



FRUITA COLORADO

CITY COUNCIL REGULAR MEETING

Fruita Civic Center

Tuesday, March 05, 2024 at 7:00 PM

AGENDA

The link to join the join the meeting electronically will be posted prior to the meeting at <https://www.fruita.org/citycouncil/page/council-meeting-information>. You may also contact the City of Fruita at (970) 858-3663 for information to connect to the meeting.

This agenda is for informational purposes only and items may be added or deleted at the discretion of the City Council. An executive session may be requested for any item appearing on the agenda.

1. CALL TO ORDER AND ROLL CALL

2. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

3. AGENDA - ADOPT/AMEND

4. PROCLAMATIONS AND PRESENTATIONS

A. PRESENTATION - Student and Teacher of the Month for March 2023: Fruita 8/9 School

B. PRESENTATION – Biannual Update from the Fruita Area Chamber of Commerce

C. PRESENTATION – The Fruita Youth Action Council will present 2023 highlights and 2024 goals

5. PUBLIC PARTICIPATION

This section is set aside for the City Council to LISTEN to comments by the public regarding items that do not otherwise appear on this agenda. Generally, the City Council will not discuss the issue and will not take an official action under this section of the agenda. Please limit comments to a three-minute period.

6. CONSENT AGENDA

These are items where all conditions or requirements have been agreed to or met prior to the time they come before the Council for final action. These items will be approved by a single motion of the Council. Members of the Council may ask that an item be removed from the consent section and fully discussed. All items not removed from the consent section will then be approved. A member of the Council may vote no on specific items without asking that they be removed from the consent section for full discussion. Any item that is removed from the consent agenda will be placed at the end of the regular agenda.

- A. LIQUOR LICENSE RENEWAL – A request to approve the renewal of a Hotel and Restaurant – Malt, Vinous & Spirituous Liquor License for Colorado Summit, LLC dba Aspen Street Coffee located at 136 E. Aspen Ave.
- B. LIQUOR LICENSE RENEWAL – A request to approve the renewal of a Hotel and Restaurant Liquor License – Malt, Vinous and Spirituous for Karma Kitchen located at 229 E. Aspen Ave.
- C. BOARDS AND COMMISSIONS APPOINTMENTS – A request to approve multiple appointments of persons to the City’s various Boards and Commissions for three-year terms as specified by Mayor Kincaid and with the approval of Mayor Pro Tem Breman and Councilors Miller and Hancey
- D. LETTER OF SUPPORT FOR CITY OF FRUITA – A Request to Authorize the Mayor to Sign Letters of Support for the City of Fruita’s Congressional Directed Spending Request
- E. RESOLUTION 2024-07 – A request to approve a Professional Services Agreement between the City of Fruita and Zambelli Fireworks for Firework Production Services and authorize the City Manager to execute the agreement
- F. ORDINANCE 2024-05 – 1st Reading - Amending Section 3.18.240 of the Fruita Municipal Code concerning membership requirements for the Tourism Advisory Council

7. ACKNOWLEDGMENT OF NEWLY APPOINTED BOARDS AND COMMISSIONS MEMBERS

8. PUBLIC HEARINGS

Public hearings are held to obtain input from the public on various items. Public hearings are either Legislative in nature or Quasi-Judicial in nature. Public Input is limited to 3 minutes per person. People speaking should step up to the microphone and state their name and address. Speakers should be to the point and try not to repeat the points others have made. Each is described as follows:

LEGISLATIVE – Legislative public hearings are held when the City Council is considering an item that establishes legislation such as an ordinance amending or establishing laws of the city. Interactions by members of the public with the City Council or individual members is permissible on items of a legislative nature.

ORDINANCES - After introduction of an Ordinance (First Reading), a public hearing date is set and notice of the hearing is published in the newspaper. Staff presents the ordinance on Second Reading and the hearing is opened to the public for public input. After comments from the public, the Mayor will close the hearing and bring the Ordinance back to the City Council for discussion and potential action. The Council will make a motion to approve the Ordinance or take no action. In the event the ordinance is approved, it will become effective 30 days after adoption.

QUASI-JUDICIAL – Quasi-judicial public hearings are held when the City Council is acting in a judicial or judge like manner and a person with a legitimate interest is entitled to an impartial decision made on the basis of information presented and laws in effect. Quasi-judicial hearings are commonly held for land use hearings and liquor license hearings. Since the City Council is acting in a fair and impartial manner, it is NOT permissible for City Council members to have any ex-parte communication (contact between the applicant, members of the public, or among other members of the City Council) outside of the Public Hearings and meetings on the subject application. The City Council must limit its consideration to matters which are placed into evidence and are part of the public record. Quasi-judicial hearings are held in the following manner:

1. Staff presentation - Staff will present the comments and reports received from review agencies and offer a recommendation.
2. Applicant Presentation - The petitioner is asked to present the proposal. Presentations should be

brief and to the point and cover all of the main points of the project.

3. Public Input (limit of 3 minutes per person) Speakers must step up to the microphone and state their name and address. Speakers should be to the point and try not to repeat the points others have made.
4. The public hearing is closed to public comments.
5. Questions from the Council. After a Council member is recognized by the Mayor, they may ask questions of the staff, the applicant, or the public.
6. Make a motion. A member of the City Council will make a motion on the issue.
7. Discussion on the motion. The City Council may discuss the motion.
8. Vote. The City Council will then vote on the motion.

A. LEGISLATIVE HEARINGS

- 1) RESOLUTION 2024-06 - Public Hearing – Amending the 2024 Budget with Supplemental Appropriations of Funds for Capital Projects and Capital Equipment initially included in the 2023 Annual Budget - *Assistant City Manager Shannon Vassen*
- 2) Ordinance 2024-09 – Second Reading – An Ordinance approving a Lease Agreement between City of Fruita and Region 10 for the Use and Management of the Fruita Carrier Neutral Location and authorizing the City Manager to execute the agreement - *Assistant City Manager Shannon Vassen*
- 3) Ordinance 2024-08 – Second Reading - An Ordinance authorizing the City Manager to execute a contract with Farm, LLC for its purchase of City property known as 169 S. Mulberry Street, Fruita, Colorado and to execute all documents to perfect the sale. (*Kim Crawford, Special Counsel & Mary Elizabeth Geiger, City Attorney*)

B. QUASI-JUDICIAL HEARINGS

- 1) NEW LIQUOR LICENSE APPLICATION – A request to approve a new Hotel and Restaurant – Malt, Vinous and Spirituous Liquor License for Blue Lotus Vietnamese Restaurant, LLC dba Blue Lotus Vietnamese Restaurant located at 152 S. Mesa Street (formerly Koko's) - *Deputy City Clerk Deb Woods*
- 2) ORDINANCE 2024-07, SECOND READING, An Ordinance amending the official zoning map of the City of Fruita by zoning approximately 5.07 acres of property located at 614 Raptor Road to a Planned Unit Development zone (Geode Flats PUD) - *City Planner Henry Hemphill*

9. ADMINISTRATIVE AGENDA

- A. RESOLUTION 2024-08, A Resolution of the City Council authorizing the City Manager to execute the COOP Tower Facade Lease Agreement and all documents necessary to effectuate the lease. (*City Attorney, Mary Elizabeth Geiger*)

10. CITY MANAGER'S REPORT

11. COUNCIL REPORTS AND ACTIONS

A. COUNCIL REPORTS AND ACTIONS

- B. EXECUTIVE SESSION – To convene in Executive Session for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for

negotiations and instructing negotiators pursuant to C.R.S. Section 24-6-402(4)(e) with regard to development agreements and contracts with 2Forks Ventures for the redevelopment of the lagoon property area sometimes referred to as “The Beach”

12. ADJOURN

In accordance with the Americans with Disabilities Act, persons who need accommodation in order to attend or participate in this meeting should contact the City Clerk's Office at 970-858-3663 within 48 hours prior to the meeting in order to request such assistance.



FRUITA
COLORADO

AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: DEBRA WOODS, DEPUTY CITY CLERK

DATE: MARCH 5, 2024

AGENDA TEXT: PRESENTATION – Fruita Teacher and Student of the Month for March 2024:
Fruita 8/9 School

BACKGROUND

At the direction of the Fruita City Council, the City of Fruita began recognizing students and teachers in Fruita's schools as "Students of the Month" or "Teachers of the Month" at the first City Council meeting of the month beginning in February of 2019. The students and teachers are chosen by the Principal of each of the schools as being those that represented their school's core values during the previous month.

For the month of March 2024, Principal Jason Plantiko selected this Fruita 8/9 student:

- Clark Jones

Principal Johnston selected this Fruita 8/9 School teacher to be recognized:

- Janelle Beach

Mayor Kincaid will present Clark Jones and Janelle Beach with a certificate, day pass to the Fruita Community Center and an I-Heart-Fruita button.

No action from the Council is necessary.

CITY OF FRUITA'S STUDENT OF THE MONTH FOR MARCH, 2024:

CLARK JONES

To be a good leader, one who others follow, is usually someone who stands at the front of the pack. They are the outgoing people who happily tell others what to do, who boldly walk down the path first, and who loudly explore new ideas and concepts. People with these characteristics are often good leaders and are easy to recognize. But, much like the eye of a storm, the real power is not in those who stand out but is actually in those who prefer to hang back, stand in the back of the group, and quietly listen to others first before ever jumping into the fray.

The quietest human beings are the most effective leaders even though, by their very nature, they are often overlooked. Philosopher Lao Tzu once said, "A leader is best when people barely know he exists, when his work is done, his aim fulfilled, they will say: we did it ourselves."

Mr. Clark Jones is such a person. His high GPA average attests to his high academic abilities, including taking all honors and AP courses. His dedication to the school's knowledge bowl team demonstrates his commitment to the pursuit of knowledge for the sake of knowledge.

But it is his quiet voice in moments of discussion that his leadership shines. When Clark speaks, others listen. When Clark writes, others engage in reading. Clark is going to do amazing things for this world, in the quietest ways possible, and the entire Fruita 8/9 staff will have been made better for having taught him.

In his own words he once said, "We need to build community if we want to break out of [our current] mindset and build a better, more hopeful, utopian society for the future of humanity." And that is how we witness the beginning of tomorrow's greatest leaders.

March 5, 2024

Joel Kincaid, Mayor



CITY OF FRUITA'S TEACHER OF THE MONTH FOR MARCH, 2024:

JANELLE BEACH

Certain individuals stand out in education for their extraordinary commitment, passion, and effectiveness in shaping young minds. Mrs. Beach is one such individual, and her recognition as Teacher of the Month is a testament to her outstanding contributions to her student's academic and athletic development.

Mrs. Beach's enthusiasm for mathematics is infectious. Her passion creates an engaging and dynamic learning environment, inspiring her students to appreciate the beauty of the subject. Her incorporation of real-world examples fosters a deeper understanding of mathematical concepts.

Mrs. Beach places her students at the center of the learning experience. She takes the time to understand each student's strengths, weaknesses, and individual learning needs, ensuring that every student has the opportunity to thrive.

Mrs. Beach goes above and beyond to support her students' success. Whether through personalized feedback or creating a positive and encouraging classroom atmosphere, she is committed to seeing each student reach their full potential.

Mrs. Beach extends her dedication beyond the classroom as a coach for both the volleyball and basketball teams. Her leadership and team-building skills have led to success on the court and imparted valuable life lessons to her players.

Mrs. Beach's recognition as Teacher of the Month is a well-deserved honor. Her exceptional qualities as a mathematics teacher, combined with her coaching contributions in volleyball and basketball, highlight her commitment to the holistic development of her students. Mrs. Beach's impact reaches far beyond the classroom, leaving a lasting mark on the hearts and minds of those she teaches and coaches.

March 5, 2024

Joel Kincaid, Mayor





FRUITA
COLORADO

AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: SHANNON VASSEN, ASSISTANT CITY MANAGER

DATE: MARCH 5, 2024

AGENDA TEXT: PRESENTATION – Biannual Update from the Fruita Area Chamber of Commerce.

BACKGROUND

Kayla Bowers, the Executive Director of the Fruita Area Chamber of Commerce, will provide an update to the City Council on the Chamber and on Fruita businesses. As an economic development partner, the Chamber has requested to make biannual updates to the City Council. After the update, Ms. Bowers will be available to take any questions that the City Council may have.



AGENDA ITEM COVER SHEET

TO: Fruita City Council and Mayor

FROM: Marc Mancuso, Parks and Recreation Director

DATE: March 5, 2024

AGENDA TEXT: PRESENTATION – The Fruita Youth Action Council will present 2023 highlights and 2024 goals

BACKGROUND

The Fruita Youth Action Council would like to present their highlights from 2023 and goals for 2024.

The current Fruita Youth Action Council is comprised of Fruita area students that are in 6th through 12th grades working collaboratively with peers and community organizations to provide meaningful input on youth related issues, programs, and the promotion of health. Fruita Youth Action Council (FYAC) is celebrating its 5th year of existence, marking a significant milestone in their journey towards positive change and community impact.

FISCAL IMPACT

There is no fiscal impact to the budget.

APPLICABILITY TO CITY GOALS AND OBJECTIVES

The Fruita Youth Action Council is established to serve in an advisory capacity and to make recommendations to the Fruita Youth Initiative (FYI) on the following matters:

- A. Youth related issues and relevant topics
- B. The programs, provided to youth by Fruita Parks and Recreation
- C. Youth leadership and civic participation
- D. Opportunities for prosocial activities for youth in the community

The Fruita Youth Action Council also creates an opportunity to put the Positive Youth Development philosophy into action within the City of Fruita by:

- Providing skills and opportunities.
- Creating a way to work with youth as partners.

- Allowing young people to identify additional opportunities in the community for youth to be a valued partner in community work.
- Consulting and involving youth in the Fruita Youth Initiative's program planning, implementation, and evaluation.
- Supporting youth and adult partnership together and sharing power to influence and make decisions regarding the City of Fruita's programs, services, and opportunities.
- Allowing youth to foster connections and build strong relationships with adults and the community and develop a sense of belonging.
- Creating intentional, strong connections with other community partners.
- Preparing youth for real world situations and future careers.
- Valuing youth as an expert and their time and leadership contributions.

OPTIONS AVAILABLE TO THE COUNCIL

N/A

RECOMMENDATION

No recommendations or actions are needed as the presentation is for informational purposes only.



FRUITA
COLORADO

AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: DEBRA WOODS, DEPUTY CITY CLERK

DATE: MARCH 19, 2023

AGENDA TEXT: LIQUOR LICENSE RENEWAL – A request to approve the renewal of a Hotel and Restaurant – Malt, Vinous & Spirituous Liquor License for Colorado Summit, LLC dba Aspen Street Coffee located at 136 E. Aspen Ave.

BACKGROUND

The Hotel and Restaurant Liquor License for Aspen Street Coffee located at 136 E. Aspen Ave. is up for renewal. Their current license expires on **March 23, 2024**.

The City Council may notice that the Renewal Form for this liquor license appears to be different from those seen previously and the reason is because the Liquor Enforcement Division updated their blank Liquor License Renewal Form on February 16, 2024. Blank Renewal Forms are available on the state's website for licensees who did not receive their original Renewal Form from the state for one reason or another. It is likely that all Renewal Forms from the state will start appearing in this new format.

The Police Department report indicates there has been nothing of concern that would hinder the renewal. There are **three** current Responsible Alcohol Server Training certificates on file at the City Clerk's Office.

The following information is provided as background on the liquor license renewal process:

Pursuant to State Statutes, the local licensing authority (City Council) may cause a hearing on the application for renewal to be held. No renewal hearing shall be held until a notice of hearing has been conspicuously posted on the licensed premises for a period of ten days and notice of the hearing has been provided the applicant at least ten days prior to the hearing. The licensing authority may refuse to renew any license for good cause, subject to judicial review.

This item is placed on the agenda for the Council to determine if there is any cause for a hearing to be held on the renewal of the liquor license. If there is no cause for a hearing, the City Council should approve the renewal of the existing license. If there is cause for a hearing, the City Council should set a date to hold a quasi-judicial hearing to determine if there are sufficient grounds for suspension or revocation of the liquor license. The City Council may also temporarily suspend any license, without notice, pending any prosecution, investigation or public hearing. No such suspension shall be for a period of more than 15 days.

FISCAL IMPACT

None.

APPLICABILITY TO CITY GOALS AND OBJECTIVES

The City of Fruita is charged with protection of the public health, safety and welfare. The review and renewal of liquor licenses ensures that licensed establishments are operating by the rules and regulations adopted by the City and State concerning the sale or service of beer and alcoholic beverages.

OPTIONS AVAILABLE TO THE COUNCIL

1. Renew the Hotel and Restaurant Liquor License.
2. Schedule a hearing date to determine if there is good cause for the license to be suspended or revoked.

RECOMMENDATION

It is the recommendation of staff that the Council move to:

- **RENEW THE HOTEL AND RESTAURANT – MALT, VINOUS & SPIRITUOUS LIQUOR LICENSE FOR COLORADO SUMMIT, LLC DBA ASPEN STREET COFFEE LOCATED AT 136 E. ASPEN AVE.**

DR 8400 (02/16/24)
COLORADO DEPARTMENT OF REVENUE
 Liquor Enforcement Division
 PO BOX 17087
 Denver CO 80217-0087
 (303) 205-2300

Submit to Local Licensing Authority

Fees Due	
Annual Renewal Application Fee	\$ 125
Renewal Fee	600.00
Storage Permit \$100 X _____	\$
Sidewalk Service Area \$75.00	\$
Additional Optional Premise Hotel & Restaurant \$100 X _____	\$
Related Facility - Campus Liquor Complex \$160.00 per facility	\$
Amount Due/Paid	\$ 725.00

Make check payable to: Colorado Department of Revenue. The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

Retail Liquor License Renewal Application

Please verify & update all information below. Return to city or county licensing authority by due date.

Note that the Division will not accept cash.

☒ Paid by check

Uploaded to MoveIt on Date

☐ Paid online

Licensee Name

COLORADO SUMMIT, LLC

Doing Business As Name (DBA)

ASPEN STREET COFFEE CO.

Liquor License Number

03-14435

License Type

HOTEL & RESTAURANT (CITY)

Sales Tax License Number

9448215

Expiration Date

03/23/24

Due Date

02/06/2024

Business Address

Street Address

136 EAST ASPEN AVENUE

Phone Number

970-858-8888

City

FRUITA

State ZIP Code

CO

81521

Mailing Address

Street Address

1320 GOLD LAKE DRIVE

City

LOMA

State ZIP Code

CO

81524

Email

ASPENSTREETCOFFEECO@GMAIL.COM

Operating Manager	Date of Birth
<div></div>	<div></div>

Home Address

Street Address	Phone Number
1320 GOLD LAKE DRIVE	970-640-3699
City	State ZIP Code
LOMA	CO 81524

1. Do you have legal possession of the premises at the street address?..... ☒ Yes ☐ No

Are the premises owned or rented? ☒ Owned ☐ Rented* *If rented, expiration date of lease

2. Are you renewing a storage permit, additional optional premises, sidewalk service area, or related facility?..... ☐ Yes ☒ No

If yes, please see the table in the upper right hand corner and include all fees due.

3. Are you renewing a takeout and/or delivery permit?..... ☐ Yes ☒ No

(Note: must hold a qualifying license type and be authorized for takeout and/or delivery license privileges)

If selecting 'Yes', an additional \$11.00 is required to renew the permit.

If so, which are you renewing?..... ☐ Delivery ☐ Takeout ☐ Both Takeout and Delivery

4. Since the date of filing of the last application, has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant, been found in final order of a tax agency to be delinquent in the payment of any state or local taxes, penalties, or interest related to a business?..... ☐ Yes ☒ No

Since the date of filing of the last application, has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant failed to pay any fees or surcharges imposed pursuant to section 44-3-503, C.R.S.?..... ☐ Yes ☒ No

5. Since the date of filing of the last application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)?..... ☐ Yes ☒ No

If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested.

6. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime?..... ☐ Yes ☒ No

If yes, attach a detailed explanation.

7. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked?..... ☐ Yes ☒ No

If yes, attach a detailed explanation.

8. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee?..... ☐ Yes ☒ No

If yes, attach a detailed explanation.

Affirmation & Consent

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct and complete to the best of my knowledge.

Type or Print Name of Applicant/Authorized Agent of Business

Melvin Seaw Schafar

Title

Owner

Signature

[Signature]

Date (MM/DD/YY)

02/23/24

Report & Approval of City or County Licensing Authority

The foregoing application has been examined and the premises, business conducted and character of the applicant are satisfactory, and we do hereby report that such license, if granted, will comply with the provisions of Title 44, Articles 4 and 3, C.R.S., and Liquor Rules.

Therefore this application is approved.

Local Licensing Authority For

THE CITY OF FRUITA

Title

JOEL KINCALD, MAYOR

Signature

[Signature]

Attest

Date (MM/DD/YY)

DR 8495 (02/16/24)
COLORADO DEPARTMENT OF REVENUE
Liquor Enforcement Division
PO BOX 17087
Denver CO 80217-0087
(303) 205-2300

Tax Check Authorization, Waiver, and Request to Release Information

I, M. Sean Schafer

am signing this Tax Check Authorization, Waiver and Request to Release Information (hereinafter "Waiver") on behalf of

(the "Applicant/Licensee")

Colorado Summit LLC

to permit the Colorado Department of Revenue and any other state or local taxing authority to release information and documentation that may otherwise be confidential, as provided below. If I am signing this Waiver for someone other than myself, including on behalf of a business entity, I certify that I have the authority to execute this Waiver on behalf of the Applicant/Licensee.

The Executive Director of the Colorado Department of Revenue is the State Licensing Authority, and oversees the Colorado Liquor Enforcement Division as his or her agents, clerks, and employees. The information and documentation obtained pursuant to this Waiver may be used in connection with the Applicant/Licensee's liquor license application and ongoing licensure by the state and local licensing authorities. The Colorado Liquor Code, section 44-3-101. et seq. ("Liquor Code"), and the Colorado Liquor Rules, 1 CCR 203-2 ("Liquor Rules"), require compliance with certain tax obligations, and set forth the investigative, disciplinary and licensure actions the state and local licensing authorities may take for violations of the Liquor Code and Liquor Rules, including failure to meet tax reporting and payment obligations.

The Waiver is made pursuant to section 39-21-113(4), C.R.S., and any other law, regulation, resolution or ordinance concerning the confidentiality of tax information, or any document, report or return filed in connection with state or local taxes. This Waiver shall be valid until the expiration or revocation of a license, or until both the state and local licensing authorities take final action to approve or deny any application(s) for the renewal of the license, whichever is later. Applicant/Licensee agrees to execute a new waiver for each subsequent licensing period in connection with the renewal of any license, if requested.

By signing below, Applicant/Licensee requests that the Colorado Department of Revenue and any other state or local taxing authority or agency in the possession of tax documents or information, release information and documentation to the Colorado Liquor Enforcement Division, and is duly authorized employees, to act as the Applicant's/Licensee's duly authorized representative under section 39-21-113(4), C.R.S., solely to allow the state and local licensing authorities, and their duly authorized employees, to investigate compliance with the Liquor Code and Liquor Rules. Applicant/Licensee authorizes the state and local licensing authorities, their duly authorized employees, and their legal representatives, to use the information and documentation obtained using this Waiver in any administrative or judicial action regarding the application or license.

Name (Individual/Business)

M Sean Schafer / Colorado Summit LLC DBA Aspen Street Coffee

Social Security Number/Tax Identification Number

522614386

Home Phone Number

9706403699

Business/Work Phone Number

9706403699

Street Address

136 E. Aspen Ave

City

Fruita

State

CO

ZIP Code

81521

Printed name of person signing on behalf of the Applicant/Licensee

M. Sean Schafer

Applicant/Licensee's Signature (Signature authorizing the disclosure of confidential tax information)

Date Signed

23 Feb 24

Privacy Act Statement

Providing your Social Security Number is voluntary and no right, benefit or privilege provided by law will be denied as a result of refusal to disclose it. § 7 of Privacy Act, 5 USCS § 552a (note).

**CITY OF FRUITA
MEMORANDUM**

TO:	FRUITA POLICE DEPARTMENT
FROM:	DEBRA WOODS, DEPUTY CITY CLERK
DATE:	FEBRUARY 29, 2024
RE:	HOTEL & RESTAURANT LIQUOR LICENSE RENEWAL

License Information

Licensee:	Aspen Street Coffee
Location:	136 E. Aspen Ave.
Type of License:	Hotel & Restaurant-Malt, Vinous & Spirituous
Expiration Date of Current License:	March 23, 2024
City Council Hearing Date:	March 19, 2024
DUE DATE FOR POLICE REPORT:	March 15, 2024

Tips certificates on File

Employee:	Date:	Exp
Andrea Svaldi	06/07/2023	06/07/2025
Jill Hamilton	05/10/2023	05/10/2025
Kathyren Hendricks	04/27/2021	04/27/2024

Report of Fruita Police Department

A)	Have there been any reported violation(s) of the Liquor or Beer Code in the last year?	Yes	No
B)	Have there been any incidents reported to the Police Dept in the last year that would pertain to the liquor license and the establishment's control of alcoholic beverages and their patrons?	Yes	No
C)	Are there other concerns that need to be brought to the attention of the City Council?	Yes	No

Please attach documentation to support the above noted violation(s), incidents or comments.

Signed: Paula Rajewich

Date: 03-01-24



FRUITA
COLORADO

AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: DEBRA WOODS, DEPUTY CITY CLERK

DATE: MARCH 19, 2024

AGENDA TEXT: LIQUOR LICENSE RENEWAL – A request to approve the renewal of a Hotel and Restaurant Liquor License – Malt, Vinous and Spirituous for Karma Kitchen located at 229 E. Aspen Ave.

BACKGROUND

The Hotel and Restaurant Liquor License for Karma Kitchen located at 229 E. Aspen Ave. is up for renewal. Their current license expires on **June 17, 2024**.

The City Clerk’s office has not been advised of any issues or concerns related to the liquor license during the past year. The Police Department report indicates that there have not been any violations or incidents reported to them in the last year and there is nothing unusual or of concern that would hinder renewal of the license. There is one current Responsible Alcohol Server Training certificates on file at the City Clerk’s Office for co-owner Anil Luitel.

The following information is provided as background on the liquor license renewal process:

Pursuant to State Statutes, the local licensing authority (City Council) may cause a hearing on the application for renewal to be held. No renewal hearing shall be held until a notice of hearing has been conspicuously posted on the licensed premises for a period of ten days and notice of the hearing has been provided the applicant at least ten days prior to the hearing. The licensing authority may refuse to renew any license for good cause, subject to judicial review.

This item is placed on the Consent agenda for the Council to determine if there is any cause for a hearing to be held on the renewal of the liquor license. If there is no cause for a hearing, the City Council should approve the renewal of the existing license. If there is cause for a hearing, the City Council should set a date to hold a quasi-judicial hearing to determine if there are sufficient grounds for suspension or revocation of the liquor license. The City Council may also temporarily suspend any license, without notice, pending any prosecution, investigation or public hearing. No such suspension shall be for a period of more than 15 days.

FISCAL IMPACT

None.

APPLICABILITY TO CITY GOALS AND OBJECTIVES

The City of Fruita is charged with protection of the public health, safety and welfare. The review and renewal of liquor licenses ensures that licensed establishments are operating by the rules and regulations adopted by the City and State concerning the sale or service of beer and alcoholic beverages.

OPTIONS AVAILABLE TO THE COUNCIL

1. Renew the Hotel and Restaurant Liquor License.
2. Schedule a hearing date to determine if there is good cause for the license to be suspended or revoked.

RECOMMENDATION

It is the recommendation of staff that the Council move to:

- **RENEW THE HOTEL AND RESTAURANT LIQUOR LICENSE – MALT, VINOUS AND SPIRITUOUS FOR KARMA KITCHEN LOCATED AT 229 E. ASPEN AVE.**

Submit to Local Licensing Authority

**KARMA KITCHEN
 229 EAST ASPEN AVENUE
 Fruita CO 81521**

APPLICANT ID: 673711

Fees Due		Section 6, Item B.
Renewal Fee		625.00
Storage Permit	\$100 X _____	\$
Sidewalk Service Area	\$75.00	\$
Additional Optional Premise Hotel & Restaurant	\$100 X _____	\$
Related Facility - Campus Liquor Complex	\$160.00 per facility	\$
Amount Due/Paid		\$ 625

Make check payable to: Colorado Department of Revenue. The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

Retail Liquor License Renewal Application

Please verify & update all information below

Return to city or county licensing authority by due date

Licensee Name KARMA KITCHEN INC		Doing Business As Name (DBA) KARMA KITCHEN	
Liquor License # 03-11803	License Type Hotel & Restaurant (city)		
Sales Tax License Number 36156816-0000	Expiration Date 06/17/2024	Due Date 05/03/2024	
Business Address 229 EAST ASPEN AVENUE Fruita CO 81521		Phone Number 9706392150	
Mailing Address 229 EAST ASPEN AVENUE Fruita CO 81521		Email 229 Karma@gmail.com	
Operating Manager Anil K. Luitel	Date of Birth 01/03/68	Home Address 657 Garrettway Cr JCO 81505	Phone Number 9702085943
1. Do you have legal possession of the premises at the street address above? <input type="checkbox"/> Yes <input type="checkbox"/> No Are the premises owned or rented? <input type="checkbox"/> Owned <input checked="" type="checkbox"/> Rented* *If rented, expiration date of lease May 30, 2034			
2. Are you renewing a storage permit, additional optional premises, sidewalk service area, or related facility? If yes, please see the table in upper right hand corner and include all fees due. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
3a. Are you renewing a takeout and/or delivery permit? (Note: must hold a qualifying license type and be authorized for takeout and/or delivery license privileges) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
3b. If so, which are you renewing? <input type="checkbox"/> Delivery <input type="checkbox"/> Takeout <input checked="" type="checkbox"/> Both Takeout and Delivery			
4a. Since the date of filing of the last application, has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant, been found in final order of a tax agency to be delinquent in the payment of any state or local taxes, penalties, or interest related to a business? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
4b. Since the date of filing of the last application, has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant failed to pay any fees or surcharges imposed pursuant to section 44-3-503, C.R.S.? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
5. Since the date of filing of the last application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
6. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			

APPLICANT ID: 673711

7. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation. ☐ Yes ☒ No
8. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation. ☐ Yes ☒ No

Affirmation & Consent I declare under penalty of perjury in the second degree that this application and all attachments are true, correct and complete to the best of my knowledge.		
Type or Print Name of Applicant/Authorized Agent of Business <i>Anil K. Luitel</i>		Title <i>President</i>
Signature <i>[Signature]</i>		Date <i>03/28/2024</i>
Report & Approval of City or County Licensing Authority The foregoing application has been examined and the premises, business conducted and character of the applicant are satisfactory, and we do hereby report that such license, if granted, will comply with the provisions of Title 44, Articles 4 and 3, C.R.S., and Liquor Rules. Therefore this application is approved.		
Local Licensing Authority For <i>The City of Fruita</i>		Date
Signature	Title <i>JOEL KINCAD, MAYOR</i>	Attest

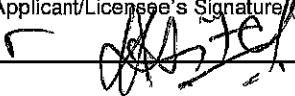
Tax Check Authorization, Waiver, and Request to Release Information

I, Anil K. Luitel am signing this Tax Check Authorization, Waiver and Request to Release Information (hereinafter "Waiver") on behalf of Karma Kitchen (the "Applicant/Licensee") to permit the Colorado Department of Revenue and any other state or local taxing authority to release information and documentation that may otherwise be confidential, as provided below. If I am signing this Waiver for someone other than myself, including on behalf of a business entity, I certify that I have the authority to execute this Waiver on behalf of the Applicant/Licensee.

The Executive Director of the Colorado Department of Revenue is the State Licensing Authority, and oversees the Colorado Liquor Enforcement Division as his or her agents, clerks, and employees. The information and documentation obtained pursuant to this Waiver may be used in connection with the Applicant/Licensee's liquor license application and ongoing licensure by the state and local licensing authorities. The Colorado Liquor Code, section 44-3-101, et seq. ("Liquor Code"), and the Colorado Liquor Rules, 1 CCR 203-2 ("Liquor Rules"), require compliance with certain tax obligations, and set forth the investigative, disciplinary and licensure actions the state and local licensing authorities may take for violations of the Liquor Code and Liquor Rules, including failure to meet tax reporting and payment obligations.

The Waiver is made pursuant to section 39-21-113(4), C.R.S., and any other law, regulation, resolution or ordinance concerning the confidentiality of tax information, or any document, report or return filed in connection with state or local taxes. This Waiver shall be valid until the expiration or revocation of a license, or until both the state and local licensing authorities take final action to approve or deny any application(s) for the renewal of the license, whichever is later. Applicant/Licensee agrees to execute a new waiver for each subsequent licensing period in connection with the renewal of any license, if requested.

By signing below, Applicant/Licensee requests that the Colorado Department of Revenue and any other state or local taxing authority or agency in the possession of tax documents or information, release information and documentation to the Colorado Liquor Enforcement Division, and is duly authorized employees, to act as the Applicant's/Licensee's duly authorized representative under section 39-21-113(4), C.R.S., solely to allow the state and local licensing authorities, and their duly authorized employees, to investigate compliance with the Liquor Code and Liquor Rules. Applicant/Licensee authorizes the state and local licensing authorities, their duly authorized employees, and their legal representatives, to use the information and documentation obtained using this Waiver in any administrative or judicial action regarding the application or license.

Name (Individual/Business) <u>Karma Kitchen</u>		Social Security Number/Tax Identification Number <u>2927728</u>	
Address <u>229 E Aspen Ave.</u>			
City <u>Fruita</u>		State <u>CO</u>	Zip <u>81521</u>
Home Phone Number <u>970 208 5943</u>		Business/Work Phone Number <u>970 639 2150</u>	
Printed name of person signing on behalf of the Applicant/Licensee <u>Anil K. Luitel</u>			
Applicant/Licensee's Signature/Signature authorizing the disclosure of confidential tax information 			Date signed <u>02/28/2024</u>

Privacy Act Statement

Providing your Social Security Number is voluntary and no right, benefit or privilege provided by law will be denied as a result of refusal to disclose it. § 7 of Privacy Act, 5 USCS § 552a (note).

**CITY OF FRUITA
MEMORANDUM**

TO:	FRUITA POLICE DEPARTMENT – PAULA RAJEWICH		
FROM:	DEBRA WOODS, DEPUTY CITY CLERK		
DATE:	FEBRUARY 29, 2024		
RE:	HOTEL/RESTAURANT LIQUOR LICENSE RENEWAL		
License Information			
Licensee:	Karma Kitchen		
Location:	229 E. Aspen Ave.		
Type of License:	Hotel/Restaurant		
Expiration Date of Current License:	June 17, 2024		
City Council Hearing Date:	March 19, 2024		
DUE DATE FOR POLICE REPORT:	March 15, 2024		

RESPONSIBLE ALCOHOL SERVER CERTIFICATES ON FILE

Employee:	Date:	Expires:
Anil K. Luitel	8/29/2023	8/29/2026
Report of Fruita Police Department		
A)	Have there been any reported violation(s) of the Liquor or Beer Code in the last year?	Yes No
B)	Have there been any incidents reported to the Police Dept in the last year that would pertain to the liquor license and the establishment's control of alcoholic beverages and their patrons?	Yes No
C)	Are there other concerns that need to be brought to the attention of the City Council?	Yes No
Please attach documentation to support the above noted violation(s), incidents or comments.		
Signed: Paula Rajewich		Date: 03-01-24

Please fax to: (970) 858-0210
Or e-mail: dwoods@fruita.org



FRUITA
COLORADO

AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL

FROM: DEBRA WOODS, DEPUTY CITY CLERK ON BEHALF OF MAYOR KINCAID WITH THE APPROVAL OF MAYOR PRO TEM BREMAN AND CITY COUNCILORS MILLER AND HANCEY

DATE: MARCH 5, 2024

AGENDA TEXT: BOARDS AND COMMISSIONS APPOINTMENTS – A request to approve multiple appointments of persons to the City’s various Boards and Commissions for three-year terms as specified by Mayor Kincaid and with the approval of Mayor Pro Tem Breman and Councilors Miller and Hancey

BACKGROUND

On February 20, 2024 prior to the regular City Council meeting, Mayor Kincaid, Mayor Pro Tem Breman and Councilors Miller and Hancey interviewed applicants for several vacancies on the City’s Boards and Commissions. Many of these vacancies were created with the City Council’s recent actions to eliminate voting rights for Council Liaisons on Boards and Commissions and exclude them from quorum calculations. All available vacancies were for three-year terms.

Subsequent to the interviews, Mayor Kincaid directed (with the approval of Mayor Pro Tem Breman and Councilors Miller and Hancey) that the following appointments be made:

NAME	BOARD/COMMISSION
Hunter McKie	Parks and Recreation Advisory Board
Nathan Darnall	Parks and Recreation Advisory Board
Lana McLaughlin	Parks and Recreation Advisory Board
Anna Harris	Livability Commission
Carmen Flores	Livability Commission
John Richardson	Police Commission
Sandy Perry	Police Commission

If these appointments are made, Staff will provide each applicant with meeting information as well as the name, phone and email address of their Staff Liaison to the board should they have any questions.

FISCAL IMPACT

N/A

APPLICABILITY TO CITY GOALS AND OBJECTIVES

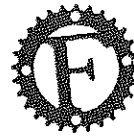
Boards and Commissions provide valuable input to the City and help establish goals and objectives. They provide a link between citizens of Fruita and city government.

OPTIONS AVAILABLE TO THE COUNCIL

1. Appoint all persons to the City's Boards and Commissions as specified by Mayor Kincaid with the approval of Mayor Pro Tem Breman and Councilors Miller and Hancey
2. Appoint some of the persons to the City's Boards and Commissions as specified by Mayor Kincaid with the approval of Mayor Pro Tem Breman and Councilors Miller and Hancey but not others
3. Appoint none of the persons to the City's Boards and Commissions

RECOMMENDATION

- **APPOINT ALL PERSONS TO THE CITY'S VARIOUS BOARDS AND COMMISSIONS FOR THREE-YEAR TERMS AS SPECIFIED BY MAYOR KINCAID WITH THE APPROVAL OF MAYOR PRO TEM BREMAN AND COUNCILORS MILLER AND HANCEY**



**CITY OF FRUITA
BOARDS AND COMMISSIONS
MEMBERSHIP APPLICATION**

BOARD OR COMMISSION: Fruita Parks Commission
NAME: Hunter McKie
MAILING ADDRESS: 2991 Fountah Greens Place, Unit A14
Grand Junction CO 81505
City State Zip
RESIDENCE ADDRESS: _____
PHONE NUMBER: 970-901-0127 970-858-2784
Home Work
E-MAIL ADDRESS: hmckie@fhw.org

How long have you been a resident of Fruita? _____

Occupation/Employer: Marketing / Family Health West

List any volunteer and/or work experience:

Employee of Family Health West
Member of Mesa County Young Professionals Network

Are you presently serving on a board or commission? If so, which one(s)?

NO

Why do you want to be a member of this board or commission?

I really want to become more involved in my community. Fruita does a great job with their parks programs. I want to be involved in creating a great space for all.

List any abilities, skills, or interests which are applicable to the board or commission for which you are applying.

Interest in local politics and real estate.
Interest in new urbanism and helping rural communities find a balance between new and old influences.

City of Fruita
Boards and Commissions Application
Page 2

Are you committed to attending meetings?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are you committed to serving an entire term?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Please specify any activities which might create serious conflict of interest if you should be appointed to a particular board or commission. (If unsure, please call the City Manager's office at 858-3663)

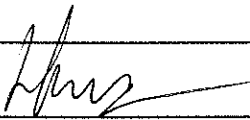
N/A

List any licenses, certificates or other specialized training applicable to the board or commission for which you are applying.

Real Estate Professional Certificate - Colorado Mesa University

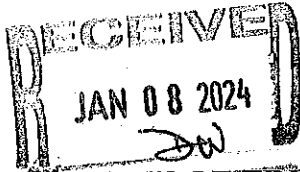
Additional information or references you believe may be helpful in considering your application.

William Cummings - 970-858-2533

Signature  Date 01/09/2024

All applicants are strongly encouraged to attend a regularly scheduled meeting of the board or commission for which they are applying. Frequent non-attendance may result in termination of the appointment.

ATTACHMENTS TO APPLICATION MUST BE LIMITED TO TWO PAGES
Please feel free to submit a resume along with this application. Application and any attachments should be returned to the Fruita City Council c/o the City Clerk, 325 E. Aspen, Fruita, CO 81521. Although we have indicated the best time to apply for a particular board, we accept applications for any of the boards year-round. Thank you.



Interview 1/16/24 @ 6:45 p

Section 6, Item C.



FRUITA
COLORADO

**CITY OF FRUITA
BOARDS AND COMMISSIONS
MEMBERSHIP APPLICATION**

BOARD OR COMMISSION: Parks and Recreation Advisory Board
NAME: Nathan Darnall
MAILING ADDRESS: 813 Cresthaven Drive
813 Cresthaven Drive
RESIDENCE ADDRESS:

City	State	Zip
<u>Fruita</u>	<u>CO</u>	<u>81521</u>

PHONE NUMBER:

<u>970-549-0958</u>	<u>970-819-0541</u>
Home	Work

E-MAIL ADDRESS: cnathan2bird@gmail.com

How long have you been a resident of Fruita? 4 months
Occupation/Employer: U.S. Fish and Wildlife Service

List any volunteer and/or work experience:

Great Salt Lake Audubon (board member, VP, President); Toastmasters (President, VP Education, Area Director, Division Director); Boy Scouts (Assistant Scoutmaster, Outdoor Chair); Linking Communities (member, President)

Are you presently serving on a board or commission? If so, which one(s)?

No

Why do you want to be a member of this board or commission?

I want to get more involved in my local community. I'd also like to build my network and make more connections.

List any abilities, skills, or interests which are applicable to the board or commission for which you are applying.

Natural resources background with degrees in Wildlife Biology (minor in Fisheries) and a Masters in Public Administration. Birdwatching, hiking, gardening, dog owner, star gazing, reading, Excel, canoeing, fishing.

City of Fruita
Boards and Commissions Application
Page 2

Are you committed to attending meetings?

☒

Yes

☐

No

Are you committed to serving an entire term?

☒

Yes

☐

No

Please specify any activities which might create serious conflict of interest if you should be appointed to a particular board or commission. (If unsure, please call the City Manager's office at 858-3663)

If Fruita applied for certain federal grants, there could be a conflict of interest, though I don't know it would be "serious" (I would have to check with Ethics, depending on the circumstances).

List any licenses, certificates or other specialized training applicable to the board or commission for which you are applying.

Wood Badge leadership program (Boy Scouts); recently completed the NRA Basic Pistol course;

Additional information or references you believe may be helpful in considering your application.

I believe in public service and citizenship. When asked about public service, most people think of voting, but I believe serving on a jury is a higher form of civic duty (your vote counts and it impacts people's lives). Serving on a board or commission is another tangible way to make a difference in one's community.

Signature NATHAN DARNALL Digitally signed by NATHAN DARNALL
Date: 2024.01.08 12:35:07 -0700 Date January 8, 2024

All applicants are strongly encouraged to attend a regularly scheduled meeting of the board or commission for which they are applying. Frequent non-attendance may result in termination of the appointment.

ATTACHMENTS TO APPLICATION MUST BE LIMITED TO TWO PAGES
Please feel free to submit a resume along with this application. Application and any attachments should be returned to the Fruita City Council c/o the City Clerk, 325 E. Aspen, Fruita, CO 81521. Although we have indicated the best time to apply for a particular board, we accept applications for any of the boards year-round. Thank you.



**CITY OF FRUITA
BOARDS AND COMMISSIONS
MEMBERSHIP APPLICATION**

BOARD OR COMMISSION: Parks and Recreation

NAME: Lana McLaughlin

MAILING ADDRESS: 822 Adams Dr
Fruita, CO 81521

RESIDENCE ADDRESS:

City	State	Zip
<u>Fruita</u>	<u>CO</u>	<u>81521</u>

PHONE NUMBER: 903-271-3960
Home Work

E-MAIL ADDRESS: lanamclaughlin90@yahoo.com

How long have you been a resident of Fruita? 9 months

Occupation/Employer: Retired from Education

List any volunteer and/or work experience:

*22 Years in Education (teacher, principal, director of secondary education)
*Volunteer youth worker at church

Are you presently serving on a board or commission? If so, which one(s)?

Not presently serving

Why do you want to be a member of this board or commission?

I am passionate about community development, outdoor spaces, and recreational activities. I am interested in the opportunity to positively impact my local community that I have recently relocated to. Parks and recreation areas enhance the overall quality of life for residents, and

List any abilities, skills, or interests which are applicable to the board or commission for which you are applying.

I have been an educator for the past 22 years. As a middle school principal, I managed a school of approximately 1200 students as well as overseeing the entire athletic program of the school. This included all of the sporting events, physical education classes, and scheduling of the gym and weightroom facilities.

City of Fruita
Boards and Commissions Application
Page 2

Are you committed to attending meetings? ☒ Yes ☐ No
Are you committed to serving an entire term? ☒ Yes ☐ No

Please specify any activities which might create serious conflict of interest if you should be appointed to a particular board or commission. (If unsure, please call the City Manager’s office at 858-3663)

None

List any licenses, certificates or other specialized training applicable to the board or commission for which you are applying.

Licensed Colorado teacher and principal

Additional information or references you believe may be helpful in considering your application

Signature Lana McLaughlin Date 1/19/23

All applicants are strongly encouraged to attend a regularly scheduled meeting of the board or commission for which they are applying. Frequent non-attendance may result in termination of the appointment.

ATTACHMENTS TO APPLICATION MUST BE LIMITED TO TWO PAGES
Please feel free to submit a resume along with this application. Application and any attachments should be returned to the Fruita City Council c/o the City Clerk, 325 E. Aspen, Fruita, CO 81521. Although we have indicated the best time to apply for a particular board, we accept applications for any of the boards year-round. Thank you.

Debra Woods

From: Lana McLaughlin <lanamclaughlin90@yahoo.com>
Sent: Friday, January 19, 2024 3:32 PM
To: Debra Woods
Subject: Application for Parks and Recreation Board
Attachments: Parks and rec board.pdf

Hello Debra,

I am submitting my application for the Fruita Parks and Recreation board. I am not sure the document downloaded properly, so I am going to include my answer to the question, Why do you want to be a member of this board/commission, here, in case you can't see the full answer on the application. Please let me know if you have any questions.

I am passionate about community development, outdoor spaces, and recreational activities. I am interested in the opportunity to positively impact my local community that I have recently relocated to. Parks and recreation areas enhance the overall quality of life for residents, and as a board member, I can play a crucial role in ensuring that the community has access to well-maintained and diverse recreational opportunities.

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.



**CITY OF FRUITA
BOARDS AND COMMISSIONS
MEMBERSHIP APPLICATION**

BOARD OR COMMISSION: Livability Commission

NAME: Anna Harris

MAILING ADDRESS: 303 N Peach St

RESIDENCE ADDRESS:

City	State	Zip
<u>Fruita</u>	<u>CO</u>	<u>81521</u>

PHONE NUMBER: 530-228-7609

Home Work

E-MAIL ADDRESS: acharris1@gmail.com

How long have you been a resident of Fruita? one year

Occupation/Employer: Product manager, Bloomberg Center for Public Innovation at Johns Hopkins

List any volunteer and/or work experience:

I am a current employee of the 2-year-old Bloomberg Center for Public Innovation at Johns Hopkins--an organization dedicated to defining the field of government innovation to facilitate better and longer lives for residents of cities all over the world. In my daily work, I am exposed to researchers, practitioners, and city leaders who are experts in the field--and partner with NGOs, nonprofit, and vendors in delivering digital products.
I volunteer with Baltimore's CollegeBound Foundation, assessing college scholarship applications. I am looking for volunteer opportunities closer to home.

Are you presently serving on a board or commission? If so, which one(s)?

no

Why do you want to be a member of this board or commission?

While my job is to support a center serving a global network of cities, I also want to direct my time and energy to make impact in my unique home community of Fruita. I am particularly interested what makes a community livable for diverse populations, and in the ways citizens like me can be engaged in guiding action that shapes the lives of every resident. I am raising children here, and I want to exemplify for them the importance of service to your community.

List any abilities, skills, or interests which are applicable to the board or commission for which you are applying.

I have worked as a product and tech manager -- so I am familiar with and comfortable technological solutions to problems faced by government organizations.
Knowledge of public administration and nonprofits
Writing, editing, proofreading
Website content management
Project management
In my free time, I work on my home in downtown Fruita and enjoy what the community has to offer outside on trails and rivers.

City of Fruita
Boards and Commissions Application
Page 2

Are you committed to attending meetings?



Yes



No

Are you committed to serving an entire term?



Yes



No

Please specify any activities which might create serious conflict of interest if you should be appointed to a particular board or commission. (If unsure, please call the City Manager's office at 858-3663)

none

List any licenses, certificates or other specialized training applicable to the board or commission for which you are applying.

--Master of Public Administration
 --(in progress) Certificate of Design Thinking, Carey Business School, Johns Hopkins
 --Path to Innovation training (target audience, city leaders)
 --Executive Leadership, Carey Business School, Johns Hopkins

Additional information or references you believe may be helpful in considering your application.

Resume attached

Signature



Date 02/02/2024

All applicants are strongly encouraged to attend a regularly scheduled meeting of the board or commission for which they are applying. Frequent non-attendance may result in termination of the appointment.

ATTACHMENTS TO APPLICATION MUST BE LIMITED TO TWO PAGES

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STATEMENT

Fast learner, experienced communicator, and higher ed tech manager transforming the way teams work together in service of an organizational mission. With over seven years of leadership experience, able to take care of administrative details while creating better ways of getting things done. A collaborator at heart who is able to gain trust and cooperation from staff, colleagues, and senior leadership alike.

CAREER HIGHLIGHTS

- 17 years** | writing and editing publications, newsletters, articles, and other digital and print media
- 16 years** | promoting a public-serving organization via digital platforms
- 11 years** | leading teams, supervising staff, and mentoring student assistants in higher education
- 11 years** | developing and executing roadmaps and comprehensive digital communication and other strategic plans
- 8 years** | managing teams of technical and creative staff dedicated to serving the needs of internal and external clients

CAREER HISTORY

Product Manager

Bloomberg Center for Public Innovation at Johns Hopkins, Baltimore, MD

2021 — Present

Manage Product team in building and supporting digital portfolio of international government innovation programs

- Manage 5 websites and other digital properties serving city leaders by developing and executing long-range product roadmaps
- Serve as the connection between funder, 15+ nonprofit and NGO program partners, designers, content creators, and developers to build digital products in support of programs such as the Local Infrastructure Hub (featured in Newsweek) and Bloomberg Cycling Infrastructure Initiative (providing \$4.5M+ for bike lanes and other projects around the world)
- Design and build application user journeys and application databases in support of Government Innovation programs
- Maintain learning management systems and knowledge bases for international program participants
- Build workflows and project management systems for new and growing organization

Associate Director, Creative Media & Technology

Creative Media & Technology, California State University, Chico

2019 — 2021

Assist director in supervising and leading a staff specializing in marketing and classroom technologies.

- Serve as advocate for inclusive media practices
- Maintain operational efficiencies, monitor budget, and ensure compliance with campus, state, and federal policies and procedures.
- Collaborate with University Communications to create guidelines and governance for the Campus Web.
- Market and oversee service offerings of for eight campus service centers.
- Track and manage marketing, media, web, print, and classroom technology projects for Creative Media & Technology department.
- Lead 10 creative and technical staff specializing in print and web, and 15 student staff.
- Determine the overall direction of CSU, Chico's website while adhering to accessibility, branding, and security standards and adapting to UX best practices and changing technologies.
- Collaborate with CMT videographers, photographers, designers, and audiovisual experts in telling the Chico State story with impact.

Manager, Web Services, University Printing & Copy Center

Creative Media & Technology, California State University, Chico

2017 — 2019

Responsible for operational, budget, planning, and personnel oversight for three on-campus service centers.

- Lead 10 creative and technical staff specializing in print and web, and 15 student staff.
- Determine the overall direction of CSU, Chico's website while adhering to accessibility, branding, and security standards and adapting to UX best practices and changing technologies. Partner with University Communications to create guidelines and governance for the Campus Web.
- Manage complex, enterprise-level projects such as web template redesign and accessibility compliance coordination.
- Managed the manual migration of 15,000 pages into new web template while developing training courses, knowledge base, best practice

PRODUCT MANAGER, BLOOMBERG CENTER FOR PUBLIC INNOVATION AT JOHNS HOPKINS

530-228-7609 | acharris1@gmail.com | Fruita, Colorado

- guidelines, and project workflow templates for over 300 site maintainers.
- Created the University's first web accessibility plan and boosted automated accessibility scan scores from 60/100 to 90+/100.
 - Championed campus digital literacy by rolling out personal web spaces used for teaching and learning to staff, faculty, and students.
 - Hired a UX/UI specialist to analyze user needs and inform future direction of campus web.
 - Collaborate with university library on copy center support of Makerspace.
 - Coordinated paper purchasing, maintenance contracts, marketing, and price setting efforts between university print centers—resulting in more than \$60,000 in 2018-19 savings and income on track with previous year in spite of challenging business climate.
 - Represent Web Services on committees on accessibility, crisis communication, campus branding, IT project intake, learning management systems, compliance training, and a trauma-informed approach to student success.

Lead, Web Services

Creative Media & Technology, California State University, Chico 2015 — 2017

Led a team of five web designers and developers and three student assistants providing web content management system frameworks and training to campus.

- Oversaw the design/build of a new responsive web template: Campus Web 3.0, the gateway to CSU, Chico information and services.
- Co-developed the University Communicators Guide on branding, messaging, and cross-platform marketing with University Communications.
- Led the implementation of a WCMS-based Campus Calendar and Announcements solution.
- Developed web service catalog and transitioned Web Services to ticket-based support model, with 140 help requests/month.
- Implemented task-management workflow, time-tracking and billing software, and project-based instant messaging.
- Proposed and managed implementation of Siteimprove website accessibility scanning software on 14 campus websites.
- Led accessibility compliance efforts for websites and web apps—including accessibility plans, manual and automated scanning, training resources, and consulting with other campus departments.

Digital Communications Coordinator/University Copyeditor and Assistant Editor

Public Affairs & Publications, California State University, Chico 2007 — 2015

Provided strategic direction for the University's digital communications. Copyedited all publications intended for off-campus audiences or wide distribution on campus.

- Wrote, edited, and published digital and web content for high-level campus web pages, official social media channels, and online publications including 125th Anniversary website and Chico State Walking Tour.
- Created and coordinated university home page banner images and stories that received 13M page views per year.
- Wrote and edited for alumni magazine, *Chico Statements* (distribution 100,000), staff/faculty newsletter, annual report, and other major university publications.
- Managed freelance writers. Trained and supervised student social media and editorial assistants.
- Taught on-campus professional development courses in Business Writing and Writing for the Web and Social Media.
- Responded to public records requests.

EDUCATION

Masters Public Administration, Public Financial Management	CSU, San Bernardino
GPA 4.0	2023
Certificate Literary Editing & Publishing	CSU, Chico
GPA 4.0 Ellen L. Walker Scholarship in Editing & Publishing	2003
BA Psychology	University of California, Santa Barbara
GPA 3.9 Graduated Phi Beta Kappa with College Honors, Highest Honors	1998

PRODUCT MANAGER, BLOOMBERG CENTER FOR PUBLIC INNOVATION AT JOHNS HOPKINS

530-228-7609 | acharris1@gmail.com | Fruita, Colorado

SPECIAL TRAINING

Executive Presence, Johns Hopkins Carey Business School,

Design Thinking certificate, Johns Hopkins Carey Business School, in progress.

California State University Project Management Study Group..

International Association of Accessibility Professionals

Accessibility, Siteimprove Academy, 2018.

Principles of Supervision, California State University, 2017 (with ongoing meetings).

Wildcat Leadership Institute: Daring Leaders Series, CSU, Chico, 2016-17.

CSU, Chico Diversity Academy, 2012.

CSU, Chico professional development courses in Building Trust, Tactical Communications, Budget 101, Evaluating Performance, and more.

KEY SKILLS

Communication | Using writing and interpersonal skills to build relationships and inspire action

Small-Group Facilitation | Ran biweekly creative writing group and weekly Women's Wellness Circle for college students

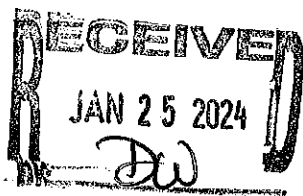
Administration | Removing logistical roadblocks so talented people can do their work

Technical Writing | Translating complicated concepts for a nontechnical audience

Change Management | Building trust during business process shifts and new software implementation

Strategic Thinking | Creating departmental missions, policies, and plans that align with organizational goals

Customer Support | Using interpersonal and technical skills to meet needs of internal and external clients



FRUITA
COLORADO

Section 6, Item C.

**CITY OF FRUITA
BOARDS AND COMMISSIONS
MEMBERSHIP APPLICATION**

BOARD OR COMMISSION: Livability Commission
NAME: Carmen Flores
MAILING ADDRESS: 815 Adams Dr

RESIDENCE ADDRESS: City State Zip
Fruita CO 81521

PHONE NUMBER: 970-623-6422
Home Work

E-MAIL ADDRESS: carmensophiaflores@gmail.com

How long have you been a resident of Fruita? 7 months (Mesa County ~ 24 yrs)
Readiness & Response Coordinator, Northwest Region Healthcare Coalition

Occupation/Employer:

List any volunteer and/or work experience:

See attached resume for details

- Readiness & Response Coordinator Northwest Region Healthcare Coalition, Colorado (June 2022 - Present)
- Community Health Planner and Emergency Preparedness & Response Coordinator for Mesa County Public Health, Grand Junction, CO (Oct 2018 - May 2022)
- Marketing & Communications Intern for SCL Health St. Marys, Grand Junction, CO (May 2018 - Oct 2018)

Are you presently serving on a board or commission? If so, which one(s)?

I am not currently serving on a board or commission.

Why do you want to be a member of this board or commission?

I want to serve as a board member on the Fruita Livability Commission because it offers a unique opportunity to contribute to the well-being of the Fruita community, which aligns with my values both personally and professionally. As a new resident to Fruita, I am excited to help advance the city's quality of life, economic health, and lifestyle by collaborating with fellow Livability Commission and City Council members as representatives of the community.

List any abilities, skills, or interests which are applicable to the board or commission for which you are applying.

Skills that I have professional experience in that I think will be valuable to the Livability Commission include the following: strategic planning, community engagement, cross-functional coordination, project management, public relations, and event planning.

City of Fruita
Boards and Commissions Application
Page 2

Are you committed to attending meetings? ☒ Yes ☐ No
Are you committed to serving an entire term? ☒ Yes ☐ No

Please specify any activities which might create serious conflict of interest if you should be appointed to a particular board or commission. (If unsure, please call the City Manager's office at 858-3663)

I do not have any activities that would create conflict of interest.

List any licenses, certificates or other specialized training applicable to the board or commission for which you are applying.

I have 5+ years experience in strategic planning, community engagement, and cross-functional coordination that will benefit the Livability Commission.

Additional information or references you believe may be helpful in considering your application.

Please see my resume for additional information not captured in my application. Thank you for your consideration!

Signature Carmen Flores Date 1/17/2024

All applicants are strongly encouraged to attend a regularly scheduled meeting of the board or commission for which they are applying. Frequent non-attendance may result in termination of the appointment.

ATTACHMENTS TO APPLICATION MUST BE LIMITED TO TWO PAGES
Please feel free to submit a resume along with this application. Application and any attachments should be returned to the Fruita City Council c/o the City Clerk, 325 E. Aspen, Fruita, CO 81521. Although we have indicated the best time to apply for a particular board, we accept applications for any of the boards year-round. Thank you.

Carmen S. Flores

Fruita, CO
(970) 623-6422
carmensophiaflores@gmail.com

EXPERIENCE

Northwest Region Healthcare Coalition, Colorado— JUNE 2022 - PRESENT

Readiness & Response Coordinator

- Enhance regional health and medical preparedness, response, and recovery capabilities through collaboration with hospital, emergency management, public health, EMS, and other health and medical partners throughout our 10-county region.
- Facilitate the planning, training, exercising, operational readiness, evaluation, and ongoing development of the Healthcare Coalition.
- Comply with and follow all requirements established in the CDPHE Statement of Work and grant guidance.
- Manage allocation of Coalition funds, funding requests, and reimbursements according to NWRHCC procedures and in conjunction with the Healthcare Coalition's Fiscal Agent.
- Provide direction to two other Healthcare Coalition staff (Assistant Readiness & Response Coordinator and Clinical Advisor).

Mesa County Public Health, Grand Junction, CO — OCTOBER 2018 - MAY 2022

Community Health Planner

AUGUST 2021 - MAY 2022

- Led collaborative community initiatives to achieve large-scale systemic change, specifically addressing youth substance abuse, opioid abuse, child maltreatment, and community mental health system capacity.
- Served as a representative on a variety of community coalitions, including the Mesa County Opioid Response Group, How Are the Children? Advisory Council, Mesa County Mental Health Steering Committee, and Warrior Wellness School-Based Health Center Advisory Council.
- Created and drove execution of five year action plans to shape the work of community coalitions based on areas of needs identified in the Community Health Needs Assessment.
- Ensured timely and accurate completion of grant deliverables as required by community-level grants currently housed at Mesa County Public Health.

Regional Emergency Preparedness & Response Specialist

OCTOBER 2018 - AUGUST 2021

- Led the Regional Operations Branch of the Mesa County COVID-19 Response for 16 months.
- Served as a liaison and subject matter expert to a variety of Emergency

SUMMARY

Experienced professional with a demonstrated history of working in the emergency preparedness and healthcare industries.

Skilled in relationship building, project management, event planning, program design, employee engagement, and time management.

Trusted and positive team and project leader who is passionate about people.

EDUCATION

University of Colorado, Boulder
2013 - 2017

- Bachelor of Arts, Anthropology
- Minor in Ethnic Studies

TRAININGS & CERTIFICATIONS

- IS-800, 700, 200, 100
- ICS-300
- G-290, G-191, G-775
- Public Health Law
- Tuberculosis for Healthcare Workers
- Advanced Planning Concepts: Developing IAPs
- IMT Public Information Officer Trainee
- Mental Health First Aid
- Introduction to Substance Abuse Prevention
- Foundations & Strategies of Tobacco Control

Preparedness and Response agencies in the Northwest & West regions of Colorado.

- Created a comprehensive and engaging emergency preparedness and response training curriculum, and acted as the lead trainer for emergency preparedness professionals throughout the region.
- Coordinated health and medical emergency planning and response with local hospitals, long-term care facilities, and other providers.
- Facilitated presentations, conference calls and discussions as they related to public health and emergency preparedness and response topics, and supported public health response activities.
- Strategized method for completing contract deliverables, and clearly communicated those methods with ten county health departments. Led meetings with public health departments on a regular basis to complete deliverables, which included updating plans, coordinating trainings, and conducting exercises.

SCL Health St. Mary's, Grand Junction, CO —
Marketing & Communications Intern
 MAY 2018 - OCTOBER 2018

- Assisted in building media campaigns using a number of digital and traditional marketing outlets.
- Planned and coordinated events to help support organizational objectives and goals.
- Managed St. Mary's Medical Center's social media (Facebook, Instagram, Twitter).
- Created and documented marketing content regarding hospital events for social platforms.

Tri Delta Fraternity, Dallas, TX —
Development Consultant
 MARCH 2017 - MAY 2018

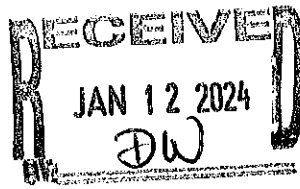
- Led a team of eight fellow leaders and collaborated with key stakeholders and volunteers to lead values driven, sustainable membership expansion to ensure organizational growth and membership retention.
- Organized recruitment efforts to accommodate over 1300 prospective members.
- Planned and facilitated workshops and engaging learning opportunities for hundreds of collegiate women.
- Trained people on organizational operations, leadership skills, policies and risk management.
- Oversaw the planning of internal and external social events, and philanthropic events benefiting St. Jude Children's Research Hospital and Children's Hospital Colorado.

REFERENCES

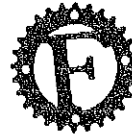
Vincent Burkhardt
*Emergency Management Manager,
 Peaks Region*
 Intermountain Healthcare
vincent.burkhardt@imail.org
 (303) 889 - 9752

Rachel Burmeister
*Disease Surveillance & Emergency
 Response Manager*
 Mesa County Public Health
rachel.burmeister@mesacounty.us
 (970) 309 - 8188

Nanci Quintana
*Retired, previously Emergency
 Preparedness & Response Specialist*
 Mesa County Public Health
naquintana54@gmail.com
 (970) 270 - 8820



Interview 2/6/24 @ 6:45 pm?



FRUITA
COLORADO

Section 6, Item C.

**CITY OF FRUITA
BOARDS AND COMMISSIONS
MEMBERSHIP APPLICATION**

BOARD OR COMMISSION: Police Commission

NAME: John K Richardson

MAILING ADDRESS: 1345 Lakeview Place

RESIDENCE ADDRESS:

City	State	Zip
<u>Fruita</u>	<u>CO</u>	<u>81521</u>

PHONE NUMBER: 970 424 3044 same

Home Work

E MAIL ADDRESS: nitewinger@aol.com

How long have you been a resident of Fruita? 7 months

Occupation/Employer: Retired US govt attorney/Retired military officer

List any volunteer and/or work experience:

- 32 years as an Air Force flight officer
- 8 years as a contract attorney for Denver, Colorado Springs and US Dept. of Defense

Are you presently serving on a board or commission? If so, which one(s)?

No

Why do you want to be a member of this board or commission?

As an attorney who has advised on Constitutional law issues and municipal liability regarding law enforcement, I have an acute interest in the difficult balancing act of ensuring efficient law enforcement and ensuring fair and accountable policing.

List any abilities, skills, or interests which are applicable to the board or commission for which you are applying.

As a Colorado licensed attorney, I am well versed in Constitutional and Criminal law issues, as well as municipal liability issues pertaining to public safety operations.

City of Fruita
Boards and Commissions Application
Page 2

Are you committed to attending meetings? ☒ Yes ☐ No
Are you committed to serving an entire term? ☒ Yes ☐ No

Please specify any activities which might create serious conflict of interest if you should be appointed to a particular board or commission. (If unsure, please call the City Manager's office at 858 3663)

None of which I am aware

List any licenses, certificates or other specialized training applicable to the board or commission for which you are applying.

Colorado law license #28805
U.S. Department of Defense judge advocate certification

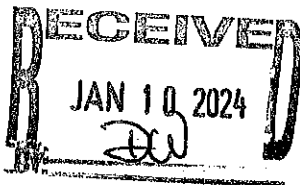
Additional information or references you believe may be helpful in considering your application.

Signature John H. Richardson Date January 10, 2024

All applicants are strongly encouraged to attend a regularly scheduled meeting of the board or commission for which they are applying. Frequent non attendance may result in termination of the appointment.

ATTACHMENTS TO APPLICATION MUST BE LIMITED TO TWO PAGES

Please feel free to submit a resume along with this application. Application and any attachments should be returned to the Fruita City Council c/o the City Clerk, 325 E. Aspen, Fruita, CO 81521. Although we have indicated the best time to apply for a particular board, we accept applications for any of the boards year round. Thank you.



FRUITA
COLORADO

Section 6, Item C.

**CITY OF FRUITA
BOARDS AND COMMISSIONS
MEMBERSHIP APPLICATION**

BOARD OR COMMISSION: Police Commission

NAME: Sandy Perry

MAILING ADDRESS: 425 Comstock Dr

City	State	Zip
<u>Fruita</u>	<u>CO</u>	<u>81521</u>

RESIDENCE ADDRESS: same as above

PHONE NUMBER: (970) 773-8048 n/a

Home	Work
<u>Perry.mikesandy@yahoo.com</u>	

E-MAIL ADDRESS: Perry.mikesandy@yahoo.com

How long have you been a resident of Fruita? Since July 2003

Occupation/Employer: Retired

List any volunteer and/or work experience:

Mesa County - HR Director 2008-2014 / HR Analyst 2003-2008
City of Grand Junction - HR Analyst 1992-2000
Board Member Housing Resources of Western Colorado 2014-2023
Eureka Science & Math Museum - volunteer 2019-present

Are you presently serving on a board or commission? If so, which one(s)?

No

Why do you want to be a member of this board or commission?

I enjoyed working with all levels of law enforcement during my working career and believe I would be an asset to the City of Fruita Police Commission. With my previous work experience I would bring a broad understanding of the issues facing law enforcement in today's work environment. Also, my son has been employed in law enforcement since 2002 which gives me a personal interest in this area.

List any abilities, skills, or interests which are applicable to the board or commission for which you are applying.

During my employment with Mesa County and the City of Grand Junction I was involved with recruitment, HR policies and issues within both agencies.

City of Fruita
Boards and Commissions Application
Page 2

Are you committed to attending meetings? ☒ Yes ☐ No
Are you committed to serving an entire term? ☒ Yes ☐ No

Please specify any activities which might create serious conflict of interest if you should be appointed to a particular board or commission. (If unsure, please call the City Manager's office at 858-3663)

None that I can think of

List any licenses, certificates or other specialized training applicable to the board or commission for which you are applying.

My previous work experience

Additional information or references you believe may be helpful in considering your application.

Jim Jackson - HOA President Comstock neighborhood - (314) 973-8498
Emilee Powell - Executive Director, Housing Resources of Western Co - (970) 773-9738
Jenn Moore - Executive Director, Eureka Science Museum - (315) 322-1303

Signature *Sandy Perry* Date 1/10/2024

All applicants are strongly encouraged to attend a regularly scheduled meeting of the board or commission for which they are applying. Frequent non-attendance may result in termination of the appointment.

ATTACHMENTS TO APPLICATION MUST BE LIMITED TO TWO PAGES

Please feel free to submit a resume along with this application. Application and any attachments should be returned to the Fruita City Council c/o the City Clerk, 325 E. Aspen, Fruita, CO 81521. Although we have indicated the best time to apply for a particular board, we accept applications for any of the boards year-round. Thank you.



FRUITA
COLORADO

AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: KIMBERLY BULLEN, PUBLIC WORKS DIRECTOR

DATE: MARCH 5, 2024

AGENDA TEXT: LETTER OF SUPPORT FOR CITY OF FRUITA – A Request to Authorize the Mayor to Sign Letters of Support for the City of Fruita’s Congressional Directed Spending Request

PURPOSE

Each year, members of the United States Congress and Senate accept requests from governments and non-profit organizations for community projects to be funded through Congressional Directed Spending. These projects are accepted through an application process, some are recommended for funding by each representative, and then may be approved through the federal appropriations process. Currently, United States Senators John Hickenlooper and Michael Bennet are accepting requests for community projects.

The City of Fruita is planning to apply for a Congressional Directed Spending award to replace deteriorating sewer lines in the City of Fruita. The City has identified the service areas served by these lines in order to prioritize for funding. The Greenway Drive line is the highest priority as it serve a large portion of the downtown area and is complicated by a requirement to bore underneath the UPRR.

In order to apply for a Congressional Directed Spending award, a Letter of Support is required. The purpose of this agenda item is to authorize Mayor Kincaid to sign a Letter of Support for this request to each Senator.

FISCAL IMPACT

The City has budgeted \$500,000 towards replacing the Greenway Drive sewer line and is anticipating requesting DOLA funds to complete a small portion of this line. If additional funding was awarded this would allow the city to replace additional footage as well as other priority lines that have been identified.

APPLICABILITY TO CITY GOALS AND OBJECTIVES

This request is applicable to the City of Fruita’s goal of Quality of Place to ensure we have quality essential infrastructure and services.

OPTIONS AVAILABLE TO THE COUNCIL

- Authorize the Mayor to sign the Letter of Support for Congressional Directed Spending Request.
- Advise staff to revise the letter and authorize the Mayor to sign it with changes.

RECOMMENDATION

It is the recommendation of staff that the Council by motion:

**AUTHORIZE THE MAYOR TO SIGN A LETTER OF SUPPORT FOR
CONGRESSIONAL DIRECTED SPENDING REQUEST.**

FRUITA COLORADO

325 East Aspen
Suite 155
Fruita, CO 81521

P 970.858.3663
F 970.858.0210
www.fruita.org



CITY MANAGER
970.858.3663

CITY CLERK/FINANCE
970.858.3663

COMMUNITY
DEVELOPMENT
970.858.0786

MUNICIPAL COURT
970.858.8041

POLICE DEPARTMENT
970.858.3008

ENGINEERING
970.858.8377

HUMAN RESOURCES
970.858.8373

PUBLIC WORKS
970.858.9558

PARKS/RECREATION
970.858.0360

WASTEWATER
TREATMENT FACILITY
970.858.4081

March 5, 2024

The Honorable Michael Bennet
United States Senate
261 Russell Senate Office Building
Washington, D.C. 20510

Re: Letter of Support for Congressional Directed Spending – Replacement of
Sewer Lines

Honorable Senator Bennet,

Thank you for the opportunity to apply for Congressional Directed Spending for the replacement of deteriorating sewer lines in the City of Fruita. The City of Fruita operates a sanitary sewer collection system of approximately 80 miles of piping, 40 maintenance zones, 8 lift stations and a 2.33 million gallon per day treatment facility.

As Fruita has continued to grow over the past several years, it has been difficult to maintain the City's core infrastructure as demand and use increases and the cost for repair continues to outpace what communities can keep up with. We also recognize that housing affordability has become an increasingly important issue, and the existing supply and utility of affordable housing is directly dependent on the condition of other infrastructure assets.

The city has identified as a key priority the remaining sewer lines that need to be replaced and has identified the service area that each of these lines serve. The Greenway Drive line is the highest priority line as it serves a large portion of the downtown area, the local Hospital, Fire Department, and Police Department. It is also further complicated as it will require boring underneath the UPRR railroad.

The City of Fruita is pleased to support this project and request, and hope that it will be considered for Congressional Directed Spending. Please feel free to let me know if you have any additional questions, or if you need additional information.

Thank you,

Joel Kincaid
City of Fruita, Mayor

FRUITA
COLORADO

325 East Aspen
Suite 155
Fruita, CO 81521

P 970.858.3663
F 970.858.0210
www.fruita.org



- CITY MANAGER
970.858.3663
- CITY CLERK/FINANCE
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- COMMUNITY DEVELOPMENT
970.858.0786
- MUNICIPAL COURT
970.858.8041
- POLICE DEPARTMENT
970.858.3008
- ENGINEERING
970.858.8377
- HUMAN RESOURCES
970.858.8373
- PUBLIC WORKS
970.858.9558
- PARKS/RECREATION
970.858.0360
- WASTEWATER TREATMENT FACILITY
970.858.4081

March 5, 2024

The Honorable John Hickenlooper
United States Senate
374 Russell Senate Office Building
Washington, D.C. 20510

Re: Letter of Support for Congressional Directed Spending – Replacement of Sewer Lines

Honorable Senator Hickenlooper,

Thank you for the opportunity to apply for Congressional Directed Spending for the replacement of deteriorating sewer lines in the City of Fruita. The City of Fruita operates a sanitary sewer collection system of approximately 80 miles of piping, 40 maintenance zones, 8 lift stations and a 2.33 million gallon per day treatment facility.

As Fruita has continued to grow over the past several years, it has been difficult to maintain the City’s core infrastructure as demand and use increases and the cost for repair continues to outpace what communities can keep up with. We also recognize that housing affordability has become an increasingly important issue, and the existing supply and utility of affordable housing is directly dependent on the condition of other infrastructure assets.

The city has identified as a key priority the remaining sewer lines that need to be replaced and has identified the service area that each of these lines serve. The Greenway Drive line is the highest priority line as it serves a large portion of the downtown area, the local Hospital, Fire Department, and Police Department. It is also further complicated as it will require boring underneath the UPRR railroad.

The City of Fruita is pleased to support this project and request, and hope that it will be considered for Congressional Directed Spending. Please feel free to let me know if you have any additional questions, or if you need additional information.

Thank you,

Joel Kincaid
City of Fruita, Mayor



AGENDA ITEM COVER SHEET

TO: Fruita City Council and Mayor

FROM: Marc Mancuso, Parks and Recreation Director

DATE: March 5, 2024

AGENDA TEXT: RESOLUTION 2024-07 – A request to approve a Professional Services Agreement between the City of Fruita and Zambelli Fireworks for Firework Production Services and authorize the City Manager to execute the agreement

BACKGROUND

The purpose of this agenda item is to authorize the City Manager to sign a multi-year Professional Services Agreement for Firework Production for the 3rd of July Fireworks for Fruita. The City of Fruita has used Zambelli Fireworks for the 2022 and 2023 fireworks shows. In January the City of Fruita’s Parks and Recreation Department issued a Request for Proposals (“RFP”) for firework production services. Over the last three years, Zambelli Fireworks was the only submission that was received.

The agreement allows for up to three (3) one-year renewal options, maintains that the City owns all work product, allows for termination, and covers all other areas of insurance and other contract requirements of the City.

FISCAL IMPACT

This fiscal impact of this agreement is limited to the approved budget by the City Council for 2024. The 2025 budget will increase to \$31,000, 2026 will increase to \$32,500, and 2027 will increase to \$34,000. These budget increases will be based on similar sized shows.

APPLICABILITY TO CITY GOALS AND OBJECTIVES

This Professional Services Agreement will assist in concert promotion in an effective and efficient manner and will have a direct impact on the Quality of Place, Economic Health, and Lifestyle of the community of Fruita.

OPTIONS AVAILABLE TO THE COUNCIL

1. Approve the attached Professional Services Agreement with Zambelli Fireworks and authorize the City Manager to sign the agreement.
2. Advise staff to amend the attached Professional Services Agreement with Zambelli Fireworks and authorize the City Manager to sign the agreement.

RECOMMENDATION

It is Staff's recommendation that the City Council, by motion:

- **MOVE TO ADOPT RESOLUTION 2024-07 - A REQUEST TO APPROVE A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF FRUITA AND ZAMBELLI FIREWORKS FOR FIREWORK PRODUCTION SERVICES AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT**

RESOLUTION 2024-07

**A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF FRUITA AND ZAMBELLI FIREWORKS FOR FIREWORK
PRODUCTION SERVICES AND AUTHORIZE THE CITY MANAGER TO EXECUTE
THE AGREEMENT**

WHEREAS, the Fruita City Council finds it necessary for the City of Fruita to enter into a multiyear Professional Services Agreement for Firework Production Services, and

WHEREAS, after a Requests for Quotes process, the Fruita Parks and Recreation Department has recommended that the City of Fruita hire Zambelli Fireworks to perform these services, and

WHEREAS, it is the intent of this resolution to approve a Professional Services Agreement between the City of Fruita and Zambelli Fireworks for Firework Production Services and authorize the City Manager to execute the agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE FRUITA CITY COUNCIL THAT:

Section 1: The City Council approves the Professional Services Agreement between the City of Fruita and Zambelli Fireworks for Firework Production Services and authorizes the City Manager to execute the agreement.

PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL THIS

5th DAY OF MARCH, 2024

ATTEST:

CITY OF FRUITA

Margaret Sell, City Clerk

Joel Kincaid, Mayor

CITY OF FRUITA, COLORADO

CONTRACT

This CONTRACT made and entered into this 5th day of March, 2024 by and between the **City of Fruita, Colorado**, a home-rule municipality in the County of Mesa, State of Colorado (the “Owner”), and **Zambelli Fireworks**, a Pennsylvania corporation whose principal address is 120 Marshall Drive, Warrendale, PA 15086, (the “Contractor”) (collectively the “Parties”).

WITNESSETH:

WHEREAS, the Owner received a quote for from the Contractor to furnish all labor, tools, permits, supplies, equipment, materials, and everything necessary and required for the **City of Fruita 3rd of July Firework Show – 2024** (the “Work”).

WHEREAS, the Contract has been awarded to the above-named Contractor by the Owner, and said Contractor is now ready, willing, and able to perform the Work specified in accordance with the Contract Documents.

NOW, THEREFORE, in consideration of the compensation to be paid the Contractor, the mutual covenants hereinafter set forth and subject to the terms hereinafter stated, it is mutually covenanted and agreed as follows:

ARTICLE 1

Contract Documents: It is agreed by the Parties hereto that the following list of instruments and documents which are attached hereto, bound herewith, or incorporated herein by reference constitute and shall be referred to either as the “Contract Documents,” and all of said instruments and documents taken together as a whole constitute the entire agreement between the parties hereto, and they are fully a part of this Contract as if they were set out verbatim and in full herein:

The order of contract document governance shall be as follows:

- a. The body of this Contract;
- b. General Contract Terms and Conditions;
- c. Contractor’s Quote;
- d. Work Change Requests (directing that changed work be performed);
- e. Field Orders
- f. Change Orders.

ARTICLE 2

Definitions: The clauses provided in the Terms and Conditions apply to the terms used in the Contract and all the Contract Documents.

ARTICLE 3

Contract Work: The Contractor agrees to furnish all labor, tools, permits, supplies, equipment, materials, and all that is necessary and required to complete the tasks associated with the Work described, set forth, shown, and included in the Contract Documents.

ARTICLE 4

Contract Price and Payment Procedures: The Contractor shall accept as full and complete compensation for the performance and completion of all of the Work specified in the Contract Documents, the sum of **Thirty Thousand and 00/100 Dollars (\$30,000.00)**. The amount of the Contract Price is and has heretofore been appropriated by the City of Fruita for the use and benefit of the Work. The Contract Price shall not be modified except by written Change Order or other written directive of the Owner. The Owner shall not issue a Change Order or other written directive which requires additional work to be performed, which work causes the aggregate amount payable under this Contract to exceed this amount, unless and until the Owner provides Contractor written assurance that lawful appropriations to cover the costs of the additional work have been made. Notwithstanding the foregoing, the parties agree that the Owner’s payment of any monies under this Agreement is subject to annual budget appropriations as required by provisions of the Taxpayers’ Bill of Rights (“TABOR”) contained in Article X, Section 20 of the Colorado Constitution, as amended. The parties further agree that any failure to fund the obligations set forth herein as a result of TABOR-related monetary constraints shall not give rise to any legal or equitable cause of action whatsoever.

ARTICLE 5

Contract Binding: The Owner and the Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contract Documents constitute the entire agreement between the Owner and Contractor and may only be altered, amended or repealed by a duly executed written instrument. Neither the Owner nor the Contractor shall, without the prior written consent of the other, assign or sublet in whole or in part its interest under any of the Contract Documents and specifically, the Contractor shall not assign any monies due or to become due without the prior written consent of the Owner.

ARTICLE 6

Severability: If any part, portion or provision of the Contract shall be found or declared null, void or unenforceable for any reason whatsoever by any court of competent jurisdiction or any governmental agency having the authority thereover, only such part, portion or provision shall be affected thereby and all other parts, portions and provisions of the Contract shall remain in full force and effect.

ARTICLE 7

Choice of Law; Venue: The parties agreed that this Contract shall be governed by the laws of the State of Colorado and venue for any dispute hereunder shall be in the courts of competent jurisdiction in Mesa County, Colorado.

IN WITNESS WHEREOF, City of Fruita, Colorado, has caused this Contract to be subscribed and sealed and attested in its behalf; and the Contractor has signed this Contract the day and the year first mentioned herein.

The Contract is executed in two counterparts.

City of Fruita, CO

By: _____
Mike Bennett, City Manager

Date

Zambelli Fireworks

By: _____

Date

SECTION 1.0: GENERAL CONTRACT TERMS AND CONDITIONS

- 1.1. Execution, Correlation, Intent, and Interpretations:** The Contract Documents shall be signed by the Owner and Contractor. By executing the contract, the Contractor represents that they have familiarized themselves with the local conditions under which the Work is to be performed and correlated their observations with the requirements of the Contract Documents. The Contract Documents are complementary, and what is required by anyone, shall be as binding as if required by all. The intention of the documents is to include all labor, materials, equipment, services and other items necessary for the proper execution and completion of the Scope of Work as defined in Section 4.0. Any drawings, specifications and copies furnished by the Owner are, and shall remain, Owner property. They are not to be used on any other project.
- 1.2. Permits, Fees, & Notices:** The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the Work as it relates to the use of fireworks in Mesa County, Colorado. The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work. If the Contractor observes that any of the Contract Documents are at variance in any respect, Contractor shall promptly notify the Owner in writing, and any necessary changes shall be adjusted by change order/amendment. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Owner, Contractor shall assume full responsibility and shall bear all costs attributable.
- 1.3. Responsibility for those Performing the Work:** The Contractor shall be responsible to the Owner for the acts and omissions of all their employees and all other persons performing any of the Work with the Contractor.
- 1.4. Use of the Site:** The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents, and shall not unreasonably encumber the site with any materials or equipment.
- 1.5. Cleanup:** The Contractor at all times shall keep the site free from accumulation of waste materials or rubbish caused by their operations. At the completion of the Work, Contractor shall remove all their waste materials and rubbish from and about the site, as well as all their equipment and surplus materials.
- 1.6. Payment:** The Contract Sum is stated in the Contract and is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents.

- 1.7. Protection of Persons & Property:** The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. Contractor shall erect and maintain, as required by existing safeguards for safety and protection, and all reasonable precautions, including posting danger signs or other warnings against hazards promulgating safety regulations and notifying owners and users of adjacent utilities. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct by the Contractor in the execution of the Work, or in consequence of the non-execution thereof by the Contractor, they shall restore, at their own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring as may be directed, or it shall make good such damage or injury in an acceptable manner.
- 1.8. Changes in the Work:** The Owner, without invalidating the contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. All such changes in the Work shall be authorized by Change Order and shall be executed under the applicable conditions of the Contract Documents. A Change Order is a written order to the Contractor signed by the Owner issued after the execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time.
- 1.9.** Intentionally omitted.
- 1.10.** Intentionally omitted.
- 1.11. Acceptance Not Waiver:** The Owner's acceptance or approval of any work furnished hereunder shall not in any way relieve the Contractor of their present responsibility to maintain the high quality, integrity and timeliness of their work. The Owner's approval or acceptance of, or payment for, any services shall not be construed as a future waiver of any rights under this Contract, or of any cause of action arising out of performance under this Contract.
- 1.12. Change Order/Amendment:** No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders/amendments to the Contract shall be made in writing by the Owner Purchasing Division.
- 1.13. Assignment:** The Contractor shall not sell, assign, transfer or convey any contract resulting from this quote, in whole or in part, without the prior written approval from the Owner.
- 1.14. Compliance with Laws:** Contractor must comply with all Federal, State, County and local laws governing or covering fireworks displays and use of fireworks. Contractor hereby warrants that it is qualified to assume the responsibilities and

render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law.

- 1.15. Debarment/Suspension:** The Contractor hereby certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Governmental department or agency.
- 1.16. Confidentiality:** All information disclosed by the Owner to the Contractor for the purpose of the Work to be done or information that comes to the attention of the Contractor during the course of performing such work is to be kept strictly confidential.
- 1.17. Conflict of Interest:** No public official and/or Owner employee shall have interest in this Contract.
- 1.18. Contract:** The Contract represents the entire and integrated agreement between the Parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only with written Change Orders, Field Orders, or Amendment.
- 1.19. Project Manager/Administrator:** The Project Manager, on behalf of the Owner, shall render decisions in a timely manner pertaining to the Work proposed or performed by the Contractor. The Project Manager shall be responsible for approval and/or acceptance of any related performance of the Scope of Work.
- 1.20. Contract Termination:** This Contract shall remain in effect until either the completion of the Work or for convenience terminated by either party with a written *Notice of Cancellation* stating therein the reasons for such cancellation and the effective date of cancellation at least thirty days past notification.
- 1.21. Employment Discrimination:** During the performance of the Work, the Contractor agrees to the following conditions:
- 1.21.1.** The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, citizenship status, marital status, veteran status, sexual orientation, national origin, or any legally protected status except when such condition is a legitimate occupational qualification reasonably necessary for the normal operations of the Contractor. The Contractor agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- 1.21.2.** The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an Equal Opportunity Employer.
- 1.21.3.** Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- 1.22. Immigration Reform and Control Act of 1986 and Immigration Compliance:** The Contractor certifies that it does not and will not during the performance of the Contract employ workers without authorization or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986 and/or the immigration compliance requirements of the State of Colorado outlined in C.R.S. § 8-17.5-101, *et seq.* (House Bill 06-1343).
- 1.23. Ethics:** The Contractor shall not accept or offer gifts or anything of value nor enter into any business arrangement with any employee, official, or agent of the Owner.
- 1.24. Failure to Deliver:** In the event of failure of the Contractor to perform the Work in accordance with these Terms and Conditions, the Owner, after due oral or written notice, may procure services from other sources and hold the Contractor responsible for any costs resulting in additional purchase and administrative services. This remedy shall be in addition to any other remedies that the Owner may have.
- 1.25. Failure to Enforce:** Failure by the Owner at any time to enforce the provisions of the Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the Contract or any part thereof or the right of the Owner to enforce any provision at any time in accordance with its terms.
- 1.26. Force Majeure:** The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by the Contract due to legal strikes, fires, riots, rebellions, and acts of God beyond the control of the Contractor, unless otherwise specified in the Contract per the specific terms of payment/cancellation set forth in the Contractor's quote.
- 1.27. Indemnification:** The Contractor shall defend, indemnify and save harmless the Owner and all its officers, employees, insurers, and self-insurance pool, from and against all liability, suits, actions, or other claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligent act or fault of the Contractor, or of any Contractor's agent, employee, subcontractor or supplier in the execution of, or performance under, the Contract Documents. The

Contractor shall pay any judgment with cost which may be obtained against the Owner growing out of such injury or damages.

- 1.28. Independent Firm:** The Contractor shall be legally considered an Independent Firm and neither the Firm nor its employees shall, under any circumstances, be considered servants or agents of the Owner. The Owner shall be at no time legally responsible for any negligence or other wrongdoing by the Firm, its servants, or agents. The Owner shall not withhold from the Contract payments to the Firm any federal or state unemployment taxes, federal or state income taxes, Social Security Tax or any other amounts for benefits to the Firm. Further, the Owner shall not provide to the Firm any insurance coverage or other benefits, including Workers' Compensation, normally provided by the Owner for its employees.
- 1.29. Oral Statements:** No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Contract Documents or any subsequent amendments. All amendments to the Contract must be made in writing and signed by both Parties.
- 1.30. Patents/Copyrights:** The Contractor agrees to protect the Owner from any claims involving infringements of patents and/or copyrights. In no event shall the Owner be liable to the Contractor for any/all suits arising on the grounds of patent(s)/copyright(s) infringement. Patent/copyright infringement shall null and void the Contract.
- 1.31. Remedies:** The Contractor and Owner agree that both Parties have all rights, duties, and remedies available as stated in the Uniform Commercial Code.
- 1.32. Venue:** The Contract is made in, and shall be construed and interpreted in accordance with, the laws of the City of Fruita, Mesa County, Colorado.
- 1.33. Expenses:** Any expenses incurred in preparation, submission and presentation of the Contractor's quote are the responsibility of the Contractor and cannot be charged to the Owner.
- 1.34. Sovereign Immunity:** The Owner specifically reserves its right to sovereign immunity pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as a defense to any action arising in conjunction to this Contract.
- 1.35. Public Funds/Non-Appropriation of Funds:** The Contractor acknowledges and agrees that the Owner's payment of any monies under this Contract is subject to annual budget appropriations as required by provisions of the Taxpayers' Bill of Rights ("TABOR") contained in Article X, Section 20 of the Colorado Constitution, as amended. The Contractor further agrees that any failure to fund the obligations set forth herein as a result of TABOR-related monetary constraints shall not give rise to any legal or equitable cause of action whatsoever.

- 1.36. Gratuities:** The Contractor certifies and agrees that no gratuities or kickbacks were paid in connection with this Contract, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Contract. If the Contractor breaches or violates this warranty, the Owner may, at its discretion, terminate this Contract without liability to the Owner.
- 1.37. OSHA Standards:** The Contractor agrees and warrants that services performed under this Contract shall conform to the standards declared by the US Department of Labor under the Occupational Safety and Health Act of 1970 ("OSHA"). In the event the services do not conform to OSHA Standards, the Owner may require the services to be redone at no additional expense to the Owner.
- 1.38. Performance of the Contract:** The Owner reserves the right to enforce the performance of the Contract in any manner prescribed by law or deemed to be in the best interest of the Owner in the event of breach or default.
- 1.39. Benefit Claims:** The Owner shall not provide to the Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the Owner for its employees.
- 1.40. Default:** The Owner reserves the right to terminate the Contract immediately in the event the Contractor fails to meet delivery or completion schedules, or otherwise perform in accordance with the accepted quote. Breach of contract or default authorizes the Owner to purchase like services elsewhere and charge the full increase in cost to the defaulting Contractor.
- 1.41. Definitions:**
- 1.41.1.** The term "Work" includes all labor, materials, equipment, and/or services necessary to produce the requirements of the Contract Documents.
 - 1.41.2.** "Contractor" is the person, organization, firm or consultant identified as such in the Contract and is referred to throughout the Contract Documents. The term Contractor means the Contractor or their authorized representative. The Contractor shall carefully study and compare the Contract Documents, including these Terms and Conditions, and shall at once report to the Owner any error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner for any damage resulting from such errors, inconsistencies or omissions. The Contractor shall not commence the Work without clarifying Drawings, Specifications, or Interpretations, if applicable.
- 1.42. Public Disclosure Record:** If the Contractor has knowledge of their employee(s) or sub-proposers having an immediate family relationship with an Owner employee or elected official, the Contractor must provide the Purchasing Representative with

the name(s) of these individuals. These individuals are required to file an acceptable “Public Disclosure Record,” a statement of financial interest, before conducting business with the Owner.

SECTION 2.0: INSURANCE REQUIREMENTS

Insurance Requirements: The selected Contractor agrees to procure and maintain, at its own cost, insurance sufficient to protect against all liability, claims, demands, and other obligations assumed by the Contractor pursuant to this Section. Such insurance shall be in addition to any other insurance requirements imposed by this Contract or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Section by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types. The Contractor shall procure and maintain and, if applicable, shall cause any Subcontractor of the Contractor to procure and maintain insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the Owner. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Minimum coverage limits shall be as indicated below unless specified otherwise:

(a) Worker Compensation: Contractor shall comply with all State of Colorado Regulations concerning Workers’ Compensation insurance coverage.

(b) General Liability insurance with minimum limits of:

ONE MILLION ONE HUNDRED NINETY-FIVE THOUSAND DOLLARS (\$1,195,000) each occurrence and ONE MILLION ONE HUNDRED NINETY-FIVE THOUSAND DOLLARS (\$1,195,000) per job aggregate.

The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

(c) Comprehensive Automobile Liability insurance with minimum limits for bodily injury and property damage of not less than:

ONE MILLION DOLLARS (\$1,000,000) each occurrence and
ONE MILLION DOLLARS (\$1,000,000) aggregate

With respect to each of Contractors owned, hired, or non-owned vehicles assigned to be used in performance of the Work. The policy shall contain a severability of interests provision. The policies required by paragraph (b) above shall be endorsed to include the Owner, and the Owner's officers and employees as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the Owner, its officers, or its employees, or carried by or provided through any insurance pool of the Owner, shall be excess and not contributory insurance to that provided by Bidder. No additional insured endorsement to any required policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The Bidder shall be solely responsible for any deductible losses under any policy required above.

SECTION 3.0: SPECIFICATIONS/SCOPE OF WORK

3.1. Project Description:

3.1.1 Fireworks show specifications:

- A. Date of the fireworks show shall be July 3, 2024, beginning at 9:30pm.
- B. Length of fireworks show shall be between 16-20 minutes.
- C. Location of the fireworks show will be either at Snooks Bottom Open Space parking lot, 1051 Kingsview Road, Fruita CO 81521 or at James M. Robb State Park depending on fire conditions and shall be designated and confirmed by Owner to Contractor 24 hours prior to the display..
- D. Please see the attached map which indicates the Fireworks Safety Zone for the City of Fruita 3rd of July Fireworks Show.

3.1.2 Contractor shall work closely with the Project Manager to coordinate all aspects of the fireworks show, and to ensure maximum public safety.

3.1.4 Contractor shall provide to City at least one week prior to July 3, 2024, the timeline of when the fireworks and staff will arrive, and state any requirements, if any, that it needs from Owner or its staff staff.

3.1.5 Owner or its staff shall at no time take possession of or responsibility for any fireworks or related equipment or supplies provided by Contractor including, but not limited to: shipment, receiving, storing, moving, setup, handling, etc.

3.1.6 Contractor shall ensure that their products, supplies, materials and equipment are secured at all times. Owner shall provide one security guard once fireworks arrive on site, until the time of the show.

3.1.7 Contractor shall provide copies of proper licensing, notices, permits, and any other completed and authorized paperwork required to perform such fireworks shows.

3.1.8 Owner shall provide the logistical type permits for such items as; special event permit, traffic control permit, security permit. The fireworks company shall acquire any and all required permits to operate, provide, and perform the fireworks show itself such as; State of Colorado permits and the City's local fireworks permit (Lower Valley Fire District). **All licensing, permits, notices shall be submitted to the City no later than May 15.**

3.1.9 Owner shall provide Fire Department and EMS crews during the show.

3.1.10 Invoices shall be submitted via email to Marc Mancuso of the City of Fruita, Parks & Recreation Department.

3.2. Special Conditions & Provisions:

3.3.1 Limited Contract Term: The Contract shall be only for the City of Fruita 3rd of July Fireworks Show, including any related setup and cleanup.

Zambelli

FIREWORKS

Product List: City of Fruita Co. July 3, 2024

Opening Finale

10-3" finale salute shells

12-4" color finale shells

Body of Program

144-4" color and pattern shells

90-5" color and pattern shells

90-6" color and pattern shells

Grand Finale

30-3" finale salute shells

180-4" color finale shells

30-5" cor finale shells

Cancellation or postponement fees:

Cancelled or postponed by June 15-No charge fee

Cancelled or postponed between June 15 and July 1, 25% fee

Cancelled or postponed after July 1, 50% 50% fee

Cost Breakdown

<u>Product cost</u>	<u>\$9,000.00</u>
<u>Labor and technician expenses</u>	<u>\$6,000.00</u>
<u>Trucking and freight</u>	<u>\$3,000.00</u>
<u>Insurance</u>	<u>\$3,000.00</u>
<u>Company overhead</u>	<u>\$6,000.00</u>
<u>Net profit</u>	<u>\$3,000.00</u>
<u>Total cost</u>	<u>\$30,000.00</u>





FRUITA
COLORADO

AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: MARGARET SELL, FINANCE DIRECTOR/CITY CLERK

DATE: MARCH 5, 2024

AGENDA TEXT: ORDINANCE 2024-05 – 1st Reading - Amending Section 3.18.240 of the Fruita Municipal Code concerning membership requirements for the Tourism Advisory Council

BACKGROUND

The City Council met with various boards and commissions throughout 2023 to review their purposes, accomplishments, and roles in furthering the city's strategic and master plans. They also evaluated the roles of City Council members serving on these boards and commissions. As part of this review, City Council determined they would take the proper steps to remove the City Council Liaison in each Board and Commission as a voting board member, designate the City Council Liaison as a non-voting Council Liaison to the board, and ensure the Council Liaison does not occupy one of the limited voting member positions on the board. Membership requirements for the Tourism Advisory Council (TAC), established by ordinance, currently require a representative of the City Council to serve on the TAC, and therefore needs to be amended to reflect City Council's direction.

The City Council aims to enhance the separation of roles between itself and the TAC, promoting the latter's independence by removing the requirement that a City Council member be appointed to the TAC. Instead, a City Council member or the Mayor will be appointed to serve as a liaison between the City Council and the Tourism Advisory Council.

A liaison serves as a bridge or intermediary between two entities or groups. In this context, the City Council liaison to the Tourism Advisory Council would facilitate communication, collaboration, and understanding between the City Council and the Tourism Advisory Council. They would convey relevant information, concerns, and decisions between the two bodies, ensuring alignment of efforts and effective utilization of resources towards promoting tourism and achieving shared objectives within the community.

Attached is a copy of the City's Boards and Commission policy adopted by Resolution 2020-32. Revisions will be drafted in the near future for City Council review to reflect recent changes in Board and Commissions.

FISCAL IMPACT

This Ordinance does not have any fiscal impact.

APPLICABILITY TO CITY GOALS AND OBJECTIVES

The removal of a representative from the City Council as a voting member from the Tourism Advisory Council provides a degree of separation of roles and responsibilities between the City Council and the Advisory Council and promotes independence of the Advisory Council. The appointment of a City Council member as a liaison to the Advisory Council fosters communication between the two boards.

OPTIONS TO THE COUNCIL:

- Approve the ordinance as presented, or with amendments, or
- Opt for no action, retaining the current membership structure of the Tourism Advisory Council.

RECOMMENDATION:

MOVE TO PUBLISH A SYNOPSIS OF ORDINANCE 2024-11, AMENDING SECTION 3.18.240 OF THE FRUITA MUNICIPAL CODE BY THE REMOVAL OF THE CITY COUNCIL REPRESENTATIVE FROM THE MEMBERSHIP OF THE ADVISORY COUNCIL AND ADDING A CITY COUNCIL REPRESENTATIVE TO SERVE AS LIAISON TO THE ADVISORY COUNCIL FOR PUBLIC HEARING ON APRIL 2, 2024.

The difference between a liaison and a member of a board lies primarily in their roles and responsibilities within the organization or group they serve.

Member of a Board:

A member of a board typically holds voting rights and is actively involved in the decision-making processes of the board. Board members have a direct stake in the board’s affairs and are responsible for setting policies, overseeing operations, and ensuring the organization's objectives are met.

They may have specific duties, such as attending meetings regularly, participating in discussions, contributing expertise, and possibly serving on committees or task forces. Board members are appointed based on their qualifications, experience, and commitment to the board’s mission and goals.

Liaison:

A liaison acts as a link or intermediary between two groups or entities. They facilitate communication, collaboration, and coordination between the groups they represent. Unlike board members, liaisons typically do not have voting rights within the group to which they are connected.

Liaisons serve to relay information, concerns, and decisions between the two entities they connect. They may attend meetings of both groups, share updates, gather feedback, and ensure alignment of efforts and objectives. Liaisons often play a crucial role in promoting understanding, resolving conflicts, and fostering productive relationships between the groups they represent.

In summary, while both liaisons and members of a board serve important roles within an organization or group, board members make recommendations to the City Council on areas within their scope of responsibility, whereas liaisons focus on facilitating communication and collaboration between different entities.

ORDINANCE NO. 2024-11

AN ORDINANCE AMENDING SECTION 3.18.240 OF THE FRUITA MUNICIPAL CODE CONCERNING MEMBERSHIP FOR THE TOURISM ADVISORY COUNCIL

WHEREAS, the City Council met with the various boards and commissions of the City throughout 2023 to 1) review the purpose and accomplishments of the boards, 2) provide direction to them on how they can advise the Council to further priorities in Fruita’s strategic and master plans, and 3) evaluate the roles of City Council members serving on various boards and commissions, and

WHEREAS, membership requirements of the Tourism Advisory Council are established by Ordinance and state that composition of the committee will include representatives of the City Council, and

WHEREAS, the City Council desires to remove the City Council member(s) appointed to the Tourism Advisory Council in order to provide better separation of roles and responsibilities between the City Council and the Tourism Advisory Council and to promote independence of the Tourism Advisory Council, and

WHEREAS, the City Council also desires to appoint a member of the governing body to the Tourism Advisory Council to serve as a liaison between the City Council and the Tourism Advisory Council.

NOW, THEREFORE, IT IS ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO, THAT:

Section 1: Section 3.18.240 of the Fruita Municipal Code and Ordinances 1996-12 and 2005-17 concerning the Tourism Advisory Council are hereby amended to read as follows: (~~redline indicates deletion~~, **BOLD AND CAPS** indicates addition)

3.18.240 TOURISM ADVISORY COUNCIL. There is hereby created a Tourism Advisory Council which will consist of seven (7) members appointed by the City Council. Composition of the committee will include representatives of the lodging industry, area attractions, retail businesses, ~~the City Council~~, and other interested parties. **AFTER EACH ELECTION, THE CITY COUNCIL SHALL APPOINT A NON-VOTING CITY COUNCIL LIAISON TO THE TOURISM ADVISORY COUNCIL.** Members of the Commission may reside inside or outside the City limits of Fruita and shall have an interest in marketing and promoting the City of Fruita. The Tourism Advisory Council shall advise the City Manager and City Council concerning the preparation of a budget for the expenditures of funds in the Tourism Promotional Fund. Members appointed to the Advisory Council shall serve terms as outlined in the Fruita City Charter. All members shall serve without compensation.

AFTER EACH REGULAR MUNICIPAL ELECTION, HELD BIENNIALY, A MEMBER OF THE FRUITA CITY COUNCIL OR THE MAYOR WILL BE APPOINTED BY THE MAYOR TO SERVE A TWO-YEAR TERM AS THE CITY COUNCIL LIAISON TO THE TOURISM ADVISORY COUNCIL.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL ON THIS
____ DAY OF APRIL, 2024**

ATTEST:

CITY OF FRUITA

Margaret Sell, City Clerk

Joel Kincaid, Mayor

EXHIBIT A



BOARDS & COMMISSIONS POLICY

August 4, 2020

PURPOSE

Details about boards and commissions may be found in various documents including the Fruita City Charter, the Fruita Municipal Code and Resolutions adopted by the City Council. These documents prescribe the power, duties, and operating procedures of the board or commission, and establishes the terms of office. The purpose of this policy is to provide general guidance and some uniformity for the various boards and commissions of the City.

POLICY

These general guidelines have been established for uniformity of various procedures associated with boards and commissions, including appointment of board members, city staff responsibilities, and council liaison roles.

- A. GENERAL PROVISIONS.** The City Council may, by ordinance or resolution, establish additional boards to advise them on various issues and perform functions as the Council may designate. The City Council may also abolish boards established by ordinance or resolution. Boards established by the City Charter require approval of the voters to abolish. Boards established by the City Charter include the Board of Adjustments, the Election Commission, Planning and Zoning Commission, Police Commission, and the Parks and Recreation Commission.

The Charter, Ordinance or Resolution establishing each board include the membership requirements including number of members, qualifications of members, residency requirements, whether or not applicant interviews are required, duties and responsibilities of the board, and the operating procedures or bylaws of the board.

With the exception of the Board of Adjustments and Election Commission, all Boards serve in an advisory capacity. Boards, by motion, may make formal recommendations to the City Council in accordance with the purpose of the board including the expenditure or receipt of funds, including donation solicitations.

Applicants for Boards are encouraged to attend a meeting of the Board they are interested in serving on prior to submitting an application for consideration.

B. APPOINTMENT AND REMOVAL OF BOARD AND COMMISSION MEMBERS.

1. Appointment. Board members are appointed by the Mayor with approval of the Council and subject to membership requirements of the establishing ordinance, resolution or Charter and the membership limitations set forth below.
2. Removal. Pursuant to the Fruita City Charter, Board members may be removed from office for:

EXHIBIT A

- a. being found guilty of committing a felony,
- b. having failed to attend 2 consecutive regular meetings, unless excused, or
- c. found to have willfully engaged in unethical conduct as defined in Chapter 2.70 of the Fruita Municipal Code concerning the Code of Ethics for City Officials.

Board members may also be removed if they no longer meet the requirements for membership established by the ordinance or resolution.

C. MEMBERSHIP.**1. Nepotism.**

- a. Relatives of City Council cannot serve on boards and commissions.
- b. City Employees and their Relatives cannot serve on boards and commissions of the City.
- c. Relatives of Board and Commission members cannot serve on the same board or commission.
- d. Relatives are defined as:
 - i) any person related by blood or marriage who is a member of the official's household, under the same roof, or
 - ii) any parent, stepparent, grandparent, spouse, child, grandchild, brother, sister, or
 - iii) any child, parent stepparent, or grandparent of the official's spouse.

This provision shall apply to all appointments made after August 1, 2020.

- 2. **Terms.** The Fruita City Charter (Article VI) states that members of Boards and Commissions shall be appointed to 3-year terms and initial appointments shall be staggered terms of 1, 2 and 3 years.
- 3. **Term limits.** Term limits shall be two consecutive terms for all boards with the exception of the Board of Adjustments. The balance of an unexpired term served by a person appointed to fill a vacancy shall not be counted as a term for the purpose of term limits. This provision shall apply to all appointments made after August 1, 2020. Appointments made prior to this date shall not be included in the two consecutive terms.
- 4. **Council Members.** Where appointment of a council member to a board is required by the authorizing document, the appointment shall be for the term specified. A council member is a required member of the following boards.
 - a. Planning Commission (2-year term)
 - b. Parks and Recreation Commission (2-year term)
 - c. Tourism Advisory Council (3-year term)
 - d. Police Commission (2-year term)

A council member is appointed as an ex-officio, non-voting member, of the Livability Commission.

If a Council member is appointed to another board, appointments will be made after the regular municipal election, and be for a 2-year term. Council members shall have the same duties, responsibilities and voting rights of all other board members.

- 5. **Membership on multiple Boards and Commission.** Appointment of an individual to serve concurrently on more than one board is discouraged. This limitation does not apply to committees deemed to be temporary in nature or that have a general purpose which

EXHIBIT A

encourages input from representatives of various boards. This provision shall apply to all appointments made after August 1, 2020.

6. Residency. Residency requirements for boards are established at the time the board is created.

D. MEETING PROCEDURES.

1. Meetings of all boards will be posted on the monthly meeting calendar and the City's official website.
2. Agendas and backup documentation (packets) will be posted to the City's website and where possible, sent to members prior to the meeting.
3. Minutes will be in written form and posted to the City's website following approval of the board. Minutes should include the date and time and location of the meeting, members present, general outline of each major topic discussed and the outcome, comments which illustrate individual viewpoints and opinions, verbatim of motions and how each member voted, statements made by members in explanation of their vote, time of adjournment.
4. All meetings are open to the public.
5. Bylaws or amendments thereto must be approved by the City Council and must be in conformance with the Charter, Ordinance or Resolution establishing the Commission.
6. Boards serve in an advisory capacity to the City Council. All recommendations by the board to the City Council shall be made by motion of the board and forwarded to the City Council for action.
7. A quorum must be present at the meeting.
8. Executive sessions may be held in accordance with legal requirements.

- E. CODE OF ETHICS.** Public confidence and respect can best be promoted if every public official, whether elected or appointed, uniformly treats all citizens with courtesy, impartiality, fairness and equality and avoids both actual and potential conflicts between their private self-interest and the public interest. The Fruita Municipal Code (Chapter 2.70) has a Code of Ethics which applies to all elected and appointed officials. The Code of Ethics includes provisions for Fair and Equal Treatment and Conflicts of Interest and provides for a Board of Ethics to hold hearings on alleged violations of the Code of Ethics. Board members who think they may have a potential conflict of interest should contact the Mayor, City Attorney or staff liaison to discuss any conflicts or potential conflicts.

F. CITY CLERK'S OFFICE – DUTIES AND RESPONSIBILITIES

1. **Terms Expiring/Expired.** The City Clerk's office will email notices every quarter to the Mayor and staff liaisons notifying them of members whose terms are expiring and how many terms have been served by each member. Letters will be sent to the member notifying them that their term will be expiring and how many terms they have served, and indicating the City

EXHIBIT A

council's policy on term limits, and notifying them that they must submit an application if they wish to be considered for reappointment.

2. Incumbent Must Reapply. Members desiring to serve another term must submit an application for reappointment.
3. Advertising Vacancies. Vacant and expiring positions will be advertised for a minimum of 30 days as follows:
 - a. on the City website Boards and Commissions page and "In the Spotlight" section
 - b. on the bulletin board outside Civic Center on the east side;
 - c. in the Weekly Information Update;
 - d. on social media applications;
 - e. in the City Link;
 - f. through council & staff recruitment.
4. Historical records of meetings. The City Clerk's office will print copies of minutes posted on the City's website for archival purposes.

G. CITY COUNCIL LIAISON. In addition to serving as a member of the board, the Council liaison's role is to:

1. serve as a communications link between the City Council and board members
2. work with the Mayor to fill vacancies, review applications, and interview candidates if required,
3. resolve questions the board may have about the role of Council, city government and the board or commission

H. CITY STAFF. A member of city staff is appointed to each board to assist the board in their duties and responsibilities. The staff's role is to:

1. schedule meetings based on input from the board and publish on the monthly meeting calendar
2. prepare and post agendas and packets for the board based on input from the board or City Council,
3. post minutes of meetings on the City's website
4. ensure that recommendations of the board get forwarded to the City Council for action
5. provide guidance and information to the board
6. communicate vacancies and resignations to the City Clerk's office
7. communicate with the Mayor and Council liaison regarding excessive absences of members

EXHIBIT A

8. schedule annual appointments of officers of the board on the agenda as required by bylaws or other documents.
9. provide orientation and training as needed to board members



FRUITA
COLORADO

AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: SHANNON VASSEN, ASSISTANT CITY MANAGER

DATE: MARCH 5, 2024

AGENDA TEXT: RESOLUTION 2024-06 - Public Hearing – Amending the 2024 Budget with Supplemental Appropriations of Funds for Capital Projects and Capital Equipment initially included in the 2023 Annual Budget.

BACKGROUND

This is a request to amend the 2024 Annual Budget and to provide appropriations (rollover from the prior year) in the General Fund, Conservation Trust Fund, Capital Projects Fund, and Sewer Fund to complete projects initially included in 2023 Budget but not completed. Additionally, this budget amendment appropriates funds in the General Fund for the purchase of capital equipment also included in the 2023 Budget but not purchased for various reasons.

The table below provides an overview of all appropriations, and additional detail can be found in the resolution.

FISCAL IMPACT

This budget amendment will not have a net fiscal impact as revenues are available to offset the additional appropriations, as they were already budgeted for use in the prior year.

APPLICABILITY TO CITY GOALS AND OBJECTIVES

The Budget is a financial plan developed for the purpose of allocating resources necessary to implement specific policies and strategies to achieve short and long-term goals established by the City throughout the year. This budget amendment provides for completion of capital projects already identified for construction.

OPTIONS AVAILABLE TO THE COUNCIL

- Approve the budget amendment as presented or with amendments
- Advise staff to revise the budget amendment

RECOMMENDATION

It is the recommendation of staff that the Council by motion:

ADOPT RESOLUTION 2024-06 AMENDING THE 2024 BUDGET TO REAPPROPRIATE FUNDS IN THE GENERAL FUND, CONSERVATION TRUST FUND, CAPITAL PROJECTS FUND, AND SEWER FUND TO COMPLETE CAPITAL PROJECTS AND CAPITAL EQUIPMENT INITIALLY INCLUDED IN THE 2023 ANNUAL BUDGET.

Description	Summary	2024 Re-Appropriations
Public Safety – Mobile Equipment	There are two Police Interceptors that are due for replacement in 2024. Unfortunately, replacing these vehicles has been difficult due to the current conditions of the new/governmental vehicle market. Staff has been informed that they will be able to place an order for two Police Interceptors in February of 2024, and these vehicles will be built and delivered by the end of 2025. In order to place the order, funds have to be appropriated, even though the expenses will not occur until the vehicles are delivered. This budget amendment reappropriates \$135,500 for the two vehicles that were included in the 2023 Budget. This is funded through reserves specifically designated for the replacement of capital equipment (CERF reserves).	\$135,500
Public Works Mobile Equipment – General Fund	This is a request to reappropriate unspent funds for the purchase of a dump truck Chevy 3500. Last year, Public Works received the chassis, and now the bed needs to be installed. This is a rollover from 2023 and was ordered in 2022.	\$26,710
16 Road Rail Crossing – Capital Projects Fund	This is a request to reappropriate unspent funds for the Engineering and Design and Construction of the 16 Road Rail crossing, off Highway 6&50.	\$20,055
S. Mesa Street Engineering – Capital Projects Fund	This is a request to reappropriate unspent funds for the completion of the S. Mesa Street Design. Assigned General Fund – Fund Balance is available for revenues of this amendment.	\$75,750
Maple Street Bridge ROW Acquisition – Capital Projects Fund	This budget amendment reappropriates \$81,400 for ROW acquisition for the Maple Street Bridge Replacement.	\$81,400
Fremont Street Intersection – Capital Projects Fund	This is a request to reappropriate funds for ROW acquisition for the Fremont Intersection project. Funds are available from the General Fund – Fund Balance.	\$384,875
19 Road – Capital Projects Fund	This is a request to reappropriate funds for ROW acquisition for the 19 Road Construction Projects. Funds are available from General Fund – Fund Balance.	\$304,225

Reed Park	This budget amendment reappropriates funding for the Reed Park Renovation from the General Fund, Conservation Trust Fund, and Grant Funds for construction, design, equipment, and sculptures.	\$2,455,875
Wastewater Reclamation Facility Treatment Repair and Maintenance	This budget amendment reappropriates \$191,625 for the replacement of a failed bearing assembly unit for one of the vertical drum mixers at the Wastewater Reclamation Facility. Funding for this replacement comes from funds specially designated for equipment repair at the facility and is carried over from 2023.	\$191,625
Sewer Capital Projects – H2S Sewer Line and Manhole Replacements	This amendment appropriates \$400,000 in funds for the completion of the H2S projects in the Sewer Fund. Funds are available for this from American Rescue Plan Funds and DOLA Grants received for the project.	\$400,000
Sewer Capital Projects – Aeration Project	This resolution reappropriates \$16,000 for the close out of the Aeration project. Funds are available through grant revenues. There is only a minimal amount of work remaining on this project that includes landscaping and release retainage.	\$16,000

RESOLUTION 2024-06

A RESOLUTION AMENDING THE 2024 BUDGET WITH
SUPPLEMENTAL APPROPRIATIONS OF FUNDS FOR
CAPITAL PROJECTS AND CAPITAL EQUIPMENT
INITIALLY INCLUDED IN THE 2023 ANNUAL BUDGET.

WHEREAS, certain capital projects and capital equipment initially budgeted for in the 2023 fiscal year were not completed or purchased as anticipated due to various reasons, and funds need to be re-appropriated in 2024 for completion of these projects or purchase of this equipment, and

WHEREAS, pursuant to Article 8.10 of the Fruita City Charter, the City Manager certifies there are sufficient funds available for the supplemental appropriations as noted below.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO AS FOLLOWS:

Section 1: That the 2024 appropriation for the General Fund is hereby increased by \$2,028,515 from \$19,536,555 to \$21,565,070 from the following sources for the following uses:

<u>Source of Funds</u>	
General Fund – Capital Equipment Replacement Fund	\$135,500
General Fund - Fund Balance	\$1,893,015
• Dump Bed – Chevy 3500.....	\$26,710
• S. Mesa Street Engineering and Design.....	\$75,750
• 16 Road Crossing	\$20,055
• Maple Street Bridge ROW Acquisition	\$81,400
• Fremont Street Intersection ROW Acquisition	384,875
• 19 Road ROW Acquisition	\$304,225
• Reed Park	<u>\$1,000,000</u>
	\$2,028,515

<u>Use of Funds</u>	
Public Safety – Mobile Equipment	\$135,500
Public Works – Mobile Equipment.....	\$26,710
Transfer to Capital Projects	<u>\$1,866,305</u>
	\$2,028,515

Section 2: That the 2024 appropriation for the Conservation Trust Fund is hereby increased by \$408,675 from \$100,000 to \$508,675 from the following sources for the following uses:

<u>Source of Funds</u>	
Conservation Trust Fund – Fund Balance	<u>\$408,675</u>
	\$408,675

<u>Use of Funds</u>	
Transfer to Capital Projects	<u>\$408,675</u>
	\$408,675

Section 3: That the 2024 appropriation for the Capital Projects Fund is hereby increased by \$3,607,880 from \$10,281,370 to \$13,889,250 from the following sources for the following uses:

<u>Source of Funds</u>	
Transfer from General Fund	\$1,866,305
Transfer from Conservation Trust Fund	\$408,675
Development Impact Fees	\$37,200
GOCO Grant	\$600,000
American Rescue Plan Funds	\$552,950
DOLA Broadband Energy Impact Grant	<u>\$142,750</u>
	\$3,607,880
<u>Use of Funds</u>	
S. Mesa Street Engineering.....	\$75,750
Broadband Middle-Mile Construction.....	\$285,700
16 Road Crossing Engineering	\$18,925
16 Road Crossing Construction	\$1,130
Maple Street Bridge ROW Acquisition	\$81,400
Fremont Street Intersection ROW Acquisition.....	\$384,875
19 Road Improvements ROW Acquisition.....	\$304,225
Reed Park Design/Engineering	\$4,200
Reed Park Construction	\$2,173,675
Reed Park Equipment	\$263,000
Reed Park Sculptures	<u>\$15,000</u>
	\$3,607,880

Section 4: That the 2024 appropriation for the Sewer Fund is hereby increased by \$607,625 from \$5,685,280 to \$6,292,905 from the following sources for the following uses:

<u>Source of Funds</u>	
Sewer Fund Assigned Fund Balance	\$191,625
DOLA Energy Impact Grant	\$62,750
ARPA Grant.....	<u>\$353,250</u>
	\$607,625
<u>Use of Funds</u>	
Capital Equipment – Mixer Bearing Assembly Replacements.....	\$191,625
H2S Mitigation Sewer Lines Replacements	\$300,000
H2S Mitigation Manhole Replacements	\$100,000
WWRF Aeration Project.....	<u>\$16,000</u>
	\$607,625

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL
THIS 5th DAY OF MARCH 2024**

ATTEST:

City of Fruita

City Clerk

Joel Kincaid, Mayor



FRUITA
COLORADO

AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: SHANNON VASSEN, ASSISTANT CITY MANAGER

DATE: MARCH 5, 2024

AGENDA TEXT: Ordinance 2024-09 – Second Reading – An Ordinance approving a Lease Agreement between City of Fruita and Region 10 for the Use and Management of the Fruita Carrier Neutral Location and authorizing the City Manager to execute the agreement

BACKGROUND

The purpose of this Ordinance is for the City Council to consider approving a lease agreement between the City of Fruita and Region 10 (a Council of Governments for Southwest Colorado) for the management of the Fruita Carrier Neutral Location. For the past two years, the City of Fruita has been working on a “Middle-Mile” Broadband project to encourage private development and investment in internet infrastructure throughout Fruita. This is one of many broadband projects throughout Mesa County and Garfield County aimed at creating a regional and multi-state fiber internet loop that will connect most of the communities along I-70 with redundant, high-speed internet. This project is almost complete and involves building a lateral connection from the Fruita City Shops Facility to a fiber vault along I-70, and then constructing a Carrier Neutral Location (hereinafter “CNL”) to house the connection. The CNL has been constructed, and the agreement before the City Council is to allow Region 10 to access the facility but also manage it with internet service providers. The CNL allows any private company an access point to fiber internet in Fruita and is open access.

This project has been funded through grant funds from the Colorado Department of Local Affairs Broadband program and American Rescue Plan Funds. The State of Colorado has funded staff from Region 10 (for Western Colorado) and the Northwest Council of Governments (for northern Colorado) to specifically help communities with these broadband projects. If this agreement is approved, staff from Region 10 will manage Fruita’s CNL, and will manage the connection, and all subleases with interested providers.

A copy of the proposed lease agreement is included with this cover sheet as attachment, but included here are the notable terms of the agreement:

- The initial term is for a period of twenty years, unless terminated prior to.
- Rent is \$1 per year throughout the term of the agreement.
- Region 10 has the ability to sublease space to Internet Service providers and will manage all subleases.
- City of Fruita is responsible for major maintenance and improvement to the facility, Region 10 will handle minor maintenance for the facility.
- Region 10 will purchase and hold renters insurance for their equipment in the facility.

- City of Fruita will pay utilities for the facility.

There has been only one change to the agreement since the first reading, and that has been redlined in the attached agreement.

FISCAL IMPACT

Although the City of Fruita will only receive a minimal amount in rent each year, there is significant savings in personnel time from having Region 10 manage the CNL and subleases with providers. Further, Region 10 has the expertise and experience with managing these spaces and leases, and this will benefit the City and the internet service providers using the CNL. Other expenses like utilities, maintenance and repair, will be covered by the City of Fruita (whether this lease is executed or not) and will be subject to annual appropriation from the City Council.

APPLICABILITY TO CITY GOALS AND OBJECTIVES

The City of Fruita is dedicated to providing core services that help improve the Quality of Place and Economic Health. Provision of high-speed broadband services can play a critical role in enhancing local government operations and community/economic development uses, and this agreement supports these efforts.

OPTIONS AVAILABLE TO THE CITY COUNCIL

- Approve the Lease Agreement between the City of Fruita and Region 10 for the Use and Management of the Fruita Carrier Neutral Location.
- Advise staff to make amendments to the agreement and bring back updated agreement at future date.

RECOMMENDATION

It is the recommendation of staff that the City Council by motion:

APPROVE ORDINANCE 2024-09 – APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF FRUITA AND REGION 10 FOR THE USE AND MANAGEMENT OF THE FRUITA CARRIER NEUTRAL LOCATION AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

ORDINANCE 2024-09**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO
APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF FRUITA AND
REGION 10 FOR THE USE AND MANAGEMENT OF THE FRUITA CARRIER
NEUTRAL LOCATION AND AUTHORIZING THE CITY MANAGER TO EXECUTE
THE AGREEMENT**

WHEREAS, the City of Fruita, along with many local and regional partners, has been working on a middle-mile broadband project to encourage private development and investment in internet infrastructure in Fruita, and

WHEREAS, this project has involved constructing a lateral connection to fiber internet and building a Carrier Neutral Location to host the connection in Fruita, and

WHEREAS, the construction of the Carrier Neutral Location has been complete, and in order for private businesses to use the space and connection, it is necessary to enter into an agreement for use and management of the space, and

WHEREAS, the City of Fruita has been working with Region 10, the Council of Governments for Southwest Colorado, on this project, and

WHEREAS, staff members from Region 10 are funded through the State of Colorado to specifically aid local communities in broadband projects due to their expertise, and

WHEREAS, Region 10 has the expertise and experience to manage the Carrier Neutral Location, and has the ability to sublease with internet service providers who want to use the space, and

WHEREAS, staff from the City of Fruita and Region 10 have created an agreement (hereinafter “the agreement”) for the Carrier Neutral Location, and

WHEREAS, the City Council finds it necessary to enter into an agreement with Region 10 for the use and management of the Carrier Neutral Location,

WHEREAS, the City Council has determined that entering into the Agreement is in the best interest of the City and desires to enter into said agreement.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO:

Section 1: Approval of Agreement. The City Council hereby approves of the Agreement and, subject to annual appropriation, payment required thereunder, and hereby authorizes the City Manager execute the Agreement and take all other steps necessary to effectuate its implementation.

Section 2. Severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect

other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The City Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the City

Section 3. Effective Date. This Ordinance shall take effect thirty days after the date of final passage in accordance with Section 6.4 of the Fruita Home Rule Charter.

Section 4. Safety Clause. The City Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the City of Fruita, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 5. No Existing Violation Affected. Nothing in this Ordinance shall be construed to release, extinguish, alter, modify, or change in whole or in part any penalty, liability or right or affect any audit, suit, or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing which may have been incurred or obtained under any ordinance or provision hereby repealed or amended by this Ordinance. Any such ordinance or provision thereof so amended, repealed, or superseded by this Ordinance shall be treated and held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions, for the enforcement of such penalty, liability, or right, and for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered, or made in such actions, suits or proceedings, or prosecutions imposing, inflicting, or declaring such penalty or liability or enforcing such right, and shall be treated and held as remaining in force for the purpose of sustaining any and all proceedings, actions, hearings, and appeals pending before any court or administrative tribunal.

Section 6. Publication. The City Clerk is ordered to publish this Ordinance in accordance with Article 2.13 of the Fruita City Charter.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL
THIS 5th DAY OF MARCH, 2024.**

ATTEST:

CITY OF FRUITA

City Clerk

Mayor Joel Kincaid

COMMERCIAL LEASE AGREEMENT FOR CARRIER NEUTRAL LOCATION

THIS COMMERCIAL LEASE AGREEMENT ("Lease" or "Agreement") is made and effective this day of March 5, 2024, by and between THE CITY OF FRUITA ("COMMUNITY/Landlord") and REGION 10 LEAP, INC., a 501(c)(3) Colorado nonprofit corporation ("Tenant" or "Lessee").

Landlord is the owner of land and improvements described as follows (the "Premises"): A site measuring 13x19x9 feet located the at 900 Kiefer Avenue, Fruita, Co 81521, and further described on Exhibit A incorporated herein.

Landlord hereby makes available for lease the room or space in the building described above (the "Leased Premises").

Landlord desires to lease the Leased Premises to Tenant, and Tenant desires to lease the Leased Premises from Landlord for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

THEREFORE, in consideration of the mutual promises herein contained, and other good and valuable consideration, it is agreed:

1. TERM

Landlord hereby leases the Leased Premises to Tenant, and Tenant hereby leases the same from Landlord, for an "Initial Term" beginning on the date set forth above, and ending on the same month and day, in the year 2024 (which period amounts to an Initial Term of twenty (20) years). Thereafter, this Lease shall renew on a year-to-year basis, under the same conditions set forth herein, unless and until terminated as set forth herein. Either party shall provide the other sixty (60) days written notice of its intent not to renew.

2. RENTAL

- A. Tenant shall pay to Landlord during the Term of this Lease rental payable in installments of \$1.00 per year. Each installment payment shall be due in advance on the 15th day of January of each calendar year during the lease term to Landlord at Fruita City Center, 325 E. Aspen Avenue, Fruita Co 81521 or at such other place designated by written notice from Landlord to Tenant. The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis. Tenant shall also pay to Landlord a "Security Deposit" in the amount of \$0.00.
- B. The rental for any renewal lease term, if created as permitted under this Lease, shall be as set forth above.

3. USE

Notwithstanding the forgoing, Tenant shall not use the Leased Premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, thing or device. Tenant shall restrict its use to those reasonably related to computer servers and related appurtenances, and shall not use or permit the use of the Leased Premises for any other purpose, except as set forth herein, without the written consent of Landlord. The Tenant shall carry on and conduct its business from time to time carried on upon the Leased Premises in such manner as to comply with all statutes, bylaws, rules and regulations of any federal, state, municipal or other competent authority and will not do anything on or in the Leased Premises in contravention of any of them. It is Tenant's obligation to determine whether its business is properly operating in the Leased Premises under zoning and other applicable state, federal, county, and city laws.

4. SUBLEASE AND ASSIGNMENT

Region 10 shall have the right to sublease part of the Leased Premises for Internet Service Providers (ISP) or similar service providers' use. Subleases shall be for the purposes of Region 10 providing a subscription service to ISPs for colocation services of equipment at the CNL. The COMMUNITY will at all times maintain its rights of access to the Leased Premises and to any COMMUNITY Equipment within the Leased Premises. Region 10 shall at all times provide the COMMUNITY with access and space for COMMUNITY Equipment within the Leased Premises.

5. REPAIRS

During the Lease term, major repairs, such as those made to the emergency/backup generator, furnace or HVAC repairs, and repair of structural failures not caused by Tenant, shall be borne by Landlord, if Landlord in its sole discretion is able to allocate funding to make said repairs; otherwise, in the event Landlord elects not to make said repairs, Tenant may terminate this Lease, and Tenant shall receive a refund of any rental payment, prorated for the remainder of the month in which the damage or failure occurred. Tenant shall make, at Tenant's expense, all necessary minor repairs to the Leased Premises. Minor repairs shall include such items as routine repairs of floors, walls, ceilings, and other parts of the Leased Premises damaged or worn through normal occupancy, minor electrical repairs, replacement of cracked or broken windows, etc. Landlord does not intend to provide any minor maintenance to the Leased Premises. Under no circumstances shall Landlord be responsible for reimbursement of costs of any repairs made by Tenant.

6. ALTERATIONS AND IMPROVEMENTS

Tenant, at Tenant's expense, shall have the right following Landlord's prior written consent to make such improvements and replacements of and to all or any part of the Leased Premises from time to time as Tenant may deem desirable. Tenant shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Leased Premises, and fasten the same to the premises. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease term or placed or installed on the Leased Premises by Tenant thereafter, shall remain Tenant's property free and clear of any claim by Landlord. Tenant shall have the right to remove the same at any time during the term of this Lease

provided that all damage to the Leased Premises caused by such removal shall be repaired by Tenant at Tenant's expense. The value of any permanent improvements made to the premises shall inure to Landlord. This Lease shall constitute a bill of sale for any and all said improvements.

7. PROPERTY TAXES

Landlord is a tax-exempt entity. Tenant shall be responsible for paying all personal property taxes with respect to Tenant's personal property at the Leased Premises.

8. INSURANCE

- A.** The Tenant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Tenant pursuant to Paragraph 9 hereof. Such insurance shall be in addition to any other insurance requirements imposed by this Lease or by law. The Tenant shall not be relieved of any liability, claims, demands, or other obligations pursuant to Paragraph 9, by reason of its failure to procure or maintain insurance.
- B.** Tenant shall procure and maintain the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to COMMUNITY. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain continuous coverage.
 - (1)** Workers' Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Lease.
 - (2)** Commercial General Liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence and one million dollars (\$1,000,000.00) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), and blanket contractual.
- C.** The policy coverage as required above shall be endorsed to include the COMMUNITY, its officers, agents and employees as additional insured.
- D.** The certificate of insurance shall be completed by the Tenant's insurance agent as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the COMMUNITY prior to execution hereof. Failure on the part of the Tenant to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which COMMUNITY may immediately terminate this Lease. COMMUNITY reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- E.** Tenant shall provide renter's insurance at Tenant's expense on the Premises, adequate to cover any damage to the Leased Premises in connection with Tenant's use thereof under the terms of this Lease.

- F. Nothing herein shall constitute a waiver by COMMUNITY of any provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.* (“CGIA”) as now in effect or may be amended.

9. INDEMNIFICATION

The Tenant agrees to indemnify and hold harmless the COMMUNITY, its officers, employees, insurers, and self insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other losses of any kind whatsoever, which arise out of or are in any manner connected with this Lease, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Tenant, or any officer, employee, representative, or agent of the Tenant, or which arise out of any workers’ compensation claim of any employee of the Tenant. The Tenant shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims and demands, and bear all other costs and expenses related thereto, including court costs and attorney fees. The obligation of this Paragraph shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the COMMUNITY, its officers, or its employees.

10. UTILITIES

Landlord shall pay all charges for water, sewer, gas, and electricity. Tenant shall pay all charges for telephone communication utilities used by Tenant on the Leased Premises during the term of this Lease unless otherwise expressly agreed in writing by Landlord. Tenant shall pay such amounts within fifteen (15) days of invoice. Tenant acknowledges that the Leased Premises are designed to provide standard sixty (60) ampere electrical facilities and standard office lighting. Tenant may install, at Tenant’s expense, additional outlets as needed. Landlord shall provide air conditioning unit capable of maintaining a temperature of no more than 72 degrees Fahrenheit, and in coordination with the Tenant provide electronic access control on the exterior door closest to the leased premises, allowing Tenant to permit authorized access on a full-time basis.

11. ACCESS TO ROOF

If the facility allows, following Landlord’s consent, Tenant shall have the right to place on the roof of the Premises, certain radio antenna equipment to be approved by the building official for its safe installation. Tenant shall notify and coordinate with the Landlord when access to the roof is required. Prior to installation Tenant shall ensure that antenna equipment can be installed safely and in compliance with any applicable building codes or permits.

12. ENTRY

Landlord reserves the right to enter on the Leased Premises at reasonable times and during regular business hours to inspect them, to make additions, alterations, or modifications to any part of the building in which the Premises are located, and Tenant shall permit Landlord to do so. Landlord may erect scaffolding, fences, and similar structures, post relevant notices, and place moveable equipment in connection with the Leased Premises.

13. DAMAGE AND DESTRUCTION

Subject to other applicable provisions herein, if the Leased Premises or any part thereof or any appurtenance thereto is so damaged by fire, casualty or structural defects that the same cannot be used for Tenant's purposes, then either party shall have the right to terminate this Lease in writing, in conformance with the Notice section of this Lease, and Landlord shall return a pro-rated amount of rental money for the period of the month during which the damage occurred when the Leased Premises was unusable for Tenant's purposes. In the event of minor damage to any part of the Leased Premises, and if such damage does not render the Leased Premises unusable for Tenant's purposes, Tenant shall have the option to either terminate this Lease as set forth in this Paragraph, or repair the minor damage at Tenant's expense; under no circumstances shall Landlord be obligated to pay for or reimburse Tenant for any repairs made. Tenant shall be relieved from paying rent and other charges during any portion of the Lease term that the Leased Premises are inoperable or unfit for occupancy, or use, in whole or in part, for Tenant's purposes. The provisions of this paragraph extend not only to the matters aforesaid, but also to any occurrence which is beyond Tenant's reasonable control and which renders the Leased Premises, or any appurtenance thereto, inoperable or unfit for occupancy or use, in whole or in part, for Tenant's purposes.

14. DEFAULT, TERMINATION, AND ABANDONMENT

- A.** If default shall at any time be made by Tenant in the payment of rent when due to Landlord as herein provided, and if said default shall continue for fifteen (15) days after written notice thereof shall have been given to Tenant by Landlord, or if default shall be made in any of the other covenants or conditions to be kept, observed and performed by Tenant, without correction thereof for fifteen (15) days after written notice, Landlord may declare the term of this Lease ended and terminated by giving Tenant written notice of such intention, and if possession of the Leased Premises is not surrendered, Landlord may reenter said premises. Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity. Landlord shall use reasonable efforts to mitigate its damages.
- B.** Notwithstanding the term as listed in Paragraph 1 above, either party may rightfully terminate this Lease at will upon sixty (60) days written notice. Notice by the terminating party shall be provided in accordance with the Notice provisions below.
- C.** If Tenant abandons said Premises prior to the noticed termination of this Lease, the COMMUNITY may, at its option, terminate this Lease and take immediate possession of the Premises without need of further written notice. The COMMUNITY's possession of the Premises does not constitute any waiver of any right it may have for the enforcement of the terms herein.

15. QUIET POSSESSION

Landlord covenants and warrants that upon performance by Tenant of its obligations hereunder, Landlord will keep and maintain Tenant in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Leased Premises during the term of this Lease.

16. SUBORDINATION

Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the Leased Premises, or upon the Building and to any renewals, refinancing and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust or other lien now existing or hereafter placed upon the Leased Premises of the Building, and Tenant agrees upon demand to execute such further instruments subordinating this Lease or attorning to the holder of any such liens as Landlord may request. In the event that Tenant should fail to execute any instrument of subordination herein required to be executed by Tenant promptly as requested, Tenant hereby irrevocably constitutes Landlord as its attorney-in-fact to execute such instrument in Tenant's name, place and stead, it being agreed that such power is one coupled with an interest. Tenant agrees that it will from time to time upon request by Landlord execute and deliver to such persons as Landlord shall request a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease have been paid, stating that Landlord is not in default hereunder (or if Tenant alleges a default stating the nature of such alleged default) and further stating such other matters as Landlord shall reasonably require.

17. RESERVED**18. NOTICE**

Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by hand delivery, or via United States certified mail, return receipt requested, addressed as follows:

If to Landlord to:

COMMUNITY
Attn: Mike Bennett, City Manager
325 E. Aspen Avenue
Fruita, Co 81521

If to Tenant to:

Region 10 LEAP, Inc.
Attn: Michelle Haynes

145 S. Cascade Ave.
Montrose, Colorado 81401

Landlord and Tenant shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

19. BROKERS

Tenant represents that Tenant was not shown the Premises by any real estate broker or agent and that Tenant has not otherwise engaged in, any activity which could form the basis for a claim for real estate commission, brokerage fee, finder's fee or other similar charge, in connection with this Lease.

20. WAIVER

No waiver of any default of Landlord or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

21. RECORDING OF LEASE

This Lease may be recorded in the public records of the Mesa County Clerk and Recorder, or in lieu thereof, at the request of either party, Landlord and Tenant shall execute a Memorandum of Lease to be recorded for the purpose of giving record notice of the appropriate provisions of this Lease.

22. GENERAL PROVISIONS

- A. The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease. All covenants are to be construed as conditions of this Lease. This Agreement may be executed in counterparts. Time shall be of the essence of this Agreement.
- B. The provisions of this Lease shall extend to and be binding upon Landlord and Tenant and their respective legal representatives, successors and assigns.
- C. Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Tenant's use of the Leased Premises. Landlord shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Premises.
- D. This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.
- E. This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Colorado. If either party commences an action to enforce any covenant contained in

this Lease, or for breach of any covenant or condition, the prevailing party shall recover reasonable attorney's fees in arbitration or litigation.

- F.** Tenant covenants and warrants that at the termination or cancellation of this Lease, Tenant shall quit and surrender said Premises in good condition, reasonable wear and tear excepted.
- G.** No representations, warranties or certifications, express or implied, shall exist as between the parties, except as specifically stated in the Lease.
- H.** Nothing herein shall represent a multi-year fiscal obligation to the COMMUNITY, and any expenditures of money by the COMMUNITY in accordance with this Lease shall be subject to the annual appropriation of funds.
- I.** The Tenant shall be responsible for collecting all sales and use tax associated with the business related to taxable sales made upon the leased premises, and submitting said tax to Mesa County and the City of Fruita, as applicable, and keeping appropriate books and records thereof, pursuant to applicable County Ordinances and Regulations. Payment of sales and use taxes to Mesa County and the City of Fruita shall be a material provision of this Lease.
- J.** There shall be no third-party beneficiaries to this Lease with rights of enforcement. This Lease may only be enforced by the Landlord and the Tenant.
- K.** No key copies may be made by Tenant or at its direction without the express written consent of Landlord. All keys shall be obtained from Landlord, and all keys shall be returned to Landlord upon the end of the tenancy. Tenant acknowledges that copies of all keys will be retained by Landlord and Tenant agrees that the locks shall not be changed or new locks installed by Tenant, unless at Landlord's request.

IN WITNESS WHEREOF, the parties have executed and made effective this Lease as of the day and year first above written.

LANDLORD:

Mike Bennett, City Manager

ATTEST:

TENANT: REGION 10 LEAP, INC.

Michelle Haynes, Executive Director

ATTEST:

EXHIBIT A LEASED PREMISES DESCRIPTION

FLOOR PLAN DRAWING

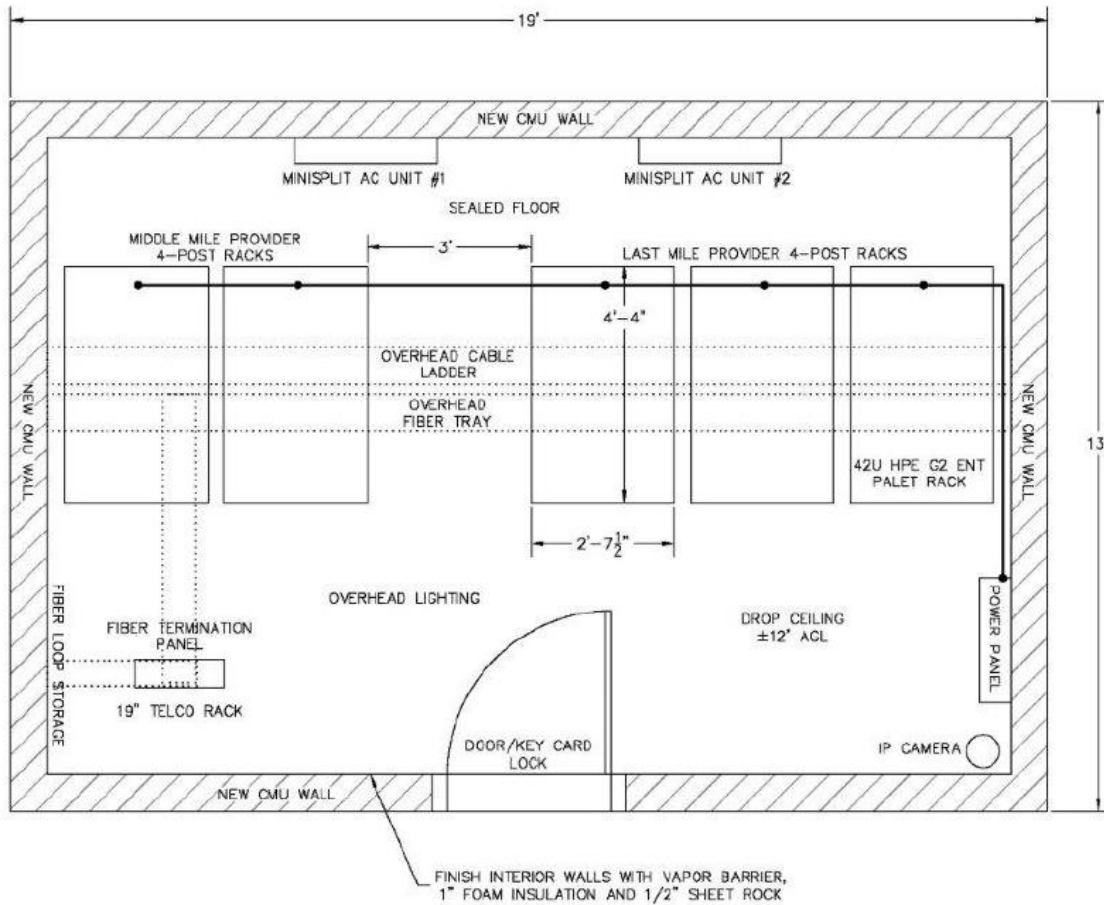


Figure A: Floor plan of the building located at 900 Kiefer Avenue, Fruita Co 81521 with leased premises and authorized access route shown.

**FRUITA**
COLORADO**AGENDA ITEM COVER SHEET**

TO: Fruita City Council and Mayor

FROM: City Attorney, Mary Elizabeth Gieger & Special Counsel, Kim Crawford

DATE: March 5, 2024

AGENDA TEXT: Ordinance 2024-08 – Second Reading - An Ordinance authorizing the City Manager to execute a contract with Farm, LLC for its purchase of City property known as 169 S. Mulberry Street, Fruita, Colorado and to execute all documents to perfect the sale.

BACKGROUND

The City of Fruita is the owner of real property described as Lots 12, 13 and 14, Block 13 of the Town of Fruita, Mesa County, Colorado also referred to 169 S. Mulberry Street, Fruita, Colorado 81521.

FARM, LLC has submitted an offer to purchase the Property which offer includes a cash payment and nonmonetary contributions, including the creation and lease of public parking spaces and redevelopment of the Property through agreements with the City, totaling a value of \$640,000.00. The City prepared a counteroffer. At the City Council's February 6, 2024, regular meeting, Council adopted Resolution No. 2024-04 which authorized the City Manager to execute the contract, which performance thereon is contingent upon the adoption of this Ordinance. The Ordinance includes authorization to the City Manager to execute the contract to formalize the documentation necessary to sell and convey the property.

The Council met in executive session on November 7, 2023, to discuss the terms of said offer and direct negotiators.

The Council met in a workshop on January 23, 2024, to receive an update on the conveyance process.

PURPOSE

The intent of Ordinance 2024-08 is to authorize the City Manager to execute the Contract to effect the sale of the Property to FARM LLC, a Colorado limited liability company, and any deeds and other necessary documents to create and lease the public parking spaces and achieve redevelopment of the Property and to convey the Property to FARM LLC, a Colorado limited liability company, for the price and terms described in the Contract attached thereto as **Exhibit A**.

In addition, the City and FARM LLC will be negotiating the final terms of the development agreement and parking lease as outlined in Exhibit A to the Contract, which summarizes the non-monetary contributions to the purchase of the Property, including the redevelopment of the Property and creation of public parking. As with any real estate contract, FARM LLC has the right to terminate the contract if it is

not satisfied with the title work, cannot procure financing, or is not satisfied with matters discovered through due diligence.

APPLICABILITY TO CITY GOALS AND OBJECTIVES

The Fruita in Motion: Plan Like a Local Comprehensive Plan established plan themes that speak to efficient development and a thriving downtown. This transaction would result in the redevelopment of blighted property within the downtown core and the creation and maintenance of additional public parking.

Efficient Development The City of Fruita encourages infill over sprawl and development within the existing city limits and Urban Growth Boundary (UGB). Efficient development reduces the demand for infrastructure and city services, supports community connectivity, and encourages a thriving downtown core.

A Thriving Downtown The City of Fruita supports a thriving downtown with strong local businesses, an inviting streetscape, and events and places that encourage the community to gather. Flexible design standards support creative uses of downtown spaces, and higher-than-existing surrounding residential densities creates a variety of housing units and types for residents to frequent businesses.

The Fruita in Motion: Plan Like a Local Comprehensive Plan contemplates three over all strategies to economic development.

Economic gardening is one of the City’s strategies– This approach recognizes the fact that most job growth comes from the expansion of existing businesses. It also focuses on supporting new business formation and entrepreneurship. It is a “grow from within” strategy that focuses on leveraging unique local strengths and opportunities. Economic gardening also incorporates place-based aspects and therefore has some overlap with a place-based strategy.

OPTIONS AVAILABLE TO THE COUNCIL

ORDINANCE 2024-08

1. APPROVE ORDINANCE 2024-08 AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH FARM LLC FOR ITS PURCHASE CITY PROPERTY KNOWN AS 169 S. MULBERRY STREET, FRUITA, COLORADO AND TO EXECUTE ALL DOCUMENTS TO PERFECT THE SALE AND CONVEYANCE OF THE SAME
2. VOTE NOT TO ADOPT ORDINANCE 2024-08.

STAFF RECOMMENDATION

APPROVE ORDINANCE 2024-08 - AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH FARM LLC FOR ITS PURCHASE OF CITY PROPERTY KNOWN AS 169 S. MULBERRY STREET, FRUITA, COLORADO AND TO EXECUTE ALL DOCUMENTS TO PERFECT THE SALE AND CONVEYANCE OF THE SAME

ORDINANCE 2024-08**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH FARM LLC FOR ITS PURCHASE OF CITY PROPERTY KNOWN AS 169 S. MULBERRY STREET, FRUITA, COLORADO AND TO EXECUTE ALL DOCUMENTS TO PERFECT THE SALE AND CONVEYANCE OF THE SAME**

WHEREAS, the City of Fruita is the owner of real property described as Lots 12, 13 and 14, Block 13 of the Town of Fruita, Mesa County, Colorado also referred to 169 S. Mulberry Street, Fruita, Colorado 81521 (the “Property”); and

WHEREAS, FARM LLC has submitted an offer to purchase the Property which offer includes a cash payment and nonmonetary contributions, including the creation and lease of public parking spaces and redevelopment of the Property through agreements with the City, totaling a value of \$640,000.00 (the “Offer”); and

WHEREAS, the City has prepared a counteroffer to the Offer to clarify terms and conditions for the redevelopment and parking agreements (the “Counteroffer”) (the Offer and Counteroffer referred to herein as the “Contract”); and

WHEREAS, pursuant to Section 2.11 of the Fruita City Charter, the Fruita City Council must, by ordinance, authorize the lease or conveyance of real property of the City, and

WHEREAS, it is the intent of this ordinance to authorize the City Manager to execute the Contract to effect the sale of the Property to FARM LLC, a Colorado limited liability company, and any deeds and other necessary documents to create and lease the public parking spaces and achieve redevelopment of the Property and to convey the Property to FARM LLC, a Colorado limited liability company, for the price and terms described in the Contract attached hereto as **Exhibit A**.

NOW, THEREFORE, THE CITY OF FRUITA HEREBY ORDAINS AS FOLLOWS:

Section 1: The above Recitals are true and correct and incorporated herein.

Section 2: The City Manager is hereby authorized to finalize and execute the Contract, any documents necessary to effect a development agreement between the FARM LLC, a Colorado limited liability company, and the City for public parking spaces, including a lease thereof, and redevelopment of the Property, and to convey title to the Property to FARM LLC, a Colorado

limited liability company, for a combination of cash payment and nonmonetary contributions totaling \$640,000.00.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL
ON THE 5th DAY OF MARCH, 2024.**

City of Fruita

Mayor Joel Kincaid

ATTEST:

City Clerk



Chesnick Realty, LLC
 137 N Peach St Fruita, CO 81521
 Lori Chesnick
 Broker/Owner
 lori@chesnickrealtyllc.com
 Ph: 970-858-8238
 Fax: 970-858-8266

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (CBS3-6-23) (Mandatory 1-24)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

CONTRACT TO BUY AND SELL REAL ESTATE (COMMERCIAL)

☒ **Property with No Residences)**
☐ **Property with Residences-Residential Addendum Attached)**

Date: 1/16/2024

AGREEMENT

1. AGREEMENT. Buyer agrees to buy and Seller agrees to sell the Property described below on the terms and conditions set forth in this contract (Contract).

2. PARTIES AND PROPERTY.

2.1. Buyer. FARM, LLC (Buyer) will take title to the Property described below as ☐ **Joint Tenants**
☐ **Tenants In Common** ☒ **Other** .

2.2. No Assignability. This Contract **IS NOT** assignable by Buyer unless otherwise specified in **Additional Provisions.**

2.3. Seller. City of Fruita (Seller) is the current owner of the Property described below.

2.4. Property. The Property is the following legally described real estate in the County of Mesa, Colorado (insert legal description):

LOTS 12 AND 13 BLK 13 TOWN OF FRUITA SUB LOCATED IN SEC 17 1N 2W UM RECD 7/23/1884 RN-1968 MESA CO RECDS-.28 AC

TAX PARCEL # 2697-172-22-029

AND

LOT 14 BLK 13 TOWN OF FRUITA SUB LOCATED IN SEC 17 1N 2W UM RECD 7/23/1884 RN-1968 MESA CO RECDS - .11 AC

TAX PARCEL # 2697-172-22-030

TITLE COMPANY TO VERIFY LEGAL DESCRIPTION

known as: **169 S Mulberry St, Fruita, CO 81521**

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded (Property).

2.5. Inclusions. The Purchase Price includes the following items (Inclusions):

2.5.1. Inclusions – Attached. If attached to the Property on the date of this Contract, the following items are included unless excluded under **Exclusions**: lighting, heating, plumbing, ventilating and air conditioning units, TV antennas, inside telephone, network and coaxial (cable) wiring and connecting

blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-in kitchen appliances, sprinkler and controls, built-in vacuum systems (including accessories) and garage door openers (including controls). If checked, the following are owned by the Seller and included: ☐ **Solar Panels** ☐ **Water Softeners** ☐ **Security Systems** ☐ **Satellite Systems** (including satellite dishes). Leased items should be listed under § 2.5.7. (Leased Items). If any additional items are attached to the Property after the date of this Contract, such additional items are also included in the Purchase Price.

2.5.2. Inclusions – Not Attached. If on the Property, whether attached or not, on the date of this Contract, the following items are included unless excluded under **Exclusions**: storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings and treatments, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, carbon monoxide alarms, smoke/fire detectors and all keys.

2.5.3. Other Inclusions. The following items, whether fixtures or personal property, are also included in the Purchase Price:

None

2.5.4. Encumbered Inclusions. Any Inclusions owned by Seller (e.g., owned solar panels) must be conveyed at Closing by Seller free and clear of all taxes (except personal property and general real estate taxes for the year of Closing), liens and encumbrances, except:

None

2.5.5. Personal Property Conveyance. Conveyance of all personal property will be by bill of sale or other applicable legal instrument.

2.5.6. Parking and Storage Facilities. The use or ownership of the following parking facilities: ; and the use or ownership of the following storage facilities:

Note to Buyer: If exact rights to the parking and storage facilities is a concern to Buyer, Buyer should investigate.

2.5.7. Leased Items. The following personal property is currently leased to Seller which will be transferred to Buyer at Closing (Leased Items):

None

2.5.8. Trade Fixtures. With respect to trade fixtures, Seller and Buyer agree as follows:

None

The trade fixtures to be conveyed at Closing will be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except . Conveyance will be by bill of sale or other applicable legal instrument.

2.6. Exclusions. The following items are excluded (Exclusions):

None

2.7. Water Rights/Well Rights.

☐ **2.7.1. Deeded Water Rights.** The following legally described water rights:

None

Any deeded water rights will be conveyed by a good and sufficient deed at Closing.

☐ **2.7.2. Other Rights Relating to Water.** The following rights relating to water not included in §§ 2.7.1., 2.7.3. and 2.7.4., will be transferred to Buyer at Closing:

None

☐ **2.7.3. Well Rights.** Seller agrees to supply required information to Buyer about the well. Buyer understands that if the well to be transferred is a "Small Capacity Well" or a "Domestic Exempt Water Well" used for ordinary household purposes, Buyer must, prior to or at Closing, complete a Change in Ownership form for the well. If an existing well has not been registered with the Colorado Division of Water Resources in the Department of Natural Resources (Division), Buyer must complete a registration of existing well form for the well and pay the cost of registration. If no person will be providing a closing service in connection with the transaction, Buyer must file the form with the Division within sixty days after Closing. The Well Permit # is .

☐ **2.7.4. Water Stock Certificates.** The water stock certificates to be transferred at Closing are as follows:

None

116 **2.7.5. Conveyance.** If Buyer is to receive any rights to water pursuant to § 2.7.2. (Other
117 Relating to Water), § 2.7.3. (Well Rights), or § 2.7.4. (Water Stock Certificates), Seller agrees to con
118 rights to Buyer by executing the applicable legal instrument at Closing.

Section I, Item 3)

119 **2.7.6. Water Rights Review.** Buyer ☐ Does ☒ Does Not have a Right to Terminate if
120 examination of the Water Rights is unsatisfactory to Buyer on or before the **Water Rights Examination**
121 **Deadline.**

123 **3. DATES, DEADLINES AND APPLICABILITY.**

124 **3.1. Dates and Deadlines.**

Item No.	Reference	Event	Date or Deadline
1	§ 3	Time of Day Deadline	
2	§ 4	Alternative Earnest Money Deadline	2/9/2024 Friday
		Title	
3	§ 8	Record Title Deadline (and Tax Certificate)	2/19/2024 Monday
4	§ 8	Record Title Objection Deadline	2/23/2024 Friday
5	§ 8	Off-Record Title Deadline	2/19/2024 Monday
6	§ 8	Off-Record Title Objection Deadline	2/23/2024 Friday
7	§ 8	Title Resolution Deadline	2/29/2024 Thursday
8	§ 8	Third Party Right to Purchase/Approve Deadline	
		Owners' Association	
9	§ 7	Association Documents Deadline	
10	§ 7	Association Documents Termination Deadline	
		Seller's Disclosures	
11	§ 10	Seller's Property Disclosure Deadline	
12	§ 10	Lead-Based Paint Disclosure Deadline (if Residential Addendum attached)	
		Loan and Credit	
13	§ 5	New Loan Application Deadline	
14	§ 5	New Loan Terms Deadline	
15	§ 5	New Loan Availability Deadline	
16	§ 5	Buyer's Credit Information Deadline	
17	§ 5	Disapproval of Buyer's Credit Information Deadline	
18	§ 5	Existing Loan Deadline	
19	§ 5	Existing Loan Termination Deadline	
20	§ 5	Loan Transfer Approval Deadline	
21	§ 4	Seller or Private Financing Deadline	
		Appraisal	
22	§ 6	Appraisal Deadline	
23	§ 6	Appraisal Objection Deadline	
24	§ 6	Appraisal Resolution Deadline	
		Survey	
25	§ 9	New ILC or New Survey Deadline	2/19/2024 Monday
26	§ 9	New ILC or New Survey Objection Deadline	2/26/2024 Monday

174	27	§ 9	New ILC or New Survey Resolution Deadline	2/29/2024	Section I, Item 3)
175			Inspection and Due diligence		
176					
177	28	§ 2	Water Rights Examination Deadline		
178	29	§ 8	Mineral Rights Examination Deadline		
179	30	§ 10	Inspection Termination Deadline	4/12/2024	Friday
180	31	§ 10	Inspection Objection Deadline	4/12/2024	Friday
181	32	§ 10	Inspection Resolution Deadline	4/16/2024	Tuesday
182	33	§ 10	Property Insurance Termination Deadline	3/22/2024	Friday
183	34	§ 10	Due Diligence Documents Delivery Deadline	2/12/2024	Monday
184	35	§ 10	Due Diligence Documents Objection Deadline	4/12/2024	Friday
185	36	§ 10	Due Diligence Documents Resolution Deadline	4/16/2024	Tuesday
186	37	§ 10	Environmental Inspection Termination Deadline	3/22/2024	Friday
187	38	§ 10	ADA Evaluation Termination Deadline		
188	39	§ 10	Conditional Sale Deadline		
189	40	§ 10	Lead-Based Paint Termination Deadline (if Residential Addendum attached)		
190	41	§ 11	Estoppel Statements Deadline		
191	42	§ 11	Estoppel Statements Termination Deadline		
192			Closing and Possession		
193	43	§ 12	Closing Date	4/24/2024	Wednesday
194	44	§ 17	Possession Date	4/24/2024	Wednesday
195	45	§ 17	Possession Time	Delivery of Deed	
196	46	§ 27	Acceptance Deadline Date	2/7/2024	Wednesday
197	47	§ 27	Acceptance Deadline Time		
198	48				
199	49				

3.2. Applicability of Terms. If any deadline blank in § 3.1. (Dates and Deadlines) is left blank or completed with "N/A", or the word "Deleted," such deadline is not applicable and the corresponding provision containing the deadline is deleted. Any box checked in this Contract means the corresponding provision applies. If no box is checked in a provision that contains a selection of "None", such provision means that "None" applies.

The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have signed this Contract. The abbreviation "N/A" as used in this Contract means not applicable.

3.3. Day; Computation of Period of Days; Deadlines.

3.3.1. Day. As used in this Contract, the term "day" means the entire day ending at 11:59 p.m., United States Mountain Time (Standard or Daylight Savings, as applicable). Except however, if a **Time of Day Deadline** is specified in § 3.1. (Dates and Deadlines), all Objection Deadlines, Resolution Deadlines, Examination Deadlines and Termination Deadlines will end on the specified deadline date at the time of day specified in the **Time of Day Deadline**, United States Mountain Time. If **Time of Day Deadline** is left blank or "N/A" the deadlines will expire at 11:59 p.m., United States Mountain Time.

3.3.2. Computation of Period of Days. In computing a period of days (e.g., three days after MEC), when the ending date is not specified, the first day is excluded and the last day is included.

3.3.3. Deadlines. If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline ☒ **Will** ☐ **Will Not** be extended to the next day that is not a Saturday, Sunday or

Holiday. Should neither box be checked, the deadline will not be extended.

Section I, Item 3)

4. PURCHASE PRICE AND TERMS.

4.1. Price and Terms. The Purchase Price set forth below is payable in U.S. Dollars by Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 4.1.	Purchase Price	\$ 230,115.00	
2	§ 4.3.	Earnest Money		\$ 11,505.00
3	§ 4.5.	New Loan		\$
4	§ 4.6.	Assumption Balance		\$
5	§ 4.7.	Private Financing		\$
6	§ 4.7.	Seller Financing		\$
7				\$
8				\$
9	§ 4.4.	Cash at Closing		\$ 218,610.00
10		Total	\$ 230,115.00	\$ 230,115.00

4.2. Seller Concession. At Closing, Seller will credit to Buyer \$**0.00** (Seller Concession). The Seller Concession may be used for any Buyer fee, cost, charge or expenditure to the extent the amount is allowed by the Buyer's lender and is included in the Closing Statement or Closing Disclosure at Closing. Examples of allowable items to be paid for by the Seller Concession include, but are not limited to: Buyer's closing costs, loan discount points, loan origination fees, prepaid items and any other fee, cost, charge, expense or expenditure. Seller Concession is in addition to any sum Seller has agreed to pay or credit Buyer elsewhere in this Contract.

4.3. Earnest Money. The Earnest Money set forth in this Section, in the form of a **Check or Wire**, will be payable to and held by **Land Title** (Earnest Money Holder), in its trust account, on behalf of both Seller and Buyer. The Earnest Money deposit must be tendered, by Buyer, with this Contract unless the parties mutually agree to an **Alternative Earnest Money Deadline** for its payment. The parties authorize delivery of the Earnest Money deposit to the company conducting the Closing (Closing Company), if any, at or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest Money deposits transferred to a fund established for the purpose of providing affordable housing to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest Money deposited with the Earnest Money Holder in this transaction will be transferred to such fund.

4.3.1. Alternative Earnest Money Deadline. The deadline for delivering the Earnest Money, if other than at the time of tender of this Contract, is as set forth as the **Alternative Earnest Money Deadline**.

4.3.2. Disposition of Earnest Money. If Buyer has a Right to Terminate and timely terminates, Buyer is entitled to the return of Earnest Money as provided in this Contract. If this Contract is terminated as set forth in § 24 and, except as provided in § 23 (Earnest Money Dispute), if the Earnest Money has not already been returned following receipt of a Notice to Terminate, Seller agrees to execute and return to Buyer or Broker working with Buyer, written mutual instructions (e.g., Earnest Money Release form), within three days of Seller's receipt of such form. If Seller is entitled to the Earnest Money, and, except as provided in § 23 (Earnest Money Dispute), if the Earnest Money has not already been paid to Seller, following receipt of an Earnest Money Release form, Buyer agrees to execute and return to Seller or Broker working with Seller, written mutual instructions (e.g., Earnest Money Release form), within three days of Buyer's receipt.

4.3.2.1. Seller Failure to Timely Return Earnest Money. If Seller fails to timely execute and return the Earnest Money Release Form, or other written mutual instructions, Seller is in default and liable to Buyer as set forth in "If Seller is in Default", § 20.2. and § 21, unless Seller is entitled to the Earnest Money due to a Buyer default.

4.3.2.2. Buyer Failure to Timely Release Earnest Money. If Buyer fails to timely execute and return the Earnest Money Release Form, or other written mutual instructions, Buyer is in default and

liable to Seller as set forth in “**If Buyer is in Default, § 20.1 and § 21**”, unless Buyer is entitled to the Money due to a Seller Default.

Section I, Item 3)

4.4. Form of Funds; Time of Payment; Available Funds.

4.4.1. Good Funds. All amounts payable by the parties at Closing, including any loan proceeds, Cash at Closing and closing costs, must be in funds that comply with all applicable Colorado laws, including electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good Funds).

4.4.2. Time of Payment. All funds, including the Purchase Price to be paid by Buyer, must be paid before or at Closing or as otherwise agreed in writing between the parties to allow disbursement by Closing Company at Closing **OR SUCH NONPAYING PARTY WILL BE IN DEFAULT.**

4.4.3. Available Funds. Buyer represents that Buyer, as of the date of this Contract, ☒ **Does** ☐ **Does Not** have funds that are immediately verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.

4.5. New Loan. (Omitted as inapplicable)

4.6. Assumption. (Omitted as inapplicable)

4.7. Seller or Private Financing. (Omitted as inapplicable)

TRANSACTION PROVISIONS

5. FINANCING CONDITIONS AND OBLIGATIONS. (Omitted as inapplicable)

5.3. Credit Information. (Omitted as inapplicable)

5.4. Existing Loan Review. (Omitted as inapplicable)

6. APPRAISAL PROVISIONS.

6.1. Appraisal Definition. An “Appraisal” is an opinion of value prepared by a licensed or certified appraiser, engaged on behalf of Buyer or Buyer's lender, to determine the Property's market value (Appraised Value). The Appraisal may also set forth certain lender requirements, replacements, removals or repairs necessary on or to the Property as a condition for the Property to be valued at the Appraised Value.

6.2. Appraised Value. The applicable appraisal provision set forth below applies to the respective loan type set forth in § 4.5.3., or if a cash transaction (i.e., no financing), § 6.2.1. applies.

6.2.1. Conventional/Other. Buyer has the right to obtain an Appraisal. If the Appraised Value is less than the Purchase Price, or if the Appraisal is not received by Buyer on or before **Appraisal Deadline** Buyer may, on or before **Appraisal Objection Deadline**:

6.2.1.1. Notice to Terminate. Notify Seller in writing, pursuant to § 24.1., that this Contract is terminated; or

6.2.1.2. Appraisal Objection. Deliver to Seller a written objection accompanied by either a copy of the Appraisal or written notice from lender that confirms the Appraised Value is less than the Purchase Price (Lender Verification).

6.2.1.3. Appraisal Resolution. If an Appraisal Objection is received by Seller, on or before **Appraisal Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Appraisal Resolution Deadline**, this Contract will terminate on the **Appraisal Resolution Deadline**, unless Seller receives Buyer's written withdrawal of the Appraisal Objection before such termination, (i.e., on or before expiration of **Appraisal Resolution Deadline**).

6.3. Lender Property Requirements. If the lender imposes any written requirements, replacements, removals or repairs, including any specified in the Appraisal (Lender Property Requirements) to be made to the Property (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract, this Contract terminates on the earlier of three days following Seller's receipt of the Lender Property Requirements, or Closing, unless prior to termination: (1) the parties enter into a written agreement to satisfy the Lender Property Requirements; (2) the Lender Property Requirements have been completed; or (3) the satisfaction of the Lender Property Requirements is waived in writing by Buyer.

6.4. Cost of Appraisal. Cost of the Appraisal to be obtained after the date of this Contract must be

349 timely paid by ☐ Buyer ☐ Seller. The cost of the Appraisal may include any and all fees paid to the
350 appraiser, appraisal management company, lender's agent or all three.

Section I, Item 3)

352 **7. OWNERS' ASSOCIATIONS.** This Section is applicable if the Property is located within one or more
353 Common Interest Communities and subject to one or more declarations (Association).

354 **7.1. Common Interest Community Disclosure. THE PROPERTY IS LOCATED WITHIN A**
355 **COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR THE COMMUNITY.**
356 **THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNERS'**
357 **ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND**
358 **REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS AND RULES AND**
359 **REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY,**
360 **INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES**
361 **NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY**
362 **AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS AND RULES AND**
363 **REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE**
364 **PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF**
365 **THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY**
366 **WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL**
367 **OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ**
368 **THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF**
369 **THE ASSOCIATION.**

370
371
372 **7.2. Association Documents to Buyer.** Seller is obligated to provide to Buyer the Association
373 Documents (defined below), at Seller's expense, on or before **Association Documents Deadline.** Seller
374 authorizes the Association to provide the Association Documents to Buyer, at Seller's expense. Seller's
375 obligation to provide the Association Documents is fulfilled upon Buyer's receipt of the Association
376 Documents, regardless of who provides such documents.

377 **7.3. Association Documents.** Association documents (Association Documents) consist of the
378 following:

379
380 **7.3.1.** All Association declarations, articles of incorporation, bylaws, articles of organization,
381 operating agreements, rules and regulations, party wall agreements and the Association's responsible
382 governance policies adopted under § 38-33.3-209.5, C.R.S.;

383 **7.3.2.** Minutes of: (1) the annual owners' or members' meeting and (2) any executive boards' or
384 managers' meetings; such minutes include those provided under the most current annual disclosure required
385 under § 38-33.3-209.4, C.R.S. (Annual Disclosure) and minutes of meetings, if any, subsequent to the
386 minutes disclosed in the Annual Disclosure. If none of the preceding minutes exist, then the most recent
387 minutes, if any (§§ 7.3.1. and 7.3.2., collectively, Governing Documents); and

388
389 **7.3.3.** List of all Association insurance policies as provided in the Association's last Annual
390 Disclosure, including, but not limited to, property, general liability, association director and officer professional
391 liability and fidelity policies. The list must include the company names, policy limits, policy deductibles,
392 additional named insureds and expiration dates of the policies listed (Association Insurance Documents);

393 **7.3.4.** A list by unit type of the Association's assessments, including both regular and special
394 assessments as disclosed in the Association's last Annual Disclosure;

395
396 **7.3.5.** The Association's most recent financial documents which consist of: (1) the Association's
397 operating budget for the current fiscal year, (2) the Association's most recent annual financial statements,
398 including any amounts held in reserve for the fiscal year immediately preceding the Association's last Annual
399 Disclosure, (3) the results of the Association's most recent available financial audit or review, (4) list of the
400 fees and charges (regardless of name or title of such fees or charges) that the Association's community
401 association manager or Association will charge in connection with the Closing including, but not limited to,
402 any fee incident to the issuance of the Association's statement of assessments (Status Letter), any rush or
403 update fee charged for the Status Letter, any record change fee or ownership record transfer fees (Record
404 Change Fee), fees to access documents, (5) list of all assessments required to be paid in advance, reserves
405 or working capital due at Closing and (6) reserve study, if any (§§ 7.3.4. and 7.3.5., collectively, Financial
406

Documents);

7.3.6. Any written notice from the Association to Seller of a “construction defect action” under 38-33.3-303.5, C.R.S. within the past six months and the result of whether the Association approved or disapproved such action (Construction Defect Documents). Nothing in this Section limits the Seller’s obligation to disclose adverse material facts as required under § 10.2. (Disclosure of Adverse Material Facts; Subsequent Disclosure; Present Condition) including any problems or defects in the common elements or limited common elements of the Association property.

7.4. Conditional on Buyer’s Review. Buyer has the right to review the Association Documents. Buyer has the Right to Terminate under § 24.1., on or before **Association Documents Termination Deadline**, based on any unsatisfactory provision in any of the Association Documents, in Buyer’s sole subjective discretion. Should Buyer receive the Association Documents after **Association Documents Deadline**, Buyer, at Buyer’s option, has the Right to Terminate under § 24.1. by Buyer’s Notice to Terminate received by Seller on or before ten days after Buyer’s receipt of the Association Documents. If Buyer does not receive the Association Documents, or if Buyer’s Notice to Terminate would otherwise be required to be received by Seller after **Closing Date**, Buyer’s Notice to Terminate must be received by Seller on or before Closing. If Seller does not receive Buyer’s Notice to Terminate within such time, Buyer accepts the provisions of the Association Documents as satisfactory and Buyer waives any Right to Terminate under this provision, notwithstanding the provisions of § 8.6. (Third Party Right to Purchase/Approve).

8. TITLE INSURANCE, RECORD TITLE AND OFF-RECORD TITLE.

8.1. Evidence of Record Title.

☒ **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will select the title insurance company to furnish the owner’s title insurance policy at Seller’s expense. On or before **Record Title Deadline**, Seller must furnish to Buyer, a current commitment for an owner’s title insurance policy (Title Commitment), ~~in an amount equal to the Purchase Price~~, or if this box is checked, ☐ an **Abstract of Title** certified to a current date. Seller will cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or after Closing.

☐ **8.1.2. Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select the title insurance company to furnish the owner’s title insurance policy at Buyer’s expense. On or before **Record Title Deadline**, Buyer must furnish to Seller, a current commitment for owner’s title insurance policy (Title Commitment), in an amount equal to the Purchase Price. If neither box in § 8.1.1. or § 8.1.2. is checked, § 8.1.1. applies.

8.1.3. Owner’s Extended Coverage (OEC). The Title Commitment ☒ **Will** ☐ **Will Not** contain Owner’s Extended Coverage (OEC). If the Title Commitment is to contain OEC, it will commit to delete or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) unrecorded mechanics’ liens, (5) gap period (period between the effective date and time of commitment to the date and time the deed is recorded) and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain OEC will be paid by ☐ **Buyer** ☐ **Seller** ☒ **One-Half by Buyer and One-Half by Seller** ☐ **Other** . Regardless of whether the Contract requires OEC, the Title Insurance Commitment may not provide OEC or delete or insure over any or all of the standard exceptions for OEC. The Title Insurance Company may require a New Survey or New ILC, defined below, among other requirements for OEC. If the Title Insurance Commitment is not satisfactory to Buyer, Buyer has a right to object under § 8.7. (Right to Object to Title, Resolution).

8.1.4. Title Documents. Title Documents consist of the following: (1) copies of any plats, declarations, covenants, conditions and restrictions burdening the Property and (2) copies of any other documents (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions) in the Title Commitment furnished to Buyer (collectively, Title Documents).

8.1.5. Copies of Title Documents. Buyer must receive, on or before **Record Title Deadline**, copies of all Title Documents. This requirement pertains only to documents as shown of record in the office of the clerk and recorder in the county where the Property is located. The cost of furnishing copies of the documents required in this Section will be at the expense of the party or parties obligated to pay for the

owner's title insurance policy.

8.1.6. Existing Abstracts of Title. Seller must deliver to Buyer copies of any abstracts covering all or any portion of the Property (Abstract of Title) in Seller's possession on or before **Record Title Deadline**.

8.2. Record Title. Buyer has the right to review and object to the Abstract of Title or Title Commitment and any of the Title Documents as set forth in § 8.7. (Right to Object to Title, Resolution) on or before **Record Title Objection Deadline**. Buyer's objection may be based on any unsatisfactory form or content of Title Commitment or Abstract of Title, notwithstanding § 13, or any other unsatisfactory title condition, in Buyer's sole subjective discretion. If the Abstract of Title, Title Commitment or Title Documents are not received by Buyer on or before the **Record Title Deadline**, or if there is an endorsement to the Title Commitment that adds a new Exception to title, a copy of the new Exception to title and the modified Title Commitment will be delivered to Buyer. Buyer has until the earlier of Closing or ten days after receipt of such documents by Buyer to review and object to: (1) any required Title Document not timely received by Buyer, (2) any change to the Abstract of Title, Title Commitment or Title Documents, or (3) any endorsement to the Title Commitment. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection, pursuant to this § 8.2. (Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.7. (Right to Object to Title, Resolution). If Seller has fulfilled all Seller's obligations, if any, to deliver to Buyer all documents required by § 8.1. (Evidence of Record Title) and Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts the condition of title as disclosed by the Abstract of Title, Title Commitment and Title Documents as satisfactory.

8.3. Off-Record Title. Seller must deliver to Buyer, on or before **Off-Record Title Deadline**, true copies of all existing surveys in Seller's possession pertaining to the Property and must disclose to Buyer all easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or other title matters not shown by public records, of which Seller has actual knowledge (Off-Record Matters). This Section excludes any **New ILC** or **New Survey** governed under § 9 (New ILC, New Survey). Buyer has the right to inspect the Property to investigate if any third party has any right in the Property not shown by public records (e.g., unrecorded easement, boundary line discrepancy or water rights). Buyer's Notice to Terminate or Notice of Title Objection of any unsatisfactory condition (whether disclosed by Seller or revealed by such inspection, notwithstanding § 8.2. (Record Title) and § 13 (Transfer of Title), in Buyer's sole subjective discretion, must be received by Seller on or before **Off-Record Title Objection Deadline**. If an Off-Record Matter is received by Buyer after the **Off-Record Title Deadline**, Buyer has until the earlier of Closing or ten days after receipt by Buyer to review and object to such Off-Record Matter. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection pursuant to this § 8.3. (Off-Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.7. (Right to Object to Title, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts title subject to such Off-Record Matters and rights, if any, of third parties not shown by public records of which Buyer has actual knowledge.

8.4. Special Taxing and Metropolitan Districts. Intentionally Deleted

8.5. Tax Certificate. A tax certificate paid for by ☒ **Seller** ☐ **Buyer**, for the Property (Tax Certificate) must be delivered to Buyer on or before **Record Title Deadline**. If the content of the Tax Certificate is unsatisfactory to Buyer, in Buyer's sole subjective discretion, Buyer may terminate, on or before **Record Title Objection Deadline**. Should Buyer receive the Tax Certificate after **Record Title Deadline**, Buyer, at Buyer's option, has the Right to Terminate under § 24.1. by Buyer's Notice to Terminate received by Seller on or before ten days after Buyer's receipt of the Tax Certificate. If Buyer does not receive the Tax Certificate, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller after **Closing Date**, Buyer's Notice to Terminate must be received by Seller on or before Closing. If Seller does not receive Buyer's Notice to Terminate within such time, Buyer accepts the content of the Tax Certificate as satisfactory and Buyer waives any Right to Terminate under this provision. If Buyer's loan specified in §4.5.3, (Loan Limitations) prohibits Buyer from paying for the Tax Certificate, the Tax Certificate will be paid for by Seller.

8.6. Third Party Right to Purchase/Approve. If any third party has a right to purchase the Property (e.g., right of first refusal on the Property, right to purchase the Property under a lease or an option held by a third party to purchase the Property) or a right of a third party to approve this Contract, Seller must promptly submit this Contract according to the terms and conditions of such right. If the third-party holder of such right

exercises its right this Contract will terminate. If the third party's right to purchase is waived explicitly expires, or the Contract is approved, this Contract will remain in full force and effect. Seller must pro notify Buyer in writing of the foregoing. If the third party right to purchase is exercised or approval of this Contract has not occurred on or before **Third Party Right to Purchase/Approve Deadline**, this Contract will then terminate. Seller will supply to Buyer, in writing, details of any Third Party Right to Purchase the Property on or before the Record Title Deadline.

8.7. Right to Object to Title, Resolution. Buyer has a right to object or terminate, in Buyer's sole subjective discretion, based on any title matters including those matters set forth in § 8.2. (Record Title), § 8.3. (Off-Record Title), § 8.5. (Tax Certificate) and § 13 (Transfer of Title). If Buyer exercises Buyer's rights to object or terminate based on any such title matter, on or before the applicable deadline, Buyer has the following options:

8.7.1. Title Objection, Resolution. If Seller receives Buyer's written notice objecting to any title matter (Notice of Title Objection) on or before the applicable deadline and if Buyer and Seller have not agreed to a written settlement thereof on or before **Title Resolution Deadline**, this Contract will terminate on the expiration of **Title Resolution Deadline**, unless Seller receives Buyer's written withdrawal of Buyer's Notice of Title Objection (i.e., Buyer's written notice to waive objection to such items and waives the Right to Terminate for that reason), on or before expiration of **Title Resolution Deadline**. If either the Record Title Deadline or the Off-Record Title Deadline, or both, are extended pursuant to § 8.2. (Record Title) or § 8.3. (Off-Record Title) the Title Resolution Deadline also will be automatically extended to the earlier of Closing or fifteen days after Buyer's receipt of the applicable documents; or

8.7.2. Title Objection, Right to Terminate. Buyer may exercise the Right to Terminate under § 24.1., on or before the applicable deadline, based on any title matter unsatisfactory to Buyer, in Buyer's sole subjective discretion.

8.8. Title Advisory. The Title Documents affect the title, ownership and use of the Property and should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property, including, without limitation, boundary lines and encroachments, set-back requirements, area, zoning, building code violations, unrecorded easements and claims of easements, leases and other unrecorded agreements, water on or under the Property and various laws and governmental regulations concerning land use, development and environmental matters.

8.8.1. OIL, GAS, WATER AND MINERAL DISCLOSURE. THE SURFACE ESTATE OF THE PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE AND TRANSFER OF THE SURFACE ESTATE MAY NOT NECESSARILY INCLUDE TRANSFER OF THE MINERAL ESTATE OR WATER RIGHTS. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL, GAS, OTHER MINERALS, GEOTHERMAL ENERGY OR WATER ON OR UNDER THE SURFACE OF THE PROPERTY, WHICH INTERESTS MAY GIVE THEM RIGHTS TO ENTER AND USE THE SURFACE OF THE PROPERTY TO ACCESS THE MINERAL ESTATE, OIL, GAS OR WATER.

8.8.2. SURFACE USE AGREEMENT. THE USE OF THE SURFACE ESTATE OF THE PROPERTY TO ACCESS THE OIL, GAS OR MINERALS MAY BE GOVERNED BY A SURFACE USE AGREEMENT, A MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE COUNTY CLERK AND RECORDER.

8.8.3. OIL AND GAS ACTIVITY. OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR ADJACENT TO THE PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING, WELL COMPLETION OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES, PRODUCING WELLS, REWORKING OF CURRENT WELLS AND GAS GATHERING AND PROCESSING FACILITIES.

8.8.4. ADDITIONAL INFORMATION. BUYER IS ENCOURAGED TO SEEK ADDITIONAL INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THE PROPERTY, INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE COLORADO OIL AND GAS CONSERVATION COMMISSION.

8.8.5. Title Insurance Exclusions. Matters set forth in this Section and others, may be excepted, excluded from, or not covered by the owner's title insurance policy.

8.9. Mineral Rights Review. Buyer ☐ Does ☒ Does Not have a Right to Terminate if examination of

9. NEW ILC, NEW SURVEY.

9.1. New ILC or New Survey. If the box is checked, (1) ☐ **New Improvement Location Certificate (New ILC)**; or, (2) ☐ **New Survey** in the form of ; is required and the following will apply:

9.1.1. Ordering of New ILC or New Survey. ☐ **Seller** ☐ **Buyer** will order the New ILC or New Survey. The New ILC or New Survey may also be a previous ILC or survey that is in the above-required form, certified and updated as of a date after the date of this Contract.

9.1.2. Payment for New ILC or New Survey. The cost of the New ILC or New Survey will be paid, on or before Closing, by: ☐ **Seller** ☐ **Buyer** or:

Seller to provide an updated copy of the Improvement Survey dated 04/05/2023. Improvement survey by QED is acceptable

9.1.3. Delivery of New ILC or New Survey. Buyer, Seller, the issuer of the Title Commitment (or the provider of the opinion of title if an Abstract of Title) and **Agent** will receive a New ILC or New Survey on or before **New ILC or New Survey Deadline**.

9.1.4. Certification of New ILC or New Survey. The New ILC or New Survey will be certified by the surveyor to all those who are to receive the New ILC or New Survey.

9.2. Buyer's Right to Waive or Change New ILC or New Survey Selection. Buyer may select a New ILC or New Survey different than initially specified in this Contract if there is no additional cost to Seller or change to the **New ILC or New Survey Objection Deadline**. Buyer may, in Buyer's sole subjective discretion, waive a New ILC or New Survey if done prior to Seller incurring any cost for the same.

9.3. New ILC or New Survey Objection. Buyer has the right to review and object based on the New ILC or New Survey. If the New ILC or New Survey is not timely received by Buyer or is unsatisfactory to Buyer, in Buyer's sole subjective discretion, Buyer may, on or before **New ILC or New Survey Objection Deadline**, notwithstanding § 8.3. or § 13:

9.3.1. Notice to Terminate. Notify Seller in writing, pursuant to § 24.1, that this Contract is terminated; or

9.3.2. New ILC or New Survey Objection. Deliver to Seller a written description of any matter that was to be shown or is shown in the New ILC or New Survey that is unsatisfactory and that Buyer requires Seller to correct.

9.3.3. New ILC or New Survey Resolution. If a **New ILC or New Survey Objection** is received by Seller, on or before **New ILC or New Survey Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **New ILC or New Survey Resolution Deadline**, this Contract will terminate on expiration of the **New ILC or New Survey Resolution Deadline**, unless Seller receives Buyer's written withdrawal of the New ILC or New Survey Objection before such termination (i.e., on or before expiration of **New ILC or New Survey Resolution Deadline**).

DISCLOSURE, INSPECTION AND DUE DILIGENCE

10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY AND DUE DILIGENCE.

10.1. Seller's Property Disclosure. On or before **Seller's Property Disclosure Deadline**, Seller agrees to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission's Seller's Property Disclosure form completed by Seller to Seller's actual knowledge and current as of the date of this Contract.

10.2. Disclosure of Adverse Material Facts; Subsequent Disclosure; Present Condition. Seller must disclose to Buyer any adverse material facts actually known by Seller as of the date of this Contract. Seller agrees that disclosure of adverse material facts will be in writing. In the event Seller discovers an adverse material fact after the date of this Contract, Seller must timely disclose such adverse fact to Buyer. Buyer has the Right to Terminate based on the Seller's new disclosure on the earlier of Closing or five days after Buyer's receipt of the new disclosure. Except as otherwise provided in this Contract, Buyer

acknowledges that Seller is conveying the Property to Buyer in an “**As Is**” condition, “**Where Is**” and **Faults.**”

Section I, Item 3)

10.3. Inspection. Unless otherwise provided in this Contract, Buyer, acting in good faith, has the right to have inspections (by one or more third parties, personally or both) of the Property, Leased Items, and Inclusions (Inspection), at Buyer’s expense. If (1) the physical condition of the Property, including, but not limited to, the roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other mechanical systems of the Property, (2) the physical condition of the Inclusions and Leased Items, (3) service to the Property (including utilities and communication services), systems and components of the Property (e.g., heating and plumbing), (4) any proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise (whether on or off the Property) and its effect or expected effect on the Property or its occupants is unsatisfactory, in Buyer’s sole subjective discretion, Buyer may:

10.3.1. Inspection Termination. On or before the **Inspection Termination Deadline**, notify Seller in writing, pursuant to § 24.1., that this Contract is terminated due to any unsatisfactory condition, provided the Buyer did not previously deliver an Inspection Objection. Buyer’s Right to Terminate under this provision expires upon delivery of an Inspection Objection to Seller pursuant to § 10.3.2.; or

10.3.2. Inspection Objection. On or before the **Inspection Objection Deadline**, deliver to Seller a written description of any unsatisfactory condition that Buyer requires Seller to correct.

10.3.3. Inspection Resolution. If an Inspection Objection is received by Seller, on or before **Inspection Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Inspection Resolution Deadline**, this Contract will terminate on **Inspection Resolution Deadline** unless Seller receives Buyer’s written withdrawal of the Inspection Objection before such termination (i.e., on or before expiration of **Inspection Resolution Deadline**). Nothing in this provision prohibits the Buyer and the Seller from mutually terminating this Contract before the Inspection Resolution Deadline passes by executing an Earnest Money Release.

10.4. Damage, Liens and Indemnity. Buyer, except as otherwise provided in this Contract or other written agreement between the parties, is responsible for payment for all inspections, tests, surveys, engineering reports, or other reports performed at Buyer’s request (Work) and must pay for any damage that occurs to the Property and Inclusions as a result of such Work. Buyer must not permit claims or liens of any kind against the Property for Work performed on the Property. Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any such Work, claim, or lien. This indemnity includes Seller’s right to recover all costs and expenses incurred by Seller to defend against any such liability, damage, cost or expense, or to enforce this Section, including Seller’s reasonable attorney fees, legal fees and expenses. The provisions of this Section survive the termination of this Contract. This § 10.4. does not apply to items performed pursuant to an Inspection Resolution.

10.5. Insurability. Buyer has the Right to Terminate under § 24.1., on or before **Property Insurance Termination Deadline**, based on any unsatisfactory provision of the availability, terms and conditions and premium for property insurance (Property Insurance) on the Property, in Buyer’s sole subjective discretion.

10.6. Due Diligence.

10.6.1. Due Diligence Documents. Seller agrees to deliver copies of the following documents and information pertaining to the Property and Leased Items (Due Diligence Documents) to Buyer on or before **Due Diligence Documents Delivery Deadline**:

10.6.1.1. Occupancy Agreements. All current leases, including any amendments or other occupancy agreements, pertaining to the Property. Those leases or other occupancy agreements pertaining to the Property that survive Closing are as follows (Leases):

None

10.6.1.2. Leased Items Documents. If any lease of personal property (§ 2.5.7., Leased Items) will be transferred to Buyer at Closing, Seller agrees to deliver copies of the leases and information pertaining to the personal property to Buyer on or before **Due Diligence Documents Delivery Deadline**. Buyer ☐ **Will** ☒ **Will Not** assume the Seller’s obligations under such leases for the Leased Items (§ 2.5.7., Leased Items).

10.6.1.3. Encumbered Inclusions Documents. If any Inclusions owned by Seller encumbered pursuant to § 2.5.4. (Encumbered Inclusions) above, Seller agrees to deliver copies of evidence of debt, security and any other documents creating the encumbrance to Buyer on or before **Due Diligence Documents Delivery Deadline**. Buyer ☐ **Will** ☒ **Will Not** assume the debt on the Encumbered Inclusions (§ 2.5.4., Encumbered Inclusions).

10.6.1.4. Other Documents. If the respective box is checked, Seller agrees to additionally deliver copies of the following:

☐ **10.6.1.4.1.** All contracts relating to the operation, maintenance and management of the Property;

☐ **10.6.1.4.2.** Property tax bills for the last years;

☐ **10.6.1.4.3.** As-built construction plans to the Property and the tenant improvements, including architectural, electrical, mechanical and structural systems; engineering reports; and permanent Certificates of Occupancy, to the extent now available;

☐ **10.6.1.4.4.** A list of all Inclusions to be conveyed to Buyer;

☐ **10.6.1.4.5.** Operating statements for the past years;

☐ **10.6.1.4.6.** A rent roll accurate and correct to the date of this Contract;

☐ **10.6.1.4.7.** A schedule of any tenant improvement work Seller is obligated to complete but has not yet completed and capital improvement work either scheduled or in process on the date of this Contract;

☐ **10.6.1.4.8.** All insurance policies pertaining to the Property and copies of any claims which have been made for the past years;

☒ **10.6.1.4.9.** Soils reports, surveys and engineering reports or data pertaining to the Property (if not delivered earlier under § 8.3.);

☒ **10.6.1.4.10.** Any and all existing documentation and reports regarding Phase I and II environmental reports, letters, test results, advisories and similar documents respective to the existence or nonexistence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances and/or underground storage tanks and/or radon gas. If no reports are in Seller's possession or known to Seller, Seller warrants that no such reports are in Seller's possession or known to Seller;

☐ **10.6.1.4.11.** Any *Americans with Disabilities Act* reports, studies or surveys concerning the compliance of the Property with said Act;

☒ **10.6.1.4.12.** All permits, licenses and other building or use authorizations issued by any governmental authority with jurisdiction over the Property and written notice of any violation of any such permits, licenses or use authorizations, if any; and

☒ **10.6.1.4.13.** Other:

Due Diligence previously preformed by the City of Fruita to be assigned and/ or released to FARM, LLC or assigns.

10.6.2. Due Diligence Documents Review and Objection. Buyer has the right to review and object based on the Due Diligence Documents. If the Due Diligence Documents are not supplied to Buyer or are unsatisfactory, in Buyer's sole subjective discretion, Buyer may, on or before **Due Diligence Documents Objection Deadline**:

10.6.2.1. Notice to Terminate. Notify Seller in writing, pursuant to § 24.1., that this Contract is terminated; or

10.6.2.2. Due Diligence Documents Objection. Deliver to Seller a written description of any unsatisfactory Due Diligence Documents that Buyer requires Seller to correct.

10.6.2.3. Due Diligence Documents Resolution. If a Due Diligence Documents Objection is received by Seller, on or before **Due Diligence Documents Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Due Diligence Documents Resolution Deadline**, this Contract will terminate on **Due Diligence Documents Resolution Deadline** unless Seller receives Buyer's written withdrawal of the Due Diligence Documents Objection before such termination (i.e., on or before expiration of **Due Diligence Documents Resolution Deadline**).

757 **10.6.3. Zoning.** Buyer has the Right to Terminate under § 24.1., on or before **Due Diligence**
758 **Documents Objection Deadline**, based on any unsatisfactory zoning and any use restrictions imposed
759 any governmental agency with jurisdiction over the Property, in Buyer's sole subjective discretion.

760 **10.6.4. Due Diligence – Environmental, ADA.** Buyer has the right to obtain environmental
761 inspections of the Property including Phase I and Phase II Environmental Site Assessments, as applicable.
762 ☐ **Seller** ☐ **Buyer** will order or provide ☐ **Phase I Environmental Site Assessment**, ☐ **Phase II**
763 **Environmental Site Assessment** (compliant with most current version of the applicable ASTM E1527
764 standard practices for Environmental Site Assessments) and/or , at the expense of ☐ **Seller** ☐ **Buyer**
765 (Environmental Inspection). In addition, Buyer, at Buyer's expense, may also conduct an evaluation whether
766 the Property complies with the *Americans with Disabilities Act* (ADA Evaluation). All such inspections and
767 evaluations must be conducted at such times as are mutually agreeable to minimize the interruption of
768 Seller's and any Seller's tenants' business uses of the Property, if any.

769 If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site
770 Assessment, the **Environmental Inspection Termination Deadline** will be extended by days (Extended
771 Environmental Inspection Objection Deadline) and if such Extended Environmental Inspection Objection
772 Deadline extends beyond the **Closing Date**, the **Closing Date** will be extended a like period of time. In such
773 event, ☐ **Seller** ☐ **Buyer** must pay the cost for such Phase II Environmental Site Assessment.

774 Notwithstanding Buyer's right to obtain additional environmental inspections of the Property in this §
775 10.6.4., Buyer has the Right to Terminate under § 24.1., on or before **Environmental Inspection**
776 **Termination Deadline**, or if applicable, the Extended Environmental Inspection Objection Deadline, based on
777 any unsatisfactory results of Environmental Inspection, in Buyer's sole subjective discretion.

778 Buyer has the Right to Terminate under § 24.1., on or before **ADA Evaluation Termination Deadline**,
779 based on any unsatisfactory ADA Evaluation, in Buyer's sole subjective discretion.

780 **10.7. Conditional Upon Sale of Property.** This Contract is conditional upon the sale and closing of
781 that certain property owned by Buyer and commonly known as . Buyer has the Right to Terminate under §
782 24.1. effective upon Seller's receipt of Buyer's Notice to Terminate on or before **Conditional Sale Deadline** if
783 such property is not sold and closed by such deadline. This Section is for the sole benefit of Buyer. If Seller
784 does not receive Buyer's Notice to Terminate on or before **Conditional Sale Deadline**, Buyer waives any
785 Right to Terminate under this provision.

786 **10.8. Source of Potable Water (Residential Land and Residential Improvements Only).**
787 **[Intentionally Deleted - See Residential Addendum if applicable]**

788 **10.9. Existing Leases; Modification of Existing Leases; New Leases.** Seller states that none of
789 the Leases to be assigned to the Buyer at the time of Closing contain any rent concessions, rent reductions
790 or rent abatements except as disclosed in the Lease or other writing received by Buyer. Seller will not amend,
791 alter, modify, extend or cancel any of the Leases nor will Seller enter into any new leases affecting the
792 Property without the prior written consent of Buyer, which consent will not be unreasonably withheld or
793 delayed.

794 **10.10. Lead-Based Paint.** **[Intentionally Deleted - See Residential Addendum if applicable]**

795 **10.11. Carbon Monoxide Alarms.** **[Intentionally Deleted - See Residential Addendum if**
796 **applicable]**

797 **10.12. Methamphetamine Disclosure.** **[Intentionally Deleted - See Residential Addendum if**
798 **applicable]**

800 **11. TENANT ESTOPPEL STATEMENTS.**

801 **11.1. Estoppel Statements Conditions.** Buyer has the right to review and object to any Estoppel
802 Statements. Seller must request from all tenants of the Property and if received by Seller, deliver to Buyer on
803 or before **Estoppel Statements Deadline**, statements in a form and substance reasonably acceptable to
804 Buyer, from each occupant or tenant at the Property (Estoppel Statement) attached to a copy of the Lease
805 stating:

806 **11.1.1.** The commencement date of the Lease and scheduled termination date of the Lease;

807 **11.1.2.** That said Lease is in full force and effect and that there have been no subsequent
808 modifications or amendments;

- 11.1.3. The amount of any advance rentals paid, rent concessions given and deposits paid to Seller;
- 11.1.4. The amount of monthly (or other applicable period) rental paid to Seller;
- 11.1.5. That there is no default under the terms of said Lease by landlord or occupant; and
- 11.1.6. That the Lease to which the Estoppel Statement is attached is a true, correct and complete copy of the Lease demising the premises it describes.

11.2. Seller Estoppel Statement. In the event Seller does not receive from all tenants of the Property a completed signed Estoppel Statement, Seller agrees to complete and execute an Estoppel Statement setting forth the information and documents required §11.1. above and deliver the same to Buyer on or before **Estoppel Statements Deadline**.

11.3. Estoppel Statements Termination. Buyer has the Right to Terminate under § 24.1., on or before **Estoppel Statements Termination Deadline**, based on any unsatisfactory Estoppel Statement, in Buyer's sole subjective discretion, or if Seller fails to deliver the Estoppel Statements on or before **Estoppel Statements Deadline**. Buyer also has the unilateral right to waive any unsatisfactory Estoppel Statement.

CLOSING PROVISIONS

12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.

12.1. Closing Documents and Closing Information. Seller and Buyer will cooperate with the Closing Company to enable the Closing Company to prepare and deliver documents required for Closing to Buyer and Seller and their designees. If Buyer is obtaining a loan to purchase the Property, Buyer acknowledges Buyer's lender is required to provide the Closing Company, in a timely manner, all required loan documents and financial information concerning Buyer's loan. Buyer and Seller will furnish any additional information and documents required by Closing Company that will be necessary to complete this transaction. Buyer and Seller will sign and complete all customary or reasonably required documents at or before Closing.

12.2. Closing Instructions. Colorado Real Estate Commission's Closing Instructions ☐ **Are** ☒ **Are Not** executed with this Contract.

12.3. Closing. Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the date specified as the **Closing Date** or by mutual agreement at an earlier date. At Closing, Seller agrees to deliver a set of keys for the Property to Buyer. The hour and place of Closing will be as designated by **Sellers & Buyers mutual agreement**.

12.4. Disclosure of Settlement Costs. Buyer and Seller acknowledge that costs, quality and extent of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

12.5. Assignment of Leases. Seller must assign to Buyer all Leases at Closing that will continue after Closing and Buyer must assume Seller's obligations under such Leases. Further, Seller must transfer to Buyer all Leased Items and assign to Buyer such leases for the Leased Items accepted by Buyer pursuant to § 2.5.7. (Leased Items).

13. TRANSFER OF TITLE. Subject to Buyer's compliance with the terms and provisions of this Contract, including the tender of any payment due at Closing, Seller must execute and deliver the following good and sufficient deed to Buyer, at Closing: ☒ special warranty deed ☐ general warranty deed ☐ bargain and sale deed ☐ quit claim deed ☐ personal representative's deed ☐ deed. Seller, provided another deed is not selected, must execute and deliver a good and sufficient special warranty deed to Buyer, at Closing.

Unless otherwise specified in § 29 (Additional Provisions), if title will be conveyed using a special warranty deed or a general warranty deed, title will be conveyed "subject to statutory exceptions" as defined in §38-30-113(5)(a), C.R.S.

14. PAYMENT OF LIENS AND ENCUMBRANCES. Unless agreed to by Buyer in writing, any amounts

owed on any liens or encumbrances securing a monetary sum against the Property and Inclusions, i
any governmental liens for special improvements installed as of the date of Buyer's signature hereon
whether assessed or not, and previous years' taxes, will be paid at or before Closing by Seller from the
proceeds of this transaction or from any other source.

15. CLOSING COSTS, FEES, ASSOCIATION STATUS LETTER AND DISBURSEMENTS, TAXES AND WITHHOLDING.

15.1. Closing Costs. Buyer and Seller must pay, in Good Funds, their respective closing costs and all other items required to be paid at Closing, except as otherwise provided herein.

15.2. Closing Services Fee. The fee for real estate closing services must be paid at Closing by
☐ Buyer ☐ Seller ☒ One-Half by Buyer and One-Half by Seller ☐ Other .

15.3. Association Fees and Required Disbursements. At least fourteen days prior to **Closing Date**, Seller agrees to promptly request that the Closing Company or the Association deliver to Buyer a current Status Letter, if applicable. Any fees associated with or specified in the Status Letter will be paid as follows:

15.3.1. Status Letter Fee. Any fee incident to the issuance of Association's Status Letter must be paid by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☒ N/A.

15.3.2. Record Change Fee. Any Record Change Fee must be paid by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☒ N/A.

15.3.3. Assessments, Reserves or Working Capital. All assessments required to be paid in advance (other than Association Assessments as defined in § 16.2. (Association Assessments), reserves or working capital due at Closing must be paid by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☒ N/A.

15.3.4. Other Fees. Any other fee listed in the Status Letter as required to be paid at Closing will be paid by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☒ N/A.

15.4. Local Transfer Tax. Any Local Transfer Tax must be paid at Closing by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☒ N/A.

15.5. Sales and Use Tax. Any sales and use tax that may accrue because of this transaction must be paid when due by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☒ N/A.

15.6. Private Transfer Fee. Any private transfer fees and other fees due to a transfer of the Property, payable at Closing, such as community association fees, developer fees and foundation fees, must be paid at Closing by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☒ N/A.

15.7. Water Transfer Fees. Water Transfer Fees can change. The fees, as of the date of this Contract, do not exceed \$ for:

☐ Water Stock/Certificates ☐ Water District

☐ Augmentation Membership ☐ Small Domestic Water Company ☐

and must be paid at Closing by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☒ N/A.

15.8. Utility Transfer Fees. Utility transfer fees can change. Any fees to transfer utilities from Seller to Buyer must be paid by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☒ N/A.

15.9. FIRPTA and Colorado Withholding.

15.9.1. FIRPTA. The Internal Revenue Service (IRS) may require a substantial portion of the Seller's proceeds be withheld after Closing when Seller is a foreign person. If required withholding does not occur, the Buyer could be held liable for the amount of the Seller's tax, interest and penalties. If the box in this Section is checked, Seller represents that Seller ☐ **IS** a foreign person for purposes of U.S. income taxation. If the box in this Section is not checked, Seller represents that Seller is not a foreign person for purposes of U.S. income taxation. Seller agrees to cooperate with Buyer and Closing Company to provide any reasonably requested documents to verify Seller's foreign person status. If withholding is required, Seller authorizes Closing Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to determine if withholding applies or if an exemption exists.

15.9.2. Colorado Withholding. The Colorado Department of Revenue may require a portion of the Seller's proceeds be withheld after Closing when Seller will not be a Colorado resident after Closing, if not otherwise exempt. Seller agrees to cooperate with Buyer and Closing Company to provide any

reasonably requested documents to verify Seller's status. If withholding is required, Seller authorizes Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to determine if withholding applies or if an exemption exists.

Section I, Item 3)

16. PRORATIONS AND ASSOCIATION ASSESSMENTS.

16.1. Prorations. The following will be prorated to the **Closing Date**, except as otherwise provided:

16.1.1. Taxes. Personal property taxes, if any, special taxing district assessments, if any, and general real estate taxes for the year of Closing, based on

☐ **Taxes for the Calendar Year Immediately Preceding Closing**

☒ **Most Recent Mill Levy and Most Recent Assessed Valuation**, adjusted by any applicable qualifying seniors property tax exemption, qualifying disabled veteran exemption or ☐ **Other**

16.1.2. Rents. Rents based on ☐ **Rents Actually Received** ☐ **Accrued**. At Closing, Seller will transfer or credit to Buyer the security deposits for all Leases assigned to Buyer, or any remainder after lawful deductions, and notify all tenants in writing of such transfer and of the transferee's name and address.

16.1.3. Other Prorations. Water and sewer charges, propane, interest on continuing loan and

16.1.4. Final Settlement. Unless otherwise specified in Additional Provisions, these prorations are final.

16.2. Association Assessments. Current regular Association assessments and dues (Association Assessments) paid in advance will be credited to Seller at Closing. Cash reserves held out of the regular Association Assessments for deferred maintenance by the Association will not be credited to Seller except as may be otherwise provided by the Governing Documents. Buyer acknowledges that Buyer may be obligated to pay the Association, at Closing, an amount for reserves or working capital. Any special assessment assessed prior to **Closing Date** by the Association will be the obligation of ☐ **Buyer** ☐ **Seller**. Except however, any special assessment by the Association for improvements that have been installed as of the date of Buyer's signature hereon, whether assessed prior to or after Closing, will be the obligation of Seller unless otherwise specified in Additional Provisions. Seller represents there are no unpaid regular or special assessments against the Property except the current regular assessments and // Association Assessments are subject to change as provided in the Governing Documents.

17. POSSESSION. Possession of the Property and Inclusions will be delivered to Buyer on **Possession Date at Possession Time**, subject to the Leases as set forth in § 10.6.1.1.

If Seller, after Closing occurs, fails to deliver possession as specified, Seller will be subject to eviction and will be additionally liable to Buyer, notwithstanding § 20.2. (If Seller is in Default), for payment of \$ per day (or any part of a day notwithstanding § 3.3., Day) from **Possession Date** and **Possession Time** until possession is delivered.

General Provisions

18. CAUSES OF LOSS, INSURANCE; DAMAGE TO INCLUSIONS AND SERVICES; CONDEMNATION; AND WALK-THROUGH. Except as otherwise provided in this Contract, the Property, Inclusions or both will be delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.

18.1. Causes of Loss, Insurance. In the event the Property or Inclusions are damaged by fire, other perils or causes of loss prior to Closing (Property Damage) in an amount of not more than ten percent of the total Purchase Price and if the repair of the damage will be paid by insurance (other than the deductible to be paid by Seller), then Seller, upon receipt of the insurance proceeds, will use Seller's reasonable efforts to repair the Property before **Closing Date**. Buyer has the Right to Terminate under § 24.1., on or before **Closing Date**, if the Property is not repaired before **Closing Date**, or if the damage exceeds such sum. Should Buyer elect to carry out this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all insurance proceeds that were received by Seller (but not the Association, if any) resulting from damage to the Property and Inclusions, plus the amount of any deductible provided for in the insurance policy. This credit may not exceed the Purchase Price. In the event Seller has not received the insurance

proceeds prior to Closing, the parties may agree to extend the **Closing Date** to have the Property re
prior to Closing or, at the option of Buyer, (1) Seller must assign to Buyer the right to the proceeds a
if acceptable to Seller's insurance company and Buyer's lender; or (2) the parties may enter into a written
agreement prepared by the parties or their attorney requiring the Seller to escrow at Closing from Seller's
sale proceeds the amount Seller has received and will receive due to such damage, not exceeding the total
Purchase Price, plus the amount of any deductible that applies to the insurance claim.

18.2. Damage, Inclusions and Services. Should any Inclusion or service (including utilities and communication services), system, component or fixture of the Property (collectively Service) (e.g., heating or plumbing), fail or be damaged between the date of this Contract and Closing or possession, whichever is earlier, then Seller is liable for the repair or replacement of such Inclusion or Service with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such Inclusion or Service is not the responsibility of the Association, if any, less any insurance proceeds received by Buyer covering such repair or replacement. If the failed or damaged Inclusion or Service is not repaired or replaced on or before Closing or possession, whichever is earlier, Buyer has the Right to Terminate under § 24.1., on or before **Closing Date**, or, at the option of Buyer, Buyer is entitled to a credit at Closing for the repair or replacement of such Inclusion or Service. Such credit must not exceed the Purchase Price. If Buyer receives such a credit, Seller's right for any claim against the Association, if any, will survive Closing.

18.3. Condemnation. In the event Seller receives actual notice prior to Closing that a pending condemnation action may result in a taking of all or part of the Property or Inclusions, Seller must promptly notify Buyer, in writing, of such condemnation action. Buyer has the Right to Terminate under § 24.1., on or before **Closing Date**, based on such condemnation action, in Buyer's sole subjective discretion. Should Buyer elect to consummate this Contract despite such diminution of value to the Property and Inclusions, Buyer is entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value of the Property or Inclusions, but such credit will not include relocation benefits or expenses or exceed the Purchase Price.

18.4. Walk-Through and Verification of Condition. Buyer, upon reasonable notice, has the right to walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this Contract.

19. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this Contract, Buyer and Seller acknowledge that their respective broker has advised that this Contract has important legal consequences and has recommended: (1) legal examination of title; (2) consultation with legal and tax or other counsel before signing this Contract as this Contract may have important legal and tax implications; (3) to consult with their own attorney if Water Rights, Mineral Rights or Leased Items are included or excluded in the sale; and (4) to consult with legal counsel if there are other matters in this transaction for which legal counsel should be engaged and consulted. Such consultations must be done timely as this Contract has strict time limits, including deadlines, that must be complied with.

20. TIME OF ESSENCE, DEFAULT AND REMEDIES. Time is of the essence for all dates and deadlines in this Contract. This means that all dates and deadlines are strict and absolute. If any payment due, including Earnest Money, is not paid, honored or tendered when due, or if any obligation is not performed timely as provided in this Contract or waived, the non-defaulting party has the following remedies:

20.1. If Buyer is in Default:

☐ **20.1.1. Specific Performance.** Seller may elect to cancel this Contract and all Earnest Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest Money is not a penalty, and the parties agree the amount is fair and reasonable. Seller may recover such additional damages as may be proper. Alternatively, Seller may elect to treat this Contract as being in full force and effect and Seller has the right to specific performance or damages, or both.

20.1.2. Liquidated Damages, Applicable. This § 20.1.2. applies unless the box in § 20.1.1. is checked. Seller may cancel this Contract. All Earnest Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest Money amount specified in § 4.1. is LIQUIDATED

DAMAGES and not a penalty, which amount the parties agree is fair and reasonable and (except as in §§ 10.4. and 21), such amount is SELLER'S ONLY REMEDY for Buyer's failure to perform the obligation of this Contract. Seller expressly waives the remedies of specific performance and additional damages.

20.2. If Seller is in Default:

20.2.1. Specific Performance, Damages or Both. Buyer may elect to treat this Contract as canceled, in which case all Earnest Money received hereunder will be returned to Buyer and Buyer may recover such damages as may be proper. Alternatively, in addition to the per diem in § 17 (Possession) for failure of Seller to timely deliver possession of the Property after Closing occurs, Buyer may elect to treat this Contract as being in full force and effect and Buyer has the right to specific performance or damages, or both.

20.2.2. Seller's Failure to Perform. In the event Seller fails to perform Seller's obligations under this Contract, to include, but not limited to, failure to timely disclose Association violations known by Seller, failure to perform any replacements or repairs required under this Contract or failure to timely disclose any known adverse material facts, Seller remains liable for any such failures to perform under this Contract after Closing. Buyer's rights to pursue the Seller for Seller's failure to perform under this Contract are reserved and survive Closing.

21. LEGAL FEES, COST AND EXPENSES. Anything to the contrary herein notwithstanding, in the event of any arbitration or litigation relating to this Contract, prior to or after **Closing Date**, the arbitrator or court must award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and expenses.

22. MEDIATION. If a dispute arises relating to this Contract (whether prior to or after Closing) and is not resolved, the parties must first proceed, in good faith, to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. Before any mediated settlement is binding, the parties to the dispute must agree to the settlement, in writing. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The obligation to mediate, unless otherwise agreed, will terminate if the entire dispute is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the other at that party's last known address (physical or electronic as provided in § 26). Nothing in this Section prohibits either party from filing a lawsuit and recording a *lis pendens* affecting the Property, before or after the date of written notice requesting mediation. This Section will not alter any date in this Contract, unless otherwise agreed.

23. EARNEST MONEY DISPUTE. Except as otherwise provided herein, Earnest Money Holder must release the Earnest Money following receipt of written mutual instructions, signed by both Buyer and Seller. In the event of any controversy regarding the Earnest Money, Earnest Money Holder is not required to release the Earnest Money. Earnest Money Holder, in its sole subjective discretion, has several options: (1) wait for any proceeding between Buyer and Seller; (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction (Earnest Money Holder is entitled to recover court costs and reasonable attorney and legal fees incurred with such action); or (3) provide notice to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to the parties, Earnest Money Holder is authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit and has not interpleaded the monies at the time of any Order, Earnest Money Holder must disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation of § 22 (Mediation). This Section will survive cancellation or termination of this Contract.

24. TERMINATION.

24.1. Right to Terminate. If a party has a right to terminate, as provided in this Contract (Right to Terminate), the termination is effective upon the other party's receipt of a written notice to terminate (Notice to

Terminate), provided such written notice was received on or before the applicable deadline specified in the Contract. If the Notice to Terminate is not received on or before the specified deadline, the party with the Right to Terminate accepts the specified matter, document or condition as satisfactory and waives the Right to Terminate under such provision.

24.2. Effect of Termination. In the event this Contract is terminated, and all Earnest Money received hereunder is timely returned to Buyer, the parties are relieved of all obligations hereunder, subject to §§ 10.4. and 21.

25. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL; SUCCESSORS. This Contract, its exhibits and specified addenda, constitute the entire agreement between the parties relating to the subject hereof and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract is valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any right or obligation in this Contract that, by its terms, exists or is intended to be performed after termination or Closing survives the same. Any successor to a party receives the predecessor's benefits and obligations of this Contract.

26. NOTICE, DELIVERY AND CHOICE OF LAW.

26.1. Physical Delivery and Notice. Any document or notice to Buyer or Seller must be in writing, except as provided in § 26.2. and is effective when physically received by such party, any individual named in this Contract to receive documents or notices for such party, Broker, or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing must be received by the party, not Broker or Brokerage Firm).

26.2. Electronic Notice. As an alternative to physical delivery, any notice may be delivered in electronic form to Buyer or Seller, any individual named in this Contract to receive documents or notices for such party, Broker or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing, cancellation or Termination must be received by the party, not Broker or Brokerage Firm) at the electronic address of the recipient by facsimile, email or .

26.3. Electronic Delivery. Electronic Delivery of documents and notice may be delivered by: (1) email at the email address of the recipient, (2) a link or access to a website or server provided the recipient receives the information necessary to access the documents, or (3) facsimile at the facsimile number (Fax No.) of the recipient.

26.4. Choice of Law. This Contract and all disputes arising hereunder are governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for real property located in Colorado.

27. NOTICE OF ACCEPTANCE, COUNTERPARTS. This proposal will expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below and the offering party receives notice of such acceptance pursuant to § 26 on or before **Acceptance Deadline Date** and **Acceptance Deadline Time**. If accepted, this document will become a contract between Seller and Buyer. A copy of this Contract may be executed by each party, separately and when each party has executed a copy thereof, such copies taken together are deemed to be a full and complete contract between the parties.

28. GOOD FAITH. Buyer and Seller acknowledge that each party has an obligation to act in good faith including, but not limited to, exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations; Title Insurance, Record Title and Off-Record Title; New ILC, New Survey; and Property Disclosure, Inspection, Indemnity, Insurability and Due Diligence.**

ADDITIONAL PROVISIONS AND ATTACHMENTS

29. ADDITIONAL PROVISIONS. (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

1. Buyer has the right to assign this contract to a related party at any point up to 3 days before closing.
2. Buyer and Seller acknowledge that the value of the Property is \$640,000.00 and that non-monetary consideration, as outlined in the Development Agreement Terms of Exhibit A, will be exchanged between Buyer and Seller for the difference between the Purchase Price and value of the Property. Title Insurance shall be issued for the full value of the Property, in the amount of \$640,000.00.
3. Seller and Buyer to split the cost of the title insurance and closing costs equally.
4. Sale of said property is contingent upon approval of City Council.
5. In the event dates need to be extended, both parties agree to extend not to exceed 60 days.

30. OTHER DOCUMENTS.

30.1. Documents Part of Contract. The following documents are a part of this Contract:
Development Agreement Terms Exhibit A

30.2. Documents Not Part of Contract. The following documents have been provided but are not a part of this Contract:

Signatures

Alleghany Meadows, Member

Date: 1/16/2024

Buyer: **FARM, LLC**

By: Alleghany Meadows, Member

Gavin Brooke, Member

Date: 1/16/2024

Buyer: **FARM, LLC**

By: Gavin Brooke, Member

[NOTE: If this offer is being countered or rejected, do not sign this document.]

Date: _____

Seller: **City of Fruita**
By: Mike Bennett, City Manager

Section I, Item 3)

END OF CONTRACT TO BUY AND SELL REAL ESTATE

BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

A. Broker Working With Buyer

Broker ☐ Does ☒ **Does Not** acknowledge receipt of Earnest Money deposit. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 23, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Broker is working with Buyer as a ☐ **Buyer's Agent** ☒ **Transaction-Broker** in this transaction.

☐ **Customer.** Broker has no brokerage relationship with Buyer. See § B for Broker's brokerage relationship with Seller.

Brokerage Firm's compensation or commission is to be paid by ☐ **Listing Brokerage Firm** ☒ **Buyer**
☐ **Other \$1,000.00.**

This Broker's Acknowledgements and Compensation Disclosure is for disclosure purposes only and does NOT create any claim for compensation. Any compensation agreement between the brokerage firms must be entered into separately and apart from this provision.

Brokerage Firm's Name: **Chesnick Realty, LLC**

Brokerage Firm's License #: **EC100010148**



Date: **1/16/2024**

Broker's Name: **Lori Chesnick**

Broker's License #: **ER1320802**

Address: **137 N Peach St Fruita, CO 81521**

Phone No.: **970-858-8238**

Fax No.: **970-858-8266**

Email Address: **lori@chesnickrealtyllc.com**

B. Broker Working with Seller

Broker ☐ Does ☒ **Does Not** acknowledge receipt of Earnest Money deposit. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 23, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Broker is working with Seller as a ☐ **Seller's Agent** ☒ **Transaction-Broker** in this transaction.

☐ **Customer.** Broker has no brokerage relationship with Seller. See § A for Broker's brokerage relationship with Buyer.

Brokerage Firm's compensation or commission is to be paid by ☒ **Seller** ☐ **Buyer** ☐ **Other** **\$1,000.00.**

This Broker's Acknowledgements and Compensation Disclosure is for disclosure purposes only and does NOT create any claim for compensation. Any compensation agreement between the brokerage firms must be entered into separately and apart from this provision.

Brokerage Firm's Name: **Chesnick Realty, LLC**

Brokerage Firm's License #: **EC100010148**

Broker:



Date: **1/16/2024**

Broker's License #: **ER1320802**

Address: **137 N Peach St Fruita, CO 81521**

Phone No.: **970-858-8238**

Fax No.: **970-858-8266**

Email Address: **lori@chesnickrealtyllc.com**

CBS3-6-23. CONTRACT TO BUY AND SELL REAL ESTATE (COMMERCIAL)

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Chesnick Realty, LLC

137 N Peach St Fruita, CO 81521

Lori Chesnick Broker/Owner lori@chesnickrealtyllc.com

Ph: 970-858-8238 Fax: 970-858-8266

Section I, Item 3)

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (CP40-6-21) (Mandatory 1-22)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

COUNTERPROPOSAL

Date: 1/25/2024

1. This Counterproposal supersedes and replaces any previous counterproposal. This Counterproposal amends the proposed contract dated 1/16/2024 (Contract) between **City of Fruita** (Seller) and **FARM, LLC** (Buyer) relating to the sale and purchase of the following legally described real estate in the County of **Mesa**, Colorado (insert legal description):

LOTS 12 AND 13 BLK 13 TOWN OF FRUITA SUB LOCATED IN SEC 17 1N 2W UM RECD 7/23/1884 RN-1968 MESA CO RECDS-.28 AC
TAX PARCEL # 2697-172-22-029

AND

LOT 14 BLK 13 TOWN OF FRUITA SUB LOCATED IN SEC 17 1N 2W UM RECD 7/23/1884 RN-1968 MESA CO RECDS - .11 AC
TAX PARCEL # 2697-172-22-030

TITLE COMPANY TO VERIFY LEGAL DESCRIPTION

known as: **169 S Mulberry St, Fruita, CO 81521** (Property).

NOTE: If the table is omitted, or if any item is left blank or is marked in the "No Change" column, it means no change to the corresponding provision of the Contract. If any item is marked in the "Deleted" column, it means that the corresponding provision of the Contract to which reference is made is deleted.

2. **§ 3.1. Dates and Deadlines.** [Note: This table may be omitted if inapplicable.]

Item No.	Reference	Event	Date or Deadline		No Change	Deleted
1	§ 3	Time of Day Deadline				
2	§ 3	Alternative Earnest Money Deadline				
		Title				
3	§ 8	Record Title Deadline (and Tax Certificate)				
4	§ 8	Record Title Objection Deadline				
5	§ 8	Off-Record Title Deadline				
6	§ 8	Off-Record Title Objection Deadline				
7	§ 8	Title Resolution Deadline				
8	§ 8	Third Party Right to Purchase/Approve Deadline				
		Owners' Association				
9	§ 7	Association Documents Deadline				
10	§ 7	Association Documents Termination Deadline				
		Seller's Disclosures				
11	§ 10	Seller's Property Disclosure Deadline				
12	§ 10	Lead-Based Paint Disclosure Deadline				
		Loan and Credit				
13	§ 5	New Loan Application Deadline				
14	§ 5	New Loan Terms Deadline				
15	§ 5	New Loan Availability Deadline				
16	§ 5	Buyer's Credit Information Deadline				
17	§ 5	Disapproval of Buyer's Credit Information Deadline				

18	§ 5	Existing Loan Deadline				
19	§ 5	Existing Loan Termination Deadline				
20	§ 5	Loan Transfer Approval Deadline				
21	§ 4	Seller or Private Financing Deadline				
Appraisal						
22	§ 6	Appraisal Deadline				
23	§ 6	Appraisal Objection Deadline				
24	§ 6	Appraisal Resolution Deadline				
Survey						
25	§ 9	New ILC or New Survey Deadline				
26	§ 9	New ILC or New Survey Objection Deadline				
27	§ 9	New ILC or New Survey Resolution Deadline				
Inspection and Due Diligence						
28	§ 2	Water Rights Examination Deadline				
29	§ 8	Mineral Rights Examination Deadline				
30	§ 10	Inspection Termination Deadline	3/22/2024	Friday		
31	§ 10	Inspection Objection Deadline	3/22/2024	Friday		
32	§ 10	Inspection Resolution Deadline	3/29/2024	Friday		
33	§ 10	Property Insurance Termination Deadline				
34	§ 10	Due Diligence Documents Delivery Deadline				
35	§ 10	Due Diligence Documents Objection Deadline				
36	§ 10	Due Diligence Documents Resolution Deadline				
37	§ 10	Environmental Inspection Objection Deadline (CBS2, 3, 4)	3/29/2024	Friday		
38	§ 10	ADA Evaluation Termination Deadline (CBS2, 3, 4)				
39	§ 10	Conditional Sale Deadline				
40	§ 10	Lead-Based Paint Termination Deadline				
41	§ 11	Estoppel Statements Deadline (CBS2, 3, 4)				
42	§ 11	Estoppel Statements Termination Deadline (CBS2,3,4)				
Closing and Possession						
43	§ 12	Closing Date				
44	§ 17	Possession Date				
45	§ 17	Possession Time				
46						
47						

Section I, Item 3)

3. § 4. PURCHASE PRICE AND TERMS. [Note: This table may be deleted if inapplicable.]

The Purchase Price set forth below is payable in U.S. Dollars by Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 4.1	Purchase Price	\$640,000.00	
2	§ 4.3	Earnest Money		\$11,505.00
3	§ 4.5	New Loan		
4	§ 4.6	Assumption Balance		
5	§ 4.7	Private Financing		
6	§ 4.7	Seller Financing		
7		Nonmonetary Contribution (ExA)		\$409,885.00
8				
9	§ 4.4	Cash at Closing		\$218,610.00
10		TOTAL	\$640,000.00	\$640,000.00

4. ATTACHMENTS. The following are a part of this Counterproposal:

Note: The following documents have been provided but are **not** a part of this Counterproposal:

5. OTHER CHANGES.

Regarding Section 8.1.1. Title Insurance: Strike-through is removed. Title insurance will be provided based on the purchase price.

Regarding Section 9.1.2. Seller will provide copy of the Improvement Survey dated 4/5/23.

Regarding Section 10.6.1.4., Other Documents. Only box to be checked. 10.6.1.4.1

City is providing the documents that they have: Seller's Disclosures to Buyer:

Appraisal, demolition estimate quote, Phase 1 and 2 environmental assessments, asbestos inspection report, 4/5/23 improvement survey plat.

Regarding Section 16.1.1. Taxes. Does not apply. Property is currently Tax Exempt.

Regarding Section 29. Additional Provisions:

2. Deleted.

3. Deleted.

4. Amended - Sale of property contingent upon approval by City Council and adoption of ordinance authorizing the sale and conveyance of the property.

6. ACCEPTANCE DEADLINE. This Counterproposal expires unless accepted in writing by Seller and Buyer as evidenced by their signatures below and the offering party to this document receives notice of such acceptance on or before 02/05/2024.

Date

Time

If accepted, the Contract, as amended by this Counterproposal, will become a contract between Seller and Buyer. All other terms and conditions of the Contract remain the same.

Date: _____

Seller: **City of Fruita****By: Mike Bennett, City Manager**

Seller: _____ Date: _____

Alleghany Meadows, Member Date: 1/30/2024

Buyer: **FARM, LLC****By: Alleghany Meadows, Member**

Gavin Brooke, Member Date: 1/31/2024

Buyer: **FARM, LLC****By: Gavin Brooke, Member**

Note: When this Counterproposal form is used, the Contract is **not** to be signed by the party initiating this Counterproposal. Brokers must complete and sign the Broker's Acknowledgments and Compensation Disclosure portion of the Contract.



EXHIBIT A TERMS FOR DEVELOPMENT AGREEMENT

Date: 1/16/2024

Property Address: **169 S Mulberry St, Fruita, CO 81521**

EXHIBIT A

At Closing, the Buyer and the City will enter into a Development Agreement including at least the general terms outlined in this Exhibit A.

Buyer and Seller agree to negotiate in good faith and enter into a Development Agreement for the Property on or before March 22, 2024, which shall include all material terms contained herein. If no Development Agreement is entered into on or before March 22, 2024, either party shall have the right to terminate under § 24 of the Contract.

I. BUILDING REDVELOPMENT

A. Buyer shall obtain a letter of credit on or before March 22, 2024, that can be drawn on by the City to complete the improvements to the Powder Coating Building in the event that the Buyer defaults in its obligations to redevelop the Powder Coating Building under the Parking and Redevelopment Agreement.

B. Buyer will provide to Seller on or before March 22, 2024 an estimate of costs associated with the redevelopment of the Powder Coating Building in accordance with subsection C, below.

C. Buyer, at its sole expense, will redevelop the Power Coating Building, which redevelopment shall include:

- a. Removal of the jumble of lean-to additions along the alley;**
- b. A new metal roof on the original building;**
- c. Replacement of the skylights;**
- d. New garage doors to Mulberry and McCune;**
- e. New exterior lighting; and**
- f. New exterior paint.**

D. Upon Buyer's obtainment of a certificate of occupancy for the redeveloped Powder Coating Building, and the seal coating and striping of the 20 initial parking spaces, as described in Section II(A)(a), below, the City will grant to Buyer use of the City's right of way along McCune for parking, patio, and/or outdoor improvements.

II. PARKING AGREEMENT

A., a. and b. are replaced with:

At closing, the Buyer and the City shall enter into a lease agreement whereby the City lease 20 parking spaces for public use on the Property which Buyer shall maintain with seal coating, striping and parking bumpers. On or before the end of the lease, Buyer shall permanently dedicate 20 public parking spaces to the City on either the Property as

described in the lease or an any property owned by the Buyer on Mulberry Street between Aspen Avenue and E. McCune Avenue in a location approved by the City Manager, in writing, which approval shall not be unreasonably withheld.

Section I, Item 3)

c. Upon the dedication of the permanent location for the 20 public parking spaces, the parking area shall be improved and maintained, at the sole expense of the City, to meet the then-current parking standards for the City of Fruita. These improvements shall include paving, lighting and landscaping.

d. City shall at all times carry insurance for all public parking spaces described and designated herein at its cost.

e. Additional parking will not be required of the Buyer as a result of the redevelopment.

f. The 24 existing parking spaces north of the FARM property and south of E. Aspen Avenue shall remain without private signage and available for use as public parking until the dedication of the 20 permanent public parking spaces is completed. Buyer shall be responsible for all costs and maintenance obligations of the 24 existing parking spaces described in this subsection.

Date: _____
Seller: **City of Fruita**
By: Mike Bennett, City Manager

Alleghany Meadows, Member

Date: **1/30/2024**
Buyer: **FARM, LLC**
By: Alleghany Meadows, Member

Gavin Brooke, Member

Date: **1/31/2024**
Buyer: **FARM, LLC**
By: Gavin Brooke, Member

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FRUITA
COLORADO

AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: DEBRA WOODS, DEPUTY CITY CLERK

DATE: MARCH 5, 2024

AGENDA TEXT: NEW LIQUOR LICENSE APPLICATION – A request to approve a new Hotel and Restaurant – Malt, Vinous and Spirituous Liquor License for Blue Lotus Vietnamese Restaurant, LLC dba Blue Lotus Vietnamese Restaurant located at 152 S. Mesa Street (formerly Koko’s)

BACKGROUND

The Blue Lotus Vietnamese Restaurant, LLC dba Blue Lotus Vietnamese Restaurant has submitted an application and all of the necessary paperwork and fees to be granted a Hotel & Restaurant Liquor License at 152 S. Mesa Street (formerly Koko’s). The applicant has requested that the Colorado Liquor Enforcement Division (state licensing authority) conduct a concurrent review of the application, which means that the state licensing authority began its approval process while the local authority was still conducting its own.

Background checks were conducted with the Federal Bureau of Investigation, Colorado Bureau of Investigation, Mesa County Sheriff’s Office, Police Departments from the Cities of Grand Junction and Fruita, the Washington State Patrol and the Pennington County (South Dakota) Sheriff’s Office.

None of these law enforcement agencies found anything of concern that would hinder the issuance of the license. The Colorado Liquor License Application, Preliminary Findings Report and diagram are attached hereto.

The following is a list of questions and guidelines to aid the Council in the decision-making process to determine if the liquor license should be approved. These guidelines are from Colorado State Statutes.

Regulation 47-324. Concurrent Application Review.

A. A local licensing authority, or a license applicant with local authority approval, can request that the state licensing authority conduct a concurrent review of a new license application prior to the local licensing authority's final approval of the license application. Local licensing authorities who permit a concurrent review will continue to independently review the applicant's license application for the purpose of establishing the reasonable requirements of the neighborhood, the suitability of the character, record and reputation of the applicant and its principals, the fitness of the applicant's premises for occupancy in compliance with the provisions of Articles 46 and Article 47 of Title 12 C.R.S., and any other provisions required for local authority determination as provided for in these articles.

- B. When conducting a concurrent application review, the state licensing authority will advise the local licensing authority of any items that it finds that could result in the denial of the license application. Upon correction of the noted discrepancies, the state licensing authority will notify the local licensing authority of its conditional approval of the license application subject to the final approval by the local licensing authority. The state licensing authority will then issue the applicant's state liquor license upon receiving evidence of final approval by the local licensing authority.
- C. All applications submitted for concurrent review must be accompanied by all applicable state license and application fees. Any applications that are later denied or withdrawn will allow for a refund of license fees only. All application fees provided by an applicant shall be retained by the respective licensing authority.

Code of Regulations, 1 C.C.R 203-2

Regulation 47-310 Application – General Provisions

- E. A licensing authority (the City Council in this case) is required to make a determination as to the character, record and reputation of the applicants for new licenses. The City Council may consider the following factors when assessing the character of the applicants, which may include but not be limited to the following:
1. The applicant or licensee has submitted false applications, made willful misrepresentations and/or committed fraudulent acts;
 2. The application or licensee has a criminal history of crimes of moral turpitude. By way of example, crimes of moral turpitude shall include but not be limited to, murder, burglary, robbery, arson kidnapping, sexual assault, illegal drugs or narcotics convictions;
 3. The applicant or licensee has had previous alcohol beverage licenses denied, suspended or revoked as a result of violations of law;
 4. The applicant or licensee has been found to be delinquent in the payment of any state or local taxes, and record of such tax delinquency has been filed in a court having jurisdiction, or has been made a public record by some other lawful means;
 5. The applicant or licensee has committed statutory violations resulting in the suspension, revocation or denial or any other professional license. For purpose of this section, the suspension or revocation or a state-issued driver's license shall not be considered.

ISSUANCE OF A NEW LIQUOR LICENSE

No license shall be issued to or held by:

1. Any person until the annual fee therefore has been paid;
2. Any person who is not of good moral character;
3. Any partnership, association, or company any of whose officers, or any of whose members holding ten percent or more interest therein, are not of good moral character;

4. Any person unless such person's character, record, and reputation are satisfactory to the respective licensing authority;
5. Any natural person under twenty-one years of age.

Because there were no records of arrest that resulted from the background checks on the individual who will be on the liquor license, staff finds that there are no grounds to deny the liquor license application based on moral character.

In addition, pursuant to **44-3-301(2)(a), C.R.S. Licensing in general:**

Before granting any license, all licensing authorities shall consider, except where this article 3 and article 4 of this title 44 specifically provide otherwise, the reasonable requirements of the neighborhood, the desires of the adult inhabitants as evidenced by petitions, remonstrances, or otherwise, and all other reasonable restrictions that are or may be placed upon the neighborhood by the local licensing authority.

Provided as evidence of the reasonable requirements of the neighborhood and the desires of the adult inhabitants, the applicant submitted a neighborhood survey that was signed by 14 people all of whom were in favor of the Fruita City Council's granting of the liquor license and do not believe that the reasonable requirements of the neighborhood are already being met by other existing establishments.

FISCAL IMPACT

Unknown

APPLICABILITY TO CITY GOALS AND OBJECTIVES

The City of Fruita is charged with protection of the public health, safety and welfare. The consideration of the issuance of a new Hotel and Restaurant Liquor License by the City Council ensures that the proposed establishment is desired in the neighborhood and the applicants are of good moral character.

OPTIONS AVAILABLE TO THE COUNCIL

1. Approve the Hotel and Restaurant – Malt, Vinous and Spirituous Liquor License for Blue Lotus Vietnamese Restaurant, LLC dba Blue Lotus Vietnamese Restaurant located at 152 S. Mesa Street (formerly Koko's) as proposed based on the character of the applicants and the needs of the neighborhood and the desires of the adult inhabitants
2. Approve the Hotel and Restaurant – Malt, Vinous and Spirituous Liquor License for Blue Lotus Vietnamese Restaurant, LLC dba Blue Lotus Vietnamese Restaurant located at 152 S. Mesa Street (formerly Koko's) based on the character of the applicants and the needs of the neighborhood and the desires of the adult inhabitants *with additional requirements*
3. Deny the issuance of the liquor license based on the character of the applicants and the needs of the neighborhood and desires of the adult inhabitants

RECOMMENDATION

It is the recommendation of the staff that Council, by motion:

- **APPROVE THE ISSUANCE OF A HOTEL AND RESTARURANT – MALT, VINOUS AND SPIRITUOUS LIQUOR LICENSE FOR BLUE LOTUS VIETNAMESE RESTAURANT, LLC DBA BLUE LOTUS VIETNAMESE RESTAURANT LOCATED AT 152 S. MESA STREET (FORMERLY KOKO’S)**

Colorado Liquor
Retail License Application

Mailed to LED 2/8/24

Section A, Item 1)

* Note that the Division will not accept cash ☐ Paid by check ☐ Paid online ☐ Uploaded to MoveIt on ☐ Date

☒ New License ☒ New-Concurrent ☐ Transfer of Ownership ☐ State Property Only ☐ Master file

• All answers must be printed in black ink or typewritten
• Applicant must check the appropriate box(es)
• Applicant should obtain a copy of the Colorado Liquor, Beer and Wine Code: SBG.Colorado.gov/Liquor

1. Applicant is applying as a/an ☐ Individual ☒ Limited Liability Company ☐ Association or Other
☐ Corporation ☐ Partnership (includes Limited Liability and Husband and Wife Partnerships)

2. Applicant If an LLC, name of LLC; if partnership, at least 2 partner's names; if corporation, name of corporation **Blue Lotus Vietnamese Restaurant, LLC** FEIN Number **93-4229999**

2a. Trade Name of Establishment (DBA) **BLUE LOTUS VIETNAMESE RESTAURANT** State Sales Tax Number **96003238** Business Telephone **(323) 336-1233**

3. Address of Premises (specify exact location of premises, include suite/unit numbers)
152 S mesa st

City **FRUITA** County **Mesa** State **CO** ZIP Code **81521**

4. Mailing Address (Number and Street) **152 S. MESA ST.** City or Town **FRUITA** State **CO** ZIP Code **81521**

5. Email Address **[REDACTED]**

6. If the premises currently has a liquor or beer license, you must answer the following questions

Present Trade Name of Establishment (DBA)	Present State License Number	Present Class of License	Present Expiration Date
BLUE			

Section A Nonrefundable Application Fees*	Section B (Cont.) Liquor License Fees*
<input type="checkbox"/> Application Fee for New License.....\$1,100.00	<input type="checkbox"/> Liquor-Licensed Drugstore (County).....\$312.50
<input checked="" type="checkbox"/> Application Fee for New License w/Concurrent Review.....\$1,200.00	<input type="checkbox"/> Lodging & Entertainment - L&E (City).....\$500.00
<input type="checkbox"/> Application Fee for Transfer.....\$1,100.00	<input type="checkbox"/> Lodging & Entertainment - L&E (County).....\$500.00

Section B Liquor License Fees*
<input type="checkbox"/> Add Optional Premises to H & R.....\$100.00 X _____ Total: _____
<input type="checkbox"/> Add Related Facility to Resort Complex \$75.00 X _____ Total: _____
<input type="checkbox"/> Add Sidewalk Service Area.....\$75.00
<input type="checkbox"/> Aris License (City).....\$308.75
<input type="checkbox"/> Aris License (County).....\$308.75
<input type="checkbox"/> Beer and Wine License (City).....\$351.25
<input type="checkbox"/> Beer and Wine License (County).....\$436.25
<input type="checkbox"/> Brew Pub License (City).....\$750.00
<input type="checkbox"/> Brew Pub License (County).....\$750.00
<input type="checkbox"/> Campus Liquor Complex (City).....\$500.00
<input type="checkbox"/> Campus Liquor Complex (County).....\$500.00
<input type="checkbox"/> Campus Liquor Complex (State).....\$500.00
<input type="checkbox"/> Club License (City).....\$308.75
<input type="checkbox"/> Club License (County).....\$308.75
<input type="checkbox"/> Distillery Pub License (City).....\$750.00
<input type="checkbox"/> Distillery Pub License (County).....\$750.00
<input checked="" type="checkbox"/> Hotel and Restaurant License (City).....\$500.00
<input type="checkbox"/> Hotel and Restaurant License (County).....\$500.00
<input type="checkbox"/> Hotel and Restaurant License w/one opt premises (City).....\$800.00
<input type="checkbox"/> Hotel and Restaurant License w/one opt premises (County).....\$600.00
<input type="checkbox"/> Liquor-Licensed Drugstore (City).....\$227.50

<input type="checkbox"/> Manager Registration - H & R.....\$30.00	<input type="checkbox"/> Manager Registration - Tavern.....\$30.00
<input type="checkbox"/> Manager Registration - Lodging & Entertainment.....\$30.00	<input type="checkbox"/> Manager Registration - Campus Liquor Complex.....\$30.00
<input type="checkbox"/> Optional Premises License (City).....\$500.00	<input type="checkbox"/> Optional Premises License (County).....\$500.00
<input type="checkbox"/> Racetrack License (City).....\$500.00	<input type="checkbox"/> Racetrack License (County).....\$500.00
<input type="checkbox"/> Resort Complex License (City).....\$500.00	<input type="checkbox"/> Resort Complex License (County).....\$500.00
<input type="checkbox"/> Related Facility - Campus Liquor Complex (City).....\$160.00	<input type="checkbox"/> Related Facility - Campus Liquor Complex (County).....\$160.00
<input type="checkbox"/> Related Facility - Campus Liquor Complex (State).....\$160.00	<input type="checkbox"/> Retail Gaming Tavern License (City).....\$500.00
<input type="checkbox"/> Retail Gaming Tavern License (County).....\$500.00	<input type="checkbox"/> Retail Liquor Store License-Additional (City).....\$227.50
<input type="checkbox"/> Retail Liquor Store License-Additional (County).....\$312.50	<input type="checkbox"/> Retail Liquor Store License-Additional (State).....\$227.50
<input type="checkbox"/> Retail Liquor Store (City).....\$312.50	<input type="checkbox"/> Retail Liquor Store (County).....\$500.00
<input type="checkbox"/> Tavern License (City).....\$500.00	<input type="checkbox"/> Tavern License (County).....\$500.00
<input type="checkbox"/> Vintners Restaurant License (City).....\$750.00	<input type="checkbox"/> Vintners Restaurant License (County).....\$750.00

Questions? Visit: SBG.Colorado.gov/Liquor for more information

Do not write in this space - For Department of Revenue use only

Liability Information			
License Account Number	Liability Date	License Issued Through (Expiration Date)	Total \$

Application Documents Checklist and Worksheet

Section A, Item 1)

Instructions: This checklist should be utilized to assist applicants with filing all required documents for license. All documents must be properly signed and correspond with the name of the applicant exactly. All documents must be typed or legibly printed. Upon final State approval the license will be mailed to the local licensing authority. Application fees are nonrefundable. **Questions? Visit: SBG.Colorado.gov/Liquor for more information**

Items submitted, please check all appropriate boxes completed or documents submitted

I. Applicant information

- ☒ A. Applicant/Licensee identified
- ☒ B. State sales tax license number listed or applied for at time of application **★**
- ☒ C. License type or other transaction identified
- ☒ D. Return originals to local authority (additional items may be required by the local licensing authority) **★**
- ☒ E. All sections of the application need to be completed
- ☐ F. Master file applicants must include the Application for Master File form DR 8415 and applicable fees to this Retail License Application **(N/A)**

II. Diagram of the premises

- ☒ A. No larger than 8½" X 11" **(DEB WILL PROVIDE)**
- ☒ B. Dimensions included (does not have to be to scale). Exterior areas should show type of control (fences, walls, entry/exit points, etc.)
- ☐ C. Separate diagram for each floor (if multiple levels)
- ☒ D. Kitchen - identified if Hotel and Restaurant
- ☒ E. Bold/Outlined Licensed Premises

III. Proof of property possession (One Year Needed)

- ☐ A. Deed in name of the applicant (or) (matching question #2) date stamped / filed with County Clerk
- ☒ B. Lease in the name of the applicant (or) (matching question #2)
- ☐ C. Lease assignment in the name of the applicant with proper consent from the landlord and acceptance by the applicant
- ☐ D. Other agreement if not deed or lease. (matching question #2)

IV. Background information (DR 8404-I) and financial documents

- ☒ A. Complete DR 8404-I for each principal (individuals with more than 10% ownership, officers, directors, partners, members)
- ☒ B. Fingerprints taken and submitted to the appropriate Local Licensing Authority through an approved State Vendor. Master File applicants submit results to the State using code 25YQHT with Identogo. **Do not complete fingerprint cards prior to submitting your application.**
The Vendors are as follows:
Identogo – <https://uenroll.identogo.com/> Phone: 844-539-5539 (toll-free)
Colorado Fingerprinting – <http://www.coloradofingerprinting.com>
Appointment Scheduling Website: <http://www.coloradofingerprinting.com/cabs/>
Phone: 720-292-2722 Toll Free: 833-224-2227
Details about the vendors and fingerprinting in Colorado can be found on CBI's website here:
<https://cbi.colorado.gov/sections/biometric-identification-and-records-unit/employment-and-background-checks>
- ☐ C. Purchase agreement, stock transfer agreement, and/or authorization to transfer license
- ☒ D. List of all notes and loans (Copies to also be attached)

V. Sole proprietor/husband and wife partnership (if applicable)

- ☐ A. Form DR 4679 **(N/A)**
- ☐ B. Copy of State issued Driver's License or Colorado Identification Card for each applicant

VI. Corporate applicant information (if applicable)

- ☐ A. Certificate of Incorporation **(N/A)**
- ☐ B. Certificate of Good Standing
- ☐ C. Certificate of Authorization if foreign corporation (out of state applicants only)

VII. Partnership applicant information (if applicable)

- ☐ A. Partnership Agreement (general or limited). **(N/A)**
- ☐ B. Certificate of Good Standing

VIII. Limited Liability Company applicant information (if applicable)

- ☒ A. Copy of articles of organization
- ☒ B. Certificate of Good Standing
- ☐ C. Copy of Operating Agreement (if applicable)
- ☐ D. Certificate of Authority if foreign LLC (out of state applicants only) **— N/A**

IX. Manager registration for Hotel and Restaurant, Tavern, Lodging & Entertainment, and Campus Liquor Complex licenses when included with this application

- ☐ A. \$30.00 fee **(N/A)**
- ☐ B. If owner is managing, no fee required

Name	Type of License	Account Number	Section A, Item 1)
7. Is the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers under the age of twenty-one years?			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
8. Has the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers ever (in Colorado or any other state):			
a. Been denied an alcohol beverage license?			<input type="checkbox"/> <input checked="" type="checkbox"/>
b. Had an alcohol beverage license suspended or revoked?			<input type="checkbox"/> <input checked="" type="checkbox"/>
c. Had interest in another entity that had an alcohol beverage license suspended or revoked?			<input type="checkbox"/> <input checked="" type="checkbox"/>
If you answered yes to 8a, b or c, explain in detail on a separate sheet.			
9. Has a liquor license application (same license class), that was located within 500 feet of the proposed premises, been denied within the preceding two years? If "yes", explain in detail.			<input type="checkbox"/> <input checked="" type="checkbox"/>
10. Are the premises to be licensed within 500 feet, of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?			<input type="checkbox"/> <input checked="" type="checkbox"/>
or Waiver by local ordinance?			<input type="checkbox"/> <input type="checkbox"/>
Other: _____			
11. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of greater than (>) 10,000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.			(N/A) <input type="checkbox"/> <input type="checkbox"/>
12. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of less than (<) 10,000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.			(N/A) <input type="checkbox"/> <input type="checkbox"/>
13. a. For additional Retail Liquor Store only. Was your Retail Liquor Store License issued on or before January 1, 2016?			(N/A) <input type="checkbox"/> <input type="checkbox"/>
b. Are you a Colorado resident?			(N/A) <input type="checkbox"/> <input type="checkbox"/>
14. Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a Limited Liability Company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any <u>current</u> financial interest in said business including any loans to or from a licensee.			<input type="checkbox"/> <input checked="" type="checkbox"/>
15. Does the applicant, as listed on line 2 of this application, have legal possession of the premises by ownership, lease or other arrangement?			<input checked="" type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/> Ownership <input checked="" type="checkbox"/> Lease <input type="checkbox"/> Other (Explain in Detail) _____ a. If leased, list name of landlord and tenant, and date of expiration, exactly as they appear on the lease:			
Landlord	Tenant	Expires	
ZHU PROPERTIES, LLC	BLUE LOTUS VIETNAMESE RESTAURANT, LLC	12/31/29	
b. Is a percentage of alcohol sales included as compensation to the landlord? If yes, complete question 16.			<input type="checkbox"/> <input checked="" type="checkbox"/>
c. Attach a diagram that designates the area to be licensed in black bold outline (including dimensions) which shows the bars; brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8½" X 11".			
16. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies) will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business? Attach a separate sheet if necessary.			
Last Name	First Name	Date of Birth	FEIN or SSN
(NONE)			
Last Name	First Name	Date of Birth	FEIN or SSN
Attach copies of all notes and security instruments and any written agreement or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.			
17. Optional Premises or Hotel and Restaurant Licenses with Optional Premises: Has a local ordinance or resolution authorizing optional premises been adopted?			(N/A) <input type="checkbox"/> <input type="checkbox"/>
Number of additional Optional Premise areas requested. (See license fee chart)			(N/A)
18. For the addition of a Sidewalk Service Area per Regulation 47-302(A)(4), include a diagram of the service area and documentation received from the local governing body authorizing use of the sidewalk. Documentation may include but is not limited to a statement of use, permit, easement, or other legal permissions.			
(N/A)			

19. Liquor Licensed Drugstore (LLDS) applicants, answer the following:
a. Is there a pharmacy, licensed by the Colorado Board of Pharmacy, located within the applicant's LLDS premises?
If "yes" a copy of license must be attached. (N/A)

20. Club Liquor License applicants answer the following: Attach a copy of applicable documentation Yes No
a. Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain? ☐ ☐
b. Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain? ☐ ☐
c. How long has the club been incorporated? (N/A)
d. Has applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above? ☐ ☐

21. Brew-Pub, Distillery Pub or Vintner's Restaurant applicants answer the following:
a. Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached) (N/A)

22. Campus Liquor Complex applicants answer the following:
a. Is the applicant an institution of higher education? ☐ ☒
b. Is the applicant a person who contracts with the institution of higher education to provide food services?
If "yes" please provide a copy of the contract with the institution of higher education to provide food services. (N/A)

23. For all on-premises applicants.
a. For all Liquor Licensed Drugstores (LLDS) the Permitted Manager must also submit an Manager Permit Application - DR 8000 and fingerprints. (N/A)

Last Name of Manager	First Name of Manager
----------------------	-----------------------

24. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number. Yes No
(N/A) ☐ ☒

25. Related Facility - Campus Liquor Complex applicants answer the following:
a. Is the related facility located within the boundaries of the Campus Liquor Complex?
if yes, please provide a map of the geographical location within the Campus Liquor Complex.
If no, this license type is not available for issues outside the geographical location of the Campus Liquor Complex. (N/A)
b. Designated Manager for Related Facility- Campus Liquor Complex

Last Name of Manager	First Name of Manager
----------------------	-----------------------

26. Tax Information. Yes No
a. Has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant, been found in final order of a tax agency to be delinquent in the payment of any state or local taxes, penalties, or interest related to a business? ☐ ☒
b. Has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant failed to pay any fees or surcharges imposed pursuant to section 44-3-503, C.R.S.? ☐ ☒

27. If applicant is a corporation, partnership, association or limited liability company, applicant must list all Officers, Directors, General Partners, and Managing Members. In addition, applicant must list any stockholders, partners, or members with ownership of 10% or more in the applicant. All persons listed below must also attach form DR 8404-I (Individual History Record), and make an appointment with an approved State Vendor through their website. See application checklist, Section IV, for details.

Name LIUFAN TANG	Home Address, City & State [REDACTED] FRUITA, CO	DOB [REDACTED]	Position OWNER	%Owned 100%
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned

Name	Type of License	Account Number	Section A, Item 1)
<p>** If applicant is owned 100% by a parent company, please list the designated principal officer on above.</p> <p>** Corporations - the President, Vice-President, Secretary and Treasurer must be accounted for above (Include ownership percentage if applicable)</p> <p>** If total ownership percentage disclosed here does not total 100%, applicant must check this box:</p> <p><input type="checkbox"/> Applicant affirms that no individual other than these disclosed herein owns 10% or more of the applicant and does not have financial interest in a prohibited liquor license pursuant to Article 3 or 5, C.R.S.</p>			
Oath Of Applicant			
<p>I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer Code which affect my license.</p>			
Authorized Signature <i>[Signature]</i>	Printed Name and Title LINFAN TANG	Date 10/25/24	
Report and Approval of Local Licensing Authority (City/County)			
Date application filed with local authority 1/29/24	Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application) 3/5/24		
For Transfer Applications Only - Is the license being transferred valid?			Yes No <input type="checkbox"/> <input type="checkbox"/>
<p>The Local Licensing Authority Hereby Affirms that each person required to file DR 8404-I (Individual History Record) or a DR 8000 (Manager Permit) has been:</p> <p><input checked="" type="checkbox"/> Fingerprinted</p> <p><input checked="" type="checkbox"/> Subject to background investigation, including NCIC/CCIC check for outstanding warrants</p> <p>That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with and aware of, liquor code provisions affecting their class of license</p> <p>(Check One)</p> <p><input type="checkbox"/> Date of inspection or anticipated date _____</p> <p><input checked="" type="checkbox"/> Will conduct inspection upon approval of state licensing authority</p>			
<input type="checkbox"/> Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1,500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of > 10,000? N/A			Yes No <input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/> Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3,000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of < 10,000? N/A			Yes No <input type="checkbox"/> <input type="checkbox"/>
<p>NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.</p> <p><input type="checkbox"/> Does the Liquor-Licensed Drugstore (LLDS) have at least twenty percent (20%) of the applicant's gross annual income derived from the sale of food, during the prior twelve (12) month period? N/A</p>			Yes No <input type="checkbox"/> <input type="checkbox"/>
<p>The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 44, Article 4 or 3, C.R.S., and Liquor Rules. Therefore, this application is approved.</p>			
Local Licensing Authority for The City of Fruita		Telephone Number (970) 639-4210	<input checked="" type="checkbox"/> Town, City <input type="checkbox"/> County
Signature <i>[Signature]</i>	Print JOEL KINCAID	Title MAYOR	Date
Signature <i>[Signature]</i>	Print DEB WOODS	Title Deputy City Clerk	Date

Tax Check Authorization, Waiver, and Request to Release Information

I, LINFAN TANG am signing this Tax Check Authorization, Waiver and Request to Release Information (hereinafter "Waiver") on behalf of BLUE LOTUS VIETNAMESE RESTAURANT (the "Applicant/Licensee") to permit the Colorado Department of Revenue and any other state or local taxing authority to release information and documentation that may otherwise be confidential, as provided below. If I am signing this Waiver for someone other than myself, including on behalf of a business entity, I certify that I have the authority to execute this Waiver on behalf of the Applicant/Licensee.

The Executive Director of the Colorado Department of Revenue is the State Licensing Authority, and oversees the Colorado Liquor Enforcement Division as his or her agents, clerks, and employees. The information and documentation obtained pursuant to this Waiver may be used in connection with the Applicant/Licensee's liquor license application and ongoing licensure by the state and local licensing authorities. The Colorado Liquor Code, section 44-3-101, et seq. ("Liquor Code"), and the Colorado Liquor Rules, 1 CCR 203-2 ("Liquor Rules"), require compliance with certain tax obligations, and set forth the investigative, disciplinary and licensure actions the state and local licensing authorities may take for violations of the Liquor Code and Liquor Rules, including failure to meet tax reporting and payment obligations.

The Waiver is made pursuant to section 39-21-113(4), C.R.S., and any other law, regulation, resolution or ordinance concerning the confidentiality of tax information, or any document, report or return filed in connection with state or local taxes. This Waiver shall be valid until the expiration or revocation of a license, or until both the state and local licensing authorities take final action to approve or deny any application(s) for the renewal of the license, whichever is later. Applicant/Licensee agrees to execute a new waiver for each subsequent licensing period in connection with the renewal of any license, if requested.

By signing below, Applicant/Licensee requests that the Colorado Department of Revenue and any other state or local taxing authority or agency in the possession of tax documents or information, release information and documentation to the Colorado Liquor Enforcement Division, and is duly authorized employees, to act as the Applicant's/Licensee's duly authorized representative under section 39-21-113(4), C.R.S., solely to allow the state and local licensing authorities, and their duly authorized employees, to investigate compliance with the Liquor Code and Liquor Rules. Applicant/Licensee authorizes the state and local licensing authorities, their duly authorized employees, and their legal representatives, to use the information and documentation obtained using this Waiver in any administrative or judicial action regarding the application or license.

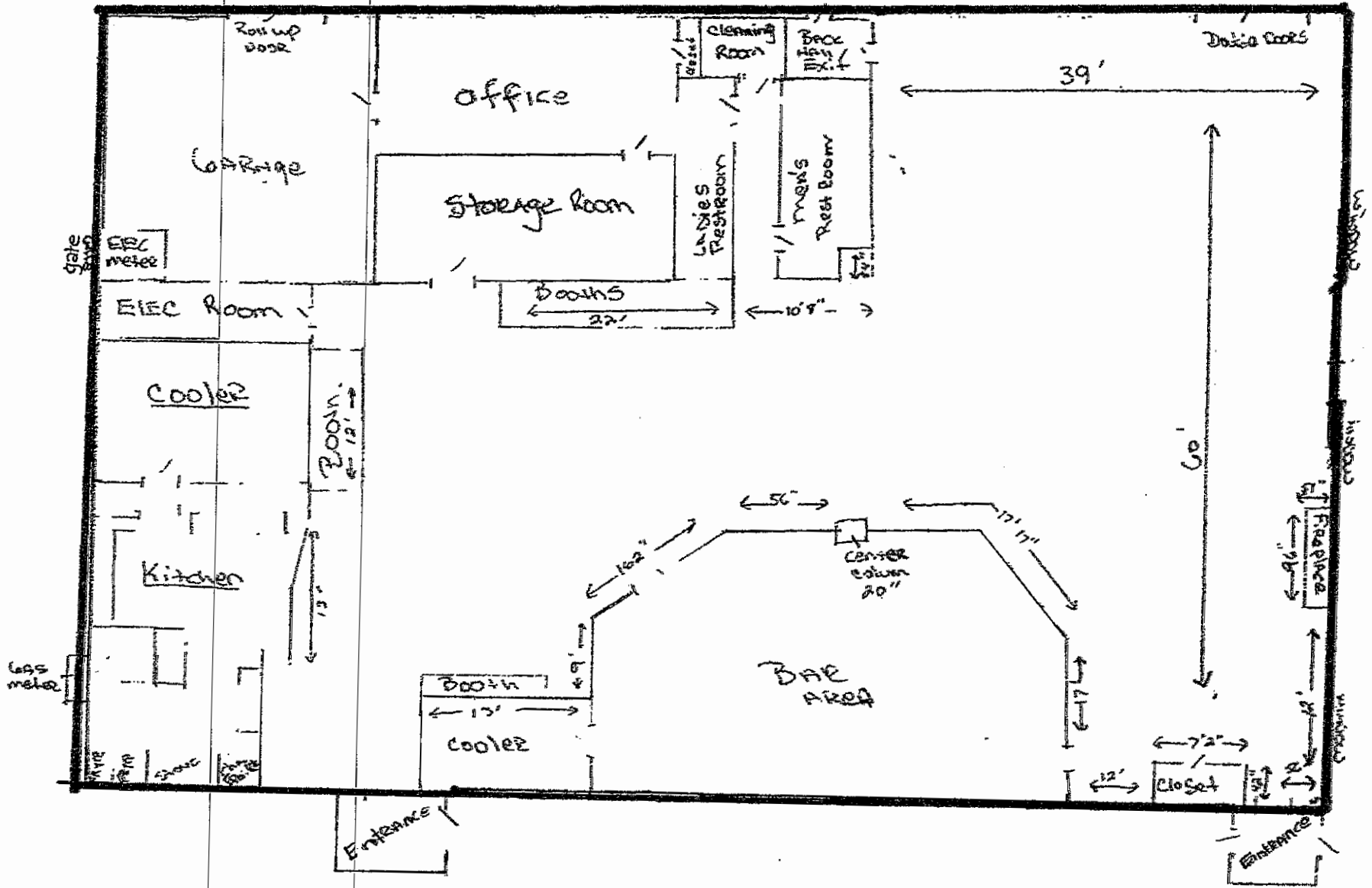
Name (Individual/Business) <u>BLUE LOTUS VIETNAMESE RESTAURANT, LLC</u>		Social Security Number <u>[REDACTED]</u>	
Address <u>152 S. MESA ST.</u>			
City <u>FRUITA</u>		State <u>CO</u>	Zip <u>81521</u>
Home Phone Number <u>(323) 336-1233</u>		Business/Work Phone Number <u>(same)</u>	
Printed name of person signing on behalf of the Applicant/Licensee <u>LINFAN TANG</u>			
Applicant/Licensee's Signature (Signature authorizing the disclosure of confidential tax information) <u>[Signature]</u>			Date signed <u>6/25/24</u>

Privacy Act Statement

Providing your Social Security Number is voluntary and no right, benefit or privilege provided by law will be denied as a result of refusal to disclose it. § 7 of Privacy Act, 5 USCS § 552a (note).

152 SO. MESA
FRUITA, CO

55'9" 58' feet
without patio
Patio 16' x 40'





FRUITA
COLORADO

325 E Aspen
Fruita, CO 81521
(970) 858-3663

CITY OF FRUITA LOCAL LICENSING AUTHORITY, MESA COUNTY COLORADO

PRELIMINARY FINDINGS AND REPORT UPON APPLICATION FOR A HOTEL AND RESTAURANT LIQUOR LICENSE – MALT, VINOUS & SPIRITUOUS

IN RE: Blue Lotus Vietnamese Restaurant, LLC
Dba Blue Lotus Vietnamese Restaurant
152 S. Mesa Street
Fruita, CO 81521

TO THE APPLICANT NAMED ABOVE AND OTHER INTERESTED PARTIES:

You are hereby advised that with regard to your application for a Hotel and Restaurant Liquor License, an investigation has been made and based on the results thereof, the following has been determined:

1. That the application was filed on January 29, 2024.
2. That the Notice of Public Hearing on this matter was posted by the applicant on February 16, 2024 and publication was made in the Daily Sentinel on February 14, 2024 for the hearing date of March 5, 2024.
3. There has not been, within two years preceding the date of your application, a denial of an application by the County Commissioners of Mesa County, the State Licensing Authority, or the Local Licensing Authority of the City of Fruita for a Hotel & Restaurant Liquor License at the location for which you make application for the reason that the reasonable requirements of the neighborhood and the desires of the inhabitants have been satisfied by the existing outlets.
4. It appears from the evidence submitted by you that you are entitled to possession of the premises where you propose to exercise the license applied for.
5. Employees serving alcohol shall attend an Approved Responsible Vendors Training Class. This is training on Colorado laws pertaining to but not limited to: serving alcohol, identifying intoxicated persons, and how to identify those of age to drink alcoholic beverages. All employees that serve alcohol should be trained either prior to beginning employment or as soon as the training is available. The Liquor Enforcement Division (LED) does NOT ACCEPT online Responsible Vendor Training; it must be either done in a "classroom setting" or "live streaming" where the student and the instructor have live interaction. The City of Fruita will be hosting two Responsible Alcohol Server Training Classes on April 29, 2024 from 10:00 a.m. to 12:00 p.m. and 1:00 to 3:00 p.m. and two

more classes on June 10, 2024 at the same timeframes. Proof of attendance by employees selling alcohol must be submitted to the City Clerk's office and will be kept on file.

6. The proposed establishment is located in a Downtown Mixed-Use Zone District. Food Service, Restaurant (including alcohol) is an allowed use in this zone. A certificate of occupancy, a food establishment permit and any other applicable licenses and permits must be issued prior to commencement of operations including Planning Clearances from the City of Fruita Planning Department.
7. The building and grounds where you propose to exercise the privilege of serving alcohol do not appear to be within 500 feet from any public or parochial school or the principal campus of any college, university or seminary.
8. Within a one-mile radius from the building and grounds where you propose to sell malt vinous and spirituous liquors on the premises, there are the following Hotel & Restaurant License establishments:

Dragon Treasure Chinese Restaurant
576 Kokopelli Blvd., Fruita, CO

El Tapatio
402 Jurassic Ave., Fruita, CO

Rib City Grill
455 Kokopelli Blvd., Fruita, CO

Strayhorn Grill
456 Kokopelli Blvd., #10, Fruita, CO

Fiesta Guadalajara Fruita
103 Highway 6 & 50, Fruita, CO

Karma Kitchen
229 E. Aspen Ave., Fruita, CO

Mezcalera, LLC dba El Mescal Family Mexican Restaurant
439 High 6 & 50, Fruita, CO

Hot Tomato Pizzeria
124 N. Mulberry St., Fruita, CO

Mike's Famous Chicken
233 E. Aspen Ave., Fruita, CO

Colorado Summit, LLC dba Aspen Street Coffee Co.
136 E. Aspen Ave., Fruita, CO

9. The following criminal history information has been brought to the attention of the authority:

Applicant (including partners, officers, directors over 10% shareholders)

Owner: Linfan Tang: ALL CLEAR

Source of information:

Federal Bureau of Investigation:	(Exhibit A)
Colorado Bureau of Investigation:	(Exhibit B)
Mesa County Sheriff's Office:	(Exhibit C)
Grand Junction Police Department:	(Exhibit D)
Fruita Police Department:	(Exhibit E)
Washington State Patrol:	(Exhibit F)
Pennington County (SD) Sheriff's Office:	(Exhibit G)

10. The results of the petition circulated with respect to this application are as follows:

Total Signatures obtained by applicant:	14 (Exhibit H, 3 pages)
For:	14
Against:	0

11. The public hearing on your application will be held on March 5, 2024 at 7:00 p.m. in the Council Chambers at the Fruita Civic Center, 2nd Floor at 325 E Aspen, Fruita, CO. At said hearing, you shall have the opportunity to be heard regarding all matters related to your application, including all matters set forth herein.
12. At the public hearing, and pursuant to CRS 12-46-108, as amended, you have the burden of proving that you are qualified to hold the license applied for and that your character, record and reputation are satisfactory; that the neighborhood needs this license and that the residents of the neighborhood desire that this license be granted.
13. A copy of the "Order of Hearing" procedures used by the Local Licensing Authority of the City of Fruita for use and guidance in holding hearings on liquor license applications is attached for your information and review. (Exhibit I)

Dated this 26th day of February, 2024.



Debra Woods, Deputy City Clerk
for the Local Licensing Authority



Page 1 of 1

CIVIL APPLICANT RESPONSE

ICN E2024025000000297903 CIDN OCA CONC J5157
TANG,LINFAN DOB [REDACTED]
MNU SOC SEX M RAC A HGT 500
COCBI0000 COLORADO B OF I
DENVER CO 2024/01/25
A SEARCH OF THE FINGERPRINTS ON THE ABOVE
INDIVIDUAL HAS REVEALED **NO PRIOR ARREST**
DATA. CJIS DIVISION
2024/01/25 **FEDERAL BUREAU OF INVESTIGATION**

COCBI0000
CO BUREAU OF INVEST
COLORADO CRIME INFO CTR
STE 3000
690 KIPLING ST
DENVER,CO 80215-8001



COLORADO
Bureau of Investigation
Department of Public Safety

Biometric Identification and Records Unit
690 Kipling Street, Suite 4000
Lakewood, CO 80215
303-239-4208

CITY OF FRUITA
325 E ASPEN
FRUITA, CO 81521

Date: 02/14/2024 10:08:11(MT)

RE: TANG, LINFAN DOB: [REDACTED] SOC: [REDACTED]

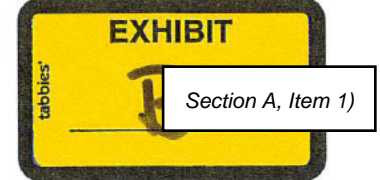
No Colorado Record of arrest has been located based on information provided.

The Colorado Bureau of Investigation's database contains detailed information of arrest records based upon fingerprints provided by Colorado law enforcement agencies. Arrests, which are not supported by fingerprints, will not be included in this database. On occasion the Colorado criminal history will contain disposition information provided by the Colorado Judicial system. Additionally, warrant information, sealed records (except those allowed per state statute 24-72-703), and juvenile records are not available to the public.

The results attached are based on a name search which may or may not be the subject of this inquiry. This search does not include a fingerprint comparison, which is the only means of positive identification. Since an arrest record may be established after this inquiry, an arrest record is only valid at the time of the current request. To ensure the most current available information in regards to subsequent arrest after an initial inquiry, it is recommended another query be made.

Falsifying or altering this document with the intent to misrepresent the contents of the record is prohibited by law, and may be punishable as a felony when done with intent to injure or defraud any person.

Sincerely,
Chris Schaefer, Director
Colorado Bureau of Investigation

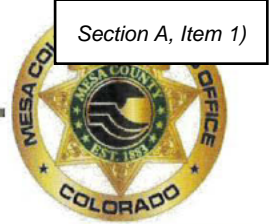


Mesa County Sheriff's Office

Sheriff Todd Rowell

215 Rice Street
P.O. Box 20,000
Grand Junction, CO 81502

970-244-3500 Phone
970-244-3503 Fax
sheriff.mesacounty.us



February 19, 2024

To Whom It May Concern:

Name: TANG, Linfan
DOB: [REDACTED]

The Mesa County Sheriff's Office has checked for arrest record information on the above referenced individual and has found the following:

- ☒ No record of arrest with this agency.
- ☐ Record of arrest with this agency as noted (see attached):
- ☐ This person did not present any personal identification. This person may or may not be the person holding this document.

This background check does not include any contacts made for Civil Process. For Civil Process information, please contact our Civil Unit at 970-244-3521.

Beth Boydstun
Records Administrator
Mesa County Sheriff's Office
(970) 244-3510

Debra Woods

From: PDRecords <PDRecords@gjcity.org>
Sent: Wednesday, February 14, 2024 11:38 AM
To: Debra Woods
Subject: Re: Background check on one individual for a liquor license application

We have no record for this subject.

Thank you,
Cori

Police Records Unit

Grand Junction Police Department
555 Ute Ave. Grand Junction CO 81501
O: 970-549-5000
gjcity.org | [EngageGJ](#)



CITY OF
Grand Junction
COLORADO
POLICE DEPARTMENT

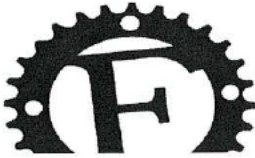
WARNING: This electronic mail transmission, to include any attached document, is from the Records & Data Management Unit of the Grand Junction Police, Grand Junction, Colorado. The information contained in this message may be privileged and/or confidential, and protected by law. The privileges are not waived by virtue of this message being sent to you in error. If the person receiving this message or any other reader of the message is not the intended recipient, please note that disclosure, copying, distribution or use of the information contained in the message is prohibited. For questions regarding this information or additional help, please call [\(970\) 549-5000](tel:9705495000).

From: Debra Woods <dwoods@fruita.org>
Sent: Wednesday, February 14, 2024 11:26 AM
To: PDRecords <PDRecords@gjcity.org>
Subject: Background check on one individual for a liquor license application

**** - EXTERNAL SENDER. Only open links and attachments from known senders. DO NOT provide sensitive information. Check email for threats per risk training. - ****

Hello,
Please see the attached and let me know if you have any questions. Thanks!

Deb Woods
Deputy City Clerk
City of Fruita
325 E. Aspen Ave.



FRUITA
COLORADO

POLICE DEPARTMENT

157 S Mesa St, Fruita, CO 81521
Phone (970) 858-3008 / Fax (970) 858-3665
fpdrecords@fruita.org

MEMO

To: Deb Woods
From: Paula Rajewich
Date: February 20, 2024
Re: **Local Records Check**

The following background information check was completed through local computer records with the Fruita Police Department and the results will be listed below.

I have checked the local records management system for the person(s) listed below and there have not been any contacts with the Fruita Police Department and this individual.

Linfan Tang
311 E. Concord Dr.
Fruita, CO 81521

DOB: [REDACTED]
SSN# [REDACTED]

Thank you,

Paula Rajewich

Fruita Police Department
157 S. Mesa St.
Fruita, CO 81521
970-858-3008 ext. 6104

Web Search No Record Found Report

Washington State Patrol

Identification and Criminal History Section

P. O. Box 42633

Olympia, Washington 98504-2633

Telephone (360) 534-2000 Option 2

**THE FOLLOWING TRANSCRIPT OF RECORD
IS FURNISHED FOR OFFICIAL USE ONLY**

This report was generated from a transaction ran on 2/14/2024 at 1:46 PM
Conviction Criminal History RCW 10.97.050(1)

Pursuant to the purpose of inquiry, **NO RECORD** was found in the **Washington State Criminal History** Repository based on descriptors provided:

LINFAN, TANG DOB [REDACTED] SEX M RACE U

ALIAS:

TANG, LINFAN

This may mean that the person you searched for has no criminal conviction record OR that your search criteria did not match the spelling of the person's name or date of birth.

Positive identification or non-identification in the Washington State Patrol's database can only be determined by fingerprint comparison.

Debra Woods

From: Records Police <Police.Records@rcgov.org>
Sent: Friday, February 16, 2024 3:15 PM
To: Debra Woods; Records Police
Subject: RE: WEBFORM: Pennington County Sheriffs Office - Contact Us

We handle records for the Pennington County Sheriff's Office and the Rapid City Police Department. I conducted a search and found no records for either agency.

Thank you,

Kailey Stringer | Police Support Technician Rapid City Police Department P : 605-394-4117 | F : 605-355-3069 We are hiring - Apply online at Rapid City Police Jobs COMMUNITY – SERVICE – INTEGRITY

-----Original Message-----

From: Debra Woods <dwoods@fruita.org>
Sent: Friday, February 16, 2024 2:13 PM
To: Records Police <Police.Records@rcgov.org>
Subject: RE: WEBFORM: Pennington County Sheriffs Office - Contact Us

Absolutely. I'm attaching the Background Check Request letter that I use for jurisdictions in Colorado, but I wasn't sure of your process there in South Dakota. Please let me know if there's anything else you require of me. Thanks in advance for all your help!

Deb Woods
Deputy City Clerk
City of Fruita
325 E. Aspen Ave.
Fruita, CO 81521
(970) 639-4210
dwoods@fruita.org

-----Original Message-----

From: Records Police <Police.Records@rcgov.org>
Sent: Friday, February 16, 2024 1:52 PM
To: Debra Woods <dwoods@fruita.org>; Records Police <Police.Records@rcgov.org>
Subject: RE: WEBFORM: Pennington County Sheriffs Office - Contact Us

Will you please include SSN and DOB so we check by those as well?

Thank you,
Kailey Stringer | Police Support Technician Rapid City Police Department P : 605-394-4117 | F : 605-355-3069 We are hiring - Apply online at Rapid City Police Jobs COMMUNITY – SERVICE – INTEGRITY



FRUITA COLORADO

SURVEY

EXHIBIT

Section A, Item 1)

An application has been filed with the City of Fruita for a liquor license. In its consideration of this application, the Fruita City Council must consider the reasonable requirements of the neighborhood and the desires of the inhabitants. An "inhabitant" is an individual who resides in a given neighborhood or community for more than six months each year. The "neighborhood" is defined generally as the area between L Road to the North and the Colorado National Monument to the South, and between 15 1/2 Road to the West and 20 Road to the East. A public hearing will be advertised and held on this application in the Council Chambers at the Fruita Civic Center, 325 E. Aspen, Fruita, Colorado on the first and third Tuesdays of the month at 7:00 pm.

Do not sign this survey unless you are 21 years or older and reside within the area bounded on the north by L Road, on the south by Colorado National Monument, on the west by 15 1/2 Road, and on the 20 Road to the East.

As an owner of property in the neighborhood, an employee or business lessee of property in the neighborhood and/or an inhabitant who resides in the neighborhood for more than six months each year:

Question 1. *I believe the reasonable requirements of the neighborhood are already being met by other existing outlets. (Yes or No)*

As an inhabitant who resides in the neighborhood for more than six month each year:

Question 2. *It is my desire that the license be issued. (Yes or No or Not Applicable (N/A))*

Name (signature)	Address	Business (B) Residence (R)	Question 1		Question 2			Date
			Yes	No	Yes	No	N/A	
<i>[Signature]</i>	1726 K 3/4 Rd	R		X	X			2/8/24
<i>John Rojas</i>	715 E Cleveland	R		X	X			2/15/24
<i>[Signature]</i>	1094 red sky rd	R		X	X			02/13/24
<i>Jackie J. J. J.</i>	975 Karp Ave	R		X	X			2/15/24
<i>Obata Huley</i>	525 Greenbriar St.	R		X	X			2/15/24
<i>[Signature]</i>	525 Greenbriar St	R		X	X			2/15/24
<i>London J. J.</i>	1146 18 Rd.	R		X	X			2/17/24
<i>Robin K. J.</i>	1146 18 Rd.	R		X	X			2/17/24
<i>MARGARET ROMANTE</i>	1225.500 ROSE	R		X	X			2/17/24
<i>Jeannette Hastings</i>	1208 Periwinkle Ln.	R		X	X			2/17/24
<i>Joanne Sanders</i>	1260 Periwinkle Ct.	R		X	X			2/17/24
<i>Drewa J. J.</i>	718 Crystal Way Fruita	R		X	X			2/17/24
<i>Ether J. J.</i>	1393 17 1/2 Rd Fruita	R		X	X			2-17-24
<i>Pat K. J.</i>	1210 B 17 1/2 Rd Fruita	R		X	X			2/17/24

CIRCULATOR'S AFFIDAVIT

I, Linfan Tang, who resides at 1058 E Laura Ave
(print name) (print address)

do hereby swear or affirm:

That I circulated the foregoing survey for a HOTEL AND RESTAURANT
(print type of license)
liquor license application within in the area described as the neighborhood,
on the date(s) of 2/8/24 - 2/17, 2024, and;

That each signature thereon was affixed in my presence;

That each signature thereon is the signature of the person whose name it purports to be;

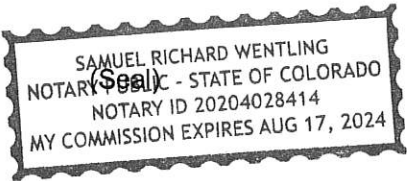
That to the best of my knowledge and belief, each of the persons signing was, at the time of signing, an owner of property in the neighborhood, an employee or business lessee of property in the neighborhood for more than six (6) months each year, and;

That the signers were not paid and will not be paid, directly or indirectly, any money or other thing of value for the purpose of inducing or causing signature of this survey.

[Signature]
Signature of Circulator
02/26/24
Date

The foregoing instrument was executed before me this 26 day of February, 2024.

My commission expires 08-17-24



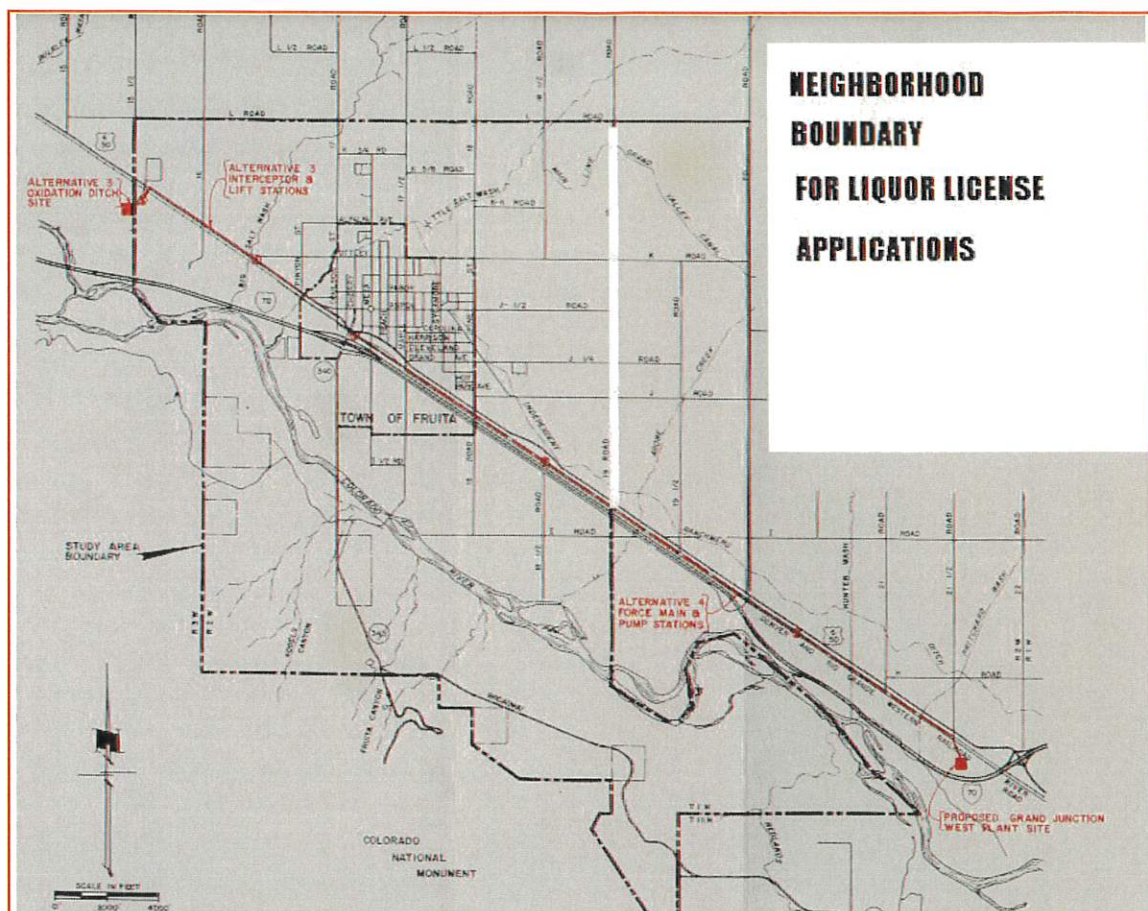
[Signature]
Notary Public



NEIGHBORHOOD DEFINED

DATE: February 1, 2019

The Fruita City Council amended the “neighborhood” definition for purposes of surveys for new liquor license applications at their regular meeting of October 5, 1999. The neighborhood is now defined as the 201 Boundary, with the east border of the 201 Boundary located north of the Colorado River extended from 19 Road to 20 Road. The map below indicates the boundary of the neighborhood.



- **QUASI-JUDICIAL** – Quasi-judicial public hearings are held when the City Council is acting in a judicial or judge like manner and a person with a legitimate interest is entitled to an impartial decision made on the basis of information presented and laws in effect. Quasi-judicial hearings are commonly held for land use hearings and liquor license hearings. Since the City Council is acting in a fair and impartial manner, it is NOT permissible for City Council members to have any ex-parte communication (contact between the applicant, members of the public, or among other members of the City Council) outside of the Public Hearings and meetings on the subject application. The City Council must limit its consideration to matters which are placed into evidence and are part of the public record. Quasi-judicial hearings are held in the following manner:
 - 1) **Staff presentation** Staff will present the comments and reports received from review agencies and offer a recommendation.
 - 2) **Applicant Presentation** The petitioner is asked to present the proposal. Presentations should be brief and to the point and cover all of the main points of the project.
 - 3) **Public Input** (limit of 3 minutes per person) Speakers must step up to the microphone and state their name and address. Speakers should be to the point and try not to repeat the points others have made.
 - 4) **The public hearing is closed to public comments.**
 - 5) **Questions from the Council.** After a Council member is recognized by the Mayor, they may ask questions of the staff, the applicant, or the public.
 - 6) **Make a motion.** A member of the City Council will make a motion on the issue.
 - 7) **Discussion on the motion.** The City Council may discuss the motion.
 - 8) **Vote.** The City Council will then vote on the motion.



AGENDA ITEM COVER SHEET

TO: Fruita City Council and Mayor

FROM: Planning & Development Department

DATE: March 5, 2024

AGENDA TEXT: ORDINANCE 2024-07, SECOND READING, An Ordinance amending the official zoning map of the City of Fruita by zoning approximately 5.07 acres of property located at 614 Raptor Road to a Planned Unit Development zone.

(Geode Flats PUD)

BACKGROUND

This is an Ordinance for the adoption of zoning standards for the Geode Flats PUD for the development of either affordable or market rate rental housing over approximately 5.07 acres.

This application was continued from the January 9, 2024, Planning Commission meeting to a special Planning Commission meeting for January 30, 2024. The Planning Commission made a motion to accept the continuance request and a motion to hold a Special Planning Commission meeting on January 30, 2024.

Following the Planning Commission meeting, the 1st Reading of this Ordinance was on the City Council's agenda on February 6, 2024, which is required to determine a future public hearing date for the 2nd Reading. The 1st Reading contained an error in the date scheduled for the 2nd Reading and a statement was made in the public hearing to inform the public that the 2nd Reading was going to be on March 5, 2024, instead of February 20, 2024. To add a layer of public notice and communication, Staff sent out a supplemental legal notice postcard and modified the legal notice sign on the property to inform neighboring property owners of the March 5, 2024, public hearing date.

This application began back on January 24, 2023, when the Planning Commission and City Council held a joint workshop on the Concept Plan for this project previously named the Residences at Fruita. Concept Plans are designed for PUDs as an optional 1st step in the review process where the Planning Commission and City Council can provide non-binding feedback in a workshop/work session and are intended to provide overall direction to the applicant.

The property is approximately 5.07 acres located directly west of the La Quinta Inn and northeast of James M. Robb State Park. The property is also bordered by Raptor Road on the north and Jurassic Court on the south. Based on the project narrative, "The proposed Preliminary PUD Plan takes a form-based approach to multifamily development to provide new housing that matches the look and feel of

the surrounding area and promotes more affordable housing while providing a demonstrated public benefit that would not be available under conventional zoning restrictions in terms of density, building heights, parking, and public benefit.”

The plan includes four (4) multi-family residential buildings and a clubhouse with proposed access coming from Jurassic Court on the south and another access coming from the west side. The plan identifies two (2) separate planning areas, Planning Area A and B, with a total of five (5) buildings and four (4) of which are designed for multi-family. Submitted with the application is a PUD Guide, which will serve as the primary zoning standards for the property with the primary goal of this project is to create affordable housing. The PUD Guide details out zoning standards for the property including land uses, density, setbacks, building heights, design standards, parking standards, landscaping standards, site lighting standards, and signage. Much like other PUD Guides, anything not mentioned in the PUD Guide will revert to the City’s Land Use Code.

The Planning Commission heard this application at a Special Meeting on January 30, 2024, and recommended approval by a vote of 5-0 to the Fruita City Council with the conditions listed below. No written public comments have been received, nor were any verbal comments made by the public at the January 30, 2024, Planning Commission meeting.

Recommendations/Conditions by Staff:

1. Remove all commercial land uses from the PUD Guide.
 - a. A reverter clause be used to revert back to the C-2 zone if affordable housing or market rate rental housing is not constructed.
2. \$100k childcare cash in lieu fee be paid upon Site Plan approval.
3. Design Standards contained in Section 17.13.060 (B)(1) be met as written in the Land Use Code.
4. If this PUD Guide is approved with these conditions by Staff and fully met, then a future Site Design Review application be reviewed administratively unless there is a major modification or change in the application deemed by the Community Development Director.

FISCAL IMPACT

Because the nature of this Ordinance is residential, there are no fiscal impacts associated with adoption. If the subject property is to develop, a fiscal impact will be associated with the public improvements.

APPLICABILITY TO CITY GOALS AND OBJECTIVES

The proposed Planned Unit Development zoning is in general conformance with the City of Fruita’s Land Use Code and Comprehensive Plan. The Comprehensive Plan, adopted in February 2020, provides guidance and support for efficient development, connectivity, infill development, open space, and diversity of housing types. Influenced heavily by community values, the vision statement was created and states, “*The City of Fruita values quality of place. It’s an inclusive city, with a small-town feel and vibrant downtown, surrounded by public lands. People love to live, work, and play in Fruita because the City facilitates community, safe neighborhoods, family-friendly events, and walking and biking. The City governs in a way that’s responsive to its citizens and prioritizes high-impact services and projects. Fruita fosters a fun and funky ambiance around the arts, agriculture, and recreation.*” (Page 3, Fruita In Motion:Plan Like A Local Comprehensive Plan)

The Land Use & Growth chapter of this plan (Chapter 3) contains strategies and policies on increasing the diversity and supply of housing in Fruita. For workforce housing, emphasis is on market rate and affordable (income restricted) rental housing and attainably priced ownership housing.

The Future Land Use Map prioritizes infill over sprawling residential development at the edge of the city limits. The policies in this plan aim to spur residential development within the existing city limits and UGB. It aims to transform the State Highway 6&50 corridor by allowing and encouraging multifamily housing on parcels and blocks adjacent to this corridor. (Chapter 3 Land Use & Growth, Page 26, Comprehensive Plan).

Goal #4. *Allow and encourage a diversity of housing types to fit the needs of the Fruita community and provide the diverse “funky” character that is treasured by residents.*

Fruita’s housing stock is getting more homogenous and more expensive. As a community that prides itself on being inclusive, this ethos should extend to providing types of housing for people of different ages, income ranges, family structures, and aesthetic preference. Allowing and encouraging more apartments and/or townhomes in appropriate locations could contribute to more affordable housing options. (Chapter 3 Land Use & Growth, Page 39, Comprehensive Plan).

The City’s Master Plan also states that the City of Fruita, “*Support the Mesa County Public Health Department and its Childcare 8,000 initiative in seeking to increase the number of available spaces for childcare in the county*” (Goal #2, Policy 2.E, on Page 66). This has been a continued goal of the City of Fruita for many years. Additionally, Page 96 of the Master Plan states that the City of Fruita, “*support ample, affordable early learning and childcare centers for city residents.*”

OPTIONS AVAILABLE TO THE COUNCIL

1. Adopt Ordinance 2024-07, an Ordinance amending the official zoning map of the City of Fruita by zoning approximately 5.07 acres of property located at 614 Raptor Road to a Planned Unit Development zone.
2. Adopt Ordinance 2024-07, an Ordinance amending the official zoning map of the City of Fruita by zoning approximately 5.07 acres of property located at 614 Raptor Road to a Planned Unit Development zone with the following conditions:
 - a. Remove all commercial land uses from the PUD Guide.
 - i. A reverter clause be used to revert back to the C-2 zone if affordable housing or market rate rental housing is not constructed.
 - b. \$100k childcare cash in lieu fee be paid upon Site Plan approval.
 - c. Design Standards contained in Section 17.13.060 (B)(1) be met as written in the Land Use Code.
 - d. If this PUD Guide is approved with these conditions by Staff and fully met, then a future Site Design Review application be reviewed administratively unless there is a major modification or change in the application deemed by the Community Development Director.
3. Deny Ordinance 2024-07.

RECOMMENDATION/ SUGGESTED MOTION:

Staff recommends that the Council move to:

BECAUSE THE APPLICATION MEETS OR CAN MEET THE PLANNED UNIT DEVELOPMENT APPROVAL CRITERIA IN SECTION 17.19 OF THE FRUITA LAND USE CODE, I MOVE TO APPROVE ORDINANCE 2024-07, 2ND READING, AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF FRUITA BY ZONING APPROXIMATELY 5.07 ACRES OF PROPERTY LOCATED AT 614 RAPTOR ROAD TO A PLANNED UNIT DEVELOPMENT ZONE WITH THE FOLLOWING CONDITIONS:

- a. REMOVE ALL COMMERCIAL LAND USES FROM THE PUD GUIDE.
 - i. A REVERTER CLAUSE BE USED TO REVERT BACK TO THE C-2 ZONE IF AFFORDABLE HOUSING OR MARKET RATE RENTAL HOUSING IS NOT CONSTRUCTED.****
- b. \$100K CHILDCARE CASH IN LIEU FEE BE PAID UPON SITE PLAN APPROVAL.**
- c. DESIGN STANDARDS CONTAINED IN SECTION 17.13.060 (B)(1) BE MET AS WRITTEN IN THE LAND USE CODE.**
- d. IF THIS PUD GUIDE IS APPROVED WITH THESE CONDITIONS AND FULLY MET, THEN A FUTURE SITE DESIGN REVIEW APPLICATION BE REVIEWED ADMINISTRATIVELY UNLESS THERE IS A MAJOR MODIFICATION OR CHANGE IN THE APPLICATION DEEMED BY THE COMMUNITY DEVELOPMENT DIRECTOR.**

ORDINANCE 2024-07

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF FRUITA BY ZONING APPROXIMATELY 5.07 ACRES OF PROPERTY LOCATED 614 RAPTOR ROAD TO A PLANNED UNIT DEVELOPMENT KNOWN AS THE GEODE FLATS.

WHEREAS, the property owner, TWG Raptor LP (“Owner”) has submitted a request to zone the property described in the attached Exhibit A, and commonly referred to as Geode Flats (the “Property”) to a Planned Unit Development (PUD) zoning designation, and

WHEREAS, the Fruita Planning Commission has recommended to the City Council approval of adopting the PUD Guide to clarify specific zoning related to the development, and

WHEREAS, the proposal is in conformity with the Fruita In Motion: Plan Like a Local Comprehensive Plan (“Comprehensive Plan”) of the City of Fruita and the City of Fruita Land Use Code (“LUC”), and

WHEREAS, by adopting the attached PUD Guide, land use, dimensional standards, and building design on the Property can be evaluated on an individual basis and impacts on surrounding land uses can be mitigated, and

WHEREAS, Owners have submitted a PUD Guide entitled, “Geode Flats” which includes dimensional standards, design standards and use restrictions for development of the Property, and

WHEREAS, proper publication and public notice were provided as required by law for the hearings before the Planning Commission and the City Council, and

WHEREAS, based on the evidence, testimony, exhibits, relationship to the Comprehensive Plan and LUC, comments of Community Development Department, Review Agencies, and Planning Commission hearing minutes, the recommendation of the Planning Commission, and comments from all interested parties, the City Council finds as follows:

Pursuant to Chapter 19 of the Fruita Land Use Code, the City Council makes the following findings in its review of the PUD Application:

- a) The application is in general conformance with the Land Use Code and Comprehensive Plan.
- b) The proposed plan conforms to all applicable regulations policies and guidelines.
- c) The application does not vary the health and safety requirements contained in Title 8 of the Fruita Municipal Code.
- d) The application does not vary from the requirements concerning public improvements contained in Title 12 of the Fruita Municipal Code.
- e) The application does not vary from the requirements concerning water and wastewater contained in Title 13 of the Fruita Municipal Code.

THE CITY OF FRUITA HEREBY ORDAINS:

Section 1: That the Zoning Map adopted pursuant to Section 17.03.030 of the Fruita Municipal Code is hereby amended and that the Property described and shown on the attached Exhibit A, containing 5.07 acres, more or less, is hereby designated as a Planned Unit Development Zone (PUD);

Section 2: That the PUD guide entitled, “Geode Flats” attached hereto as Exhibit B establishes dimensional standards including but not limited to land uses, amenities, building design guidelines, parking standards, setbacks, and lot coverage within the Geode Flats development and is approved;

Section 3: Special Conditions: That the development of the Property will be required to adhere to the conditions outlined in the Planned Unit Development Guide for the Geode Flats development attached hereto as Exhibit B.

Section 4: Reverter Clause: In the event, the Planned Unit Development fails to develop as either market rate or affordable multifamily development at the property owner's discretion, the zoning of the land shall automatically revert to Commercial Two (C-2), as it existed prior to the Planned Unit Development approval. This reverter clause shall terminate automatically once construction of the multifamily development begins and if requested by the owner, the City or local municipality shall provide written confirmation of the same.

Section 5: It shall be a Class B municipal offense, as defined in the Fruita Municipal Code, for any person to knowingly erects, constructs, reconstructs, uses, or alters any building or structure or knowingly uses any land in violation of the Sunset Pointe Planned Unit Development Guide herein adopted.

Section 6: The City Clerk is directed to:

1. File the original of this Ordinance and attached exhibit in the office of the City Clerk of Fruita, Colorado;
2. File one copy of this Ordinance and attached exhibit in the office of the Mesa County, Colorado, Assessor; and
3. File for record one certified copy of this ordinance and attached exhibits with the Clerk and Recorder of Mesa County, Colorado.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL
THIS 5TH DAY OF MARCH 2024**

ATTEST:

City of Fruita:

Margaret Sell, City Clerk

Joel Kincaid, Mayor

EXHIBIT A

Lot 1, Horsethief Commercial Subdivision (Reception Number 2741274)

Situated in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18

Township 1 North, Range 2 West, Ute Meridian

City of Fruita, Mesa County, Colorado

GEODE FLATS

City of Fruita, Colorado

PRELIMINARY PUD GUIDE

November 29, 2023

WRITTEN RESTRICTIONS**Intent**

The purpose of this Planned Unit Development is to allow flexibility and innovation in the development of market rate or workforce/affordable multifamily housing in exchange for a community benefit that could not otherwise be realized through the strict adherence to the Fruita Land Use Code. This PUD Guide will serve as the zone district regulations for the PUD. This PUD Guide is a site-specific development plan and creates vested rights pursuant to Article 68 of Title 24, Colorado Revised Statutes, as amended.

Underlying Zoning

Commercial Two (C-2)

Allowed Land Uses

All uses permitted by right and conditional use in the C-2 zone district, including but not limited to:

- Multifamily Residential
- Clubhouse

On Site Amenities

On site amenities shall include at least two of the following elements:

- Playground equipment
- Common outdoor gathering spaces
- Pocket Park
- Raised garden beds
- Trails
- Furnished exercise room
- Community room
- Computer room

Community Component

A payment of \$100,000 is due upon issuance of building permits in lieu of dedicated land for a Childcare Center to be provided off-site.

Workforce/Affordable Housing

Multifamily development may be either market rate or affordable housing.

Overall Site Dimensional Standards

Density:	No specific standard
Maximum Number of Buildings:	5
Minimum Landscape Area:	10%

Planning Area A

Maximum number of Buildings:	3
------------------------------	---

Planning Area B

Maximum number of Buildings:	2
------------------------------	---

Density and Dimensional Standards Table

Use	Max Density	Min Lot Area	Min Front/Street Yard	Min Interior Side Yard	Min Rear Yard	Max Structure Height	Max Lot Coverage
Multi-family	12 DU/acre Minimum Deviation: No Specific Standard Minimum Unit Size: 500 sf	5,000 sq ft per dwelling unit Deviation: 4.5 Acres	0 feet Deviation: PA A: 14' PA B 14'	10 feet for primary structures 5 feet for accessory structures except 0 feet where common wall or zero-lot line dev. Allowed Deviation: 14 feet for primary structures	20 for primary and accessory structures except 0 feet where common wall or zero-lot line dev. Allowed Deviation: Not Applicable	35 feet for primary structures 25 feet for accessory structures Deviation: PA A: 4 Stories PA B: 3Stories Elevator overrun and mechanical equipment exempt from maximum building height See Figure 1.1 B for building height measurement	80% Deviation: PA A: 35.3% PA B: 24.4% See Figure 1.1 for lot coverage diagram.

Use	Max Density	Min Lot Area	Min Front/Street Yard	Min Interior Side Yard	Min Rear Yard	Max Structure Height	Max Lot Coverage
Non-Residential Development	Not Applicable	5,000 sq ft	0 Feet	10 feet for primary structures 5 feet for accessory structures except 0 feet where common wall or zero-lot line dev. allowed	20 feet for primary structures 5 feet for accessory structures except 0 feet where common wall or zero-lot line dev. Allowed	35 feet for primary structures 25 feet for accessory structures	80%

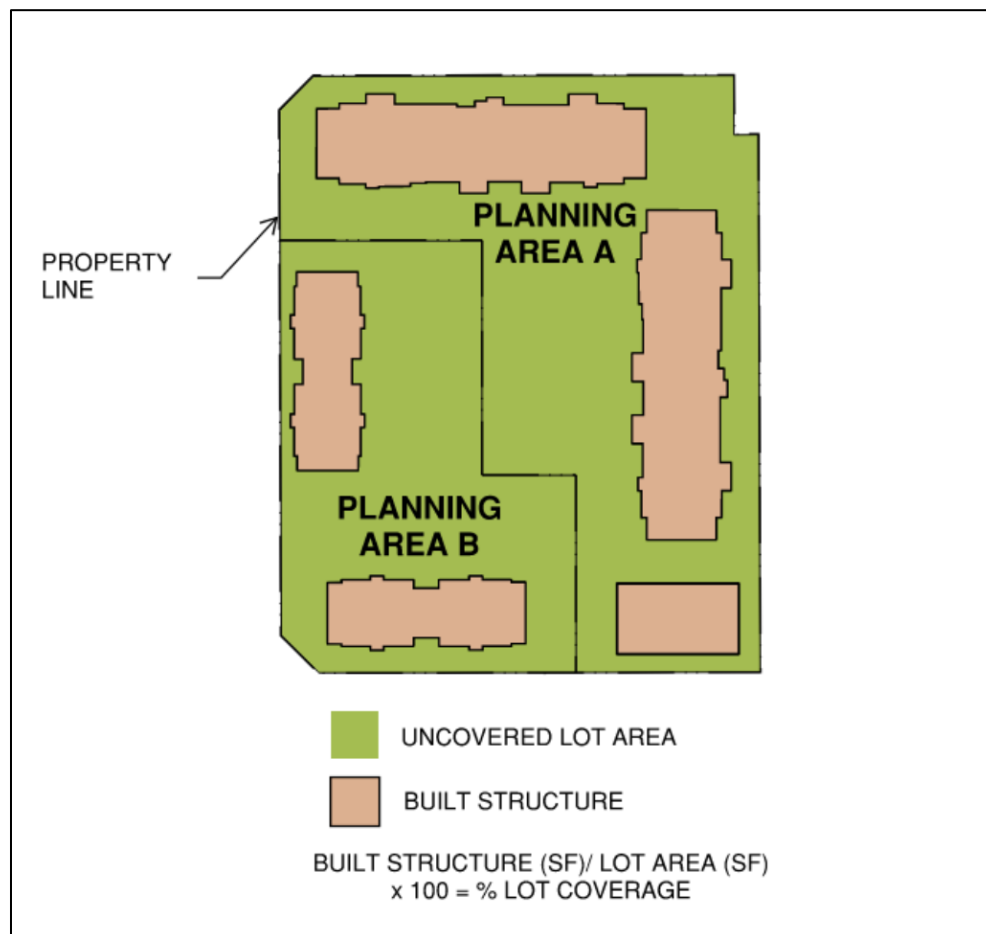


Figure 1.1: Lot Coverage Diagram

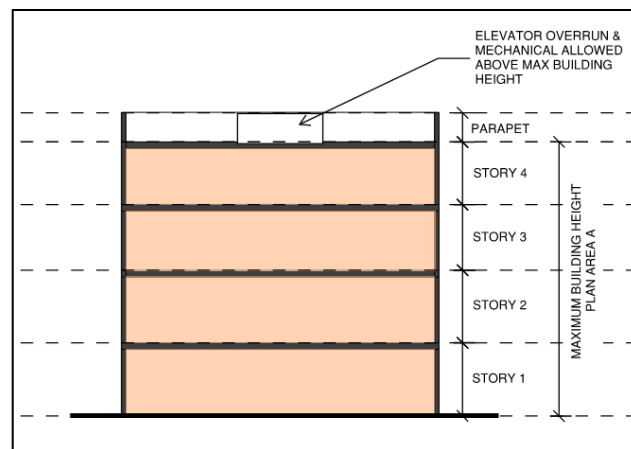


Figure 1.1 A: Plan Area A Height

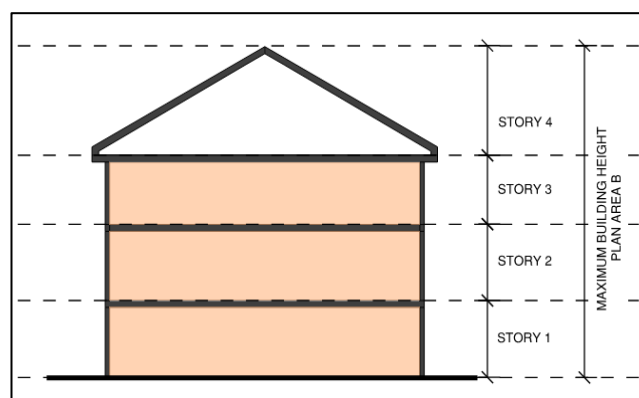


Figure 1.1 B: Plan Area B Height

SITE DESIGN

Primary Entrances

- a. Primary building entrances shall be oriented to the public street right-of-way and/or public sidewalk and shall be connected to the public street right-of-way and/or public sidewalk by a concrete walkway not less than six (6) feet in width. Primary building entrances shall be within twenty (20) feet of the public street right-of-way and/or public sidewalk.

Proposed Deviation: When a building has street frontage the building should incorporate one primary entrance that faces the street and/or public sidewalk and shall be connected to the public street right-of-way and/or public sidewalk by a concrete walkway not less than six (6) feet in width. See Figure 1.2 below.

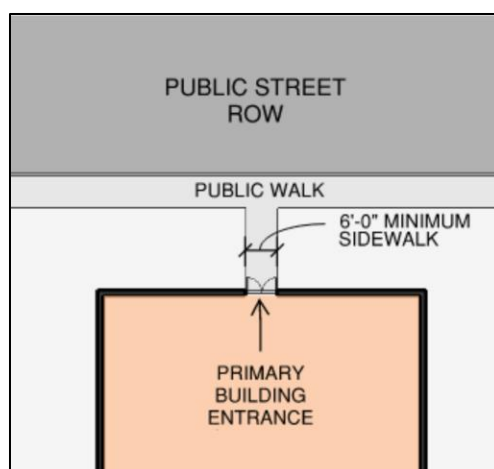


Figure 1.2: Concrete Walkway Requirement

- b. Where it is not practical to locate primary building entrances within twenty (20) feet of the public street right-of-way or public sidewalk, the concrete walkway connecting primary building entrances to the public sidewalk or public street right-of-way shall be no less than ten (10) feet in width. This concrete walkway must have three-foot wide planter strips on each side.

Proposed Deviation: Where it is not practical to locate primary building entrances within twenty (20) feet of the public street right-of-way or public sidewalk, the concrete walkway connecting primary building entrances to the public sidewalk or public street right-of-way shall be no less than six (6) feet in width. This concrete walkway must have three-foot wide planter strips on each side.

- ~~c. Primary building entrances located more than forty (40) feet from the public street right-of-way or public sidewalk will require a pedestrian plaza outdoor seating area, courtyard, or other civic amenity is provided between the building and street.~~

Proposed Deviation: Strike completely as the lot is bounded by three street frontages.

- d. Where a primary building entrance is located more than twenty (20) feet from a public street right-of-way and/or public sidewalk, or where parking and/or driving aisles are provided between the primary building entrance and public street right-of-way and/or public sidewalk, a fifteen (15) foot wide minimum landscape screen shall separate all off-street parking areas from adjacent public street rights-of-way or public sidewalks.

Proposed Deviation: Where no building entrance is located within a (20) feet of a public street right-of-way and/or public sidewalk, a ten (10) foot wide minimum landscape screen shall separate all off-street parking areas from adjacent public street rights-of-way or public sidewalks. See Figures 1.3a, 1.3b, 1.3c below.

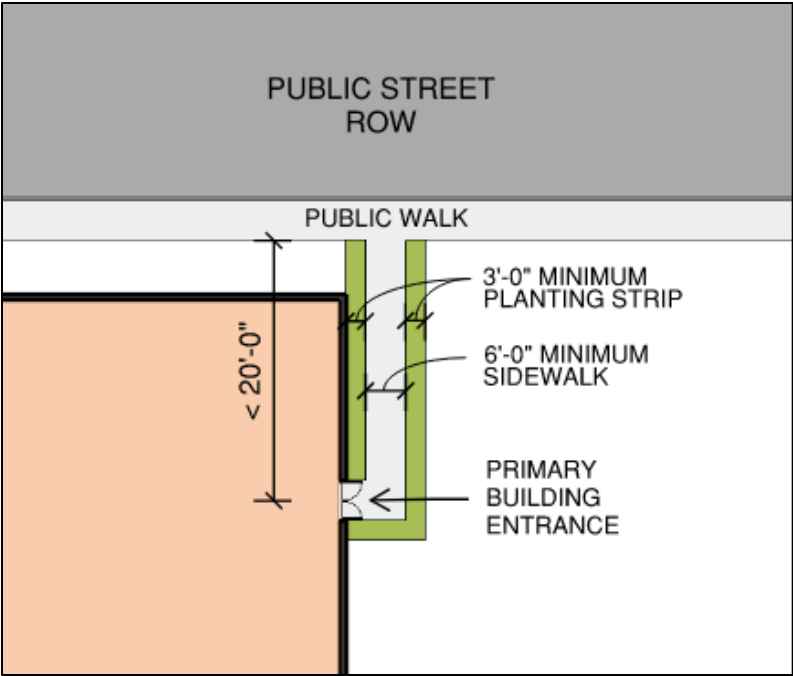


Figure 1.3a: Landscape Screen Requirement

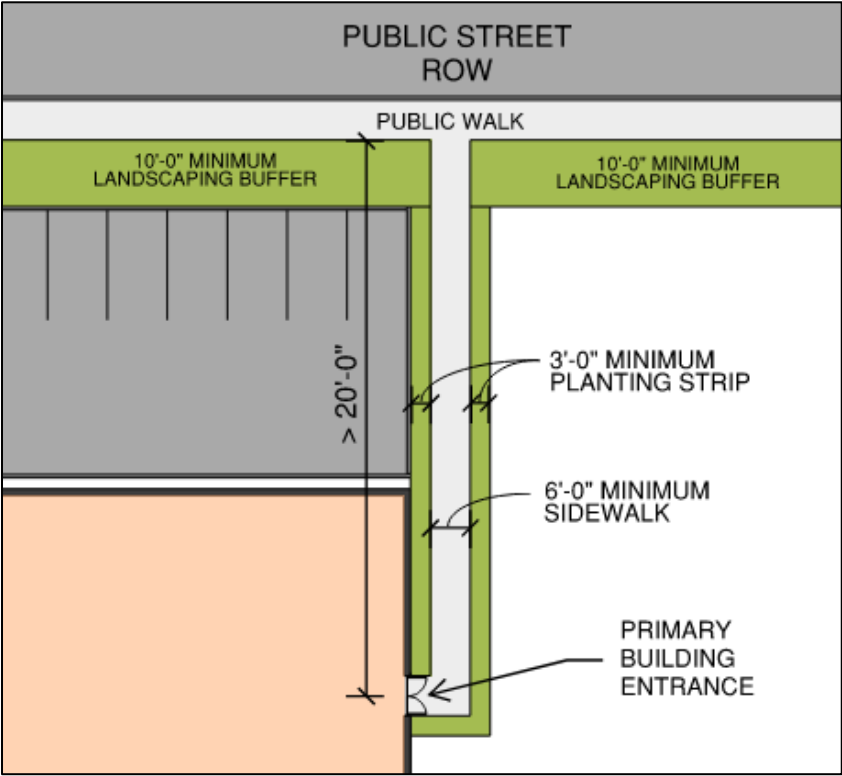


Figure 1.3b: Landscape Screen Requirement

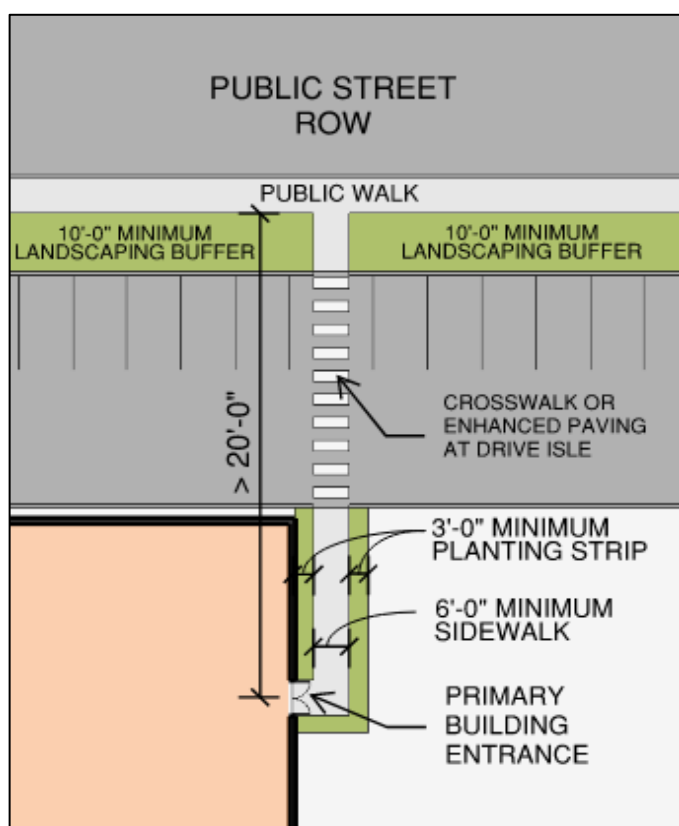


Figure 1.3c: Landscape Screen Requirement

- e. Buildings shall have clearly defined primary entrances that provide a weather-protection shelter for a depth of not less than five (5) feet (e.g., either by recess, overhang, canopy, portico and/or awning) extending from the building entry.

Proposed Deviation: None

Blank Wall Prevention

- a. Buildings shall meet transparency and weather protection standards (Subsection B, Building Design below) along all street-facing elevations and any elevations containing a primary building entrance. A landscape screen at least five (5) feet wide shall cover any blank building walls (i.e., lacking windows and weather protection) and contain materials of sufficient size/species to screen the blank wall.

Proposed Deviation: Buildings elevations that are public street-facing shall meet transparency and weather protection standards (Subsection B, Building Design below) along all street-facing elevations. A landscape screen at least five (5) feet wide shall cover any blank building walls over 10'-0" in length (i.e., lacking windows and weather protection) and contain materials of sufficient size/species to screen the blank wall. See Figure 1.4 below.

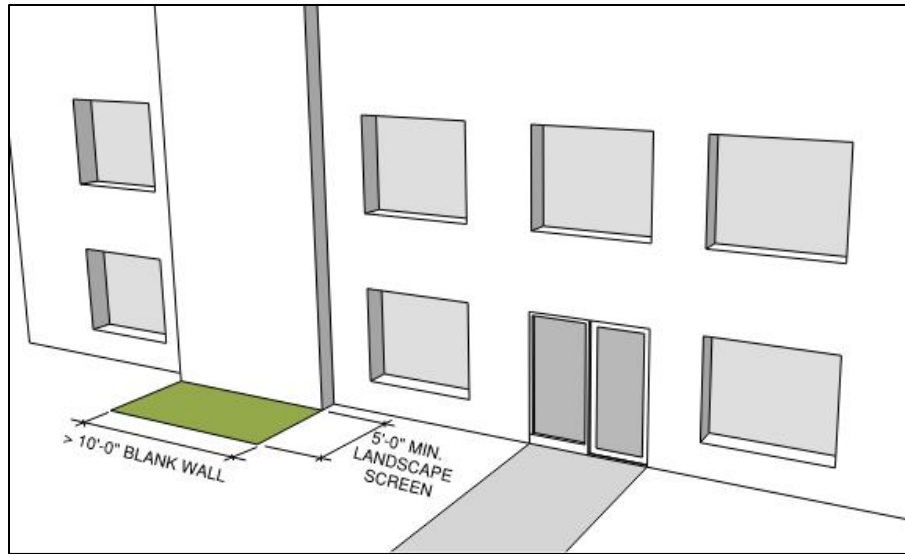


Figure 1.4: Blank Wall Landscape Screen Requirement

- b. Public art and murals may be used to minimize the visual impacts of a blank façade.

Proposed Deviation: None.

Building Design

Overall Design.

- a. Architectural designs shall address all facades of a building visible from the street with materials, detailing, and color. Architectural elements should wrap around building corners. Where a proposed design is based on the applicant's corporate style guide, as in formula retail stores, restaurants, discount outlets, or similar proposals where a similar building design has been used previously, the applicant must demonstrate that the design has been adapted to fit Fruita's unique location/historical context (Colorado National Monument/Grand Valley) and desert environment.

Proposed Deviation: Architectural designs shall address all street-facing facades of a building with materials, detailing, and color. Architectural elements should wrap around building corners. Where a proposed design is based on the applicant's corporate style guide, as in formula retail stores, restaurants, discount outlets, or similar proposals where a similar building design has been used previously, the applicant must demonstrate that the design has been adapted to fit Fruita's unique location/historical context (Colorado National Monument/Grand Valley) and desert environment.

Stepped Rooflines.

- a. Height should vary from building to building to avoid a homogenous appearance. This standard is met by using stepped parapets, gables, or slightly dissimilar height from building-to-building.

Proposed Deviation: Rooflines should vary to avoid a homogenous appearance. This standard is met by using stepped parapets, gables, changes in roof slope, or slightly dissimilar heights.

Window Transparency.

- a. Building elevations that face a street, parking area, civic space, or open space shall comprise at least forty (40) percent transparent windows, measured as a section extending the width of the street-facing elevation between the building base (or thirty (30) inches above the sidewalk grade, whichever is less) and a plane eighty (80) inches above the sidewalk grade. Upper floors may have less window area but should follow the vertical lines of the lower level piers and the horizontal definition of spandrels and any cornices.

Proposed Deviation: Building elevations that face a street or civic space, shall comprise at least thirty (30) percent transparent windows, measured as a section extending the width of the street-facing elevation between the building base (or thirty (30) inches above the sidewalk grade, whichever is less) and a plane eighty (80) inches above the sidewalk grade. Upper floors may have less window area but should follow the vertical lines of the lower-level piers and the horizontal definition of spandrels and any cornices. See Figure 1.5 below.

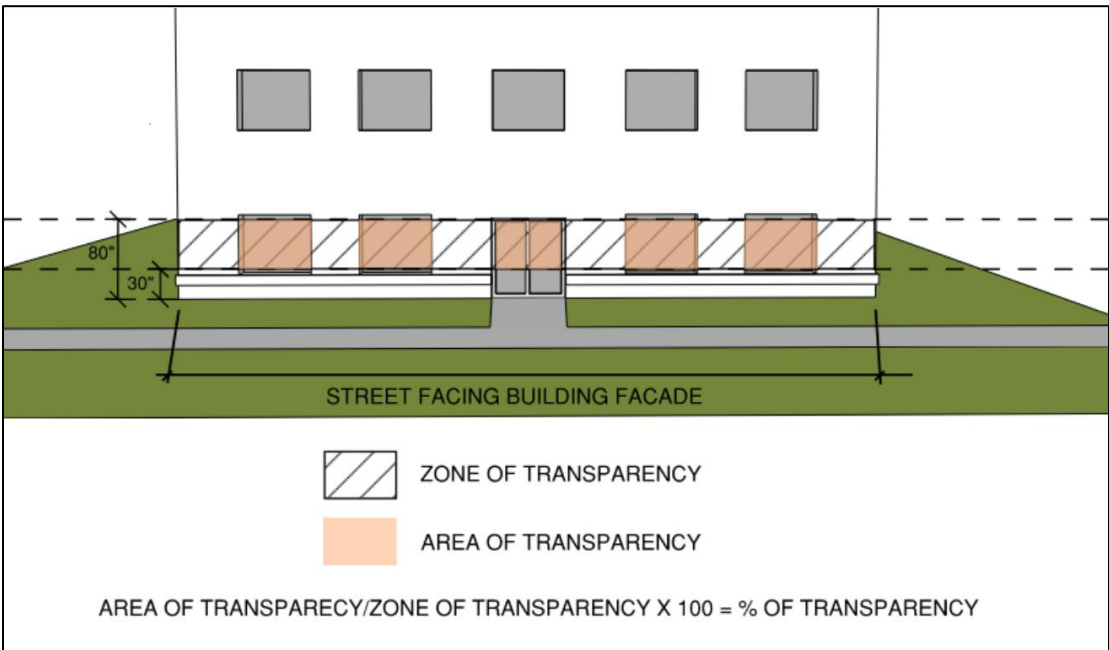


Figure 1.5: Transparency Requirement

- b. Where the Community Development Director determines, based on physical site constraints or the functional requirements of a non-residential building, that providing window transparency is not practical or does not further intent of these standards as stated above, other alternative means of breaking up large elevations (e.g., columns, belt course, and upper story panels/transom, with landscaping) shall be employed.

Proposed Deviation: None.

Building Mass.

- a. Building elevations shall incorporate offsets or divisions to reduce the apparent building scale and to improve aesthetics. Elevations of a structure shall be divided into smaller areas or planes to minimize the appearance of bulk as viewed from any street, civic space, or adjacent property.

Proposed Deviation: None.

- b. When an elevation of a primary structure is more than eight hundred (800) square feet in area, the elevation must be divided into distinct planes of not more than eight hundred (800) square feet. For the purpose of this standard, areas of wall planes that are entirely separated from other wall planes are those that result in a change in plane such as a recessed or projecting section of the structure that projects or recedes at least one (1) foot from the adjacent plane, for a length of at least six (6) feet.

Proposed Deviation: When an elevation of a primary structure is more than ~~eight hundred (800)~~ ~~square~~ twenty-five hundred (2,500) square feet in area, the elevation must be divided into distinct planes of not more than (1,600) square feet. For the purpose of this standard, areas of wall planes that are entirely separated from other wall planes are those that result in a change in plane such as a recessed or projecting section of the structure that projects or recedes at least one (1) foot from the adjacent plane, for a length of at least six (6) feet. See Figure 1.6 below.

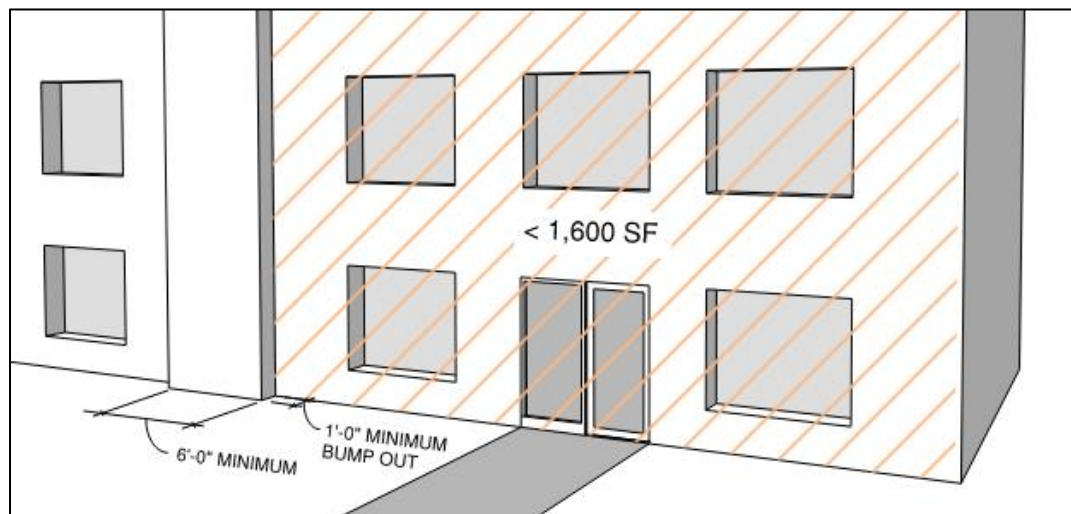


Figure 1.6: Blank Wall Landscape Screen Requirement

- c. Changes in plane may include but are not limited to recessed entries, bays, stepped parapets, secondary roof forms (e.g., gables, lower roof sheds, dormers and towers), building bases, canopies, awnings, projections, recesses, alcoves, pergolas, porticos, roof overhangs, columns, or other features that are consistent with the overall composition of the building.

Proposed Deviation: None.

- d. The distinction between street level and upper floors shall be established, for example, through the use of awnings, canopies, belt course, or similar detailing, materials and/or fenestration.

Proposed Deviation: None.

Materials and Colors.

- a. Exterior materials shall consist of brick, stone, adobe, wood shingle or imitation wood shingle walls, slump block, adobe brick or suitable split block or brick.

Proposed Deviation: Exterior materials shall consist of brick, stone, adobe, wood shingle or imitation wood shingle walls, slump block or fiber cement panel, lap siding, vinyl siding, adobe brick, or suitable split block or brick.

- b. Wood timbers and metal (brushed steel, iron, copper, or similar architectural-grade metals) may be used on canopies, arbors, trellises, pergolas, porticos, brackets, fasteners, lighting, signage, and other detailing, as appropriate, to provide visual interest and contrast. In general, color selection should complement, not compete with, the surrounding desert landscape. Warm earth tone colors (e.g., sandstone reds, desert greens and browns) are generally preferred over cool colors, such as blue and white/off-white. Substitute materials that are equal in appearance and durability may be approved.

Proposed Deviation: None.

ATMs and Service Windows.

- a. Where walkup ATMs or service windows are proposed on any street-facing elevation, they shall be visible from the street for security and have a canopy, awning, or other weather protection shelter. Where drive-up windows or similar facilities are provided the drive-up window and associated vehicle queuing area shall be set back at least twenty (20) feet from all adjacent rights-of-way. The applicant may be required to install textured pavement (e.g., pavers or stamped concrete) for pedestrian crossings of any drive aisle.

Proposed Deviation: None.

PARKING STANDARDS

Off street parking to be provided in accordance with Chapter 17.37 Parking Standards for commercial development.

The following parking rates shall apply to multifamily development.

	Per Dwelling Unit	
	Market Rate Rental	Affordable Rental
Parking Rate	1.32	0.75
180 Units	238 Spaces	135 spaces

- a. Garages and other parking areas are setback and oriented away from neighborhood streets or a 6-foot landscape buffer shall be provided between the street and parking areas.
- b. Parking management included in the individual apartment leases, specifying the parking requirements and enforcement policies.
- c. Bicycle parking provided in accordance with Chapter 17.37 Parking Standards of the Land Use Code.

LANDSCAPE STANDARDS

Site development to employ desert design-inspired xeriscape landscaping. A minimum of 10 percent (10%) of the land area shall be landscaped with drought-tolerant plant species provided in conformance with Section 17.11.050 Landscape Standards of the Land Use Code.

SIGNAGE

All signs shall comply with the City's Sign Code, unless the developer chooses to submit a master sign program application for consideration by the City.

LIGHTING

All exterior lighting shall be in conformance with the lighting standards of the Land Use Code.

CONFLICTS

In the event a standard in this PUD Guide is in conflict, the standard in this PUD Guide shall govern.



PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT
JANUARY 9, 2024

**JANUARY 30, 2024 (Planning Commission)*

Project continued from January 9, 2024 to January 30, 2024 Planning Commission.

Application #:	2023-37
Project Name:	Geode Flats
Application:	Preliminary PUD Plan
Representative:	McCool Development Solutions, LLC
Property Owner:	TWG Raptor LP
Location:	614 Raptor Road
Current Zone:	Commercial 2 (C-2)
Request:	This is a request for a Preliminary Planned Unit Development (PUD) Plan to establish zoning standards for a multi-family development on approximately 5.07 acres.

PROJECT DESCRIPTION:

This application was continued from the January 9, 2024, Planning Commission meeting to a special Planning Commission meeting for January 30, 2024. The Planning Commission made a motion to accept the continuance request and a motion to hold a Special Planning Commission meeting on January 30, 2024.

This is an application for a Preliminary PUD Plan to establish zoning standards for a multi-family development on approximately 5.07 acres of property located at 614 Raptor Road. This application began back on January 24, 2023, when the Planning Commission and City Council held a joint workshop on the Concept Plan for this project previously named the Residences at Fruita. Concept Plans are designed for PUDs as an optional 1st step in the review process where the Planning Commission and City Council can provide non-binding feedback in a workshop/work session and are intended to provide overall direction to the applicant.

The property is approximately 5.07 acres located directly west of the La Quinta Inn and northeast of James M. Robb State Park. The property is also bordered by Raptor Road on the north and Jurassic Court on the south. Based on the project narrative, “The proposed Preliminary PUD Plan takes a form-based approach to multifamily development to provide new housing that matches the look and feel of the surrounding area and promotes more affordable housing while providing

a demonstrated public benefit that would not be available under conventional zoning restrictions in terms of density, building heights, parking, and public benefit.”

The plan includes four (4) multi-family residential buildings and a clubhouse with proposed access coming from Jurassic Court on the south and another access coming from the west side. The plan identifies two (2) separate planning areas, Planning Area A and B, with a total of five (5) buildings and four (4) of which are designed for multi-family. Submitted with the application is a PUD Guide, which will serve as the primary zoning standards for the property with the primary goal of this project is to create affordable housing. The PUD Guide details out zoning standards for the property including land uses, density, setbacks, building heights, design standards, parking standards, landscaping standards, site lighting standards, and signage. Much like other PUD Guides, anything not mentioned in the PUD Guide will revert to the City’s Land Use Code.

SURROUNDING LAND USES AND ZONING:

Surrounding land uses are primarily commercial. There is a Mack Truck Sale and repair shop directly to the north. East of that is also a large semi-truck repair shop. South and West are the State Park and the City of Fruita old sewer lagoon site. The map below identifies the various zones in this area.



AERIAL PHOTO



REVIEW OF APPLICABLE LAND USE CODE REQUIREMENTS:

PLANNED UNIT DEVELOPMENTS (PUD'S)

Section 17.19.010 explains the purpose of a Planned Unit Development and states, “*The purpose of this Chapter is to encourage flexibility and innovation in developments in exchange for a community benefit that could not otherwise be realized through the strict adherence to the Code.*”

The Planned Unit Development request must be reviewed in accordance with Section 17.19.030 of the Land Use Code which are addressed within this Staff Report.

17.19.030 (A)(1) (a-d)

a. Conformance to the City of Fruita's Comprehensive Plan, Land Use Code, Design Criteria and Construction Specifications Manual and other city policies and regulations;

The applicant has submitted enough information to consider the zoning application as it's proposed. More information will be required to be provided with a subsequent application to determine compliance with the City's Engineering Standards (Design Criteria and Construction Specifications Manual).

As mentioned with the Concept Plan, The City of Fruita's transportation plan requires right-of-way construction connecting Raptor Road and Jurassic Court.

The primary purpose of this PUD request is to allow for more density, parking reductions, and greater building height than what is allowed under the conventional Commercial-2 (C-2) zone district.

The C-2 zone allows for 12 dwelling units per acre, giving the total allowed residential count of 60 dwelling units (12 du * 5 acres).

The C-2 zone allows for a maximum building height of 35 feet. At the January 24, 2023 workshop, there was no concern about building heights overall.

The PUD Guide states that all uses permitted by right and conditional uses in the C-2 zone district be allowed, including Multifamily Residential and a Clubhouse. It is the recommendation of Staff that the only allowed uses be Multifamily Residential and a Clubhouse as an accessory use and that all other allowed uses and conditionally allowed uses be removed. The purpose of the PUD is to provide either affordable housing or market rate rental housing in Fruita, not commercial uses. To name a few allowed uses supported in the C-2 zone are: Alcohol sales, Bar/Nightclub, Short-Term Rentals, General Retail Sales (indoor and outdoor), Small Engine/appliance repair shops, Outdoor Storage, Self-storage/Mini warehouse.

PARKING:

Section 17.37.030 contains parking requirements for Multi-Family developments. The requirements are as follows:

Use Categories (Examples of Uses are in Chapter 17.03)	Minimum Motorized Vehicle Parking Per Land Use (fractions rounded down to the closest whole number)	Minimum Bicycle Parking Per Land Use (fractions rounded down to the closest whole number)	Minimum Motorized Vehicle Parking Per Land Use (DMU Zone District)
Residential Categories			
Multi-family	1 space per studio or 1-bedroom unit 1.5 spaces per 2-bedroom unit 2 spaces/unit per 3-bedroom or larger unit	1 space per unit	0.95 spaces per studio or 1-bedroom unit 1.25 spaces per 2-bedroom unit 2 spaces per 3-bedroom or larger unit

The application is proposing two (2) separate parking rate ratios which are contained on page 12 of the PUD Guide submitted. The ratios breakdown either Market Rate Rentals or Affordable Rentals.

	Market Rate Rental	Affordable Rental
Parking Rate (per dwelling unit)	1.32	0.75
180 Units	238 Spaces	135 Spaces

These proposed ratios are accompanied by a Parking Analysis Study provided by transportation engineering firm McDowell Engineering, LLC. At the January 24, 2023, workshop, the Planning Commission and City Council requested that this be completed with the Preliminary PUD Plan application. The Concept Plan proposed a parking ratio of 0.5 spaces per unit.

CHILDCARE:

The Concept Plan proposed a childcare center in the form of land dedication or a cash payment in lieu of dedicating land. It appears that the developer is open to creative solutions with regards to the Childcare proposal as a community benefit. The Planning Commission and City Council were supportive of this idea. This application proposes a cash payment of \$100,000 due upon issuance of building permits. Staff is supportive of the amount proposed, however, Staff recommends that the cash in lieu payment be paid upon Site Plan approval.

Fruita In Motion: Plan Like a Local Comprehensive Plan (Master Plan):

With regards to the Master Plan, Fruita is an exceptional community. Throughout the comprehensive plan process, residents brought up how much they love living in Fruita, its small-town character, and their desire to preserve the community's most desirable qualities into the future. The plan starts by declaring what makes Fruita special. In turn, these community values are the foundation of the plan—shaping the plan vision, goals, policies, and actions. Two community values represented include:

- *Fruita is a place where you run into neighbors, friends, and acquaintances at local stores and restaurants, parks, and the community center. (Community Values, Page 2, Comprehensive Plan)*
- *Fruita is a community where people are invested and constantly work to make the community better. (Community Values, Page 2, Comprehensive Plan)*
- *Fruita is committed to a land use pattern and supporting policies that promote access to housing across the income spectrum of its residents. (Community Values, Page 2, Comprehensive Plan)*

Influenced by the community values expressed on page 2 of the Comprehensive Plan, the Plan Vision states, *“The City of Fruita values quality of place. It’s an inclusive city, with a small-town feel and vibrant downtown, surrounded by public lands. People love to live, work, and play in Fruita because the City facilitates community, safe neighborhoods, family-friendly events, and walking and biking. The City governs in a way that’s responsive to its citizens and prioritizes high-impact services and projects. Fruita fosters a fun and funky ambiance around the arts, agriculture, and recreation.”*

The Community Snapshot section within the Comprehensive Plan also identified affordability as a growing concern within Fruita. *“Affordability issues are greatest among renters in Fruita, with about half of all renters paying more than 30% of their income towards housing costs. This is defined as being cost burdened, wherein a household is paying too much towards housing. The rental supply in Fruita is extremely limited with essentially zero vacancy, allowing landlords to charge higher rents. The percentage of renters in Fruita has increased, even though most housing being built is in the form of single-family homes. Some people may be renting single-family homes by choice; for others it may be the only option and they would prefer a lower cost option such as an apartment or duplex. Housing affordability issues affect the ability of local businesses to attract and retain employees. This is a threat to economic sustainability if left unchecked.”* (Community Snapshot, Page 12, Comprehensive Plan).

The Future Land Use Map prioritizes infill over sprawling residential development at the edge of the city limits. The policies in this plan aim to spur residential development within the existing city limits and UGB. It aims to transform the State Highway 6&50 corridor by allowing and encouraging multifamily housing on parcels and blocks adjacent to this corridor. (Chapter 3 Land Use & Growth, Page 26, Comprehensive Plan).

Goal #4. *Allow and encourage a diversity of housing types to fit the needs of the Fruita community and provide the diverse “funky” character that is treasured by residents. Fruita’s housing stock is getting more homogenous and more expensive. As a community that prides itself on being inclusive, this ethos should extend to providing types of housing for people of different ages, income ranges, family structures, and aesthetic preference. Allowing and encouraging more apartments and/or townhomes in appropriate locations could contribute to more affordable housing options.* (Chapter 3 Land Use & Growth, Page 39, Comprehensive Plan).

Goal #9. *Support flexibility in zoning and the development of diverse housing types as part of an economic sustainability strategy.*

The availability of workforce housing is now an economic development issue in Fruita. Additionally, businesses are looking for the right fit in terms of buildings, land, and space to move, expand, or start businesses. Fruita can look to the experience of high-cost mountain resort towns to observe the risks of waiting too long to act. Local businesses are experiencing workforce shortages. The Land Use & Growth chapter of this plan (Chapter 3) contains strategies and policies on increasing the diversity and supply of housing in Fruita. For workforce housing, emphasis is on market rate and affordable (income restricted) rental housing and attainably priced ownership housing. For commercial spaces, Land Use Code changes can lay the groundwork for being an attractive place for a new or existing business. Flexibility in the design and types of buildings that can be built would be a business-friendly approach. (Chapter 4 Economic Development, Page 58, Comprehensive Plan).

The City’s Master Plan also states that the City of Fruita, “*Support the Mesa County Public Health Department and its Childcare 8,000 initiative in seeking to increase the number of available spaces for childcare in the county*” (Goal #2, Policy 2.E, on Page 66). This has been a continued goal of the City of Fruita for many years. Additionally, Page 96 of the Master Plan states that the City of Fruita, “*support ample, affordable early learning and childcare centers for city residents.*”

Because this application is seeking to meet many community goals contained in the Master Plan, this application should be able to meet all applicable construction standards, and can be consistent with the Land Use Code, this criterion can be met.

b. Consistency with one or more of the following general goals for a PUD justifying a deviation from the requirements of the Code, including but not limited to:

i. More convenient location of residences, places of employment, and services in order to minimize the strain on transportation systems, to ease burdens of traffic on streets and highways, and to promote more efficient placement and utilization of utilities and public services; or

This application appears to be taking many housing goals into consideration based on the proposed PUD Guide. The location of the property and the emphasis on housing are

conveniently located near places of employment, public transportation networks/locations, and is close to the highway networks. If developed for multifamily, the location of the property should allow residents to easily commute to other areas or even locally without too much driving. Furthermore, there are trails nearby that will allow for multimodal transportation opportunities.

- ii. To promote greater variety and innovation in residential design, resulting in adequate housing opportunities for individuals of varying income levels and greater variety and innovation in commercial and industrial design; or***

The proposed application for a PUD zoning classification meets this general goal for justifying a PUD application. The project is designed so that a large multifamily project could be constructed at either a market rate rental or as an affordable housing project. If constructed, the project would provide greater variety and innovation to the City of Fruita's housing market. Staff is hopeful that if constructed, this project would be able to bring additional housing opportunities for individuals of varying income levels and greater opportunities for housing options in Fruita.

- iii. To relate development of particular sites to the physiographic features of that site in order to encourage the preservation of its natural wildlife, vegetation, drainage, and scenic characteristics; or***

- iv. To conserve and make available open space; or***

- v. To provide greater flexibility for the achievement of these purposes than would otherwise be available under conventional zoning restrictions; or***

The proposed application is requesting deviations from the C-2 zone district that would only allow for 50 dwelling units to be constructed at a density of 12 dwelling units per acre. Under this conventional zoning standard, the project would be difficult to develop. Over the past few years, the property has seen other development proposals such as self-storage units. Although allowed in the C-2 zone district, Staff feels that this proposal for multifamily residential is something supported in the City's Master Plan. The major deviation from the C-2 zone district is the residential density component, which Staff is supportive of. Additionally, Staff believes that this application is making an efficient use of the land.

- vi. To encourage a more efficient use of land and of public services, or private services in lieu thereof, and to reflect changes in the technology of land development so that resulting economies may inure to the benefit of those who need homes; or***

- vii. To conserve the value of land and to provide a procedure which relates the type, design, and layout of residential, commercial and industrial development to the***

particular site proposed to be developed, thereby encouraging the preservation of the site's natural characteristics.

Based on the application submittal and the project narrative, the overall goal of this project is to implement many of the housing related goals contained in the City of Fruita's Comprehensive Plan. The proposed PUD plan should allow for efficient development and layout of the residential buildings.

c. Conformance to the approval criteria for Subdivisions (Chapter 17.21) and/or Site Design Review (Chapter 17.09), as applicable; except where Adjustments to the standards of this Title are allowed, and;

The application will be reviewed in accordance with Section 17.09 for a Site Design Review application if this PUD is approved. As it stands now, there has been much consideration as to how the applicant wants the project to be built out and most of that has been shown in the PUD Guide related to the Design Standards. These Design Standards will be used to review the application in its future steps. Most all deviations have been reviewed by Staff and are supported as they are minor. There are no direct review criteria for Site Design Reviews, however, Staff and other review agencies will have an opportunity to review the site design and building elevations when a future application is submitted. Staff will also use the PUD Guide to review a Site Design Review application.

This criterion can be met.

d. Conformance with applicable Design Standards and Guidelines as outlined in Chapter 17.13, unless approved as an Adjustment pursuant to the Adjustment criteria set forth in Section 17.13.020(B).

The application proposes deviations from the Design Standards contained in Chapter 17.13 of the Land Use Code. These deviations are outlined in the proposed PUD Guide and are overall supported by Staff as they do meet the intents and purpose of the Business Design Standards related to residential types of developments.

The one deviation that Staff recommends follow the Business Design Standards is related to Building Design and the overall architecture to address all sides of the buildings visual from the street. This section in particular is contained in Section 17.13.060 (B)(1) and reads, "*Architectural designs shall address all facades of a building visible from the street with materials, detailing, and color. Architectural elements should wrap around building corners,*" and the PUD deviation proposes that only the architectural designs address the street-facing facades of a building.

If the architectural features wrap around all sides of each building, then this criterion can be met.

17.19.030 (B)(1) (a-e)***a) Adequate resolution of all review comments; and***

Because this is a zoning application, no review agencies were needed to provide input. Review Agencies will be communicated with if a Site Design Review Application is submitted. Review Agencies like CDOT, Ute Water, School District 51, Mesa County Transportation Planning Office, Xcel Energy, GVP, and others will be provided with time to comment.

b) Proposed zoning and adjustments are generally consistent with the character in the immediate area, or are necessary to address an important community purpose, as determined by City Council.

The proposed PUD Guide, which contains the zoning related elements of the development, are consistent with the character in the immediate area and are written to ensure that the development can be completed in accordance with the City's Design Standards and other applicable requirements. The modifications proposed in the PUD Guide provided also appear to be justified where necessary. The character of the adjacent area is unique, but the application, if developed, should provide for a consistent transition of what is already built.

c) Conformance to the approval criteria for Subdivisions (Chapter 17.21) and/or Site Design Review (Chapter 17.09), as applicable; except where Adjustments to the standards of this Title are allowed, and;

This is strictly just a zoning application. In accordance with the submitted documents and if approved, Staff expects that the next step would be the submittal of a Site Design Review application.

If a Site Design Review application were to be submitted in the future, Staff would recommend that the application be reviewed and approved administratively.

d) Conformance with applicable Design Standards and Guidelines as outlined in Chapter 17.13, unless approved as an Adjustment pursuant to the Adjustment criteria set forth in Section 17.13.020(B).

This criterion is also considered above in the Staff Report. The application proposes deviations from the Design Standards contained in Chapter 17.13 of the Land Use Code. These deviations are outlined in the proposed PUD Guide and are overall supported by Staff as they do meet the intents and purpose of the Business Design Standards related to residential types of developments.

The one deviation that Staff recommends follow the Business Design Standards and not be deviated from are related to Building Design and the overall architecture to address all sides of the buildings visual from the street. This section in particular is contained in Section 17.13.060

(B)(1) and reads, “*Architectural designs shall address all facades of a building visible from the street with materials, detailing, and color. Architectural elements should wrap around building corners.*” And the PUD deviation proposes that only the architectural designs address the street-facing facades of a building.

If the architectural features wrap around all sides of each building, then this criterion can be met.

e) Compliance with conditions of approval on the Concept Plan, if any.

Based on the feedback provided by the Planning Commission and City Council at their January 24, 2023, workshop, it appears that the application has taken the necessary steps to address concerns discussed at this meeting. The application provides an approach to Childcare as a community benefit, has provided a Parking Demand analysis, and proposes building design standards that should allow for consistent and transitional standards to blend with existing buildings.

This criterion appears to have been met.

LEGAL NOTICE:

Legal Notice (minimum of 15 days prior to Planning Commission)	
December 14, 2023 (26 days prior)	Post Cards [17.07.040 (E)(1)(d)]
December 14, 2023 (26 days prior)	Sign Posting [17.07.040 (E)(1)(c)]
December 15, 2023 (25 days prior)	Legal Ad [17.07.040 (E)(1)(a)]

*Supplemental legal notice information attached with the Staff Report

REVIEW COMMENTS:

All review comments received are included with this Staff Report.

PUBLIC COMMENTS:

No written public comments have been received at this time.

PUBLIC HEARING SCHEDULE:

Planning Commission – January 9, 2024

City Council 1st Reading of zoning Ordinance – February 6, 2024 (*tentative*)

City Council 2nd Reading of zoning Ordinance – February 20, 2024 (*tentative*)

STAFF RECOMMENDATION:

Because the application meets the requirements of Section 17.19.030 (A)(1) (a-d) and Section 17.19.030 (B)(1) (a-e) of the Fruita Land Use Code, **Staff recommends approval** of the proposed Geode Flats Preliminary PUD Plan with the condition that the application adequately resolve all review comments and conditions in the Staff Report with either the zoning ordinance or the Final PUD application.

Recommendations/Conditions by Staff:

1. Remove all commercial land uses from the PUD Guide.
2. \$100k childcare cash in lieu fee be paid upon Site Plan approval.
3. Design Standards contained in Section 17.13.060 (B)(1) be met as written in the Land Use Code.
4. If this PUD Guide is approved with these conditions by Staff and fully met, then a future Site Design Review application be reviewed administratively unless there is a major modification or change in the application deemed by the Community Development Director.

SUGGESTED MOTION:

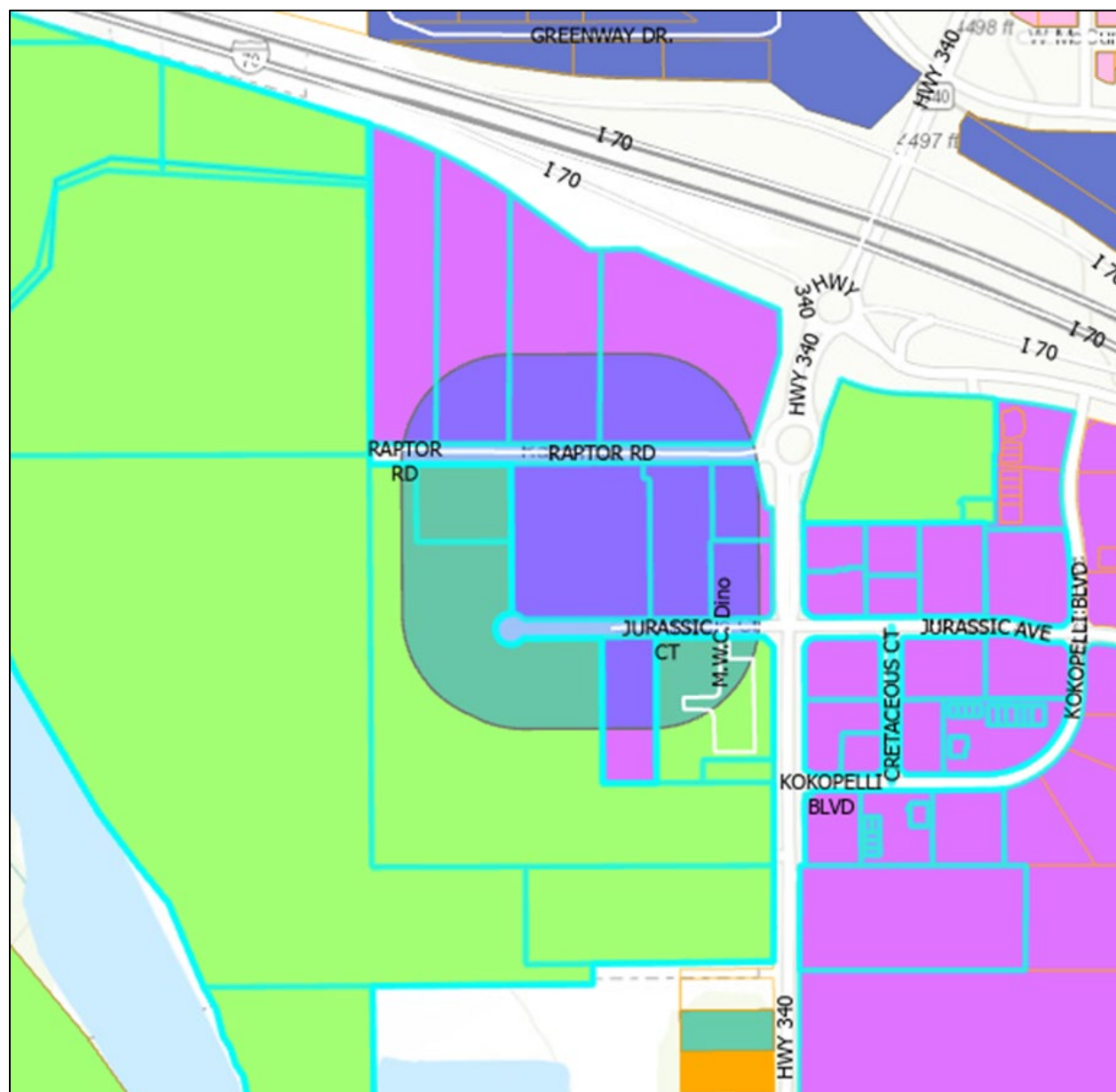
Mr. Chair, because the application meets or can meet all applicable approval criteria for a Preliminary PUD Plan including Section 17.19.030 (A)(1) (a-d) and Section 17.19.030 (B)(1) (a-c) of the Fruita Land Use Code, I move to recommend **approval** to the Fruita City Council with the conditional that all review comments and conditions in the Staff Report be adequately resolved with either the zoning ordinance or the Final PUD Plan application.

Geode Flats – Preliminary PUD Plan (zoning)
Supplemental Legal Notice

Legal Notice (minimum of 15 days prior to Planning Commission)	
December 14, 2023 (26 days prior)	Post Cards [17.07.040 (E)(1)(d)]
December 14, 2023 (26 days prior)	Sign Posting [17.07.040 (E)(1)(c)]
December 15, 2023 (25 days prior)	Legal Ad [17.07.040 (E)(1)(a)]
*February 7, 2024	Post Card
*February 14, 2024	Legal Ad (initiated by City Clerk)







From: [Carrie McCool](#)
To: [Henry Hemphill](#)
Cc: [Ryan Kelly](#); [Megan Adams](#)
Subject: Re: Planning Commission packet_Continuance Request
Date: Tuesday, January 9, 2024 8:23:38 AM

Good morning, Henry.

Our team has reviewed the Planning Commission Staff Report and appreciates staff work on the Report. In general, we are in concurrence with the analysis; however, there are concerns with the recommended conditions of approval 1 -3.

We would like to have the opportunity to discuss the conditions with Staff prior to moving forward to the Planning Commission public hearing. As such, we kindly request a continuance of the Planning Commission hearing to Tuesday, January 30, 2024, with the City Council public hearing 1st ready to be scheduled on February 6, 2024 agenda, to keep us on schedule for 2nd Reading on February 20, 2024.

On behalf of TWG, we remain committed to our primary goal of constructing affordable housing in Fruita to implement the vision and goals of the City's Comprehensive Plan. Thank you for your consideration.

Best,



Carrie McCool, Principal
McCool Development Solutions
4383 Tennyson Street, Unit 1-D
Denver, CO 80212
Direct: 303.378.4540
www.mccooldevelopment.com

GEODE FLATS PRELIMINARY PUD PLAN (REZONING) PROJECT NARRATIVE

Project Description

The subject property is an infill site located at 614 Raptor Road, is approximately 5.07 acres and is currently zoned Commercial-Two (C-2). The intent of the Planned Unit Development (PUD) is to allow flexibility and innovation in the development of rental market rate or affordable multifamily housing in exchange for a community benefit that could not otherwise be realized through the strict adherence to the Fruita Land Use Code. The proposed uses include all uses permitted by right and conditional use in the C-2 zone district, including but not limited to multifamily residential and clubhouse. The proposed Preliminary PUD Plan takes a form-based approach to multifamily development to provide new housing that matches the look and feel of the surrounding area and promotes more affordable housing while providing a demonstrated public benefit that would not be available under conventional zoning restrictions in terms of density, building heights, parking, and public benefit.

TWG's primary goal of the rezone request is to work closely with the City to create this PUD to allow construction of affordable housing in Fruita who earn at and below 140% of the area median income (AMI) to fulfill the need for affordable housing and thus improve the quality of life for Fruita residents. The project would include the build-out of Jurassic Court, Raptor Road, and the construction of a north/south minor collector to provide connectivity between Raptor Road and Jurassic Court as illustrated on the Road Classification Map in the Comprehensive Plan. Additionally, this connection will promote circulation with convenient connections via streets and pedestrian ways to parks, and adjacent neighborhood-oriented services and amenities in conformance with the Fruita Design Principals as outlined in Chapter 17.13 of the Fruita Land Use Code. The community component of the project includes a payment of \$100,000 to the city in lieu of performance to assist in providing additional childcare facilities in the area.

The Preliminary PUD Plan is divided into two (2) planning areas (A and B) to allow the construction of four (4) multifamily residential buildings, a clubhouse, and a minimum of two on site amenity elements that could include playground equipment, common outdoor gathering spaces, pocket park, raised garden beds, trails, furnished exercise room, community room or computer room. The proposed overall site dimensional standards include a minimum lot size of 4.5 acres with a maximum of five (5) buildings with no specific density standard and a parking rate of 0.75 spaces per dwelling unit for affordable rental and 1.31 spaces per dwelling unit for market rate rental. Planning Area A would allow two (2) multifamily buildings and the clubhouse building. A maximum structure height of four (4) stories is proposed for consistency with the building mass of the La Quinta hotel located along the eastern boundary of the site. Planning Area B would allow two 3-story multifamily buildings to provide an appropriate transition to the James M. Robb – Colorado River State Park to the west.

Neighborhood Meeting

The TWG Team hosted a neighborhood meeting on Wednesday, September 6, 2023, from 5:30 – 6:30 P.M., at the Fruita Community Center. One person attended the meeting (see attached sign-in sheet). The meeting participant did not have any concerns with the proposal but noted there were multifamily projects in Fruita that were approved with a parking reduction and he felt they had problems.

Justification of Modifications of Zoning and Design Standards

The submittal includes a Preliminary PUD Plan and PUD Guide. Below is an overview of the proposed deviations from the underlying zone district density and design standards, as well applicable narrative on how the Preliminary PUD complies with the conditions of approval on the Concept Plan:

- **Allowed uses.** In addition to all uses permitted by right and conditional use in the C-2 zone district, multi-family residential and clubhouse are also included in the allowed land uses to provide greater flexibility for the achievement of the purpose of PUDs and provide a more convenient location of residences, places of employment, and services in order to minimize the strain on transportation systems, to ease burdens of traffic on streets and highways, and to promote more efficient placement and utilization of utilities and public services.
- **On site amenities.** Based on input from the Fruita Planning Commission and City Council, the Preliminary PUD includes a list of amenities wherein a minimum of two elements must be included in the Site Design plan set. This allows for flexibility in selecting the most appropriate amenities to serve the needs of future residents.
- **Public Benefit.** In addition to providing a much-needed diversity in Fruita's housing stock, the Preliminary PUD Plan proposes a childcare center as the community component of the project. A payment of \$100,000 is due upon issuance of building permits in lieu of dedicated land for a childcare center to be provided off site pursuant to Council's directive at Concept Plan approval. The cash-in-lieu contribution will provide the city with the resources needed to select a childcare provider partner and the best location for a new childcare center to meet community needs.
- **Density and Building Heights.** Instead of setting forth a maximum density limitation, the Geode Flats PUD focus is placed on the size and mass of the multifamily buildings per planning area. You'll see that the two planning areas propose height limitations in terms of the number of stories versus the 35-foot height limitation of the C-2 zone district. Planning Area A would include two 4-story buildings to complement the building form of the La Quinta hotel, with Planning Area B transitioning down to 3-story buildings along the southwestern portion of the site. The Preliminary PUD Guide includes a diagram to illustrate how to measure building heights (see Figures 1.1 A and 1.1 B) with a slight deviation to allow elevator overrun and mechanical to extend beyond the 4-story height in Planning Area A. This approach would allow for unique architecture with appropriate building mass and scale that is consistent with the building form in the area.
- **Minimum Lot Area.** Instead of setting forth 5,000 square feet per dwelling unit, the minimum lot area is proposed to match the developable size of the lot.
- **Minimum Front/Street Yard, Side, and Rear Yard Standards for multi-family.** The deviations from the setback requirements outlined below are due to the property's unique configuration, as the lot has three street frontages and an interior side yard (no rear yard). The proposed yard standards will achieve several goals, including preserving scenic

characteristics, creating visually appealing street frontages, and promoting compatibility with the surrounding land uses.

- The minimum front yard has been increased from zero to 14 feet to allow for landscape buffers along all street frontages.
- Minimum side yard has been revised to clarify that it is a minimum interior side yard with no deviation proposed to the standard.
- Minimum rear yard standards are not applicable as there is only one interior side yard that forms the eastern boundary of the site.
- **Maximum Lot Coverage.** Reduction in the maximum lot coverage from 80% to approximately 60% with 35.3% for Planning Area A and 24.4 percent for Planning Area B. The reduction would allow for more land to be allocated to common areas and recreational amenities, which will enhance the overall quality of life for residents. The Preliminary PUD Guide includes graphics to illustrate maximum lot coverage (see Figure 1.1).
- **Design Standards.** The Preliminary PUD Guide includes the Business Design Standards from Section 17.13.060 of the Land Use Code with slight deviations to primary entrances, preventing blank walls, architectural features, window transparency, building mass, materials, and color choices to account for the specific lot configuration, which includes three street frontages. Proposed deviations demonstrate conformance to approval criteria for subdivision (Chapter 17.21) and/or site design (Chapter 17.09) and will promote greater variety and innovation in multi-family residential design resulting in housing opportunities for individuals of varying income levels.
- **Parking Standards.** The Preliminary PUD Plan submittal includes a Parking Study as required by Council at the time of Concept Plan approval. Based on the findings of the Study and connectivity from Geode Flats to the greater multimodal network, surface parking will be provided at 1.32 spaces per dwelling unit for market rate rental and .075 spaces per affordable dwelling unit. The PUD Guide includes parking management provisions to be included in the individual apartment leases, specifying the parking requirements and enforcement policies. Additionally, garages and other parking areas are required to be oriented away from neighborhood streets or provide a 6-foot landscape buffer between the street and parking areas to implement the residential and subdivision principles. If the property developed non-residential, off-street parking is required to be provided in accordance with Chapter 17.37 Parking Standards for commercial development.
- **Landscape Standards.** A minimum of 10 percent (10%) of the land area will be desert design-inspired xeriscape landscaping. The PUD Guide requires drought-tolerant plant species provided in conformance with Section 17.11.050 Landscape Standards of the Land Use Code.

Project compliance with, compatibility with and impacts on:

Fruita in Motion: Plan like a Local 2020 Comprehensive Plan: Adding diversity in Fruita's housing stock is a pervasive theme throughout the 2020 Fruita in Motion that is grounded in the City's community values with the commitment to a land use pattern and supporting policies that promote access to housing across the income spectrum of its residents. The following is an overview of the concepts for which the Residences at Fruita PUD further the goals of the Comprehensive Plan:

- Chapter 3 Land Use + Growth, Goal #2. The proposal represents an infill development opportunity that takes advantage of existing nearby roads and James M. Robb Colorado River State Park.

- Chapter 3 Land Use + Growth Goal #4. The proposed multifamily residential development provides a diversity of housing types to fit the needs of the Fruita community and will provide the diverse “funky” character that is treasured by residents.
- Chapter 4 Economic Development, Economic Vitality. The addition of either market rate and affordable rental housing apartments to the City’s housing stock increases Fruita residents’ housing choices close to jobs to support the City’s labor force.
- Chapter 4 Economic Development, Workforce. The project increases the availability and cost of suitable rental housing that would help alleviate local businesses’ challenges related to the shortage of workers and residents’ experiences at local businesses.
- Chapter 4 Economic Development Goal 9. Approval and implementation of a Planned Unit Development would support flexibility in zoning and development of diverse housing types as part of an economic sustainability strategy.
- Education, Arts, and Historic Preservation Goal #4, Policy 4.D. The Preliminary PUD Plan includes a Childcare Center as the community component to provide educationally enriching opportunities by supporting affordable childcare centers for city residents.

Land use in surrounding area including parks and open space. Goede Flats is located directly west of the La Quinta Inn within an existing commercial area with access to trails and transportation resources. It is in close proximity to the city owned Fruita Lagoon redevelopment site that will include a combination of open space and recreation opportunities. Surrounding land uses include the Dinosaur Journey Museum and the Colorado State Patrol office to the south, and truck dealerships and a gas station to the north. James M. Robb State Park is located to the east and offers future residents access to camping and outdoor recreation. All of the surrounding land uses and nearby amenities provide excellent recreation and employment opportunities for future Goede Flats residents.

Site access and traffic patterns. All project traffic would access the site via SH 340 by Raptor Road or Jurassic Court. Both streets will be completed to City standards as they are partially built out at this time. Additionally, the project will include the build-out of a collector street along the western property boundary to connect Raptor Road and Jurassic Court, aligning with the City's long-range transportation goals.

Availability of utilities. All utilities are readily available. Water service is provided by the Ute Water Conservancy District. The City of Fruita provides sewer and stormwater. Power and gas are provided by Xcel Energy. No special or unusual demand on utilities is anticipated. The landscape standards include desert-inspired landscaping that would reduce water demand.

Effects on public facilities and services. The subject property can be adequately served by City water, sanitation, storm drainage facilities, and police protection. The property is located with the Lower Valley Fire District and the Mesa County School District No. 51. At time of Site Design Review, it is anticipated that payment of the school land dedication in an amount per unit, based upon the increased number of dwelling units. Depending on the on-site amenities proposed at time of Site Design review, a waiver from the Parks, Health, Recreation, Open Space and Trails impact fee or partial payment toward the impact fee could be requested for City Council’s consideration.

Site soils and geology. The project site is vegetated with sparse grass and underlain by low strength, compressible sands and clays. The site slopes down from the east towards the west/southwest approximately four (4) feet. A Geotechnical Report will be submitted at the time of Site Design Review.

Development Schedule and Phase/Filing Plan

TWG intends to submit the Final PUD application and Major Site Design review upon Preliminary PUD approval. Development of the property is proposed in a single phase.

Credits Against Impact Fees

Raptor Road and Jurassic Court will be completed to City standards as they are partially built out at this time. Fruita in Motion delineates a collector road between Raptor Road and Jurassic Court. As such, the project will include the build-out of a collector street between Raptor Road and Jurassic Court per the city's street standards. As such, TWG respectfully requests 100 percent of the construction costs of the collector street connection be credited against the Transportation Impact fee.

Consistency with Concept Plan

The Fruita Planning Commission and City Council conducted a joint workshop on January 24, 2023. Below is an overview how the Preliminary PUD complies with all conditions of the approval on the Concept Plan:

- The proposed Preliminary PUD includes Council's preferred public benefit of providing for childcare versus parks and trails since parks and trails already have several revenue sources. A cash in lieu of a childcare land dedication is proposed to benefit the community as a whole.
- A Parking Demand Study is included in the Preliminary PUD submittal to support the parking rates proposed for market and affordable housing.
- The building design standards set forth requirements for architecture that have been adapted to fit Fruita's unique location/historical context (Colorado National Monument/Grand Valley and the desert environment. Additionally, proposed building materials will complement the beauty of the State Patrol building with the allowance of exterior materials such as brick, stone, adobe, wood shingle or imitation wood singles wall, slump block or fiber cement panel, lap siding, vinyl siding, adobe brick, or suitable split block or brick.
- The intent of the PUD is to allow flexibility and innovation in the development of rental market rate or affordable multifamily housing; however, TWG's primary goal is to construction of affordable housing in Fruita who earn at and below 140% of the area median income (AMI) to fulfill the need for affordable housing in Fruita.
- Since City Council was not concerned about density due to Fruita's housing crisis, the PUD does not include a limitation on density.

Enclosed: Neighborhood meeting sign in sheet



WELCOME AND PLEASE SIGN IN

Neighborhood Meeting – September 6, 2023 at 5:30 p.m.

Residences at Fruita Preliminary PUD

NAME	EMAIL	PHONE	ORGANIZATION [if Any]
Chris Bennetts	papabennetts@yahoo.com	970-250-9950	

Thank you!

GEODE FLATS

City of Fruita, Colorado

PRELIMINARY PUD GUIDE

November 29, 2023

WRITTEN RESTRICTIONS

Intent

The purpose of this Planned Unit Development is to allow flexibility and innovation in the development of market rate or workforce/affordable multifamily housing in exchange for a community benefit that could not otherwise be realized through the strict adherence to the Fruita Land Use Code. This PUD Guide will serve as the zone district regulations for the PUD. This PUD Guide is a site-specific development plan and creates vested rights pursuant to Article 68 of Title 24, Colorado Revised Statutes, as amended.

Underlying Zoning

Commercial Two (C-2)

Allowed Land Uses

All uses permitted by right and conditional use in the C-2 zone district, including but not limited to:

- Multifamily Residential
- Clubhouse

On Site Amenities

On site amenities shall include at least two of the following elements:

- Playground equipment
- Common outdoor gathering spaces
- Pocket Park
- Raised garden beds
- Trails
- Furnished exercise room
- Community room
- Computer room

Community Component

A payment of \$100,000 is due upon issuance of building permits in lieu of dedicated land for a Childcare Center to be provided off-site.

Workforce/Affordable Housing

Multifamily development may be either market rate or affordable housing.

Overall Site Dimensional Standards

Density:	No specific standard
Maximum Number of Buildings:	5
Minimum Landscape Area:	10%

Planning Area A

Maximum number of Buildings:	3
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Planning Area B

Maximum number of Buildings:	2
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Density and Dimensional Standards Table

Use	Max Density	Min Lot Area	Min Front/Street Yard	Min Interior Side Yard	Min Rear Yard	Max Structure Height	Max Lot Coverage
Multi-family	12 DU/acre Minimum Deviation: No Specific Standard Minimum Unit Size: 500 sf	5,000 sq ft per dwelling unit Deviation: 4.5 Acres	0 feet Deviation: PA A: 14' PA B 14'	10 feet for primary structures 5 feet for accessory structures except 0 feet where common wall or zero-lot line dev. Allowed Deviation: 14 feet for primary structures	20 for primary and accessory structures except 0 feet where common wall or zero-lot line dev. Allowed Deviation: Not Applicable	35 feet for primary structures 25 feet for accessory structures Deviation: PA A: 4 Stories PA B: 3Stories Elevator overrun and mechanical equipment exempt from maximum building height See Figure 1.1 B for building height measurement	80% Deviation: PA A: 35.3% PA B: 24.4% See Figure 1.1 for lot coverage diagram.

Use	Max Density	Min Lot Area	Min Front/Street Yard	Min Interior Side Yard	Min Rear Yard	Max Structure Height	Max Lot Coverage
Non-Residential Development	Not Applicable	5,000 sq ft	0 Feet	10 feet for primary structures 5 feet for accessory structures except 0 feet where common wall or zero-lot line dev. allowed	20 feet for primary structures 5 feet for accessory structures except 0 feet where common wall or zero-lot line dev. Allowed	35 feet for primary structures 25 feet for accessory structures	80%

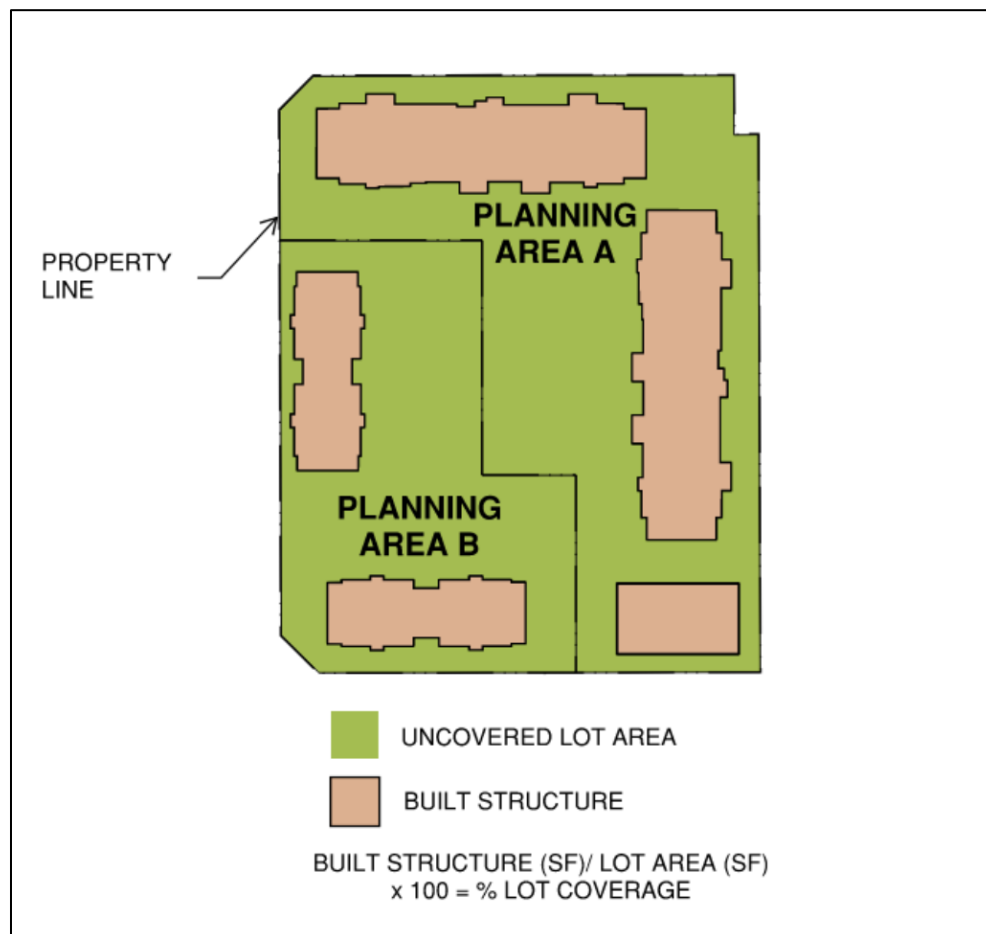


Figure 1.1: Lot Coverage Diagram

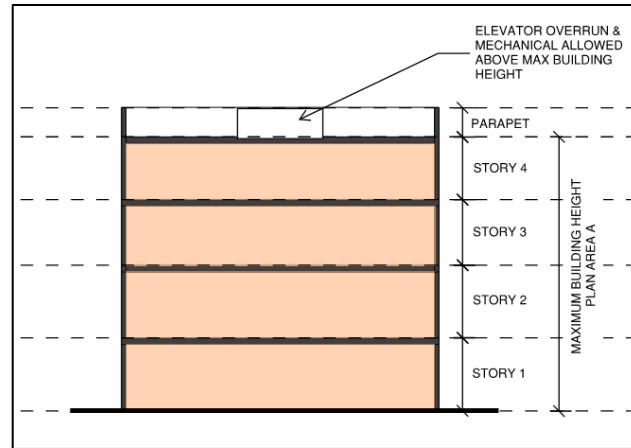


Figure 1.1 A: Plan Area A Height

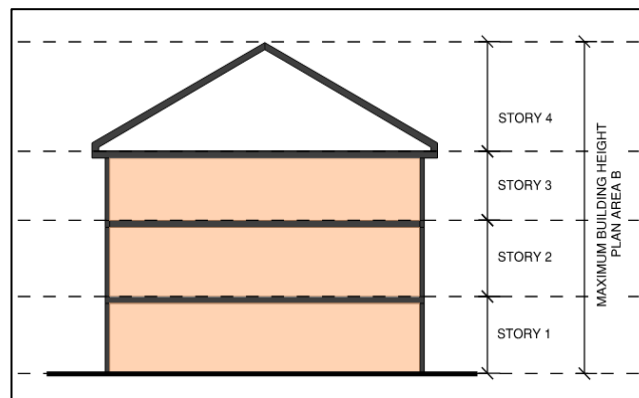


Figure 1.1 B: Plan Area B Height

SITE DESIGN

Primary Entrances

- a. Primary building entrances shall be oriented to the public street right-of-way and/or public sidewalk and shall be connected to the public street right-of-way and/or public sidewalk by a concrete walkway not less than six (6) feet in width. Primary building entrances shall be within twenty (20) feet of the public street right-of-way and/or public sidewalk.

Proposed Deviation: When a building has street frontage the building should incorporate one primary entrance that faces the street and/or public sidewalk and shall be connected to the public street right-of-way and/or public sidewalk by a concrete walkway not less than six (6) feet in width. See Figure 1.2 below.

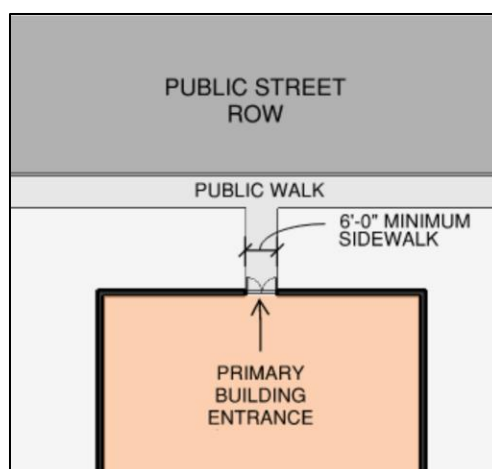


Figure 1.2: Concrete Walkway Requirement

- b. Where it is not practical to locate primary building entrances within twenty (20) feet of the public street right-of-way or public sidewalk, the concrete walkway connecting primary building entrances to the public sidewalk or public street right-of-way shall be no less than ten (10) feet in width. This concrete walkway must have three-foot wide planter strips on each side.

Proposed Deviation: Where it is not practical to locate primary building entrances within twenty (20) feet of the public street right-of-way or public sidewalk, the concrete walkway connecting primary building entrances to the public sidewalk or public street right-of-way shall be no less than six (6) feet in width. This concrete walkway must have three-foot wide planter strips on each side.

- ~~c. Primary building entrances located more than forty (40) feet from the public street right-of-way or public sidewalk will require a pedestrian plaza outdoor seating area, courtyard, or other civic amenity is provided between the building and street.~~

Proposed Deviation: Strike completely as the lot is bounded by three street frontages.

- d. Where a primary building entrance is located more than twenty (20) feet from a public street right-of-way and/or public sidewalk, or where parking and/or driving aisles are provided between the primary building entrance and public street right-of-way and/or public sidewalk, a fifteen (15) foot wide minimum landscape screen shall separate all off-street parking areas from adjacent public street rights-of-way or public sidewalks.

Proposed Deviation: Where no building entrance is located within a (20) feet of a public street right-of-way and/or public sidewalk, a ten (10) foot wide minimum landscape screen shall separate all off-street parking areas from adjacent public street rights-of-way or public sidewalks. See Figures 1.3a, 1.3b, 1.3c below.

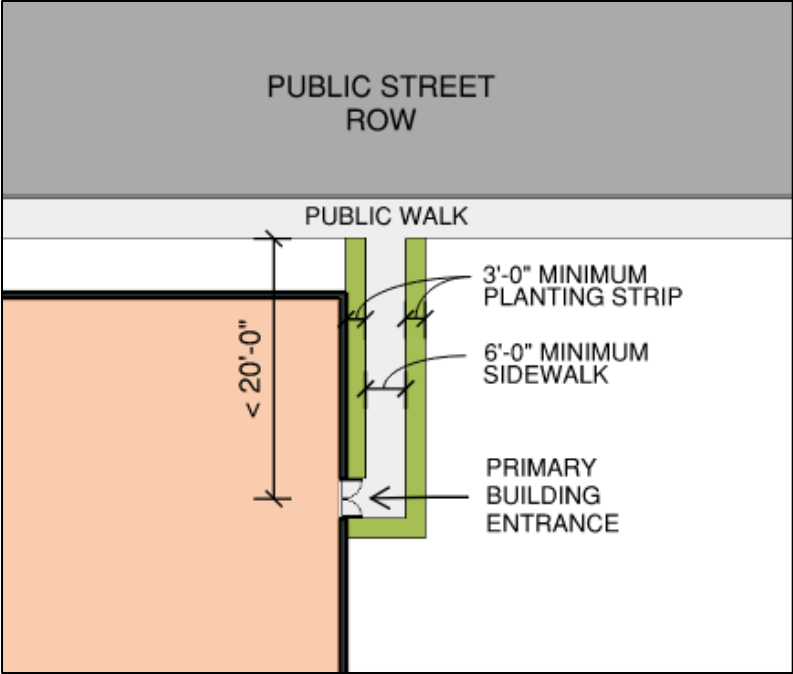


Figure 1.3a: Landscape Screen Requirement

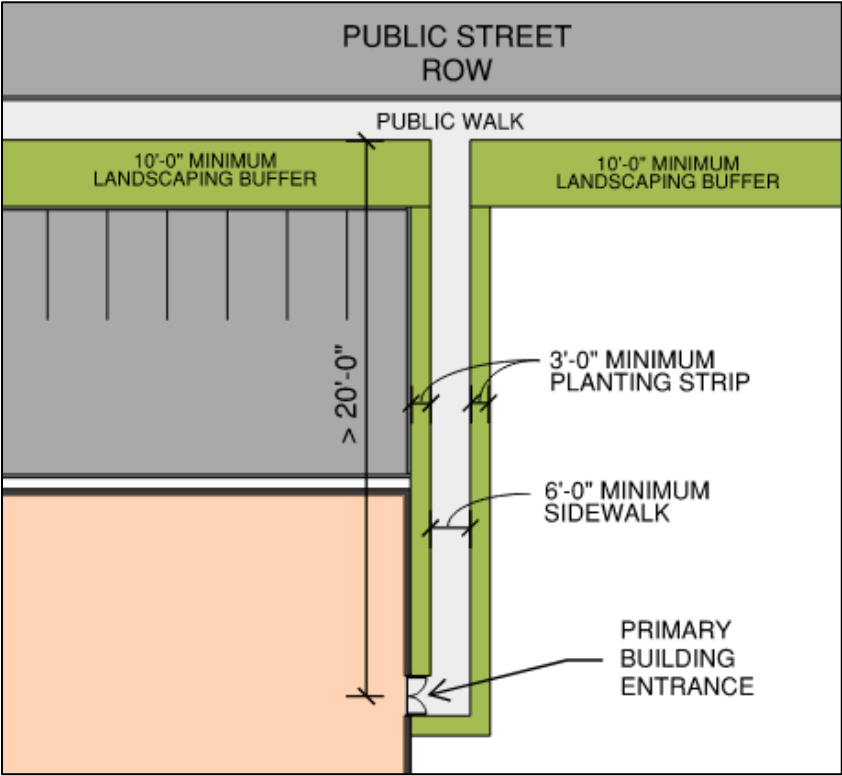


Figure 1.3b: Landscape Screen Requirement

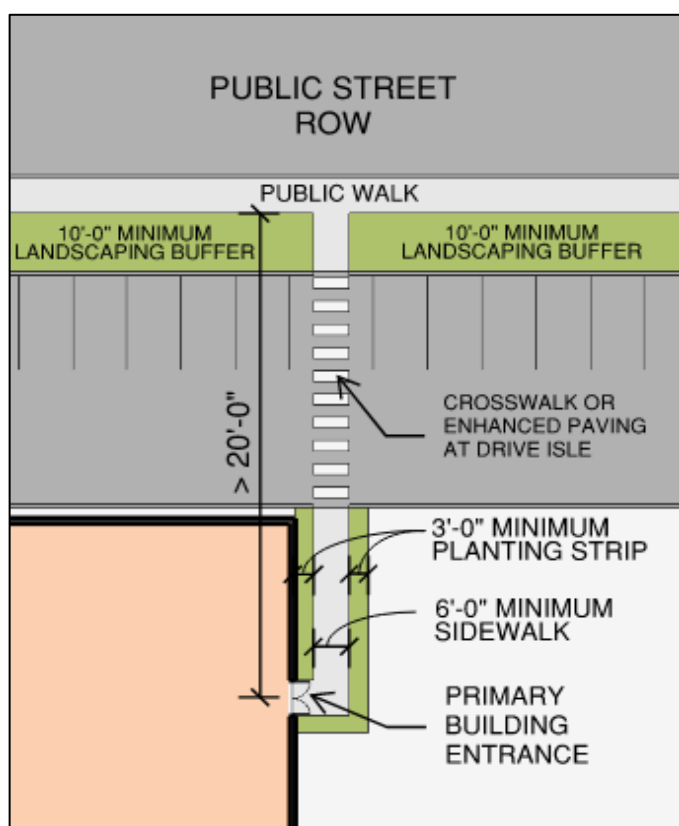


Figure 1.3c: Landscape Screen Requirement

- e. Buildings shall have clearly defined primary entrances that provide a weather-protection shelter for a depth of not less than five (5) feet (e.g., either by recess, overhang, canopy, portico and/or awning) extending from the building entry.

Proposed Deviation: None

Blank Wall Prevention

- a. Buildings shall meet transparency and weather protection standards (Subsection B, Building Design below) along all street-facing elevations and any elevations containing a primary building entrance. A landscape screen at least five (5) feet wide shall cover any blank building walls (i.e., lacking windows and weather protection) and contain materials of sufficient size/species to screen the blank wall.

Proposed Deviation: Buildings elevations that are public street-facing shall meet transparency and weather protection standards (Subsection B, Building Design below) along all street-facing elevations. A landscape screen at least five (5) feet wide shall cover any blank building walls over 10'-0" in length (i.e., lacking windows and weather protection) and contain materials of sufficient size/species to screen the blank wall. See Figure 1.4 below.

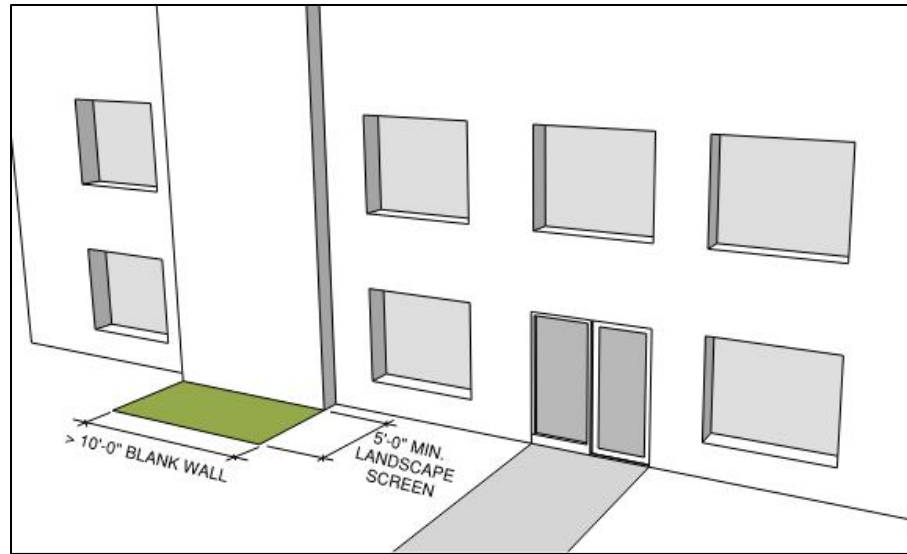


Figure 1.4: Blank Wall Landscape Screen Requirement

- b. Public art and murals may be used to minimize the visual impacts of a blank façade.

Proposed Deviation: None.

Building Design

Overall Design.

- a. Architectural designs shall address all facades of a building visible from the street with materials, detailing, and color. Architectural elements should wrap around building corners. Where a proposed design is based on the applicant's corporate style guide, as in formula retail stores, restaurants, discount outlets, or similar proposals where a similar building design has been used previously, the applicant must demonstrate that the design has been adapted to fit Fruita's unique location/historical context (Colorado National Monument/Grand Valley) and desert environment.

Proposed Deviation: Architectural designs shall address all street-facing facades of a building with materials, detailing, and color. Architectural elements should wrap around building corners. Where a proposed design is based on the applicant's corporate style guide, as in formula retail stores, restaurants, discount outlets, or similar proposals where a similar building design has been used previously, the applicant must demonstrate that the design has been adapted to fit Fruita's unique location/historical context (Colorado National Monument/Grand Valley) and desert environment.

Stepped Rooflines.

- a. Height should vary from building to building to avoid a homogenous appearance. This standard is met by using stepped parapets, gables, or slightly dissimilar height from building-to-building.

Proposed Deviation: Rooflines should vary to avoid a homogenous appearance. This standard is met by using stepped parapets, gables, changes in roof slope, or slightly dissimilar heights.

Window Transparency.

- a. Building elevations that face a street, parking area, civic space, or open space shall comprise at least forty (40) percent transparent windows, measured as a section extending the width of the street-facing elevation between the building base (or thirty (30) inches above the sidewalk grade, whichever is less) and a plane eighty (80) inches above the sidewalk grade. Upper floors may have less window area but should follow the vertical lines of the lower level piers and the horizontal definition of spandrels and any cornices.

Proposed Deviation: Building elevations that face a street or civic space, shall comprise at least thirty (30) percent transparent windows, measured as a section extending the width of the street-facing elevation between the building base (or thirty (30) inches above the sidewalk grade, whichever is less) and a plane eighty (80) inches above the sidewalk grade. Upper floors may have less window area but should follow the vertical lines of the lower-level piers and the horizontal definition of spandrels and any cornices. See Figure 1.5 below.

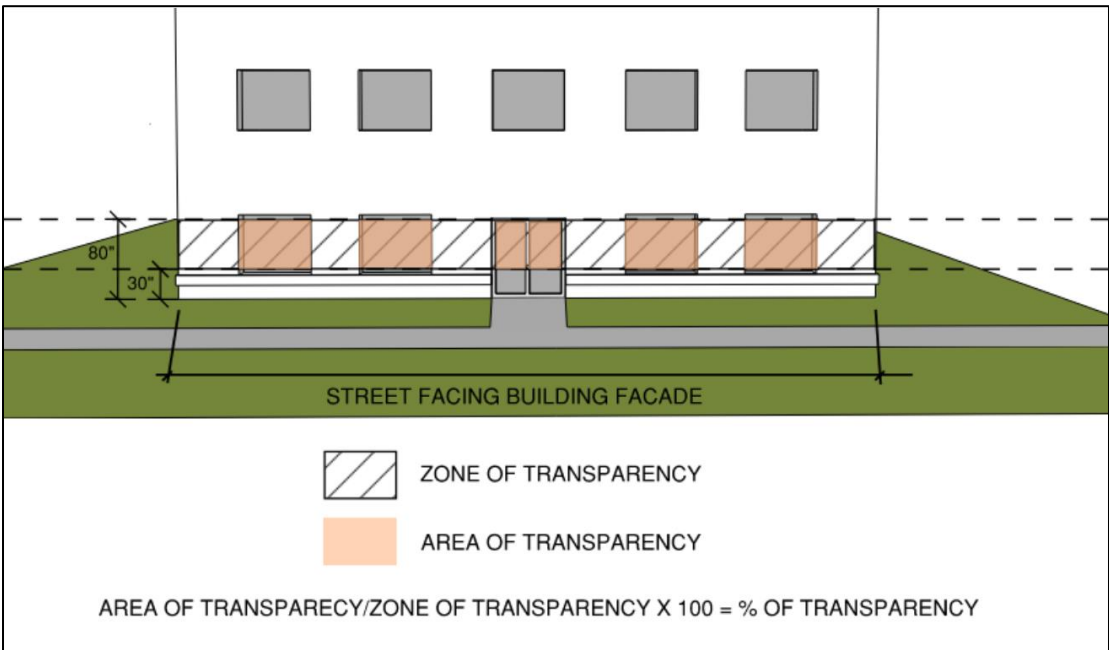


Figure 1.5: Transparency Requirement

- b. Where the Community Development Director determines, based on physical site constraints or the functional requirements of a non-residential building, that providing window transparency is not practical or does not further intent of these standards as stated above, other alternative means of breaking up large elevations (e.g., columns, belt course, and upper story panels/transom, with landscaping) shall be employed.

Proposed Deviation: None.

Building Mass.

- a. Building elevations shall incorporate offsets or divisions to reduce the apparent building scale and to improve aesthetics. Elevations of a structure shall be divided into smaller areas or planes to minimize the appearance of bulk as viewed from any street, civic space, or adjacent property.

Proposed Deviation: None.

- b. When an elevation of a primary structure is more than eight hundred (800) square feet in area, the elevation must be divided into distinct planes of not more than eight hundred (800) square feet. For the purpose of this standard, areas of wall planes that are entirely separated from other wall planes are those that result in a change in plane such as a recessed or projecting section of the structure that projects or recedes at least one (1) foot from the adjacent plane, for a length of at least six (6) feet.

Proposed Deviation: When an elevation of a primary structure is more than ~~eight hundred (800)~~ ~~square~~ twenty-five hundred (2,500) square feet in area, the elevation must be divided into distinct planes of not more than (1,600) square feet. For the purpose of this standard, areas of wall planes that are entirely separated from other wall planes are those that result in a change in plane such as a recessed or projecting section of the structure that projects or recedes at least one (1) foot from the adjacent plane, for a length of at least six (6) feet. See Figure 1.6 below.

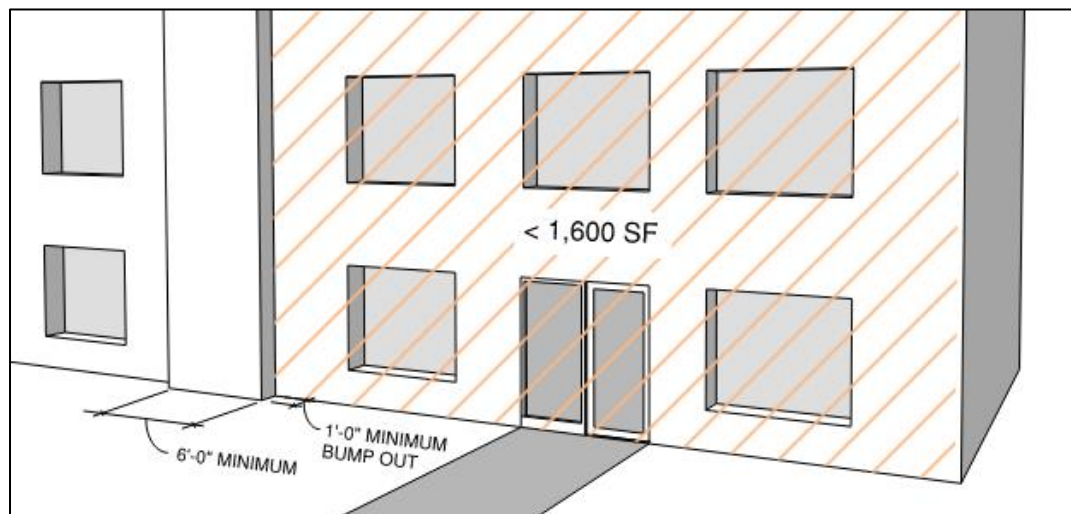


Figure 1.6: Blank Wall Landscape Screen Requirement

- c. Changes in plane may include but are not limited to recessed entries, bays, stepped parapets, secondary roof forms (e.g., gables, lower roof sheds, dormers and towers), building bases, canopies, awnings, projections, recesses, alcoves, pergolas, porticos, roof overhangs, columns, or other features that are consistent with the overall composition of the building.

Proposed Deviation: None.

- d. The distinction between street level and upper floors shall be established, for example, through the use of awnings, canopies, belt course, or similar detailing, materials and/or fenestration.

Proposed Deviation: None.

Materials and Colors.

- a. Exterior materials shall consist of brick, stone, adobe, wood shingle or imitation wood shingle walls, slump block, adobe brick or suitable split block or brick.

Proposed Deviation: Exterior materials shall consist of brick, stone, adobe, wood shingle or imitation wood shingle walls, slump block or fiber cement panel, lap siding, vinyl siding, adobe brick, or suitable split block or brick.

- b. Wood timbers and metal (brushed steel, iron, copper, or similar architectural-grade metals) may be used on canopies, arbors, trellises, pergolas, porticos, brackets, fasteners, lighting, signage, and other detailing, as appropriate, to provide visual interest and contrast. In general, color selection should complement, not compete with, the surrounding desert landscape. Warm earth tone colors (e.g., sandstone reds, desert greens and browns) are generally preferred over cool colors, such as blue and white/off-white. Substitute materials that are equal in appearance and durability may be approved.

Proposed Deviation: None.

ATMs and Service Windows.

- a. Where walkup ATMs or service windows are proposed on any street-facing elevation, they shall be visible from the street for security and have a canopy, awning, or other weather protection shelter. Where drive-up windows or similar facilities are provided the drive-up window and associated vehicle queuing area shall be set back at least twenty (20) feet from all adjacent rights-of-way. The applicant may be required to install textured pavement (e.g., pavers or stamped concrete) for pedestrian crossings of any drive aisle.

Proposed Deviation: None.

PARKING STANDARDS

Off street parking to be provided in accordance with Chapter 17.37 Parking Standards for commercial development.

The following parking rates shall apply to multifamily development.

	Per Dwelling Unit	
	Market Rate Rental	Affordable Rental
Parking Rate	1.32	0.75
180 Units	238 Spaces	135 spaces

- a. Garages and other parking areas are setback and oriented away from neighborhood streets or a 6-foot landscape buffer shall be provided between the street and parking areas.
- b. Parking management included in the individual apartment leases, specifying the parking requirements and enforcement policies.
- c. Bicycle parking provided in accordance with Chapter 17.37 Parking Standards of the Land Use Code.

LANDSCAPE STANDARDS

Site development to employ desert design-inspired xeriscape landscaping. A minimum of 10 percent (10%) of the land area shall be landscaped with drought-tolerant plant species provided in conformance with Section 17.11.050 Landscape Standards of the Land Use Code.

SIGNAGE

All signs shall comply with the City's Sign Code, unless the developer chooses to submit a master sign program application for consideration by the City.

LIGHTING

All exterior lighting shall be in conformance with the lighting standards of the Land Use Code.

CONFLICTS

In the event a standard in this PUD Guide is in conflict, the standard in this PUD Guide shall govern.

City of Fruita Planning Department

325 E. Aspen Avenue

Fruita, CO 81521

November 29, 2023

Re: **Geode Flats**
 Parking Analysis Study
 Fruita, Colorado

Purpose:

This memorandum was developed to give a parking rate recommendation for the proposed Geode Flats apartment project. The Geode Flats is located at 614 Raptor Road in Fruita, Colorado. This is a 5-acre proposed workforce/affordable housing project. The specifics of the workforce/affordable housing component are still being detailed. Therefore, the parking analysis includes alternative scenarios for a workforce housing project and an affordable housing project.

The proposed project is currently proposed to include 180 dwelling units in a mix of three and four-story residential apartment buildings.

Residential Parking Analysis:

The parking required to accommodate the proposed Geode Flats residents and guests was taken from national rates in general urban/suburban multifamily complexes throughout the United States. Alternatives for both market rate apartments and affordable apartments are included in this analysis.

Market Rate Analysis:

The Institute of Transportation Engineers' *Parking Generation Manual, 5th Edition*¹ provides parking generation rates based upon numerous parking studies accumulated across the United States. The data provided is based upon observations for apartment complexes in a general urban/suburban setting that is not located within ½ mile of rail transit.

The Institute of Transportation Engineers' *Parking Generation Manual*¹ states that the average peak period parking demand for a suburban mid-rise (3+ floor/story) apartment (Land Use #221) is 1.32 parking spaces per occupied dwelling unit. The Geode Flats development is anticipated to be 100% occupied.

¹ *Parking Generation Manual, 5th Edition*, Institute of Transportation Engineers, 2019

The statistic is given based upon the 95th Percent Confidence Interval for a nationwide study of 48 apartment complexes. The 95th Percent Confidence Interval indicates that there is a 95% likelihood that the parking demand will fall within 1.25 to 1.39 parking spaces per occupied dwelling unit.

Affordable Housing Analysis:

The Institute of Transportation Engineers’ *Parking Generation Manual*¹ gives national parking demand data for affordable multifamily housing. This includes housing complexes where 75% or more of the units are designated as affordable and rented at below market rate. The *Parking Generation Manual*¹ states that the average peak period parking demand for per affordable dwelling unit (Land Use #223) is 0.78 parking spaces per occupied dwelling unit. The statistic is given based upon the 95th Percent Confidence Interval for a nationwide study of 6 apartment complexes. The Geode Flats development is anticipated to be 100% occupied.

However, the *Parking Generation Manual*¹ also states that the manual ‘should be considered only the beginning point of information to be used in estimating parking demand. Local conditions and area type can influence parking demand... Therefore, a survey of a site in a comparable local condition should always be considered as one potential means to estimate parking demand.’¹

Therefore, local data sources were reviewed. A Colorado-specific document, *Parking & Affordable Housing 2020/2021 Report*², provided a detailed analysis of 19 affordable housing developments and determined that across the board the affordable housing facilities are overparked and requirements can be up to five times the need. A parking rate range from 0.36 to 1.10 parking spaces per unit is recommended. The average of this study is a rate of 0.73 parking spaces per affordable housing unit.

Averaging the two rates, results in a recommended parking rate of 0.75 parking spaces per occupied affordable dwelling unit.

Table 1 summarizes the parking rate analysis per dwelling unit.

Table 1: Parking Rate Summary

	Per Occupied Dwelling Unit	
	Market Rate Rental ¹	Affordable Rental ^{1,2}
Number of Occupied Dwelling Units	180	180
Parking Rate	1.32	0.75
Required Parking Spaces	238	135

City of Fruita's Market Rate Analysis per Bedroom:

The City requested additional parking analysis utilizing the parking rates per number of bedrooms as defined by the City of Fruita's updated *Chapter 17.37 Parking Standards* of the *Land Use Code*³. The exact number of bedroom units is unknown at this time. Therefore, this analysis is a hypothetical look at an assumed unit mix. This calculation was performed for both market rate and affordable housing alternatives.

Table 2 summarizes the parking rate analysis using an assumed unit mix of bedrooms.

Table 2: Parking Rate Summary per Bedroom (Hypothetical Unit Mix)*

	Per Bedroom (Hypothetical)							
	Market Rate Rental ³				Affordable Rental ³			
	1-Bed Unit	2-Bed Unit	3-Bed Unit	Add'l Parking Spaces	1-Bed Unit	2-Bed Unit	3-Bed Unit	Add'l Parking Spaces
Hypothetical Number of Bedrooms	54	134	40		54	134	40	
Parking Rate	1.00	1.5	2	1 space/6 du	0.50	0.75	1.25	N/A
Required Parking Spaces	54	201	80	30	27	101	50	-
Total Parking Spaces Required	365				178			

*Uses an assumed unit mix of bedrooms.

Multimodal Infrastructure:

Connectivity from Geode Flats to the greater multimodal network will support the parking ratios in **Table 1**. Transit access, sidewalk connectivity, bicycle facilities, and adjacent transit access provide the ability for residents to have multiple options for safe and efficient travel in the Grand Valley.

Bicycle parking will be provided in accordance with *Chapter 17.37 Parking Standards* of the *Land Use Code*³.

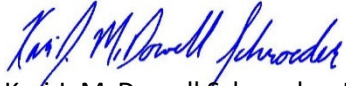
Parking Rate Summary:

Geode Flats' anticipated unit mix has not yet been determined. Therefore, it is necessary to apply the per unit parking rates. If the project is developed for market rate residents, the site should include 238 parking spaces. If the project is an affordable housing project, the site should include 135 parking spaces.

Additionally, parking management should be included in the individual apartment leases, specifying the parking requirements and enforcement policies.

Please call if you would like any additional information or have any questions regarding this parking analysis.

Sincerely,
McDowell Engineering, LLC



Kari J. McDowell Schroeder, PE, PTOE
Senior Traffic Engineer

Enclosed: Excerpts from *Parking & Affordable Housing 2020/2021 Report*²

Parking & Affordable Housing

2020/2021 Report

50% of parking
in affordable
housing
projects go
unused.

Estimating Parking Demand

In summer/fall 2020, Fox Tuttle and Shopworks Architecture partnered to perform an audit of parking usage in affordable housing along the Front Range, with a specific focus on supportive housing to determine whether the current requirements are in line with the demand. [We found that across the board the affordable housing facilities are overparked and requirements can be up to 5 times the need, especially in lower Area Median Income \(AMI\) levels.](#) For example, for supportive housing (0-30% AMI) within the Denver metro area, the average vehicle ownership was ¹ 8.8% which equates to 1 vehicle per 12 units.

It is generally agreed that affordable housing communities, especially those serving individuals who have experienced, or are at risk of homelessness, generate significantly less parking demand than other residential uses.

Unfortunately, there is no industry standard for how to reduce typical residential parking rates for lower-income residential properties. The reduction of parking demand for affordable housing communities is due to a number of factors:

1. Their typical location is in more urban conditions with better access to transit use, and
2. The lack of funds lower-income residents have to cover the cost of vehicle ownership and insurance/maintenance.

The following pages demonstrate what we learned, and our understanding of the current demand for parking for affordable housing across the Front Range.

¹ In our study 32 individuals in PSH had cars out of a total of 365 units.

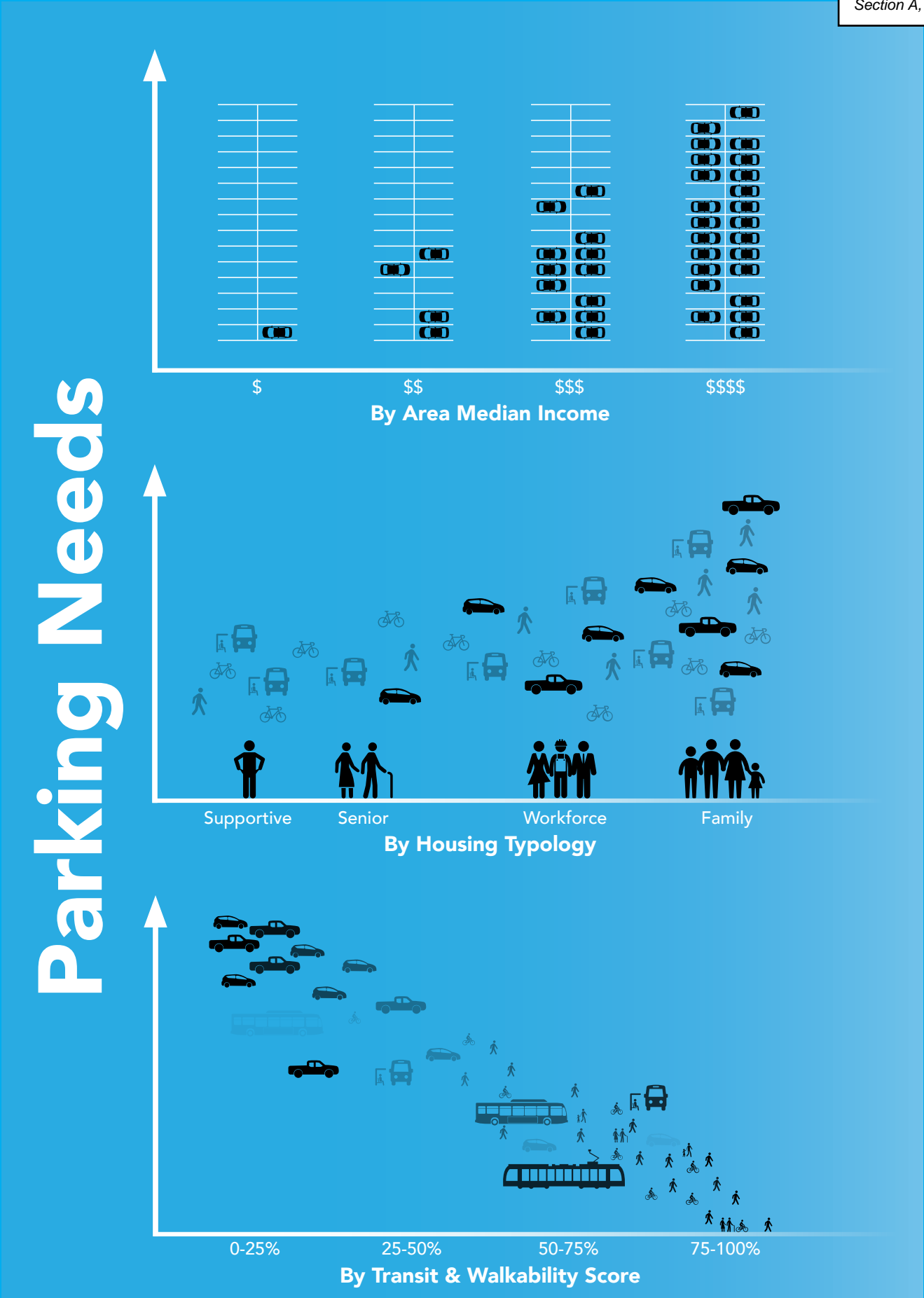
Impact of Proximity to Multi-Modal Facilities

The walk, bike, and transit scores were added together to get the total non-auto score for each property. The data indicates that the property's proximity to quality walking and biking facilities and transit services deeply impacts vehicle ownership.

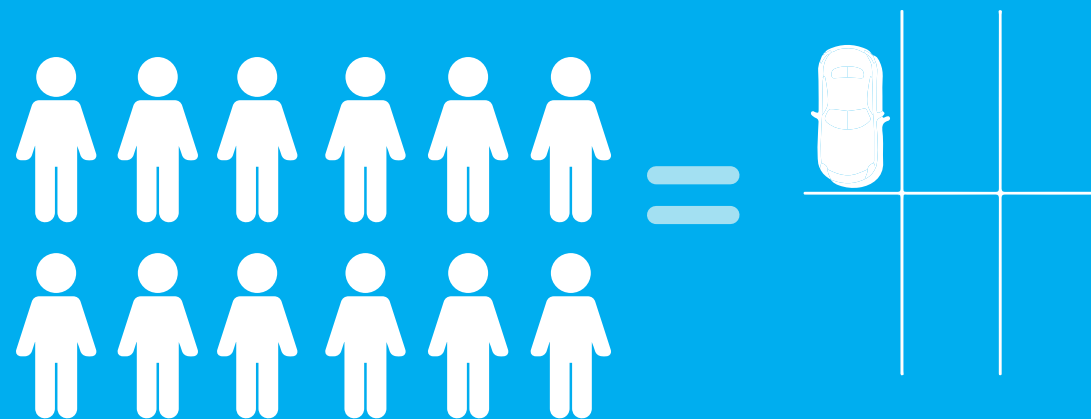
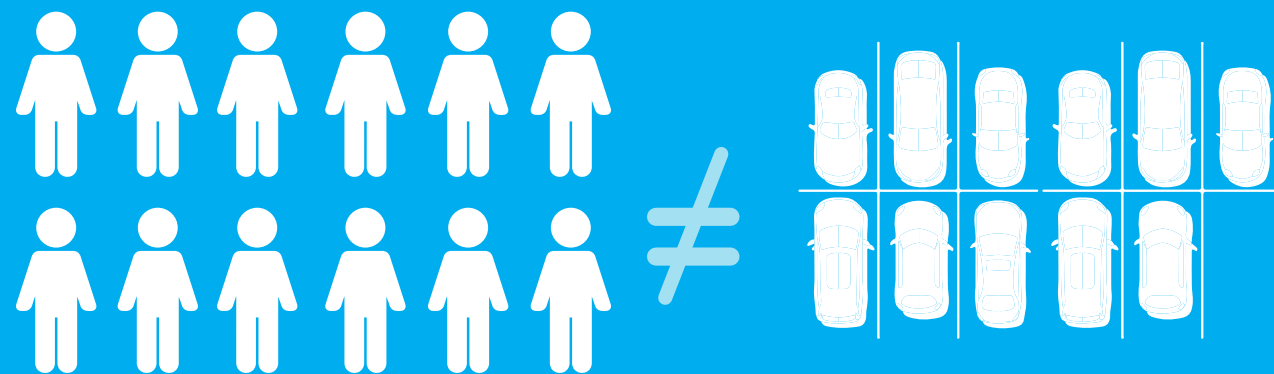
The need to own a vehicle is reduced when the surrounding neighborhood is walkable, bikeable, and has reliable transit that can get the residents to work, school, shopping, appointments, etc.

The majority of the surveyed properties were purposefully located within communities and neighborhoods that are walkable, bikeable, and near transit.

This is to serve people that do not typically own a vehicle due to the affordability, credit, maintenance, and insurance, as well as to meet the rental cost of their unit.



Parking Supply



vs. Demand

Parking Supply Verses Parking Demand

Combining the parking supply of all the surveyed properties, there are 883 parking spaces for 1,353 affordable housing units with an approximate demand of 461 spaces. To understand the impact of over parking for affordable housing projects, the unused parking spaces were valued at \$22,000 per space. This equates to an estimated cost of \$9,460,000 on parking that is in excess of the demand. If parking requirements for affordable projects were lowered closer to the parking demand, then the funds could be reallocated for support services or providing transportation options. The physical space could be repurposed for additional affordable housing units or amenity space for residents.

883 parking spaces

1,353 units

461 spaces

422 unused

\$22,000 cost per space

\$9,284,000* funds spent on unnecessary parking

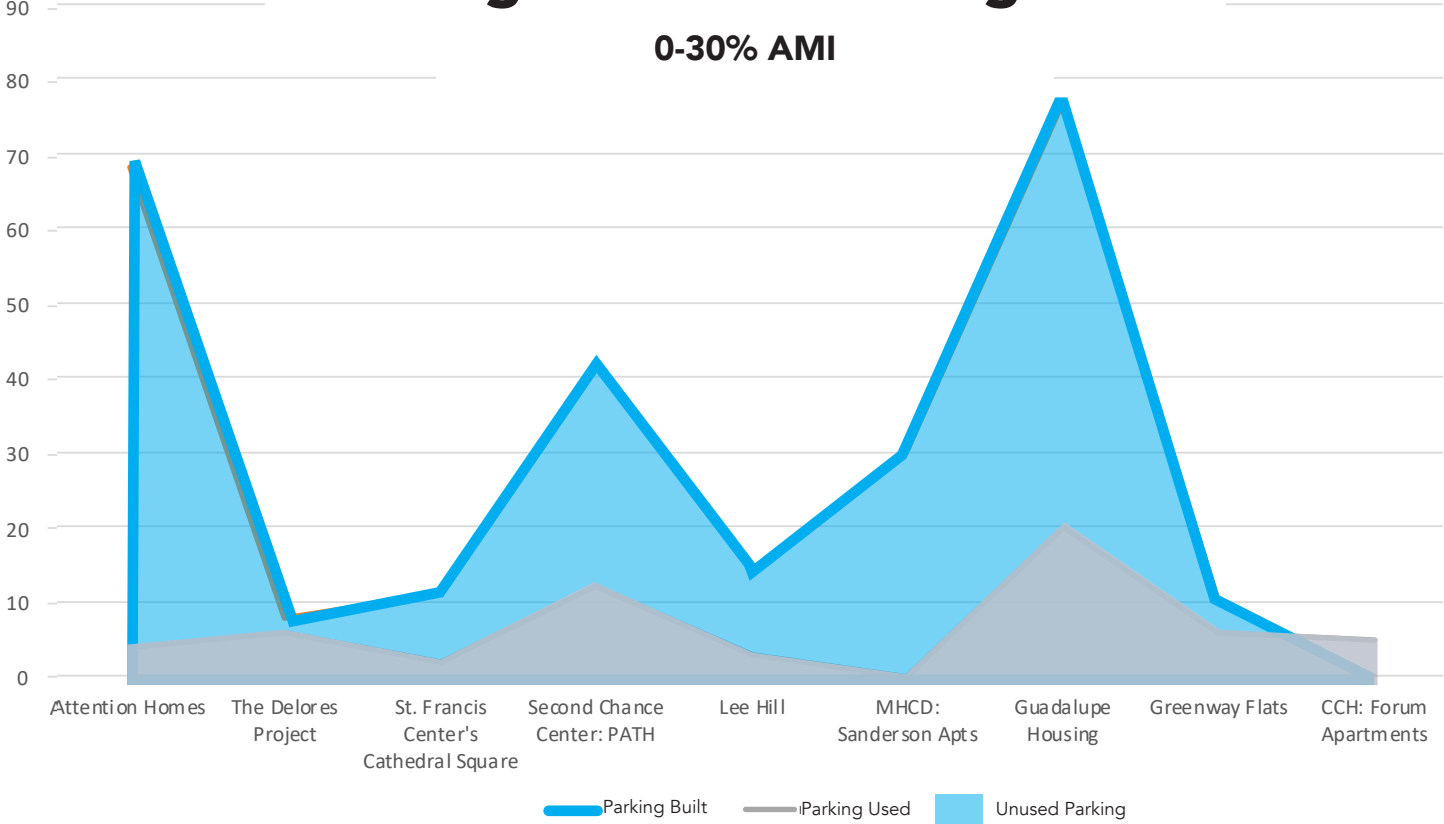
*Figure is over 6 years and 19 projects



***Equates to one 40 unit affordable housing building.**

Parking Built vs. Parking Used

0-30% AMI



Vehicle Ownership

The Area Median Income (AMI) was compared to resident's vehicle ownership and it can be seen that residents with lower income levels own fewer vehicles and as the income increases the vehicle ownership increases.

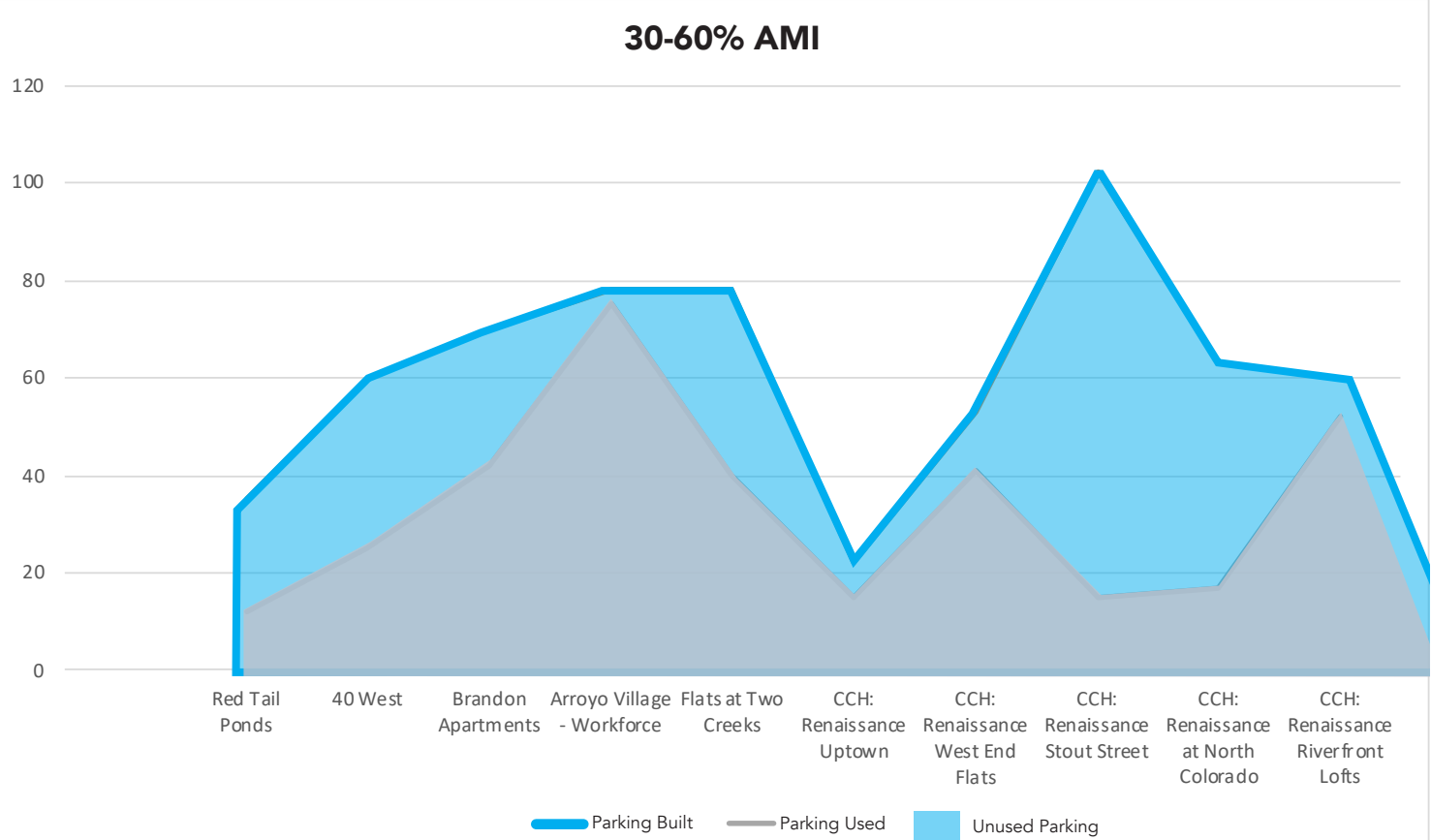
The survey data provided by the twenty properties indicated the following trends:

- 29.0% of current residents own a vehicle (equates to 1 vehicle per 4 units) across all affordable housing studied.
- 8.8% of Permanent Supportive Housing Residents own a vehicle (equates to 1 vehicle per 12 units)
- On average 0.9 parking spaces per unit are provided to meet the municipal requirements.

The vehicle ownership equates to the parking demand needed at each property to serve the residents and should help inform the parking supply needed.

Comparing the vehicle ownership to the parking spaces supplied indicated that affordable housing projects are overparked.

30-60% AMI

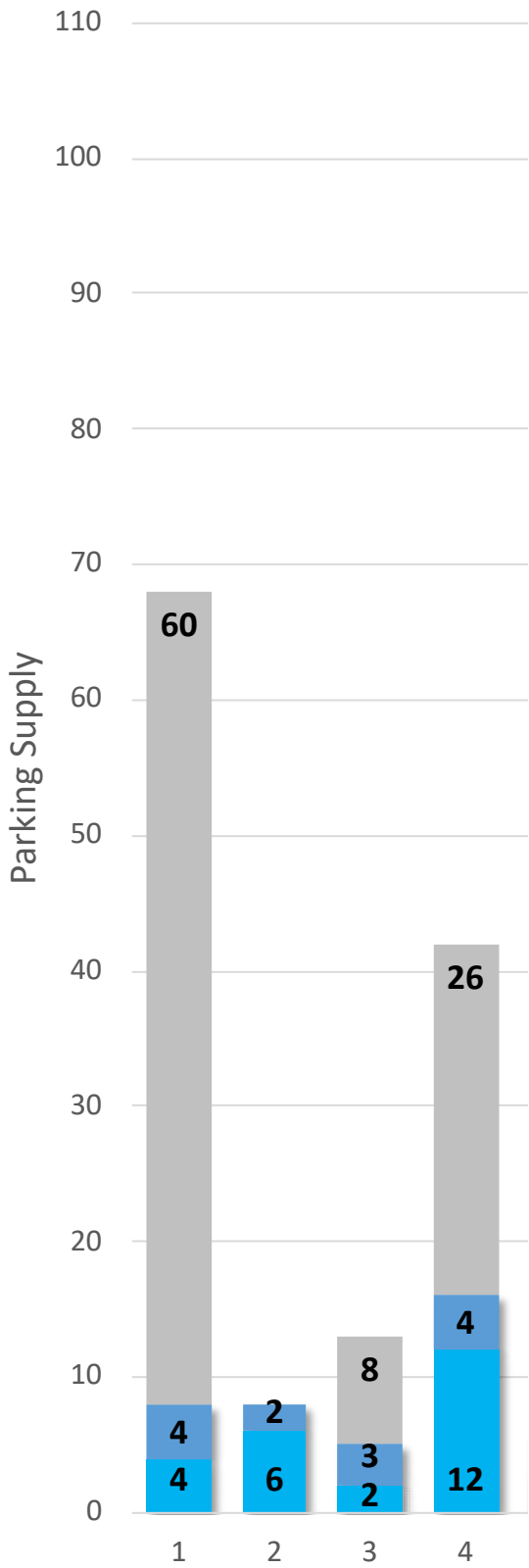


Parking Utilization

Property Key

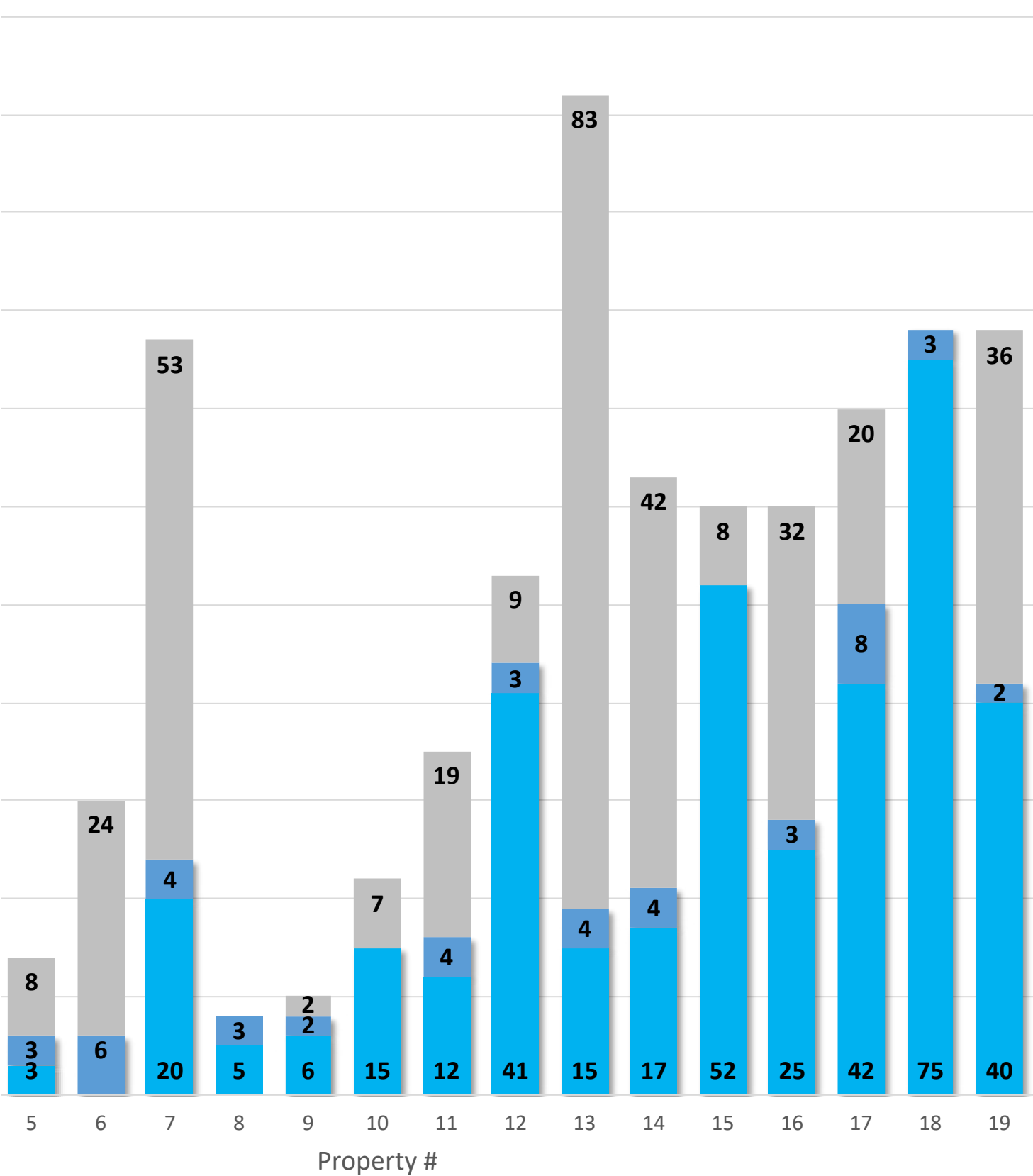
#	Property	City	Denver Metro PSH	Outside Denver Metro PSH
1	Attention Homes	Boulder	X	
2	The Delores Apartments at Arroyo Village	Denver	X	
3	St. Francis Center's Cathedral Square	Denver	X	
4	Second Chance Center: PATH	Aurora	X	
5	Lee Hill	Boulder	X	
6	Mental Health Center of Denver: Sanderson Apts	Denver	X	
7	Guadalupe Apartments	Greeley		X
8	CCH: Forum Apartments	Denver	X	
9	Greenway Flats	Colo. Springs		X
10	CCH: Renaissance Uptown Lofts	Denver		
11	Red Tail Ponds	Fort Collins		
12	CCH: Renaissance West End Flats	Denver		
13	CCH: Renaissance Stout Street Lofts	Denver		
14	CCH: Renaissance at North Colorado Station	Denver		
15	CCH: Renaissance Riverfront Lofts	Denver		
16	40 West	Lakewood		
17	Brandon Apartments	Denver		
18	Arroyo Village - Workforce	Denver		
19	Flats at Two Creeks	Lakewood		

- Resident's Parking Demand
- Staff Parking Demand
- Unused Parking Spaces



Overall Parking Demand

Section A, Item 2)





RTD's 2020 Transit-Oriented Development Parking Study

In late 2019 and early 2020, Regional Transportation District (RTD) performed a parking survey of 86 properties located within a 10-minute walk to a train or bus rapid transit station. The survey included discussions with property managers, counting parking supply and utilization, and analyzing the data. Results were based on resident income; policy for including a parking space in a tenant's lease; neighborhood transit quality; property age; policy for including a transit pass in a tenant's lease; distance between the property and the station; location in the City and County of Denver or other municipality; and location in related to TOD typology.

The RTD study stated **"the most significant finding from the combined survey-count analysis ties a strong correlation between the over-supply of expensive parking and the under-utilization of parking at income-restricted properties.** Metro Denver TODs analyzed here provide approximately 40 percent more parking than residents use at peak demand." RTD intends to use their research to initiate and guide discussions amongst Metro Denver professionals and development partners about more appropriate parking provision appropriate for properties in transit-rich neighborhoods.

"Excess parking is particularly inappropriate in transit-rich neighborhoods. Not only does it effectively prohibit affordable housing, but it unnecessarily increases development costs, reduces project savings, and obstructs access to transit, and by extension, to economic opportunity for a growing number of low-income households."



RTD’s 2020 Transit-Oriented Development Parking Study

RTD Parking Study Findings

Resident Income	# Of Properties	# Of Units	# Of Parking Spaces	Spaces Available Per Unit	Spaces Utilized Per Unit	Parking Utilization
All Properties	86	22,422	26,442	1.18	0.70	59%
Market-Rate	65	19,850	24,462	1.23	0.74	60%
Mixed-Income	5	985	845	0.86	0.49	57%
Income-Restricted	16	1,587	1,135	0.72	0.36	50%

The table above summarizes the data gathered and evaluated as part of the RTD study. It can be seen that the income restricted properties are over-parked, which supports the findings in the Shopworks and Fox Tuttle study.

You can find RTD’s full report [here](https://www.rtd-denver.com/sites/default/files/files/2020-12/RTD-Residential-TOD-Parking-Study_Final-R_0.pdf): https://www.rtd-denver.com/sites/default/files/files/2020-12/RTD-Residential-TOD-Parking-Study_Final-R_0.pdf

RTD Report: Summary

- 

1.

The most significant finding from the combined survey and analysis was the strong correlation between the oversupply of expensive parking and the significantly low utilization of parking at income-restricted properties.
- 

2.

Market-rate properties provide approximately 40% more parking than residents use, and income-restricted properties provide approximately 50% more parking than residents use.
- 

3.

Income-restricted properties (0-99% AMI) provide 0.72 parking spaces per unit, but residents use only 0.36 parking spaces per unit.
- 

4.

Of the properties located less than 0.3 miles from a station, residents utilized 0.10 per unit compared to those properties located between 0.3 to 0.5 miles from a station. In other words, for every 30 units, a property within a five-minute walk of a station provides five fewer parking spaces and its residents use three fewer parking spaces than a comparable station-area property farther away.

Parking Needs For Staff

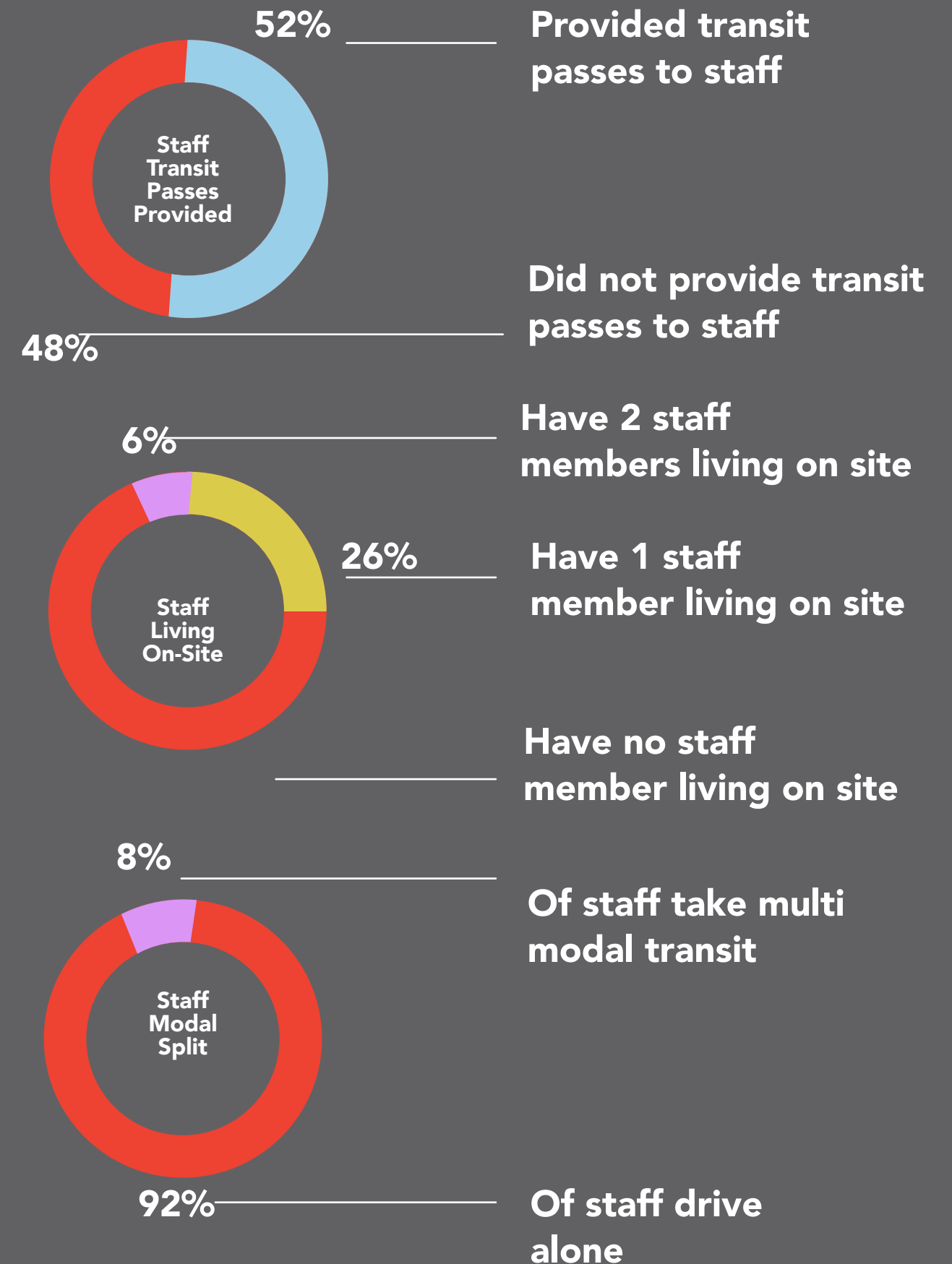
The same affordable housing properties that were surveyed by Fox Tuttle/Shopworks for resident vehicle ownership were asked about staffing to understand the parking demand needed by staff. On average, the majority of the affordable home properties have 5 full time staff members (1 per 17 units) and 4 part-time staff members (1 per 45 units).

There are a few exceptions to this data - The Attention Homes, Delores Project/Arroyo Village, and CCH: Renaissance at Civic Center Apartments. These buildings are staffed significantly more than the rest of the properties and reported having between 14 and 22 full-time staff members. However, upon further research it was determined that these organizations host all of their administrative staff for the entire organization in these buildings.

Half of the properties are staffed 24 hours a day, 7 days a week; while the other half have staff on-site only during typical daytime work hours. On average, there are 4 staff members on-site during any given shift. Typically, the evening and weekend shifts have a maximum of 1-2 staff members (front desk staff/security). The majority of the supportive housing properties have 3 staff shifts during weekdays and some have staff shifts on weekends. Approximately 1/3 of the properties have up to 2 staff members that live on-site.

Based on the provided data, 92% of staff members drive to work and need a parking space on or near the property.

The staff parking demand is additional to the residents' parking demand. However, the shift work that is typical of these types of properties, especially permanent supportive housing, lowers the need for parking since the entire staff are not on-site at the same time.



Takes the bus

Owens a car

One unit out of every 12 utilize parking.

Takes the bus

Walks

Rides bike

Rides bike

Takes the bus

Takes the bus

Light Rail

Takes the bus

Walks

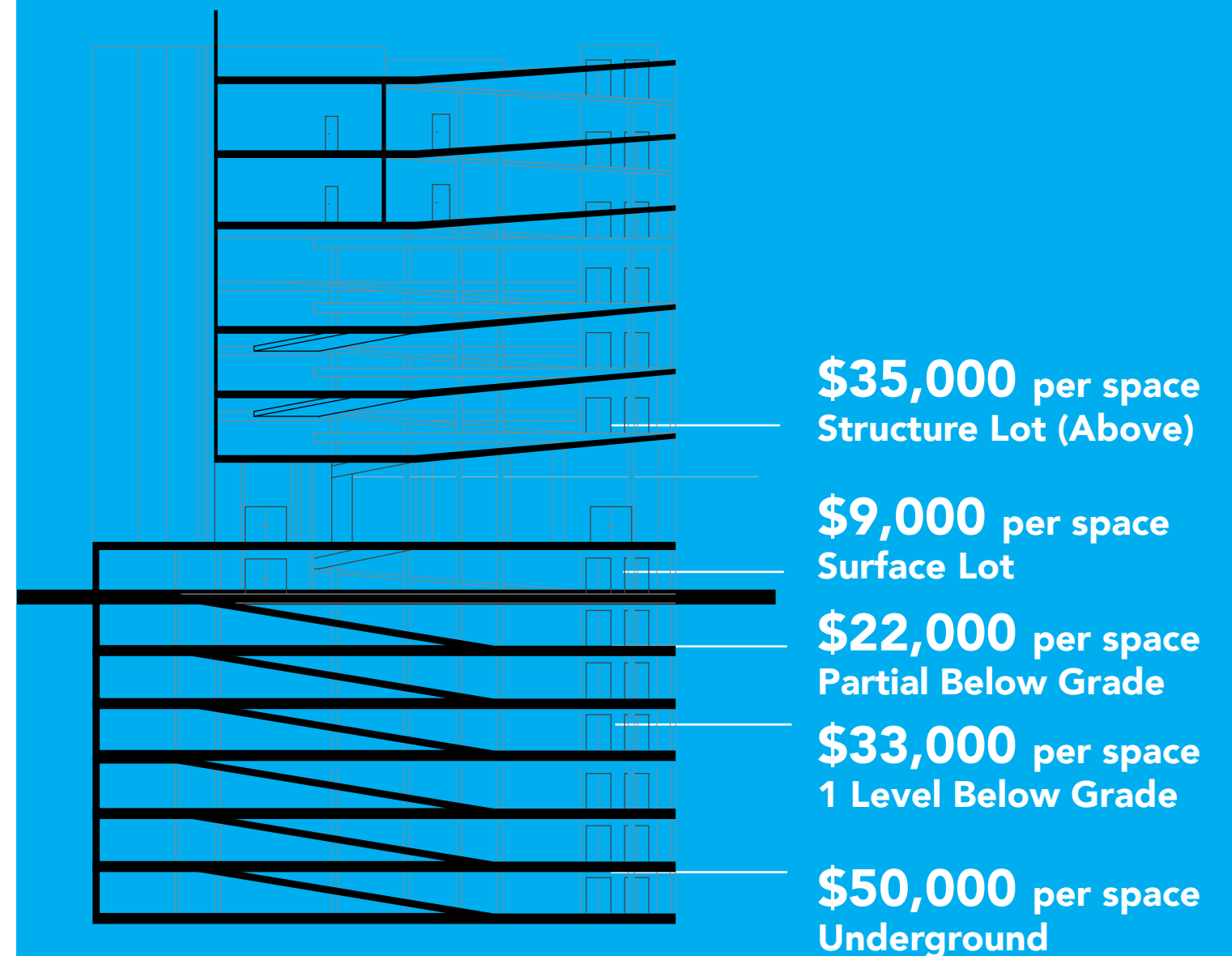
Rides bike

Parking facilities are costly to build.

Cost of Parking

Regardless of housing type, parking spaces are expensive to construct and maintain. The cost of parking impacts affordable housing projects more significantly than market-rate apartments since they cannot typically recoup the cost within rental fees. Parking also takes up valuable space that could be utilized for additional housing units or amenities for the people living on the property. As the data in this study indicates, parking demand is significantly less than the actual parking supply.

Existing and future sites would greatly benefit from reduced parking requirements to be able to repurpose the cost of parking and gain development area. Listed to the right are typical construction costs of one parking space in different parking facility types within the Front Range. This does not include the cost of the land or maintenance.





Across affordable housing, there are 0.29 vehicles per unit, equating to less than one vehicle per 6 units.



In Denver PSH there are .088 vehicles owned per unit, equating to less than one vehicle per 12 units.



Current Denver zoning requires on average 0.48 per unit across housing buildings. Thus the zoning requires 5.5 times more than the parking demand.

In Conclusion

We are building parking when we could be building more housing. The Department of Housing Stability in Denver, HOST, estimates that after LIHTC financing there is a funding gap equal to \$37,000 per unit in the City of Denver; a gap that City and State funds have to cover to ensure these apartments get built. We are taking tax payer dollars and spending it on unnecessary parking, when we could be creating more units or beautiful parks that help people heal. Our report shows that we spent \$9.3 million over the last 6 years on parking that is not used in affordable housing. With those funds we could have built an entire new PSH project with 40 units. We built parking when we could have housed people.

Thank You

We would like to extend our deepest appreciation for all the participants in this research who answered question after question as we refined our study. This report would not have been possible without each and every one of you, and we are so grateful for your assistance!

Appendix A.

	Overview of Building				Parking Requirement	
	How many units and unit type	How many residents: adults, kids	AMI for building	Median AMI	Zoning Required Parking Ratio (per DU)	Reductions (if available)
Attention Homes, Boulder	40 units: 23 studios, 16 1-bed, 1 2-bed	41	All 0-30%	30%	1.00	0.25
Arroyo Village - Delores PSH	35 units: all 1-bed	40	All 0-30%	30%	1.00	0.40
Arroyo Village - Workforce	95 units: 25 1-bed, 58 2-bed, 12 3-bed	267	All 0-50%	50%	1.00	0.32
St. Francis Center's Cathedral Square	50 units, all 1-bed	55	All 0-30%	30%	0.25	0.00
Second Chance Center: PATH	50 units, 40 1-bed, 10 2-bed	49	All 0-30%	30%	1.50-2.00	0.54
Lee Hill	31 units, all 1-bed	31	All 0-30%	30%	1.00	0.25
Red Tail Ponds	60 units, 54 one-bedroom and 6 two-bedrooms	60	40@0-30%, 20 @0-60%	40%	0.75-1.00	0.50
Mental Health Center of Denver: Sanderson Apts	60 units	60	All 0-30%	30%	1.25	0.60
40 West	60 units: 54 1-bed, 6 2-bed	67	9@0-30%, 10@0-40%, 34@0-50%, 6@0-60%	46%	0.75	0.00
Flats at Two Creeks	78 units: 70 1-bed, 8 2-bed	106	16@0-30%, 21@0-50%, 40@0-60%	43%	0.75	0.00
Greenway Flats	65 one-bedroom units	68	62@0-30% 3@0-40%	30%	1.50	0.00
Guadalupe Apartments Archdiocesan Housing	47 units: 18 studios, 19 one-bed, 10 two-bed	68	All 0-30%	30%	1.25-1.75	0.00
Brandon Apartments	103 – 47 one-bedroom, 45 two-bedroom, 11 three-bedroom	86	20@0-30%, 39@0-40%, 44@0-60, 1 staff unit	47%	1.00	0.25
CCH: Renaissance West End Flats	101 units, 75 one-bedroom, 26 two-bedroom	115	35@0-30%, 31@0-40%, 26@0-50%, 8@0-60%	40%	0.75	0.25

Parking Requirement		Parking Analysis			Alternative Modes			
Minimum Required Parking	Parking Provided	Parking Ratio (Provided per DU)	Residents With Cars	Parking Lot Utilization	Walk/Transit/ Bike Score	Number of bike parking spaces	Do you provide transit passes or bus tickets to residents	Shared Bikes / Cars?
30.00	68	1.70	4	5.88%	95/62/95	40	Yes	No
21.00	8	0.23	6	75.00%	73/63/65	100	Yes	Yes
64.60	78	0.82	75	96.15%	73/63/65	100	No	Yes
12.50	13	0.26	2	15.38%	94/82/91	30+	Yes	No (but have access to shared van)
92.00	42	0.84	12	28.57%	59/58/70	50	Yes	Yes
23.25	14	0.45	3	21.43%	56/40/88	20	Yes	No
23.25	35	0.58	12	34.29%	38/36/66	66	Yes	Yes
75.00	30	0.50	0	0.00%	79/48/68	15	No	No
45.00	60	1.00	25	41.67%	67/55/73	15	No	No
58.50	78	1.00	40	51.28%	61/55/69	At least 20	No	No
8.00	10	0.15	6	60.00%	48/33/71	6 rentals, 48 bike parking spots	Yes	Yes
76.00	77	1.64	20	25.97%	1/0/27	20 spaces	No	No
66.00	70	0.68	42	60.00%	74/54/94	92	Yes	No
49.00	53	0.52	41	77.36%	77/55/90	N/A	No	

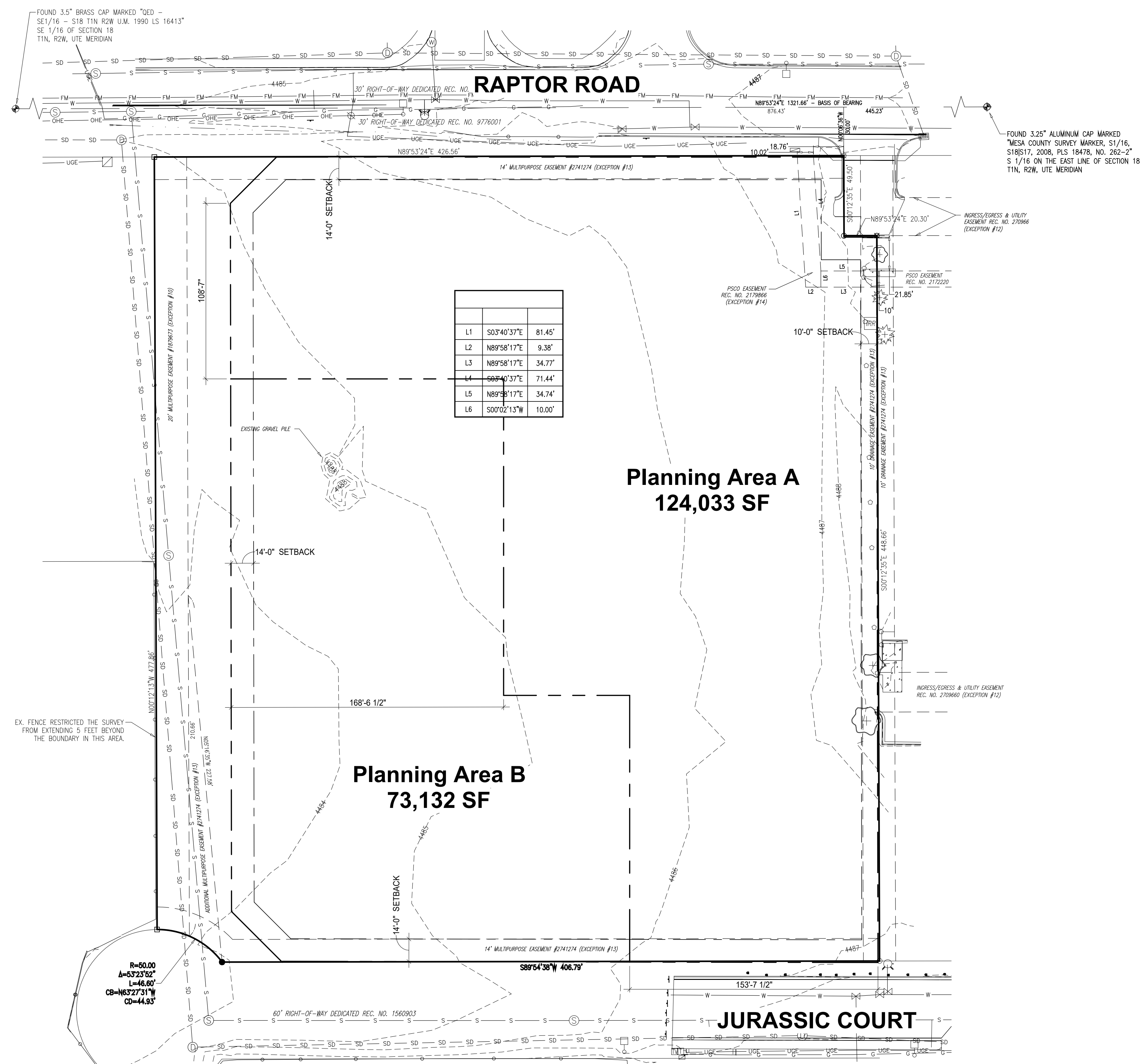
Appendix A.

	Overview of Building				Parking Requirement	
	How many units and unit type	How many residents: adults, kids	AMI for building	Median AMI	Zoning Required Parking Ratio (per DU)	Reductions (if available)
CCH: Renaissance at North Colorado Station	103 Units: 19 studio, 54 one-, 24 two-, and 6 three-bedroom apartments	112	38@0-30%, 19@0-40%, 27@0-50%, 18@0-60%	42%	0.75	0.20
CCH: Forum Apartments	100 studio apartments	98	All 0-30%	30%	0.75	0.00
CCH: Renaissance at Civic Center Apartments	216 units: 200 studio, 16 one-bed	188	68@0-30%, 26@0-40%, 46@0-50%, 76@0-60%	46%	0.00	0.00
CCH: Renaissance Riverfront Lofts	100 Units: 88 one-bedroom apartments, 12 two-bedroom apartments	Did not receive	30@0-30%, 22@0-40%, 24@0-50%, 23@0-60%	44%	1.00-1.50	0.25+0.25
CCH: Renaissance Uptown Lofts	98 Units: 4 studios, 90 one-bedroom apartments, 4 two-bedroom apartments	Did not receive	41@0-30%, 31@0-40%, 17@0-50%, 8@0-60%	39%	0.75	0.25
CCH: Renaissance Stout Street Lofts	78 Units: 59 one-bedroom apartments, 19 two-bedroom apartments	63	26@0-30%, 23@0-40%, 22@0-50%, 6@0-60%	41%	0.75	0.20

Parking Requirement		Parking Analysis			Alternative Modes			
Minimum Required Parking	Parking Provided	Parking Ratio (Provided per DU)	Residents With Cars	Parking Lot Utilization	Walk/Transit/ Bike Score	Number of bike parking spaces	Do you provide transit passes or bus tickets to residents	Shared Bikes / Cars?
54.00	63	0.61	17	26.98%	61/53/66	None	No	
75.00	0	0.00	5	N/A	96/89/95	3	Yes	
0.00	0	0.00	Unknown	N/A	99/91/88	0	Yes	
60.00	60	0.60	52	86.67%	62/66/84	0	No	
25.00	22	0.22	15	68.18%	94/86/98	2	Yes	
59.00	102	1.31	15	14.71%	93/90/99	0	Yes	

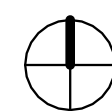
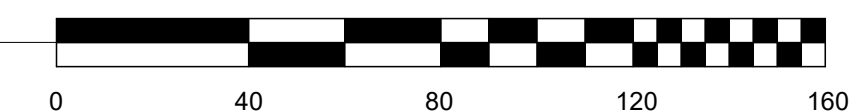
LOT 1, HORSETHIEF COMMERCIAL SUBDIVISION (REC. NO. 2741274)
SITUATED IN THE SE1/4SE1/4 OF SECTION 18

TOWNSHIP 1 NORTH, RANGE 2 WEST, UTE MERIDIAN
CITY OF FRUITA, MESA COUNTY, COLORADO



1 PRELIMINARY PUD PLAN
1" = 40'-0"

GRAPHIC SCALE



STUDIO ARCHITECTURE
3575 RINGSBY CT, SUITE 300A
DENVER CO, 80216
theSTUDIOarchitecture.com
866.529.9130

ARCHITECTURE
STUDIO

GEODE FLATS

614 RAPTOR ROAD, FRUITA CO

0" 1" THIS GRAPHIC EQUALS 0'-1"
DO NOT SCALE DRAWINGS

STUDIO Project No: Project #

Sheet Issue & Revision Log

No	Date	Description
	10/12/23	PRELIMINARY PUD PLAN

It is the client's responsibility prior to or during construction to notify the architect in writing of any perceived errors or omissions in the plans and specifications of which a contractor thoroughly knowledgeable with the building codes and methods of construction should reasonably be aware. Written instructions addressing such perceived errors or omissions shall be received from the architect prior to the client or client's subcontractors proceeding with the work. The client shall be responsible for any defects in construction if these procedures are not followed.

PRELIMINARY PUD
PLAN

A1.0

**FRUITA CITY COUNCIL
WORKSHOP
JANUARY 24, 2023
6:30 P.M.**

CALL TO ORDER AND ROLL CALL

The workshop of the Fruita City Council was called to order at 6:30 p.m. by Mayor Kincaid. City Council members present were Mayor Pro Tem Matthew Breman, and City Councilors Jeannine Purser, James Williams, Ken Kreie and Aaron Hancey (Councilor Hancey arrived at 7:20 p.m.). Councilor Amy Miller was excused absent.

City Staff present were City Manager Mike Bennett, Assistant City Manager Shannon Vassen, Deputy City Clerk/Finance Director Margaret Sell, Deputy City Clerk Deb Woods, Parks and Recreation Director Marc Mancuso, City Planner Henry Hemphill and Planning and Development Director Dan Caris.

Also in attendance were members of the Fruita Planning Commission and Carrie McCool with McCool Development Solutions, LLC.

AGENDA ITEMS

1. DISCUSSION ON POST IMPACT FEE IMPLEMENTATION

City Clerk/Finance Director Margaret Sell reviewed staff's recommendation for implementation of an increase in the Parks, Open Space and Trails (POST) development impact fee for new construction based on a POST Impact Fee Study conducted by TischlerBise, Inc.

The study provides the necessary analysis and documentation to support an increase in the POST impact fee up to a maximum of the following amounts:

Current POST Impact Fee: \$1,860 per dwelling unit (in effect for over 10 years)

Proposed Maximum Supportable Fee:

Single-family Residential	\$3,179 per dwelling unit
Multi-family Residential*	\$2,154 per dwelling unit

**The difference in the proposed fee is based on the assumption that single-family residential has 2.42 persons per housing unit and multi-family residential has 1.64 persons per housing unit.*

Staff is proposing that the fee be implemented in two stages for single-family residences and one stage for multi-family residences.

City Manager Mike Bennett reviewed the history of the Council's previous discussions and a presentation from the City's hired consultant TischlerBise, Inc. Mrs. Sell requested feedback from the Council, noting that they could make any adjustments to the proposed fee increases that they preferred.

The Council noted that although the increases were high, they were something that haven't been updated in a considerable number of years. They reached a consensus to move forward with the fee increases as proposed by staff.

2. RESIDENCES AT FRUITA – CONCEPT PLAN

STAFF PRESENTATION:

City Planner Henry Hemphill provided a PowerPoint presentation of the Concept Plan for Residences at Fruita, a Planned Unit Development (PUD) proposal for a multi-family development on approximately 5.07 acres located directly west of the La Quinta Inn and northeast of the James M. Robb – Colorado River State Park. A Concept Plan for a PUD is optional in Fruita, but was submitted by the applicant's representative, McCool Development Solutions, in order to obtain general, non-binding feedback from the City Council, Planning Commission and City staff.

Mayor Kincaid explained that this was a new process that resulted from recent amendments to the Fruita Land Use Code whereby the process for reviewing a Concept Plan is done in a workshop setting instead of a public hearing at regular meeting of the Planning Commission and City Council.

Mr. Hemphill's presentation included a zoning map, aerial photo and several street-level photos of the property, an outline of the Concept Plan process for a PUD, list of Land Use Code requirements and a listing of the next steps that will include:

- Preliminary PUD Plan submission within 180 days
- Pre-Application meeting
- Outside agency review and legal notice
- Planning Commission public hearing (recommending body to the City Council)
- City Council public hearing (decision of approval or denial on the application)
- Zoning Ordinance

APPLICANT PRESENTATION:

Carrie McCool with McCool Development Solutions, LLC (the applicant's representative) also provided a PowerPoint presentation that included:

- An overview of their client, developer TWG Development, LLC
- A Concept Plan illustration showing two planning areas
- PUD parameters concerning density and building heights, parking, and public benefit,
- Examples of how the project aligns with the City's Comprehensive Plan
- Photos of other completed projects as examples of architecture that may be used for the Residences at Fruita

Ms. McCool noted that the developer was also proposing a childcare center as a public benefit in the form of land dedication or a cash payment in lieu of dedicating land. She requested feedback from the City Council.

Councilor Aaron Hancey arrived at 7:20 p.m.

STAFF, APPLICANT, PLANNING COMMISSOIN AND CITY COUNTY DISCUSSION:

Discussions were held concerning the following:

- Council's preference of the public benefit being childcare versus parks and trails since parks and trails already have several revenue sources
- Staff will research childcare land dedication versus cash in lieu to determine which is a better benefit to the community
- Parking was a concern to the Council: applicant will submit a Parking Study
- Keeping the architecture in line with geologic features such as the Bookcliffs, Colorado National Monument and the desert
- The beauty of the State Patrol building
- The pricing of the multi-family housing is proposed at market rate
- Applicant will work with staff on further details and specific pricing for dwelling units
- There did not appear to be a concern about density as Fruita is in a housing crisis

3. OTHER**PROCLAMATION REQUEST: COUNTERING ANTISEMITISM**

Councilor Breman provided hate crime statistics. The Council was in support of issuing a Proclamation titled, "Affirming a Commitment to Countering Antisemitism" at the next regular meeting of the City Council (February 7, 2023) and Councilor Breman said he could find some people who would attend and accept the Proclamation.

He noted that the League of Women Voters was taking the lead on an article that will be published in the Daily Sentinel on February 5th concerning antisemitism and asked for the Council's permission to include their names and titles in the piece, which he received.

CITY MANAGER UPDATES:

- Reminder of the Municipalities (Multi-Jurisdictional) Dinner next Tuesday. Councilor Kreie will be unable to attend.
- The Church of Jesus Christ of Latter-Day Saints submitted plans the previous Friday and they are out to the review agencies. The new church will be at the same location as the old one that burned down.
- Staff will be sending out a Press Release about the City's new Building Department, which will "go live" beginning on February 20, 2023.
- The Fruita Mews and Car Barn projects pulled their building permits from Mesa County to submit them to the City's new Building Division.
- Staff has been getting good feedback on the new Building Department.
- Vectra Bank will host a mixer in the second or third week of February for the Homebuilders Association and industry members. Fruita City Council will be invited to attend.

CITY COUNCIL DISCUSSION:

- Councilor Purser asked about when it is appropriate for Council members to respond to emails sent to them by the public. There was discussion about the importance of making clear any

personal opinions versus opinions of the entire Council and to not “reply all,” which constitutes a meeting of the City Council that must be noticed to the public 24 hours prior. Mr. Bennett stated that it was best for City Council members to respond to those emails that they would be discussing with the rest of the Council at a later date. He also recommended that the Council refer matters to staff if the Council does not have enough information to respond.

- Councilor Purser also mentioned that enrollment in public schools is declining across the state, including in School District #51, who has decided to adopt school consolidation as a strategy for relieving staffing and safety issues. District 51’s contracted demographer will present recommendations for school consolidations at the Board of Education meeting scheduled for Tuesday, February 21. Mike noted that he would be meeting with Brian Hill with the District and ask if they want to give the Council an update. Matthew stated that he is in support of School District #51.

4. ADJOURN

With no further business before the Council, Mayor Kincaid adjourned the meeting at 9:40 p.m.

Respectfully submitted,

Deb Woods
Deputy City Clerk

A. CALL TO ORDER

Five Planning Commissioners were in attendance. (Jessica Hearn (virtually), Mel Mulder, Derek Biddle, Josh McGuire, and Michael Handley were present.)

B. PLEDGE OF ALLEGIANCE

Commissioner Biddle led the Pledge of Allegiance.

C. AMENDMENTS TO THE AGENDA

None

D. APPROVAL OF THE AGENDA

COMMISSIONER MCGUIRE MOVED TO APPROVE THE AGENDA

COMMISSIONER MULDER SECONDED THE MOTION

MOTION PASSED 5-0

E. WITHDRAWN ITEMS

None

F. CONSENT ITEMS

APPROVAL OF MINUTES:

January 9, 2024, Planning Commission meeting

COMMISSIONER HANDLEY MOVED TO APPROVE THE MINUTES

COMMISSIONER MCGUIRE SECONDED THE MOTION

MOTION PASSED 4-0 (COMMISSIONER MULDER WAS NOT PRESENT AT THE LAST MEETING AND ABSTAINED FROM THE VOTE)

G. CONTINUED ITEMS/PUBLIC HEARING ITEMS

Application #:	2023-37
Project Name:	Geode Flats
Application:	Preliminary PUD Plan
Representative:	McCool Development Solutions, LLC
Location:	614 Raptor Road
Description:	This is a request for approval of a Preliminary PUD Plan to Establish zoning standards for a multi-family residential development plan over approximately 5 acres.

Mr. Henry Hemphill gave the Staff Presentation.

Slide 1 – Introduction

Slide 2 – Planned Unit Developments

- “The purpose of this Chapter is to encourage flexibility and innovation in developments in exchange for a community benefit that could not otherwise be realized through the strict adherence to the Code.”

- Section 17.19.010

Slide 3 – PUD Process

Concept Plan (optional step) – 17.19.030 (A)

- This step is optional.
- The Planning Commission and City Council both review the application in a workshop setting.
- Decisions and discussions are non-binding.

Preliminary PUD Plan – 17.19.030 (B)

- This step is required.
- The Planning Commission will make its recommendation to the City Council.
- As part of the Preliminary PUD Plan, the City Council shall enact an ordinance zoning the property to PUD.

Final PUD Plan – 17.19.030 (C)

- This step is required after the Preliminary PUD Plan.
- This application is reviewed administratively in accordance with review agencies and City Councils’ decision on the Preliminary PUD Plan.

Slide 4 – Concept Plan

- Public benefit of Childcare vs. parks, trails, and open space.
- Parking Study should be provided with future application.
- Architecture in line with geologic features such as the Book Cliffs and the Monument.
- The beauty of the State Patrol building.
- No concerns with density.

Mr. Hemphill mentioned that in January of last year the Planning Commission and the City Council held a joint workshop to discuss a concept plan for what was known as the Residences at Fruita, which was a multifamily presentation or proposal like what you're seeing tonight. He continued that decisions in that workshop are nonbinding, they're more of directives of things that they recommend they do, or these are things that the community would feel are beneficial. He added that Concept Plans were only for PUDs and are optional.

Slide 5 – Application Introduction

Slide 6 – Zoning Map and Aerial View

Mr. Hemphill showed a zoning map and aerial photograph. He stated that the current zone of this property is C2, which is commercial, and it allows a whole host of different commercial land uses. The one aspect of this PUD Plan is, the density is capped at 12 dwelling units per acre, and in this case the applicants proposing to utilize the land highest and best use as a plan unit development zone to accomplish meeting some housing goals that that they were really striving for in the Strategic Plan, the Comprehensive Plan, and a housing study. He pointed out in the aerial photograph that the subject property was directly behind the La Quinta, and the McDonald's and Starbucks multi-unit complex on the corners of Jurassic Court and Raptor Road.

Slide 7 – Development Plan

- 4 Multi-Family buildings.
 - Affordable housing or Market Rate
 - Maximum height = 4 stories (N and E sides of property)
- 1 Clubhouse.
- Zoning application at this time.
- Next step - Site Design Review.
- Concept Plan discussed January 24, 2023.

Slide 8 – Parking

- Parking Study provides recommendations.

	Market Rate Rental	Affordable Rental
Parking Rate (per dwelling unit)	1.32	0.75
180 Units	238 Spaces	135 Spaces

Slide 9 – Code Requirements

Planned Unit Developments

- Section 17.19.030 (A)(1) (a-d)
- Section 17.19.030 (B)(1(a-c)
- Comprehensive Plan
- Flexibility
- Surrounding character

Site Design Review

- Section 17.09
- Comprehensive Plan
- Design Standards – Section 17.13
- Compatibility
- Ability to resolve recommendations from reviewers

Mr. Hemphill explained that there was one deviation that staff recommended not be deviated from, which was that if you can see the building from all sides from a street that the architectural elements need to wrap around all those sides. He continued that staff was supportive of what the Code required as architectural elements wrapping around as one of the conditions and the staff condition that is seen in the Staff report. He added that all the other deviations that Staff is supportive of would be met at the Site Design review.

Slide 10 – Review Comments & Public Comments

Review Comments

- No review agency comments provided for this zoning application.
- Site Design Review application will have review agency comments.

Public Comments

- No written public comments have been received at this time.

Mr. Hemphill explained that this was a zoning application, and a site design review application would garner a lot more feedback from outside agencies. The power company, Ute Water, CDOT, would absolutely be involved and the city engineer just to name a couple, but more would be included like the school district and others within our community. He added that there was a neighborhood meeting held and all legal notice, for this application has been rendered in accordance with local law.

Slide 11 – Conditions /Recommendations

1. Remove all commercial land uses from the PUD Guide.
2. \$100k childcare cash in lieu fee be collected at Site Plan approval.
3. Design Standards contained in Section 17.13.060 (B)(1) be met as written in the Land Use Code.
4. If this PUD Guide is approved with these conditions by Staff and fully met, then a future Site Design Review application be reviewed administratively unless there is a major modification or change in the application deemed by the Community Development Director.

Slide 12 – Staff Recommendation

- Because the application meets the requirements of Section 17.19.030 (A)(1) (a-d) and Section 17.19.030 (B)(1) (a-e) of the Fruita Land Use Code, Staff recommends **approval** of the proposed Geode Flats Preliminary PUD Plan with the condition that the application adequately resolve all review comments and conditions in the Staff Report with either the zoning ordinance or the Final PUD application.

Slide 13 – Suggested Motion – Pg. 18

- The motion should have specific findings of fact that application meets or can meet the requirements considered in the LUC.
- Mr. Chair, because the application meets the requirements and is consistent with Section 17.19.030 (A)(1) (a-d) and Section 17.19.030 (B)(1) (a-e) of the Fruita Land Use Code, Staff recommends approval of the proposed Geode Flats Preliminary PUD Plan with the condition that the application adequately resolve all review comments and conditions in the Staff Report with either the zoning ordinance or the Final PUD application.

Slide 14 – Reverter Clause

- “In the event, the Planned Unit Development fails to develop as either market rate or affordable multifamily development at the property owner's discretion, the zoning of the land shall automatically revert to Commercial Two (C-2), as it existed prior to the Planned Unit Development approval. This reverter clause shall terminate automatically once construction of the multifamily development begins and if requested by the owner, the City or local municipality shall provide written confirmation of the same.”

Slide 15 – Next Steps

- Following Planning Commission
 - City Council – February 20, 2024.
- If approved by City Council.
 - Applicant has 180 days to submit the Final PUD Plan.
 - Final PUD Plan sent out for review to ensure compliance with review comments.
 - Decision is made administratively.

Mr. Hemphill concluded his presentation.

Ms. Carrie McCool from McCool Developments went up to speak. She stated that they specialized in community and community planning and development solutions for

both public and private sector clients throughout the west. She is a native of Colorado and they love to focus on building strong communities throughout the State of Colorado. She continued, joining us virtually this evening was Megan Adams, a regional development director at TWG. TWG is the owner of the subject property and the developer of the property as well. Also joining them was their project architect Aldo Sabin with Studio Architecture. She thanked the Commission for having them. She gave a PowerPoint presentation to talk about where they are, where they have been and who TWG is and where we have been in our Preliminary PUD framework and follow up with discussions.

TWG is headquartered in Indianapolis, Indiana with presence throughout the United States. They are a real estate development company, specializing in affordable market rates, mixed income, and senior housing developments. They've been committed to constructing, developing, and managing quality housing since their founding in 2007. They have developments in 18 states with over 2 billion plus in total development cost over 105 developments and they've built over 11,000 units throughout the nation.

Ms. McCool moved onto the topic of where they had been. They had a workshop with the Planning Commission and City Council back in January of 2023. They really like the process that you have in your Code, because that Concept Plan process really gave us an opportunity to hear from you, hear from the community and be able to infuse that input into our preliminary PUD Plan. As Mr. Hemphill noted, they did have a neighborhood meeting back in the fall of last year, and there was only one participant that attended that meeting, and that person was supportive of the project. The only thing that he brought up was that it was his understanding that there had been some projects in Fruita, the multifamily projects that were granted parking exceptions, and he just said he had heard that they had had some problems, so they knew that they had to really address parking in the PUD Guide.

She continued that the goal of their proposed PUD is to really build off the C2 zoning, which is the underlying zoning which they hoped to build off that to allow flexible form based dimensional standards for affordable and market rate residential housing. The development would include four apartment buildings across two planning areas, planning areas A and planning area B, and a clubhouse and surface parking. What they are proposing is to have it be located interior to the site. They really understood that the City wants to see the property develop as multifamily residential as we can tell by the condition of approval, one that's in your staff report, and TWG is committed and wants to develop the property as multifamily, because that is really what they do best. That's why they purchase the property and want to move forward with either affordable or market rate housing. She added that land development can be a little bit tricky, there are sometimes entitlement processes and things out of the developer's control can happen. If for some reason TWG couldn't secure state funding to build affordable housing, they would like to have the zoning of the land revert to the C2 zoning like it is today. They have proposed a modification to Staff's recommended condition of approval number one which will be discussed in more detail when they get further on in the presentation.

Ms. McCool stated at the Concept phase, they talked a lot about density and building heights, and again, our intent with the PUD was to have more of a form-based approach. Instead of setting forth a maximum density limitation, the PUD places focuses on the size and the mass of

the building and the quality of the architecture. They heard from the Planning Commission and Council that there wasn't a concern with the density as Fruita was in a housing crisis. Consistent with that feedback the Preliminary PUD regulated building height in terms of numbers of stories and mandated high quality architecture. In PA One which is in the north-northeast corner, that planning area would allow for two buildings to be four stories in height and that is to compliment the looking the La Quinta hotel that is a higher, taller building and then transition down to three stories in planning area three or planning area B, which is in the southwestern portion of the property. It is the whole transitioning from the higher building heights at the northeast and transitioning to three stories to the southwest. The architecture they were proposing is in line with the geologic features of your community, such as the Book Cliffs, Colorado National Monument, and the desert.

Ms. McCool addressed the public benefit of the plan. She felt it was great to get feedback at the Concept Plan stage from the Planning Commission and Council on support for provisions for childcare to be met within this Preliminary PUD. She continued that there was support for a cash in lieu payment instead of dedicating land and that they worked with staff to come up with the number the dollar amount would be dedicating for cash and lieu, and that number is \$100,000. They were in concurrence with Staff's recommended condition of approval to pay that at time of Site plan approval.

She stated that in terms of parking, at Concept Plan they wanted to get feedback on being able to set forth a parking ratio because the current parking regulations require parking per bedroom. They garnered support for that parking to present a ratio. The question was, what would that ratio be? The direction was to provide a parking study and they hired McDowell Engineering. They are headquartered in Eagle, Colorado and they have a lot of experience with West Slope communities, and they conducted the parking study. They have infused the findings that are in that parking study in the PUD development standards and set forth a parking rate, parking ratio for the affordable product as well as for the market rate. She added that they have set forth provisions for parking management. She felt that parking management is important, and it will be included in the individual leases, apartment leases, specifying the parking regulations and enforcement policies, and that'll be important for the future residents to know what to expect. They are also proposing to provide bicycle parking per the Land Use Code.

Ms. McCool discussed transportation improvements. They looked at the City's Comprehensive Plan, and we will be making the transportation element connection, that collector road between Raptor Road and Jurassic. That will be built out as well as building out Raptor Road and Jurassic Court. Onsite amenities in terms of the onsite amenities were discussed at the Concept Plan and they heard some suggestions on what would be good amenities and put together the list of amenities which you will see in the PUD guide that they a menu of a list of all the onsite amenities for the development to happen, at least a minimum of two of those elements need to be included in the development. She felt that this really allowed for flexibility in selecting the most appropriate amenities to serve the future residents. It would have to have a playground and raised garden beds, or common outdoor gathering spaces and a pocket park.

Ms. McCool showed the Planning Commission some of TWGs past projects. These included the

the old Best Western motel conversion in Durango, Colorado. They converted the motel into affordable housing and added a one-story commercial building and they constructed two 3 story buildings to deliver 48 affordable housing units to the city of Durango. Another one is in Spokane, Washington, this one she visited herself when she was on a Pacific Northwest tour last summer, and it includes 1, 2- and 3-bedroom affordable housing units, and it's adjacent to the Northern Quest Resort and Casino. She described this as a huge resort Casino, that's way outside the city center and this housing development was really needed because it provided affordable housing to the workforce who work at the resort and casino. The amenities that were selected were a basketball court and a sand volleyball court. They worked with the community in helping decide what amenities would be there. She felt it was really rewarding to provide amenities that really serve the needs of the future residents. Lastly, she shared was Bold on Broadway located in Saint Peter's, Missouri, and the architecture includes some more modern designs with wonderful common outdoor open space, gathering spaces.

Ms. McCool summarized that they were requesting approval of their Preliminary PUD Plan. Mr. Hemphill already mentioned how their PUD Preliminary plan was in conformance with the City's Master Plan, strategies, long range policies and goals. She felt that they really hit a lot of those marks in terms of land use and growth of housing, affordability, transportation, economic development and vitality, education, arts, all those good things. They worked hard to infuse the direction that we've received at Concept Plan and felt that they have incorporated all those elements into the Preliminary PUD Plan and our proposed deviations and design standards all meet the intent and purpose of the City's business design standards, and the purpose of the PUD criteria. She stated that they were in concurrence with Staff's recommended conditions of approval 2-4 and the only modifications that we're proposing are to condition of approval one. The TWG team has been working with staff to address their concern and desire to have this property be developed in multifamily, TWG shares that desired goal as well. They discussed with staff that if we removed all of the commercial land uses which we could do, they would need to have some assurance that for some reason if TWG didn't secure state funding then the zoning of the property would revert back to C2, which it is today. This language that she showed on the screen is what they would propose to change that condition. It would be adding a reverter clause and it would read that in the event the PUD failed to develop is either market rate or affordable multifamily housing at the property zone or discretion, the zoning of the land shall automatically revert to C2 as it existed prior to the Planned Unit Development approval this reverter clause shall terminate automatically once construction of the multifamily development begins, and if requested by the owner the city or local municipalities shall provide written confirmation of the same. She felt that this addressed Staff's zoning concerns. They thought that this was a real win/win with this condition, and it's really the only change that they had. Ms. McCool concluded by saying she was happy to answer any questions that they had.

Commissioner Biddle thanked her. He then opened the meeting to public comment. There was none. The meeting was then opened to Commissioner discussion.

Commissioner Handley said that he wasn't present at the workshop for the childcare discussion and wanted more details on how the cash payment would be used to support childcare in the City.

Mr. Dan Caris responded that at that time they were planning on applying for a Stronger Community's Infrastructure Grants which a component of that strengthened those grant applications was childcare, and they had identified another property and an actual operator for the childcare facility. They were unsuccessful in being selected for the request, which he believed was four million dollars for the Stronger Communities Infrastructure Grant. He continued that why there's little context with what we were going to use those funds for was because they had a conceptual idea of how they were going to approach that. They now don't have as clear of a path, but you know the City often issues requests for proposals or requests for qualifications which they could do if we were seeking an operator or work with the small business incubator here in the grand valley that does have some existing operators that are trying to expand. They do have kind of a path forward where that wouldn't just be sitting there, if that's the concern of the Planning Commission, but that those dollars would be deployed if this were to move forward.

Commissioner Handley asked if what he was saying was that the \$100,000, would be essentially held in escrow for some future childcare project.

Mr. Caris responded yes, not very much different than how they collected Transportation Impact fees or other impact fees. They are held typically in a separate account, and then can only be used for adding capacity to the thing in which they were impacting. They would view this very similarly where they could not use the \$100,000 just for anything, but it would be encumbered to be used just for adding childcare seats for the city or for the city's residents.

Commissioner Handley thanked him.

Mr. Caris added that this wasn't like a random, they spoke at length with the hospital, you know, that is consistently looking for seats for their employees for childcare. This is a county wide issue commonly referred to as a childcare desert. This is one small way that they could contribute but it could be to the benefit of specific organizations, even this organization and a creative way, where doesn't necessarily encumber the real estate on site per se but could ultimately end up adding more capacity for the city as a whole.

Commissioner Hearn said that she was able to make it to that meeting in January where they discussed the community amenity. She said that they talked about having trails versus childcare and they were brought back to the PUD. The reason for PUDs is to have a modification or flexibility and innovation for things that otherwise couldn't be realized. She continued, that when you think about asking a community amenity to be trails, they have so many other ways to realize trail building, but they didn't have other ways to realize childcare which was seen as a need. She stated that her take away from the Concept Plan was this community amenity was unique and something that the City wanted over the other kinds that we traditionally see.

Commissioner Biddle stated that one thing from back from the previous discussion at the workshop was that the City was not looking to get into the childcare business. This is a partnership or grant type opportunity for somebody. He asked if anyone had questions.

Commissioner Mulder thought that this project could be a good fit with the location for all of the right reasons. The developer has taken it on themselves to address the issues that we have. He added that not everything had been completely taken care of, but it seems like they're on the right track. He hoped that ultimately, when this is completed, that an official bus stop would be put in a project and that all the prairie dogs would get new homes.

Commissioner Handley asked for more clarification on the commercial rate versus affordable, although I prefer the term attainable housing. He asked what's their mix? And I understood that they represent that this will be at the developer's discretion. He asked if they could give them a little more thought on their direction there for attainable housing?

Ms. McCool responded that the way that the PUD was set up is to allow for either/or but their primary goal, if it develops affordable would be for folks in Fruita who earn at or below a hundred 140 % of AMI to fulfill the need for affordable housing in Fruita. She stated that they took a close look, too, at your housing studies and those types of things. They didn't know the mix right now. A lot of that depended on their ability to secure state funding of how that would be. They were disappointed that they didn't get the Stronger Community's Grant, and this is why they were requesting a modification to condition of approval one to allow that to protect TWG's interest as well as meet the community's goal of providing affordable or market rate housing, and just adding to the diversity of your housing stock in the city.

Commissioner Handley paraphrased that they plan some percentage to be attainable units you just don't know what that percentage is?

Ms. McCool stated that it will most likely be either all affordable housing units or market rate.

Commissioner Handley said that he understood the challenge and the problem.

Ms. McCool said that a lot of it depended on funding. And it's competitive to secure that funding.

Commissioner Handley seconded what Commissioner Mulder said. This is something that we need perfect project, perfect location, something that I've advocated for quite some time.

Megan Adams joined the conversation. She introduced herself. She stated that they could see her online at TWG's website. She said that she was the Regional Development Director. She added that if they looked at her history, she did affordable housing. She said it was not only her job but it's also my mission. While they are stating a hundred, 140%, AMI, they originally started this project for lower AMIs, like 60% right or 50% especially for families with children or seniors and with prop 123 they we're really hoping to secure that funding it allows for up to 140% AMI. They are trying to serve the lowest AMI and a mix of AMI, but they are subject to what funding is available coming down from the state level.

Commissioner Biddle asked if the Staff have any issue with the reverter clause?

Mr. Caris said that they didn't have any issues with that. He said that they have been a participant or co collaborator on submitting grants like in partnership with this project and our community that has opted in to Prop 123. He stated that they we felt strongly that if we're going to participate in that way, that they want it to be through the context of what this is being proposed to be which is affordable housing or market rate housing, not some sort of contribution and the change to commercial. They don't typically do that, they typically just allow the uses that are underlined to exist with plan developments, but in this case, they have worked in tandem with this this group and Kerry and Megan at TWG. They were fine with that language that she put up on the screen and they would support that and don't have any strong reactions that we feel like we would have more exposure by you codifying that by ordinance.

Commissioner Biddle asked if some verbiage of that would be included in any motion?

Mr. Caris responded yes.

Commissioner Hearn said that her recollection of the Concept Plan was, there's no like height limit when we say four stories. She wanted to check in on that and what if this Preliminary PUD was approved tonight what are the extremes that those four stories could be? Could a story be 40 feet each, and this be wildly taller than the La Quinta? What kind of standards would be trapped in if this were approved?

Mr. Hemphill responded that the way that the PUD Guide reads is four stories tall and typically, those are 11 feet in height. Maybe the first floor is 10, and then the second, third, and fourth floor as 11 each. He added that this was something that's in our Code for the Downtown Mixed-Use zone.

Commissioner Hearn thanked the applicant for the staggered approach. She thought she was the one that said I believed that the La Quinta was an eyesore when you're coming over the I70 overpass. In her hopes and dreams for the community going forward is that four stories mean to you wouldn't be taller than the La Quinta which you did say. She was just nervous about what going forward is possible.

Mr. Hemphill asked if she meant as far as building height?

Commissioner Hearn said yes.

Mr. Hemphill said that the Downtown Mixed Use core says ground floor story to ceiling height shall not exceed 15 feet and all stories above the ground floor shall not exceed floor to ceiling height of 11 feet. He said that they could expect something like that to meet the building codes and be able to accommodate for those 33 plus 15 feet, 48 feet. The La Quinta is about 40 feet, maybe a bit more but again, as you're coming down from that roundabout the perspective, there is that that building isn't much taller than the elevation of the roundabout.

Commissioner Hearn asked if 33 plus 15 was a height that the applicant was expecting and not going any higher, is that correct? The four stories tall Staff just calculated it would be 33 plus 15 potentially, is that within what your engineers are considering, and that's reasonable for you?

Ms. McCool responded that the heights how Mr. Hemphill explained it were pretty much right on because we really looked at the height, the La Quinta and in that planning area A, that's in the northeast corner, that's where they were proposing building heights of four stories can't exceed four stories. They are tapering down, transitioning to the southwestern portion of the site planning area B, where the building heights would be limited to three stories.

Commissioner Hearn said that she is a mathematician so when she doesn't see a number, just stories her mind just kind of goes wild and she could see the members of our community may say that they are building this Behemoth for childcare as the tradeoff. She wanted the record to say that they are staggering the approach to help with the visual obstructions, and using the La Quinta as your guide to be conscientious of how present this building will look.

Ms. McCool that was why they have included design standards and, as Mr. Hemphill had pointed out in the one of the conditions of approval three about making sure that we have essentially what is four-sided architecture that was really the tradeoff as not just the child care component, but allowing us to focus on the form, size, and mass of the building and providing quality architecture that's in line with what your community desires and the surrounding area in terms of the design with the National Monument and the Book Cliffs and incorporating more of a modern design. Having a flexible number of stories, is the limitation really allows us to really focus on the architecture of the building that will help with the mass.

Commissioner Hearn asked in their proposal somewhere under materials and colors, you'd ask for a deviation to include fiber cement panel lap siding, final siding, and adobe brick. She didn't see that at the Staff report. She asked if that was something that you and the staff agreed on, and that is a deviation, and I just missed it?

Ms. McCool responded that they do have in the PUD guide the deviations to adding other materials as well.

Commissioner Hearn thanked her. She commented that she loved that this presentation today included loving the State Patrol Building. She wanted her to remember that Fruita wanted to be funky in these materials and colors, and she hoped those deviations would allow them to think more outside the box. She wanted to make sure that wasn't like where you were sticking with it, and you're allowing the funky architecture to come through.

Ms. McCool stated that they would be working closely with staff in implementing the zoning, the PUD Guide at time of site plan design it will be funky.

Commissioner Hearn wanted a reminder of what approval this zoning application would be. She understood it the few bits of description of a Site plan that we've gotten would be approved and Administrative Site Plan going forward, she asked if that was correct?

Mr. Hemphill responded yes and added it would be an administrative review of the Site plan.

Commissioner Hearn stated that she was impressed with the care that the applicant took with parking. In January they wanted, I think it was a half of parking for each dwelling unit, and they

pushed back an awful lot and said that double digit percentages of our Fruita residents have four plus vehicles in a household, and that wasn't going to work. She was gracious to them for hearing that, and to increase. She wanted to double check that if they approve this, then the .75, if everything were affordable housing that would be written into this zone, right? They are committing to that tonight.

Mr. Hemphill stated that this was correct.

Commissioner Hearn thanked him. She added that this was wildly needed if they don't do it, Fruita stays stagnant and fails to achieve inclusivity and attract diverse residents. She was very excited.

Commissioner Biddle asked for a motion.

Mr. Hemphill responded that they needed to ensure that the motion and discussion includes the findings of fact and that's why the summarized statements from the Land Use Code and our Staff report have been provided to you. He asked them to make it clear that they are, or that you agree that you recommend either they do meet it or can meet it in accordance with the Staff reports recommendation, and then he also have the reverter clause in there that has been agreed upon. staff is supportive of this; we can include this in the PUD guide that's attached with the zoning ordinance itself. He added that from what he understood the Planning Commission's discussion was reiterating the fact that the Planning Commission does agree that this should be included as one of the conditions to take out the commercial uses but put them back in if you know this doesn't all work out as the planning and development as proposed.

Mr. Caris stated procedurally that if there's a motion for recommending approval, that would be the motion and then, like the reverter clause, would be stated as an additional condition.

Commissioner Hearn said that in her review of the application and the Code and the things she knew about the Fruita in Motion plan she thought they absolutely meet 17.19.030 all A-D in it's conformance to the Comprehensive Plan it allows for a diversity that she didn't think that they were currently achieving with our housing and hopefully they can attract residents where Fruita can be inclusive and there's all sorts of amazing design standards that help us stay funky and they were getting to number D and the proposed zoning she feel strongly meet all the sections of the code in 17.19.030 (B)(1) and with all of that said she believed that the exemptions and deviations that we're making after this PUD help them realize a lot of community needs one is diverse housing, but also the childcare. She thought it just matches and compliments the things that Fruita wants to do.

COMMISSIONER HEARNS MOVED THAT THEY RECOMMEND APPROVAL TO THE FRUITA CITY COUNCIL WITH THE CONDITION THAT ALL REVIEW COMMENTS AND CONDITIONS BE ADEQUATELY RESOLVED

COMMISSIONER HEARNS MOVED THAT THEY APPROVE GEODE FLATS PRELIMINARY PUD PLAN WITH THE CONDITION THAT THE APPLICATION ADEQUATELY RESOLVES THE REVIEW COMMENTS AND CONDITIONS IN THE

STAFF REPORT WITH EITHER THE ZONING ORDINANCE OR THE PUD APPLICATION BUT ALSO ADDING THE REVERTER CLAUSE THAT IN THE EVENT THE PLANNED UNIT DEVELOPMENT FAILS TO DEVELOP AS EITHER MARKET RATE OR AFFORDABLE MULTIFAMILY UNIT DEVELOPMENT OF THE PROPERTY AT THE OWNERS DISCRETION THE ZONING OF THE LAND SHALL AUTOMATICALLY REVERT TO COMMERCIAL TWO (C-2), AS IT EXISTED PRIOR TO THE PLANNED UNIT DEVELOPMENT APPROVAL. THE REVERTER CLAUSE SHALL TERMINATE AUTOMATICALLY ONCE CONSTRUCTION OF THE MULTIFAMILY DEVELOPMENT BEGINS AND IF REQUESTED BY THE OWNER, THE CITY OR LOCAL MUNICIPALITY SHALL PROVIDE WRITTEN CONFIRMATION OF THE SAME.

COMMISSIONER MCGUIRE SECONDED THE MOTION.

MOTION PASSED 5-0

H. OTHER BUSINESS

1. Community Development Updates.
2. Visitors and Guests.
3. Other Business.

Adjournment 7:10 pm

Respectfully submitted,

Kelli McLean

Planning Technician, City of Fruita



AGENDA ITEM COVER SHEET

TO: Fruita City Council and Mayor

FROM: Mary Elizabeth Geiger, City Attorney

DATE: March 5, 2024

AGENDA TEXT: RESOLUTION 2024-08, A Resolution of the City Council authorizing the City Manager to execute the COOP Tower Façade Lease Agreement and all documents necessary to effectuate the lease.

BACKGROUND

The purpose of this coversheet is to provide City Council information related to the COOP tower façade lease agreement. Sparks Fly LTD is under contract to purchase the former Fruita COOP building located along Highway 6&50. This structure has an abandoned grain tower that is a prominent feature in the skyline of Fruita. The City has historically used the Tower to hang banners promoting the City and local activities. Sparks Fly and the City would like to enter a lease of the East and West facades of the tower effective on closing of Sparks Fly purchase of the property. Staff presented the potential of entering a lease agreement at the January 23rd workshop and the February 27th workshop.

FISCAL IMPACT

The City of Fruita shall pay Sparks Fly the total annual amount of \$24,000.00 (\$2000.00 a month) to lease the East and West side of the COOP Tower. The lease is for one year, which is automatically renewable for one year up to 50 years; the City can terminate the lease at any time by giving 90 days written notice. The lease is subject to annual appropriations.

APPLICABILITY TO CITY GOALS AND OBJECTIVES

The COOP Tower has been a landmark in the community and the state since the banners were attached to the Tower. The Tower has also been utilized in local art, promotions, and advertising.

OPTIONS AVAILABLE TO THE COUNCIL

1. Adopt Resolution 2024-08 A Resolution of the City Council authorizing the City Manager to execute the COOP Tower Façade Lease Agreement and all documents necessary to effectuate the lease.
2. Deny Resolution 2024-08

RECOMMENDATION

**ADOPT RESOLUTION 2024-08 A RESOLUTION OF THE CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO EXECUTE THE COOP TOWER FAÇADE**

**LEASE AGREEMENT AND ALL DOCUMENTS NECESSARY TO EFFECTUATE THE
LEASE.**

RESOLUTION #2024-08

RESOLUTION OF THE CITY OF FRUITA AUTHORIZING THE CITY MANAGER TO EXECUTE THE COOP TOWER FACADE LEASE AGREEMENT AND ALL DOCUMENTS NECESSARY TO EFFECTUATE THE LEASE.

WHEREAS, Sparks Fly Ltd., a Colorado limited liability company (“Sparks Fly”), is under contract to purchase the real property described on **Exhibit A** and commonly known as **COOP Grain Tower** Fruita, Colorado (the “**Property**”); and

WHEREAS, the Property includes an abandoned grain tower that is a prominent feature of the City of Fruita skyline viewed from I-70 (the “**Tower**”); and

WHEREAS, the City has historically used the Tower to hang banners promoting the City and the activities associated therewith; and

WHEREAS, the City wishes to formalize an agreement with Sparks Fly for the City’s exclusive use of the east and west facades of the Tower; and

WHEREAS, Sparks Fly and the City desire to enter into a Lease to the City of the east and west facades of the Tower to be effective upon closing of Sparks Fly’s purchase of the Property.

NOW, THEREFORE, the City Council of the City of Fruita hereby resolves as follows:

Section 1. The above recitals are true and correct.

Section 2. The Fruita City Council hereby authorizes the City Manager to execute the COOP Tower Facade Lease Agreement, pursuant to the general terms set forth in **Exhibit B** attached hereto, and all documents necessary to effectuate said lease. The Fruita City Council authorizes the City Manager to work with the City Attorney to make changes to Exhibit B as may be necessary to finalize the same.

Section 3. This Resolution shall be effective upon closing of Sparks Fly’s purchase of the Property.

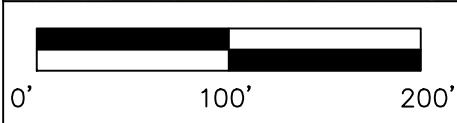
**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL
THIS 5TH DAY OF MARCH 2024**

ATTEST:

City of Fruita

Margaret Sell, City Clerk

Joel Kincaid, Mayor



ENGINEERING DEPT.
325 East Aspen
Fruita, CO 81521
970-858-8377
WWW.FRUITA.ORG

SURVEYED BY: — DATE: —
DRAWN BY: CD DATE: 2/28/2
CHECKED BY: —

COMMERCIAL LEASE

THIS COMMERCIAL LEASE (“**Lease**”) is made effective as of _____, 2024 (the “**Effective Date**”), by and between SPARKS FLY STUDIO, LTD., a Colorado limited liability company with an address of 314 Heritage Court, Fruita, Colorado 81521 (“**Lessor**”), and CITY OF FRUITA, a Colorado home rule municipality with an address of 325 E. Aspen Ave., Fruita, Colorado 81521 (“**Lessee**” or “**City**”). Lessor and Lessee are collectively referred to herein as the “**Parties**”.

WHEREAS, Lessor is the owner of the real property described on **Exhibit A** and commonly known as _____ Fruita, Colorado (the “**Property**”); and

WHEREAS, the Property includes an abandoned grain tower that is a prominent feature of the City of Fruita skyline viewed from I-70 (the “**Tower**”); and

WHEREAS, the City has historically used the Tower to hang banners promoting the City and the activities associated therewith; and

WHEREAS, the City wishes to formalize an agreement for its exclusive use of the east and west facades of the Tower; and

WHEREAS, the Parties desire to enter into this Lease to be effective upon closing of Lessor’s purchase of the Property.

NOW, THEREFORE, for and in consideration of the covenants and agreements given herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Premises. Effective upon the Effective Date, Lessor hereby leases to Lessee the west façade and east façade of the Tower from the top of foundation to the top of the situated on the Property and access thereto for the installation and maintenance of commercial grade banners as depicted on Exhibit 1 attached hereto and incorporated herein by this reference (collectively, the “**Premises**”).

2. Term. The initial term of this Lease shall be one year, commencing on the Effective Date (the “**Initial Term**”), automatically renewed on an annual basis from the Effective Date (“**Annual Term**”) for an additional fifty (50) years, unless terminated earlier as provided herein, (the “**Renewal Term**”). This Lease shall automatically renew for each Annual Term unless Lessee provides Lessor with written notice at least ninety (90) days prior that Lessee does not intend to further occupy the Premises. Lessee shall pay pro-rata Rent due as set forth in Section 3 below. Lessee’s occupancy of the Premises during the Renewal Term will be subject to the terms, conditions, and provisions hereof.

3. Rent. Lessee shall pay to Lessor gross rent in the total amount of \$24,000.00 (“**Rent**”) for the each annual term (\$2,000.00 per month). Such Rent shall be due and payable

quarterly commencing with the Effective Date. There shall be no additional charges imposed on Lessee for taxes, insurance, or utilities.

4. Changes to the Property. Notwithstanding anything to the contrary contained in this Lease, Lessee acknowledges and agrees that Lessor shall have the right to redevelop and perform other construction on the Property now and in the future (“**Existing or Future Construction**”) provided that such Existing or Future Construction does not deprive or materially interfere with Lessee’s use and occupancy of the Premises. Lessee shall not interfere with and shall prohibit anyone acting by or through Lessee from interfering with such Existing or Future Construction, and Lessee will not object thereto, will not seek to impose any restriction or limitation thereon, and will not assert any challenge thereto so long as such Existing or Future Construction does not deprive or materially interfere with Lessee’s use and occupancy of the Premises. Lessee further acknowledges that there will, necessarily, be some disruption in the Property, including, without limitation, noise, dust, interruption and re-routing of traffic, dislocation of parking, construction traffic, sidewalk superintending, and the like in connection with Existing or Future Construction. Lessee hereby accepts such non-material disruptions as a necessary and normal part of such Existing or Future Construction and hereby waives any and all claims for constructive eviction or any other default by Lessor or damages resulting from the same. Lessor reserves the right, at any time, to make alterations, expansions, or additions to the Property, provided, however, that such changes shall not affect the Tower or change the Premises, nor deny Lessee reasonable ingress to and egress to and from the Premises, or deprive or materially interfere with Lessee’s use and occupancy of the Premises.

5. Condition of Premises. Lessee warrants and represents that it has inspected the Premises and shall accept the Premises in its “as-is” condition. Lessor makes no representations or warranties as to the physical condition of the Premises, the Tower, or the Property, or their suitability for Lessee’s intended use as of the Effective Date. Lessor is not obligated to make upgrades or improvements to the Premises. In the event Lessee desires to make any alterations to the Premises, aside from the Use of Premises set forth in Section 6, below, such alterations shall be subject to prior written approval of Lessor. Lessee acknowledges that neither Lessor nor any agent, representative, or employee of Lessor has made any representation or warranty (either express or implied, including without limitation any implied warranty of habitability, merchantability, or fitness for a particular purpose, and any and all such warranties are hereby disclaimed) with respect to the Premises, the Tower, or the Property as of the Effective Date or their suitability for the conduct of Lessee’s business. Lessee’s occupancy of the Premises shall be conclusive evidence that the Premises were in good order and repair as of the Effective Date.

6. Use of Premises. Lessee shall use the Premises solely for the affixing, alteration and modification of promotional material for the City of Fruita and associated activities related thereto, and for no other purposes without the prior express written consent of Lessor in its sole and absolute discretion. Lessee shall not use the Premises to advertise any private commercial or business venture or political advertisement. Lessee shall have the right to install illumination of the Premises and operate, maintain, repair and replace the same upon prior written consent of Lessor, which consent shall not be unreasonably withheld.

- a. No Violations. Lessee shall not utilize the Premises for any purpose that is in violation of any applicable law, zoning, building regulation, rules, or any other applicable restriction in effect on the Effective Date of this Lease (collectively, “**Laws**”) on the use of the Premises. Lessee understands and agrees that in the event actions, alterations, or improvements are required in order to bring the Premises into compliance with any Laws because of Lessee’s intended use, Lessee shall be solely responsible for any and all associated costs and expenses relative thereto, including but not limited to all fees and charges related to the construction or use of the Premises and all permitting fees. Lessor shall not have any obligation whatsoever to make or pay for any improvement within the Premises or to any property, equipment, or services serving exclusively the Premises.
 - b. Lessee’s Conduct. Lessee shall not do or permit anything to be done in or about the Premises or the Property, nor bring nor keep anything therein or elsewhere, that will in any way (i) increase the existing rate of or affect any fire or other insurance upon said Premises or Property or any of its contents, or (ii) cause cancellation of any insurance policy covering said Premises or Property or any part thereof or any of its contents. Lessee shall not (a) do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other lessees or occupants of the Property or injure any of them, (b) use or allow the Premises to be used for any improper or unlawful purpose, or (c) cause, maintain or permit any nuisance in, on or about the Premises. Lessee shall not perform any action or practice that may damage or injure the Premises or any portion of the rest of the Property.
 - c. Waste Removal. Lessee shall not commit waste on or to the Premises. Lessee shall keep the Premises free and clean of all debris, garbage, and rubbish. Lessee shall remove all trash and refuse from the Premises.
 - d. Security. Lessor shall have the right, but not the obligation, to provide security-related services for the Property. Notwithstanding the foregoing, Lessor is not responsible for the security of persons or property on the Property or within the Premises or the Tower and Lessor is not and shall not be liable in any way whatsoever for any breach of security. Lessee assumes full responsibility for protecting the Premises from theft, robbery, vandalism, or other destruction of property.
7. Maintenance and Repairs.
- a. Lessor’s Obligations. Lessor shall maintain the Property such that Lessee has access to the Tower and Premises.
 - c. Lessee Improvements. Lessee shall be solely responsible for any and all improvements and alterations to the Premises necessary for Lessee’s intended use of the Premises. Any and all such improvements and alterations shall be subject to Lessor’s prior written approval (not to be unreasonably withheld).

8. Insurance.

- a. Lessee Insurance. Lessee shall, at its expense, maintain in full force during the Term of the Lease commercial general liability insurance for the Premises with coverage at least equal to the limitations on judgments provided by the Colorado Governmental Immunity Act (“CGIA”), C.R.S. §§ 24-10-101, *et seq.*, at any given time, which shall not be interpreted as a waiver of the CGIA.
- b. Lessor Insurance. Lessor shall, at its expense, maintain commercial general liability and property insurance in the amount of liability coverage and replacement cost of any improvements as Lessor may determine. Such insurance shall not be required to cover any of Lessee’s personal property.
- c. Waiver of Subrogation. As long as their respective insurers so permit, Lessor and Lessee waive all rights to recover against each other or against the officers, directors, shareholders, partners, joint venturers, employees, agents, customers, invitees, or business visitors of each other for any loss or damage arising from any cause covered by any insurance required to be carried by either of them pursuant to this Lease or any other insurance actually carried by each of them which occur in, on or about the Premises or the Property to the extent that such loss or damage is covered by collectible insurance. Lessor and/or Lessee will cause their respective insurers to issue appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with the Premises.

9. Destruction of Premises; Condemnation.

- a. Lessor’s Duty to Repair. If the Premises shall be totally or partially destroyed or damaged by fire, earthquake, act of God, or by other casualty during the Term of this Lease not a result of Lessee’s negligent act or omission, said destruction or damage shall not release Lessee from any obligation hereunder except as provided in this Section 10; and in the case of such casualty to or destruction of any such part of the Premises, Lessor shall, at its own expense, promptly repair and restore the same to a condition as good as or better than that which existed prior to such damage or destruction. Without limiting such obligation of Lessor, the Parties agree that the proceeds of any insurance covering such damage or destruction shall be made available to Lessor for repair or replacement. As soon as practical, Lessor shall provide Lessee a written estimate of the time required to repair such damage or destruction. Lessee may elect to terminate this Lease upon written notice to Lessor given no later than 30 days after receipt of Lessor’s repair time estimate. If actual repair time will exceed Lessor’s original estimate, Lessor shall provide an additional notice to Lessee, whereupon Lessee will have an additional 30 days within which it may elect to terminate this Lease. If Lessee elects not to terminate this Lease, then Lessor shall promptly restore the Premises, excluding the improvements installed by Lessee, subject to delays arising from the collection of insurance proceeds or from force majeure events. Lessee, at Lessee’s sole expense,

shall promptly perform, subject to delays arising from the collection of insurance proceeds or from force majeure events, all repairs or restoration not required to be done by Lessor and shall promptly re-enter the Premises and commence doing business in accordance with this Lease.

- b. Rent Reduction. For any period during which the Premises cannot be occupied (“**Abatement Period**”) as a result of damage to the Premises by a cause covered by this Section or the repair thereof, Lessor shall pay back to Lessee an amount equal to the number of days in the Abatement Period, pro-rated in accordance with the rent paid pursuant to Section 3. For example, if the Abatement Period lasts 60 days, Lessor shall pay to Lessee \$305.75. Any rent abated shall be paid to Lessee within 30 days of the end of the Abatement Period.
 - c. Termination of Term. Lessor agrees that if Lessee decides to terminate the Lease due to damage or destruction of the Premises as described in this Section, the Term of the Lease shall cease upon the date that Lessee gives written notice to Lessor of such determination. A refund will be given to Lessee for the balance of any rent paid in advance for which Lessee did not have use of the Premises due to the cessation of the Term under the conditions of this Section.
 - d. Condemnation. For purposes of the provisions of this section, a “**Taking**” shall mean the taking of all or any portion of the Premises, Tower or Property as a result of the exercise of the power of eminent domain or condemnation for public or quasi-public use by a public entity other than Lessee or the sale of all or part of the Premises, Tower or Property under the threat of condemnation by a public entity other than Lessee. A “**Substantial Taking**” shall mean a Taking of twenty-five percent (25%) or more of the rentable area of either the Premises, Tower or Property. An “**Insubstantial Taking**” shall mean a Taking which does not constitute a Substantial Taking. If there is a Substantial Taking, the Term shall expire on the date of vesting of title pursuant to such Taking. In the event of an Insubstantial Taking with respect to the Premises, Tower or the Property, this Lease shall continue in full force and effect, Lessor shall cause the Premises (but excluding any alterations, improvements, fixtures and personal property constructed or owned by Lessee), less such Taking, to be restored as near as may be to the original condition thereof. If no part of the Premises or this Lease is affected by the Taking, and Lessee retains full use and enjoyment of the Premises as provided in this Lease, then the total award, compensation, damages or consideration received or receivable as a result of a Taking (“**Award**”) shall be paid to and be the property of Lessor. However, in the event of a Substantial Taking, or if any portion of the Premises or this Lease is affected by the Taking, the Lessee shall be entitled to a proportionate share of the Award, which shall be paid to and be the property of Lessee.
10. Lessor’s Right of Entry. Lessee shall permit Lessor and the agents and employees and contractors of Lessor to enter into and upon the Premises upon 24-hour advance notice to Lessee (except in the event of an emergency when no such advance notice shall be required) during all reasonable business hours for the purpose of inspecting the same, performing maintenance, repairs, or other work to the Tower.

11. Holdover. Lessee shall vacate the Premises and remove all of Lessee's personal property from the Premises prior to 11:59 p.m. on the date the Renewal Term expires. Lessor may immediately commence eviction proceedings at its sole discretion if Lessee fails to vacate the Premises by such time. If, after the expiration of the Renewal Term, Lessee remains in possession of the Premises with the consent of Lessor and continues to pay rent without a written agreement as to such possession, then such tenancy shall be regarded as a month-to-month tenancy, at a monthly rental, payable in advance, equivalent to 100% of the then-current fair market rental for the Premises (as determined by Lessor) and shall be subject to all the terms and conditions of this Lease.

12. Default; Remedies. If Lessee is in violation of any covenants or agreements set forth in the Lease (a "**Default**") and the Default remains uncorrected for a period of 10 days after Lessor has given written notice thereof (or such longer time as reasonably required under the circumstances so long as Lessee commences to cure with in such 10-day period and diligently proceeds therewith to completion), then Lessor may undertake the following sole and exclusive remedies: (a) suspend Lessee's right to possession of the Premises until Lessee cures the violation; or (b) pursue breach of contract remedies. If Lessor is in Default and the Default remains uncorrected for a period of 10 days after Lessee has given written notice thereof (or such longer time as reasonably required under the circumstances so long as Lessor commences to cure with in such 10-day period and diligently proceeds therewith to completion), then Lessee may undertake any available remedies at law or equity, including but not limited to repayment to Lessee of rent advanced, prorated according to the period remaining in the Term. Notwithstanding anything to the contrary herein, Lessor's managers, shareholders, officers, employees, or agents shall not be personally liable with respect to any of the terms, covenants, and conditions of this Lease.

13. Abandonment. In the event of abandonment of the Premises by Lessee, Lessor may, without being obligated to do so and without terminating the Lease, retake possession of the Premises and exercise any of the remedies contained in Section 15 below. Abandonment shall not be deemed to occur unless Lessee fails to occupy, access, or use the Premises or to maintain personal property or equipment within the Premises for a period of at least one year.

14. Re-Entry. In the event of re-entry by Lessor as a result of: (i) Lessee's abandonment of the Premises; or (ii) termination of the Lease because the Premises permanently cease to be used as described in Section 7, then:

- a. Lessee's personal property and the personal property of any guest, invitee, licensee, or occupant may be removed from the Premises and stored or disposed of, at Lessor's sole discretion, at Lessee's cost. Lessor shall not be deemed a bailee of the property removed, and Lessor shall not be held liable for the property.
- b. Lessor may enter the Premises, clean and make repairs, and charge Lessee accordingly.
- c. Lessee shall surrender all keys and peacefully surrender and deliver up possession of the Premises.

15. Surrender of Premises. Lessee will return the Premises to Lessor at the expiration of the Renewal Term in as good order and repair as when Lessee took possession (loss by casualty, condemnation, and normal wear and tear excepted). Any deterioration or damage caused by abuse, carelessness, or negligence shall not be considered normal wear and tear. If Lessee fails to redeliver the Premises in appropriate condition, Lessor may restore the Premises to appropriate condition, including, but not limited to, repair, replacement, and cleaning. Lessee shall be obligated to pay the cost of any such work necessitated. At the termination of the Lease or Lessee's right to possession of the Premises, Lessee shall remove Lessee's movable trade fixtures, equipment, pipes, lines, wires, cabling, and other items of personal property that are not permanently affixed to the Premises. Lessee shall remove the alterations and additions and signs made by Lessee, as Lessor may request, and repair any damage caused by such removal. Lessee shall peaceably yield the Premises and all alterations and additions thereto (except such as Lessor has requested Lessee to remove), and all fixtures and floor coverings that are permanently affixed to the Premises, which shall thereupon become the property of Lessor. Any personal property of Lessee not removed within five business days following termination shall, at Lessor's option, become the property of Lessor.

16. No Waiver of Requirements. No assent, express or implied, to any Default of any one or more of the obligations herein shall be deemed or taken to be a waiver of any succeeding or other Default. The covenants set forth herein are independent.

17. Subletting. Lessee is expressly not authorized to sublet the Premises or any part thereof to.

18. Transfer by Lessor. Lessor shall have the right to transfer, sell or otherwise convey the Property or any interest therein. In the event of a transfer by Lessor of the Property or of Lessor's interest as Lessor under this Lease, Lessor's successor or assign shall take subject to and be bound by this Lease and in such event, Lessee covenants and agrees that Lessor shall be released from all obligations of Lessor under this Lease, except obligations which arose and matured prior to such transfer by Lessor; that Lessee shall thereafter look solely to Lessor's successor or assign for satisfaction of the obligations of Lessor under this Lease; and that, upon demand by Lessor or Lessor's successor or assign, Lessee shall attorn to such successor or assign.

19. Estoppel Certificates. Lessee covenants and agrees to execute, acknowledge and deliver to Lessor, within 30 days of Lessor's written request, a written statement certifying that this Lease is unmodified (or, if modified, stating the modifications) and in full force and effect; stating the Rent paid; stating that there have been no defaults by Lessor or Lessee and no event which with the giving of notice or the passage of time, or both, would constitute such a default (or, if there have been defaults, setting forth the nature thereof); and stating such other matters concerning this Lease as Lessor may reasonably request. Lessee agrees that such statement may be delivered to and relied upon by any existing or prospective mortgagee or purchaser of the Property.

20. Notices. All notices required to be sent under the Lease shall be in writing and delivered by: (i) U.S. Certified Mail, return receipt requested, postage prepaid; (ii) courier delivery; (iii) overnight delivery using a reputable overnight carrier; or (iv) electronic mail (e-mail). Notices

shall be deemed to have been made on the fifth day after deposit into the U.S. Mail, on the first day after deposit with a reputable overnight carrier, or upon receipt if delivered by courier delivery or email. All notices required to be sent to Lessor or Lessee shall be sent or delivered to the addresses below unless otherwise specified in writing by the Parties. Any notices or communications provided for in this Lease shall be sent to the Parties at the following addresses:

To Lessor: Sparks Fly Studio Ltd.

With a copy to:

To Lessee: City of Fruita
Attn: Mike Bennett, City Manager
325 E. Aspen Ave.
Fruita, Colorado 81521
mbennett@fruita.org

With a copy to: Garfield & Hecht, P.C.
Attn: Mary Elizabeth Geiger, Esq.
910 Grand Ave., Suite 201
Glenwood Springs, Colorado 81601
megeiger@garfieldhecht.com

21. Governing Law; Jurisdiction. This Lease shall be governed and construed by the laws of the State of Colorado. Venue and jurisdiction for any litigation arising out of this Lease shall rest exclusively with the courts in Mesa County, Colorado. LESSOR AND LESSEE HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS LEASE, OR IN ANY WAY CONNECTED WITH, OR RELATED TO, OR INCIDENTAL TO, THE DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS LEASE, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND IRRESPECTIVE OF WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE.

22. Attorneys' Fees. In the event of any action or proceeding under this Lease, the prevailing party shall be entitled to recover all reasonable costs and expenses, including the fees and expenses of its attorneys. All rights concerning remedies and/or attorneys shall survive any termination of this Lease.

23. Entire Agreement. This Lease memorializes and constitutes the final, complete, and exclusive agreement and understanding between the Parties on the subject matter hereof. It supersedes and replaces all prior negotiations, proposed agreements, and agreements, whether written or oral on the subject matter hereof. This Lease may not be amended or modified, except in writing and signed by the Parties. Lessor and Lessee each acknowledges that it has participated in the drafting of and has had the opportunity to thoroughly review and negotiate this Lease.

24. Lease Not to be Recorded. Each party agrees that it will not cause or permit this Lease or any memorandum or summary of this Lease or any portion thereof to be recorded. Failure to comply with the provisions of this Section by Lessee or Lessor shall be a material default under this Lease.

25. Successors and Assigns. This Lease is binding upon and inures to the benefit of the Parties and their respective assigns and successors-in-interest.

26. Time of the Essence. Time is of the essence of the Lease and each and all of its provisions.

27. Severability. In the event any part of this Lease is found to be void, illegal, invalid, or unenforceable under present or future laws, then, in such event, the remaining provisions of this Lease shall nevertheless be binding with the same effect as though such part was deleted and shall be construed to effectuate, as nearly as possible, the original intentions of the Parties based upon the entire agreement, including the invalidated provision.

28. Captions. The captions contained in this Lease are for convenience only and shall not affect the construction or interpretation of any provision herein.

29. Non-Appropriation. No provision of this Lease shall be construed or interpreted: (a) to directly or indirectly obligate Lessee to make any payment in any year in excess of amounts appropriated for such year; (b) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article XI, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or (c) as a donation or grant to or in aid of any person, company, or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution. Failure by Lessee to make any payments due hereunder by operation of this Section shall not constitute a default. However, if Lessee fails to appropriate funds for payments pursuant hereto, Lessee may elect to terminate this Lease immediately.

30. Immunity. The Parties hereto understand and agree that Lessee neither waives nor intends to waive by this Lease, or any provision hereof, the monetary limitations and any other rights, immunities, and protections provided by the Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.* (CGIA).

31. Authorization. Lessor and Lessee each represents and warrants to the other that the signatories to this Lease for such party are fully authorized to enter into and execute this Lease, and that all necessary actions, notices, and/or meetings required by law to authorize their execution of this Lease have been made.

33. Counterparts. This Lease may be executed in counterparts, each of which shall for all purposes be deemed an original and all of which together shall constitute one and the same agreement. Any such counterpart may be transmitted by e-mail (in PDF format), and any such counterpart so transmitted shall have full force and effect as if it were an original.

[Remainder of page intentionally left blank.]

This Lease is executed by the Parties hereto as of the date first set forth above.

LESSOR:

SPARKS FLY STUDIO LTD.

a Colorado limited liability company

By: _____

Name:

Title:

LESSEE:

City of Fruita, Colorado

By: _____

Name: Michael P. Bennett

Title: City Manager

Exhibit 1
To Commercial Lease
Depiction of Premises





AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: MIKE BENNETT, CITY MANAGER

DATE: MARCH 5, 2024

AGENDA TEXT: EXECUTIVE SESSION – To convene in Executive Session for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations and instructing negotiators pursuant to C.R.S. Section 24-6-402(4)(e) with regard to development agreements and contracts with 2Forks Ventures for the redevelopment of the lagoon property area sometimes referred to as “The Beach”

BACKGROUND

The City Council has reason to convene in Executive Session for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations and instructing negotiators pursuant to C.R.S. Section 24-6-402(4)(e) with regard to development agreements and contracts with 2Forks Ventures for the redevelopment of the lagoon property area sometimes referred to as “The Beach.” To convene in executive session, state law requires that a motion with specific language requesting the executive session be passed with 2/3 of the governing body voting in the affirmative for said motion.

FISCAL IMPACT

N/A

APPLICABILITY TO CITY GOALS AND OBJECTIVES

N/A

OPTIONS AVAILABLE TO THE COUNCIL

N/A

RECOMMENDATION

It is the recommendation of the Fruita City Staff that the Council:

- **MOVE TO CONVENE IN EXECUTIVE SESSION FOR THE PURPOSE OF DETERMINING POSITIONS RELATIVE TO MATTERS THAT MAY BE SUBJECT TO NEGOTIATIONS; DEVELOPING STRATEGY FOR NEGOTIATIONS AND INSTRUCTING NEGOTIATORS PURSUANT TO C.R.S. SECTION 24-6-402(4)(E) WITH REGARD TO DEVELOPMENT AGREEMENTS AND CONTRACTS WITH 2FORKS VENTURES FOR THE REDEVELOPMENT OF THE LAGOON PROPERTY AREA SOMETIMES REFERRED TO AS “THE BEACH”**

ANNOUNCEMENT NO. 1

***ANNOUNCEMENT TO BE MADE BY MAYOR
AT THE BEGINNING OF THE EXECUTIVE SESSION
(MAKE SURE THE EXECUTIVE SESSION IS BEING RECORDED;
DO NOT STOP RECORDING DURING THE EXECUTIVE SESSION
UNLESS SO ADVISED BY LEGAL COUNSEL.)***

It's March 5, 2024 and the time is _____. For the record, I am the Mayor, Joel Kincaid. As required by the Open Meetings Law, this executive session is being electronically recorded.

Also present at this executive session are the following persons:

_____.

This is an executive session for the following purposes:

For the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations and instructing negotiators pursuant to C.R.S. Section 24-6-402(4)(e) with regard to development agreements and contracts with 2Forks Ventures for the redevelopment of the lagoon property area sometimes referred to as “The Beach.”

I caution each participant to confine all discussion to the stated purposes of the executive session, and that no formal action may occur in the executive session.

If at any point in the executive session any participant believes that the discussion is going outside the proper scope of the executive session, please interrupt the discussion and make an objection.

ANNOUNCEMENT NO. 2

***ANNOUNCEMENT TO BE MADE BY THE MAYOR
BEFORE CONCLUDING THE EXECUTIVE SESSION
(WHILE THE SESSION IS STILL BEING RECORDED)***

I hereby attest that this recording reflects the actual contents of the discussion at the executive session and has been made in lieu of any written minutes to satisfy the recording requirements of the Open Meetings Law.

_____ I will have the Deputy City Clerk retain the recording for a 90-day period.

***OR
(if City personnel was the
subject of the session and
was not present at the session)***

_____ I will retain the tape in my possession for a 90-day period.

The time is now _____, and we now conclude the executive session and return to the open meeting.

(stop recording and return to open meeting)