

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 32 A-B

DATE: December 2, 2003

STAFF: Alan Krcmarik

SUBJECT

Items Relating to the North Front Range Transportation and Air Quality Planning Council.

RECOMMENDATION

Staff recommends adoption of Resolution and of the Ordinance on First Reading.

FINANCIAL IMPACT

The City has been the primary sponsor for the North Front Range Transportation and Air Quality Planning Council (MPO) for several years. The City has been financially responsible for costs of the MPO and these costs have been accounted for in the City's Transportation fund. The external auditors and reviewers from the Government Finance Officers Association have commented that the MPO should be accounted for as a more independent organization. To this end, the MPO is now a separate fund, but still within the City of Fort Collins' accounting entity. According to the Charter, expenditures within a fund should not exceed revenue. To ensure that the MPO does not exceed its revenue, the City will be advancing, in the form of a loan, up to \$175,000 to the MPO. When the MPO is reimbursed through grant programs and contributions from other member cities, the MPO will repay the City of Fort Collins. Repayment is expected to be completed in January 2004 and, at the latest, by the end of the first quarter of 2004.

EXECUTIVE SUMMARY

- A. Resolution 2003-142 Authorizing the Mayor to Execute an Intergovernmental Agreement for the Provision of a Loan to the North Front Range Transportation and Air Quality Planning Council.
- B. First Reading of Ordinance No. 176, 2003, Appropriating Prior Year Reserves in the Transportation Services Fund for Transfer to the North Front Range Transportation & Air Quality Planning Council Fund for the Purpose of Providing a Loan to the Metropolitan Planning Organization.

The North Front Range Transportation and Air Quality Planning Council serves as the Metropolitan Planning Organization (MPO) and lead air quality planning agency for the North Front Range region. It was created in 1988 and includes two counties, eleven cities and towns, the State of Colorado Transportation Commission, and the State of Colorado Air Quality Control Commission. In this

capacity, the MPO promotes regional transportation and air quality planning related to transportation for the counties, cities, and towns in northern Colorado. The activities of the MPO are funded through federal grant programs administered by the Colorado Department of Transportation. The City of Fort Collins has been the financial sponsor of the organization and accounted for the financial transactions within the City of Fort Collins Transportation Fund. As a step to provide for the future independence of the MPO, the MPO is now accounted for in its own fund within the City of Fort Collins accounting system. In the future it will be an independent organization and conduct its own financial management.

The MPO operates on grants and contributions on a reimbursable basis. The City of Fort Collins usually advances funds for MPO activities and then is reimbursed through CDOT distributions. As the year 2003 comes to a close, staff projects that the MPO may have spent as much as \$175,000 that is subject to reimbursement that will not be received until some time in 2004. Due to the indefinite nature of the reimbursements and the requirement that all City funds have balanced revenues and expenditures, the staff recommends that the City's Transportation Fund provide financial support to the MPO by loaning up to \$175,000. The City will be repaid from future grant reimbursements and other funds contributed by the other members of the MPO.

The Resolution authorizes the Mayor to sign the loan to the MPO. The Ordinance appropriates the prior year reserves to be transferred to the MPO.

RESOLUTION 2003-142
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE MAYOR TO EXECUTE
AN INTERGOVERNMENTAL AGREEMENT FOR THE PROVISION OF
A LOAN TO THE NORTH FRONT RANGE TRANSPORTATION AND
AIR QUALITY PLANNING COUNCIL

WHEREAS, the North Front Range Transportation and Air Quality Planning Council (hereinafter the "MPO") was created on January 27, 1988 to promote regional transportation and transportation related air quality planning, cooperation and coordination among federal, state and local governments in the North Front Range area; and

WHEREAS, the MPO was established pursuant to the powers set forth in Article XIV, Section 18(2) of the Colorado Constitution and Part 2 of Article 1 of Title 29, C.R.S., as amended; and

WHEREAS, voting members of the MPO include Fort Collins, Greeley, Loveland, Evans, Timnath, Windsor, Berthoud, LaSalle, Johnstown, Milliken, Garden City, Larimer County, Weld County, the State of Colorado Transportation Commission, and the State of Colorado Air Quality Control Commission; and

WHEREAS, the MPO's activities are of a regional and multi-governmental nature and the MPO performs regional functions which are authorized by the Transportation Efficiency Act of the 21st Century and the Clean Air Act of 1990, as amended, as well as Colorado legislation which requires a regional and a statewide transportation plan; and

WHEREAS, the MPO is charged with the duty to undertake comprehensive, regional transportation and transportation-related air quality planning; and

WHEREAS, the MPO is the designated entity for the purpose of receiving local, state and federal assistance for the purposes of undertaking transportation planning, air quality planning and other purposes authorized to the MPO; and

WHEREAS, the funds for the administration of the MPO's program are federal transportation program funds appropriated by the federal government and administered by the Colorado Department of Transportation (CDOT), based on the federal fiscal year of October 1 through September 30; and

WHEREAS, all transportation-related funding contracts received by the MPO are in the form of cost reimbursement, thereby leaving the MPO in need of available cash funds in order to incur and pay for expenditures prior to seeking reimbursement; and

WHEREAS, the City Council agrees that the need exists for the MPO to have money available to incur and pay expenditures prior to seeking reimbursement from CDOT; and

WHEREAS, the City Council has determined that the making of a loan to the MPO for the aforesaid purposes will promote and advance a valid public purpose of the City as a Member Entity of the MPO.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS the Mayor is hereby authorized to execute an Intergovernmental Agreement for the provision of a loan to the North Front Range Transportation and Air Quality Planning Council in substantially the form shown on Exhibit "A" attached hereto and incorporated herein by this reference, with such modifications and additional terms as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City.

Passed and adopted at a regular meeting of the City Council held this 2nd day of December, A.D. 2003.

Mayor

ATTEST:

Chief Deputy City Clerk

EXHIBIT "A"

**INTERGOVERNMENTAL AGREEMENT FOR THE PROVISION
OF A LOAN TO THE NORTH FRONT RANGE
TRANSPORTATION AND AIR QUALITY PLANNING COUNCIL**

THIS AGREEMENT, is entered into this _____ day of _____, 2003, by and between THE NORTH FRONT RANGE TRANSPORTATION AND AIR QUALITY PLANNING COUNCIL, a body politic and corporate (the "MPO"), and THE CITY OF FORT COLLINS, COLORADO, a municipal corporation (the "Member Entity").

WITNESSETH:

WHEREAS, the MPO was created on January 27, 1988 to promote regional transportation and transportation related air quality planning, cooperation and coordination among federal, state and local governments in the North Front Range area; and

WHEREAS, the MPO was established pursuant to the powers set forth in Article XIV, Section 18(2) of the Colorado Constitution and Part 2 of Article 1 of Title 29, C.R.S., as amended; and

WHEREAS, voting members of the MPO include Fort Collins, Greeley, Loveland, Evans, Timnath, Windsor, Berthoud, LaSalle, Johnstown, Milliken, Garden City, Larimer County, Weld County, the State of Colorado Transportation Commission, and the State of Colorado Air Quality Control Commission; and

WHEREAS, the MPO's activities are of a regional and multi-governmental nature and the MPO performs regional functions which are authorized by the Transportation Efficiency Act of the 21st Century and the Clean Air Act of 1990, as amended, as well as Colorado legislation which requires a regional and a statewide transportation plan; and

WHEREAS, the MPO is charged with the duty to undertake comprehensive, regional transportation and transportation-related air quality planning; and

WHEREAS, the MPO is the designated entity for the purpose of receiving local, state and federal assistance for the purposes of undertaking transportation planning, air quality planning and other purposes authorized to the MPO; and

WHEREAS, the funds for the administration of the MPO's program are federal transportation program funds appropriated by the federal government and administered by the Colorado Department of Transportation (CDOT), based on the federal fiscal year of October 1 through September 30; and

WHEREAS, all transportation-related funding contracts received by the MPO are in the form of cost reimbursement, thereby leaving the MPO in need of available cash funds in order to incur and pay for expenditures prior to seeking reimbursement; and

WHEREAS, the Member Entity agrees that the need exists for the MPO to have money available to incur and pay expenditures prior to seeking reimbursement from CDOT; and

WHEREAS, the parties desire to enter into this Intergovernmental Agreement for the purpose of lending the funds for the operation of the MPO; and

WHEREAS, the City Council has determined that the making of a loan to the MPO for the aforesaid purposes will promote and advance a valid public purpose of the City as a Member Entity of the MPO.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties as hereafter provided and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

Section 1. The sum of ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$175,000) is hereby authorized, upon appropriation to be loaned to the MPO by the Member Entity upon the effective date of this agreement and in accordance with the Promissory Note attached hereto as Exhibit "A" and incorporated herein by this reference.

Section 2. The MPO and Member Entity agree to review the need and desirability of continuation of the loan on an annual basis.

Section 3. The MPO agrees to maintain a separate payable line-item within its Accounting system to track the loan amount received from the Member Entity.

Section 4. In the event that the MPO is able to obtain alternative sources of funding, as for example, a taxing authority through the Rural Transportation Authority, it agrees to promptly return the loaned principal amount plus all accrued interest to the Member Entity.

Section 5. Notice. Any notice required to be delivered in writing pursuant to this Agreement shall be delivered as follows:

If to the Council:

Council Chair c/o Executive Director
North Front Range Transportation and
Air Quality Planning Council
235 Mathews Street
Fort Collins, CO 80524

If to the Member Entity:

City of Fort Collins
Director of Finance
PO Box 580
Fort Collins, CO 80522-0580

Section 6. This Agreement shall be construed according to its fair meaning, and as if prepared by both parties hereto, and constitutes the entire understanding and agreement between the parties hereto pertaining to the matters addressed in this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement the day and year first above written.

NORTH FRONT RANGE TRANSPORTATION
AND AIR QUALITY PLANNING COUNCIL

By: _____
Chair

CITY OF FORT COLLINS, COLORADO,
A municipal corporation

By: _____
Mayor

ATTEST:

City Clerk

Approved as to form:

City Attorney

EXHIBIT "A"

PROMISSORY NOTE

AMOUNT: \$ _____

DATE: December _____, 2003

FOR VALUE RECEIVED, the North Front Range Transportation and Air Quality Planning Council, ("the Borrower") promises to pay to the City of Fort Collins, Colorado, a municipal corporation, ("the Lender"), or order, the principal sum indicated above, which in no event shall exceed One Hundred Seventy-Five Thousand Dollars (\$175,000), on the following terms:

1. Interest Rate. So long as this Promissory Note is not in default, the unpaid principal balance due hereunder shall bear interest from the date of this promissory note until paid. The interest rate shall be variable and shall be equivalent to the interest rate payable on two-year United States Treasury Bills, currently bearing an interest of one and seven hundredths percent (1.07%), per annum compounded annually.

2. Payment of Interest. Interest accrued under the terms of this Promissory Note shall be due and payable no later than March 31, 2004.

3. Payment of Principal. All unpaid principal due hereunder shall become due and payable on March 31, 2004.

4. Form of Payment. All payments of principal, interest, and other amounts due under this Promissory Note shall be payable in lawful money of the United States of America.

5. Place of Payment. All payments of principal and interest shall be made at City of Fort Collins, Finance Department, 215 North Mason Street, Fort Collins, Colorado 80521, or at such other place as the Lender may designate in writing. Payments shall be deemed made only upon receipt by the Lender.

6. Default. Default shall result upon the occurrence of any one of the following with respect to the Borrower: (a) entry of a judgment against the Borrower and the Borrower's failure to satisfy said judgment within fifteen (15) days after the expiration of any applicable stay of execution; (b) dissolution, suspension, or liquidation of the Borrower; (c) failure after demand to furnish financial information or to permit inspection of any books or records; (d) the conditions or affairs of the Borrower change such that the Lender, in good faith, regards the Borrower's ability to repay this Promissory Note to be impaired; (e) commencement of any proceedings under any bankruptcy or insolvency laws against the Borrower; (f) any representation false in any material respect made or furnished to the Lender by or on behalf of the Borrower in connection with the loan evidenced by this Promissory Note; or (g) failure to make any payment required to be made pursuant to the terms of this Promissory Note within ten (10) days of the date due.

7. Remedy. Upon default, the entire unpaid principal sum, accrued interest, other amounts due under this Promissory Note, and all other obligations, direct or contingent, of the Borrower due to the Lender shall at once become due and payable without further notice, at the option of the Lender.

8. Prepayment. This Promissory Note may be prepaid, in whole or in part, at any time without penalty.

9. Waiver. The Borrower waives demand; presentment for payment; protest; notice of dishonor, of protest, of demand, of nonpayment, and of maturity; and diligence in collecting or bringing suit against any party liable hereon; and further agrees to any and all extensions, renewals, modifications, partial payments, substitutions of evidence of indebtedness, or the release of any party liable hereon, with or without notice before or after maturity.

10. Expenses and Costs of Collection. In the event this Promissory Note is placed in the hands of an attorney for collection or suit is filed hereon; or if proceedings are commenced to foreclose any instruments securing this Promissory Note; or if proceedings are had in bankruptcy, receivership, reorganization, or other legal or judicial proceedings for the collection of this Promissory Note; or in the event the Lender is made a party to any litigation or any litigation is threatened as a result of the existence of this Promissory Note, the Borrower agrees to pay to the Lender all expenses and costs of collection incurred by the Lender in connection with any such collection, suit, or proceeding, in addition to the principal and interest then due. All expenses and costs of collection shall be paid at the time of and as a condition precedent to the curing of any default in the payment of this Promissory Note. The Borrower and any surety, endorser, guarantor, or accommodation party hereon further agree to pay to the Lender all expenses and costs, including attorney's fees, incurred by the Lender in collecting any judgment entered on this Promissory Note.

11. Colorado Law to Apply. Regardless of the place of execution, this Promissory Note shall be governed by and construed in accordance with the laws of the State of Colorado, and all obligations of the Borrower created hereunder are performable in Larimer County, Colorado.

12. Late Payment Penalties. The Borrower acknowledges that if any payment under this Promissory Note is not made when due, the Lender will, as a result thereof, incur costs not contemplated by this Promissory Note, the exact amount of which would be extremely difficult or impractical to ascertain. The Borrower therefore hereby agrees that, in the event the Borrower fails to make any payment required to be made pursuant to the terms of this Promissory Note within ten (10) days of the date such payment is due, the Borrower shall be obligated to pay to the Lender a late payment penalty in an amount equal to ten percent (10%) of the delinquent payment. Only one late payment penalty shall be required to be made for each payment which is not made within ten (10) days of the date such payment is due. All late payment penalties shall be paid at the time of, and as a condition precedent to, the curing of any default. This provision for late payment penalties shall not constitute an extension of the due date for any payment required to be made pursuant to the terms of this Promissory Note, nor shall it be considered a waiver of the right of the Lender to require payments to be made when due.

13. Defaulting Interest. Upon default, in addition to the late payment penalties set forth in the preceding paragraph, the unpaid principal, defaulting interest, and all other amounts due under this Promissory Note or any instrument securing this Promissory Note, including costs and expenses of collection and amounts advanced to protect the Collateral, shall bear interest at a rate equal to the nondefaulting interest rate set forth above in paragraph 1 plus five percent (5%) per annum, compounded annually, from the date of default until paid in full. All defaulting interest shall be paid at the time of, and as a condition precedent to, the curing of any default. This provision for defaulting interest shall not constitute an extension of the due date for any payment required to be made pursuant to the terms of this Promissory Note; nor shall it be considered a waiver of the right of the Lender to require payments to be made when due.

14. No Waiver. No failure on the part of the Lender to exercise, and no delay in exercising, any right which the Lender may have hereunder shall operate as a waiver of such right; nor shall any single or partial exercise by the Lender of any right hereunder preclude the exercise of any other right.

15. Bankruptcy. Notwithstanding the full payment of all obligations due to the Lender under and pursuant to the terms of this Promissory Note, in the event of bankruptcy, either voluntary or involuntary, or of any other action of insolvency or debtor relief in which the Borrower may be involved pursuant to federal or state law, under such terms and conditions as to cause any payments made by the Borrower to the Lender to be deemed a preferential or voidable payment, then in that event, the Borrower shall remain and shall be fully and completely liable and obligated to the Lender upon demand for the repayment of any sums which the Lender may be obligated to make to any bankruptcy court, trustee in bankruptcy, receiver, or other third party pursuant to any such bankruptcy or insolvency laws or provisions plus interest at the rate herein set forth from the date of notice to the date of payment. This provision shall be applicable notwithstanding the prior payment in full of said obligations and/or the cancellation of this Promissory Note. The Borrower acknowledges that this agreement is a material part of the consideration, in exchange for which the Lender has agreed to extend the above-described credit for and at the rates and terms herein set forth.

16. Remedies Cumulative. The remedies provided in this Promissory Note and any instruments securing this Promissory Note shall be cumulative and not exclusive of any remedies provided by law.

17. Modification. This Promissory Note may not be amended, altered, changed, or modified, nor shall any waiver of any provision hereof be effective, except by an instrument in writing signed by the party against whom enforcement of any waiver, amendment, change, modification, or discharge is sought.

18. Clerical Errors. In the event the Lender at any time discovers that this Promissory Note or any other document related to this loan (collectively "the Loan Documents") contains an error which was caused by a clerical mistake, calculation error, computer error, printing error, or similar error, the Borrower agrees, upon notice from the Lender, to re-execute any Loan Documents

that are necessary to correct any such error(s) and also agrees that the Borrower will not hold the Lender responsible for any damage to the Borrower which may result from any such error(s).

19. Successors and Assigns. The Borrower and any endorsers, guarantors, or accommodation parties shall be jointly and severally liable for the payment of the indebtedness evidenced hereby. All of the covenants, obligations, promises, and agreements contained in this Promissory Note made by the Borrower shall be binding upon the Borrower and any guarantors, endorsers, or accommodation parties, their heirs, personal representatives, successors, and assigns.

20. Notice. Any notice required or desired to be given by the parties hereto shall be in writing and may be personally delivered or mailed, certified mail, return receipt requested. Any such notice shall be deemed given when personally delivered or, if mailed, three (3) business days after deposit in the United States mail, postage prepaid. The addresses for the delivering or mailing of notices shall be as follows:

(a) If to the Lender, to:

Director of Finance
City of Fort Collins
P.O. Box 580
Fort Collins, Colorado 80522

(b) If to the Borrower, to:

Council Chair c/o Executive Director
North Front Range Transportation and
Air Quality Planning Council
235 Mathews Street
Fort Collins, Colorado 80524

Notices of assignment of this Promissory Note by the Lender or of a change of address of either party shall be given in the same manner as all other notices as hereinabove provided.

EXECUTED in the City of Fort Collins, County of Larimer, State of Colorado, this _____ day of December, 2003.

North Front Range Transportation and Air Quality
Planning Council, a body politic and corporate,

By: _____

Name (please print)

Title (please print)

ATTEST:

By: _____
Secretary

ORDINANCE NO. 176, 2003
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES IN THE TRANSPORTATION SERVICES
FUND FOR TRANSFER TO THE NORTH FRONT RANGE TRANSPORTATION
& AIR QUALITY PLANNING COUNCIL FUND FOR THE PURPOSE OF PROVIDING
A LOAN TO THE METROPOLITAN PLANNING ORGANIZATION

WHEREAS, the North Front Range Transportation & Air Quality Planning Council (the "NFRT&AQPC") is the Metropolitan Planning Organization (MPO) and lead air quality planning agency for the North Front Range region; and

WHEREAS, the MPO promotes regional transportation and transportation related air quality planning, and cooperation and coordination among federal, state, and local governments in the North Front Range area; and

WHEREAS, voting members of the MPO include Fort Collins, Greeley, Loveland, Larimer County, Weld County, Evans, Timnath, Windsor, Berthoud, LaSalle, Johnstown, Milliken, Garden City, the State of Colorado Transportation Commission, and the State of Colorado Air Quality Control Commission; and

WHEREAS, the funds for the administration of the MPO program are federal transportation program funds appropriated by the federal government and administered by the Colorado Department of Transportation (CDOT), based on the federal fiscal year of October 1 through September 30; and

WHEREAS, under the terms of an Intergovernmental Agreement, dated May 17, 2001, between the City and the MPO, entitled Intergovernmental Agreement for the Provision of Support Services, the City provides support services to the MPO, including accounting and financial services, purchasing services, risk management services, budgeting services, human resource services, and legal services, and accordingly, manages federal grant revenue and matching funds received on behalf of the MPO; and

WHEREAS, in February 2001, the MPO retained Corona Research, Inc. to analyze and report on the implications of an independent MPO; and

WHEREAS, the Corona Report (the "Report"), issued in July 2001, identified the MPO's current relationship with the City of Fort Collins in the area of cash management, whereby the MPO's accounts receivable and accounts payable flow through the City's accounting system, and from which the MPO benefits through the use of the City's large cash reserves and funding streams; and

WHEREAS, the aforementioned benefit derived by the MPO, is clearly in conflict with the MPO's desire to become a regional government, operating as a joint venture supported by its members; and

WHEREAS, the Report recommends that the MPO secure a low/no interest line of credit (or "Float") from a member entity or entities, for a term of three to five years, during which time the MPO would attempt to secure other long-term, independent, funding streams; and

WHEREAS, the MPO has requested financial support in the amount of \$100,000, in the form of an advance, loan, or other financial transaction from the City of Fort Collins, the City of Greeley, the City of Loveland, Larimer County, and Weld County for a total of \$500,000; and

WHEREAS, while staff is in agreement that the City of Fort Collins and four other member entities should contribute to establishing financial support for the MPO, the City, in order to address the MPO's cash flow issues in 2003, proposes setting up a loan, not to exceed \$175,000, for the MPO; and

WHEREAS, staff has identified prior year reserves in the City's Transportation Services Fund (\$175,000) to be used for the loan to the MPO; and

WHEREAS, under the terms of said loan, the City will transfer only the amounts needed by the MPO in 2003 to maintain a positive cash flow; and

WHEREAS, reimbursement to the City by the MPO, may come from payments to the MPO from other member entity loans, advances, or MPO grant reimbursements; and

WHEREAS, the City anticipates that the MPO will reimburse the City for the principal loaned and interest, upon the MPO obtaining the necessary funding sources for the payment of interest; and

WHEREAS, City Council adopted Resolution 2003-131, on December 2, 2003, authorizing the Mayor to enter into an intergovernmental agreement with North Front Range Transportation & Air Quality Planning Council, a body politic and corporate (the "MPO"), for the purpose of providing an interest-bearing loan to the North Front Range Transportation & Air Quality Planning Council; and

WHEREAS, Article V, Section 9, of the Charter of the City of Fort Collins (the "Charter") permits the City Council to appropriate by ordinance at any time during the fiscal year such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated; and

WHEREAS, it is the desire of the Council to appropriate the sum of \$175,000 from Transportation Services Fund prior year reserves for transfer to the North Front Range Transportation & Air Quality Planning Council Fund, for appropriation therein, as a loan to the Metropolitan Planning Organization.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that there is hereby appropriated from prior year reserves in the Transportation Services Fund the sum of ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$175,000) for transfer to the North Front Range Transportation & Air Quality Planning Council Fund and

appropriated therein as an interest-bearing loan, providing the Metropolitan Planning Organization with the necessary financial support, pending receipt of grant reimbursements, and providing support for the MPO becoming a regional government, operating as a joint venture supported by its members.

Introduced and considered favorably on first reading and ordered published this 2nd day of December, A.D. 2003, and to be considered for final passage on the 16th day of December, A.D. 2003.

Mayor

ATTEST:

Chief Deputy City Clerk

Passed and adopted on final reading this 16th day of December, A.D. 2003.

Mayor

ATTEST:

City Clerk