

■ LILEY LAW OFFICES, LLC ■

October 23, 2018

Mayor Wade Troxell  
and City Council Members  
City Hall West  
300 LaPorte Avenue  
Fort Collins, CO 80521

c/o Tom Leeson  
CDNS Director  
281 N. College Avenue  
Fort Collins, CO 80521

Re: Request for Vested Property Rights  
Montava Master Plan

Dear Mayor and Council Members:

This firm represents HF2M, Inc., the developer of the proposed Montava project (“Developer”). The Developer has submitted to the City an application for approval of the Montava Planned Unit Development Master Plan for the Property (“Montava Master Plan”) pursuant to Land Use Code Division 4.29. The Montava Master Plan encompasses 900+ acres of contiguous, undeveloped, vacant land in northeast Fort Collins (the “Property”) that is currently owned by the Anheuser-Busch Foundation and the Poudre R-1 School District. A depiction of the Property is attached to hereto as **Attachment A**. Current zoning of the Property is a combination of (I) Industrial, (E) Employment, and (L-M-N) Low Density Mixed-Use Neighborhood.

Based on all relevant circumstances, detailed below, including the size and phasing of the Montava Master Plan and expected fluctuation of market conditions and economic cycles during the expected twenty-five (25) to thirty (30) year build out of the Montava Master Plan, the Developer requests:

1. A determination by Tom Leeson, Director of the Community Development and Neighborhood Services Department, that: (i) it will likely take more than three (3) years to complete all phases of the Montava Master Plan and the associated engineering improvements; and (ii) vested property rights in excess of three (3) years for the Montava Master Plan are warranted in light of all relevant circumstances.

2. City Council action by ordinance (i) approving the Montava Master Plan, including the uses, densities, development standards and engineering variances described and set forth therein in the Project Design Narrative and in Chapter 2 (Uses), Chapter 3 (Densities), Chapter 4 (Development Standards and Definitions), Chapter 5 (Engineering Variances) and Chapter 6 (Alternative Compliance Requests) of the PUD Master Plan Standards; and (ii) adopting the development agreement governing the Montava Master Plan (“Development Agreement”); both as site specific development plans establishing vested property rights for a term of twenty-five (25) years, in accordance with the Colorado Vested Property Rights Statute (C.R.S. §24-68-102), Ordinance No. 091, 2018 of the Council of the City of Fort Collins (“PUD Overlay Ordinance”) and the provisions of the Development Agreement concerning vested property rights

### **Circumstances Which Warrant Extended Vested Property Rights**

#### A. Size and Complexity of Project

The Montava Master Plan, at 900+ acres, is by far the largest comprehensively planned development area in the City. Not only is the Montava Master Plan large, it is also complex. The Developer’s overall vision is for development of the Property, over time, as a New Urbanist community of true traditional neighborhoods with an integrated mix of uses including housing, employment, schools, parks, natural areas and agriculture. It is estimated that there will be approximately 4,200 dwelling units and approximately 450,000 to 750,000 square feet of nonresidential uses including commercial, industrial and employment uses in the Montava Master Plan.

#### B. Multiple Phases

The Development Phasing Plan submitted with the Montava Master Plan depicts the Developer’s estimate of the scope and order of the phases of development. Please see a copy of the Development Phasing Plan in **Attachment B**. The residential product absorption is targeted at approximately 150 units per year. Each development phase within the Montava Master Plan will require Preliminary Development Plan and Final Plan review and approval of the design of appropriate infrastructure suitable for each phase.

#### C. Economic Fluctuation

Economic downturns will occur during the long build-out period which, in turn, will reduce the number of years in which active development will occur during the vesting period.

D. Significant Up Front Investment

1. Land Purchase: There will be a significant cost for the purchase of the 800+ acre Anheuser-Busch Foundation property.
2. Land Entitlement: Land entitlement costs which are expected to reach approximately \$2 million just through the Montava Master Plan stage. Further entitlement costs will be incurred with entitlement of each phase.
3. Public Improvements:
  - (a) Overall, the public improvements associated with the Montava Master Plan include, but are not limited to: arterial and collector roadways (2.9 miles); trail networks (5.8 miles); multi-modal facilities (pedestrian, bicycle and transit); storm drainage systems (realignment of No. 8 Ditch; creation of 2.24 miles of storm water channel / conveyance paths and 113 acres of regional detention ponds; non-potable water system; water, sanitary sewer, electric and broadband; and parks and recreation.
  - (b) The cost, scope, and definition of such public improvements may vary over time. The total estimated cost of public improvements, as set forth on **Attachment C**, is approximately Three Hundred Twenty-Five Million One Hundred Ninety-Four Thousand Five Hundred Forty Three Dollars (\$325,194,543) in 2018 dollars. This total estimated cost does not include costs for some local public improvements.

E. Public Benefits

There are significant public benefits resulting from this project. See **Attachment D** taken from the Montava Metropolitan Districts Service Plan.

Given the size of the Montava Master Plan, the scope of the associated public improvements and the anticipated fluctuation in market conditions and economic cycles, the Developer and its consultants estimate build out of all phases to take twenty-five (25) to thirty (30) years. Without legal assurance that the Montava Master Plan will not be subject to unilateral changes by the City, the very significant investment in this project is neither reasonable nor feasible.

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Thank you for your consideration of this request.

Sincerely,

LILEY LAW OFFICES, LLC

*/s/ Lucia A. Liley*

By:

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Lucia A. Liley

LAL/jpk

Attachments

Pc: Jeff Mihelich, Deputy City Manager  
Carrie Daggett, City Attorney  
Brad Yatabe, Assistant City Attorney  
Rebecca Everette, Development Review Manager  
Cameron Gloss, Comprehensive Planning Manager  
Clay Frickey, City Planner  
Max Moss, HF2M, Inc.



**Attachment B**  
To Request for Vested Property Rights  
Montava Master Plan

**Development Phasing Plan**



**Attachment C**  
To Request for Vested Property Rights  
Montava Master Plan



## CONCEPTUAL OPINION OF COST

	PROJECT:	JOB NO.	DATE:	BY:	
	Montava Metropolitan Districts	1230.0001.00	6/27/2018	JAZ	
No.	Item	Quantity	Units	Unit Cost	Total
<b>ADMINISTRATIVE &amp; MISCELLANEOUS</b>					
					<b>\$11,000,000</b>
<b>EARTHWORK</b>					
					<b>\$21,499,312</b>
<b>STREETS (ONSITE &amp; OFFSITE)</b>					
					<b>\$105,255,350</b>
<b>SANITARY SEWER (ONSITE &amp; OFFSITE)</b>					
					<b>\$15,732,500</b>
<b>WATER (ONSITE &amp; OFFSITE)</b>					
					<b>\$11,081,500</b>
<b>NONPOTABLE WATER (ONSITE &amp; OFFSITE)</b>					
					<b>\$13,814,500</b>
<b>STORM SEWER (ONSITE &amp; OFFSITE)</b>					
					<b>\$10,286,290</b>
<b>RECREATION FACILITIES</b>					
					<b>\$8,000,000</b>
<b>LANDSCAPING, TRAILS, OPEN SPACE, AND FARM FACILITIES</b>					
					<b>\$44,215,395</b>
<b>Additional Costs</b>					
				<b>Construction Costs</b>	<b>\$240,884,847</b>
				<b>Contingency (20% of Costs)</b>	<b>\$48,176,969</b>
				<b>Engineering / Survey / C. M. (15% of Costs)</b>	<b>\$36,132,727</b>
<b>Total Infrastructure Cost</b>					<b>\$325,194,543</b>

This is a conceptual opinion of cost and supplied only as a guide. TST is not responsible for fluctuation in costs of material, labor or unforeseen contingencies.

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**Public Benefits**

**1. Large-Scale Comprehensive Master Planning:**

The approximately 914-acre Service Area will be comprehensively master-planned, with an emphasis on multi-modal transportation, through the new Planned Unit Development Overlay Regulations as the Montava PUD Master Plan (the “Montava development”). The Montava development design will include coordinated, interconnecting trail, street, sidewalk, transit and storm drainage systems which will both (i) correct existing infrastructure deficiencies within the boundaries of the Mountain Vista Subarea Plan; and (ii) provide opportunities to connect infrastructure in such area to existing City infrastructure. The Districts will have authority to build and, in some cases, to maintain these public systems and can also be used to facilitate the construction of “off-site” public infrastructure required by the City’s Land Use Code or Municipal Code for individual projects within the Montava development.

**2. New Urbanism:**

New Urbanism is an urban design movement which promotes environmentally friendly habits by creating walkable neighborhoods containing a wide range of housing and job types. The Montava development has been designed by the industry leaders, DPZ, and New Urbanism resonates throughout the Montava development.

The Montava development will implement New Urbanism by one or more of the following:

- a. Creating a mixed-use town center integrated with surrounding neighborhood fabric;
- b. Developing the Montava development as a series of neighborhoods with centers, based on a 5-minute walk shed;
- c. Integrating a wide variety of housing types and intensities within each neighborhood;
- d. Creating walkable streets and trails that connect meaningful destinations;
- e. Distributing traffic through a network of connected streets;
- f. Integrating market rate and affordable housing.

**3. Agri-Urban Development:**

This is a concept promoted in the Mountain Vista Subarea Plan. There will be an approximately 40-acre organic farm in the Montava development. The land will either be donated or sold at a substantially discounted amount to the Poudre Valley Cooperative which entity will in turn enter into a long-term lease with the farmers. A wide variety of high-quality, organic, locally-grown produce from the farm will be available to the entire Fort Collins community. While there may be other uses on the farm in the long term, the primary business model is organic produce.



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**4. Zero Energy Ready Homes:**

Residential development in the Montava development will be built to the Department of Energy's Zero Energy Ready Home "ZERH" standard.

**5. Non-potable Water System:**

There is only one quarter section of land within the Montava development that does not have adequate coffin wells to provide all needed irrigation water for that quarter section. In all other areas, the Developer commits to the development of a non-potable water system which will incorporate the historical usage of these wells for the irrigation needs of the Montava development.

**6. Affordable/Workforce Housing:**

At least ten percent (10%) of the total housing units approved in the Montava development will be affordable or workforce housing, whether owner-occupied or leased, ranging from sixty percent (60%) to one hundred twenty percent (120%) of the Fort Collins' AMI for a family of four ("Required Affordable Units"). The Required Affordable Units will be provided through any of the following mechanisms or any other mechanism mutually agreed upon by the Developer and the City:

A. The Developer has executed an option contract with the City for the purchase of five (5) acres within the Montava development, at a mutually acceptable location, for development by the City as part of its Affordable Housing Land Bank Program at a time it chooses.

B. A continuation of the collaborative effort among developers within the boundaries of the Mountain Vista Subarea Plan, the City, a community land trust and entities such as Housing Catalyst and Habitat for Humanity on a strategy for long-term affordability of the Required Affordable Units. If a program is developed from this strategic collaborative effort which includes fair and reasonable contributions from all stakeholders, up to five percent (5%) (with the number depending on what the program can manage) of the annual developed single family lots would be contributed to the program at Developer's cost, but not to exceed the Required Affordable Units.

C. Sale of land within the Montava development by the Developer to a non-profit or for-profit builder and the development of that land as part or all of the Required Affordable Units.

D. Legally enforceable reservation of acreage within the Montava development for the eventual sale to an entity for development of the Required Affordable Units (i.e. similar to the Land Bank option agreement described in paragraph A above).

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E. If another method for long-term affordability does not result from the collaborative effort described in paragraph B above, deed restrictions for a twenty (20) year period will be placed on all the Required Affordable Units which are single family units.

F. Sixty-five percent (65%) of the Required Affordable Units shall be secured through one of the mechanisms described in paragraphs A through D above (or through any other mutually agreed-upon mechanism) prior to receipt of a building permit for more than fifty percent (50%) of the total housing units approved in the Montava development, and the remaining thirty-five percent (35%) of the Required Affordable Units shall be so secured prior to receipt of a building permit for the last one hundred (100) of the total housing units approved in the Montava development.