Sheet (Attachment 2)) for the Contractor to conduct an annual Solid Waste composition analysis to identify Recyclable Materials and Yard Trimmings still being landfilled, and possible composition analysis of Recyclable Materials and/or Yard Trimmings to identify contamination percentages and items. Composition analysis should utilize the same material categories as past City composition analysis and the same methodologies as much as possible. See 2016 City Solid Waste Composition Analysis at https://www.fcgov.com/recycling/pdf/2016_Landfill__Waste_Composition_Report_28Fort_Collins29.pdf?1555024955

5.11 Contractor Compensation

Service Price Changes

The City agrees that the Contractor's pricing as stated in Attachment 3 may be adjusted annually beginning on the first anniversary of the Service Commencement Date and annually thereafter to reflect changes in the cost of doing business except in instances when performance violations on contract non-compliance issues are unresolved. The adjustment will be the lesser of the Denver-Boulder-Greeley Consumer Price Index (CPI) or three percent annually.

Uncontrollable Cost Increases or Decreases

On an annual basis beginning on the first anniversary of the Service Commencement Date the Contractor may petition the City for an additional pricing adjustment due to uncontrollable costs such as disposal or processing tip fee increases, fuel cost increases or changes in applicable regulations. The Contractor shall petition the City at least ninety (90) days prior to the anniversary date. Price adjustment petitions developed by the Contractor shall consider decreases in fuel costs (if any) as reported by the US Energy Information Administration for the Rocky Mountain region and / or Recyclable Materials tip fees as a potential counter-balance for other uncontrollable costs. Any pricing change under this subsection shall be effective on the anniversary of the Service Commencement Date.

Any petition shall include documentation to justify how the cost increases exceed the three percent per year standard increase. The City reserves the right, as a condition of approval, to inspect Contractor financial records that justify a change in the pricing. The City has no obligation to approve any petition but acknowledges uncontrollable costs may occur and intends to negotiate with the Contractor in good faith.

5.12 Administrative Fee and Liquidated Damages Remittance

The Contractor shall collect the administrative fee through Customer billing on behalf of the City. Contractor shall remit the administrative fee and liquidated damages from performance violations to the City within 30 calendar days of the last day of the calendar quarter via check or electronic transfer (at the City's discretion).

6.0 CONTRACTOR PERFORMANCE

6.1 Performance Standards & Liquidated Damages

Performance standards and liquidated damages for non-compliance to the Agreement requirements are stated in Table 5. In the event the Contractor fails to sustain the stated Performance Standard and/or any non-compliance with the terms of the Agreement may be considered a default subject to resolution in accordance with the terms of the Agreement. Table 5 consists of the following sub-tables:

In the event of a non-compliance, the City will notify the Contractor in writing of the basis of each assessment of liquidated damages and will work in good faith with the Contractor to resolve any disputes related to liquidated damages. Liquidated damages will be due to the City on the next quarterly remittance following assessment of the liquidated damages (per Section 5.12).

See Next Page for Table 5

Table 5
PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Material Conditions for Contract Default

PERFORMANCE STANDARD VIOLATION	LIQUIDATED DAMAGES	CALCULATION BASIS	PERFORMANCE STANDARD
Failure to meet schedule for any transition activity	\$500 per day	Daily	100%
Failure to deliver all Solid Waste to Larimer County Landfill or other permitted landfill (depending on scenario City selects), all Recyclable Materials to Larimer County Recycling Center or other permitted recycling center (depending on scenario City selects), and all Yard Trimmings to approved facilities OR landfilling properly source separated Recyclable Materials or Yard Trimmings	\$3,000 per load	1 - Load	100%
Failure to maintain required insurance coverage	\$5,000 per incident	Insurance expiration date	100%
Failure to maintain irrevocable letter of credit	\$5,000 per incident	IRLOC expiration date	100%
Misrepresentation in reporting including inaccurate City administrative fees or liquidated damages	\$5,000 per incident	Each Reporting Period	100%
Contractor utilizing a driver to provide Collection Services that does not have a valid Class B CDL with air brakes endorsement and Colorado Drivers' License and/or is not current with DOT required training or other DOT requirements	\$1,000 per driver per day	All Drivers	100%
Delayed remittance of City administrative fees or liquidated damages	\$500 per day	Each Billing Period	100%
Failure to participate in mutually scheduled quarterly meeting	\$1,000 per incident	Each Quarterly Meeting	100%
Failure to allow City audits or maintain records for 3 years	\$3,000 per incident	Each City Audit	100%
Failure to provide the date, description and resolution/corrective action taken for any vehicle accidents, infractions, or overweight vehicles that occurred within the last three (3) years.	\$1,000 per incident	Each Reporting Period	100%

Failure to deliver specified loads of material to a designated location in support of a material composition analysis conducted on behalf of the City	\$1,000 per load per audit	Annual Audit	100%
Failure to appropriately bill Customers according to the Agreement OR bill for fees not approved by City OR failure to provide text in Spanish with directions for accessing full bills in Spanish	\$3,000 per billing	Each Billing Period	100%
Failure to provide the number of dedicated service representatives familiar with city neighborhoods and City contract during business hours that are agreed upon in Service Agreement	\$500 per day	Daily	100%

Daily Operations

PERFORMANCE STANDARD VIOLATION	LIQUIDATED DAMAGES	CALCULATION BASIS FOR PERFORMANCE STANDARD	CORRECTIVE ACTION TIME PERIOD	PERFORMANCE STANDARD
Collection before 7 AM or after 7 PM or not on the designated scheduled collection day (each route shall be separate incident)	\$250 per incident	Monthly	Collected between 7AM and 7PM on scheduled collection day	98%
Failure to collect missed collections within 1 business day (excludes late set-outs & blocked carts which shall be collected within 1 calendar week) (excludes severe weather delays, which shall be serviced in accordance with Section 5.5)	\$250 per Customer per day	Monthly	Within specified time frame	98%
Failure to deliver carts after service start-up OR to replace damaged/lost carts within 2 business days	\$250 per day per cart	Monthly	Within 2 business days	98%
Failure to respond to Customer queries within 1 business day	\$250 per incident	Monthly	Within 1 business day	98%
Failure to resolve billing inquiries and disputes within two business days (including Saturdays where staffing is required)	\$250 per incident	Monthly	Within 2 Business Days	98%
Failure to maintain an average hold time of two minutes or less for customer service over the phone	\$250 per incident	Monthly Average	<2 Minutes	98%

EXHIBIT A

Item 20.

Failure to maintain an average abandonment rate of less than one percent of customer calls for customer service over the phone	\$250 per incident	Monthly Average	<1% of Customer Service calls	98%
Failure to resolve Customer or City complaints within 2 business days	\$250 per Customer per day	Monthly	Within 2 business days	98%
Failure to clean up any vehicle leaks or collect materials spilled during the execution of Collection Services within 24 hours	2X cost of clean-up incurred by City	Monthly	Within 24 hours	100%
Collection of overflow Solid Waste, prohibited materials, contaminated Recyclable Materials or contaminated Yard Trimmings without tagging & charging appropriate fee to customer	\$500 per incident	Monthly	Each Customer	98%
Failure to maintain carts in good working condition including needed repairs in accordance with the Agreement	\$100 per Cart	Monthly	Each Customer's	98%
Late or incomplete submission of on request, monthly, quarterly OR annual reports	\$250 per day	Monthly / Quarterly/ Annually	Within specified time frame	100%
Failure to cover vehicles that contain Solid Waste, Recyclable Materials, Yard Trimmings or Bulky Items OR to maintain vehicles that are clean, sanitary & in good working order	\$250 per incident	Each Load	Each Vehicle	100%
Failure to provide Bulky Item collection within 1 calendar week of Customer request	\$250 per Customer per day	Monthly	Within 1 calendar week	98%
Driver providing Collection Service utilizing a cell phone in a moving vehicle	\$500 per cell phone infraction	Monthly	All drivers	100%
Failure to maintain required color-coding for Solid Waste, Recyclable Materials or Yard Trimmings carts OR to maintain hot-stamp labels on all carts OR to maintain printed material guidelines on Recyclable Materials or Yard Trimmings carts	\$250 per cart per day	Monthly	Each Cart	98%
Failure to distribute approved notifications & collection calendars OR to develop/use approved service tags	\$250 per day	Monthly	Within specified time frame 98%	98%

6.2 Contactor Performance Review

The City reserves the right to conduct a full review of Contractor performance at any time during the contract term if any condition identified in the Agreement (see Attachment 4) occurs. If during the

review process the City finds that Contractor performance is unacceptable (regardless of remedies completed or penalties paid), it may subject the Contractor to the requirements of the termination clause in the Agreement (Attachment 4).

6.3 Irrevocable Letter of Credit

During the Term of the Agreement, the Contractor shall maintain an Irrevocable Letter of Credit as stated in the Agreement. (See Attachment 4).

7.0 REVIEW AND ASSESSMENT CRITERIA

Contractors will be evaluated on the criteria stated in Table 7. This set of criteria will be the basis for review and assessment of the written proposals and optional interview session. At the discretion of the City, interviews of the top-rated Contractors may be conducted.

The rating scale shall be from 1 to 10 for each criteria category with the following baseline for ratings:

- 1 = does not meet minimum requirements
- 5 = fulfills the minimum requirements
- 10 = exceeds minimum requirements in that category

Table 7

PROPOSAL EVALUATION CRITERIA

CRITERIA	WEIGHTING
Acceptance Key Components of City Contract and Ability to Meet Service Requirements	10%
Strategy(ies) for Enhanced Sustainability and Equity	15%
Commitment to a High-Level of Customer Service	35%
Customer Pricing	40%
Total	100%

8.0 ANTICIPATED SCHEDULE

The following represents the City's target schedule for the RFP. The City reserves the right to amend the target schedule at any time.

- RFP issuance: September 12, 2022
- Pre-bid meeting: 1:00 PM MT on September 26, 2022
- Question deadline: 5:00 PM MT on October 3, 2022
- Proposal due date: 5:00 PM MT (our clock) on October 24, 2022
- Interviews (tentative): November / December 2022
- Award of Contract (tentative): February 2023

9.0 INTERVIEWS

In addition to submitting a written proposal, the top-rated Contractor may be interviewed by the RFP assessment team and asked to participate in an oral presentation to provide an overview of the company, approach to the project and to address questions. The evaluation criteria for the oral interviews will be the same as the criteria for the written evaluations and is included in Section 8.0.

Because of recent events involving COVID-19, the City may use non-traditional methods for the optional interview phase of the assessment process. The City will receive and score written proposals. However, instead of traditional in-person interviews for the optional interview session, the City may opt to use alternate methods including, but not limited to remote interviews through a platform such as Microsoft Teams or Zoom.

10. PROPOSAL SUBMITTAL

Please limit the total length of your proposal to a maximum of fifty (50) 8 ½ x 11" pages (excluding cover pages, table of contents, dividers and Acknowledgement form, and Pricing Sheet). Font shall be a minimum of 10 Arial and margins are limited to no less than .5" for sides and top/bottom. Extended page sizes, such as 11" x 17", count as a single page and may be used for detailed pricing. Links to other files or websites shall not be permitted. Proposals that do not conform to these requirements may be rejected.

Contractors are required to provide detailed written responses to the following items in the order outlined below. The responses shall be considered technical offers of what Contractors propose to provide and shall be incorporated in the contract award as deemed appropriate by the City. A proposal that does not include all the information required may be deemed non-responsive and subject to rejection.

Responses must include all the items in the order listed below. It is suggested that the Contractors include each of the City's questions with their response.

The City of Fort Collins shall not reimburse any firm for costs incurred in the preparation and presentation of their proposal.

10.1 Cover Letter / Executive Summary

The Executive Summary should highlight the content of the proposal and features of the program offered, including a general description of the program and any unique aspects or benefits provided by your firm.

Indicate your availability to participate in the interviews on the proposed dates as stated in the Section 8, Anticipated Schedule.

10.2 Contractor Background

1. Describe the Contractor's business and background
2. Number of years in the business
3. Details about ownership
4. An overview of services offered and qualifications
5. Size of the firm
6. Location(s) of offices. If multiple, please identify which will be the primary for our account.
7. Primary contact information for the company including contact name(s) and title(s), mailing address(s), phone number(s), and email address(s).

10.3 Scope of Proposal

Solid Waste Collection Service

- Complete Pricing Sheet (Attachment 3) for Solid Waste Collection Service and overflow Solid Waste fee

- Provide program details for the Super Saver Service
 - o Container type
 - o Service frequency
 - o If proposing bag / tag / sticker service, include location within City limits where customer would purchase bags / tags / stickers

Recyclables Collection Service

- Address any proposed additions to the materials stated in Table 3
- Complete Pricing Sheet (Attachment 3) for Recyclable Materials Service Scenario 1: Every-other-week collection of up to two Large Recyclable Materials Carts
- Complete Pricing Sheet (Attachment 3) for Recyclable Materials Service Scenario 2: Weekly collection of one Large Recyclable Materials Cart

Yard Trimmings Service

- Planned destination(s) for Yard Trimmings
- May identify any proposed additions to the materials included in Table 4
- Complete Pricing Sheet (Attachment 3) for Yard Trimmings Service Scenario 1: Bundled seasonal Yard Trimmings collection service for 100% of Customers
- Complete Pricing Sheet (Attachment 3) for Yard Trimmings Service Scenario 2: Optional seasonal Yard Trimmings collection service with estimated participation rate of 75% of Customers

Bulky Items Collection

- Provide details about the types of collection equipment to be used for Bulky Items collection
- Address your approach to encourage Customers to reuse Bulky Items rather than landfilling them
- Complete Pricing Sheet (Attachment 3) for Additional Fee Bulky Items proposed items and related prices
- Complete Pricing Sheet (Attachment 3) for Bulky Items Collection Scenario 1: Collection of up to two No Additional Fee Bulky Items / year for each Customer
- Complete Pricing Sheet (Attachment 3) for Bulky Items Collection Scenario 2: Collection of unlimited Bulky Items for a separate price

Dumpster Service

- Complete Pricing Sheet (Attachment 3) for proposed pricing for Solid Waste and Recyclable Materials Dumpster service for multi-unit residential buildings with eight or more units and commercial buildings that opt in to receive such service by Contractor

Additional Services or Additional Material Collection or Other Ways to Improve Program

- Provide details about any proposed additional services and/or additional material collections and/or other ways to improve the program to be included in the scope of the City's Agreement
- Provide pricing for any proposed additional services and/or additional material collections or other program improvements. Include pricing in an addendum to the Pricing Sheet (Attachment 3)

10.4 Operational Specifications

Carts

- Provide proposed cart manufacturer, model number, and brief summary of the basis for the selected cart manufacturer and model

- Provide details about the cart warranty, including length of warranty and transferability to the City at the end of the Agreement Term
- Complete the Pricing Sheet (Attachment 3) for the cost to be applied to the Customer bill for the purchase, assembly, delivery and maintenance of the carts
- Provide strategy for removing existing Customer carts and replacing with new carts as well as providing carts to new Customers during the transition period with no service disruption
- Provide overview of strategy for maintain the optimum mix of cart sizes to support Customers
- Provide details about the proposed location for ongoing cart storage, cleaning and repair

Collection Vehicles

- Provide details about the vehicles to be used for the Collection Services including but not limited to the following:
 - Vehicle type, manufacturer, and model number
 - Number of vehicles by vehicle type
 - Fuel by vehicle type
 - Average vehicle age by vehicle type
 - Overview of vehicle replacement schedule
 - Overview of preventative and corrective maintenance programs
- Plan to track and address overweight vehicles
- Sustainable vehicle strategy including
 - Contractor's level of commitment and timing to implement all or some of the strategies to reduce greenhouse gases (see Section 5.2 for complete list)

Program Transition Services

Contractor's proposal will include proposed dates for each of the following activities:

- Develop, produce and distribute public notifications to customers
 - Contractor shall collaborate with the City to design the public notifications and City shall have final approval authority
 - Contractor shall distribute public notifications at the following times at a minimum
 - During the initial start-up period
 - When new customers start service (after the service start-up period)
 - When customers change service levels at any time
 - Annually to all customers at a time agreed upon with City Representative
 - The notification shall be in a multi-color, user-friendly format with any text in both English and Spanish and shall include:
 - Available service levels and rates
 - Annual collection calendar
 - Set-out times and locations
 - Directions for changing service levels, managing overflow Solid Waste, contamination, and requesting additional services
 - Guidance on acceptable and unacceptable materials in Recyclable Materials and Yard Trimmings carts
- Develop service address list
- Facilitate and manage Customer cart size selection
- Conduct all billing set up
- Develop and distribute a collection calendar(s) for all Customers
- Produce service tags to address situations such as blocked carts, Solid Waste overflows, contaminated Recyclable Materials or Yard Trimmings, or other conditions that impact service or safety. Tags shall:

- o Include text in English and Spanish
- o Be made of durable, water-resistant material that can be written on
- o Be printed with 1 color
- o Have a mechanism for temporary attachment to carts
- o Be a minimum size of 5" x 10"
- Remove all containers from existing Customers at no additional cost per Section 6.1
- Purchase, assemble and deliver new carts to all Residential Units
- Provide services included in this Request for Proposals

Billing

- Anticipated billing frequency and whether it will be assessed in advance or in arrears and why
- Address how the Contractor proposes to address the funding from Extended Producer Responsibility when it comes available (HB22-1355)

Customer Service and Education

- Dates within the transition period when partial and/ or full Customer service capabilities will be provided that align the Contractor's proposed transition schedule
- Number of customer service representatives Contractor will dedicate to service the Customers (distinct from centralized call center responsibilities that service many communities), where the customer service representatives will be located, and how Contractor will ensure customer service representatives are familiar with Fort Collins' contract and neighborhoods
- Hours for which dedicated customer service representatives will be available for Customers
- May propose roll over hours to national call centers to extend customer service hours (only outside of minimum business hours)
- Details of how Contractor shall:
 - Address all issues directly
 - o The City shall not be the default customer service provider
 - Answer Customer contacts primarily with live personnel
 - o When call volume is unexpectedly high and live personnel are addressing other City queries, Customers shall be able to leave direct voice mail message; Contractor shall respond to Customer query within 1 business day
 - Resolve any missed collection issues within 1 business day
 - o Excluding delays associated with service suspensions
 - o Excluding instances where Customer had late set-out, blocked cart or excessive contamination (all of which shall be resolved or referred to the City within 1 calendar week)
 - Resolve any other Customer or City complaints within 2 business days
 - Respond to any service change or Bulky Items collection requests within 2 business days
 - o Actual change or collection shall be completed within 1 calendar week
 - Resolve all complaints and requests to the satisfaction of Customers and the City
- May include proposed customer service metrics beyond those listed in Section 6.8
- Include examples of similar customer notifications, service tags, websites, and collection day reminders created for other communities it has serviced, if applicable

Solid Waste, Recyclable Materials and Yard Trimmings Composition Analysis

- Contractor proposals may include a description and costs (see the Pricing Sheet (Attachment 3))

Confidential Redacted Version of Contractors Proposal

Provide redacted version (if applicable) of proposal for public disclosure. Any proposed redactions must be limited to “trade secrets, privileged information, and confidential commercial, or financial information” pursuant to the Colorado Open Records Act (CORA). Contractor must submit a supplemental document explaining the justification for each redaction.

Subcontractors

The Contractor shall provide details regarding any subcontractors contractor proposes to use to provide services under the Agreement.

Acknowledgement

All Contractors submitting a proposal must sign the Acknowledgement Form (See Attachment 1)

10.5 Sustainability/TBL Methodology

In concise terms (no more than two pages), please describe your organization’s commitment to sustainability and supporting values.

Each element of the TBL sustainability criteria will receive equal consideration in determining the final Sustainability/TBL score.

1. Address how your firm strives to incorporate all three aspects (social, environmental, and economic) of Triple Bottom Line (TBL) sustainable practices into the workplace. Provide examples along with any metrics used to measure success within your firm.
2. Also provide examples of how your firm has incorporated all three aspects of TBL sustainable practices in previous similar projects on which your firm has been the prime Contractor.

Some examples are provided below:

- a. Environmental – Experience delivering projects / programs focused on environmental health priorities in the areas of climate resiliency, water quality and watershed protection, regulatory performance, management systems, air quality, renewable energy, sustainable building and design, construction materials management, and Solid Waste reduction.
- b. Economic – Experience working and delivering projects with an emphasis on strategic financial planning, job creation, business development, asset management, various project delivery methods, value engineering, regional partnerships, transparency, stakeholder engagement, strategic investments, aging infrastructure, repurposing of existing facilities, and competing financial priorities.
- c. Social - Experience working and delivering projects, programs, and/or initiatives that support Equity, Diversity, and Inclusion throughout your firm’s workplace, including leadership, and supply chain. Examples of this may be demonstration of working within cultural and language gaps, development of diversity programs, diverse project teams, equitable opportunity vendor supply chain, and how your firm has applied an equity lens to processes such as recruitment, hiring, purchasing, career pathways, salaries, and staff engagement.

11. SAMPLE AGREEMENT

Included with this request for proposals is a sample Agreement that the City intends to use for obtaining the services of the Contractor. The Contractor is required to review this Agreement and indicate any objections to the terms of the contract. If revisions to the contractual terms are requested, provide suggested revisions.

12. ACKNOWLEDGEMENT

The Acknowledgement form is attached as Attachment 1. Complete the attached form indicating the Contractor hereby acknowledges receipt of the City of Fort Collins Request for Proposal and acknowledges that the Contractor has read and agrees to be fully bound by all of the terms, conditions and other provisions set forth in the RFP.

See Next Page for Attachment 1

Attachment 1

ACKNOWLEDGEMENT

Contractor hereby acknowledges receipt of the City of Fort Collins Request for Proposal and acknowledges that it has read and agrees to be fully bound by all of the terms, conditions and other provisions set forth in the RFP 9648 Residential Solid Waste Collection and sample Agreement except as otherwise noted. Additionally, Contractor hereby makes the following representations to City:

- a. All of the statements and representations made in this proposal are true to the best of the Contractor's knowledge and belief.
- b. Contractor commits that it is able to meet the terms provided in this proposal.
- c. This proposal is a firm and binding offer, for a period of 90 days from the date hereof.
- d. Contractor further agrees that the method of award is acceptable.
- e. Contractor also agrees to complete the proposed Agreement with the City of Fort Collins within 10 days of notice of award. If contract is not completed and signed within 10 days, City reserves the right to cancel and award to the next highest rated firm.
- f. Contractor acknowledges receipt of ___ addenda.
- g. Contractor acknowledges no conflict of interest.
- h. Failure to provide a public viewing copy will be considered a waiver of any claim of confidentiality under Colorado Open Records Act (CORA). Contractor hereby waives any and all claims for damages against the City for the City's good faith compliance with CORA.

Legal Firm Name: _____

Physical Address: _____

Remit to Address: _____

Phone: _____

Name of Authorized Agent of Firm: _____

Signature of Authorized Agent: _____

Primary Contact for Project: _____

Title: _____ Email Address: _____

Phone: _____ Cell Phone: _____

NOTE: ACKNOWLEDGMENT IS TO BE SIGNED & RETURNED WITH YOUR PROPOSAL.

EXHIBIT A

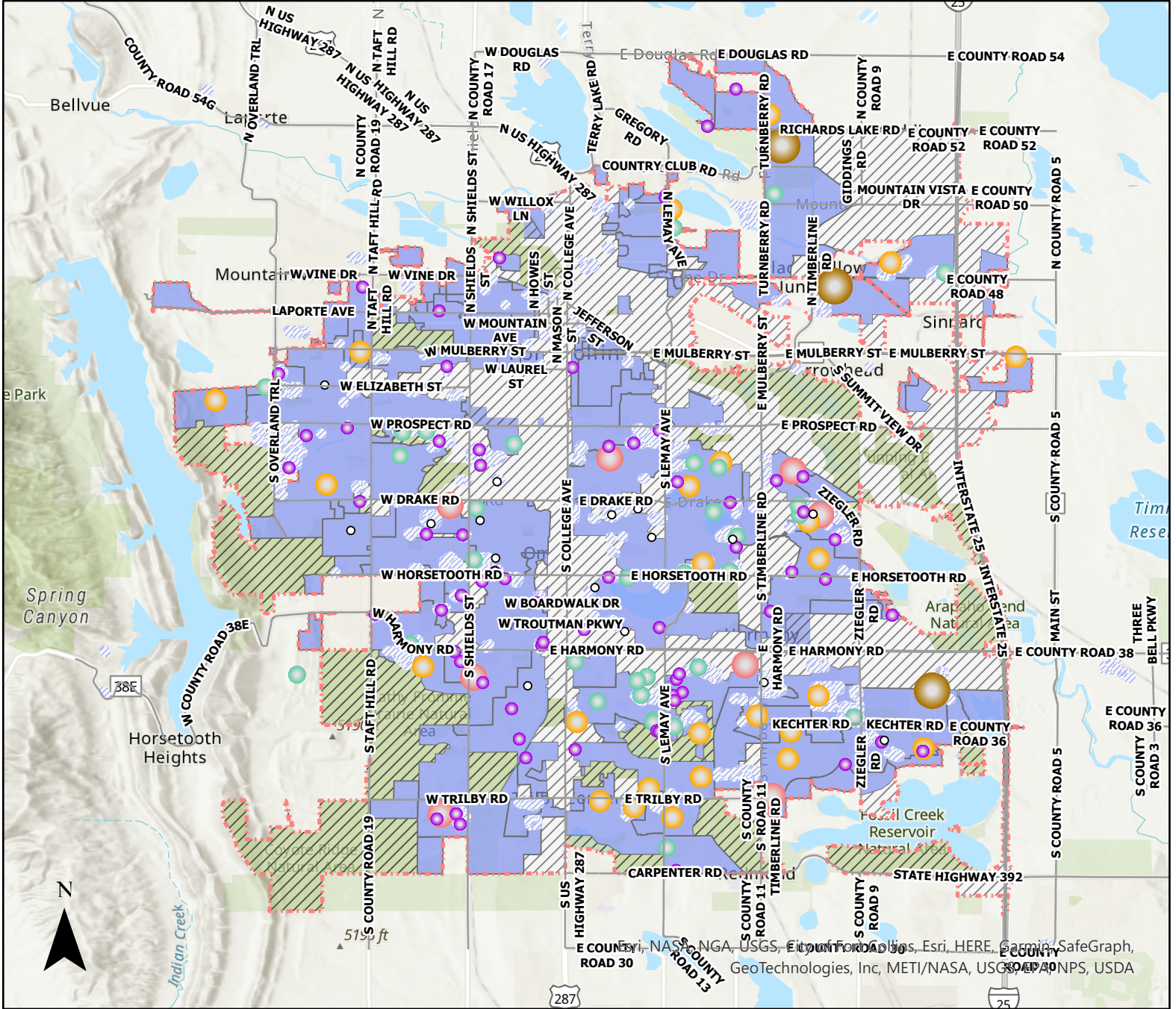
Attachment 2

HOAs

See Next Page

Item 20.

Residential Areas That May Be Serviced by a Contracted Hauler



HOA with Contract by # Units, Likely Excluded

- 0-10
- 10-50
- 50-100
- 100-300
- 300-500
- 500-700

Class

- Not Primary Residential
- Out of Scope Residential
- Primary Residential
- Public Land
- City Limits

EXHIBIT A

Attachment 3

Pricing Sheet

See Separate Excel Attachment

Item 20.

EXHIBIT A

Attachment 4

Agreement

See Next Pages

Item 20.

AGREEMENT FOR RESIDENTIAL SOLID WASTE COLLECTION SERVICES

THIS AGREEMENT FOR RESIDENTIAL SOLID WASTE COLLECTION SERVICES ("Agreement") is made and entered into by and between the CITY OF FORT COLLINS, a Colorado home-rule municipal corporation ("City"), whose address is 300 LaPorte Ave., Fort Collins, Colorado 80521 and _____ ("Contractor"), whose address is _____, each of which is individually a "Party" and collectively are the "Parties".

WHEREAS, the Contractor, in response to the City's Request for Proposals ("RFP") No. 9648 dated September 12, 2022, submitted a proposal for Residential Solid Waste Collection Services dated October __, 2022 ("Proposal"), to provide Collection Services for Residential Units, as such terms are defined below, within the City; and

WHEREAS, based on the outcome of the RFP the City has selected the Contractor to perform the Collection Services for Residential Units in accordance with the terms of this Agreement and pursuant to the City's authority under C.R.S. § 30-15-401(7.5) and Chapter x, Article y of the City Code; and

WHEREAS, pursuant to C.R.S. § 30-15-401(7.5) and Section 8-186(a) of the City Code, this Agreement is subject to approval by the City Council of the City of Fort Collins by ordinance.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Definitions. For the purposes of this Agreement, the following terms shall have the meanings set forth herein unless the context specifies otherwise:
 - A. "Bulky Waste" means Solid Waste that does not fit in a closed solid waste cart, excluding hazardous waste, electronics, yard trimmings, recyclable cardboard, items that weigh more than 60 pounds, and items larger than 6' x 6'.
 - B. "Collection Services" means the collection, transportation, and delivery to an appropriate facility of solid waste, recyclable materials, yard trimmings, bulky items, and associated services for residential units conducted in a manner consistent with all applicable laws and regulations and the provisions of this Agreement.
 - C. "Customer" means a customer of the Collection Services.
 - D. "Contractor" means Firm Name.
 - E. "Dumpster" means a metal or plastic container, one (1) cubic yard to ten (10) cubic yards in volume, that is manufactured and used for the collection of solid waste or recyclable materials.

- F. "Effective Date" means the effective date of this Agreement, which shall be the date stated in Section 4, Contract Term.
- G. "Electronics" means any electronic device or electronic component as those terms are defined in the Colorado Hazardous Waste Regulations, 6 Code of Colorado Regulations 1007-3, Section 260.10 and as amended by the State of Colorado from time to time.
- H. "Hazardous waste" means any chemical, compound, substance or mixture that state or federal law designates as hazardous because it is ignitable, corrosive, reactive or toxic, including but not limited to solvents, degreasers, paint thinners, cleaning fluids, pesticides, adhesives, strong acids and alkalis and waste paints and inks.
- I. "Recyclable cardboard" means corrugated cardboard, and shall include, but not be limited to, materials used in packaging or storage containers that consist of three (3) or more layers of Kraft paper material, at least one (1) of which is rippled or corrugated. Cardboard shall be considered recyclable cardboard regardless of whether it has glue, staples or tape affixed, but not if it is permanently attached to other packing material or a non-paper liner, waxed cardboard or cardboard contaminated with oil, paint, blood or other organic material.
- J. "Recyclable materials" means the materials listed in Table 3 of Exhibit A and any other materials identified by Contractor and approved by the City as recyclable materials, provided those materials have been separated from solid waste and can be recovered as useful materials and are properly prepared for the purpose of recycling.
- K. "Residential Units" means all single-unit residential buildings, and multi-unit residential buildings containing seven (7) dwelling units or fewer within the City, subject to certain exceptions and City-granted variances as stated in Exhibit A. Residential units also includes any service opt-in customers.
- L. "Service Opt-in" means Homeowner Associations within the City that meets an exception to the definition of Residential Units as provided in Exhibit A that opts-in to be a Customer and/or a multi-unit residential building containing eight (8) or more dwellings within the City that opts-in to be a Customer.
- M. "Services Commencement Date" means as stated in Section 5 of this Agreement.
- N. "Solid waste" means all refuse, putrescible and nonputrescible waste, excluding electronics, discarded or abandoned vehicles or parts thereof, sewage, sludge, septic tank and cesspool pumpings or other sludge, discarded home or industrial appliances, hazardous wastes, materials used as fertilizers or for other productive purposes and recyclable materials or yard trimmings which have been source separated for collection.

- O. "Yard trimmings" means those materials included in Table 4 of Exhibit A and any other similar organic materials identified by Contractor and approved by the City as yard trimmings.
2. Scope of Agreement.
- A. This Agreement pertains to Collection Services for Residential Units in the City provided by Contractor on behalf of the City pursuant to the City's authority in C.R.S. § 30-15-401(7.5). Contractor's work under this Agreement shall consist of all supervision, materials, equipment, fuel, labor, tip fees and other items necessary to provide a high level of customer service, timely accurate billing, and the collection, transportation and disposal of solid waste, recyclables, yard trimmings, bulky waste from Residential Units in accordance with the provisions of this Agreement.
- B. This Agreement shall not be considered a franchise for services to the residents of the City and any residential household may choose to negotiate with any other solid waste collection service provider licensed to do business in the City or may choose to remove their own solid waste and recyclables in accordance with applicable laws and regulations.
3. Scope of Services. Beginning on the Effective Date or Services Commencement Date, as applicable, the Contractor will provide the following services to the City or, as applicable, to each Customer:
- A. Contractor's Proposal. Contractor's Proposal is incorporated into this Agreement by this reference. In the event a conflict exists between this Agreement and any term in the Proposal, the terms in this Agreement shall supersede the terms in Proposal.
- B. Collection Services. Collection of solid waste, recyclables, yard trimmings, bulky waste and associated services for Residential Units shall be in accordance with **Exhibit A**, which is attached hereto and incorporated herein by this reference.
- C. Operating Specifications. All services performed hereunder shall be subject to the requirements stated in **Exhibit B**, which is attached hereto and incorporated herein by this reference.
- D. Contractor Performance. The Contractor is required to provide a high level of customer service, timely and accurate billing provided by Contractor on behalf of the City, and professionalism in the performance of services under this Agreement. Performance failures will be addressed, to the extent possible, through liquidated damages for certain infractions as set forth on **Exhibit C**. The parties agree, assigning a monetary value for damages to the City and the public for performance

failures for such matters do not easily translate to the dollar amount of such damage, and that the liquidated damage amounts that are set forth in **Exhibit C**, which is attached hereto and incorporated herein by this reference, are reasonable estimates as to the dollar amount of damage incurred in relation to each offending act or omission.

- E. **Pricing.** The Contractor shall perform Collection Services for Residential Units at the prices stated in **Exhibit D**, which is attached hereto and incorporated herein by this reference.
- F. **Insurance.** Without limiting any of the Contractor's obligations hereunder, the Contractor shall provide and maintain insurance coverage naming the City as an additional insured under this Agreement of the type and with the limits specified within **Exhibit E**, which is attached hereto and incorporated herein by this reference. Prior to the Effective Date of the Agreement, the Contractor shall deliver to the City's Purchasing Director, purchasing@fcgov.com or P.O. Box 580, Fort Collins, Colorado 80522, one copy of a certificate evidencing the insurance coverage required from an insurance company acceptable to the City.
- G. **Confidentiality.** The Contractor shall comply with **Exhibit F**, which is attached hereto and incorporated herein by this reference.
4. **Contract Term.** Subject to approval by ordinance of the Fort Collins City Council, this Agreement shall commence effective _____ (“Effective Date”) and shall continue in full force and effect for five (5) years from the Services Commencement Date, unless terminated as provided herein (“Term”).
5. **Services Commencement Date.** The Services Commencement Date is the date the Contractor starts collecting solid waste, recycling, yard trimmings, and bulky waste under the Agreement. This date shall be mutually agreed upon by the parties and will be not less than six (6) and not more than twenty-four (24) months from the Effective Date of the Agreement
6. **Early Termination by City.** Notwithstanding the time periods contained herein, the City may terminate this Agreement at any time without cause by providing written notice of termination to the Contractor. Such notice shall be delivered at least six (6) months prior to the effective date of the termination.
7. **Carts.** Upon expiration or termination of the Agreement, ownership of all carts and replacement parts for such carts purchased by the Contractor under this Agreement shall transfer to the City. In the event of expiration or termination for Contractor default, the ownership of the Carts shall transfer to the City at no-cost, free and clear of any liens or debt. In the event the Agreement is terminated early by the City in accordance with Section 6, the City shall pay the Contractor the net present value of the monthly cost per

cart multiplied by the number of months remaining to reach five (5) years from the Service Commencement Date. Upon transfer of ownership any manufacturer's warranty for the carts shall transfer to the City.

8. Notices. All notices provided under this Agreement shall be effective immediately when emailed or three (3) business days from the date of the notice when mailed to the following addresses:

Contractor

City

City of Fort Collins
 Attn: Project Manager
 PO Box 580
 Fort Collins, CO 80522
 City of Fort Collins
 Attn: Purchasing Director
 PO Box 580
 Fort Collins, CO 80522

City of Fort Collins
 Attn: City Attorney
 PO Box 580
 Fort Collins, CO 80522

9. Appropriation. To the extent this Agreement or any provision in it constitutes a multiple fiscal year debt or financial obligation of the City, it shall be subject to annual appropriation by City Council as required in Article V, Section 8(b) of the City Charter, City Code Section 8-186, and Article X, Section 20 of the Colorado Constitution. The City shall have no obligation to continue this Agreement in any fiscal year for which no such supporting appropriation has been made.
10. City Representative. The City has designated _____ to serve as its representative who shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the Services provided under this Agreement. The City may change its representative by providing written notice of such change to

Contractor. All requests concerning this Agreement shall be directed to the City Representative. Notwithstanding the foregoing, any changes to the Agreement shall not be binding on either party without a written amendment to the Agreement.

11. Marks. Subject to a Party's express written approval, the other Party may use the Party's name, logo, symbol, trademark or service mark (together "Marks") in electronic, printed, stamped or inscribed materials to support and promote the relationship between the Parties during the Contract Period. Each Party's right to use the Marks is royalty-free, non-exclusive, non-transferrable, and non-assignable.
12. Independent Service Provider. It is the express intention of the Parties that Contractor is an independent contractor performing services and is not an employee, agent, joint venturer, or partner of City. The City shall not be responsible for withholding any portion of Contractor's compensation hereunder for the payment of FICA, Workmen's Compensation or other taxes or benefits or for any other purpose.
13. Subcontractors. Contractor may not subcontract any of the Collection Services set forth in this Agreement without the prior written consent of the City. If any of the Services are subcontracted hereunder (with the consent of the City), then the following provisions shall apply: (a) the subcontractor must be a reputable, qualified firm with an established record of successful performance in its respective trade performing identical or substantially similar work, (b) the subcontractor will be required to comply with all applicable terms of this Agreement, (c) the subcontract will not create any contractual relationship between any such subcontractor and the City, nor will it obligate the City to pay or see to the payment of any subcontractor, and (d) the work of the subcontractor will be subject to inspection by the City to the same extent as the work of the Contractor. Contractor shall be solely responsible for performance of all duties hereunder.
14. Personal Services. It is understood that the City enters into the Agreement based on the special abilities of the Contractor and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Contractor shall neither assign any responsibilities nor delegate any duties arising under the Agreement without the prior written consent of the City.
15. Acceptance Not Waiver. The City's approval or acceptance of, or payment for any of the Services shall not be construed to operate as a waiver of any rights or benefits provided to the City under this Agreement or cause of action arising out of performance of this Agreement.
16. Warranty.
 - A. The Contractor hereby warrants that it is qualified and has the operational capacity and equipment to assume the duties and responsibilities necessary to effectively render the services described herein and has all the requisite corporate authority, professional licenses, and permits in good standing required by law.

B. The services performed by the Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work. The services to be performed by the Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules, and regulations.

17. City's Role. The Contractor shall provide all services with no direct support by City staff. Although City staff may collaborate with Contractor on certain initiatives such as Customer education and communication, such support is solely at the City's discretion. Notwithstanding the foregoing, the City intends to monitor and evaluate the progress and performance of Contractor to ensure the terms of this Agreement are being satisfactorily met in accordance with the City's and other applicable monitoring and evaluating criteria and standards. Contractor shall fully cooperate with the City relating to such monitoring and evaluation.

18. Force Majeure. If either party is prevented in whole or in part from performing its obligations by force majeure, then the party so prevented shall be excused from whatever performance is prevented by such cause. "Force Majeure" means any act or event that prevents a party from performing its obligations in accordance with the Agreement where the act or event is beyond the reasonable control and not the result of the fault or the negligence of the affected party and such party is unable to overcome such act or event through the exercise of due diligence. Such acts and events, include but are not limited to, acts of God, fire, explosion, accident, flood, earthquake, epidemic, war, riot, and restraints or injunctions, not resulting from a party's breach of any terms and conditions of this Agreement or any other contractual commitment. Force majeure acts or events do not include: economic or financial events that impact the Service Provider's ability to access or use financial resources; or labor disputes or strikes. Weather that causes City closures or delayed starts, as referenced in the Severe Weather Protocol in Exhibit A, is not a force majeure act or event. To the extent that the performance is actually prevented, the Service Provider must provide written notice to the City of such condition within ten (10) days from the onset of such condition.

19. Disputes Resolution. Except in the event of a Default, pursuant to Section 20, the Parties shall attempt to resolve disputes as follows:

A. Informal Dispute Resolution. The Parties will use reasonable efforts to resolve any disputes under this Agreement through negotiation. If a dispute arises between the Parties, the primary Representative for each Party will first strive to work out the problem internally. If the Representatives are unable to resolve the dispute within ten (10) days of commencing discussions, then either Party may deliver a written notice to the other Party describing the nature and substance of the dispute and proposing a resolution (the "Notice of Dispute").

B. Executive Negotiation. During the first ten (10) days following the delivery of the Notice of Dispute (and during any extension to which the Parties agree) an authorized executive of each Party shall attempt in good faith to resolve the dispute through negotiations. If such negotiations result in an agreement in principle to

settle the dispute, they shall cause a written settlement agreement to be prepared, signed and dated, whereupon the dispute shall be deemed settled, and not subject to further dispute resolution.

- C. **Unresolved Disputes.** Upon the Parties' mutual written agreement, any dispute under this Section 19 may be submitted for resolution to mediation to occur in Fort Collins, Colorado. The Parties reserve all rights to adjudicate any dispute not submitted to mediation under this Section 19 of the Agreement. In the event of mediation, the Parties shall share the cost for the mediator(s) equally and each party shall be solely responsible for their own legal counsel expenses.

20. **Default.** Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default thereof.

21. **Remedies.** In the event a party has been declared in default, such defaulting party shall be allowed a period of ten (10) 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) avail themselves of any other remedy at law or equity. If the non-defaulting party commences legal or equitable actions against the defaulting party, the defaulting party shall be liable to the non-defaulting party for the non-defaulting party's reasonable attorney fees and costs incurred because of the default.

22. **Performance Security.**

- A. The Contractor shall provide performance security by providing the City an irrevocable letter of credit in a form satisfactory to the City ninety (90) days prior to the Service Commencement Date. The amount of the letter of credit will be One-Million Dollars (\$1,000,000) issued by a local, federally insured (FDIC) banking institution with a debt rating of 1A or higher by the FDIC or A or higher by Standard & Poor's, Moody's Investor, or comparable agency as determined by the City.
- B. The irrevocable letter of credit shall contain the following endorsement, "At least sixty (60) days prior to cancellation, replacement, failure to renew or material alteration of this irrevocable letter of credit, written notice of such intent shall be given to the City by the financial institution. Such notice shall be given by certified mail to the City of Fort Collins, Purchasing Director, 215 North Mason, Fort Collins, CO 80522."
- C. The irrevocable letter of credit shall be released to the City in the event this Agreement is terminated by reason of breach or default of the Contractor. The irrevocable letter of credit will be released to Contractor at the end of the Agreement Term, provided there is no outstanding breach, default, or other payment deductions or adjustments.

D. The rights reserved to the City with respect to the irrevocable letter of credit are in addition to all other rights of the City, whether reserved by this Agreement, or otherwise authorized by law, and no action, proceeding or right with respect to the irrevocable letter of credit shall affect any other rights the City has or may have under the law.

23. Entire Agreement; Binding Effect; Order of Precedence; Authority to Execute. This Agreement, along with all Exhibits and other documents incorporated herein, shall constitute the entire Agreement of the parties regarding this transaction and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties. Covenants or representations not contained in this Agreement shall not be binding on the parties. In the event of a conflict between terms of the Agreement and any exhibit or attachment, the terms of the Agreement shall prevail. Each person executing this Agreement affirms that they have the necessary authority to sign on behalf of their respective party and to bind such party to the terms of this Agreement.

24. Indemnity. The Contractor agrees to indemnify and save harmless the City, its officers, agents and employees against and from any and all actions, suits, claims, demands or liability of any character whatsoever brought or asserted for injuries to or death of any person or persons, or damages to property arising out of, result from or occurring in connection with the performance of any service hereunder.

The Contractor shall take all necessary precautions in performing the work hereunder to prevent injury to persons and property.

25. Compliance with Law: The services to be performed by the Contractor hereunder shall be done in compliance with all applicable federal, state, county and City laws, ordinances, rules and regulations. Contractor must be properly licensed by the City to perform Collection Services.

26. Law/Severability. The laws of the State of Colorado shall govern the construction, interpretation, execution, and enforcement of this Agreement. The Parties further agree that Larimer County District Court is the proper venue for all disputes. If the City subsequently agrees in writing that the matter may be heard in federal court, venue will be in Federal District Court in Denver, Colorado. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

27. Prohibition Against Unlawful Discrimination. The City, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, affirmatively ensures that for all contracts entered into with the City, disadvantaged business enterprises are afforded a full and fair opportunity to bid on the contract and are not to be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The City strictly prohibits unlawful discrimination based on an individual's gender (regardless of gender identity or gender expression), race, color, religion, creed, national origin, ancestry, age 40 years or older, marital status, disability, sexual orientation, genetic information, or other characteristics protected by law. For the purpose of this policy "sexual orientation" means a person's actual or perceived orientation toward heterosexuality, homosexuality, and bisexuality. The City also strictly prohibits unlawful harassment in the workplace, including sexual harassment. Further, the City strictly prohibits unlawful retaliation against a person who engages in protected activity. Protected activity includes an employee complaining that he or she has been discriminated against in violation of the above policy or participating in an employment discrimination proceeding.

The City requires its vendors to comply with the City's policy for equal employment opportunity and to prohibit unlawful discrimination, harassment and retaliation. This requirement applies to all third-party vendors and their subcontractors at every tier.

28. Governmental Immunity Act. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, by the City of any of the notices, requirements, immunities, rights, benefits, protections, limitations of liability, and other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq. and under any other applicable law.
29. Colorado Open Records Act. The Contractor hereby acknowledges that the City is a public entity subject to Sec. 24-72-201 et seq. of the Colorado Revised Statute (CORA). This Agreement is subject to public disclosure in whole pursuant to CORA.
30. Survival: Any terms and conditions of this Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.
31. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

Signature Page Follows

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first written above.

CITY OF FORT COLLINS

CONTRACTOR

Kelly DiMartino, City Manager

Date

CITY OF FORT COLLINS

Gerry Paul, Purchasing Director

Date

APPROVED AS TO FORM

ATTEST

EXHIBIT A

SCOPE OF WORK/COLLECTION SERVICES

EXHIBIT A

EXHIBIT B

OPERATION SPECIFICATIONS

Item 20.

EXHIBIT A

EXHIBIT C

CONTRACTOR PERFORMANCE

EXHIBIT A

EXHIBIT D

PRICING

EXHIBIT E**INSURANCE**

The Contractor will provide, from insurance companies acceptable to the City, the insurance coverage designated hereinafter and pay all costs. Before commencing work under this bid, the Contractor shall furnish the City with certificates of insurance showing the type, amount, class of operations covered, effective dates and date of expiration of policies.

In case of the breach of any provision of the Insurance Requirements, the City, at its option, may take out and maintain, at the expense of the Contractor, such insurance as the City may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Contractor under this Agreement.

Insurance certificates should show the certificate holder as follows:

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

The City, its officers, agents and employees shall be named as additional insureds on the Contractor's general liability and automobile liability insurance policies **by marking the appropriate box or adding a statement to this effect on the certificate**, for any claims arising out of work performed under this Agreement.

Insurance coverages shall be as follows:

- A. Workers' Compensation & Employer's Liability. The Contractor shall maintain during the life of this Agreement for all of the Contractor's employees engaged in work performed under this agreement. Workers' Compensation & Employer's Liability insurance shall conform with statutory limits of \$100,000 per accident, \$500,000 disease aggregate, and \$100,000 disease each employee, or as required by Colorado law.
- B. General Liability. The Contractor shall maintain during the life of this Agreement such General Liability as will provide coverage for damage claims of personal injury, including accidental death, as well as for claims for property damage, which may arise directly or indirectly from the performance of work under this Agreement. Coverage for property damage shall be on a "broad form" basis. The amount of insurance for General Liability, shall not be less than Two Million Dollars (\$2,000,000) each occurrence and Four Million Dollars \$4,000,000 aggregate.
- C. Automobile Liability. The Contractor shall maintain during the life of this Agreement such Automobile Liability insurance as will provide coverage for damage claims of personal injury, including accidental death, as well as for claims for property damage, which may arise directly or indirectly from the performance of work under this Agreement. Coverage for property damage shall be on a "broad form" basis. The amount of insurance for Automobile Liability, shall not be less than One Million Dollars (\$1,000,000) combined single limits for bodily injury and property damage.

EXHIBIT A

Item 20.

In the event any work is performed by a subcontractor, the Contractor shall be responsible for any liability directly or indirectly arising out of the work performed under this Agreement by a subcontractor, which liability is not covered by the subcontractor's insurance.

EXHIBIT F**CONFIDENTIALITY**

IN CONNECTION WITH SERVICES provided to the City of Fort Collins (the “City”) pursuant to this Agreement (the “Agreement”), the Contractor 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.

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 under this Agreement, the Contractor hereby acknowledges and agrees as follows:

That information that has or will come into its possession or knowledge in connection with the performance of services for the City may be confidential and/or proprietary. The Contractor 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, and (b) all information that is proprietary to a third party (including but not limited to customers and suppliers of the City). The Contractor shall not disclose any such information to any person not having a legitimate need-to-know for purposes authorized by the City. Further, the Contractor 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.

As part of the Services provided to the City under this Agreement, the Contractor will maintain, store or process personal identifying information, as defined in C.R.S. § 24-73-101. Pursuant to C.R.S. § 24-73-102, Contractor shall implement and maintain reasonable security procedures and practices that are: appropriate to the nature of the personal identifying information disclosed to the Contractor in furtherance of this Agreement; and reasonably designed to help protect the personal identifying information from unauthorized access, use, modification, disclosure, or destruction.

The foregoing to the contrary notwithstanding, the Contractor understands that it shall have no obligation under this Agreement with respect to information and material that (a) becomes generally known to the public by publication or some means other than a breach of duty of this Agreement, or (b) 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 disclosure under (b) above, the Contractor 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.

In the event that the Contractor ceases to perform services for the City, or the City so requests for any reason, the Contractor shall promptly return to the City any and 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.

The Contractor understands and agrees that the City’s remedies at law for a breach of the Contractor’s obligations under this Confidentiality Agreement 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.



Financial Services
Purchasing Division
215 N. Mason St. 2nd Floor
PO Box 580
Fort Collins, CO 80522
970.221.6775
970.221.6707
fcgov.com/purchasing

ADDENDUM NO. 1

RFP 9648 Residential Solid Waste Collection Services

CLOSING DATE: 5:00 PM MT (Our Clock) October 24, 2022

To all prospective proposers under the specifications and contract documents described above, the following changes/additions are hereby made and detailed in the following sections of this addendum:

Exhibit 1 – Questions and Answers

Please contact Gerry Paul, Purchasing Director, at gspaul@fcgov.com with any questions regarding this addendum.

RECEIPT OF THIS ADDENDUM MUST BE ACKNOWLEDGED BY A WRITTEN STATEMENT ENCLOSED WITH THE REQUEST FOR PROPSAL STATING THAT THIS ADDENDUM HAS BEEN RECEIVED.

Questions and Answers:

1. For Bulky Items Scenario 2, is that an on-call service? Customers would call in to request pick-up.

Answer: On-call means that the service is only provided when a Customer calls to request the service (as opposed to regularly-scheduled service).

2. Does Fort Collins have a storage yard we could use to store carts as they are deployed?

Answer: Proposals must reflect the RFP request that the Contractor is responsible for securing space for cart storage during assembly and delivery. Contractors may also propose an alternative scenario proposing the City provide a space and related cost savings.

3. What process was used to gather information related to container size currently in use by residents?

Answer: One of the requirements of Fort Collins' hauler license is that haulers report the number of homeowners' association and open market customers and the size of cart to which they subscribe. The table in the Request for Proposals (RFP) is a compilation of that information from 2021 reports from all residential haulers currently servicing Fort Collins.

4. On the bulky item definition, is it correct that anything over 60 pounds is not considered a bulky item?

Answer: The following items are always excluded from the Bulky Items collection: Hazardous Waste, Electronics, Yard Trimmings, Recyclable Cardboard.

The following items may be included in the Additional Fee Bulky Items at a fee determined by the Contractor: items that weigh over 60 pounds, items larger than 6' x 6', and other items identified by the Contractor.

5. Will the City of Fort Collins be responsible for maintaining the Utility lines within the Alleyways? Our firm requires a minimum height of 15ft to enter the alley safely.

Answer: Fort Collins utility lines are primarily underground. In general, the owner of the utility line is responsible for its maintenance. There may be various owners of any overhead lines in Fort Collins alleys.

6. Will code enforcement handle overgrown trees to ensure we can safely navigate the alleys and roadways?

Answer: The City Forester is generally responsible for the maintenance of trees within the City's rights-of-way and on other City property.

For trees located on other property, the property owner is responsible for tree maintenance, including for trees in an alley adjacent to the property up to the center line of the alley.

Property owners must ensure tree branch growth is maintained at a height no lower than 14 feet over the travel lanes of a street or alley.

If a property owner fails to maintain a tree as required by the City Code, the City Forester may provide notice to the property owner that the work must be accomplished. If the tree has not been brought into compliance as required by the City Forester, the work may be done by the City.

For a complete understanding of tree maintenance responsibility within the City, see Chapter 27 of the Fort Collins City Code.

7. Section 5.1 Carts: Will the City consider the option of using one color for all cart bodies and different lids to designate Garbage, Recycle, and Yard Waste?

Answer: Proposals must reflect the RFP request, and the City's preference is, that cart bodies and lids be the same color. Contractors may also include an alternative proposal in which cart bodies would be all one color with different color lids along with corresponding cost savings.

8. On page 13 of the RFP, taking the Yard Trimmings to a permitted/licensed facility is detailed. Currently, in the publicized Policy Advisory Council Notes from Larimer County website dated 9/8/22, it is not a guarantee the Compost Facility will be funded. *EX: The estimated Compost Facility would be \$6,250,000. If pricing for the North Landfill and Transfer Station is more than anticipated, the Compost Facility will not be funded as anticipated. Reference: [Solid Waste Policy Advisory Council Packet Document \(4\).pdf](#)* Beyond not having disposal rates secured at a facility that may or may not be built, should Contractors explore any other area disposal permitted outlets and they cannot handle the volume, how does the City recommend Contractors handle this volume?

Answer: There are several regional facilities other than the potential Larimer County facility that can accept yard trimmings.

9. As a way to achieve more favorable sustainability goals and lower customer pricing, would the City of Fort Collins consider a contract length of 7-10 years versus 5 years?

Answer: Proposals must reflect the RFP request for a 5-year contract length. Contractors may also propose a term length greater than 5 years, not to exceed 10 years with corresponding cost savings. A contract term longer than 5 years would require City Council approval via an ordinance.

10. At the Contractor's determination, can we require some residential customer segments who predominantly receive alley service to all have their carts serviced in the alley, versus some residents selecting curbside?

Answer: One of the City's objectives of the contract services is to provide a level of service equal to or better than the current service level. Residential customers on a

block that predominately receives alley service are currently able to select curbside service as an alternative.

Proposals must reflect the current service level. Contractors may also submit an additional alternative approach and related cost savings.

11. In the attached RFP, can the winning Contractor request the right to negotiate the final contract with the City?

Answer: The RFP includes a sample Agreement that the City intends to use for obtaining the services under this RFP. As stated in the RFP, any objections to the terms of the contract need to be stated in the proposal with suggested revisions. The City will consider negotiating the final contract terms with the selected Contractor, based on the objections stated as part of the Contractor's proposal.

12. Based on the Pre-Bid Meeting Call last week, we understand that Yard Trimmings are part of the bundled package with MSW and Recycling. By being bundled together with these other services, it is our understanding that PAYT Guidelines, with 100% multipliers among the tiers labeled Small, Medium and Large Cart Packages, must be followed. Can you please confirm this is accurate?

Answer: All pricing scenarios are based on 100% price difference between small, medium and large solid waste carts. All pricing scenarios include recycling for no additional charge. The "Yard Trimmings Collection Service" column in the pricing sheet indicates whether that pricing scenario is based on bundled or optional yard trimmings service.

Bundled yard trimmings collection means 100% of customers receive yard trimmings collection as part of the core services rate for no additional charge.

Optional yard trimmings collection means that customers would be automatically enrolled in the service but could contact the Contractor to decline collection service and receive a reduction in their core service price. The pricing sheet includes a field to enter the amount of reduction in the customer's bill if the customer elects to decline service (cell D48). The City estimates 75% of Customers would participate in the optional service scenario.

13. **Page 15 Section 4.4 - Dumpster Service for MFUs and Commercial Customers:** Is it required to provide pricing in this section, as there are multiple factors to consider: frequency of the service, enclosure considerations, potential recycling contamination and fees, location nuances, and the fact MFUs and Commercial Customers are subject to open market in the State of Colorado?

Answer: Contractors are required to provide pricing for dumpster service for Multi-Unit and Commercial Customers. The Pricing Sheet (Attachment 3 of the RFP) states the service frequency and various dumpster sizes by type. If there are other considerations that may impact pricing for the dumpster service, please state these factors and the associated financial impact as part of the proposal. Dumpster service may or may not be included in the final scope of the contract.

14. For the customer hold time, would the City consider a 90-second prompt to receive a call back as “answered” within the 2-minute time frame? This would be whether the resident chooses to continue holding or asks for a call back in the order their call was received.

Answer: Proposals must reflect the RFP request for calls to be answered within two minutes. Contractors may also submit an additional alternative approach and related cost savings.

15. Can you define what the City deems as uncontrollable rates/cost on page 23? Does the City consider it be a certain percentage and above?

Answer: An uncontrollable rate/cost is an expense over which the Contractor has no direct control. Under this contract the City anticipates uncontrollable costs may potentially include 1) fuel, 2) tip fees, and 3) changes in regulations. As part of the contract negotiations the City intends to negotiate and establish the specific indices for fuel and tip fees which will be the basis for considering an annual price adjustment above the lesser of the Denver-Boulder-Greeley Consumer Price Index (CPI) or three percent.

16. How big is the sample size for estimates in table 1 for small, medium, and large carts?

Answer: One of the requirements of Fort Collins’ hauler license is that haulers report the number of homeowners’ association and open market customers and the size of cart to which they subscribe. The table in the Request for Proposals (RFP) is a compilation of that information submitted for 2021 by all residential haulers currently servicing Fort Collins.

17. There is an inconsistency/contradiction in RFP surrounding the amount of time to exchange out carts – Section 5.8 says must respond within 2 days, Section 5.1 says we need to respond within 2 days but 7 days to deliver the carts. I would like clarity that it means we need to provide a response within 2 days but have 7 days to actually deliver the carts.

Answer: Thank you for identifying this inconsistency. The accurate text for both sections is:

“Contractor shall collect, deliver or swap carts for any service change requests and fulfill Bulky Items collection requests within 1 calendar week.”

18. For non-payment accounts is there a method the City would like to propose or do you want Contractor to specify that? Do we put them down to super saver service or other approach?

Answer: The City does not specify a process for addressing non-payment accounts. Contractors shall propose how they would handle non-payment accounts.

19. Does this RFP apply to the junk removal business?

Answer: This RFP does not apply directly to on-call junk removal Customers. Although pricing is requested for Bulky Items and dumpster service, the City intends to award a contract to one firm for ongoing residential solid waste cart-based services which may also include some level of services for Bulky Items and dumpsters.

20. Does this RFP apply to firms offering large roll-offs?

Answer: This RFP does not apply directly to on-call roll-off services. Although pricing is requested for dumpster service, the City intends to award a contract to one firm for ongoing residential solid waste cart-based services which may also include some level of services for Bulky Items and dumpsters.

EXHIBIT B

Item 20.

ORIGINAL MAILING LIST

Contact Name	Company Name	Address	City	ZIP
Yuliya Shymchyk	Alpine Waste & Recycling (NOW GFL)	7373 Washington Street	Denver	80229
Lori Cate	BeeLine Trucking Ltd	6042 WCR 42	Johnstown	80534
Kayla McGill	Bin There Dump That	541 E Garden Drive Unit O Sutie 140	Windsor	80550
Yvonne Cook	Blue Bear Waste Systems	2180 W 60th Ave	Denver	80221
Dan Garvin	Colorado Iron and Metal	903 Buckingham St	Fort Collins	80524
Jamie Blanchard-Poling	Compost Queen	2224 Stonegate Drive 1825 22nd Street Unit	Fort Collins	80525
Geoffrey Schmidt	Common Good Compost	9	Greeley	80631
Tanner Slatten	Custom Disposal & Service	620 E 3rd St	Eaton	80615
Stefani Richardson	Dirty Deeds	2580 E Harmony Rd ste 201	Fort Collins	80528
Nicole Hicks	Dumpster Diverz	PO Box 204	Timnath	80547
Paul Korte, Jenni Korte	Dumpster Rental	562 Boxwood Dr	Windsor	80550
Buster Dunn	Dunn Teller Enterprises	45407 CR 41	Pierce	80650
Andra Presser	Fuzion Field Services	PO Box 200638	Evans	80620
Brooklyn Hephner, Becca Walkinshaw	Gallegos Sanitation / Republic Sanitation	PO Box 1986	Ft. Collins	80522
Bridget Johnson	Green Girl	PO Box 324	Jamestown	80455
Taylor Hagen	Hagens Junk Removal	1609 Hillside Dr	Fort Collins	80524
Armando	Home Builders Services Inc	3031 Highway 119	Longmont	80504
Mike Howard	Hulk Addicts Hauling and Junk Removal	3836 Beechwood LN	Johnstown	80524
Adam Wasson	Junk King	PO Box 102	Berthoud	80513
Adam Wood	McDonald Farm Enterprises Inc.	7247 E. County Line	Longmont	80504
Rob Rapp	Rob and Mike's Hauling	2136 Cadman St.	Berthoud	80513
Jennifer Parkos	Mountain High Disposal	15416 Hwy 14	Ault	80610
Andrew Meredith	Mountain West Disposal	6094 Maidenhead Drive	Windsor	80550

EXHIBIT B

Item 20.

William Kennedy	Organix	19065 Hickory Creek Drive Suite 240	Mokena, IL	60448
John Puma	Ram Waste Systems	5704 Bueno Drive	Ft. Collins	80526
Ronnie Lee Hicks	RH Contracting	PO BOX 1408	Wellington	80549
Dean Hoag	RMB Recycling	1475 N College Ave	Fort Collins	80521
Jonathan Heaberlin	Timberline Waste Services	606 4th St	Windsor	80550
Tim Lambert	Tim of All Trades	9 Nantucket Ct	Windsor	80550
Brian Heuer	Sage Disposal	8646 Blackwood Drive	Windsor	80550
David LeClair & Cathy Johnston	S&B Waste Systems (Now United Site Services)	6766 E County Road 18	Johnstown	80534
Patty Kennedy	S&S Sanitation	PO Box 673	Loveland	80539
Jeff Wright	Step Up Roll Offs	1635 Foxtrail Drive #307	Fort Collins	
Deb Overturf Frank Santiago Jeremy Bradley	Waste Management of N. Colo.	40950 W C Rd 25	Ault	80610
Kirk Barker John Newman	Waste-Not Recycling	1065 Poplar Street	Loveland	80537
Kevin D Jackson	Yee Haul Junk	500 N Impala Drive	Fort Collins	80521

PACKETS RESENT

Contact Name	Company Name	Address	City	Zip
Yvonne Cook	Blue Bear Waste Systems	6130 Huron St	Denver	80221
Brian Cleveringa	HBSCO LLC dba Home Builders Services	PO Box 3525	Greenwood Village	80155
Jennifer Parkos	Mountain High Disposal	PO BOX 1100	Ault	80610
Andrew Meredith	Mountain West Disposal	PO Box 832	Windsor	80550
Deb Hoag	Rocky Mountain Battery Service dba RMB Recycling	1475 N College Ave	Fort Collins	80524
Beth Wright	Step Up Inc	1635 Foxtrail Drive #307	Loveland	80538
Kevin D Jackson	Yee Haul Junk	904 30th Avenue Ct	Greeley	80634
William Kennedy	Organix	3308 Bernice Ave	Russellville, Arkansas	72802
Matt Marquardt	McDonald Farm Enterprises Inc.	7440 E I25 Frontage Rd	Frederick	80516
Kayla McGill	Bin There Dump That	1942 East Lincoln Ave, Unit B	Fort Collins	80524

Item 20. - FORT COLLINS
COLORADOAN

EXHIBIT C

Invoice Text

Notice of Intent to Provide City Residential Waste Services Pu

STATE OF COLORADO
COUNTY OF LARIMER
AFFIDAVIT OF PUBLICATION

CITY OF FC-CLERK-LEGALS
300 LAPORTE AVE

FORT COLLINS CO 80521

I, being duly sworn, deposes and says that said is the legal clerk of the Fort Collins Coloradoan; that the same is a daily newspaper of general circulation and printed and published in the City of Fort Collins, in said county and state; that the notice or advertisement, of which the annexed is a true copy, has been published in said daily newspaper and that the notice was published in the regular and entire issue of every number of said newspaper during the period and time of publication of said notice, and in the newspaper proper and not in a supplement thereof; that the publication of said notice was contained in the issues of said newspaper dated on

09/15/22

that said Fort Collins Coloradoan has been published continuously and uninterruptedly during the period of at least six months next prior to the first publication of said notice or advertisement above referred to; that said newspaper has been admitted to the United States mails as second-class matter under the provisions of the Act of March 3, 1879, or any amendments thereof; and that said newspaper is a daily newspaper duly qualified for publishing legal notices and advertisements within the meaning of the laws of the State of Colorado.

Nicole Jacobs

Legal Clerk

Subscribed and sworn to before me, within the County of Brown, State of Wisconsin this 15th of September 2022.

Nancy Heyrman

Notary Public

9.15.23

Notary Expires

NANCY HEYRMAN
Notary Public
State of Wisconsin

Legal No.0005413455

Affidavit Prepared
Thursday, September 15, 2022 12:16 am

Ad#:0005413455

P O :

This is not an invoice

Item 20.

Notice to Provide City Residential Waste Services Pursuant to C.R.S. § 30-15-401 (7.5)

The City of Fort Collins is considering adoption of a requirement that municipal residents use or pay user charges for residential waste, recycling and yard trimmings collection service for single family homes, including multi-family residences of 7 or fewer units (the "City Residential Waste Services") in accordance with the following:

- (a) The area within which the City Residential Waste Services will be required includes the Fort Collins City Limits.
- (b) The date upon which the City Residential Waste Services requirement will start is not less than 6 and not more than 24 months after execution of a contract for City Residential Waste Services by the City.
- (c) Any person may, within 30 days after the date of this Notice, request in writing the opportunity to submit a proposal to provide City Residential Waste Services.

The City has issued a Request for Proposals (RFP) for the City Residential Waste Services. Persons wishing to submit a proposal are advised to register with Rocky Mountain E-Purchasing Systems at <http://www.bidnetdirect.com/> (use the "Vendor Register" link and complete your registration) and reference Solicitation #9648 Residential Solid Waste Collection Services or to provide a written request for the RFP by certified U.S. Mail, return receipt requested, addressed to the City of Fort Collins Purchasing Department, Attn: Gerry S. Paul, Ref Solicitation #9648 Residential Solid Waste Collection Services, 215 N Mason St. Fort Collins CO 80522-0580.

0005413455
Coloradoan
September 15, 2022

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

REVIEW VERSION – R2

AGREEMENT FOR RESIDENTIAL SOLID WASTE COLLECTION SERVICES

FEBRUARY 27, 2023

The contract is not in effect until approved by City Council and signed by both Republic Services and the City.

References to sections of the City Code in the review version of the contract may be changed prior to or during Council consideration of the contract because Council would be adopting changes to the municipal code simultaneous with adoption of the contract.

The City and Republic Services may make technical changes to the review version of the contract prior to signing.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES – 2/27/2023
SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE PARTIES**

AGREEMENT FOR RESIDENTIAL SOLID WASTE COLLECTION SERVICES

THIS AGREEMENT FOR RESIDENTIAL SOLID WASTE COLLECTION SERVICES ("Agreement") is made and entered into on the Effective Date (defined below) by and between the CITY OF FORT COLLINS, a Colorado home-rule municipal corporation ("City"), whose address is 300 LaPorte Ave., Fort Collins, Colorado 80521 and Allied Waste Systems, Inc., a Delaware corporation d/b/a Republic Services of Colorado ("Contractor"), whose local address is 1941 Heath Parkway, Unit 2, Fort Collins, CO 80524, each of which is individually a "Party" and collectively are the "Parties".

WHEREAS, the Contractor, in response to the City's Request for Proposals ("RFP") No. 9648 dated September 12, 2022, submitted a proposal for Residential Solid Waste Collection Services dated October 17, 2022 ("Proposal"), to provide Collection Services for Residential Units, as such terms are defined below, within the City; and

WHEREAS, based on the outcome of the RFP the City has selected the Contractor to perform the Collection Services for Residential Units in accordance with the terms of this Agreement and pursuant to the City's authority under C.R.S. § 30-15-401(7.5) and Chapter 12, Article II of the Fort Collins Municipal Code; and

WHEREAS, pursuant to C.R.S. § 30-15-401(7.5) and Section 8-186(a) of the Fort Collins Municipal Code, this Agreement is subject to approval by the City Council of the City of Fort Collins by ordinance.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Definitions.** For the purposes of this Agreement, the following terms shall have the meanings set forth herein unless the context specifies otherwise:
 - A. "Acceptable Waste" means Bulky Waste, Recyclable Materials, Solid Waste and Yard Trimmings but does not include Excluded Waste.
 - B. "Administrative Fee" means that fee authorized by Section 12-32(b) of the Fort Collins Municipal Code.
 - C. "Associated Services" means customer service and billing functions, including billing of Customers and Service Opt-Out Customers.
 - D. "Bulky Waste" means Solid Waste that does not fit in a closed solid waste cart, excluding Excluded Waste, electronics, yard trimmings, recyclable cardboard, items that weigh more than 60 pounds, and items larger than 6' x 6'.
 - E. Carts Terminology:
 - "XS Cart" shall mean a 30-39-gallon cart with an insert that functionally creates a cart with less than 30 gallons of available capacity.
 - "Small Cart" shall mean a cart with a capacity of 30-39 gallons.
 - "Medium Cart" shall mean a cart with a capacity of 60-69 gallons.
 - "Large Cart" shall mean a cart with a capacity of 90-99 gallons.
 - "XL Cart" shall mean two Large Carts.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

- F. “City Limits” means the boundary of the City of Fort Collins as identified via the City of Fort Collins GIS system. City Limits does not include the Growth Management Area. The City Limits are subject to change through future annexations by the City.
- G. “City Representative” means the City’s Environmental Program Manager for Waste Reduction & Recycling, or another City employee designated through the process established in Section 10, who shall be the Contractor’s primary contact at the City of Fort Collins.
- H. “Collection Services” means the collection, transportation, and delivery to an appropriate facility of Solid Waste, Recyclable Materials, Yard Trimmings, Bulky Items, and Associated Services for Residential Units conducted in a manner consistent with all applicable laws and regulations and the provisions of this Agreement.
- I. “Contractor” means Allied Waste Systems, Inc., a Delaware corporation d/b/a Republic Services of Colorado.
- J. “Customer” means an owner or occupant of a Residential Unit that receives Collection Services from Contractor under the terms of this Agreement.
- K. “Door-to-Door Service” means service in which Contractor brings carts from the Customer’s location to the curb or alley for servicing and returns the carts to the Customer’s location.
- L. “Dumpster” means a metal or plastic container, one (1) cubic yard to ten (10) cubic yards in volume, that is manufactured and used for the collection of Solid Waste, Recyclable Materials or Yard Trimmings.
- M. “Effective Date” means the effective date of this Agreement, which shall be the date stated in Section 4, Agreement Term.
- N. “Electronics” means any electronic device or electronic component as those terms are defined in the Colorado Hazardous Waste Regulations, 6 Code of Colorado Regulations 1007-3, Section 260.10 and as amended by the State of Colorado from time to time.
- O. “Excluded Waste” means (1) Hazardous Waste; (2) radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, or toxic waste as defined by applicable law; or (3) any other waste prohibited from a disposal or processing facility.
- P. “Force Majeure” means any act or event that prevents a Party from performing its obligations in accordance with the Agreement where the act or event is beyond the reasonable control and not the result of the fault or the negligence of the affected Party and such Party is unable to overcome such act or event through the exercise of due diligence. Such acts and events, include but are not limited to, acts of God, fire, explosion, accident, flood, earthquake, pandemic, epidemic, war, riot, and restraints or injunctions, not resulting from a Party’s breach of any terms and conditions of this Agreement or any other contractual commitment. Force Majeure acts or events do not include: economic or financial events that impact Contractor’s

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

ability to access or use financial resources; or labor disputes or strikes. To the extent that the performance is actually prevented, the Contractor must provide written notice to the City of such condition within three (3) days from the onset of such condition. Weather that causes suspensions or delays in Collection Services, as referenced in the Severe Weather Protocol in Exhibit A, is not a Force Majeure act or event.

- Q. “Hazardous Waste” means any chemical, compound, substance or mixture that state or federal law designates as hazardous because it is ignitable, corrosive, reactive or toxic, including but not limited to solvents, degreasers, paint thinners, cleaning fluids, pesticides, adhesives, strong acids and alkalis and waste paints and inks.
- R. “Recyclable Cardboard” means corrugated cardboard, and shall include, but not be limited to, materials used in packaging or storage containers that consist of three (3) or more layers of Kraft paper material, at least one (1) of which is rippled or corrugated. Cardboard shall be considered Recyclable Cardboard regardless of whether it has glue, staples or tape affixed, but not if it is permanently attached to other packing material or a non-paper liner, waxed cardboard or cardboard contaminated with oil, paint, blood or other organic material.
- S. “Recyclable Materials” means the materials listed in Table 1 of Exhibit A and any other materials identified by Contractor and approved by the City as Recyclable Materials, provided those materials have been separated from Solid Waste and can be recovered as useful materials and are properly prepared for the purpose of recycling.
- T. “Residential Units” means and includes all single-unit residential buildings, and multi-unit residential buildings containing seven (7) dwelling units or fewer within the City Limits, subject to certain exceptions and/or City-granted variances as provided in Sections 12-29 and 12-30 of the Fort Collins Municipal Code. Residential Units also include residences of Service Opt-in Customers.
- U. “Service Commencement Date” means the date as stated in Section 5, upon which the Contractor begins providing all Collection Services to Residential Units.
- V. “Service Opt-In Customer” means a Homeowner Association (“HOA”) or multi-unit residential building containing eight (8) or more dwellings within the City Limits that qualifies for an exception to the City’s Residential Waste Collection Program as provided in Section 12-29 of the Fort Collins Municipal Code that opts-in to receive Collection Services from Contractor.
- W. “Service Opt-Out Customer” means any person or entity who opts-out of the City Residential Waste Collection Program pursuant to Fort Collins Municipal Code, Section 12-32(d).
- X. “Service Year” means a period of twelve (12) calendar months beginning on the Service Commencement Date.
- Y. “Solid Waste” means all refuse, putrescible and nonputrescible waste, excluding electronics, discarded or abandoned vehicles or parts thereof, sewage, sludge, septic tank and cesspool pumpings or other sludge, discarded home or industrial

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

appliances, Hazardous Wastes, materials used as fertilizers or for other productive purposes and Recyclable Materials or Yard Trimmings which have been source separated for collection and does not include Excluded Waste.

- Z. “Transition Period” means the time from Effective Date until the Service Commencement Date.
- AA. “Transition Plan” means a plan documenting the timeline for which activities shall be undertaken by the Contractor and by the City during the Transition Period.
- BB. “Yard Trimmings” means those materials included in Table 2 of Exhibit A and any other similar organic materials identified by Contractor and approved in writing by the City Representative as Yard Trimmings.

2. Scope of Agreement.

- A. This Agreement pertains to Collection Services for Residential Units in the City Limits provided by Contractor on behalf of the City pursuant to the City’s authority in C.R.S. § 30-15-401(7.5). Contractor’s work under this Agreement shall consist of all supervision, materials, equipment, fuel, labor, tip fees and other items necessary to diligently and effectively provide Collection Services.
 - B. This Agreement shall not be considered a franchise for services to the residents of the City and any residential household may choose to negotiate with any other solid waste collection service provider licensed to do business in the City or may choose to remove their own Solid Waste, Recyclable Materials, Yard Trimming and Bulky Items in accordance with applicable laws and regulations and subject to the payment obligations set forth in Sections 3.1 and 4.7 of Exhibit A.
3. Scope of Services. Beginning on the Effective Date or Service Commencement Date, as applicable, the Contractor shall provide services to the City or, as applicable, to each Residential Unit as described herein:
- A. Request for Proposal. Request for Proposal (RFP) 9648 Residential Solid Waste Collection Services dated September 12, 2022 is incorporated herein by this reference. In the event a conflict exists between contract documents the order of precedence shall be 1) This Agreement including all exhibits; 2) RFP; and 3) Contractor’s Proposal.
 - B. Contractor’s Proposal. Contractor’s Proposal dated October 17, 2022 is incorporated herein by this reference.
 - C. Collection Services. Applicable Collection Services for Residential Units and Service Opt-Out Customers shall be in accordance with **Exhibit A**, which is attached hereto and incorporated herein by this reference.
 - D. Operating Specifications. All services performed hereunder shall be subject to the requirements stated in **Exhibit A**, which is attached hereto and incorporated herein by this reference.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

- E. Contractor Performance. The Contractor is required to provide a high level of customer service, timely and accurate billing on behalf of the City, and professionalism in the performance of services under this Agreement. Performance failures will be addressed, to the extent possible, through liquidated damages for certain infractions as set forth on Exhibit A. The Parties agree, assigning a monetary value for damages to the City and the public for performance failures for such matters do not easily translate to the dollar amount of such damage, and that the liquidated damage amounts that are set forth in Exhibit A, which is attached hereto and incorporated herein by this reference, are reasonable estimates as to the dollar amount of damage incurred in relation to each offending act or omission.
- F. Pricing. The Contractor shall perform applicable Collection Services for Residential Units and Service Opt-Out Customers at the prices stated in Exhibit B, which is attached hereto and incorporated herein by this reference.
- G. Compensation. As compensation for the services provided under this Agreement, Contractor shall retain all fees collected from Customers and Service Opt-Out Customers except for the Administrative Fee, as provided in Exhibit A. The City is not liable or otherwise responsible to Contractor for any fee not paid by any Customer or Service Opt-Out Customer.
- H. Insurance. Without limiting any of the Contractor's obligations hereunder, the Contractor shall provide and maintain insurance coverage naming the City as an additional insured under this Agreement, via blanket-form endorsement, as applicable of the type and with the limits specified within Exhibit C, which is attached hereto and incorporated herein by this reference. Prior to the Effective Date of the Agreement, the Contractor, or its authorized representative, shall deliver to the City's Purchasing Director, purchasing@fcgov.com or P.O. Box 580, Fort Collins, Colorado 80522, one copy of a certificate evidencing the insurance coverage required from an insurance company rated A-VIII or higher by A.M. best Company and approved in Colorado.
- I. Confidentiality. The Contractor shall comply with Exhibit D, which is attached hereto and incorporated herein by this reference.
- J. Ownership of Waste. Contractor shall take ownership of Acceptable Waste when it is loaded into Contractor's vehicle. Ownership of and liability for any Excluded Waste shall remain with the generator and shall at no time pass to Contractor.
- K. Right of Refusal. If any Excluded Waste is discovered before it is collected by Contractor, Contractor may refuse to collect the entire pick-up that contains those items. In the event such items are present but not discovered until after it has been collected by Contractor, Contractor may, in its sole discretion, remove, transport, and dispose of such items at a facility authorized to accept those items, in accordance with applicable law and charge the depositor or generator for all reasonable direct costs incurred due to the removal, remediation, handling, transportation, delivery, and disposal of those items.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

4. Agreement Term. Subject to approval by ordinance of the Fort Collins City Council, this Agreement shall commence effective March 17, 2023, (“Effective Date”) and shall continue in full force and effect for five (5) years from the Service Commencement Date, unless terminated as provided herein (“Agreement Term”).
5. Service Commencement Date. The Service Commencement Date is the date the Contractor starts performing all Collection Services for Residential Units under the Agreement. The Service Commencement Date shall be September 30, 2024, subject to change by mutual written agreement of the Parties.
6. Early Termination. Notwithstanding the time periods contained herein, this Agreement shall terminate: 1) if the City fails to appropriate funds pursuant to Section 9 of this Agreement at the time as such then-existing appropriations are to be depleted; or 2) in the event of a termination by default in accordance with Section 20; or 3) at either Party’s option pursuant to Exhibit A, Section 4.11 in the event the Parties cannot mutually agree on the impact of uncontrollable costs.
7. Carts. Upon expiration or termination of the Agreement, ownership of all carts and replacement parts for such carts purchased by the Contractor under this Agreement shall transfer to the City. In the event of expiration or termination for Contractor default, the ownership of the Carts shall transfer to the City at no cost, free and clear of any liens or debt. In the event the Agreement is terminated early by the City in accordance with Section 6, the City shall pay the Contractor the net present value of the monthly cost per cart multiplied by the number of months remaining to reach five (5) years from the Service Commencement Date. Upon transfer of ownership, carts at Residential Units shall remain at the Residential Unit and Contractor shall transport the carts and replacement parts for such carts not at Residential Units to a location within Larimer County designated by the City Representative.
8. Notices. All notices provided under this Agreement shall be effective immediately when emailed or three (3) business days from the date of the notice when mailed to the following addresses:

Contractor

Allied Waste Systems, Inc., d/b/a Republic Services of Colorado
Attn: General Manager
1941 Heath Parkway Unit 2
Fort Collins, CO 80524

Republic Services, Inc.
Attn: Legal Department
18500 N. Allied Way
Phoenix, AZ 85054

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

City

City of Fort Collins
Attn: Program Manager, Waste Reduction and Recycling
PO Box 580
Fort Collins, CO 80522

City of Fort Collins
Attn: Purchasing Director
PO Box 580
Fort Collins, CO 80522

City of Fort Collins
Attn: City Attorney's Office
PO Box 580
Fort Collins, CO 80522

9. Appropriation. To the extent this Agreement or any provision in it would constitute a multiple fiscal year debt or financial obligation of the City, it shall be subject to annual appropriation by City Council as required in Article V, Section 8(b) of the City Charter, City Code Section 8-186, and Article X, Section 20 of the Colorado Constitution. The City shall provide Contractor with thirty (30) days written notice of any failure of the City to appropriate adequate funds. Neither party shall have the obligation to continue this Agreement in any fiscal year for which no such supporting appropriation has been made.
10. City Representative. The City Representative shall make, within the scope of their authority, all necessary and proper decisions with reference to the services provided under this Agreement. The City, through the City Manager, may change its representative by providing written notice of such change to Contractor. All requests concerning this Agreement shall be directed to the City Representative. Notwithstanding the foregoing, any changes to the Agreement shall not be binding on either Party without a written amendment to the Agreement.
11. Marks. Subject to a Party's express written approval, the other Party may use the Party's name, logo, symbol, trademark or service mark (together "Marks") in electronic, printed, stamped or inscribed materials to support and promote the relationship between the Parties during the Agreement Term. Each Party's right to use the Marks is royalty-free, non-exclusive, non-transferrable, and non-assignable.
12. Independent Service Provider. It is the express intention of the Parties that Contractor is an independent contractor performing services and is not an employee, agent, joint venturer, or partner of City. The City shall not be responsible for withholding any portion of Contractor's compensation hereunder for the payment of FICA, Workmen's Compensation or other taxes or benefits or for any other purpose.
13. Subcontractors and Disposal Facilities.
- A. The City acknowledges and approves the Contractor's utilization of the following subcontractors to perform services hereunder:

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

- i) Schaefer Plastics North America, LLC (“Schaefer”), which shall manufacture, warrant, and deliver the Carts for Solid Waste, Recyclable Materials and Yard Trimmings on Contractor’s behalf.
- B. The City acknowledges and approves Contractor’s use of the following disposal facilities:
- i) A-1 Organics for disposal of Yard Trimmings.
 - ii) Ewing Landscape Materials for disposal of Yard Trimmings.
 - iii) Larimer County Landfill for disposal of Solid Waste.
 - iv) Larimer County Recycling Center for disposal of Recyclable Materials.
 - v) North Weld Landfill for disposal of Solid Waste.
 - vi) Other disposal facilities selected and used in accordance with the terms of this Agreement.
- C. Except as stated above in Section 13(A), Contractor may not subcontract any of the Collection Services or use another disposal facility without the prior written consent of the City Representative.
- D. The following provisions shall apply for all services subcontracted hereunder: (a) the subcontractor must be a reputable, qualified firm with an established record of successful performance in its respective trade performing identical or substantially similar work, (b) the subcontractor shall be required to comply with all applicable terms of this Agreement, (c) the subcontract shall not create any contractual relationship between any such subcontractor and the City, nor shall it obligate the City to pay or see to the payment of any subcontractor, and (d) the work of the subcontractor shall be subject to inspection by the City to the same extent as the work of the Contractor. Contractor shall be solely responsible for performance of all duties hereunder.
14. Personal Services. It is understood that the City enters into the Agreement based on the special abilities of the Contractor and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Contractor shall neither assign any responsibilities nor delegate any duties arising under the Agreement except as set forth in this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.
15. Not Waiver. The City’s approval or acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights or benefits provided to the City under this Agreement or cause of action arising out of performance of this Agreement. The failure or delay by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.
16. Warranty.
- A. The Contractor hereby warrants that it is qualified and has the financial capacity, operational capacity and equipment to assume the duties and responsibilities necessary to effectively render the services described herein and has all the requisite corporate authority, professional licenses, and permits in good standing required by law.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

- B. The services performed by the Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work. The services to be performed by the Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules, and regulations.
- C. The Carts shall be warranted by Schaefer for a period of ten (10) years from the date of delivery. As stated in Exhibit A, Attachment 2 upon transfer of ownership the manufacturer's warranty for the carts shall transfer to the City. The Contractor shall use best efforts to ensure the City receives the manufacturer's warranty upon transfer of ownership.
17. City's Role. The Contractor shall provide all services with no direct support by City staff. Although City staff may collaborate with Contractor on certain initiatives such as Customer education and communication, such support is solely at the City's discretion. Notwithstanding the foregoing, the City intends to monitor and evaluate the progress and performance of Contractor to ensure the terms of this Agreement are being satisfactorily met in accordance with the City's and other applicable monitoring and evaluating criteria and standards. Contractor shall fully cooperate with the City relating to such monitoring and evaluation.
18. Force Majeure. If either Party is prevented in whole or in part from performing its obligations by force majeure, then the Party so prevented shall be excused from whatever performance is prevented by such cause.
19. Disputes Resolution. Except in the event of a Default, pursuant to Section 20, the Parties shall attempt to resolve disputes as follows:
- A. Informal Dispute Resolution. The Parties will use reasonable efforts to resolve any disputes under this Agreement through negotiation. If a dispute arises between the Parties, the primary Representative for each Party will first strive to work out the problem internally. If the Representatives are unable to resolve the dispute within ten (10) days of commencing discussions, then either Party may deliver a written notice to the other Party describing the nature and substance of the dispute and proposing a resolution (the "Notice of Dispute").
- B. Executive Negotiation. During the first ten (10) days following the delivery of the Notice of Dispute (and during any extension to which the Parties agree) an authorized executive of each Party shall attempt in good faith to resolve the dispute through negotiations. If such negotiations result in an agreement in principle to settle the dispute, they shall cause a written settlement agreement to be prepared, signed and dated, whereupon the dispute shall be deemed settled, and not subject to further dispute resolution.
- C. Unresolved Disputes. Upon the Parties' mutual written agreement, any dispute under this Section 19 may be submitted for resolution to mediation to occur in Fort Collins, Colorado. The Parties reserve all rights to adjudicate any dispute not submitted to mediation under this Section 19 of the Agreement. In the event of mediation, the Parties shall share the cost for the mediator(s) equally and each Party shall be solely responsible for their own legal counsel expenses.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

20. Default. If either Party breaches any provision of this Agreement and such breach is not substantially cured within ten (10) days after receipt of written notice from the non-breaching Party specifying such breach in reasonable detail, the non-breaching Party may terminate this Agreement by giving ten (10) days' written notice of termination to the breaching Party. However, if the breach is not within the reasonable control of the defaulting party and cannot be substantially cured within ten (10) days, such cure period may be extended to an agreed period of time pursuant to a mutually agreed upon corrective action plan to cure the default. If the breach is within the reasonable control of the defaulting party, and the defaulting party fails to cure such default in accordance with this Section, 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) avail themselves of any other remedy at law or equity. If the non-defaulting Party, exhausts the dispute resolutions provisions stated in Section 19 of the Agreement, they may commence legal or equitable action against the defaulting Party, the defaulting Party shall be liable to the non-defaulting Party for the non-defaulting Party's reasonable attorney fees and costs incurred because of default.

21. Performance Security.

- A. The Contractor shall provide performance security by providing the City an irrevocable letter of credit in a form satisfactory to the City Purchasing Director at least ninety (90) days prior to the Service Commencement Date. The amount of the letter of credit will be One-Million Dollars (\$1,000,000) issued by a local, federally insured (FDIC) banking institution with a debt rating of 1A or higher by the FDIC or A or higher by Standard & Poor's, Moody's Investor, or comparable agency as determined by the City.
- B. The irrevocable letter of credit shall contain the following endorsement, "At least sixty (60) days prior to cancellation, replacement, failure to renew or material alteration of this irrevocable letter of credit, written notice of such intent shall be given to the City by the financial institution. Such notice shall be given by certified mail to the City of Fort Collins, Purchasing Director, 215 North Mason, Fort Collins, CO 80522."
- C. The irrevocable letter of credit shall be released to the City in the event this Agreement is terminated by reason of breach or default of the Contractor. The irrevocable letter of credit will be released to Contractor at the end of the Agreement Term, provided there is no outstanding breach, default, or other payment deductions or adjustments.
- D. The rights reserved to the City with respect to the irrevocable letter of credit are in addition to all other rights of the City, whether reserved by this Agreement, or otherwise authorized by law, and no action, proceeding or right with respect to the irrevocable letter of credit shall affect any other rights the City has or may have under the law.

22. Entire Agreement; Binding Effect; Order of Precedence; Authority to Execute. This Agreement, along with all Exhibits and other documents incorporated herein, shall constitute the entire Agreement of the Parties regarding this transaction and shall be binding upon said Parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said Parties. Covenants or representations not contained in this

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

Agreement shall not be binding on the Parties. In the event of a conflict between terms of the Agreement and any exhibit or attachment, the terms of the Agreement shall prevail. Each person executing this Agreement affirms that they have the necessary authority to sign on behalf of their respective Party and to bind such Party to the terms of this Agreement.

23. Indemnity. The Contractor agrees to indemnify, defend and save harmless the City, its officers, agents and employees against and from any and all actions, suits, claims, demands or liability of any character whatsoever (including reasonable attorneys' fees) brought or asserted for injuries to or death of any person or persons, or damages to property (collectively, "Claims") to the extent caused by the negligence or willful misconduct of the Contractor. The Contractor shall not be liable for any Claims resulting solely from negligence or willful misconduct of the City.
24. Compliance with Law: The services to be performed by the Contractor hereunder shall be done in compliance with all applicable federal, state, county and City laws, ordinances, rules and regulations. Contractor must be properly licensed by the City to perform Collection Services.
25. Law/Severability. The laws of the State of Colorado shall govern the construction, interpretation, execution, and enforcement of this Agreement. The Parties further agree that Larimer County District Court is the proper venue for all disputes. If the City subsequently agrees in writing that the matter may be heard in federal court, venue will be in Federal District Court in Denver, Colorado. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.
26. Prohibition Against Unlawful Discrimination. The City, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, affirmatively ensures that for all contracts entered into with the City, disadvantaged business enterprises are afforded a full and fair opportunity to bid on the contract and are not to be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The City strictly prohibits unlawful discrimination based on an individual's gender (regardless of gender identity or gender expression), race, color, religion, creed, national origin, ancestry, age 40 years or older, marital status, disability, sexual orientation, genetic information, or other characteristics protected by law. For the purpose of this policy "sexual orientation" means a person's actual or perceived orientation toward heterosexuality, homosexuality, and bisexuality. The City also strictly prohibits unlawful harassment in the workplace, including sexual harassment. Further, the City strictly prohibits unlawful retaliation against a person who engages in protected activity. Protected activity includes an employee complaining that he or she has been discriminated against in violation of the above policy or participating in an employment discrimination proceeding.

The City requires its contractors to comply with the City's policy for equal employment opportunity and to prohibit unlawful discrimination, harassment and retaliation. This requirement applies to all third-party contractors and their subcontractors at every tier.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

27. Governmental Immunity Act. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, by the City of any of the notices, requirements, immunities, rights, benefits, protections, limitations of liability, and other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq. and under any other applicable law.
28. Colorado Open Records Act. The Contractor hereby acknowledges that the City is a public entity subject to Sec. 24-72-201 et seq. of the Colorado Revised Statute (CORA). This Agreement is subject to public disclosure in whole pursuant to CORA.
29. Cooperative Purchase – Utilization by Other Governmental Entities. Any governmental entity within the state of Colorado may, subject to such entity's governing laws, rules, and regulations, use the City's competitive purchasing process as the basis to negotiate a contract with the Contractor for similar services. Any governmental entity that uses the City's competitive purchasing process as the basis of award will be solely responsible for negotiating all terms of such contract with the Contractor and issuing their own contract documents. The Contractor shall be required to include in any contract with another governmental entity that is entered into under this cooperative provision a contract clause that will hold harmless the City from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the City's Agreement. The City makes no guarantee of usage by other entities of this Agreement. Utilization of this cooperative provision by any other entity must not have a negative impact on the City's level and/or quality of service.
30. Survival: Any terms and conditions of this Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.
31. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands and seals the day and year first written above.

Signature Page Follows

Item 20.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

CITY OF FORT COLLINS

ALLIED WASTE SYSTEMS, INC.

Kelly DiMartino, City Manager

Date

CITY OF FORT COLLINS

Gerry Paul, Purchasing Director

Date

APPROVED AS TO FORM

ATTEST

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

EXHIBIT A

SCOPE OF WORK/COLLECTION SERVICES

1.0 BACKGROUND

The Agreement provides for Solid Waste, Recyclable Materials, Yard Trimmings, Bulky Items and related services for Residential Units in Fort Collins.

Fort Collins has a long-standing commitment to waste reduction and has utilized a licensed open market collection system for decades.

Fort Collins' license requires haulers to report the materials collected from all sectors of the community, which is used to calculate various diversion rates. In 2020, the community diversion rate (including residential, commercial, and industrial materials) was 52% and the residential diversion rate was 29%. Details of Fort Collins diversion rates can be found in the annual reports at www.fcgov.com/recycling/publications-resources.php.

Fort Collins has adopted aggressive waste reduction goals, including working toward zero waste by 2030, and has identified a stagnant residential diversion rate as one of the challenges of making progress on that goal. Our Climate Future is the combined waste, climate and energy plan for Fort Collins and can be viewed at www.fcgov.com/climateaction/our-climate-future.

Fort Collins wishes to build upon the existing program and the goals of this Agreement include, but are not limited to:

- Reduce the number of trucks on residential streets and achieve street maintenance savings as well as increase safety in residential neighborhoods.
- Reduce greenhouse gas emissions.
- Increase diversion of Recyclable Materials and Yard Trimmings and encourage reuse of Bulky Items as much as possible.
- Provide equitable pricing throughout the community.
- Provide cost-effective pricing for Collection Services.
- Provide a high level of customer service.

2.0 SERVICE INFORMATION

City Limits

The Contractor shall provide applicable Collection Services for Residential Units and Service Opt-Out Customers within the City Limits. Contractor is responsible for servicing Residential Units and Service Opt-Out Customers added to City limits within 60 days of the Residential Unit's location being annexed into the City Limits.

Alleys

Where alleys are the primary service option, Contractor shall provide Collection Services in alleys.

Door to Door Service

Contractor shall provide Door-to-Door Service for Customers with a disability as defined in Title 2 of the ADA upon request for no additional charge.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

Service Suspension

Contractor shall provide a suspension of services (a “Service Suspension”) up to once per calendar year upon Customer request for a period of one month or more. During the Service Suspension, the Contractor shall charge the Customer the XS Cart service price and the Administrative Fee. Contractor may not charge the Customer to start or stop the Service Suspension.

Transition Plan

The current version of the Transition Plan is Attachment 3 and may be adjusted during the Transition Period by mutual written consent of the Parties.

Service Opt-Out Customers

Contractor shall not provide Solid Waste, Recyclable Materials, Yard Trimmings, or Bulky Items collection services to Service Opt-Out Customers. Contractor shall bill Service Opt-Out Customers in accordance with this Agreement and the Fort Collins Municipal Code.

Customers may elect to opt out of Collection Services at any time by contacting the Contractor. In the event more than ten percent (10%) of eligible Customers elect to opt out within sixty (60) days of the Service Commencement Date, the Parties shall negotiate, in good faith, the time available to the Contractor to start Collection Services for Service Opt-Out Customers who choose to opt back in to Collection Services. For purposes of this paragraph, the calculation of eligible Customers shall consider only Customers at single-unit residential buildings not within an HOA and multi-unit residential buildings containing seven (7) dwelling units or fewer within the City Limits.

In the event the City eliminates or reduces the impact of the Pay-As-You-Throw program (volume-based trash rates with bundled recycling) in the residential hauler license requirements of Chapter 15, Article XV of the Fort Collins Municipal Code, the Parties shall negotiate in good faith, the time available to the Contractor to start Collection Services for Service Opt-Out Customers who choose to opt back in to Collection Services.

Service Opt-In Customers

If a Service Opt-In Customer requests to opt in to Collection Services, the Contractor shall work with the entity representing the Service Opt-In Customers to mutually agree to a date to deliver carts and start Collection Services (i.e. the Contractor is not required to meet the cart delivery requirements in section 4.1 of this Agreement).

3.0 SCOPE OF WORK/COLLECTION SERVICES

3.1 Solid Waste Collection

Contractor shall provide Solid Waste Collection Services as follows:

- Contractor shall offer five service levels to Customers, corresponding the XS, S, M, L, and XL Cart sizes, for the prices in the Price Sheet (Exhibit B). All service levels shall include Recyclable Materials, Yard Trimmings, and Bulky Items collection.
- Contractor shall provide weekly Solid Waste collection.
- Contractor shall collect Solid Waste from Solid Waste carts provided as part of this Agreement.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

- The Contractor may use any of the permitted landfills identified in this Agreement. Notwithstanding the previous sentence, at the City's sole option the City may require flow control, in which case the Contractor shall dispose of all Solid Waste at the Larimer County Landfill. City Representative shall notify the Contractor in writing with at least six (6) months' notice if the City elects to start or stop flow control of Solid Waste to the Larimer County Landfill. If such action takes place after one (1) year from the Service Commencement Date, the Parties shall negotiate in good faith any resulting financial impacts and update Exhibit B.

Overflow Solid Waste

When a Customer sets out un-carted Solid Waste (including if a cart lid cannot fully close), the Contractor shall:

- Photograph the Solid Waste.
- Affix an appropriately marked service tag to the Customer's Solid Waste cart.
- Collect the overflow Solid Waste on the same day as Solid Waste cart.
- Charge the Customer an extra \$4 per 32-gallon bag equivalent. Contractor will retain the additional cost paid by the Customer.

Recyclable Cardboard in Non-Recycling Carts

City code prohibits the disposing of Recyclable Cardboard in Solid Waste or Yard Trimmings carts or Electronics in any cart. When Recyclable Cardboard appears to constitute 25% or more of a Solid Waste or Yard Trimmings cart or when Electronics are observed in any cart, the Contractor shall:

- Photograph the item(s) in the cart.
- Affix an appropriately marked service tag to the Customer's Solid Waste cart.
- Not service the cart until the Recyclable Cardboard is removed.
 - Contractor may leave the cart un-serviced until the regularly scheduled service day that follows the removal of prohibited materials.
 - The following regularly scheduled service day, the Customer may set out twice the regular volume of Solid Waste for no additional charge to account for the prior missed service. In this circumstance, bags equivalent to the regular weekly service level of Solid Waste shall not be considered overflow Solid Waste.
- If Customer has not removed the materials by the next regularly scheduled service day, Contractor shall notify the City Representative for compliance action.

3.2 Recyclable Materials Collection

Contractor shall provide Recyclable Materials Collection Services as follows:

- Contractor shall collect Recyclable Materials from Recyclable Materials carts provided as part of this Agreement.
- Standard service shall be a Large Cart
 - Residents can select a Medium Cart for no change in their monthly cost subject to Section 4.1 of the Agreement.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

- Collection shall be on the same day as Solid Waste collection.
- At the City’s discretion, Contractor shall deliver Recyclable Materials to the Larimer County Recycling Center or the permitted recycling center of the Contractor’s choice for the pricing included in the Price Sheet (Exhibit B). City Representative shall notify the Contractor in writing with at least six (6) months prior written notice if the City elects to start or stop flow control of Recyclable Materials to the Larimer County Recycling Center. If such action takes place after one (1) year from the Service Commencement Date the Parties shall negotiate in good faith any resulting financial impacts and update Exhibit B.
- Recyclable Materials shall not be landfilled unless the load is rejected from the recycling center due to contamination. If that occurs, Contractor shall notify the City Representative within one (1) business day with details of the incident / cause of the contamination. Contractor shall also include details and cause of the contamination incident in the regular report to the City Representative.

**Table 1
MINIMUM LIST OF RECYCLABLE MATERIALS TO COLLECT**

Recyclable Cardboard	Plastic bottles, tubs, jugs and jars (#1,2 and 5)
Office paper (white and colored)	Aluminum cans, clean foil & pie plates
Magazines	Steel / tin cans & empty aerosol cans
Paperboard	Glass bottles and jars
Kraft paper	Aseptic containers

Recyclable Materials Service Frequency and Number of Carts

Recyclable Materials Service shall be provided to 100% of Customers as part of the Collection Services cost. Recyclable Materials Services collection shall be performed weekly with up to two (2) Large Recyclable Materials Cart. Except as otherwise set forth herein, Contractor shall only be required to collect the contents of the Recyclable Materials Carts and may charge Customers for additional Recyclable Materials should Contractor elect to collect such materials. Any such material cannot be in a plastic bag and must not exceed the Cart size. The fee for such services shall be in accordance with the Pricing Schedule in Exhibit B.

Changes in Frequency of Recyclable Materials Services Collection

In the event the City wishes to change the frequency of Recyclable Materials Services collection from weekly to every-other-week, the parties agree to negotiate in good faith the timing to implement the change and impact to pricing with consideration to the effect of such change on the Contractor’s operations.

Changes in Market Conditions

If the materials recovery facility processing Customers’ Recyclable Materials temporarily or permanently stops accepting some or all of the items in Table 1, the Parties will come to mutual agreement about how to adjust Collection Services in a timely manner.

Recyclable Materials Contamination

The Recyclable Materials contamination threshold shall be ten percent (10%) by volume. When the Contractor encounters a cart with ten percent (10%) or more contamination, the Contractor shall:

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

- Photograph the item(s) in the cart.
- Affix an appropriately marked service tag to the Customer's Recyclable Materials cart.
- Not service the cart until the contamination is removed.
- Contractor may leave the cart un-serviced until the regularly scheduled service day that follows the removal of the contamination.
- The following regularly scheduled service day, the Customer may set out twice the regular volume of Recyclable Materials for no additional charge to account for the prior missed service. In this circumstance, Recyclable Materials may be placed in Recyclable Cardboard boxes and shall not be considered overflow Recyclable Materials.
- If the Customer has not removed the contamination by the next regularly scheduled service day, the Contractor shall affix a service tag to the cart, service the cart as Solid Waste, and charge the Customer the equivalent overflow Solid Waste fee.

3.3 Yard Trimmings Collection

Contractor shall provide Yard Trimmings Collection Services as follows:

Contractor shall automatically enroll Customers in Yard Trimmings Collection Services. However, Customers may elect to opt-out of Yard Trimmings Collection Services at the time of the initial sign-up for services or by contacting the Contractor.

Customer's may elect to opt-out of Yard Trimming Collection Services at any time however, the effectivity date for such change in service and corresponding reduction in the monthly cost shall in accordance with Attachment 1, attached hereto and incorporated herein by reference.

- In the event a Customer elects to opt-out of the Yard Trimming collection services, the Customer's monthly cost shall be reduced in accordance with the Pricing Sheet (Exhibit B).
 - Contractor shall collect Yard Trimmings from Yard Trimmings carts provided as part of this Agreement.
- Contractor shall collect Yard Trimmings in the cart only (no loose materials will be accepted).
- Unless the Customer opts out of Yard Trimmings Collection Services, Contractor shall provide Customers a Large Cart for Yard Trimmings Collection Services.
 - Customers may select a Medium Cart for no change in their monthly cost subject to Section 4.1 of the Agreement.
- Contractor shall collect Yard Trimmings weekly from April 1st through November 30th each year.
- Contractor shall collect Yard Trimmings on the same day as Solid Waste and Recyclable Materials collection.
- Contractor shall deliver Yard Trimmings to A-1 Organics or Ewing Landscape Materials.
 - Contractor shall receive prior written approval from the City Representative to take materials to a facility other than A-1 Organics or Ewing Landscape Materials.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

- Yard Trimmings may not be landfilled unless load is rejected from the Yard Trimmings destination due to contamination. If that occurs, Contractor shall notify City Representative via email within one (1) business day with details of the incident / cause of the contamination. Contractor shall also include details and cause of the contamination incident in the regular report to the City Representative.

**Table 2
MINIMUM LIST OF YARD TRIMMINGS TO COLLECT**

Brush & Limbs (Up to 3" diameter and length to fit in in the cart with lid closed)
Grass Clippings
Leaves
Garden Trimmings / Weeds / Plant Material

Yard Trimmings Contamination

The Yard Trimmings contamination threshold shall be ten percent (10%) by volume. When the Contractor encounters a cart with ten percent (10%) or more contamination through visual inspection of the cart, the Contractor shall:

- Photograph the item(s) in the cart.
- Affix an appropriately marked service tag to the Customer's Yard Trimmings cart.
- Not service the cart until the contamination is removed.
- Contractor may leave the cart un-serviced until the regularly scheduled service day that follows the removal of the contamination.
- The following regularly scheduled service day, the Customer may set out twice the regular volume of Yard Trimmings for no additional charge to account for the prior missed service. In this circumstance, Yard Trimmings may be placed in paper yard waste bags and shall not be considered overflow Yard Trimmings.
- If the Customer has not removed the contamination by the next regularly scheduled service day, the Contractor shall affix a service tag to the cart, service the cart as Solid Waste, and charge the Customer the equivalent overflow Solid Waste fee.

3.4 Periodic Residential Bulky Items Collection

Bulky Items Collection Services

The Contractor shall provide Bulky Items Collection Services as follows:

- Collection on an on-call basis.
- Collection within five (5) business days of request.
- Collection need not be on the same day as regular Solid Waste services.
- Contractor shall utilize a rear load truck to provide Bulky Items Collection.
- Contractor will provide periodic educational outreach to Customers in the City to encourage reuse of Bulky Items.
- Contractor shall track the number of and types of items collected (in categories mutually agreed upon by the Contractor and the City Representative).

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

- As part of the Collection Services cost, Customers may request collection of up to two (2) No Additional Fee Bulky Items per calendar year for no additional charge. Customers requesting collection of more than two (2) No Additional Fee Bulky Item collections per calendar year shall pay the price stated in the Pricing Sheet (Exhibit B) for any additional No Additional Fee Bulky Items.
 - No Additional Fee Bulky Items

Shall include common household items, including but not limited to non-freon containing appliances and furniture, excluding the following:

 - Excluded Waste
 - Hazardous Waste
 - Electronics
 - Yard Trimmings
 - Recyclable Cardboard
 - Items that weigh over 60 pounds
 - Items larger than 6' x 6'
 - Additional Fee Bulky Items

Shall include items for which Customers will be charged an extra fee, per the pricing stated in the Pricing Sheet (Exhibit B).

3.5 Dumpster Service for Multi-Unit Residential and Commercial Customers

At the City's discretion and with 90 days advance written notice of the City Representative, the Contractor shall offer Dumpster service for Solid Waste and Recyclable Materials pursuant to the terms of this Agreement. As determined by the City, this service offering may be made available to Residential Units, multi-unit residential buildings, or commercial buildings that opt in to receive such Dumpster service by Contractor. Pricing for such Dumpster services shall be as stated in the Price Sheet (Exhibit B).

3.6 Other Services or Additional Material Collections or Other Ways to Improve Program

The Contractor may identify at any time and propose to the City to offer other services or collect additional materials to improve the program subject to the following:

- Such supplemental service(s) enhances services under the City's Agreement and supports the City's sustainability goals.
- Collection is compliant with the terms of the City's Agreement and all local, state and federal laws and regulations.
- Materials are managed at an appropriately licensed / permitted facility.

Any additional services or additional materials collected are subject to the City's prior written approval at the City's sole discretion.

4.0 OPERATIONAL SPECIFICATION

The Contractor shall provide all resources, equipment, and personnel necessary to perform all services described herein.

4.1 Carts

The Contractor shall purchase, assemble, and deliver all Solid Waste, Recyclable Materials, and Yard Trimmings carts.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

Cart ownership will transfer to the City at the end of the Agreement Term subject to Section 5 of the Agreement.

The cost of the carts is included in the monthly rates as stated in the Pricing Sheet (Exhibit B). The Customer's bill shall not include a separate itemized line-item price for carts.

Carts shall be new, wheeled units that meet the following criteria:

- The cart body and lid shall be distinct for Solid Waste, Recyclable Materials and Yard Trimmings carts. Cart colors shall be:
 - Grey for Solid Waste (CL.GRY.1).
 - Blue for Recyclable Materials (CL.BLU.1).
 - Green for Yard Trimmings (CL.GRN.1).
- Cart sizes available must be consistent with service levels in Section 3.
- Carts must be compatible with industry standard collection equipment.
- Carts shall be manufactured with a minimum of ten percent (10%) residential post-consumer recycled plastic content based on the weight of the entire mass of the body, lid and wheels.
- Radio Frequency Identification (RFID) tags must be embedded in carts at the time of manufacturing.
- Carts shall be hot-stamped with City logo and contact phone number. The lids of Recyclable Materials and Yard Trimmings carts shall have in-mold labeling of full-color guidelines for acceptable/unacceptable materials.
 - The City Representative will provide information and artwork for hot stamp and in-mold label guidelines printing.
 - Contractor logos and information shall not be included on carts other than temporary labeling approved by the City Representative.
- Carts shall be purchased from Schaefer and shall be model numbers 95Q.0R0, 65Q.0R0 and 35Q.0R0.
- Schaeffer shall provide a 10-year warranty on the carts purchased pursuant to this Agreement which shall transfer to the City simultaneous with the transfer of the cart ownership at the end of this Agreement Term.

Grant Funding

The City has secured \$15 per Recyclable Materials cart in grant funding from The Recycling Partnership to offset part of the Recyclable Materials cart cost. The price stated in the Pricing Sheet (Exhibit B) has been reduced by an amount equal to this grant funding.

Once the City has received the grant funds, the City Council has appropriated such funds and the City has confirmed delivery of the carts, the City shall authorize the Contractor to initiate an invoice for such grant funds. The Contractor shall then invoice the City for an amount equal to the grant funding. Invoices should be emailed to invoices@fcgov.com with a copy to the City Representative. Pay terms shall be Net 30 days from the date of the invoice.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

The City may continue to seek grant funding to offset other cart costs. In the event the City secures additional grant funding, the price for services shall be reduced by an amount equal to the additional grant funding provided by the City.

Cart Exchanges and Replacement

Initial Service Start-Up:

- Contractor shall provide an appropriately sized and equipped fenced, secured location to utilize during cart assembly and delivery. The Contractor shall notify the City Representative in writing as soon as reasonably possible once the site has been identified.
- Contractor shall provide a second appropriately sized and equipped fenced, secured location to store Contractor's legacy carts and other haulers' carts. The Contractor shall notify the City Representative in writing as soon as reasonably possible once the site has been identified.
- Contractor shall collect existing Republic Services or Gallegos carts from their customers simultaneous with delivery of carts for Collection Services. Subject to written agreement with other licensed haulers, Contractor shall collect other haulers' existing carts from their customers simultaneous with delivery of carts for Collection Services unless otherwise mutually agreed in writing by the Parties.
 - All collected carts shall be transported to the secure storage location agreed upon by the City Representative and Contractor.
 - The City Representative shall use commercially reasonable efforts to support communication between the Contractor and other licensed haulers.
- Contractor shall deliver new carts simultaneously with the old cart removal unless otherwise mutually agreed in writing by the Parties.
- Contractor shall scan the RFID in each cart and the related serial number at the point of delivery and confirm the carts delivered are the correct size and type requested by each Customer.
 - Throughout the duration of this Agreement, Contractor shall maintain a current database of the serial number of each cart and the affiliated address, along with the Customer's name, phone number, email address and billing address. With thirty (30) days' advance written request by City, Contractor shall send City the information contained in the database in a mutually agreed-upon format. As part of Contractor's subcontract with Schaefer, Contractor will provide information correlating each serial number with its corresponding RFID within reasonable time upon request.
- Contractor shall affix information to carts at the time of delivery.
 - The information shall include but is not limited to guidelines and a service calendar. The information shall be designed collaboratively by the City and the Contractor with final written approval by the City Representative.
 - The Contractor shall pay all printing and any other costs (such as cost for attaching to carts at delivery etc.) for the information.
- Contractor and the City Representative shall agree in writing to the cart deployment and collection schedule at least ninety (90) days prior to cart delivery and collection.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

- Contractor shall recycle all unusable Republic Services carts and carts labeled as Gallegos Sanitation.
- Contractor shall provide Cart delivery and collection of Contractor's and Gallegos' Carts, and subject to written agreement between the Contractor and other haulers, such haulers' Carts. Such service shall be performed at no charge to the Customer.
- Upon receipt of a Customer complaint that Contractor delivered the incorrect size or type of cart, Contractor shall deliver correct carts and remove incorrect carts by the next scheduled service day for such waste stream.

Ongoing:

- Contractor shall provide up to two (2) delivery / exchange / repair instances per service address per year for no additional charge. Each instance could involve one or more carts for the following reasons:
 - Initial delivery of carts when a new Customer starts service.
 - Collection of carts when a Customer ends service.
 - Repairing or replacing broken or missing carts.
 - Exchanging carts for a different service size.
 - Cart delivery or exchange for any other reason.

Contractor can charge Customer a delivery / exchange fee for delivery / exchange / repair needs beyond two instance per year. The cart exchange fee for such instances is included in the Pricing Sheet (Exhibit B).

- Contractor shall deliver, exchange or collect carts by the next service date for the applicable waste stream.
- Contractor shall maintain at least two percent (2%) surplus inventory for each size and type of cart utilized as part of this Agreement. Contractor shall monitor cart inventory daily. Contractor shall ensure adequate inventory of carts at all times.
- Cart inventory utilized as part of this Agreement shall be securely stored within Contractor's fenced property.

Cart Maintenance

Contractor shall provide routine cart maintenance, repair and replacement.

Contractor shall:

- Maintain carts graffiti-free and in good working condition.
- Repair any damaged carts that can reasonably be returned for regular service.
- Replace carts that cannot reasonably be repaired.
- Recycle any decommissioned carts.

4.2 Collection Vehicles

The Contractor shall provide all vehicles and equipment needed for Collection Services in an efficient and environmentally sensitive manner.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

Collection Vehicles

Collection vehicles used to provide Collection Services for this Agreement shall meet the following criteria:

- Be 2018 model year or newer.
- As applicable, have functioning diesel exhaust aftertreatment systems.
- At least 50% of the diesel collection vehicles shall meet US16 Emission standards.
- At least 45% of the diesel collection vehicles shall have certified clean idle engines.

Contractor shall not purchase and/or transfer from another location any additional diesel trucks for use in Collection Services for this Agreement. Both Parties acknowledge vehicles may need to be transferred due to a vehicle collision or equipment failure. All new trucks purchased and any replacements for trucks retired from service shall be RNG-fueled or electric trucks.

Contractor shall provide an adequate fleet size of vehicles required to perform the services hereunder.

Contractor shall conduct a pilot utilizing at least one electric collection vehicle for as long as reasonable for the duration of this Agreement. With mutual agreement, Contractor and the City may pursue additional electric collection vehicles within the Term of this Agreement.

Details of vehicles anticipated to be utilized as of the Service Commencement Date as well as replacement criteria and schedule are in Attachment 4.

Fuel

Contractor shall construct RNG fueling infrastructure that shall be operational by the Service Commencement Date and for the duration of this Agreement. Contractor shall secure RNG credits to utilize at least 98% RNG for all natural-gas-fueled collection vehicles utilized for Collection Services.

Contractor shall construct at least one electric charging station at Contractor's Fort Collins facility by the Service Commencement Date to support the electric collection vehicle pilot project.

Preventative Maintenance and Repairs

Contractor shall conduct preventative maintenance to ensure that collection vehicles are available to provide Collection Services, including at a minimum the following:

- Every collection vehicle shall be inspected and lubed according to the following schedule.
 - Every 150 hrs. for automated and front load trucks (Approximately every 12-15 days of use).
 - Every 250 hrs. for rear load trucks. (Approximately every 20-25 days of use).
- Hydraulics shall be maintained sufficiently to prevent hydraulic fluid leaks.
- Seals on trucks shall be regularly replaced to prevent material leaks.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

Overweight vehicles

Contractor shall track vehicle weights on an ongoing basis. Routes shall be designed to support collection vehicles remaining under legal weight limits.

Weight tickets from disposal facilities shall be retained for a minimum of six months.

Instances of overweight vehicles shall be included in the regular report to the City Representative.

4.3 Collection Personnel

The Contractor shall maintain staffing levels required to support the Collection Services on the schedules set forth herein. The Contractor shall maintain a current Department of Transportation (DOT) compliance policy. Such policy shall be subject to audit and review by the City with reasonable prior notice.

At a minimum, all vehicle drivers shall be:

- Licensed by the State of Colorado with a valid Class B Commercial Driver License (CDL) with air brakes endorsement.
- Alert, careful, courteous and competent.
- Appropriately trained in operations and safety measures.
- Provided with appropriate communication tools and Personal Protective Equipment (PPE).

4.4 SAFETY

Safety Program

The Contractor shall embrace a culture of safety to include a documented safety program for the Collection Services. The safety program must include at a minimum the following:

- Health and Safety Training.
- Employee/Management Responsibility.
- Hazard Recognition and Control.
- Incident Reporting and Investigation.

Tracking and Reporting

The Contractor shall track and report to the City Representative on an annual basis its Experience Modification Rate (EMR) and OSHA Total Recordable Incident Rate (TRIR). The calculation for TRIR is as follows:

$$\text{TRIR} = \frac{\text{Number of recordable cases} \times 200,000}{\text{Number of hours worked}}$$

Contractor shall notify the City Representative in writing within 24 hours in the event of a serious accident involving injury.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

Contractor shall provide a summary of any incident report and investigation for any accident or infraction as well as any follow up actions taken to resolve situation or prevent in the future in the regular report to the City Representative.

Vehicle Safety

Contractor shall ensure, when operational, all collection and transfer vehicles:

- Have covered loads.
- Be kept in good repair and appearance.
- Be clean and sanitary.
- Be compliant with all local, state, and federal safety and inspection regulations.

Contractor's drivers shall conduct pre- and post-trip inspections daily and shall identify any issues in a written vehicle condition report.

Any collection vehicle deemed unsafe or not legal to operate shall be removed from service.

Contractor collection vehicles shall have dash cameras, back up cameras, and software with real-time GPS tracking.

Spill Response

Any vehicle leaks or spills shall be cleaned up as soon as possible and no later than 24 hours after occurrence.

Contractor shall clean up any spills or litter caused by collection or transportation, regardless of whether it is on public or private property.

Cell Phone Usage

No driver of a Contractor vehicle operating in furtherance of this Agreement shall use a cell phone when the vehicle is moving.

4.5 Collection Schedule, Missed Collections and Blocked Carts

Hours and Holidays

All collections shall be conducted between 7 a.m. and 7 p.m. Monday through Friday and 7 a.m. to 7 p.m. on Saturdays during any week with a holiday or due to severe weather.

No collections shall occur on Sundays or holidays unless expressly authorized by the City Representative.

Holidays observed shall be New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day and Christmas Day. The date on which each holiday is observed shall follow the schedule of the disposal facilities utilized by the Contractors.

Severe Weather Protocol

On days when the City closes or declares a late start due to severe weather or other emergency, the Contractor may suspend or delay service without prior approval of the City. The City will post such notification at fcgov.com by 5 a.m. Mountain Time.

In situations where the Contractor seeks to suspend or delay service, but the City has not closed its facilities or declared a delayed start, Contractor must notify the City Representative in writing by 7 a.m. Mountain Time of the basis for the service suspension

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

for that day. Contractor shall use commercially reasonable efforts to avoid any service suspension or delay.

Contractor shall collect any missed collections due to suspended service within one calendar day of the resumption of service (as determined by Contractor) unless otherwise approved by the City Representative. The resumed service may cause a similar delay to other service days throughout that service week. (For example, if service is suspended on a Tuesday and resumes on Wednesday, the Tuesday Customers would be serviced on Wednesday and so on, including Friday collections taking place on Saturday.)

If severe weather requires a service suspension of two or more days in length, Contractor may delay service of the necessary service days until the following regularly scheduled service day (for instance, if service must be suspended on Monday and Tuesday, Monday Customers' service may be delayed until the following service day so that Tuesday Customers would be serviced on Wednesday and so on, including Friday collections taking place on Saturday.)

If multi-day service suspensions take place over the course of multiple weeks, Contractor shall adjust which day of service is delayed for one week. Any one service day shall not be delayed for more than one week (i.e. if storms take place on two Wednesdays in a row, Wednesday customers may have service delayed to the following week, but in the second week Thursday customers would be delayed so that no one set of customers is without service for any longer than two weeks).

Missed Collections

Contractor shall resolve any missed collection issues within one (1) business day if the missed collection is reported by 4 p.m. Missed collections reported after 4 p.m. shall be serviced within two (2) business days.

- Excluding delays associated with service suspensions.
- Excluding instances where Customer had late set-out, blocked cart or excessive contamination.
- Contractor shall photograph when carts are not set out by the service time.

Blocked Carts

If the Contractor cannot access a cart to service it, the Contractor shall:

- Photograph the cause of the issue.
- Affix an appropriately marked service tag to the blocked cart(s). If attaching a tag is not feasible / practical, Contractor shall contact the Customer via text, email, or phone call to notify them of the problem and when their cart(s) will next be serviced.

Contractor may leave the cart(s) un-serviced until the next regularly scheduled service day that follows the removal of the situation blocking access to the cart(s).

The following regularly scheduled service day, the Customer may set out twice the regular volume of materials for no additional charge to account for the prior missed service. In this circumstance, materials equivalent to the regular service level shall not be considered overflow and Customer shall not be charged extra.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

If the blockage remains on the next regularly scheduled service day, Contractor shall notify the City Representative and does not have to service the location until the blockage is addressed.

4.6 City and Contractor Responsibilities During Transition Period and Beyond

City Responsibilities

- Collaborate with the Contractor to design public notifications and service tags for the Collection Services.
- Provide information and artwork for cart hot stamps and cart lid in-mold labels.
- Help to resolve questions while Contractor develops service address list.
- Determine whether HOAs with existing hauling contracts comply with City requirements (and thus are exempt from the City’s residential waste collection program under Section 12-29 of the City Code) and share that information with the Contractor.
- Provide a phone number that shall be routed to the Contractor and that the Contractor shall use for all customer service inquiries, requests, complaints and other as related to this Agreement. The City will retain all rights to the phone number. Contractor will assist to transfer the phone number to the City or next selected contractor at the end of the Agreement Term.
- The City Representative shall use commercially reasonable efforts to support communication between the Contractor and other licensed haulers during the time that Republic legacy and other haulers’ carts are being collected.
- Establish Customer billing rates based on the contract pricing and the Administrative Fee.

Contractor Responsibilities

Contractor shall:

- Develop, produce and distribute public notifications to Customers.
 - Contractor shall collaborate with the City Representative to design the public notifications and City Representative shall have final approval authority.
 - Contractor shall distribute public notifications at the following times at a minimum.
 - During the initial start-up period.
 - When new Customers start service (after the service start-up period).
 - When Customers change service levels at any time.
 - Annually to all Customers at a time agreed upon with City Representative.
 - The notification shall be in a multi-color, user-friendly format with any text in both English and Spanish and shall include:
 - Available service levels and rates.
 - Annual collection calendar.
 - Set-out times and locations.
 - Directions for changing service levels, managing overflow Solid Waste, contamination, and requesting additional services.
 - Guidance on acceptable and unacceptable materials in Recyclable Materials and Yard Trimmings carts.
- Develop service address list.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

- Facilitate and manage Customer cart size selection.
 - Customers shall be able to select their cart sizes via any of the following options: a Fort Collins-specific page on RepublicServices.com, through the mail, or over the phone.
- Conduct all billing set-up with Customers.
- Develop and distribute a collection calendar(s) for all Customers.
- Produce service tags to address situations such as blocked carts, Solid Waste overflows, contaminated Recyclable Materials or Yard Trimmings, or other conditions that impact service or safety. The City Representative shall have final approval authority of the service tag design. Tags shall:
 - Include text in English and Spanish.
 - Be made of durable, water-resistant material that can be written on.
 - Be printed with one (1) color.
 - Have a mechanism for temporary attachment to carts.
 - Be a minimum size of 5” x 10”.
- Remove all existing carts from Customers at no additional cost simultaneous with new cart delivery per Section 4.1.
- Provide all other services stated in this Agreement and/or required to provide Collection Services in accordance with the terms of the Agreement.

4.7 Customer Billing

All Customer billing shall be conducted by the Contractor.

Customer rates will be established by the City based on the pricing stated in Exhibit B and Administrative Fee.

Contractor portion of rates and fees shall remain unchanged during each Service Year unless otherwise approved by an amendment to this Agreement.

Customer bills shall be on a quarterly schedule and shall be assessed in advance.

Contractor shall charge all Service Opt-Out Customers the XS Cart service price and the Administrative Fee.

All Customer bills shall include the following:

- Applicable Collection Services rates as one line item (i.e. Recyclables Materials, Yard Trimmings and Bulky Items collections shall not be separate line items).
- Separate itemization of any fees accrued by the Customer for overflow Solid Waste, contamination, Bulky Items collection and any other fees approved by the City.
 - The only charges allowed on Customer bills are those described in this Agreement.
- Administrative Fee(s) may be itemized separately or included with the Collection Services price at the City’s discretion. If itemized, the City Representative will provide text to be included on bills.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

- Bills shall include text in Spanish providing Customers with directions for how to receive a Spanish translation of their Bill. During the Agreement Term, the Contractor will seek the capability to provide Customer bills in Spanish upon request.

4.8 Customer Service and Education

All customer service functions shall be provided starting in the Transition Period and shall continue through the Agreement Term.

Customer Service Representatives

Prompt customer service from representatives who understand Fort Collins' program is very important to the City.

Contractor shall have a sufficient number of qualified and experience customer service agents who possess comprehensive working knowledge of Fort Collins neighborhoods and the specific details of services, rates, and applicable provisions of the Agreement available at the specified times to service Customers. These customer service agents will work in Contractor's Colorado Pod and service Fort Collins and Colorado generally, with priority given to Customer contacts.

During times of high call volume, Customer contacts may roll over to Contractor's Northwest area pod representatives.

Customer Service Hours

Customer service staff dedicated to Customers under this Agreement shall be available at a minimum from 7:30 a.m. to 5 p.m. Mountain Time (MT) Monday through Friday.

Northwest area pod customer service agents shall be available additional hours of 5 p.m. to 6 p.m. MT Monday through Friday and 8 a.m. to 1 p.m. MT Saturdays.

Customer Queries and Complaints

Contractor shall:

- Address all issues directly and strive for a one call resolution to Customer and Service Opt-Out Customer needs.
 - The City shall not be the default customer service provider.
- Answer Customer contacts primarily with live personnel.
 - When call volume is unexpectedly high and live personnel are addressing other City queries, Customers may opt to receive a call back while holding their place in the call queue.
- Provide an option for Customers calling after hours to leave a voice mail message; Contractor shall respond to Customer query within one (1) business day.
- Maintain an average hold time of three (3) minutes or less for customer service over the phone.
- Maintain an average abandonment rate of less than three percent (3%) of customer calls for customer service over the phone.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

- Offer Customers the opportunity to take an optional three (3) question survey at the end of a call with a customer service agent. The survey questions will be mutually agreed upon by the Parties.
 - Responses to the survey from Fort Collins Customers shall be included in the regular report to the City Representative.
- Resolve any other Customer or City complaints within two (2) business days.
- Resolve all complaints and requests to the satisfaction of Customers and the City Representative.

Subject to Customer's consent, City shall have access to the recording of any phone customer service interactions and/or written communications with a Customer upon request. Contractor shall retain phone recordings for ninety (90) days from the date of the interaction and written correspondence for six (6) months from the date of the correspondence. Contractor shall obtain any required consent of Customers and Service Opt-Out Customers to provide this information to the City Representative.

Public Outreach and Education

The City will conduct comprehensive public outreach and education activities throughout the Agreement Term. The Contractor shall support these efforts by:

- Producing and distributing Customer notifications as described in Section 4.6.
- Maintaining a Fort Collins-specific website page(s) with the same information required for Customer notifications.
- Providing Customers with the ability to request service changes online (such as start / stop service, cart size change, Bulky Items collection, report a missed collection, opt out of Yard Trimmings collection etc.).
- Providing service tags and utilizing them as described in this Agreement.
- Providing the City Representative with information that will impact Customer service at least thirty (30) days before any changes go into effect.
 - Including changes in accepted Recyclable Materials or Yard Trimmings, equipment, routing, collection schedule etc.

4.9 Regular Reports

All reports shall be submitted electronically in a format and with a level of detail that is acceptable to the City Representative.

Each report shall include information since the last report (monthly / quarterly / annual).

Monthly reports shall be submitted within 15 days of the end of the month. Quarterly and annual reports shall be submitted within 30 days of the end of the month / quarter / year.

Information within each topic area shall be sorted by Customer address unless otherwise specified below.

For the purpose of this section, service type shall mean Solid Waste, Recyclable Materials, or Yard Trimmings.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

All reporting periods shall be based on a calendar year.

The City reserves the right to request additional information mutually agreed up on by the City Representative and the Contractor.

Reports shall include the following:

Immediate Reporting

Contractor shall notify the City Representative via email within twenty-four (24) hours in the event of a serious accident involving injury or death.

Contractor shall notify the City Representative via email as well as spill@fcgov.com in the event of any spill that enters a storm drain inlet or any significant spill.

Contractor shall send a report to the City Representative within one (1) business day if / when any of the following occur:

- Contaminated loads of Recyclable Materials or Yard Trimmings that include materials from Customers that are rejected from processing facilities.
 - Include date, service type, contamination type, situation that caused contamination, and any other relevant details.
- Prohibited materials in carts or blocked carts that are not corrected within one (1) week by Customer.

Monthly Report

- Materials collected.
 - Scale-based weight data for Solid Waste, Recyclable Materials, Yard Trimmings and Bulky Items collections, including facilities where they were delivered for reuse, recycling, composting, disposal or other management.
 - The weight of City materials in any mixed loads that also includes non-City Solid Waste can be estimated using methodology acceptable to the City.
 - If materials were delivered to more than one (1) facility, include the scale-based weight data for each facility.
- Customer complaints.
 - Include date of complaint, service address, complaint type, resolution, and date resolved.
 - For purposes of this report, a complaint is any customer contact other than a service change or information request.
 - Contractor and the City Representative will develop list of complaint types that are mutually agreeable, and they may include missed collection, unsafe driving, spills, operating outside permitted hours, customer service phone call hold times, other customer service issues, etc.
- Missed collection.
 - Date of missed collection, date of resolution, service type missed, service address, and whether missed collection was due to Contractor or Customer (i.e. late set out, blocked cart etc.).

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

- Contaminated loads of Recyclable Materials or Yard Trimmings rejected from processing facilities.
 - Include date, service type, contamination type, situation that caused contamination, and any other relevant details.
- Accidents or infractions.
 - Provide a summary of any incident report and investigation for any accident or infraction as well as any follow up actions taken to resolve situation or prevent in the future.

Quarterly Report

- Number of Customers receiving Collection Services through the City contract.
- Financials.
 - Amount of Administrative Fee collected for remittance to the City.
 - Any known performance violations and associated liquidated damages to be remitted to the City.
 - Fees charged for the quarter sorted by fee type.
 - Number of accounts over 90 days delinquent.
- Special service situations and fees assessed.
 - Include the incident date, service address, incident resolution and fee charged for the following incident types:
 - Overflow Solid Waste.
 - Prohibited items in Solid Waste carts (such as Recyclable Cardboard, Electronics, etc.).
 - Blocked carts.
 - Contaminated Recyclable Materials carts.
 - Contaminated Yard Trimmings carts.
- Bulky Items collection.
 - Service address, date service request received, date of bulky item pick up, and number of items by type (in categories agreed upon by Contractor and the City Representative)
- Customer service.
 - Number of customer communications.
 - Include date and type of customer service (complaint, service change, or information request).
 - Percent of phone calls answered via roll over to Northwest area pod or national staff.
 - Summary of Customer responses to customer service survey.
 - Percent abandoned phone calls.
 - Average hold times for phone calls.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

- Average number of phone calls per time of day.
 - Contractor and the City Representative shall mutually determine time categories, such as before 8 am, 8am-11am, 11am-1pm, 1pm to 3pm, 3pm -5pm, 5-6pm, after 6pm.
- Cart activity (includes deliveries, replacements, repairs, removal or exchanges).
 - Include type of cart, type of action (delivery, repair, replacement, removal, exchange), request date, completion date, and service address. If Customer is changing cart size, include the initial and new cart size.
- New opportunities: any new opportunities identified by Contractor to decrease materials landfilled, increase reuse, recycling or composting of materials.
- Number of Customers opting out of Collection Service.

Annual Report

- Annual average of the number of Customers receiving Collection Services through the City contract.
- Monthly scale-based weight data for Solid Waste, Recyclable Materials, Yard Trimmings and Bulky Items collections, including facilities where they were delivered for reuse, recycling, composting, disposal or other management for each month of the year.
- Annual summary of the number of the following:
 - Missed collections by Contractor*.
 - Missed collections due to Customer (late set-out, blocked cart etc.)*.
 - Number of contaminated loads of Recyclable Materials or Yard Trimmings rejected by processor with brief notes of the cause.
 - Carts delivered, repaired, replaced, removed or exchanged, sorted by activity type as a number and as a percentage of carts serviced by Contractor's Collection Services.
- * Express these data points as a raw number and as a percentage out of all the Customers receiving Collection Services through the City.
- Annual summary of each of the following Financials.
 - Amount of Administrative Fee remitted to the City.
 - Amount of liquidated damages remitted to the City.
 - Amount of fees charged, sorted by fee type.
 - Collection Services rates charged to Customers.
- Summary of Bulky Item material collection by item type.
- New opportunities: any new opportunities identified by Contractor to decrease materials landfilled, increase reuse, recycling or composting of materials.

Available to City Upon Request

- Customer and service level details.
 - Customer name, service address, billing address, phone number, Customer email, cart serial number and related cart sizes per service type.
- Customer invoice.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

- Time and date stamped photograph of any incident of a late set out, overflow solid waste, prohibited item in Solid Waste cart, blocked cart, contaminated Recyclable Materials cart, contaminated Yard Trimmings cart.
- Recording of customer service interactions over the phone (must be retained for ninety (90) days after interaction).
- Copy of written customer service interactions (must be retained for six (6) months after interaction)

Quarterly Meeting

City Representative and Contractor contact shall meet quarterly to review and discuss Contractor performance. Either Party may also invite additional staff members as appropriate.

Records Retention and Auditing Rights

The Contractor shall maintain all records for a minimum of three (3) years from the end of the Agreement Term and any extension, with the exception of phone customer service interactions, which shall be retained for at least ninety (90) days and written customer service interactions, which shall be retained for at least six (6) months from the interaction. Contractor shall retain records of tip fees paid during the Agreement Term for a minimum of three (3) years from the end of the Agreement Term and any extension.

Contractor records shall be available at all reasonable times for inspection by the City, including records of tip fees paid.

The City will retain full auditing rights of the Contractor's accounting records as they pertain to this Agreement.

Materials to Provide to City Near the End of Agreement Term

Contractor shall provide documentation certifying transfer of ownership of carts and of cart warranty to the City Representative within 30 days from the end of the Agreement Term.

Contractor shall provide the following to the City Representative within 30 days of the end of the Agreement Term:

- Customer name, service address, billing address, phone number, Customer email, cart serial and related cart sizes per service type to the City in Excel or other electronic format acceptable to both Parties.

4.10 Solid Waste, Recyclable Materials and Yard Trimmings Composition Analysis

If the City or any agent hired by the City conducts a composition analysis of Solid Waste, Recyclable Materials, Yard Trimmings or other materials, the Contractor shall support by diverting loads identified by the City Representative or their agent to the designated sort site (within Larimer County) during the composition analysis and any significant additional cost shall be negotiated by the Parties in good faith.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

4.11 Contractor Compensation

Service Price Changes

The City agrees that the Contractor's pricing as stated in Exhibit B may be adjusted annually beginning on the first anniversary of the Service Commencement Date and annually thereafter, except in instances when performance violations on contract non-compliance issues are unresolved.

The adjustment will be three percent (3%) annually effective on the anniversary date of the Service Commencement Date.

Uncontrollable Cost Increases or Decreases

On an annual basis beginning on the first anniversary of the Service Commencement Date the Contractor may petition the City for an additional pricing adjustment due to uncontrollable costs limited to disposal or processing tip fee increases or changes in applicable regulations. The Contractor shall petition the City at least ninety (90) days prior to the anniversary date.

Price adjustment petitions developed by the Contractor for tip fee increases shall include written documentation of tip fees for all materials collected in Collection Services as of the time of the application as well as an average over the last twelve (12) months. The petition shall consider decreases in other tip fees as a potential counterbalance for other uncontrollable costs.

Any pricing change under this subsection shall be effective on the anniversary of the Service Commencement Date.

Any petition shall include documentation to justify how the cost increases exceed the three percent (3%) per year standard increase.

The City reserves the right, as a condition of approval, to inspect Contractor financial records that justify a change in the pricing.

The City has no obligation to approve any petition but acknowledges uncontrollable costs may occur and intends to negotiate with the Contractor in good faith without unreasonable delay. In the event the Parties are unable to agree on such uncontrolled costs the pricing shall increase 3.5% inclusive of the increase stated in Service Price Changes stated above and either party shall have the right to terminate the Agreement with twelve (12) months written notice.

4.12 Administrative Fee and Liquidated Damages Remittance

The Contractor shall collect the Administrative Fee through Customer billing on behalf of the City. Contractor shall remit the Administrative Fee and liquidated damages from performance violations to the City Representative within thirty (30) calendar days of the last day of the calendar quarter via check made out to the City of Fort Collins.

5.0 CONTRACTOR PERFORMANCE

5.1 Performance Standards & Liquidated Damages

Performance standards and liquidated damages for non-compliance to the Agreement requirements are stated in Table 3.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

The liquidated damages stated in Table 3 are reasonable estimates as to the dollar amount of damages incurred in relation to each offending act or omission. The City may assess liquidated damages regardless of whether the Contractor has met or is meeting the related performance standards percentages stated in Table 3. The liquidated damages are not intended as a penalty and the assessment of liquidated damages shall not be deemed a default except in the event the Contractor fails to cure in accordance with the Agreement.

During the Agreement Term, the Contractor shall sustain the performance standards stated in Table 3. In the event the Contractor fails to sustain the stated performance standards and/or is not in compliance with the terms of the Agreement, the City may deem the Contractor to be in default in accordance with the provisions of Section 20.

In the event of non-compliance, the City shall notify the Contractor in writing of the basis for each assessment of liquidated damages. City shall work in good faith with the Contractor to resolve any disputes related to liquidated damages.

Liquidated damages shall be due to the City on the next quarterly remittance following assessment of the liquidated damages (per Section 4.12).

Table 3

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

Material Conditions for Contract Default

PERFORMANCE STANDARD VIOLATION	LIQUIDATED DAMAGES	CALCULATION BASIS FOR PERFORMANCE STANDARD	PERFORMANCE STANDARD
Failure to meet schedule for any Transition Plan activity	\$500 per day	Daily	100%
Failure to deliver all Solid Waste to mutually-agreed-upon permitted landfill, all Recyclable Materials to the Larimer County Recycling Center, and all Yard Trimmings to mutually-agreed-upon facilities OR landfilling properly source separated Recyclable Materials or Yard Trimmings	\$3,000 per load	1 - Load	100%
Failure to maintain required insurance coverage	\$5,000 per incident	Insurance expiration date	100%
Failure to maintain irrevocable letter of credit	\$5,000 per incident	ILOC expiration date	100%
Misrepresentation in reporting including inaccurate Administrative Fees or liquidated damages	\$5,000 per incident	Each Reporting Period	100%
Contractor utilizing a driver to provide Collection Services that does not have a valid Class B CDL with air brakes endorsement and Colorado Drivers' License and/or is not current with DOT required training or other DOT requirements	\$1,000 per driver per day	All Drivers	100%
Delayed remittance of Administrative Fees or liquidated damages	\$500 per day	Each Billing Period	100%
Failure to participate in mutually scheduled quarterly meeting	\$1,000 per incident	Each Quarterly Meeting	100%
Failure to allow City audits or maintain records for three (3) years or retain customer service phone recordings for ninety (90) days or customer service written correspondence for six (6) months	\$3,000 per incident	Each City Audit or Each Information Request	100%

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

PERFORMANCE STANDARD VIOLATION	LIQUIDATED DAMAGES	CALCULATION BASIS FOR PERFORMANCE STANDARD	PERFORMANCE STANDARD
Failure to provide written notice within 24 hours of any serious accident involving injury or death or significant spill the date, description and resolution/corrective action taken for any vehicle accidents, infractions, or overweight vehicles that occurred.	\$1,000 per incident	Each Reporting Period	100%
Failure to deliver specified loads of material to a designated location in support of a material composition analysis conducted on behalf of the City	\$1,000 per load per audit	Annual Audit	100%
Failure to appropriately bill Customers according to the Agreement OR billing Customers for fees not approved by City OR failure to provide text in Spanish with directions for accessing full bills in Spanish	\$300 per bill, up to \$3,000 per quarterly billing cycle	Per Customer Bill	100%
Failure to provide dedicated service representatives in the Colorado Pod and NW Pod during each respective pod's customer service hours in this Agreement	\$500 per day	Daily	100%

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

Daily Operations

PERFORMANCE STANDARD VIOLATION	LIQUIDATED DAMAGES	CALCULATION BASIS FOR PERFORMANCE STANDARD	REQUIRED TIME PERIOD OR MEASUREMENT UNIT	PERFORMANCE STANDARD
Collection Services taking place before 7 a.m. or after 7 p.m. (each route shall be separate incident)	\$250 per incident	Monthly	Collected between 7 a.m. and 7 p.m.	98%
Failure to collect missed collections reported by 4 p.m. within one (1) business day or those reported after 4 p.m. within two (2) business days (excludes late setouts & blocked carts which shall be collected within one (1) calendar week) (excludes severe weather delays, which shall be serviced in accordance with Section 4.5)	\$150 per Customer per day plus one month credit to each missed Customer	Monthly	Within specified time frame	98%
Failure to deliver carts to new Customers (after initial service start-up) OR to replace and/or repair damaged/lost carts OR to collect carts when Customer ends service OR to deliver correct cart type and size if initial cart delivery was incorrect by the next scheduled service day	\$150 per day per cart plus one month credit to each impacted customer	Monthly	Within two (2) business days	98%
Failure to respond to Customer queries within one (1) business day	\$250 per incident	Monthly	Within one (1) business day	98%
Failure to resolve billing inquiries and disputes within two (2) business days	\$250 per incident	Monthly	Within two (2) Business Days	98%
Failure to maintain an average hold time of three (3) minutes or less for customer service over the phone	\$500 per month	Monthly Average	Less than three (3) Minutes	98%

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

PERFORMANCE STANDARD VIOLATION	LIQUIDATED DAMAGES	CALCULATION BASIS FOR PERFORMANCE STANDARD	REQUIRED TIME PERIOD OR MEASUREMENT UNIT	PERFORMANCE STANDARD
Failure to maintain an average abandonment rate of less than three percent (3%) of customer calls for customer service over the phone	\$500 per month	Monthly Average	Less than three percent (3) of Customer Service calls	98%
Failure to clean up any vehicle leaks or collect materials spilled during the execution of Collection Services within twenty-four (24) hours of spill	Twice (2X) cost of clean-up incurred by City	Monthly	Within twenty-four (24) hours	100%
Collection of overflow Solid Waste, prohibited materials, contaminated Recyclable Materials or contaminated Yard Trimmings without tagging and / or charging appropriate fee to customer	\$500 per incident	Monthly	Each Customer	98%
Late or incomplete submission of on-request, monthly, quarterly OR annual reports	\$250 per day	Monthly / Quarterly/ Annually	Within specified time frame	100%
Failure to cover vehicles that contain Solid Waste, Recyclable Materials, Yard Trimmings or Bulky Items OR to maintain vehicles in clean, sanitary and good working order	\$250 per incident	Each Load	Each Vehicle	100%
Failure to provide Bulky Item collection within five (5) business days of Customer request	\$150 per Customer per day plus one month credit to each impacted Customer	Monthly	Within five (5) business days	98%
Driver providing Collection Service utilizing a cell phone in a moving vehicle	\$500 per cell phone infraction	Per Incident	All drivers	100%

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

PERFORMANCE STANDARD VIOLATION	LIQUIDATED DAMAGES	CALCULATION BASIS FOR PERFORMANCE STANDARD	REQUIRED TIME PERIOD OR MEASUREMENT UNIT	PERFORMANCE STANDARD
Failure to maintain required color-coding for Solid Waste, Recyclable Materials or Yard Trimmings carts OR to maintain hot-stamp labels on all carts OR to maintain printed material guidelines on Recyclable Materials or Yard Trimmings carts	\$250 per cart per day	Monthly	Each Cart	98%
Failure to distribute approved notifications & collection calendars OR to develop/use approved service tags	\$250 per day	Monthly	Within specified time frame	98%

5.2 Contactor Performance Review

The City reserves the right to conduct a full review of Contractor performance at any time during the Agreement Term. If during the review process or any other deliberative process the City determines the Contractor's performance is not in compliance with the terms of the Agreement (regardless of liquidated damages paid), the City may declare the Contractor in default and terminate the Agreement pursuant to Section 20, Defaults of this Agreement.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

Attachment 1

Yard Trimmings Opt-In or Opt-Out Effectivity Dates

Date of Customer Notification to Contractor Requesting to Opt-In or Opt-Out	Date Effective for Service and Billing
First Six Months after Service Commencement Date	
By September 1, 2024	October 1, 2024
By October 1, 2024	November 1, 2024
By November 1, 2024	December 1, 2024
By December 1, 2024	January 1, 2025
By January 1, 2025	February 1, 2025
By February 1, 2025	March 1, 2025
Next Six Months after Service Commencement Date	
By January 1	February 1
By February 1	March 1
By March 1	April 1
By April 1	August 1
By May 1	August 1
By June 1	August 1
By July 1	August 1
By August 1	December 1
By September 1	December 1
By October 1	December 1
By November 1	December 1
By December 1	January 1

Item 20.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

Attachment 2

Schaefer Cart Warranty Transfer Acknowledgement



CITY OF FORT COLLINS, CO

RE: WARRANTY TRANSFER CONFIRMATION

1/20/2023

To Whom It May Concern:

Please accept this letter as confirmation that the 10-year warranty of the Schaefer carts, that would be purchased for the City of Fort Collins, CO contract, will transfer to the city from Republic Services at the conclusion of the initial term of the 5-year contract. The result will be the remaining years of warranty from cart purchases for the contract will transfer with the asset to the City of Fort Collins, CO.

This arrangement is possible due to the partnership Schaefer and Republic Services share, spanning over 20 years.

If there are any further questions or clarifications needed, please feel free to contact me.

We sincerely hope to partner with the city during this project for a smoothly executed transition for the residents of Fort Collins.

Thank you,

A handwritten signature in black ink that reads 'Brett Belda'.

Brett Belda
Vice President, Waste Technology Division
Schaefer Plastics North America, LLC.
Brett.Belda@ssi-plastic.com
(440) 679- 2430

Item 20.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

Attachment 3

Transition Plan

Program Transition Services Updated 1/3/23	Start Date	Completed Date	Touch Points	Assigned
*Not all-inclusive of every detail. We are proposing a draft timeline, but it is our intent to sit down with the City to mutually agree upon dates, as we are using best estimates right now. We typically provide a draft and very early after signing an agreement we sit down with the City to walk through it and make sure we are aligned on dates or changes needed.				
Denotes a milestone.				
Project	Start Date	Completed Date	Touch Points	Assigned
EV Vehicle - Pilot Program with Xcel Energy				
EV Mobile Battery Charging Single Charging Station Installed	12/2022 (exp.)	Q1-Q2 2023	Single	HQ EV Team Republic Services
EV Truck Arrives	Q3 2023	N/A	Single	HQ EV Team Republic Services / Kevin O'Reilly Fleet Maintenance Shop
EV Truck Show & Tell with Partners (Invite Event)	Q3/Q4 2023	Ongoing Educational Events	Multiple	HQ Republic Services Marketing, Holli McElwee and Partner with City on Invites Elected Officials/Staff
EV Truck to Begin Route in Fort Collins	Q3/Q4 2023	Ongoing	Single	Kevin O'Reilly Fleet Maintenance and Austin Self Operations Manager
RNG Trucks (ASL)				
RNG Infrastructure Construction Begins/Concludes	Q1 2023	Q2/Q3 2024	Multiple	HQ EV Team Republic Services / Kevin O'Reilly Fleet Maintenance Shop
RNG Truck Order Placed	Q1/Q2 2023	Q1/Q2 2024	Multiple	HQ EV Team Republic Services / Kevin O'Reilly Fleet Maintenance Shop
RNG Trucks Arrive	Q3 2024	Q3 2024	Multiple	HQ EV Team Republic Services / Kevin O'Reilly Fleet Maintenance Shop
Single-Hauler Communications				
Monthly Coordination Meetings with City Representative	3/20/2023	9/29/2029	Monthly	Holli McElwee; Austin Self; Tony Jimenz(Other Dept. Managers, As Necessary)
Press Release 1	3/21/2023	3/22/2023	Single	Subject: Single Hauler Contract with Republic Services Adopted; City of Fort Collins (RS Requests Ability to Review); Approved by City Staff
Cart Set-Out Times and Locations	5/1/2024	9/14/2024	Multiple & Series Out	HQ Marketing and Holli McElwee; Approved by City Staff
Develop Public Notifications to Customers	6/1/2023	9/14/2024	Multiple & Series Out	HQ Marketing and Holli McElwee; Approved by City Staff
Directions: Changing Service, Managing Solid Waste Overflow	6/1/2024	12/30/2024 (Ongoing)	Multiple & Series Out	HQ Marketing and Holli McElwee; Approved by City Staff
Press Release 2	3/1/2024	3/15/2024	Single	Subject: Ordering Carts; City of Fort Collins (RS Requests Ability to Review); Approved by City Staff
Create Letter, Postcard, Website Landing Page - Multiple Touch Pts.	11/1/2023	12/1/2024	Multiple & Series Out	HQ Marketing and Holli McElwee; Approved by City Staff
Distribute Public Notifications to Customers	1/1/2024	2/1/2024	Multiple & Series Out	HQ Marketing and Holli McElwee; Approved by City Staff
Facilitate and Manage Customer Cart Size Collection Communications and Ordering	11/1/2023	3/31/2024	Series Out	HQ Marketing, Digital, Holli McElwee, CS, Billing & Ops; Approved by City Staff
Press Release 3	5/1/2024	5/16/2024	Single	Subject: Ordering Carts Reminder City of Fort Collins (RS Requests Ability to Review); Approved by City Staff
Produce Service Tags (Oops, Contamination, Blocked Carts)	6/1/2024	8/1/2024 (Ready 9/30/24)	Multiple & Series Out	HQ Marketing and Holli McElwee; Approved by City Staff
Annual Collection Calendar	6/1/2024	8/7/2024	Multiple & Series Out	HQ Marketing and Holli McElwee; Approved by City Staff
Press Release 4	6/1/2024	8/15/2024	Single	Subject: Program Roll-Out & Collection Service - City of Fort Collins (RS Requests Ability to Review); Approved by City Staff
Develop and Mail the Yard Waste Recycling Guide	6/1/2024	9/1/2024 (& YOY: New Starts)	Mailed & Digital	HQ Marketing and Holli McElwee; Approved by City Staff
Recycle Guide	6/1/2024	9/1/2024 (& YOY: New Starts)	Mailed & Digital	HQ Marketing and Holli McElwee; Approved by City Staff
City of Fort Collins E-Newsletter	6/1/2024	8/30/2024	Multiple	City of Fort Collins (RS Requests Ability to Review); Approved by City Staff
Annual Communications - English/Spanish - Using the App	6/1/2024	9/30/2024 (& YOY)	Multiple & Series Out	HQ Marketing and Holli McElwee; Approved by City Staff
Service Levels & Rates	6/1/2024	9/30/2024	Multiple & Series Out	HQ Marketing and Holli McElwee; Approved by City Staff
New Customer Start Service Electronic Packet	6/1/2024	9/30/2024	Multiple & Series Out	HQ Marketing and Holli McElwee; Approved by City Staff
Cart Hanger Postcard for Cart Deployment/New Carts Delivered	6/1/2024	10/4/2024	Placed on New Carts	HQ Marketing, Holli McElwee & Schaefer; Approved by City Staff
Change of Service Levels	6/1/2024	12/30/2024	Multiple & Series Out	Holli McElwee Creative; CS Containers; Approved by City Staff
Service Addresses and Orders				
Meet with City of Fort Collins Environmental Services Representative	By 3/30/2023	Possible Weekly Touch Pts. TBD	TBD	Republic's GM, Austin Self, Holli McElwee, Catherine Morrow and Area Representative
Fort Collins staff answers questions while Republic drafts a Complete Residential Address List ***Per RFP Interview Discussion	3/31/2023	8/30/2023 (Ongoing w' Moves/Build)	Have to Determine	City Staff & Republic Services Representatives
Meet with other haulers to determine if they want their carts collected along with Republic carts	6/1/2024	9/30/2024	TBD	TBD
Cross Reference the List With Republic's Existing Customer List	8/30/2023	9/30/2023	Have to Determine	Republic Services Operations (Austin Self), Routing Manager and Area Team
Color Details, Hot Stamp, Artwork, City Phone #, Stream, Cart Sizes All Due	2/1/2024	2/1/2024	Single	Holli McElwee, Austin Self, Stephen Walker, HQ Marketing, City Representative and All Approved by City Representative
Set-up All Routing for 45,500 (+-) Customers (Will Coordinate with the City on Exacts)	3/1/2024	6/30/2024	Series	Republic Services Operations (Austin Self), Routing Manager and Area Team
Conduct All Billing Set-Up	3/1/2024	9/20/2024	Series Out	HQ Billing/Franchise Specialists, Catherine Morrow, Kathy Sommermeyer
Cart PO Placement and Order Finalization	4/1/2024	4/1/2024	Bulk Order #1	Stephen Walker and Josh Jones
Carts arrive	6/1/2024	7/1/2024		
***Place 2nd Cart Order; Only if Needed; Stragler Order (Move-ins/outs, Late Orders, HOAs or Residents or Late Adopters)	5/1/2024	6/15/2024	If Needed	Stephen Walker, Operations Manager and Josh Jones, Shop Supervisor
Develop and Distribute a Collection Calendar to All Customers	9/1/2024	9/7/2024	Series Out YOY	HQ Marketing and Holli McElwee; Approved by City Staff
Issue OOPS Tags	9/30/2024	(Ongoing & As Need Per HH)	Series Out	Drivers on Route; Approved by City Staff
Hiring and Training Class B CDL Drivers				
Post job openings for Class B CDL drivers. Target the Northern Colorado / Southern Wyoming regions. Determine if out-of-area geo targeting needs to occur as we work through the recruitment process.	6/1/2023	9/30/2024 (Ongoing)	Series Out	Maria Placencio and Republic Service's Recruiter
Begin interviewing. Note: Some interviews will take place sooner or later than this date, just depending on the candidate pool.	11/1/2023	9/30/2024 (Ongoing)	Series Out	Maria Placencio, HR Manager, and Republic Service's Recruiter
Begin background checks and drug testing. Note: Some interviews will take place sooner or later than this date, just depending on the candidate pool.	12/1/2023	9/30/2024 (Ongoing)	Series Out	Republic Service's Recruiter and Outside Agency
Hire, new hire orientation and train (18+ days for training/driver).	2/1/2024	8/1/2024 (Ongoing)	Series Out	Karisa Sommermeyer, Ops Clerk (New Hire Orientation), Shadow Other Departments, Operations Supervisor (Driver Training)

Project	Start Date	Completed Date	Touch Points	Assigned
Drivers are route ready. Until service officially begins 9/30/24, we will utilize this pool of drivers in other lines of business, on yard waste routes and as SOS relief drivers for other BUs.	2/19/2024	8/20/2024 (Ongoing)	Series Out	Austin Self and Tony Jimenez
Post for Collection Helpers, if needed	3/1/2024	As Needed	Series Out	Maria Placencio, HR Manager, and Republic Service's Recruiter
City-wide contract collection services begin.	9/30/2024	9/29/2024 (5-Year)	Series Out	All Resi Fort Collins Crew(s)
Continued driver safety training and daily huddles/crew-outs.	9/30/2024	Ongoing	Series Out	Austin Self, Tony Jimenez, Stephen Walker, and Special Visits by Area on Occasion
Keep the Class B CDL job posting opened and candidate pool steady, as there is bound to be natural ebbs and flows with the workforce.	9/30/2024	Ongoing	Series Out	Maria Placencio, HR Manager, and Republic Service's Recruiter
Hiring and Training Customer Service Representatives (Republic's CRC)				
Begin recruiting for 20 CRC agents.	9/30/2023	11/30/2023	Series Out Depending on	Republic's Recruiter and CRC Manager
Begin interviewing.	12/1/2023	1/15/2024	Series Out Depending on	Republic's Recruiter and CRC Manager
Begin making offers, background check, drug testing/screening.	1/15/2024	2/15/2024	Series Out Depending on	Republic's Recruiter and CRC Manager
Begin new hire orientation, training, onboarding, taking calls, expecting 20 agents by the "Completed Date".	2/15/2024 (Ongoing)	8/15/2024 (Ongoing)	Series Out Depending on	Republic's Recruiter and CRC Manager
Cart Pickup and New Cart Deployment - Cart Deployment Can Be Scaled Up or Down				
Republic Secure the Rental of Two Yards, One for New Carts and Other for Legacy Carts	7/1/2024	10/31/2024		Republic's GM
Pick Up Legacy Carts; Deliver New Cart Roll-Out Assemble & Deliver New Carts to All Residential Units	8/26/2024	9/20/2024	Routed Out; Series	Schaefer Representative & A&D Team
Clean-up From New Cart Roll-Out (Any Missed Residents/Changes); Some Overlapping of Above New Cart Roll-Out	9/20/2024	10/24/2024	As Needed	Schaefer Representative & A&D Team
First Day of Monday Collection Services (MSW, REC, YW, BULK)	9/30/2024	Ongoing	Weekly & EOW	All Departments: Ops, Billing, CS, Muni, Fleet, etc.
After the initial roll-out of Carts, Republic's Delivery Department would Deliver New Carts, Switch-Outs, etc.	10/5/2024	9/29/2029	Daily; As Needed	Republic's Operations Delivery Department

Item 20.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

Attachment 4

Vehicle Details

Collection Vehicle Chart								
Unit #	Year	Make	Model	Body	Est. Replacemer	Includes Aftertreatment	Age	Fuel
Updated 1/31/23								
Residential Front Load				12				
2201	2021	Mack	LR64	McNeilus	2031	Yes		1 Diesel
2202	2021	Mack	LR64	McNeilus	2031	Yes		1 Diesel
2203	2021	Mack	LR64	McNeilus	2031	Yes		1 Diesel
2204	2021	Mack	LR64	McNeilus	2031	Yes		1 Diesel
2205	2020	Mack	LR64	McNeilus	2030	Yes		2 Diesel
2206	2020	Mack	LR64R DSL	McNeilus	2030	Yes		2 Diesel
2207	2018	Peterbilt	520	McNeilus	2028	Yes		4 Diesel
2208	2018	Peterbilt	520	McNeilus	2028	Yes		4 Diesel
2209	2018	Peterbilt	520	McNeilus	2028	Yes		4 Diesel
2210	2018	Mack	LR613	McNeilus	2028	Yes		4 Diesel
1214	2021	Mack	LR64	Heil	2031	Yes		1 Diesel
1215	2021	Mack	LR64	Heil	2031	Yes		1 Diesel
							Avg Age	2.2
Rear Load				2				
2080	2021	Peterbilt	520	McNeilus	2031	Yes		1 Diesel
2081	2021	Peterbilt	520	McNeilus	2031	Yes		1 Diesel
							Avg. Age	1

This spreadsheet includes information about existing diesel collection vehicles that will provide Collection Service. Additional vehicles will be purchased. All new vehicles will be CNG-fueled vehicles.

Item 20.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES –
2/27/2023 SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE
PARTIES**

EXHIBIT B

PRICING

Fort Collins Residential Solid Waste Collection Services Price Sheet

Note: Contractor may not charge any fees beyond those listed in this pricing sheet

Collection Service Price Options

	Service Scenario	XS Service Price \$ / month / Customer	Small Cart Service Price \$ / month / Customer	Medium Cart Service Price \$ / month / Customer	Large Cart Service Price \$ / month / Customer	XL Cart Service Price \$ / month / Customer
1	Solid Waste collection, weekly Recyclable Materials collection, Yard Trimmings collection and Bulky Items collection (Requires Solid Waste go to Larimer County Landfill)	\$10.75	\$19.00	\$38.25	\$57.50	\$115.25
2	Solid Waste collection, weekly Recyclable Materials collection, Yard Trimmings collection and Bulky Items collection (Contractor may take Solid Waste to approved landfill of their choice)	\$9.75	\$17.75	\$35.75	\$53.75	\$107.75

*These service rates have been reduced by \$0.25/mo to account for The Recycling Partnership grant funding.
City Administrative Fee will be charged monthly in addition to the above pricing.*

Additional Fees / Services

Yard Trimmings	\$ / Customer / month
Decrease in Customer bill if Customer declines Optional Yard Trimmings Service (Price decrease does not apply to XS cart customers)	\$5.00

Overflow trash or recycling fee	\$ / 32 gallon equivalent
Fee charged to Customers with overflow trash or recycling	\$4.00

Additional cart delivery fee	\$ / delivery instance
Delivery / exchange fee for cart delivery / exchange / repair needs beyond two instances per year	\$35.00

City administrative fee	\$ / month
Fee charged to Customers and Opt-Out Customers	\$1.35

The City Administration Fee is set by the City Manager and shall not exceed \$1.35

Bulky Items Collection	
No Additional Fee Bulky Items	\$ / item
\$ per "No Additional Fee" Bulky Item (when customer request more than 2 Bulky Item collections per calendar year)	\$40.00
"Additional Fee" Bulky Items	\$ / item
Non-CFC containing appliances	\$50.00
Sofas, chairs, furniture (less than 60 lbs.)	\$40.00
Mattresses & box springs	\$40.00
Large or overweight items (above 60 lbs.)	Call for pricing

Dumpster Service		
Dumpster size and type	Service Frequency	\$ / month for service
2 cubic yard Solid Waste + 2 cubic yard Recyclable Materials	Weekly	\$110.50
3 cubic yard Solid Waste + 2 cubic yard Recyclable Materials	Weekly	\$183.50
4 cubic yard Solid Waste + 2 cubic yard Recyclable Materials	Weekly	\$200.00
6 cubic yard Solid Waste + 3 cubic yard Recyclable Materials	Weekly	\$330.00

City Administrative Fee will be charged monthly in addition to the above pricing.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES – 2/27/2023
SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE PARTIES**

EXHIBIT C

INSURANCE

Without limiting any of the Contractor's obligations hereunder, the Contractor shall provide and maintain insurance coverage naming the City as an additional insured under this Agreement, via blanket-form endorsement, as applicable of the type and with the limits specified herein. Prior to the Effective Date of the Agreement, the Contractor, or its authorized representative, shall deliver to the City's Purchasing Director, purchasing@fcgov.com or P.O. Box 580, Fort Collins, Colorado 80522, one copy of a certificate evidencing the insurance coverage required from an insurance company rated A-VIII or higher by A.M. best Company and approved in Colorado.

In case of the breach of any provision of the Insurance Requirements, the City, at its option, may take out and maintain, at the expense of the Contractor, such insurance as the City may deem proper and charge-back the cost of such insurance.

Insurance certificates should show the certificate holder as follows:

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

The City, its officers, agents and employees shall be named as additional insureds on the Contractor's general liability and automobile liability insurance policies **by marking the appropriate box or adding a statement to this effect on the certificate**, for any claims arising out of work performed under this Agreement.

Insurance coverages shall be as follows:

- A. Workers' Compensation & Employer's Liability. The Contractor shall maintain the following coverage for the Agreement Term for all of the Contractor's employees engaged in work performed under this Agreement. Workers' Compensation & Employer's Liability insurance shall conform with statutory limits of \$100,000 per accident, \$500,000 disease aggregate, and \$100,000 disease for each employee, or as required by Colorado law.
- B. General Liability. The Contractor shall maintain for the duration of the Agreement Term such General Liability as will provide coverage for damage claims of personal injury, including accidental death, as well as for claims for property damage, which may arise directly or indirectly from the performance of work under this Agreement. Coverage for property damage shall be on a "broad form" basis. The amount of insurance for General Liability shall not be less than Two Million Dollars (\$2,000,000) each occurrence and Four Million Dollars (\$4,000,000) aggregate.
- C. Automobile Liability. The Contractor shall maintain for the Agreement Term such Automobile Liability insurance as will provide coverage for damage claims of personal injury, including accidental death, as well as for claims for property damage, which may arise directly or indirectly from the performance of work under this Agreement. Coverage for property damage shall be on a "broad form" basis. The amount of insurance for Automobile Liability shall not be less than One Million Dollars (\$1,000,000) combined single limits for bodily injury and property damage.

In the event any work is performed by a subcontractor, the Contractor shall be responsible for any liability directly or indirectly arising out of the work performed under this Agreement by a subcontractor, which liability is not covered by the subcontractor's insurance.

EXHIBIT D**CONFIDENTIALITY**

IN CONNECTION WITH SERVICES provided to the City pursuant to this Agreement, the Contractor 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.

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 under this Agreement, the Contractor hereby acknowledges and agrees as follows:

That information that has or will come into its possession or knowledge in connection with the performance of services for the City may be confidential and/or proprietary. The Contractor 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, and (b) all information that is proprietary to a third party (including but not limited to customers and suppliers of the City). The Contractor shall not disclose any such information to any person not having a legitimate need-to-know for purposes authorized by the City. Further, the Contractor 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.

As part of the Services provided to the City under this Agreement, the Contractor will maintain, store or process personal identifying information, as defined in C.R.S. § 24-73-101, of Customers and Service Opt-Out Customers. Pursuant to C.R.S. § 24-73-102, Contractor shall maintain confidentiality of this information and implement and maintain reasonable security procedures and practices that are: appropriate to the nature of the personal identifying information disclosed to the Contractor in furtherance of this Agreement; and reasonably designed to help protect the personal identifying information from unauthorized access, use, modification, disclosure, or destruction. If the Contractor becomes aware of any unauthorized release of personal identifying information, it shall notify the City immediately and cooperate with the City regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the City. After any such release, Contractor shall take steps to reduce the risk of incurring a similar type of release in the future as directed by the City, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the City at no additional cost to the City. In addition to any other remedies available to City under law or equity, Contractor will promptly reimburse City in full for all costs incurred by City relating to any such release.

The foregoing to the contrary notwithstanding, the Contractor understands that it shall have no obligation under this Agreement with respect to information and material that (a) becomes generally known to the public by publication or some means other than a breach of duty of this Agreement, or (b) 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 disclosure under (b) above, the Contractor 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.

Item 20.

**REVIEW VERSION – RESIDENTIAL SOLID WASTE COLLECTION SERVICES – 2/27/2023
SUBJECT TO CITY COUNCIL APPROVAL AND EXECUTION BY THE PARTIES**

In the event that the Contractor ceases to perform services for the City, or the City so requests for any reason, the Contractor shall promptly return to the City any and 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.

The Contractor understands and agrees that the City’s remedies at law for a breach of the Contractor’s obligations under this Confidentiality Agreement 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.

ORDINANCE NO. 056, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
REPEALING ORDINANCE NO. 029, 2023, AND APPROPRIATING PRIOR YEAR
RESERVES FOR START-UP COSTS TO CREATE A
CONTRACTED RESIDENTIAL WASTE COLLECTION PROGRAM

WHEREAS, the Council of the City of Fort Collins seeks to establish a City Residential Waste Collection Program (“Program”); and

WHEREAS, to establish the Program, the City Council, simultaneously with the adoption of this Ordinance, is adopting Ordinance No. 054, 2023, to amend the City Code to authorize the Program, and Ordinance No. 055, 2023, to approve an agreement with a waste collector to provide solid waste, recyclable materials, yard trimmings and bulky items collection services (the “services”) to certain residences and other locations within the City; and

WHEREAS, customers of the Program will pay the contracted waste collector the applicable rates for the services and an administrative fee to be remitted to the City to pay for the City’s administrative costs to manage the Program; and

WHEREAS, the services will commence September 30, 2024; and

WHEREAS, the City seeks to start administrative work prior to the commencement of the services using prior year reserves in the General Fund, which will be paid back using the administrative fee collected from customers of the Program; and

WHEREAS, this appropriation benefits the public health, safety and welfare of the residents of Fort Collins and serves the public purpose of facilitating the administration of a program to improve waste collection in the City; and

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

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

WHEREAS, the Council adopted Ordinance No. 029, 2023 (“Ordinance No. 029”) to make this appropriation, but Ordinance No. 029 was not published after adoption as required by the City Charter; and

WHEREAS, it is necessary that the Council repeal Ordinance No. 029 and adopt this Ordinance to make the appropriation effective; and

WHEREAS, the City has taken no action under Ordinance No. 029.

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

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

Section 2. That there is hereby appropriated from prior year reserves in the General Fund the sum of ONE HUNDRED SEVEN THOUSAND TWO HUNDRED FIFTY-ONE DOLLARS (\$107,251) to be expended in the General Fund for Start-up Costs to Create a Contracted Residential Waste and Recycling Collection Program.

Section 3. Ordinance No. 029, 2023, is hereby repealed.

Introduced, considered favorably on first reading and ordered published this 4th day of April, 2023, and to be presented for final passage on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

ORDINANCE NO. 057, 2023
OF THE CITY OF FORT COLLINS, COLORADO
REPEALING ORDINANCE NO. 30, 2023, AND ADOPTING THE
NORTH COLLEGE MAX BRT PLAN AS A COMPONENT OF CITY PLAN

WHEREAS, the development of Bus Rapid Transit on North College Avenue was identified as a goal in the 2019 Transit Master Plan and has been requested by the North College Avenue area businesses and the residential community for many years; and

WHEREAS, the North College MAX BRT Plan provides recommendations for Bus Rapid Transit, local transit routes, bicycle and pedestrian facilities, future development, and affordability; and

WHEREAS, the North College MAX BRT Plan was developed after extensive public outreach, discussion and consideration of community needs and priorities and is the result of approximately eighteen months of community engagement, information analysis, and concept refinement; and

WHEREAS, Our Climate Future sets a goal of 80% reduction in greenhouse gas emissions by 2030 and identifies expansion of public transit and bicycle facilities as “big moves” needed to achieve these goals; and

WHEREAS, Routes 8 and 81, which serve the North College Avenue corridor, are the fastest growing bus transportation routes in the Transfort system; and

WHEREAS, the North College MAX BRT Plan’s expansion of transit services to North College is consistent with the City’s climate and equity goals; and

WHEREAS, the North College MAX BRT Plan has been the subject of extensive public outreach and stakeholder presentations and have received the favorable recommendations of the Planning and Zoning Commission and the Transportation Board; and

WHEREAS, the purpose of the North College MAX BRT Plan is to guide transportation infrastructure improvements and new development, to plan and provide steps for implementation for increased transit investment, to build upon City-wide efforts to preserve affordability for residents and local businesses, and to contribute to other efforts in the North College Avenue area to help strengthen its unique local character and sense of place; and

WHEREAS, the City Council adopted Ordinance No. 30, 2023 (“Ordinance No. 30”) to adopt the North College MAX BRT Plan as a component of the City Plan, but Ordinance No. 30 was not published after adoption as required by the City Charter; and

WHEREAS, it is necessary that the City Council repeal Ordinance No. 30 and adopt this Ordinance to adopt the North College MAX BRT Plan as a component of the City Plan; and

WHEREAS, the City Council has determined that it is in the best interests of the residents of the City of Fort Collins to adopt formally the North College MAX BRT Plan.

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

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

Section 2. That the City Council hereby adopts the North College MAX BRT Plan attached hereto as Exhibit "A" as a component of City Plan, the City's comprehensive plan.

Section 3. Ordinance No. 030, 2023, is hereby repealed.

Introduced, considered favorably on first reading, and ordered published this 4th day of April, 2023, and to be presented for final passage on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

North College MAX BRT

Final Plan Report



February
2023

PREPARED FOR



CONSULTANT TEAM



INSTITUTE FOR THE BUILT



Table of Contents

SECTION A

EXECUTIVE SUMMARY **I**

SECTION 05

URBAN DESIGN & LAND USE **39**

SECTION 01

INTRODUCTION **01**

SECTION 06

STRATEGIES FOR PRESERVING & INCREASING AFFORDABILITY **53**

SECTION 02

VISION, PURPOSE, & NEED **09**

SECTION 07

SUMMARY OF RECOMMENDATIONS & TRACKING PERFORMANCE **61**

SECTION 03

PLAN DEVELOPMENT **13**

APPENDICES

APPENDIX A:
Public Engagement Summaries

APPENDIX B:
Existing Conditions Report

APPENDIX C:
Alternatives Analysis Report

APPENDIX D:
North College Roadway Design Cutsheets

APPENDIX E:
Conceptual Estimate of Project Cost for North College Reconstruction

SECTION 04

TRANSPORTATION PLAN RECOMMENDATIONS **19**

Executive Summary

: The North College MAX Bus Rapid Transit (BRT) Plan makes
 : recommendations for the future of transportation and land use
 : on North College Avenue, from approximately Willow Street
 : to Terry Lake Road. MAX BRT on North College Avenue is an
 : important project to emerge from the city’s Transit Master Plan
 : and is consistent with City Council Priorities and Strategic Plan
 : objectives, Our Climate Future, and the city’s equity goals.

: **The future vision for the corridor is that it will:**



Be a **gateway** into the City of Fort Collins.



Include a **safe, comfortable, and convenient** transportation network for people taking transit, using active modes, and driving.



Stay **affordable** for residents and local businesses.



Grow in a way that **protects the natural environment and the local community.**



Provide ample **services, places to live, employment opportunities, and spaces for recreation.**



Display its own unique local character.

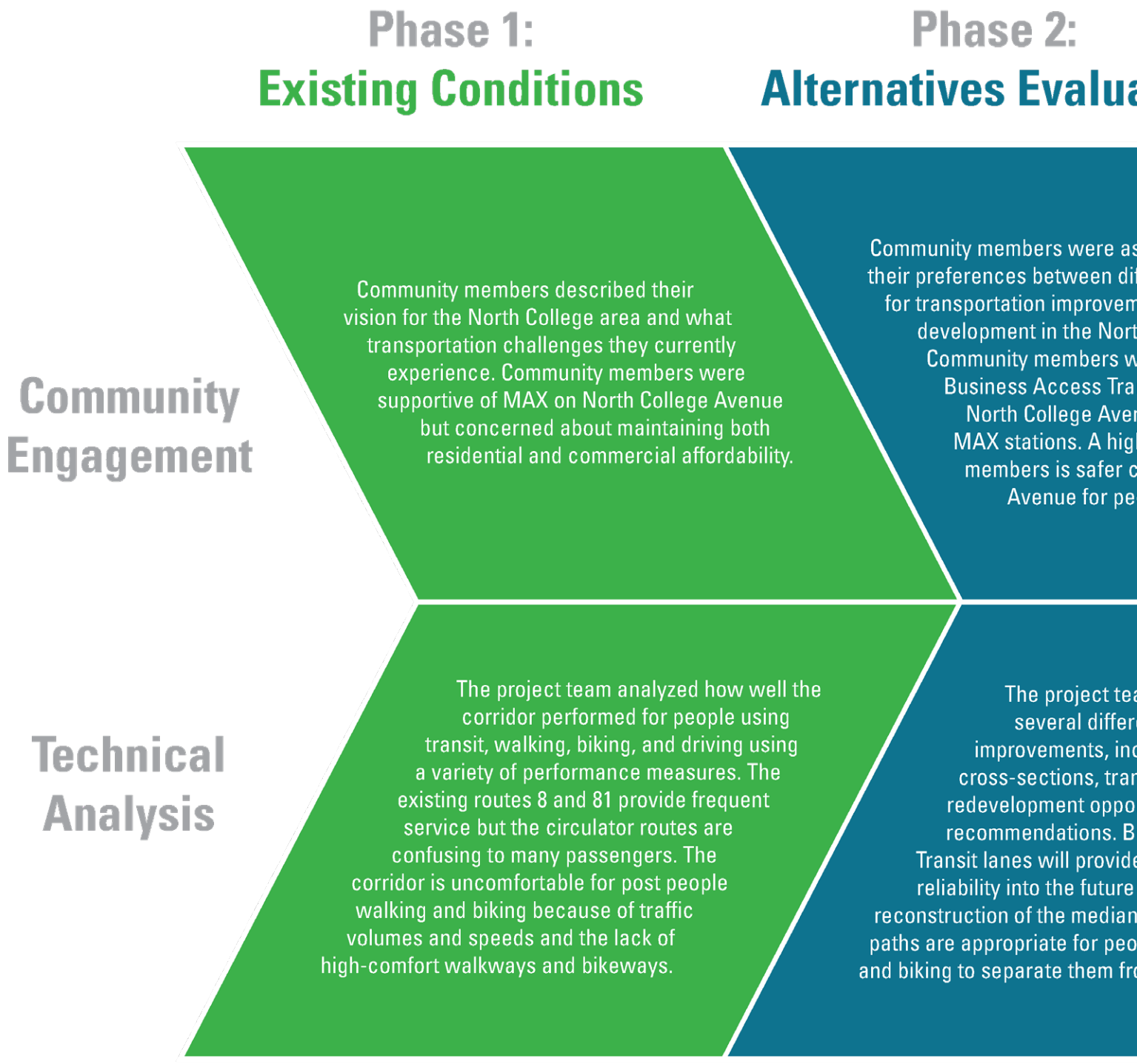


The project's three phases of community engagement each involved 300-500 individuals to shape this plan. Additionally, the project team completed a robust technical process including existing conditions analysis, alternatives evaluation, and final recommendations. This plan's recommendations are supported both technically and by the community because of this process.

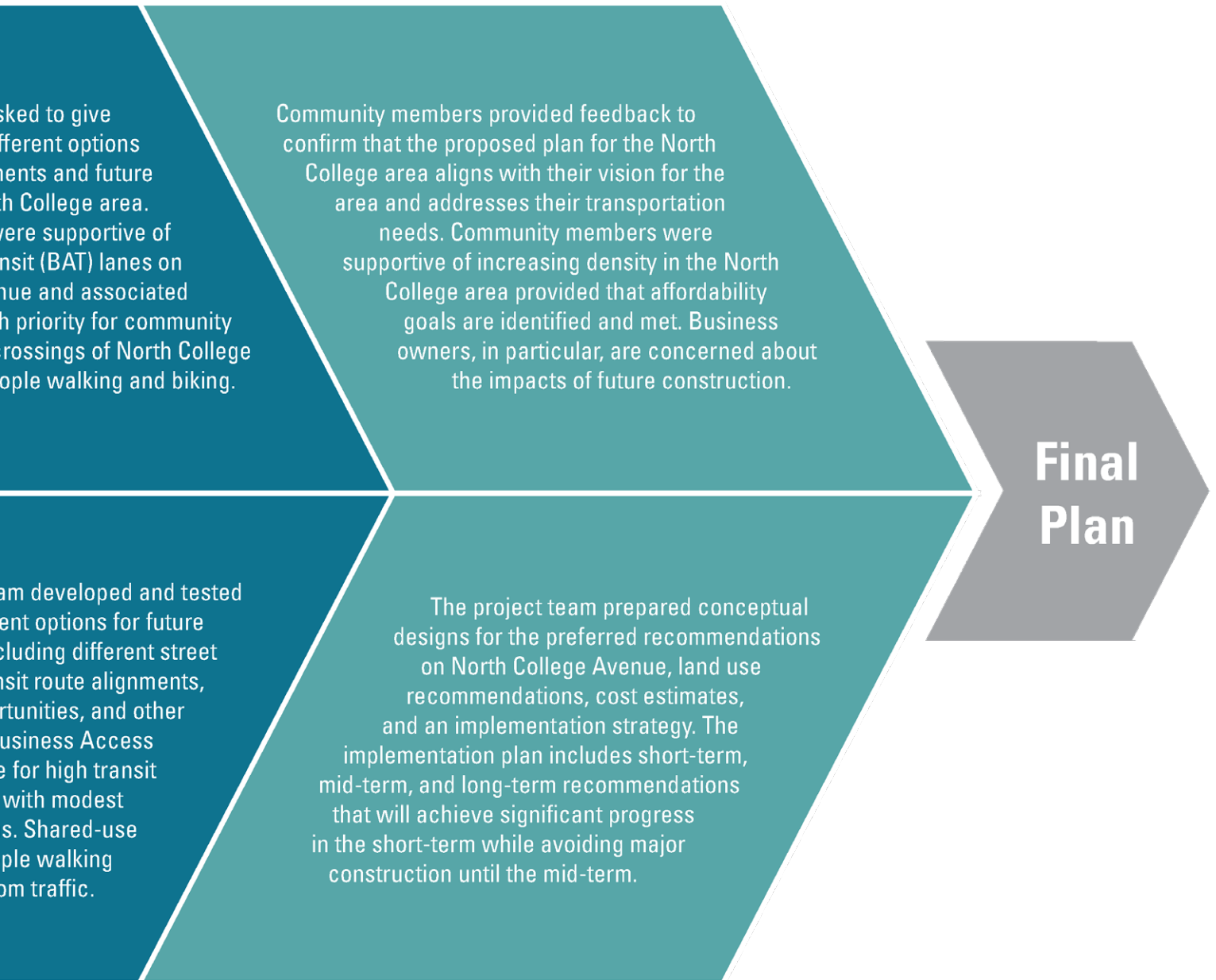
The key elements of MAX BRT on North College Avenue are BRT service with Business Access Transit (BAT) lanes, MAX stops and stations, and shared use paths for people walking and biking. Transit Oriented Development (TOD) urban design and land use strategies will increase the area's population and employment. Lastly, a host of strategies will help preserve and increase affordability in the North College area as the area grows. Transportation and land use change in the area will happen over time. The plan's most significant cost, the construction of BRT on North College Avenue, is estimated to cost \$22 million in 2022 dollars.

The plan development process included robust community involvement and technical analyses, both of which occurred across three phases.

Figure 1: Plan Development Process



Phase 3: Final Recommendations



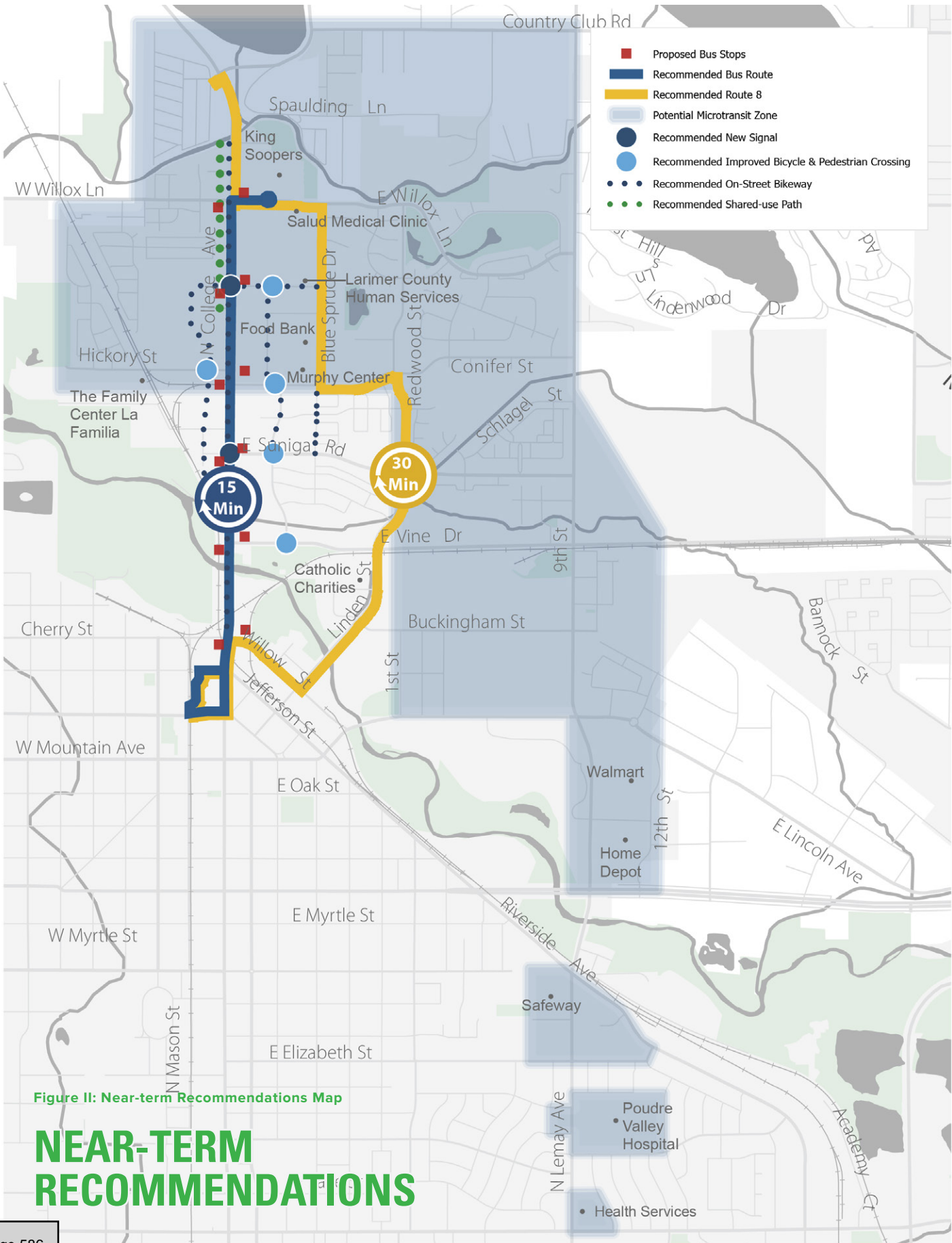


Figure II: Near-term Recommendations Map

NEAR-TERM RECOMMENDATIONS

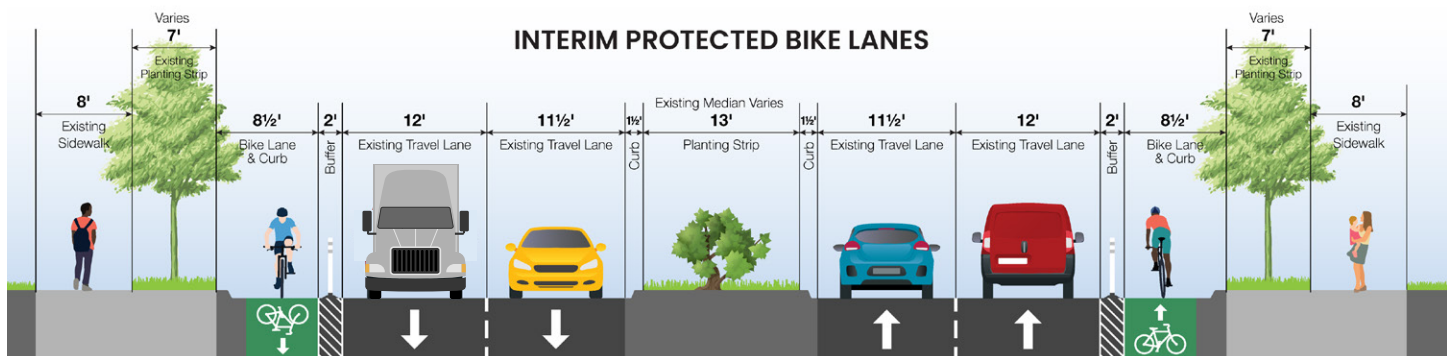
Table I: Near-term Recommendations Summary

Near-term Plan Recommendations Summary

Near-term investments will cost approximately \$3 million in capital costs and \$750,000 per year in operating costs for microtransit service.

- Create a new high frequency bus route on North College Avenue in the existing general purpose travel lanes at 15-minute frequency
- Consolidate existing local bus stops on North College Avenue at signalized intersections
- Realign route 8 to serve Blue Spruce Drive, Redwood Street, and Linden Street at 30-minute frequency
- Implement a micro-transit zone in the North College area to serve places not well-served by fixed-route transit
- Construct access infrastructure for people walking and biking, including segments of shared use path north of Hibdon Court, new signals on North College Avenue, interim protected bike lanes on North College Avenue, and improved bikeways, walkways, and crossings along streets parallel and connecting to North College Avenue
- As development and redevelopment occur, construct access infrastructure for people walking and biking along Mason Street and Red Cedar Circle
- Adopt amendments to the Mason Street realignment identified in the Master Streets Plan
- Implement Transit Oriented Development (TOD) strategies including a TOD overlay; change setback and height standards; establish connectivity, outdoor space, and dominant block face requirements; adjust Architectural Standards; and create incentives to preserve existing commercial buildings
- Implement strategies to preserve and increase affordability, including applying the Urban Renewal Authority's tools, requiring considerable public benefits from metro districts, rezoning the North College Mobile Home Park, leveraging the city's land bank, and establishing an affordable housing goal for the area

Figure III: Interim Protected Bike Lane Cross-section



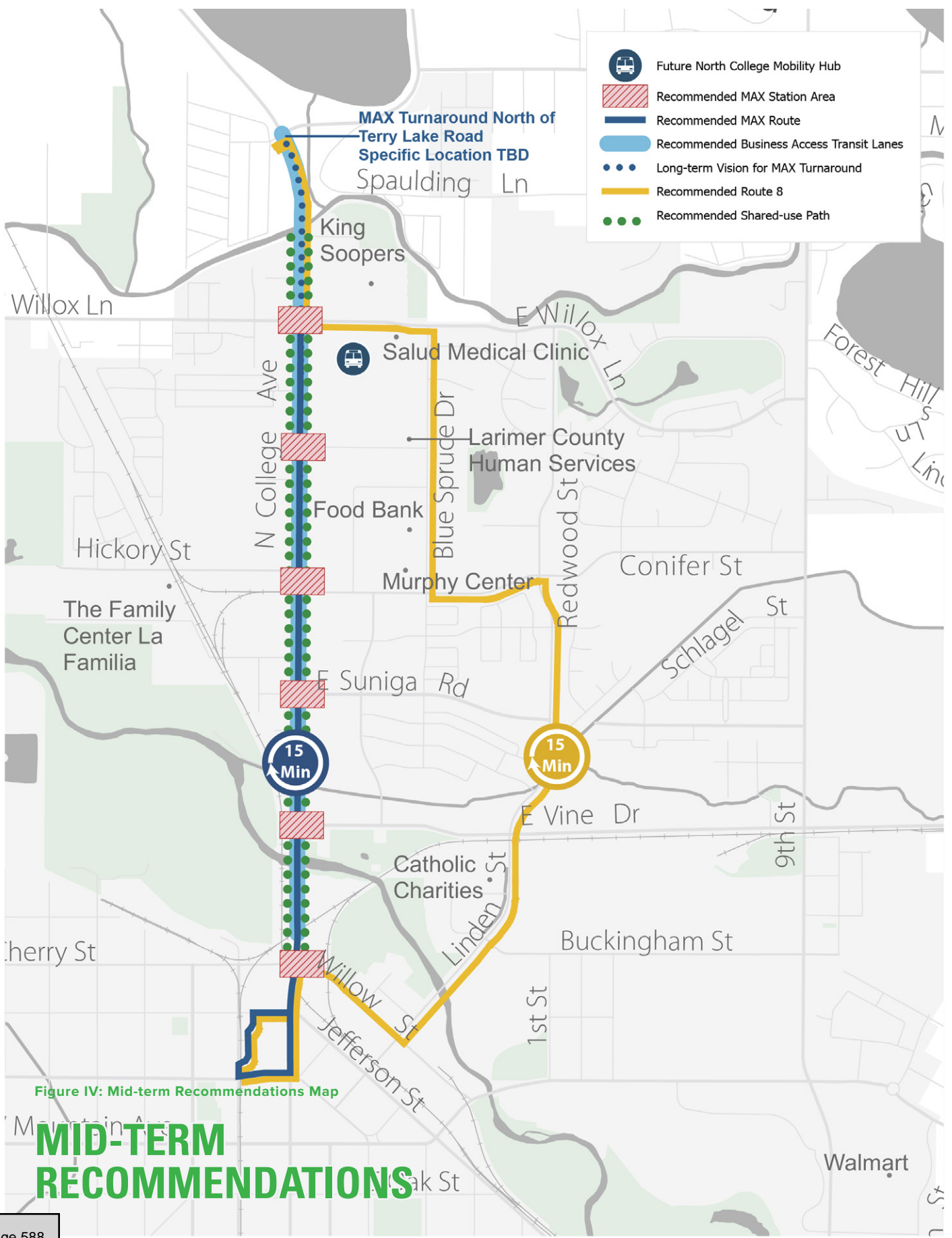


Figure IV: Mid-term Recommendations Map

MID-TERM RECOMMENDATIONS

Table II: Mid-term Recommendations Summary

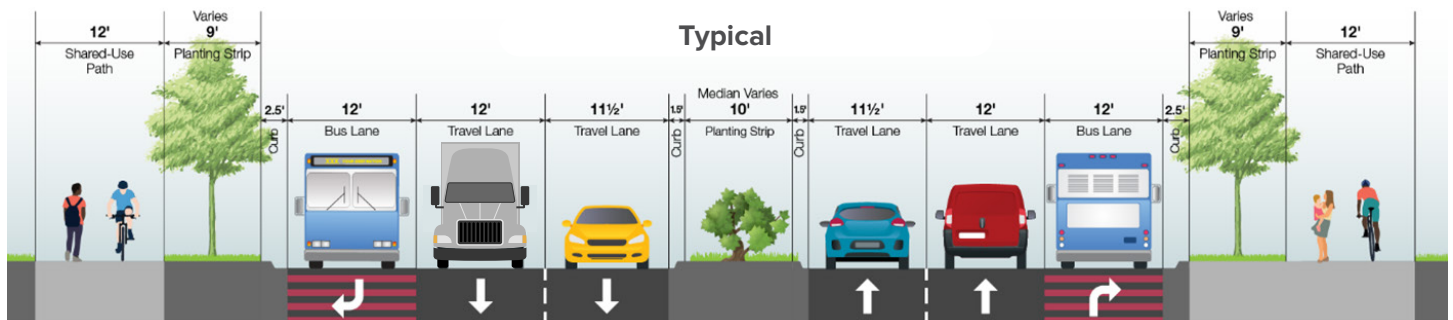
Mid-term Plan Recommendations Summary

Mid-term transit investments will cost approximately \$22 million. Multiple conditions could create the conditions for the mid-term transit investments. The purposes for a phased approach with conditions are to effectively allocate scarce city resources and to postpone construction impacts to property owners who endured construction just seven years ago.

Conditions are: corridor ridership approaches 1,000 boardings per day; intersection approaches (e.g., northbound approach, southbound approach) on North College Avenue experience level of service F conditions; corridor population and employment approximately doubles from current levels, or major rehabilitation maintenance of the corridor creates an opportunity to “one-build” the project.

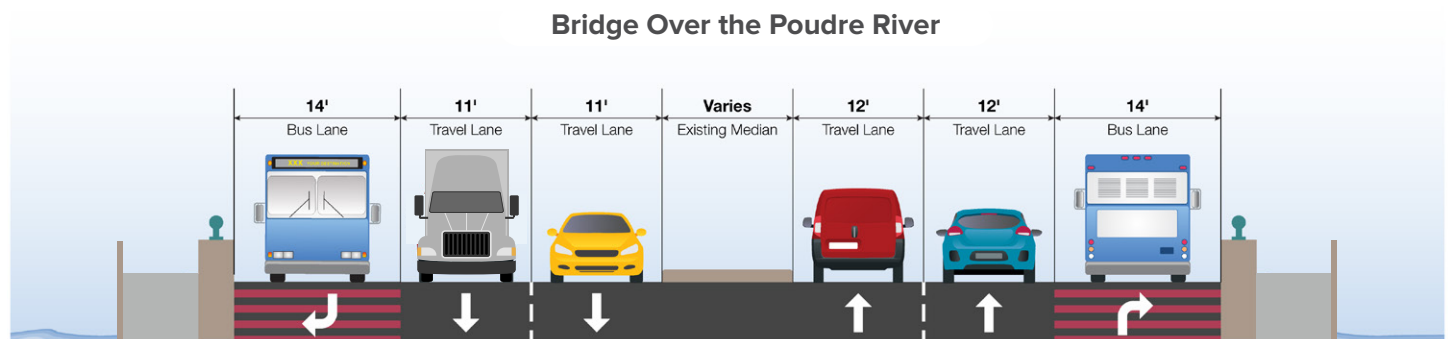
- Construct Business Access Transit (BAT) lanes, MAX stations with mobility hubs, and complete shared-use paths on North College Avenue
- Acquire property for and construct a bus turn-around north of Terry Lake Road
- Increase bus frequency (15-minutes on North College Avenue and 15-minutes on Route 8) and service hours
- Create a mobility hub near the Willox Lane roundabout in conjunction with redevelopment of the former Albertson’s
- Construct medians south of Conifer Street
- Provide regional stormwater detention
- New regional transit to Wellington

Figure V: Typical North College Avenue BAT Lane Cross-section



*At signalized intersections, turn lanes will replace the median.

Figure VI: North College Avenue Cross-section at Poudre River Bridge



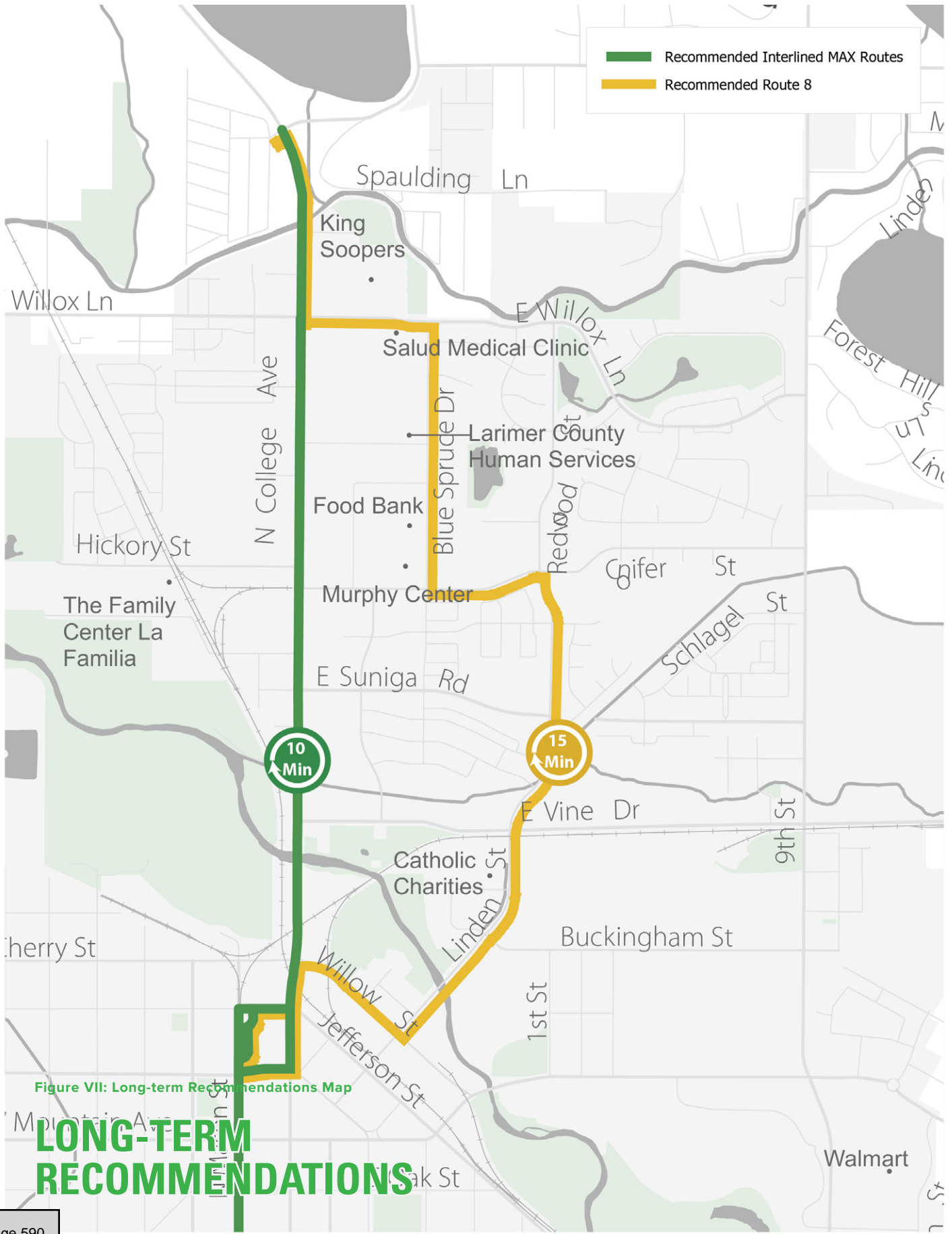


Figure VII: Long-term Recommendations Map

LONG-TERM RECOMMENDATIONS

Table III: Long-term Recommendations Summary

Long-term Plan Recommendations Summary

Long-term interlining is estimate to cost an additional \$750,000 per year in operating costs. Long-term interlining of MAX on North College Avenue with MAX on Mason Street could be triggered if North College Avenue ridership approaches 1,500 boardings per day.

- Increase MAX frequency to 10-minutes and evaluate feasibility of interlining MAX on North College Avenue with MAX on Mason Street



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Introduction

Introduction

MAX BRT on North College was chosen as a priority to support our commitment to equity and climate action and because the area is growing in terms of population, employment, and transit ridership.

This report includes the final recommendations for the future of North College Avenue and the commercial areas and neighborhoods surrounding it. The process for the North College MAX Bus Rapid Transit (BRT) Plan began in February of 2021. This process included three separate phases of community engagement, an existing conditions assessment, and an evaluation of different transportation and land use alternatives. The final recommendations for the North College area presented in this report were developed from community members input received and the technical analysis conducted. This report summarizes the process that led to these recommendations and presents the final transportation, development, and funding recommendations. Additionally this plan includes potential phasing and funding sources for all recommendations.

WHY THE NORTH COLLEGE MAX BRT PLAN?

MAX BRT on North College Avenue was chosen as a priority because of the growth and development in north Fort Collins that is occurring today and anticipated to continue for the foreseeable future. This additional growth of residents and workers will require improvements to the multi-modal transportation network in order to maintain efficiency of transportation in the area and shift more people to active modes, including walking, biking, and e-scooters, and public

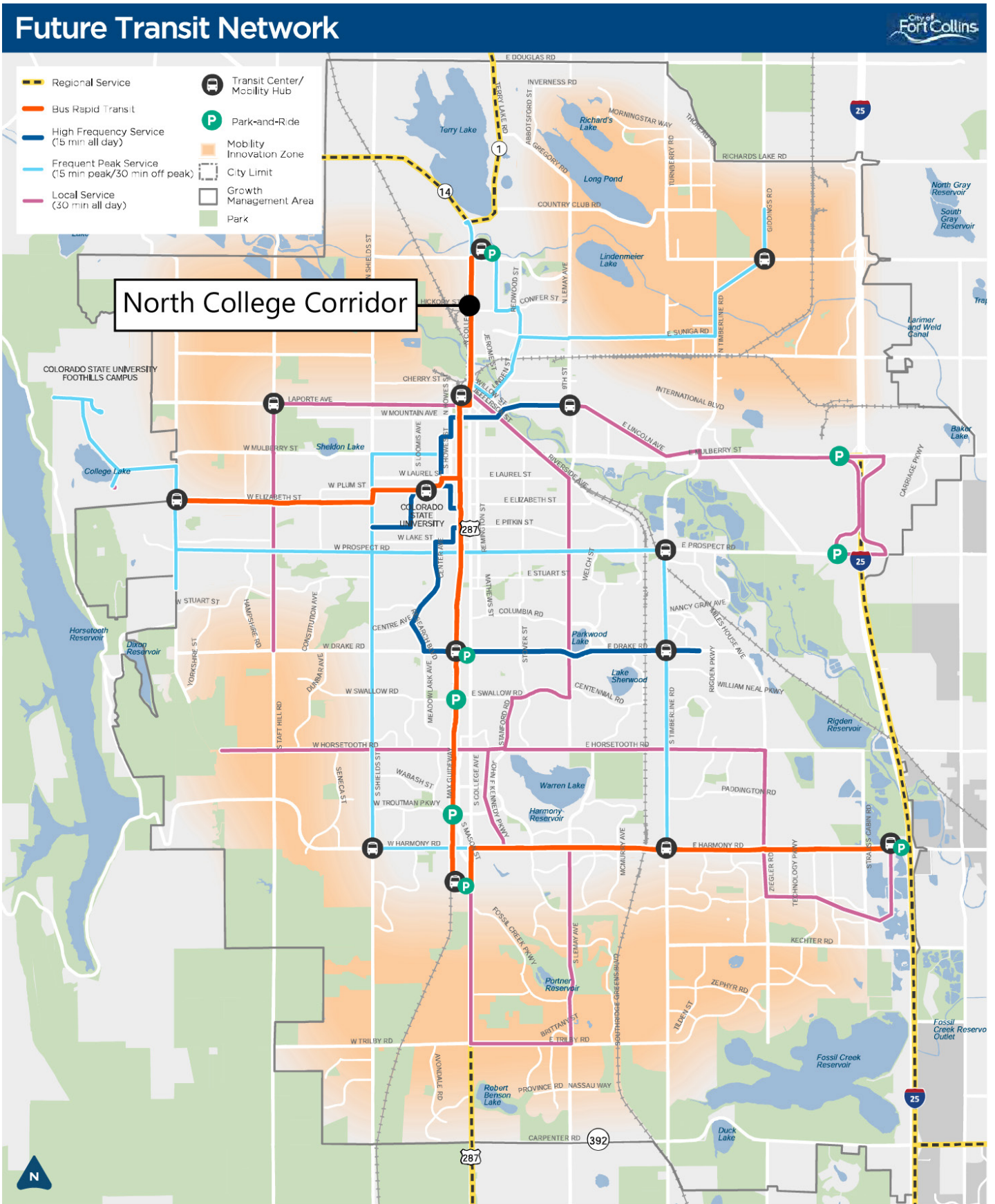
transportation modes when possible. In addition, the city has an opportunity now to help guide new development in the area to better serve community goals like preserving and increasing affordable housing and commercial space, support multi-modal transportation, provide services that support the local community, and increase open space. Furthermore, North College Avenue is a priority for increased transit investments because routes 8 and 81 (which loop through the North College area) are currently some of the most used transit routes in the city.

Equity considerations are a priority when planning in the North College area given the area's high concentration of social service providers, low-income residents, and Spanish speaking populations.

The North College MAX BRT Plan was prioritized for completion over other transit corridors in the city because it presents an opportunity to plan ahead for anticipated growth in north Fort Collins while also addressing existing equity concerns by identifying needed improvements to the multi-modal transportation networks, existing land use policies, and funding and incentives for implementation of these improvements.

The MAX BRT Plan builds on previous planning efforts like the Transit Master Plan and aims to contribute to many of the city's goals including elements of the Council's strategic objectives, the city's climate action goals, and the city's commitment to improving equitable processes and outcomes across the city.

Figure 1: 2019 Transit Master Plan Future Transit Network



TRANSIT MASTER PLAN

The North College MAX BRT was identified as part of the future transit network in the *Fort Collins Transit Master Plan (2019)*. As part of the North College MAX BRT the proposed MAX station adjacent to the King Soopers at 1842 North College Avenue was identified as a future transit center and mobility hub with a park-and-ride. The transit recommendations in this plan are similar to those presented in the *Transit Master Plan* with some adjustments made based

on community input and alternatives evaluation findings. **Figure 1** displays the future transit network from the 2019 plan. The North College MAX route completes the north-south MAX corridor through Fort Collins, creating a spine of rapid transit traversing the city. North College Avenue is a high priority in the city, after West Elizabeth Street which has the city’s highest ridership outside of the MAX corridor, and above Harmony Road which has lower ridership and less transit-supportive urban form.

The *Transit Master Plan* also outlines the relationship between land use density

and viability of different transit solutions (see **Figure 2**). In general, areas with higher densities of residents and jobs generate higher demand for transit ridership which requires greater capital investment in transit and more frequent transit service. This concept is key to this study and provided a foundation for the analysis of existing and projected land use development in the North College area and how improvements to the area’s land use policies could support a future MAX BRT route on North College Avenue. Today, the North College Avenue area’s density is in the range of Mixed Neighborhoods.

Figure 2: 2019 Transit Master Plan - Land-use Densities and Supported Transit Service

Land Use				Transit	
Land Use Type	Example	Residents per Acre	Jobs per Acre	Appropriate Types of Transit	Frequency of Service
Downtowns & High Density Corridors		>45	or >25	BRT, High Frequency Bus, Local Bus	10 minutes or better
Urban Mixed-Use		30-45	or 15-25	BRT, High Frequency Bus, Local Bus	10-15 minutes
Neighborhood & Suburban Mixed-Use		15-30	or 10-15	Local Bus	15-30 minutes
Mixed Neighborhoods		10-15	or 5-10	Local Bus, Micro-Transit	30 minutes On demand
Single Family Neighborhoods		<10	or <5	Rideshare, Micro-Transit	On demand

CITY COUNCIL PRIORITIES & STRATEGIC PLAN OBJECTIVES

This plan also aims to address City Council’s priorities and help work towards the strategic outcomes listed in the Council’s 2022 Strategic Plan. Below is a list of the strategic outcomes most relevant to the recommendations put forth in this plan:



Neighborhood Livability & Social Health

- **1.1:** Increase housing supply and choice and address inequities in housing to ensure that everyone has healthy, stable housing they can afford.
- **1.6:** Transform regulations and revise procedures to increase clarity and predictability to ensure new development advances adopted City plans and policies.
- **1.8:** Preserve and enhance mobile home parks as a source of affordable housing and create a safe and equitable environment for residents.



Culture & Recreation

- **2.5:** Ensure safety and access to and within City parks, natural areas, paved trails, and cultural and recreation facilities for visitors and employees.



Economic Health

- **3.1:** Collaborate with local and regional partners to achieve economic resilience in Northern Colorado.
- **3.3:** Support local businesses by engaging in opportunities for business revival with a focus on the Recovery Plan.



Environmental Health

- **4.1:** Intensify efforts to meet 2030 climate, energy and 100% renewable electricity goals that are centered in equity and improve community resilience
- **4.2:** Improve indoor and outdoor air quality.



Safe Community

- **5.1:** Improve overall community safety while continuing to increase the level of public trust and willingness to use emergency services.
- **5.5:** Provide and maintain reliable utility services and infrastructure that directly preserve and improve public health and community safety.



Transportation & Mobility

- **6.1:** Improve safety for all modes and users of the transportation system to ultimately achieve a system with no fatalities or serious injuries.
- **6.2:** Support an efficient, reliable transportation system for all modes of travel, enhance high-priority intersection operations, and reduce Vehicle Miles Traveled (VMT).
- **6.3:** Invest in equitable access to, and expansion of, all sustainable modes of travel with emphasis on growing transit ridership.
- **6.4:** Support and invest in regional transportation connections.



High Performing Government

- **7.3:** Engage the community more effectively with enhanced inclusion of diverse identities, languages and needs.



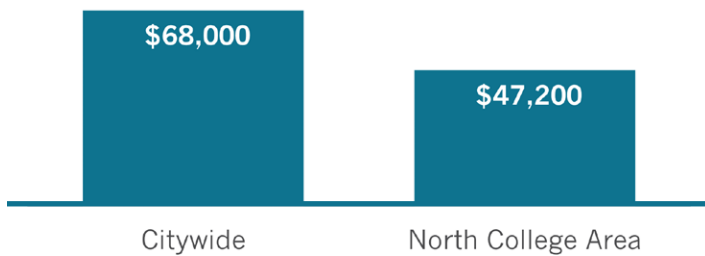
80%

The recommendations in the North College MAX BRT Plan are most relevant to the City’s goal of reducing 2030 greenhouse gas emissions by 80% below 2005 baseline levels.

CLIMATE GOALS

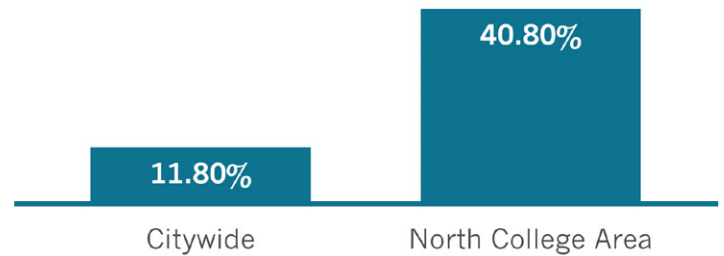
The recommendations in this plan were also developed in an effort to help contribute to the City’s climate action goals as described in Fort Collins’ Our Climate Future Plan. The recommendations in the North College MAX BRT Plan are most relevant to the City’s goal of reducing 2030 greenhouse gas emissions by 80% below 2005 baseline levels. Our Climate Future includes a Big Move to provide convenient transportation choices, including expanding local and regional public transit, continuing to build bicycle facilities, and creating mobility hubs. Additionally, Our Climate Future also includes a Big Move with moves related to increasing the density and mix of land uses. The North College MAX BRT Plan’s recommendations include transportation and land use improvements that aim to make it easier, more efficient, and more comfortable to use transit and active transportation modes. Shifting more trips to, from, and within the North College area to transit and active transportation modes will reduce the number of vehicle miles traveled and therefore the greenhouse gas emissions created by ground travel.

Median Household Income



Source: US Census Bureau

Hispanic Population



Source: US Census Bureau

EQUITY

Improving equity is a core priority for the City and was a guiding principal for the process and recommendations for this plan. The public engagement process of this plan integrated equity through outreach to historically underrepresented populations, like people who primarily speak Spanish, mobile home community residents, service industry workers, and patrons of the area’s social service providers. Several social service providers are located in the North College area, including Salud Medical Clinic, Larimer County Department of Human Services, Food Bank For Larimer County, Murphy Center for Hope, Catholic Charities of Larimer

County, and The Family Center La Familia. In an effort to make the process more accessible to a wide range of people, a diversity of outreach opportunities were presented throughout the project including online engagement, in-person workshops, and virtual meetings. The Fort Collins Community Connectors handed out flyers to area businesses and went door-to-door to collect community member feedback in neighborhoods with high numbers of underrepresented groups. In addition to the outreach process, improving equitable outcomes was a key consideration throughout this project’s recommendation development and technical analysis. The equity considerations that were considered for different recommendations are included in the more detailed discussions of study recommendations later in this report.



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Vision, Purpose, & Need

YIELD TO THE BUS.
HAVE A HEART.
DRIVE SMART.
YIELD TO THE BUS.
IT'S THE LAW.

Vision, Purpose, & Need

The vision for North College Avenue is for a safe, accessible, and affordable corridor for people who live, work, and visit the North College area.

The vision, purpose, and need statements below were created using the public input collected and existing conditions analysis conducted in previous phases of this project. The **vision statement** describes the ideal of how the study area should look and function once all of the plan recommendations have been implemented. The **project purpose** outlines this specific plan's role in achieving the vision statements. The **statement of need** summarizes the common themes of existing challenges in the study area.


VISION STATEMENT

The vision for North College Avenue is for a safe, accessible, attractive, and affordable corridor for people who live, work, and visit the North College area. North College Avenue will be a gateway and hub for local and regional transit connections that link people to essential services, recreation, and entertainment.


The corridor will connect to a comfortable and convenient network for people using active modes made up of sidewalks, share-use paths, and bike lanes.

Transit stations will be focal points for new, multi-story development that de-emphasizes surface parking. Corridor development will bring upgrades to infrastructure, improve public space, and fill in existing vacant land and buildings. New development will occur in a way that protects the natural environment and preserves affordability and diversity of residents, local businesses, and service providers. North College Avenue will become a district and destination with its own distinct character that is driven by residents, workers, and local business owners. The corridor will be a safe and comfortable corridor to travel through and a destination for people of all socio-economic statuses, ages, and abilities.

The corridor will:



Be a **gateway** into the City of Fort Collins.




Include a **safe, comfortable, and convenient** transportation network for people taking transit, using active modes, and driving.




Stay **affordable** for residents and local businesses.



Grow in a way that **protects the natural environment and the local community.**



Provide ample **services, places to live, employment opportunities, and spaces for recreation.**



Display its own **unique** local character.

PROJECT PURPOSE

The purpose of the North College MAX Plan is to guide future transit investments and help align policies with those future transit investments.

This plan will provide a roadmap for the City of Fort Collins to make improvements to transportation infrastructure and transit service in the North College area. Additionally, this plan provides recommendations to guide new development in a direction that preserves affordability for residents and local businesses, is supportive of transit and other active modes of transportation and promotes needed services and open space to the surrounding community. In summary, this plan's purpose is to:

- **Guide transportation infrastructure improvements and new development** in a way that allows North College Avenue to continue its evolution as the northern entryway to the city with a positive community look and feel.
- **Plan and provide steps for implementation** for increased transit investment and a multi-modal transportation network in the North College area that is safe, comfortable and convenient for people of all ages and abilities.
- **Build upon citywide efforts to preserve affordability** for residents and local businesses and recommend appropriate strategies for the North College area in particular.
- **Guide new development to provide** affordable housing, essential services, and open space in the area.
- Contribute to numerous other efforts in the North College area to **strengthen its unique local character and sense of place**.

STATEMENT OF NEED

From analyses of community input (**Appendix A**) and existing conditions (**Appendix B**) the following five statements of need for the North College area were developed:

- **Incomplete multi-modal transportation network** that makes it challenging to comfortably get to, from, and around the North College area by modes other than driving. Additionally, the current network creates many areas of conflict between people driving and people using active modes which impacts efficiency and feelings of safety, especially for vulnerable, active mode users. Additionally, community members expressed that the existing transportation network could be improved to better protect the natural environment.
- **Need for increased investment in transit service** in the North College area. Community members expressed a desire for more frequent and efficient transit service on North College Avenue and the surrounding area with more investments in bus stops, future MAX stations, and security to make them feel safer and more comfortable. Community members also expressed the importance of preserving the existing transit connections to the Poudre Valley Mobile Home Park and social services on Blue Spruce Drive.
- **Lack of comfortable places to walk and bike** in the North College area due to missing or uncomfortable infrastructure, infrequent controlled crossings of roadways (particularly across North College Avenue), and the frequency of driveways that intersect the bike lane and sidewalk on North College Avenue.
- **Desire for redevelopment of vacant properties** to provide new homes, services, and enough travel demand for high-frequency transit.
- **Increasing costs of buying or renting property** for both residents and local businesses, which is making it hard to stay in the North College area and Fort Collins at large, especially for underrepresented populations including people with lower incomes and Hispanic residents.





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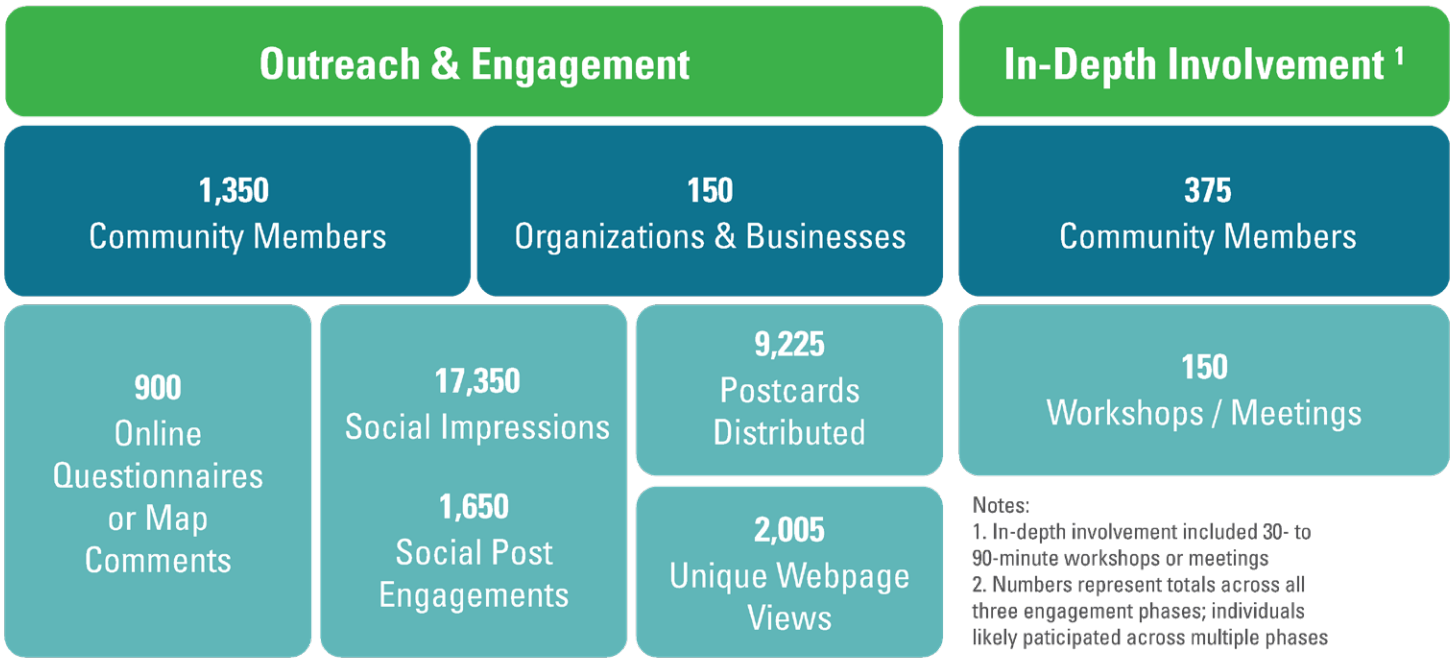
Plan Development

Plan Development

This plan details the final recommendations for the future of transportation and related land use improvements in the North College area. These recommendations were developed and refined through an extensive public outreach process and technical analysis. These processes are summarized in **Figure 3** and more details about each can be found in their respective appendices at the end of this report.



Figure 4: Outreach Summary



Phase 3: Recommendations

Community members provided feedback to the project team that the proposed plan for the North College area aligns with their vision for the area and addresses their transportation needs. Community members were supportive of increasing density in the North College area provided that affordability goals are identified and met. Business owners, in particular, are concerned about the impacts of future construction.

The project team prepared conceptual designs for the preferred recommendations on North College Avenue, land use recommendations, cost estimates, and an implementation strategy. The implementation plan includes short-term, mid-term, and long-term recommendations that will achieve significant progress in the short-term while avoiding major construction until the mid-term.

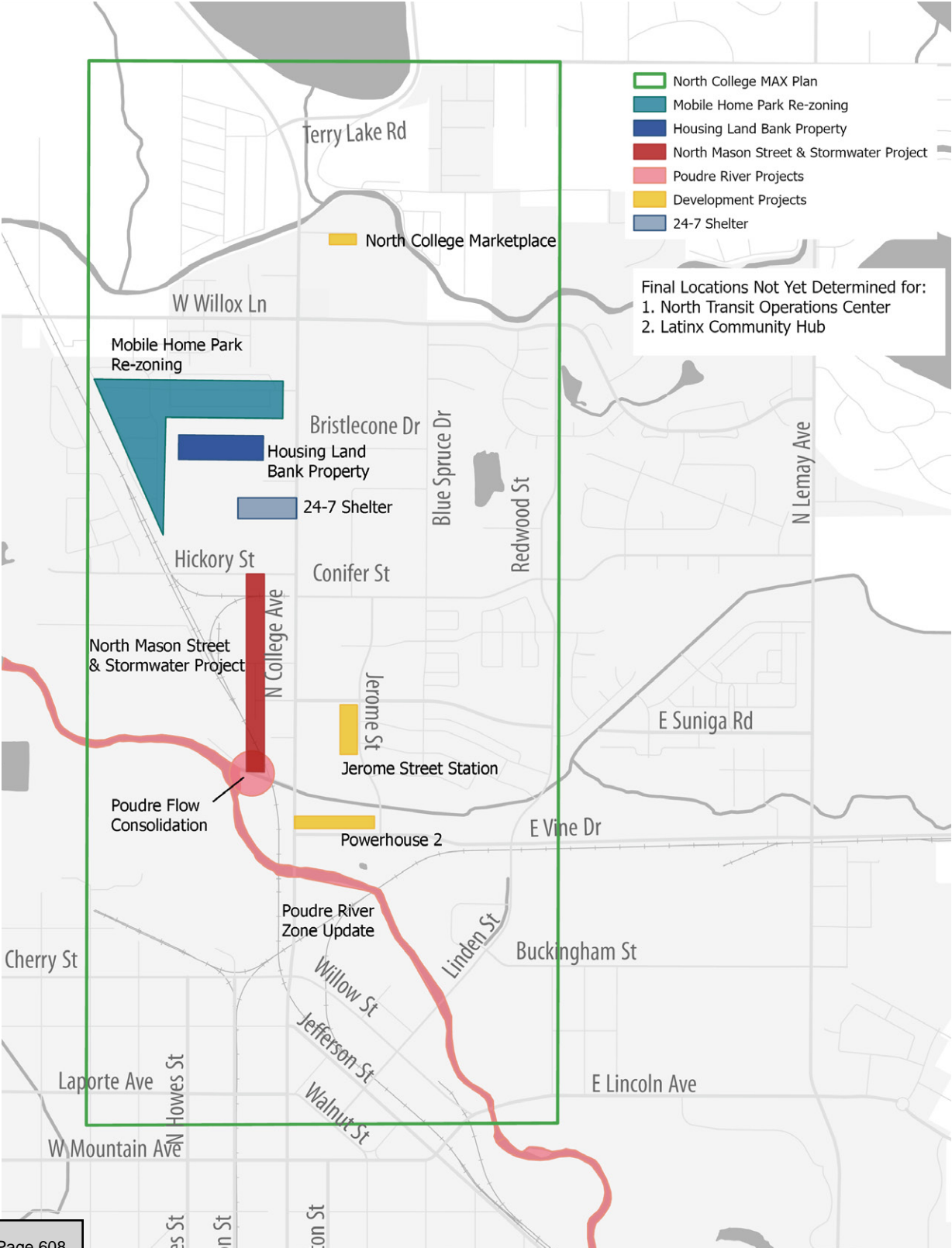
The plan was developed across three separate phases of community engagement and technical analyses. The team implemented an equity-forward community engagement process given the proportion of under-served populations in the North College area. Specifically, community members, community-based organizations, and representatives of the area’s social service providers all participated in the community engagement process. Given the high proportion of Hispanic residents, the team conducted outreach in all phases in both English and Spanish, including door-to-door outreach in the area’s mobile home parks. Lastly, recognizing the value of peoples’ time, compensation was provided to participants of workshops in the form of \$50 grocery gift cards. **Figure 4** summarizes the number of people engaged through different mediums through the community engagement process.



To see more details about each phase of outreach and the results of those efforts see **Appendix A** of this plan. To see more about the technical analysis, see **Appendix B** which includes the Existing Conditions Report and **Appendix C** which includes the Alternatives Analysis Report.

The North College MAX BRT Plan was developed to be consistent with other projects in the area, as shown in Figure 5.

Figure 5: Active Projects in the North College Area





Ohio State University



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Transportation Plan Recommendations

Transportation Plan Recommendations

This design also aims to improve the comfort and safety of people using active modes and people taking transit on the corridor.

ROADWAY DESIGN OF NORTH COLLEGE

The long-term design for North College Avenue can be seen in **Figure 6** and **Figure 7**. Plan view cut sheets of the entire corridor can be seen in **Appendix D**. The roadway design includes Business Access Transit (BAT) lanes and sidewalks widened into shared-use paths for people walking and biking.

BUSINESS ACCESS TRANSIT LANES

Business Access Transit (BAT) lanes are a key element of the preferred cross-section. BAT lanes are lanes in which buses travel and vehicles can use only for making right turns at intersections or turning into existing driveways midblock. The recommended BAT lanes can be accommodated in the existing curb-to-curb width of the street if the existing median width is reduced, typically one to five feet of median narrowing is necessary.

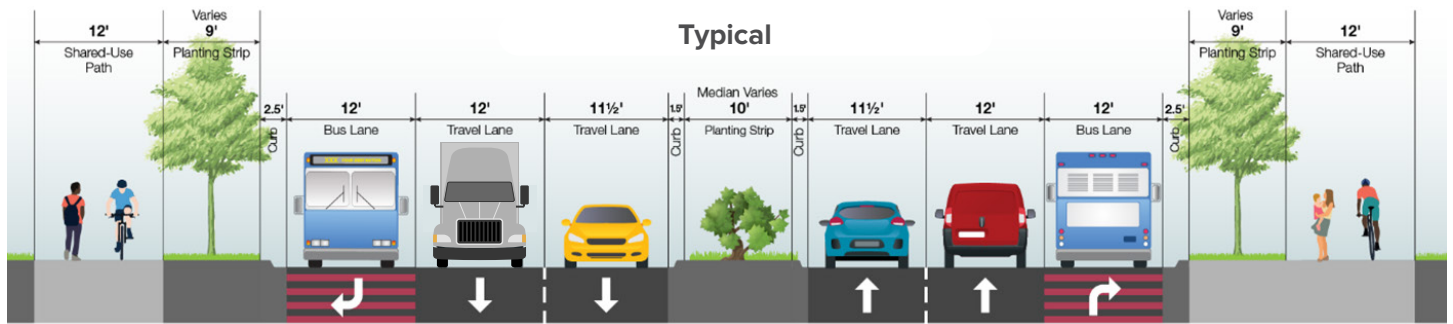
SHARED-USE PATHS

The construction of BAT lanes does not allow enough width for on-street bicycle lanes. However, community input indicated that higher comfort bicycle infrastructure (like an off-street path) is preferred on North College Avenue over on-street bike lanes due to the volume and speed of vehicles. Instead of bike lanes, a shared-use path (10- to 12-foot wide,

which requires acquiring up to two feet of right-of-way on each side) is recommended along the length of the corridor to provide a high-comfort facility for people using active modes. In many areas the shared-use path cannot be accommodated in existing right-of-way. Therefore it is recommended that in areas without sufficient right-of-way, the existing sidewalk be widened behind the back of walk to allow for both a shared-use path and the existing width of landscaped buffer. This also will minimize disturbance to established street trees that are already on the corridor. Implementation of this cross section will require acquisition or easement for additional right-of-way at certain locations on the corridor (see **Appendix D**).

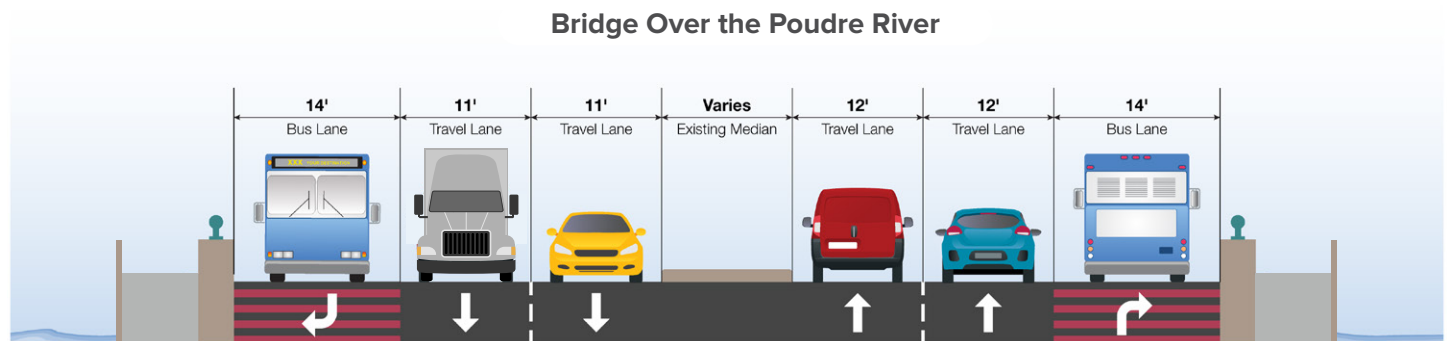
Due to the cost and disruption of construction required to build a shared use path along the length of the corridor, it is recommended only a priority section be constructed in the near-term where parallel bikeways are not feasible. Elsewhere, the remainder of the path will be implemented as parcels redevelop along North College Avenue. The priority area to be constructed in the near-term is on the west side of North College Avenue between Hibdon Court and the pedestrian and bicycle bridge over the canal to the north (**Figure 10**).

Figure 6: Typical North College Avenue BAT Lane Cross-section



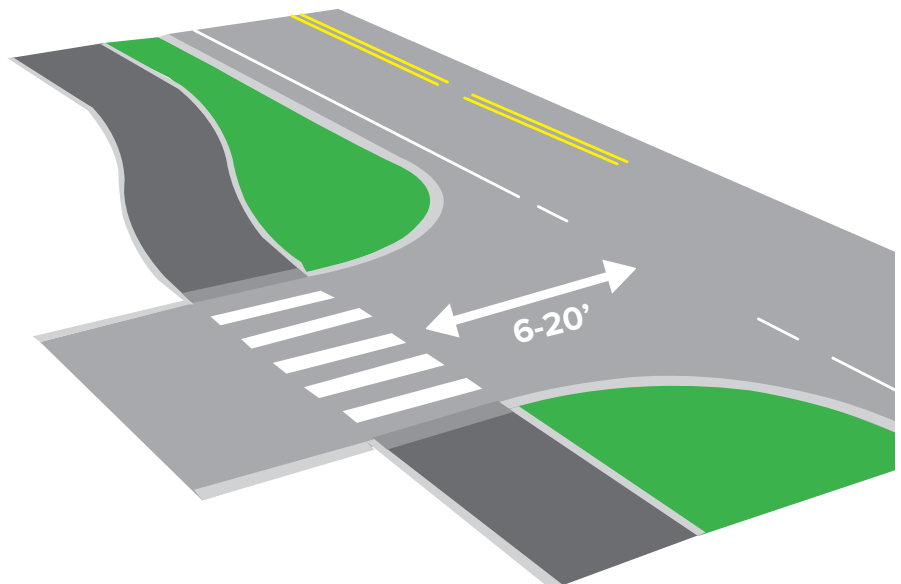
*At signalized intersections, turn lanes will replace the median.

Figure 7: North College Avenue Cross-section at Poudre River Bridge



Throughout the project, concerns were heard regarding the safety of people biking and walking on the shared use paths where they intersect minor streets and driveways. **Figure 8** shows treatments implemented in other cities to minimize crash risk at similar locations. These treatments include bending out the shared use path at intersections to create yielding space for drivers turning off of the major street and stacking space for drivers waiting to turn onto the major street. High-visibility markings emphasize the path crossing to people driving.

Figure 8: Typical Shared-use Path Crossing with Setback and High-visibility Markings



MEDIANS

Creating the BAT lanes will require narrowing the existing landscaped medians, typically by one to five feet. Additionally, the plan recommends adding medians on North College where they do not currently exist south of Conifer Street and as shown in **Figure 9**. The median narrowing and new median would have some construction impacts to the corridor.

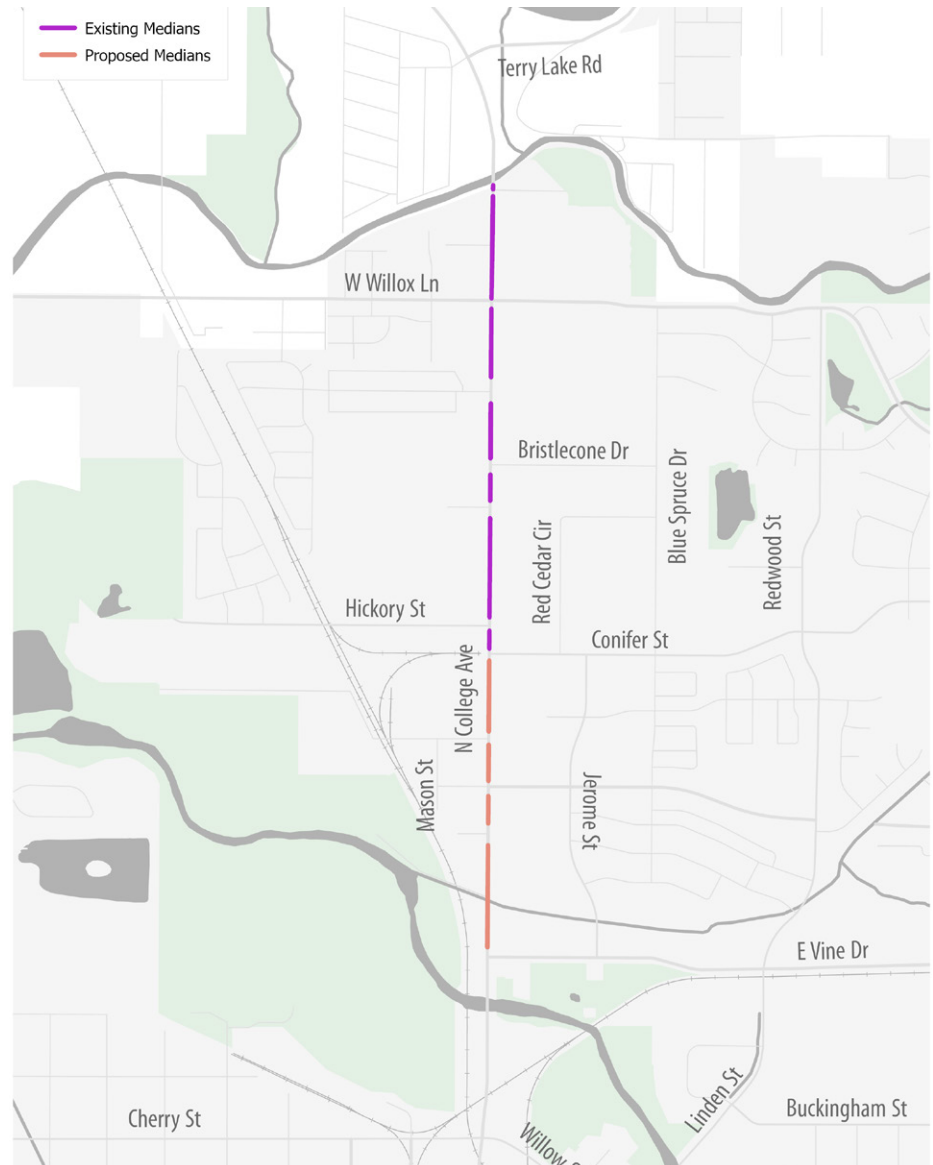
FUTURE BUS TURNAROUND

This plan also recommends constructing a new turnaround for buses outside of the Poudre Valley Mobile Home Park, somewhere north of Terry Lake Road along either North College Avenue or Terry Lake Road. Through this plan, the project team explored whether any publicly owned parcels were available for a turnaround and found none. Instead, the city will have to work with a property owner or property owners to acquire land for a turnaround. The project team explored different dimensions for this turnaround and found that approximately one acre of land is adequate, with a minimum depth of 150 feet and a minimum length of 250 feet.

COST ESTIMATES

Conceptual cost estimates were developed for the full implementation of the cross-sections shown in **Figure 6** and **Figure 7** along the length of North College Avenue. The total for all improvements is estimated to cost **\$21.8 million in 2022 dollars**, excluding right-of-way costs and the future bus turnaround. Rebuilding the entire corridor

Figure 9: Existing and Future Median Locations



at once would not only be a considerable financial investment but would also create additional construction impacts. For this reason, the phasing of elements is recommended and phasing options are described in more detail in Phasing & Funding Sources, later in this section.

Appendix E provides the more detailed breakdown of the cost estimate.

TRANSIT RECOMMENDATIONS

Below is a summary of recommendations for transit service changes across the North College area:

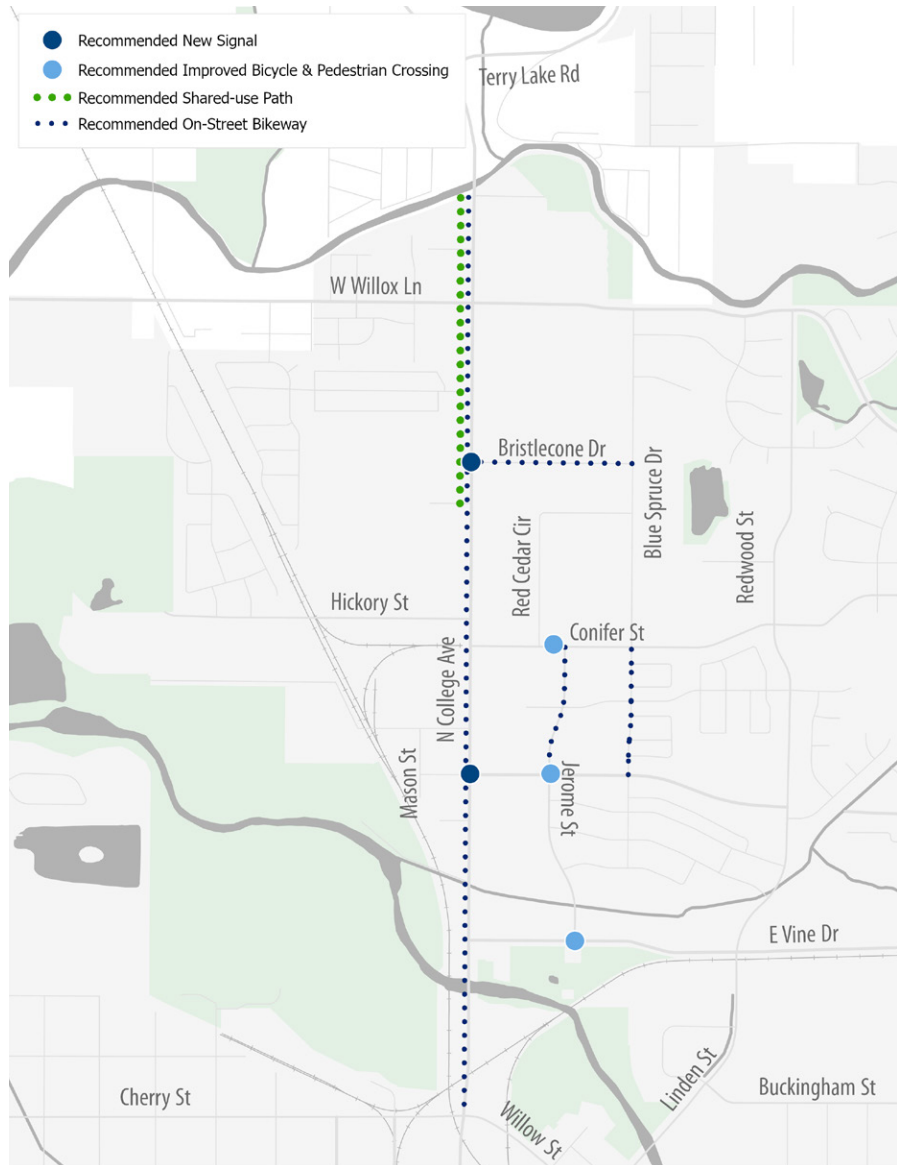
- New MAX BRT route on North College Avenue; long-term interlining of service with MAX on Mason Street
- Realign route 8 to run from the Downtown Transit Center to Poudre Valley Mobile Home Park, operating on Blue Spruce Drive, Redwood Street, and Linden Street
- Elimination of route 81 (the North College MAX will replace this service)
- New on-demand transit service like micro-transit service operating in the neighborhoods near North College Avenue, connecting to businesses on Lemay Avenue and bringing people into the high-frequency transit network

These recommendations are shown on a map in **Figure 11**. The following sections provide further detail about and the reasoning for each recommendation.

MAX ON NORTH COLLEGE AVENUE

The first phase MAX route alignment for North College Avenue is from the Downtown Transit Center to Willox Street on North College Avenue and back, with the Willox Street roundabout as the northern turnaround point (see **Figure 11**). This alternative was chosen because it could be implemented immediately without needing to build a new turnaround area. This alignment creates a straightforward and intuitive MAX route that goes both north and south on North College Avenue and does not make any additional loops, helping with route efficiency as well as being easier to understand for riders.

Figure 10: Near-term Pedestrian & Bicycle Recommendations, Including High-priority Shared-use Path Segment



The drawbacks of this alignment is that MAX level service is not provided directly to the Poudre Valley Mobile Home Park or the social services on Blue Spruce Drive and Redwood Street. However, Route 8 will still provide local service to these locations and the efficiency of a local route on Blue Spruce Drive and Redwood Street will be improved because it will not need to make a loop on North College Avenue. Additionally, MAX service will be provided within a half mile of the main entrance to the mobile home park at Terry Lake Road and within a quarter mile of the south end which has an unofficial pedestrian access point that residents use to enter and exit the neighborhood. Further discussion of the final route alignment for the local route 8 is covered in an upcoming section of this report.

Potential Future Phase of Route Alignment

It is recommended that the long-term vision for MAX on North College Avenue include creating a new turnaround point near the North College Avenue/Terry Lake Road (CO 1) intersection (see **Figure 11**). There will be a considerable cost to purchase the property for and construction of this turnaround, which makes it a less desirable alternative in the short-term. However as a long-term goal, this turnaround would be able to provide MAX service closer to the Poudre Valley Mobile Home Park and other residences in the area north of Willox Street. This turnaround would also be available for use by local buses to eliminate buses turning around inside of the mobile home park as they currently do today.

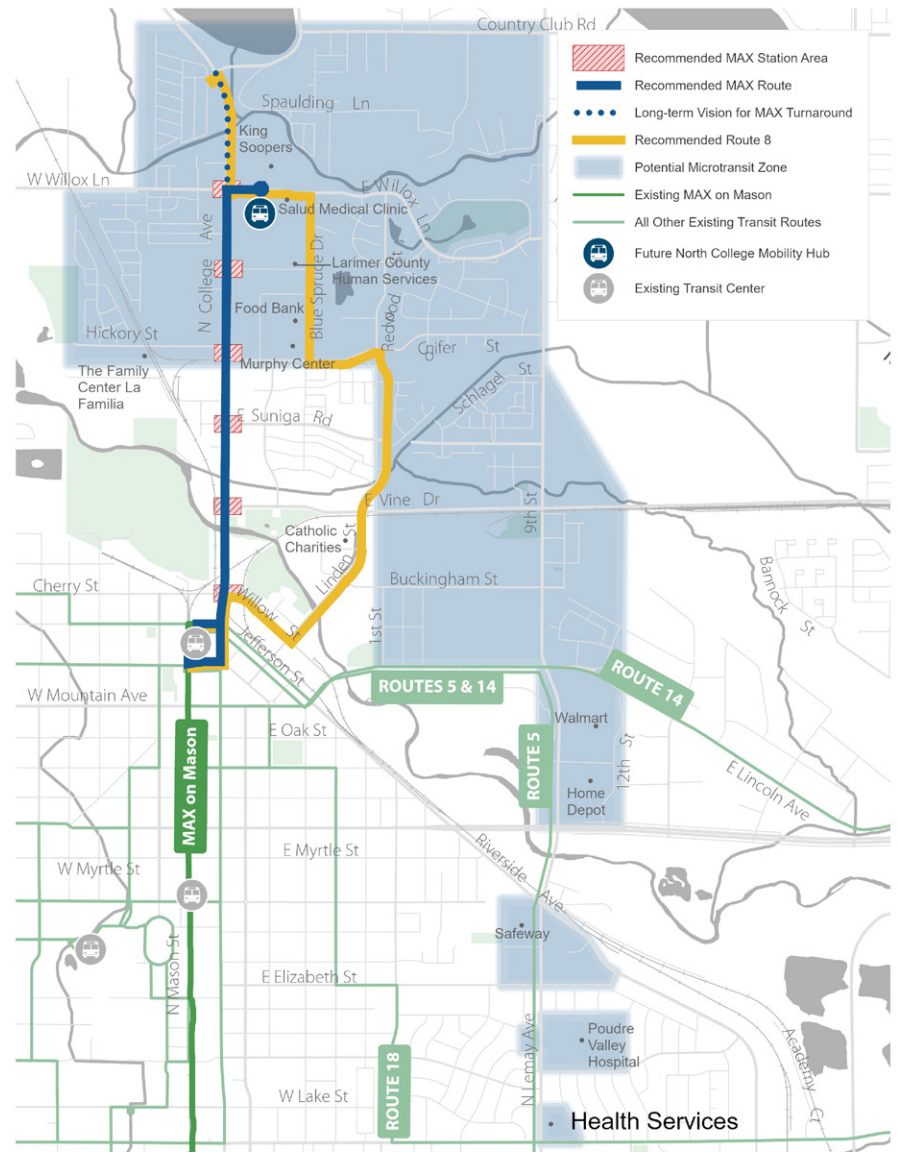
Service Characteristics

It is recommended that the MAX route on North College Avenue operate at a 15-minute frequency. A round trip of the route is estimated to take about 12-minutes. Therefore, this service could be operated with one bus every 15 minutes with roughly three minutes of recovery time between trips. The following sections provide additional information on how the possibility of interlining MAX on North College Avenue with MAX on Mason Street and could affect frequencies.

Future Interlining with MAX on Mason Street

Based on extensive community desire for a one-seat ride from North College Avenue to the South Transit Center, technical analysis of this plan considered the feasibility, benefits, and drawbacks of interlining the MAX on North College Avenue with the existing MAX on Mason Street route. Interlining the two routes would result in operating the service as one continuous route where the Downtown Transit Center would serve as a stop rather than a transfer. In the near- and mid-term it is recommended that these two MAX routes operate separately (possibly with different service names) because of a mismatch of the planned frequencies of each route and reliability challenges created by railroad

Figure 11: Map of Final Transit Recommendations



Mismatch of Frequencies

Before the COVID-19 pandemic, MAX on Mason Street ran at 10-minute frequencies with six buses required to operate that service. It is expected that MAX on Mason Street will return to this frequency once resources are available. The MAX route on North College Avenue is proposed to have 15-minute frequencies which allows the route to be operated using only one bus. Existing demand is not yet at a level where 10-minute frequency is necessary. The two MAX routes operating separately would require a total of seven buses. Riders would transfer from the North College Avenue route to the Mason Street route at the Downtown Transit Center. Given the planned frequencies of 15- and 10-minutes, riders would not experience much waiting to transfer.

If interlining is desirable in the future, the challenge of misaligned frequencies (10-minutes vs. 15-minutes) can be addressed two different ways:

1. Run a bus at 10-minute frequencies the length of the two routes, from the turnaround on Willox Lane to the South Transit Center. This requires eight buses to operate (one more than if the routes operate separately). MAX on Mason Street currently has a simple 60-minute run time with built in recovery time. Extending up to North College Avenue would create a 75-minute cycle time for the route that would require two additional buses than MAX on Mason Street did before the pandemic.

The benefits of interlining are that it is a simple and intuitive schedule for riders and provides a single seat ride from the North College area all the way to the South Transit Center. This strategy also provides more frequent service to North College Avenue than if the routes operated separately. The drawbacks of this option are that it requires an additional bus to operate compared to the non-interlined option, which would be an extra cost for the bus, operator hours, and other operating costs. It is possible the additional resource investments to interline the two routes may not result in proportional increases in ridership based on expected demand in the North College area.

2. Run only every other MAX on Mason Street bus up North College Avenue so that MAX on Mason Street has 10-minute frequency but MAX on North College Avenue would have 20-minute frequency. This option also requires 8 buses, because of the needed cycle time to combine both routes into one. The only benefit this option achieves is creating the single seat ride from Willox Lane to the South Transit Center. The drawbacks include the alternating run schedule (which is often confusing and frustrating for riders), additional resources needed for the eighth bus, and lower frequency service for the North College area. This strategy would require similar resources as the first without the added benefit of high-frequency service on North College Avenue.

Based on 2019 ridership data, MAX on Mason Street averages 285 boardings per station per day or 800 passengers per mile. Interlining would be most appropriate when transit ridership on North College Avenue comes within a margin of these levels of productivity (approximately 1,500 boardings per day).

Conflicts from Additional Rail Crossings

The North College Avenue MAX route will need to cross two freight rail lines in order to connect the Downtown Transit Center with the north end of North College Avenue. MAX on Mason Street already crosses the rail twice: once when turning around north of the Downtown Transit Center and a second time in the southbound direction at Laurel Street. The rail crossings will impact the route's reliability at certain times as

the bus must wait for the trains to pass through. This is likely to cause the bus to run behind schedule. Rail crossings will be a challenge for the North College MAX route regardless but interlining with MAX on Mason Street will bring this challenge to the Mason Street service where it is not currently an issue. Rather than just the North College area occasionally experiencing these delays, the railroad crossings have the potential to impact the reliability of the entire interlined route.

For these two reasons it is recommended that the two services begin operating as separate routes. The feasibility and benefits of interlining the two routes may be more appropriate to consider when ridership of a North College MAX route is better understood after the service has been operating for a couple of years.

CO2 EMISSION REDUCTION BENEFITS

MAX on North College Avenue is envisioned to eventually deliver daily ridership over 1,000 boardings per day. Assuming typical point-to-point travel distances of three to five miles, and if all of these trips were to be made by car, this level of ridership represents 3,000 to 5,000 vehicle miles traveled (VMT) per day, or 2,400 to 4,000 pounds of reduced CO2 emissions per day. While this likely over-estimates the CO2 emissions reduction potential of MAX on North College Avenue as not all ridership would be converted from driving trips, it does illustrate the CO2 emissions-reducing potential of the service.

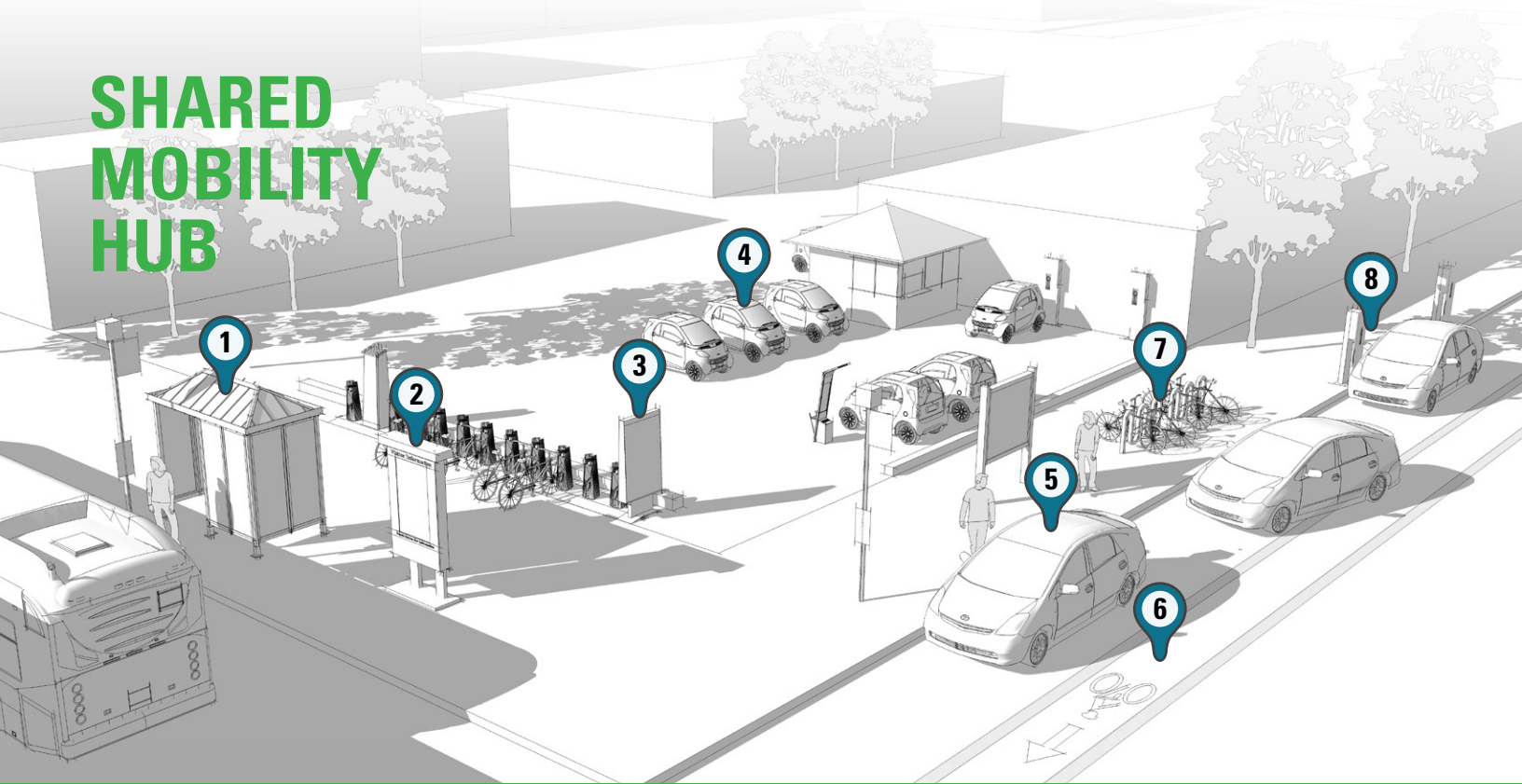
STOPS & STATIONS

Locations

The final plan for MAX on North College Avenue includes consolidating and aligning the existing bus stops to create the MAX stations (see **Figure 11**). New station locations were chosen for their proximity to key destinations as well as their alignment with existing or proposed traffic signals. All stations were aligned into matching pairs, one northbound station and one southbound station on the other side of the road. These station pairs make the service easier to use for riders, allowing someone to pick-up the bus for their return trip in the same location they were dropped off. This mitigates confusion about where to go to take the bus back, especially for newer riders.

Station pairs were located around traffic signals to provide safe, controlled pedestrian crossings linking the northbound and southbound stations together. Crossing at signals to access bus stops and destinations on the other side of the road improves pedestrian comfort as well as minimizing out of direction travel for people accessing the bus stops.

Figure 12: Shared Mobility Hub



1 Bus shelter

5 TNC/microtransit drop-off/pick-up

2 Information and fare payment

6 Intersecting bike lane or bike paths

3 Scooter share & bike share (Zagster)

7 Bike parking

4 Car share

8 Car charging station

Amenities at MAX Stations

It is recommended that each MAX BRT station feature multimodal options, with the most northern station near King Soopers being the a mobility hub with the most amenities.

All MAX BRT stations should have the following amenities, where space allows:

- Intuitive information on transportation options:
 - » Live informational signage on transit arrival times
 - » Maps of key destinations, transit routes, and bicycle facilities
- High comfort station amenities including:
 - » Shelters
 - » Benches
 - » Trash cans
 - » Pedestrian scale lighting
 - » Kiosks for ticket purchases (if applicable)
- Features of universal design for accessibility by all users
- Public art
- Security features such as emergency telephones
- Bicycle parking (covered where possible)
- Micro-mobility parking areas

The northern most station near the King Soopers will serve as a mobility hub. The Transit Master Plan envisioned a mobility hub at this location, which can be incorporated into redevelopment of the former Albertsons site. As a mobility hub, it can include the following additional amenities illustrated in **Figure 12**:

- Secure bicycle parking
- Park-n-ride
- Restrooms
- Electric vehicle (EV) charging
- Car share
- Taxi/ride hailing loading zones
- Micro-mobility charging hubs

These additional amenities would require more space than a typical MAX station. Partnerships can be pursued with nearby landowners and businesses to create shared parking agreements or other agreements allowing station amenities to be located on parcels near the station. The vacant Albertsons lot could provide a great opportunity to accommodate these mobility hub elements on part of that property.

NEW ROUTE 8

The recommended alignment for local bus service is to eliminate the current route 81 and realign route 8 to create greater efficiency and eliminate redundancy with MAX on North College Avenue. The new route 8 will run from the Downtown Transit Center to Willow Street, then head north on Linden Street to Redwood Street to Blue Spruce Drive. The route will then turn west on Willox Lane and turnaround in the Poudre

Valley Mobile Home Park as it does today and then reverse the directions above back to downtown (see **Figure 11**). When the future turnaround south of Terry Lake is constructed, route 8 will also use this turnaround in order to remove turning buses from the Poudre Valley Mobile Home Park.

The new alignment of route 8 will make it more intuitive and efficient for riders, particularly those using the service to get to and from the services on Blue Spruce drive, since the route would run the same path northbound and southbound. The alignment also retains the connection between the service providers east of North College Avenue with the Downtown Transit Center.

Alignments that brought route 8 to destinations on Lemay Avenue were considered, however after analysis those options were not recommended because of route inefficiency, loss of the connection from services on Blue Spruce Drive to Downtown, and redundancy with route 5. Instead, this need for connections to destinations on Lemay Avenue, like shopping and medical services, was addressed with a recommendation for new on-demand micro-transit service that is detailed in the following section.

Service Characteristics

The new alignment of route 8 is recommended to run at 20-minute frequencies. It is estimated that a round trip of this route would take about 35-minutes. This means it would require two buses to operate route 8 at 20-minute frequency with a 5-minute recovery period between trips. Route 8 could also operate at 30-minute frequencies but this would still require two buses. For this reason it is more beneficial and efficient to operate the route at 20-minute frequencies.

Amenities at Local Bus Stops

It is recommended that all local bus stops on the realigned route 8 be upgraded to include the following amenities where space is available:

- Shelters
- Maps of the transit system
- Benches
- Trash cans
- Pedestrian scale lighting
- Bicycle/micro-mobility parking

Providing these amenities at stops can make riding the bus feel safer and more comfortable for a wider demographic of riders. Bus shelters make it more feasible and comfortable for people to ride transit in inclement weather. Benches provide a chance to rest while waiting for the bus which can be particularly critical for older adults and people with mobility issues. Trash cans and pedestrian scale lighting provide a more comfortable station environment, particularly at night. Bicycle and micro-

Figure 13 Image of Microtransit Service in Denver called the “Montbello Connector”



mobility parking provide an option for people to easily access the stop by bicycle or scooter to make their trip more efficient or access a bus stop that is too far to comfortably walk to.

INNOVATION ZONE: NEW MICRO-TRANSIT SERVICE

This plan recommends exploring a microtransit service from the North College area to destinations on Lemay Avenue. See **Figure 11** for the approximate boundaries of the recommended zones within the study area. Travelers could request trips that started and ended at any two points within the three zones on the map. The three zones encompass the mobile home communities near North College Avenue, the Tres Colonias neighborhoods, Walmart, Home Depot, Safeway, Poudre Valley Hospital, and other medical services on Lemay Avenue. These microtransit zones were drawn based on where community members reported they wanted new transit connections to the North College area.

The microtransit service will help fill the gap in transit service to the Tres Colonias neighborhoods and provide a direct link from the North College area to Home Depot, Walmart, Safeway, and medical services on Lemay Avenue. These new connections were identified as high priority by community members. Additionally, the service would provide a first/last-mile connection between MAX service on North College Avenue and the surrounding neighborhoods. The data collected about trips in the microtransit system can inform the creation of a service in the future.

What is Microtransit?

Microtransit is a form of demand response transit that uses a smartphone app (with a call-in option) to match trip requests in real time. Microtransit typically uses small vans or shuttle buses and can be operated by a contracted provider or by an agency, like Transfort, with purchase of a ride-matching app and associated technology.

Microtransit allows for transit service connecting low to medium density areas with popular destinations where a fixed-route bus route may not be appropriate due to low demand for fixed-route transit. Microtransit technology has the ability to group trips to and from popular destinations at similar times. This service can charge a fare or be operated fare-free.

Equity Considerations for Microtransit

A new microtransit service should still be accessible to people who do not have reliable access to cellphone data, are not proficient in using a smartphone, or are uncomfortable creating a profile on an app. To address this concern, the new service should include a call-in option as an alternative to using the app. Providing a call-in option for riders is an essential component to making this tech-enabled service more accessible to everyone.

Additionally, any materials developed for this service should be in both English and Spanish, at a minimum, in order to make the service easy and accessible for riders who primarily speak Spanish. Finally, it should be noted that at least one vehicle in the microtransit fleet must be ADA accessible.

Service Characteristics

Within the study area, the proposed microtransit zones cover a total of 2.4 square miles. Operating this microtransit system would require one to two vehicles (one of which must be ADA accessible) in order to provide service within 10-minutes of a request. The exact number of vehicles needed will depend on days and hours of service, projected demand, and the final service area as it may be desirable to serve other nearby areas not served by fixed-route transit.

ACTIVE MODE RECOMMENDATIONS

In addition to the new shared use path along North College Avenue, several other recommendations were developed for improving active mode use in the North College area, building upon the recommendations in the 2022 update to the Active Modes Plan (see **Figure 14**):

- Construction of two new traffic signals on North College Avenue

- Improvement of five key roadway crossings east of North College Avenue
- Creation of comfortable pedestrian and bicycle networks to the east and west of North College Avenue
- Interim protected bike lanes on North College Avenue

The following sections provide locations and more detail for these pedestrian and bicycle recommendations.

Roadway Crossings

Additional signals with crosswalks at Bristlecone Street and Suniga Road are recommended. Signalizing these intersections would provide additional controlled crossings for people using active modes and make it more convenient for transit riders to get between the northbound and southbound stations at these locations (see **Figure 14**). The signal at North College Avenue/Suniga Road is already planned for construction and both the signals are planned for in CDOT's *US-287 (North College Avenue) Access Control Plan*. The signal at Bristlecone Drive would also serve people accessing the future 24/7 shelter at Hibdon Court.

Figure 14: Pedestrian & Bicycle Infrastructure Improvements





In addition to the signals on North College Avenue, it is recommended that the following intersections be evaluated for improved bicycle and pedestrian crossings (see **Figure 14**):

- Conifer Street / Red Cedar Court / Jerome Street
- Suniga Road / Jerome Street
- Vine Drive / Jerome Street (in design as of fall 2022)
- Hickory Street / Mason Street
(when Mason Street extension is constructed)
- Bristlecone Street / Red Cedar Court
(when Red Cedar Court extension is constructed)

These locations are all on the recommended parallel networks for improved bicycle and pedestrian infrastructure (see **Figure 14**) and several were identified by community members as difficult areas to cross the street.

Active Mode Networks Adjacent to North College Avenue

It is recommended that investments be made on streets adjacent to North College Avenue to create comfortable infrastructure for people using active modes (see **Figure 14**). Investments in the streets around North College Avenue will give people the option to walk and bike on lower speed streets with fewer cars, providing an alternative to walking or biking on North College Avenue.

The recommended infrastructure upgrades to these streets include:

- New bikeways on:
 - » Bristlecone Street between North College Avenue and Blue Spruce Drive – this segment has a curb-to-curb width of approximately 40 feet, which is adequate for buffered or protected bike lanes if on-street parking is prohibited. If parking cannot be removed, a Neighborhood Bikeway may be feasible provided that traffic calming can achieve the desired vehicular volume and speed levels of a Neighborhood Bikeway.
 - » Blue Spruce Drive from Conifer Street to Suniga Road – this segment has a curb-to-curb width of approximately 30 feet. Given the residential nature of this segment, a Neighborhood Bikeway is recommended. Additional traffic calming treatments may be necessary to achieve the desired vehicular volume and speed levels of a Neighborhood Bikeway.
 - » The proposed Mason Street extension – the Mason Street extension is proposed as a 2-lane collector. The Larimer County Urban Area Street Standards for a 2-lane collector feature two travel lanes and buffered bike lanes with 5-foot bike lanes and 3-foot buffers.
 - » The proposed Red Cedar Circle extension – the Red Cedar Circle extension is proposed as a 2-lane collector.

The Larimer County Urban Area Street Standards for a 2-lane collector feature two travel lanes and buffered bike lanes with 5-foot bike lanes and 3-foot buffers.

- Wide detached sidewalks with limited or no curb cuts across the sidewalk on the proposed Mason Street extension.
- Wayfinding on North College Avenue and the parallel pedestrian and bicycle corridors directing people how best to walk and bike between key destinations and use the parallel streets to bike the length of North College Avenue comfortably.

Investing in these parallel streets for people using active modes will make it more convenient and comfortable to move through the North College area, as well as improve the first and last mile connections to MAX stations and route 8 stops.

INTERIM PROTECTED BIKE LANES ON NORTH COLLEGE AVENUE

As an interim solution to address user comfort for people biking on North College Avenue, this plan recommends that the wide shoulder on North College Avenue be converted into one-way protected bike lanes. The shoulders are typically 8 feet wide from curb to edge line which is adequate space for a 5- to 6-foot bike lane and a 2- to 3-foot buffer with vertical delineators. **Figure 15** shows a cross-section of the interim protected bike lanes. Eventually, once BAT lanes are added by narrowing the median, the continuous shared-use path on North College Avenue will replace the protected bike lanes.

Changes to the Master Street Plan

The map of adjacent pedestrian and bicycle networks (**Figure 14**) assumes the future construction of two roadway extensions: Mason Street and Red Cedar Court. The alignment shown in **Figure 16** differs from that currently shown in the Master Streets Plan. These alignments are recommended for a variety of reasons including equity, feasibility, and circulation.

Mason Street Extension

The Master Street Plan indicates a future extension of Mason Street from Suniga Road, to the north through the North College Mobile Home Park, across Willox Lane, across the Larimer & Weld Canal, and connecting back to North College Avenue through the Poudre Valley Mobile Home Park in Larimer County. The intention of the original Mason Street alignment was to provide a parallel street on the west side of North College Avenue for local access and circulation as an alternative to the highway. The original Mason Street alignment provided access to North College Avenue at signalized intersections as medians were implemented on North College Avenue to manage access to individual properties.

This plan recommends amending the Master Street Plan to show Mason Street’s north terminus at a future intersection with Bristlecone Drive which will have a traffic signal on North College Avenue. The remaining portion of a future parallel Mason Street can still provide access and utilities to land parcels that currently lack that infrastructure. It also would provide bicycle and pedestrian paths for local circulation without requiring the use of the highway. Because Mason Street will still provide access to North College Avenue at the same signalized intersections as previously proposed, the traffic impacts of this change will be minimal.

In the area of the North College Mobile Home Park, this original alignment is based on ideas for potential redevelopment of the east portion of the park with related drainage and utility improvements. Additionally, new access to a traffic signal on North College Avenue would provide improved access to shopping and other destinations to the east and north. Recently, park ownership and management have changed their approach to reinvest in the east portion of the park, at the same time that affordable housing has become an increasingly critical issue which is evident by the current effort to rezone the park to Manufactured Housing (M-H), intended to preserve affordability. For these reasons, along with the community discussions for this plan, this plan recommends amending the Master Street Plan to show Mason Street’s north terminus at

Figure 15: Interim Protected Bike Lane Cross-section

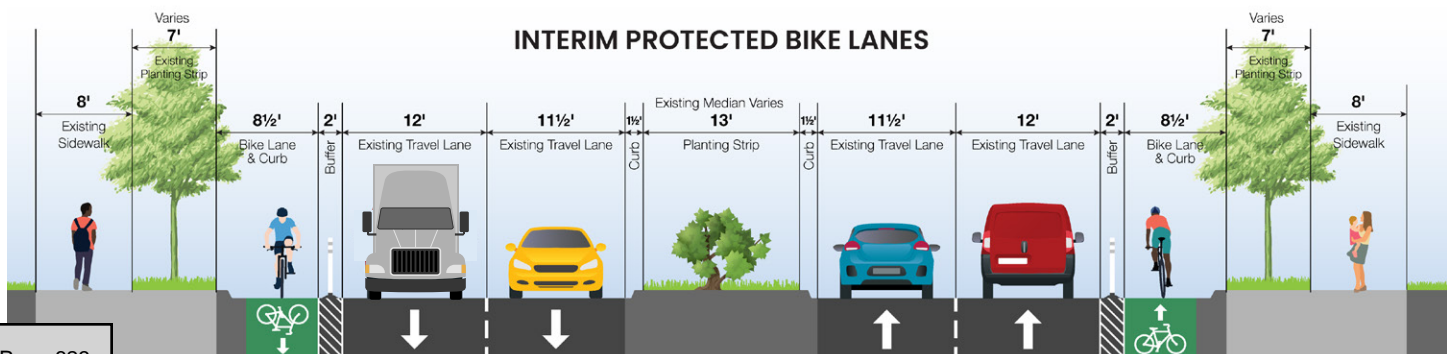
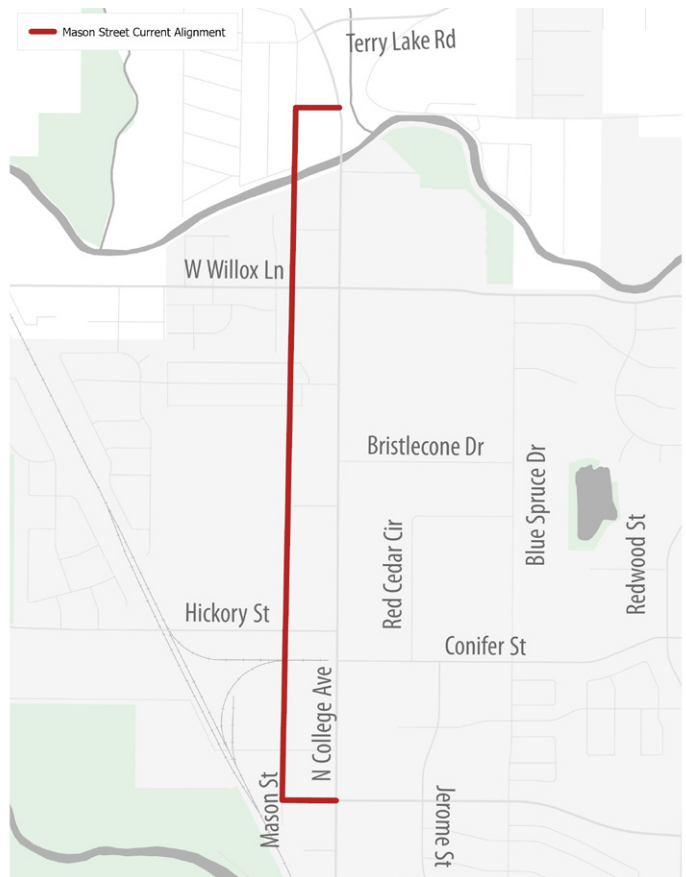


Figure 16: Original and Recommended Mason Street Alignment



a future intersection with Bristlecone Drive. This will remove the future Mason Street connection through the park.

The Master Street Plan also indicates future extension of the Mason Street alignment northward from Wilcox Lane along what is currently Wilcox Court, across the Larimer & Weld Canal with a new bridge, and then along a street through the Poudre Valley Mobile Home Park in Larimer County connecting to North College Avenue. This study recommends removing that proposed street segment because of the major difficulties and costs and minor benefits. A short segment of Mason Street was already built south of Wilcox Lane. This segment provides access to two parcels owned by the City of Fort Collins. In the future, this segment can be reconfigured as a cul-de-sac to enable turning around as well as parcel access.

While a parallel street that extends the full length of the corridor is lost with this realignment, the intent of the original alignment is still achieved. The parcels to the south of the Poudre Valley Mobile Home Park are the parcels without

existing access to North College Avenue. The proposed alignment would still provide access to those parcels. High-comfort bicycle and pedestrian infrastructure can be accommodated in the form of a shared-use path on North College Avenue north of Bristlecone Drive, rather than on a parallel street. For this reason this section of the recommended shared-use path is a near-term priority project in this plan.

Lastly, south of Conifer Street, the Mason Street extension will complement proposed medians south of Conifer Street by provided alternative access to properties currently accessed by North College Avenue.

The development of North Mason Street will likely have an alternative cross-section to the Collector identified in the Larimer County Urban Area Street Standards (LCUASS), but will still accommodate a buffered bike facility for the parallel bike network. This is to accommodate the existing businesses and property alignments, and likely low volumes of traffic.

Red Cedar Court Extension

The current alignment in the Master Street Plan for Red Cedar Court crosses Bristlecone Street to connect to Willox Lane. The new alignment, shown in **Figure 17**, would terminate Red Cedar Court as a collector street at Bristlecone Street, using Blue Spruce Drive as a continuous north-south collector street parallel to North College Avenue. Development and redevelopment north of Bristlecone Street, including redevelopment of the former Albertson's, would allow for other north-south streets connecting to Red Cedar Court.

PHASING & FUNDING SOURCES

The plan recommends a **phased approach** to implementation for the following reasons:

A major capital project was constructed on North College less than a decade ago. The construction of sidewalks, streetscape amenities, and medians was challenging for residents and businesses in the North College corridor. More major construction in the near term is not welcome.

The mid- and long-term recommendations are not yet needed in the corridor but associated conditions will be monitored to determine when they are needed.

The mid- and long-term recommendations are expensive and without meeting certain population and ridership requirements this project is not eligible for the FTA grants that typically pay for such improvements like the Small Starts grant used for the MAX BRT.

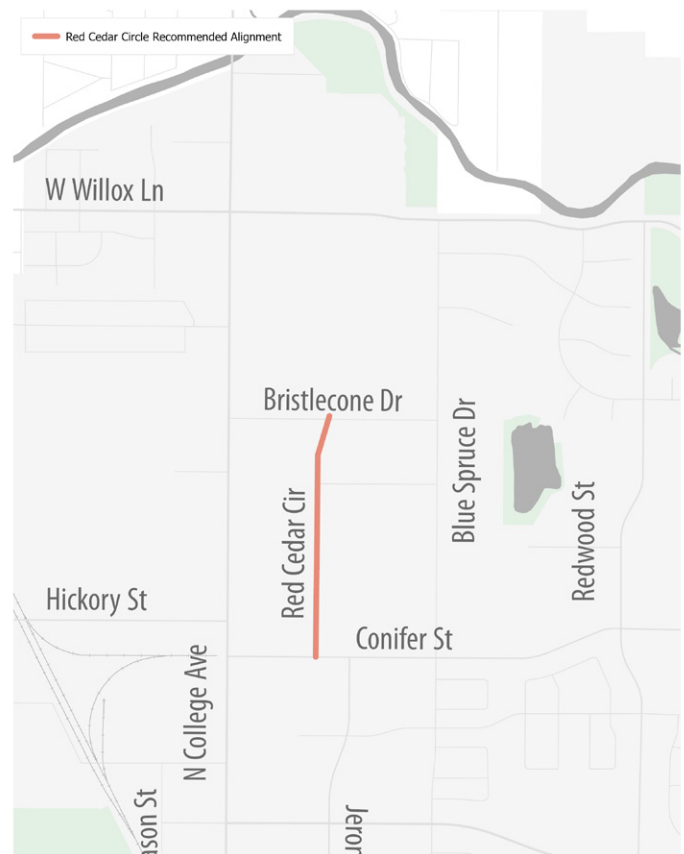
All of the transportation recommendations detailed previously are summarized and organized as near-, mid-, and long-term transportation recommendations and displayed in **Table 1**, **Table 2**, and **Table 3**, respectively. Potential funding sources and relevant partners were identified for each recommendation.

Funding Opportunity Acronyms

Below is a list of acronyms used in the recommendations tables that correspond to federal grants or other federal funding programs:

- **FTA** - Federal Transit Administration

Figure 17: Recommended Red Cedar Court Alignment



- **MMOF** - Multimodal Transportation and Mitigation Options Fund (distributed through North Front Range Metropolitan Planning Organization)
- **CMAQ** - Congestion Mitigation and Air Quality Improvement Program (distributed through North Front Range Metropolitan Planning Organization)
- **STBG** – Surface Transportation Block Grant (distributed through North Front Range Metropolitan Planning Organization)
 - » (TA) - Transportation Alternatives (a subset of the Surface Transportation Block Grant)
- **RAISE** - Rebuilding American Infrastructure with Sustainability and Equity Discretionary Grant Program (distributed by the United States Department of Transportation)

NEAR-TERM RECOMMENDATIONS

Table 1: Near-term Transportation Recommendations

Recommendation		Planning Level Cost Estimates	Relevant Partners	Potential Funding Sources
Fixed-route Transit Realignments:				
<ul style="list-style-type: none"> Create new high-frequency bus route on North College Avenue within existing general-purpose lanes at 15-minute frequency (with turnaround at Willox Lane roundabout) Realign route 8 on Blue Spruce Drive, Redwood Street, and Linden Street at 30-minute frequency Eliminate route 81 		Fleet needs: \$2.3m for battery electric buses Operating costs: neutral	Transfort	FTA 5307 Funding, MMOF, CMAQ
Micro-transit Zone		Fleet needs: \$120k Operating costs: +\$500k per year	Transfort, Ride-matching technology provider	FTA 5307 Funding, MMOF, CMAQ
Consolidate existing local bus stops into new MAX Stations at signalized intersections (with basic amenities such as shelters, benches, trash cans, and pedestrian scale lighting)		\$450k	FC Moves, Engineering, CDOT, Property owners	FTA 5339 Funding, CMAQ, STBG, RAISE
New shared use path on the west side of North College Avenue (between the canal and Hibdon Court)		\$770k	FC Moves, Engineering, CDOT, Property owners	STBG, MMOF, CMAQ, RAISE
Adopt amendments to the Mason Street realignment identified in the Master Streets Plan		No cost. Staff time only.	City Council, FC Moves, Engineering, Traffic Operations	N/A
New Signals	Suniga Road/North College Avenue	\$500k	FC Moves, Engineering, Traffic Operations	MMOF, STBG
	Bristlecone Street/North College Avenue	\$500k	FC Moves, Engineering, Traffic Operations	MMOF, STBG
Improved bicycle and pedestrian crossings	Bristlecone Drive/Red Cedar Circle	\$80k	FC Moves, Engineering, Traffic Operations	MMOF, STBG (TA), CMAQ
	Conifer Street/Red Cedar Circle/Jerome Street	\$80k	FC Moves, Engineering, Traffic Operations	MMOF, STBG (TA), CMAQ
	Hickory Street/Mason Street	\$80k	FC Moves, Engineering, Traffic Operations	MMOF, STBG (TA), CMAQ
	Suniga Road/Jerome Street	\$80k	FC Moves, Engineering, Traffic Operations	MMOF, STBG (TA), CMAQ
	Vine Drive/Jerome Street	\$80k	FC Moves, Engineering, Traffic Operations	MMOF, STBG (TA), CMAQ
New buffered or protected bike lanes	Interim one-way protected bike lanes on North College Avenue north of the railroad crossing	\$340k	FC Moves, Engineering, Traffic Operations	Local
	Jerome Street (between Conifer Street and Suniga Road)	\$25k	FC Moves, Engineering, Traffic Operations	MMOF, STBG (TA), CMAQ
	Blue Spruce Drive (between Conifer Street and Suniga Road)	\$25k	FC Moves, Engineering, Traffic Operations	MMOF, STBG (TA), CMAQ
	Bristlecone Street (between North College Avenue and Blue Spruce Drive)	\$50k	FC Moves, Engineering, Traffic Operations	MMOF, STBG (TA), CMAQ

MID-TERM RECOMMENDATIONS

The mid-term recommendations include large capital investments that will not be implemented until the following conditions are met:

- Ridership on North College BRT is at 1,000 boardings per day, or
- Traffic becomes congested to the point that intersections on North College Avenue are experiencing a level of service F, or

- The population (currently approximately 7,000) and employment (currently approximately 16,125) of the area doubles from current levels, or
- CDOT plans a major rehabilitation project for North College Avenue and this plan's recommended improvements could occur at the same time.

Additionally, prior to any major capital project related to this plan, an Equity Analysis is recommended to identify and mitigate possible negative outcomes.

Table 2: Mid-term Transportation Recommendations

Recommendation		Planning Level Cost Estimates	Necessary Partners	Potential Funding Sources
Business Access Transit (BAT) lanes on North College Avenue (between Willox Lane and Willow Street)		\$22m	FC Moves, Engineering, Traffic Operations CDOT	FTA 5339 Funding, MMOF, STBG (TA), CMAQ, RAISE
*Increase bus frequency and service hours: <ul style="list-style-type: none"> • MAX on North College Avenue with 15-minute peak frequency • Route 8 with 15-minute peak frequency 		Fleet needs: +\$1m Operating costs: +\$1m per year	Transfort, Ride-matching technology provider	FTA 5307 Funding, MMOF, CMAQ
Creation of mobility hub near Willox Lane turnaround		No capital cost. Incorporate into redevelopment plans.	Transfort, FC Moves, Engineering, Property owners	FTA 5339 Funding, MMOF, STBG (TA), CMAQ
*Shared-use paths for the length of North College Avenue on both sides of the roadway		Included in cost of BAT lanes.	Public Works, CDOT, Property owners	MMOF, STBG, CMAQ
Fully built MAX stations with multimodal options		Included in cost of BAT lanes.	Transfort, FC Moves, Engineering, Traffic Operations, CDOT, Property owners	FTA 5339 Funding, MMOF, STBG, CMAQ
Bus turnaround north of Terry Lake Road		\$5m; does not include property.	Transfort, FC Moves, Engineering, Traffic Operations, CDOT, Adjacent property owners	FTA 5339 Funding, MMOF, STBG, CMAQ
*Construct medians south of Conifer Street		Included in cost of BAT lanes.	FC Moves, Engineering, Traffic Operations, CDOT, Property owners	MMOF, STBG (TA), CMAQ
*New buffered or protected bike lanes or shared use paths with planned roadway connections	Mason Street (between Bristlecone Street and Alpine Street)	No capital cost. Incorporate into new street construction.	FC Moves, Engineering, Traffic Operations	MMOF, STBG (TA), CMAQ
	Red Cedar Circle (between Willox Lane and Conifer Street)	No capital cost. Incorporate into new street construction.	FC Moves, Engineering, Traffic Operations	MMOF, STBG (TA), CMAQ

**Recommendations with an asterisk could be implemented before the previously listed conditions are met.*

LONG-TERM RECOMMENDATIONS

Table 3: Long-term Transportation Recommendations

Recommendation	Planning Level Cost Estimates	Relevant Partners	Potential Funding Sources
Increase bus frequency to 10-minutes; re-evaluate feasibility and benefits of interlining MAX on North College Avenue with MAX on Mason Street	Fleet needs: +\$1.3m Operating costs: +\$500k per year	Transfort, FC Moves, Planning Development & Transportation	FTA 5307 Funding, MMOF, STBG, CMAQ

MAINTENANCE CONSIDERATIONS

Some of the recommendations in this plan, such as shared-use paths, landscaped medians, transit station amenities, and protected bike lanes will require more time to maintain and may require the purchase of specialized equipment, incurring higher maintenance costs. For example, based on analysis completed for the Bicycle Master Plan, the Fort Collins Streets Department estimated that it costs \$17,900 per year to sweep and plow one mile of protected bike lane compared to \$3,970 per year to sweep and plow one mile of standard bike lane.

As projects from this plan go through final design, the project management team shall work closely with the Transfort, Streets Department, Forestry, and the Parks Department to identify maintenance requirements, context appropriate materials, and maintenance responsibilities. Future budget requests should be made at the time the recommended facilities are built.



THIS VEHICLE MAKES
FREQUENT AND SUDDEN STOPS

City of
Fort Collins

**YIELD
TO
BUS**
WHEN
LIGHT IS
FLASHING
IT'S THE
LAW

QTL-429
COLORADO

CNG





05

Urban Design & Land Use Requirements

Urban Design & Land Use Requirements

Community members expressed that their priorities included **preserving and expanding affordability for residents and local businesses, increasing density to support high-frequency transit, and redevelopment of currently vacant properties to provide new housing, services, and infrastructure improvements in the area.**

Based on community input and travel demand projections, it was determined that this plan needed to create recommendations around land use, future development, and affordability. Community members expressed that their priorities for future development in the North College Avenue area included preserving and expanding affordability for residents and local businesses, increasing density to support high-frequency transit, and redevelopment of currently vacant properties to provide new housing, services, and infrastructure improvements in the area. The existing zoning in the area does not support these ideas as effectively as it could.

CORRIDOR DENSITY AND BRT CORRELATION

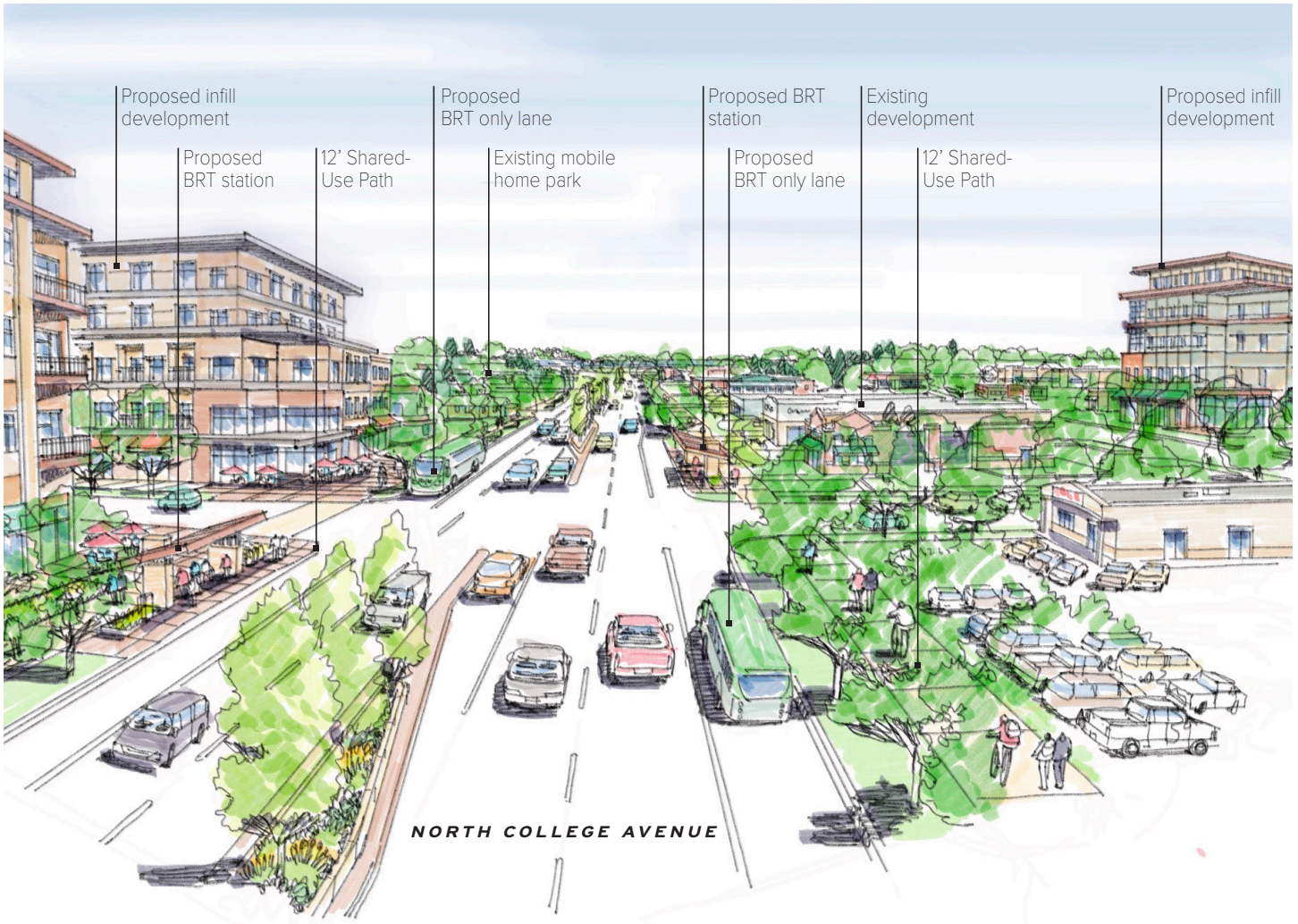
BRT corridors are typically found in more dense urban settings due to higher population and ridership demand in these areas. Low density areas lack the population for frequent ridership demand and have larger dispersal areas making accessing stations difficult. Federal grants for infrastructure improvements are awarded when there is increased ridership demand and the zoning conditions that support higher population densities. As shown in **Figure 18**, the area is currently transitioning

Figure 18: Depicts the Correlation Between Densities and Building Height Increases With the Type of Public Transit That Can Be Supported

Land Use				Transit	
Land Use Type	Example	Residents per Acre	Jobs per Acre	Appropriate Types of Transit	Frequency of Service
Downtowns & High Density Corridors		>45	or >25		10 minutes or better
Urban Mixed-Use		30-45	or 15-25		10-15 minutes
Neighborhood & Suburban Mixed-Use		15-30	or 10-15		15-30 minutes
Mixed Neighborhoods		10-15	or 5-10		30 minutes On demand
Single Family Neighborhoods		<10	or <5		On demand

The North College area's current land uses and density reflect Mixed Neighborhoods. With the recommendations of this plan, the area will transition to an Urban Mixed-Use area, compatible with BRT.

Figure 19: An artist's rendering of possible character of North College Avenue with Redeveloped and New Developed Properties That Adhere To Recommendations



from low density to medium and higher density.

The following recommendations have been developed to bring additional residential units and new businesses required along North College Avenue to support BRT operations and infrastructure.

To help address these community priorities the following policies are recommended for the North College Avenue area:

- Establish a North College Avenue specific Transit-Oriented Development (TOD) Overlay Zone
- Modify the existing 200-foot residential setback from North College Avenue
- Increase building height allowance
- Provide regional detention and reduce Low Impact Development (LID) requirements for projects that include

while also reducing development costs

- Establish connectivity requirements
- Establish outdoor space requirements for large urban buildings
- Reference River Downtown Redevelopment (RDR) architectural standards
- Create incentives to preserve existing commercial buildings and current rental rates where possible

The following sections provide more detail about each of the policies listed previously. The current Mason MAX BRT utilizes many of the same recommendations particularly in the area near Colorado State University and Downtown Fort Collins.

Figure 19 shows an artist's rendering of possible character of North College Avenue with redevelopment and new development that utilizes the recommended policies while also integrating with the existing commercial and residential of the area.

NORTH COLLEGE AVENUE SPECIFIC TOD OVERLAY ZONE

Currently the City of Fort Collins has an existing Transit-Oriented Development (TOD) Overlay Zone that runs along the Mason Street Corridor from Vine Drive to the South Transit Center. This TOD Overlay Zone includes reduced parking requirements and increased building heights that allow for additional housing units when affordable units are included. This TOD Overlay Zone is meant to encourage more dense residential developments and affordable housing that support ridership for the MAX BRT route on Mason Street.

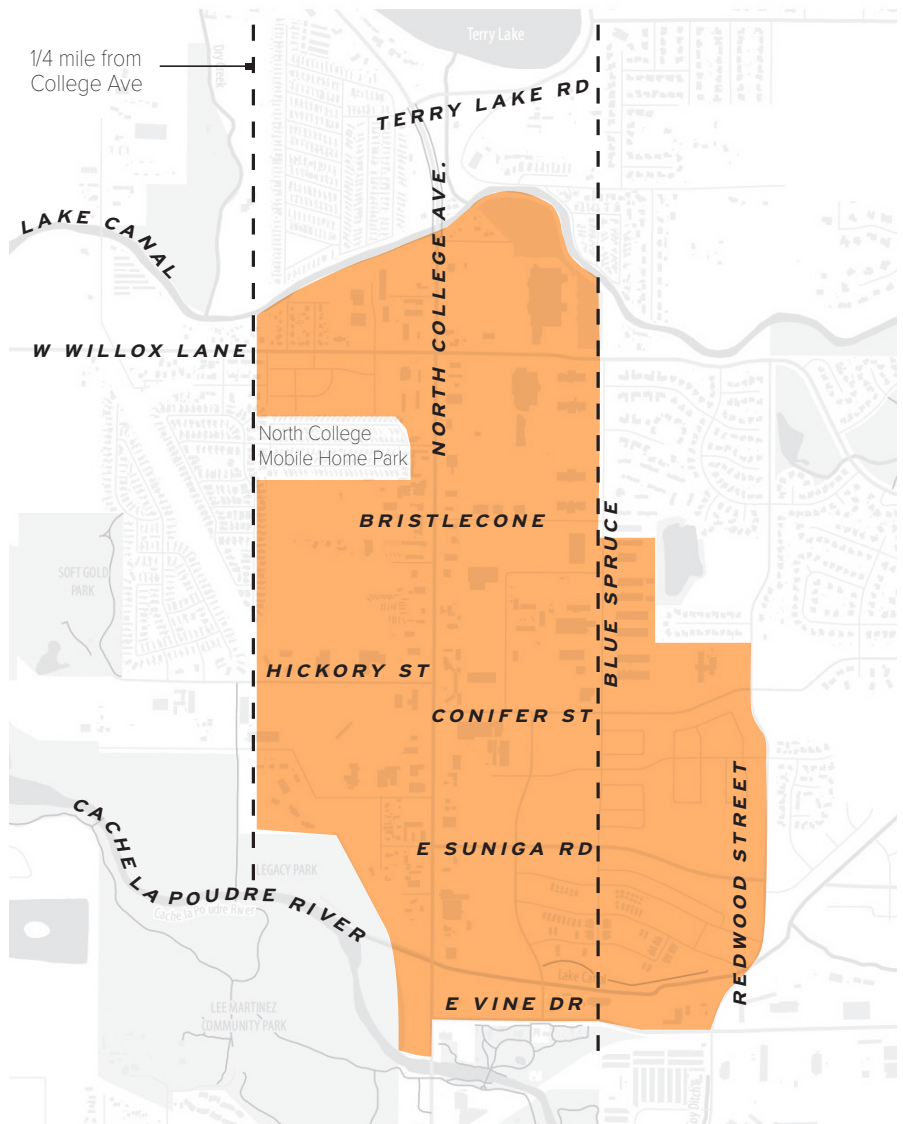
In order to facilitate denser transit-oriented development that supports public transit and provides pedestrian and bike connectivity, more open space options, and regional detention, a new TOD Overlay Zone should be established north of Vine Street to Terry Lake Road along North College Avenue. Parking reductions should be created for standard developments and decreased further when affordable housing units are included.

Figure 20 outlines the proposed area of the North College Avenue TOD Overlay Zone.

RECOMMENDATIONS:

- Limit new auto-oriented developments such as auto dealerships, car washes, etc like the current 10% limitation on auto dealerships within the zone district on North College and discourage traditional auto-oriented design like drive-thru restaurants in order to prioritize development that supports the ridership of the BRT and is more compatible with a multi-modal user group.
- Explore feasibility and costs/benefits of URA funded parking structure that could be utilized for public/affordable housing parking.
- Establish a transit-oriented development (TOD) Overlay zone or create a new zone district if deemed appropriate upon further

Figure 20: North College Avenue TOD Overlay Zone Extents



	Current City of Fort Collins Land Use Code Parking Requirement		Proposed City of Fort Collins Land Development Code Parking Requirement*	Proposed North College Ave TOD Overlay Parking Requirement	
	Non-TOD	Existing Mason TOD Overlay		TOD Overlay	Any Project with Affordable Housing (applies to all units)
1-Bedroom	1.5	0.75	1	0.75	0.5
2-Bedroom	1.75	1	1.5	1	.75
3-Bedroom	2.0	1.25	2.0	1.25	1
4+-Bedroom	3.0	1.5	3.0	1.5	1.25
All Bedrooms	-	0.75	-	0.75	0.75

* The City of Fort Collins Planning Department is currently working on Land Use Code changes to encourage housing capacity and afford ability

MODIFY RESIDENTIAL SETBACK REQUIREMENT

In the 1994 zoning updates a 200-foot setback was established along North College Avenue that restricted any residential development within it. The intent of this setback was to preserve commercial uses along the corridor and recognize the impacts of the highway on livability.

In order to support the new MAX BRT route, improve streetscapes, and allow for more housing in the corridor, this setback should be modified to allow residential uses on North College Avenue when part of mixed-use developments where a portion of the ground floor is commercial. Stand-alone commercial uses should continue to be permitted.

Figure 21 and Figure 22 outline the different modifications to the setback approaches that can be used to encourage both mixed-use and commercial only developments along North College Avenue while allowing for the development of new residential units as well.

RECOMMENDATIONS:

- Allow residential development with ground floor commercial (mixed-use) within 200-feet of North College Avenue
- Commercial area should be minimum 20% of ground floor area or 20% of primary right-of-way frontage, whichever is greater
- Uses associated with residential component may not be considered as a portion of the commercial area (i.e. leasing offices, recreation facilities for residential, etc.)

Figure 21: Plan View Options for Configuring Residential and Commercial within Mixed Use Developments within 200 Feet of North College Avenue

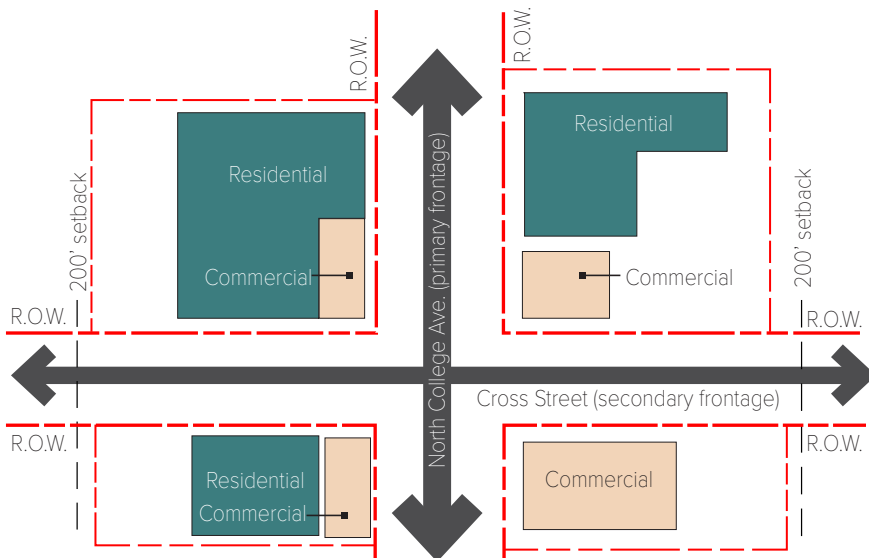
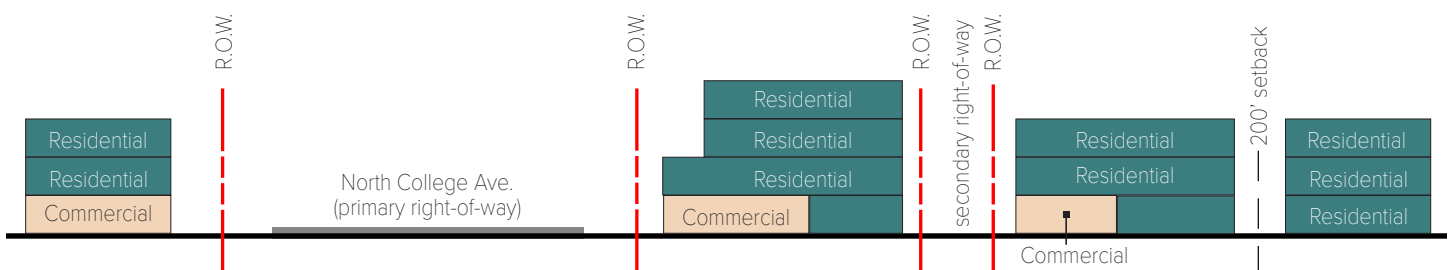


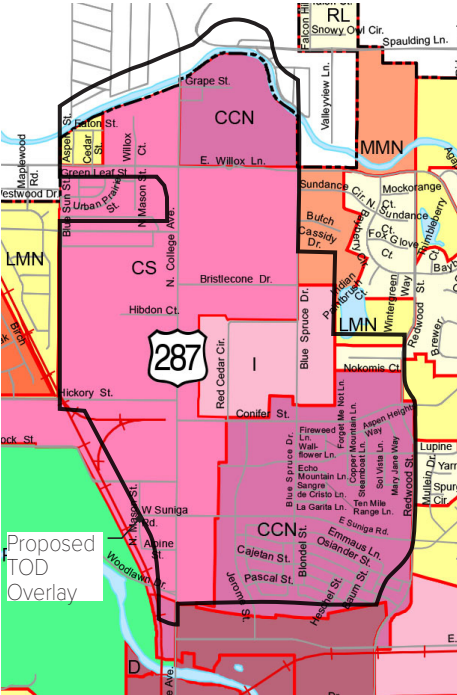
Figure 22: Section View Options for Mixed Use Development within 200 Feet of North College Avenue Showing Orientation of Commercial Uses



INCREASE BUILDING HEIGHT ALLOWANCE

Within the study area there are currently five (5) different zone districts with varying building height allowances described below and shown in **Figure 23**:

Figure 23: Zoning Map



- The Service Commercial District (C-S) district comprises much of the area and allows for a maximum building height of 3-stories
- A small portion of the north-west corner of the study area is Low Density Mixed-Use Neighborhood District (L-M-N) and has a 3-story maximum
- The Industrial District (I), also on the east side of North College Avenue allows for a maximum of 4-stories for mixed use buildings
- Two areas east of North College Avenue are zoned Community Commercial North College (C-C-N) and Downtown District (D-innovation subdistrict) and have a maximum building height of 5-stories

RECOMMENDATIONS:

- Increase building height allowance to 5-stories within the 200-foot setback of North College Avenue
- 8-stories should be permitted in all other areas of the North College Avenue TOD Overlay Zone

To promote denser development for the BRT line as well as to increase the likelihood of more affordable/attainable housing units it is recommended that within the North College Avenue TOD Overlay Zone building height allowance be increased if the share of affordable units in a development exceeds 30% (see **Figure 24**).

Building step-backs, which help reduce the perception of overall height along street frontages should be required along primary public right-of-way for buildings over 3-stories. Mixed use developments will typically require 4-5 stories in order to be financially feasible, public feedback has indicated that this is supported.

Figure 24: Building Height Sections

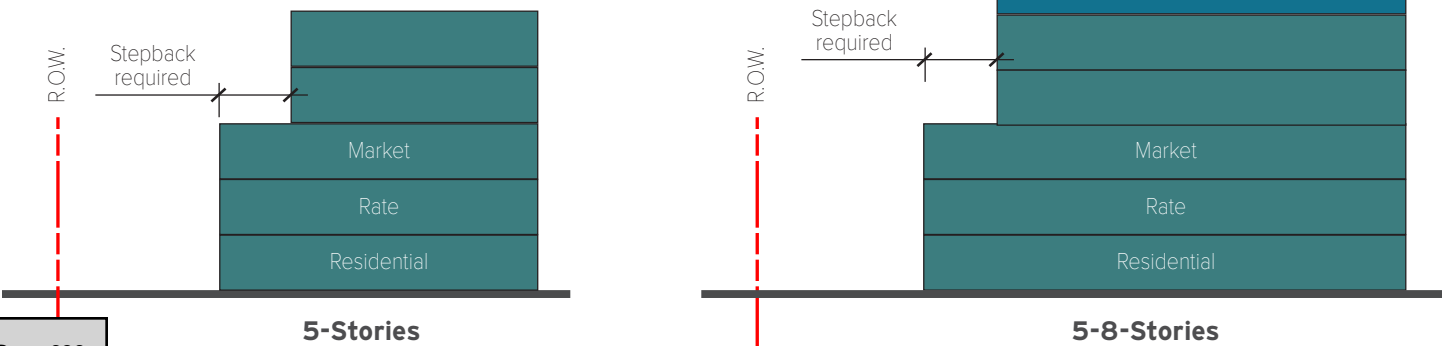
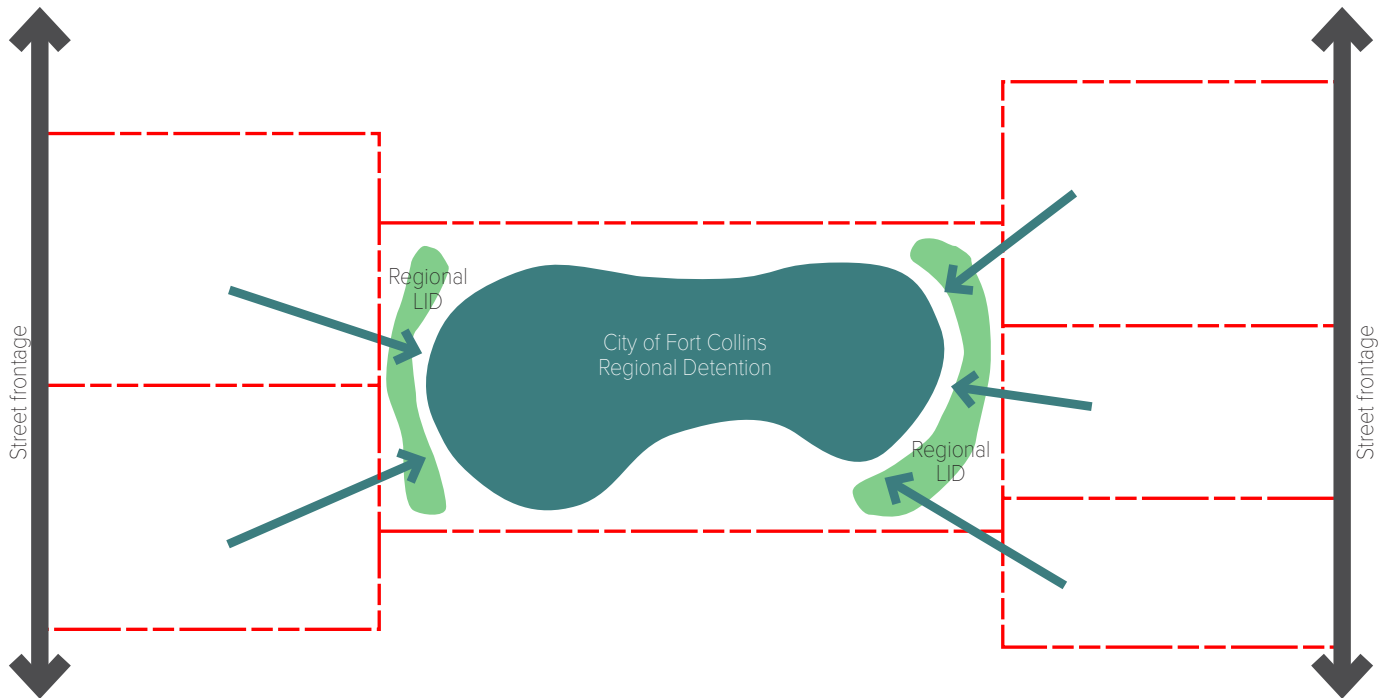


Figure 25: Regional Detention for All Development and LID for Developments with Affordable/Attainable Housing Diagram



PROVIDE REGIONAL DETENTION AND REDUCE LID REQUIREMENTS

By providing a regional detention system for all developments along North College Avenue more area could be developed on each site, reducing the overall development cost. Offsite detention reduces design fees, lowers construction and maintenance costs, allows for more densities on project sites and creates more park-like natural areas for all residents of the community

Low Impact Development (LID) stormwater treatment facilities comprise a large portion of not only a site’s area but also of the development costs. Currently each site must provide LID treatment. Allowing for LID treatment to occur in off-site detention facilities or reducing the area that needs to be treated for sites that include affordable housing will allow for less infrastructure needing to be designed, accommodated, maintained, and paid for. These saved costs promote the inclusion of affordable/attainable housing in a project.

Currently the city has secured a parcel on the west side of North College Avenue that will serve as regional detention for all the development from Bristlecone to the Poudre River. Additional efforts should continue to analyze and secure regional detention on the east side of North College Avenue.

RECOMMENDATIONS:

- Invest in additional regional detention on the west side of North College Avenue, if current Hickory Pond is not sufficient for future development (see **Figure 25**)
- Explore reduction of LID requirements for developments with more than 30% of the development’s units being affordable/attainable housing (for example, only treat vehicular areas, etc.)
- Explore centralized LID treatment within regional detention areas in lieu of “treatment train” approach of having small, isolated LID treatments for developments with affordable/attainable housing

ESTABLISH PEDESTRIAN & BICYCLE CONNECTIVITY REQUIREMENTS

North College Avenue has several locations with block lengths that are over 1,000-feet, making it difficult for bikes and pedestrians to easily move east and west from North College Avenue.

The addition of city or privately owned and maintained trail connections would ease circulation for these travel modes from the North College MAX BRT to residential units on parallel streets.

Figure 26 identifies where these connections should be made. These locations are based on current block lengths, existing building locations, existing city owned land, as well as existing and proposed streets that are east and west of North College Avenue. Easements and/or property dedication to the city should both be considered. Right-of-way dedications would ensure long term maintenance and snow removal. **Figure 27** displays diagrams of what these connections may look like. Within the west area the mobile home neighborhoods would not be included in the TOD Overlay Zone. General TOD Overlay Zone recommendations are outlined here.

RECOMMENDATIONS:

- Developments within designated areas on map (**Figure 26**) shall be required to provide multi-modal connections from North College Avenue to parallel streets
- Dedication of 15-foot access easement or parcel to City of Fort Collins should be required to accommodate a 10-12-foot trail connection (**Figure 27**)

Figure 26: Multi-modal Connections and Block Lengths

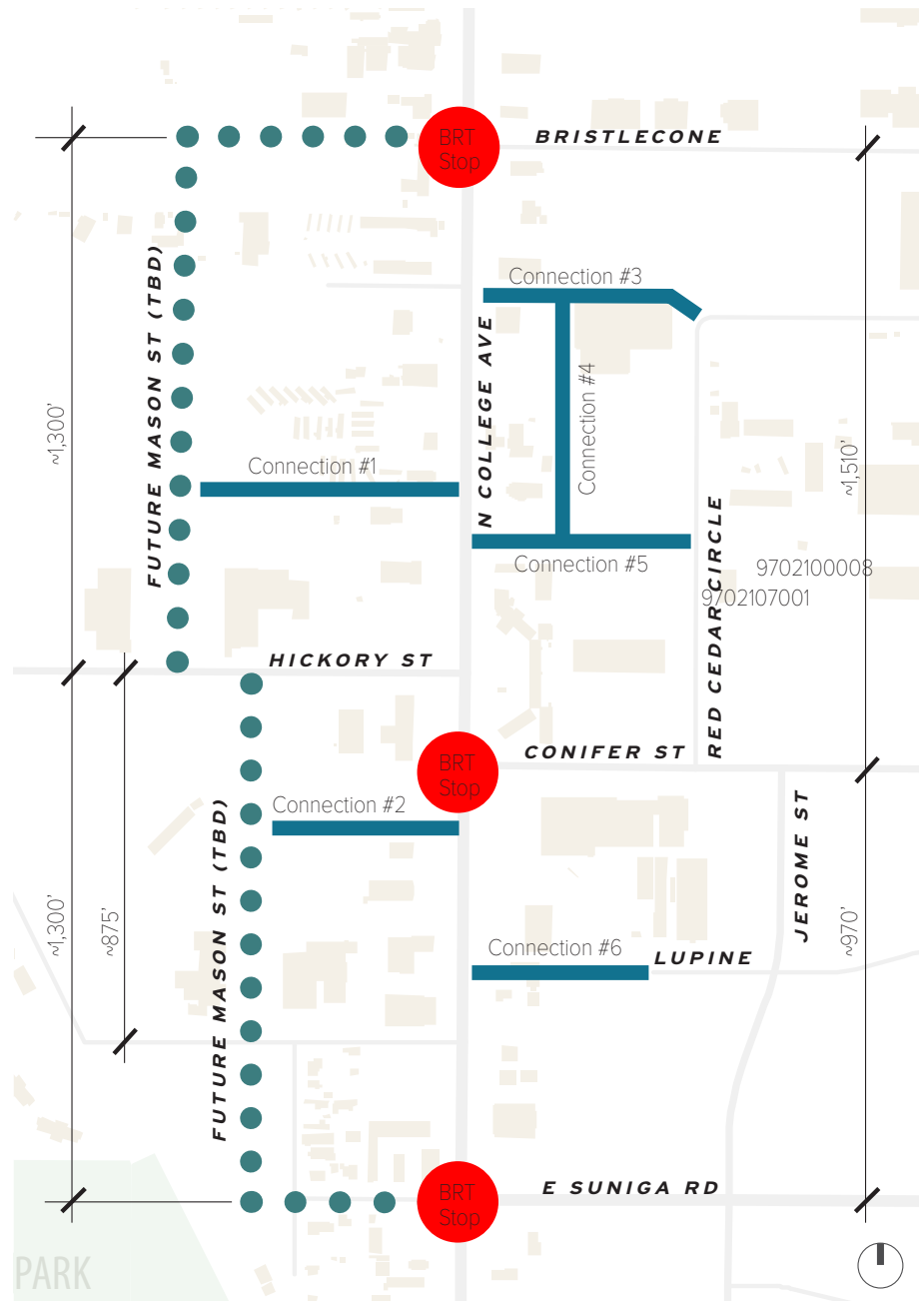
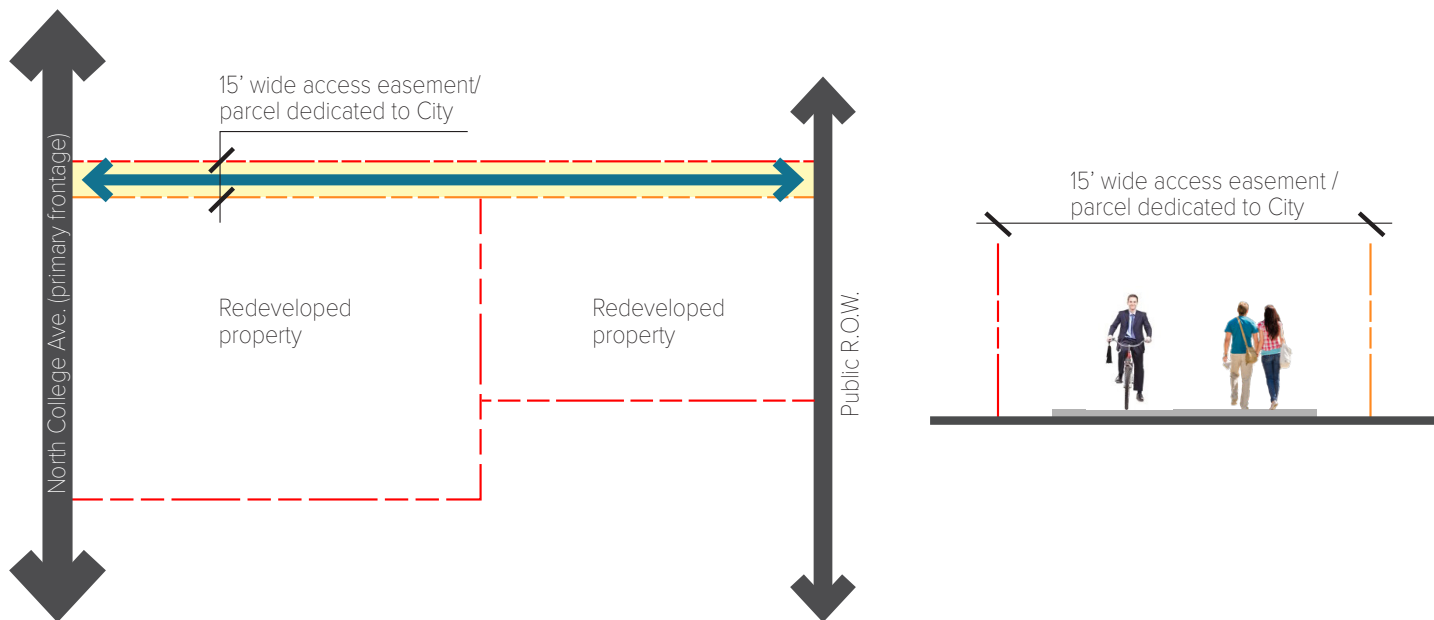


Figure 27: Example Multi-Modal Connection Plan and Section



ESTABLISH OUTDOOR SPACE REQUIREMENTS

Within the North College Avenue TOD Overlay Zone, outdoor spaces should be more urban in form with plazas, courtyards, and rooftop spaces. These types of outdoor spaces allow for gathering and refuge to activate the streetscapes and create visually appealing areas within developments. Naturalized/vegetated open spaces within the North College Avenue TOD Overlay Zone will be accomplished with the regional detention areas. **Figure 28** and **Figure 29** provide examples of how these requirements could look.

Figure 28: Example Open Space Configurations

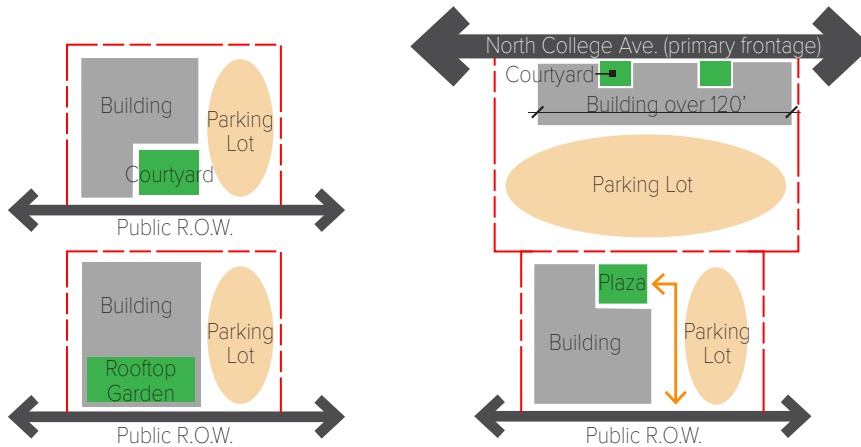


Figure 29: Example of Courtyard



RECOMMENDATIONS:

- Courtyards oriented to the primary public right-of-way on all multi-family buildings over 120-feet in length along right-of-way
- Open space credit for roof top amenities with permanent vegetation that is oriented towards the right-of-way
- Connecting walkways that have enhancements such as plazas and courtyards interior to the site
- Consider reducing the amount of open space requirements in the event that regional detention areas are created

Figure 30: Comparison of Architectural Character Images (“More of This” vs. “Less of This”)

More of This



Less of This



REFERENCE RIVER DOWNTOWN REDEVELOPMENT (RDR) ARCHITECTURAL STANDARDS

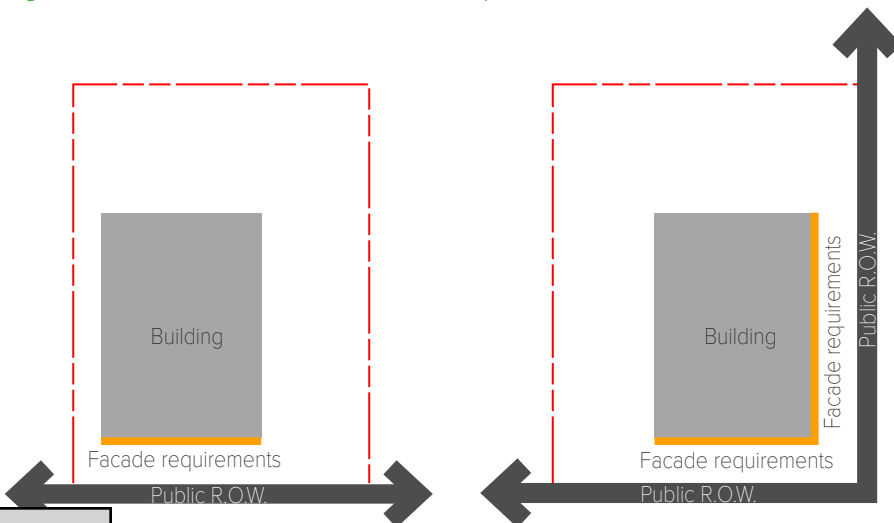
Currently architectural standards emphasize material changes and vertical articulation that generally create a complex aesthetic/appearance while increasing construction costs. In addition, all four sides of a building need to meet the materiality and articulation requirements which increase costs.

In order to encourage affordable/attainable housing and create a more simplified building aesthetic the architectural recommendations from the Fort Collins R-D-R, River Downtown Redevelopment Zone District should be referenced for the North College Avenue TOD Overlay Zone.

RECOMMENDATIONS:

- Reference Fort Collins R-D-R, River Downtown Redevelopment Zone District Architectural Design Guidelines
- Focus on street facing elevations for facade requirements (**Figure 31**).
- Reduce requirements for building articulation along horizontal planes.

Figure 31: Location of Architectural Facade Requirements



CREATE INCENTIVES TO PRESERVE EXISTING COMMERCIAL BUILDINGS AND RENTAL RATES

Community outreach has indicated a preference to preserve the existing businesses and commercial diversity that is due to the lower rents that are more common in this area. There is concern that redevelopment will increase rent costs and increase the likelihood that existing businesses could be displaced.

On properties where it is desired to preserve existing commercial buildings for the types of existing uses in the area, flexibility should be provided in order to maintain the existing building and allow for new development to occur.

RECOMMENDATIONS:

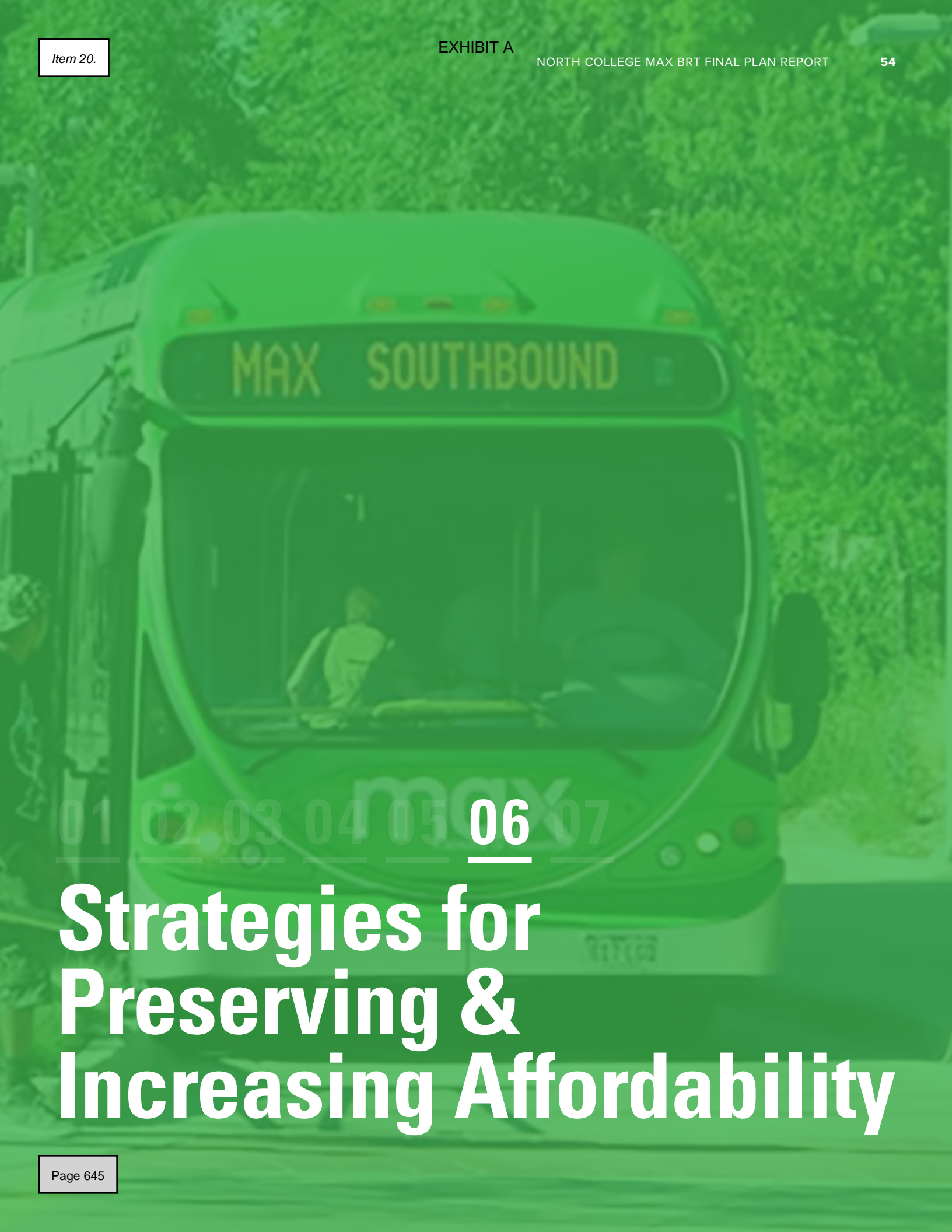
- Continue to allow case-by-case consideration of requirements for property upgrades “to the extent reasonably feasible”. Example of such would be adaptive re-use of an existing hotel/motel becoming multi-family
- Capture lower commercial rental rate in development agreement, similar to affordable housing deed restrictions

Figure 32: Possible Redevelopment while Retaining Existing Businesses









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Strategies for Preserving & Increasing Affordability

Strategies for Preserving & Increasing Affordability

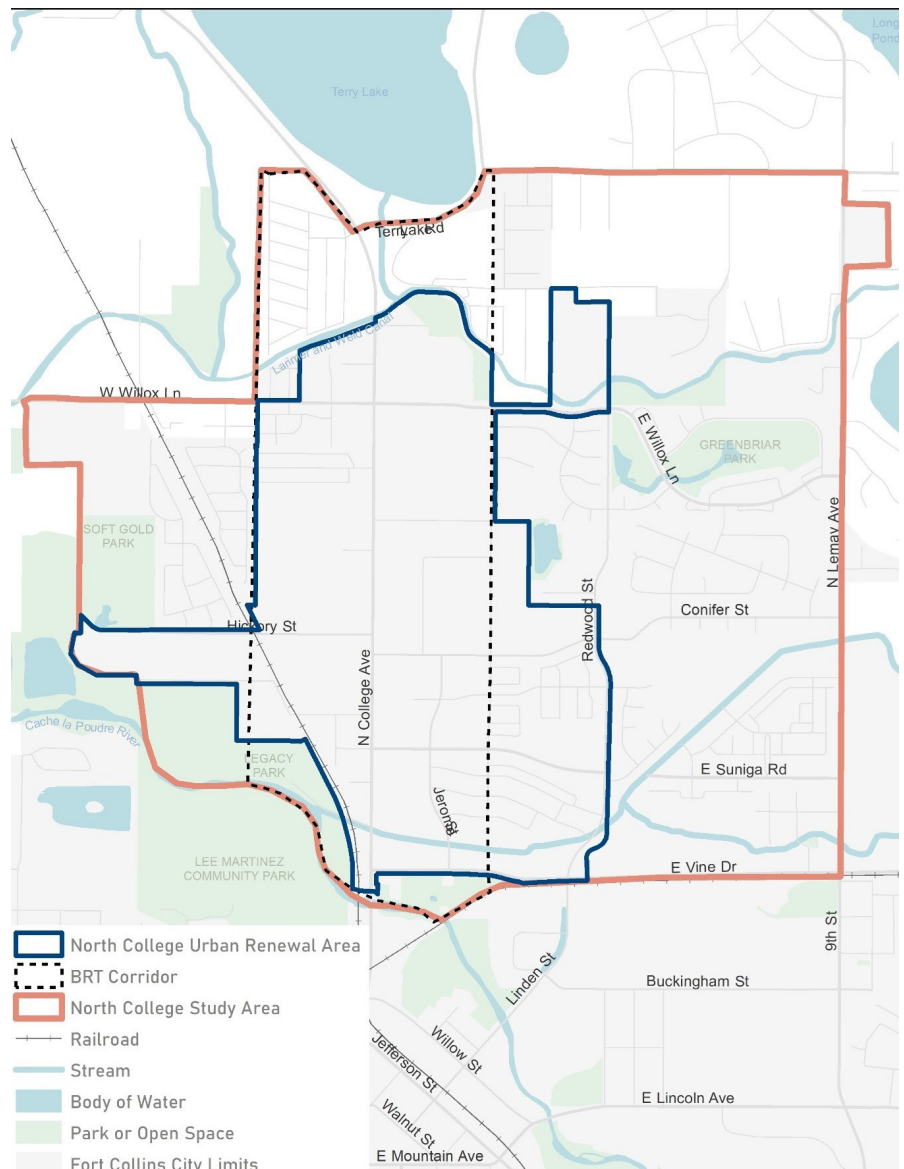
Currently the North College area is one of the most affordable neighborhoods in the city with a diverse population, including a higher percentage of Hispanic residents (44 percent) in comparison to the rest of Fort Collins' as a whole (12 percent).

• The new growth occurring on the corridor has raised concerns among existing residents and businesses about the impacts of gentrification and displacement. **These issues were identified through the public input gathered by this project.**

This section addresses land use and development implementation strategies to improve opportunities for TOD in the North College corridor. The study area is largely contained in the North College Urban Renewal Plan Area (URA) (**Figure 33**) which has a focus on addressing infrastructure deficiencies and promoting redevelopment of underutilized land. Over the last 15 years, there has been a significant amount of private infrastructure investment and related private development.

Previous studies conducted by the URA as well as this TOD land use analysis have identified additional redevelopment sites with the potential for TOD-supportive medium to high density housing. The development of these properties is currently inhibited by infrastructure deficiencies, particularly the

Figure 33: North College Urban Renewal Area



lack of regional stormwater detention and the lack of local street access on the west side of North College Avenue. Addressing these infrastructure deficiencies should therefore be a priority to continuing redevelopment and growth in the corridor.

The implementation recommendations therefore seek to balance the objectives of supporting additional development and density with protecting existing affordable housing, supporting locally owned businesses, and providing future opportunities for low- and middle-income residents and employers.

AFFORDABLE HOUSING STRATEGIES AND INCENTIVES

The additional strategies for encouraging new development while maintaining and increasing affordable housing in the corridor are outlined below. As an overarching goal, it is recommended that the City establish an affordable housing goal for the study area that can be applied to future development proposals and requests for financial assistance. **An overall goal of 30 percent affordable at 80 percent AMI or below for for-sale housing and 60 percent AMI or below for rental housing is recommended,** which would be support strategies outlined in the Housing Strategic Plan. The 30 percent goal is based on the on the existing housing stock in the area which is 32 percent affordable which includes the mobile home parks and the Village on Redwood. This 30 percent affordable goal aims to maintain the current levels of affordability in the area into the future.

RECOMMENDATIONS:

Preservation of Mobile Home Parks

The City has already taken an important step in maintaining the affordable housing inventory in the corridor by rezoning the existing Hickory mobile home park to Manufactured

Housing District (MH). The other mobile home park in the North College area, North College Mobile Home Park, is currently zoned as Low Density Mixed-Use. To help maintain the existing affordable housing inventory in the corridor, the North College Mobile Home Park is also recommended to be rezoned to MH. This zoning action would give greater protection to this inventory of affordable housing and would require a landowner or developer to rezone the property if it were to propose redevelopment.

Land Bank

Another important step towards affordable housing was the acquisition of a 5-acre parcel at 1475 North College Avenue by the Fort Collins Land Bank to be held for a future affordable housing development. The Land Bank Program was established in 2001 to purchase properties in the path of development that, due to a lack of infrastructure or other constraints, could be acquired at a discount; and when the properties appreciate in value five or more years later, sell them below market value to allow for the development of affordable housing. The program can sell properties at a maximum of 90 percent of market value, although many land bank properties have sold at a much higher discount. The North College Avenue site in the BRT Corridor is expected to redevelop into 75 affordable housing units in the future. This property lacks access to North College Avenue and will need to be aggregated with other properties or gain easement access, or access to the recommended realignment of Mason Street, before development can occur.

The existing City Land Bank Program can be used to acquire additional properties for affordable development. As noted, the corridor is one of the more affordable areas of the city and some properties may not be currently feasible for development given existing infrastructure constraints. There may therefore be opportunities to acquire additional properties at a discounted price for future development.

CASE STUDY WHEAT RIDGE URA AFFORDABLE HOUSING

In recent years, URAs throughout the state have been using URA funds to support the development of affordable housing. URAs have started to make it a priority to provide gap financing for projects within their boundaries that include affordable housing. A recent example took place in Wheat Ridge, CO where Renew Wheat Ridge, the City's URA program, provided TIF funds to support the conversion of an older 108-room hotel into 97 multifamily units for workforce housing. The new residential development, Prospect Park Apartments, includes studio, 1-, and 2-bedroom units at rental rates below market rate for the local workforce. It also has residential amenities with a fitness room, co-working space, storage units, and dog park. The developer received financial gap assistance from the URA to provide the additional improvements and amenities. The City and the developer worked together to create an affordable housing development that met the standards of the City with below market rents, exterior improvements, and residential amenities. The hotel conversion cost approximately \$10.7 million to develop and received \$400,000 in public subsidy as a TIF reimbursement.

NORTH COLLEGE URBAN RENEWAL AUTHORITY

The North College Urban Renewal Authority (URA) was established in 2004 and encompasses most of the North College MAX BRT Corridor. The URA has 7 years left to generate and collect tax increment financing (TIF) dollars from new development and redevelopment within the URA boundaries. The URA has approximately \$20 million of TIF funds that must be used before the URA expires in 2029 to support specific priorities within the plan area. Any remaining funds at expiration will be remitted back to each taxing entity. The URA is not a durable long-term source of funding, but it can support specific projects and goals before its expiration.

The North College URA adopted a Community Investment Plan in 2020 that provides guidance on how to invest unpledged TIF dollars through the duration of the URA. The Plan identifies three main priority areas:

- Complete, Vibrant Neighborhood
- Community Hub
- Infrastructure Improvements

Each priority area includes an investment plan with short-, medium-, and long-term strategies and a recommended revenue allocation. Specific recommendations from the Community Investment Plan also support affordable housing strategies and incentives included in this section such as, small business support, acquire property for redevelopment, repayments fund community objectives, forge development partnerships, continue and complete infrastructure projects, and fund legacy projects.

The following sections provide specific actions recommended for the URA in support of the Community Investment Plan and redevelopment that includes affordable housing.

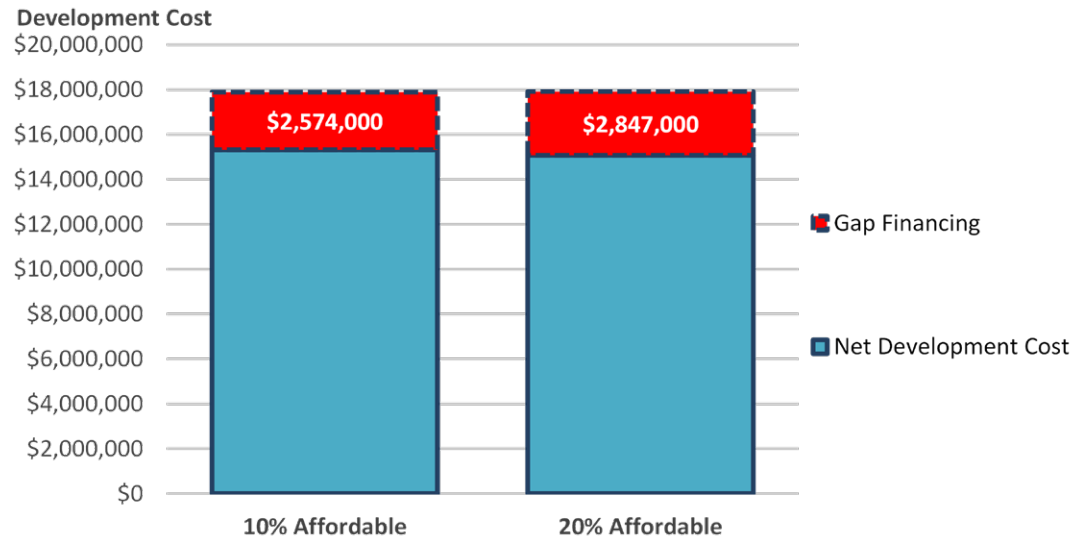
RECOMMENDATIONS:

Gap Financing for Affordable Housing

The City of Fort Collins URA has prioritized commercial and mixed-use developments. It is recommended that the North College URA provide gap financing for more residential developments that meet the affordable housing goals for the corridor.

The amount of gap financing required for residential projects with a percentage of affordable units is estimated below in **Figure**

Figure 34: Estimated Gap Financing Required for Affordability



Source: Economic & Planning Systems

34. The estimates are based on a 5-story multifamily project with 65 rental units. Two scenarios were tested with 10% affordable units (7 units) and 20 percent affordable units (13 units). Both scenarios apply the TOD Overlay recommendations of increased density to 5-stories and parking reductions for affordable housing developments. Each scenario requires a subsidy to reach a developer return within industry standards. The 10 percent affordable scenario requires approximately \$2.6 million in subsidy or \$40,000 per unit, which is about 13 percent of the total development costs. The 20 percent affordable scenario requires approximately \$2.9 million in subsidy or \$44,000 per unit, which is about 16 percent of the total development costs.

Key Infrastructure Projects

The west side of North College Avenue has various detriments for development due to the lack of key infrastructure. Regional stormwater improvements are needed to allow for new development of significant density and scale. Additionally, there are multiple sites that lack street frontage or connection to North College Avenue and require street connections or easements. The URA could provide funding to support stormwater, and street connections to help catalyze development on the west side of North College Avenue. The proposed Mason Street Extension is a key infrastructure project that would improve access for parcels west of North College with a future intersection at Bristlecone Drive with a traffic signal on North College Avenue. Additionally, the City owns a parcel west of North College Avenue that has plans for stormwater improvements that would benefit surrounding properties in the area. It is recommended to continue to invest in regional stormwater solutions and street accessibility improvements for the west side of North College Avenue.

New URA Plan

The City should consider creating a new urban renewal plan in the North College corridor to implement the recommendations of the existing URA plan and this study beyond its

iration. The expected growth over

the 2020-2045 time period will not support BRT investment unless development forecasts and area densities are increased. The feasibility of a new urban renewal area and plan should be explored through discussions with each taxing entity. With the revised state statute, C.R.S. 31-25-107 (3.5), each taxing entity must agree to inclusion in the tax increment financing (TIF) and a county impact report is required. Additionally, a new blight study and plan is required to establish a new URA. It is recommended to focus on areas of the corridor where redevelopment is desired, require significant infrastructure investment, and have plans for development.

Metro Districts

Larger development projects may seek to use a metro district to pay for project infrastructure costs. Fort Collins has modified its metro district service plan policies to require districts to provide “extraordinary public benefits” to be approved. These benefits can fall into the categories of Environmental Sustainability, Critical Public Infrastructure, Smart Growth Management, and Strategic Priorities, and for which there is an overall scoring system. This last category includes items such as Affordable Housing, Infill Redevelopment and Economic Health Outcomes that are applicable to the goals of this plan. A number of recently approved metro districts successfully gained affordable housing at 80 percent AMI or below (listed below). All of these developments were approved by a different iteration of the City’s metro district service plan policies, but illustrate how affordable housing goals can be met.

- Montava - 4,400 units with 10 percent being affordable (440 units)
- Waterfield - 498 units with 10 percent being affordable (50 units)
- Northfield - 442 units with 15 percent being affordable (63 units)

Additional projects in the corridor seeking metro district approvals should be required to provide affordable housing consistent with the recommended area goals.

CASE STUDY - OLDE TOWN ARVADA URA

The Arvada Urban Renewal Authority was created in 1981 and the City Center Plan Area was designated at that time. The Plan addressed building, façade, and streetscape improvements in the historic Olde Town commercial district. The Plan also assembled 26 acres of blighted land next to Olde Town that was redeveloped with infill housing. The City Center URA Plan Area expired in 2006. The City formed the Olde Town Station URA Plan Area in 2009 to address development and infrastructure needs in anticipation of the opening of the RTD Commuter Rail line and Olde Town station. The focus of the new URA was station improvements including a P3 with City, URA, and RTD to build a parking structure at the station and to support the transit-oriented development on the former RTD surface parking lot as well as adjacent private properties. Establishing the new URA required a blight study to define a boundary of eligible properties. It is a much smaller plan area but does overlap with a portion of the previous plan area.

CASE STUDY - ENGLEWOOD SMALL BUSINESS GRANTS

The City of Englewood has a Business Initiation grant program that provides grants of up to \$5,000 for a storefront business in a commercial district. The City also provides a Business Acceleration Grant of up to \$10,000 for permanent improvements to existing businesses in operation for 2+ years. In both cases, applicants must complete a business training program with SBDC and develop a business plan.

LOCAL COMMERCIAL STRATEGIES AND INCENTIVES

This section addresses strategies and incentives for commercial development, specifically balancing redevelopment and revitalization of commercial properties with the preservation of locally owned and operated retail and service businesses. A particular challenge is the preservation of local small businesses along North College Avenue, which has been magnified and compounded by the pandemic. Locally owned and locally serving retail, restaurants, and service businesses support local households and the quality of life in the community. The following strategies and incentives are recommended to help support local businesses in the area.

RECOMMENDATIONS:

New and Emerging Business Grants

Most of the available grants and loans are focused on improvements to commercial properties. It is more challenging to provide incentives to individual businesses. The primary sources of small business assistance are Small Business Development Centers (SBDC). SBDCs are a partnership of state (Colorado Office of Economic Development and International Trade), federal (Small Business Administration), and local (chambers and economic development corporations) organizations. Larimer SBDC is in Fort Collins and serves Larimer County. Some cities also provide small startup grants while others establish a revolving loan program (RLP). Fort Collins had a RLF that was established a few months prior to the pandemic, however it was suspended at that time. It is recommended the City consider bringing this program back or refocus it as grants instead of loans similar to the City of Englewood program described in the case study on this page.

Building Improvement and Redevelopment Incentives

The City and/or URA can provide grants and loans to local property owners and businesses for site and building improvements. This funding could be used for property improvements such as streetscapes, walkways, landscaping, façade repairs and enhancements, new signage, and other building upgrades to enhance the state of repair and aesthetics of businesses in the area. In 2017 and 2018, the URA offered a façade improvement program that no one took advantage of. If this or a similar program is brought back, additional promotion and education would be needed to encourage its use and effectiveness. Additionally, public assistance can be provided to support redevelopment projects including property acquisitions and gap financing using tax increment financing (TIF) to make a desirable project feasible.

Multicultural Business & Entrepreneur Center

The Multicultural Business & Entrepreneur Center (MBEC) is a free bilingual (English & Spanish) center that provides business owners and entrepreneurs easy access to business service providers, resources, mentorship and specialty training. It also connects them with critical resources to create, launch and grow a business in Fort Collins.

Capital Projects Business Liaison

This is a new position at the city who will work on the construction toolkit and help provide coordination and consistency across the city when it comes to projects that impacts businesses.

Commercial Lease Strategies

Commercial lease strategies can be used by property owners to support local businesses and mitigate the impact of high lease rates on tenants. These strategies would need to

be encouraged and potentially subsidized by the City to support and preserve economic development. Commercial lease strategies include percentage rent leases, graduated lease rates, and short-term leases.

Percentage Rent Leases

The rent paid by the tenant is based on a percentage of the sales made by the business. This often includes a base rental rate that is a reduced triple net (NNN) lease rate and can cover taxes, insurance, and maintenance. In addition to the base rate, a percentage of the revenue from sales above a set base level is paid as rent. This lease strategy works best for businesses with revenue tied directly to sales such as restaurants and clothing stores.

Graduated Lease Rates

A graduated lease can attract and support new businesses. The graduate lease structure increases rental rates as the business grows and becomes more viable. For example, a base rate in year 1 covers the costs of space (utilities, taxes, insurance, and maintenance) and then the rental rate increases annually as the business grows.

Short Term Leases

A short-term lease is typically for six months to a year and is great for pop-up businesses or incubator/start-up businesses. The rental rate is much lower than the market rate and is usually provided while recruiting a longer-term tenant.

Flexible Incubator Space

A business incubator space for local businesses was an idea that came from previous outreach done by the city to inform future Urban Renewal Authority investments. A flexible business incubator could provide space for new local businesses to get started or could be a temporary space for businesses that are displaced by redevelopment in the North College area. For displaced businesses the space could serve as a temporary location until they are able to move back to their original location once redevelopment is finished. A business incubator could be a space owned and managed by the city or an existing non-profit or could a program of rent subsidies for local businesses displaced by redevelopment until they can return to a permanent space.







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Summary of Recommendations & Tracking Performance

Summary of Recommendations & Tracking Performance



Table 4 displays a summarized list of all the recommendations included in this plan organized by the subject of recommendation and whether the recommendation is near-, mid-, or long-term.

Table 4: Summary of All Recommendations

Recommendation Type	Phase	Recommendation
Transportation	Near-Term	 <p>Fixed-route Transit Realignments:</p> <ul style="list-style-type: none"> • Create new high-frequency bus route on North College Avenue within existing general-purpose lanes at 15-minute frequency • Realign route 8 on Blue Spruce Drive, Redwood Street, and Linden Street at 30-minute frequency • Eliminate route 81
		 <p>Micro-transit Zone</p>
		 <p>Consolidate existing local bus stops into new MAX stations at signalized intersections (with basic amenities such as shelters, benches, trash cans, and pedestrian scale lighting)</p>
		 <p>New shared use path on the west side of North College Avenue (between the canal and Hibdon Court)</p>
		 <p>Adopt amendments to the Mason Street realignment identified in the Master Streets Plan</p>
		 <p>New signals: Suniga Road, Bristlecone Drive</p>
		 <p>Improved bicycle and pedestrian crossings: Conifer Street/Red Cedar Circle/Jerome Street, Suniga Road/Jerome Street, Vine Drive/Jerome Street, Bristlecone Drive/Red Cedar Circle, Hickory Street/Mason Street</p>
		 <p>New buffered or protected bike lanes: interim protected bike lanes on North College Avenue; Jerome Street, Blue Spruce Drive, and Bristlecone Drive</p>
	Mid-Term	 <p>Business Access Transit (BAT) lanes on North College Avenue</p>
		 <p>Increase bus frequency and service hours: MAX on North College Avenue with 15-minute frequency and route 8 with 15-minute frequency</p>
		 <p>Creation of mobility hub near Willox Lane turnaround</p>
		 <p>Shared-use paths for the length of North College Avenue on both sides of the roadway</p>
		 <p>Fully built MAX stations with multimodal options</p>
		 <p>Bus turnaround north of Terry Lake Road</p>
		 <p>Construct medians south of Conifer Street</p>
Long-Term	 <p>Increase bus frequency to 10-minutes; re-evaluate feasibility and benefits of interlining MAX on North College Avenue with MAX on Mason Street</p>	

Recommendation Type	Phase	Recommendation
Development Requirements	Near-Term	Establish North College area specific TOD Overlay
		Modify residential setback from College Ave
		Increase building height allowance
		Establish connectivity requirements
		Establish outdoor space requirements
		Establish requirements for building dominant block faces
		Adjust Architectural Standards
Strategies for Preserving & Increasing Affordability	Near-Term	Identify opportunities to use the Urban Renewal Authority's financing tools to encourage affordable development in the area
		Require metro districts created for large developments to provide specific and considerable public benefits
		Rezone the North College Mobile Home Park to the Manufactured Housing District
		Continue to leverage the city's existing land bank
		Establish an affordable housing goal for the study area
		Encourage and subsidize commercial lease strategies where appropriate
		Develop new and emerging business grants for local businesses
		Provide incentives for building improvements and redevelopments for local businesses



TRACKING PERFORMANCE

As the recommendations in the North College MAX BRT Plan are implemented, tracking the performance of improvements will be important. Tracking different performance measures will help ensure the project is addressing community concerns and serving community needs. Performance measures should measure the effectiveness of improvements achieving the corridor vision and addressing the identified need, both of which are included in the beginning of this document. The following is a list of potential performance measures the City of Fort Collins can track over time to ensure improvements are addressing the needs they were intending to and providing a direction for adjustments if they are not performing up to expectations.

- **Mode-share**

Tracking the percentage of trips by mode made to, from, and within the North College area can be an effective way to measure how convenient and comfortable the multi-modal transportation network is and how well development is serving active modes of transportation. The city can create a target for each mode to see how well improvements to transportation and land use are helping reduce the proportion of people driving alone and increasing the proportion of people using active modes and people taking transit. Changes in mode-share not only reflect the effectiveness of transportation infrastructure but also how the density, urban design, and land use mix of nearby development support transit ridership and active mode use.

- **Crash History**

Improvements to safety in the area can be monitored by tracking the number of crashes in the study area and identifying if they go down significantly after improvements are implemented. This performance measure should also look at the number of crashes involving people using active modes and the number of crashes that resulted in serious injury or death. Tracking crashes by these additional measures will provide more information

about the safety challenges occurring at each location and how well improvements address the different safety concerns.

- **Speed and Reliability of Transit**

Monitoring changes to speed and reliability of bus routes can provide important information about when additional transit improvements are needed (like BAT lanes) and whether implemented projects are successful in improving transit performance. Tracking speed and reliability is very important for people choosing to use transit so monitoring this metric is tied closely to understanding changes in ridership numbers.

- **Surveys**

Regularly surveying transit riders, residents, and employees through on-board surveys or travel surveys can provide valuable information on how well the existing transit system is serving transportation needs, as well as how comfortable and convenient it is to ride. Items to ask transit riders could include:

- » Things that are working well about current transit services
- » Improvements they would like to see to the transit system
- » Challenges they experience accessing transit
- » Needed service changes or new connections they would like to see

- **Affordability**

The city could track the efficacy of different affordability policies by tracking prices of for sale and for rent homes and retail space in the North College area and creating targets for the proportions of property that fall into different affordability ranges. This would allow the city to understand if adopted policies and new developments are helping create a healthy mix of options for people of different income levels wanting to live or operate a business in the area. An overall goal of 20 percent affordable at 80 percent AMI or below for-sale housing and 60 percent AMI or below for rental housing is recommended.

Appendix A

Public Engagement Summaries

Appendix B

Existing Conditions Report

Appendix C

Alternatives Analysis Report

Appendix D

North College Roadway Design Cutsheets

Appendix E

Conceptual Estimate of Project Cost for North College Reconstruction



AGENDA ITEM SUMMARY

City Council

STAFF

Cassie Archuleta, Air Quality Program Manager
Brad Yatabe, Legal

SUBJECT

Resolution 2023-033 Terminating the Oil and Gas Operator Agreement between the City of Fort Collins and Prospect Energy.

EXECUTIVE SUMMARY

The purpose of this item is to consider termination of the Oil and Gas Operator Agreement between the City and Prospect Energy, which was originally executed in 2013 and is eligible for termination in May 2023. This is recommended as the Operator Agreement is outdated and indicates that the operator is not required to go through the City’s Development Review Process for approvals prior to modifications to existing sites.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

Recent discussions about oil and gas policy and regulation needs in Fort Collins have been related to new State regulations and new local authority following adoption of Senate Bill 19-181 (SB-181). Notably, prior to adoption of SB19-181, local authority was limited by the Colorado Oil and Gas Conservation Commission (COGCC). In 2013, Fort Collins adopted a voter-initiated 5-year ban on hydraulic fracturing, but this was overturned by the Colorado Supreme Court in 2016, in part, because it was preempted by State law.

During this time, the City entered into an Operator Agreement (OA) with Prospect Energy, the sole oil and gas operator in the City. The OA was intended to exempt the current operator from the ban if the agreement included strict controls on methane release and adequately protected public health, safety, and welfare in the judgment of Council. The OA established 5-year automatically renewing terms, and it renewed in 2018. On May 31, 2023, the OA is set to automatically renew again unless Council elects to terminate (the OA is dated May 29, 2013, however, the effective date is correctly measured from the effective date of Ordinance No. 057, 2013, as stated in OA Section 1. As stated in the OA:

5. Term. This Agreement is effective upon the Effective Date and shall remain in effect for five (5) years from the Effective Date, at which time the Agreement shall be automatically renewed and extended for successive five (5) year terms, unless and until either Party elects to terminate the Agreement at the end of the then current five (5) year term by providing written notice of such intent to the other party at least thirty (30) days before the expiration of said term.

Termination of the agreement is strongly recommended for the following reasons:

- The OA, as written, indicates that the current operator (Prospect Energy) would not be required to go through the Development Review process and obtain City approvals;
- Setbacks required for occupied buildings (500' minimum) are less stringent than those being considered in proposed updates to the Land Use Code (2000); and
- The “Best Management Practices” in the 2013 OA are outdated and not as protective as newer rules adopted since SB 19-181.

While staff did not conduct extensive public engagement on this specific item, representatives of Larimer Alliance were notified of this intent on March 10, 2023. Preliminary feedback was that Larimer Alliance would endorse the recommendation to not renew for another 5-year term, and it was re-iterated that Larimer Alliance is requesting further deliberation on additional operational standards that should be considered by the City.

The Operator Agreement is attached. The proposed Resolution would direct the Mayor to issue written notice terminating the OA.

CITY FINANCIAL IMPACTS

There are no financial impacts related to terminating the Operator Agreement.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

N/A

PUBLIC OUTREACH

Local advocacy groups were contacted on March 10, 2023, and notified of the intention to recommend termination of the agreement. Additionally, the operator was notified on March 2, 2023.

ATTACHMENTS

1. Resolution for Consideration
2. Amended Oil and Gas Operator Agreement, as executed on May 29, 2013

RESOLUTION 2023-033
OF THE COUNCIL OF THE CITY OF FORT COLLINS
TERMINATING THE OIL AND GAS OPERATOR AGREEMENT BETWEEN THE
CITY OF FORT COLLINS AND PROSPECT ENERGY

WHEREAS, by Resolution 2013-024, City Council approved an Oil and Gas Operator Agreement between the City and Prospect Energy, LLC, dated March 19, 2013, that applied to all existing and future operations in the areas that are the subject of the Agreement, and by Resolution 2013-036 the City Council adopted certain amendments thereto (the "Operator Agreement"); and

WHEREAS, by Ordinance 057, 2013, City Council exempted the Prospect Energy oil and gas operations subject to the Amended Agreement from the moratorium in effect at that time on the acceptance or processing of land use applications, permit applications and other applications seeking approval to conduct oil and gas extraction or related operations within the City; and

WHEREAS, pursuant to Operator Agreement Section 1, the effective date of the Operator Agreement is the effective date of Ordinance 057, 2013, which was May 31, 2013; and

WHEREAS, pursuant to Operator Agreement Section 5, the initial term of the Operator Agreement was for five years with automatic renewal of the Operator Agreement for five-year terms unless written notice of the intent to terminate the Operator Agreement is provided at least thirty days prior to the expiration of the current term; and

WHEREAS, the initial five-year term finished on May 31, 2018, and the Operator Agreement automatically renewed for five additional years with such term ending on May 31, 2023; and

WHEREAS, in consideration of the changed nature of the City's authority to regulate the surface impacts and siting of oil and gas operations brought about by Senate Bill 19-181 in a more stringent manner than the terms of the Operator Agreement, and the City's adoption of Land Use Code oil and gas regulations, City Council wishes to terminate the Operator Agreement; and

WHEREAS, the termination of the Operator Agreement is in the best interests of the City and will further the protection of public health, safety, and welfare, and the environment and wildlife resources.

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

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

Section 2. That the Mayor is authorized to immediately issue written notice to Prospect Energy, LLC in conformance with the Operator Agreement to terminate the Operator Agreement as of the end the current term.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

AMENDED OIL AND GAS OPERATOR AGREEMENT

THIS OIL AND GAS OPERATOR AGREEMENT (“Agreement”) is made and entered into this 29th day of May, 2013, by and through Prospect Energy, LLC, whose address is 1600 Stout Street, Suite 1710, Denver, CO 80202 (referred to hereinafter as the “Company”), and The City of Fort Collins (referred to hereinafter as the “City”) with an address of 300 LaPorte Avenue, Fort Collins, CO 80522, which may be collectively referred to herein as the “Parties”, or individually as a “Party”.

WHEREAS, the Company and its affiliates, namely, Black Diamond Minerals, LLC (“BDM”), the parent of the Company, engage in the exploration, development, production and marketing of natural gas, oil and natural gas liquids in the Rocky Mountains, including the State of Colorado. The Company currently operates the Fort Collins Field (the “Field”) located in Larimer County, with certain portions of the Field located within the City, as depicted in Exhibit A, and, as such, is the only operator with active oil and gas operations within the City. The Company also holds certain leasehold interests within the City described as the Undeveloped Area (the “UDA”), as depicted in Exhibit B.

WHEREAS, the Field was discovered in 1924, and has continually produced oil and associated hydrocarbons to this day. As is common with other older, once remote, oil and gas developments around the state, urban growth and subsequent annexation of certain lands by the City have encroached upon the Field. These annexations, including the Richard’s Lake subdivision (developed in the late 1990’s) and the Hearthfire subdivision (developed in the mid 2000’s), have allowed developers to place residential areas in the vicinity of active oil and gas operations. Some property lines are now within 150 feet of oil wells constructed on then-rural well pads.

WHEREAS, the Field is an oil producing field unitized for waterflood operations from the Muddy Sandstone Formation (which yields the majority of the Field’s production), but the Field also produces oil from the Niobrara, Codell, Dakota, and Lyons Formations, all of which may need future development.

WHEREAS, recent engineering and geological analysis indicates that certain parts of the Field may yield substantial incremental resource recovery by expanding the secondary recovery waterflood project by drilling and hydraulic fracturing new wells drilled from lands currently called Waters Edge, Richard’s Lake and Hearthfire subdivisions (the “Subdivisions”). The Company is presently studying the UDA to assess whether it would support the development of mineral resources.

WHEREAS, in the Field and UDA, the Company has entered into Surface Use Agreements with the surface owners, dated December 19, 1988, as amended April 19, 2001, and

March 17, 2011, respectively, which expressly govern the locations of wells and associated facilities within the Subdivisions, and other specified terms, including, but not limited to, landscaping and fencing around wells and associated production equipment.

WHEREAS, the City and the Company value a balanced approach to oil and gas development that is protective of public health, safety and welfare, including the environment and wildlife resources. To that end, in order to achieve those goals in a cooperative manner, the City and the Company enter into this Agreement to identify best management practices (“BMPs”) for the Company’s future drilling operations within the City’s boundaries.

WHEREAS, the Field extends beyond the City limits and the Company, as a responsible oil and gas operator, has installed a vapor recovery unit at its existing production facility located just south of Douglas Road (the “Fort Collins Tank Battery”) as shown in the Exhibit A attached hereto which lies outside of the City limits. All water, oil and gas produced from any New Well, as defined herein, and located in the Field, will flow into existing or future pipelines to the Fort Collins Tank Battery where gas will be captured and sent to the thermal oxidizer for destruction. Equipment, both at the Fort Collins Tank Battery and within City limits, will capture and destroy at least 98% of any methane and volatile organic compounds (VOC).

WHEREAS, the Colorado Oil and Gas Conservation Act, C.R.S. §34-60-101 *et. seq.* (the “Act”), authorizes the Colorado Oil and Gas Conservation Commission (“COGCC” or “Commission”) to adopt statewide rules and regulations, which the Commission has done. Further, the Commission continues to consider changes to the rules and regulations.

WHEREAS, on December 18, 2012, by the adoption of Ordinance 145, 2012, the City Council imposed a temporary moratorium until July 31, 2013 on the acceptance, processing and approval of any land use applications relating to new oil and gas development (the “Moratorium”).

WHEREAS, on March 5, 2013, by the adoption of Ordinance No. 032, 2013, the City Council enacted Sec. 12-135 of the City Code prohibiting the use of hydraulic fracturing in the City, as well as the storage in open pits of solid or liquid wastes and /or flowback (the “Ban”) and, through the enactment of City Code Sec. 12-136, exempted from the Ban any oil or gas wells or pad sites existing within the City as of February 19, 2013, that become the subject of an operator agreement between the operator of the same and the City, as long as such agreement includes strict controls on methane release and, in the judgment of the City Council, adequately protects the public health, safety and welfare.

WHEREAS, by Resolution 2013-036, the City Council has approved this Oil and Gas Operator Agreement with the Company, and the Parties agree to the terms and conditions contained below.

NOW THEREFORE, in consideration of the covenants and mutual promises set forth in this Agreement, including in the recitals, the Parties agree as follows:

1. Effective Date. When this Agreement is presented to the City Council for its consideration, City staff will also present to the City Council an ordinance exempting all Company operations within the areas described in Exhibits "A" and "B" from the Moratorium and the Ban, which exemption will continue in effect as long as the Company's operations are conducted in accordance with this Agreement. The Effective Date of such ordinance shall be the "Effective Date" of this Agreement. Notwithstanding the foregoing, this Agreement shall be void and of no effect as of June 1, 2013, unless such ordinance has been approved by the City Council and has taken effect on or before said date.
2. The Company's Best Management Practices ("BMPs") within City Limits. The Company shall include the BMPs listed in Appendix A, attached hereto and by reference made a part hereof, on all Applications for Permit-to-Drill, Form 2, and Oil and Gas Location Assessments, Form 2A, submitted to the Commission for a "New Well". For the purposes of this provision, "New Well" shall mean any Company-operated well spudded during the term of this Agreement, and located on either a currently existing well pad or a New Well pad that is located within the City limits, and a "New Well Pad" shall mean any area that is directly disturbed during the drilling and subsequent operation of a New Well, including any production facilities directly associated with such well, and its associated Well Pad, insofar as it covers lands located in the City limits. The BMPs shall apply to all New Wells drilled by the Company while this Agreement is effective. For the purposes of this Agreement, a New Well shall not include the re-entry of a previously plugged and abandoned well; accordingly, the re-entry of a previously plugged and abandoned well is not allowed.
3. City Regulatory Approvals. The Company shall not be required to obtain any project development plan or final plan approval from the City to conduct its oil and gas operations within the City limits, as long as the Company complies with the terms and conditions contained herein, and this Agreement shall control all oil and gas operations conducted by the Company within the City limits. Prior to the submission of a COGCC Form 2 and/or Form 2A to the COGCC, the Company shall meet with the City to review the proposed oil and gas operation to ensure compliance with this Agreement, all applicable state and federal regulations, and any site-specific concerns, which concerns may include overall project impacts and economically and technically feasible mitigation measures or BMPs related to field design and infrastructure construction to minimize potential adverse impacts to public health, safety and welfare. At such

time, if at all, that the City and Larimer County, Colorado (the "County") enter into a written agreement that authorizes the City to regulate the oil and gas operations of the Company within the Growth Management Area, such operations shall thereafter be governed by the terms and conditions of this Agreement and shall be subject to the City's regulatory authority as provided in this Agreement. "Growth Management Area" shall be as described in that certain Intergovernmental Agreement entered into by the City of Fort Collins and Larimer County on June 24, 2008, nunc pro func [sic] October 17, 2006.

4. Operations on Existing Facilities. For any Facility owned by the Company and existing prior to the Effective Date and located within the City limits, the Parties hereby agree that the Company may perform routine maintenance operations on said Facility and perform such operations the Company deems prudent and necessary, including, but not limited to, stimulating existing wells through hydraulic fracturing and temporarily storing chemicals on existing well pads for that purpose. The Company agrees to conduct such operations as a prudent operator in accordance with the rules and regulation of the COGCC; however, the Company shall not be subject to the BMP's as attached hereto, except for Appendix A paragraphs 21(j) and 21(k) thereof. "Facility" as used in this provision shall include wells, pipelines, and all equipment necessary and appurtenant to such wells and pipelines.

5. Term. This Agreement is effective upon the Effective Date and shall remain in effect for five (5) years from the Effective Date, at which time the Agreement shall be automatically renewed and extended for successive five (5) year terms, unless and until either Party elects to terminate the Agreement at the end of the then current five (5) year term by providing written notice of such intent to the other party at least thirty (30) days before the expiration of said term.

6. Force Majeure. Neither Party will be liable for any delay or failure in performing under this Agreement in the event and to the extent that the delay or failure arises out of causes beyond a Party's reasonable control, including, without limitation, war, civil commotion, act of God, strike or other stoppage (whether partial or total) of labor, or any law, decree, regulation, or order of any government or governmental body (including any court or tribunal).

7. Authority to Execute Agreement. Each Party represents that the undersigned have the full right and authority to enter into this Agreement and bind the Parties to the terms and conditions contained herein. This Agreement may be amended only by an instrument executed by both Parties hereto.

8. Successors and Assigns. The terms and conditions of this Agreement shall bind and extend to the City and the Company, and the Company's successors and assigns.

9. No Third Party Beneficiaries. Except for the rights of enforcement by the Commission with respect to the BMPs, this Agreement is not intended to, and does not create, any right, benefit, responsibility or obligation that may be enforced by any non-party. Additionally, nothing in the Agreement shall entitle any third party to any claims, rights or remedies of any kind.

10. Notices. All notices and other correspondence related to this Agreement shall be in writing and shall be delivered by: (i) certified mail with return receipt, (ii) hand delivery with signature or delivery receipt provided by a third party courier service (such as FedEx, UPS, etc.), (iii) fax transmission if verification of receipt is obtained, or (iv) email with return receipt, to the designated representative of the Party as indicated below. A Party may change its designated representative for notice purposes at any time by written notice to the other Party. The initial representatives of the Parties are as follows:

City: City of Fort Collins
300 LaPorte Avenue
P.O. Box 580
Fort Collins, CO 80522
Attn: City Manager
Telephone: 970-416-2253
Fax: 970-224-6107
Email: datteberry@fcgov.com

Company: Prospect Energy, LLC
1600 Stout Street, Suite 1710
Denver, CO 80202
Attn: Scott D. Hall, Manager
Telephone: 303-973-3228, ext. 223
Fax: 303-346-4893
Email: sdhall@bdminerals.com

11. Default; Remedies. If either party believes that the other Party has failed to comply with any provision of this Agreement, or if any other kind of dispute arises under any provision of this Agreement that cannot be resolved by good faith negotiation between the Parties, the Party claiming that a breach of this Agreement has occurred or seeking resolution of any other dispute under this Agreement shall send written notice to the other Party, specifying its position in the matter and invoking the dispute resolution process in this section. Within fifteen (15) days of the date of delivery of such notice, the Parties shall meet to resolve the matter described in the notice. If either Party believes that mediation would be advantageous in connection with such meeting, or if a resolution of the matter cannot be achieved at the meeting, both parties agree to make a reasonable effort to work through and with a mutually acceptable mediator to attempt to resolve the dispute. Notwithstanding the foregoing, if either Party believes that the dispute will

not otherwise be resolved in a sufficiently prompt and effective manner, such Party may, at its discretion, take such legal action and seek such legal or equitable remedies as it determines to be appropriate or necessary to protect and enforce its rights under this Agreement. Such remedies may include, without limitation, an injunction to stop an alleged violation or an order requiring the performance of all acts and things required to be performed hereunder by the other Party.

12. Integration Clause: This Agreement, along with all exhibits and appendices attached hereto encompasses the entire agreement of the Parties and supersedes all previous understandings and agreements between the Parties, whether oral or written.

13. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado without reference to its conflicts of laws provisions.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by a duly authorized representative on the day and year first written above.



THE CITY:

CITY OF FORT COLLINS, COLORADO
A MUNICIPAL CORPORATION

By:

Darin Atteberry, City Manager

ATTEST:

Wanda Nelson

City Clerk

APPROVED AS TO FORM:

Michael Eckman

Deputy City Attorney

THE COMPANY:

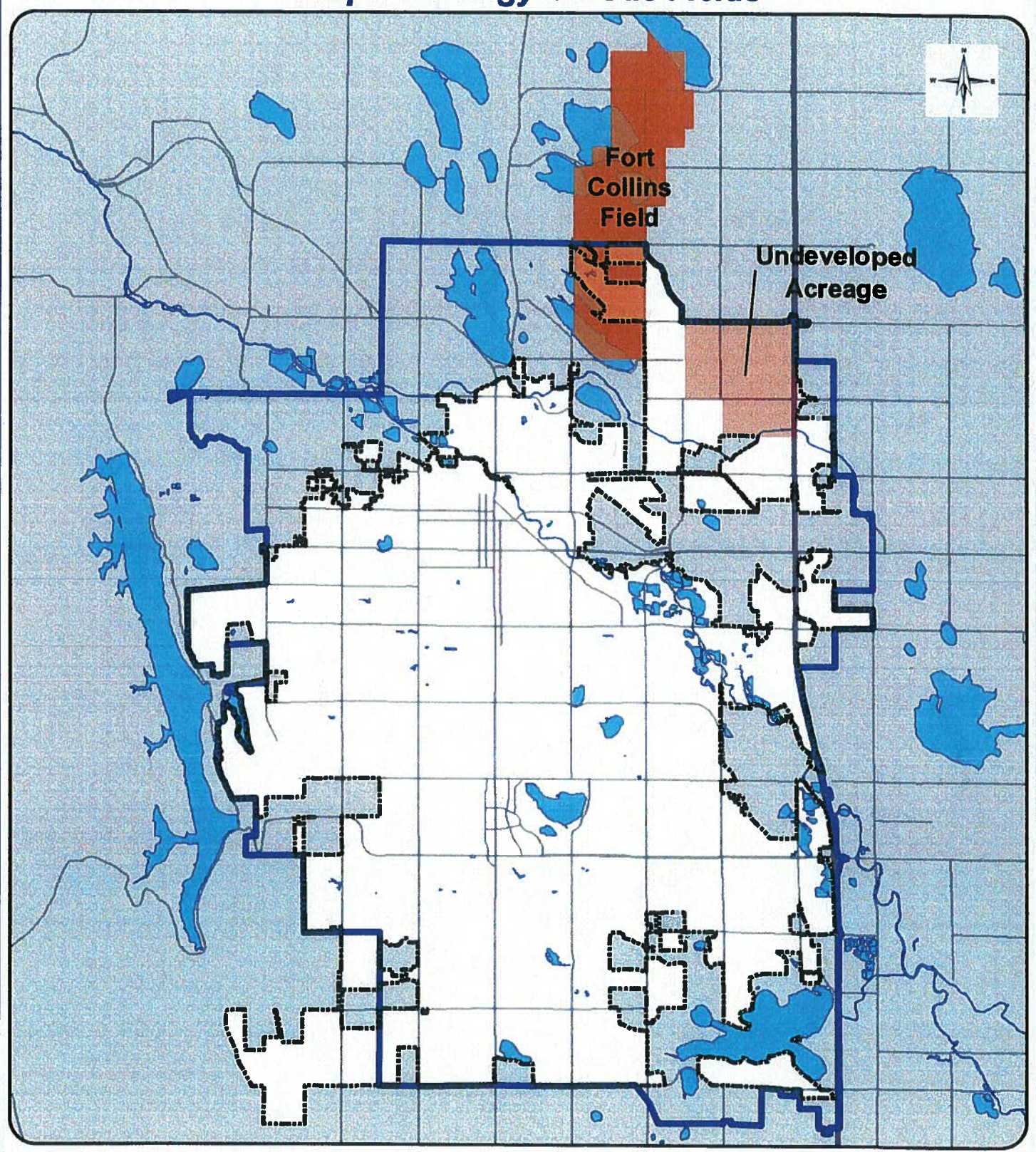
PROSPECT ENERGY, LLC

By (signature):

Scott Hall 5/29/13

Scott Hall, CEO

City of Fort Collins Prospect Energy Oil/Gas Fields



**CITY OF FORT COLLINS
GEOGRAPHIC INFORMATION SYSTEM MAP PRODUCTS**

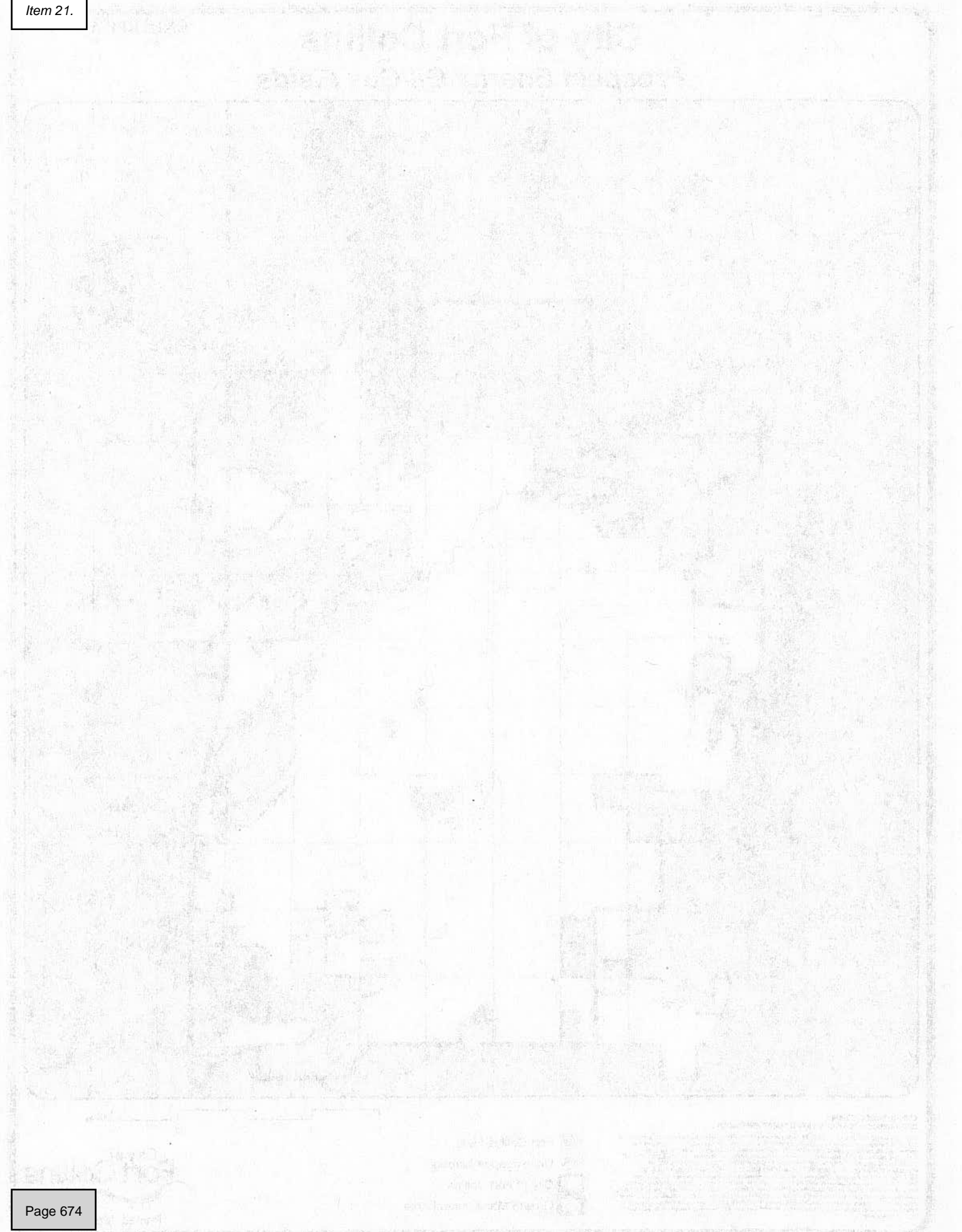
These map products and all underlying data are developed for use by the City of Fort Collins for its internal purposes only, and were not designed or intended for general use by members of the public. The City makes no representation or warranty as to its accuracy, timeliness, or completeness, and in particular, its accuracy in labeling or displaying boundaries, contours, property boundaries, or placement of location of any map features thereon. THE CITY OF FORT COLLINS MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE FOR PARTICULAR PURPOSES, EXPRESSED OR IMPLIED, WITH RESPECT TO THESE MAP PRODUCTS OR THE UNDERLYING DATA. Any users of these map products, map applications, or data, accept them AS IS WITH ALL FAULTS, and assumes all responsibility of the use thereof, and further covenants and agrees to hold the City harmless from and against all damage, loss, or liability arising from any use of this map product, in consideration of the City's having made available. Independent verification of all data contained herein should be obtained by any users of underlying data. The City disclaims, and shall not be held liable for any and all damage, loss, or indirect, or consequential which users or may arise from these map products or the use thereof.

0 1 2 3 4 Miles

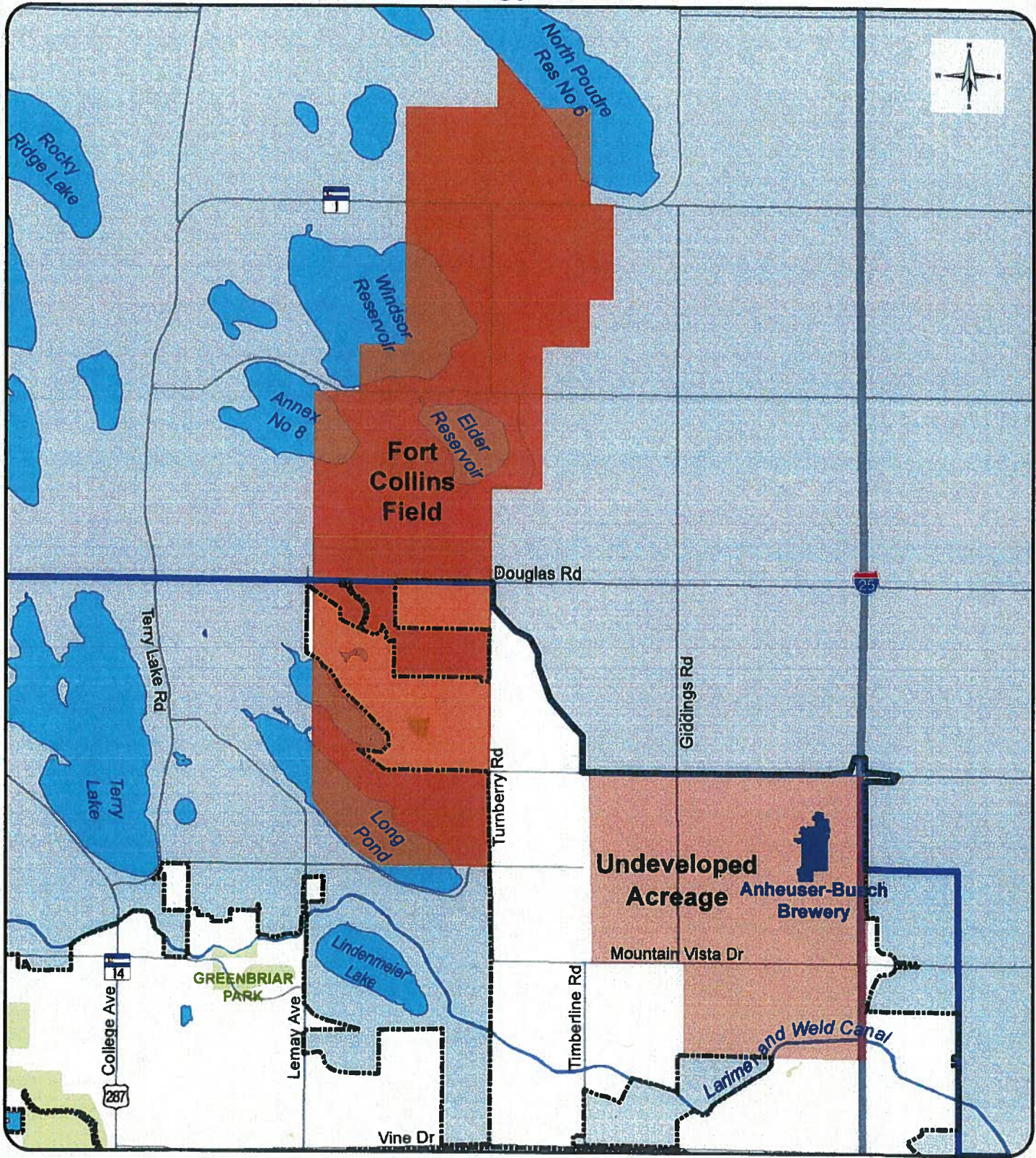
- Fort Collins Field
- Undeveloped Acreage
- City of Fort Collins
- Growth Management Area



Printed: March 12, 2013



City of Fort Collins Prospect Energy Oil/Gas Fields



**CITY OF FORT COLLINS
GEOGRAPHIC INFORMATION SYSTEM MAP PRODUCTS**

These map products and all underlying data are developed for use by the City of Fort Collins for its internal purposes only and were not designed or intended for general use by members of the public. The City makes no representation or warranty as to its accuracy, timeliness, or completeness, and in particular, its accuracy in labeling or displaying dimensions, contours, property boundaries, or placement of location of any map features thereon. THE CITY OF FORT COLLINS MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, EXPRESSED OR IMPLIED, WITH RESPECT TO THESE MAP PRODUCTS OR THE UNDERLYING DATA. Any users of these map products, map regulations, or data, except those AS IS, WITH ALL FAULTS, and assumes all responsibility of the use thereof, and further consents and agrees to hold the City harmless from and against all damage, loss, or liability arising from any use of this map product, in consideration of the City's having made available. Independent verification of all data contained herein should be obtained by any users of underlying data. The City disclaims, and shall not be held liable for any and all damage, loss, or cost, indirect, or consequential, which arises or may arise from these map products or the use thereof.

- Fort Collins Field
- Undeveloped Acreage
- City Limits
- Growth Management Area



List of Exhibits

Exhibit A - Map of the Fort Collins Field and City boundaries

Exhibit B - Map of the Undeveloped Acreage (UDA) and City Boundaries

Appendix A – List of BMP’s

Appendix B – Submittal Requirements

Appendix C - UDA Outline with Setbacks

APPENDIX A

**BEST MANAGEMENT PRACTICES FOR LOCATIONS
WITHIN THE CITY LIMITS OF FORT COLLINS**

Pursuant to the terms of this Agreement, the Company shall include the best management practices listed below on all Applications for Permit-to-Drill, Form 2, and Oil and Gas Location Assessments, Form 2A, (for New Well Pads only), submitted to the Commission for New Wells the Company drills after the Effective Date within the city limits of Fort Collins. Additionally, certain of the paragraphs below shall also apply to existing wells within the City (but not to existing wells within the City's extraterritorial Growth Management Area) but only if express language is included in such paragraphs extending them to existing wells.

1. *Regulations.* The Company shall comply with all applicable state, and federal regulations in addition to the terms of this agreement and the Best Management Practices included below. Any exploration or drilling activity conducted by the Company must comply with the revised rules adopted by the COGCC on January 9, 2013, even though such rules will not officially take effect until August 1, 2013, and as such rules may be amended thereafter. Whichever regulation is most stringent shall apply. The City agrees that it will not impose any fine on the Company for violation of a local regulation if the activity or condition that created the violation is also subject to regulation by the COGCC, so that the violation could result in the imposition of a fine by the COGCC.
2. *Setbacks for New Wells.* It is the intent of the Company to maximize equipment and wellhead setbacks from occupied buildings and residences beyond the setbacks required by the COGCC to the extent feasible and practicable.

The Parties recognize that a portion of the Field is within the Fort Collins City Limits and as such, development has occurred within the already established Field. The surface owner has obtained permitted plats for residential areas in the vicinity of existing oil and gas activities, including a constructed city park and contemplated building units and public roads within three hundred fifty (350) feet of an existing well. Further, the Parties acknowledge that the Commission rules require a minimum of five hundred (500) feet safety setback for New Well construction from a building unit and one thousand feet (1,000) from a high occupancy building.

Any New Wells drilled shall conform to the Commission setback rules as established effective August 1, 2013, and as such rules may be amended thereafter. Notwithstanding the previous sentence, Company agrees that the center of the wellhead for a New Well shall not be located closer than 1,000 feet to the western lease line of the UDA acreage covering the NE 1/4 of Section 32, Township 8 North, Range 68 West; nor closer than

1,500 feet to the western lease line of the UDA acreage covering the SE 1/4 of Section 32, Township 8 North, Range 68 West; nor at any location on the UDA acreage located in the NE 1/4 of Section 4, Township 7 North, Range 68 West that is closer than 1,000 feet to a Building Unit (as such term is defined by the Colorado Oil and Gas Conservation Commission to be adopted effectively as of August 1, 2013) only if such Building Unit is located south of the southern UDA lease line located in the NE 1/4 of said Section 4. (See Appendix C for graphic description.) In the Fort Collins Field, New Wells shall be constructed on existing Well Pads, which due to previous setback requirements, and City approval of residential development, do not conform to five hundred (500) feet setbacks, and are given an exemption from the Commission in the Rules now in effect.

The Parties recognize the existence of a Surface Use Agreement (the "SUA") between the Company and the surface owner which expressly governs the locations of wells and associated facilities within the Water's Edge, Richard's Lake and Hearthfire subdivisions (the "Subdivisions"), and that certain terms found in the SUA may affect Commission setbacks and other Commission rules.

3. *Conceptual Review.* No less than thirty (30) days prior to the submission of an Application for a Permit to Drill, the Company agrees to schedule a meeting with the City to review the proposed new well or drilling activity. The goal of this meeting shall be for staff and the applicant to review the proposed oil and gas operation in a manner that ensures compliance with the operator agreement and applicable state and federal regulations. This pre-submittal meeting shall also allow the applicant and staff to explore site-specific concerns, to discuss project impacts and potential mitigation methods including field design and infrastructure construction to minimize impacts, to discuss coordination of field design with other existing or potential development and operators, to identify sampling and monitoring plans for air and water quality, and other elements of the operator agreement as contained in Appendices A and B. Based upon the foregoing, applicants are encouraged to conduct the pre-submittal meeting with the City prior to completing well siting decisions, to the extent reasonably feasible.
4. *Mailed Notice.* The City shall mail notice of the pending Application for a Permit to Drill no more than ten (10) days after the conceptual review meeting has taken place. The Company shall reimburse the City for the costs of the mailing. Owners of record shall be ascertained according to the records of the Larimer County Assessor's Office, unless more current information is made available in writing to the City prior to the mailing of the notices. Notice of the pending application shall include reference to the neighborhood meeting, if applicable, and be made as follows:
 - To the surface owners of the parcels of land on which the oil and gas operation is proposed to be located;

- To the surface owners of the parcels of land within five hundred (500) feet of a proposed gathering line;
 - To the surface owners of the parcels of land within two thousand six hundred forty (2,640) feet of the parcel on which the oil and gas operation is proposed to be located; and
 - To persons registered in writing with the City as representing bona fide neighborhood groups and organizations and homeowners' associations within the area of notification.
5. *Posted Notice.* The real property proposed to be developed shall also be posted with a sign, giving notice to the general public of the proposed development. For parcels of land exceeding ten (10) acres in size, two (2) signs shall be posted. The size of the sign(s) required to be posted shall be as established in the Supplemental Notice Requirements of Section 2.2.6(D) of the City's Land Use Code. Such signs shall be provided by the City and shall be posted on the subject property in a manner and at a location or locations reasonably calculated by the City to afford the best notice to the public, which posting shall occur within ten (10) days following the Conceptual Review meeting.
 6. *Neighborhood Meetings.* A neighborhood meeting shall be required on any New Well, even on existing Well Pads, that requires an Application for a Permit to Drill. Notice of the neighborhood meeting shall be provided in accordance with Sections 4 and 5 above. The Company shall attend the neighborhood meeting. The City shall be responsible for scheduling and coordinating the neighborhood meeting and shall hold the meeting in the vicinity of the proposed development. A written summary of the neighborhood meeting shall be prepared by the City. The written summary shall be included in the Local Government Designee (LGD) comments provided to the COGCC at the time of the public hearing or permit review to consider the Application for a Permit to Drill.
 7. *Notification to the City and the public regarding commencement of operations.* Prior to the commencement of any new drilling operations, the Company shall provide to the City Manager for posting on the website the information outlined in Appendix B regarding commencement of operations, which the Company may revise from time-to-time during operations, with prior approval from the City.
 8. *Inspections.* The City shall have the right to inspect the Company's operations and its sites during business hours, upon the giving of twenty-four (24) hour advance written notice to the Company. This paragraph shall also apply to existing wells. City hereby acknowledges that nothing herein shall grant the City authority to assess fees for the inspection of the operations conducted by Company hereunder.

9. *Containment berms.* The Company shall utilize steel-rim berms around tanks and separators at new Well Pads. All berms and containment devices shall be inspected at regular intervals and maintained in good condition. No potential ignition sources shall be installed inside the secondary containment area unless the containment area encloses a fired vessel. Refer to American Petroleum Institute Recommended Practices, API RP - D16.
 - a) Containment berms shall be constructed of steel rings, designed and installed to prevent leakage and resist degradation from erosion or routine operation.
 - b) Secondary containment for tanks shall be constructed with a synthetic or engineered liner that contains all primary containment vessels and flowlines and is mechanically connected to the steel ring to prevent leakage.
 - c) For locations within five hundred (500) feet and upgradient of a surface water body, tertiary containment, such as an earthen berm, is required around production facilities.
10. *Closed Loop Pitless Systems for the Containment and/or Recycling of Drilling and Completion Fluids.* Wells shall be drilled, completed and operated using closed loop pitless systems for containment and/or recycling of all drilling, completion, flowback and produced fluids.
11. *Anchoring.* All equipment at drilling and production sites shall be anchored to the extent necessary to resist flotation, collapse, lateral movement, or subsidence. All guy line anchors left buried for future use shall be identified by a marker of bright color not less than four (4) feet in height and not greater than one (1) foot east of the guy line anchor. The first sentence of this paragraph shall also apply to existing wells.
12. *Burning.* No open burning shall occur on the site of any oil and gas operation. This paragraph shall also apply to existing wells.
13. *Chains.* Traction chains from heavy equipment shall be removed before entering a City street. This paragraph shall also apply to existing wells.
14. *Chemical disclosure and storage.* The City shall be provided, in table format, the name, Chemical Abstracts Service (CAS) number, volume, storage, containment and disposal method for all drilling and completion chemicals (solids, fluids, and gases) used on the Well Pad. Fracture chemicals shall be uploaded onto the Frac Focus website. The Company shall not permanently store hydraulic fracturing chemicals, flowback from hydraulic fracturing, or produced water in the City limits.
15. *Color.* Facilities shall be painted in a uniform, non-contrasting, non- reflective color, to blend with the surrounding landscape and, with colors that match the land rather than the

sky. The color should be slightly darker than the surrounding landscape. This paragraph shall also apply to existing wells when such wells are repainted for general maintenance purposes.

16. *Cultural and Historical Resource Protection.* If a significant surface or sub-surface archaeological site is discovered during construction, the Company shall be responsible for immediately contacting the City to report the discovery. If any disturbance of the resource occurs, the Company shall be responsible for mitigating the disturbance to the cultural or historical property through a data recovery plan approved by the City.
17. *Discharge valves.* Open-ended discharge valves on all storage tanks, pipelines and other containers shall be secured where the operation site is unattended or is accessible to the general public. Open-ended discharge valves shall be placed within the interior of the tank secondary containment.
18. *Dust suppression.* Dust associated with on-site activities and traffic on access roads shall be minimized throughout construction, drilling and operational activities such that there are no visible dust emissions from access roads or the site to the extent practical given wind conditions. No produced water or other process fluids shall be used for dust suppression. The Company will avoid dust suppression activities within three hundred (300) feet of the ordinary high water mark of any waterbody, unless the dust suppressant is water. Material Safety Data Sheets (MSDS) for any chemical based dust suppressant shall be submitted to the City for approval prior to use. This paragraph shall also apply to existing wells.
19. *Electric equipment.* Electric-powered engines for motors, compressors, and drilling equipment and for pumping systems shall be used in order to mitigate noise and to reduce emissions when feasible. This paragraph shall also apply to existing wells.
20. *Emergency preparedness plan.* The Company is required to develop an emergency preparedness plan for each specific facility site, which shall be in compliance with the International Fire Code. The plan shall be filed with the Poudre Fire Authority and the City of Fort Collins Office of Emergency Management and updated on an annual basis or as conditions change (responsible field personnel change, ownership changes, etc.). This paragraph shall also apply to existing wells. The emergency preparedness plan shall consist of at least the following information:
 - a) Name, address and phone number, including twenty-four (24)-hour emergency numbers for at least two persons responsible for emergency field operations.
 - b) An as-built facilities map in a format suitable for input into the City's GIS system depicting the locations and type of above and below ground facilities including

sizes, and depths below grade of all oil and gas gathering and transmission lines and associated equipment, isolation valves, surface operations and their functions, as well as transportation routes to and from exploration and development sites, for emergency response and management purposes. The information concerning pipelines and isolation valves shall be held confidentially by the City's Office of Emergency Management and the Battalion Chief, and shall only be disclosed in the event of an emergency or to emergency responders. The City shall deny the right of inspection of the as-built facilities maps to the public or for the training of emergency responders pursuant to C.R.S. § 24-72-204.

- c) Detailed information addressing each reasonable potential emergency that may be associated with the operation. This may include any or all of the following: explosions, fires, gas, oil or water pipeline leaks or ruptures, hydrogen sulfide or other toxic gas emissions, or hazardous material vehicle accidents or spills. A provision that any spill outside of the containment area, that has the potential to leave the facility or to threaten waters of the state, or as required by the City-approved Emergency Preparedness Plan shall be reported to the local emergency dispatch and the COGCC Director in accordance with COGCC regulations.
- d) Detailed information identifying access or evacuation routes, and health care facilities anticipated to be used.
- e) A project specific emergency preparedness plan for any project that involves drilling or penetrating through known zones of hydrogen sulfide gas.
- f) Detailed information showing that the Company has adequate personnel, supplies, and training to implement the emergency response plan immediately at all times during construction and operations.
- g) The Company shall have current Material Safety Data Sheets (MSDS) for all chemicals used or stored on a site. The MSDS sheets shall be provided immediately upon request to City officials, a public safety officer, or a health professional.
- h) The plan shall include a provision establishing a process by which the Company engages with the surrounding neighbors to educate them on the risks of the on-site operations and to establish a process for surrounding neighbors to communicate with the Company.
- i) All training associated with the Emergency Preparedness plan shall be coordinated with the City's Office of Emergency Management and Poudre Fire Authority.

- j) A provision obligating the Company to reimburse the appropriate emergency response service providers for costs incurred in connection with any emergency in accordance with Colorado State Statutes.

21. *Air quality.* The Company must comply with emissions regulations governed by the Colorado Department of Public Health and Environment (CDPHE), Air Pollution Control Division (APCD). Air emissions from wells shall be in compliance with the permit and control provisions of the Colorado Air Quality Control Program, Title 25, Section 7, C.R.S., COGCC Rule 805, and all state and federal regulations for the control of fugitive dust, and control of ozone, ozone precursors, methane, and hazardous air pollutants by the Larimer County Public Health Department, and the CDPHE-APCD. The Company must comply with 40 CFR Subpart OOOO as published on August 16, 2012 (Quad O). Subparagraphs (j) and (k) shall also apply to existing wells.

- a) **General Duty to Minimize Emissions.** The Company shall incorporate in the development plan; operations, procedures, and field design features to the maximum extent feasible that minimize air pollutant emissions including but not limited to:

- 1) Consolidation of product treatment and storage facilities
- 2) Centralization of compression facilities
- 3) Liquids gathering and water delivery systems
- 4) Telemetric control and monitoring systems
- 5) Pipeline infrastructure prior to well completion.

- b) In the UDA, the Company shall utilize a high-low pressure vessel (HLP) and vapor recovery unit (VRU) for New Wells that are placed on production. The Company may remove the VRU at such time it determines that the VRU system is no longer necessary due to reduced emission recoveries and/or efficiencies, but no earlier than one (1) year after the New Well is placed on production. The Company may opt to capture gas and send through a thermal oxidizer in lieu of a HLP and VRU.

- c) Plunger lifts are not typically used in the Fort Collins Field due to insufficient gas. However if there is future use of plunger lifts, emissions shall be controlled from the motor control valve using low bleed pneumatic controllers.

- d) There will be no uncontrolled venting of methane. All gas vapors shall be captured to the extent practicable. Vapor capture equipment shall operate at ninety-eight percent (98%) efficiency or better. There are no gas sales lines in the Fort Collins field because the quantity and quality of gas is low and not

marketable. If salable gas were to occur in the UDA, a sales line shall be constructed.

e) Flaring during drilling and completions:

During well completion, the capture and beneficial use of natural gas is preferred over flaring. Minimal flaring may occur in the Fort Collins field, because there is minimal gas in the field. Flaring shall be continuously monitored on-site by the Company, under twenty-four (24) hour watch and is regulated by COGCC Rules 317, 805B(3)B, and 912. No venting of gas may occur, except under COGCC Green Completion Practices (Rule 805 B(3)B), or in very limit cases under Rule 912 with the COGCC Director approval.

f) Flaring during production operations:

- 1) The flare shall be fired with natural gas and shall be operated with a ninety eight (98) percent or higher VOC destruction efficiency.
- 2) The flare shall be designed and operated in a manner that shall ensure no visible emissions, pursuant to the provisions of 40 CFR 60.18(f), except for periods not to exceed a total of five (5) minutes during any two (2) consecutive hours. Where applicable, flares shall also be in compliance with 5 CCR 1001-9 Regulation 7 Section XVIIIB for non-condensate oil.
- 3) The flare shall be operated with a flame present at all times when emissions may be vented to it, pursuant to the methods specified in 40 CFR 60.18(f).
- 4) An automatic pilot system shall be used when feasible. Other ignition systems may include the installation and operation of a telemetry alarm system or an on-site visible indicator showing proper function.

g) Leak Detection and Repair (LDAR) – The Company shall develop and maintain a leak detection and component repair program according to EPA Method 21 for equipment used in permanent operations. LDAR shall be performed on newly installed equipment, and then on an annual basis. A Forward-Looking Infrared (FLIR) camera shall be used as the preferred implementation method of EPA Method 21 as available from the state; if unavailable, other methods shall be used in compliance with this method. Upon request from the City, the Company shall implement EPA Method 21 upon additional concerns. At least once per year, the Company shall notify the City prior to FLIR camera use in case the City wishes to observe the method.

h) **One Time Baseline Air Quality Monitoring** - the Company and the City shall split the cost for a one time Baseline Sampling and Analytical. The work shall be done by a third party consultant agreeable to both parties over a five day sampling period with each location sampled per day. The sampling locations shall be as follows:

- 1) Upwind of Tank Battery
- 2) Downwind of Tank Battery
- 3) City Park
- 4) One location downtown, such as New Belgium Brewery or Wild Boar Coffee

i) **One Time Air Sampling During Well Completion** – The Company shall conduct air sampling during well completion. The work shall be done by a third party consultant agreeable to both parties. This shall be done over a five day sampling period with each location sampled per day. The sampling shall be for one well completion in the City (City's choice of which well completion). The sampling locations shall be as follows:

- 1) Upwind of well
- 2) Downwind of well

j) **Ongoing Air Quality Monitoring** - Periodic air monitoring shall be performed for hydrogen sulfide (H₂S), a hazardous air pollutant (HAP). The Company shall perform field monitoring using the Jerome 631 XC or equivalent instrument annually, or until such time that odors are not detected past the Fort Collins Tank Battery fence line in City Limits.

k) The City may require the Company to conduct additional air monitoring as needed to respond to emergency events such as spill, process upsets, or accidental releases or in response to odor complaints in City Limits.

- 1) In response to emergency events that involve the potential release of hazardous air pollutants, the Company may be required to conduct air sampling in accordance with Subsection i. above.
- 2) In response to odor complaints, the Company may be required to conduct air sampling in accordance with subsection j above or use a photo-ionization detector (PID) to measure detected levels of VOCs that exceed acute health-based exposure thresholds, or other air sampling methodology depending on the nature of the complaint.

1) **Air Quality Action Days.** The Company shall respond to air quality Action Day advisories posted by the Colorado Department of Public Health and Environment for the Front Range Area by implementing air emission reduction measures committed to in the Air Quality Mitigation Plan. Emission reduction measures shall be implemented for the duration of an air quality Action Day advisory and may include measures such as:

- 1) Minimize vehicle and engine idling
- 2) Reduce truck traffic and worker traffic
- 3) Delay vehicle refueling
- 4) Suspend or delay use of fossil fuel powered ancillary equipment
- 5) Postpone construction activities

22. *Green completions.*

- a) Gas gathering lines, separators, and sand traps capable of supporting green completions as described in COGCC Rule 805 shall be installed at any location at which commercial quantities of gas are reasonably expected to be produced based on existing adjacent wells within one (1) mile or well in the Fort Collins Field, whichever is greater.
- b) Uncontrolled venting is prohibited.
- c) Temporary flowback flaring and oxidizing equipment shall include the following:
 - 1) Adequately sized equipment to handle 1.5 times the largest flowback volume of gas experienced in a one (1) mile radius (or well in the Fort Collins Field), whichever is greater;
 - 2) Valves and porting available to divert gas to flaring and oxidizing equipment; and
 - 3) Auxiliary fueled with sufficient supply and heat to combust or oxidize non-combustible gases in order to control odors and hazardous gases. The flowback combustion device shall be equipped with a reliable continuous ignition source over the duration of flowback, except in conditions that may result in a fire hazard or explosion.
 - 4) The Company has a general duty to safely maximize resource recovery and minimize releases to the atmosphere during flowback and subsequent recovery/operation.

23. *Exhaust.* The exhaust from all engines, motors, coolers and other mechanized equipment shall be vented up or in a direction away from the closest existing residences. This paragraph shall also apply to existing wells.

24. *Fencing.* Permanent perimeter fencing shall be installed around production equipment, and shall be secured. The main purpose of the fencing is to deter entrance by unauthorized people. The Company shall use visually interesting fencing, when feasible, but the parties recognize that there is a need for air circulation, and for the field personnel who regularly inspect the facilities to be able to identify visual operational deficiencies when driving by. Landscaping may be used for screening. If a chain link fence is required to achieve safety requirements set by the COGCC, then landscaping and other screening mechanisms shall be required that comply with the City's Land Use Code regulations and the Company's safety requirements.
25. *Flammable material.* All land within twenty five (25) feet of any tank, or other structure containing flammable or combustible materials shall be kept free of dry weeds, grass or rubbish, and shall conform to Section 315 of the International Fire Code. This paragraph shall also apply to existing wells.
26. *Floodplains.* All oil and gas operations shall comply with Chapter 10 of the City Code.
27. *Water Quality Monitoring Plan.* The Company shall comply with COGCC Rule 609. In summary, this requires pre- and post-drilling testing. The rules require oil and gas operators to sample all "Available Water Sources" (owner has given consent for sampling and testing and has consented to having the sample data obtained made available to the public), with a cap of four (4) water sources, within one-half (1/2) mile radius of a proposed well, multi-well site, or dedicated injection well. Water sources include registered water wells, permitted or adjudicated springs, and certain monitoring wells. The Company agrees to the following requirements above and beyond the COGCC requirements: analyzing for dissolved metals as indicated in the Land Use Code and sampling intervals to be baseline (before drilling), post-drilling at one, three, and six years. Analytical results shall be shared with the COGCC, the City, and the landowner. All spills, for new and existing wells, shall be managed in accordance with COGCC regulations.
28. *Landscaping.* In the Fort Collins Field, existing Well Pads shall be used for any New Wells and all landscaping shall be in compliance with the City of Fort Collins Land Use Code standards and in compliance with the safety requirements of the Company. Existing vegetation shall be minimally impacted. In the UDA, motorized equipment shall be restricted to the Well Pad and access roads to the Well Pads. A Visual Mitigation Plan, along with fencing and landscaping shall be developed for new construction.
29. *Lighting.* Except during drilling, completion or other operational activities requiring additional lighting, down-lighting is required, meaning that all bulbs must be fully

shielded to prevent light emissions above a horizontal plane drawn from the bottom of the fixture. A lighting plan shall be developed to establish compliance with this provision. The lighting plan shall indicate the location of all outdoor lighting on the site and any structures, and include cut sheets (manufacturer's specifications with picture or diagram) of all proposed fixtures. This paragraph shall also apply to existing wells.

30. *Maintenance of machinery.* Routine field maintenance of vehicles or mobile machinery shall not be performed within three hundred (300) feet of any water body. This paragraph shall also apply to existing wells.
31. *Mud Tracking.* The Company shall take all practicable measures to ensure that vehicles do not track mud or debris onto City streets. If mud or debris is nonetheless deposited on City streets, the streets shall be cleaned immediately by the Company using pressured water from a water truck. This shall be done as part of maintenance. If for some reason it cannot be done, or needs to be postponed, the LGD shall be notified of the Company's plan for mud removal. This paragraph shall also apply to existing wells.
32. *Natural Resources – An Ecological Characterization Study* shall be provided if any New Well is within 500 feet of a Natural Habitat or Feature, and if impacting these resources, mitigation plans to ensure no net resource loss per Fort Collins Land Use Code 3.4.1.
33. *Noise mitigation.* Noise mitigation measures shall be constructed along any edge of any oil and gas operation site if such edge is between the oil and gas operation and existing residential development or land which is zoned for future residential development. The noise mitigation measures shall, to the maximum extent feasible, decrease noise from the oil and gas operations to comply with the sound limitation regulations set forth in Commission Rule 802. A noise mitigation study shall be submitted with the application to demonstrate that noise will be decreased to the maximum extent feasible.
34. *Pipelines.* Any newly constructed or substantially modified pipelines on site shall meet the following requirements:
 - (a) To the maximum extent feasible, all flow lines, gathering lines, and transmission lines shall be sited a minimum of fifty (50) feet away from general residential, commercial, and industrial buildings, as well as the high-water mark of any surface water body. This distance shall be measured from the nearest edge of the pipeline. Pipelines and gathering lines that pass within 150 feet of general residential, commercial, and industrial buildings or the high water mark of any surface water body shall incorporate leak detection, secondary containment, or other mitigation, as appropriate.
 - (b) To the maximum extent feasible, pipelines shall be aligned with established roads in order to minimize surface impacts and reduce habitat fragmentation and disturbance.

- (c) To the maximum extent feasible, operators shall share existing pipeline rights-of-way and consolidate new corridors for pipeline rights-of-way to minimize surface impacts.
 - (d) To the maximum extent feasible, operators shall use boring technology when crossing streams, rivers, or irrigation ditches with a pipeline to minimize negative impacts to the channel, bank, and riparian areas.
35. *Recordation of flowlines.* All new flowlines, including transmission and gathering systems, shall have the legal description of the location recorded with the City Clerk and the Larimer County Clerk and Recorder within thirty (30) days of completion of construction. Abandonment of any recorded flowlines shall be recorded with the Larimer County Clerk and Recorder's office within thirty (30) days after abandonment.
36. *Recreational Activity Standards.* The installation and operation of any oil and gas operation shall not cause significant degradation to the quality and quantity of recreational activities in the City. Methods to achieve compliance with this standard include, but are not limited to locating operations away from trails and from property used for recreational purposes, or by using existing Well Pads.
37. *Removal of debris.* When an oil and gas operation becomes operational, all construction-related debris shall be removed from the site for proper disposal. The site shall be maintained free of debris and excess materials at all times during operation. Materials shall not be buried or burned on-site. This paragraph shall also apply to existing wells.
38. *Removal of equipment.* All equipment used for drilling, re-completion and maintenance of the facility shall be removed from the site within thirty (30) days of completion of the work, unless otherwise agreed to by the surface owner. Permanent storage of equipment on Well Pad sites shall not be allowed. This paragraph shall also apply to existing wells.
39. *Soil Gas Monitoring* – The City, at its discretion, may conduct soil gas monitoring to assess well casing integrity. This shall be typically completed within ninety (90) days of New Well completion. The City shall notify the Company prior to entering the site for soil gas monitoring.
40. *Spills.* Chemical spills and releases shall be reported in accordance with applicable state and federal laws, including the Emergency Planning and Community Right To Know Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Oil and Pollution Act, the Clean Water Act, the Resource Conservation and Recovery Act and the Spill Control Prevention and Countermeasure plan, as

applicable. If a spill or release impacts or threatens to impact surface water or a water well, the Company shall notify the affected or potentially affected owner immediately following discovery of the release, and the spill or release shall be reported to the City and to the surface water or water well owner within twenty-four (24) hours of becoming aware of the spill or release.

41. *Stormwater control plan.* All oil and gas operations shall comply and conform with the Fort Collins Storm Criteria Manual (FCSCM), including submission of an Erosion Control Report and Plan. This paragraph shall also apply to existing wells.
42. *Temporary access roads.* Temporary access roads associated with oil and gas operations shall be reclaimed and re-vegetated to the original state. This paragraph shall also apply to existing wells.
43. *Trailers.* A construction trailer or office is permitted as an accessory use during active drilling and well completion only. This paragraph shall also apply to existing wells.
44. *Transportation and circulation.* All applicants for drilling and completion operations (New Wells) shall include in their applications detailed descriptions of all proposed access routes for equipment, water, sand, waste fluids, waste solids, mixed waste, and all other material to be hauled on the public streets and roads of the City. The submittal shall also include the estimated weights of vehicles when loaded, a description of the vehicles, including the number of wheels and axles of such vehicles, trips per day and any other information required by the Traffic Engineer. Preliminary information is required for this item for the Conceptual Review meeting, in accordance with Appendix B. The Company shall comply with all Transportation and Circulation requirements as contained in the Land Use Code as may be reasonably required by the City's Traffic Engineer.
45. *Wastewater and Waste Management.* In the Fort Collins Field, all fluids shall be contained and there shall be no discharge of fluids, as described in the Closed Loop System and Green Completions section of this Appendix. Waste shall be stored in tanks, transported by tanker trucks, and disposed of at licensed disposal fields. In the UDA, new secondary containment shall be constructed of steel, with sufficient perimeter and height to hold one and one-half (1.5) times the volume of the largest tank and sufficient freeboard to prevent overflow. No potential ignition sources shall be installed inside the secondary containment area unless the containment enclosed a fired vessel. The requirements for secondary containment will meet the Fort Collins Stormwater Criteria Manual. No land treatment of oil impacted or contaminated drill cuttings are permitted. The use of a closed loop drilling system precludes discharge of produced water or flowback to the ground or the use of pits. Produced water or flowback will not be used for dust suppression. A copy of the field's Spill Prevention, Control, and Countermeasure Plan (SPCC) will be given to

the City, which describes spill prevention and mitigation practices. The Company will provide the City documentation of waste disposal and its final disposition. This paragraph shall also apply to existing wells.

46. *Water supply.* The Company shall identify in the site plan its source for water used in both the drilling and production phases of operations. The sources and amount of water used in the City shall be documented and this record shall be provided to the City annually or sooner, if requested by the City Manager. The disposal of water used on site shall also be detailed including anticipated haul routes, approximate number of vehicles needed to supply and dispose of water and the final destination for water used in operation. This paragraph shall also apply to existing wells.
47. *Weed control.* The Company shall be responsible for ongoing weed control at oil and gas operations, pipelines, and along access roads during construction and operation, until abandonment and final reclamation is completed per City, Larimer County or other applicable agency regulations. The appropriate weed control methods and species to be controlled shall be determined through review and recommendation by the County Weed Coordinator by reference to the Larimer County Noxious Weed Management Plan and in coordination with the requirements of the surface owner. This paragraph shall also apply to existing wells.
48. The Company shall, with respect to the initial drilling of a New Well through completion, provide liability insurance that covers pollution, cleanup and general liability in the amount of \$10,000,000 per occurrence. Following completion, the Company shall provide ongoing pollution, cleanup and general liability coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate, and general liability umbrella coverage in the amount of \$5,000,000.

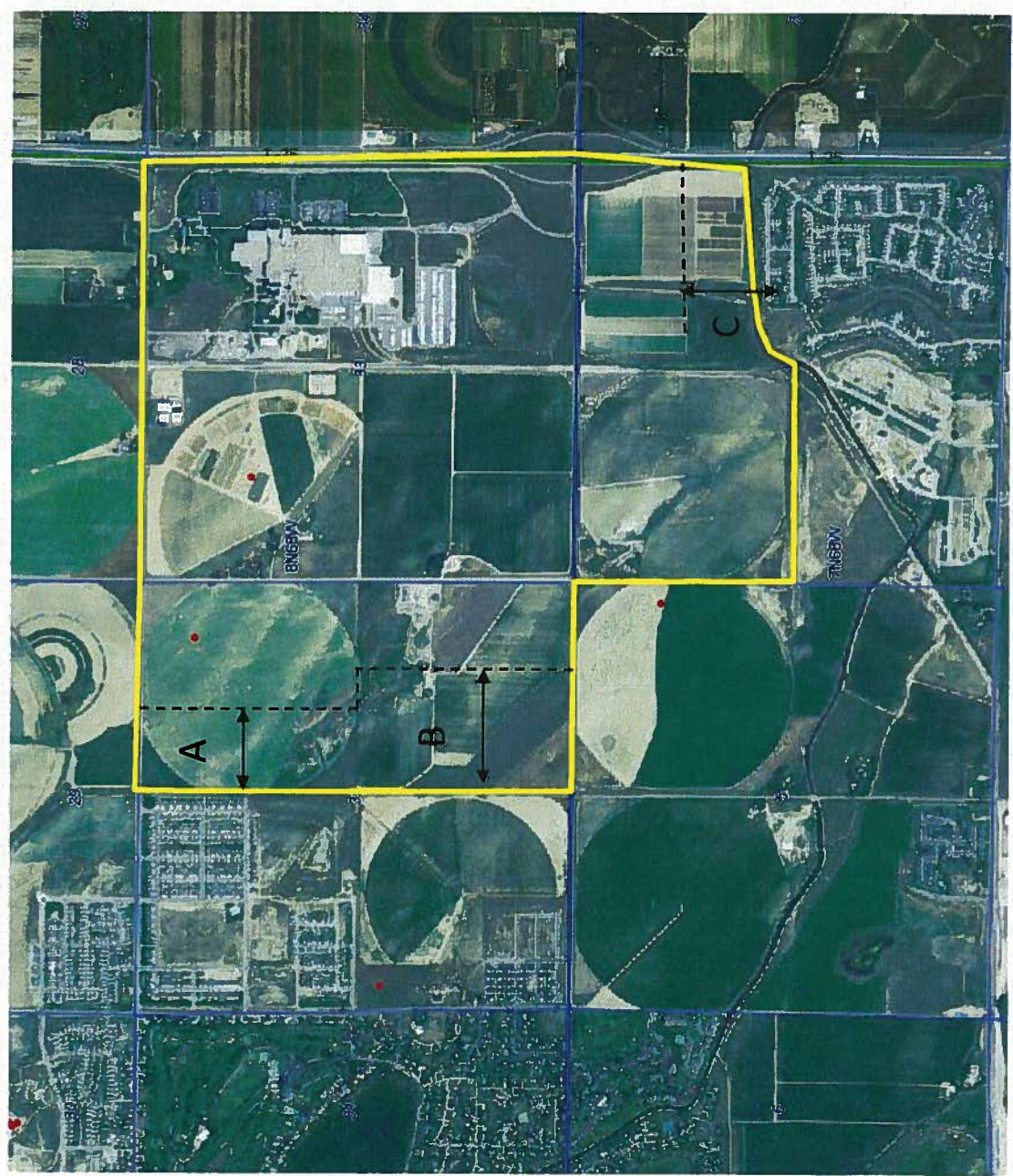
APPENDIX B

SUBMITTAL REQUIREMENTS FOR THE COMPANY FOR NEW WELL LOCATIONS WITHIN THE CITY LIMITS OF FORT COLLINS

1. *Conceptual Review Submittal Requirements.* The following documents shall be submitted prior to the Conceptual Review meeting outlined in Appendix A:
 - a) A preliminary summary of planned operations, including identified access points and operational timeline for posting to a local community information web-page;
 - b) A preliminary site plan for site preparation, mobilization and demobilization;
 - c) A preliminary plan for interim reclamation and revegetation of the well pad and final reclamation of the well pad;
 - d) A preliminary plan for noise, light and dust mitigation;
 - e) A preliminary traffic management plan;
 - f) A preliminary Visual Mitigation Plan, including but not limited to, a list of the proposed colors for the operations' equipment, proposed fencing and screening in accordance with Appendix A.
 - g) A preliminary list of permits that shall be submitted in conjunction with the APD and any exceptions proposed to be requested.
 - h) A draft air quality mitigation plan in accordance with Appendix A.
 - i) A draft emergency response preparedness plan in accordance with Appendix A.
 - j) Preliminary list of chemicals proposed to be disclosed through the "Frac Focus" uploading mechanism and regulated through the COGCC Rule 205.
 - k) Proposed sampling locations in accordance with the water quality monitoring plan outlined in Appendix A.
2. *Submittal Requirements Prior to Commencement.* The following documents shall be submitted by the Company prior to the commencement of drilling and completion:
 - a) A response letter that outlines how staff comments from the Conceptual Review were addressed during the APD permitting process.

- b) A summary of planned operations, including identified access points and operational timeline for posting to a local community information web-page;
 - c) A site plan for site preparation, mobilization and demobilization;
 - d) A plan for interim reclamation and revegetation of the well pad and final reclamation of the well pad;
 - e) A plan for noise, light and dust mitigation, to the extent reasonably feasible;
 - f) A traffic management plan, if applicable, and a reasonable bond to cover any damage to public infrastructure during active drilling and completion;
 - g) A Visual Mitigation Plan, including but not limited to, a list of the proposed colors for the operations' equipment, proposed fencing and screening in accordance with Appendix A.
 - h) Copies of all permits requested, including any exceptions.
 - i) A final air quality mitigation plan in accordance with Appendix A.
 - j) A final emergency response preparedness plan in accordance with Appendix A.
 - k) Updated preliminary Chemical disclosure using the "Frac Focus" uploading mechanism, and Chemical Inventory per COGCC Rule 205.
 - l) Baseline water quality data collected in accordance with the Water Quality Monitoring Plan.
3. *Submittal Requirements Post Well-Completion.* The following documents shall be submitted by the Company after well-completion:
- a) Chemical disclosure using the "Frac Focus" uploading mechanism, and Chemical Inventory per COGCC Rule 205.
 - b) Water quality data collected at 1, 3, and 6 year post-completion intervals, as described in Appendix A.
 - c) Air quality and other data collected throughout the post-completion phase, as identified in Appendix A.

UDA Outline With Setbacks

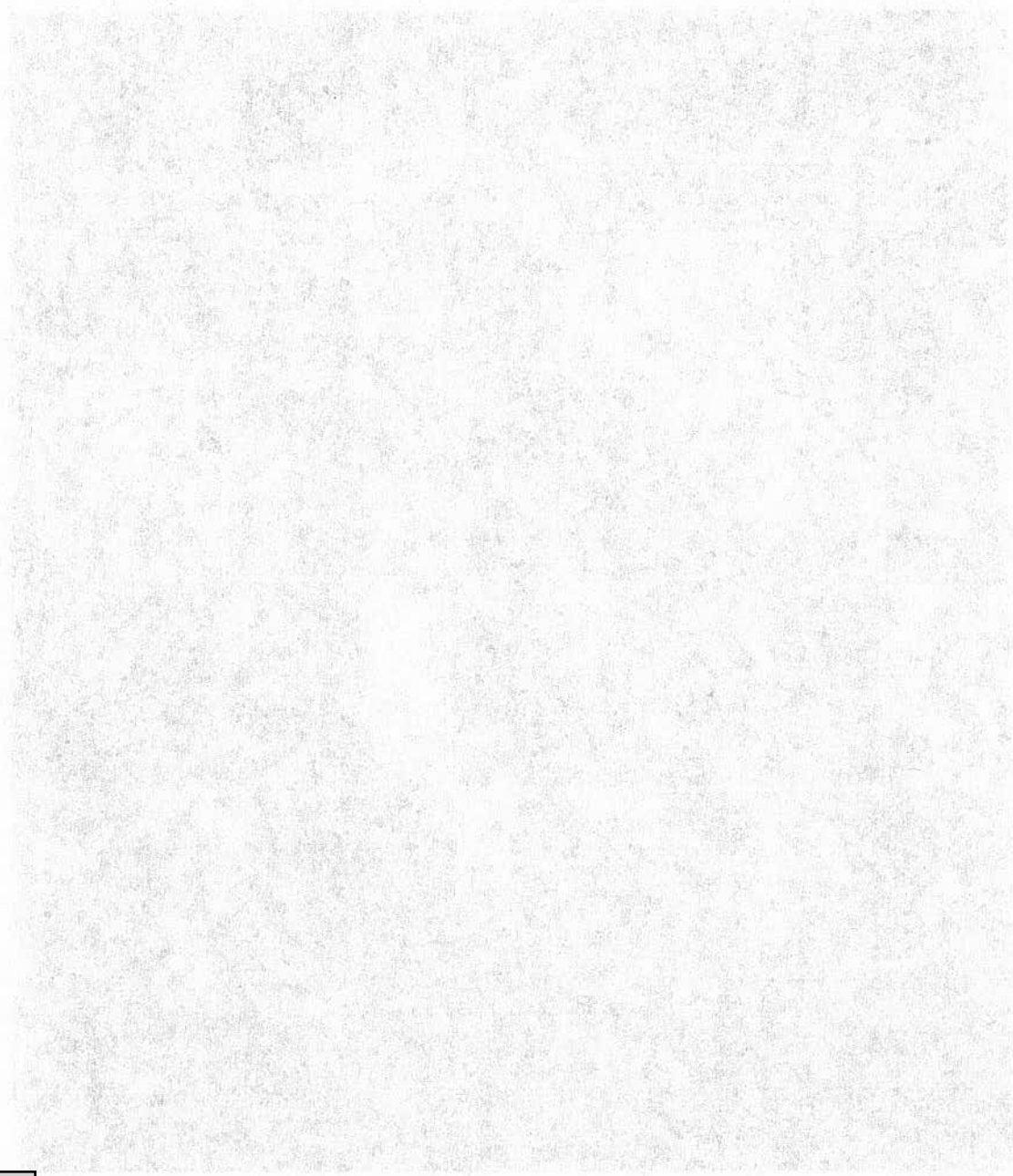


A 1,000' setback from lease line

B 1,500' setback from lease line

C 1,000' setback from Building Unit

----- Setback
Boundary



AGENDA ITEM SUMMARY

City Council



STAFF

Kaley Zeisel, Interim Director, Transit
Chris Hayes, Legal

SUBJECT

Items Relating to FLEX Route Regional Transit Services Intergovernmental Agreements.

EXECUTIVE SUMMARY

A. Resolution 2023-034 Authorizing the Execution of an Intergovernmental Agreement between the City of Fort Collins, Colorado and the City of Loveland for FLEX Route Regional Transit Services.

B. Resolution 2023-035 Authorizing the Execution of an Intergovernmental Agreement between the City of Fort Collins, Colorado and the Town of Berthoud for FLEX Route Regional Transit Services.

C. Resolution 2023-036 Authorizing the Execution of an Intergovernmental Agreement between the City of Fort Collins, Colorado and the County of Boulder for FLEX Route Regional Transit Services.

D. Resolutions 2023-037 Authorizing the Execution of an Intergovernmental Agreement between the City of Fort Collins, Colorado and the City of Boulder for FLEX Route Regional Transit Services.

E. Resolution 2023-038 Authorizing the Execution of an Intergovernmental Agreement between the City of Fort Collins, Colorado and the City of Longmont for FLEX Route Regional Transit Services.

The purpose of these items is to authorize the City Manager to sign separate Intergovernmental Agreements (“IGAs”) with the City of Loveland, the Town of Berthoud, the City of Boulder, the County of Boulder, and the City of Longmont (collectively, the “FLEX Partners”) by which the FLEX Partners will contribute funds toward the operating cost of the FLEX Route Regional Transit Service bus route to further the goals of regional connectivity through transit.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolutions.

BACKGROUND / DISCUSSION

Since 2016, the City has entered into separate agreements with the City of Loveland, the Town of Berthoud, the City of Longmont, the City of Boulder, and the County of Boulder that allow the City of Fort Collins to operate the FLEX regional route with partner contributions from all five entities. Notably, Colorado State University also contributes financially to the operation of the FLEX regional bus route through a separate IGA that previously was executed between the City and Colorado State University.

Additional financial contributions toward the operation of the FLEX route includes grant funding from state and federal sources. The total breakdown of contributions is as follows:

Contributor	% Passenger Activity	Total Owed
Grants, Eco Pass, CSU		\$493,295
Fort Collins	45%	\$750,830
City of Loveland	23%	\$383,758
City of Longmont	12%	\$200,221
Boulder County	10%	\$166,851
City of Boulder	7%	\$116,796
Town of Berthoud	3%	\$50,055

These Resolutions would authorize the City Manager to execute the IGAs with the FLEX Partners, which are intended to be effective retroactively on January 1, 2023.

CITY FINANCIAL IMPACTS

There are no financial impacts as these agreements provide for expenditures on services to be reimbursed by the FLEX Partners.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

No board or commission recommendations are associated with this item.

PUBLIC OUTREACH

No public outreach was conducted as part of this item.

ATTACHMENTS

1. Resolution A for Consideration
2. Exhibit A to Resolution A
3. Resolution B for Consideration
4. Exhibit A to Resolution B
5. Resolution C for Consideration
6. Exhibit A to Resolution C
7. Resolution D for Consideration
8. Exhibit A to Resolution D
9. Resolution E for Consideration
10. Exhibit A to Resolution E

RESOLUTION 2023-034
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF FORT COLLINS, COLORADO AND THE CITY OF LOVELAND
FOR FLEX ROUTE REGIONAL TRANSIT SERVICES

WHEREAS, since 2016, the City has entered into an intergovernmental agreement (“IGA”) with the City of Loveland (“Loveland”) to provide FLEX Route Regional Transit Service; and

WHEREAS, both the City and Loveland contribute a percentage of funds based on the ridership of each jurisdiction; and

WHEREAS, through the partnership, regional connectivity transit goals are met, and City Council wishes to continue to offer these services; and

WHEREAS, the funds for the City’s expenditure and reimbursement for these transit services were appropriated previously through the Budgeting for Outcomes Process; thus, no appropriation action is required with this item; and

WHEREAS, this Resolution comes before City Council to authorize the attached IGA for FLEX Route Regional Transit Service between the City of Fort Collins and Loveland substantially in the form attached hereto as Exhibit “A” and incorporated herein by this reference (the “IGA”); and

WHEREAS, the attached IGA for FLEX Route Regional Transit Service with the City of Loveland is intended to be effective retroactively on January 1, 2023; and

WHEREAS, the City Council has determined that the IGA is in the best interests of the City and that the City Manager be authorized to execute the IGA between the City and Loveland in support thereof.

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

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

Section 2. That the City Council hereby authorizes the City Manager to execute the IGA in substantially the form attached hereto as Exhibit “A,” together with such modifications and additions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution as set forth above.

Section 3. That during the term of the IGA the City Manager, in consultation with the City Attorney, is authorized to approve and execute amendments to the IGA consistent with this Resolution so long as the City Manager determines such amendments: (a) are reasonably necessary

and appropriate to protect the City’s interests or provide a benefit to the City; (b) effectuate the purposes of this Resolution; and (c) limit the City’s financial obligation to expenditure of funds already appropriated and approved by Council or conditioned upon such appropriation.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

**INTERGOVERNMENTAL AGREEMENT
FOR BUS SERVICE BETWEEN THE CITY OF FORT COLLINS AND
CITY OF LOVELAND**

This Agreement is made this _____ day of _____, 2023 between the **City of Fort Collins, Colorado**, a municipal corporation (hereafter “Fort Collins”), and the **City of Loveland, Colorado**, a municipal corporation (hereafter “Loveland”) (Fort Collins and Loveland collectively may be referred to as the “Parties” or individually, as a “Party”).

RECITALS

WHEREAS, the Parties desire to provide regional connector bus service between Fort Collins and Loveland; and

WHEREAS, Fort Collins has its own fixed-route bus system (hereinafter “Transfort”);

WHEREAS, FLEX is a regional connector bus service operated by Transfort in partnership with Loveland, Berthoud, Longmont, City of Boulder, and Boulder County (hereinafter “Partners”) to provide services to said communities pursuant to separate Intergovernmental Agreements; and

WHEREAS, Transfort is willing and able to extend FLEX services along the U.S. Highway 287 and Highway 119 corridors between Fort Collins and Boulder (hereinafter “FLEX”) with stops in Fort Collins, Loveland, Longmont, and Boulder; and

WHEREAS, Fort Collins intends to execute agreements with the other Partners to address such Partners’ obligations regarding the FLEX bus service; and

WHEREAS, the Parties have determined that significant economic and efficiency benefits result for each Party through the provision of FLEX by Transfort.

NOW, THEREFORE, in consideration of the mutual promises herein and other good and valuable consideration, receipt and adequacy of which is acknowledged, the Parties agree as follows:

AGREEMENT

1. The foregoing recitals are hereby incorporated as though fully set forth herein.
2. Fort Collins shall provide regional connector bus service, FLEX, in accordance with the terms of this Agreement and as specifically identified and described in **Exhibit A**, attached hereto and incorporated herein by this reference, throughout the term of this Agreement. The services identified and described in **Exhibit A** are subject to increase, modification, reduction, and termination pursuant to this **Section 2** and **Section 6** of this Agreement.

- a. Increased service beyond that described in **Exhibit A** may be provided by Fort Collins, at its sole discretion, to the extent Fort Collins determines appropriate given the demand for service and available resources. Prior to providing additional service at Fort Collins' expense, Fort Collins shall provide advance written notice to Loveland. If Fort Collins desires to increase service with contribution from Loveland, Loveland's prior written agreement to such increased service shall be required. If the Parties agree to the increased service, Fort Collins and Loveland will amend **Exhibit A** and **Exhibit B** and the respective cost share associated with the change. If the Partners do not agree to increase contribution and service, then Fort Collins reserves the right to modify the service pursuant to paragraph (b) below to accommodate demand. Any such additional service that exceeds the services described in **Exhibit A** may be reduced or stopped by Fort Collins, at its sole discretion. Prior to reducing or stopping any such additional service, Fort Collins will make reasonable efforts to provide 30 days of advance written notice to the Partners.
 - b. In the event Fort Collins determines that circumstances require modification of FLEX services as described in **Exhibit A** to better accommodate the demand for service or the efficient provision of service, Fort Collins shall be entitled to implement such modification at its sole discretion. Fort Collins will make reasonable efforts to provide 30 days of advance written notice of any such modification to the Partners.
3. This Agreement shall commence on January 1, 2023 and shall continue in full force and effect until December 31, 2023, unless sooner terminated as herein provided.
4. Fort Collins agrees that all services provided under this Agreement shall be consistent with Transfort system operating policies and procedures, as the same may be amended in Fort Collins' sole discretion, and that all such services shall be consistent with the Transfort operation schedule.
5. In consideration of the services provided by Fort Collins under this Agreement, and the mutual financial commitments herein made, Loveland agrees to contribute to the direct and indirect costs of operating FLEX, as supplemented by such additional federal or state grant funds as may be available therefor. The Parties agree to use ridership data to formulate the cost share associated with each Partner. Based on average ridership data from 2019, 2020 and 2021, for each term of this Agreement, Loveland shall pay to Fort Collins the amount of \$383,758, for the year 2023 for its share of direct and indirect costs of operating FLEX subject to any cost share adjustment pursuant to **Section 7** or need for additional service pursuant to **Section 1**. Fort Collins currently maintains and administers Loveland's portion of the Urbanized Area Formula Funding (49 U.S.C. § 5307) grant funds (the "5307 Funds"). Loveland will allow Fort Collins to withhold \$244,351 from its balance of 5307 Funds from the Fiscal Year 2023. Loveland will remain responsible for the remaining amounts owed under this IGA after deduction of the 5307 Funds, in the amount of \$139,407. Fort Collins will invoice Partners in the first quarter of 2023 for the FLEX service provided in 2023. Such payment shall be made within 60 days after receipt of an invoice.
6. Any additional revenues collected by Loveland from the operation of FLEX, shall be remitted to Fort Collins. Such revenue, and any additional revenues collected by Fort Collins from the operation of FLEX, shall be used to supplement FLEX operation expenses and will equally benefit the Parties.

7. The Parties agree to run a ridership analysis on a triennial basis and adjust cost shares according to ridership quantities relative to each Partner. Ridership data will be an average of the previous year of service.
8. The Parties acknowledge and agree that the budget proposal for operation of FLEX for the term of this Agreement includes projected FLEX Fare Revenue and anticipated revenues from bus fares pursuant to **Section 10** (“FLEX Fare Revenue”). If FLEX Revenue and FLEX Fare Revenue for the term of this Agreement is insufficient to meet the budget for operation of FLEX, the Parties may elect to appropriate and pay their pro rata share of any shortage. If either Party does not appropriate and pay its pro rata share of the shortage in FLEX Revenue and FLEX Fare Revenue, Fort Collins in its sole discretion may reduce FLEX services as necessary to reduce operating expenses in an amount sufficient to address such a shortage or terminate FLEX service. Prior to any reduction in service or termination, Fort Collins shall provide advance written notice to the Partners.
9. Fort Collins Transfort buses will utilize existing Regional Transportation District (hereafter “RTD”) stops in Boulder, or as otherwise agreed by the Parties.
10. The basic cash fare to be charged for FLEX shall be One Dollar and Twenty-Five Cents (\$1.25) per ride; however, Fort Collins currently is not charging fares for the Transfort bus system. Notwithstanding, Fort Collins in its sole discretion shall be entitled to modify the fare to be charged as necessary for the efficient and cost-effective operation of FLEX, provided that advance written notice of any such modification is provided to Loveland. All Fort Collins discounted fare categories for Transfort bus service will apply to FLEX. Fort Collins shall collect any fares due from passengers and accurately record and account for such fare receipts and ridership levels. Fort Collins shall prepare quarterly reports of such receipts and ridership levels and shall provide such quarterly reports to Loveland.
11. All Fort Collins and City of Loveland bus pass programs will be accepted as full fare to ride FLEX. Transfers from FLEX to the Transfort or COLT bus systems will be honored. The RTD Eco Pass will be accepted as full fare to ride FLEX, but free transfers from FLEX; however, free transfers from FLEX to RTD will not be honored.
12. Each Party shall designate a representative, who shall be responsible for managing such Party’s performance of the terms of this Agreement and shall provide the other Party with written notice thereof, along with address, telephone, and email information. All notices to be provided under this Agreement shall be provided to such designated representatives and to the parties listed below. Any notice pursuant to this Agreement shall be hand-delivered or sent by certified mail, return receipt requested, and addressed to the designated representative. Any such notice shall be deemed given upon hand-delivery to the designated representative or their address or three (3) days after mailing.

If to Fort Collins:

City of Fort Collins

Transfort & Parking Services Director
City of Fort Collins

Item 22.

250 N. Mason Street
Fort Collins, CO 80522

With a copy to:

City Attorney
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522

If to Loveland:

Public Works Director
City of Loveland
2525 West 1st Street
Loveland, CO 80537

With a copy to:

City Attorney
City of Loveland
500 E. Third Street, Suite 300
Loveland, CO 80537

- 13. The Parties agree to cooperate fully, to a reasonable extent, in the development and implementation of any surveys or studies undertaken by the other Party to evaluate demand, usage, cost, effectiveness, efficiency, or any other factor relating to the success or performance of FLEX or the need for such service. However, such cooperation shall not require the expenditure of funds more than the specific amounts set forth in **Section 5** and **Exhibit B**, unless approved in writing and duly appropriated by the Parties.
- 14. The Parties acknowledge that their obligations under this Agreement are subject to annual appropriation by the governing body of each respective Party and shall not constitute or give rise to a general obligation or other indebtedness of either Party within the meaning of any constitutional or statutory provision or limitation of the State of Colorado nor a mandatory charge or requirement against either Party in any ensuing fiscal year beyond the current fiscal year. If the governing body of either Party shall fail to budget and appropriate funds for its share of expenses as described in this Agreement, then this Agreement shall terminate as of the end of the fiscal year for which such funds were last budgeted and appropriated.
- 15. In the event a Party has been declared in default, such defaulting Party shall be allowed a period of thirty (30) days within which to cure said default. In the event the default remains uncorrected, the Party declaring default may elect to terminate the Agreement and so notify the defaulting Party in writing. Any amounts due to the non-defaulting Party shall be paid within fifteen (15) days of the date of notice of termination is received.

16. Liability of the Parties shall be apportioned as follows:

- a. Fort Collins shall be responsible for all claims, damages, liability and court awards, including costs, expenses, and attorney fees incurred, should Fort Collins be found liable as a result of any action or omission of Fort Collins or its officers, employees, and agents, in connection with the performance of this Agreement.
- b. Loveland shall be responsible for all claims, damages, liability and court awards, including costs, expenses, and attorney fees incurred, should Loveland be found liable as a result of any action or omission of Loveland or its officers, employees, and agents, in connection with the performance of this Agreement.
- c. Nothing in this **Section 16** or any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities, and limitations the Parties may have under the Colorado Governmental Immunity Act (Section 24-10-101, C.R.S. *et seq.*) or any other defenses, immunities, or limitations of liability available to any Party by law.
- d. Any liability of the Parties under this Agreement shall be subject to appropriation of funds by their respective governing bodies sufficient to satisfy such liability as required by their Charter provisions.
- e. No elected official, director, officer, agent or employee of the Parties shall be charged personally or held contractually liable under any term or provision of this Agreement, or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

17. This Agreement embodies the entire agreement of the Parties about the FLEX program. The Parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein.

18. The Parties hereto may not assign this Agreement or parts hereof or its rights hereunder without the express written consent of all of the Parties. Any attempt to assign this Agreement in the absence of such written consent shall be null and void *ab initio*.

19. No changes, amendments or modifications of any of the terms or conditions of this Agreement shall be valid unless reduced to writing and signed by the Parties, except as provided herein.

20. The laws of the State of Colorado shall be applied to the interpretation, execution and enforcement of this Agreement. The Parties recognize the legal constraints imposed upon them by the constitutions, statutes, and regulations of the State of Colorado and the United States, and imposed upon the Parties by their respective charters, municipal codes and other similar documents and, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other

provision in this Agreement to the contrary, in no event shall any party exercise any power or take any action which shall be prohibited by applicable law.

21. Any provision rendered null and void by operation of law shall not invalidate the remainder of this Agreement to the extent that this Agreement is capable of execution.
22. Either Party's failure to enforce any provision of this Agreement shall not in any way be construed as a waiver of any such provision or prevent that Party thereafter from enforcing each and every other provision of this Agreement.
23. This Agreement does not and is not intended to confer any rights or remedies upon any entity or person other than the Parties.
24. This Agreement may be executed in multiple counterparts; all counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart.
25. This Agreement may be executed by electronic signature in accordance with C.R.S. 24-71.3-101 *et seq.* Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

CITY OF FORT COLLINS, COLORADO
a municipal corporation

By: _____
Kelly DiMartino, City Manager

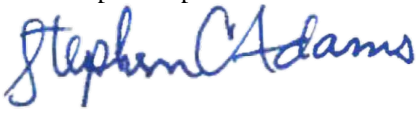
ATTEST:

City Clerk

APPROVED AS TO FORM:

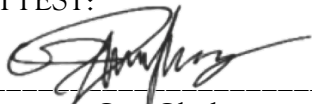
Assistant City Attorney

CITY OF LOVELAND, COLORADO
a municipal corporation

By: 

Stephen C. Adams, City Manager

ATTEST:



Assistant City Clerk

APPROVED AS TO FORM:



Assistant City Attorney



EXHIBIT A

FLEX service will be provided within the following parameters:

- Days of Service: Monday - Friday (between the cities of Fort Collins and Boulder) and Monday - Saturday (between the cities of Fort Collins and Longmont). No service is provided on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.
- Hours of Service: 5AM - 8 PM
- Frequency of Service: 60 Minutes

Service Area Maps:

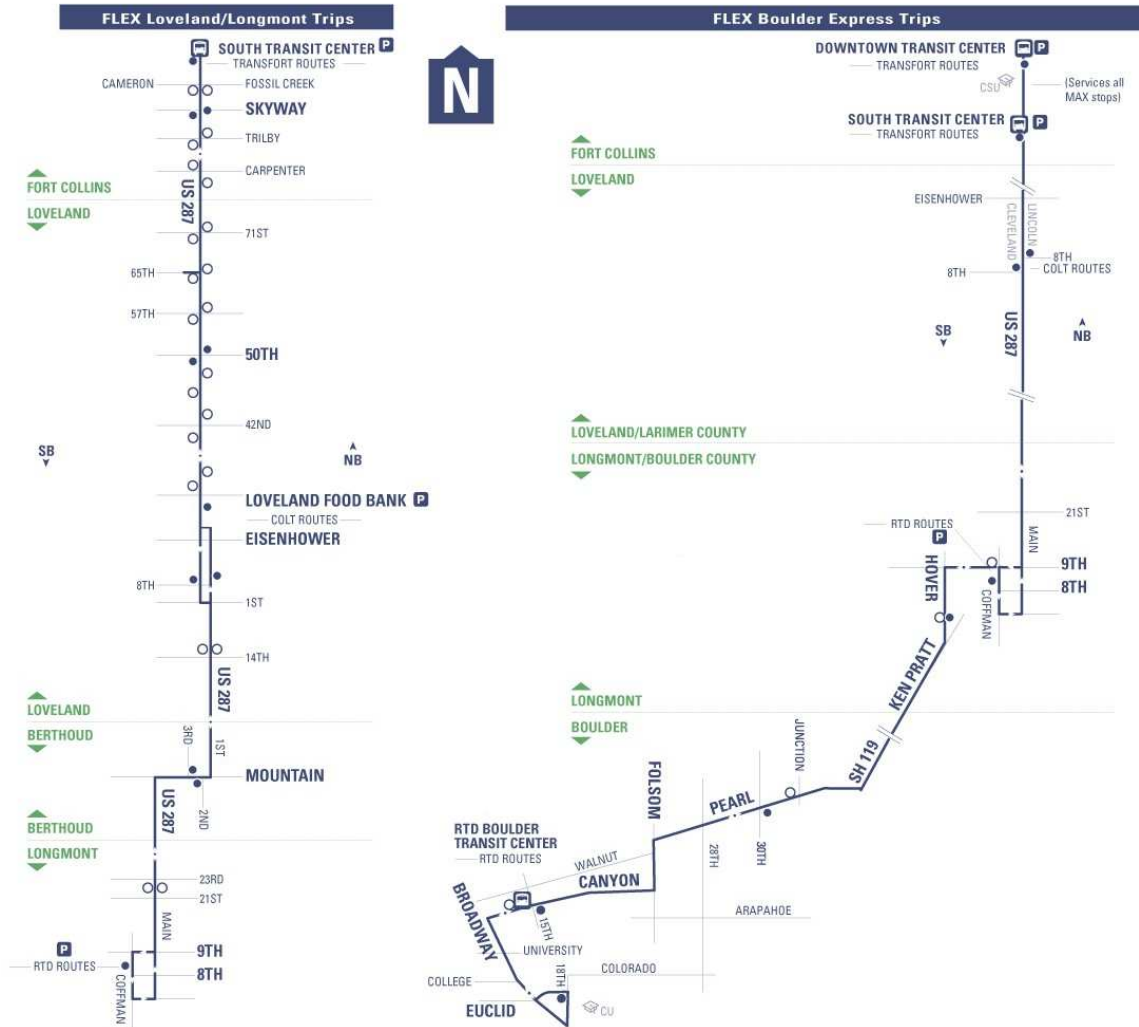


EXHIBIT B

	2021	2022	2023		
Operating Cost	\$ 1,943,371	\$ 2,001,672	\$ 2,161,805.90		
Fares	\$ 40,000	\$ 40,000	N/A		
CMAQ Flex to Boulder Enhancement	\$ 224,655	\$ 218,545	\$ 225,102		
EcoPass Reimbursement	\$ 5,000	\$ 5,000	\$ 5,000		
FASTER Funding	\$ 200,000	\$ 200,000	\$ 200,000		
CSU Contribution	\$ 63,193	\$ 63,193	\$ 63,193		
Remainder to be split among partners	\$ 1,410,523	\$ 1,474,934	\$ 1,668,511		
	% Passenger Activity (2019, 2020, 2021)	Amount Owed	Less 5307 Contribution	Loveland's Additional 5307 Withheld Amount	Loveland's Amount Owed
Fort Collins	45%	\$ 750,830	\$ 521,702.51		
Loveland	23%	\$ 383,758	\$ 278,814	\$ 139,407	\$ 139,407
Longmont	12%	\$ 200,221			
Boulder County	10%	\$ 166,851			
City of Boulder	7%	\$ 116,796			
Berthoud	3%	\$ 50,055	\$ 34,127		
Total		\$ 1,668,511			
5307 Breakdown	% TMA Service Area Population	\$			
Fort Collins	65.47%	\$ 229,128			
Loveland	29.98%	\$ 104,944			
Berthoud	4.55%	\$ 15,929			
*Highlighted = total owed by partner					

RESOLUTION 2023-035
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF FORT COLLINS, COLORADO AND THE TOWN OF
BERTHOUD FOR FLEX ROUTE REGIONAL TRANSIT SERVICES

WHEREAS, since 2016, the City has entered into an intergovernmental agreement (“IGA”) with the Town of Berthoud (“Berthoud”) to provide FLEX Route Regional Transit Service; and

WHEREAS, both the City and Berthoud contribute a percentage of funds based on the ridership of each jurisdiction; and

WHEREAS, through the partnership, regional connectivity transit goals are met, and City Council wishes to continue to offer these services; and

WHEREAS, the funds for the City’s expenditure and reimbursement for these transit services were appropriated previously through the Budgeting for Outcomes Process; thus, no appropriation action is required with this item; and

WHEREAS, this Resolution comes before City Council to authorize the attached IGA for FLEX Route Regional Transit Service between the City of Fort Collins and Berthoud substantially in the form attached hereto as Exhibit “A” and incorporated herein by this reference (the “IGA”); and

WHEREAS, the attached IGA for FLEX Route Regional Transit Service with the Town of Berthoud is intended to be effective retroactively on January 1, 2023; and

WHEREAS, the City Council has determined that the IGA is in the best interests of the City and that the City Manager be authorized to execute the IGA between the City and Berthoud in support thereof.

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

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

Section 2. That the City Council hereby authorizes the City Manager to execute the IGA in substantially the form attached hereto as Exhibit “A,” together with such modifications and additions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution as set forth above.

Section 3. That during the term of the IGA the City Manager, in consultation with the City Attorney, is authorized to approve and execute amendments to the IGA consistent with this Resolution so long as the City Manager determines such amendments: (a) are reasonably necessary

and appropriate to protect the City’s interests or provide a benefit to the City; (b) effectuate the purposes of this Resolution; and (c) limit the City’s financial obligation to expenditure of funds already appropriated and approved by Council or conditioned upon such appropriation.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

**INTERGOVERNMENTAL AGREEMENT
FOR BUS SERVICE BETWEEN THE CITY OF FORT COLLINS AND
THE TOWN OF BERTHOUD**

This Agreement is made this _____ day of _____, 2023, between the **City of Fort Collins, Colorado**, a municipal corporation (hereafter “Fort Collins”), and the **Town of Berthoud**, a public body corporate and politic (hereafter “Berthoud”) (Fort Collins and Berthoud collectively may be referred to as the “Parties” or, individually, as a “Party”).

RECITALS

WHEREAS, the Parties desire to provide regional connector bus service between Fort Collins and Berthoud; and

WHEREAS, Fort Collins has its own fixed-route bus system (hereinafter “Transfort”);

WHEREAS, FLEX is a regional connector bus service operated by Transfort in partnership with Loveland, Berthoud, Longmont, City of Boulder, and Boulder County (hereinafter “Partners”) to provide services to said communities pursuant to separate Intergovernmental Agreements; and

WHEREAS, Transfort is willing and able to extend FLEX services along the U.S. Highway 287 and Highway 119 corridors between Fort Collins and Boulder (hereinafter “FLEX”) with stops in Fort Collins, Loveland, Berthoud, Longmont, and Boulder; and

WHEREAS, the Parties have determined that significant economic and efficiency benefits result for each Party through the provision of FLEX by Transfort.

NOW, THEREFORE, in consideration of the mutual promises herein and other good and valuable consideration, receipt and adequacy of which is acknowledged, the Parties agree as follows:

AGREEMENT

1. The foregoing recitals are hereby incorporated as though fully set forth herein.
2. Fort Collins shall provide connector bus service, FLEX, in accordance with the terms of this Agreement and as specifically identified and described in **Exhibit A**, attached hereto and incorporated herein by this reference, throughout the term of this Agreement. The services identified and described in **Exhibit A** are subject to increase, modification, reduction, termination, and pursuant to this **Section 2** and **Section 4** of this Agreement.
 - a. Increased service beyond that described in **Exhibit A** may be provided by Fort Collins, at its sole discretion, to the extent Fort Collins determines appropriate given the demand for service and available resources. Prior to providing additional service at Fort Collins’ expense, Fort Collins shall provide advance written notice to the Partners. Prior to providing additional service with Partner

contribution, Fort Collins and the Partners will amend Exhibit A and the respective cost share associated with the change. If the Partners and Fort Collins cannot agree to amend Exhibit A for the additional service then any such additional service that exceeds the services described in **Exhibit A** may be reduced or stopped by Fort Collins, at its sole discretion. Prior to reducing or stopping any such additional service, Fort Collins will make reasonable efforts to provide 30 days of advance written notice to the Partners.

b. In the event Fort Collins determines that circumstances require modification of FLEX services as described in **Exhibit A** to better accommodate the demand for service or the efficient provision of service, Fort Collins shall be entitled to implement such modification at its sole discretion. Fort Collins will make reasonable efforts to provide 30 days of advance written notice of any such modification to the Partners.

3. This Agreement shall commence on January 1, 2023 and shall continue in full force and effect until December 31, 2023 unless sooner terminated as herein provided.
4. Fort Collins agrees that all services provided under this Agreement shall be consistent with Transfort system operating policies and procedures, as the same may be amended, from time to time, in Fort Collins' sole discretion, and that all such services shall be consistent with the Transfort operation schedule.
5. In consideration of the services provided by Fort Collins under this Agreement, and the mutual financial commitments herein made, Town of Berthoud agrees to contribute to the direct and indirect costs of operating FLEX, as supplemented by such additional federal or state grant funds as may be available therefor. The Parties agree to use ridership data to formulate the cost share associated with each Partner. Based on average ridership data from 2019, 2020 and 2021, for each term of this Agreement, Berthoud shall pay to Fort Collins the amount of \$50,055 for the year 2023 for its share of direct and indirect costs of operating FLEX subject to any cost share adjustment pursuant to **Section 7** or need for additional service pursuant to Section 1. Fort Collins currently maintains and administers Berthoud's portion of the Urbanized Area Formula Funding (49 U.S.C. § 5307) grant funds (the "5307 Funds"). Berthoud will allow Fort Collins to withhold \$15,929 from its balance of 5307 Funds from the Fiscal Year 2023. Town of Berthoud will remain responsible for the remaining amounts owed under this IGA after deduction of the 5307 Funds, in the amount of \$34,127. Fort Collins will invoice Partners in the first quarter of 2023 for the FLEX service provided in 2023. Such payment shall be made within 60 days after receipt of an invoice.
6. Any additional revenues collected by Berthoud from the operation of FLEX, shall be remitted to Fort Collins. Such revenue, and any additional revenues collected by Fort Collins from the operation of FLEX, shall be used to supplement FLEX operation expenses to equally benefit the Parties.
7. The Parties agree to run a ridership analysis on a triennial basis and adjust cost shares according to ridership quantities relative to each Partner. Ridership data will be an average of the previous year of service.
8. The Parties acknowledge and agree that the budget proposal for operation of FLEX for 2023 (or any subsequent term of this Agreement if extended pursuant to **Section 2**) includes projected FLEX Revenue and anticipated revenues from bus fares pursuant to **Section 10** ("FLEX Fare Revenue"). If FLEX Revenue

and FLEX Fare Revenue for 2023 (or any subsequent term of this Agreement if extended pursuant to Section 2) is insufficient to meet the budget for operation of FLEX, the Parties may elect to appropriate and pay their pro rata share of any shortage. If either Party does not appropriate and pay its pro rata share of the shortage in FLEX Revenue and FLEX Fare Revenue, Fort Collins in its sole discretion may reduce FLEX services as necessary to reduce operating expenses in an amount sufficient to address such a shortage or terminate FLEX service. Prior to any reduction in service or termination, Fort Collins shall provide advance written notice to the Partners.

9. Fort Collins Transfort buses will utilize Regional Transportation District (hereafter "RTD") stops in Boulder, or as otherwise agreed upon by the Parties.
10. The basic cash fare to be charged for FLEX shall be One Dollar and Twenty-Five Cents (\$1.25) per ride; however, Fort Collins currently is not charging fares for the Transfort bus system. Notwithstanding, Fort Collins in its sole discretion shall be entitled to modify the fare to be charged as necessary for the efficient and cost-effective operation of FLEX, provided that advance written notice of any such modification is provided to the Partners. All Fort Collins discounted fare categories for Transfort bus service will apply to FLEX. Fort Collins shall collect any fares due from passengers and accurately record and account for such fare receipts and ridership levels. Fort Collins shall prepare quarterly reports of such receipts and ridership levels and shall provide such quarterly reports to the Partners.
11. All Fort Collins and City of Loveland bus pass programs will be accepted as full fare to ride FLEX. Transfers from FLEX to the Transfort or COLT bus systems will be honored. RTD Eco Pass will be accepted as full fare to ride FLEX; however, free transfers from FLEX to RTD will not be honored.
12. Each Party shall designate a representative, who shall be responsible for managing such Party's performance of the terms of this Agreement and shall provide the other Party with written notice thereof, along with address, telephone, and email information. All notices to be provided under this Agreement shall be provided to such designated representatives. Any notice pursuant to this Agreement shall be hand-delivered or sent by certified mail, return receipt requested, and addressed to the designated representative. Any such notice shall be deemed given upon hand-delivery to the designated representative or their address, or three (3) days after mailing.

If to Fort Collins:

City of Fort Collins

Transfort & Parking Services Director
 City of Fort Collins
 250 N. Mason Street
 Fort Collins, CO 80522

With a copy to:

City Attorney
 City of Fort Collins
 P.O. Box 580
 Fort Collins, CO 80522

If to Berthoud:

Town of Berthoud
 BATS Supervisor
 807 Mountain Ave
 Berthoud, CO 80513

13. The Parties agree to cooperate fully, to a reasonable extent, in the development and implementation of any surveys or studies undertaken by the other Party to evaluate demand, usage, cost, effectiveness, efficiency, or any other factor relating to the success or performance of FLEX or the need for such service. Such cooperation shall not require the expenditure of funds more than the specific amounts set forth in **Section 5** and **Exhibit B**, however, unless approved in writing and duly appropriated by the Parties.
14. The Parties acknowledge that their obligations under this Agreement are subject to annual appropriation by the governing body of each respective Party and shall not constitute or give rise to a general obligation or other indebtedness of either Party within the meaning of any constitutional or statutory provision or limitation of the State of Colorado, nor a mandatory charge or requirement against either Party in any ensuing fiscal year beyond the current fiscal year. If the governing body of either Party shall fail to budget and appropriate funds for its share of expenses as described in this Agreement, then this Agreement shall terminate as of the end of the fiscal year for which such funds were last budgeted and appropriated.
15. In the event a Party has been declared in default, such defaulting Party shall be allowed notice thereof from the Party declaring default and a period of thirty (30) days within which to cure said default. In the event the default remains uncorrected, the Party declaring default may elect to terminate the Agreement and so notify the defaulting Party in writing. Any amounts due to the non-defaulting Party shall be paid within fifteen (15) days of the date of notice of termination is received.
16. Liability of the Parties shall be apportioned as follows:
 - a. Fort Collins shall be responsible for all claims, damages, liability and court awards, including costs, expenses, and attorney fees incurred, should Fort Collins be found liable as a result of any action or omission of Fort Collins or its officers, employees, and agents, in connection with the performance of this Agreement.
 - b. Berthoud shall be responsible for all claims, damages, liability and court awards, including costs, expenses, and attorney fees incurred, should Berthoud be found liable as a result of any action or omission of Berthoud or its officers, employees, and agents, in connection with the performance of this Agreement.

- c. Nothing in this **Section 16** or any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities, and limitations the Parties may have under the Colorado Governmental Immunity Act (Section 24-10-101, *et seq.*, C.R.S.) or any other defenses, immunities, or limitations of liability available to any Party by law.
 - d. Any liability of the Parties under this Agreement shall be subject to appropriation of funds by their respective governing bodies.
 - e. No elected official, director, officer, agent or employee of the Parties shall be charged personally or held contractually liable under any term or provision of this Agreement, or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.
17. This Agreement embodies the entire agreement of the Parties about the FLEX program. The Parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein.
18. The Parties hereto may not assign this Agreement or parts hereof or its rights hereunder without the express written consent of all of the Parties. Any attempt to assign this Agreement in the absence of such written consent shall be null and void *ab initio*.
19. No changes, amendments or modifications of any of the terms or conditions of this Agreement shall be valid unless reduced to writing and signed by the Parties, except as provided herein.
20. The laws of the State of Colorado shall be applied to the interpretation, execution and enforcement of this Agreement. The Parties recognize the legal constraints imposed upon them by the constitutions, statutes, and regulations of the State of Colorado and the United States, and imposed upon the Parties by their respective charters, municipal codes and other similar documents and, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision in this Agreement to the contrary, in no event shall any party exercise any power or take any action which shall be prohibited by applicable law.
21. Any provision rendered null and void by operation of law shall not invalidate the remainder of this Agreement to the extent that this Agreement is capable of execution.
22. Either Party's failure to enforce any provision of this Agreement shall not in any way be construed as a waiver of any such provision or prevent that Party thereafter from enforcing each and every other provision of this Agreement.
23. This Agreement does not and is not intended to confer any rights or remedies upon any entity or person other than the Parties.

24. This Agreement may be executed in multiple counterparts; all counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart.
25. This Agreement may be executed by electronic signature in accordance with C.R.S. § 24-71.3-101, et seq. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures

27. IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

CITY OF FORT COLLINS, COLORADO
a municipal corporation

By: _____
Kelly DiMartino, City Manager

ATTEST:

City Clerk

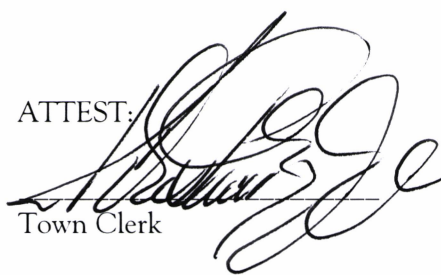
APPROVED AS TO FORM:

Assistant City Attorney

TOWN OF BERTHOUD, COLORADO

By: 
Town Administrator

ATTEST:


Town Clerk

APPROVED AS TO FORM:



Town Attorney



EXHIBIT A

FLEX service will be provided within the following parameters:

- Days of Service: Monday – Friday (between the cities of Fort Collins and Boulder) and Monday
- Saturday (between the cities of Fort Collins and Longmont). No service is provided on New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.
- Hours of Service: 5AM – 8 PM
- Frequency of Service: 60 Minutes

Service Area Maps:

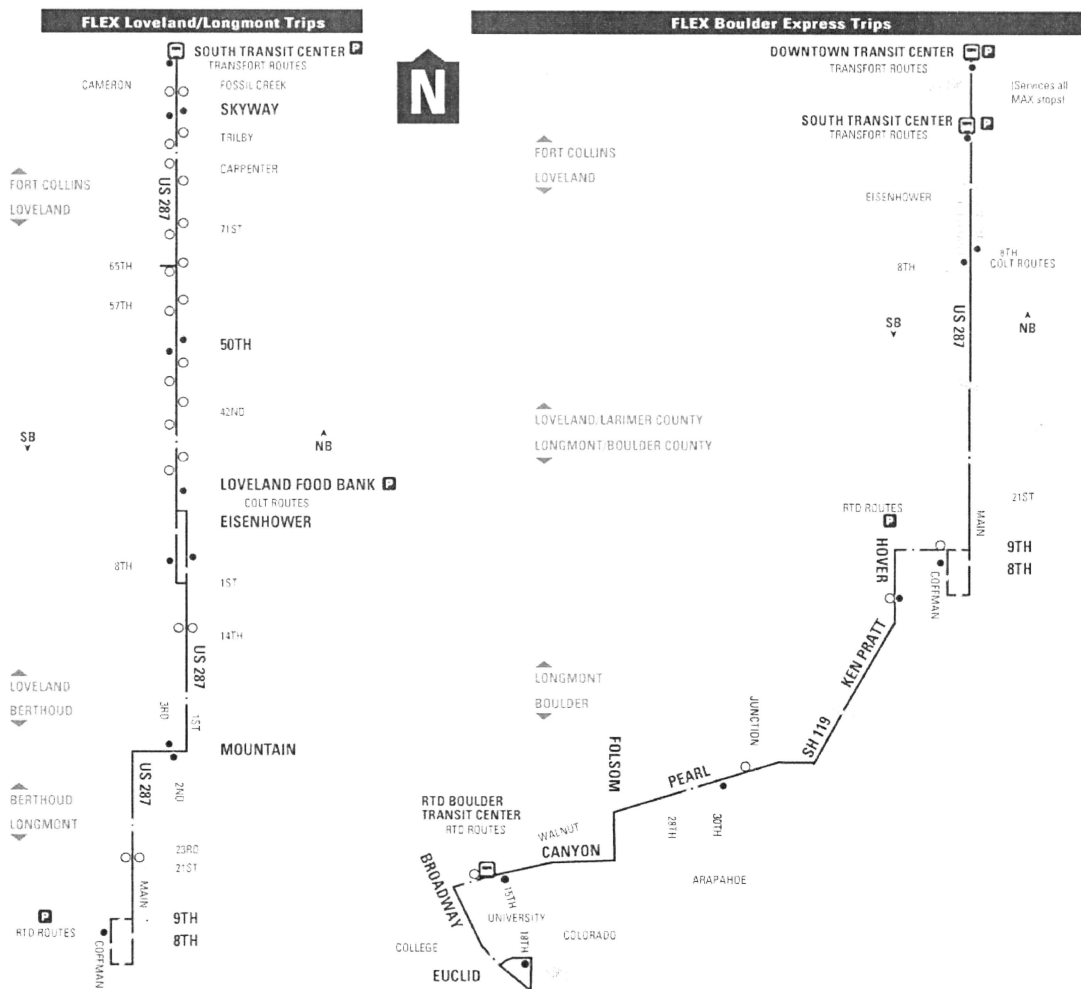


EXHIBIT B

	2021	2022	2023		
Operating Cost	\$ 1,943,371	\$ 2,001,672	\$ 2,161,805.90		
Fares	\$ 40,000	\$ 40,000	N/A		
CMAQ Flex to Boulder Enhancement	\$ 224,655	\$ 218,545	\$ 225,102		
EcoPass Reimbursement	\$ 5,000	\$ 5,000	\$ 5,000		
FASTER Funding	\$ 200,000	\$ 200,000	\$ 200,000		
CSU Contribution	\$ 63,193	\$ 63,193	\$ 63,193		
Remainder to be split among partners	\$ 1,410,523	\$ 1,474,934	\$ 1,668,511		

	% Passenger Activity (2019, 2020, 2021)	Amount Owed	Less 5307 Contribution	Loveland's Additional 5307 Withheld Amount	Loveland's Amount Owed
Fort Collins	45%	\$ 750,830	\$ 521,702.51		
Loveland	23%	\$ 383,758	\$ 278,814	\$ 139,407	\$ 139,407
Longmont	12%	\$ 200,221			
Boulder County	10%	\$ 166,851			
City of Boulder	7%	\$ 116,796			
Berthoud	3%	\$ 50,055	\$ 34,127		
Total		\$ 1,668,511			

5307 Breakdown	% TMA Service Area Population	Amount Owed
Fort Collins	65.47%	\$ 229,128
Loveland	29.98%	\$ 104,944
Berthoud	4.55%	\$ 15,929

*Highlighted = total owed by partner

RESOLUTION 2023-036
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF FORT COLLINS, COLORADO AND THE COUNTY OF
BOULDER FOR FLEX ROUTE REGIONAL TRANSIT SERVICES

WHEREAS, since 2016, the City has entered into an intergovernmental agreement (“IGA”) with the County of Boulder (“Boulder County”) to provide FLEX Route Regional Transit Service; and

WHEREAS, both the City and Boulder County contribute a percentage of funds based on the ridership of each jurisdiction; and

WHEREAS, through the partnership, regional connectivity transit goals are met, and City Council wishes to continue to offer these services; and

WHEREAS, the funds for the City’s expenditure and reimbursement for these transit services were appropriated previously through the Budgeting for Outcomes Process; thus, no appropriation action is required with this item; and

WHEREAS, this Resolution comes before City Council to authorize the attached IGA for FLEX Route Regional Transit Service between the City of Fort Collins and Boulder County substantially in the form attached hereto as Exhibit “A” and incorporated herein by this reference (the “IGA”); and

WHEREAS, the attached IGA for FLEX Route Regional Transit Service with the County of Boulder is intended to be effective retroactively on January 1, 2023; and

WHEREAS, the City Council has determined that the IGA is in the best interests of the City and that the City Manager be authorized to execute the IGA between the City and Boulder County in support thereof.

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

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

Section 2. That the City Council hereby authorizes the City Manager to execute the IGA in substantially the form attached hereto as Exhibit “A,” together with such modifications and additions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution as set forth above.

Section 3. That during the term of the IGA the City Manager, in consultation with the City Attorney, is authorized to approve and execute amendments to the IGA consistent with this

Resolution so long as the City Manager determines such amendments: (a) are reasonably necessary and appropriate to protect the City’s interests or provide a benefit to the City; (b) effectuate the purposes of this Resolution; and (c) limit the City’s financial obligation to expenditure of funds already appropriated and approved by Council or conditioned upon such appropriation.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

**INTERGOVERNMENTAL AGREEMENT
FOR BUS SERVICE BETWEEN THE CITY OF FORT COLLINS AND
BOULDER COUNTY**

This Agreement is made this ____ day of _____, 2023 between the City of Fort Collins, Colorado, a municipal corporation (hereinafter “Fort Collins”), and the Board of County Commissioners on behalf of the County of Boulder, State of Colorado, a public body corporate and politic, for the benefit of the Community Planning & Permitting Department (hereinafter “Boulder County”) (Fort Collins and Boulder County collectively may be referred to as the “Parties” or individually, as a “Party”).

RECITALS

WHEREAS, the Parties desire to provide regional connector bus service between Fort Collins and Boulder County; and

WHEREAS, Fort Collins has its own fixed-route bus system (hereinafter “Transfort”);

WHEREAS, FLEX is a regional connector bus service operated by Transfort (hereinafter “FLEX”) in partnership with Loveland, Berthoud, Longmont, City of Boulder, and Boulder County (hereinafter “Partners”) to provide services to said communities pursuant to separate Intergovernmental Agreements; and

WHEREAS, Transfort is willing and able to extend FLEX services along the U.S. Highway 287 and Highway 119 corridors between Fort Collins and Boulder (hereinafter “FLEX”) with stops in Fort Collins, Loveland, Longmont, and Boulder; and

WHEREAS, the Parties have determined that significant economic and efficiency benefits result for each Party through the provision of FLEX by Transfort.

NOW, THEREFORE, in consideration of the mutual promises herein and other good and valuable consideration, receipt and adequacy of which is acknowledged, the Parties agree as follows:

AGREEMENT

1. The foregoing recitals are hereby incorporated as though fully set forth herein.
2. Fort Collins shall provide connector bus service, FLEX, in accordance with the terms of this Agreement and as specifically identified and described in **Exhibit A**, attached hereto and incorporated herein by this reference, throughout the term of this Agreement. The services identified and described in **Exhibit A** are subject to increase, modification, reduction, and termination pursuant to this **Section 2** and **Section 15** of this Agreement.
 - a. Increased service beyond that described in **Exhibit A** may be provided by Fort Collins, at its sole discretion, to the extent Fort Collins determines appropriate given the demand for service and available resources. Prior to providing additional service at Fort Collins’ expense, Fort Collins shall

provide advance written notice to the Partners. Prior to providing additional service with Partner contribution, Fort Collins and the Partners will amend **Exhibit A** and the respective cost share associated with the change. If the Partners and Fort Collins cannot agree to amend **Exhibit A** for the additional service then any such additional service that exceeds the services described in **Exhibit A** may be reduced or stopped by Fort Collins, at its sole discretion. Prior to reducing or stopping any such additional service, Fort Collins will make reasonable efforts to provide 30 days of advance written notice to the Partners.

- b. In the event Fort Collins determines that circumstances require modification of FLEX services as described in **Exhibit A** to better accommodate the demand for service or the efficient provision of service, Fort Collins shall be entitled to implement such modification at its sole discretion. Fort Collins will make reasonable efforts to provide 30 days of advance written notice of any such modification to the Partners.
3. This Agreement shall commence on January 1, 2023 and shall continue in full force and effect until December 31, 2023, unless extended or sooner terminated as herein provided.
 4. Fort Collins agrees that all services provided under this Agreement shall be consistent with Transfort system operating policies and procedures, as the same may be amended, from time to time, in Fort Collins' sole discretion, and that all such services shall be consistent with the Transfort operation schedule.
 5. In consideration of the services provided by Fort Collins under this Agreement, and the mutual financial commitments herein made, Boulder County agrees to contribute to the direct and indirect costs of operating FLEX, as supplemented by such additional federal or state grant funds as may be available therefor. The Parties agree to use ridership data to formulate the cost share associated with each Partner. Based on average ridership data from 2019, 2020 and 2021 for each term of this Agreement, Boulder County shall pay to Fort Collins the amount \$166,851 for the year 2023 for its share of direct and indirect costs of operating FLEX subject to any cost share adjustment pursuant to **Section 7** or need for additional service pursuant to **Section 1**. Fort Collins will invoice Partners in the first quarter of 2023 for the FLEX service provided in 2023. Such payment shall be made within 60 days after receipt of an invoice.
 6. Any additional revenues collected by Boulder County from the operation of FLEX, shall be remitted to Fort Collins. Such revenue, and any additional revenues collected by Fort Collins from the operation of FLEX, shall be used to supplement FLEX operation expenses to equally benefit the Parties.
 7. The Parties agree to run a ridership analysis on a triennial basis and adjust cost shares according to ridership quantities relative to each Partner. Ridership data will be an average of the previous year of service.
 8. The Parties acknowledge and agree that the budget proposal for operation of FLEX for 2023 (or any subsequent term of this Agreement if extended pursuant to **Section 2**) includes projected FLEX Revenue and anticipated revenues from bus fares pursuant to **Section 10** ("FLEX Fare Revenue"). If FLEX Revenue and FLEX Fare Revenue for 2023 (or any subsequent term of this Agreement if extended pursuant to **Section 2**) is insufficient to meet the budget for operation of FLEX, the Parties may elect to appropriate

and pay their pro rata share of any shortage. If either Party does not appropriate and pay its pro rata share of the shortage in FLEX Revenue and FLEX Fare Revenue, Fort Collins in its sole discretion may reduce FLEX services as necessary to reduce operating expenses in an amount sufficient to address such a shortage or terminate FLEX service. Prior to any reduction in service or termination, Fort Collins shall provide advance written notice to the Partners.

- 9. Fort Collins Transfort buses will utilize Regional Transportation District (hereinafter "RTD") stops in Boulder, or as otherwise agreed upon by the Parties.
- 10. The basic cash fare to be charged for FLEX shall be One Dollar and Twenty-Five Cents (\$1.25) per ride; however, Fort Collins currently is not charging fares for the Transfort bus system. Notwithstanding, Fort Collins in its sole discretion shall be entitled to modify the fare to be charged as necessary for the efficient and cost-effective operation of FLEX, provided that advance written notice of any such modification is provided to the Partners. All Fort Collins discounted fare categories for Transfort bus service will apply to FLEX. Fort Collins shall collect any fares due from passengers and accurately record and account for such fare receipts and ridership levels. Fort Collins shall prepare quarterly reports of such receipts and ridership levels and shall provide such quarterly reports to the Partners.
- 11. All Fort Collins and City of Loveland bus pass programs will be accepted as full fare to ride FLEX. Transfers from FLEX to the Transfort or COLT bus systems will be honored. RTD Eco Pass will be accepted as full fare to ride FLEX, but free transfers from FLEX to RTD will not be honored.
- 12. Boulder County will reimburse Fort Collins for all Eco Pass boardings on the FLEX route. Patrons using an Eco Pass must show the Eco Pass with the patron's photo to the FLEX operators. FLEX operators should make a reasonable attempt to confirm that the photo on the Eco Pass is the patron's photo. FLEX operators will count each boarding made by Eco Pass via the farebox keypad or some other method. Boulder County will pay Fort Collins \$1.25 for each Eco Pass boarding. Fort Collins will invoice Boulder County not more often than quarterly for the Eco Pass boardings.
- 13. Each Party shall designate a representative, who shall be responsible for managing such Party's performance of the terms of this Agreement and shall provide the other Party with written notice thereof, along with address, telephone, and email information. All notices to be provided under this Agreement shall be provided to such designated representatives. Any notice pursuant to this Agreement shall be hand-delivered or sent by certified mail, return receipt requested, and addressed to the designated representative. Any such notice shall be deemed given upon hand-delivery to the designated representative or their address or three (3) days after mailing.

If to Fort Collins:

City of Fort Collins

Transfort & Parking Services Director
 City of Fort Collins
 250 N. Mason Street

Fort Collins, CO 80522

With a copy to:

City Attorney
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522

If to Boulder County:

Dale Case, Director- Community Planning & Permitting
PO Box 471
Boulder, CO 80306

14. The Parties agree to cooperate fully, to a reasonable extent, in the development and implementation of any surveys or studies undertaken by the other Party to evaluate demand, usage, cost, effectiveness, efficiency, or any other factor relating to the success or performance of FLEX or the need for such service. Such cooperation shall not require the expenditure of funds more than the specific amounts set forth in Section 5 and Exhibit B, however, unless approved in writing and appropriated by the Parties.
15. The Parties acknowledge that their obligations under this Agreement are subject to annual appropriation by the governing body of each respective Party and shall not constitute or give rise to a general obligation or other indebtedness of either Party within the meaning of any constitutional or statutory provision or limitation of the State of Colorado nor a mandatory charge or requirement against either Party in any ensuing fiscal year beyond the current fiscal year. If the governing body of either Party shall fail to budget and appropriate funds for its share of expenses as described in this Agreement, then this Agreement shall terminate as of the end of the fiscal year for which such funds were last budgeted and appropriated.
16. In the event a Party has been declared in default, such defaulting Party shall be allowed notice thereof from the Party declaring default and a period of thirty (30) days within which to cure said default. In the event the default remains uncorrected, the Party declaring default may elect to terminate the Agreement and so notify the defaulting Party in writing. Any amounts due to the non-defaulting Party shall be paid within fifteen (15) days of the date of notice of termination is received.
17. Liability of the Parties shall be apportioned as follows:
 - a. Fort Collins shall be responsible for all claims, damages, liability and court awards, including costs, expenses, and attorney fees incurred, should Fort Collins be found liable as a result of any action or omission of Fort Collins or its officers, employees, and agents, in connection with the performance of this Agreement.

- b. Boulder County shall be responsible for all claims, damages, liability and court awards, including costs, expenses, and attorney fees incurred, should Boulder County be found liable as a result of any action or omission of Boulder County or its officers, employees, and agents, in connection with the performance of this Agreement.
 - c. Nothing in this Section 17 or any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities, and limitations the Parties may have under the Colorado Governmental Immunity Act (Sections 24-10-101, C.R.S. *et seq.*) or any other defenses, immunities, or limitations of liability available to any Party by law.
 - d. Any liability of the Parties under this Agreement shall be subject to appropriation of funds by their respective governing bodies sufficient to satisfy such liability as required by their Charter provisions.
 - e. No elected official, director, officer, agent or employee of the Parties shall be charged personally or held contractually liable under any term or provision of this Agreement, or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.
18. This Agreement embodies the entire agreement of the Parties about the FLEX program. The Parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein.
19. The Parties hereto may not assign this Agreement or parts hereof or its rights hereunder without the express written consent of all of the Parties. Any attempt to assign this Agreement in the absence of such written consent shall be null and void *ab initio*.
20. No changes, amendments or modifications of any of the terms or conditions of this Agreement shall be valid unless reduced to writing and signed by the Parties, except as provided herein.
21. The laws of the State of Colorado shall be applied to the interpretation, execution and enforcement of this Agreement. The Parties recognize the legal constraints imposed upon them by the constitutions, statutes, and regulations of the State of Colorado and the United States, and imposed upon the Parties by their respective charters, municipal codes and other similar documents and, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision in this Agreement to the contrary, in no event shall any party exercise any power or take any action which shall be prohibited by applicable law.
22. Any provision rendered null and void by operation of law shall not invalidate the remainder of this Agreement to the extent that this Agreement is capable of execution.

23. Either Party's failure to enforce any provision of this Agreement shall not in any way be construed as a waiver of any such provision or prevent that Party thereafter from enforcing each and every other provision of this Agreement.
24. This Agreement does not and is not intended to confer any rights or remedies upon any entity or person other than the Parties.
25. This Agreement may be executed in multiple counterparts; all counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart.
26. This Agreement may be executed by electronic signature in accordance with C.R.S. § 24-71.3-101, et seq. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.
27. Each Party is a "public entity" under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended, and shall always during the terms of this Agreement maintain such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. This insurance shall have minimum limits, which shall match or exceed the maximum governmental liability limits set forth in C.R.S. § 24-10-114, as amended.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

CITY OF FORT COLLINS, COLORADO
a municipal corporation

By: _____
Kelly DiMartino, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

THE COUNTY OF BOULDER,
a body corporate and politic

By: *Jana Petersen*

Jana Petersen, County Administrator

EXHIBIT A

FLEX service will be provided within the following parameters:

- Days of Service: Monday - Friday (between the cities of Fort Collins and Boulder) and Monday through Saturday (between the cities of Fort Collins and Longmont). No service is provided on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.
- Hours of Service: 5AM - 8 PM
- Frequency of Service: 60 Minutes

Service Area Maps:

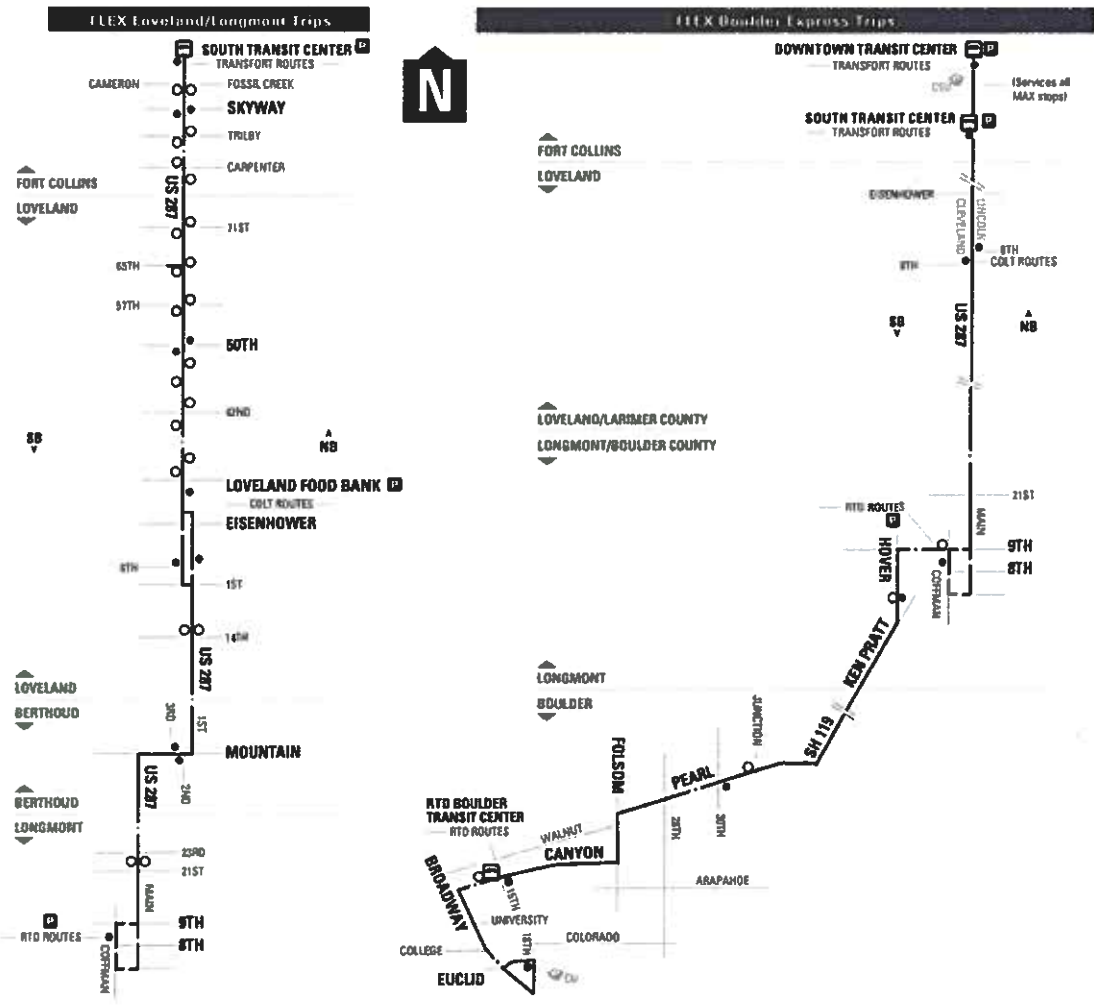


EXHIBIT B

	2021	2022	2023		
Operating Cost	\$ 1,943,371	\$ 2,001,672	\$ 2,161,805.90		
Fares	\$ 40,000	\$ 40,000	N/A		
CMAQ Flex to Boulder Enhancement	\$ 224,655	\$ 218,545	\$ 225,102		
EcoPass Reimbursement	\$ 5,000	\$ 5,000	\$ 5,000		
FASTER Funding	\$ 200,000	\$ 200,000	\$ 200,000		
CSU Contribution	\$ 63,193	\$ 63,193	\$ 63,193		
Remainder to be split among partners	\$ 1,410,523	\$ 1,474,934	\$ 1,668,511		
	% Passenger Activity (2019, 2020, 2021)	Amount Owed	Less 5307 Contribution	Loveland's Additional 5307 Withheld Amount	Loveland's Amount Owed
Fort Collins	45%	\$ 750,830	\$ 521,702.51		
Loveland	23%	\$ 383,758	\$ 278,814	\$ 139,407	\$ 139,407
Longmont	12%	\$ 200,221			
Boulder County	10%	\$ 166,851			
City of Boulder	7%	\$ 116,796			
Berthoud	3%	\$ 50,055	\$ 34,127		
Total		\$ 1,668,511			
5307 Breakdown	% TMA Service Area Population	\$ 350,000			
Fort Collins	65.47%	\$ 229,128			
Loveland	29.98%	\$ 104,944			
Berthoud	4.55%	\$ 15,929			
*Highlighted = total owed by partner					

RESOLUTION 2023-037
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF FORT COLLINS, COLORADO AND THE CITY OF BOULDER
FOR FLEX ROUTE REGIONAL TRANSIT SERVICES

WHEREAS, since 2016, the City has entered into an intergovernmental agreement (“IGA”) with the City of Boulder (“Boulder”) to provide FLEX Route Regional Transit Service; and

WHEREAS, both the City and Boulder contribute a percentage of funds based on the ridership of each jurisdiction; and

WHEREAS, through the partnership, regional connectivity transit goals are met, and City Council wishes to continue to offer these services; and

WHEREAS, the funds for the City’s expenditure and reimbursement for these transit services were appropriated previously through the Budgeting for Outcomes Process; thus, no appropriation action is required with this item; and

WHEREAS, this Resolution comes before City Council to authorize the attached IGA for FLEX Route Regional Transit Service between the City of Fort Collins and Boulder substantially in the form attached hereto as Exhibit “A” and incorporated herein by this reference (the “IGA”); and

WHEREAS, the attached IGA for FLEX Route Regional Transit Service with the City of Boulder is intended to be effective retroactively on January 1, 2023; and

WHEREAS, the City Council has determined that the IGA is in the best interests of the City and that the City Manager be authorized to execute the IGA between the City and Boulder in support thereof.

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

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

Section 2. That the City Council hereby authorizes the City Manager to execute the IGA in substantially the form attached hereto as Exhibit “A,” together with such modifications and additions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution as set forth above.

Section 3. That during the term of the IGA the City Manager, in consultation with the City Attorney, is authorized to approve and execute amendments to the IGA consistent with this Resolution so long as the City Manager determines such amendments: (a) are reasonably necessary

and appropriate to protect the City’s interests or provide a benefit to the City; (b) effectuate the purposes of this Resolution; and (c) limit the City’s financial obligation to expenditure of funds already appropriated and approved by Council or conditioned upon such appropriation.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Item 22.



STANDARD

Contract Routing Cover Sheet

Please print and attach to your document

You can view the status of your contract using the [Contract Tracking Status Page](#).

Routing Number	20230209-0028		
Originating Dept	PW - Transportation & Mobility		
Contact Person	Michael Parrish	Phone Number	303-441-4257
Project Manager / Contract Administrator	Sydney Schieffer	E-mail	schieffers@bouldercolorado.gov
Counter Parties	City of Fort Collins		
Contract Title / Type	IGA for Bus Service between the City of Fort Collins and City of Boulder		
Number			
Description	Annual IGA between City of Fort Collins and City of Boulder for 2023 cost share of FLEX regional bus service operated by City of Fort Collins/Transfort between Fort Collins and Boulder.		
Special Instructions	Contract requires City of Boulder to sign first. Please return signed copy to Sydney Schieffer (schieffers@bouldercolorado.gov) to provide to Ft. Collins. Fully executed agr. Will be returned to CR.		
Amount	116,796	Expense Type	OUTGOING

✓ Dept. Head Signature *N. Schieffer*

NOTE; Originating Department: Identify with a check mark all areas document needs to be routed.

- Purchasing _____
- Budget _____
- Sales Tax _____
- ✓ CAO itm 02/21/2023
- ✓ City Manager _____
- Central Records _____

**INTERGOVERNMENTAL AGREEMENT
FOR BUS SERVICE BETWEEN THE CITY OF FORT COLLINS AND
CITY OF BOULDER**

This Agreement is made this _____ day of _____, 20___, between the **City of Fort Collins, Colorado**, a home rule municipal corporation (hereafter “Fort Collins”), and the **City of Boulder**, a home rule city (hereinafter “Boulder”) (Fort Collins and Boulder collectively may be referred to as the “Parties” or, individually, as a “Party”).

RECITALS

WHEREAS, the Parties desire to provide regional connector bus service between Fort Collins and Boulder; and

WHEREAS, Fort Collins has its own fixed-route bus system (hereinafter “Transfort”);

WHEREAS, FLEX is a regional connector bus service operated by Transfort in partnership with Loveland, Berthoud, Longmont, City of Boulder, and Boulder County (hereinafter “Partners”) to provide services to said communities pursuant to separate Intergovernmental Agreements; and

WHEREAS, Transfort is willing and able to extend FLEX services along the U.S. Highway 287 and Highway 119 corridors between Fort Collins and Boulder (hereinafter “FLEX”) with stops in Fort Collins, Loveland, Berthoud, Longmont, and Boulder; and

WHEREAS, the Parties have determined that significant economic and efficiency benefits result for each Party through the provision of FLEX by Transfort.

NOW, THEREFORE, in consideration of the mutual promises herein and other good and valuable consideration, receipt and adequacy of which is acknowledged, the Parties agree as follows:

AGREEMENT

1. The foregoing recitals are hereby incorporated as though fully set forth herein.
2. Fort Collins shall provide connector bus service, FLEX, in accordance with the terms of this Agreement and as specifically identified and described in **Exhibit A**, attached hereto and incorporated herein by this reference, throughout the term of this Agreement. The services identified and described in **Exhibit A** are subject to increase, modification, reduction, and termination, pursuant to this **Section 2** and **Section 14** of this Agreement.
 - a. Increased service beyond that described in **Exhibit A** may be provided by Fort Collins, at its sole discretion, to the extent Fort Collins determines appropriate given the demand for service and available resources. Prior to providing additional service at Fort Collins’ expense, Fort Collins shall provide advance written notice to the Partners. Prior to providing additional service with Partner contribution, Fort Collins and the Partners will amend Exhibit A and the respective cost share

associated with the change if the Partners all agree to such additional service and respective cost share. If the Partners and Fort Collins cannot agree to amend Exhibit A for the additional service then any such additional service that exceeds the services described in **Exhibit A** may be reduced or stopped by Fort Collins, at its sole discretion. Prior to reducing or stopping any such additional service, Fort Collins will make reasonable efforts to provide 30 days of advance written notice to the Partners.

- b. In the event Fort Collins determines that circumstances require modification of FLEX services as described in **Exhibit A** to better accommodate the demand for service or the efficient provision of service, Fort Collins shall be entitled to implement such modification at its sole discretion. Fort Collins will make reasonable efforts to provide 30 days of advance written notice of any such modification to the Partners.
3. This Agreement shall commence on January 1, 2023, and shall continue in full force and effect until December 31, 2023, unless sooner terminated as herein provided.
4. Fort Collins agrees that all services provided under this Agreement shall be consistent with Transfort system operating policies and procedures, as the same may be amended, from time to time, in Fort Collins' sole discretion, and that all such services shall be consistent with the Transfort operation schedule.
5. In consideration of the services provided by Fort Collins under this Agreement, and the mutual financial commitments herein made, Boulder agrees to contribute to the direct and indirect costs of operating FLEX, as supplemented by such additional federal or state grant funds as may be available therefor. The Parties agree to use ridership data to formulate the cost share associated with each Partner. Based on average ridership data from 2019, 2020, and 2021 for each term of this Agreement, Boulder shall pay to Fort Collins the amount of \$116,796 for the year 2023 as its share of direct and indirect costs of operating FLEX subject to **Section 7**. Fort Collins will invoice Partners in the first quarter of 2023 for the FLEX service provided in 2023 and the first quarter of each subsequent year. Such payment shall be made within 60 days after receipt of an invoice.
6. Any additional revenues collected by Boulder from the operation of FLEX, shall be remitted to Fort Collins. Such revenue, and any additional revenues collected by Fort Collins from the operation of FLEX, shall be used to supplement FLEX operation expenses to equally benefit the Parties.
7. The Parties agree to run a ridership analysis on a triennial basis and adjust cost shares according to ridership quantities relative to each Partner. Ridership data will be an average of the previous year of service.
8. The Parties acknowledge and agree that the budget proposal for operation of FLEX for 2023 includes projected FLEX Revenue and anticipated revenues from bus fares pursuant to **Section 10** ("FLEX Fare Revenue"). If FLEX Revenue and FLEX Fare Revenue for 2023 is insufficient to meet the budget for operation of FLEX, the Parties may elect to appropriate and pay their pro rata share of any shortage. If either Party does not appropriate and pay its pro rata share of the shortage in FLEX Revenue and FLEX Fare Revenue, Fort Collins in its sole discretion may reduce FLEX services as necessary to reduce operating

expenses in an amount sufficient to address such a shortage or terminate FLEX service. Prior to any reduction in service or termination, Fort Collins shall provide advance written notice to the Partners.

9. Fort Collins Transfort buses will utilize existing Regional Transportation District (hereinafter "RTD") stops in Boulder, or as otherwise agreed upon by the Parties.
10. The basic cash fare to be charged for FLEX shall be One Dollar and Twenty-Five Cents (\$1.25) per ride; however, Fort Collins currently is not charging fares for the Transfort bus system. Notwithstanding, Fort Collins in its sole discretion shall be entitled to modify the fare to be charged as necessary for the efficient and cost-effective operation of FLEX, provided that advance written notice of any such modification is provided to the Partners. All Fort Collins discounted fare categories for Transfort bus service will apply to FLEX. Fort Collins shall collect any fares due from passengers and accurately record and account for such fare receipts and ridership levels. Fort Collins shall prepare quarterly reports of such receipts and ridership levels and shall provide such quarterly reports to the Partners.
11. All Fort Collins and City of Loveland bus pass programs will be accepted as full fare to ride FLEX. Transfers from FLEX to the Transfort or COLT bus systems will be honored. RTD Eco Pass will be accepted as full fare to ride FLEX, but free transfers from FLEX to RTD will not be honored.
12. Each Party shall designate a representative, who shall be responsible for managing such Party's performance of the terms of this Agreement and shall provide the other Party with written notice thereof, along with address, telephone, and email information. All notices to be provided under this Agreement shall be provided to such designated representatives. Any notice pursuant to this Agreement shall be hand-delivered or sent by certified mail, return receipt requested, and addressed to the designated representative. Any such notice shall be deemed given upon hand-delivery to the designated representative or their address or three (3) days after mailing.

If to Fort Collins:

City of Fort Collins

Transfort & Parking Services Director
 City of Fort Collins
 250 N. Mason Street
 Fort Collins, CO 80522

With a copy to:

City Attorney
 City of Fort Collins
 P.O. Box 580
 Fort Collins, CO 80522

If to City of Boulder:

Transit Program Manager
City of Boulder
1777 Broadway
Boulder, CO 80302

With a copy to:
City Attorney
City of Boulder
P. O. Box 791
Boulder, CO 80306

13. The Parties agree to cooperate fully, to a reasonable extent, in the development and implementation of any surveys or studies undertaken by the other Party to evaluate demand, usage, cost, effectiveness, efficiency, or any other factor relating to the success or performance of FLEX or the need for such service. Such cooperation shall not require the expenditure of funds more than the specific amounts set forth in **Section 5** and **Exhibit B**, however, unless approved in writing and appropriated by the Parties.
14. The Parties acknowledge that their obligations under this Agreement are subject to annual appropriation by the governing body of each respective Party and shall not constitute or give rise to a general obligation or other indebtedness of either Party within the meaning of any constitutional or statutory provision or limitation of the State of Colorado nor a mandatory charge or requirement against either Party in any ensuing fiscal year beyond the current fiscal year. If the governing body of either Party shall fail to budget and appropriate funds for its share of expenses as described in this Agreement, then this Agreement shall terminate as of the end of the fiscal year for which such funds were last budgeted and appropriated.
15. In the event a Party has been declared in default, such defaulting Party shall be allowed a period of thirty (30) days within which to cure said default. In the event the default remains uncorrected, the Party declaring default may elect to terminate the Agreement and so notify the defaulting Party in writing. Any amounts due to the non-defaulting Party shall be paid within fifteen (15) days of the date of notice of termination is received.
16. Liability of the Parties shall be apportioned as follows:
 - a. Nothing in this **Section 16** or any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities, and limitations the Parties may have under the Colorado Governmental Immunity Act (Section 24-10-101, C.R.S. *et seq.*) or any other defenses, immunities, or limitations of liability available to any Party by law.
 - b. Any liability of the Parties under this Agreement shall be subject to appropriation of funds by their respective governing bodies sufficient to satisfy such liability as required by their Charter provisions.

- c. No elected official, director, officer, agent or employee of the Parties shall be charged personally or held contractually liable under any term or provision of this Agreement, or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.
17. This Agreement embodies the entire agreement of the Parties about the FLEX program. The Parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein.
18. The Parties hereto may not assign this Agreement or parts hereof or its rights hereunder without the express written consent of all of the Parties. Any attempt to assign this Agreement in the absence of such written consent shall be null and void *ab initio*.
19. No changes, amendments or modifications of any of the terms or conditions of this Agreement shall be valid unless reduced to writing and signed by the Parties, except as provided herein.
20. The laws of the State of Colorado shall be applied to the interpretation, execution and enforcement of this Agreement. The Parties recognize the legal constraints imposed upon them by the constitutions, statutes, and regulations of the State of Colorado and the United States, and imposed upon the Parties by their respective charters, municipal codes and other similar documents and, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision in this Agreement to the contrary, in no event shall any party exercise any power or take any action which shall be prohibited by applicable law.
21. Any provision rendered null and void by operation of law shall not invalidate the remainder of this Agreement to the extent that this Agreement is capable of execution.
22. Either Party's failure to enforce any provision of this Agreement shall not in any way be construed as a waiver of any such provision or prevent that Party thereafter from enforcing each and every other provision of this Agreement.
23. This Agreement does not and is not intended to confer any rights or remedies upon any entity or person other than the Parties.
24. This Agreement may be executed in multiple counterparts; all counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart.
25. This Agreement may be executed by electronic signature in accordance with C.R.S. § 24-71.3-101, et seq. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

Item 22.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

CITY OF FORT COLLINS, COLORADO
a municipal corporation

By: _____
Kelly DiMartino, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

CITY OF BOULDER, COLORADO
a Colorado home rule city

By: NR _____
Nuria Rivera-Vandermyde, City Manager

ATTEST:

Elsie McQueen _____
City Clerk

APPROVED AS TO FORM:

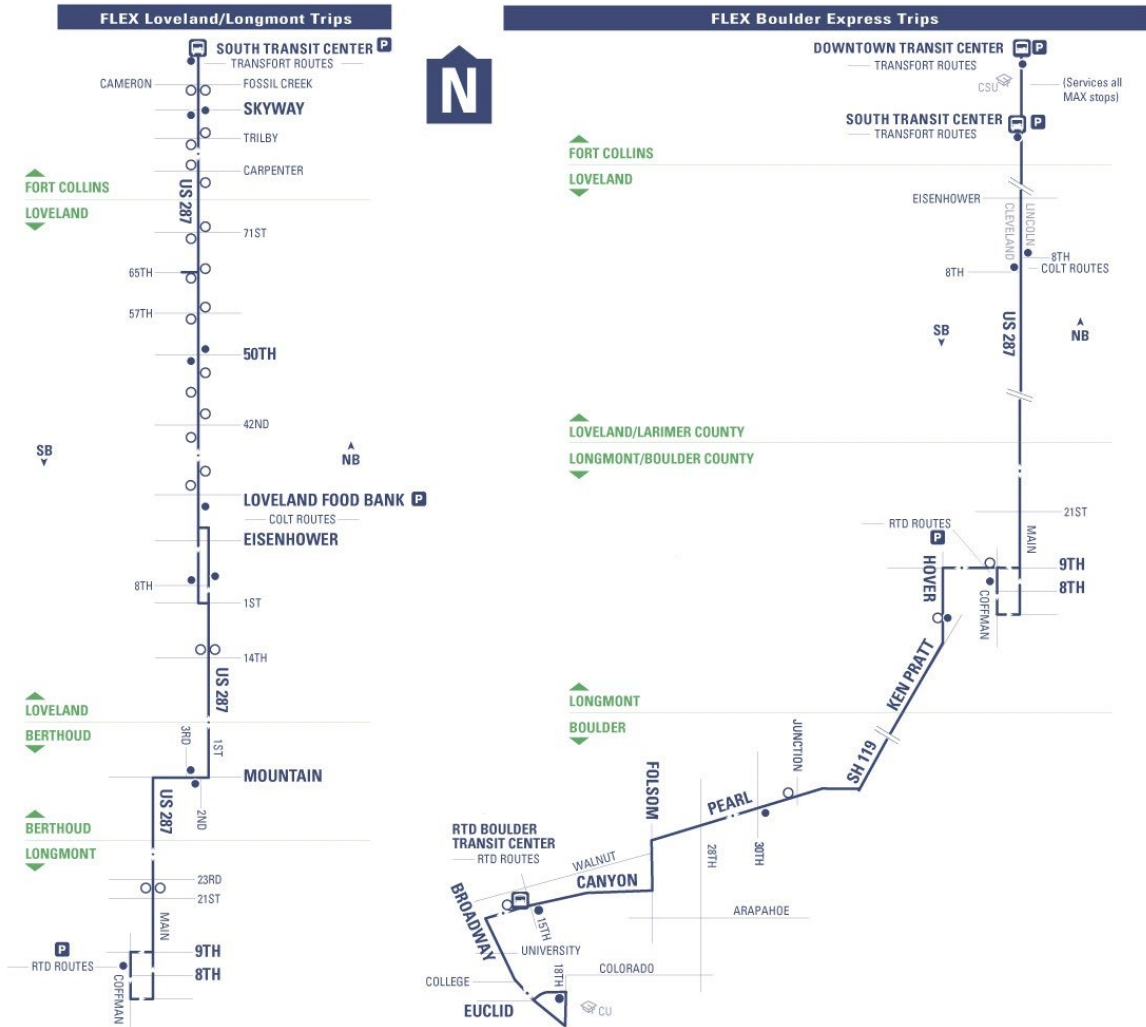
Janet Michels _____
City Attorney 02/21/2023

EXHIBIT A

FLEX service will be provided within the following parameters:

- Days of Service: Monday – Friday (between the cities of Fort Collins and Boulder) and Monday – Saturday (between the cities of Fort Collins and Longmont). No service is provided on New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.
- Hours of Service: 5AM – 8 PM
- Frequency of Service: 60 Minutes

Service Area Maps:



Item 22.

EXHIBIT A TO RESOLUTION 2023-037

EXHIBIT B

	2021	2022	2023		
Operating Cost	\$ 1,943,371	\$ 2,001,672	\$ 2,161,805.90		
Fares	\$ 40,000	\$ 40,000	N/A		
CMAQ Flex to Boulder Enhancement	\$ 224,655	\$ 218,545	\$ 225,102		
EcoPass Reimbursement	\$ 5,000	\$ 5,000	\$ 5,000		
FASTER Funding	\$ 200,000	\$ 200,000	\$ 200,000		
CSU Contribution	\$ 63,193	\$ 63,193	\$ 63,193		
Remainder to be split among partners	\$ 1,410,523	\$ 1,474,934	\$ 1,668,511		
	% Passenger Activity (2018, 2019, 2020)	Amount Owed	Less 5307 Contribution	Loveland's Additional 5307 Withheld Amount	Loveland's Amount Owed
Fort Collins	45%	\$ 750,830	\$ 521,702.51		
Loveland	23%	\$ 383,758	\$ 278,814	\$ 139,407	\$ 139,407
Longmont	12%	\$ 200,221			
Boulder County	10%	\$ 166,851			
City of Boulder	7%	\$ 116,796			
Berthoud	3%	\$ 50,055	\$ 34,127		
Total		\$ 1,668,511			
5307 Breakdown	% TMA Service Area Population	\$ 350,000			
Fort Collins	65.47%	\$ 229,128			
Loveland	29.98%	\$ 104,944			
Berthoud	4.55%	\$ 15,929			
*Highlighted = total owed by partner					

RESOLUTION 2023-038
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF FORT COLLINS, COLORADO AND THE CITY OF
LONGMONT FOR FLEX ROUTE REGIONAL TRANSIT SERVICES

WHEREAS, since 2016, the City has entered into an intergovernmental agreement (“IGA”) with the City of Longmont (“Longmont”) to provide FLEX Route Regional Transit Service; and

WHEREAS, both the City and Longmont contribute a percentage of funds based on the ridership of each jurisdiction; and

WHEREAS, through the partnership, regional connectivity transit goals are met, and City Council wishes to continue to offer these services; and

WHEREAS, the funds for the City’s expenditure and reimbursement for these transit services were appropriated previously through the Budgeting for Outcomes Process; thus, no appropriation action is required with this item; and

WHEREAS, this Resolution comes before City Council to authorize the attached IGA for FLEX Route Regional Transit Service between the City of Fort Collins and Longmont substantially in the form attached hereto as Exhibit “A” and incorporated herein by this reference (the “IGA”); and

WHEREAS, the attached IGA for FLEX Route Regional Transit Service with the City of Longmont is intended to be effective retroactively on January 1, 2023; and

WHEREAS, the City Council has determined that the IGA is in the best interests of the City and that the City Manager be authorized to execute the IGA between the City and Longmont in support thereof.

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

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

Section 2. That the City Council hereby authorizes the City Manager to execute the IGA in substantially the form attached hereto as Exhibit “A,” together with such modifications and additions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution as set forth above.

Section 3. That during the term of the IGA the City Manager, in consultation with the City Attorney, is authorized to approve and execute amendments to the IGA consistent with this Resolution so long as the City Manager determines such amendments: (a) are reasonably necessary

and appropriate to protect the City’s interests or provide a benefit to the City; (b) effectuate the purposes of this Resolution; and (c) limit the City’s financial obligation to expenditure of funds already appropriated and approved by Council or conditioned upon such appropriation.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

**INTERGOVERNMENTAL AGREEMENT
FOR BUS SERVICE BETWEEN THE CITY OF FORT COLLINS AND
THE CITY OF LONGMONT**

This Agreement is made this ____ day of _____, 2023 between the City of Fort Collins, Colorado, a municipal corporation (hereafter "Fort Collins"), and the City of Longmont, a municipal corporation (hereafter "Longmont") (Fort Collins and Longmont collectively may be referred to as the "Parties" or individually as a "Party").

RECITALS

WHEREAS, the Parties desire to provide regional connector bus service between Fort Collins and City of Longmont; and

WHEREAS, Fort Collins has its own fixed-route bus system (hereinafter "Transfort");

WHEREAS, FLEX is a regional connector bus service operated by Transfort in partnership with Loveland, Berthoud, Longmont, City of Boulder, Boulder County and Colorado State University (hereinafter "Partners") to provide services to said communities pursuant to separate Intergovernmental Agreements; and

WHEREAS, Transfort is willing and able to extend FLEX services along the U.S. Highway 287 and Highway 119 corridors between Fort Collins and Boulder (hereinafter "FLEX") with stops in Fort Collins, Loveland, Longmont, and Boulder; and

WHEREAS, the Parties have determined that significant economic and efficiency benefits result for each Party through the provision of FLEX by Transfort.

NOW, THEREFORE, in consideration of the mutual promises herein and other good and valuable consideration, receipt and adequacy of which is acknowledged, the Parties agree as follows:

AGREEMENT

1. The forgoing recitals are hereby incorporated as though fully set forth herein.
2. Fort Collins shall provide connector bus service, FLEX, in accordance with the terms of this Agreement and as specifically identified and described in **Exhibit A**, attached hereto and incorporated herein by this reference, throughout the term of this Agreement. The services identified and described in **Exhibit A** are subject to increase, modification, reduction, termination, and pursuant to this **Section 2** and **Section 4** of this Agreement.
 - a. Increased service beyond that described in **Exhibit A** may be provided by Fort Collins, at its sole discretion, to the extent Fort Collins determines appropriate given the demand for service and available resources. Prior to providing additional service at Fort Collins' expense, Fort Collins shall provide advance written notice to the Partners. Prior to providing additional service with Partner

contribution, Fort Collins and the Partners will amend Exhibit A and the respective cost share associated with the change. If the Partners and Fort Collins cannot agree to amend Exhibit A for the additional service then any such additional service that exceeds the services described in **Exhibit A** may be reduced or stopped by Fort Collins, at its sole discretion. Prior to reducing or stopping any such additional service, Fort Collins will make reasonable efforts to provide 30 days of advance written notice to the Partners.

- b. In the event Fort Collins determines that circumstances require modification of FLEX services as described in **Exhibit A** to better accommodate the demand for service or the efficient provision of service, Fort Collins shall be entitled to implement such modification at its sole discretion. Fort Collins will make reasonable efforts to provide 30 days of advance written notice of any such modification to the Partners.
3. This Agreement shall commence on January 1, 2023 and shall continue in full force and effect until December 31, 2023, unless sooner terminated as herein provided.
4. Fort Collins agrees that all services provided under this Agreement shall be consistent with Transfort system operating policies and procedures, as the same may be amended, from time to time, in Fort Collins' sole discretion, and that all such services shall be consistent with the Transfort operation schedule.
5. In consideration of the services provided by Fort Collins under this Agreement, and the mutual financial commitments herein made, Longmont agrees to contribute to the direct and indirect costs of operating FLEX, as supplemented by such additional federal or state grant funds as may be available therefor. The Parties agree to use ridership data to formulate the cost share associated with each entity. Based on average ridership data from 2019, 2020 and 2021, Longmont shall pay to Fort Collins the amount of \$200,221 for the year 2023 and its share of direct and indirect costs of operating FLEX subject to Section 7. Fort Collins will invoice Partners in the first quarter of 2023 for the FLEX service provided in 2023 and the first quarter of each subsequent year. Such payment shall be made within 60 days after receipt of an invoice.
6. Any additional revenues collected by Longmont from the operation of FLEX, shall be remitted to Fort Collins. Such revenue, and any additional revenues collected by Fort Collins from the operation of FLEX, shall be used to supplement FLEX operation expenses and will equally benefit the Parties.
7. The Parties agree to run a ridership analysis on a triennial basis and adjust cost shares according to ridership quantities relative to each Partner. Ridership data will be an average of the previous year of service.
8. The Parties acknowledge and agree that the budget proposal for operation of FLEX for 2023 includes projected FLEX Revenue and anticipated revenues from bus fares pursuant to Section 9 ("FLEX Fare Revenue"). If FLEX Revenue and FLEX Fare Revenue for 2023 is insufficient to meet the budget for operation of FLEX, the Parties may elect to appropriate and pay their pro rata share of any shortage. If either Party does not appropriate and pay its pro rata share of the shortage in FLEX Revenue and FLEX Fare Revenue, Fort Collins in its sole discretion may reduce FLEX services as necessary to reduce operating

expenses in an amount sufficient to address such a shortage or terminate FLEX service. Prior to any reduction in service or termination, Fort Collins shall provide advance written notice to the Partners.

9. Fort Collins Transfort buses will utilize existing Regional Transportation District (hereafter "RTD") stops in Boulder, or as otherwise agreed by the Parties.
10. The basic cash fare to be charged for FLEX shall be One Dollar and Twenty-Five Cents (\$1.25) per ride; however, Fort Collins currently IS not charging fares for the Transfort bus system. Notwithstanding, Fort Collins in its sole discretion shall be entitled to modify the fare to be charged as necessary for the efficient and cost-effective operation of FLEX, provided that advance written notice of any such modification is provided to the Partners. All Fort Collins discounted fare categories for Transfort bus service will apply to FLEX. Fort Collins shall collect any fares due from passengers and accurately record and account for such fare receipts and ridership levels. Fort Collins shall prepare quarterly reports of such receipts and ridership levels and shall provide such quarterly reports to the Partners.
11. All Fort Collins and City of Loveland bus pass programs will be accepted as full fare to ride FLEX. Transfers from FLEX to the Transfort or COLT bus systems will be honored. The RTD Eco Pass will be accepted as full fare to ride FLEX, but free transfers from FLEX to RTD will not be honored.
12. Each Party shall designate a representative, who shall be responsible for managing such Party's performance of the terms of this Agreement and shall provide the other Party with written notice thereof, along with address, telephone, and email information. All notices to be provided under this Agreement shall be provided to such designated representatives. Any notice pursuant to this Agreement shall be hand-delivered or sent by certified mail, return receipt requested, and addressed to the designated representative. Any such notice shall be deemed given upon hand-delivery to the designated representative or their address or three (3) days after mailing.

If to Fort Collins:

City of Fort Collins

Transfort & Parking Services Director
 City of Fort Collins
 250 N. Mason Street
 Fort Collins, CO 80522

With a copy to:

City Attorney
 City of Fort Collins
 P.O. Box 580
 Fort Collins, CO 80522

If to City of Longmont:

Transportation Planning Manager
City of Longmont
385 Kimbark Street
Longmont, CO 80501

With a copy to:

City Attorney
City of Longmont
350 Kimbark Street
Longmont, CO 80501

13. The Parties agree to cooperate fully, to a reasonable extent, in the development and implementation of any surveys or studies undertaken by the other Party to evaluate demand, usage, cost, effectiveness, efficiency, or any other factor relating to the success or performance of FLEX or the need for such service. However, such cooperation shall not require the expenditure of funds more than the specific amounts set forth in Exhibit B, however, unless approved in writing and appropriated by the Parties.
14. The Parties acknowledge that their obligations under this Agreement are subject to annual appropriation by the governing body of each respective Party and shall not constitute or give rise to a general obligation or other indebtedness of either Party within the meaning of any constitutional or statutory provision or limitation of the State of Colorado nor a mandatory charge or requirement against either Party in any ensuing fiscal year beyond the current fiscal year. If the governing body of either Party shall fail to budget and appropriate funds for its share of expenses as described in this Agreement, then this Agreement shall terminate as of the end of the fiscal year for which such funds were last budgeted and appropriated.
15. In the event a Party has been declared in default, such defaulting Party shall be allowed a period of thirty (30) days within which to cure said default. In the event the default remains uncorrected, the Party declaring default may elect to terminate the Agreement and so notify the defaulting Party in writing. Any amounts due to the non-defaulting Party shall be paid within fifteen (15) days of the date of notice of termination is received.
16. Liability of the Parties shall be apportioned as follows:
 - a. Fort Collins shall be responsible for all claims, damages, liability and court awards, including costs, expenses, and attorney fees incurred, should Fort Collins be found liable as a result of any action or omission of Fort Collins or its officers, employees, and agents, in connection with the performance of this Agreement.

- b. Longmont shall be responsible for all claims, damages, liability and court awards, including costs, expenses, and attorney fees incurred, should Longmont be found liable as a result of any action or omission of Longmont or its officers, employees, and agents, in connection with the performance of this Agreement.
 - c. Nothing in this Section 16 or any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities, and limitations the Parties may have under the Colorado Governmental Immunity Act (Section 24-10-101, C.R.S. *et seq.*) or any other defenses, immunities, or limitations of liability available to any Party by law.
 - d. Any liability of the Parties under this Agreement shall be subject to appropriation of funds by their respective governing bodies sufficient to satisfy such liability as required by their Charter provisions.
 - e. No elected official, director, officer, agent or employee of the Parties shall be charged personally or held contractually liable under any term or provision of this Agreement, or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.
17. This Agreement embodies the entire agreement of the Parties about the FLEX program. The Parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein.
18. The Parties hereto may not assign this Agreement or parts hereof or its rights hereunder without the express written consent of all of the Parties. Any attempt to assign this Agreement in the absence of such written consent shall be null and void *ab initio*.
19. No changes, amendments or modifications of any of the terms or conditions of this Agreement shall be valid unless reduced to writing and signed by the Parties, except as provided herein.
20. The laws of the State of Colorado shall be applied to the interpretation, execution and enforcement of this Agreement. The Parties recognize the legal constraints imposed upon them by the constitutions, statutes, and regulations of the State of Colorado and the United States, and imposed upon the Parties by their respective charters, municipal codes and other similar documents and, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision in this Agreement to the contrary, in no event shall any party exercise any power or take any action which shall be prohibited by applicable law.
21. Any provision rendered null and void by operation of law shall not invalidate the remainder of this Agreement to the extent that this Agreement is capable of execution.
22. Either Party's failure to enforce any provision of this Agreement shall not in any way be construed as a waiver of any such provision or prevent that Party thereafter from enforcing each and every other provision of this Agreement.

23. This Agreement does not and is not intended to confer any rights or remedies upon any entity or person other than the Parties.
24. This Agreement may be executed in multiple counterparts; all counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart.
25. This Agreement may be executed by electronic signature in accordance with C.R.S. § 24-71.3-101, et seq. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

CITY OF FORT COLLINS, COLORADO
a municipal corporation

By: _____
Kelly DiMartino, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

CITY OF LONGMONT:

Jean Beck

MAYOR

ATTEST:

Jane Edwards 

CITY CLERK

01/25/2023

DATE

APPROVED AS TO FORM:

[Signature]

ASSISTANT CITY ATTORNEY

01/24/2023

DATE

[Signature]

Katy Kuhier (Jan 24, 2023 14:16 MST)

PROOFREAD

01/24/2023

DATE

APPROVED AS TO FORM AND SUBSTANCE:

[Signature]

ORIGINATING DEPARTMENT

01/24/2023

DATE

CA File No. 22-002070

EXHIBIT A

FLEX service will be provided within the following parameters:

- Days of Service: Monday - Friday (between the cities of Fort Collins and Boulder) and Monday through Saturday (between the cities of Fort Collins and Longmont). No service is provided on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.
- Hours of Service: 5AM - 8 PM
- Frequency of Service: 60 Minutes

Service Area Maps:

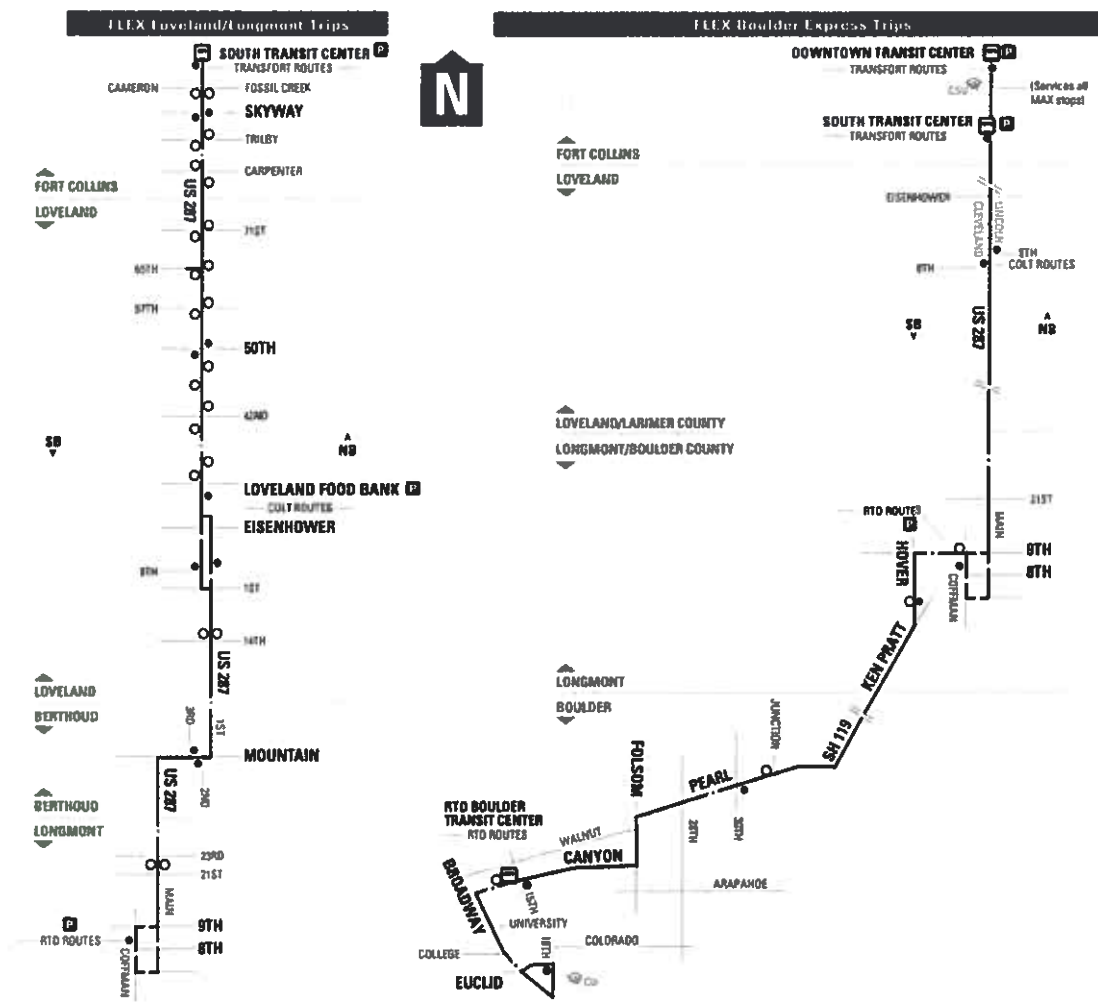


EXHIBIT B

	2021	2022	2023		
Operating Cost	\$ 1,943,371	\$ 2,001,672	\$ 2,161,805.90		
Fares	\$ 40,000	\$ 40,000	N/A		
CMAQ Flex to Boulder Enhancement	\$ 224,655	\$ 218,545	\$ 225,102		
EcoPass Reimbursement	\$ 5,000	\$ 5,000	\$ 5,000		
FASTER Funding	\$ 200,000	\$ 200,000	\$ 200,000		
CSU Contribution	\$ 63,193	\$ 63,193	\$ 63,193		
Remainder to be split among partners	\$ 1,410,523	\$ 1,474,934	\$ 1,668,511		
	% Passenger Activity (2019, 2020, 2021)	Amount Owed	Less 5307 Contribution	Loveland's Additional 5307 Withheld Amount	Loveland's Amount Owed
Fort Collins	45%	\$ 750,830	\$ 521,702.51		
Loveland	23%	\$ 383,758	\$ 278,814	\$ 139,407	\$ 139,407
Longmont	12%	\$ 200,221			
Boulder County	10%	\$ 166,851			
City of Boulder	7%	\$ 116,796			
Berthoud	3%	\$ 50,055	\$ 34,127		
Total		\$ 1,668,511			
5307 Breakdown	% TMA Service Area Population	\$ 350,000			
Fort Collins	65.47%	\$ 229,128			
Loveland	29.98%	\$ 104,944			
Berthoud	4.55%	\$ 15,929			
*Highlighted = total owed by partner					



AGENDA ITEM SUMMARY

City Council

STAFF

Anissa N. Hollingshead, City Clerk
Carrie M. Daggett, Legal

SUBJECT

Resolution 2023-039 Making an Appointment to the General Employees Retirement Committee.

EXECUTIVE SUMMARY

The purpose of this item is to fill a vacancy on the General Employee’s Retirement Committee.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

This Resolution reappoints an individual to fill a vacancy left from previous committee members. This appointment will begin and expire as noted next to the recommended name shown below in the individual resolution.

General Employee’s Retirement Committee

Appointment	Term Effective Date	Expiration of Term
Ralph Zentz (Seat B)	April 5, 2023	December 31, 2026

ATTACHMENTS

1. Resolution for Consideration

RESOLUTION 2023-039
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING AN APPOINTMENT TO THE
GENERAL EMPLOYEE’S RETIREMENT COMMITTEE

WHEREAS, the General Employee’s Retirement Committee has vacancies due to the expiration of terms of certain members; and

WHEREAS, the General Employee’s Retirement Committee has a vacancy due to certain members having expiring terms; and

WHEREAS, the General Employee Retirement Plan (the “Plan”) calls for five of the six members of the General Employee’s Retirement Committee to be appointed by City Council; and

WHEREAS, of the five appointed committee members, four must either be an employee who is covered by the Plan, a terminated-vested member of the Plan, or a retired member of the Plan who is receiving a monthly retirement benefit; and

WHEREAS, City employee Ralph Zentz is covered by the Plan; and

WHEREAS, the City Council desires to make an appointment to fill this vacancy on the General Employee’s Retirement Committee.

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

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

Section 2. That the following named person is hereby appointed to fill an open vacancy on the General Employee’s Retirement Committee with a term to begin and expire as noted below next to the appointee’s name:

General Employee’s Retirement Committee

Appointments	Term Effective Date	Expiration of Term
Ralph Zentz (Seat B)	April 5, 2023	December 31, 2026

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

AGENDA ITEM SUMMARY

City Council



STAFF

Kirk Longstein, Senior Environmental Planner
Clay Frickey, Interim Planning Manager
Brad Yatabe, Legal

SUBJECT

Second Reading of Ordinance No. 151, 2022, Amending the Land Use Code to Regulate Oil and Gas Facilities and Pipelines.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on December 20, 2022, updates the Land Use Code (LUC) to regulate new oil and gas facilities and pipelines within City limits. These regulations include zoning, setbacks, development standards and a process for development review which limits new Oil and Gas facilities to less than 1% of available land. Per new authority granted through Senate Bill 19-181, these local regulations exceed Colorado Oil and Gas Conservation Commission (COGCC) requirements related to surface oil and gas activities and are designed to ensure the protection of public health, safety, welfare, the environment, and wildlife resources.

STAFF RECOMMENDATION

Staff recommends adoption of the Land Use Code updates without modifications, other than those made between first and second reading to adapt the regulations to the Land Use Code format, as unanimously (6-0) approved on December 20, 2022.

BACKGROUND / DISCUSSION

In April 2019, the City gained new authority to regulate the siting and surface impacts of oil and gas operations with the adoption of Senate Bill 19-181 (SB-181). SB-181 changed the regulatory landscape for oil and gas operations, prompting an overhaul of State regulations and opening the door for additional local regulations. Since 2019, Council has been exploring policy questions to develop local regulations.

Recent Policy input: At the October 25, 2022 work session, Council provided input to consider adoption of zoning and setback standards to restrict new development. To achieve this, new Land Use Code (LUC) elements related to oil and gas have been proposed that:

- Define oil and gas facilities and pipelines as a use.
- Define setback and zoning standards.
- Outline the review process for oil and gas wells and associated facilities including procedural steps for neighborhood meetings, hearings, and notification; and

- Add siting regulations, design standards, and reclamation requirements.

The proposed code is included as an attachment. Key elements of the proposed code are prescribed setback and zoning standards which are highly restrictive for new oil and gas development and redevelopment of existing development. This includes:

- Limiting new oil and gas facilities and redevelopment of existing facilities to only the Industrial Zone District, and
- Requiring a 2,000-foot setback from all buildings designed as Occupiable Space, including residential, commercial, institutional, industrial, and other uses.
- Requiring a 2,000-foot setback from areas where people may congregate outdoors, such as parks, trails, and natural areas.
- Natural Habitat Buffer Standards would also be applied when proposed oil and gas development is within 2,000 feet of a natural habitat feature.

Because the City is largely built out, these restrictions would leave less than 1% of surface area within City limits available for development related to oil and gas. Additionally, some code sections are amended to include oil and gas references, and all existing code sections apply, such as lighting, transportation, electric, stormwater, and tree protection requirements.

Additionally, before beginning any new oil and gas development, an operator must first obtain surface use and down-hole permits from the Colorado Oil & Gas Conservation Commission (COGCC), in addition to complying with Fort Collins' local regulations. The necessary state-level approvals would involve a further set of plans and requirements, such as cumulative impact assessments, financial assurances, an air quality monitoring plan, and other conditions.

In addition to the proposal, staff heard feedback from environmental groups for a desire to create locally adopted operational standards similar to Larimer County Code. Unfortunately, those standards adopted by neighboring jurisdictions like Broomfield, Boulder, and Larimer County are not “plug and play Code language” based on how the Fort Collins Code is organized and administered. As an example: there are several general development standards throughout the existing land use code that would apply to applications for new oil and gas facilities. Staff has prepared the Protective Measures Comparison attachment which highlights these differences as compared to neighboring jurisdictions and redundancy with the state.

In support of the 2,000-foot setback, which is the presumptive setback distance the COGCC also imposes, staff relies in part upon the *Final Report: Human Health Risk Assessment for Oil & Gas Operations in Colorado*, dated October 17, 2019, and also discussion at the COGCC rulemaking hearings adopting the 2,000-foot setback. A list of studies regarding health and environmental impacts of oil and gas activities, including the aforementioned report, is attached in support of the oil and gas regulations.

Oil and Gas Work Plan

To respond to the changing regulatory landscape, Council direction, and community feedback, staff has worked to develop a comprehensive work plan for oil and gas development for both new and existing facilities. A number of regulatory changes have occurred at the State and County levels that have created opportunities to more efficiently and effectively meet the community's and Council's expectations within the new regulatory framework, and without additional operational regulations at the City level. Staff work plans and Council decision points are separated into three parts as related to (1) new oil and gas facilities, (2) existing oil and gas facilities, and (3) partnerships.

Fort Collins Oil and Gas Work Plan	Overview	Council Action
Land Use Code Development Standards (e.g., zoning, setbacks, buffering, land use code violations)	Proposed additions to the land use code. New well development standards – April 4. Reverse setbacks and ground water monitoring requirements May/June 2023	April 4, 2023 – second reading of oil and gas development standards Q3 2023 – Reverse setback near existing wells
Operational standards (e.g., enforcement mechanisms; County IGA)	Staff is working with Larimer County and Colorado Department of Health and Environment to address compliance concerns for a well site abutting City limits. Includes new established Intergovernmental Agreement (IGA) with Larimer County to support leak detection at oil and gas sites.	Staff recommends an additional work session to provide additional direction regarding consideration of additional operational standards along with an associated enforcement/inspection program.
Operator Agreement	Agreement was established in 2013 exempting Operator from application of LUC and requiring prescribed Best Management Practices (BMPs) for operations, which are now outdated and less stringent than new State standards.	April 4, 2023 – consideration of recommendation to terminate Operator Agreement (presented as separate Agenda item).

Public Feedback on Code Language:

A draft of code language was published for review on November 8, 2022 (version 1), and several modifications were proposed in response to public feedback before the first reading (version 2). The current version under consideration (Attachment) also includes formatting edits to fit the current Land Use Code (LUC) structure. After changes were made and since adoption of the code on first reading, December 20, 2022, environmental groups continue to advocate for additional Council considerations:

- Include requirements for “plans” submitted to COGCC to also be reviewed by City Staff;
- Include requirements for a regulatory/compliance program between first and second reading; and
- Pause on adoption of LUC updates, open a public process to evaluate additional code elements, and re-consider LUC updates at the same time as additional operational standards and an ongoing compliance program are considered.

The following table summarizes Industry and Environmental group advocacy since the first reading adoption of the Code and staff recommendations for Council consideration:

Affiliation	Feedback	Staff Recommendation
Environmental Groups	Staff should take a more comprehensive approach and expand the regulatory framework	The proposed development standards are in addition to the full regulatory framework of the Land Use Code.
Environmental Groups	Require Cumulative Impacts	No Changes to the Land Use Code at this time. Staff recommend updating plan submittal documents administratively.
Environmental Groups	Require water Use, Source Documentation, and Recycling	

Affiliation	Feedback	Staff Recommendation
Environmental Groups	Require Air Quality and Emissions Modeling/Monitoring	
Environmental Groups	Require a BMP Plan	
Environmental Groups	Require Pipeline Leak Detection and Integrity Inspection	
Environmental Groups	Require Financial Assurance	No changes to the Land Use Code at this time; however Staff recommends a work session and further public outreach related to potential considerations
Environmental Groups	Add Inspection, Enforcement, and Penalties	No changes to the Land Use Code at this time; however Staff recommends a work session and further public outreach related to potential consideration of additional regulations through updates to Municipal Code along with resource considerations for an inspection, enforcement and compliance program.
Environmental Groups	Increase Infrastructure and Services Fees	No changes to the code; however, Staff recommend updating the development fees administratively after adoption of the Code.
Environmental Groups	Increase Setback	No changes to the Code currently
Industry Groups	Reduce Setbacks and allow modification of standards	No changes to the Code currently
Industry Groups	Development application submittal too administratively burdensome and redundant with COGCC processes	No changes to the Code currently
Industry Groups	Setbacks from natural features too restrictive	No changes to the Code currently
Industry Groups	Neighborhood meeting mailer requirements not clear	No changes to the Code currently

Revisions for First Reading:

Following feedback from stakeholders, and recommendations from the Planning and Zoning Commission, the following updates were made ahead of first reading on December 20, 2022:

- Remove Oil and Gas pipelines as an allowed use within public open lands and residential zone districts; including, HMN, LMN, MH, MMN, RL, UE, RF, and RUL
- Oil and Gas developments (new pipelines, oil and gas facilities) would be subject to a Planning and Zoning Commission Review (Type 2). Plugging and abandoning remains Basic Development Review

Council Decision Points

Decision Point 1 – Second Reading of the Land Use Code (LUC), April 4, 2023

Since the First Reading (December 20, 2022), staff conducted additional engagement with the community. A summary of the feedback from that effort is in the next section of this memo. Based on the additional feedback received during this time, Council can consider the following decision points related to the LUC:

- (Staff recommendation) Adopt the LUC updates without modifications, and to address environmental group feedback, staff suggest adopting development review submittal requirements administratively after adoption of the Code; or
- Adopt the LUC updates with minor modifications directed by Council at Second Reading and based on Industry and environmental group feedback highlighted below; or
- Contingent upon Decision Point 2: If Council directs staff to create local Operational Standards, as suggested by environmental groups, Council could choose to pause adoption of the LUC changes to align schedules and actions.

Decision Point 2 – Operational Standards: Based on previous discussions with Council, expanding these standards beyond existing land use and municipal code sections was considered redundant, covered by the State (COGCC) standards and that sufficient work was occurring between the City and County in this space. However, if Council determines it is important to explore this concept further, then staff recommends a future Work Session and further public outreach related to potential consideration of additional regulations through updates to the Municipal Code along with resource considerations for an inspection, enforcement, and compliance program.

Decision Point 3 – Terminate the Operator Agreement: In addition to the Land Use Code and operational standards discussion, staff will also be bringing forward a Resolution to Terminate the existing Operator Agreement with Prospect Energy. This Agreement was developed prior to the stricter regulatory environment in place today and has less restrictive requirements, thus staff is recommending that Council terminate this Agreement so that the Land Use Code requirements apply.

CITY FINANCIAL IMPACTS

There are no financial impacts related to adopting the proposed Oil and Gas Land Use Code restrictions. Costs related to processing development applications, administering permits, and conducting inspections would be recovered through fees.

If Council directs staff to develop financial assurances and a regulatory compliance program, additional staff analysis is needed to study the City's financial impacts.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Air Quality Advisory Board

- Reduce the pace of the regulation adoption.
- Increase transparency and remove Staff discretion from Code language.
- City should expand regulations and consider wider range of rules.

Planning and Zoning Commission (6-1 vote)

The motion to approve the draft regulations (Version-1) carried 6-1 vote with the following recommended changes:

- Remove Oil and Gas pipelines as an allowed use within public open lands and residential zone districts; including, HMN, LMN, MH, MMN, RL, UE, RF, and RUL

Oil and Gas developments (new pipelines, oil and gas facilities) would be subject to a Planning and Zoning Commission Review (Type 2). Plugging and abandoning remains Basic Development Review

PUBLIC OUTREACH

Staff released draft code language on November 8 (version 1) and discussed with several individuals representing Industry and environmental advocacy groups as well as boards and commissions. Based on stakeholder feedback changes were made to version 1 and a version 2 draft of the Oil and Gas Development Standards were adopted unanimously (6-0) on December 20, 2023.

Following First Reading, several environmental groups expressed concerns that the proposed LUC development standards lack a full regulatory framework. To address their concerns, staff held a panel discussion to better familiarize community partners with code elements on March 9, 2023 (44 attendees).

Environmental Groups were represented by Larimer Alliance, Sierra Club, 350 Colorado, Fort Collins Sustainability Group, and Colorado Rising. These groups have shared that the currently proposed regulations are not consistent with the full intent of SB 19-181 and as such would neglect the City's opportunity and duty to reduce unnecessary public health, safety, welfare, and environmental risks for Fort Collins' current and future residents. The Environmental Groups also stated that staff should take a more comprehensive vision of what protections are available and needed, and to prepare a substantially revised and enhanced regulatory package.

Environmental group feedback can be summarized in the following themes:

- **Development application requirements:** Include requirements for detailed submittal documents in the Land Use Code to align with the requirements documents submitted to COGCC;
- **Operational Standards:** Include requirements for a regulatory/compliance program; and
- **Process/Next Steps:** Pause on adoption of LUC updates, open a public process to evaluate additional code elements, and re-consider LUC updates at the same time as additional operational standards and an ongoing compliance program are considered.

Industry groups have also provided feedback along the way as a potential LUC applicant. These groups were represented by the American Petroleum Institute (API) and Colorado Oil and Gas Association (COGA). Comment letters from these groups can be summarized under the following themes:

- **Setback Requirements:** Setback requirements are too restrictive and do not allow for conditions or variances.
- **Development Application Requirements:** Development application submittal procedures are too administratively burdensome and redundant with COGCC processes.

ATTACHMENTS

1. Ordinance for Consideration
2. Revisions for First Reading
3. Oil and Gas Policy Cross-walk
4. Oil and Gas Panel, March 9, 2023
5. Development Application Master List for Oil and Gas Facilities
6. Protective Measures Comparison
7. Studies Regarding Oil and Gas Activity Impacts on Health and Environment
8. Public Comments

ORDINANCE NO. 151, 2022
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE LAND DEVELOPMENT **USE** CODE TO REGULATE
OIL AND GAS FACILITIES AND PIPELINES

WHEREAS, on December 2, 1997, by its adoption of Ordinance No. 190, 1997, the City Council enacted the Fort Collins Land Use Code (the "Land Use Code"); and

WHEREAS, at the time of the adoption of the Land Use Code, it was the understanding of staff and the City Council that the Land Use Code would most likely be subject to future amendments, not only for the purpose of clarification and correction of errors, but also for the purpose of ensuring that the Land Use Code remains a dynamic document capable of responding to issues identified by staff, other land use professionals and citizens of the City; and

WHEREAS, several active oil wells are located in the northern part of the City; and

WHEREAS, several active oil wells are located within the City’s Growth Management Area in unincorporated Larimer County; and

WHEREAS, there is potential for additional oil gas activity within the City and within the City’s Growth Management Area; and

WHEREAS, in 2019, the State of Colorado enacted Senate Bill 19-181 which, among other things, expanded the City’s ability to regulate the location and siting of oil and gas facilities and oil and gas locations and the surface impacts of oil and gas operations; and

WHEREAS, the City and the Colorado Oil and Gas Conversation Commission have co-equal, independent authority to regulate the location and siting and surface impact of oil and gas activities; and

WHEREAS, the City’s oil and gas regulations regarding the location and siting and surface impacts may be more protective or stricter than state requirements; and

~~WHEREAS, pursuant to Ordinance 114, 2022, adopted on second reading on November 1, 2022, the Land Development Code was adopted to replace the Land Use Code; and~~

~~WHEREAS, the effective date of the Land Development Code set forth in Ordinance 144, 2022, is January 1, 2023; and~~

WHEREAS, the Planning and Zoning Commission at its November 17, 2022, regular meeting recommended on a 6-1 vote that City Council adopt the proposed oil and gas regulations with certain recommended changes; and

WHEREAS, between first and second reading, the oil and gas regulations were revised to be consistent with the Land Use Code structure instead of the Land Development Code which was repealed between first and second reading of this Ordinance; and

WHEREAS, City Council adopts these oil and gas regulations based upon the information provided by City staff during first and second reading, at previous work sessions regarding oil and gas issues, and City staff update memoranda; and the comments and information regarding oil and gas regulations provided by the public prior to and at first and second reading; and

WHEREAS, the adoption as part of the Land Development Use Code of oil and gas regulations that anticipate, avoid, minimize, and mitigate adverse impacts to existing, planned, and future land uses is necessary to protect the public health, safety, and welfare, and the environment and wildlife resources and is in the best interests of the City.

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

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

Section 2. That Section 2.5.3 Division 4.28 of the Land Development Use Code is hereby amended to read as follows:

DIVISION 2.5.34.28 - INDUSTRIAL DISTRICT Industrial District (I)

...

~~(B) Land Use Standards.~~

~~(1) Prohibited Uses.~~

~~The following uses are specifically prohibited in the Industrial District:~~

(B) Permitted Uses.

...

(3) The following uses are permitted in the I District, subject to review by the Planning and Zoning Board Commission:

...

(c) Industrial Uses:

- 1. Resource extraction, processes and sales establishments.

- 2. Junk yards.
- 3. Airports and airstrips.
- 4. Dry-cleaning plants.
- 5. Transport terminals (truck terminals, public works yards, container storage).
- 6. Farm implement and heavy equipment sales.

7. Oil and gas facilities.

8. Oil and gas pipelines.

...

(C) **Prohibited Uses.** All uses that are not (1) expressly allowed as permitted uses in this Section or (2) determined to be permitted by the Director or the Planning and Zoning Board pursuant to Section 1.3.4 of this Code shall be prohibited. In addition, the following uses are specifically prohibited in the Industrial District:

...

(2b) All establishments falling within Standard Industrial Classification (SIC) Major Group No. 29, Petroleum Refining and Related Industries, as identified in the Standard Industrial Classification Manual (OMB 1987). This prohibition shall not be interpreted to include oil and gas facilities or pipelines as defined in this Code and addressed in Division 5.173.12.

...

(6f) All establishments falling within Standard Industrial Classification (SIC) Major Group No. 4925, Mixed, Manufactured, or Liquefied Petroleum Gas Products and/or Distribution, as identified in the Standard Industrial Classification Manual (OMB 1987). This prohibition shall not be interpreted to include oil and gas facilities or pipelines as defined in this Code and addressed in Division 5.173.12.

...

~~Section 3. That Article 4 of the Land Development Code is hereby amended to read as follows:~~

Article 4: Oil and Gas Changes

That “Oil and Gas Facilities” shall be added to the Table of Primary Uses set forth in Land Development Code Division 4.2 as an Industrial Use in the Industrial District subject to Type 2 review.

That “Oil and Gas Pipelines” shall be added to the Table of Primary Uses set forth in Land Development Code Division 4.2 as an Industrial Use in all zone districts except the following: POL, RC HMN, LMN, MH, MMN, NCL, NCM, NCB, RL, UE, RF, and RUL. “Oil and Gas Pipelines” are subject to Type 2 review.

Section 43. That a new Division 3.125.17 is hereby added to the Land Development Use Code and reads in its entirety as follows:

DIVISION 5.17 3.12 - Oil And Gas Facilities And Pipelines

3.12.15.17.1 - Purpose And Applicability

(A) **Purpose.** This Division is intended to protect the public health, safety, and welfare, and the environment and wildlife resources by regulating oil and gas development to anticipate, avoid, minimize and mitigate adverse impacts to existing, planned, and future land uses.

(B) **Applicability.** This Division applies to siting and reclamation of all oil and gas facilities and oil and gas pipelines within City boundaries over which the City has regulatory authority pursuant to law, except for oil and gas facilities and oil and gas pipelines subject to a valid operator agreement between the City and the operator effective prior to [Insert Effective Date] in which case the operator agreement shall govern the applicable oil and gas facilities and oil and gas pipelines. All persons must obtain approval from the City in accordance with the standards in this Division and all applicable Land Development Code requirements prior to constructing and operating any new oil and gas facility or oil and gas pipeline or enlarging or expanding any oil and gas facility or oil and gas pipeline lawfully existing prior to [Insert Effective Date].

Any terms used in this Division that are not defined within the Land Development Use Code shall be defined by the COGCC as set forth in the Code of Colorado Regulations. The terms applicant and operator are used interchangeably at times in this Division.

Where, in any specific case, the requirements of any other provision within the Land Development Use Code or Code of the City of Fort Collins or any applicable federal or state laws or regulations of any state or federal agency are in conflict with this Division, the more restrictive or stringent requirement shall be imposed.

5.17 3.12.2 - Existing Oil And Gas Facilities And Pipelines

Application to Existing Oil and Gas Facilities and Pipelines. Oil and gas facilities and oil and gas pipelines that were lawfully established prior to **[Insert Effective Date]**, referred herein as lawful nonconforming oil and gas facilities and pipelines, are considered nonconforming uses that may continue to operate pursuant to either a valid operator agreement governing such oil and gas facilities or oil and gas pipelines between the City and the operator in effect prior to **[Insert Effective Date]**, or absent such an operator agreement, pursuant to Land ~~Development~~ Use Code Division 1.5~~6.16~~ as modified in this Section. The following provisions apply to lawful nonconforming oil and gas facilities and pipelines not subject to an operator agreement:

- (A) Section ~~6.16~~1.5.3 regarding abandonment of use.
- (B) Section ~~6.16~~1.5.4 regarding reconstruction does not apply to lawful nonconforming oil and gas facilities and pipelines. Reconstruction of such an oil and gas facility or pipeline or facility or pipeline taken by governmental acquisition or damaged by fire or other accidental cause or natural catastrophe is not allowed.
- (C) Section ~~6.16~~1.5.5 regarding enlargement of buildings and expansion of facilities, equipment or structures does not apply to lawful nonconforming oil and gas facilities and pipelines. Enlargement and expansion of any such facility or pipeline requires such facility or pipeline to be brought into conformance with the Land ~~Development~~ Use Code.
 - (1) Enlargement or expansion includes, but is not limited to, any permanent physical change to a lawful nonconforming oil and gas facility or pipeline not required by law that increases operating capacity, harmful air emissions, traffic, noise, risk of spills, or will adversely impact public health, safety, welfare, the environment or wildlife resources. Use of a drilling rig or hydraulic fracturing equipment to deepen or recomplete an existing well into a new geologic formation is considered expansion.
 - (2) Maintenance activities, the replacement of existing equipment with substantially similar equipment in like and kind, installation of emission control equipment, and the addition of equipment to fulfill mandated regulatory requirements are not considered enlargement or expansion.

5.173.12.3 - Oil and Gas Project Development Plan Review Procedures

In order for a new oil and gas facility to be constructed and operated, or a lawful nonconforming oil and gas facility to be enlarged or expanded, the applicant must receive approval of a project development plan, final plan, and building permit pursuant to the Land ~~Development~~ Use Code. In order for enlargement or expansion of a lawful nonconforming oil and gas facility to occur, unless an operator agreement as described in above Section ~~5.173.12.2~~ provides otherwise, such facility must be brought into

conformance with the Land Development Use Code and receive approval of a project development plan, final plan, and building permit pursuant to the Land Development Use Code prior to enlargement or expansion and continued operation.

With regards to oil and gas pipelines, flowlines are subject to review as part of the project development plan for any new oil and gas facility to which the flowlines are associated or through a major amendment if additional flowlines are added subsequent to project development plan approval. Crude oil transfer lines, gathering lines and transmission lines are subject to project development plan review and subsequent changes through a major amendment. In order for enlargement or expansion of a lawful nonconforming oil and gas pipeline to occur, unless an operator agreement as described in above Section 5.173.12.2 provides otherwise, such pipeline must be brought into conformance with the Land Development Use Code and receive approval of a project development plan, final plan, and building and other required permits pursuant to the Land Development Use Code prior to enlargement or expansion and continued operation.

Specific development standards regarding oil and gas facilities are set forth in Section 5.173.12.4, and specific development standards regarding oil and gas pipelines are set forth in Section 5.173.12.5. The Project Development Plan Review Procedures set forth in Section 6.62.4.2 are modified as follows:

(A) **Step 1 (Conceptual Review):** Mandatory. In addition to the Concept Plan Submittal requirements pursuant to Section 6.32.2.1(A)(3), the applicant for a new oil and gas facility or oil and gas pipeline shall provide an alternative location analysis and preliminary site analysis as described below. The Director may waive or modify any information required for the alternative location and preliminary site analysis if, given the facts and circumstances of a proposed oil and gas facility or pipeline, a particular requirement would either be irrelevant, immaterial, redundant or otherwise unnecessary to evaluate the proposed project. Prior to the required neighborhood meeting referenced in (B) below, the City will review all proposed locations for the oil and gas facility or oil and gas pipeline to determine which locations, if any, meet Land Development Use Code requirements and will prepare a report summarizing its findings with respect to the proposed locations. If the City requests a site visit of any of the locations under consideration, the operator is responsible for securing permission or coordinating with the landowner(s) to conduct the site visit. Prior to selecting the location for the proposed oil and gas facility or oil and gas pipeline, the operator shall consult with the City regarding the proposed locations and the City’s report regarding such locations.

(1) **Alternative Location Analysis.** The alternative location analysis must include, at a minimum, the following:

(a) For oil and gas facilities:

1. A map depicting the following elements within three (3) miles of the proposed surface location. (This requirement is

limited to one (1) mile for a proposed single vertical or directional well):

- a. All mineral rights held or controlled by the applicant; and
- b. The location of all features listed in the "Preliminary Site Analysis."

2. The alternative location analysis shall evaluate a minimum of three potential locations that can reasonably access the mineral resources within the proposed drilling and spacing unit(s), including the following information for each site:

- a. General narrative description of each location;
- b. Any location restrictions that the site does not satisfy;
- c. Any existing surface use agreements or other documentation regarding legal property rights;
- d. Off-site impacts that may be associated with each site;
- e. Proposed truck traffic routes and access roads for each location; and
- f. Any information pertinent to the applicable review criteria that will assist the Director in evaluating the locations.

(b) For oil and gas pipelines, the alternative location analysis shall evaluate a minimum of three potential alignments for the pipeline, including the following information for each alignment:

- 1. General narrative description of each alignment;
- 2. Any location restrictions that the alignment does not satisfy;
- 3. Any existing surface use agreements or other documentation regarding legal property rights;
- 4. Off-site impacts that may be associated with each alignment; and

5. Any information pertinent to the applicable review criteria that will assist the Director in evaluating the locations.

(2) **Preliminary Site Analysis.** The Preliminary Site Analysis shall include maps with the following information:

(a) Provide an ecological characterization study if the development site contains or is within two thousand (2,000) feet of a natural habitat or feature as defined in Section 5-63.4.1.

(b) All drilling and spacing units proposed by the applicant within one (1) mile of the City's boundaries; and

(c) All features defined below that are wholly or partially within one (1) mile of the proposed oil and gas facility:

1. Any existing or future building approved as occupiable space, as defined in the City's Building Code;

2. City parks or City property intended to be used for City parks;

3. City maintained trails and trailheads or City property intended to be used for City trails and trailheads;

4. Outdoor venues, playgrounds, permanent sports fields, amphitheaters, or other similar places of outdoor assembly;

5. City natural areas;

6. Existing and approved oil and gas facilities and pipelines;

7. Areas within the FEMA 100-Year Floodplain boundary;

8. The centerline of all USGS perennial and intermittent streams and the map will indicate which surface water features are downgradient;

9. Active reservoirs and public and private water supply wells of public record;

10. Natural habitats and features as defined in Land Development Use Code Section 5-63.4.1 within one (1) mile of the proposed oil and gas facility;

11. High priority habitat as defined by the COGCC; and

12. Disproportionately impacted communities, as defined by the COGCC.

(B) **Step 2 (Neighborhood Meeting):** Mandatory. After a proposed location has been selected for the oil and gas facility or oil and gas pipeline, a neighborhood meeting must be held. Written notice of the neighborhood meeting must be mailed to the owners of record and occupants of all real property within one (1) mile (exclusive of public rights-of-way, public facilities, parks or public open space) of the property line of the parcel of land upon which the development is planned.

(C) **Step 3 (Development Application Submittal):** All items or documents required for project development plans as described in the development application submittal master list for oil and gas facilities and oil and gas pipelines shall be submitted. The Director may waive or modify the foregoing submittal requirements if, given the facts and circumstances of the specific application, a particular requirement would either be irrelevant, immaterial, redundant or otherwise unnecessary for the full and complete review of the application.

The complete project development plan application must be submitted and accepted by the City as complete prior to the applicant submitting any required Form 2 or 2A to the COGCC. Should the applicant submit any required Form 2 or 2A to the COGCC prior to submitting its complete project development plan application to the City, the applicant must withdraw the Form 2 or 2A and refrain from resubmitting until a complete project development plan application has been submitted and accepted by the City as complete.

5.173.12.4 - Oil and Gas Facility Development Standards

The following requirements apply to oil and gas facilities in addition to other applicable Land Development Use Code requirements.

(A) **Location Restrictions for New Oil and Gas Facilities or Enlarged or Expanded Existing Oil and Gas Facilities.**

(1) Allowed Zone Districts. Oil and gas facilities may only be located on property located within:

(a) The Industrial (I) zone district;

(b) A zone district to which oil and gas facility is added as an allowed use for a particular parcel pursuant to Section ~~Division 6.91.3.4,~~ Addition of Permitted Uses; or

(c) A Planned Unit Development (PUD) overlay in which oil and gas facilities are an allowed use.

A development application for an oil and gas facility may not be submitted until oil and gas facility is an allowed use for the proposed location.

(2) Setbacks. Setbacks for new oil and gas facilities and enlarged or expanded existing oil and gas facilities cannot be modified pursuant to Division 62.8, Modification of Standards. Setbacks are measured as the shortest distance from the edge of the working pad surface.

(a) No working pad surface shall be located within two thousand (2,000) feet from the following:

1. The nearest wall of any existing or platted building approved or to be approved as occupiable space as defined under the City's Building Code;
2. The property boundary line of any property containing a City park or City property intended to be used for a City park;
3. The easement or parcel boundary of City maintained recreation trails and trailheads or City property intended to be used for City maintained trails and trailheads;
4. The edge of outdoor venues, playgrounds, permanent sports fields, amphitheaters, or other similar places of outdoor assembly; or
5. The property boundary line of any property containing a City natural area.

(b) No working pad surface shall be located within one thousand (1,000) feet from the following:

1. Public water supply surface intakes or public water supply wells;
2. Ditches that transport water used by, or to augment, a public water supply system; or
3. Conservation easements.

(3) Buffer zones surrounding natural habitats and features. Oil and gas facilities shall protect natural habitats and features specified in Section 5-63.4.1 through buffer zones. Buffer zones set forth in the *Buffer Zone Table for Fort Collins Natural Habitats and Features* in Section 5-63.4.1(E) are

measured from the shortest distance from the working pad surface to the top of bank, and are modified as follows:

- (a) All features under the Stream Corridors category: 1,000 feet
- (b) Wetlands greater than 1/3 acre: 1,000 feet
- (c) Lakes or reservoirs: 1,000 feet
- (d) Naturalized storm drainage channels/detention ponds: 1,000 feet
- (e) Naturalized irrigation ponds: 1,000 feet
- (f) Buffer zones for natural habitats and features not listed above will conform to the buffer distances specified in Section 5-63.4.1(E) or 1,000 feet, whichever is greater.

(B) Prohibited Oil and Gas Facilities. The following facilities are prohibited within the City:

- (1) Injection wells for disposal of oil and gas exploration and production wastes;
- (2) Gas storage wells;
- (3) Disposal pits;
- (4) Commercial disposal facilities;
- (5) Centralized exploration and production waste management facilities;
- (6) Subsurface disposal facilities; and
- (7) Glycol dehydrators and desiccant gas processing dehydrators.
- (8) Onsite oil storage greater than thirty (30) feet in height.

(C) Landscaping. Land Development Use Code Section 5-103.2.1 applies in addition to the following requirements:

- (1) The requirements of Section 5-103.2.1, Landscaping and Tree Protection, apply within designated setbacks as defined in Section 5-173.12.4(A)(2) above to meet the Landscaping and Tree Protection general standard set forth in Land Development Use Code Section 5-103.2.1(C).

- (2) No landscaping will may be placed within a twenty-five (25) foot buffer around any tank or other structure containing flammable or combustible materials.
- (D) **Environmental Protection.** Land Development Use Code Section 5.63.4.1, Natural Habitats and Features, applies in addition to the requirement for an Ecological Characterization Study if the development site contains or is within two thousand (2,000) feet of a natural habitat or feature.
- (E) **Artificial Lift.** Artificial lift may not be accomplished through the use of traditional pump jacks and an alternative artificial lift system must be used that is both less visible and has fewer auditory impacts than a traditional pump jack. Alternatives such as gas lift, linear rod pumps, or hydraulic pumping unit must be used instead of traditional pumpjacks and are to be as low profile as practicable with a maximum height of thirty (30) feet.
- (F) **Fencing Plan.** The requirements in this Subsection (F) apply to oil and gas facilities in substitution of the requirements set forth in Land Development Use Code Section 4.3.53.8.11, Fences and Walls. A fencing plan must be submitted as part of the application for a project development plan and such plan must demonstrate how the oil and gas facility will comply with the following requirements:
- (1) All pumps, wellheads and production facilities must be fenced to prevent unauthorized access and fencing must:
- (a) Completely surround such facilities;
 - (b) Be no less than six (6) feet in height;
 - (c) Be noncombustible and allow for adequate ventilation;
 - (d) May not consist of solid masonry walls; and
 - (e) Must be visually compatible with surrounding land uses.
- (2) Each fence enclosure must be equipped with at least one gate. Each gate must meet the following requirements:
- (a) Gates shall be provided with a combination catch and locking attachment device for a padlock and shall be kept locked except when being used to access the oil and gas location; and
 - (b) Gates must provide adequate access for emergency responders and the operator must provide Poudre Fire Authority with a "Knox Padlock" or "Knox Box with a key" to allow emergency access to the oil and gas location.

5.173.12.5 - Oil and Gas Pipelines

Oil and Gas Pipelines. To the maximum extent feasible, oil and gas pipelines must be utilized for the transport of oil, gas, and produced water within and from any oil and gas location except that temporary tanks may be utilized during drilling, flowback, workover, completion, hydraulic fracturing and maintenance operations. All oil and gas pipelines needed to transport oil, gas, and produced water within and from any oil and gas location must be constructed prior to the production phase of such oil and gas facility.

Oil and gas pipelines must meet the following requirements in order to be approved:

- (A) Oil and gas pipelines shall be located underground except to the extent above ground connections to surface oil and gas facilities are necessary.
- (B) Oil and gas pipelines shall be sited a minimum of fifty (50) feet away from residential and non-residential buildings. This distance shall be measured from the nearest edge of the oil and gas pipeline. Increased setbacks of up to one hundred and fifty (150) feet may be required for public safety on a case-by-case basis in consideration of the size, pressure, and type of oil and gas pipeline being proposed.
- (C) Oil and gas pipelines that pass within one hundred and fifty (150) feet of residential or non-residential building or the high-water mark of any surface water body shall incorporate leak detection, secondary containment, or other mitigation, as appropriate.
- (D) To the maximum extent feasible, oil and gas pipelines shall be aligned with established roads in order to minimize surface impacts and reduce natural habitat fragmentation and disturbance.
- (E) To the maximum extent feasible, operators shall share existing oil and gas pipeline easements and consolidate new corridors for oil and gas pipeline easements to minimize surface impacts.
- (F) The legal description of the location of all new oil and gas pipelines must be recorded on the respective property with the Larimer County Clerk and Recorder within thirty (30) days of completion of construction.
- (G) Coordinates of all oil and gas pipelines shall be provided in a format suitable for input into the City's GIS system depicting the locations and type of above and below ground facilities.
- (H) Operators shall use boring technology when crossing streams, rivers, irrigation ditches or wetlands with a pipeline to minimize negative impacts to the channel, bank, and riparian areas, except that open cuts may be used across irrigation ditches if the affected ditch company approves the technique.

(I) Special conditions of approval for all gathering lines and transmission lines:

- (1) Operator must make available to the City upon request all records submitted to PHMSA or the PUC including those related to inspections, pressure testing, pipeline accidents and other safety events.
- (2) Operator shall comply with Fort Collins right-of-way permit and easement processes for all gathering lines installed in Fort Collins owned property or rights-of-way.

5.173.12.6 - Plugging and Abandonment of Wells and Pipelines and Decommissioning of Oil and Gas Facilities

(A) The plugging and abandonment of a well, abandonment of an oil and gas pipeline, and the decommissioning of any oil and gas facility are subject to basic development review. City review and approval of an application to plug and abandon a well, abandon an oil and gas pipeline or decommission and oil and gas facility is intended to be in addition to any required COGCC review and approval. The following documents and information shall be provided as part of the basic development review application:

- (1) Coordinates of the well proposed to be plugged and abandoned or pipeline to be abandoned.
- (2) A removal plan for flowlines and wastewater pipelines associated with any well proposed to be plugged and abandoned to the extent such lines will not serve a well that has not been plugged and abandoned.
- (3) A sampling and monitoring plan associated with any well proposed to be plugged and abandoned. Site investigation, sampling, and monitoring shall be conducted to demonstrate that the well has been properly abandoned and that soil, air and water quality have not been adversely impacted by oil and gas facilities or other sources of contamination. Such sampling and monitoring shall be conducted by a qualified environmental engineering or consulting firm with experience in oil and gas investigations. Director approval that the sampling and monitoring plan contains the information required pursuant to this Subsection (3) is required prior to sampling occurring and such plan shall include, but is not limited to, the following:
 - (a) Site survey, historical research, and/or physical locating techniques to determine exact location and extent of oil and gas facilities.
 - (b) Documentation of plugging activities, abandonment and any subsequent inspections.

- (c) Soil sampling, including soil gas testing.
 - (d) Groundwater sampling, if deemed necessary.
 - (e) Installation of permanent groundwater wells for future site investigations, if deemed necessary.
 - (f) A minimum of five (5) years of annual soil gas and groundwater monitoring at the well location.
 - (g) Upon completion of the site investigation and sampling, not including the ongoing monitoring, the consultant must provide a written report verifying that the soil and groundwater samples meet applicable Environmental Protection Agency and State residential regulations and that a reclaimed site would not pose a greater health or safety risk for future residents or users of the site. Otherwise, the decision maker may require that the following actions be completed by a qualified professional before development may occur, including but not limited to:
 - (I) Remediation of environmental contamination to background levels.
 - (II) Well repair or re-plugging of a previously abandoned well.
- (4) A final reclamation plan for the associated oil and gas location. The final reclamation plan must demonstrate how the following reclamation requirements will be satisfied:
- (a) All oil and gas related improvements and equipment must be removed from the oil and gas location, including flowlines, gathering lines, and oil and gas pipelines of any kind unless such improvements or equipment are needed to serve a well that has not been plugged and abandoned.
 - (b) Upon written request, the Director may approve in writing the abandonment in place of any oil and gas pipeline. The Director may approve abandonment in place only if removal would cause greater adverse impacts to public health, safety, welfare, or the environment than allowing the oil and gas pipeline to remain. If an oil and gas pipeline is abandoned in place, a tracer will be placed in any nonmetal line. Any oil and gas pipeline approved to be abandoned in place must comply with all COGCC rules and the location of the abandoned oil and gas pipeline must be recorded with the Larimer County Clerk and Recorder on the corresponding property.

(c) The oil and gas location must be reclaimed and revegetated to the satisfaction of the City and in consultation with the landowner, the oil and gas location and all access roads associated with the oil and gas location proposed to be reclaimed within three (3) years after seeding, or as directed by the landowner in a surface use agreement.

(B) Prior to commencing plugging and abandonment of a well, the applicant must provide the City with evidence of COGCC approval of the request to plug and abandon.

(C) After plugging and abandonment is completed, the operator must:

(1) Provide the City with evidence of COGCC approval of the completed plugging and abandonment.

(2) Provide evidence that the location of the plugged and abandoned well has been recorded with the Larimer County Clerk and Recorder on the corresponding property.

(3) Permanently mark by a brass plaque set in concrete, similar to a permanent bench mark, to monument the plugged and abandoned well's existence and location. Such plaque shall contain the information required by the COGCC to properly identify the well.

(D) **Reclamation.** Within six (6) months after plugging and abandoning a well, abandoning an oil and gas pipeline, or decommissioning an oil and gas facility, reclamation of the associated oil and gas location must be completed pursuant to the approved final reclamation plan unless the Director grants additional time to complete reclamation in consideration of the complexity of the reclamation and conditions that may delay reclamation such as the season and weather. The operator must notify the City upon commencement of reclamation and upon completion.

Section 54. That Section 6.32.2.3 of the Land Development Use Code is hereby amended to read as follows:

6.32.2.3 - Step 3: Development Application Submittal

...

(C) *Development Application Contents.*

...

(2) *Submittal Requirement.* Each development application shall be submitted to the Director and shall include the items on the Comprehensive master-list

that are identified as submittal requirements for that development application. The Director may waive items on the Comprehensive master list that are not applicable due to the particular conditions and circumstances of that development proposal. At the time of application submittal, all applicants must agree in writing to pay the costs for third-party consultants the City retains to adequately review the application as described in Land Development Use Code Section 6.32.2.3(D)(3).

...

(D) **Development Review Fees and Costs for Specialized Consultants.**

...

(3) **Specialized Consultants.** In the Director’s discretion, the City may retain the services of third-party consultants with specialized knowledge that the City requires to adequately evaluate an application, the costs of which must be paid by the applicant with such payment agreed to in writing at the time of application submittal. Prior to retaining any consultant, the Director must inform the applicant of the intent to retain such consultant and the estimated costs. The applicant must pay to the City the estimated costs prior to the City retaining the consultant. Within sixty (60) days of completion of the consultant’s work, the applicant must pay to the City the actual cost of the consultant’s services in excess of the estimate, or the City must refund any portion of the estimate in excess of the actual cost.

Section 6.5. That Section 6.32.2.4 of the Land Development Use Code is hereby amended to read as follows:

6.32.2.4 - Step 4: Review Of Applications

(A) **Determination of Sufficiency.** After receipt of the development application, the Director shall determine whether the application is complete and ready for review. Some development applications may involve complex technical issues that require review and input that is outside the expertise of City staff. If such a situation arises, the Director may procure the services of third-party consultants to review and consult with the City regarding the relevant subject matter and require the applicant to pay the costs for such third-party consultants as described in Section 6.62.2.3(D)(3). Upon review by the Director and any necessary third-party consultants, the Director will determine whether the application is complete. The determination of sufficiency shall not be based upon the perceived merits of the development proposal.

...

Section 76. That Section 6.32.2.6 of the Land Development Use Code is hereby amended to read as follows:

6.32.2.6 - Step 6: Notice

...

(D) **Supplemental Notice Requirements.** The following table indicates the required notice radius for a mailed notice and posted sign size for development applications.

Development Project	Minimum Notice Radius	Sign Size
...
Oil and gas facilities and oil and gas pipelines	One (1) mile to owners of record and occupants of real property (exclusive of property rights-of-way, public facilities, parks or public open space); plus, with respect to neighborhood meetings, publication of a notice not less than seven (7) days prior to the meeting in a newspaper of general circulation in the City.	12 square feet
Plugging and abandonment of wells and pipelines and decommissioning of oil and gas facilities	One (1) mile to owners of record and occupants of real property (exclusive of property rights-of-way, public facilities, parks or public open space	12 square feet

	of the oil and gas facility, well, or pipeline.	
--	---	--

...

Section 87. That Section 6.42.18 of the Land Development Use Code is hereby amended to read as follows:

6.42.18.1 - Purpose And Applicability

The purpose of the Basic Development Review (“BDR”) is to establish an internal administrative process for approval of a site specific development plan where the decision maker is the Director. There is no public hearing and the Basic Development Review process shall be deemed final upon issuance of a decision by the Director and shall not be construed to be the same as an Administrative (Type 1) review process for which the Director, or his designee, conducts a public hearing. The Basic Development Review shall be the review process for:

...

- (F) Plugging and Abandonment and Decommissioning of Wells and Pipelines (Division 5.173.12) provided such Plugging and Abandonment and Decommissioning is not part of a development application subject to a development review process other than BDR.

Section 98. That Section 6.262.14.3 of the Land Development Use Code is hereby amended to read as follows:

6.262.14.3 - Inspection

The City Manager is hereby empowered to cause any building, other structure or tract of land to be inspected and examined and to order in writing the remedying of any condition found to exist therein or thereat in violation of any provision of this Land Development Use Code. After any such order has been served, no work shall proceed on any building, other structure or tract of land covered by such order, except to correct such violation or comply with the order.

With regards to inspections of oil and gas facilities, the operator of any oil and gas facility or oil and gas pipeline that has been inspected shall pay to the City the costs for such inspection within sixty (60) days of receiving an invoice for the cost of the inspection. Inspections of oil and gas facilities and oil and gas pipelines may be conducted by City staff or non-City inspectors authorized by the City to conduct such inspections.

Section 109. That Section 7.25.1.2 of the Land Development Use Code is hereby amended to read as follows:

ARTICLE 7—TERMS Rules Of Measurement And Definitions

7.25.1.2 - Definitions.

The following words, terms and phrases, when used in this Land Use Code, shall have the meanings ascribed to them in this section:

...

COGCC shall mean the Colorado Oil and Gas Conservation Commission.

...

Flowback shall mean the process of allowing fluids and entrained solids to flow from a well following stimulation, either in preparation for a subsequent phase of treatment or in preparation for cleanup and placing the Well into production. The term flowback also means the Fluids and entrained solids that emerge from a Well during the flowback process.

Flowline shall mean a segment of pipe transferring oil, gas, or condensate between a wellhead and processing equipment to the load point or point of delivery to a U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration or Colorado Public Utilities Commission regulated gathering line or a segment of pipe transferring produced water between a wellhead and the point of disposal discharge or loading. This definition of flowline does not include gathering line.

...

Gathering line shall mean a gathering pipeline or system as defined by the Colorado Utilities Commission, Regulation No. 4, 4 C.C.R. 723-4901, Part 4, (4 C.C.R. 723-4901) or a pipeline regulated by the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration pursuant to 49 C.F.R. §§ 195.2 or 192.8. 49 C.F.R. §§ 195.2 or 192.8 and 4 C.C.R. 723-4901 in existence as of the date of this regulation and does not include later amendments.

...

~~High occupancy building unit shall mean any building type listed in the Colorado Oil and Gas Conservation Commission definition of a High Occupancy Building Unit set forth in the Code of Colorado Regulations.~~

High occupancy building unit shall mean:

- (a) Any public or private school, nursing facility as defined in § 25.5-4-103(14), C.R.S., hospital, life care institution as defined in § 12-13-101, C.R.S., or correctional facility as defined in § 17-1-102(1.7), C.R.S., provided the facility or institution regularly serves 50 or more persons;

(b) An operating Child Care Center as defined in § 26-6-102(5), C.R.S.; or

(c) A multiunit dwelling with four or more units

...

Oil and gas facility shall mean ~~equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment, or processing of oil or natural gas. This term shall include equipment or improvements associated with active, inactive, temporarily abandoned, and plugged and abandoned wells.~~ equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, treatment, or processing of crude oil, condensate, exploration, development, and production waste, or gas.

Oil and gas location shall mean: the area where an operator has disturbed or intends to disturb the land surface in order to locate an oil and gas facility.

~~(1) the area where the operator of an oil and gas facility has disturbed the land surface in order to locate an oil and gas facility or conduct oil and gas operations, or both; or (2) the area where the operator of an oil and gas facility intends to disturb the land surface in order to locate an oil and gas facility or conduct oil and gas operations, or both, and such facility or operations have received all required permits prior to submission of a residential development plan for the construction of dwellings or high occupancy building within one thousand feet of the permitted oil and gas facility or operations, even if disturbance of the land surface to locate the oil and gas facility or conduct operations has yet to occur on the site.~~

Oil and gas pipeline shall mean a flowline, crude oil transfer line, gathering line, as such terms are defined by the Colorado Oil and Gas Conservation Commission, and transmission lines.

Operator as used in Division ~~5.17~~3.12 shall mean any person who exercises the right to operate and control an oil and gas facility or oil and gas pipeline.

...

Plugging and abandonment shall mean the cementing of a well, the removal of its associated production facilities, the abandonment of its flowline(s), and the remediation and reclamation of the wellsite.

...

Reclamation shall mean the process of returning or restoring the surface of disturbed land to its condition prior to development.

...

School facility shall mean any discrete facility or area, whether indoor or outdoor, associated with a public or private school, that students use commonly as part of their curriculum or extracurricular activities. A school facility is either adjacent to or owned by the school or school governing body, and the school or school governing body has the legal right to use the school facility at its discretion. The definition includes future school facility as defined by the Colorado Oil and Gas Conservation Commission.

...

Working pad surface shall mean the portion of an oil and gas location that has an improved surface upon which oil and gas facilities are placed.

...

Section 10. That the table contained in Section 4.16(F)(2) of the Land Use Code is hereby amended to read as follows:

Division 4.16 - Downtown District (D)

...

(F) Permitted Uses.

...

(2) The following uses are permitted in the subdistricts of the Downtown District, subject to ~~B~~asic ~~D~~evelopment ~~R~~eview (BDR), Minor Amendment (MA), Administrative (Type 1) Review or Planning and Zoning Board (Type 2) Review as specifically identified on the chart below:

<i>Land Use</i>	<i>Historic Core</i>	<i>Canyon Avenue/Civic/North Mason</i>	<i>Innovation/River</i>	<i>River Corridor</i>	<i>Campus North</i>	<i>Entryway Corridor</i>
...
Oil and Gas Pipelines	Type 2	Type 2	Type 2	Type 2	Type 2	Type 2

Section 11. That Section 4.18(B)(3) of the Land Use Code is hereby amended by the addition of a new subsection (d) which reads in its entirety as follows:

Division 4.18 - Community Commercial District (C-C)

...

(d) Industrial Uses:

1. Oil and gas pipelines.

Section 12. That Section 4.19(B)(3) of the Land Use Code is hereby amended by the addition of a new subsection (d) which reads in its entirety as follows:

Division 4.19 - Community Commercial – North College District (C-C-N)

...

(d) Industrial Uses:

- 1. Oil and gas pipelines.

Section 13. That Section 4.20(B)(3) of the Land Use Code is hereby amended by the addition of a new subsection (d) which reads in its entirety as follows:

Division 4.20 - Community Commercial – Poudre River District (C-C-R)

...

(d) Industrial Uses:

- 1. Oil and gas pipelines.

Section 14. That the table contained in Section 4.21(B)(2) of the Land Use Code is hereby amended to read as follows:

Division 4.21 – General Commercial District (C-G)

...

<i>Land Use</i>	<i>I-25/SH 392 (CAC)</i>	<i>General Commercial District (C-G)</i>
A. RESIDENTIAL		
...
D. INDUSTRIAL USES		
...
Oil and gas pipelines	Type 2	Type 2
...		

Section 15. That Section 4.22(B)(3)(d) of the Land Use Code is hereby amended by the addition of a new subparagraph 3 which reads in its entirety as follows:

Division 4.22 - Service Commercial District (C-S)

...

(d) Industrial Uses:

1. Recycling facilities.
2. Transport terminals (truck terminals, public works yards, container storage).
3. Oil and gas pipelines.

Section 16. That Section 4.23(B)(3) of the Land Use Code is hereby amended by the addition of a new subsection (d) which reads in its entirety as follows:

Division 4.23 – Neighborhood Commercial District (N-C)

...

(d) Industrial Uses:

1. Oil and gas pipelines.

Section 17. That the table contained in Section 4.24(B)(2) of the Land Use Code is hereby amended to read as follows:

Division 4.24 – Limited Commercial District (C-L)

...

<i>Land Use</i>	<i>Riverside Area</i>	<i>All Other Areas</i>
A. RESIDENTIAL		
...
D. INDUSTRIAL		
...
Oil and gas pipelines	Type 2	Type 2
...

Section 18. That Section 4.26(B)(3) of the Land Use Code is hereby amended by the addition of a new subsection (e) which reads in its entirety as follows:

Division 4.26 – Harmony Corridor District (H-C)

...

(e) Industrial Uses:

1. Oil and gas pipelines.

Section 19. That Section 4.27(B)(3)(d) of the Land Use Code is hereby amended as follows:

Division 4.27 - Employment District (E)

...

(d) **Industrial Uses:**

- 1. Dry-cleaning plants.
- 2. Oil and gas pipelines.

Introduced, considered favorably on first reading and ordered published this 20th day of December, A.D. 2022, and to be presented for final passage on the 4th day of April, A.D. 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 4th day of April, A.D. 2023.

Mayor

ATTEST:

City Clerk

Changes made based on Stakeholder feedback.

Stakeholder feedback on Version 1 (November 8)	Version 2 updates (December 12)
Pipelines are allowed in all zone districts	Pipelines are limited to Commercial; Employment and Industrial; and Downtown.
Development review includes too much staff discretion, including decision making authority	Oil and Gas Facilities and pipelines are subject to a Type 2 development review by Planning and Zoning Commission
Notifications should be provided to rental and leasehold tenants	Neighborhood meeting and hearing notice must be mailed to the owners of record and occupants within 1-mile radius
Concerns about gathering line and transmission lines	Alternative site analysis required for all pipelines; Special conditions for approval; and Pipelines must be buried underground
More ecological analysis needed at the conceptual phases of an application	Ecological characterization study required during preliminary site analysis.

Fort Collins Oil and Gas Regulations (Land Use Code)

Parameters	COGCC Rules	Fort Collins Version-Two ADOPTED FIRST READING - December 20, 2022
Zoning Districts	N/A	(Proposed addition to the Land Use Code LUC 4.28) Oil and Gas Facilities - Industrial Zone Oil and Gas Pipeline - Commercial; Employment and Industrial; Downtown; Overlay Zone
Setbacks	2,000' from existing Residential 2,000' from High Occupancy Building Units	(Proposed addition to the Land Use Code 3.12.4(A)(2)) 2,000' from all occupied buildings
Public Meeting	1 informational meeting & Commissioner Hearing	(Existing) Section 2.2.7(A)(1) Type 2 Development Review Procedures 1 neighborhood meeting & Planning and Zoning Hearing
Public Notice	Surface Owners	Property Owners and Occupants
	2,000' radius	(Proposed addition to the Land Use Code 2.2.6) Mailer 1-mile radius 12 square foot sign
Variance	Variance process for siting within setbacks available through COGCC Rule 502	(Proposed addition to the Land Use Code 3.12.4(2)) not allowed for setback
Alternative Site Analysis	required for public comment period Rule 304	(Proposed addition to the Land Use Code 3.12.3(1)) Alternative and primary site analysis prior to 1st neighborhood meeting; includes facilities and pipelines
Noise	Noise mitigation plan	(Existing) LUC 3.4.4 Noise and Vibration activities shall be conducted so that any noise generated on the property will not violate the noise regulations contained in the City's Noise Control Ordinance (Chapter 20, Article II of the City Code)
	Max 80dB(a) adjacent to residential use	Max 55dB(a) adjacent to residential use Max 80dB(a) adjacent to Industrial use
Inspection	No Inspection Fees Fee schedule in place \$100,000 financial assurance	(Proposed) Inspection fee required (Existing) Fees are adopted administratively by the City Manager
Enforcement	Rule 523	Existing - LUC 2.14.6 failure to comply with any terms, conditions or limitations contained on the site plan, landscape plan, building elevations or other approved documents pertaining to a development which has received final approval from the city, whether under the provisions of this Land Use Code or under the provisions of prior law.
Tanks	not required	(Proposed addition to the Land Use Code 3.12.4(B)) Prohibited - Onsite oil storage greater than 30 feet in height
Prohibited Facilities	n/a	(Proposed addition to the Land Use Code 3.12.4(B)) (1)Injection wells for disposal of oil and gas exploration and production wastes; (2)Gas storage wells; (3)Disposal pits; (4)Commercial disposal facilities; (5)Centralized exploration and production waste management facilities;(6) Subsurface disposal facilities; and (7)Glycol dehydrators and desiccant gas processing dehydrators.
Landscaping	n/a	(Existing) LUC 3.2.1 Tree protection standards; and (Proposed addition to the land use code 3.12.4) Development Standards include no landscaping within 25'
Fencing	Security fencing and wildlife protection measures Rule 600	(Proposed addition to the Land Use Code 3.12.4(F)) Fencing Plan required
Natural Resources	Rule 1200 - Wildlife Plan	(Proposed addition to the Land Use Code 3.12.3(A)(2)(a)) Ecological Characterization Study within 2000-feet of site
	500' buffer from CPW High Priority Habitat Spill prevention measures within 1,000' of aquatic high priority habitats	(Proposed addition to the Land Use Code - LUC 3.12.4 (3)(f)) 1,000' Natural Habitat Buffers (Existing) LUC 3.4.1 Development Standards
Financial Assurance	Rule 700 Assurity Bonds	(Existing) LUC 3.3.2 - Construction Security "Maintenance guarantee" two-year maintenance guarantee and five-year repair guarantee covering all errors or omissions
Transportation	n/a	(Existing) LUC 3.3.2 Transportation and Circulation; Transportation Impact Study required
Gathering Lines and Transmission lines	Public Utilities, Department of Transportation, COGCC Regulation	(Proposed addition to the Land Use Code - LUC 3.12.5(I)) Special conditions for approval
Accidental Spills	Form 19, Spill/Release Report	(Existing) 3.4.9 - Health Risks protect the occupants of and visitors to the site following development from health risks that may be presented by the existence of dangerous chemicals, metals or other substances, microorganisms, germs, bacteria or viruses, which pose a health risk to the potential occupants of and/or visitors to the development site if permitted to develop.



Oil and Gas Panel Regarding Proposed Changes to the City's Land Use Code

The purpose of this attachment is to provide City Council with insights into the conversations about proposed changes to the City's Land Development Code related to limitations on approvals for Oil and Gas Facilities and Pipelines. These conversations took place at a virtual Zoom panel March 9th, 2023. This panel spoke to new code updates that our City Council will consider for a second reading on April 4, 2023. This proposed code addresses land use restrictions for new oil and gas wells. Even with restrictions on new wells, there are still concerns about operational standards for existing or potential future operations for oil and gas wells. Regarding operational standards, the panel included City, County and State representatives who spoke to the regulations and resources already in place that have recently been adopted for oil and gas operations, as applicable in Fort Collins.

Panelists

- City of Fort Collins
 - Ginny Sawyer - Panel Facilitator, Senior Project and Policy Manager, City Manager's Office
 - Cassie Archuleta – Air Quality Program Manager, Environmental Services
 - Noah Beals – Development Review Manager, Community Development and Neighborhood Services
- Larimer County
 - Matt Lafferty, AICP – Principal Planner, Community Development Department
 - Lea Schneider, REHS – Environmental Health Planner Air Quality & Zoonotic Supervisor, Health and Environment Department
- State of Colorado
 - Kate Fury, Air Quality Oil and Gas Liaison, Colorado Department of Public Health and Environment

Context and Proposed Land Use Code in City of Fort Collins

The City is discussing oil and gas regulations due to the adoption of SB19-181 which changed the mission of the Colorado Oil and Gas Conservation Commission (COGCC) from fostering oil and gas development to protecting the environment. This legislation created more local control over oil and gas development.

Colorado is one of the top producers of oil and gas in the Nation.

- In Colorado, Weld County is the highest producing county.
- Larimer County has several wells.
- Within the Growth Management Area (GMA) and the City, there are 17 wells.

There is one oil and gas operator, Prospect Energy, within the City limits



- There are 10 active wells and 20 inactive wells

Initial Public Outreach

Initial public outreach was completed from 2019 – 2020 with Boards and Commissions, open houses, and an online forum. The consensus from this outreach was that there is a desire by the community to have no new oil and gas development within City limits or natural areas. The top concerns were regarding sub-surface water quality, traffic, leaks and spills, regional air quality, odors and emissions, and climate change impacts. Community members have expressed concerns that the proposed regulations do not exercise the full authority granted through SB-181 to address these top concerns.

Areas of Focus for Proposed Oil and Gas Land Use Code

Building off the initial public outreach, staff created three areas of focus for the proposed Oil and Gas land use code.

- **New Oil and Gas Facilities**
 - Objective: Limit new oil and gas development within City limits
 - This can be achieved through the use of zoning and Land Development Code to limit oil and gas development to industrial zones only.
 - Current Status
 - 1st reading passed unanimously.
 - 2nd reading scheduled for April 4th.
- **Operational Standards for Existing and New Facilities**
 - Objective: Mitigate or eliminate impacts from existing and potential future wells
 - The City was involved in a State rulemaking process where the City identified gaps where if the State was regulating, the City would not.
 - Enforcement and actions:
 - Financial Assurances
 - Requests to plug and abandon existing wells
 - Purchase optical gas imaging camera for leak detection – there is an Intergovernmental Agreement (IGA) with Larimer County for shared resources and enforcement needs
- **Reverse Setbacks**
 - Objective: Distance for new development from existing wells
 - Minor code refinements for this focus area will be coming in 2023

Development Review Process

To address these areas of focus, the proposed code went through the three parts of the development review process. This process included reviewers from multiple departments and some City partners

- Type II development review with Planning and Zoning as the final decision maker
- Project Development Plan
- Final Plan



- Building Permit

Next Steps

The City would like to clarify the objectives for the proposed oil and gas code. The current objectives are as follows:

- **Restrict locations for new oil and gas locations**
 - Pending adoption of proposed Land Use Code
- **Identify and address gaps in regulations for local operations**
 - Address through engagement on State rulemaking
- **Identify and address gaps in enforcement**
 - In progress through Larimer County Health Department of Public Health and Environment

There are discussions of a new objective to be included that considers redundancy for increased local control. Additional community engagement and Council Work session is recommended to discuss this objective.

Larimer County’s Role in Regulating Oil and Gas Development

The City has been working closely with Larimer County to utilize available tools to regulate oil and gas development. The County primarily uses zoning tools to limit oil and gas development to more rural places and industrial zone districts if they meet the threshold for review. With the Intergovernmental Agreement between the City and County, the County would look directly to land use objectives if there were a proposed well in the Growth Management Area (GMA).

Larimer County uses the two following County land use codes to regulate development:

- **Article 11.3.2 – Regulates oil and gas facility locations through the application of setbacks and buffers**
 - All new building facilities need to be 2,000’ as measured from the property line of any school facility, hospital, medical clinic, senior or assisted living facility, multi-family dwelling, or state licensed day care as defined by Colorado state law.
 - All other uses must have a 1000-2000’ setback.
- **Article 11.2.4 - Larimer County Land Use Code acknowledges the importance and public conservation lands that the County, local municipalities and land trusts have used public funds to purchased fee title or conservation easements to protect conservation values such as natural, cultural, agricultural, or scenic value**
 - This code places a no surface occupancy status upon said properties unless the County Commissioners allow reasonable siting alternatives.
 - Only approving siting locations, including all on-site and off-site mitigation, that will not result in a net loss of any natural, cultural, agricultural, recreational, or scenic values on such lands as determined by the Board of County Commissioners.

The County's regulatory role falls into the following actions:

- Larimer County Health Department (LCDHE) has a contract with the Air Pollution Control Division to investigate complaints and regulated sources of pollution.
- LCDHE supports the County planning department with oil and gas activities under Article 11 of the LUC
- LCDHE has IGA with the City to enhance many activities

State of Colorado's Role in Regulating Oil and Gas Development

Along with working closely with the County, the City has been working with the State to regulate oil and gas development. The State's Air Pollution Control Division (APCD) has identified the City has having one of the best air quality programs in the State and with the passage of SB19-181, the City is in a different position than it was before the passage of the bill for regulating oil and gas development. There is no "rush" to develop oil and gas in Fort Collins and regulating facility siting through land use is one of the best ways for cities and counties to control the amount of oil and gas development in their jurisdictions.

The APCD is aware of problem sites that are within Fort Collins and is working with the City and County to address these sites. The two problem sites are the Krause and Hearthfire facilities.

- Krause
 - Compliance issues include odor complaints and emissions from thief hatches
 - Cease and desist issued in Aug 2022, lifted in Nov 2022 as operator was able to meet terms of the cease and desist
 - Operator agreed to redesign the facility, which included installation of a new enclosed combustion device
- Hearthfire
 - Consists of multiple sites, collectively known as Hearthfire
 - Main issues have been with the enclosed combustion device
 - Hearthfire shares some equipment with Krause

To address these problem sites, the Air Pollution Control Division (APCD) is inspecting and monitoring these sites frequently. Along with this action, the APCD has invested in specialized monitoring equipment.

ACPD monitoring is done through:

- Four mobile monitoring vans, in addition to the air monitoring trailer and solar powered portable total volatile organic compound sensors
 - Two vans are currently operating, and two additional vans are built and should be delivered this year
- Working with the Colorado Oil and Gas Conservation Commission (COGCC) to put conditions into their permits to ensure best management practice
- Working on stronger permitting requirements

The ACPD is continuing to investigate all complaints and plans to conduct a stakeholder process to identify additional emissions controls for oil and gas facilities.

Questions and Comments from Panel Participants

As part of the panel, participants were able to submit questions to any of the panelists along with submitting comments for further consideration.

- **Questions and Answers**

- **Question** - City limits and Natural areas excludes GMA --- no new oil and gas in GMA is presumably also an objective? Can the city prevent those as well?
 - **Answer** - New financial assurance rule gives City ability to ask for low and non-producing wells to be plugged and abandoned.
- **Question** - If we zone within the City and less than 1% what happens in the GMA?
 - **Answer** - Under County jurisdiction and will be covered in that presentation.
- **Question** - Given that Prospect Energy has had multiple infractions and was given a cease-and-desist order. After a short period, the state allowed this company to resume operations and, once again, they have shown to capacity to not pollute. Since we cannot depend on the state or county it makes sense to have the city's regulations have more teeth to enforce bad operators. Doesn't it?
- **Question** - The local public has said that high quality air quality monitoring should be required for all oil & gas sites and facilities. Why did staff NOT include air quality monitoring in the City's proposed regulations? There is clear evidence that state and county do not take enforcement action that actually stops emissions violations, so the City would be foolish to rely on state and county for meaningful enforcement
 - **Answer** - For existing sites, odor concerns are at a facility outside of City limits and local regs would not apply. County will be available to response with a camera, but this will not be continuous. This is a concern, and the City's air quality program is planning to install continuous VOC monitoring along the fence line to aid in leak detection and response.
- **Question** - Prospect Energy Krauss site was leaking last week with APCD inspector responding but I don't believe the LCDHE was notified of the inspection so it could be a part of the inspection. Please let us know about this & why this happened?
 - **Answer**- Enforcement is ongoing at the Krause site.
- **Question** - CDPHE never followed through with the water testing. Army Corps of Engineers also didn't follow through. How can we get the GILMORE LAKE tested. It is flammable as evidenced by the chopper that used water to put out the CR 21 fire last fall. Can you follow through with one simple request to test that water. Our area includes thousands of tax-paying households. Some of them million-dollar estates. Thanks!



- **Answer** - If there isn't a lot of circulation- need to consider what is coming from a body of water versus oil and gas development. It is outside of the GMA and is not near a storage facility.
- **Question** - The County stated last year that the LDAR enforcement was estimated to be operational in Q1: when will this happen?
- **Question** - Because the county and city are new at these sort of inspections, and now tethered to serve APCD, how much experience do our workers have, or who will be hired?
 - **Answer** - State has resources and trained professionals, but sometimes this takes time to deploy. The City of Fort Collins and Larimer County are cooperating on this, where City is helping with purchase of equipment, and County will provide trained staff to respond to leaks.
- **Question** - Which agency can we lobby that to plug, and abandon take less than 5 years??
 - **Answer** - The City of Fort Collins and Larimer County are sending these requests to the COGCC. Including public comments and letters would help with these requests.
- **Question** - When there is demonstrable harm to people, why does it take years to correct? Granted we are not seeing fire and brimstone but continuous exposure to the chemicals leaked by oil and gas are harmful, worse for children, seniors and ill individuals.
- **Question** - As near as I can tell, the City/County IGA really only applies to the GMA, but not within Fort Collins city limits. Is that correct?
 - **Answer** - That is correct. The Health Dept has a separate IGA for just O&G facilities within Fort Collins City Limits and GMA.
- **Question** - Fort Collins, like all the other cities on the front range are being polluted by outside wells, mainly in Weld County. Having continuous monitoring can show these harms and hopefully, create mechanisms for regulating surrounding counties pollution (state level).
 - **Answer** - Agreed. Regional pollution from oil and gas is a major concern. The City and County are currently working with the State to install a regulatory ozone monitor to better represent what is transported. Additionally, the City is awaiting funds from an EPA award to deploy more VOC sites.
- **Question** - Are there legal conversations that promote Larimer County having some rights/grievance to address all air pollution drift against foothills from Weld County? Despite few wells here, we are quite affected by the pollution there.
- **Question** - County Health's IGA with Fort Collins would apply to the AQ measurement and OGI camera, once that is acquired, but not enforcement. Is that correct?
 - **Answer** - This will apply to enforcement. The County is a designee of the State and can inspect sites on their behalf.

- **Question** - Unlike the state, I have no confidence in Prospect following the rules or complying. The fox is guarding the henhouse. When will the public see the monitoring and state evaluation of the Prospect site?
- **Question** - How many of these new AQ monitoring stations will operate and provide real time data 24/7, as opposed to needing collected samples to be sent to a lab for analysis?
 - **Answer** - Monitors will track and report total VOC continuously, with canisters collected and analyzed offline. Total VOC could still be indicator for an inspection response (e.g., camera detection of leaks). Detailed plans are awaiting EPA funds and further community discussions.
- **Question** - At the Krause facility, the operator made changes during the cease-and-desist period but it is my understanding that the Division is continuing to document emissions at the facility - if this is the case, are additional changes to the site/operations being considered?
- **Question** - Hello, my question is regarding ozone pollution. How well is it a) measured and b) enforced in our city/ county? As far as I know, the new ozone plan approved Dec 15th 2022 in Colorado won't be enough to meet a federal deadline to improve Front Range air quality. We are a severe air quality violator because of ozone, which is associated with asthma attacks, heart disease, lower birth weights and premature death.
 - **Answer** - We know that oil and gas and transportation are our main contributors- cumulative impacts from all oil and gas operations which goes beyond our limits. State implementation plan- federal requirement to come into attainment and there were sections of plan that was not approved. More conversations are happening around oil and gas and transportation sources, and non-engine sources (i.e. lawn and garden equipment. Locally trying to influence conversations related to electric vehicles, alternative modes of transportation, etc.
- **Question** - Will the slides be made available?
 - **Answer** - Yes, slides and the video recording will be posted.
<https://www.fcgov.com/oilandgas/>
- **Question** - In December 2022 the City's Air Quality Advisory Board, joint environmental groups, and local residents called on the City for public engagement that really listens to and considers public input regarding the proposed O&G regulations, and to revise the draft regs in response to public input. City Council extended the period before 2nd reading for 4+ months to allow more public engagement. Both AQAB and the public have also made substantial recommendations to strengthen the City's draft O&G regs. This panel is 1-way communication (City to the public) and is not public engagement that really listens to and considers public input. So far the City has refused to consider substantial recommendations to strengthen the City's draft O&G regs. Why is the City so intentionally deaf to the AQAB and to public input?

- **Answer** – The current path has been from Council direction from back in October. There have been a lot of letters asking for more local regulations. What we are hearing is that new objective that the City of Fort Collins should consider more redundancy for increase local control should be included. Staff are not in a position to add a whole regulatory section between 1st and 2nd reading of the ordinance. This panel was trying to meet the intention to explain more about why the City is addressing oil and gas the way it is in the codes. Staff hopes that community members use more open communication options available.
 - **Question** - Why aren't the producers simply mandated to set up real time monitoring?
 - **Question** - BoulderAir has the state of art technology that captures signature O&G emissions. Please talk about whether this is being considered for air quality monitoring?
 - **Answer** - Some sites that can measure continuous streams of pollutants related to oil and gas are very expensive sites to operate and maintain. There are conversations around objectives and what we are trying to do but it is a huge investment so need to determine if it meets objectives. BoulderAIR monitors costs about \$1 million to run and for an area like Fort Collins, that doesn't have as many wells, there is a cost benefit analysis related to this. The State shared that operators hire 3rd party companies to monitor and they don't do it themselves
 - **Question** - Are you leveraging operators with bonds (or other financial security tools) before they are permitted to break ground in order to protect residents when disasters occur? (worst case scenario is bankruptcy, etc.)
 - **Question** - Do any of the oil and gas operators believe that their facilities release dangerous chemicals and take monitoring and control seriously? My guess is they will only do what they are forced to do or if they get caught
- **Comments**
 - **Comment** - The Larimer Alliance coalition sent a letter listing many recommended provisions. I would like to hear each of those recommendations be addressed.
 - Follow-up comment to the above comments - Relevant letters as mentioned by Mr. Walters:
 - <https://www.larimerallianceblog.org/letter-submitted-by-larimer-alliance-and-other-allied-groups-to-fort-collins-city-council-regarding-draft-oil-and-gas-regulations/>
 - <https://www.larimerallianceblog.org/for-reference-december-memo-of-the-air-quality-advisory-board-on-fort-collins-draft-oil-and-gas-regulations-and-response-from-mayor-arndt/>
 - <https://www.larimerallianceblog.org/follow-up-letter-submitted-by-larimer-alliance-and-other-allied-groups-to-fort-collins-city-council-regarding-draft-oil-and-gas-regulations/>



- **Comment** - It is also a major objective to shut down 100% of the ones that already do exist, since they are harming health, safety and environment.
- **Comment** - Here's everything I see about leak detection & repair in the regs. This is not detailed enough.
 - Follow-up comment to the above comment - 6.262.14.3 - Inspection The City Manager is hereby empowered to cause any building, other structure or tract of land to be inspected and examined and to order in writing the remedying of any condition found to exist therein or thereat in violation of any provision of this Land Development Use Code. After any such order has been served, no work shall proceed on any building, other structure or tract of land covered by such order, except to correct such violation or comply with the order. With regards to inspections of oil and gas facilities, the operator of any oil and gas facility or oil and gas pipeline that has been inspected shall pay to the City the costs for such inspection within sixty (60) days of receiving an invoice for the cost of the inspection. Inspections of oil and gas facilities and oil and gas pipelines may be conducted by City staff or non-City inspectors authorized by the City to conduct such inspections.
- **Comment** - Comment during the County's portion of the presentation - Absolutely useless map unless you are familiar with the bodies of water. The Growth Management Area is where I live and already the Gilmore Lake smells like Hydrogen Sulfide from the water table which is polluted. I've been requesting a water test for over a year. BEFORE any approvals for drilling in the GMA are allowed, we need baseline testing to be conducted including seismic tests. Thank you.
- **Comment** - Ms. Fury, small amounts H₂S cause irritation to the lungs, throat, eyes, and skin. It causes headaches and there are NO long-term studies of minute amounts has been made on feed lots. It stinks and people will not reside with an irritating odor and properties will lose value. So please do NOT minimize its effect.
- **Comment** - Speaking of financial assurance (FA) & Prospect Energy this is what was asked of them to restart operations here. This isn't anywhere close to enough protection for our community! Amount of Financial Assurance Required per Rule 702: \$133,750.00 Amount of Financial Assurance Required per Rule 703: \$0.00 Amount of Financial Assurance Required per Rule 704: \$100,000.00 Total Amount of Financial Assurance the Operator will provide to the Commission no later than 90 days from the Commission's approval of the Financial Assurance Plan: \$233,750.00
- **Comment** - Any monitoring of these facilities cannot allow the operators to chose those contractors who measure. An unbiased monitoring company is the only way to get accurate data.
- **Comment** - BoulderAIR has established that sort of 24/7 monitoring, and yes, it is expensive. But the value of the data which can be seen in real time and viewed digitally over given periods of time, can still pinpoint events as they happen. Numerous

communities along the Front Range utilize that technology. Granted, not a code consideration perhaps, but something that needs to be addressed.

- **Comment** - What you are describing is a nice patchwork of initiatives and hopes for things that might happen to address problems from oil & gas. But it is NOT a substitute for good regulations that will protect public health, safety, welfare, financial security, and the environment from known and possible future harm by oil & gas development.
- **Comment** - Boulder air is operational. Where are the city or counties monitors - conceptual only.
- **Comment** - Continuous monitoring would show how much pollution is coming from other sites. The air is still bad.
- **Comment** - Networking with the other communities would point up where the emissions are coming from. . . which may well be coming from Weld County. Could help us deal with consequences of emissions out of our jurisdiction that are still impacting us. It would be the air quality equivalent of an air defense radar network. Just a thought
 - **Response:** 100 percent agree. Right now we are in the process of developing an aerial survey monitoring program that could measure emissions on a per facility, per basin, and per state basis. In addition, we have partnered with CSU for a grant from the Department of Energy to install a series of monitoring towers across various basins. The hope is that will fill some of the gaps.
- **Comment** - Kate - Sorry but permitting these CAPs & mega CAPS isn't the answer to address the harms of O&G, air quality, spills & harmful emissions & destroying tons of water...
 - **Response:** The CAPs are useful in that they force the operator to account for the cumulative impacts of multiple facilities and allow the public and decision makers to account for the full scope of impacts, instead of the operator submitting one facility at a time which can obscure the overall impacts of multiple facilities. The benefits of the CAPs are that it allows the operator to make long-term plans which include things like pipelines (so the facilities can be tankless, reduce truck trips to and from sites, and other benefits that reduce emissions), work with the utilities to install power lines and transformers to electrify most of pre-production, etc. In addition, the CAPs typically include commitments to plug and abandon large numbers of older wells, even ones that don't belong to the operator that is filing the CAP.
- **Comment** - Ms. Fury, spudding still takes an ENORMOUS amount of water. There are also lined treatment beds and fracking involves proppants which are carcinogens. The earth has to be restored after being extracted.
- **Comment** - As the City expands eastward as it will in the coming decade, and with changes in oil & gas development, it is entirely plausible that the only O&G in Ft Collins will not only the existing Prospect facilities. The City's regs should be looking ahead so the City is well prepared, and not just left to react.



Next Steps

During this panel, staff outlined a variety of next steps for the proposed oil and gas code.

- **2nd Reading April 4th, 2023 Council will consider adoption of land use restrictions**
- **Compiling recommendations by advocacy groups and the Air Quality Advisory Board (AQAB)**
- **Continue to share information related to what occurred during the panel**

3.23.2023 DRAFT SUBJECT TO CHANGE

City of Fort Collins
Application for Permit
For
New Oil and Gas Facilities

Development application submittal master list for oil and gas facilities

Introduction & Instructions to Applicant

This application form requires information from, and provides guidance to, applicants for permits, pursuant to the City Fort Collins *Oil and Gas Facilities and Pipelines Land Use Code Standards* (“*Development Standards*”). This application is supplementary to, and not in replacement of the specific and detailed requirements of the Development Standards. Any conflict between the requirements of the Development Standards as generally described in this application form, and the Development Standards themselves, shall be resolved in favor of the Development Standards.

Conceptual Review

Prior to submitting an application for a permit under the Development Standards, the prospective applicant must schedule and attend a conceptual review pursuant to Section 3.12.3 of the Land Use Code. At or before the Conceptual Review meeting, the applicant shall provide staff with the following information:

- (a) Names and addresses of all persons or interests proposing the designated activity;
- (b) The application fee, pursuant to Section 2.2.3(D) of the Land Use Code
- (c) Alternative Location Analysis. The alternative location analysis must include, at a minimum, the following information:
 - 1) A map depicting the following elements within three (3) miles of the proposed surface location. (This requirement is limited to one (1) mile for a proposed single vertical or directional well):
 - i. All mineral rights held or controlled by the applicant; and
 - ii. The location of all features listed in the "Preliminary Site Analysis."
 - 2) Unless waived by the Director, the analysis shall evaluate a minimum of three potential locations that can reasonably access the mineral resources within the proposed drilling and spacing unit(s), including the following information for each site:
 - i. General narrative description of each location;
 - ii. Any location restrictions that the site does not satisfy;
 - iii. Any existing surface use agreements or other documentation regarding legal property rights;
 - iv. Off-site impacts that may be associated with each site;
 - v. Proposed truck traffic routes and access roads for each location; and
 - vi. Any information pertinent to the applicable review criteria that will assist the Director in evaluating the locations.

- 3) Preliminary Site Analysis. The Preliminary Site Analysis shall include maps with the following information:
- a. All drilling and spacing units proposed by the applicant within one (1) mile of the City's boundaries;
 - b. All features defined below that are wholly or partially within one (1) mile of the proposed oil and gas facility:
 - i. Any existing or future building approved as occupiable space, as defined in the City's Building Code;
 - ii. City parks or City property intended to be used for City parks;
 - iii. City maintained trails and trailheads or City property intended to be used for City trails and trailheads;
 - iv. Outdoor venues, playgrounds, permanent sports fields, amphitheaters, or other similar places of outdoor assembly;
 - v. City natural areas;
 - vi. Existing and approved oil and gas facilities and pipelines;
 - vii. Areas within the FEMA 100-Year Floodplain boundary;
 - viii. The centerline of all USGS perennial and intermittent streams and the map will indicate which surface water features are downgradient;
 - ix. Active reservoirs and public and private water supply wells of public record;
 - x. Natural habitats and features as defined in Section 3.4.1 of the City Land Use Code, within one (1) mile of the proposed oil and gas facility;
 - xi. High priority habitat as defined by the COGCC; and
 - xii. Disproportionately impacted communities, as defined by the COGCC.
 - (d) Any additional information requested by the Director as necessary to facilitate a productive pre-application meeting and to enable the Director to make a determination of the required permitting procedure and applicable portions of the Development Standards.

Mineral Interest Owner Certification

Any application which requires compliance with § 24-65.5-101, et seq., C.R.S., (Notification to Mineral Owners of Surface Development) shall not be considered to have been submitted as complete until the applicant has provided a certification signed by the applicant confirming that the applicant or its agent has examined the records of the Larimer County Clerk and Recorder for the existence of any mineral estate owners or lessees that own less than full fee title in the property which is the subject of the application, and stating whether or not any such mineral estate owners or lessees exist. In addition, for purposes of the Permit Authority convening its initial public hearing on any application involving property which mineral estate owners or lessees owning less than full fee title in the property have been certified by the applicant to exist, the application shall not be considered to have been submitted as complete until the applicant has provided an additional signed certification confirming that the applicant has, at least 30 days prior to the initial public hearing, transmitted to the City and to the affected mineral estate owners and lessees the notices required by C.R.S. §24-65.5-101, et seq.

General Submission Requirements

All applications for permits under the Development Standards are required to be accompanied by

general submission requirements:

1. Completed application form;
2. Identify what other city, state or federal permits are required in order to initiate and complete the Project:

Detailed Submission Requirements

1. Information describing the Project

- (a) Executive summary of the proposal indicating the scope and need for the Project.
- (b) The legal description of the proposed development site
- (c) An index map showing the general location of the Project area and its relationship to surrounding topographic and cultural features. A standard U.S.G.S. quadrangle map would usually be adequate for an index map.
- (d) Ownership of the surface of the area of land to be affected.
- (e) A topographic map or maps showing location, nature, and density of the proposed development or land use change.
- (f) Aerial photographs, when available, of reasonable scale and of a date which reasonably portrays the current condition of the area to be covered by the permit application. The area to be covered by the permit shall be outlined on the aerial photograph.
- (g) Plans and specifications of the Project in sufficient detail to evaluate the application against the applicable Review Criteria.
- (h) Schedules for designing, permitting, constructing and operating the Project, including the estimated life of the Project.
- (i) Description of relevant conservation techniques to be used in the construction and operation of the Project.
- (j) Description of demands that this Project expects to meet and basis for Projections of that demand.
- (k) List of adjacent property owners [within 1000 feet of any Project component], and their mailing addresses.

2. Property rights, other permits and approvals

- (a) Description of property rights that are necessary for or that will be affected by the Project, including easements and property rights proposed to be acquired through negotiation or condemnation.
- (b) Specify how the proposed development will utilize existing easements or rights-of-way for new associated distribution or collector networks;
- (c) Copies of any permits or approvals related to the Project that have been granted.
- (d) Copies of relevant official federal and state consultation correspondence prepared for the Project; a description of all mitigation required by federal, state and local authorities; and copies of any draft or final environmental assessments or impact statements required for the Project.

3. Land Use

- (a) Provide a map at a scale relevant to the Project describing existing land uses and existing zoning of the proposed Project area and the Project service area, including peripheral lands which may be impacted. The land use map shall include but need not necessarily be limited to the following categories: residential, commercial, industrial, extractive, transportation, communication and utility, institutional, open space, outdoor recreation, agricultural, forest land and water bodies. Show all special districts (school, fire, water, sanitation, etc.) within the Project area.
- (b) All immediately affected public land boundaries should be indicated on the map. Potential impacts of the proposed development upon public lands will be visually illustrated on the map as well as described in the text.
- (c) Detail the agricultural productivity capability of the land in the development area and source development area (SCS classification)
- (d) Specify whether and how the proposed Project conforms to the City's planning policies, including without limitation, the Fort Collins Comprehensive Plan.
 - (e) Specify whether and how the proposed Project conforms to applicable regional and state planning policies.
 - (f) Specify whether and how the proposed Project conforms to applicable federal land management policies.
 - (g) If relevant to the Project design, describe the agricultural productivity capability of the land in the Project area, using Soils Conservation Service soils classification data.

4. Financial feasibility of the Project

- (a) Relevant bond issue, loan and other financing approvals or certifications (ex: approved bond issues; bond counsel opinion).
- (b) Business plan that generally describes the financial feasibility of the Project.

5. Areas of Paleontological, Historic or Archaeological Importance. Description of the impacts and net effect of the Project on sites of paleontological, historic or archaeological interest.

6. Noise Mitigation. A noise report and mitigation plan must be submitted as part of the application for a project development plan. The noise report and mitigation plan must include the following information:
- a. During construction, drilling, and completion activities, the City will require continuous noise monitoring for all oil and gas facilities located within ½ mile (2,640 feet) of any existing Building Units. The City may adjust this distance based on the location, nature, and size of the facility. The City may require continuous noise monitoring to be conducted by an approved third-party consultant.
 - b. The hours of maximum noise emissions, type, frequency, and level of noise to be emitted, and proposed mitigation measures.
 - c. A minimum five-day baseline noise analysis which must include Saturday and Sunday as two of the days.
 - d. Modeled maximum A- and C-weighted decibel levels for all phases of development shall be presented using contour maps from the oil and gas facility (combining noise sources) at 350 feet, 500 feet, 1000 feet, 2,000 feet, and to the property line of the adjacent properties. Contour maps shall be provided that demonstrate both unmitigated and mitigated decibel levels.
 - e. A plan of proposed mitigation measures to be implemented by the oil and gas facility during each phase of development shall be provided to ensure compliance with the maximum permissible noise levels as listed in the Code of the City of Fort Collins Chapter 20, Article II.
 - f. Compressor engines for natural gas are prohibited within the City limits except for wellhead, sales, and gas lift compressors, air and/or gas gathering compressors which shall be located on the oil and gas locations. Operator shall use acoustic wall enclosures for compressor engines where necessary to provide visual and/or noise mitigation. Any compressors that are used as part of the vapor recovery units use to control air pollution will be limited to a maximum of eight (8) small engine drive units. Vapor recovery unit compressors will be installed with sound walls to buffer noise.
7. Visual Mitigation. A visual mitigation plan must be submitted as part of the application for a project development plan and such plan must demonstrate how the proposed oil and gas facility will blend into the surrounding environment, including consideration of landscape berming, facility colors, and use of existing and new vegetation and contours. The visual mitigation plan must include photographic simulations of the oil and gas facility with proposed mitigation measures.
8. Air Quality. Description of the impacts and net effect the Project would have on air quality during both construction and operation, and under both average and worst case conditions, considering particulate matter and aerosols, oxides, hydrocarbons, oxidants, and other chemicals, temperature effects and atmospheric interactions. Such plan must demonstrate compliance with the specifications and requirements as outlined in Chapter 11 Section 3.3 of Larimer County's Land Use Code.
9. Air Monitoring. An air monitoring plan must be submitted as part of the application for a project development plan. Such plan must demonstrate compliance with Ambient Air Monitoring methods and reporting specifications as set forth in Chapter 11 Section 3.3 of Larimer County's Land Use Code, and include how the operator will conduct the following:
- g. Baseline Monitoring: Baseline monitoring shall be conducted within five hundred (500) feet of a proposed oil and gas location over at thirty (30) day period prior to construction of the oil and gas facility.

- b. Monitoring during Drilling, Completion and Production Phases: High frequency monitoring shall be conducted during drilling and completions activities and continue until three years have passed from the date the last well drilled on the site has entered the production phase, unless a building approved for human occupancy is within one thousand (1000) feet of the edge of the working pad surface. In such instance, high frequency monitoring shall be required until all wells are plugged and abandoned.
10. Community Outreach Plan. A community outreach plan must be submitted as part of the application for a project development plan for any oil and gas location proposed to be located within two thousand six hundred and forty (2640) feet of any building approved for human occupancy under the building code and must provide for consultation, outreach, and engagement that includes:
- Describe any measures taken to directly mitigate adverse impact to occupants of any buildings approved for human occupancy.
 - Providing at least thirty (30) days advance written notice to occupants of any buildings approved for human occupancy of mobilization in, rig up.
 - Providing written notice to occupants of any building approved for human occupancy within ten (10) days after any reportable events that could have off-site impacts including fires, explosions, blow-outs, venting, or spills over one-hundred (100) barrels in volume.
11. Odor Complaint Response Plan. Plan should also describe odor response procedures, Continuation of high frequency monitoring will be required if repeated emissions at threshold concentrations are detected or as a result of repeated odor violations.
12. Water Source Plan. As part of the application for a project development plan, the Operator will provide the City with details regarding the source or sources of water to be used at the oil and gas facility during the drilling phase and completion phase and during hydraulic fracturing.
- The Operator will provide the City with a will serve letter from each water provider stating that sufficient water is available to support the estimated volumes of water to be utilized.
 - All water for hydraulic fracturing shall be transported to the Oil and Gas Locations by means other than by truck, unless the Operator demonstrates extenuating circumstances that prevent water delivery through other means. If water is delivered by truck, Operator shall submit a traffic control plan to the City engineer for approval prior to hydraulic fracturing, and trucks shall be limited to a maximum of seven (7) days to deliver water. If the transportation of water by means other than truck exceeds seven (7) days, the Operator will seek any necessary amendments to the Oil and Gas Project Development Plan.
13. Waste Management Plan. Must detail how all solid and liquid wastes will be addressed. The plan must demonstrate how the oil and gas facility will comply with the following requirements:
- All fluids must be contained and there shall be no discharge of fluids.
 - Wastewater must be stored in tanks, transported by tanker trucks and/or pipelines, and disposed of at licensed disposal or recycling sites in accordance with applicable law.
 - The location and type of secondary containment and stormwater measures as required in Chapter 11 Section 3.3 of Larimer County's Land Use Code.

14. Surface Water Quality
- (a) Map and/or description of all surface waters to be affected by the Project, including description of provisions of the applicable regional water quality management plan, any NPDES Permit, or Section 404 Federal Clean Water Act Permit that applies to the Project.
 - (b) Descriptions of the immediate and long-term impact and net effects that the Project would have on the quantity and quality of surface water under both average and worst case conditions.
 - (c) Provide a surface and subsurface drainage analysis.
15. Groundwater Quality
- (a) Map and/or description of all groundwater, including any and all aquifers underlying or affected by the Project. At a minimum, the description should include:
 - i. groundwater flow directions and levels.
 - ii. existing groundwater quality and classification.
 - iii. location of all water wells potentially affected by the Project and their uses.
 - iv. description of the impacts and net effect of the Project on groundwater.
16. Soils, Geologic Conditions and Natural Hazards
- (a) Map and/or description of soils, geologic conditions, and natural hazards including but not limited to soil types, drainage areas, slopes, avalanche areas, debris fans, mud flows, rock slide areas, faults and fissures, seismic history, and wildfire hazard areas, all as relevant to the Project area.
 - (b) Descriptions of the risks to the Project from natural hazards.
 - (c) Descriptions of the impacts and net effect of the Project on soil and geologic conditions in the Project area.
 - (d) On an appropriate map, indicate any floodplain associated with the proposed development. Documentation of historical flooding activity should be included. Documentation of historical flooding activity should be included.
17. Hazardous Materials
- (a) Description of all solid waste, hazardous waste, petroleum products, hazardous, toxic, and explosive substances to be used, stored, transported, disturbed or produced in connection with the Project, including the type and amount of such substances, their location, and the practices and procedures to be implemented to avoid accidental release and exposure.
 - (b) Location of storage areas designated for equipment, fuel, lubricants, and chemical and waste storage with an explanation of spill containment plans and structures.
18. Monitoring and Mitigation Plan

- (a) Description of all mitigation that is proposed to avoid, minimize or compensate for adverse impacts of the Project and to maximize positive impacts of the Project.
- (b) Describe how and when mitigation will be implemented and financed.
- (c) Describe impacts that are unavoidable that cannot be mitigated.
- (d) Description of methodology used to measure impacts of the Project and effectiveness of proposed mitigation measures.
- (e) Description, location and intervals of proposed monitoring to ensure that mitigation will be effective.

DRAFT

**Local Government Oil & Gas Regulations
Protective Measures Comparison**

Protective Measure	COGCC Rules and Regulations	City of Broomfield	Boulder County	Larimer County	City of Fort Collins Land Use Code	City of Fort Collins Municipal Code	City of Fort Collins Submittal documents Administratively adopted by DIRECTOR
Zoning/Setback Restrictions	N	Y	Y	Y	Y – LUC 3.12.4	N	N
Air Emissions: Emission Modeling Required	Y	Y	Y	N	Y – LUC 3.4.2 Air Quality	WS	Y
Air Emissions: Required to Comply with Fed. Stds.	Y	Y	Y	L	Y – LUC 3.4.2 Air Quality	WS	Y
Air Emissions: Required to Comply with St. AQ Stds.	Y	Y	Y	L	Y – LUC 3.4.2 Air Quality	WS	Y
Air Emissions: Continuous Emission Monitoring Required	Y	Y	Y	L	Y – LUC 3.4.2 Air Quality	WS	Y
Air Emissions: Leak Detection & Repair Program Required	Y	Y	Y	Y	Y – LUC 3.4.2 Air Quality	WS	Y
Air Emissions: Venting/Flaring Prohibited Except in Emergency	Y	Y	Y	L	Y – LUC 3.4.2 Air Quality	WS	Y

Water Supply & Use (S&U): Water Supply Plan Required	Y	Y	Y	L	N	Y - municipal code sections 26-148 and 26-149.	Y
Water S&U: Water Source Disclosure Required	Y	Y	Y	L	N	Y - municipal code sections 26-148 and 26-149.	Y
Water S&U: Water Use Disclosure Required	Y	Y	Y	N	N	Y - municipal code sections 26-148 and 26-149.	Y
Water S&U: Independent Assessment of Impacts to Other Water Users	Y	Y	Y	L	N	Y - municipal code sections 26-148 and 26-149.	Y
Water S&U: Produced Waste Water Disposal Plan Required	Y	Y	Y	Y	N	Y - municipal code sections 26-148 and 26-149.	Y
Water S&U: Prohibition on Use of City Water	N	Y	N/A (Not City Regs)	N/A (Not City Regs)	N	WS	WS
Hazardous Materials Disclosure & Mgt. Plan Required	Y	Y	L	Y	Y - LUC section 3.4.5 Hazards	WS	Y
Env. Impact Assessment Required (Independent)	Y	Y	N	N	Y - LUC section 3.4.1 <u>Ecological Characterization study</u>	WS	Y
Cumulative Impacts Analysis Required (Independent)	Y	Y	L	L	N	WS	Y

Seismic Testing/Vibration Oversight and Limitation Authority	Y	N	Y	Y	Y – LUC 3.3.4 Engineering Standards Y- LUC3.4.4 Noise and Vibrations	WS	Y
Pipelines: Leak Detection/Integrity Management Required	Y	Y	Y	Y	Y – LUC 3.12.5 Special Conditions of approval	WS	Y
Pipelines: Emergency Response Plan Required	Y	Y	Y	Y	N	WS	Y
Financial Assurance Authority	Y	Y	Y	Y	Y – LUC 3.3.2 Construction Security	WS	Y
Operational Violations: Inspection and Enforcement Authority	Y	Y	Y	Y	Y – LUC 2.14.6 violation of dev standards	WS	Y
Operational Violations: Penalty/Fine Authority	Y	Y	Y	Y	N	WS	N
Operational Violations: Cease & Desist and Corrective Action Authority	Y	Y	Y	Y	N	WS	N

Y=Yes N=No L=Limited WS=Staff recommended Council Work Session to discuss Operational Standards

Studies Regarding Oil and Gas Activity Impacts on Health and Environment

HEALTH AND SAFETY STUDIES

Bien, T. and Helmig, D., 2018. Changes in summertime ozone in Colorado during 2000-2015, *Elem Sci Anth*, 6(1), p.55. DOI: <http://doi.org/10.1525/elementa.300>

Discussed complicating factor of oil and gas emissions in addressing ozone formation in Colorado front range. NCFR O3 trends are primarily determined by local/regional emissions and production. The lack of the higher percentile O3 response to the NOx decline indicates that O3 in the region has not been sensitive to these NOx reductions thus far.

Blair, B., McKenzie, L., Allshouse, W., Adgate, J., 2017. Is reporting “significant damage” transparent? Assessing fire and explosion risk at oil and gas operation in the United States, *Energy Research and Social Science*, 29, p.36. DOI: <http://doi.org/10.1016/j.erss.2017.04.014>

The study found that between 2006 and 2015, a total of 116 fires and explosions were self-reported by the industry in Colorado (0.03% of active wells). The study concludes that the total number of fires and explosions may be underreported due to Colorado’s relaxed incident reporting rules.

Carr, E., Avanasani, R., Mendez, B., Glen, G., Hader, J., Hong, T., Wignall, J., Wei, Y., Guelden, B., and Holder, C., 2019. Final report: human health risk assessment for oil & gas operations in Colorado, Colorado Department of Public Health and Environment, accepted for forthcoming publication.

At the most-exposed (downwind) locations at 500 ft from the well pads, the highest estimated 1-hour exposures exceeded guideline levels for a small number of chemicals, including benzene during development and production activities, and toluene and ethyltoluenes during development activities... One-hour exposures decreased rapidly with distance from the hypothetical facilities, but some remained above guideline levels out to 2,000 ft.

Casey, J., Savitz, D., Rasmussen, S., Ogburn, E., Pollak, J., Mercer, D., and Schwartz, B., 2016. Unconventional natural gas development and birth outcomes in Pennsylvania, USA, *Epidemiology*, 27(2), p. 163. DOI: <http://10.0.4.73/EDE.0000000000000387>. (Also available at: <https://www.ncbi.nlm.nih.gov/pubmed/26426945>)

Mothers who lived in the highest exposure quartile (124 wells within 20 km) were 1.4 times more likely to give birth to low-birth-weight children and smaller than gestational age children; compared to lower quartile (8 wells within 20 km). (Inverse Density Weighting (IDW) methodology) methodology

Currie, J., Greenstone, M., and Meckel, K. Hydraulic Fracturing and infant health: New evidence from Pennsylvania, 2017. *Sci. Adv.*, 3:e1603021. (Available at:

<https://advances.sciencemag.org/content/3/12/e1603021/tab-pdf>

We found evidence for negative health effects of in utero exposure to fracking sites within 3 km of a mother’s residence, with the largest health impacts seen for in utero exposure within 1 km of fracking sites. Strongest Evidence of negative health effects, including greater incidence of low-birth weight and significant declines in average birth weight.

Evans, J., Helmig, D., 2017. Investigation of the influence of transport from oil and natural gas regions on elevated ozone levels in the northern Colorado front range, *Journal of the Air & Waste Management Association*, 67:2, p.196. DOI: <https://dx.doi.org/10.1080/10962247.2016.1226989> (Also available at: <https://www.tandfonline.com/doi/full/10.1080/10962247.2016.1226989>)

Finding that 65% of ozone formation on Colorado's Northern Front Range's worst ozone days is due to pollutants transported from oil and gas producing areas, while only 9% is due to transport from the Denver urban corridor

Gilman, j., Lerner, B., Kuster, W., and de Gouw, J., 2013. Source Signature of Volatile Organic Compounds from Oil and Natural Gas Operations in Northeastern Colorado, *Environ. Sci. Technol.*, 47, p.1297. DOI: <http://dx.doi.org/10/1021/es304119a>

Performing source signature analysis Finding that 55% of ozone-forming VOCs measured in the Colorado Northern Front Range were attributable to the oil and gas sector

Haley, M., McCawley, M., Epstein, A., Arrington, B., and Bjerke, E., 2016. Adequacy of current state setbacks for directional high-volume hydraulic fracturing in the Marcellus, Barnett, and Niobrara shale plays, *Environ Health Perspectives*, 124:9, p.1323. DOI: <https://doi.org/10.1289/ehp.1510547>

Reviewed setback distances in Texas, Pennsylvania, West Virginia, Ohio, and Maryland, and they found the setbacks were not determined from peer-reviewed data analysis but were based on compromise between government agencies, the regulated community, environmental and citizen groups, and landowners. In the evacuation data we collected, the average evacuation zone was 0.8 mi (range of 660–13,200 ft) and the average number of homes/families displaced was 149 (range of 3–500 per event). Concluded that catastrophic events, thermal modeling, vapor cloud modeling, and air pollution data indicate that 1500 feet "do[es] not appear sufficient to protect public health and safety."

Holder, C., Hader, J., Avanas, R., Hong, T., Carr, E., Mendez, B., Wignall, J., Glen, G., Guelden, B., and Wei, Y., 2019. Evaluating potential human health risks from modeled inhalation exposures to volatile organic compounds emitted from oil and gas operations, *Journal of the Air & Waste Management Association*. DOI: <https://doi.org/10.1080/10962247.2019.1680459>

At the most-exposed (downwind) locations at 500 ft from the well pads, the highest estimated 1-hour exposures exceeded guideline levels for a small number of chemicals, including benzene during development and production activities, and toluene and ethyltoluenes during development activities... One-hour exposures decreased rapidly with distance from the hypothetical facilities, but some remained above guideline levels out to 2,000 ft.

Janitz, A., Dao, H., Campbell, J., Stoner, J., Peck, J., 2019. The association between natural gas well activity and specific congenital anomalies in Oklahoma, 1997-2009, *Environment International*, 122, p.381. DOI: <https://doi.org/10.1016/j.envint.2018.12.011>

Higher risk of neural tube defects for babies born in closer proximity to natural gas wells. (Inverse Distance Weight method). Supports the results of 2014 McKenzie Study.

Lewis, C., Greiner, L., and Brown, D., 2018. Setback distances for unconventional oil and gas development: Delphi study results, *PLoS ONE* 13(8). DOI: <https://doi.org/10.1371/journal.pone.0202462>

Expert consensus (Delphi study) that 1/4 mile is insufficient, but no consensus on setbacks between 1/4 and 2 miles. The results suggest that if setbacks are used the distances should be greater than 1/4 of a mile from human activity, and that additional setbacks should be used for

settings where vulnerable groups are found, including schools, daycare centers, and hospitals. The lack of consensus on setback distances between 1/4 and 2 miles reflects the limited health and exposure studies and need to better define exposures and track health. For this Delphi panel, selection criteria included: researchers whose work has been published in peer-reviewed journals and/or presented at national scientific meetings; scientists employed in regulatory agencies; and leaders in public policy and environmental advocacy who have been published in the grey literature.

Macey, G., Breech, R., Chernaik, M., Cox, C., Larson, D., Thomas, D., and Carpenter, D., 2014. Air concentrations of volatile compounds near oil and gas production: a community-based exploratory study. *Environmental Health*, 13:82. <http://ehjournal.net/content/13/1/182>

Community-based monitoring near unconventional oil and gas operations demonstrates elevations in concentrations of hazardous air pollutants under a range of circumstances. Of special concern are high concentrations of benzene, hydrogen sulfide, and formaldehyde, as well as chemical mixtures linked to operations with observed impacts to resident quality of life.

McDuffie, E., Edwards, P., Gilman, J., Lerner, B., Dube, W., Trainer, M., Wolfe, D., Angevine, W., deGouw, J., Williams, E., Tevlin, A., Murphy, J., Fischer, E., McKeen, S., Ryerson, T., Peischi, J., Holloway, W., Aikin, K., Langford, A., Senff, C., Alvarez II, R., Hall, S., Ullman, K., Lantz, K., and Brown, S., 2016. Influence of oil and gas emissions on summertime ozone in the Colorado Northern Front Range, *J. Geophys. Res. Atmos.*, 121, p.8712. DOI: 10.1002/2016JD025265.

Finding that oil and gas emissions contribute to approximately 50% of regional VOCs and 20% of regional ozone formation in the Colorado Front Range

McKenzie, L., Witter, R., Newman, L., and Adgate, J., 2012. Human health risk assessment of air emissions from development of unconventional natural gas resources. *Sci Total Environ.* 424, p.79. DOI: <https://doi.org/10.1016/j.scitotenv.2012.02.018>

Hazard Index: sub-chronic non-cancer of 5; chronic hazard index of 1; cumulative cancer risk = 10/1 million. All at or above EPA thresholds

McKenzie, L., Guo, R., Witter, R., Savitz, D., Newman, L., and Adgate, J., 2014. Birth outcomes and maternal residential proximity to natural gas development in rural Colorado. *Environ Health Perspect*, 122:4, p.412. DOI: <http://dx.doi.org/10.1289/ehp.1306722>

Positive association between gas wells within 10 miles of maternal residence (Inverse Distance Weight approach), and prevalence of congenital heart defects and neural tube defects in infants

McKenzie, L., Blair, B., Hughes, J., Allshouse, W., Blake, N., Helmig, D., Milmoie, P., Halliday, H., Blake, D., and Adgate, J., 2018. Ambient nonmethane hydrocarbon levels along Colorado's Northern Front Range: Acute and chronic health risks. *Environ. Sci. Technol.* 52(8), p.4514. DOI:

<https://10.1021/acs.est.7b05983> (Also available at: https://mediaassets.thedenverchannel.com/document/2018/04/09/acs.est.7b05983_83327309_ver1.0.pdf)

For populations living within 500 feet of an oil and gas facility there are higher rates of neurological, hematological, and developmental health effects from acute inhalation exposures to benzene and alkanes. At 500 feet, there is an elevated lifetime cancer risk 8.3 times above EPA upper threshold of 1 in 10 000. We also estimated cumulative lifetime excess cancer risks for populations living within 610 m (2,000 feet) of an O&G facility exceed USEPA's upper threshold. Our results indicate that State regulatory setback distances of 500 feet may not

protect nearby residents from health effects resulting from air pollutants emitted from these facilities.

McKenzie, L., Allshouse, W., and Daniels, S., 2019. Congenital heart defects and intensity of oil and gas well site activities in early pregnancy. *Environment International*, 132. 104949. DOI:

<https://10.1016/j.envint.2019.104949> (Also available at:

<https://www.sciencedirect.com/science/article/pii/S0160412019315429>)

Significantly higher rates of congenital heart defects in infants born to women who live in areas with more than 403 wells in a 10-mile radius (IDW methodology). In rural areas, odds of a birth with an AAVD, CTD, or TVD were 2.6–4.6 times more likely than controls in the high exposure group compared to the low exposure group.

McMullin, T., Bamber, A., Bon, D., Vigil, D., Van Dyke, M., 2018. Exposures and Health Risks from Volatile Organic Compounds in Communities Located near Oil and Gas Exploration and Production Activities in Colorado (U.S.A.), *Int. J. Environ. Res. Public Health*, 15(7), 1500. DOI:

<https://doi.org/10.3390/ijerph15071500>

Found hazard index of greater than 1 for combined VOCs and less than 1 for VOCs individually; Lifetime excess cancer risk from Benzene was above EPA hazard index of 1/10,000 people.

Oltmans, S., Cheadle, L., Johnson, B., Schnell, R., Helmig, D., Thompson, A., Cullis, P., Hall, E., Jordan, A., Sterling, C., McClure-Begley, A., Sullivan, J., McGee, T., and Wolfe, D., 2019. Boundary layer ozone in the Northern Colorado Front Range in July–August 2014 during FRAPPE and DISCOVER-AQ from vertical profile measurements, *Elem Sci Anth*, 7: 6. DOI: <https://doi.org/10.1525/elementa.345>

Wind trajectories show that volatile organic compounds emitted by oil and gas play a "crucial role" in causing the highest ozone levels in Colorado.

Pétron, G., Frost, G., Miller, B., Hirsch, A., Monta, S., Karion, A., Tranier, M., Sweeney, C., Andrews, A., Miller, L., Kofler, J., Bar-Ilan, A., Dlugokencky, E., Patrick, L., Moore Jr., C., Ryerson, T., Siso, C., Kolodzey, W., Lang, P., Conway, T., Novelli, P., Masarie, K., Hall, B., Guenther, D., Kitzis, D., Miller, J., Welsh, D., Wolfe, D., Neff, W. and Tans, P., 2012. Hydrocarbon emissions characterization in the Colorado Front Range: A pilot study, *J. Geophys. Res.*, 117, D04304. DOI: <https://doi.org/10.1029/2011JD016360>

Measuring oil and gas emissions in Colorado's Northern Front Range and concluding that due to oil and gas sector emissions, state emissions inventory may be too low by a factor of two.

Pétron, G., Karion, A., Sweeney, C., Miller, B., Montzka, S., Frost G., Trainer, M., Tans, P., Andrews, A., Kofler, J., Helmig, D., Guenther, D., Dlugokencky, E., Lang, P., Newberger, T., Wolter, S., Novelli, P., Hall, B., Conley, S., Hardesty, M., Banta, R., White, A., Noone, D., Wolfe, D., and Schnell, R., 2014. A new look at methane and nonmethane hydrocarbon emissions from oil and natural gas operations in the Colorado Denver- Julesburg Basin, *J. Geophys. Res. Atmos.*, 119, p.6836. DOI:

<https://doi.org/10.1002/2013JD021272>

Finding that oil and gas emissions of benzene and other pollutants was seven times higher than estimated in the Colorado state emissions inventory

Rabinowitz, P., Slizovskiy, I., Lamers, V., Trufan, S., Holford, T., Dziura, J., Peduzzi, P., Kane, M., Reif, J., Weiss, T., and Stowe, M., 2015. Proximity to natural gas wells and reported health status: results of a household survey in Washington County, Pennsylvania. *Environmental Health Perspectives*, 123(1), p.21. DOI: <http://dx.doi.org/10.1289/ehp.1307732>

Statistically significant increase in reporting of dermal and respiratory symptoms

Rasmussen, S., Ogburn, E., McCormack, M., Casey, J., Bandeen-Roche, K., Mercer, D., and Schwartz, B., 2016. Asthma exacerbations and unconventional natural gas development in the Marcellus Shale, *JAMA Intern Med.*, 176(9), p.1334. DOI: 10.1001/jamainternmed.2016.2436

Elevated asthma exacerbation (hospitalizations, severity of attacks) due to proximity

Stacy, S., Brink, L., Larkin, J., Sadovsky, Y., Goldstein, B., Pitt, B., and Talbott, E., 2015. Perinatal outcomes and unconventional natural gas operations in Southwest Pennsylvania. *PLoS ONE*, 10(6): e0126425. DOI: <https://doi.org/10.1371/journal.pone.0126425>

Lower birth weight and higher incidence of small for gestational age among babies born to women in areas with greater well density (IDW - inverse dist. weighted method)

Steinzor, N., Subra, W., and Sumi, L., 2013. Investigating links between shale gas development and health impacts through a community survey project in Pennsylvania, *New Solutions*, 23(1), p.55. DOI: <https://doi.org/10.2190%2FNS.23.1.e>

Swarthout, R., Russo, R., Zhou, Y., Hart, A., and Sive, B., 2013. Volatile organic compound distributions during the NACHTT campaign at the Boulder Atmospheric Observatory: Influence of urban and natural gas sources, *J. Geophys. Res. Atmos.*, 118, p.10,614. DOI: <https://doi.org/10.1002/jgrd.50722>

Performing source signature analysis and determining that a high percentage of ozone-forming VOCs at an atmospheric measurement station in the Colorado Northern Front Range originated from the oil and gas sector

Thompson, C., Hueber, J., Helmig, D., 2014. Influence of oil and gas emissions on ambient atmospheric non-methane hydrocarbons in residential areas of northeastern Colorado, *Elem Sci Anth*, 3, p.000035. DOI: <http://doi.org/10.12952/journal.elementa.000035>

The mean benzene levels in Platteville and Erie are above the EPA's cancer risk threshold of 1 in 100,000 and therefore of a high enough concentration for the potential of detrimental health effects if chronic exposure at these levels should occur. An initial look at comparisons with data sets from previous years reveal that ambient levels for oil and gas-related non methane hydrocarbons in Erie, as well as further downwind in Boulder, have not decreased, but appear to have been increasing, despite tightening of emissions standards for the oil and gas industries in 2008. Even though the volume of emissions per well may be decreasing, the rapid and continuing increase in the number of wells may potentially negate any real improvements to the air quality situation.

Whitworth, K., Marshall, A., and Symanski, E., 2017. Maternal residential proximity to unconventional gas development and perinatal outcomes among a diverse urban population in Texas. *PLoS ONE*, 12(7): e0180966. DOI: <https://doi.org/10.1371/journal.pone.0180966>

Higher risk of pre-term birth

WATER QUALITY STUDIES

Gross, S., Avens, H., Banducci, A., Sahmel, J., Panko, J., and Tvermoes, B., 2013. Analysis of BTEX groundwater concentrations from surface spills associated with hydraulic fracturing operations, *Journal of the Air & Waste Management Association*, 63:4, p. 424. DOI:

<http://dx.doi.org/10.1080.10962247.2012.759166> (Also available at: <https://www.tandfonline.com/doi/full/10.1080/10962247.2012.759166>)

Kassotis, C., Tillitt, D., Davis, W., Hormann, and Nagel, S., 2014. Estrogen and androgen receptor activities of hydraulic fracturing chemicals and surface and ground water in drilling-dense region, *Endocrinology*, 155(3), p.897. DOI: [10.1210/en.2013-1697](https://doi.org/10.1210/en.2013-1697). (Also available at: https://www.researchgate.net/publication/259724012_Estrogen_and_Androgen_Receptor_Activities_of_Hydraulic_Fracturing_Chemicals_and_Surface_and_Ground_Water_in_a_Drilling-Dense_Region)

Maloney, K., Baruch-Mordo, S., Patterson, L., Nicot, J., Entrekin, S., Fargione, J., Liesecker, J., Konschnik, K., Ryan, J., Trainor, A., Saiers, J., Wiseman, H., 2016. Unconventional oil and gas spills: Materials, volumes, and risks to surface waters in four states of the U.S., *Sci Total Environ*. DOI: <http://dx.doi.org/10.1016/j.scitotenv.2016.12.142>

Mrdjen, I., and Lee, J., 2016. High volume hydraulic fracturing operations: potential impacts on surface water and human health, *Int. J. Environ. Health Res.*, 26:4, 361-380, DOI: <http://dx.doi.org/10.1080/09603123.2015.1111314> (Also available at: https://www.researchgate.net/publication/284729618_High_volume_hydraulic_fracturing_operations_potential_impacts_on_surface_water_and_human_health)

Rogers, J., Burke, T., Osborn, S., Ryan, J., 2015. A framework for identifying organic compounds of concern in hydraulic fracturing fluids based on their mobility and persistence in groundwater. *Environ. Sci. Technol. Lett.*, 2 (2015), p.158. DOI: <https://doi.org/10.1021/acs.estlett.5b00090>

Sherwood, O., Rogers, J., Lackey, G., Burke, T., Osborn, S., and Ryan, J., 2016. Groundwater methane in relation to oil and gas development and shallow coal seams in the Denver-Julesburg Basin of Colorado, *Proceedings of the National Academy of Sciences*, 113(30). DOI: <https://doi.org/10.1073/pnas.1523267113>



Mayor Jeni Arndt
 Council member Tricia Canonico
 Council member Emily Francis
 Council member Susan Gutowsky
 Council member Kelly Ohlson
 Council member Shirley Peel
 Council member Julie Pignataro

February 23, 2023

Re: Fort Collins Draft Oil and Gas Regulations

Dear Mayor Arndt and City Council members,

The Larimer Alliance for Health, Safety, and the Environment; Sierra Club Poudre Canyon Group; 350 Colorado; Fort Collins Sustainability Group; and Colorado Rising respectfully offer the following additional comments regarding the City of Fort Collins draft Oil and Gas (O&G) regulations.¹ These groups collectively represent thousands of Fort Collins and Larimer County residents committed to protecting our community’s public health, environment, natural resources, and wildlife resources from significant threats posed by inadequately regulated O&G development.

We urge the City to prepare a substantially revised and enhanced regulatory package consistent with our recommendations; with meaningful opportunities for public input before proposed regulations are brought forward for Council action.

This letter incorporates and expands upon the comments and recommendations made in our letter to you dated Dec. 17, 2022. Its primary purpose is to identify specific regulatory approaches that would significantly strengthen the City’s draft O&G regs. There is nothing new or unproven here: Every one of the approaches we recommend has been adopted by at least one local government in the Front Range. Moreover, none of the regulatory approaches we recommend have been successfully challenged in Colorado by O&G industry advocates.

Fort Collins residents and voters have expressed their desire for effective protection from the threats, dangers, and harms associated with O&G development; and the need to upgrade the current under-protective draft O&G regs cannot be overstated. However, based upon our communications with City

¹ These comments are based on the most recent public version of the draft regs (ver. 2 dated Dec. 12, 2022). We note that ver. 2 did not address most of the concerns pertaining to ver. 1 identified in the Air Quality Advisory Board’s Dec. 15, 2022 memo to City Council and the Dec. 17, 2022 Joint Environmental Organization letter to City Council.

staff, strengthening the draft regs will not occur unless City Council expressly directs staff to broaden the regulatory approach and adopt protective standards.²

To help ensure that future O&G development within Fort Collins, or in areas over which the City may exert regulatory jurisdiction, proceeds in a manner that sufficiently protects the public interests set forth in SB 19-181, we recommend modifying the draft O&G regulations by including the following provisions:³

- **Financial Assurance:** Establish operator financial assurance requirements, including insurance and indemnification requirements, sufficient to ensure adequate resources are available to provide for proper maintenance, decommissioning, removal, response, and remediation of O&G operations and facilities; and be adequate to guarantee operator performance of all conditions of approval. Insurance should include pollution liability and control of well coverage.
- **Cumulative Impacts:** Require the operator to provide a cumulative impacts analysis and a natural habitat / natural feature review in the O&G development application for all O&G facilities and operations (including pipelines).
- **Setbacks:** The setback should be a non-waivable minimum of 2500' with a discretionary option to expand the setback to 3200' (as required in California) where necessary to protect public health, public welfare, or the environment.⁴
- **Water Use, Source Documentation, and Recycling:** Require the operator to provide an up-front Water Use, Source Documentation, and Recycling Plan as part of the O&G development application showing that water supply for the proposed O&G operation will be adequate for the project's needs; to disclose the amounts and sources of the water utilized; and to maximize use of produced water recycling to the maximum extent possible.
- **Air Quality and Emissions Modeling and Monitoring:** Require an independent air quality modeling study that assesses existing air quality at the proposed site, predicts the anticipated

² At the Dec. 20, 2022, City Council meeting, City staff publicly recommended adoption of the current draft regulations without significant changes. In recent discussions, staff verbally reaffirmed the intent to recommend that City Council adopt the current draft as is.

³ SB 19-181, §4(1)(h) provides local governments with broad authority to regulate “the surface impacts of oil and gas operations in a reasonable manner to address matters specified in this subsection (1)(h) and to protect and minimize adverse impacts to public health, safety, and welfare and the environment.” In addition to the section’s broad “protect and minimize adverse impacts” authorization, the numerous “matters specified” that SB 19-181, §4 expressly authorizes local governments to regulate include: impacts to public facilities and services (§4(1)(h)(III)); water quality and sources ((§4(1)(h)(IV)); air emissions and air quality (§4(1)(h)(IV)); noise and vibration (§4(1)(h)(IV)); financial securities, indemnification, and insurance (§4(1)(h)(V)); and imposition of fines for leaks, spills, and emissions (§4(2)(b)). We note that the City’s current draft regulations make virtually no use of these important local government authorities expressly granted under SB 19-181. We also note that the draft regs fail to utilize the full range of inherent regulatory authority available under the City’s Home Rule status.

⁴ There is no scientific and/or medical evidence that a 2000' setback provides a high level of health protection and safety, and a substantial body of scientific and medical evidence indicates that more than 2000' is needed to protect health and safety. The 2000' setback in the COGCC and Larimer County regulations was a political compromise, and without scientific and/or medical basis.

emissions from the proposed facilities/operations, and models the air quality impacts over the project's projected lifetime.

- Require compliance with the National Ambient Air Quality Standards (NAAQS); avoidance or minimization and mitigation of methane emissions; and the most protective health-based guidelines for Hazardous Air Pollutants (HAPs) established by EPA and CDPHE.
- Require continuous emission and ambient air quality monitoring for key air pollutants during all phases of the facility's/operation's pre-production, production, shutdown (including any temporary shutdown), and P&A. Monitoring must be conducted by an independent expert and data generated should meet EPA and CDPHE-APCD standards.
- **Best Management Practices:** Require development plans for all O&G operations and facilities (including all pipelines) to incorporate industry-leading Best Management Practices regarding facility inspection, maintenance, and operation; and require the operator to implement and fully comply with these BMPs.
- **Inspection, Enforcement, and Penalties:** Establish effective inspection, enforcement, and penalty provisions for violations of operational requirements.
 - Enforcement options should include the authority to promptly issue facility shut-down and corrective action orders in response to non-compliance events; to seek judicial injunctive relief in response to an operator's failure to comply with such orders and/or for continuing violations; and to impose meaningful penalties for an operator's repeated, willful, or negligent non-compliance.
 - In addition to civil fines, enforcement authority should include the discretion to mandate, in response to non-compliance events, increased inspection frequencies; facility equipment upgrades; and system audits.
- **Infrastructure and Services Fees:** Establish a schedule of impact fees sufficient to cover all costs for infrastructure and services necessary to serve oil and gas development, including roads, water supply, waste disposal, emergency services, and City planning, inspection, and enforcement costs.
- **Pipeline Leak Detection and Integrity Inspection:** Require the operator to implement state-of-the-art pipeline leak detection technologies/practices and periodic pipeline integrity inspection protocols.

The currently proposed regulations are not consistent with the full intent of SB 19-181 and as such would neglect the City's opportunity and duty to reduce unnecessary public health, safety, welfare, and environmental risks for Fort Collins' current and future residents.

We urge the City Council to instruct staff to take a more comprehensive vision of what protections are available and needed, and to prepare a substantially revised and enhanced regulatory package consistent with our above recommendations.

We also encourage the City Council to provide timely and meaningful opportunities for public input before final proposed regulations are brought forward for Council action.

As always, we stand ready to assist and work with the City Council and staff toward these very worthwhile and achievable goals.

Thank you for the opportunity to provide these recommendations and for your commitment, time and efforts to the Fort Collins community.

Sincerely,

Tim Gosar, Convener

Larimer Alliance for Health, Safety, and the Environment

Megan Thorburn, Chair

Sierra Club Poudre Canyon Group

Kevin Cross, Convenor

Fort Collins Sustainability Group

Micah Parkin, Executive Director, and Riley Ruff, Northern Colorado Coordinator

350 Colorado

Lauren Petrie, Executive Director

Colorado Rising



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WWW.COGA.ORG

December 20, 2022

VIA EMAIL – NO ORIGINAL TO FOLLOW

City of Fort Collins
300 LaPorte Ave.
Fort Collins, CO 80521

ATTN:
Kirk Longstein, Senior Environmental Planner (klongstein@fcgov.com)
Cassie Archuleta, Air Quality Program Manager (carchuleta@fcgov.com)
City of Fort Collins City Council

RE: Colorado Oil & Gas Association Comment to Draft Oil and Gas Regulations

Dear Ms. Archuleta, Mr. Longstein, and City of Fort Collins City Council,

The Colorado Oil & Gas Association (“COGA”) appreciates the opportunity to provide comment on the City of Fort Collins’s (“City”) draft oil and gas regulations dated December 12, 2022 (“Draft Regulations”). COGA looks forward to providing additional, constructive input as the City moves forward in drafting and ultimately adopting new regulations in accordance with state law, including the legal requirements that local governments may enact regulations pertaining to the siting of an Oil and Gas Facility or Oil and Gas Location and relating to the surficial impacts of oil and gas development only to the extent such regulations are reasonable and necessary and only to the extent such regulations do not prohibit, whether directly or indirectly, oil and gas development. As explained below, COGA is concerned that, among other things, the Draft Regulations do not meet these legal mandates and instead operate as an illegal *de facto* ban on new oil and gas development within the City. COGA encourages the City closely to examine our attached redline of the Draft Regulations for additional detail and input beyond what is contained herein, as this letter does not exhaust COGA’s concerns.

- I. The Proposed Setbacks and Siting Requirements Are Too Restrictive.

The Draft Regulations' setbacks and siting requirements go well beyond the extremely rigorous rules adopted recently by the state's technical experts in oil and gas, the Colorado Oil and Gas Conservation Commission ("COGCC") and are anticipated to carry unintended consequences. While COGA recognizes that local governments share with COGCC the authority to regulate siting of oil and gas development and to regulate surface impacts of oil and gas development, and COGA acknowledges local governments may exercise their authority to enact regulations more stringent than the state's, local government authority is not unfettered. Local government regulations must still be reasonable and necessary, § 29-20-104(1)(h), C.R.S., and they certainly cannot have the effect of banning oil and gas operations and precluding the state from exercising its exclusive jurisdiction to regulate downhole aspects of oil and gas development.

Indeed, Senator Fenberg, the Senate sponsor of Senate Bill 19-181 (SB 19-181), stated when he introduced the legislation to the Colorado Senate Committee on Transportation and Energy "I want to spend a little bit of time on what this bill is not. **This bill does not allow a de facto ban whether at the state level or at the local level.**" Colorado Senate Committee on Transportation and Energy March 5, 2019, audio at 9:50-10:35, available at <https://leg.colorado.gov/committee/granicus/1474856> (emphasis added). Senator Fenberg later reiterated to the Colorado Senate Finance Committee floor that the bill does not allow bans, stating, "**What this bill does not do is allow a de facto ban.**" Colorado Senate Finance Committee March 7, 2019, audio at 9:15-10:10, available at <https://leg.colorado.gov/committee/granicus/1474831> (emphasis added). When Representative KC Becker, another of SB 19-181's sponsors, introduced the legislation to the Colorado House Energy and Environment Committee, she likewise acknowledged that bans are impermissible under SB 19-181, explaining that the bill "**is not a de facto ban at the state level or local level.**" Colorado House Energy and Environment Committee March 18, 2019, audio at 19:55-20:50, available at https://coloradoga.granicus.com/MediaPlayer.php?view_id=16&clip_id=13741 (emphasis added).

COGA is concerned that several individual siting restrictions in the Draft Regulations are unreasonable and unnecessary and that the restrictions taken as a whole operate as an illegal *de facto* ban on oil and gas development in Fort Collins.

Beginning with select individual restrictions, imposing a 2,000' setback from all occupiable buildings with no exceptions is unreasonable and unnecessary because distance is not the only relevant metric by which to ensure protection of public health, safety, welfare, and the environment, including wildlife resources. In adopting siting regulations that allow for new oil and gas development locations to be within 2,000' from residential buildings when one or more of several enumerated criteria are present, the COGCC recognized that its rules and operator Best Management Practices can and do protect residents and other receptors at distances shorter than 2,000'. See COGCC Statement of Basis, Specific Statutory Authority, And Purpose, Cause No. 1R Docket No.2003002071 at 225 ("[D]istance alone does not directly address any specific potential impacts and that protective measures required by other Commission Rules

which are targeted to a specific impact may provide equal or even greater protections than distance.”); *id.* at 226 (“Depending on what type of impact is at issue, and the nature of the potential receptor that would be adversely impacted, [Commission regulations and Best Management Practices] achieve protection [that] may be equally effective or more effective than distance.”); *id.* (Stating it is bad policy to “elevate distance as the sole or predominate regulatory tool to protect and minimize adverse impacts.”).

The Draft Regulations’ 2,000’ setback from residences also does not consider the fact pattern recognized in COGCC Rule 604.b.(1) that property owners and tenants within 2,000’ of a proposed oil and gas location may have no issue with the proposed location. Where this is the case, COGA believes the input of property owners and tenants should be taken into consideration and their position respected.

A 1,000’ setback from all conservation easements is also inappropriate and unreasonable. The Draft Regulations prohibit the development of mineral rights within 2,000’ of surface parcels encumbered with conservation easements without exception, not recognizing that mineral rights underlying the conservation easement may have been severed prior to the encumbrance or leased prior to the encumbrance, nor recognizing that the conservation easement may not prohibit mineral development. Where mineral rights are severed or leased prior to a conservation easement being placed on the surface of a property, the conservation easement affects only the surface of the property as a matter of law. COGA contends it is unreasonable to restrict mineral development based on the existence of a conservation easement when the conservation easement itself has no legal impact or relationship to the previously severed or leased minerals. Just as a surface owner with severed minerals cannot prohibit reasonable mineral development on the surface of its property due to the reasonable accommodation doctrine, nor can a conservation easement holder prohibit development of minerals severed or leased prior to the conservation easement encumbrance. Additionally, where a conservation easement allows for mineral development, it makes no sense arbitrarily to disallow mineral development. COGA recommends adopting language to clarify that only conservation easements where minerals were not severed or leased prior to conservation easements encumbering the surface would be subject to the 1,000’ setback.

Further, zoning is not an appropriate means for regulating oil and gas development. Mineral development is unique among land uses because such development can only take place where subsurface minerals exist. The application of superficial zoning boundaries will do nothing to alter the location of subsurface minerals but may result in an illegal regulatory taking of a mineral owner’s property. The Draft Regulations’ zoning restrictions for pipelines also may carry unintended consequences. By disallowing pipelines in so many districts, new development may not be able to take advantage of existing pipeline right of way corridors and existing pipeline infrastructure, meaning that new surface disturbance and new pipeline infrastructure would be required, which COGA finds wasteful, unreasonable, unnecessary, and less protective of

the environment. Worse, limiting pipeline right of way options may mean that it is impossible for operators to use pipelines to take away produced hydrocarbons and produced water from oil and gas locations. Without pipeline takeaway, operators must have on site storage tanks, which means more emissions, a bigger location footprint, and significantly more truck traffic.

COGA is concerned that the total effect of all the setbacks proposed is that there is no space for new oil and gas development within Fort Collins, which would render the regulatory framework an illegal ban. COGA requests the City provide a map of the City detailing which surface parcels in the City would meet all the setback criteria outlined in the Draft Regulations and be available for mineral development.

II. It is Unreasonable and Unnecessary for the City to Require the Applicant to Submit a Complete Local Permit Application Before Submitting Applications to the State.

It is unreasonable, unnecessary, and contrary to COGCC's codified preference to require a local completeness determination prior to the submission of a development application to the COGCC. The COGCC prefers state and local permitting processes to run concurrently to improve efficiency for operators and to take advantage of natural opportunities for collaboration. See COGCC Rule 301.f.(2)("[T]he Commission prefers operators to follow the concurrent permit review process pursuant to rule 303.a.(6).A. to allow each permitting authority to coordinate sharing its unique expertise and standards."). COGA agrees that a concurrent process can benefit the state and the local government alike and further observes that requiring a sequential process ultimately will cause operators' projects to be delayed without any benefit to Fort Collins. COGA urges the City not to foreclose the opportunities for collaboration and coordination that a concurrent permitting process confers.

III. Permits Should Not Be Required for Plugging and Abandonment.

COGA also questions the need to obtain City permits to plug and abandon wells and decommission facilities. The Draft Regulations' requiring permitting for these activities and subjecting operators to City review and approval threatens to interject the City's discretion into an area where the COGCC has expertise and, regarding downhole well plugging procedures, primacy. Though other local governments include references to plugging and abandonment within their respective development codes, these references direct operators to the COGCC's rules and merely reiterate that compliance with established statewide rules is required. See Boulder County Land Use Code 12-600; Broomfield Municipal Code 17-54-320. To impose additional requirements here adds unnecessary administrative burdens to operators, delays the activities of plugging, abandonment, and decommissioning and is legally inappropriate.

Many of the plugging and abandonment restrictions are also substantively unreasonable and necessary. For example, the City proposes to have operators conduct annual groundwater and soil sampling at the plugged location for a minimum of five years. As a threshold matter COGA does not believe such testing is reasonable or necessary unless there is an issue with the plugging or a wellbore integrity issue, but in any event, after an operator appropriately plugs and abandons a well in compliance with state law, an operator may no longer have permission to access the location and performing such testing would require the operator to trespass. Similarly, the Draft Regulations' requirement for operators to install permanent groundwater wells for future site investigation "if necessary" may be impossible because the operator may not have permission to install such wells and such installation would constitute a continuing trespass.

The Draft Regulations also require operators to mail notice of the permit application to real property owners and residents within one mile feet prior to commencing plugging and abandonment of wells and pipelines and decommissioning of oil and gas facilities. This requirement risks confusing the general public, who have little knowledge of the technical procedures involved with either plugging and abandonment or decommissioning of facilities, about what is to occur and may mislead the public into thinking that the notice relates to new proposed oil and gas development, particularly because the City's Code primarily requires notice of proposed new development, not notice that development will no longer be present in an area. COGA reckons the intent of requiring notice to surface owners may be to notify surface owners that an oil and gas rig may be visible, and COGA appreciates that surface owners may have questions relating to seeing a visible oil and gas rig. However, rigs used to plug and abandon wells are much shorter than drilling rigs and the plugging, abandonment, and decommissioning process for oil and gas wells and facilities carry very few impacts, none of which extend even remotely close to the proposed notice distance of one mile. As a rig used for plugging and abandonment is approximately 100 feet, COGA suggests a reasonable and necessary notice distance would not exceed 500 feet at the most. Consistent with COGA's position that a permit should not be required for these activities, COGA further suggests that the notice not be related to a permit application but rather only to the activities themselves. Finally, COGA cannot divine any reason why property owners in the notice radius who are not residents would require notice. These persons will not see a rig, because they are not residents, and nor are they impacted in any way by the plugging, abandoning, and decommissioning process.

IV. The Proposed Permitting Process for Pipelines Is Unreasonable, Unnecessary, and Too Administratively Burdensome.

In a shift from the City's prior proposed regulations, the Draft Regulations apply the full suite of steps required for new oil and gas pad development to pipelines. As noted above, pipelines have many benefits and their use should be encouraged. COGA asserts that the Draft Regulations' pipeline permitting process perversely discourages

pipelines by making them difficult to apply for. As well, some permitting steps are unreasonable and unnecessary as applied to pipelines.

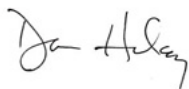
For example, COGA strongly opposes the requirement that pipeline applications be subject to a one mile notice requirement. Impacts from pipelines are essentially limited to surface disturbance during construction and maintenance, and it is unreasonable and unnecessary to notice persons who are not impacted. Furthermore, because pipelines can traverse miles, a one mile notice requirement could also mean an operator is required to notice thousands of persons, perhaps tens of thousands or even hundreds of thousands, along the pipeline alignment. Obtaining addresses for this many people and then mailing notice would be a very time-intensive exercise and expensive, deterring operators from utilizing pipelines.

Conclusion

COGA is proud the Colorado oil and gas industry leads the technological and safety advancements that make our state a national and global leader in developing the resources we use every day. The state's rules and regulations have set a high bar for our employees and companies to protect public health, safety, welfare, the environment, and wildlife, while also preserving jobs and opportunities for tens of thousands of Coloradans and their families. Going beyond the state's rules without a demonstration for their need and reasonableness flouts the law. COGA encourages the City to revise its Draft Regulations in a manner consistent with state law, that is, to revise the provisions discussed herein and in the attached such that they are reasonable, necessary, and do not operate as an *de facto* ban. Given COGA's grave concerns that the setbacks and siting requirements do indeed carry the illegal effect of banning new oil and gas operations, COGA respectfully reiterates its request for mapping that clearly illustrates where oil and gas development would be possible under the Draft Regulations.

Thank you for your consideration of our comments and the included redline of the Draft Regulations.

Sincerely,



Dan Haley
President & CEO
Colorado Oil & Gas Association



December 20, 2022

City Council
City of Fort Collins
300 Laporte Avenue
Fort Collins, CO 80521

Delivered via email: Kirk Longstein, Senior Environmental Planner, klongstein@fcgov.com
Cassie Archuleta, Air Quality Program Manager, carchuleta@fcgov.com

RE: Draft Oil and Gas Regulations

Dear Council Members,

The American Petroleum Institute Colorado (API Colorado) respectfully submits the following comments on the proposed oil and gas regulations put forth by the City of Fort Collins (the city). API Colorado appreciates the efforts by the city to consider stakeholder feedback and we look forward to continuing to work with city staff on this matter.

The American Petroleum Institute (API) represents all segments of America's oil and natural gas industry. API was formed in 1919 as a standards-setting organization and has developed more than 800 standards to enhance operational and environmental safety, efficiency and sustainability. Its nearly 600 members produce, process, and distribute most of the nation's energy. Member companies are producers, refiners, suppliers, marketers, and pipeline operators as well as service and supply companies that support all segments of the industry.

Our state continues to be home to some of the most stringent regulations in the oil and gas industry. API Colorado encourages alignment with the Colorado Oil and Gas Commission's (COGCC) rules including the use of consistent definitions, standards, and practices. Clear guidance and feasible requirements will help ensure operators continue to meet requirements in an efficient and effective manner. For these reasons, API Colorado suggests the following revisions.

5.17.3 Oil and Gas Project Development Plan Review Procedures

Conceptual Review, Alternative Location Analysis

In current draft regulations, the city is requesting operators submit an alternative location analysis. We note COGCC permitting rules already require alternative location analyses in many cases including proximity to water courses. To meet these requirements, operators typically evaluate multiple alternative locations, which are thorough and exceed the city's proposed requirements. To prevent unnecessary duplication, we recommend the city defer to the COGCC for alternative location analysis. Additionally, COGCC's rules provide multiple opportunities for local governments to collaborate with the COGCC on things such as alternative analyses, and we strongly encourage the city to avail itself of those opportunities.



Neighborhood Meeting

The draft ordinance requires operators to send written notice for a neighborhood meeting to all addresses within one mile of the property line of the parcel of land. Since the term parcel is not defined, it could include far more than the proposed location. This could cause the distance between a proposed location and other buildings to be well in excess of one mile. We recommend that the ordinance use the term proposed location rather than a parcel of land.

Development Application Submittal

As local governments have developed their own submission processes, many jurisdictions allow, or even encourage, operators to submit concurrent filings with the COGCC. Allowing this avoids duplication and local governments can gain insight from the forms submitted to the COGCC. As noted above, we strongly recommend that the city allow concurrent applications to reduce unnecessary duplication for operators and undue burden for city staff.

5.17.4 Oil and Gas Facility Development Standards

Location Restrictions, Setbacks

API Colorado notes several concerns with the proposed setback provisions that raise legal concerns. We first question the applicability of these setbacks to existing facilities. As written, the draft ordinance states that the use of equipment to recompleat an existing well would be considered expansion, but we are aware of no circumstances where it would be possible for an existing facility to meet these setbacks. This provision appears to have the practical effect of rendering an economic asset unviable. We also note that the draft regulations state that setbacks will be measured from the edge of a working pad to the nearest wall of any existing or platted building approved, or to be approved, as occupiable space. For operators to satisfy this requirement, the city must maintain a list of platted buildings awaiting approval. We seek to understand if the city manages a such list. Without one, operators would be unable to determine measurements from a platted building awaiting approval. API Colorado also seeks additional information on steps an operator would be required to take should a building application be filed during the review of an oil and gas location.

Location Restrictions, Buffer Zones

While this section requires operators to protect natural habitats and features, we note natural features are not defined in these regulations. While natural communities, habitats, and special features are defined in the city's code, Article 3, Division 3.4.1, there is no language specific to defining a natural feature. Due to the vague nature of this term, and to best ensure operators can meet requirements in an effective manner, we request the term natural feature be defined.

5.17.5 Oil and Gas Pipelines

Oil and Gas Pipelines

Current draft regulations require operators to share oil and gas pipeline easements and consolidate new corridors for oil and gas pipeline easements in order to minimize surface impacts. This draft also requests the coordinates of all oil and gas pipelines. The U.S. Department of Homeland Security Department treats pipelines, including above-surface facilities, as sensitive information and limits access beyond a specific level of granularity. COGCC approaches this issue in a similar manner and the newly



issued rules from the Colorado Public Utilities Commission also limit access to detailed information about pipeline location for natural gas lines. While Senate Bill 19-181 granted local governments significant authority over siting oil and gas facilities, it must be both necessary and reasonable. At this time, we do not feel it is necessary and reasonable to make such sensitive information publicly available. For these reasons, we strongly recommend the city use the same protocol developed by COGCC.

API Colorado also reminds the city that disturbing an existing right-of-way can entail significant safety risk since pipeline locations cannot be precisely known even when mapped. The city should consider whether co-locating rights-of-way merits the risk of excavation accidents with their attendant human health implications.

5.17.6 Plugging and Abandonment of Wells and Pipelines and Decommissioning of Oil and Gas Facilities

While we appreciate the city's efforts to ensure wells are properly plugged and reclaimed, we remind the city of the authority granted through Senate Bill 19-181 to the COGCC to plug and abandon oil and gas facilities. As such, the city does not have regulatory authority over this matter. This section also requires operators to provide a removal plan for flowlines and wastewater pipelines; however, the city also lacks the decision-making authority to remove or abandon pipelines in place. This, too, is not reasonable or necessary since this is a matter that is currently addressed and regulated by the COGCC.

Reclamation

Currently, the draft ordinance requires operators to reclaim a site within six months after plugging and abandoning a well, a pipeline, or decommissioning an oil and gas facility. We note this differs from the COGCC, which allows 12 months for reclamation.¹ Due to limited growing seasons, it would be difficult to complete reclamation within six months due to the lengthy work needed to reclaim a site. As written, this requirement would be unreasonable. We recommend the city mirror the COGCC's reclamation timelines.

6.3.3 Development Application Submittal

Development Review Fees and Costs for Specialized Consultants.

This section of the draft regulations allows the city to utilize a specialized third-party consultant with specialized knowledge to address these matters. If the city were to allow concurrent applications to COGCC and the city, the need for specialized, and costly, consultants could be avoided in many cases.

Finally, API Colorado notes that it appears the city is limiting operations to only industrial zones, which could virtually eliminate any usable space for new operations or, potentially, expanded uses as envisioned by the city. We remind the city that the authors of Senate Bill 19-181 explicitly, and consistently, emphasized that their legislation did not and does not authorize a blanket prohibition on oil and gas operations. By adopting an ordinance that eliminates usable space for oil and gas operations, the city would in effect be prohibiting oil and gas operations anywhere and everywhere. The law clearly provides that a governmental entity may not achieve by indirection what it cannot achieve directly. We urge the city to reconsider this part of this proposed ordinance.

¹ Reclamation Regulations, 1004. Final Reclamation of Well Sites and Associated Production Facilities
[https://cogcc.state.co.us/documents/reg/Rules/LATEST/Complete%20Rules%20\(100%20-%201200%20Series\).pdf](https://cogcc.state.co.us/documents/reg/Rules/LATEST/Complete%20Rules%20(100%20-%201200%20Series).pdf)

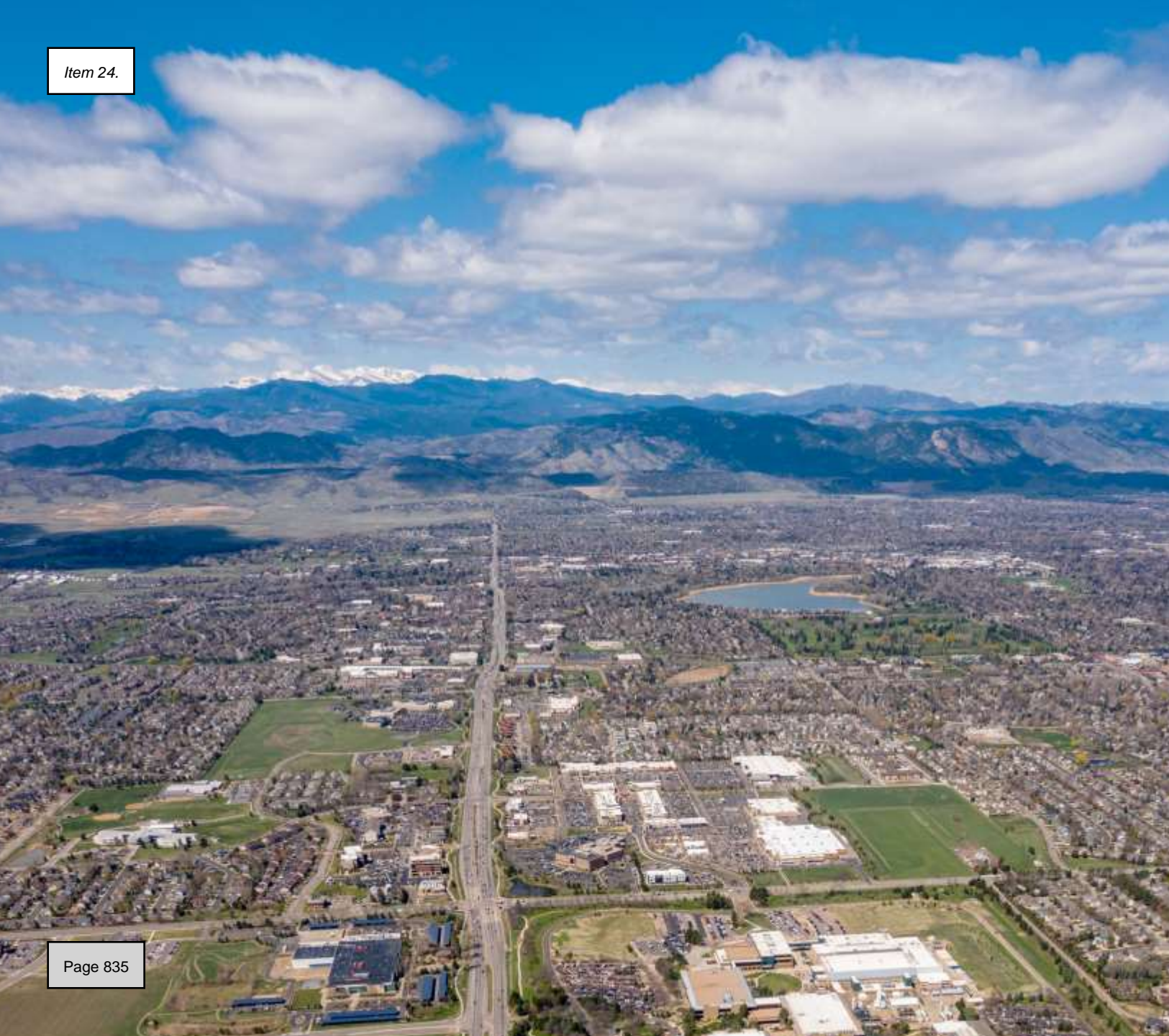


Many of the recommendations set forth by the city are duplicative with regulations put forth by the COGCC. Left in its current form, operators could face unclear and duplicative standards. We ask the city to consider the regulations set forth by the state as it continues its efforts. API Colorado once again appreciates the opportunity to provide comments on these proposed changes, and we look forward to working with the city and its staff in developing standards for safe and reliable operations.

Sincerely,

A handwritten signature in black ink that reads 'Lynn Granger'.

Lynn Granger
Executive Director
American Petroleum Institute Colorado
grangerl@api.org



4-4-2023

New Oil and Gas Wells

Kirk Longstein

Senior Environmental Planner

Clay Frickey

Planning Manager



New Oil & Gas Facilities

Siting requirements

Approval procedures

Design standards

April 4, 2023

Operational Standards for Existing Facilities

Emissions controls

Leak detection and repair

Spill detection and response

Leverage State and County regulations; County/City IGA adopted in Oct 2022

Reverse Setbacks

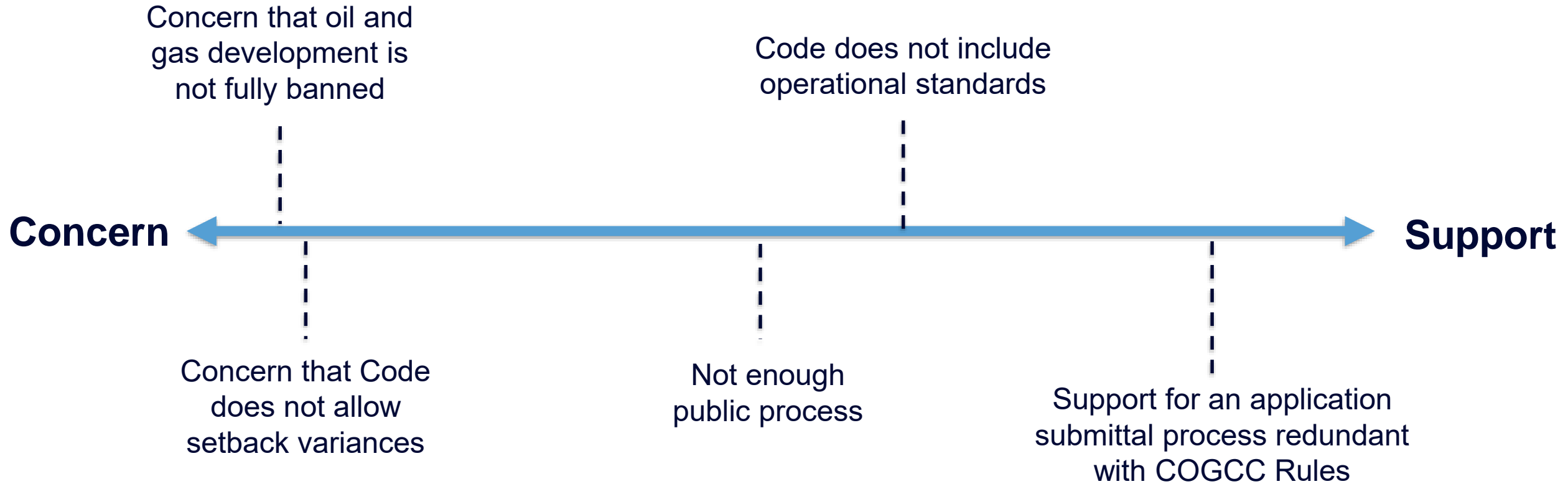
Distance for new development from existing wells

Minor code refinements proposed; June 2023

Code proposal restricts Oil and Gas developments from approx. 13% to less than 1% of land area

- Adds to the existing Land Use Code standards and includes oil and gas as a permitted use in certain zone districts
 - Oil and Gas facilities – Industrial Zone District only
 - Oil and Gas pipelines – allowed in nonresidential zones only
- Requires a 2,000-foot setbacks from occupiable buildings
 - additional 1000' buffer from natural habitat features identified in LUC 3.4.1 buffer table
 - Does not allow a modification, or variance, of the setback standards.
- Adds Development Plan Review Procedures to the land use code related to Oil and Gas facilities and pipeline
 - Type II development review – Planning and Zoning Commission approval
 - Requires a project development plan application be accepted by the City before submitting an application to the state
- Adds a list of prohibited facilities to development standards
 - Including but not limited to injection wells
- Adds basic development review procedures for plugging and abandoning wells

- October 25 - Council Work Session
- November 8 - Released public draft of the regulations on (version 1)
- AQAB Meetings
 - November 14 (+November 29 work session)
 - December 12
 - February 27
 - March 17
- P&Z Work Session & Hearing
 - November 10
 - November 17
- December 12 - Final draft released for Council consideration on (version 2)
- December 20 - First reading adoption
- March 9 - Public Forum with Larimer County and COGCC Staff
- 1x1 meetings with environmental group leaders and Industry group representatives



- **Relieve administrative burden and redundancy**

- No change to the Code.

OR

- Amend Code to allow new oil and gas applications to the State concurrently rather than through Fort Collins development review, first.

- **Setback variance**

- No changes to the Code.

OR

- Amend Code to allow requests for a modification of standards to the 2,000-foot setback.

- **Increase application requirement consistent with COGCC submittal documents**

- Direct City Staff to create administrative development application requirements after Code adoption.

OR

- Postpone adoption and add development application submittal list to the Code.

- **Operational standards**

- Adopt code and schedule a work session to explore scope.

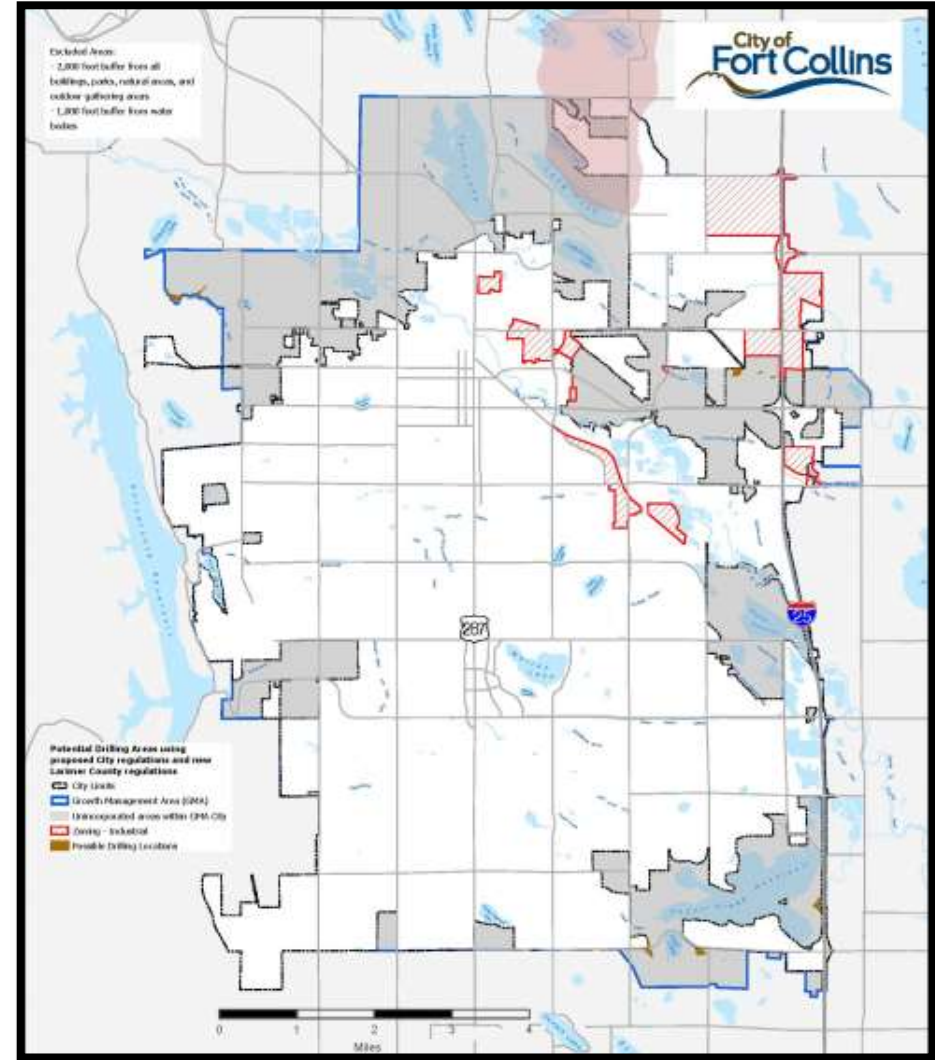
OR

- Postpone code adoption, schedule a work session to explore scope, and bring both codes at the same time.



Allowed Use: Oil and Gas Facilities

- Add “oil and gas facilities” to the Industrial zone district as an allowed use.



New Oil and Gas Facilities

- ✓ 2,000' from all occupiable buildings
- ✓ Enhanced NHBZ buffer (e.g., 1000' wetlands)
- ✓ 1,000' water, ditches, conservation easements

New Oil and Gas Pipelines

- ✓ 50-150' from buildings (based on public safety)
- ✓ 150' surface water features

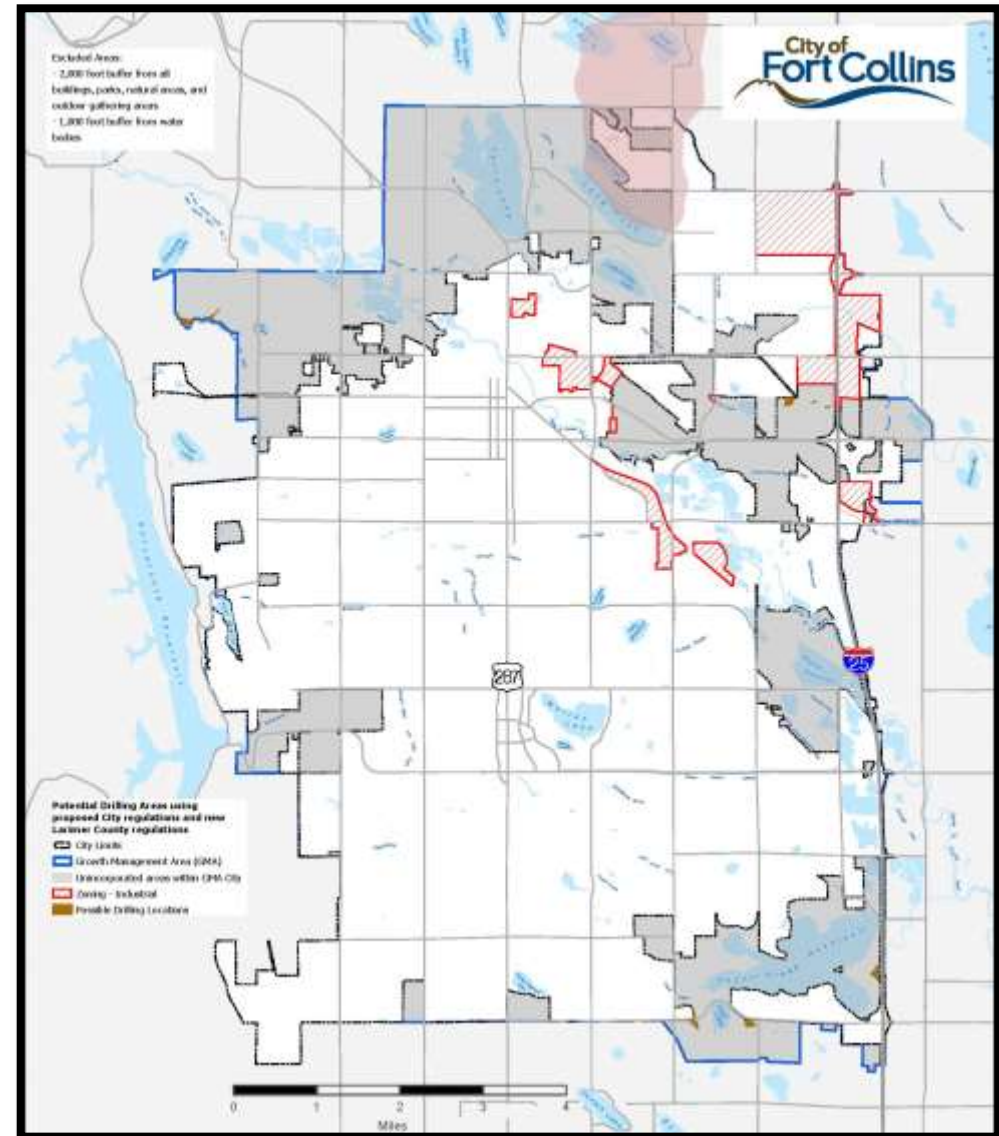
Colorado Oil and Gas Conservation Commission Rules

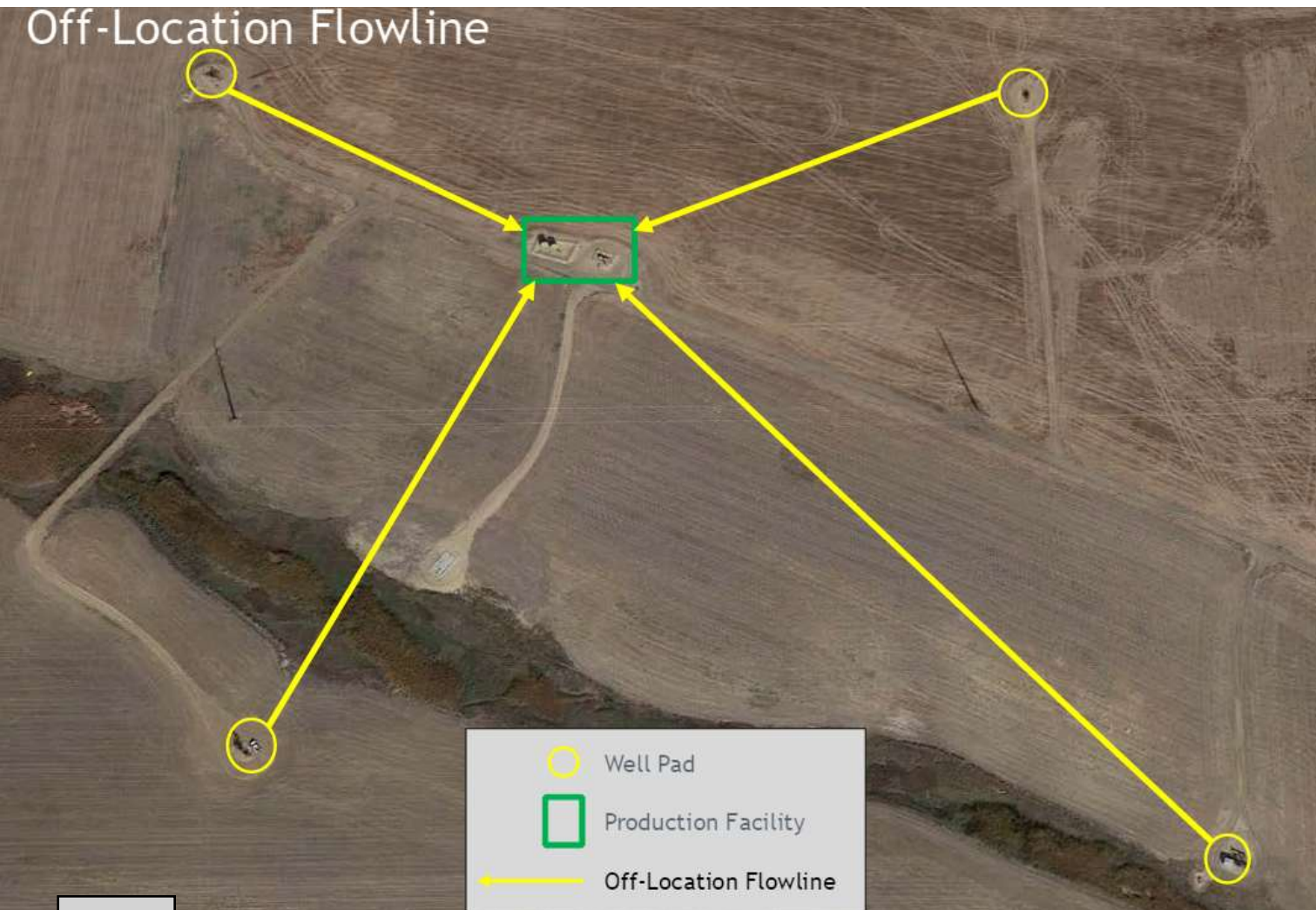
Rule 1202 High Priority Habitat buffer

- ✓ 500' buffer from Colorado Parks and Wildlife High Priority Habitat
- ✓ Spill prevention measures within 1,000' of aquatic high priority habitats

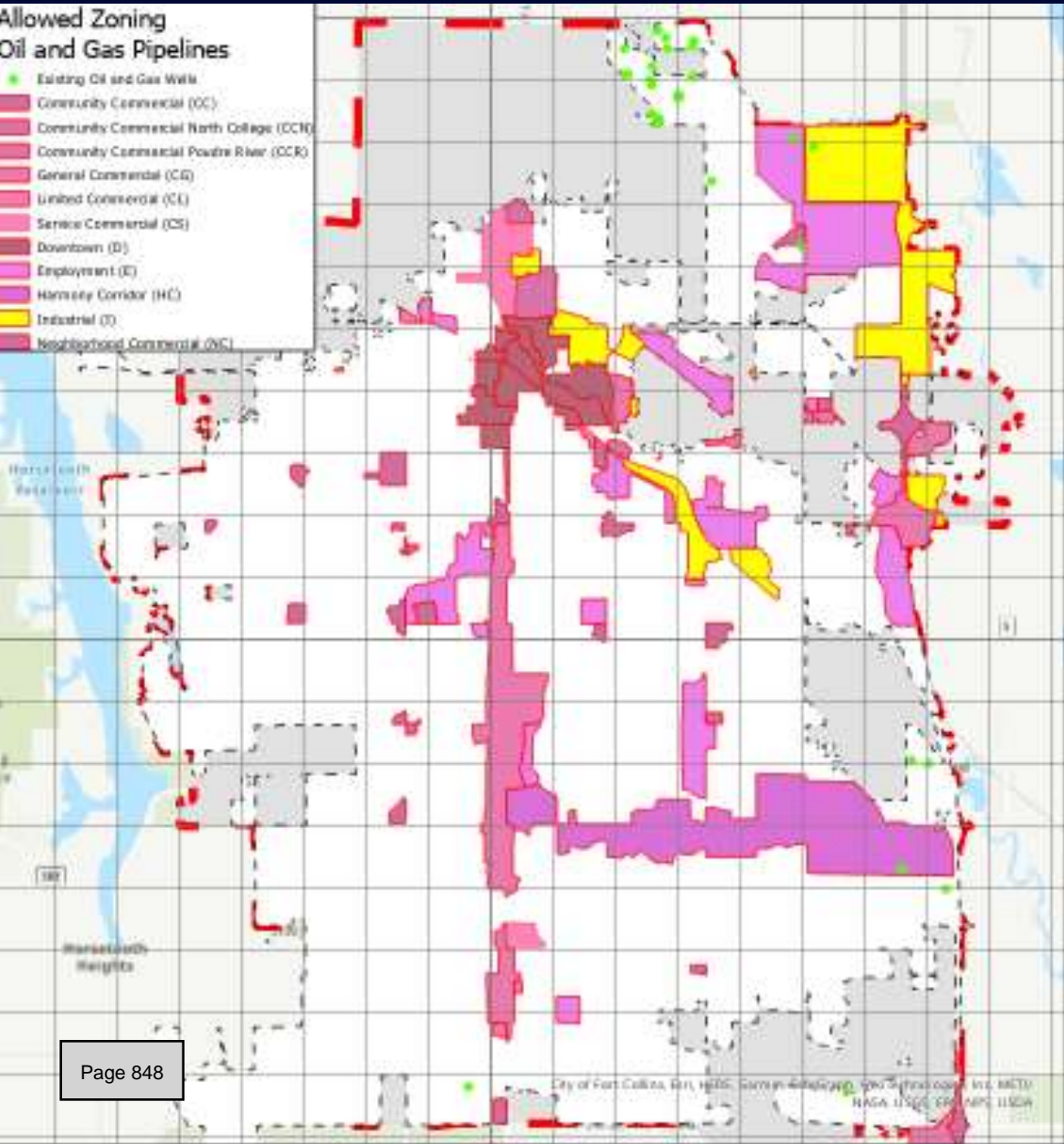
Allowed Use: Oil and Gas Developments

- Add “oil and gas facilities” to the Industrial zone district as an allowed use.
- **<1% LAND AVAILABLE FOR NEW WELLS**





Off-Location Flowlines transfer produced fluids (crude oil, natural gas, condensate, or produced water) from an oil and gas location to a production facility, injection facility, pit, or discharge point that is not on the same oil and gas location.



Allowed Use: Oil and Gas Pipelines

- Add “oil and gas pipelines” to Commercial; Employment and Industrial; Downtown districts.

- ✓ Buried underground
- ✓ Placed within existing ROW and utility easements

Oil and Gas Development Applications

- ✓ New Wells (Type 2) Planning and Zoning Commission
- ✓ New pipeline (Type 2) Planning and Zoning Commission
- ✓ Plugged and Abandoned (BDR) Basic Development Review

Prior to neighborhood meeting (Conceptual Review)

- ✓ Alternative Site analysis
- ✓ Primary Site analysis

Neighborhood Meeting & P&Z Hearing Notices

- ✓ 1-mile radius (Owners and Occupants)
- ✓ 12 square foot yellow sign
- ✓ Development Review newsletter and website

Prohibited Oil and Gas Facilities

- (1) Injection wells for disposal of oil and gas exploration and production wastes;
- (2) Gas storage wells;
- (3) Disposal pits;
- (4) Commercial disposal facilities;
- (5) Centralized exploration and production waste management facilities;
- (6) Subsurface disposal facilities; and
- (7) Glycol dehydrators and desiccant gas processing dehydrators.
- (8) Onsite oil storage greater than 30 feet in height

- **Landscaping**
 - 25' buffer to reduce fire potential
- **Fencing**
 - Safety
- **Artificial Lifts**
 - No pumpjacks (30' Max)
- **Environmental Protections**
 - 1,000' NHBZ



- ✓ Basic Development Review
- ✓ Required Monitoring
- ✓ COGCC Form 6 and Inspection



Stakeholder feedback on Version 1 (November 8)	Version 2 updates (December 12)
Pipelines are allowed in all zone districts	Pipelines are limited to Commercial; Employment and Industrial; and Downtown.
Development review includes too much staff discretion, including decision making authority	Oil and Gas Facilities and pipelines are subject to a Type 2 development review by Planning and Zoning Commission
Notifications should be provided to rental and leasehold tenants	Neighborhood meeting and hearing notice must be mailed to the owners of record and occupants within 1-mile radius
Concerns about gathering line and transmission lines	Alternative site analysis required for all pipelines; Special conditions for approval; and Pipelines must be buried underground
More ecological analysis needed at the conceptual phases of an application	Ecological characterization study required during preliminary site analysis.

Colorado Oil and Gas Conservation Commission

- ✓ **Down-Hole Activities**
- ✓ **Definitions**
- ✓ **Financial Security**

City of Fort Collins

- ✓ **Surface Activities**
- ✓ **Development Standards**
- ✓ **Building Code**

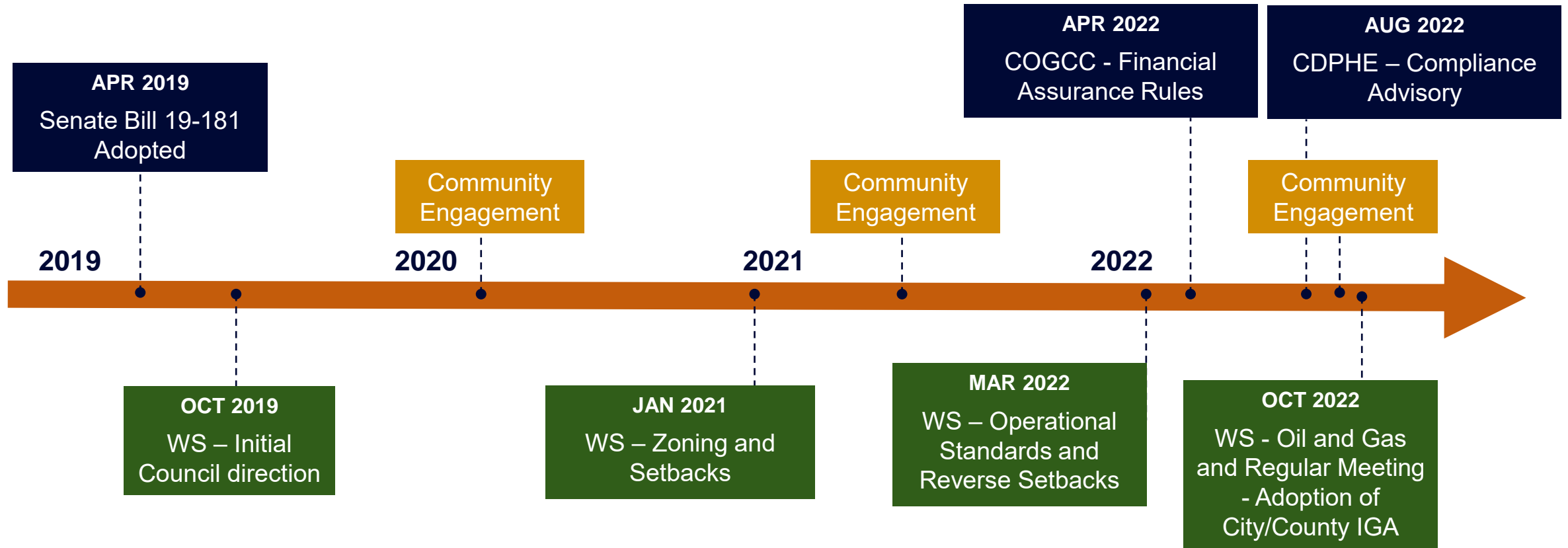
- Air Quality Advisory Board
 1. Reduce the pace of the regulation adoption
 2. Increase transparency and remove Staff discretion from Code language
 3. City should expand regulations and consider wider range of rules

- Planning and Zoning Commission (6-1 vote)

The motion to approve the draft regulations (Version-1) carried 6-1 vote with the following recommended changes:

1. Remove oil and Gas pipelines as an allowed use within public open lands and residential zone districts; including, HMN, LMN, MH, MMN, RL, UE, RF, and RUL

2. Oil and Gas developments (new pipelines, oil and gas facilities) would be subject to a Planning and Zoning Commission Review (Type 2). Plugging and abandoning remains Basic Development Review



COGCC = Colorado Oil and Gas Conservation Commission; CDPHE = Colorado Department of Health and Environment
 = Intergovernmental Agreement

AGENDA ITEM SUMMARY

City Council



STAFF

Marcy Yoder, Neighborhood Services Manager
 Meaghan Overton, Housing Manager
 Caryn Champine, Director of Planning, Development, and Transportation
 Monica Martinez, PDT Financial Planning and Analysis Manager
 Claire Turney, Finance
 Holly Coulehan, Legal

SUBJECT

Items Relating to Rental Housing Program.

EXECUTIVE SUMMARY

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

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

The purpose of this item is to consider the adoption of a Rental Housing Program that begins with registration and adds proactive rental inspections after one year of full implementation and to consider an off-cycle general fund appropriation in the amount of \$1.1 million over a 2-year period (\$421,583 in 2023 and \$669,500 in 2024) to support the start-up phase of the proposed program. The development of a Rental Housing Program implements policy direction in both the Housing Strategic Plan (2021) and the Our Climate Future Plan (2021):

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

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

STAFF RECOMMENDATION

Staff recommends adoption of both Ordinances on the First Reading.

BACKGROUND / DISCUSSION

Regulations for rental housing have been a topic of community dialogue and debate for many years. In November 2005, alongside changes to the enforcement of the occupancy ordinance, Council considered several options for rental registration/licensing. However, a formal rental registration or licensing program was not pursued at that time. Council also considered rental licensing in 2016 but did not pursue a program.

Previous Council Direction

The most recent community discussion about rental housing strategies began in 2020 as part of the development of the Housing Strategic Plan. In December 2020, the Council Ad Hoc Housing Committee expressed interest in exploring rental licensing to support healthy, stable housing for people who rent their homes. The Committee encouraged consideration of a pilot program for rental registration or licensing.

At the October 26, 2021 work session, staff shared information with Council about the history of rental housing strategies, findings from recent demographic and market analysis, a summary of peer cities research, and an outline of a proposed roadmap to implement rental housing strategies. Several Councilmembers supported additional community engagement in early 2022 to further explore the potential design of a rental registration/licensing program.

Staff conducted a thorough community engagement process during an 8-month period between December 2021-July 2022. The outcomes and themes from community engagement, recommendations from a Rental Housing Task Force composed of community members, a summary of best practices, and an exploration of potential next steps toward implementation were the focus of a work session with Council on August 23, 2022. At this work session, Council directed staff to design a Rental Housing Program that included proactive inspections.

In response to Council feedback, a cross-departmental staff team designed a Rental Housing Program comprised of two essential components: 1) property registration; and 2) proactive inspections. The proposed program would have required an initial appropriation of \$1.6 million for its start-up phase. An overview of the proposed program and its expected financial impact was presented to the Council Finance Committee on December 1, 2022. The Committee supported bringing the Rental Housing Program before the full Council for consideration on First Reading.

At the first reading on January 17, 2023, Council voted to table the Rental Housing Program as presented and asked staff to bring scaled options to a future work session.

At the February 28, 2023 work session, Council reviewed scaled options for a Rental Housing Program. Three options were presented: rental registration with improved complaint-based inspections (Option 1), rental registration with delayed proactive inspections (Option 2), and rental registration with proactive inspections (Option 3). Proposed improvements to the complaint-based inspection program in Option 1 included the expansion of landlord/tenant mediation support, enhanced education and outreach, and additional staff capacity to perform rental inspections. Most councilmembers supported Option 2 and staff was directed to schedule a date for Council consideration of Option 2.

Issue Identification

Safe and stable housing provides a foundation that allows individuals, families, and communities to thrive. Livable housing has a positive impact on health, economic security, educational attainment, and the overall stability of families and communities.

In Fort Collins, the best available data suggests that more than 40% of all housing units are renter-occupied. The renter community in Fort Collins makes up a significant portion of the population and the City does not currently conduct proactive rental property inspections for health, safety, and habitability. While the City maintains a complaint-based rental inspection system to promote safe and habitable housing

For renters, this program does not address power dynamics faced by tenants who often fear retaliation, increased rental payments, damaged relationships with property owners, and eviction.¹

Community comments from renters during Housing Strategic Plan engagement indicated a range of concerns with the City's current level of regulation: a need to proactively ensure healthy, safe units; fear of retaliation or loss of housing if renters report substandard or unsafe units; and concerns about discrimination. Feedback from landlords/property managers about a Rental Housing Program included concerns about the cost of the program, concerns that the problem had not been sufficiently defined, a desire to ensure fair treatment of both small and large landlords, a lack of trust in the City, a desire to keep the current complaint-based system and concerns that mandatory rental registration/licensing may not be an effective way to address substandard units.

Proposed Program Design

The proposed program design aims to address concerns about the lack of proactive inspection and to ensure safe, healthy, habitable housing for all Fort Collins residents. It also strives to thoughtfully address concerns expressed by landlords and others in the rental industry regarding fairness, unnecessary regulation, and increased costs. The proposed program includes two primary components – property registration and delayed proactive rental inspections. A start-up phase is a key component of the proposed program and focuses on outreach, education, and feedback from those entities participating in the initial stages of implementation. The proposed program would require landlords/property owners to enroll their properties into the program, update contact information annually, and – when delayed proactive inspections are added after the first year – to submit their rental businesses to property inspections once every five years to ensure compliance with minimum life, health, and safety standards.

Rental Property Registration: To maintain complete and timely information about rental properties in Fort Collins, all property owners who rent to tenants would be required to enroll their rental properties into the program, including both owner-occupied rental properties and fully renter-occupied properties. The registration information collected would include, but is not limited to:

- Name and contact information of the property owner(s), whether LLC or natural person
- Contact information for the property manager, if one is used
- A local contact located no more than 70 miles from the property
- A complete list of additional rental properties owned by the property manager, if applicable
- Types of units at the property
- Age of units
- Has a third-party inspection been completed in the last year? If yes, please upload a copy of the detailed results, the criteria used to conduct the inspection and the credentials of the inspector.
- A self-attestation that the property is compliant with the IPMC (International Property Maintenance Code)

Additional reporting could be added if the start-up phase reveals the need for additional information that could enable more data-informed decision-making.

Property owners would be required to update their enrollment information annually to ensure that local contact information is up to date, which ultimately helps facilitate a streamlined rental property inspection process.

It is expected that the additional education and outreach planned for this program will result in additional requests for mediation and complaint-based rental inspection. Therefore, additional staffing (1 mediation specialist and 2 rental inspectors) was added to meet these needs.

¹ Chisholm, E., Howden-Chapman, P., & Fougere, G. (2020). Tenants' responses to substandard housing: Hidden and invisible power and the failure of rental housing regulation. *Housing, Theory and Society*, 37(2), 139–161.

Proactive Rental Inspections: The second element of the Rental Housing Program adds proactive inspections after the first full year of implementation for any properties that do not have an adequate and acceptable third-party inspection that meets the City’s minimum habitability standards and approval. Having collected a year of registration information will allow staff to understand and evaluate the third-party inspections that are already occurring. Fees can then be established for the remaining properties and units that still require inspection by the City. The following rental property classifications would require inspections:

- Single detached
- Attached
- Multi-unit buildings
- Condos
- Mobile homes

All single detached, attached units, and individually owned units, regardless of property type, are proposed to be inspected once every five years. For multi-unit buildings in which units share the same property owner, properties will be inspected on a percentage basis. The program will require buildings with 0-10 units to be 100% inspected, 11 to 100 units to have 10% of units inspected and buildings with greater than 100 units to have 5% of units inspected. The percentage-based inspections will allow building inspectors to identify the general state of repair for multi-unit buildings, reinforce the City’s rental housing standards of habitability for multi-unit buildings, and relieve the burden on staff and property owners of inspecting every unit in large apartment complexes.

Building Type	% Inspected
Single unit, detached	100%
Single unit, attached (e.g., townhouse)	100%
Individually owned (e.g., condo)	100%
Multi-unit, 0-10 units	100%
Multi-unit, 11-100 units	10%
Multi-unit, 100+ units	5%

The current complaint-based rental inspection system would remain in place. As education and outreach are completed, staff expect the number of requests for complaint-based rental inspections to increase. Upon beginning proactive inspections, maintaining the complaint-based system would allow tenants to report off-cycle life, health, and safety concerns that may arise between inspections. Moreover, this system would provide an option for renters in multi-unit buildings whose units were not selected for inspection to report concerns.

Proposed Fee Structure

The proposed Rental Housing Program fee structure has been designed to cover all administrative costs as projected for the first five years of implementation. Regular analysis of fees to evaluate cost recovery will be included in the administrative tasks of the Rental Housing Program staff, similar to many other fee-based City programs.

To balance the impact of fees across different types of landlords and properties, staff proposes a hybrid fee structure that allocates program costs to both the rental property (75% of the cost) and each unit being rented (25% of the cost). Fees will need to be recalculated after the first full year of implementation to account for the additional cost of proactive inspections. Staff proposes to separate the cost of registration from the cost of inspection.

Alternative fee structures were also considered. A “per-unit” fee is more expensive for owners of larger multi-unit properties, while a “per property” fee is more expensive for owners of single-unit properties.

Staff's intent in proposing a hybrid fee structure is to provide a more equitable distribution of costs among different property types. (See attachments for Root Policy Fee memos)

Proposed Fee Table (75% based on property and 25% based on units)

Annual Fees per Model Type	Per Property	Per Unit
Registration Only (year 1)	\$37	\$10
Registration/Delayed Inspection	To be determined	To be determined

Proposed Enforcement Checkpoints

Enforcement checkpoints have been built into the proposed Rental Housing Program's design to ensure compliance at each stage. Staff intends to partner with property owners to achieve voluntary compliance with program requirements whenever possible. A critical task of the start-up phase (and beyond) is education and outreach to landlords, property owners, property managers, and tenants to increase awareness of and compliance with the proposed program. If Council chooses to adopt a Rental Housing Program, however, staff expects that there will be some situations that may require enforcement to address violations that have not been successfully resolved through voluntary compliance.

Staff has proposed a range of penalties for failure to comply with the requirements of the Rental Housing Program that include fines, civil penalties, and, upon several repeated instances of noncompliance, misdemeanor charges. If property violations are found upon a complaint-based rental inspection, property owners will receive a notice of violation with a specified amount of time to cure the violation(s) that is dependent on the severity and implications for the renter's life, health, and safety. Properties with violations upon complaint-based rental inspection will require subsequent reinspection to ensure compliance. If unpermitted work is identified during the complaint-based rental housing inspection that presents a life, health, or safety concern as defined in the Building Code, a violation notice and enforcement actions would follow the current Building Code processes and codes.

Proposed Staffing and Startup Costs

The proposed staffing and startup costs of the Rental Housing Program are based on a phased approach to hiring during the startup phase. Hiring would start with four staff to begin education, outreach, and implementation. Then additional staff will be added as needed to support implementation. In total, staff is requesting an appropriation of \$1.1 million over a 2-year period (\$421,583 in 2023 and \$669,500 in 2024) to support the start-up phase of the proposed program.

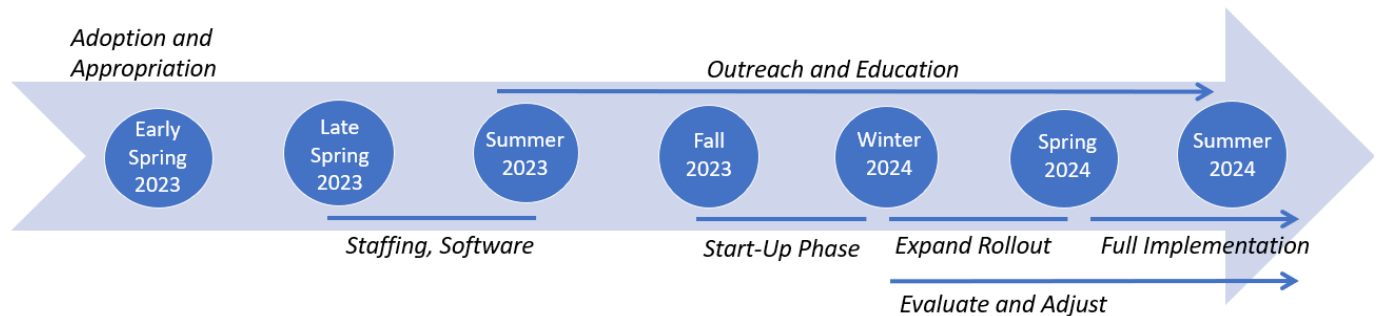
	FTE	Per FTE Cost	2023 Estimate	2024 Estimate
Compensation				
Program Manager	1	\$90,000	\$54,000	\$90,000
Engagement Specialist	1	\$65,000	\$39,000	\$65,000
Admin/Tech	1	\$50,000	\$30,000	\$50,000
Med Specialist	1	\$65,000	\$16,250	\$65,000
Lead Bldg Inspector	1	\$80,000	\$48,000	\$80,000
Bldg Inspector	1	\$70,000	\$0	\$70,000
Bulding and Dev. Review Tech	1	\$60,000	\$0	\$60,000
Total Salaries	7		\$187,250	\$480,000
Benefits	0.25		\$46,813	\$120,000

Item 25.

One-Time Costs					
Software		1	\$75,000	\$75,000	\$0
Vehicle		2	\$30,000	\$60,000	\$0
Clothing		2	\$500	\$1,000	\$0
Boots		2	\$160	\$320	\$0
Tools		2	\$100	\$200	\$0
iPad		2	\$1,300	\$1,300	\$1,300
Laptop		5	\$1,500	\$4,500	\$3,000
Desktop Computer		2	\$500	\$500	\$500
Total One-Time Costs				\$142,820	\$4,800
Ongoing Annual					
Marketing			\$20,000	\$20,000	\$20,000
Translation		1	\$10,000	\$10,000	\$10,000
Postage		1	\$10,000	\$10,000	\$10,000
Phone		7	\$600	\$4,200	\$4,200
Clothing		2	\$250	\$500	\$500
Vehicle Maintenance and Fuel		2	\$10,000	\$20,000	\$20,000
Total Ongoing Annual Costs				\$44,700	\$64,700
Total Compensation/One-Time/Ongoing Costs				\$421,583	\$669,500
Total 2023-2024					\$1,091,083

Implementation

If Council adopts the proposed Rental Housing Program and allocates funding for the start-up phase of the program, staff estimates that full implementation could begin as early as April 2024. The timeline below outlines the steps in the start-up phase that would lead up to the full implementation.



Adoption and Appropriation – April 2023

Initial Staffing and Software – June 2023

- The initial phase of hiring includes the Program Manager, Engagement Specialist, Admin/Tech, and Lead Building inspector.
- Work on the Accela platform will begin to accommodate the Rental Housing Program enrollment and inspection processes.
- Staff will develop all necessary rules and regulations to implement.

Outreach and Education – June 2023 (and ongoing)

- Messaging and relationship building with rental industry partners will be developed and implemented

Start-Up Phase – Q4 2023

- Identify pilot neighborhood(s)
- Test registration processes

Evaluate and Adjust – Q1 2024 (and ongoing)

- Identify and implement process changes
- Council memo update

Implement registration citywide – April 2024

- Hire any remaining staff needed to support full implementation.

Begin delayed proactive inspection process – April 2025

- Determine City-approved third-party inspections
- Recalculate fees
- Pilot proactive inspections
- Hire appropriate staff

CITY FINANCIAL IMPACTS

On December 1, 2022, staff presented initial estimates of the proposed Rental Housing Program's initial and ongoing costs and anticipated fee structure, which was designed to make the program self-sustaining upon full implementation. Two of three Council Finance Committee members were supportive of an appropriation of \$1.6 million from General Fund reserves (\$750,000 in 2023 and \$850,000 in 2024) to fund the first two years of the program in its start-up phase.

The currently proposed option described herein has lower startup costs than the program presented in December. In total, staff is requesting an appropriation of \$1.1 million from General Fund reserves (\$421,583 in 2023 and \$669,500 in 2024). A 2024 Revision offer will be completed during the revision process in July of 2023 in order to gain Council approval to appropriate the 2024 amount from General Fund reserves needed for this program. The total anticipated startup costs will be paid back over the first five years of full implementation of the Rental Housing Program with delayed inspections.

The total expected revenue per year is \$737,152 based on the assumptions of 12,496 properties at \$37 each and 27,480 units at \$10 each. This revenue projection exceeds the appropriation request, which suggests that the program may be able to repay some, if not all, of the start-up costs within the first five years of the program.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

An overview of the proposed program and its expected financial impact was presented to the Affordable Housing Board and the Council Finance Committee on December 1, 2022.

PUBLIC OUTREACH

A thorough public engagement process from December 2021-July 2022 helped shape the design of the Rental Housing Program.

ATTACHMENTS

1. Ordinance A for Consideration
2. Ordinance B for Consideration
3. Fee Memo
4. Proposed Inspection Minimum Standards
5. Community Engagement Summary
6. Council Finance Committee Minutes (excerpt), December 1
7. Affordable Housing Board Minutes (excerpt) December 1
8. Presentation

ORDINANCE NO. 058, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ADOPTING A RENTAL HOUSING PROGRAM AS AN IMPLEMENTATION
ACTION OF THE HOUSING STRATEGIC PLAN AND THE
OUR CLIMATE FUTURE PLAN

WHEREAS, livable housing has a positive impact on health, economic security, educational attainment and the overall stability of individuals and families in communities; and

WHEREAS, in Fort Collins, the best available data suggests that more than 40% of all housing units are renter-occupied; and

WHEREAS, the renter community, which makes up a significant portion of the City’s population, would benefit from proactive rental property inspections conducted by the City to ensure the health, safety and habitability of their rental housing; and

WHEREAS, while the City maintains a complaint-based rental inspection system to promote safe and habitable housing for renters, that program does not adequately address the power dynamics faced by tenants who often fear retaliation, increased rental payments, damaged relationships with property owners and eviction for reporting complaints to the City; and

WHEREAS, the Council has determined that delaying implementation of a mandatory inspection requirement will enable a reasonable transition to the new program for those impacted and will allow time for staff to put in place the arrangements necessary for the City to effectively carry out the program; and

WHEREAS, the Council has determined, and now finds, that the adoption of this Ordinance is necessary to ensure safe and stable housing that allows individuals, families and communities to thrive and is necessary for the public’s health, safety and welfare.

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

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

Section 2. That Section 5-236 is hereby deleted in its entirety.

Sec. 5-236. Definitions.

~~For the purposes of this Article, certain terms, phrases, words and their derivatives shall be construed as expressly stated herein and as follows:~~

~~Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular. Where terms are not defined in this Division and are defined in the City Code, Land Use Code, International Building Code, International Fire Code, Land Use Code, International Plumbing Code, International Mechanical Code or National Electrical Code, such terms shall have the meanings ascribed to them as stated in those codes. Where terms are not defined through the methods authorized by this Section, such terms shall have ordinarily accepted meanings such as the context implies. Whenever the words *dwelling unit*, *dwelling*, *premises*, *building*, *rooming house*, *rooming unit*, *housekeeping unit* or *story* are stated in this code, they shall be construed as though they were followed by the words "or any part thereof."~~

~~*Electronic record* shall mean a record created, generated, sent, communicated, received or stored by electronic means and reproducible in a physical document.~~

~~*Owner* shall mean any person whose name appears on the tax bill for the property or who, alone or jointly or severally with others, has legal title to any dwelling or dwelling unit, with or without actual possession thereof, or has charge, care or control of any dwelling or dwelling unit as owner, executor, executrix, administrator, trustee, guardian of the estate of the owner, mortgagee or assignee of rents. *Owner* shall not include any person, group of persons, company, association or corporation who holds only a security interest or easement on the real property upon which the dwelling or dwelling unit is situated.~~

~~*Property manager* shall mean any person, group of persons, company, firm or corporation charged with the care and control of rental housing as defined below who performs services with respect to such rental housing under a contract with the owner thereof or who otherwise acts as representative of an owner with respect to such rental housing.~~

~~*Rental dwelling unit* shall mean one (1) or more rooms occupied or intended to be occupied as a unit exclusively for residential purposes that is leased, rented or sublet for compensation (including money or services or the sharing of expenses) and that is located in a boarding house or a single-family, two-family or multi-family dwelling.~~

~~*Rental housing* shall mean any building or mobile home or portion thereof, including the lot, tract or parcel of land on which the same is located, containing any dwelling unit, or guest room which is leased, rented or sublet to a family or person(s) for compensation (including money or services, and the sharing of expenses).~~

Section 3. That a new Section 5-221 is hereby created in Chapter 5 of the Code of the City of Fort Collins to read as follows:

ARTICLE VI. HOUSING STANDARDS

Division 1 - Generally

Sec. 5-221. Definitions.

For the purposes of this Article, certain terms, phrases, words and their derivatives shall be construed as expressly stated herein and as follows:

Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular. Where terms are not defined in this Division and are defined in the City Code, Land Use Code, International Building Code, International Fire Code, International Plumbing Code, International Mechanical Code or National Electrical Code, such terms shall have the meanings ascribed to them as stated in those codes. Where terms are not defined through the methods authorized by this Section, such terms shall have ordinarily accepted meanings such as the context implies. Whenever the words long-term residential rental dwelling unit, dwelling unit, dwelling, premises, building, rooming house, rooming unit, housekeeping unit or story are stated in this code, they shall be construed as though they were followed by the words “or any part thereof.”

Agent shall mean any person legally authorized to act on behalf of or in place of the owner or lessee of a long-term residential rental dwelling unit and for receipt of notices and legal service of process related to a long-term residential rental dwelling unit. An *agent* may also be the requisite local contact.

Applicant shall mean any person who seeks to register a long-term residential rental dwelling unit as a long-term residential rental under this Division.

Building shall mean a structure with the capacity to contain, and is designed for the shelter of, humans, animals, or personal property of any kind. Building shall include, without limitation, any house, office building, store, warehouse, or any other residential or nonresidential structure of any kind, whether or not such structure is permanently affixed to the ground upon which it is situated, and any trailer, semi-trailer, trailer coach, mobile home, or other vehicle designed or used for occupancy by persons for any purpose.

Building official shall mean the Chief Building Official with the administrative and enforcement authority as provided in this Article, and their designees.

Director shall mean the Director of Community Development and Neighborhood Services with the administrative and enforcement authority provided in this Article, and their designees.

Electronic record shall mean a record created, generated, sent, communicated, received or stored by electronic means and reproducible in a physical document.

Imminent danger shall mean an existing condition that is reasonably likely to cause immediate serious or life-threatening injury or death.

Lease shall mean an agreement by which an owner of residential rental property conveys the right to use and occupy such property to an occupant or tenant or lessee, in exchange for consideration.

Lessee or *tenant* shall mean a person having a possessory interest in a property under an oral or written lease agreement.

Local contact shall mean one or more persons legally authorized by the owner to access the long-term residential rental dwelling unit, to make decisions regarding the long-term residential rental dwelling unit, to accept service of noncompliance notice in lieu of the owner and have a physical residential or business address no more than seventy (70) miles from the long-term residential rental dwelling unit to be available to respond to any issues raised by the lessee or the City.

Long-term residential rental dwelling unit shall mean one or more rooms and a single kitchen and at least one bathroom, designed, occupied or intended for occupancy as separate quarters for the exclusive use of a single family for living, cooking and sanitary purposes, located in a single-family, two-family or multi-family dwelling or mixed-use building that is leased, rented or sublet for compensation (including money or services or the sharing of expenses), in part or in whole, for periods of thirty (30) consecutive days or more. *Long-term residential rental dwelling unit* shall not include such land, buildings, and residential units owned by the Board of Governors of the Colorado State University System or utilized by Colorado State University for the housing of students or faculty or for other educational purposes.

Municipal court or *court* shall mean the municipal court of the City as established in Article VII, Section 1 of the Charter.

Owner shall mean any person whose name appears on the tax bill for the property or who, alone or jointly or severally with others, has legal title to any long-term residential dwelling or long-term residential rental dwelling unit, with or without actual possession thereof, or has charge, care or control of any long-term residential dwelling or long-term residential rental dwelling or long-term residential rental dwelling unit as owner, executor, executrix, administrator, trustee, guardian of the estate of the owner, mortgagee or assignee of rents. *Owner* shall not include any person who holds only a security interest or easement on the real property upon which the long-term residential rental dwelling unit is situated.

Person means any individual, corporation, association, firm, joint venture, estate, trust, business trust, syndicate, fiduciary, partnership, limited partnership, limited liability company, and body politic and corporate, and all other groups and combinations.

Property manager shall mean any person charged with the care and control of rental housing or long-term residential rental dwelling unit who performs services with respect to such rental housing or long-term residential rental dwelling unit under a contract with

the owner thereof or who otherwise acts as representative of an owner with respect to such rental housing or long-term residential rental dwelling unit.

Registered premises or premises shall mean a long-term residential rental dwelling unit that has a valid registration issued pursuant to Division 3 allowing long-term residential rental of such long-term residential rental dwelling unit.

Rental housing shall mean any building or mobile home or portion thereof, including the lot, tract or parcel of land on which the same is located, containing any long-term residential rental dwelling unit, or guest room which is leased, rented or sublet to a family or person(s) for compensation (including money or services, and the sharing of expenses) in part or in whole, for periods of thirty (30) consecutive days or more. *Rental housing* shall not include such land, buildings, and residential units owned by the Board of Governors of the Colorado State University System or utilized by Colorado State University for the housing of students or faculty or for other educational purposes.

Section 4. That reserved sections in Division 1, Article VI of Chapter 5 of the Code of the City of Fort Collins will be Section 5-222 to Section 5-236.

Section 5. That Article VI of Chapter 5 of the Code of the City of Fort Collins is hereby amended by the addition of a new Division 3, to read in its entirety as follows:

Division 3 - Long-Term Rental Registration

Subdivision A. - Generally

Sec. 5-280. Purpose.

This registration of long-term residential rental properties is implemented pursuant to this Division to ensure the health and safety of renters of long-term residential properties, to promote safe and stable housing for renters and to improve the overall livability of our City.

Sec. 5-281. Administration.

The Director and Building Official shall administer the provisions of this Division and are authorized to jointly promulgate rules and regulations for its administration and implementation.

Sec. 5-282. Reserved.

Subdivision B. - Registration

Sec. 5-283. Registration required.

An owner of a long-term residential rental dwelling unit shall register it with the City and comply with the inspection requirements pursuant to this Division.

Sec. 5-284. Application for registration.

- (a) Any person seeking to register a particular long-term residential rental dwelling unit pursuant to this Division, or renew an existing registration, must file a complete application and pay all applicable fees. The Director may approve or deny registration based on whether the applicant and the premises proposed to be registered or renewed satisfy all the requirements of this Division.
- (b) The Director may require additional information and documentation as the Director deems necessary to determine whether an initial or renewal application meets the requirements of this Division.
- (c) At the time of an initial or renewal application for registration, each applicant shall pay a fee in an amount set by the City Manager in accordance with § 7.5-1.
- (d) Each applicant shall pay a fee for every inspection or reinspection of a long-term residential rental dwelling unit in an amount set by the City Manager pursuant § 7.5-1.

Sec. 5-285. Registration requirements.

- (a) The following are the minimum requirements that must be satisfied by the applicant for the issuance or renewal of a long-term residential rental dwelling unit registration.
 - (1) The applicant must provide documentation satisfactory to the Director that the applicant is the owner of the long-term residential rental dwelling unit, or the owner's authorized agent.
 - (2) The long-term residential rental dwelling unit must comply with all applicable federal, state, and local laws including, but not limited to, this Code and the City's Land Use Code.
 - (3) Until *[18 months after the enactment of this Ordinance]*, the property and long-term residential rental dwelling unit must conform to, and the applicant shall certify that, the applicable building, sanitation, mechanical, electrical, structural and fire safety requirements in Chapter 5 of the Code in addition to those listed in the administrative regulations adopted pursuant to § 5-281 of the Code.
 - (4) Beginning *[18 months after the enactment of this Ordinance]*, the long-term residential rental dwelling unit must pass an inspection conducted by the Building Official as described in Subdivision C, unless the long-term residential rental dwelling unit passed an acceptable inspection conducted by a third-party inspector as described in Subdivision C.

(b) The applicant must identify one or more persons who will be the local contact. Any such person must have access to the long-term residential rental dwelling unit and be authorized to make decisions regarding the long-term residential rental dwelling unit.

Sec. 5-286. Issuance of registration.

Upon the applicant's compliance with the requirements of this Division, the Director shall register the long-term residential rental dwelling unit.

(a) Each registration shall be applicable only to the long-term residential rental dwelling unit for which approval is granted by the Director and no registration shall be transferrable.

(b) A registration shall terminate upon transfer of ownership of the registered long-term residential rental dwelling unit.

Sec. 5-287. Term of registration and renewal.

Registration issued pursuant to this Division shall be valid for one (1) year. Registration must be renewed annually.

(a) Renewal applications shall be reviewed by the Director in consultation with the Building Official, are subject to § 5-288 and § 5-308, must meet the standards set forth in § 5-285 and, if applicable, § 5-306.

(b) Any prior violation of the provisions of this Article may be considered by the Director during the registration renewal review and may result in non-renewal. In the Director's discretion, after consultation with the Building Official as necessary, the Director may impose conditions upon a registration at the time of renewal to address non-compliance with the terms of the registration, the provisions of this Article, or any other applicable provision of federal, state, or local law. Failure to comply with such conditions may result in suspension, revocation, or non-renewal of the registration pursuant to § 5-308 and, if applicable, § 5-306.

Sec. 5-288. Registration regulations.

Upon completion of registration pursuant to this Division, the following requirements must be met for the registration to remain valid.

(a) The owner shall comply with the terms of the registration and all applicable provisions of this Code, including, but not limited to, this Chapter 5, Chapter 20 regarding nuisances, the Land Use Code, and any other applicable provision of federal, state, and local law.

(b) The owner shall maintain the long-term residential rental dwelling unit in compliance with the minimum rental housing requirements as provided in § 5-296.

Sec. 5-289. Fees

The fees authorized and imposed under this Division shall be paid by the owner to the City as directed in any notice provided under this Article.

Sec. 5-290. Grounds for denial.

The following are all grounds for the Director’s denial of an application for registration or renewal:

- (a) Registering the long-term residential rental dwelling unit would violate any applicable federal, state, or local law, and any rules and regulations adopted pursuant thereto.
- (b) The premises of the long-term residential rental dwelling unit does not comply with the requirements of the Land Use Code or with any applicable provisions of Chapters 5, 9, 12 or 20 of this Code.
- (c) The applicant fails to complete any required inspections, when applicable, or obtain necessary permits for the premises of the long-term residential rental dwelling unit.

Sec. 5-291. Appeal.

An owner may appeal any decision whether to grant, renew, suspend, or revoke an application or registration under this Division to the City Manager in accordance with Chapter 2, Article VI of this Code. The City Manager’s decision shall be final.

Secs. 5-292 – 5-295. Reserved.

Subdivision C. Inspections

(Effective [18 months after the enactment of this Ordinance])

Sec. 5-296. Inspections required.

- (a) The Director and Building Official shall establish a regular and orderly schedule to inspect all long-term residential rental dwelling units within the City. Such schedule may be determined based upon location of the long-term residential rental dwelling unit within the City, the age of long-term residential rental dwelling units, size of the rental complex, complaints received from residents or the public, or the general condition of the property. Such schedule is in addition to and does not limit or preclude the right of the Building Official to inspect a property pursuant to any other provision of this Chapter 5, including, but not limited to, inspections based on a request of a tenant, owner, manager, or complainant.

(b) The Building Official may enter a long-term residential rental dwelling unit and related buildings on the premises at all reasonable times to inspect and ensure the long-term residential rental dwelling unit and property are compliant with all applicable building, sanitation, mechanical, electrical, structural and fire safety requirements in Chapter 5 of the Code, administrative regulations adopted pursuant to § 5-281 of the Code and all provisions of this Division.

(1) The Building Official has authority to inspect the long-term residential rental dwelling unit and related buildings and common areas on the premises to be registered or renewed for purposes of verifying compliance with the rental housing minimum requirements as set forth in this Article.

(2) A refusal by the owner or lessee to allow such inspection shall be grounds for denial of the issuance of a registration or renewal, will result in a notice of non-compliance under § 5-299 and may result in an enforcement action pursuant to § 5-306.

(c) The Building Official shall prepare a report documenting any violations of this Division on a written inspection report and may make a photographic record of the property or of any violations discovered on the property. This report will be provided to the Director and owner.

(d) Except as provided in § 5-297, the Director shall not approve a registration unless the long-term residential rental dwelling unit at issue has successfully passed an inspection performed by the Building Official when so required.

(e) Each long-term residential rental dwelling unit shall be inspected upon initial registration and every five (5) years thereafter.

(1) When multiple long-term residential rental dwelling units are located on a single parcel of land the Building Official shall inspect a random sample of the long-term residential rental dwelling units based on the following:

a. Up to 10 units, one hundred (100) percent of the units will be inspected,

b. 11-100 units, a minimum of ten (10) percent of the units to be inspected,

c. Over 100 units, a minimum of five (5) percent of the units to be inspected.

The random sampling is at the sole discretion of the Building Official.

Sec. 5-297 Exemptions to inspection requirement.

(a) The following long-term residential rental dwelling units are exempt from the City-conducted scheduled inspection requirement described in this Section:

(1) A long-term residential rental dwelling unit that complies with federal housing standards and was inspected by a state or federal government agency within the last five (5) years and successfully passed that inspection.

a. Such proof of inspection shall include documentation from that governmental agency setting forth the date of the inspection and the result of that inspection.

(2) A long-term residential rental dwelling unit newly constructed less than ten (10) years before the registration application date, based on the date of issuance of the certificate of occupancy or temporary certificate of occupancy. This exemption does not apply to existing structures that receive a new certificate of occupancy or temporary certificate of occupancy.

a. Such proof of inspection shall include a copy of the dated certificate of occupancy or temporary certificate of occupancy.

(3) A long-term residential rental dwelling unit inspected by a third-party inspector, as approved by the Building Official, shall only be acceptable in lieu of a City-conducted inspection described in this Division on the following conditions:

a. Documentary proof of the inspection setting forth the date of the inspection and the result of the inspection;

b. Documentary proof of the qualifications of the third-party inspector;

c. Documentary proof of the standards used to inspect the long-term residential rental dwelling unit and property with detailed results of that inspection;

d. Confirmation that the standards used to inspect the long-term residential rental dwelling unit comply with the same standards used by City-conducted inspections as described in this Division and § 5-296; and

e. Each long-term residential rental dwelling unit must be inspected by a third-party inspector.

i. A third-party inspector must inspect each long-term residential rental dwelling unit located within a multiple dwelling unit building(s) on a single parcel, the random sampling described in § 5-296(e)(1) does not apply to third-party inspectors.

(g) All registered long-term residential rental dwelling units shall be subject to other inspections as provided in this Chapter 5. No person shall be deemed in compliance with the provisions of this Chapter 5 solely by virtue of having registered a long-term residential rental dwelling unit pursuant to this Division.

Sec. 5-298. Notice of inspection.

(a) A letter of intent to inspect a long-term residential rental dwelling unit based on the systematic inspection schedule or pursuant to a re-inspection will be sent by the City to the owner, local contact and tenant informing them of the need to schedule an inspection within the time frame stated in the notice.

(b) The owner must notify the tenant of the scheduled inspection of the long-term residential rental dwelling unit, common areas (if applicable) and related buildings on the premises and request the tenants' permission to authorize the Building Official to enter the long-term residential rental dwelling unit, common areas (if applicable) and related buildings on the premises at the scheduled date and time.

(c) The owner, or the owner's agent or local contact, must provide the Building Official with access to the entire long-term residential rental dwelling unit, common areas (if applicable) and related buildings on the premises.

Sec. 5-299. Notice of non-compliance.

(a) If the Building Official determines upon inspection that the long-term residential rental dwelling unit does not comply with the requirements of this Division, a notice of non-compliance and an order to correct shall be issued to the owner and local contact with a copy to the tenant. The notice of non-compliance and order shall be in writing and shall describe the violation in sufficient detail for it to be properly corrected.

(1) The notice and order shall provide a reasonable time for correction of the non-compliance of not less than seven (7) days nor more than ninety (90) days from the date of service of the notice and order. The notice and order shall advise the owner that a reinspection is required and that if the owner fails to correct the violation by the required correction date, the City may take one (1) or more of the actions set forth in Subdivision D below.

(2) If the observed violations constitute an imminent danger to the long-term residential rental dwelling unit or any related building on the premises then the Building Official shall comply with § 5-300.

(b) The notice of non-compliance and order to correct shall be served upon the owner by one (1) of the following methods:

(1) Personal service upon the owner, agent or local contact, in which case service shall be deemed complete on the date service occurs; or

(2) By posting on the long-term residential rental dwelling unit premises and mailing to the owner or agent at the address currently on file with the City as part of the registration of the long-term residential rental dwelling unit pursuant to this Division. Service by this method shall be deemed complete three (3) days after mailing and posting.

(c) After the time for correction as set forth in the notice of non-compliance and order to correct has passed, the City shall re-inspect the long-term residential rental dwelling unit to verify the violations identified during the initial inspection have been corrected.

(1) The owner may be granted an extension of time by the City if the Building Official determines that substantial progress is being made to correct the violation. Such request must be made in writing by the property owner and submitted to the Building Official prior to expiration of the 90-day period. Upon receipt the Building Official shall, in consideration of all applicable facts, determine the terms and conditions of the extension.

(d) A re-inspection fee shall be assessed upon the owner for each re-inspection when violations identified on a notice of non-compliance have not been corrected by the date established for correction in the notice of non-compliance unless the Building Official has granted an extension prior to the re-inspection date.

Sec. 5-300. Imminent Danger.

(a) If the Director or Building Official finds that a long-term residential rental dwelling unit, or a part of any such dwelling or building presents an imminent danger, the Building Official shall order the long-term residential rental dwelling unit, or the affected portion of the building, be vacated.

(1) A written notification of non-compliance stating the violations that deem the long-term residential rental dwelling unit, or any part of such dwelling or building, as an imminent danger will be served as required in § 5-299.

(b) The Building Official shall post notice of any such order on the subject premises and send a copy thereof to the owner at the address currently on file with the City as part of the registration of the long-term residential rental dwelling unit as described in § 5-285.

(1) It shall be unlawful for anyone to remove or deface the posted notice. Such violation is a civil infraction pursuant to § 1-15(f) of this Code.

(c) The owner shall correct the violations causing the property to present an imminent danger, and such correction confirmed by re-inspection of the premises as described in § 5-299.

Secs. 5-301 – 5-305. Reserved.

Subdivision D – Violations and Penalties

Sec. 5-306. Violations and penalties.

In addition to the suspension, revocation or refusal to renew any registration hereunder, any owner who violates any provision of this Division may be punished by a fine or imprisonment or both in accordance with § 1-15 of this Code as described below. Each day that a violation of this Division continues shall be deemed a separate offense. Additionally, the City may take any other legal action available to address violations of the provisions of this Article.

(a) **Registration or Renewal.** It shall be unlawful for any owner to lease or to allow the use, maintenance, or occupancy of any long-term residential rental dwelling unit that does not have a current, valid registration as described in in §§ 5-285 and 5-287. Such violation is a civil infraction pursuant to § 1-15(f) of this Code..

(b) **Inspection.** Beginning on [*18 months after effective date of this Ordinance*], it shall be unlawful for any owner to lease or to allow the use, maintenance, or occupancy of any long-term residential rental dwelling unit that does not comply with the inspection requirements in § 5-296. Such violation is a civil infraction pursuant to § 1-15(f) of this Code.

(c) **Failure to correct.** Beginning on [*18 months after effective date of this Ordinance*], it shall be unlawful for an owner not to correct the violations identified in a properly served non-compliance notice and order as described in § 5-299. Such violation is a misdemeanor pursuant to § 1-15(a) of this Code.

(d) **Failure to vacate.** Beginning on [*18 months after effective date of this Ordinance*], it shall be unlawful for a tenant or other occupant of a long-term residential rental dwelling unit to fail to vacate a long-term residential rental dwelling unit after the passage of such time as is set forth in a vacation order posted pursuant to § 5-300. Such violation is a misdemeanor pursuant to § 1-15(a) of this Code.

(e) **Interference with City official.** It shall be unlawful for any tenant or person having common authority of a long-term residential rental dwelling unit to deny entry to the Building Official when such individual is acting pursuant to this Division. Such violation is a misdemeanor pursuant to § 1-15(a) of this Code.

Sec. 5-307. Enforcement.

(a) The Director or Building Official may cause to be issued a summons and complaint for prosecution in municipal court in accordance with the procedures established in Chapter 19 of this Code.

(b) Upon conviction of any person for a violation of this Division, the Director may place a notice of the violation on the City’s website that contains the address of the subject long-term residential rental dwelling unit and a statement that the long-term residential rental dwelling unit was found not to comply with a requirement or limitation of this Division. Such notice shall remain on the City’s website only until such time as the owner of the subject long-term residential rental dwelling unit establishes, to the reasonable satisfaction of the City, that the condition that caused the violation has been corrected.

Sec. 5-308. Suspension, revocation, or nonrenewal of registration.

(a) In addition to the grounds set forth in § 5-306, the Director may suspend, revoke, or not renew any registration issued pursuant to this Division if the Director determines that any of the following have occurred:

(1) Fraud, material misrepresentation or false statement in the initial application for registration or any renewal application; or

(2) Failure to comply with the requirements of § 5-288.

(b) Procedures for investigation of registration violations and for suspension, revocation or other registration sanctions as a result of any such violation shall be as provided in § 5-307 of this Division and any rules and regulations promulgated by the Director as provided in § 5-281.

(c) The suspension or revocation of a registration shall not affect any lease or other arrangement for possession between the owner and a tenant. However, the owner shall not enter into any new arrangement for possession, nor renew any arrangement, during active suspension or revocation of its registration. Additionally, the owner must comply with any conditions related to the disciplinary action.

Sec. 5-309. Public nuisance.

A violation of any provisions of this Division is hereby declared to be a public nuisance, subject to abatement by the City in accordance with the procedures established in Chapter 20 of this Code.

Secs. 5-310 – 5-344. Reserved.

Section 6. That Section 5 of this Ordinance shall become effective April 1, 2024. The Director shall develop and implement the administrative and financial processes for this registration program between the effective date of this Ordinance and April 1, 2024.

Section 7. That Section 5-256 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 5-256 Enforcement authority; rules and procedures.

The Building Official is hereby authorized and directed to enforce all of the provisions of this Article. For such purposes, the Building Official shall have the authority to adopt and promulgate administrative rules and procedures consistent with the provisions of this Article; to interpret and implement the provisions of this Article; to secure the intent thereof; to enforce all provisions of this Article pursuant to the authority granted by the Chief of Police under Paragraph 2-504(b)(2); and to designate requirements applicable because of local climatic or other conditions. Such rules shall not have the effect of waiving structural or fire performance requirements specifically provided for in this Article, or of violating accepted engineering methods involving public safety.

Introduced, considered favorably on first reading, and ordered published this 4th day of April, 2023, and to be presented for final passage on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

ORDINANCE NO. 059, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES IN THE GENERAL FUND FOR THE
START UP PHASE OF THE RENTAL HOUSING PROGRAM

WHEREAS, in August 2022, the City Council directed staff to develop a rental housing program that includes mandatory registration of rental properties and proactive inspections to ensure that rental housing is healthy and safe; and

WHEREAS, staff conducted a detailed fee analysis with the intent of making the rental housing program self-sustaining if approved by City Council; and

WHEREAS, the initiation of the program will require an initial outlay of funds to hire additional staff, purchase software and conduct program activities; and

WHEREAS, on December 1, 2022, staff presented to the Council Finance Committee a request for appropriation in the amount of \$1,600,000 over the period of two years from the General Fund for the rental registration and inspection program start-up phase, which two of the three Committee members supported; and

WHEREAS, the amount requested for 2023 is \$421,583; and

WHEREAS, this appropriation benefits the public health, safety and welfare of the residents of Fort Collins and serves the public purpose of ensuring safe and stable housing that allows individuals, families and communities to thrive; and

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

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

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

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

Section 2. That there is hereby appropriated from prior year reserves in the General Fund the sum of FOUR HUNDRED TWENTY-ONE THOUSAND FIVE HUNDRED EIGHTY-THREE DOLLARS (\$421,583) to be expended in the General Fund for the Start Up Phase of the Rental Housing Program.

Introduced, considered favorably on first reading, and ordered published this 4th day of April 2023, and to be presented for final passage on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

MEMORANDUM

To: Marcy Yoder
From: Mollie Fitzpatrick, Julia Jones, and Lucy McGehee
Re: Rental Registry Fee Structure
Date: November 15, 2022, Revised November 29, 2022

Fort Collins Proposed Program Structure

This memo provides fee structure options for the proposed City of Fort Collins rental licensing/registry program for the City's consideration. The fee proposed for Fort Collins is designed to recover program administration costs and distribute such costs across the full inventory of rental units in the City. Fee structure alternatives are crafted to balance the total impact on program costs, number of units in a development, and number of properties owned/managed by payors.

Registration. The proposed rental licensing/registry program includes an annual enrollment/renewal with an accompanying fee. Enrollment includes basic information about property ownership and a local contact for the rental property. The City of Fort Collins will collect rental unit information for the licensing/registry program through an online application. All rental units will be required to register including:

- Single family detached units
- Attached units (duplex, row, townhouses)
- Multifamily units (apartments or condos)
- Mobile homes

Inspections. All rental properties in the City will be inspected unless the property falls under one of the exemptions below. Inspection of licensed/registered rentals will occur on a five-year schedule. The City will use in-house inspectors—separate from existing building inspectors—to complete inspections of rental units. Units will be inspected as follows:

- All individually owned rental units regardless of type (detached, mobile home, condo, attached housing)
- Multifamily rental properties with less than 100 units will be inspected using a random sample of 10% of total units.

- Multifamily rental properties with more than 100 units will be inspected using a random sample of 5% of total units.

The following properties will be exempted from an inspection but are still required to renew their license/registration annually.

- Properties that were constructed (or substantially remodeled and inspected by the City's inspectors) within the past 10 years.
- Affordable housing units inspected under the U.S. Department of Housing and Urban Development (must provide a copy of the inspection report to the City).

Fee Structure Options

Rental registration programs are often designed to be full cost recovery programs, though some programs are "subsidized" through General Fund allocations for program administration. Registration and inspection fees can be structured by unit, by building, or by property; some programs separate registration and inspection fees, whereas others assess a single all-encompassing fee. Details on peer community fees are included at the end of this memo for context in evaluating the fee options proposed for Fort Collins.

This section provides a rationale for potential fee structure options in Fort Collins and fee costs for payors. It considers both per unit and per property fee options and focuses on a full-cost recovery fee.

Anticipated inspections. Overall, the City of Fort Collins has an estimated 12,496 rental properties (with 27,480 total units). Of those, 678 properties (5,954 units) would likely be exempt from inspections (due to age or HUD inspections) leaving 11,818 rental properties (with 21,526 total units) that are likely to require inspections.

Figure 1 shows the number of rental units and properties in the City of Fort Collins that would be subject to inspections every five years (excluding properties that are less than 10 years old and affordable units inspected by HUD). A reinspection rate of 60% is used to account for units that need more than one inspection. This count of units and properties are used to calculate the number of inspections that will need to be completed annually.

With a random sample method for multifamily units, the number of inspections needed every five years is 11,965 unit inspections. A reinspection rate of 60% results in 7,179 additional inspections. Annually, the City of Fort Collins would have an estimated 3,829 inspections.

Figure 1.
Rental Units and Properties in Fort Collins and Estimated Annual Inspections

Units and Properties	Inspections			
	Pct. Inspected	Properties	Units	Estimated Inspections
Inspection Exempt	0%	678	5,954	0
Inspection Required		11,818	21,526	11,965
Single Family Detached	100%	7,377	7,377	7,377
Single Family Attached	100%	2,471	2,471	2,471
Duplex	100%	1,134	1,134	1,134
Multi Unit (less than 100 units)	10%	564	4,518	452
Multi Unit (more than 100 units)	5%	30	5,784	289
Mobile Homes	100%	242	242	242
Reinspection Estimate	60%			7,179
Total Annual Inspections	20%			3,829

Source: 5-year 2020 ACS, Larimer County Assessor, Housing Catalyst, and Root Policy Research.

Program costs. Figure 2 shows the number of in-house inspectors needed to administer the program in the City of Fort Collins. The City would need to hire one lead inspector and 3.25 FTE inspectors. The following assumptions were used to calculate the number of inspectors needed:

- Each inspector can perform five inspections daily on average.
- Inspectors work 47 weeks (235 days) per year accounting for holiday and vacation.
- Each inspector can complete 1,175 inspections per year.
- The lead inspector can complete half the number of inspections as a regular inspector.
- Complaint based rental inspections will increase as the City educates tenants on their rights (0.25 FTE was added to cover this increase).

Figure 2.
Estimated Inspector FTE's to Administer Program

Source:
 City of Fort Collins and Root Policy Research.

	Inspectors	
	Assumptions	FTE
Units per day per inspector	5	
Days per year per inspector	235	
Inspector Capacity (units/year)	1,175	3.00
Lead Inspector Capacity (units/year)	588	1.00
Plus uptick in reporting		0.25
Estimated Inspectors Needed		4.25

Figure 3 shows program expenses for the City of Fort Collins. Expenses include employee compensation, one-time upfront costs, and ongoing program costs. Employee salary and benefits (with 4.25 FTE inspectors) would cost \$723,438. One-time costs for the City are estimated at \$253,380. Ongoing annual program costs are estimated at \$73,775.

Overall, the estimated program cost over the first five years is \$4,239,443 in administrative costs to the City. The program fee options, discussed in the subsequent section, are all designed to cover all administrative costs for the first five years of implementation.

**Figure 3.
Program Expenses**

Note:

Annual inspection costs include compensation (salary and benefits) for building inspectors and the building and dev. Review tech, along with the "per inspector" ongoing annual costs. Non-Inspection related includes compensation for all other staff positions and the ongoing marketing and postage costs.

Source:

City of Fort Collins and Root Policy Research.

Category	Expenses		
	FTE	Per FTE Cost	Estimate
Compensation			
Program Manager (M1)	1.00	\$90,000	\$90,000
Engagement Specialist (P1)	1.00	\$65,000	\$65,000
Admin/Tech	1.00	\$50,000	\$50,000
.25 Deputy CBO (M1)	0.25	\$25,000	\$6,250
Lead Bldg Inspector	1.00	\$80,000	\$80,000
Bldg Inspector (each)	3.25	\$70,000	\$227,500
Building and Dev. Review Tech.	1.00	\$60,000	\$60,000
Total Salaries	8.50		\$578,750
Benefits	0.25	\$578,750	\$144,688
One Time Costs			
Software	1.00	75,000	\$75,000
Marketing	1.00	20,000	\$20,000
Postage	1.00	10,000	\$10,000
Translation	1.00	10,000	\$10,000
Vehicle	4.25	30,000	\$127,500
Clothing	4.25	500	\$2,125
Boots	4.25	160	\$680
Tools	4.25	100	\$425
IPAD	4.25	1,300	\$5,525
Desktop computer	4.25	500	\$2,125
Total One Time Costs			\$253,380
Ongoing Annual Costs			
Per Inspector			
Phone	4.25	\$50	\$213
Clothing (after year 1)	4.25	\$250	\$1,063
Vehicle maintenance and gas	4.25	\$10,000	\$42,500
Marketing and Postage			\$30,000
Total Ongoing Annual Costs			\$73,775
Total			
Upfront Costs Total			\$253,380
Annual Costs Total			\$797,213
<i>Annual inspection cost</i>			<i>\$503,150</i>
<i>Annual non-inspection cost</i>			<i>\$294,063</i>
First Five Years Cost	5.00		\$4,239,443

Full cost recovery fee options for Fort Collins. Figure 4 shows fee structure options for complete cost recovery in the first five years of program implementation. Two different approaches are shown for fee calculation:

- **One approach is to imbed the cost of inspections into the overall registration fee.** This approach effectively requires all registered properties to “share” the inspection cost, even though some properties will be exempt from the actual inspections.
- **The second approach is to separate the cost of registration from the cost of inspection** such that inspection-exempt properties pay a lower registration fee while properties that require inspection pay both a registration fee and an inspection fee. The inspection fee is modeled as an annual fee (even though inspections would only occur every 5 years) but could be assessed every five years instead (which would simply require multiplying the fee shown in the figure by five).

Within each approach, three annual fee assessment options are presented: a per property fee; a per-unit fee; and a hybrid fee (which assumes a base fee per property and a marginal per-unit fee for each additional unit in the property). The hybrid fee assumes 75% of the cost recovery occurs through the per-property assessment and the remaining 25% of costs are recovered through the marginal per-unit fee.

There is an additional cost calculated for reinspection per unit. The cost of reinspection is calculated by estimating the ongoing annual expenses for one inspector (\$80,300) divided by the number of inspections an inspector can complete annually on average (1,175 inspections). The cost of a reinspection would be \$68 per unit per reinspection required.

Under the first approach, which reflects an all-in-one registration + inspection fee, assessed on all rental properties in the City:

- Option one requires a per unit fee for all licensed/registered units of \$31 per unit.
- Option two requires a per property fee for all licensed/registered properties (regardless of unit count) of \$68 per property.
- Option three requires a combination of a fee per property (75% of cost recovery) and per unit (25%). This hybrid fee results in a \$51 fee per property (includes the first unit) and \$22 per additional unit.

Under the second approach, which reflects a registration fee for all rental units and an inspection fee for all rental properties that do not qualify for an inspection exemption:

- Option one requires a registration fee for all licensed/registered units of \$13 per unit and an additional \$23 per unit annually for properties requiring an inspection.

- Option two requires a per property fee for all licensed/registered properties (regardless of unit count) of \$28 per property plus an additional \$43 per property annually for properties that do qualify for an inspection exemption.
- Option three requires a registration fee per of \$21 per property (75% of cost recovery) and \$6 per additional unit (25%). Properties that do not qualify for an inspection exemption would pay another \$32 per property and \$13 per additional unit annually.

Figure 4.
Fee Structure Options for Complete 5-Year Cost Recovery

Approach 1:		Annual Fees	
Fee Options if first inspection included with registration		Per Property	Per Unit
Fee Structure Options (includes registration and first inspection)			
Option 1. Per Unit Fee Structure		\$0	\$31
Option 2. Per Property Fee Structure		\$68	\$0
Option 3. Hybrid Fee Structure (75% property; 25% unit)		\$51	\$22
Reinspection Costs			
Single inspector annual costs			\$80,300
Cost of Reinspection (per unit inspected)			\$68
Approach 2:		Annual Fees	
Fee Options if registration separate from inspection fee		Per Property	Per Unit
Fee Structure Options (registration and inspection fees assessed separately)			
Option 1. Per Unit Fee Structure			
Registration fee (paid by all properties)		\$0	\$13
Inspection fee (paid only by non-exempt properties)		\$0	\$23
Total Annual Fee (for non-exempt properties)		\$0	\$36
Option 2. Per Property Fee Structure			
Registration fee (paid by all properties)		\$28	\$0
Inspection fee (paid only by non-exempt properties)		\$43	\$0
Total Annual Fee (for non-exempt properties)		\$70	\$0
Option 3. Hybrid Fee Structure (75% property; 25% unit)			
Registration fee (paid by all properties)		\$21	\$6
Inspection fee (paid only by non-exempt properties)		\$32	\$13
Total Annual Fee (for non-exempt properties)		\$53	\$19
Reinspection Costs			
Single inspector annual costs			\$80,300
Cost of Reinspection (per unit inspected)			\$68

Notes: Per unit reflects cost per total unit (not per inspected unit). In the hybrid fee structure, the first unit is included with property fee; per unit fee is assessed on each additional unit.

Source: Root Policy Research.

Figure 5 illustrates how the fee options described above would impact property owners of a variety of property types and sizes. A per unit structure is more expensive for larger multifamily properties whereas the per property fee is more expensive for single unit owners. The hybrid fee provides the most equitable distribution of fee costs among different property types and unit counts compared to the other two fee structures. **Root recommends the City of Fort Collins adopt hybrid fee structure.**

Figure 5.
Sample Fees by Property Type Using Fee Structure Options

	Total Fee by Property Type		
	Single Family or Mobile Home	50 Unit Building	250 Unit Building
Approach 1: Fee Structure Options (includes registration and first inspection)			
Option 1. Per Unit Fee Structure	\$31	\$1,543	\$7,714
Option 2. Per Property Fee Structure	\$68	\$68	\$68
Option 3. Hybrid Fee Structure (75% property; 25% unit)	\$51	\$1,121	\$5,488
Approach 2: Fee Structure Options (with registration and inspection separate)			
Option 1. Per Unit Fee Structure			
Exempt from inspection	\$13	\$627	\$3,136
Option 2. Per Property Fee Structure			
Exempt from inspection	\$28	\$28	\$28
Inspection required	\$70	\$70	\$70
Option 3. Hybrid Fee Structure (75% property; 25% unit)			
Exempt from inspection	\$21	\$303	\$1,453
Inspection required	\$53	\$969	\$3,279
Reinspection Costs			
Number of Units Inspected	1	5	13
Cost of Reinspection	\$68	\$342	\$854

Source: Root Policy Research.

Figure 6 shows fee structures and costs for peer communities interviewed by Root (additional details on peer community programs is included in the appendix to this memo). Overall, the recommended hybrid fee for the City of Fort Collins falls in the middle of the group in terms of costs to rental property owners.

Figure 6.
Peer Community Fee Structures

	Registration/License		Inspection	
	Frequency	Fee	Frequency	Fee
Ames, Iowa	Annual	\$50 single family \$100 duplex \$23-\$30 per unit multifamily	1 to 4 years	\$50 for 3+ reinspections
Austin, Texas	Annual	\$372 per property	Annual	Utility billing
Boulder, Colorado	4 years	\$190 per single family or per building	4 years	3rd party
Lawrence, Kansas	Annual	\$14-\$17 per unit	3-6 years	\$50 per unit
Seattle, Washington	2 years	\$70 per property \$15 per unit	5-10 years	\$175 property \$35 per unit
Westminster, Colorado	2 years	\$50 per unit	2-4 years	\$40 per unit

Source: Root Policy Research.

Appendix: Peer Community Fee Detail

Root interviewed six peer communities with rental registration and inspection programs about their rental regulations and fees. These communities were selected because they are 1) university anchored (with a few exceptions); 2) have unique program requirements or methods of enforcement; and 3) have proactive inspections.

- Ames, Iowa
- Austin, Texas
- Boulder, Colorado
- Lawrence, Kansas
- Seattle, Washington
- Westminster, Colorado

Peer community program details related to fee structure are shown in Figure A-1 on the following page.

The communities interviewed either directly fund their program through fees, allocate fees to the general fund to fund the program through the general fund, or collect fees and other department specific funding to run the program. Most communities are cost neutral, while some communities are working toward that goal or using a unique funding structure. Cost recovery depends on the frequency of registration/licensing renewals (ranges from 1 to 4 years in communities), the fee structure and frequency of inspections (varies). The fee structure for the program determines the staffing capacity.

Communities where fees collected fully fund the program include Ames, Boulder, and Seattle. Programs funded through the general fund include Lawrence and Westminster. Programs funded through the general fund can be cost neutral if fee revenue contributed to the general fund is adequate. Finally, the City of Austin charges a small fee that covers the cost of registration paperwork and funds the remainder of the program's administration (staff, inspectors, etc.) through a clean community fee—\$4.25 collected monthly as part of utility billing.

Communities interviewed indicated the fee calculation itself can be a challenge. Fees that are calculated per property have a larger impact on small properties whereas fees calculated per unit have a larger impact on large properties. Interviewees suggested the fee calculation be tailored to the amount of staff time and resources properties require. A tiered fee based on the size of the property was preferred.

Figure A-1. Peer Community Program Details

	Registration/ Licensing Fee	Inspection Fee	Cost Recovery	Inspections Complaint or Proactive	Inspection Frequency	Staffing
Ames, Iowa	Single family \$50; duplex \$100; multifamily \$23-\$30 per unit	Included in registration fee; 3+ inspections \$50 each	100%	Proactive	1 to 4 year rotation; frequency based on performance	3 full time inspectors
Austin, Texas	\$372 per property	No fee for inspection; clean community fee \$4.25/month utility charge funds code enforcement	Covers registration, not staff	Registered repeat offender properties	Annual	8 full time inspectors, 1 supervisor
Boulder, Colorado	\$190 per SF unit or per building	Third party inspectors	100%; pre-2021 60% fee recovery, 40% general fund	Proactive	4 years	3 full time licensing team, inspections conducted by 3rd party
Lawrence, Kansas	\$14-\$17 per unit	\$50 per unit	General fund	Proactive	3 years typical; 5 or less violations, 6 years	3 inspectors
Seattle, Washington	\$70 for property and 1st unit; \$15 per additional unit	\$175 for property and 1st unit; \$35 per additional units	Working toward self-sufficiency	Proactive; random selection of 10% of all rental units in city per year	At least once every 5-10 years	1 call center, 3 administrative, 1 cashier, 3 inspectors, 1 senior inspector, 1 manager
Westminster, Colorado	\$50 per unit	\$40 per unit	100%	Proactive	2 and 4 year schedule of inspections based on property age	3 inspectors, 1 part time admin

Rental Housing Minimum Requirements

Required Items in ALL Rental Housing

Exterior General

1. Building, sidewalks, outbuildings and fences generally must be in good repair and free from hazards like damaged and loose building components.
2. Yards must not have rodent, vermin or insect infestation and free from hazards such as open holes or broken sidewalks.
3. Stairways must not have loose or broken steps and have handrails solidly attached.
4. Decks and porches 30 inches above the ground must have guardrails that are solidly attached.
5. Window wells within 3 feet of driveways or sidewalks must be protected with guard rails or grate covers.

Interior General

1. Windows and doors must be capable of keeping wind and elements out.
2. Insect screens are required on windows and doors used for ventilation May to November.
3. Entry doors are required to have locks for security; locks shall operate from inside without a key or special knowledge.
4. Windows located within 6 feet of ground are required to have locks for security.
5. All floors, walls, stairs, doors and windows to be maintained in good repair and free from decay or defective surfaces.
6. All stairs must have handrails and guardrails installed and solidly attached.
7. All interior doors must be securely attached and open and close properly.
8. All interior spaces must be free from rodent, vermin or insect infestation.
9. All walking surfaces must be in generally good repair.

Light

1. Every habitable space must have a window for natural light with a glazed area sized not less than 8% of the floor area of the room.
2. In buildings containing 3 or more dwelling units, the common hallways and stairways must be provided with one 60 watt bulb per every 200 square feet.

Ventilation

1. Every habitable space must have at least one openable window for natural ventilation sized not less than 4% of the floor area of the room.
2. Every bathroom and toilet room must have an openable window to the exterior or have an exhaust fan, ducted to the exterior.
3. Every clothes dryer must be exhausted to the exterior through independent ducts.

Occupancy General

1. Dwelling units must be arranged to provide privacy from adjoining spaces.
2. Every bedroom must have access to at least one water closet and lavatory without passing through another bedroom.
3. Spaces used for food preparation must contain suitable space and equipment to store, prepare and serve foods in a sanitary manner.
4. Adequate facilities for temporary storage and sanitary disposal of food waste and refuse are required.

Plumbing Facilities

1. Every dwelling unit must contain its own bathtub or shower, lavatory, water closet and kitchen sink, maintained in safe and sanitary condition.
2. A kitchen sink must not be used as a substitute for the required lavatory.
3. Toilet rooms and bathrooms must provide privacy
4. All plumbing fixtures must be maintained in a safe, sanitary and functional condition, free from obstructions, leaks and defects.
5. All kitchen sinks, lavatories, laundry facilities, bathtubs and showers must have hot and cold running water.
6. The water supply system must have sufficient volume and pressure for proper function of plumbing fixtures.
7. Water heated to a temperature of not less than 110 degrees must be provided.
8. All plumbing fixtures must be connected to an approved sewer system without obstructions, leaks and defects.

Mechanical Facilities

1. Habitable spaces must have heat during the period from September 15 to May 15 and maintain a temperature of not less than 68 degrees F.
2. All mechanical appliances must be properly installed and maintained in a safe working condition.
3. All fuel-burning equipment and appliances except for gas-cooking appliances, must be connected to an approved chimney or vent.
4. All mechanical equipment must have an approved automatic safety fuel shutoff, an accessible manual fuel shutoff valve and a listed appliance fuel connector.
5. Gas cooking appliances must not be used for space heating of any portion of a dwelling or guestroom, and, portable fuel burning appliances are prohibited.

Electrical Facilities

1. Dwelling units must have a three-wire, 120/240 volt, electrical service having a

- rating of not less than 60 amperes.
2. All electrical equipment, wiring and appliances must be properly installed and maintained in a safe and approved manner.
 3. Every habitable space in a dwelling must contain at least (2) separate and remote receptacle outlets.
 4. Every laundry area must contain at least (1) grounded receptacle or a receptacle protected with a ground fault circuit interrupter (GFCI).
 5. Every bathroom must contain at least (1) receptacle protected with a ground fault circuit interrupter.
 6. Receptacle outlets installed in kitchens, garages, unfinished basements and exterior locations must be protected by ground fault circuit interrupters.
 7. Every public hall, interior stairway, toilet room, kitchen, bathroom, laundry room, boiler room and furnace room must contain at least (1) electric light fixture.
 8. Extension cords must not be wired directly to permanent wiring or installed inside walls, through floors, under carpets or attached to trim or walls.

Fire Safety Requirements

1. All means of egress doors must be openable from the inside without the need for keys, special knowledge or effort.
2. Every rental dwelling unit or guestroom must have access directly to the outside or to a public corridor which leads to an exterior exit.
3. Below grade sleeping rooms must be provided with emergency escape window having a maximum sill height of (48) inches above the floor and a minimum openable area of (720) square inches.
4. Smoke alarms (electric or battery operated) must be installed in each of the following areas:
 - a. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.
 - b. In each room used for sleeping purposes.
 - c. In each story within a dwelling unit, including basements.
5. Carbon Monoxide Detectors

Any single- family dwelling or dwelling unit in a multi-family dwelling used for rental purposes and that includes fuel-fired appliances or and attached garage, on or after July 1, 2009 shall be required to have carbon monoxide detectors installed.

The location shall be on each level that has a lawful sleeping room and shall be located within 15 ft of the entrance to each sleeping room.

Attachment – Engagement Summary

Community Engagement Overview

Fort Collins has had a long-standing community dialogue about the best way(s) to ensure safe, healthy housing for renters, efficiently use existing housing stock, and address nuisance issues. During development of the HSP in 2020, extensive community engagement continued to highlight a need to explore rental registration/licensing and occupancy ordinance revisions. Over the last year, staff has built on the HSP community dialogue by engaging with a range of community members to ensure that multiple perspectives are included in the current exploration of rental housing strategies.

Groups Engaged:

Group	Engagement Activities Conducted
Renters, neighborhood groups, HOAs	Housing Strategic Plan engagement, 2020-2021 Community Questionnaire, Aug. 2022 Pop-up Engagement, Aug. 2022 Rental Housing Taskforce
Landlords, realtors, property managers	Presentation to Northern CO Rental Housing Association, Feb. 2022 Presentation to Board of Realtors, Feb. 2022 Rental Industry Questionnaire, Feb./March 2022 Rental Housing Taskforce
City Departments	Convening of Rental Housing and Occupancy Core Team Conversations with IT, Building Services, Communications and Public Involvement Office, City Attorney’s Office
Council	Ad Hoc Housing Committee discussion, Dec. 2020 Rental Strategies Work Session, Oct. 2021

Summary of Key Engagement Activities

Rental Industry Questionnaire, February/March 2022

This online questionnaire was primarily focused on soliciting feedback from rental owners, property managers, and landlords to better understand how potential rental programs (e.g., registry and occupancy regulations) might impact the industry, and to explore specific elements of program design. Assessor’s data was used to identify and mail flyers to nearly 9,000 likely owners of rental property within Fort Collins to ensure wide awareness of the questionnaire. A total of 1,912 people responded to the questionnaire, 68% of whom identified themselves as rental owners, managers, or landlords. 20% of respondents were residents who live or work in Fort Collins but do not own or manage rental property.

Rental Housing Task Force, March-August 2022

In early 2022, the City convened a Task Force to support deeper exploration of the three HSP strategies to work collaboratively to propose modifications to current rental housing policy for consideration by City staff, the broader public, and City Council. A total of 76 people applied for

20 spots, and applications were reviewed by a committee of City staff. The top scoring applications for landlord/property managers, renters, and others were invited to participate. Staff consulted with the City Attorney’s Office on the criteria utilized for selection and the information shared with the selection team. Demographic information was collected from applicants but was not used in the selection process; it was considered in aggregate for the entire application pool to evaluate the task force’s representativeness.

A panel of applicants was selected to represent a diversity of perspectives, including rental housing tenants, property owners/landlords and property managers, and people who fit neither category. Fort Collins residents Jack Armstrong, Jade Beaty, Julia Berger, Lisa Cunningham, Brannan Davis, Adam Eggleston, Emily Gallichotte, Carrie Gillis, Cecilia Granby, Sean Haines, Nicole Hanson, Mike Herder, Torey Lench, Robert Long, Lindsay Mason, Amy Pezzani, Jose Luis Ramos, Carolyn J. Rasley, and Isabella Zapata served as Task Force members for the duration of ten meetings. One task force member withdrew from participation due to other commitments. The total composition of the group was 19 members, and all meetings were facilitated by a professional third-party facilitator.

The task force members shared multiple perspectives and affiliations. They are listed below:

Renter	Industry Representative	Other
Currently renting	Realtor	Non-profit executive
Single parent	Large landlord	Immigrant to U.S.
Experienced homelessness	Small landlord	HOA Board representative
Affordable housing tenant	Real estate appraiser	Fifth generation Fort Collins resident
Seeking home ownership	Contractor	CSU Off-Campus Life
Parent of renters	Property Manager	
Former CSU student	Former Housing Authority employee	

The Task Force met a total of ten times between March 30 and August 3, 2022. The 19 Task Force members attended an average of 8.5 meetings each. Each meeting had an average of 16 Task Force members present. Task Force members completed homework assignments between meetings to ensure they were well informed. Early meetings were primarily informational as the Task Force members received presentations from staff as well as a panel including Paul Anderson, Lloyd Walker, David Roy, and Benton Roesler to explore opinions about the City’s U+2 Policy.

Community Questionnaire, August 2022

This questionnaire sought opinions about how much the City’s approach to rental housing regulation and occupancy should change, if at all. The questionnaire also asked respondents their opinions about a range of potential next steps for rental registration/licensing and occupancy ordinance revisions. Additional “pop-up” engagement utilizing the Neighborhood Services lemonade stand was conducted to increase awareness of the community questionnaire and encourage participation; particularly in areas where changes to occupancy and extra occupancy

have been raised as a concern. A total of 1,739 responded to the questionnaire: 64% indicated that they owned their home, 31% of respondents indicated that they rented their home, 19% of respondents were landlords. The charts below show respondents by Council District and housing tenure (rent/own):

Council District	Total	Owners	%Owners	Renters	%Renters
District 1	226	138	61%	82	36%
District 2	223	150	67%	62	27%
District 3	143	94	65%	46	32%
District 4	227	154	68%	63	28%
District 5	373	249	67%	113	30%
District 6	264	144	55%	111	42%



Council Finance Committee Meeting
December 1, 2022, 4-6 pm
Via Zoom

- Council Attendees: Emily Francis (acting Chair), Kelly Ohlson, Shirley Peel
Staff: Kelly DiMartino, Travis Storin, John Duval, Ginny Sawyer, Dean Klingner, Drew Brooks, Teresa Roche, Kelley Vodden, Jen Poznanovic, Nina Bodenhamer, Blaine Dunn, Jo Cech, Holly Mason, Randy Bailey, Trevor Nash, Renee Reeves, Caryn Champine, Dana Hornkohl, Marc Virata, Monica Martinez, Clay Frickey, Megan Valliere, Kelley Vodden, Jill Hueser, Tracy Ochsner, Brian Hergott, Blake Visser, Kendall Minor, Josh Birks, SeonAh Kendall, Meaghan Overton, Marcy Yoder, Lindsay Ex, Gerry Paul, Claire Goodwin, Dave Lenz, Kerri Ishmael, Zack Mozer, Erik Martin, Carolyn Koontz
Others: Jason Sherrill, Chris Beabout (developers)
Molly Bohannon, Coloradoan

Meeting called to order at 4:00 pm

Approval of minutes from the November 3, 2022, Council Finance Committee Meeting. Kelly Ohlson moved for approval of the minutes as presented. Emily Francis seconded the motion. Minutes were approved unanimously via roll call by; Kelly Ohlson and Emily Francis.

A. Financial Policy Updates

Blaine Dunn, Accounting Director

SUBJECT FOR DISCUSSION: 2022 Financial Policy Review

EXECUTIVE SUMMARY: Once a year a portion of Financial Policies are reviewed and updated as needed. Staff is committed to reviewing each policy no less than every 3 years. Policy 7 and Policy 8 were reviewed in January 2022, but additional concerns were brought forward with some of those changes, so staff has adjusted the recommendations around the Local Government Investment Pools. Staff is also adding one change under Policy 5, to be reviewed by the Committee during this meeting. Policies up for review this year are:

- Financial Management Policy 5 – Fund Balance
Financial Management Policy 7 – Debt
Financial Management Policy 8 – Investment

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

- 1. Does Council Finance Committee support the changes as recommended?

Tracy Ochsner; we can move forward with the parking structure design and in the back of our minds, think if we still want to do the 30-year plan, we can accommodate that space. I think there is some opportunity there. I am not eliminating that option as we design the parking structure.

Brain Hergott; I agree, right now the parking structure is very conceptual, so it would be easy to modify the design to make sure we are allowing the space that the Judge could need later for courtroom expansion.

Kelly DiMartino; would there be offices in the parking structure? Do we have retail on the ground floor?

Brain Hergott; they asked us as we went forward with design, include flat floors so we could transition it to offices if needed. No offices in the design initially.

Emily Francis; I don't see the downside of planning for 30 years. We could always phase in construction but having the plan and understanding how that would look with our other Civic Center plans. The court could change over the years, and we could change what that design looks like.

Tracy Ochsner; would it be fair to suggest that we plan for the 30 years, but we don't move past a conceptual design for the 30-year addition. We plan for it, but we don't design for it.

Emily Francis; can you explain the difference between designing and planning.

Tracy Ochsner; in planning, we would still allow for that space no matter how we design the parking structure, we could always add on that building in the future. If we did even conceptual design, we could block out that space for the court addition, but we would not go into full design but just take it to conceptual, but keep that space earmarked for the court.

Travis Storin; we will arrange for an appropriation ordinance for design funds associated with a 15-year facility.

D. Rental Licensing Pilot Programming

Meaghan Overton, Sr. Manager, Social Sustainability

Marcy Yoder, Sr. Manager, Neighborhood Services

SUBJECT FOR DISCUSSION

Request for Appropriation in the amount of \$1,600,000 from General Fund for Rental Registration and Inspection Program Start-Up Phase

EXECUTIVE SUMMARY

In August 2022, Council directed staff to develop a rental housing program that included mandatory registration of rental properties and proactive inspections to ensure that rental housing is healthy and safe. Staff has conducted a detailed fee analysis with the intent of making the rental housing program self-sustaining if approved by City Council. However, setting up the program will require an initial outlay of funds to hire additional staff, purchase software, and conduct program activities. To that end, staff is seeking feedback from Council Finance on an initial appropriation in the amount of \$1,600,000 (2023: \$776,388 and 2024: \$823,612).

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

Is Council Finance Committee supportive of the request for a \$1,600,000 appropriation from the General Fund to support starting the rental registration and inspection program?

BACKGROUND/DISCUSSION

Previous Council Direction

At a work session on October 26, 2021, staff shared information with Council about the history of rental housing strategies, findings from recent demographic and market analysis, a summary of peer cities research, and an outline of a proposed roadmap to implement rental housing strategies. Several Councilmembers supported additional community engagement in early 2022 to further explore potential design of a rental registration/licensing program.

Upon receiving this Council direction at the October 26, 2021, work session, staff began an extensive community engagement process to assess feedback from rental owners, property managers, landlords, and renters. These efforts included an informational mailing to over 9,000 likely landlords identified through City Utilities and County Assessor's data; a rental industry questionnaire in February/March 2022 (1,912 responses); a formal Rental Housing Task Force that met ten times between March and August 2022; and a community questionnaire in August 2022 (1,739 responses). A comprehensive explanation of each of these engagement efforts is provided in Attachment 1.

On August 23, 2022, staff presented Council with findings from public engagement and best practice/peer cities research along with several options for potential next steps to implement Housing Strategic Plan (HSP) strategies related to rental licensing/registration (Strategy 20) and occupancy ordinance revisions (Strategy 21). Key topics for each strategy included a brief overview of existing conditions, an examination of outcomes and themes from community engagement, a summary of recommendations and best practices, and potential next steps toward implementation.

During the August 23 work session, several Councilmembers supported rental registration, while several others supported rental licensing. There was general support for a rental housing program that includes proactive inspections. Based on this Councilmember feedback, a cross-departmental group of staff has designed a rental housing program that requires registration of all rental properties and proactive inspections. Council consideration of this rental housing program is currently scheduled for the January 17, 2023, Council Hearing.

Program Cost

One of the key components of the rental program is a thorough understanding of expected initial and ongoing costs to the City and a careful calibration of fees. Root Policy Research conducted a fee analysis based on staff's proposed program structure to provide a baseline cost estimate and the corresponding fees necessary to ensure full cost recovery over the first five years of implementation (Attachment 2).

The figure below shows program expenses for the City of Fort Collins over the first five years of implementation. Expenses include employee compensation, one-time upfront costs, and ongoing program costs. Employee salary and benefits (with 4.25 FTE inspectors) would cost \$723,438. One-time costs for the City are estimated at \$223,380. Ongoing annual program costs are estimated at \$73,775. Overall, the estimated program cost over the first five years is \$4,089,443 in administrative costs to the City (\$2.5 million is inspection-related and \$1.6 million is non-inspection related costs).

Though the ongoing rental housing program is designed to be self-sustaining if approved by City Council, the start-up phase will require an initial appropriation in the amount of \$1,600,000 to hire staff, purchase software,

and fund program activities and engagement for the first two years of the program. This appropriation (including approximately 3% additional funding to account for inflation) has been included in the analysis of full cost recovery, which means that the initial outlay of funds will be recovered in full over the first five years of program implementation.

Program costs for 2023 and 2024 are estimated as follows:

	FTE	Per FTE Cost	2023 Estimate	2024 Estimate
Compensation				
Program Manager	1	\$90,000	\$67,500	\$90,000
Engagement Specialist	1	\$65,000	\$48,750	\$65,000
Admin/Tech	1	\$50,000	\$37,500	\$50,000
.25 Deputy CBO	0.25	\$25,000	\$4,688	\$6,250
Lead Bldg Inspector	1	\$80,000	\$60,000	\$80,000
Bldg Inspector	3.25	\$70,000	\$113,750	\$227,500
Bulding and Dev. Review Tech	1	\$60,000	\$30,000	\$60,000
Total Salaries	8.5		\$362,188	\$578,750
Benefits	0.25		\$90,547	\$144,688
One-Time Costs				
Software	1	\$75,000	\$75,000	\$0
Translation	1	\$10,000	\$10,000	\$0
Vehicle	4.25	\$30,000	\$127,500	\$0
Clothing	4.25	\$500	\$2,125	\$0
Boots	4.25	\$160	\$680	\$0
Tools	4.25	\$100	\$425	\$0
iPad	4.25	\$1,300	\$5,525	\$0
Destop Computer	4.25	\$500	\$2,125	\$0
Total One-Time Costs			\$223,380	\$0
Ongoing Annual				
Marketing	1	\$20,000	\$20,000	\$20,000
Postage	1	\$10,000	\$10,000	\$10,000
Phone	4.25	\$50	\$213	\$213
Clothing	4.25	\$250	\$1,063	\$1,063
Vehicle Maintenance and Fuel	4.25	\$10,000	\$42,500	\$42,500
Total Ongoing Annual Costs			\$73,775	\$73,775
Total Compensation/One-Time/Ongoing Costs			\$749,889	\$797,213
Total 2023-2024				\$1,547,102

Fee Structure

The program fee options are all designed to cover all administrative costs for the first five years of implementation. This includes the initial appropriation for the “start-up” phase of the program. Fees can be

assessed per unit, per property, or using a hybrid approach. The fee analysis from Root Policy Research notes that a per unit structure is more expensive for larger multifamily properties whereas the per property fee is more expensive for single unit owners. The hybrid fee provides the most equitable distribution of fee costs among different property types and unit counts compared to the other two fee structures. Staff concurs with Root Policy Research’s recommendation to pursue a hybrid fee structure. The figure below outlines all of the potential fee options and the costs to a range of property owners on an annual basis:

Approach 1:	Annual Fees	
Fee Options if first inspection included with registration	Per Property	Per Unit
Fee Structure Options (includes registration and first inspection)		
Option 1. Per Unit Fee Structure	\$0	\$30
Option 2. Per Property Fee Structure	\$65	\$0
Option 3. Hybrid Fee Structure (75% property; 25% unit)	\$49	\$21
Reinspection Costs		
Single inspector annual costs		\$80,300
Cost of Reinspection (per unit inspected)		\$68
Approach 2:	Annual Fees	
Fee Options if registration separate from inspection fee	Per Property	Per Unit
Fee Structure Options (registration and inspection fees assessed separately)		
Option 1. Per Unit Fee Structure		
Registration fee (paid by all properties)	\$0	\$11
Inspection fee (paid only by non-exempt properties)	\$0	\$23
Total Annual Fee (for non-exempt properties)	\$0	\$35
Option 2. Per Property Fee Structure		
Registration fee (paid by all properties)	\$25	\$0
Inspection fee (paid only by non-exempt properties)	\$43	\$0
Total Annual Fee (for non-exempt properties)	\$68	\$0
Option 3. Hybrid Fee Structure (75% property; 25% unit)		
Registration fee (paid by all properties)	\$19	\$5
Inspection fee (paid only by non-exempt properties)	\$32	\$13
Total Annual Fee (for non-exempt properties)	\$51	\$18
Reinspection Costs		
Single inspector annual costs		\$80,300
Cost of Reinspection (per unit inspected)		\$68

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

Is Council Finance Committee supportive of the request for a \$1,600,000 appropriation from the General Fund to support starting the rental registration and inspection program?

DISCUSSION / NEXT STEPS

Kelly Ohlson; supportive of the program – might be doing a lot less than I would like to see, but better than the nothing we do now - I am pleased that the Inspection and registration fees are so low. It breaks down the argument that it would automatically be passed along. \$5 will not make or break people's survival. I am very pleased as this is 1/5 to 1/8 of what I anticipated it might be. I am unlikely to move away from my position. I am supportive, and this is very fine work.

Shirley Peel; are there a lot of people that rent mobile homes?

Marcy Yoder; 247 is what we estimate our rentals to be. We do have quite a few owner-occupied mobile homes.

Shirley Peel; Do you know if the mobile home parks are renting to these people? Is it a single landlord or a company?

Marcy Yoder; the mobile home parks have homes along with a lot to rent.

Shirley Peel; at some point mobile homes can't be fixed or it is more expensive to fit them than they are worth – if they came in and said you need to do all these things, what would happen?

Marcy Yoder; we anticipate the way the code language will be written is that the home would have to be in compliance to pass the minimum health and safety guidelines. We are still investigating what does that mean or is it any different with a mobile home than with another type of building? They are regulated differently through building code, etc. The other thing that will start to give us some additional information is the Budget offer that was just approved between Neighborhood Services and Utilities concentrates on code compliance and energy efficiency inside of mobile homes. We will learn a lot in the next year about what it takes to make that mobile home a safe, healthy, and efficient unit.

Shirley Peel; I am not in favor of rental licensing, but I will keep digging and researching.

Emily Francis; Council hasn't decided on licensing versus registration, we are assuming that the cost is the same, correct?

Meaghan Overton; yes, the direction we heard from Council at the last work session was design a program that will get information about rentals and have inspections. The inspections are one of the big pieces of the costs. So, whether it is registration or licensing in technicality, those costs are likely to be very similar to each other. It is the inspection costs that we wanted to make sure were separated and clear. Registration and licensing will probably cost a similar amount of money regardless of the direction Council chooses.

Emily Francis; does our estimate on how many rental properties there are, include and require an inspection if somebody is renting a room out of their house?

Marcy Yoder; there I no way for us to know that from assessor date. Our data is based on the owner not living in that unit. I do think there is a small segment of potential there that, as a part of our outreach and education, we are going to need to figure out the best way to uncover and address that. Those situations are probably going to be the most difficult for us to enforce. The way we are looking at this and the way we know it is based on who property owner is and if that their primary residence.

Emily Francis; confirming that the intent of the program is to include those.

I think the hybrid model is great and I am also supportive of this going to Council for \$1.6M.

To Shirley's point, really keeping an eye on the mobile homes. We are going to need some creative solutions on what we are going to do with that housing segment.

ACTION ITEM:

Please add Fort Collins to the table, so it will be easier for Council to compare so we don't have to go back and forth?

Kelly Ohlson; wise move for staff – wording and semantics can make a difference but let's not get hung up on registration versus licensing. Let's get a rational program that will be real but not over the top and not overly costly. I think we are heading in the right direction. I don't think we are calling it registration or licensing, is that correct?

Marcy Yoder; we have been calling it Rental Housing Programming and we do have a question out to the City Attorney's office about registration / licensing and how that all fits into code language so, I expect that you will also get some additional information from the City Attorney's office prior to first reading about if there is a difference and if they are recommending one or the other based on our ability to enforce. The staff team who has been working on this agrees with what Kelly said, we want it to be a real, substantive program that we can enforce when we have a unit that is not passing inspections and the owner is not willing to upgrade to make it a healthy and safe unit. We want the ability to say you can no longer have tenants in that space

Kelly Ohlson; I am a very strong proponent of this program - not overreach or over the top and not costly I am not going to worry about an owner who is renting a room in their house. I am concerned about friends of mine who for years have rented a basement unit with no egress windows. Let's not get hung up on overreach or perfection.

Marcy Yoder; what Kelly is saying does make sense to me and aligns with the kinds of conversations we have been having.

Kelly Ohlson; let's deal with the real issues and not peripheral ones – we can address those later - let's go for the important stuff.

John Duval; there isn't any real distinction between registration and licensing. What is important is what are the real remedies that the city have employ? if you are not registered or licensed, what happens? What can the city do?

Meeting adjourned at 5:51 pm

Item 25.

MINUTES

CITY OF FORT COLLINS • BOARDS AND COMMISSIONS



AFFORDABLE HOUSING BOARD

REGULAR MEETING

November 3, 2022, 4:00-6:00pm
Remote/Online via Zoom due to COVID-19

CALL TO ORDER

At 4:03 PM the meeting was called to order by John Singleton

1. ROLL CALL

DocuSigned by:
Sue Beck-Ferkiss
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- **Board Members Present:** John Singleton, Bob Pawlikowski, Seth Forwood, Sheila Seaver-Davis and Jennifer Bray
- **Board Members Absent:** Stefanie Berganini, Kristin Fritz
- **Staff Members Present:**
 - Sue Beck-Ferkiss, Staff Liaison – City of Fort Collins
 - Meaghan Overton, Social Sustainability – City of Fort Collins
 - Marcy Yoder, Neighborhood Services – City of Fort Collins
 - Hannah Tinklenberg, Minutes – City of Fort Collins
- **Guests Present:**
 - Marilyn Heller
 - Lisa Cunningham

2. **AGENDA REVIEW** – No changes.

3. **CITIZEN PARTICIPATION** – None.

4. **APPROVAL OF MINUTES**

**Bob Pawlikowski moved to approve the October minutes.
Seth Forwood seconded. Approved 4-0.
Jennifer Bray abstained due to absence at the October meeting.**

MINUTES

CITY OF FORT COLLINS • BOARDS AND COMMISSIONS



AFFORDABLE HOUSING BOARD

REGULAR MEETING

5. NEW BUSINESS

- **Board Member Introductions**
 - Board members introduced themselves to new board member, Sheila Seaver-Davis.
- **Renter Programming – Marcy Yoder, Neighborhood Services**
 - 2023 Council Timeline
 - Rental Housing – first reading January 17
 - Occupancy Work Session – January 24
 - Rental Housing – second reading February 7
 - Occupancy – first reading March 7
 - Occupancy – second reading March 14
 - Overview/Key Points of Rental Housing Strategies:
 - Part of Housing Strategic Plan Implementation with alignment on the following strategies from the Housing Strategic Plan:
 - Strategy 20: explore the mandated rental housing license registry program.
 - Strategy 21: revising current occupancy code around family definitions and re-calibrate policy to support stable, healthy, and affordable housing, citywide.
 - Strategy 26: develop small landlord incentives program.
 - Alignment with goals within Our Climate Future and current City Plan.
 - Challenge according to Housing Strategic Plan: housing policies have not consistently addressed housing stability and healthy housing (especially for people who rent).
 - Community engagement included renters, neighborhood groups, HOAs, landlords, realtors, property managers, City departments, and Council.
 - Rental Housing Task Force created summer 2022 with broad spectrum of representation, a third party facilitator, and met for a total of 20 hours between March to August 2022.
 - Existing Conditions:
 - 40% of all housing in Fort Collins is renter-occupied (38,088 units).
 - About 90% of landlords/property owners own only one property, in addition to their residence.
 - Stakeholder surveys indicated support for proposed strategies and a rental industry questionnaire highlighted themes and concerns with the City creating rental regulations.
 - Potential next steps were presented in a Council work session and included task force and staff recommendations.

MINUTES

CITY OF FORT COLLINS • BOARDS AND COMMISSIONS



AFFORDABLE HOUSING BOARD

REGULAR MEETING

- DISCUSSION:

- How does the City plan to implement and message the rental licensing registry? And is there any intent to monitor pricing increases?
 - Will include a lot of education and outreach with support from the CPIO to help with the messaging around providing safe, healthy units for all renters.
 - Development of an annual renewal application, annual fee, and inspection process that might provide some insight on average rent costs, types of units, etc.
 - Team is exploring what information would be beneficial to collect and what is legally acceptable.
 - The City is not allowed to regulate rents in any way.
- Currently, there is no consideration to create a searchable database of rentals.
- There is a strong interest in educational components for both tenants and landlords (especially for landlords that own only one rental unit) with continued support to know and understand fair housing laws, tenant rights and responsibilities, and access to rental resources.
- Short-term rentals are not part of this program.
- There will be an initial enrollment application in which the City will issue a certificate followed by annual notifications to update and complete the renewal application (this will be housed in an online portal/platform). Enrollment is mandatory with various levels of enforcement.
- The team has not explored how the fees might cause implications that might trickle down to the tenants.
- Marcy will return on February 3 to discuss occupancy. Prior to the meeting, Marcy will provide materials to help inform the board's recommendation.

- **Housing Strategic Plan – Meaghan Overton, Social Sustainability**

- City Council voted 5-2 on November 1 to adopt the Land Development Code and as part of the process, they adopted a number of changes taking effect in January 2023. Meaghan provided a brief overview of each of those changes.
- DISCUSSION:
 - It is not yet known whether the extension of deed restriction could create some unintended consequences. Ultimately, Council is committed to resolving major issues should there be unintended consequences with extending deed restrictions to ninety-nine years, however felt that it was important to get the maximum time they can get on affordable units.



Rental Housing Program: First Reading

Housing Strategic Plan Implementation

Marcy Yoder, Neighborhood Services Manager
Meaghan Overton, Housing Manager



- **Strategy 20** - Explore the option of a mandated rental license/registry program and pair with best practice rental regulations.

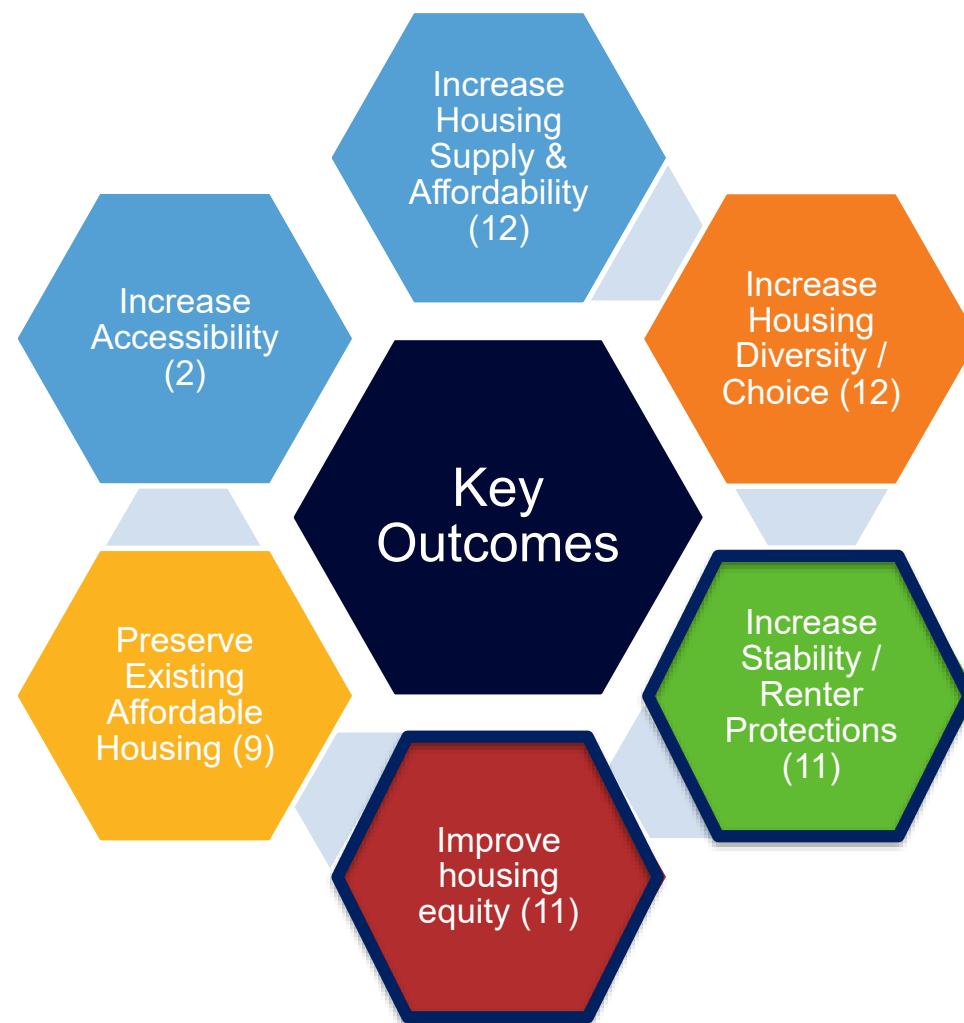


Big Move 7: Healthy, Affordable Housing

- **HAH6:** Explore mandated rental license/rental registry

Why are we looking at a rental registration and inspection program?

- *Greatest Challenge #7:* Housing policies have not consistently addressed housing stability and healthy housing, especially for people who rent
- *Community engagement:* a desire to proactively ensure **healthy, safe units** and maintain neighborhood **quality of life**



- Over 40% of all housing in Fort Collins is renter-occupied

	Estimated # of homes*	Estimated % of all housing
Total (citywide)	87,863	100%
Owned Units	49,775	57%
Rental Units	38,088	43%
<i>Single-household, duplex, and townhome rentals</i>	14,419	16% <i>(38% of all rentals)</i>
<i>Multi-household, mixed-use or manufactured housing rentals</i>	23,669	27% <i>(62% of all rentals)</i>

**Note: This data is the best available information at present but should be interpreted as an estimate because of potential data gaps or lags in reporting property information.*

Prior Council Work Sessions (October 2021, August 2022) covered:

- Problem to be addressed
- Current Market Conditions
- Peer City data
- Best Practice Research
- Public Engagement from multiple stakeholders

August 2022 – staff directed to bring forward a rental housing program design that included proactive inspections.

January 2023 – staff directed to outline a registration option that would **not** include proactive inspections.

February 2023 – staff directed to bring forward a rental housing program design that included delayed proactive inspections.

Option 2: Registration with Delayed Proactive Inspections

- Registration of all rental properties
- Inspections delayed – beginning after first year of registration
 - Fees recalibrated based on number of inspections required
 - Based on habitability and safety standards
 - Conducted by City staff
 - Required every 5 years *unless*
 - Less than 10 years old
 - HUD inspected
 - Approved Third-party inspection completed
- Complaint-based system still available
- Start-up costs: \$1.1 million

Registration

Annual Rental Property Registration

Items included:

- Identify property ownership
- Local contact info
- Types and locations of units
- Age of units
- Information about third-party inspections if applicable



Inspections

- Begin after first year of registration
- Internal rental inspection team
- Inspections every 5 years

Building Type	% Inspected
Single unit, detached	100%
Single unit, attached (e.g., townhouse)	100%
Individually owned (e.g., condo)	100%
Multi-unit, 0-10 units`	100%
Multi-unit, 11-100 units	10%
Multi-unit, 100+ units	5%



Fees

- Utilizing a hybrid approach (75% property; 25%unit)
- Separating registration fee and inspection fee
 - Both will be paid annually for all units
 - Fees will be recalibrated after first year of registration to include inspections for properties that are not exempt

Hybrid (75% property/25% unit)	Per Property	Per Unit
Registration fee (paid by all properties)	\$37	\$10
Inspection fee (paid only by non-exempt properties)	To be determined	To be determined

Enforcement checkpoints

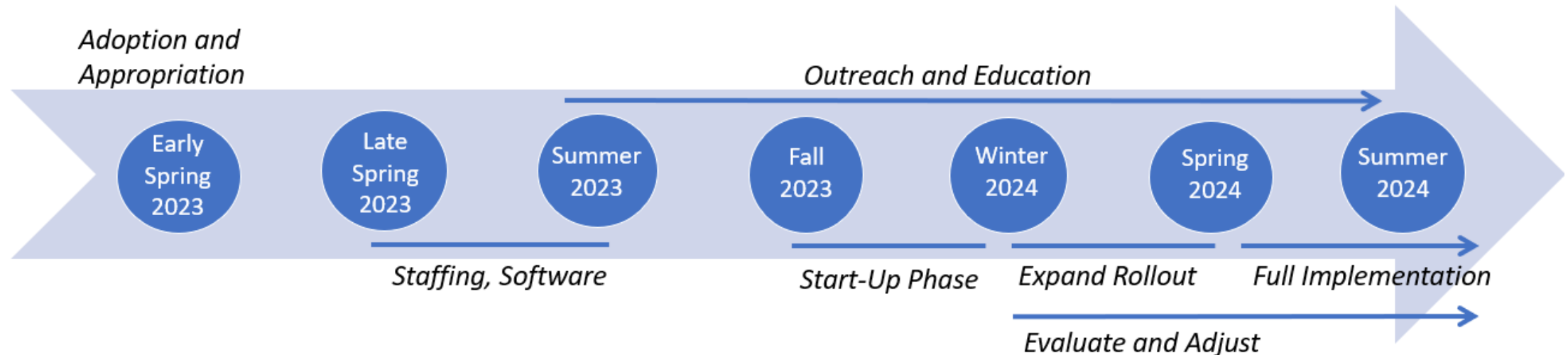
Voluntary compliance is the goal

Checkpoints:

- Failure to enroll/renew
- Failure to complete inspection
- Interfering with City Official's authority to enter
- Failure to correct identified life, health, and safety violations
- Failure to vacate properties with imminent dangers



What is the timeline for implementing a rental housing program?



- **What:** \$1,100,000 appropriation from the general fund
 - 2023 = \$421,583
 - 2024 = \$669,500
- **Why:** Initial outlay for a rental registration program with delayed proactive inspections to hire staff, purchase software, and fund program activities and engagement
- Program is designed to recover the full cost over the first five years of implementation – depending on the implementation timeline and revenue generation, partial costs of start-up will be recovered



- Total Revenue per year: \$737,152
- Based on the assumptions of 12,496 properties @\$37 each and 27,480 units @\$10 each
- This exceeds the actual annual cost to be able to recoup some if not all of the start-up costs within the first five years of the program.
- Revenue generated by a percentage of enrollment before 1/1/2025:
 - 100% = \$737,152
 - 75% = \$552,864
 - 50% = \$368,576
 - 25% = \$184,288
- Staffing and program development should support beginning citywide registration by April 2024
- Accela development may impact timeline

Rental Housing fees fully cover costs upon full implementation. The fees cover appropriate program costs at the same time they leverage staffing for CDNS to be closer to overarching capacity needs.

First round of hiring (May with June start dates):

- 1 Program manager to ensure the program is fully developed and implemented.
- 1 Engagement Specialist to connect with key stakeholders, focusing on education and outreach
- 1 Admin/Tech that can focus on Accela software coordination and customer experience
- 1 Rental inspector to be available for program design and implementation while also taking over all complaint-based rental inspections. (allows current building inspector to stop doing rental inspections)

Additional staffing anticipated (likely 1st and 2nd qtr 2024):

- 1 Mediation/Public Engagement Specialist as requests for education on conflict management and/or mediation build (Current staffing will not be able to support a large increase in requests)
- 1 Rental inspector when requests exceed the workload capacity of the first inspector
- 1 Admin/Tech upon full implementation of registration program to support customer needs

	FTE	Per FTE Cost	2023 Estimate	2024 Estimate
Compensation				
Program Manager	1	\$90,000	\$54,000	\$90,000
Engagement Specialist	1	\$65,000	\$39,000	\$65,000
Admin/Tech	1	\$50,000	\$30,000	\$50,000
Med Specialist	1	\$65,000	\$16,250	\$65,000
Lead Bldg Inspector	1	\$80,000	\$48,000	\$80,000
Bldg Inspector	1	\$70,000	\$0	\$70,000
Bulding and Dev. Review Tech	1	\$60,000	\$0	\$60,000
Total Salaries	7		\$187,250	\$480,000
Benefits	0.25		\$46,813	\$120,000

One-Time Costs				
Software	1	\$75,000	\$75,000	\$0
Vehicle	2	\$30,000	\$60,000	\$0
Clothing	2	\$500	\$1,000	\$0
Boots	2	\$160	\$320	\$0
Tools	2	\$100	\$200	\$0
iPad	2	\$1,300	\$1,300	\$1,300
Laptop	5	\$1,500	\$4,500	\$3,000
Desktop Computer	2	\$500	\$500	\$500
Total One-Time Costs			\$142,820	\$4,800
Ongoing Annual				
Marketing		\$20,000	\$20,000	\$20,000
Translation	1	\$10,000	\$10,000	\$10,000
Postage	1	\$10,000	\$10,000	\$10,000
Phone	7	\$600	\$4,200	\$4,200
Clothing	2	\$250	\$500	\$500
Vehicle Maintenance and Fuel	2	\$10,000	\$20,000	\$20,000
Total Ongoing Annual Costs			\$44,700	\$64,700
Total Compensation/One-Time/Ongoing Costs			\$421,583	\$669,500
Total 2023-2024				\$1,091,083

Option 1: Registration + Improved Complaint-Based Inspections

- Registration of all rental properties
 - Self-attestation
 - Submit 3rd party inspections
- No proactive inspections
 - Improved education/outreach
 - Enhanced mediation services
- \$37/property and \$10/unit annually
- Inspections based on habitability and safety standards
- City staff conduct inspections only upon complaint
- Start-up costs \$1.1 million
- Staffing 7 FTE (decreased inspectors and added a mediation specialist)



Option 2: Registration with Delayed Proactive Inspections

- Registration of all rental properties
- Inspections every 5 years *unless*
 - Less than 10 years old
 - HUD inspected
 - Third-party inspection completed
- Fees and number of inspections recalibrated based on the first year
- Inspections based on habitability and safety standards
- City staff conduct inspections
- Complaint-based system still available
- Start-up costs \$1.1 million
- Staffing 7 FTE to start, then TBD (supported by program fees)



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Option 3: Registration with Proactive Inspections

- Registration of all rental properties
- Inspections every 5 years *unless*
 - Less than 10 years old
 - HUD inspected
- \$53/property and \$19/unit annually
- Inspections based on habitability and safety standards
- City staff conduct inspections
- Complaint-based system still available
- Start-up costs \$1.6 million
- Staffing 8.5 FTE



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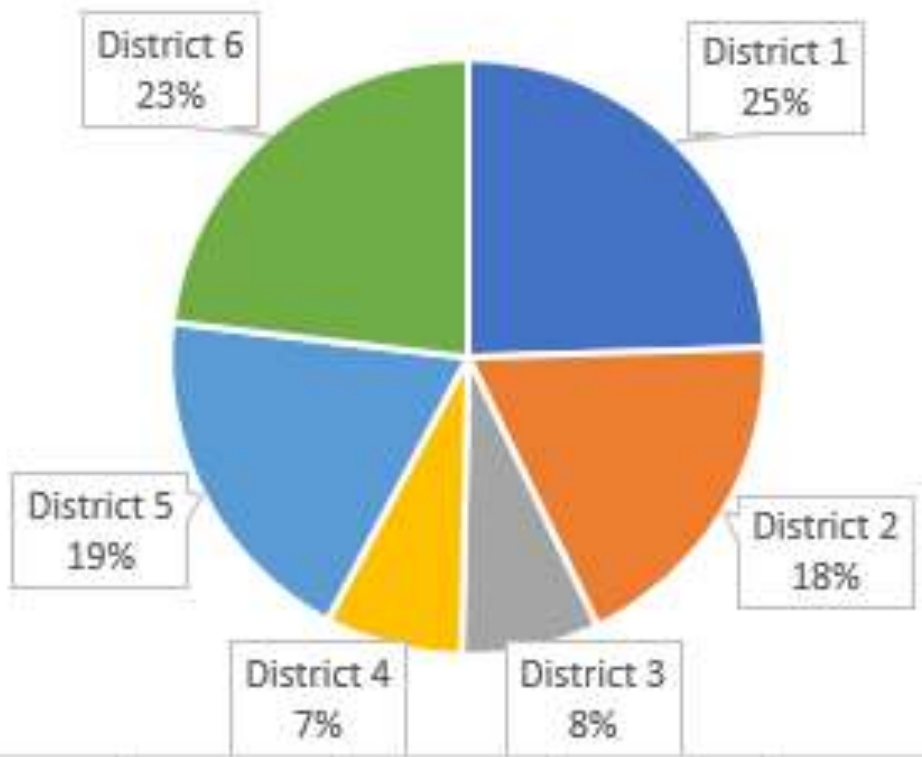
Start-up Budget Comparisons	Option 1 & 2	Option 3
Salaries and benefits 1. Manager, 2 Engagement, 2 Admin/Tech, 2 inspectors 3. Manager, 1 Engagement, 2 Admin/Tech, 4.5 inspectors	\$862,500	\$1,176,173
One-time costs <ul style="list-style-type: none"> Vehicles, software, computers, initial clothing & equipment, etc. 	\$147,120	\$223,380
Annual costs <ul style="list-style-type: none"> Marketing, postage, phones, vehicle maintenance and fuel, clothing, etc. 	\$97,500	\$147,550
TOTALS	\$1,107,120	\$1,547,103

	Rental Registration with Improved Complaint-Based Inspections (Option 1)	Rental Registration with Proactive Inspections (Options 2 and 3)
At its most effective:	<ul style="list-style-type: none"> - Complete database of rental housing - Incremental improvement of rental housing stock via improved complaint-based system - Improved tenant/landlord relationships via additional mediation - Reasonable per property and per unit fees - Costs of the program fully recovered by fees 	<ul style="list-style-type: none"> - Complete database of rental housing - Comprehensive improvement of all rental housing via proactive inspections - Equitable access to safe and healthy rental units - Reduced burden on renters to report issues - Provides marketable certification from the City that helps landlords/property owners attract tenants - Consistent approach via utilizing in-house inspectors - Reasonable per property and per unit fees - Costs of the program fully recovered by fees
At its least effective:	<ul style="list-style-type: none"> - Incomplete database of rental housing - Complaint-based inspections may not provide protections for all renters - Self-attestation may result in noncompliance, enforcement challenges and lower housing quality - Access to safe and healthy rental housing contingent on tenant power, resources, and knowledge to recognize and report concerns - Annual fee analysis could result in a need to increase program fees to cover costs - Noncompliance could limit program effectiveness 	<ul style="list-style-type: none"> - Incomplete database of rental housing - May displace renters in cases of serious concerns - May result in cost burdens for tenants (via increased rents) and/or for landlords if expensive repairs required - High costs could result in landlords exiting the market - Annual fee analysis could result in a need to increase program fees to cover costs - Noncompliance could limit program effectiveness

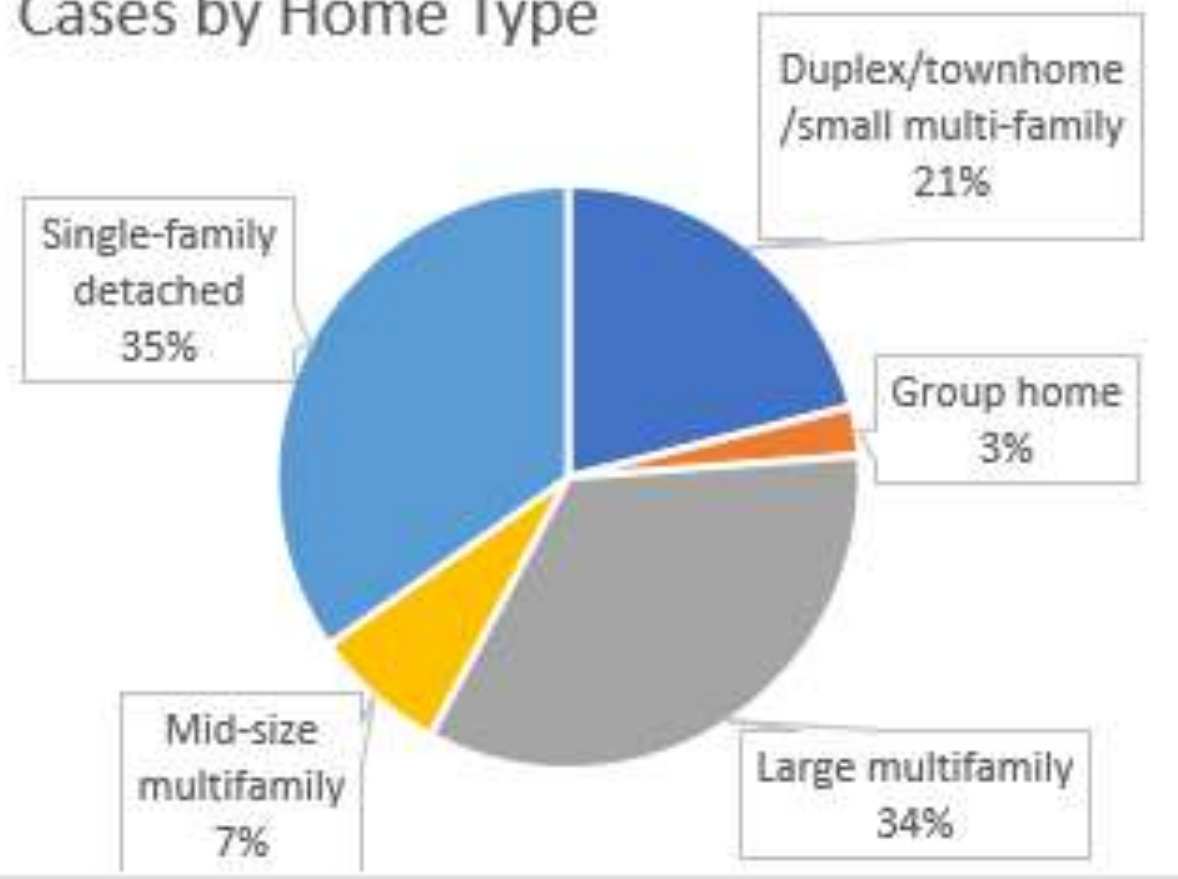
	Option 1: Registration + Complaint-Based Inspections	Option 2: Registration + Delayed Proactive Inspections	Option 3: Registration + Proactive Inspections
Registration	All rental properties Local contact/owner info Self-attestation Submit 3 rd party inspections	Same as Option 1	Same as Option 1
Inspections	Complaint-based only	Complaint-based only in Year 1, then every 5 years	Every 5 years
Exceptions	N/A (no proactive inspections required)	<ul style="list-style-type: none"> • Less than 10 years old • HUD inspected • Third-party inspected 	<ul style="list-style-type: none"> • Less than 10 years old • HUD inspected
Fees	\$37 per Property \$10 per Unit	Same as Option 1, TBD when inspections added	\$53 per Property \$19 per Unit
Staffing	7	7, TBD when inspections added	8.5
Start-up Cost	\$1.1 million	\$1.1 million	\$1.6 million

Current complaint-based rental inspections – ALL DATA

Cases by Council District



Cases by Home Type



Community task force was formed to support deeper exploration of strategies related to rental housing and occupancy and bring recommendations forward for staff and Council consideration.

- 76 applicants for 20 spots
- Selection process sought to include perspectives of landlords, property managers, renters, and others
- Third-party neutral facilitator
- 10 meetings, March-August 2022



Affiliations Shared

Renter

- Currently renting
- Single parent
- Experienced homelessness
- Affordable housing tenant
- Seeking homeownership
- Parent of renters
- Former CSU student

Industry representative

- Realtor
- Large landlord
- Small landlord
- Real estate appraiser
- Contractor
- Property manager
- Former housing authority employee

Other

- Non-profit executive
- Immigrant to US
- HOA Board representative
- Fifth generation Fort Collins resident
- CSU off-campus life

Note: Task Force members shared multiple perspectives and affiliations.

- Over 40% of all housing in Fort Collins is renter-occupied

	Estimated # of homes*	Estimated % of all housing
Total (citywide)	87,863	100%
Owned Units	49,775	57%
Rental Units	38,088	43%
<i>Single-household, duplex, and townhome rentals</i>	14,419	16% <i>(38% of all rentals)</i>
<i>Multi-household, mixed-use or manufactured housing rentals</i>	23,669	27% <i>(62% of all rentals)</i>

**Note: This data is the best available information at present but should be interpreted as an estimate because of potential data gaps or lags in reporting property information.*

Group	Engagement Activities Conducted
Renters, neighborhood groups, HOAs	Housing Strategic Plan engagement, 2020-2021 Community Questionnaire, Aug. 2022 Pop-up Engagement, Aug. 2022 Rental Housing Taskforce
Landlords, realtors, property managers	Presentation to Northern CO Rental Housing Association, Feb. 2022 Presentation to Board of Realtors, Feb. 2022 and Jan. 2023 Rental Industry Questionnaire, Feb./March 2022 Rental Housing Taskforce
City Departments	Convening of Rental Housing and Occupancy Core Team Conversations with IT, Building Services, Communications and Public Involvement Office, City Attorney's Office
Council	Ad Hoc Housing Committee discussion, Dec. 2020 Rental Strategies Work Session, Oct. 2021 Rental Strategies Work Session, Aug. 2022 Council Finance Committee, Dec. 2022

Community Questionnaire

<i>Rental Strategies</i>	All Respondents		Renters		Homeowners		Landlords	
	Yes	No	Yes	No	Yes	No	Yes	No
Agree or disagree with the following statements:								
Should Fort Collins rental strategies stay as they are?	40%	60%	25%	75%	46%	54%	53%	47%
Require that all landlords obtain a license to rent property in the City	50%	40%	63%	21%	45%	48%	13%	78%
Require that all landlords register their rental properties with the City	56%	34%	69%	17%	52%	40%	21%	69%
Proactively inspect rental properties on a regular basis for health and safety violations	47%	37%	62%	20%	42%	44%	15%	72%
Inspect rental properties only when a complaint is filed	56%	26%	60%	22%	53%	28%	56%	23%

Rental Industry Questionnaire

- Potential costs were identified as a drawback to a licensing and inspection program, and most rental landlords/managers indicated they would pass costs on to tenants.
- Respondents indicated concern that the City was not clearly defining the problem and that rental registration/licensing was not an effective way to address the minority of units that might be substandard.
- Respondents preferred that inspections occur only if a complaint is received and that inspections focus narrowly on health and safety issues.
- Participants expressed a lack of trust with the City of Fort Collins. Specific concerns included that the City would move forward without further consideration from stakeholders, and that City lacked the ability and capacity to scale-up a pilot program for all rentals

Rental Housing Taskforce Recommendations:

- Implement a mandatory rental registration program
 - Continue complaint-based rental inspections, focus on habitability
 - No proactive inspection of units
 - Nominal fee

Best Practices from peer cities research (40+ cities, 22 in Colorado):

- Implement a mandatory rental licensing program that includes:
 - Proactive inspection of units
 - A fee structure designed to cover program costs
 - Training for staff, landlords, and tenants
 - Involve landlords and tenants in program design and implementation

AGENDA ITEM SUMMARY

City Council



STAFF

Anissa Hollingshead, City Clerk

SUBJECT

Items Relating to the Repeal and Reenactment of Certain Ordinances.

EXECUTIVE SUMMARY

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

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

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

STAFF RECOMMENDATION

Staff Recommends adoption of the Ordinances on First Reading.

BACKGROUND / DISCUSSION

Following the March 7, 2023, City Council Meeting, an error occurred with the required publication of ordinances adopted on first and second reading in the Coloradoan. The City Charter requires in Article II, Section 7, that every ordinance be published in full on the City website and by number and title in a newspaper of general circulation both at least seven days prior to its final passage and within seven days after its final passage. While all ordinances were published in full on the City website, there was no publication in the Coloradoan.

The Charter provides no mechanism to correct this sort of omission. Therefore, in order to ensure the ordinances adopted on second reading on March 7 are fully perfected, it is necessary to repeal the original ordinances and reenact that content in two readings of new ordinances. This is a purely procedural action.

These two ordinances are being presented on the discussion agenda to allow Councilmembers to vote in the manner in which they did upon their original adoption.

CITY FINANCIAL IMPACTS

N/A

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

N/A

PUBLIC OUTREACH

N/A

ATTACHMENTS

- 1. Ordinance A for Consideration
- 2. Ordinance B for Consideration

ORDINANCE NO. 060, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
REPEALING ORDINANCE NO. 026, 2023, AND APPROPRIATING PHILANTHROPIC
REVENUE RECEIVED THROUGH CITY GIVE FOR THE GARDENS ON SPRING CREEK
FOR GENERAL OPERATIONS AS DESIGNATED BY THE DONOR

WHEREAS, Nutrien has generously donated \$100,000 to the City of Fort Collins to support The Gardens on Spring Creek (“The Gardens”); and

WHEREAS, the \$100,000 donation is designated for exterior capital improvements of the Outdoor Teaching Kitchen at The Gardens; and

WHEREAS, Nutrien’s generosity will be acknowledged onsite at The Gardens via terms and details outlined in a Gift Agreement per City Give policy; and

WHEREAS, this appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of improving a public cultural facility; and

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

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

WHEREAS, the Council adopted Ordinance No. 026, 2023 (“Ordinance No. 026”) to make this appropriation, but Ordinance No. 026 was not published after adoption as required by the City Charter; and

WHEREAS, it is necessary that the Council repeal Ordinance No. 026 and adopt this Ordinance to make the appropriation effective.

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

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

Section 2. That there is hereby appropriated from new philanthropic revenue in the Cultural Services and Facilities Fund the sum of ONE HUNDRED THOUSAND DOLLARS

(\$100,000) to be expended in the Cultural Services and Facilities Fund by The Gardens on Spring Creek for general operations of The Gardens on Spring Creek.

Section 3. Ordinance No. 026, 2023, is hereby repealed.

Introduced, considered favorably on first reading and ordered published this 4th day of April, 2023, and to be presented for final passage on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

ORDINANCE NO. 061, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
REPEALING ORDINANCE NO. 031, 2023, AND APPROPRIATING PRIOR YEAR
RESERVES FOR A CAPITAL CONTRIBUTION OF \$1,000,000 FOR
CONSTRUCTION OF A NEW PUBLIC TERMINAL FACILITY AT THE
NORTHERN COLORADO REGIONAL AIRPORT

WHEREAS, the City of Fort Collins (the “City”) and the City of Loveland (“Loveland”) jointly own the Northern Colorado Regional Airport (the “Airport”); and

WHEREAS, the Airport is currently undertaking a project to construct a new public terminal facility (the “Project”) for the purpose of growing multi-modal transportation, charters, and future airline services; and

WHEREAS, the Project is estimated to have a total cost \$25,000,000, with \$21,000,000 from federal funding, of which \$1,590,000 is contingent upon a local match of \$175,000; and

WHEREAS, the Project is dependent upon a local contribution obligation of \$4,000,000, of which \$2,000,000 will come from the Airport’s capital reserves and \$1,000,000 is proposed to be contributed each by the City and Loveland; and

WHEREAS, City Council’s Finance Committee recommended that City staff collaborate with Airport staff to develop a series of performance indicators for the Project; and

WHEREAS, City staff has identified the following performance indicators: (i) no later than March 31, 2025, the Project shall achieve LEED Silver building certification; the Project shall include a public art commitment at 1% of non-federal funding contributions to the Project; and the carbon footprint of the building shall be no greater than 198 metric tons of carbon dioxide equivalent; and enhanced accessibility to the building will be provided; and (ii) by year-end 2028, the Airport shall achieve no less than 33,000 bus or air passengers annually that directly utilize the new terminal facility (collectively, the “Performance Indicators”); and

WHEREAS, this Ordinance directs the City Manager to negotiate and execute an intergovernmental agreement with Loveland for this capital contribution that addresses the Performance Indicators, but leaves to the City Manager the discretion as to how they will be addressed in the intergovernmental agreement with the goal being the timely funding of the Project; and

WHEREAS, in addition to appropriating the identified funds, this Ordinance is intended to provide a public position of support for the Project to allow for the release of federal funding; and

WHEREAS, this appropriation benefits the public health, safety and welfare of the residents of Fort Collins and serves the public purpose of providing funding for the construction of a new public terminal facility at the Airport with the intent of growing multi-modal transportation, charters, and future airline services that Fort Collins residents will be able to access; and

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

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

WHEREAS, the City Council adopted Ordinance No. 031, 2023 (“Ordinance No. 031”) to appropriate the prior year reserves described herein, but Ordinance No. 031 was not published after adoption as required by the City Charter; and

WHEREAS, it is necessary that the City Council repeal Ordinance No. 031 and adopt this Ordinance to make the appropriation again; and

WHEREAS, the City has taken no action on the appropriation or related agreement under Ordinance No. 031.

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

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

Section 2. That there is hereby appropriated from prior year reserves in the General Fund the sum of ONE MILLION DOLLARS (\$1,000,000) to be expended in the General Fund for a capital contribution for the Project, the construction of a new public terminal facility at the Northern Colorado Regional Airport.

Section 3. That the City Manager is directed to negotiate an intergovernmental agreement with Loveland for this capital contribution and is authorized to enter into and sign it on the City’s behalf. The City Manager is further authorized to enter into the agreement on such terms and conditions concerning the Performance Indicators as the City Manager determines are in the best interest of the City for the timely funding of the Project.

Section 4. Ordinance No. 031, 2023, is hereby repealed.

Introduced, considered favorably on first reading, and ordered published this 4th day of April 2023, and to be presented for final passage on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

AGENDA ITEM SUMMARY

City Council



STAFF

Anissa Hollingshead, City Clerk
Carrie Daggett, City Attorney

SUBJECT

Items Relating to a City-Initiated Charter Amendment Regarding Making Candidate Qualifications Comport with the State Constitution.

EXECUTIVE SUMMARY

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

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

The purpose of this item is to set the ballot language regarding making candidate qualifications comport with the Colorado Constitution.

Any protest of the proposed ballot language must be received no later than Monday, April 3, 2023, at noon. Protest(s) shall be heard, considered, and resolved by the Council prior to adoption of the related Ordinance. If protests are received, copies will be included in Council's "Read Before the Meeting" packet.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

In November of 2022, the City received a letter from the American Civil Liberties Union (ACLU) advising a City Charter provision violates the Colorado Constitution. This provision, found in Article II, Section 2(b), prohibits those who have been convicted of a felony from running for or holding a position on City Council. The ACLU also asserts this provision is preempted by Colorado statute. They have successfully sued the City of Aurora regarding a similar provision. The Charter also contains a related provision in Article II, Section 18 that creates a vacancy when a Councilmember is convicted of a felony or after the City Clerk determines as much after receiving a written protest. In comparison, the Colorado Constitution, Article XII, Section 4, is more specific and provides that a person is prohibited from holding public office where that person is convicted of one or more of the following felonies: embezzlement of public monies; bribery; perjury; solicitation of bribery; or subornation of perjury.

This issue was brought to Council for discussion of the involved legal issues in Executive Session. The Council's Election Code Committee also discussed the topic, recommending a ballot question to amend the Charter be brought to Fort Collins voters. The Council also provided direction to the City Clerk by motion under Other Business to instruct the codifier to place an editor's note in the Charter regarding the lack of congruence with the State Constitution until an amendment can be presented to voters. The proposed Ordinance would approve a ballot question for the voters asking whether Section 2 and Section 18 should be amended to conform to the provisions of the Colorado Constitution.

CITY FINANCIAL IMPACTS

November will be a regular municipal election, conducted as a coordinated election with Larimer County. It is not anticipated placing this ballot question will have an impact on the total cost for that election. There will be minimal costs involved with updating the Charter if the question is approved by voters.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The Council's Election Code Committee has recommended placing this question on the ballot.

PUBLIC OUTREACH

NA

ATTACHMENTS

1. Ordinance for Consideration

ORDINANCE NO. 062, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
SUBMITTING TO A VOTE OF THE REGISTERED ELECTORS OF THE CITY OF FORT
COLLINS PROPOSED AMENDMENTS TO ARTICLE II OF THE CITY CHARTER
CONFORMING THE LIMITS ON HOLDING
COUNCIL OFFICE TO THE LIMITS IN THE COLORADO CONSTITUTION
APPLICABLE TO THOSE WITH DISQUALIFYING FELONY CONVICTIONS

WHEREAS, Article IV, Section 8 of the Charter of the City of Fort Collins (“Charter”) provides that the Charter may be amended as provided by the laws of the State of Colorado; and

WHEREAS, Section 31-2-210, Colorado Revised Statutes, provides that Charter amendments may be initiated by the adoption of an ordinance by the City Council submitting a proposed amendment to a vote of the registered electors of the City of Fort Collins; and

WHEREAS, Article II, Section 2 of the Charter (“Section 2”) currently disqualifies from running for or serving on City Council any person convicted of any felony; and

WHEREAS, Article II, Section 18 of the Charter (“Section 18”) currently states that a vacancy exists when a Councilmember is convicted of a felony or is declared by the City Clerk, more than sixty days after the date of issuance of the certification of such Councilmember, to have previously been convicted of a felony pursuant to a written protest filed under Section 2; and

WHEREAS, the U.S. Court of Appeals for the Tenth Circuit and the Colorado Supreme Court have determined that the right to seek and hold public office is a fundamental civil right under federal and state law, respectively; and

WHEREAS, under Colorado law, individuals lose the rights to vote and run for public office during their incarceration for a felony conviction, and upon completion of a sentence, rights of citizenship, such as the right to run for public office, are automatically restored; and

WHEREAS, Colorado Constitution Article XII, Section 4, provides a permanent exception to the restoration of rights applies where the underlying felony conviction was for one of five listed crimes:

- a. Embezzlement of public monies;
- b. Bribery;
- c. Perjury;
- d. Solicitation of bribery; or
- e. Subornation of perjury; and

WHEREAS, broad and permanent disqualifications from office for any felony conviction, like that included in the Charter, have been subject to criticism and legal attack in recent years; and

WHEREAS, the City of Aurora recently lost a lawsuit challenging its broad disqualification provision based on the conflicting provision in the Colorado Constitution; and

WHEREAS, Council desires to amend the Charter to address the legal issue posed by the current overbroad disqualification of those with any felony conviction from running for or serving on the City Council.

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

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

Section 2. That the following proposed changes to Section 2 and Section 18 of Article II of the City Charter shall be submitted to the registered electors of the City as “Proposed Charter Amendment No. 1” at the regular municipal election to be held on Tuesday, November 7, 2023:

**ARTICLE II.
CITY COUNCIL**

Section 2. - Qualifications of candidates and members; challenges.

...

(b) No person ~~who has been convicted of a felony~~ **prohibited by the Colorado constitution from serving in public office in Colorado** shall be eligible to be a candidate for, or hold, the office of Councilmember.

Section 18. - Vacancies.

(a) A vacancy exists when a Councilmember:

...

(5) is convicted of a felony **that disqualifies the Councilmember from serving in public office in Colorado under the Colorado Constitution,** or is declared by the City Clerk, more than sixty (60) days after the date of issuance of the certificate of election of such Councilmember, to have previously been convicted of a **disqualifying** felony pursuant to a written protest filed under Section 2 of this article; or

...

Section 3. That the following ballot title and submission clause are hereby adopted for submitting Proposed Charter Amendment No. 1 to the voters at said election:

CITY-INITIATED
PROPOSED CHARTER AMENDMENT NO. 1

Shall Section 2 and Section 18 of Article II of the Charter of the City of Fort Collins, disqualifying anyone convicted of any felony from running for or serving on City Council, be amended to conform the City Charter to the Colorado Constitution, which specifies felonies resulting in disqualification from office in Colorado (currently including embezzlement of public monies, bribery, perjury, solicitation of bribery and subornation of perjury)?

_____ Yes/For
_____ No/Against

Introduced, considered favorably on first reading, and ordered published this 4th day of April 2023, and to be presented for final passage on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 18th day of April, 2023.

Mayor

ATTEST:

City Clerk