Regular Meeting
August 21, 2018

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

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

The City of Fort Collins will make reasonable accommodations for access to City services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call 221-6515 (V/TDD: Dial 711 for Relay Colorado) for assistance.

Proclamations and Presentations
5:30 p.m.

A. Friends Of Preservation Awards
Regular Meeting
6:00 p.m.

- PLEDGE OF ALLEGIANCE

- CALL MEETING TO ORDER

- ROLL CALL

- AGENDA REVIEW: CITY MANAGER
  - City Manager Review of Agenda.
  - Consent Calendar Review
    This Review provides an opportunity for Council and citizens to pull items from the Consent Calendar. Anyone may request an item on this calendar be “pulled” off the Consent Calendar and considered separately.
    - Council-pulled Consent Calendar items will be considered before Discussion Items.
    - Citizen-pulled Consent Calendar items will be considered after Discussion Items.

- CITIZEN PARTICIPATION

  Individuals may comment regarding items scheduled on the Consent Calendar and items not specifically scheduled on the agenda. Comments regarding land use projects for which a development application has been filed should be submitted in the development review process** and not to the Council.

  - Those who wish to speak are asked to sign in at the table in the lobby (for recordkeeping purposes).
  - All speakers will be asked by the presiding officer to identify themselves by raising their hand, and then will be asked to move to one of the two lines of speakers (or to a seat nearby, for those who are not able to stand while waiting).
  - The presiding officer will determine and announce the length of time allowed for each speaker.
  - Each speaker will be asked to state his or her name and general address for the record, and to keep comments brief. Any written comments or materials intended for the Council should be provided to the City Clerk.
  - A timer will beep once and the timer light will turn yellow to indicate that 30 seconds of speaking time remain, and will beep again and turn red when a speaker’s time to speak has ended.

[**For questions about the development review process or the status of any particular development, citizens should consult the Development Review Center page on the City’s website at fcgov.com/developmentreview, or contact the Development Review Center at 221-6750.]

- CITIZEN PARTICIPATION FOLLOW-UP
## Consent Calendar

The Consent Calendar is intended to allow the City Council to spend its time and energy on the important items on a lengthy agenda. Staff recommends approval of the Consent Calendar. Anyone may request an item on this calendar to be "pulled" off the Consent Calendar and considered separately. Agenda items pulled from the Consent Calendar will be considered separately under Pulled Consent Items. Items remaining on the Consent Calendar will be approved by City Council with one vote. The Consent Calendar consists of:

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

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1. **Consideration and Approval of the Minutes of the July 10 and July 17, 2018, Regular Council Meetings, the July 10, 2018, Adjourned Council Meeting and the July 24, 2018, Special Council Meeting.**

   The purpose of this item is to approve the minutes from the July 10 and July 17, 2018, Regular Council meetings, the July 10, 2018, Adjourned Council meeting, and the July 24, 2018 Special Council meeting.

2. **Second Reading of Ordinance No. 094, 2018, Appropriating Unanticipated Grant Revenue From the Colorado Water Conservation Board and Great Outdoors Colorado in the Natural Areas Fund.**

   This Ordinance, unanimously adopted on First Reading on July 17, 2018, appropriates two grants totaling $300,000 into the Natural Areas 2018 budget. The first grant of $200,000 was awarded by the Colorado Water Conservation Board (CWCB) through its Watershed Restoration grant program, and the second is a $100,000 grant awarded by Great Outdoors Colorado (GOCO) through its Habitat Restoration grant program. The CWCB grant was awarded to support two related initiatives focused on improving the health of the Poudre River fish communities. Half the grant ($100,000) will fund the installation of a fish ladder on the Timnath Reservoir Inlet Ditch diversion dam. The second half of the CWCB funds ($100,000) will enable a fish movement monitoring study on the Poudre to better understand the efficacy of fish ladders. The GOCO grant will support Poudre River and floodplain habitat restoration at Kingfisher Point Natural Area.

3. **Second Reading of Ordinance No. 095, 2018, Appropriating Unanticipated Grant Revenue in the General Fund and Transferring Funds from the Community Development and Neighborhood Services Operating Budget to the Grant Budget for the Restorative Justice Program.**

   This Ordinance, unanimously adopted on First Reading on July 17, 2018, appropriates grant revenue to fund Restorative Justice Services within Community Development and Neighborhood Services (CDNS). A grant in the amount of $67,612 has been received from the Colorado Division of Criminal Justice (DCJ) Juvenile Diversion fund for the continued operation of Restorative Justice Services, which includes the RESTORE program for shoplifting offenses, and the Restorative Justice Conferencing Program (RJCP) and Reflect for all other offenses. The grant period for is July 1, 2018 to June 30, 2019. This is the second year in a 3-year cycle for the Juvenile Diversion grant.

4. **Second Reading of Ordinance No. 096, 2018, Appropriating Prior Year Reserves in the Parking Fund for the Replacement of a Parking Enforcement Patrol Vehicle and License Plate Recognition System.**

   This Ordinance, unanimously adopted on First Reading on July 17, 2017, appropriates $80,000 from Parking Services Reserves to replace a parking enforcement patrol vehicle and its license plate recognition system.
5. **Items Relating to the City’s Various Tax Provisions.**

A. Second Reading of Ordinance No. 097, 2018, Amending Article II of Chapter 25 of the Code of the City of Fort Collins Concerning the City’s Tax Rebate Programs.

B. Second Reading of Ordinance No. 098, 2018, Amending Article III of Chapter 25 of the Code of the City of Fort Collins Concerning the Imposition, Collection, and Enforcement of the City’s Sales and Use Taxes.


D. Second Reading of Ordinance No. 100, 2018, Amending Article V of Chapter 25 of the Code of the City of Fort Collins Concerning the City’s Telephone Occupation Tax.

These Ordinances, unanimously adopted on First Reading on July 17, 2018, amends City Code sections in Chapter 25 to provide clarification for definitions and the application of various sections of the Code, and to make clear the City may use a third-party auditor or collections service for delinquent accounts.

6. **Second Reading of Ordinance No. 101, 2018, Amending Section 8-158 of the Code of the City of Fort Collins Pertaining to the City’s Procurement of Services for an Annual Independent Audit of the City’s Financial Records.**

This Ordinance, adopted on First Reading on July 17, 2018, amends the City Code to accommodate the roles of the Council Finance Committee and the City Council in procuring external audit services for the City. An important element of auditor independence is that the selection of the external auditor is made by a governing body rather than by the staff of the auditee. The proposed Code section would (1) allow the selection process of an external audit services to take place at publicly held meetings and (2) define the maximum service period of an incumbent auditor.

7. **Second Reading of Ordinance No. 102, 2018, Amending Article IV, Division 2 of Chapter 23 of the Code of the City of Fort Collins Regarding Real Property.**

This Ordinance, unanimously adopted on First Reading on July 17, 2018, amends various Sections of Article IV, Division 2 of Chapter 23 in City Code as it pertains to real property. Article IV was reviewed to find areas where the language could be improved and to make changes to these areas to streamline the process.

8. **Second Reading of Ordinance No. 103, 2018, Annexing the Property Known as the East Gateway Annexation to the City of Fort Collins, Colorado.**

This Ordinance, unanimously adopted on First Reading on July 17, 2018, annexes 1.77 acres of land consisting of three properties into the City of Fort Collins. The properties are located approximately ¼ mile northeast of the Interstate 25 and East Mulberry Street interchange. The annexation will create the East Mulberry Enclave encompassing the East Mulberry Corridor. A related item to zone the annexed property is presented as the next item on this Agenda.

9. **Second Reading of Ordinance No. 104, 2018, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the East Gateway Annexation to the City of Fort Collins, Colorado, and Approving Corresponding Changes to the Residential Neighborhood Sign District Map.**

This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 1(d) of the Council’s Rules of Meeting Procedures adopted in Resolution 2018-034.
This Ordinance, unanimously adopted on First Reading on July 17, 2018, zones the property included in the East Gateway Annexation into the General Commercial (G-C), Low Density Mixed Use Neighborhood (L-M-N), and Industrial (I) zone districts.

10. **First Reading of Ordinance No. 105, 2018, Appropriating Prior Year Reserves in the Cultural Services and Facilities Fund for Lincoln Center Improvements.**

   The purpose of this item is to appropriate funds set aside by the Lincoln Center into reserves to replace aisle lighting in the Performance Hall as part of the seat replacement project.

11. **First Reading of Ordinance No. 106, 2018, Appropriating Unanticipated Grant Revenue from the Colorado Energy Office in the Light and Power Fund for the HOME Efficiency Loan Program/On-Bill Financing Program.**

   The purpose of this item is to appropriate $200,000 in grant revenues from the Colorado Energy Office in the Fort Collins Utilities Light and Power fund for the purposes of developing and capitalizing Utilities On-Bill Financing (OBF) program. The program will provide utility bill serviced loans for energy efficiency and renewable energy, with a focus on efficiency in rental properties for low- to moderate-income households.

12. **First Reading of Ordinance No. 107, 2018, Amending Chapter 23 of the Code of the City of Fort Collins Regarding Model Rocketry.**

   The purpose of this item is to change the City Code to allow model rocketry activities under a permit issued by the Parks Department. Model rocketry is currently allowed by City Code in areas that are signed for the use. There are no areas currently signed for this use. This change would allow for the development of an internal policy for the safe and appropriate use of model rockets in the parks system, and issuance of a permit for that use.

13. **First Reading of Ordinance No. 108, 2018, Amending Chapter 12, Article X, of the Code of the City of Fort Collins to Remove the Small Scale Source Definition and Warning Requirements for Fugitive Dust.**

   The purpose of this item is to amend the City Code, Chapter 12, Article X, Particulate Matter Emissions, to remove small source written warning requirements for violations, and instead apply the City’s standard citation procedure for civil infractions, which allows the option for written warnings (Sec 19-65. - Commencement of action; citation procedure). This would simplify education, outreach and enforcement related to the Ordinance.

14. **Items Relating to Adequate Public Facilities for Transportation.**

   A. **First Reading of Ordinance No. 109, 2018, Amending Article 3 of the Land Use Code Regarding Adequate Public Facilities Standards for Transportation Levels of Service.**

   B. **First Reading of Ordinance No. 110, 2018, Amending Larimer County Urban Area Street Standards Related to Land Use Code Adequate Public Facilities Requirements.**

   The purpose of this item is to consider revisions to the Land Use Code (“LUC”) and the Larimer County Urban Area Street Standards (“LCUASS”) as they relate to Adequate Public Facilities (“APF”) standards for transportation levels of service. The changes will make the standards current and consistent and provide for Alternative Mitigation Strategies in cases where typical improvements are not feasible, not proportional to impact, or not desired by the City.
15. **First Reading of Ordinance No. 111, 2018 Authorizing the Lease of, and the Grant of an Option to Purchase, City-Owned Property at 317 and 321 South Sherwood Street to Faith Family Hospitality of Fort Collins, Inc.**

The purpose of this item is to obtain approval for a lease of City-owned property located at 317-321 South Sherwood to the non-profit corporation, Faith Family Hospitality of Fort Collins, Inc., a Colorado nonprofit corporation (FFH). FFH currently provides three core programs including case management, day center and an overnight shelter for families experiencing homelessness in Fort Collins. This facility will allow FFH to expand its program to include transitional housing. FFH is requesting a less than market lease rate of $25 per month for a period of up to 25 years, including an option to purchase said property between the third year and fifteenth year of the lease at a purchase price of $700,000. This purchase price was supported by the Council Finance Committee.

16. **First Reading of Ordinance No. 112, 2018, Declaring Certain City-Owned Property on North College Avenue as Road Right-of-Way for Suniga Road.**

The purpose of this item is to declare property owned by the City as road right-of-way to be constructed and used for Suniga Road at College Avenue. The City owns a parcel of property located at 1000 North College Avenue. In 2018, the City Engineering Department designed improvements for the Suniga Road and College Avenue connection across the City’s property. The project will construct a new arterial roadway between College Avenue and Blondel Street. Improvements include construction of a complete arterial street which includes 4 travel lanes, protected bike lanes, landscaped parkways, medians, sidewalks and utility improvements. This Ordinance officially declares this City owned parcel needed for Suniga Road as road right-of-way.

17. **Resolution 2018-072 Finding Substantial Compliance and Initiating Annexation Proceedings for the Hughes Stadium Annexation.**

The purpose of this item is to initiate annexation proceedings for the Hughes Stadium Annexation, containing 164-acres, into the City of Fort Collins. The Annexation is located at the northwest corner of South Overland Trail and Dixon Canyon Road. The Annexation area is owned and administered by Colorado State University and is the former location of Hughes Stadium. The requested zoning for the property contained within the annexation area is Transition (T) which is intended for properties for which there are no specific and immediate plans for development. The surrounding properties are a mixture of recreational, residential and commercial land uses.

The proposed Resolution makes a finding that the annexation petition substantially complies with the Municipal Annexation Act of 1965, determines that a hearing should be established regarding the annexation, and directs notice be given of the hearing. The hearing will be held at the time of First Reading of the annexation and zoning ordinances; not less than thirty days’ prior notice is required by State law.

18. **Resolution 2018-073 Authorizing the Execution of an Intergovernmental Agreement Between the City and the Colorado Department of Transportation for Signal and Safety Improvements at the Intersection of College Avenue and Troutman Parkway.**

The purpose of this item is to enable the City to undertake signal and safety improvements at the intersection of College Avenue and Troutman Parkway. This roadway is also State Highway 287 and is under the jurisdiction and responsibility of the Colorado Department of Transportation (CDOT). The City will complete the improvements and CDOT will fully (100%) reimburse the City for the cost of the project.

19. **Resolution 2018-074 Approving and Authorizing the Execution of an Intergovernmental Agreement with the Town of Timnath for Financial Participation in the I-25/Prospect Interchange Improvements.**

The purpose of this item is to enter into an Intergovernmental Agreement with the Town of Timnath and the City of Fort Collins regarding Timnath’s portion ($2.5 million) of financial participation in the reconstruction of the interchange at I-25 and Prospect Road.
20. Resolution 2018-075 Authorizing the Execution of an Intergovernmental Agreement Between the City and Colorado State University for Game Day Transportation Services.

The purpose of this item is to authorize the Mayor to sign the Game Day Intergovernmental Agreement ("IGA") for the provision of enhanced public transportation services from the City, by CSU, to assist in managing the flow of people entering and exiting CSU’s on-campus stadium during major events, such as home football games.

21. Resolution 2018-076 Authorizing the Mayor to Execute an Intergovernmental Agreement with Larimer County to Partner on the Purchase of an 800 Acre Inholding at Red Mountain Open Space.

The purpose of this item is for City Council to consider the proposed intergovernmental agreement (IGA) with Larimer County to partner 50/50 on the purchase of the 800-acre inholding owned by Rick and Mike Gallegos in Red Mountain Open Space. The County is the lead on the purchase and will own and manage the property; the City will hold a conservation easement on the property.

The County closed on the property on August 1 and was willing to assume the risk of paying for the full cost of the property if this IGA is not approved. As a part of the negotiated purchase the County had to agree to close on the property on August 1.

22. Resolution 2018- 077 Authorizing a Parking Agreement with Confluence FC, LLC for City Property at 424 Pine Street.

The purpose of this item is to authorize the City Manager to execute a parking agreement to allow Confluence FC, LLC to share 17 parking spaces in the United Way parking lot at 424 Pine Street. United Way is the City's tenant and in its existing lease, it has the right to use the parking lot for its purposes and to pay for the maintenance of the lot.

END CONSENT

• CONSENT CALENDAR FOLLOW-UP

This is an opportunity for Councilmembers to comment on items adopted or approved on the Consent Calendar.

• STAFF REPORTS

• COUNCILMEMBER REPORTS

• CONSIDERATION OF COUNCIL-PULLED CONSENT ITEMS
Discussion Items

The method of debate for discussion items is as follows:

- Mayor introduces the item number, and subject; asks if formal presentation will be made by staff
- Staff presentation (optional)
- Mayor requests citizen comment on the item (three minute limit for each citizen)
- Council questions of staff on the item
- Council motion on the item
- Council discussion
- Final Council comments
- Council vote on the item

Note: Time limits for individual agenda items may be revised, at the discretion of the Mayor, to ensure all citizens have an opportunity to speak. Please sign in at the table in the back of the room. The timer will buzz when there are 30 seconds left and the light will turn yellow. It will buzz again at the end of the speaker’s time.

23. First Reading of Ordinance No. 113, 2018, Amending Chapter 7 of the Code of the City of Fort Collins to Amend Requirements and Procedures Related to Campaigns and Campaign Finance in City Elections. (staff: Delynn Coldiron, Rita Knoll; 5 minute staff presentation; 1 hour discussion)

The purpose of this item is to consider proposed amendments to the City’s election campaign code provisions that will raise the threshold requirement for reporting of independent expenditures, ensure that the campaign violation complaint process applies to reporting of independent expenditures, and require “paid for by” disclaimers on campaign communications for registered committees. There are also various clean-up items that provide changes for added clarity and to reconcile conflicts created by the proposed amendments.

24. First Reading of Ordinance No. 114, 2018, Amending Article 3 of the Land Use Code Regarding Buffering Requirements for Development in Relation to Oil and Gas Facility Locations. (staff: Rebecca Everette, Cassie Archuleta; 10 minute staff presentation; 30 minute discussion)

The purpose of this item is to present Land Use Code updates related to buffering new development from existing oil and gas wells for Council consideration. The staff recommendation includes the following Code changes:

1. Increase buffer for residential development near existing oil and gas operations from 350 feet to 500 feet.
2. Add a new 1000-foot buffer requirement for high occupancy buildings near oil and gas operations.
3. Allow a reduced setback (150 feet minimum) near plugged and abandoned wells if specific requirements and performance standards are met.
4. Create an additional means of disclosure to future property owners as part of any required recorded declaration.
25. **Resolution 2018-079 Adopting a Revised Policy for Reviewing Service Plans of Metropolitan Districts.** (staff: Josh Birks, Tom Leeson; 10 minute staff presentation, 30 minute discussion)

The purpose of this item is to consider adoption of a revised policy for reviewing service plans for Title 32 Metropolitan Districts (“Metro Districts”). In 2008, the City Council adopted the existing policy by Resolution 2008-069. At that time, Council responded to changing market conditions to enable the use of Metro Districts to primarily support commercial development. Residential development faces similar market conditions, as well as constrained land supply. The proposed revisions address these conditions while furthering several City goals.

26. **Resolution 2018-078 Appointing Councilmembers to Serve on an Ad Hoc Council Committee to Develop an Anti-Harassment Policy.** (staff: Teresa Roche; 3 minute staff presentation, 10 minute discussion)

The purpose of this item is to appoint City Councilmembers to an ad hoc Council Committee to develop an anti-harassment policy.

- **CONSIDERATION OF CITIZEN-PULLED CONSENT ITEMS**

- **OTHER BUSINESS**

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

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

  B. Consideration of a motion to adjourn into executive session.

- **ADJOURNMENT**

  Every Council meeting will end no later than 10:30 p.m., except that: (1) any item of business commenced before 10:30 p.m. may be concluded before the meeting is adjourned and (2) the City Council may, by majority vote, extend a meeting until no later than 12:00 a.m. for the purpose of considering additional items of business. Any matter which has been commenced and is still pending at the conclusion of the Council meeting, and all matters scheduled for consideration at the meeting which have not yet been considered by the Council, will be continued to the next regular Council meeting and will be placed first on the discussion agenda for such meeting.
AGENDA ITEM SUMMARY  
August 21, 2018  

City Council  

STAFF  

Delynn Coldiron, City Clerk  

SUBJECT  

Consideration and Approval of the Minutes of the July 10 and July 17, 2018, Regular Council Meetings, the July 10, 2018, Adjourned Council Meeting and the July 24, 2018, Special Council Meeting.  

EXECUTIVE SUMMARY  

The purpose of this item is to approve the minutes from the July 10 and July 17, 2018, Regular Council meetings, the July 10, 2018, Adjourned Council meeting, and the July 24, 2018 Special Council meeting.  

ATTACHMENTS  

1. July 3, 2018 (PDF)  
2. July 10, 2018 (PDF)  
3. July 17, 2018 (PDF)  
4. July 24, 2018 (PDF)
July 3, 2018

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

• ROLL CALL

PRESENT: Martinez, Stephens, Summers, Troxell, Cunniff, Horak
ABSENT: Overbeck
Staff Present: Atteberry, Daggett, Coldiron

• AGENDA REVIEW: CITY MANAGER

City Manager Atteberry stated there were no changes to the published agenda.

• CITIZEN PARTICIPATION

Peter Tippett, Tilted Halo Services, discussed his non-profit organization which leases homes and rents subsidized rooms to provide affordable housing for community residents. He announced a fundraiser on July 18 at Pour Brothers.

Teddy Cox thanked Councilmembers for their time, interest, and commitment to the city. She discussed the benefits of the City’s Sign Code and Historic Preservation efforts and encouraged Art in Public Places funding.

Kevin Cross, Fort Collins Sustainability Group, discussed the resolution presented to Council by the Fort Collins Partners for Clean Energy (FCPE) that would establish a communitywide goal of 100% renewable electricity by 2030. He urged Council to direct staff to prepare a resolution using the FCPE Resolution as a starting point. He discussed two studies suggesting the 2030 goal is feasible; however, more study will be needed to determine the optimal path toward achieving that goal.

• CITIZEN PARTICIPATION FOLLOW-UP

Mayor Troxell summarized the citizen comments.

Councilmember Martinez commended Mr. Tippett’s organization and encouraged Council to attend the fundraiser event.

Mayor Pro Tem Horak requested staff address Mr. Cross’ comments. Deputy City Manager Mihelich replied staff will be meeting with the Fort Collins Sustainability Group on Thursday to address their concerns. Staff will examine their draft as a framework; however, staff is committed to recommending a resolution that can be implemented rather than just be aspirational. Staff is hoping to return in September with a recommendation.

Mayor Pro Tem Horak stated a resolution could include some of the assumptions that must be met to attain the 2030 goal.
Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt and approve all items on the Consent Agenda.

RESULT: CONSENT CALENDAR ADOPTED [UNANIMOUS]
MOVER: Gerry Horak, District 6
SECONDER: Ross Cunniff, District 5
AYES: Martinez, Stephens, Summers, Troxell, Cunniff, Horak
ABSENT: Overbeck


This Ordinance, unanimously adopted on First Reading on June 19, 2018, appropriates $318,099 in additional fundraising dollars secured for the Whitewater Park Project. The Whitewater Park Project is scheduled to begin construction in summer 2018 and be completed in summer 2019.

2. Second Reading of Ordinance No. 079, 2018, Appropriating Prior Year Reserves in the Transportation Capital Expansion Fee Fund and the Transportation Fund and Authorizing the Transfer of Appropriations from the Transportation Capital Expansion Fee Fund and the Transportation Fund into the Capital Project Fund for the Suniga Road Improvements Project and Transferring Appropriations from the Capital Project Fund to the Cultural Services and Facilities Fund for the Art in Public Places Program. (Adopted)

This Ordinance, unanimously adopted on First Reading on June 19, 2018, appropriates $1,477,370 of Transportation Capital Expansion Fee (TCEF) Funds into the Capital Project Fund for the Suniga Road Improvements Project. In addition, this item authorizes the transfer of $14,774, one percent of the appropriated funds, from the Capital Project Fund to the Cultural Services and Facilities Fund for Art in Public Places. This project will construct Suniga Road to the City's four-lane arterial roadway standards between North College Avenue and Blondel Street, as identified on the City's Master Street Plan. Improvements include raised, protected bike lanes, pedestrian facilities, transit facilities, utility infrastructure, roadway improvements, and landscaped medians and parkways. The project will complement the existing section of Suniga Road, providing connectivity for surrounding developments from North College Avenue to Redwood Street.

3. Second Reading of Ordinance No. 080, 2018, Appropriating Prior Year Reserves in the Parking Fund for the Downtown Parking Sensor and Technology Project and Authorizing the Transfer of Appropriations from the Parking Fund to the Cultural Services and Facilities for the Art in Public Places Program. (Adopted)

This Ordinance, unanimously adopted on First Reading on June 19, 2018, appropriates $359,917 of additional funds from Parking Reserves into the capital project fund to complete the Downtown Parking Sensor and Technology Project and appropriates 1% of the project funds to Art in Public Places. The Project includes installing sensors and new payment technology in the three downtown parking structures and in approximately 3000 on-street parking spaces and 3 parking lots. This Project will allow Parking Services to collect occupancy and turnover rate data to improve management of downtown parking.

This Ordinance, unanimously adopted on First Reading on June 19, 2018, appropriates funds to purchase a public safety software solution for the Combined Regional Information Systems Project (CRISP). CRISP is a regional partnership with other Larimer County public safety agencies and provides a reliable public safety software solution that allows regional agencies to share police and fire data, manage incidents and provide for redundancy and continuity of operations. The current system is scheduled for replacement. The City of Loveland is joining CRISP and with the addition of Loveland and other project changes, staff is also requesting an additional appropriation of $1.98 million with the understanding that all but $288K will be reimbursed from both CRISP partner and member agencies.

5. **Second Reading of Ordinance No. 082, 2018, Appropriating Unanticipated Grant Revenue From Bloomberg Philanthropies in the Light and Power Fund for the Home Efficiency Loan Program/On-Bill Financing Program. (Adopted)**

This Ordinance, unanimously adopted on First Reading on June 19, 2018, appropriates $100,000 in grant revenues from Bloomberg Philanthropies, as part of the Bloomberg Mayor’s Challenge, into the Fort Collins Utilities Light and Power Enterprise fund to develop and capitalize the Utilities On-Bill Financing program (OBF). The OBF provides utility bill serviced loans for energy efficiency capital improvements, and the Bloomberg project within this program will focus on funding improvements to advance efficiency in rental properties.

6. **Items Relating to Amending City Code, Chapter 17 - Miscellaneous Offenses. (Adopted)**

   A. Second Reading of Ordinance No. 083, 2018, Amending Articles III, IV, VI, and VII of Chapter 17 of the Code of the City of Fort Collins Pertaining to Trespass, Theft, Littering, Criminal Mischief, Resisting Arrest, Throwing of Missiles, and Disorderly Conduct.

   B. Second Reading of Ordinance No. 084, 2018, Amending Article VII of Chapter 17 of the Code of the City of Fort Collins Pertaining to Staying on Medians.


Ordinance No. 083, 2018, amends certain Sections of Chapter 17 regarding trespass, theft, littering, criminal mischief, resisting arrest, throwing of missiles, and disorderly conduct to be consistent with state statutes. Ordinance No. 084, 2018, amends Section 17-122 to make that section more specific to prohibit staying on medians in locations where safety issues arise given median width, traffic volumes, and/or traffic speed. Ordinance No. 085, 2018, eliminates Section 17-127 in its entirety pertaining to panhandling. These Ordinance were unanimously adopted on First Reading on June 19, 2018.

7. **Items Relating to the Fire Protection Capital Expansion Fee. (Adopted)**

   A. First Reading of Ordinance No. 086, 2018, Amending Section 7.5-30 of the Code of the City of Fort Collins Relating to the Adjustment of the Fire Protection Capital Expansion Fee.

   B. First Reading of Ordinance No. 087, 2018, Appropriating Prior Year Reserves from the Fire Protection Capital Expansion Fee Account Within the Capital Expansion Fee Fund to Reimburse Building Permit Applicants for Overpayment of the Fire Protection Capital Expansion Fee.

The purpose of this item is to adjust the Fire Protection Capital Expansion Fee (Fire CEF) consistent with correct calculations and to appropriate funds from the Fire CEF Account in the Capital Expansion Fee Fund to reimburse fee payers for overpayments back to October 1, 2017. Consulting firm Duncan Associates discovered there was a cell reference error in their formula used for the City’s 2017 Capital Expansion Fee Study. This error caused the Fire CEF to be overstated by 19%. The City Council approved 75% of the proposed fee increases in the City’s Capital Expansion Fees (CEFs), which went into effect October 1, 2017. Due to the error in the Fire CEF calculation, the Fire CEF was set at 90%
instead of 75% of the 2017 proposed fee level. The estimated total refund due to fee payers is approximately $130,000.

8. **First Reading of Ordinance No. 088, 2018, Amending Section 2-31 of the Code of the City of Fort Collins Concerning Executive Sessions Pertaining to Telecommunication Facilities and Services, (Adopted)**

The purpose of this item is to update City Code consistent with the November 7, 2017 voter-approved Charter amendment providing for telecommunication facilities and services (broadband) as part of the City’s Electric Utility. The Charter amendment also authorized the Council and any board or commission established under the Charter amendment to go into executive session to consider issues of competition in providing telecommunication facilities and services. The proposed Ordinance amends City Code Section 2-31 to permit executive sessions for such purposes.


The purpose of this item is to certify to the Larimer County Assessor the percentages of property tax distributions that are to be allocated for the Downtown Development Authority by the Assessor as tax increment from the 2018 property taxes payable in 2019 to the City and to all other affected taxing entities.

- **END CONSENT**

- **CONSENT CALENDAR FOLLOW-UP**

Councilmember Cunniff commented on Item No. 8, **First Reading of Ordinance No. 088, 2018, Amending Section 2-31 of the Code of the City of Fort Collins Concerning Executive Sessions Pertaining to Telecommunication Facilities and Services**, noting the ballot item allows Council to be a governing body as part of this utility rather than delegating completely to an independent board.

Councilmember Martinez requested a brief explanation of Item No. 4, **Second Reading of Ordinance No. 081, 2018, Reappropriating Funds Previously Appropriated in 2017 but not Expended and not Encumbered in 2017, Appropriating Prior Year Reserves in the General Fund and Appropriating Unanticipated Revenue in the General Fund for the Fort Collins Police Services Combined Regional Information Systems Project; No. 5, Second Reading of Ordinance No. 082, 2018, Appropriating Unanticipated Grant Revenue From Bloomberg Philanthropies in the Light and Power Fund for the Home Efficiency Loan Program/On-Bill Financing Program;** and **No. 6, Items Relating to Amending City Code, Chapter 17-Miscellaneous Offenses.**

Carol Workman, Acting Director of Police Informational Services, stated the Combined Regional Information Systems Project (CRISP) is a regional project that allows a variety of agencies to share in a computer-aided dispatch records management system and jail system. The system allows officers and fire units in the field to see incoming calls for service, as well as share resources and back up one another. She noted the City of Loveland will be a new partner with CRISP.

Councilmember Martinez commended the CRISP effort as being a good example of regional cooperation.
Sean Carpenter, Economic Health Office, stated the Bloomberg Mayor’s Challenge was a $100,000 award received by the City as part of a national competition. Most of the award will be used to capitalize an on-bill loan fund for cost-effective, energy-efficiency loans for low to moderate income households.

Councilmember Summers asked how the information about the energy-efficiency loans can be accessed. Carpenter replied staff is working to roll out the information to the public and trade partners will also be informed. He stated a public announcement is expected in the next two weeks.

Joe Olson, Traffic Operations Director, stated Item No. 6 regulates standing on medians in the interest of public safety. Locations where this would apply have been identified based on traffic volumes, speeds, and median widths.

Mayor Pro Tem Horak commented on Item No. 1, Second Reading of Ordinance No. 078, 2018, Appropriating Unanticipated Revenue in the Capital Project Fund for the Poudre River Whitewater Park Project and Transferring Appropriations from the Capital Project Fund to the Cultural Services and Facilities Fund for the Art in Public Places Program for the Poudre River Whitewater Park Project, and asked when citizens should expect to see construction begin. Deputy City Manager Mihelich replied ground-breaking is expected at the end of August and the construction is expected to last one year.

**STAFF REPORTS**

**FC Lean**

City Manager Atteberry noted FC Lean is a specific investment made by Council in the City’s continuous improvement efforts for the 2017-2018 budget.

Lawrence Pollack, Budget Director, stated FC Lean was meant to start a continuous improvement program with two main goals: training and running projects. He noted the consulting budget has been reduced as training materials were produced in house.

Kirsten Silveira, Budget Department, stated FC Lean attempts to take a structured approach to problem solving across the City government. The 5-year goals for the program are to have 50% of employees trained in Lean Basics, 50% of managers and supervisors trained in the Lean Managers course, and 5% of employees trained in the Lean Leaders course, which is a 3-month boot camp style course with an applied project.

City Manager Atteberry stated the FC Lean program speaks to the concept of vision clarity, aligning resources, and building systems that support.

Mayor Pro Tem Horak questioned why it takes so long to train employees. Silveira replied she is currently the sole trainer and the Lean Basics course is provided once a month and the Lean Managers course every two months. Pollack stated the results of the project work are more important than training.

Mayor Pro Tem Horak stated 50% of employees being trained over 5 years is not a very aggressive program and questioned its importance if this is the case. City Manager Atteberry replied the 5-year goal is somewhat aspirational given other training needs in the organization.
North College Railroad Project

Brad Buckman, Special Projects Engineer, stated the City’s portion of funding the railroad crossing on North College Avenue is $98,000. During the College Avenue closure, July 16-19, the railroad crossing near Cherry will be replaced, the roadway will be milled and overlaid from Cherry to just north of the Poudre River bridge, a dangerous cottonwood tree near the corner of Mulberry and Mason will be removed, and signal work will be completed at the Cherry and College intersection. Buckman detailed the public outreach and engagement efforts and detour routes.

Mayor Troxell asked about the truck bypass route. Joe Olson, Traffic Engineer, replied the goal for through trucks is to keep them on I-25 up to Cheyenne; however, there is a chance some will take Owl Canyon.

Councilmember Cunniff asked if signal timing will be adjusted in advance for the detour routes. Olson replied in the affirmative but noted it is difficult to adjust perfectly to the volume.

Councilmember Cunniff asked if signage will be provided for affected businesses. Buckman replied vehicle access will be open for those businesses and signage will indicate businesses are open.

Mayor Pro Tem Horak asked how truck traffic on Shields, Taft Hill, and Overland will be monitored. Olson replied Traffic Operations will monitor traffic and modify if necessary.

Councilmember Cunniff asked if there is an opportunity to partner with CDOT during the closure to allow them to do some necessary construction. City Manager Atteberry replied staff will check with CDOT.

Councilmember Cunniff asked if there are replacement plans for the cottonwood tree that is planned to be removed. Buckman replied he would find out from the Forestry Department.

COUNCILMEMBER REPORTS

Councilmember Martinez reported on a tour of the County voting facility and thanked Matt Robenault, Downtown Development Authority Director, for helping him with a citizen.

Councilmember Cunniff reported on the opening of the Off the Hook Arts summer program.

Mayor Troxell reported on the Colorado Capital Conference and the Colorado Municipal League conference.

Councilmember Martinez reported on the Ann Azari lounge dedication.

Councilmember Stephens reported on the Colorado Municipal League conference and her participation in a panel discussing the Climate Action Plan. She also reported on the National League of Cities conference.

Mayor Pro Tem Horak reported on the public outreach event for the new park near the Streets facility. He also reported on the Poudre Fire Authority Board meeting.
Councilmember Summers reported on an Oakridge HOA meeting dealing with a water usage issue. He commended the City staff for being available and concerned.

**DISCUSSION ITEMS**

10. **Items Relating to Consideration of the Century Wireless Telecommunications Facility Addition of Permitted Use Request.** (Ordinance No. 089, 2018, Adopted as Amended on First Reading)

   A. **Public Hearing and First Reading of Ordinance No. 089, 2018, Approving the Addition of Permitted Use Associated with the Century Wireless Telecommunications Facility and Addition of Permitted Use Project Development Plan #170017.**

   **OR**

   B. **Public Hearing and First Reading of Ordinance No. 090, 2018, Denying the Addition of Permitted Use Associated with the Century Wireless Telecommunications Facility and Addition of Permitted Use Project Development Plan #170017.**

   The purpose of this item is to decide whether to approve, approve with conditions, or deny the Century Wireless Telecommunications Addition of Permitted Use request (APU) being made in conjunction with PDP170017. The APU would allow the addition of wireless telecommunication facilities as a permitted use on a parcel of land located in the Low Density Residential (RL) zone district. Wireless telecommunication facilities are not a permitted use in the RL. PDP170017 proposes a 55-foot tall wireless telecommunications facility disguised as a bell tower at 620 West Horsetooth Road.

Mayor Troxell discussed the Addition of a Permitted Use (APU) process.

City Attorney Daggett detailed Council’s role in this item and noted this is not an appeal of the Planning and Zoning Board recommendation. Council will make the final determination regarding the requested APU and, after that decision, the Planning and Zoning Board will hold a separate public hearing and make a final decision on the project development plan.

Mayor Troxell outlined the time allotments for each segment of the hearing.

Clay Frickey, City Planner, stated the applicant is requesting to construct a 55-foot tall wireless telecommunications facility, designed as a bell tower, at 620 West Horsetooth. The site is located in the low-density residential district which does not allow wireless telecommunications facilities. He discussed the APU process and stated the project must meet eight criteria in order to be recommended for approval: the use must be appropriate in the zone district to which it is added, the use conforms to the basic characteristics of the underlying zone district, the location, size, and design of the use is compatible with other uses of nearby properties and the proposal minimizes any negative impacts on those properties, the use must not create any more offensive noise, vibration, dust, glare, or other nuisances, the use must not change the predominate character of the surrounding area, the use must be compatible with the other listed permitted uses in the zone district, two neighborhood meetings must occur, and the use shall not be a medical marijuana business.

Frickey detailed the eight criteria and the ways in which this application meets them. The Planning and Zoning Board recommended approval of this project, with the condition of lowering the bell tower height to 45 feet.

Ken Bradtke, Atlas Tower Director of Operations, stated Atlas Tower owns, operates, and maintains communications towers and facilities and leases space to carriers on those towers. He
noted Atlas will attempt to co-locate another user on this tower after its approval. The Telecommunications Act states the regulation of the placement and construction of communications tower facilities by any local government shall not have the effect of prohibiting the provision of personal wireless service. He discussed the coverage and capacity issues around the proposed tower and stated no other suitable location in the area has been found and there is a need for additional coverage for emergency reasons. Bradtke discussed the site selection process and showed photo simulations and drawings of the bell tower structure. He noted the discrepancy between the zoning drawings and photo simulations brought up during the Planning and Zoning Board hearing has been corrected. Bradtke discussed the need for the 55-foot height, noting it is necessary for the best coverage and co-location options. There is a negligible aesthetic difference between a 45 and 55-foot tower from a pedestrian level and an ornamental bell tower could be administratively approved at a height of 100 feet.

Mike Moses stated he lives about a half-mile from the proposed structure and has no cell signal at his house. He encouraged Council to approve the tower at its full height.

Bradtke stated a 55-foot tower would limit the need for future towers in the area and provide the best service.

Councilmember Martinez asked if Police Services officers are having trouble getting data in the area. City Manager Atteberry replied in the affirmative.

Councilmember Martinez asked how officers compensate for that issue. Tyler Marr, City Manager’s Office, replied officers struggle to compensate for it and use other technology such as radios instead of their laptops. Greg Yeager, Police Services Deputy Chief, stated the laptops provide other functionality such as active maps and real time call data. Using a single radio channel does cause some issues; however, he does not have any hard data regarding this affecting response times.

Councilmember Cunniff noted the Planning and Zoning Board is recommending a 45-foot height based on aesthetics and compatibility with the surrounding area. He asked if the applicant has an estimate of how the coverage changes between a 45 and 55-foot tower. Bradtke replied they do not have exact plots; however, Verizon said 55 feet was the height they needed prior to significant degradation occurring.

Mayor Troxell noted Council must determine whether the requested telecommunications facility on this specific parcel in the RL zone district meets the standards set by the Land Use Code.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Stephens, to adopt Ordinance No. 089, 2017, on First Reading.

Mayor Pro Tem Horak supported allowing the tower at its full height. He stated the Planning and Zoning Board did not make the reason for its recommended height decrease abundantly clear. The towers need to be strategically located in the community not only to provide service to citizens, but to provide for their safety.

Councilmember Stephens stated she would support the motion as cell phone coverage in the area is a large concern. She supported allowing the full height as that would broaden the tower’s use.
Councilmember Martinez stated he would support the motion particularly given its impact on community safety.

Councilmember Cunniff stated he does not have a specific opinion on the height; however, he expressed concern about the bulk of the proposed structure. He stated he would support the motion on First Reading but asked if the applicant could consider using different materials to decrease the apparent bulk of the top of the tower prior to Second Reading.

Councilmember Summers supported allowing the tower at its full height.

Mayor Troxell supported allowing the tower at its full height and commended staff for their comparative work.

City Attorney Daggett suggested eliminating the Ordinance language related to conditions. Mayor Pro Tem Horak and Councilmember Stephens accepted that change as part of their motion.

The vote on the motion was as follows: Yeas: Martinez, Troxell, Cunniff, Stephens, Summers and Horak. Nays: none.

THE MOTION CARRIED.

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<tr>
<th>RESULT:</th>
<th>ORDINANCE NO. 089, 2018 ADOPTED ON AS AMENDED ON FIRST READING</th>
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<tr>
<td>MOVER:</td>
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<td>AYES:</td>
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<td>ABSENT:</td>
<td>Overbeck</td>
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(Secretary’s Note: The Council took a brief recess at this point in the meeting.)

11. **Items Relating to Planned Unit Development (PUD) Regulations.** (Adopted on First Reading)

   A. First Reading of Ordinance No. 091, 2018, Amending Articles 1, 2, 4, and 5 of the Land Use Code Regarding Planned Unit Development Overlay Regulations.

   B. First Reading of Ordinance No. 092, 2018, Making Policy Revisions to the Larimer County Urban Area Street Standards.

The purpose of this item is to create an optional Planned Unit Development (PUD) process and regulations within the Land Use Code applicable to parcels 50 acres or greater in size being developed in multiple phases. Under the Ordinance, a PUD overlay designation would be applied to the City’s zoning map at the time a PUD Master Plan is approved. The PUD Master Plan provides an overall vision for the long-term development, including the project phasing, and the elements for which the applicant has requested entitlement to long-term vested rights of the uses, densities, modifications to land use design standards, and variances to engineering standards. Each development phase is subject to the Project Development Plan (PDP) process.

Tom Leeson, Community Development and Neighborhood Services Director, stated this item would add a Planned Unit Development (PUD) process to the Land Use Code. The language has been written collaboratively with the City Attorney’s Office, outside counsel, the development community, and the Planning and Zoning Board.
Cameron Gloss, Planning Director, stated this item would be an optional process to the Land Use Code which provides an applicant the opportunity to provide public benefit that would otherwise not be achieved through the Land Use Code, in exchange for some flexibility with regard to the use of land and design standards. Some of the public benefits include diversification of land use, innovation and land development, higher energy and water efficiency, and compatibility with surrounding neighborhoods.

Gloss stated the PUD process would typically be considered for larger projects developed in multiple phases, perhaps over several years, where flexibility in land use is desired. The underlying zoning would be retained, and an PUD Master Plan would become the governing document. The overlay zone allows the applicant the vesting of rights for land use and intensity and each phase of the development would go through a project development plan. The present proposal is for a 50-acre minimum threshold, 24 of which exist within the city limits. Parcels of 640 acres or larger would be considered a legislative review and would come before Council for consideration of a PUD Master Plan. Parcels of a lesser size would go through the Planning and Zoning Board.

Gloss stated the public process allows input during at least two meetings for the Master Plan process and at least one meeting for each project development plan.

Councilmember Cunniff expressed concern this process has been put through in a much quicker fashion than would normally occur due to the imminence of the Montava development. Moving so quickly with policy-related changes to benefit a specific project might create the impression the City or Council are favorable toward that project.

Councilmember Cunniff asked why Ordinance No. 092, 2018 is needed and asked why the language is not specific to the PUD. Brad Yatabe, Assistant City Attorney, replied the variance procedure addressed in Ordinance No. 092, 2018 is part of the Larimer County Urban Area Street Standards. The variance procedure, as written, addresses a couple specific processes; however, it was not clear that the process related to the PUD would be included as part of that. A lot of the flexibility built into the PUD process is to address potential variances to development standards within and outside the Land Use Code. The PUD is set up to provide the overlay to allow for future phasing and variances could be applied to a PDP or final plan.

Councilmember Cunniff asked why the word “significant” is omitted from the objectives in Ordinance No. 091, 2018. Gloss replied that is something staff could consider changing prior to Second Reading. He added the intent is these developments will be held to a higher standard.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Martinez, to adopt Ordinance No. 091, 2018, on First Reading.

Councilmember Cunniff stated he would support the motion as it is better to restrict this to larger parcels while evaluating the impact of the overall policy to the rest of the city. He expressed concern about giving the impression this is serving only the development community. City Manager Atteberry stated that has not been the intent at all and stated staff will attempt to better communicate the objectives.

Councilmember Martinez disagreed this process seems rushed.
Mayor Troxell stated he would support the motion adding there is evidence in the community the PUD process works.

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<td>Overbeck</td>
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Mayor Pro Tem Horak made a motion, seconded by Councilmember Martinez, to adopt Ordinance No. 092, 2018, on First Reading.

Councilmember Cunniff requested additional information for the applicability of this beyond PUDs prior to Second Reading.

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● OTHER BUSINESS

Mayor Pro Tem Horak made a motion, seconded by Councilmember Stephens, to adjourn to 6:00 PM, Tuesday, July 10, 2018, for the purpose of considering an ordinance appropriating funds for a utility billing system and such other business as may come before the Council.

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● ADJOURNMENT

The meeting adjourned at 8:38 PM.

______________________________
Mayor

______________________________
ATTEST:

______________________________
City Clerk
July 10, 2018

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Adjourned Meeting – 6:00 PM

ROLL CALL

PRESENT: Martinez, Stephens, Summers, Overbeck (Remote), Troxell, Horak
ABSENT: Cunniff
Staff present: Atteberry, Daggett, Coldiron

1. First Reading of Ordinance No. 093, 2018, Appropriating Prior Year Reserves in the Light and Power Fund, the Water Funds, the Wastewater Fund and the Storm Drainage Fund for the Utilities Customer Information Billing System Project. (Adopted on First Reading)

The purpose of this item is to appropriate $6,297,001 to purchase a Customer Information System with an Operational Support System (CIS/OSS) for electric, water, wastewater, stormwater and broadband billing services, replacing the 18-year old billing system. The CIS/OSS is the billing system that will collect revenues for utility and broadband services, serving as the accounting ledger for Utilities revenue, which currently generates over $200 million in annual total revenue through an average of 80,000 monthly utility bills and service requests for residential and commercial customers.

The CIS/OSS will be the system interface customers rely on for accurate utility and broadband billing that includes a robust customer self-service platform that will assist customers towards understanding interval utility usage and costs in order to make energy and water conservation/efficiency investments.

Staff has completed the robust Request for Proposal (RFP) process for a comprehensive integrated CIS/OSS solution and selected a vendor that will provide the solution with the following key technology deliverables:

- delivering timely and accurate customer utility and broadband bills
- providing customer web-portal interfaces for utility and broadband services
- maintaining accurate customer contact information
- processing customer payments and service requests
- supporting exceptional customer service experience through on-line services
- increasing operational efficiency with advanced metering infrastructure
- providing enhanced rate, product, payment and service offerings
- automating Broadband service provisioning; and
- including mobile workforce management functionality to enhance field services

Mike Beckstead, Chief Financial Officer, stated this billing system and operating system would cover all of the City’s utilities, including broadband. Staff is still in negotiations with the preferred vendor, but this item would appropriate funds to meet the broadband timeline needs.

Lisa Rosintoski, Deputy Director of Utilities, discussed the cyber security, self-service capability, state-of-the-art technology, and configurable bill formats of the operating system.

Beckstead stated both vendor finalists were brought in for two days to demonstrate how systems provide functionality. Significant reference checking was completed with the preferred vendor. The cost is $9.5 million for the implementation and transition team, $6.3 million of which is in this appropriation.
Rosintoski outlined the proposed timeline for the operating system rollout and its convergence with the broadband rollout.

Councilmember Stephens asked if broadband customers will receive a separate bill or if all items will be on one utility bill. Beckstead replied the intent is to have a single bill for all Fort Collins utilities.

Mayor Troxell asked if there is a hardware component to this change. Dan Coldiron, Chief Information Officer, replied this budget includes a full implementation of the hardware and database infrastructure, including disaster recovery.

Councilmember Martinez asked if the preferred vendor is an American company. Beckstead replied it is an American company; however, their development operations are in South America. Fort Collins would be its first North American client.

Mayor Pro Tem Horak asked if these expenditures are in the capital plans for each utility. Beckstead replied in the affirmative.

Councilmember Martinez asked if the software is being designed outside of the United States. Beckstead replied its development office is in Latin America, which is typical for software companies. The agreement would be with a United States registered company.

Councilmember Martinez asked if the foreign status could provide legal difficulties. City Attorney Daggett replied there are a lot of issues with these contracts related to responsible parties and providing protections for the City in terms of subcontractors.

City Manager Atteberry noted the other final vendor is a non-United States company as well. He stated there are safeguards in the contract and he could provide those under confidential cover.

Mayor Pro Tem Horak asked why the appropriation ordinance is being heard prior to signing a contract. Beckstead replied the broadband timing necessitates having the billing system up and running; therefore, the negotiations need to be complete and the contract needs to be signed by July 27.

Councilmember Overbeck asked how long staff has been searching for vendors. Beckstead replied the RFP for a vendor that could handle all five utilities was issued in February. Rosintoski replied the City partnered with a vendor to look at the scope of available comprehensive solutions in 2016.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Overbeck, to adopt Ordinance No. 093, 2018, on First Reading.

Mayor Pro Tem Horak stated he would support the item on First Reading but expressed concern there was no additional information on the capital budgets. He asked whether the City would be receiving some type of benefit for being the first customer in the United States.

City Manager Atteberry stated billing systems are often not seen by the public and this system will bill $200 million annually; therefore, it is important for this system to be done properly.
Councilmember Martinez stated he would support the motion cautiously given his concerns about being the first United States customer and his questions about how to hold the company accountable.

Mayor Troxell stated he would support the motion and discussed the importance of the successful completion of the project.

Councilmember Stephens expressed the importance of making the bills easier to understand and preemptively educating citizens on the new bill format.

RESULT: ORDINANCE NO. 093, 2018, ADOPTED ON FIRST READING [UNANIMOUS]
MOVER: Gerry Horak, District 6
SECONDER: Bob Overbeck, District 1
AYES: Martinez, Stephens, Summers, Overbeck, Troxell, Horak
ABSENT: Cunniff

• OTHER BUSINESS

Councilmember Martinez commented on the Police Services report on issues with transient residents. He stated more dynamic solutions need to be considered.

• ADJOURNMENT

The meeting adjourned at 6:28 PM.

______________________________
Mayor

ATTEST:

______________________________
City Clerk
ROLL CALL

PRESENT: Martinez, Stephens, Summers, Overbeck, Cunniff, Horak
ABSENT: Troxell
Staff Present: Atteberry, Daggett, Coldiron

AGENDA REVIEW: CITY MANAGER

City Manager Atteberry stated there were no changes to the published agenda.

CITIZEN PARTICIPATION

Nick Cullen discussed his experience with domestic violence and subsequent mental health issues. He encouraged people to participate in a longboarding awareness event September 1.

Jody Deschanes discussed the need for transparency in elections and encouraged Council to require “paid for by” statements on election materials. She opposed increasing the independent expenditure threshold to $1,000.

Matthew Fugate, Tilted Halo Services, thanked Councilmember Martinez for being the celebrity bartender at their event at Pour Brothers. He discussed the organization’s goals of helping citizens with temporary affordable housing.

Kathleen Schmidt discussed the importance of transparency in government and elections. She expressed concern about increasing the independent expenditure threshold to $1,000 and about not including independent expenditures in the “paid for by” disclaimer on future campaign contributions.

Eric Sutherland discussed Item No. 3, Second Reading of Ordinance No. 088, 2018, Amending Section 2-31 of the Code of the City of Fort Collins Concerning Executive Sessions Pertaining to Telecommunication Facilities and Services, stating state law should prevail in this circumstance. He expressed concern about the legality of the item.

Mila Thornton read comments from Marge Norskog related to her concerns about increasing the independent expenditure threshold to $1,000 and removing “paid for by” requirements for independent expenditures. She stated these changes should be more thoughtfully studied and discussed prior to being considered by Council.

Lynn Thompson spoke on behalf of residents of Choice House, which is slated to close July 31. Residents should not be kicked out of the house and 90-day treatment programs.

Benjamin Delgo, Choice House resident, stated residents need the stability of the house and mental health programs.

Kathryn (no last name given), Choice House resident, stated residents need the stability of the house and mental health programs.
Janet Rossi, Represent Us Fort Collins, opposed increasing the independent expenditure threshold to $1,000 and removing “paid for by” requirements for independent expenditures. She also encouraged Council to provide assistance to Choice House residents.

Steve Raymer, Fort Collins Mennonite Fellowship Pastor, stated the best way to prevent homelessness is to keep people in their homes. He encouraged Council to put resources toward assisting the Choice House residents.

Chris (no last name given) opposed increasing the independent expenditure threshold to $1,000.

- CITIZEN PARTICIPATION FOLLOW-UP

Mayor Pro Tem Horak summarized the citizen comments.

Councilmember Stephens stated she was made aware of the Choice House situation last night and would like to receive input from staff on possible ways to assist.

Councilmember Martinez requested staff reach out to Kathryn regarding her need of a CPAP machine.

Jackie Kozak-Thiel, Social Sustainability Director, stated staff is familiar with the facility but have not been closely involved in the situation. Staff will mobilize available resources to assess the situation.

Councilmember Cunniff requested Sustainability staff reach out to Mr. Cullen regarding his efforts.

Councilmember Stephens thanked the speakers and noted the election topic will be discussed at the work session. She also stated requirements for “paid for by” statements have not been removed as they were not previously required.

Councilmember Overbeck discussed the resources available at Crossroads Safehouse.

- CONSENT CALENDAR

Mayor Pro Tem Horak noted Item Nos. 13, Items Relating to the East Gateway Annexation, and 14, First Reading of Ordinance No. 104, 2018, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the East Gateway Annexation to the City of Fort Collins, Colorado, and Approving Corresponding Changes to the Residential Neighborhood Sign District Map, are Public Hearings.

A citizen withdrew Item No. 15, Resolution 2018-070 Approving a Process for Certain Boards and Commissions to Conduct Joint Working Meetings, from the Consent Agenda.

Councilmember Cunniff made a motion, seconded by Councilmember Overbeck, to adopt and approve all items not withdrawn from the Consent Agenda.
RESULT: CONSENT CALENDAR ADOPTED [UNANIMOUS]
MOVER: Ross Cunniff, District 5
SECONDER: Bob Overbeck, District 1
AYES: Martinez, Stephens, Summers, Overbeck, Cunniff, Horak
ABSENT: Troxell

1. Consideration and Approval of the Minutes of the June 19, 2018, Regular Council Meeting. (Adopted)

The purpose of this item is to approve the minutes from the June 19, 2018, Regular Council meeting.

2. Items Relating to the Fire Protection Capital Expansion Fee. (Adopted)

A. Second Reading of Ordinance No. 086, 2018, Amending Section 7.5-30 of the Code of the City of Fort Collins Relating to the Adjustment of the Fire Protection Capital Expansion Fee.

B. Second Reading of Ordinance No. 087, 2018, Appropriating Prior Year Reserves from the Fire Protection Capital Expansion Fee Account Within the Capital Expansion Fee Fund to Reimburse Building Permit Applicants for Overpayment of the Fire Protection Capital Expansion Fee.

These Ordinances, unanimously adopted on First Reading on July 3, 2018, adjust the Fire Protection Capital Expansion Fee (Fire CEF) to be consistent with correct calculations and appropriate funds from the Fire CEF Account in the Capital Expansion Fee Fund to reimburse fee payers for overpayments back to October 1, 2017. Consulting firm Duncan Associates discovered there was a cell reference error in their formula used for the City's 2017 Capital Expansion Fee Study. This error caused the Fire CEF to be overstated by 19%. The City Council approved 75% of the proposed fee increases in the City's Capital Expansion Fees (CEFs), which went into effect October 1, 2017. Due to the error in the Fire CEF calculation, the Fire CEF was set at 90% instead of 75% of the 2017 proposed fee level. The estimated total refund due to fee payers is approximately $130,000.


This Ordinance, unanimously adopted on First Reading on July 3, 2018, amends City Code Section 2-31 to permit executive sessions to consider issues of competition in providing telecommunication facilities and services. This update to City Code is consistent with the November 7, 2017 voter-approved Charter amendment providing for telecommunication facilities and services (broadband) as part of the City’s Electric Utility. The Charter amendment also authorized the Council and any board or commission established under the Charter amendment to go into executive session for such purposes.

4. Second Reading of Ordinance No. 089, 2018, Approving the Addition of Permitted Use Associated with the Century Wireless Telecommunications Facility and Addition of Permitted Use Project Development Plan #170017. (Adopted)

This Ordinance, unanimously adopted on First Reading on July 3, 2018, approves the Century Wireless Telecommunications Addition of Permitted Use request (APU) being made in conjunction with PDP170017. The APU allows the addition of wireless telecommunication facilities as a permitted use on a parcel of land located in the Low Density Residential (RL) zone district. Wireless telecommunication facilities are not a permitted use in the RL. PDP170017 proposes a 55-foot tall wireless telecommunications facility disguised as a bell tower at 620 West Horsetooth Road.
5. **Items Relating to Planned Unit Development (PUD) Regulations.** (Adopted)

   A. Second Reading of Ordinance No. 091, 2018, Amending Articles 1, 2, 4, and 5 of the Land Use Code Regarding Planned Unit Development Overlay Regulations.

   B. Second Reading of Ordinance No. 092, 2018, Making Policy Revisions to the Larimer County Urban Area Street Standards.

These Ordinances, unanimously adopted on First Reading on July 3, 2018, create an optional Planned Unit Development (PUD) process and regulations within the Land Use Code applicable to parcels 50 acres or greater in size being developed in multiple phases. Under Ordinance No. 091, 2018, a PUD overlay designation would be applied to the City’s zoning map at the time a PUD Master Plan is approved. The PUD Master Plan provides an overall vision for the long-term development, including the project phasing, and the elements for which the applicant has requested entitlement to long-term vested rights of the uses, densities, modifications to land use design standards, and variances to engineering standards. Each development phase is subject to the Project Development Plan (PDP) process.

In response to Council discussion on First Reading, staff has reviewed the language describing the purposes of the PUD Overlay process, and the word “significantly” has been added to more fully capture the intent of the language regarding public benefits required. This change appears on page 14 of Ordinance No. 091, 2018. Additionally, the amendment to the Larimer County Urban Area Street Standards in Ordinance No. 092, 2018, as applicable to the City of Fort Collins, was narrowed to allow the consideration of variances related to applications for Planned Unit Development Overlays or Project Development Plans and Final Plans within Planned Unit Development Overlays.

6. **Second Reading of Ordinance No. 093, 2018, Appropriating Prior Year Reserves in the Light and Power Fund, the Water Funds, the Wastewater Fund and the Storm Drainage Fund for the Utilities Customer Information Billing System Project.** (Adopted)

This Ordinance, unanimously adopted on First Reading on July 10, 2018, appropriates $6,297,001 to purchase a Customer Information System with an Operational Support System (CIS/OSS) for electric, water, wastewater, stormwater and broadband billing services, replacing the 18-year old billing system. The CIS/OSS is the billing system that will collect revenues for utility and broadband services, serving as the accounting ledger for Utilities revenue, which currently generates over $200 million in annual total revenue through an average of 80,000 monthly utility bills and service requests for residential and commercial customers.

7. **First Reading of Ordinance No. 094, 2018, Appropriating Unanticipated Grant Revenue From the Colorado Water Conservation Board and Great Outdoors Colorado in the Natural Areas Fund.** (Adopted)

The purpose of this item is to appropriate two grants totaling $300,000 into the Natural Areas 2018 budget. The first grant of $200,000 was awarded by the Colorado Water Conservation Board (CWCB) through its Watershed Restoration grant program, and the second is a $100,000 grant awarded by Great Outdoors Colorado (GOCO) through its Habitat Restoration grant program. The CWCB grant was awarded to support two related initiatives focused on improving the health of the Poudre River fish communities. Half the grant ($100,000) will fund the installation of a fish ladder on the Timnath Reservoir Inlet Ditch diversion dam. The second half of the CWCB funds ($100,000) will enable a fish movement monitoring study on the Poudre to better understand the efficacy of fish ladders. The GOCO grant will support Poudre River and floodplain habitat restoration at Kingfisher Point Natural Area.
8. **First Reading of Ordinance No. 095, 2018, Appropriating Unanticipated Grant Revenue in the General Fund and Transferring Funds from the Community Development and Neighborhood Services Operating Budget to the Grant Budget for the Restorative Justice Program.** (Adopted)

   The purpose of this item is to appropriate grant revenue to fund Restorative Justice Services within Community Development and Neighborhood Services (CDNS). A grant in the amount of $67,612 has been received from the Colorado Division of Criminal Justice (DCJ) Juvenile Diversion fund for the continued operation of Restorative Justice Services, which includes the RESTORE program for shoplifting offenses, and the Restorative Justice Conferencing Program (RJCP) and Reflect for all other offenses. The grant period for is July 1, 2018 to June 30, 2019. This is the second year in a 3-year cycle for the Juvenile Diversion grant.

9. **First Reading of Ordinance No. 096, 2018, Appropriating Prior Year Reserves in the Parking Fund for the Replacement of a Parking Enforcement Patrol Vehicle and License Plate Recognition System.** (Adopted)

   The purpose of this item is to appropriate $80,000 from Parking Services Reserves to replace a parking enforcement patrol vehicle and its license plate recognition system.

10. **Items Relating to the City's Various Tax Provisions.** (Adopted)

   A. **First Reading of Ordinance No. 097, 2018, Amending Article II of Chapter 25 of the Code of the City of Fort Collins Concerning the City’s Tax Rebate Programs.**

   B. **First Reading of Ordinance No. 098, 2018, Amending Article III of Chapter 25 of the Code of the City of Fort Collins Concerning the Imposition, Collection, and Enforcement of the City’s Sales and Use Taxes.**

   C. **First Reading of Ordinance No. 099, 2018, Amending Article IV of Chapter 25 of the Code of the City of Fort Collins Concerning the City’s Lodging Tax.**

   D. **First Reading of Ordinance No. 100, 2018, Amending Article V of Chapter 25 of the Code of the City of Fort Collins Concerning the City’s Telephone Occupation Tax.**

   The purpose of this item is to amend City Code sections in Chapter 25 to provide clarification for definitions and the application of various sections of the Code, and to make clear the City may use a third-party auditor or collections service for delinquent accounts.

11. **First Reading of Ordinance No. 101, 2018, Amending Section 8-158 of the Code of the City of Fort Collins Pertaining to the City’s Procurement of Services for an Annual Independent Audit of the City’s Financial Records.** (Adopted)

   The purpose of this item is to amend the City Code to accommodate the roles of the Council Finance Committee and the City Council in procuring external audit services for the City. An important element of auditor independence is that the selection of the external auditor is made by a governing body rather than by the staff of the auditee. The proposed Code section would (1) allow the selection process of an external audit services to take place at publicly held meetings and (2) define the maximum service period of an incumbent auditor.

12. **First Reading of Ordinance No. 102, 2018, Amending Article IV, Division 2 of Chapter 23 of the Code of the City of Fort Collins Regarding Real Property.** (Adopted)

   The purpose of this item is to amend various Sections of Article IV, Division 2 of Chapter 23 in City Code as it pertains to real property. Article IV was reviewed to find areas where the language could be improved and to make changes to these areas to streamline the process.
13. **Items Relating to the East Gateway Annexation. (Adopted)**

   A. Resolution 2018-069 Setting Forth Findings of Fact and Determinations Regarding the East Gateway Annexation.

   B. Public Hearing and First Reading of Ordinance No. 103, 2018, Annexing the Property Known as the East Gateway Annexation to the City of Fort Collins, Colorado.

   The purpose of this item is to annex 1.77 acres of land consisting of three properties into the City of Fort Collins. The properties are located approximately ¼ mile northeast of the Interstate 25 and East Mulberry Street interchange. The annexation will create the East Mulberry Enclave encompassing the East Mulberry Corridor. The Initiating Resolution was adopted on June 5, 2018. A related item to zone the annexed property is presented as the next item on this Agenda.

14. **First Reading of Ordinance No. 104, 2018, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the East Gateway Annexation to the City of Fort Collins, Colorado, and Approving Corresponding Changes to the Residential Neighborhood Sign District Map. (Adopted)**

   This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 1(d) of the Council’s Rules of Meeting Procedures adopted in Resolution 2018-034.

   The purpose of this item is to zone the property included in the East Gateway Annexation into the General Commercial (G-C), Low Density Mixed Use Neighborhood (L-M-I), and Industrial (I) zone districts.

15. **Resolution 2018-071 Approving Fort Fund Grant Disbursements. (Adopted)**

   The purpose of this item is to approve Fort Fund grants from the Cultural Development and Programming and Tourism Programming Accounts for the selected community and tourism events, based upon the recommendations of the Cultural Resources Board.

- **END CONSENT**

- **CONSENT CALENDAR FOLLOW-UP**

   Mayor Pro Tem Horak discussed Item No. 6, *Second Reading of Ordinance No. 093, 2018, Appropriating Prior Year Reserves in the Light and Power Fund, the Water Funds, the Wastewater Fund and the Storm Drainage Fund for the Utilities Customer Information Billing System Project*, and stated he would like additional detail related to the variable cost. City Manager Atteberry replied regular updates will be provided to the Finance Committee.

- **STAFF REPORTS**

   Chad Crager, City Engineer, discussed the environmental impact statement created by Colorado Department of Transportation for I-25 in 2011. He detailed the upcoming project to add a lane from Highway 14 to the south; construction will begin in August and wrap up in 2021. Crager discussed transportation-related ballot initiatives.

   Mayor Pro Tem Horak noted a trail under the I-25 Poudre River bridge will connect Fort Collins with Timnath by the end of 2021. Additionally, the Big Thompson bridge will also be brought to its final design.
Councilmember Cunniff asked if this presentation is available on the City’s website. Crager replied that could be arranged.

Councilmember Cunniff encouraged staff to examine placing staff reports on the website.

**COUNCILMEMBER REPORTS**

Councilmember Cunniff reported on the Air Quality Advisory Board meeting. He suggested Boards and Commissions be informed when Council discusses their recommendations.

Councilmember Overbeck reported the Poudre Heritage Alliance received a $4,000 grant from the Fort Collins Rotary Club to support learning in the watershed program.

Councilmember Martinez reported on the Downtown Development Authority’s opening of the new two-tiered bicycle racks in Old Town.

Councilmember Cunniff reported on the Finance Committee meeting during which the audit findings were presented. He congratulated staff on the successful audit.

**DISCUSSION ITEMS**

*No Discussion Items Scheduled*

**CONSIDERATION OF CITIZEN-PULLED CONSENT ITEMS**


   The purpose of this item is to outline a structure to allow multiple boards and commissions to work cross-functionally on two (yet to be determined) projects to further Triple Bottom Line thinking across boards and commissions.

Ginny Sawyer, City Manager’s Office, stated this item is a pilot study of allowing various boards and commissions to hold joint meetings. She stated two Economic Advisory Boardmembers presented this proposal to the Futures Committee in May, suggesting six boards and commissions in the sustainability service area meet two times per year for an extended meeting to use a triple bottom line analysis and work cross-functionally. The formation of a steering committee to help develop the process was also discussed.

Ted Settle, Economic Advisory Commission Vice Chair, stated this entire project is about citizen engagement and encouraged Council to recognize the role of the steering committee in the Resolution.

Councilmember Overbeck requested information regarding citizen engagement. Sawyer replied this Resolution is the first step in the process and it was written broadly so as to allow the process to continue without further Council action. She stated staff fully realizes the importance of citizen engagement in the process.

Councilmember Overbeck asked about the planned timeframe of the pilot. Sawyer replied the plan is to conduct at least two meetings in the next year before returning to Council with feedback.
Councilmember Cunniff stated the Air Quality Advisory Board was concerned about the staff-driven language in the Resolution. Sawyer replied staff is hoping to find relevant topics based on Council’s 6-month calendar and propose those topics to the boards. She stated Council could also suggest topics.

Mayor Pro Tem Horak asked Mr. Settle if he supports this item. Mr. Settle replied in the affirmative but stated it was an omission to not identify the role of the steering committee in the Resolution, given this is a citizen engagement effort.

Councilmember Overbeck made a motion, seconded by Councilmember Martinez, to adopt Resolution 2018-070.

Councilmember Overbeck stated he would support the motion.

Councilmember Stephens commented on the presentation received by the Futures Committee and stated she would support the motion.

Councilmember Summers stated this effort came about as a result of citizen engagement.

| RESULT: RESOLUTION 2018-070 ADOPTED [UNANIMOUS] |
| MOVER: Bob Overbeck, District 1 |
| SECONDER: Ray Martinez, District 2 |
| AYES: Martinez, Stephens, Summers, Overbeck, Cunniff, Horak |
| ABSENT: Troxell |

● OTHER BUSINESS

Councilmember Overbeck made a motion, seconded by Councilmember Cunniff, to cancel the August 7, 2018 Regular Council meeting as permitted under Section 2-28 of the City Code so that Councilmembers may participate in Neighborhood Night Out events.

| RESULT: ADOPTED [UNANIMOUS] |
| MOVER: Bob Overbeck, District 1 |
| SECONDER: Ross Cunniff, District 5 |
| AYES: Martinez, Stephens, Summers, Overbeck, Cunniff, Horak |
| ABSENT: Troxell |

● ADJOURNMENT

The meeting adjourned at 7:51 PM.

______________________________
Mayor

______________________________
City Clerk
ROLL CALL

PRESENT: Martinez, Stephens, Summers, Overbeck (Remote), Troxell, Horak
ABSENT: Cunniff
Staff present: Atteberry, Daggett, Coldiron

DISCUSSION ITEMS

1. Consideration of Motion for Executive Session. (Adopted)

This meeting was called for this date and time to allow the Council to consider adjourning into Executive Session to discuss Collective Bargaining negotiations with the Fraternal Order of Police.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Overbeck, to go into executive session for the purpose of meeting with the City Attorney and City management staff to consider and discuss strategy matters related to the negotiations with the Fort Collins Fraternal Order of Police Lodge #3, as permitted under Section 2-31(a)(1)(d) of City Code and Colorado Revised Statute Section 24-6-402(4)(e).

RESULT: ADOPTED [UNANIMOUS]
MOVER: Gerry Horak, District 6
SECONDER: Bob Overbeck, District 1
AYES: Martinez, Stephens, Summers, Overbeck, Troxell, Horak
ABSENT: Cunniff

ADJOURNMENT

The meeting adjourned at 7:00 PM.

______________________________
Mayor

ATTEST:

______________________________
City Clerk
AGENDA ITEM SUMMARY
August 21, 2018

STAFF
Jennifer Shanahan, Watershed Planner
Jody Hurst, Legal

SUBJECT
Second Reading of Ordinance No. 094, 2018, Appropriating Unanticipated Grant Revenue From the Colorado Water Conservation Board and Great Outdoors Colorado in the Natural Areas Fund.

EXECUTIVE SUMMARY
This Ordinance, unanimously adopted on First Reading on July 17, 2018, appropriates two grants totaling $300,000 into the Natural Areas 2018 budget. The first grant of $200,000 was awarded by the Colorado Water Conservation Board (CWCB) through its Watershed Restoration grant program, and the second is a $100,000 grant awarded by Great Outdoors Colorado (GOCO) through its Habitat Restoration grant program. The CWCB grant was awarded to support two related initiatives focused on improving the health of the Poudre River fish communities. Half the grant ($100,000) will fund the installation of a fish ladder on the Timnath Reservoir Inlet Ditch diversion dam. The second half of the CWCB funds ($100,000) will enable a fish movement monitoring study on the Poudre to better understand the efficacy of fish ladders. The GOCO grant will support Poudre River and floodplain habitat restoration at Kingfisher Point Natural Area.

STAFF RECOMMENDATION
Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS
1. First Reading Agenda Item Summary, July 17, 2018 (w/o attachments) (PDF)
2. Ordinance No. 094, 2018 (PDF)
AGENDA ITEM SUMMARY
City Council
July 17, 2018

STAFF

Jennifer Shanahan, Watershed Planner
Jody Hurst, Legal

SUBJECT

First Reading of Ordinance No. 094, 2018, Appropriating Unanticipated Grant Revenue From the Colorado Water Conservation Board and Great Outdoors Colorado in the Natural Areas Fund.

EXECUTIVE SUMMARY

The purpose of this item is to appropriate two grants totaling $300,000 into the Natural Areas 2018 budget. The first grant of $200,000 was awarded by the Colorado Water Conservation Board (CWCB) through its Watershed Restoration grant program, and the second is a $100,000 grant awarded by Great Outdoors Colorado (GOCO) through its Habitat Restoration grant program. The CWCB grant was awarded to support two related initiatives focused on improving the health of the Poudre River fish communities. Half the grant ($100,000) will fund the installation of a fish ladder on the Timnath Reservoir Inlet Ditch diversion dam. The second half of the CWCB funds ($100,000) will enable a fish movement monitoring study on the Poudre to better understand the efficacy of fish ladders. The GOCO grant will support Poudre River and floodplain habitat restoration at Kingfisher Point Natural Area.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The City’s 2017 Poudre Report Card noted that aquatic habitat connectivity and native fish populations are in poor condition, thus the CWCB grant was sought to support Natural Areas efforts related to improving vulnerable populations of native plains fishes and the recreational trout fishery.

Grant project #1: Fish passage installation in the Timnath Inlet Ditch diversion dam

The Timnath Reservoir Inlet Ditch (aka Cache la Poudre Reservoir Inlet Ditch), owned by the Cache la Poudre Reservoir Company (CLPRC) and located downstream of Lemay Avenue, is a major barrier to aquatic habitat connectivity on the Poudre. The structure is impassable many months of the year due to the structure’s size and the timing and type of CLPRC’s water right. The City has been working in collaboration with CLPRC for the past two years to design fish passage on this structure. The design is complete and permits are pending. The City is working to secure funding beyond this grant for the construction/installation of fish passage in the Timnath Reservoir Inlet diversion in the fall/winter of 2018/2019.

Grant project #2: Evaluating effectiveness of fish passage - a fish movement monitoring program

Many diversion structures impede upstream movements of fish, and flow fluctuations are sometimes extreme, especially in base flow periods such as November to March. Fish movements may be restricted by several in-channel diversion structures that are barriers to fish passage, which ultimately may affect the health of the fish community. To that end, fish passage structures are proposed to remedy the issue of upstream fish passage,
but the best placement of new structures and efficacy of existing ones are largely unknown.

With significant effort needed to improve the numerous structures on the Poudre, it would be helpful to better understand their effectiveness. To that end, $100,000 of these funds will go towards a 3-year monitoring program to monitor the makeup of the fish community, background fish movement rates in various habitat types, and passage rates of fish over existing diversion dams via fish passage devices.

**Grant project #3: Poudre River and floodplain habitat restoration at Kingfisher Point Natural Area**

As a part of its 2015 Natural Areas Restoration Master Plan, the Natural Areas Department (NAD) is planning to restore river and floodplain habitat along a one half-mile stretch of the Poudre River through Kingfisher Point Natural Area (between Lemay Avenue and Timberline Road). The project is intended to provide restored in-river aquatic habitat, naturalized riverbanks, expanded floodplain cottonwood forests, improved floodwater retention, and create high-quality wetlands. Along with the investment generated from the City’s Open Space Yes tax and the County’s Help Preserve Open Space tax, GOCO’s matching grant award will support the procurement of materials and restoration services to bring the project to fruition. The GOCO grant was awarded in December 2016, the grant agreement was executed with City Council Resolution 2017-002.

**CITY FINANCIAL IMPACTS**

The City will provide a 100% local match for both grants. Funds are appropriated and available in the Natural Areas budget for this purpose.

This action has a net positive impact on the City’s financial resources by $300,000 and the ability to make progress in the goal of improving and sustaining the health of the Cache la Poudre River.

**BOARD / COMMISSION RECOMMENDATION**

At its March 8, 2018, meeting, the Land Conservation and Stewardship Board unanimously voted to recommend City Council appropriate the CWCB grant funds of $200,000 into the Natural Areas budget.

At its June 13, 2018, meeting, the Land Conservation and Stewardship Board unanimously voted to recommend City Council appropriate the GOCO grant funds of $100,000 into the Natural Areas budget.

**ATTACHMENTS**

1. Land Conservation and Stewardship Board minutes, March 8, 2018 (PDF)
2. Land Conservation and Stewardship Board minutes, June 13, 2018 (PDF)
ORDINANCE NO. 094, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING UNANTICIPATED GRANT REVENUE FROM THE
COLORADO WATER CONSERVATION BOARD AND GREAT
OUTDOORS COLORADO IN THE NATURAL AREAS FUND

WHEREAS, the City has been awarded a Colorado Water Conservation Board ("CWCB")
grant in the amount of $200,000 that will be used to improve the health of the Poudre River fish
communities; and

WHEREAS, the CWCB grant will be used to install a fish ladder on the Timnath Reservoir
Inlet Ditch diversion dam and a fish movement monitoring study on the Poudre River; and

WHEREAS, the City has also been awarded a Great Outdoors Colorado ("GOCO") grant
in the amount of $100,000 that will support Poudre River and floodplain habitat restoration at
Kingfisher Point Natural Area; and

WHEREAS, the GOCO grant requires $100,000 of matching funds and the CWCB Grant
requires $200,000 of matching funds, which have been appropriated and are available in the
Natural Areas budget for this purpose; and

WHEREAS, the Land Conservation and Stewardship Board at its regular meeting in March
2018 voted unanimously to recommend approval of the CWCB grant funds; and

WHEREAS, this appropriation benefits public health, safety, and welfare of the citizens of
Fort Collins and serves the public purpose of conserving land and restoring wildlife habitats; and

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

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

WHEREAS, Article V, Section 10, of the City Charter authorizes the City Council to
transfer by ordinance any unexpended and unencumbered appropriated amount or portion thereof
from one fund or capital project to another fund or capital project, provided that the purpose for
which the transferred funds are to be expended remains unchanged; the purpose for which the
funds were initially appropriated no longer exists; or the proposed transfer is from a fund or capital
project in which the amount appropriated exceeds the amount needed to accomplish the purpose
specified in the appropriation ordinance.
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

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

Section 2. That there is hereby appropriated from unanticipated revenue in the Natural Areas Fund the sum of TWO HUNDRED THOUSAND DOLLARS ($200,000) for expenditure in the Natural Areas Fund for the installation of a fish ladder on the Timnath Reservoir Inlet Ditch diversion dam and a fish movement monitoring study on the Poudre river.

Section 3. That there is hereby appropriated from unanticipated revenue in the Natural Areas Fund the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000) for expenditure in the Natural Areas Fund for Poudre River and floodplain habitat restoration at the Kingfisher Point Natural Area.

Introduced, considered favorably on first reading, and ordered published this 17th day of July, A.D. 2018, and to be presented for final passage on the 21st day of August, A.D. 2018.

__ ATTEST: __

Mayor Pro Tem

__________________________
City Clerk

Passed and adopted on final reading on the 21st day of August, A.D. 2018.

__ ATTEST: __

Mayor

__________________________
City Clerk
AGENDA ITEM SUMMARY
August 21, 2018

STAFF

Perrie McMillen, Restorative Justice Program Coordinator
Jody Hurst, Legal

SUBJECT

Second Reading of Ordinance No. 095, 2018, Appropriating Unanticipated Grant Revenue in the General Fund and Transferring Funds from the Community Development and Neighborhood Services Operating Budget to the Grant Budget for the Restorative Justice Program.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on July 17, 2018, appropriates grant revenue to fund Restorative Justice Services within Community Development and Neighborhood Services (CDNS). A grant in the amount of $67,612 has been received from the Colorado Division of Criminal Justice (DCJ) Juvenile Diversion fund for the continued operation of Restorative Justice Services, which includes the RESTORE program for shoplifting offenses, and the Restorative Justice Conferencing Program (RJCP) and Reflect for all other offenses. The grant period for is July 1, 2018 to June 30, 2019. This is the second year in a 3-year cycle for the Juvenile Diversion grant.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, July 17, 2018 (w/o attachments) (PDF)
2. Ordinance No. 095, 2018 (PDF)
AGENDA ITEM SUMMARY
City Council
July 17, 2018

STAFF
Perrie McMillen, Restorative Justice Program Coordinator
Jody Hurst, Legal

SUBJECT
First Reading of Ordinance No. 095, 2018. Appropriating Unanticipated Grant Revenue in the General Fund and Transferring Funds from the Community Development and Neighborhood Services Operating Budget to the Grant Budget for the Restorative Justice Program.

EXECUTIVE SUMMARY
The purpose of this item is to appropriate grant revenue to fund Restorative Justice Services within Community Development and Neighborhood Services (CDNS). A grant in the amount of $67,612 has been received from the Colorado Division of Criminal Justice (DCJ) Juvenile Diversion fund for the continued operation of Restorative Justice Services, which includes the RESTORE program for shoplifting offenses, and the Restorative Justice Conferencing Program (RJCP) and Reflect for all other offenses. The grant period is July 1, 2018 to June 30, 2019. This is the second year in a 3-year cycle for the Juvenile Diversion grant.

STAFF RECOMMENDATION
Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION
Restorative Justice Services and its three programs; RESTORE for shoplifting offenses, and RJCP (Restorative Justice Conferencing Program) and Reflect Program for all other offenses, has been partially grant funded since its inception in 2000. The Council yearly accepts grant funds from Colorado Division of Criminal Justice to support Restorative Justice Services. This grant helps fund youth referred to the program from the 8th Judicial District Attorney’s Office. Since it began, Restorative Justice Services has provided a restorative justice alternative to more than 2,970 young people who committed chargeable offenses in our community.

Restorative Justice is an alternative method of holding a young offender accountable by facilitating a meeting with the offender, the victim/victim representative and members of the community to determine the harm done by the crime, and how to repair the harm. By identifying and repairing the harm caused by the crime, criminal justice officials are optimistic repeat offenses by these youths will be reduced and the needs and concerns of the victims and affected community will be addressed.

The programs help young people understand how family, friends, victim and community are harmed by their actions and hold them accountable for the harm they caused. The intention is that these young people will make better future decisions and not commit the same or similar crime again. Reducing future criminal behavior and keeping young people out of the justice system, both contribute positively to a safer and healthier community. Addressing the needs and concerns of crime victims and community members also has a positive effect on the overall health and safety of the community. As part of the programs, youth and families are referred to appropriate community resources based on needs identified during program participation.
Without grant funding and the support of the City, Restorative Justice Services would not be a service available to young people and their families, crime victims, the courts, law enforcement and our community.

CITY FINANCIAL IMPACTS

The additional grant money in the amount of $67,612 from Division of Criminal Justice, Juvenile Diversion Grants, provides funding for the continuation of Restorative Justice Services. The match requirement has already been met by utilizing $9,091 from the Neighborhood Services operating budget, designated for restorative justice, $9,846 as in-kind from the City in the form of office space provided for grant funded services and $3,600 is committed donated volunteer time from a primary volunteer who assists with administrative duties.
ORDINANCE NO. 095, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING UNANTICIPATED GRANT REVENUE IN THE GENERAL FUND AND TRANSFERRING FUNDS FROM THE COMMUNITY DEVELOPMENT AND NEIGHBORHOOD SERVICES OPERATING BUDGET TO THE GRANT BUDGET FOR THE RESTORATIVE JUSTICE PROGRAM

WHEREAS, the Colorado Division of Criminal Justice has awarded the City of Fort Collins Community Development and Neighborhood Services (“CDNS”) a grant in the amount of $67,612 for salaries associated with the continued operation of the Restorative Justice Program (“Program”); and

WHEREAS, the Program is an alternative method to the criminal justice system, providing services to more than 2,970 young people who committed chargeable offenses in the community since 2000; and

WHEREAS, the Program facilitates a meeting with the young offender, the victim, and community members to discuss the harm caused by the young offender and to find meaningful ways for the young person to repair that harm; and

WHEREAS, the grant period for this award is from July 1, 2018 to June 30, 2019; and

WHEREAS, the grant requires a 25% match of $22,537; and

WHEREAS, the City’s cash match of $9,091 will come from the CDNS operating budget for Restorative Justice and the remaining $13,446 match requirement will come from the City in the form of office space and volunteers provided for the grant-funded services; and

WHEREAS, this appropriation benefits public health, safety, and welfare of the citizens of Fort Collins and serves the public purpose of rebuilding community ties after a crime has been committed; and

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

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

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

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

Section 2. That there is hereby appropriated from unanticipated revenue in the General
Fund the sum of SIXTY-SEVEN THOUSAND SIX HUNDRED TWELVE DOLLARS ($67,612)
for expenditure in the General Fund, Restorative Justice Services grant project, for continuation of
the Restorative Justice Program.

Section 3. That the unexpended appropriated amount of NINE THOUSAND NINETY-
ONE DOLLARS ($9,091) is hereby authorized for transfer from the Community Development
and Neighborhood Services operating budget in the General Fund to the grant project for
Restorative Justice Services and appropriated herein.

Introduced, considered favorably on first reading, and ordered published this 17th day of
July, A.D. 2018, and to be presented for final passage on the 21st day of August, A.D. 2018.

__________________________________
Mayor Pro Tem

ATTEST:

__________________________________
City Clerk

Passed and adopted on final reading on the 21st day of August, A.D. 2018.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
AGENDA ITEM SUMMARY
City Council

August 21, 2018

STAFF
Craig Dubin, Transfort Communications and Admin Mgr
Dean Klingner, Transfort and Parking Interim General Manager
Chris Van Hall, Legal

SUBJECT
Second Reading of Ordinance No. 096, 2018, Appropriating Prior Year Reserves in the Parking Fund for the Replacement of a Parking Enforcement Patrol Vehicle and License Plate Recognition System.

EXECUTIVE SUMMARY
This Ordinance, unanimously adopted on First Reading on July 17, 2017, appropriates $80,000 from Parking Services Reserves to replace a parking enforcement patrol vehicle and its license plate recognition system.

STAFF RECOMMENDATION
Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS
1. First Reading Agenda Item Summary, July 17, 2018 (w/o attachments) (PDF)
2. Ordinance No. 096, 2018 (PDF)
AGENDA ITEM SUMMARY
City Council
July 17, 2018

STAFF

Craig Dubin, Transfort Communications and Admin Mgr
Dean Klingner, Transfort and Parking Interim General Manager
Chris Van Hall, Legal

SUBJECT

First Reading of Ordinance No. 096, 2018, Appropriating Prior Year Reserves in the Parking Fund for the Replacement of a Parking Enforcement Patrol Vehicle and License Plate Recognition System.

EXECUTIVE SUMMARY

The purpose of this item is to appropriate $80,000 from Parking Services Reserves to replace a parking enforcement patrol vehicle and its license plate recognition system.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Parking Services has a fleet of three electric patrol vehicles and one Go4 gasoline engine three-wheel patrol vehicle. In 2013, Parking Services piloted a 2013 Nissan Leaf with the objective of reducing emissions and fuel use. Given the high-idle requirements for parking enforcement, the pilot was accepted and over the next two years, Parking Services purchased two more, later model Nissan Leaf sedans. The Go4 has become unreliable due to increased maintenance issues and operates poorly in inclement weather.

With the increase in enforcement due to the expanded RP3 program and projections to expand hours of service, Parking Services submitted an offer for the 2019/2020 BFO cycle for two more electric vehicles. However, there remains an urgent need to replace the Go4 as maintenance issues on this vehicle have become frequent; which creates work stoppages for several hours. Parking enforcement is performed by a staff of seven parking enforcement officers using three electric sedans and the single Go4.

Fleet Services has recommended replacement of the vehicle. Furthermore, the existing asset uses gasoline and would be replaced with an electric vehicle to further reduce the City's carbon footprint.

Staff is proposing to replace the license plate recognition system because it is past its useful life and is no longer supported.

CITY FINANCIAL IMPACT

The total cost for these items is $80,000. This includes:

- $35,000  2018 Nissan Leaf including aftermarket safety lighting and markings
- $45,000  License Plate Recognition System and associated hardware and software
These funds are available in the Parking Fund Reserves. Excess parking revenues are added to the Parking Fund and it is anticipated that these reserves are intended for long-term replacement and maintenance costs. Staff anticipates that ongoing costs will be slightly lower by replacing this vehicle based on reduced maintenance and operating costs.
ORDINANCE NO. 096, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES IN THE PARKING
FUND FOR THE REPLACEMENT OF A PARKING ENFORCEMENT
PATROL VEHICLE AND LICENSE PLATE RECOGNITION SYSTEM

WHEREAS, Parking Services has a fleet of three electric patrol vehicles and one Go4 gasoline engine three-wheel patrol vehicle (the “Go4”); and

WHEREAS, in 2013, Parking Services piloted a 2013 Nissan Leaf with the objective of reducing emissions and fuel use; and

WHEREAS, over the next two years, Parking Services purchased two more, later model Nissan leaf sedans and the Go4 has now become unreliable due to increased maintenance issues and operates poorly in inclement weather; and

WHEREAS, there remains an urgent need to replace the Go4 as maintenance issues on this vehicle have become frequent, which creates work stoppage for several hours and current Parking enforcement is performed by a staff of seven parking enforcement officers using three electric sedans and the single Go4; and

WHEREAS, staff recommends that the Go4 be replaced with an electric vehicle to further reduce the City’s carbon footprint; and

WHEREAS, staff recommends that the current license plate recognition system also be replaced because it is past its useful life and is no longer supported by the vendor; and

WHEREAS, this appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of providing fuel efficient vehicles for City staff to enforce the City’s parking regulations within the City; and

WHEREAS, Article V, Section 9 of the City 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, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Parking Fund and will not cause the total amount appropriated in the Parking Fund to exceed the current estimate of actual and anticipated revenues to be received in that fund during any fiscal year; and

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.
Section 2. That there is hereby appropriated from prior year reserves in the Parking Fund the sum of EIGHTY THOUSAND DOLLARS ($80,000) for expenditure in the Parking Fund for a new parking enforcement patrol vehicle and license plate recognition system.

Introduced, considered favorably on first reading, and ordered published this 17th day of July, A.D. 2018, and to be presented for final passage on the 21st day of August, A.D. 2018.

Mayor Pro Tem

ATTEST:

_______________________________
City Clerk

Passed and adopted on final reading on the 21st day of August, A.D. 2018.

Mayor

ATTEST:

_______________________________
City Clerk
AGENDA ITEM SUMMARY
City Council
August 21, 2018

STAFF

Peggy Streeter, Senior Sales Tax Auditor
Jennifer Poznanovic, Project and Revenue Manager
Ryan Malarky, Legal

SUBJECT

Items Relating to the City's Various Tax Provisions.

EXECUTIVE SUMMARY

A. Second Reading of Ordinance No. 097, 2018, Amending Article II of Chapter 25 of the Code of the City of Fort Collins Concerning the City’s Tax Rebate Programs.

B. Second Reading of Ordinance No. 098, 2018, Amending Article III of Chapter 25 of the Code of the City of Fort Collins Concerning the Imposition, Collection, and Enforcement of the City’s Sales and Use Taxes.


D. Second Reading of Ordinance No. 100, 2018, Amending Article V of Chapter 25 of the Code of the City of Fort Collins Concerning the City’s Telephone Occupation Tax.

These Ordinances, unanimously adopted on First Reading on July 17, 2018, amends City Code sections in Chapter 25 to provide clarification for definitions and the application of various sections of the Code, and to make clear the City may use a third-party auditor or collections service for delinquent accounts.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinances on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, July 17, 2018 (w/o attachments) (PDF)
2. Ordinance No. 097, 2018 (PDF)
3. Ordinance No. 098, 2018 (PDF)
4. Ordinance No. 099, 2018 (PDF)
5. Ordinance No. 100, 2018 (PDF)
AGENDA ITEM SUMMARY
July 17, 2018

STAFF
Peggy Streeter, Senior Sales Tax Auditor
Jennifer Poznanovic, Project and Revenue Manager
Ryan Malarky, Legal

SUBJECT
Items Relating to the City's Various Tax Provisions.

EXECUTIVE SUMMARY
A. First Reading of Ordinance No. 097, 2018, Amending Article II of Chapter 25 of the Code of the City of Fort Collins Concerning the City’s Tax Rebate Programs.

B. First Reading of Ordinance No. 098, 2018, Amending Article III of Chapter 25 of the Code of the City of Fort Collins Concerning the Imposition, Collection, and Enforcement of the City’s Sales and Use Taxes.

C. First Reading of Ordinance No. 099, 2018, Amending Article IV of Chapter 25 of the Code of the City of Fort Collins Concerning the City’s Lodging Tax.

D. First Reading of Ordinance No. 100, 2018, Amending Article V of Chapter 25 of the Code of the City of Fort Collins Concerning the City’s Telephone Occupation Tax.

The purpose of this item is to amend City Code sections in Chapter 25 to provide clarification for definitions and the application of various sections of the Code, and to make clear the City may use a third-party auditor or collections service for delinquent accounts.

STAFF RECOMMENDATION
Staff recommends adoption of these Ordinances on First Reading.

BACKGROUND / DISCUSSION
The various Code changes being requested are as follows:

Chapter 25, Article II (Ordinance No. 097, 2018)

City Code Section 25-50 establishes that the amount of sales tax rebate for food is increased annually based on the "Denver-Boulder-Greeley" Consumer Price Index (CPI) published by the federal Bureau of Labor Statistics. In January 2018, the Bureau of Labor Statistics updated the geographic area sample for the CPI has changed it to Denver-Aurora-Lakewood. Therefore, the Code is being updated to reflect this change. The City Code contains other limited references to the CPI, and City staff will review whether additional Code changes are appropriate to bring before Council at a later time.

City Code Chapter 25, Article II, Division 5 establishes the City’s use tax rebate program on manufacturing equipment. City Code Section 25-66 sets forth the qualifications a qualifying manufacturer must meet to be eligible for the use tax rebate. Use tax is owed by a consumer for using, storing, distributing, or otherwise
consuming tangible personal property or taxable services in the City. In general, a manufacturer owes use tax to the City when City sales tax is not otherwise collected by a vendor. City staff desires to clarify in the Code that the use tax rebate is not available when a vendor should have collected City sales tax from the manufacturer, consistent with both the historical administration of the program and rules adopted by the Financial Officer.

Chapter 25, Article III (Ordinance No. 098, 2018)

The definition of charitable organization in Section 25-71 specifies an entity must have a current sales tax exemption certification from the State of Colorado. City staff has determined the State does not issue a State of Colorado sales tax exemption certificate to out-of-state organizations. As a result, out-of-state organizations cannot qualify for exemption from the City of Fort Collins sales tax because they cannot obtain a State of Colorado tax exemption certificate. The definition has been updated to allow for the exemption of out-of-state organizations that would otherwise qualify for City of Fort Collins tax exemption.

The definition of Financial Officer and the requirements regarding confidentiality of tax information is being changed to make clear City staff: (1) may continue to use the services of a third-party auditor for tax audits; and (2) may have the option to utilize a third-party collection service to collect outstanding sales or use tax due in cases of severe noncompliance with the City’s remittance requirements. The changes expand the definition of Financial Officer slightly to allow for delegation of certain responsibilities to entities, rather than only individual persons. The changes also allow the disclosure of otherwise confidential tax information to third parties, on the condition that the third parties commit in a written agreement to non-disclosure.

Chapter 25, Article IV (Ordinance No. 099, 2018)

In Ordinance No. 098, 2018, City staff is recommending a change to the definition of charitable organization in Section 25-71, located in the Sales and Use Tax Code as noted above. A similar definition is in Section 25-241 of the Lodging Tax Code. City staff is recommending the same change be made to the definition of charitable organization in the Lodging Tax Code so that both codes are administered in substantially the same manner and with the same requirements.

Chapter 25, Article V (Ordinance No. 100, 2018)

Article V, Division 2 establishes an occupation tax levied on telephone utility companies engaged in the business of furnishing local exchange telephone service within the City. Since the establishment of the telephone occupation tax in 1979, technological advances have occurred that allow telephone service to be provided over the Internet, otherwise known as Voice over Internet Protocol (VoIP). The City currently collects, and VoIP providers currently remit, the telephone occupation tax. City staff desires to make clear that VoIP service is subject to said tax, and is recommending a change to Section 25-326 to make specific reference to VoIP.

CITY FINANCIAL IMPACTS

No known financial impacts.
ORDINANCE NO. 097, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE II OF CHAPTER 25 OF THE CODE OF THE CITY
OF FORT COLLINS CONCERNING THE CITY’S TAX REBATE PROGRAMS

WHEREAS, Division 3 in Article II of City Code Chapter 25 authorizes a rebate on the City’s sales tax charged on food purchases by low-income persons residing in the City (the “Sales Tax Rebate Program”); and

WHEREAS, Division 5 in Article II of City Code Chapter 25 authorizes the rebate of the City’s use tax imposed on manufacturing equipment paid by certain qualifying manufacturers (the “Manufacturing Equipment Use Tax Rebate Program”); and

WHEREAS, the Sales Tax Rebate Program serves the public purpose of assisting certain low-income individuals in better affording the necessities of life related to food; and

WHEREAS, the Manufacturing Equipment Use Tax Rebate Program serves the public purpose of encouraging manufacturers to establish, continue and expand their manufacturing activities within the City to benefit the local economy and provide manufacturing jobs within the City; and

WHEREAS, City staff has reviewed the Sales Tax Rebate Program and is recommending a revision to account for a geographical revision in the consumer price index published by the Bureau of Labor Statistics; and

WHEREAS, City staff has reviewed the Manufacturing Equipment Use Tax Rebate Program and is recommending a revision to clarify that the rebate is not available for purchases for which City sales tax should have been collected by the vendor; and

WHEREAS, the City Council hereby finds that amending the Sales Tax Rebate Program and the Manufacturing Equipment Use Tax Rebate Program as proposed in this Ordinance is in the City’s and its taxpayers’ best interests and necessary for the public’s health, safety and welfare.

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

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

Section 2. That Section 25-50 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-50. Amount of rebate.

The rebate amount for the 2017 tax year will be sixty-three dollars ($63.) per calendar year for each person in the qualified household not to exceed eight (8) household members.
This amount of the rebate will be increased annually according to the Denver-Aurora-Lakewood Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics.

Section 3. That Section 25-66 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-66. Qualifications.

In order to qualify for a rebate under the provisions of this Division, the following requirements must be met:

(1) The qualifying manufacturer must have a sales and use tax license from the City and be classified as a "manufacturer" under the North American Industry Classification System (NAICS), as amended;

(2) The qualifying manufacturer must certify compliance with all federal, state and local laws and regulations applicable to a manufacturing facility located within the City limits;

(3) The qualifying manufacturer must be current in all payments to the City and in compliance with any contractual agreements with the City;

(4) Machinery and equipment must be tangible personal property when purchased; be necessary for, and used directly in, the manufacturing of tangible personal property to be sold; not be used in any activity other than the actual manufacturing process; not be merely useful or incidental to the manufacturing operation; and be purchased in the year the rebate is being applied for;

(5) The qualifying manufacturer must have paid the appropriate use tax when due and not as a consequence of a tax audit conducted by the City; and

(6) The use tax paid by the qualifying manufacturer must not have been the result of a vendor failing to collect City of Fort Collins sales tax as required by law.

Introduced, considered favorably on first reading, and ordered published this 17th day of July, A.D. 2018, and to be presented for final passage on the 21st day of August, A.D. 2018.

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Mayor Pro Tem

ATTEST:

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City Clerk
Passed and adopted on final reading on the 21st day of August, A.D. 2018.

ATTEST:

Mayor

City Clerk
ORDINANCE NO. 098, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS

WHEREAS, Article XX, § 6.g. of the Colorado Constitution grants to the City of Fort Collins, as a home rule municipality, all powers necessary to levy and collect taxes for municipal purposes, subject to any limitations in the Colorado Constitution; and

WHEREAS, on November 16, 1967, the City Council, in the exercise of its home rule taxing powers, adopted Ordinance No. 058, 1967, to levy, collect and enforce beginning on January 1, 1968, a sales and use tax on the purchase of tangible personal property sold at retail in the City and on certain taxable services provided in the City (the “Sales and Use Tax Code”); and

WHEREAS, the Sales and Use Tax Code is currently found in Article III of the City Code Chapter 25, which has been significantly amended many times since its adoption in 1967; and

WHEREAS, City staff has reviewed Article III and has recommended revisions to clarify the manner in which charitable organizations may qualify for a tax-exempt organization license from the City; and

WHEREAS, City staff is recommending revisions to make clear the City’s Financial Officer may use the services of a third-party auditor or collections service to ensure the proper payment of tax owed to the City; and

WHEREAS, the City Council hereby finds that amending the Sales and Use Tax Code as proposed in this Ordinance is in the City’s and its taxpayers’ best interests and necessary for the public’s health, safety and welfare.

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

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

Section 2. That Section 25-71 of the Code of the City of Fort Collins is hereby amended to change the definition of “charitable organization” to read as follows:

Sec. 25-71. Definitions.

... Charitable organization shall mean:
(1) any entity that has and maintains a current sales tax exemption certificate from the Colorado Department of Revenue; or

(2) any out-of-state entity that has been certified as a nonprofit organization under Internal Revenue Code Section 501(c)(3) and maintains a current tax exemption certificate from another state.

... Section 3. That Section 25-71 of the Code of the City of Fort Collins is hereby amended to change the definition of “Financial Officer” to read as follows:

Sec. 25-71. Definitions.

... Financial Officer shall mean the Financial Officer of the City of Fort Collins or such other person designated by the Financial Officer.

... Section 4. That Section 25-94 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-94. Exempt organization license; application procedure.

... (b) The application for an exempt organization license shall include copies of the organization's current certificate of incorporation, bylaws, financial statements showing sources of revenues and expenditures, the organization's current sales tax exemption certificate from the Colorado Department of Revenue or from another state, and a copy of the Internal Revenue Service's letter of determination recognizing the organization as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.

... Section 5. That Section 25-166 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-166. Preservation of returns and other records; confidentiality.

... (f) Nothing in this Section shall be construed to prohibit the Financial Officer from disclosing information to an individual with whom, or an organization with which, the
Financial Officer has contracted or engaged to assist the City in examining or auditing tax records or collecting taxes, provided that the individual or organization is required by written agreement not to disclose any of said information to any person other than the Financial Officer and the authorized agents and employees thereof.

Introduced, considered favorably on first reading, and ordered published this 17th day of July, A.D. 2018, and to be presented for final passage on the 21st day of August, A.D. 2018.

______________________________
Mayor Pro Tem

ATTEST:

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City Clerk

Passed and adopted on final reading on the 21st day of August, A.D. 2018.

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Mayor

ATTEST:

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City Clerk
ORDINANCE NO. 099, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE IV OF CHAPTER 25 OF THE CODE OF THE
CITY OF FORT COLLINS CONCERNING THE CITY’S LODGING TAX

WHEREAS, Article XX, § 6.g. of the Colorado Constitution grants to the City of Fort Collins, as a home rule municipality, all powers necessary to levy and collect taxes for municipal purposes, subject to any limitations in the Colorado Constitution; and

WHEREAS, on February 21, 1984, the City Council, in the exercise of its home rule taxing powers, adopted Ordinance No. 20, 1984, adding a new chapter to the City Code to levy, collect and enforce a three percent (3%) tax on the price of lodging accommodations provided in the City (the “Lodging Tax Code”);

WHEREAS, the Lodging Tax Code is found in Article IV of City Code Chapter 25 and has existed in substantially its current form since its adoption in 1984 with only minor amendments since that time; and

WHEREAS, City staff has recommended to City Council for its consideration Ordinance No. 098, 2018, which includes changes to the City’s sales and use tax provisions found in Article III of City Code Chapter 25 (the “Sales and Use Tax Code”) to clarify the manner in which charitable organizations may obtain a tax-exempt organization license from the City; and

WHEREAS, City staff has reviewed the Lodging Tax Code and is recommending a similar revision to the definition of “charitable organization” so that the Sales and Use Tax Code and the Lodging Tax Code will be administered in essentially the same manner and with the same requirements; and

WHEREAS, the City Council hereby finds that collecting and enforcing the Sales and Use Tax Code and the Lodging Tax Code in substantially the same manner is in the City’s and its taxpayers’ best interests and necessary for the public’s health, safety and welfare.

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

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

Section 2. That Section 25-241 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-241. Definitions.

... Charitable organization shall mean:
(1) any entity that has and maintains a current sales tax exemption certificate from the Colorado Department of Revenue; or

(2) any out-of-state entity that has been certified as a nonprofit organization under Internal Revenue Code Section 501(c)(3) and maintains a current tax exemption certificate from another state.

... 

Introduced, considered favorably on first reading, and ordered published this 17th day of July, A.D. 2018, and to be presented for final passage on the 21st day of August, A.D. 2018.

__________________________________
Mayor Pro Tem

ATTEST:

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City Clerk

Passed and adopted on final reading on the 21st day of August, A.D. 2018.

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Mayor

ATTEST:

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City Clerk
ORDINANCE NO. 100, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE V OF CHAPTER 25 OF THE CODE OF THE CITY OF FORT COLLINS CONCERNING THE CITY’S TELEPHONE OCCUPATION TAX

WHEREAS, Article XX, § 6.g. of the Colorado Constitution grants to the City of Fort Collins, as a home rule municipality, all powers necessary to levy and collect taxes for municipal purposes, subject to any limitations in the Colorado Constitution; and

WHEREAS, since January 1, 1979, the City, through the City Council’s exercise of its home rule taxing powers, has levied, collected and enforced a telephone occupation tax in the amount of seventy cents ($0.70) per account for local exchange telephone service to customers in the City (the “Telephone Occupation Tax”); and

WHEREAS, the City has been collecting, and Voice over Internet Protocol (“VoIP”) providers have been remitting, the Telephone Occupation Tax; and

WHEREAS, City staff has reviewed the Telephone Occupation Tax and is recommending a revision to state more clearly that VoIP is subject to the tax; and

WHEREAS, the City Council hereby finds that amending the Telephone Occupation Tax as proposed in this Ordinance is in the City’s and its taxpayers’ best interests and necessary for the public’s health, safety and welfare.

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

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

Section 2. That Section 25-326 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-326. Levy of tax.

There is hereby levied against every telephone utility company engaged in the business of furnishing local exchange telephone service within the City a tax on the privilege of engaging in such business. The amount of such tax shall be seventy cents ($0.70) per account per month. For the purposes of this Division, account shall be defined as a billing of a telephone utility company for service to a customer. For the purposes of this Division, telephone utility company engaged in the business of furnishing local exchange telephone service shall include Voice over Internet Protocol (VoIP) service.
Introduced, considered favorably on first reading, and ordered published this 17th day of July, A.D. 2018, and to be presented for final passage on the 21st day of August, A.D. 2018.

__________________________________
Mayor Pro Tem

ATTEST:

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City Clerk

Passed and adopted on final reading on the 21st day of August, A.D. 2018.

_______________________________
Mayor

ATTEST:

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City Clerk
AGENDA ITEM SUMMARY
City Council

AGENDA ITEM SUMMARY
August 21, 2018

STAFF

Travis Storin, Accounting Director
Gerry Paul, Director of Purchasing & Risk Management
John Duval, Legal

SUBJECT

Second Reading of Ordinance No. 101, 2018, Amending Section 8-158 of the Code of the City of Fort Collins Pertaining to the City's Procurement of Services for an Annual Independent Audit of the City's Financial Records.

EXECUTIVE SUMMARY

This Ordinance, adopted on First Reading on July 17, 2018, amends the City Code to accommodate the roles of the Council Finance Committee and the City Council in procuring external audit services for the City. An important element of auditor independence is that the selection of the external auditor is made by a governing body rather than by the staff of the auditee. The proposed Code section would (1) allow the selection process of an external audit services to take place at publicly held meetings and (2) define the maximum service period of an incumbent auditor.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, July 17, 2018 (w/o attachments) (PDF)
2. Ordinance No. 101, 2018 (PDF)
AGENDA ITEM SUMMARY
City Council

July 17, 2018

STAFF

Travis Storin, Accounting Director
Gerry Paul, Director of Purchasing & Risk Management
John Duval, Legal

SUBJECT

First Reading of Ordinance No. 101, 2018, Amending Section 8-158 of the Code of the City of Fort Collins Pertaining to the City's Procurement of Services for an Annual Independent Audit of the City's Financial Records.

EXECUTIVE SUMMARY

The purpose of this item is to amend the City Code to accommodate the roles of the Council Finance Committee and the City Council in procuring external audit services for the City. An important element of auditor independence is that the selection of the external auditor is made by a governing body rather than by the staff of the auditee. The proposed Code section would (1) allow the selection process of an external audit services to take place at publicly held meetings and (2) define the maximum service period of an incumbent auditor.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Audit Requirements and Best Practices in Selection

An annual, external audit by an independent CPA firm is required by Colorado Statute, City Charter, City debt covenants on outstanding bonds and leases, and the majority of grant agreements for which the City is a recipient.

The current audit contract is in its fifth and final year, necessitating a competitive selection per City Code. Historically, the Council Finance Committee has served as the interview panel for audit services and made a recommendation to the Council for selection via resolution. Staff recommends that the Finance Committee continue to perform this function.

Properly performed audits play a vital role in the public sector by helping to preserve the integrity of the public finance functions and by maintaining citizens’ confidence in their local government. Best practices published by the Government Finance Officers Association and the American Institute of CPAs strongly recommend for the selection of auditing services be conducted by governing and oversight bodies (rather than by employees of the auditee) as an important measure to preserve auditor independence. It is also ideal for auditor independence to require auditors be replaced after a defined contract term, as is often the case in the private sector.

As a comparison, SEC-regulated publicly traded companies are required by the Sarbanes-Oxley Act of 2002 to delegate to an audit committee the responsibility for appointment, compensation, and oversight of audits. Sarbanes further requires that the high-ranking personnel within the selected firm be rotated every 5 years, although there is not a requirement that the firm itself be rotated.
Holding Supplier Interviews in a Public Meeting

Any meeting of three or more Councilmembers is required to be held in public with sufficient advance notice of the time, location, and meeting agenda. Further, Code Section 2-31 and Article II Section 11 of the City Charter specifically limit when the Council and its committees can go into executive session and there is no exception that authorizes an executive session to interview prospective auditors. Therefore, Finance Committee interviews of prospective auditors are required to be conducted in a public meeting.

Current City Code pertaining to supplier/vendor procurement precludes the public disclosure of proposal, offeror, and evaluation information during the competitive selection process.

Given the limitations this places on the selection process of an auditor, staff recommends the Code be amended to allow the Finance Committee and Council to conduct its interview and selection of qualified candidates in a public meeting. If this Ordinance is adopted, interviews will proceed at the September meeting of the Finance Committee.

Auditor Rotation

Many private-sector business enterprises and not-for-profits mandate that a new audit firm be selected periodically, in an effort for fresh procedures and greater independence from management. In highly-regulated environments such as publicly traded companies, it is often required that personnel rotate from their clients in 5-year increments.

The City does not currently have a policy or Code requirement to rotate auditors. At the June 18 Finance Committee, the matter was discussed and the Committee supported a codified rotation requirement. Staff was asked to research and recommend a practice for the City to adopt.

Staff contacted Front Range peer organizations, the results of which are below:

<table>
<thead>
<tr>
<th>City</th>
<th>Selection method</th>
<th>Rotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boulder</td>
<td>Public selection by Finance Committee</td>
<td>Not mandatory</td>
</tr>
<tr>
<td>Loveland</td>
<td>Staff run, staff selected</td>
<td>Not mandatory</td>
</tr>
<tr>
<td>Aurora</td>
<td>Staff run, Council adopted</td>
<td>5-year partner rotation; no mandatory firm rotation</td>
</tr>
<tr>
<td>Larimer County</td>
<td>One commissioner participates with staff committee</td>
<td>Not mandatory, like to rotate every 10 years</td>
</tr>
<tr>
<td>CO Springs</td>
<td>Finance/Audit Committee decides</td>
<td>Have in practice rotated every 5 years, but not codified</td>
</tr>
</tbody>
</table>

Staff recommends to Council a 10-year rotation requirement for accounting firms (2 consecutively awarded 5-year periods), with a mandatory rotation of the lead partner after the first 5-year period concludes. This recommendation allows efficiencies and continuity to be gained throughout the contract term between audit staff and City staff while also ensuring fresh perspectives are introduced at regular intervals.

CITY FINANCIAL IMPACTS

Staff sees no direct financial impact from the proposed amendments and additions.

BOARD / COMMISSION RECOMMENDATION

The Finance Committee supported adoption at its June 18, 2018 meeting.

ATTACHMENTS

1. Council Finance Committee minutes, June 18, 2018 (draft)  (PDF)
ORDINANCE NO. 101, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING SECTION 8-158 OF THE CODE OF THE CITY OF FORT COLLINS
PERTAINING TO THE CITY’S PROCUREMENT OF SERVICES FOR AN
ANNUAL INDEPENDENT AUDIT OF THE CITY’S FINANCIAL RECORDS

WHEREAS, the City Council is required by Section 17 in City Charter Article II to provide an annual independent audit of the City’s books and accounts conducted by a public accounting firm; and

WHEREAS, City Code Section 8-158 sets out the process by which such accounting services, as well as similar professional services, are procured by the City through competitive sealed proposals; and

WHEREAS, this procurement process is typically conducted administratively by the City’s Purchasing Agent and other City staff, but because of the requirements in Section 17 of Charter Article II that the City Council provide for an annual independent audit, this process has historically been conducted, with assistance from the Purchasing Agent, by the Council Finance Committee reviewing the proposals and conducting the interviews of the offerors in a public meeting and making a recommendation to City Council, with the Council then making the final decision in a public meeting to select the firm; and

WHEREAS, this Ordinance amends Code Section 8-158 to take into account that this process will occur in public meetings because it is being conducted by the Council Finance Committee and the City Council; and

WHEREAS, this Ordinance is necessary for the public’s health, safety and welfare.

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

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

Section 2. That Section 8-158 of the Code of the City of Fort Collins is hereby amended to read:

Sec. 8-158. - Competitive sealed proposals.

(a) Procurements for the following are eligible for award by competitive sealed proposals:

(1) Materials and services when the Purchasing Agent determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the City;
(2) Professional services; and

(3) City improvements when the Purchasing Agent determines that the use of alternative delivery methods will provide substantial benefit to the City while retaining sufficient competitive pricing and/or performance.

(b) Procurements accomplished pursuant to this Section shall be solicited through a request for proposals.

(c) Public notice shall be given and shall include the proposal title, place, date and time of proposal opening.

(d) Except as provided in paragraph (m) of this Section, proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation.

(e) A register of proposals shall be maintained containing the name of each offeror and shall be open for public inspection after the award of the contract in the office of the Purchasing Agent in the same manner as are other public records.

(f) The request for proposals shall state evaluation factors and their relative importance.

(g) After proposal opening, interviews may be conducted with the highest ranked responsible offeror or offerors for the purpose of clarification and to assure full understanding of, and responsiveness to, solicitation requirements. Offerors selected for interview shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions may be permitted after submissions and prior to award in order to reflect clarifications in the proposal's scope of work or contract amount.

(h) Except as provided in paragraph (m) of this Section, in conducting interviews, there shall be no disclosure by the City or any officer, employee or committee thereof, of any information derived from proposals submitted by competing offerors, nor shall there be any disclosure of information discussed by the evaluation committee in selecting the highest ranked offeror(s).

(i) After the contract has been awarded and a written contract executed with the selected offeror(s), the total points of the evaluation committee will be retained by the Purchasing Agent for a period of time consistent with the City's record retention policy.

(j) Except as provided in paragraph (m) of this Section, individual rating sheets and notes prepared or utilized by members of the evaluation committee shall not be made available for public inspection.

(k) The contract shall be awarded with reasonable promptness by written notice to the responsible offeror whose proposal is determined in writing to be the most advantageous
to the City, taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation.

(l) The Purchasing Agent is authorized to negotiate the final price and precise scope of work with the selected offeror.

(m) If the proposals are for the services of a public accounting firm to conduct the annual independent audit of the City’s books and accounts as required in Section 17 of Charter Article II, those proposals shall be reviewed and the interviews conducted by the City Council or a committee of the Council in a public meeting and the selection by Council shall be conducted in a public meeting. In conducting such review, interviews and selection, the City Council and committees of the Council shall not be subject to the provisions in paragraphs (d), (h) and (j) of this Section.

(n) No public accounting firm selected to conduct the City’s annual independent audit shall be eligible to be selected under this Section to conduct that audit for more than two (2) consecutive five (5) year terms. In addition, any firm conducting the audit for five (5) consecutive years shall not be eligible to participate in a new competitive sealed proposal and be selected unless the firm assigns a new lead partner to conduct the audit under the new contract with a term of one (1) to five (5) years.

Introduced, considered favorably on first reading, and ordered published this 17th day of July, A.D. 2018, and to be presented for final passage on the 21st day of August, A.D. 2018.

__________________________________
Mayor Pro Tem

ATTEST:

__________________________________
City Clerk

Passed and adopted on final reading on the 21st day of August, A.D. 2018.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
AGENDA ITEM SUMMARY
City Council

AGENDA ITEM SUMMARY
August 21, 2018

STAFF

Helen Matson, Real Estate Services Manager
Ingrid Decker, Legal

SUBJECT

Second Reading of Ordinance No. 102, 2018, Amending Article IV, Division 2 of Chapter 23 of the Code of the City of Fort Collins Regarding Real Property.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on July 17, 2018, amends various Sections of Article IV, Division 2 of Chapter 23 in City Code as it pertains to real property. Article IV was reviewed to find areas where the language could be improved and to make changes to these areas to streamline the process.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, July 17, 2018 (w/o attachments) (PDF)
2. Ordinance No. 102, 2018 (PDF)
AGENDA ITEM SUMMARY
City Council
July 17, 2018

STAFF
Helen Matson, Real Estate Services Manager
Ingrid Decker, Legal

SUBJECT
First Reading of Ordinance No. 102, 2018, Amending Article IV, Division 2 of Chapter 23 of the Code of the City of Fort Collins Regarding Real Property.

EXECUTIVE SUMMARY
The purpose of this item is to amend various Sections of Article IV, Division 2 of Chapter 23 in City Code as it pertains to real property. Article IV was reviewed to find areas where the language could be improved and to make changes to these areas to streamline the process.

STAFF RECOMMENDATION
Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION
Section 23-111 - Authorization to sell real property.
Staff recommends that paragraph (a) specifically include the right to "exchange" property as well as to sell, convey, or otherwise dispose of any and all interests in property.

The other suggested change to this section is to paragraph (e). This section currently states that the Mayor is authorized to execute all leases, deeds and other instruments of conveyance; but sometimes it is useful for the City Council to be able to authorize the City Manager to sign such documents. Therefore, staff recommends amending paragraph (e) to specifically allow for that.

Section 23-112 – Form of deeds; signature and seal.
Section 23-112 currently states that instruments executed by the Mayor and attested by the City Clerk are deemed prima facie evidence of compliance with all the requirements of Division 2. Staff recommends adding instruments executed by the City Manager.

Section 23-117 – Acceptance of Deeds and Easements.
Staff recommends adding a new Section 23-117 regarding acceptance of deeds and easements, stating that instruments of conveyance properly executed by the Mayor or City Manager and attested by the City Clerk, or proof that the City paid consideration for property conveyed to the City whether or not the instrument of conveyance was executed by the City, will be prima facie evidence that the City has accepted ownership of the property interests conveyed by such instrument. The purpose of this change is to eliminate or at least reduce the number of items brought to the City Council on the “Routine Deeds and Easements” portion of the agenda for Council meetings, as the purpose and use of that process is confusing and the process may not be used consistently.
ORDINANCE NO. 102, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE IV, DIVISION 2 OF CHAPTER 23 OF THE CODE
OF THE CITY OF FORT COLLINS REGARDING REAL PROPERTY

WHEREAS, the provisions of Division 2 of Article IV of Chapter 23 of the City Code ("Division 2") govern the disposition of real property by the City; and

WHEREAS, in 2014 the City Council adopted Ordinance No. 085, 2014, which amended Section 23-113 of the City Code to authorize the City Manager to enter into leases of City property for a term of five years or less without formal action by the City Council; and

WHEREAS, in 2017 the City Council adopted Ordinance No. 050, 2017, which amended Section 23-116 of the City Code to authorize the City Manager to grant a license or permit for the use of City property for up to five years, instead of one year; and

WHEREAS, Real Estate staff and the City Attorney’s staff have conducted an overall review of Division 2 and are recommending amendments that would update two provisions and add a new Code section; and

WHEREAS, the suggested changes would (1) clarify that the City Council can authorize the exchange of property; (2) state that the City Council can authorize the City Manager, as well as the Mayor, to sign instruments of conveyance; (3) add that such instruments signed by the City Manager and attested by the City Clerk shall be prima facie evidence of compliance with the requirements of Division 2; and (4) add a new Code section stating what constitutes prima facie evidence that the City has accepted ownership of a property interest; and

WHEREAS, the purpose of these amendments is to give the City additional flexibility in completing the necessary processes for the conveyance of property, and to reduce the need to use the “Routine Deeds and Easements” process at City Council meetings to formalize acceptance by the City of certain property interests; and

WHEREAS, the City Council finds it is in the best interests of the City to make amendments to Division 2 as described above.

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

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

Section 2. That Section 23-11 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-111. - Authorization to sell real property.
(a) The City Council is hereby authorized to sell, convey, exchange or otherwise dispose of any and all interests in real property owned in the name of the City, whether the interest in real property is obtained by tax deed or otherwise, provided that the City Council first finds, by ordinance, that such sale or other disposition is in the best interests of the City.

... 

(e) The Mayor is authorized to execute all leases, deeds and other instruments of conveyance. The City Council may also authorize the City Manager to execute such instruments of conveyance.

Section 3. That Section 23-112 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-112. - Form of deeds; signature and seal.

All leases, deeds and other instruments of conveyance executed by “The City of Fort Collins, by the Mayor,” or “The City of Fort Collins, by the City Manager,” attested by the City Clerk with the official seal of the City affixed thereto and purporting to have been made pursuant to the provisions of this Division, shall be deemed prima facie evidence of due compliance with all the requirements of this Division.

Section 4. That Division 2 of Article IV of Chapter 23 of the Code of the City of Fort Collins is hereby amended by the addition of a new Section 23-117 to read in its entirety as follows:

Sec. 23-117. Acceptance of Deeds and Easements.

(a) All deeds, easements and other instruments of conveyance to the City executed by “The City of Fort Collins, by the Mayor,” or “The City of Fort Collins, by the City Manager,” attested by the City Clerk with the official seal of the City affixed thereto, shall be deemed prima facie evidence that the City has accepted ownership of the property interests conveyed by such deed, easement, or other instrument of conveyance.

(b) Proof that the City paid consideration for property interests conveyed to the City by a deed, easement or other instrument of conveyance, whether or not executed by the City as described in subparagraph (a), shall be deemed prima facie evidence that the City has accepted ownership of the property interests conveyed by such deed, easement, or other instrument of conveyance.

(c) The absence of the elements described in subparagraphs (a) and (b) shall not necessarily invalidate a deed, easement or other instrument of conveyance if there is other reliable evidence that the City has accepted ownership of the property interests intended to be conveyed.
Introduced, considered favorably on first reading, and ordered published this 17th day of July, A.D. 2018, and to be presented for final passage on the 21st day of August, A.D. 2018.

Mayor Pro Tem

ATTEST:

_______________________________
City Clerk

Passed and adopted on final reading on the 21st day of August, A.D. 2018.

Mayor

ATTEST:

_______________________________
City Clerk
AGENDA ITEM SUMMARY
August 21, 2018

SUBJECT
Second Reading of Ordinance No. 103, 2018, Annexing the Property Known as the East Gateway Annexation to the City of Fort Collins, Colorado.

EXECUTIVE SUMMARY
This Ordinance, unanimously adopted on First Reading on July 17, 2018, annexes 1.77 acres of land consisting of three properties into the City of Fort Collins. The properties are located approximately ¼ mile northeast of the Interstate 25 and East Mulberry Street interchange. The annexation will create the East Mulberry Enclave encompassing the East Mulberry Corridor. A related item to zone the annexed property is presented as the next item on this Agenda.

STAFF RECOMMENDATION
Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS
1. First Reading Agenda Item Summary, July 17, 2018 (PDF)
2. Ordinance No. 103, 2018 (PDF)
Agenda Item Summary
July 17, 2018

Staff
Kai Kleer, Associate Planner
Brad Yatabe, Legal

Subject
Items Relating to the East Gateway Annexation.

Executive Summary
A. Resolution 2018-069 Setting Forth Findings of Fact and Determinations Regarding the East Gateway Annexation.

B. Public Hearing and First Reading of Ordinance No. 103, 2018, Annexing the Property Known as the East Gateway Annexation to the City of Fort Collins, Colorado.

The purpose of this item is to annex 1.77 acres of land consisting of three properties into the City of Fort Collins. The properties are located approximately ¼ mile northeast of the Interstate 25 and East Mulberry Street interchange. The annexation will create the East Mulberry Enclave encompassing the East Mulberry Corridor. The Initiating Resolution was adopted on June 5, 2018. A related item to zone the annexed property is presented as the next item on this Agenda.

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

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

Background / Discussion
The City of Fort Collins has received a written petition requesting annexation of three properties known collectively as the East Gateway Annexation.

The annexation area includes three parcels of land that consist of railroad-owned property, a strip of land on the western edge of the Cloverleaf Mobile Home Park, and a triangular-shaped parcel owned by the Colorado Department of Transportation.

Contiguity
The subject property gains the required one-sixth contiguity to existing City limits from a common boundary on the north and south perimeter with the following annexations:

1. Kirschner Annexation, December 1993
2. Peterson Annexation, July 2006
3. Interchange Business Park Third Annexation, 2005
4. Interchange Business Park Second Annexation, 2005

As a result, there is 16.71% of the total perimeter contiguous to the existing municipal boundary which exceeds the required minimum (16.66%).

Enclave Implications

The annexation will create the East Mulberry Enclave which closely coincides with the East Mulberry Corridor Plan boundary adopted in 2002 (updated in 2003). The Plan was developed after a two-year joint planning effort between Larimer County and the City of Fort Collins. Though an enclave will be created after annexation of the subject properties, Colorado Revised Statutes require municipalities to wait three years until annexation can be initiated without property owner consent. Based on the anticipated schedule of the East Gateway Annexation, a future City Council could consider annexation of the East Mulberry Enclave as soon as September 2021.

CITY FINANCIAL IMPACTS

There are no financial impacts as a result of the proposed 1.77-acre annexation.

BOARD / COMMISSION RECOMMENDATION

At its May 17, 2018, regular meeting, the Planning and Zoning Board voted 5-0 to recommend approval of the annexation. Further, the Board recommended that the properties be placed into the General Commercial (C-G), Low Density Mixed Use Neighborhood (L-M-N) and Industrial (I) zone districts. (Attachment 4)

PUBLIC OUTREACH

Staff conducted two open house-style events within the East Mulberry Corridor on April 25th and 26th. Thirty-five (35) individuals signed into the first event which was held at the La Quinta Inn, and twenty-four (24) at the second event held at The Elks Lodge. An estimated twenty additional individuals attended the two events but preferred not to sign in.

Four City staff members were available at the open houses to answer questions and have one-on-one and small group conversations with attendees. Materials presented at the open houses included display boards showing the historical evolution of the area, maps displaying the East Mulberry Corridor Plan Framework Plan, the potential enclave area, water and sewer service areas, Southwest Enclave phasing, and attendees were urged to fill out a questionnaire and provide comments. Copies of the East Mulberry Corridor Plan were available as well as a display outlining the City Plan Update process which may have implications for the land use pattern and transportation system within the Corridor.

During the open houses, staff underscored four elements:

1. A decision to annex the enclave has not been made and the earliest date that an annexation could be considered is just over three years from now;
2. There will be extensive community engagement prior to the enclave annexation being considered;
3. The annexation will likely occur in phases over an extended period; and
4. A fiscal impact assessment will be conducted in 2019-2020.

Additional information about the questionnaire results, community comments, and material presented at the open house meeting can be seen in Attachment 3.

All required mailings and postings per Section 2.12 (Annexation of Land) of the Land Use Code have been followed.
ATTACHMENTS

1. Vicinity Map (PDF)
2. Annexation Petition and Map (PDF)
3. East Mulberry Corridor Enclave Open House Summary (PDF)
4. Planning and Zoning Board minutes, May 17, 2018 (PDF)
ORDINANCE NO. 103, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ANNEXING THE PROPERTY KNOWN AS THE EAST GATEWAY
ANNEXATION TO THE CITY OF FORT COLLINS, COLORADO

WHEREAS, Resolution 2018-060 finding substantial compliance and initiating annexation proceedings for the East Gateway Annexation, as defined therein and described below, was previously adopted by the City Council; and

WHEREAS, Resolution 2018-069 setting forth findings of fact and determinations regarding the East Gateway Annexation was adopted concurrently with the first reading of this Ordinance; and

WHEREAS, the City Council has determined that it is in the best interests of the City to annex the property to be known as the East Gateway Annexation (the “Property”) to the City.

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

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

Section 2. That the City Council hereby incorporates the findings of Resolution 2018-060 and Resolution 2018-069 and further finds that it is in the best interests of the City to annex the Property to the City.

Section 3. That the Property, more particularly described as:

A TRACT OF LAND LOCATED IN THE WEST HALF OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE SIXTH P.M.; COUNTY OF LARIMER, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 10, AND CONSIDERING THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 10 TO BEAR S89°23'02"E, SAID LINE BEING MONUMENTED ON ITS WEST END BY A 3" BRASS CAP STAMPED LS 23503, AND ON ITS EAST END BY A 2-1/2" ALUMINUM CAP STAMPED LS 31169, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENENCE ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 10, S89°23'02"E, A DISTANCE OF 1,427.40 FEET;
THENENCE N00°36'58"E, A DISTANCE OF 30.90 FEET;
THENENCE N69°23'46"W, A DISTANCE OF 89.48 FEET TO THE POINT OF BEGINNING, SAID POINT BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 14 (EAST MULBERRY STREET);
THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, N69°23'46"W, A DISTANCE OF 211.18 FEET TO THE MOST WESTERLY CORNER OF THAT TRACT OF LAND CONVEYED TO THE COLORADO DEPARTMENT OF TRANSPORTATION BY WARRANTY DEED RECORDED JUNE 11, 2009 AT RECEPTION NO. 20090038617;
THENCE ALONG THE NORTHERLY BOUNDARY OF SAID TRACT, S89°47'51"E, A DISTANCE OF 193.56 FEET TO A POINT ON THE WESTERLY BOUNDARY OF THAT TRACT OF LAND DESCRIBED IN THE WARRANTY DEED RECORDED APRIL 12, 2002 AT RECEPTION NO. 2002051529;
THENCE ALONG SAID WESTERLY BOUNDARY, N00°37'38"E, A DISTANCE OF 2,453.85 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF THE BNSF RAILWAY;
THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE, N89°02'25"W, A DISTANCE OF 470.00 FEET;
THENCE N83°54'03"W, A DISTANCE OF 558.15 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF SAID BNSF RAILWAY;
THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE S89°02'25"E, A DISTANCE OF 1,044.00 FEET;
THENCE ALONG THE NORTHERLY EXTENSION OF THE TOP BACK OF AN EXISTING CURB, ALONG SAID TOP BACK OF CURB, AND ALONG THE SOUTHERLY EXTENSION OF SAID TOP BACK OF CURB, THE FOLLOWING FIVE (5) COURSES:
1. S00°12'51"W, A DISTANCE OF 920.13 FEET;
2. 34.24 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 250.00 FEET, A CENTRAL ANGLE OF 07°50'52", AND A CHORD WHICH BEARS S04°08'17"W, A DISTANCE OF 34.22 FEET;
3. S08°03'43"W, A DISTANCE OF 96.07 FEET;
4. 31.86 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 250.00 FEET, A CENTRAL ANGLE OF 07°18'07", AND A CHORD WHICH BEARS S04°24'40"W, A DISTANCE OF 31.84 FEET;
5. S00°45'36"W, A DISTANCE OF 1,496.03 FEET TO THE POINT OF BEGINNING;

CONTAINING 76,962 SQUARE FEET (1.767 ACRES), MORE OR LESS

is hereby annexed to the City of Fort Collins and made a part of said City, to be known as the East Gateway Annexation, which annexation shall become effective upon completion of the conditions contained in Section 31-12-113, C.R.S., including, without limitation, all required filings for recording with the Larimer County Clerk and Recorder.

Section 4. That, in annexing the Property to the City, the City does not assume any obligation respecting the construction of water mains, sewer lines, gas mains, electric service lines, streets or any other services or utilities in connection with the Property hereby annexed except as may be provided by ordinances of the City.
Section 5. That the City hereby consents, pursuant to Section 37-45-136(3.6), C.R.S., to the inclusion of the Property into the Municipal Subdistrict, Northern Colorado Water Conservancy District.

Introduced, considered favorably on first reading, and ordered published this 17th day of July, A.D. 2018, and to be presented for final passage on the 21st day of August, A.D. 2018.

ATTEST:

Mayor Pro Tem

City Clerk

Passed and adopted on final reading on the 21st day of August, A.D. 2018.

ATTEST:

Mayor

City Clerk
Second Reading of Ordinance No. 104, 2018, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the East Gateway Annexation to the City of Fort Collins, Colorado, and Approving Corresponding Changes to the Residential Neighborhood Sign District Map.

EXECUTIVE SUMMARY

This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 1(d) of the Council’s Rules of Meeting Procedures adopted in Resolution 2018-034.

This Ordinance, unanimously adopted on First Reading on July 17, 2018, zones the property included in the East Gateway Annexation into the General Commercial (G-C), Low Density Mixed Use Neighborhood (L-M-N), and Industrial (I) zone districts.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, July 17, 2018 (w/o attachments)    (PDF)
2. Ordinance 104, 2018    (PDF)
AGENDA ITEM SUMMARY
City Council

July 17, 2018

STAFF

Kai Kleer, Associate Planner
Brad Yatabe, Legal

SUBJECT

First Reading of Ordinance No. 104, 2018, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the East Gateway Annexation to the City of Fort Collins, Colorado, and Approving Corresponding Changes to the Residential Neighborhood Sign District Map.

EXECUTIVE SUMMARY

This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 1(d) of the Council’s Rules of Meeting Procedures adopted in Resolution 2018-034.

The purpose of this item is to zone the property included in the East Gateway Annexation into the General Commercial (G-C), Low Density Mixed Use Neighborhood (L-M-N), and Industrial (I) zone districts.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The requested zoning for this annexation is General Commercial (G-C), Low Density Mixed Use Neighborhood (L-M-N), and Industrial (I), which conforms to the larger surrounding area.

Context

The surrounding zoning and land uses are as follows:

<table>
<thead>
<tr>
<th>ZONING</th>
<th>LAND USES</th>
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<tbody>
<tr>
<td>N Industrial (I) and Urban Estate (U-E)</td>
<td>Agriculture</td>
</tr>
<tr>
<td>S General Commercial (C-G)</td>
<td>Drive-thru restaurant, McDonald’s; Limited Indoor Recreation, The Edge Sports Center</td>
</tr>
<tr>
<td>E County, M1 Multiple-Family and C Multiple Family</td>
<td>Mobile Home Park, Cloverleaf Community</td>
</tr>
<tr>
<td>W County, I Industrial and C Industrial</td>
<td>Helicopter Repair and Parts Sales, Heli-One; Warehouse and Agriculture</td>
</tr>
</tbody>
</table>

Zoning

The proposed zoning for the subject annexation is a combination of General Commercial (G-C), Low Density Mixed Use Neighborhood (L-M-N), and Industrial (I) zone districts. These districts are intended to be a setting for development, redevelopment and infill of a wide range of industrial, residential, community and regional retail uses, offices and personal and business services. However, because the restrictive size and shape of the annexation, future development is likely unfeasible on the annexed properties. Therefore, the recommended
zoning for this annexation is procedural and consistent with land use designations as prescribed by the City of Fort Collins Structure Plan Map.

**Residential Neighborhood Sign District**

Land Use Code Section 3.8.7.1(E) established the Residential Neighborhood Sign District for the purpose of “regulating signs for nonresidential uses in certain geographical areas of the City which may be particularly affected by such signs because of their predominately residential use and character.” Based upon the proposed zoning, size, and location of the property being annexed and zoned, the property does not advance the purpose of the Residential Neighborhood Sign District and staff is not recommending that any of the property be placed into the Residential Neighborhood Sign District. In particular, the property proposed to be zoned Low Density Mixed Use Neighborhood (L-M-N) is a narrow strip of property inappropriate for development. Additionally, it abuts property to the west designated for zoning as General Commercial upon annexation and the property to the east is expected to become part of the Town of Timnath’s future Growth Management Area.

**CITY FINANCIAL IMPACTS**

There are no direct financial impacts as a result of the proposed zoning.

**BOARD / COMMISSION RECOMMENDATION**

At its May 17, 2018, regular meeting, the Planning and Zoning Board voted 5-0 to recommend approval of the annexation. Further, the Board recommended that the subject properties be placed into the General Commercial (G-C), Low Density Mixed Use Neighborhood (L-M-N), and Industrial (I) zone districts. (Attachment 3)

**PUBLIC OUTREACH**

Given the surrounding context of the East Gateway annexation and the relatively small size of the properties, no public outreach in relation to the zoning was conducted. However, all required mailings and postings per Section 2.9 (Amending the Zoning Map) of the Land Use Code have been followed.

**ATTACHMENTS**

1. Zoning Map (PDF)
2. Structure Plan Map (PDF)
3. Planning and Zoning Board minutes, May 17, 2018 (excerpt) (PDF)
ORDINANCE NO. 104, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE ZONING MAP OF THE CITY OF FORT COLLINS
AND CLASSIFYING FOR ZONING PURPOSES THE PROPERTY INCLUDED
IN THE EAST GATEWAY ANNEXATION TO THE CITY OF FORT COLLINS,
COLORADO, AND APPROVING CORRESPONDING CHANGES TO
THE RESIDENTIAL NEIGHBORHOOD SIGN DISTRICT MAP

WHEREAS, Division 1.3 of the Land Use Code of the City of Fort Collins establishes the
Zoning Map and Zone Districts of the City; and

WHEREAS, Division 2.9 of the Land Use Code of the City of Fort Collins establishes
procedures and criteria for reviewing the zoning of land; and

WHEREAS, pursuant to Land Use Code Section 2.9.2, the City Planning and Zoning
Board, at its meeting on May 17, 2018, unanimously recommended zoning the property to be
known as the East Gateway Annexation (the “Property”) as more particularly described below, as
General Commercial, Industrial, and Low Density Mixed-Use Neighborhood, and determined that
the proposed zonings are consistent with the City’s Comprehensive Plan; and

WHEREAS, the City Council has determined that the proposed zonings of the Property are
consistent with the City’s Comprehensive Plan; and

WHEREAS, to the extent applicable, the City Council has also analyzed the proposed
zonings against the applicable criteria set forth in Section 2.9.4(H)(3) of the Land Use Code and
finds the proposed zonings to be in compliance with all such criteria; and

WHEREAS, in accordance with the foregoing, the City Council has considered the zonings
of the Property as described below, finds it to be in the best interests of the City, and has determined
that the Property should be zoned as hereafter provided.

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

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

Section 2. That the Zoning Map of the City of Fort Collins adopted pursuant to Section
1.3.2 of the Land Use Code of the City of Fort Collins is hereby changed and amended by including
the following portion of the Property in the General Commercial (“G-C”) Zone District as more
particularly described as:

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10,
TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE SIXTH P.M.; COUNTY OF
LARIMER, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 10, AND CONSIDERING THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 10 TO BEAR S89°23'02"E, SAID LINE BEING MONUMENTED ON ITS WEST END BY A 3" BRASS CAP STAMPED LS 23503, AND ON ITS EAST END BY A 2-1/2" ALUMINUM CAP STAMPED LS 31169, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 10, S89°23'02"E, A DISTANCE OF 1,427.40 FEET;
THENCE N00°36'58"E, A DISTANCE OF 30.90 FEET;

THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, N69°23'46"W, A DISTANCE OF 205.95 FEET TO THE MOST WESTERLY CORNER OF THAT TRACT OF LAND CONVEYED TO THE COLORADO DEPARTMENT OF TRANSPORTATION BY WARRANTY DEED RECORDED JUNE 11, 2009 AT RECEPTION NO. 20090038617;
THENCE ALONG THE NORTHERLY BOUNDARY OF SAID TRACT, S89°47'51"E, A DISTANCE OF 193.56 FEET TO A POINT ON THE AFOREMENTIONED WESTERLY BOUNDARY;
THENCE ALONG SAID WESTERLY BOUNDARY, S00°37'38"W, A DISTANCE OF 71.79 FEET TO THE POINT OF BEGINNING.

CONTAINING 6,948 SQUARE FEET (0.160 ACRES), MORE OR LESS

Section 3. That the Zoning Map of the City of Fort Collins adopted pursuant to Section 1.3.2 of the Land Use Code of the City of Fort Collins is hereby changed and amended by including the following portion of the Property in the Industrial ("I") Zone District as more particularly described as:

A TRACT OF LAND LOCATED IN THE WEST HALF OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE SIXTH P.M.; COUNTY OF LARIMER, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 10, AND CONSIDERING THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 10 TO BEAR S89°23'02"E, SAID LINE BEING MONUMENTED ON ITS
WEST END BY A 3" BRASS CAP STAMPED LS 23503, AND ON ITS EAST END BY A 2-1/2" ALUMINUM CAP STAMPED LS 31169, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 10, S89°23'02"E, A DISTANCE OF 1,427.40 FEET;
THENCE N00°36'58"E, A DISTANCE OF 30.90 FEET;
THENCE ALONG SAID WESTERLY BOUNDARY, N00°37'38"E, A DISTANCE OF 2,525.64 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF THE BNSF RAILWAY, SAID POINT BEING THE POINT OF BEGINNING;

THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE, N89°02'25"W, A DISTANCE OF 470.00 FEET;
THENCE N83°54'03"W, A DISTANCE OF 558.15 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF SAID BNSF RAILWAY;
THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE S89°02'25"E, A DISTANCE OF 1,025.62 FEET;
THENCE S00°37'38"W, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 37,390 SQUARE FEET (0.858 ACRES), MORE OR LESS

Section 4. That the Zoning Map of the City of Fort Collins adopted pursuant to Section 1.3.2 of the Land Use Code of the City of Fort Collins is hereby changed and amended by including the following portion of the Property in the Low Density Mixed-Use Neighborhood ("L-M-N") Zone District as more particularly described as:

A TRACT OF LAND LOCATED IN THE WEST HALF OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE SIXTH P.M.; COUNTY OF LARIMER, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 10, AND CONSIDERING THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 10 TO BEAR S89°23'02"E, SAID LINE BEING MONUMENTED ON ITS WEST END BY A 3" BRASS CAP STAMPED LS 23503, AND ON ITS EAST END BY A 2-1/2" ALUMINUM CAP STAMPED LS 31169, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID
SECTION 10, S89°23'02"E, A DISTANCE OF 1,427.40 FEET;
THENCE N00°36'58"E, A DISTANCE OF 30.90 FEET;
THENCE N69°23'46"W, A DISTANCE OF 89.48 FEET TO THE POINT OF
BEGINNING, SAID POINT BEING ON THE NORTHERLY RIGHT-OF-WAY LINE
OF STATE HIGHWAY 14 (EAST MULBERRY STREET);

THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, N69°23'46"W, A
DISTANCE OF 5.23 FEET TO THE POINT OF INTERSECTION OF THE
NORTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 14 (EAST MULBERRY
STREET) AND THE WESTERLY BOUNDARY OF THAT TRACT OF LAND
DESCRIBED IN THE WARRANTY DEED RECORDED APRIL 12, 2002 AT
RECEPTION NO. 2002051529;
THENCE ALONG SAID WESTERLY BOUNDARY, N00°37'38"E, A DISTANCE
OF 2,575.64 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF THE
BNSF RAILWAY;
THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE S89°02'25"E, A DISTANCE
OF 18.38 FEET;
THENCE ALONG THE NORTHERLY EXTENSION OF THE TOP BACK OF AN
EXISTING CURB, ALONG SAID TOP BACK OF CURB, AND ALONG THE
SOUTHERLY EXTENSION OF SAID TOP BACK OF CURB, THE FOLLOWING
FIVE (5) COURSES:
1. S00°12'51"W, A DISTANCE OF 920.13 FEET;
2. 34.24 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS
   OF 250.00 FEET, A CENTRAL ANGLE OF 07°50'52", AND A CHORD WHICH
   BEARS S04°08'17"W, A DISTANCE OF 34.22 FEET;
3. S08°03'43"W, A DISTANCE OF 96.07 FEET;
4. 31.86 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS
   OF 250.00 FEET, A CENTRAL ANGLE OF 07°18'07", AND A CHORD WHICH
   BEARS S04°24'40"W, A DISTANCE OF 31.84 FEET;
5. S00°45'36"W, A DISTANCE OF 1,496.03 FEET TO THE POINT OF BEGINNING;

CONTAINING 32,624 SQUARE FEET (0.749 ACRES), MORE OR LESS

Section 5. That the Sign District Map adopted pursuant to Section 3.8.7.1(E) of the
Land Use Code of the City of Fort Collins is hereby changed and amended by showing that the
Property described herein is not included in the Residential Neighborhood Sign District.

Section 6. That the City Manager is hereby authorized and directed to amend said
Zoning Map in accordance with this Ordinance.
Introduced, considered favorably on first reading, and ordered published this 17th day of July, A.D. 2018, and to be presented for final passage on the 21st day of August, A.D. 2018.

Mayor Pro Tem

ATTEST:

__________________________________________
City Clerk

Passed and adopted on final reading on the 21st day of August, A.D. 2018.

Mayor

ATTEST:

__________________________________________
City Clerk
ORDINANCE NO. 105, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES IN THE CULTURAL SERVICES
AND FACILITIES FUND FOR LINCOLN CENTER IMPROVEMENTS

WHEREAS, the Lincoln Center has been at the center the City’s cultural life since its opening in 1978; and

WHEREAS, the current 1,180 seats at the Lincoln Center, the original seats that have been used since its opening, are well-used and worn; and

WHEREAS, the 2018 Budget included one-time Cultural Services reserves funding of $375,000 to replace the seats in the Lincoln Center (the “Project”); and

WHEREAS, Cultural Services has $70,799 set aside - but not yet appropriated - to also replace aisle lighting and egress systems as part of the Project; and

WHEREAS, if the funds for aisle lighting and egress systems are appropriated, the Project will be complete for the Lincoln Center’s 40th Anniversary Season; and

WHEREAS, this appropriation benefits public health, safety, and welfare of the citizens of Fort Collins and serves the public purpose of creating opportunities for cultural appreciation and community building available to all citizens of Fort Collins; and

WHEREAS, Article V, Section 9 of the City 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, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Cultural Services Fund and will not cause the total amount appropriated in the Cultural Services and Facilities Fund to exceed the current estimate of actual and anticipated revenues to be received in that fund during any fiscal year.

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

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

Section 2. That there is hereby appropriated for expenditure from reserves in the Cultural Services and Facilities Fund the sum of SEVENTY THOUSAND SEVEN HUNDRED SEVENTY-NINE DOLLARS ($70,779) for Lincoln Center improvements and appropriated therein.
Introduced, considered favorably on first reading, and ordered published this 21st day of August, A.D. 2018, and to be presented for final passage on the 4th day of September, A.D. 2018.

__________________________________
Mayor

ATTEST:

_______________________________
City Clerk

Passed and adopted on final reading on the 4th day of September, A.D. 2018.

__________________________________
Mayor

ATTEST:

_______________________________
City Clerk
AGENDA ITEM SUMMARY
City Council

AGENDA ITEM SUMMARY
August 21, 2018

STAFF

Jack Rogers, Senior Manager, Cultural Services
Jody Hurst, Legal

SUBJECT

First Reading of Ordinance No. 105, 2018. Appropriating Prior Year Reserves in the Cultural Services and Facilities Fund for Lincoln Center Improvements.

EXECUTIVE SUMMARY

The purpose of this item is to appropriate funds set aside by the Lincoln Center into reserves to replace aisle lighting in the Performance Hall as part of the seat replacement project.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

This Ordinance will appropriate additional funding to replace the aisle lighting that was damaged during demolition as part of the seat replacement project in the Lincoln Center Performance Hall.

The 2018 Budget included one-time Cultural Services reserves of $375,000 to replace the 1,180 seats in the Lincoln Center that are original to the 1978 opening of the facility. The seats in the Performance Hall are well-used and worn and were originally planned to be replaced during the 2010 renovation. However, funds were needed for unanticipated major structural issues. The theater seats directly impact the patron’s experience and customers constantly comment on the need to replace the seating in audience surveys.

The budget for the seat replacement project covers moving the fixed seating, cutting and patching the existing seat anchors and installing new seating while simultaneously addressing issues including trenching the concrete to address the trip hazards of cabling that runs between backstage and front-of-house show control, light locks for the mezzanine (curtains to stop light bleed from affecting patrons viewing experience) and required modifications to substantial portions of our assisted listening system.

Unfortunately, the original aisle lighting was damaged when the old seats were removed. The manufacturer is no longer in business and replacement diodes for this kind of light are no longer available. This appropriation is needed to complete the project currently in process.

CITY FINANCIAL IMPACTS

This Ordinance will appropriate $70,779 in Cultural Services reserves to replace the Lincoln Center’s aisle lighting and egress systems as part of this project.

PUBLIC OUTREACH

Public outreach was completed during the design and development phases of the project. Input was received
from multiple stakeholder groups including donors, patrons, subscribers, and volunteers among others.

**ATTACHMENTS**

1. Lincoln Center Seating Replacement - Budget Estimate (PDF)
**Project**: Lincoln Center Performance Hall  
**Location**: 417 S Meldrum, Fort Collins, CO  
**Project Manager**: Chad Mapp  
**Estimate Date**: 7/3/2018  
**Work Order #**:  

**Project Description**: Replace performance hall seating, new carpet, aisle lighting, cable/wire trench, t-coil modifications

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<th>Unit</th>
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**Lincoln Center Contribution**

- Seating Replacement: $243,900
- General Requirements: $32,050
- Environmental Services: $1,500
- Cable/Wire Trench: $20,425
- Light Locks: $12,950
- T-Coil Modifications: $17,000
- Aisle Lighting: $103,000

**SUB-Total**: $430,825

**8% CONTINGENCY**: $14,954

**TOTAL ESTIMATED COST**: $445,779

**Op Services Contribution**

- Carpet Replacement: $60,000
- Concrete Floor Polish/Seal: $20,000

**SUB-Total**: $80,000

**TOTAL ESTIMATED COST**: $80,000
AGENDA ITEM SUMMARY
City Council
August 21, 2018

STAFF

John Phelan, Energy Services Manager
Sean Carpenter, Climate Economy Advisor
Cyril Vidergar, Legal

SUBJECT

First Reading of Ordinance No. 106, 2018, Appropriating Unanticipated Grant Revenue from the Colorado Energy Office in the Light and Power Fund for the HOME Efficiency Loan Program/On-Bill Financing Program.

EXECUTIVE SUMMARY

The purpose of this item is to appropriate $200,000 in grant revenues from the Colorado Energy Office in the Fort Collins Utilities Light and Power fund for the purposes of developing and capitalizing Utilities On-Bill Financing (OBF) program. The program will provide utility bill serviced loans for energy efficiency and renewable energy, with a focus on efficiency in rental properties for low- to moderate-income households.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Bloomberg Mayors Challenge

In February 2018, Fort Collins was one of 35 Champion Cities selected from 320 applications as part of the 2018 U.S. Mayors Challenge, which provides grants and technical assistance to city leaders who are solving urgent problems in their communities. As part of being selected as one of the Champion Cities, Bloomberg awarded Fort Collins a $100,000 grant to develop a program that would improve the energy efficiency of low- to moderate-income rental households.

Mayor Wade Troxell selected the theme of “Climate Economy” as the innovative idea for the Bloomberg competition. The Climate Economy refers to the notion that economic prosperity can occur without high carbon emissions.

In Fort Collins, nearly 50% of low- to moderate-income residents live in rental housing, much of which is inefficient and contributes to health and economic disparities in the community. The City's proposed Bloomberg project is to develop public-private partnerships that help catalyze the renovation of thousands of single- and multi-family rental properties. The strategy includes helping property owners finance these improvements through their utility bills, known as on-bill financing (OBF).

Bloomberg Philanthropies works in over 120 countries around the world to ensure better, longer lives for the greatest number of people. The organization focuses on five key areas for creating lasting change: Arts, Education, Environment, Government Innovation, and Public Health. In 2016, Bloomberg Philanthropies distributed $600 million. For more information, go to www.bloomberg.org.
On-Bill Financing 2.0

The City of Fort Collins 2013 - 2016 on-bill financing program successfully demonstrated the feasibility of a Utility department-managed, private sector-driven strategy to reduce carbon emissions through residential energy efficiency building upgrades, in collaboration with external partners including contractors, equipment suppliers and area homeowners. In late 2016, the City transitioned from the successful on-bill financing methodology to a 3rd party commercial model. Although the new structure aligns with City and Utilities current financial requirements, the 3rd party financing program has failed to achieve acceptable results. In order to achieve community energy and climate goals, as adopted by City Council, a “reboot” and upgrade of the original approach is required - On-Bill Finance 2.0. The OBF2.0 reboot will:

- Materially contribute to the City’s energy and climate objectives, particularly the 2030 goals. Research and analysis contained herein indicates that OBF2.0 will be a critical factor in Fort Collins likelihood of achieving CAP goals;
- As a part of the Bloomberg Mayors’ Challenge, OBF 2.0 will focus on expanding equitable participation of low and moderate income (LMI) households in energy efficiency and renewable energy programs;
- Establish a scalable public private partnership (PPP) social impact model that incents the private sector and residents to upgrade aging building stock in an affordable, cost effective manner;
- Spur the start, strengthening and/or expansion of new and existing energy efficiency related businesses and jobs in Fort Collins.
- Obtain non-recourse, private-sector debt capital to fund new energy efficiency loans for homes and businesses.
- Benefit utility ratepayers by promoting and increasing energy conservation and efficiency, and likely reducing the need for additional resources to provide utility resources.

CITY FINANCIAL IMPACTS

The funds have been received and entered into the appropriate Utilities account. While the CEO grant is not restricted to use for LMI households, the funds will be used as a part of the Bloomberg Mayors’ Challenge with a focus on serving these households. The appropriation of these funds will enable Utilities to continue to move forward with the initial phases of the OBF 2.0. While no matching funds are required for this grant, staff will be supporting a CEO project to develop an OBF toolkit which CEO will then offer to other Colorado communities. OBF 2.0 will require additional capital funds to scale over time. In addition to this grant, the Colorado Energy Office (CEO) has agreed to provide $800,000 through a low interest loan in support of the capitalization of OBF. Additional third-party, private-sector capital sources will be added, resulting in a sustainable financial model. Any such future additions to the OBF 2.0 program will be brought to Council for consideration as appropriate.
ORDINANCE NO. 106, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING UNANTICIPATED GRANT REVENUE FROM THE COLORADO
ENERGY OFFICE IN THE LIGHT AND POWER FUND FOR THE HOME
EFFICIENCY LOAN PROGRAM/ON-BILL FINANCING PROGRAM

WHEREAS, under Ordinance No. 033, 2012, the City established a Home Efficiency Loan Program, also known as On-Bill Utility Financing (OBF), which enabled Fort Collins Utilities to offer financing and on-bill servicing of customer loans for energy efficiency, water efficiency and renewable energy upgrade projects; and

WHEREAS, between 2013 through 2016, OBF provided low-cost financing for energy efficiency, solar photovoltaic, and water conservation improvements, in support of Utilities’ efficiency and conservation efforts, and policy goals from Plan Fort Collins, the Climate Action Plan, Energy Policy and Water Conservation Plan; and

WHEREAS, in 2016, the City transitioned the funding methodology for OBF to a third-party commercial model relying on an outside financing partner; and

WHEREAS, the rate of OBF residential customer energy efficiency building upgrades under the third-party commercial loan model has lagged below levels required to achieve City energy and climate policy goals; and

WHEREAS, in February 2018, the City was selected as a Champion City as part of the 2018 Bloomberg Philanthropies U.S. Mayors' Challenge competition; and

WHEREAS, in conjunction with selection as a Champion City, Bloomberg Philanthropies awarded the City a $100,000 grant to develop a program to improve energy efficiency of low- to moderate-income rental households, which was appropriated in Ordinance No. 082, 2018; and

WHEREAS, this item is to appropriate the Colorado Energy Office grant awarded to the City of $200,000 to provide capital for a loan program to improve energy efficiency and renewable energy for Fort Collins households; and

WHEREAS, Utility Services staff and the City Manager recommend appropriating the Colorado Energy Office grant to continue the OBF program to increase participation by low- and moderate-income households in energy efficiency and renewable energy programs, and thereby increase the City’s progress toward its 2030 energy and climate objectives; and

WHEREAS, Article V, Section 9, of the City Charter permits the City Council to make supplemental appropriations by ordinance at any time during the fiscal year, provided that the total amount of such supplemental appropriations, in combination with all previous appropriations for that fiscal year, does not exceed the current estimate of actual and anticipated revenues to be received during the fiscal year; and
WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Electric Utility Light and Power Fund and will not cause the total amount appropriated in the Light and Power Fund to exceed the current estimate of actual and anticipated revenues to be received in that fund during any fiscal year; and

WHEREAS, Article XII, Section 6 of the City Charter permits the City Council to approve expenditure of utility funds for renewals, replacements, extraordinary repairs, extension, improvements, enlargements and betterments of each Utility enterprise or other specific utility purpose determined by Council to be beneficial to the ratepayers of such Utilities; and

WHEREAS, the City Council has determined it is desirable to enhance the program incentives and financing options for new Home Efficiency Loan Program/OBF loans and provide flexibility in the administration of those loans, in furtherance of the conservation benefits available to ratepayers through the OBF program, as required by Article XII, Section 6 of the City Charter.

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

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

Section 2. That, for the reasons stated above, the City Council hereby finds and determines that applying the Colorado Energy Office grant to enhance the program incentives and financing options for the Home Efficiency Loan Program/OBF program, as described herein, will be for the betterment of the affected Utilities and serve utility purposes beneficial to the ratepayers of those Utilities by promoting and increasing energy and water conservation and efficiency and reducing the need for additional resources to provide such utility services.

Section 3. That there is hereby appropriated for expenditure from unanticipated grant revenue in the Light and Power Fund the sum of TWO HUNDRED THOUSAND DOLLARS ($200,000) for the purposes of developing and capitalizing the OBF program.

Introducted, considered favorably on first reading, and ordered published this 21st day of August, A.D. 2018, and to be presented for final passage on the 4th day of September, A.D. 2018.

______________________________________________________________
Mayor

ATTEST:

______________________________________________________________
City Clerk
Passed and adopted on final reading on the 4th day of September, A.D. 2018.

ATTEST:

Mayor

City Clerk
AGENDA ITEM SUMMARY
City Council

AGENDA ITEM SUMMARY
August 21, 2018

STAFF

Mike Calhoon, Parks Supervisor
Jody Hurst, Legal

SUBJECT

First Reading of Ordinance No. 107, 2018, Amending Chapter 23 of the Code of the City of Fort Collins Regarding Model Rocketry.

EXECUTIVE SUMMARY

The purpose of this item is to change the City Code to allow model rocketry activities under a permit issued by the Parks Department. Model rocketry is currently allowed by City Code in areas that are signed for the use. There are no areas currently signed for this use. This change would allow for the development of an internal policy for the safe and appropriate use of model rockets in the parks system, and issuance of a permit for that use.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Model rocketry is an activity that provides a great learning tool in disguise. This activity combines science and technology along with individual creativity and group co-operation. It appeals to all ages and skill levels including Cub Scout groups, model rocket clubs at universities and members of all ages in groups such as the National Association of Rocketry.

Currently, City Code 23-203 - Prohibited acts; permits. Section b.4 states: "Unless a sign has been posted by the Service Unit that the particular recreation area or a portion thereof is open for such use, it shall be unlawful to: Launch a model rocket in, onto or over a recreation area." With the build out of the parks system and the increasing population growth, areas to sign for this activity have become scarce. This request to change the ordinance is so that a permit may be issued for model rocketry in the parks system. This will allow for the completion of an internal policy which has already been reviewed by the City Attorney's Office, Safety Security and Risk Management and the Parks and Recreation Advisory Board. Rocket size limitations, insurance requirements, appropriate locations and safety zone standards have been addressed along with the requirement to adhere to the National Association of Rocketry standards.

The permit process will also facilitate communication with the Park Ranger staff to ensure proper compliance with the restrictions proposed in the new policy.

CITY FINANCIAL IMPACTS

There are no financial impacts from this change. The current permitting system will accommodate this change with no additional resources required.

BOARD / COMMISSION RECOMMENDATION
At its April 25, 2018, regular meeting, the Parks and Recreation Advisory Board reviewed and supported this change with a vote of 6:1.

PUBLIC OUTREACH

Staff has worked with Cub Scout Troop 116 to develop the standards for safe model rocketry in the parks system.

ATTACHMENTS

1. Parks and Recreation Board Minutes from April 25, 2018 (PDF)
Model Rocketry Demonstration – Robert Kacsanowski, Cub Scouts Troop 116

- Currently, there is no park in the City of Fort Collins that allows the launching of model rockety. The local cub scouts would like to demonstrate how safe model rockets are and work with the city to provide a safe, approved space for them.
- The US Postal Service has not classified model rocket motors as dangerous. The company that makes model rocket motors is located in Pueblo, Colorado. They have a $10 million insurance policy, and in over 3 million launches there has not been a reported incident.
- Two large model rocketry organizations provide safety rules & regulations, the National Association of Rocketry & Tripoli Organization.
- Mike has reviewed the recommended rules & regulations with the City Attorney and suggested the addition of an insurance policy which the presenter has acquired. Additionally, the rocket motors should be limited to C’s & D’s.

Discussion

Board – What is the purpose of teaching this in Boy Scouts?
Presenter – This is provided as an elective option for Boy Scouts.
Board – Were people launching these in their backyard?
Presenter – You can launch on private property, but we don’t have private property that accommodates the space required.
Board – Do they fly straight up or in an arc?
Presenter – That depends on the wind and launch conditions. There are streamers and parachutes that slow the descent, but they can get stuck in trees, on roofs, etc. We also follow the rules & regulations that limit the materials that can be used to paper, plastic, cardboard, etc. and prevent the launching of hazardous materials.
Board – Have you approached the school district?
Presenter – That’s the first thing we did. They want to promote STEM and Model Rocketry; however, the Poudre School District follows the policies of the City of Fort Collins so they also won’t allow it.
Board – When I was an 8th-grade teacher we would launch them on concrete behind a fence in case they did fall horizontally before launch, which I did see happen at one point.
Presenter – There are safety protocols we follow to prevent any issues such as that. Safety is an important issue. We would request a permit for launching rockets.
Board – I used to ride my horse by Spring Canyon Park, and a father & son launched a rocket which started my horse and I’ve also seen launches during high fire danger.
Presenter – Providing a safe location, permitting process and park signage regarding model rocketry regulations will help to give hobbyists an option. Whereas now, without a safe place or process, there is no legal and regulated option.
Board – Does the motor spew flame out the back? It looks similar to a firecracker.
Presenter – It does spew a hot gas. We do not launch from a flammable surface. They do come with a metal launch pad.
Board – Is there a specific area or space recommended for model rocketry launches?
Presenter – It depends on the engine size. For A, you would need a 100x100 space, B would be 200x200, etc.
Board – Are you looking for a permit?
Presenter – Yes, we’re looking to work with the Parks Department to establish a permitting process.
Board – I would recommend, as this moves forward, I would like to keep the Park Rangers involved and find out what they say. Considering that there will be people that will not have permits, insurance, safety protocol, etc.
Presenter – Some municipalities that include a QR code on signs to provide more details information to rules, permits, etc so to encourage safe use of model rockets.

Board – I think we should be limit model rocket launches to the type of parks in the City, such as not in smaller, neighborhood parks. Perhaps even parks without fewer trees, like Twin Silo Park. Or restrict to just concrete, such as tennis courts. Fossil Creek Park would also have space.

Staff – Yes, I believe Mike Calhoon was already recommending Community Parks.

Scott Sinn made a motion to support the use of model rocketry based on the Parks Department and City Attorney’s recommendations for safety rules, a permitting process requiring insurance. Seconded by Bruce Henderson – 6:1

**Budgeting for Outcomes Update** – Ralph, Bob, Kurt

- The first round of BFO drafts are due Friday
- **Parks**
  - On-going positions:
    - 2 Parks Technicians - One Downtown and a Playground Inspector.
  - Enhancement positions:
    - Lead Warehouse Manager.
    - Forestry Maintenance Worker (lower pay scale than the Forestry Technician.)
    - Horticulture Crew Chief
    - A new Park Ranger by 2020 to provide 7-coverage.
    - Life-cycle Planting Technician, there are a lot of perennials on Mulberry Bridge alone.
    - Whitewater Park Technician towards 2019
    - 2 Park Technicians
    - Forestry Specialist to handle Emerald Ash Borer logistics, such as tree removal, replacement, contracting, etc. If we make it to 2021 without EAB, we’ll be in a great position.
    - Lincoln Corridor Maintenance Worker
  - Life-cycle Projects
    - Continuing the conversion of the Rolland Moore ballfield lights to LED
    - Rolland Moore tennis complex upgrade from asphalt to post-tension concrete. Also, upgrade the lighting to LED. The estimated cost is $1,222,000. The post-tension concrete is cheaper than replacing with asphalt. The condition of the current courts has caused us to lose some tournament opportunities.
    - Streetscape renovations- parkways & median renovations
    - Encampment Clean-up - $30,000 for Parks. This would be a multi-department project
- **Recreation**
  - On-going
    - Ice & Aquatics Facilities, Recreation Activities & Programs, Recreation Administration & Communication
  - Enhancement
    - Contribution to the Parks & Recreation Master Plan & Recreational Operational Plan
    - Recreation Facility Improvements & Equipment Replacement – An example would be the locker rooms in the Senior Center, Men’s at EPIC, electric basketball hoops to make for faster & safer storage. Exercise equipment replacement at Senior Center and Northside, new vans for safety, new storage at EPIC to replace the city sheds, lobby enclosure for the Green Rink at EPIC. We
ORDINANCE NO. 107, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 23 OF THE CODE OF THE CITY
OF FORT COLLINS REGARDING MODEL ROCKERY

WHEREAS, model rocketry is an activity that provides a great learning tool; and

WHEREAS, when done properly and safely, model rocketry advances science, technology, creativity, and group cooperation; and

WHEREAS, the Code currently prohibits the use of model rockets in recreation areas unless a sign is posted permitting the activity; and

WHEREAS, there are no signs posted in any recreation area permitting the activity, effectively banning it from all recreation areas; and

WHEREAS, City Staff believes a permit system will allow for the safe and effective use of model rockets in parks, removing the effective ban of the current Code system and placing specific requirements on both the model rocket and the persons using the model rocket; and

WHEREAS, a Code amendment is needed to change the current requirement from only using model rockets where signs are posted to only using model rockets when given a permit to do so; and

WHEREAS, the City Council has determined that the proposed amendments are in the best interests of the City and are necessary for the health, safety, and welfare of the City’s citizens.

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

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

Section 2. That Section 23-203 of the Code of the City of Fort Collins is hereby amended as follows:

Sec. 23-203 Prohibited acts; permits.

... (b) Unless a sign has been posted by the Service Unit that the particular recreation area or a portion thereof is open for such use, it shall be unlawful to:

...
(4) Launch a model rocket in, onto or over a recreation area.

(54) Ride or have a horse in a recreation area more than ten (10) feet from a designated trail or roadway, or on any irrigated turf grass, except to the extent unavoidable circumstances require that a horse be ridden or taken into such areas briefly to avoid imminent danger to other persons.

(65) Skateboard or in-line skate, except on a sidewalk, roadway, parking area or designated trail.

... 

(d) Except as authorized by a permit obtained for such use from the Service Unit, it shall be unlawful to:

... 

(16) Launch a model rocket in, onto or over a recreation area.

... 

Introduced, considered favorably on first reading, and ordered published this 21st day of August, A.D. 2018, and to be presented for final passage on the 4th day of September, A.D. 2018.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk

Passed and adopted on final reading on the 4th day of September, A.D. 2018.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
AGENDA ITEM SUMMARY
City Council
August 21, 2018

STAFF
Cassie Archuleta, Senior Environmental Planner
Jody Hurst, Legal

SUBJECT
First Reading of Ordinance No. 108, 2018, Amending Chapter 12, Article X, of the Code of the City of Fort Collins to Remove the Small Scale Source Definition and Warning Requirements for Fugitive Dust.

EXECUTIVE SUMMARY
The purpose of this item is to amend the City Code, Chapter 12, Article X, Particulate Matter Emissions, to remove small source written warning requirements for violations, and instead apply the City's standard citation procedure for civil infractions, which allows the option for written warnings (Sec 19-65. - Commencement of action; citation procedure). This would simplify education, outreach and enforcement related to the Ordinance.

STAFF RECOMMENDATION
Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION
Fugitive dust is defined as solid particulate matter emitted into the air by mechanical process or natural forces. Examples of dust-generating sources include saw cutting, construction activities, unpaved roads and mechanical blowing. Dust emissions are a concern because inhaling fine dust particles can be a health hazard, and visible dust can also be considered a safety hazard and a nuisance.

The fugitive dust ordinance was adopted unanimously by City Council on May 3, 2016, with enforcement beginning on November 1, 2016. The ordinance requires the use of reasonable control measures if off-property transport of visible dust is observed. A provision of the ordinance (Section 12-160) states that small sources, defined as sources less than 5 acres in size, be provided two written warnings prior to being issued a citation for a violation.

Following the first year of implementation, which concluded on November 1, 2017, staff reviewed the effectiveness of the fugitive dust requirements including the small source size threshold. Attached is the 1-Year Impacts Report, provided to Council on March 28, 2018. A key recommendation in the report was the removal of the small source distinction and associated warning requirements from the ordinance language, and instead using the City’s standard citation procedures. Per justification:

- This would simplify understanding of the ordinance and implementation, as staff often encountered confusion regarding whether the ordinance applies to small sources. The only distinction related to small sources is the requirement that two written warnings be issued prior to being issued a citation.
- In practice, all complaints received since Ordinance adoption (55 as of July 2018) have been provided with initial education and outreach (regardless of size), and resolved with voluntary compliance (i.e., no written warnings or citations have been issued). Given the voluntary compliance success rate, it seems that continuing the small source distinction is not necessary.
- Removal of the warning requirements from this ordinance would not remove the standard practice of
outreach and written warnings, but it would provide more consistent requirements for all sources.

- Please note that the proposed amendments would also remove Section 12-153(a) and (b) because those sections were initially added to ensure off-vehicle transport and saw cutting activities for small scale sources would be treated the same as large scale sources (no additional warnings were given for those two activities). Because the small scale source distinction is being removed, those two subsections are now unnecessary.

Next steps if adopted:

The Fugitive Dust Implementation and Enforcement Plan, which was developed as guidance to assist with implementation, will be updated to remove the small source distinction, and instead provide guidance for levels of complaint response for all sources to include, at minimum:

- Initial education and outreach, notifying the sources of the requirements and resources available (warning #1)
- Notice of Violation (NOV) with an opportunity to correct (warning #2)
- Issuance of a citation for a violation

Additionally, the Dust Prevention and Control Manual, which outlines standards for control measures, will be updated administratively to remove references to small source distinctions.

BOARD / COMMISSION RECOMMENDATION

The Air Quality Advisory Board heard a staff update on September 18, 2017. While no formal action was taken by the AQAB, Board members supported removing the 5-acre threshold (September 18, 2017 minutes attached), and noted that the Board did not support inclusion of the threshold distinction when the Ordinance was initially adopted in 2016.

PUBLIC OUTREACH

No public outreach was conducted beyond the AQAB meeting, as no changes are planned in implementation practices. All sources will continue to be provided with initial outreach and education, with a focus on voluntary compliance.

ATTACHMENTS

1. Air Quality Advisory Board Meeting Minutes - September 18, 2017  (PDF)
2. Fugitive Dust Impacts Report  (PDF)
A banker can be a C-PACE lender.
- CSU Green Revolving Fund (GRF) - CSU will use a portion of its endowment to create a self-funded revolving fund to pay for upgrades on campus buildings using their own capital and repaying themselves from savings. Calculations suggest that they should be able to outperform their current endowment and pay interest to themselves.
- Efficiency Loan Programs - The Clean Energy Credit Union (CECU) is the first of its kind to provide loans solely for energy efficiency upgrades.
- Crowd Funding - It is hoped that this will be more of a way to get people personally involved, rather than a significant source of income.
- Environmental Impact Bonds - major financiers that are interested in certain performance outcomes will reduce the interest on bonds in exchange for meeting certain environmental metrics.

Discussion

- What does the organization look like now?
  - The City is still building out tools, bylaws and determining best practices. He is hoping that it will be a significant revenue source, particularly the technology testing aspect of the plan.
- How much money was expected to come from taxpayers and what, specifically, would the money be invested in?
  - Ideally, the City (taxpayers) wouldn’t have to invest any money in this effort, but rather, funding would come from private businesses and organizations. Funding would go towards windows, insulation and other building efficiency upgrades such as LED lighting, electric car infrastructure, and other home/community improvements. These are things that may occur on their own, but the government has an enabling role to play by creating an environment that will allow the private sector to benefit and creating financial tools to help move the process along.
  - It was noted that bigger businesses are already taking steps toward efficiency and sustainability and cited King Sooper’s disposal of organic waste. Interest was expressed in helping to facilitate such practices in small businesses that may not have the budget to consider their impact on the CAP.
  - That is precisely what this plan would help us to do.
- While the connection between money and climate change helps to incentivize the issue for people, what funding would go towards helping reach CAP goals?
  - The biggest emissions sources in Fort Collins include: heating/cooling in houses (largest source), transportation, and waste. This is why most of the instruments that are part of the Climate Economy Plan focus on these three first.

AGENDA ITEM 3: Fugitive Dust Ordinance Implementation

Jenna Channel, Associate Environmental Planner, presented an update regarding the implementation of the City’s Fugitive Dust Ordinance, which took effect in November 2016. The purpose of the presentation was to review the impacts of the Fugitive Dust Ordinance over the past year, present a draft of potential ordinance revisions, present a draft questionnaire which will be submitted for feedback to local businesses, and to solicit the AQAB’s unofficial feedback on each of these items.

Presentation

- Implementation of the Fugitive Dust Act
  - The process for investigating fugitive dust is complaint driven. Dust complaints are routed to the City’s Environmental Services Department (to Jenna, specifically). Jenna then contacts the source directly to find a resolution. If a resolution cannot be reached in this manner, or if the complaint is too vague, then an inspector will be deployed to the source area. The inspection is conducted based on best management practices, and information is formally documented.
- How many complaints did the City receive during the first year?
  - 49 complaints since 2016 (2016 - 25, 2017 - 24)
  - All complaints were addressed through outreach and no written warnings or citations were issued.
Proposed Draft Revisions:
- Under the current ordinance, sites less than 5 acres are not subject to the dust control manual until they have received 2 warnings; proposed revision would be to remove the structured warning process and leave the decision of whether to issue warnings to field staff based on their field observations and inspections.
- Data analysis from the past year has revealed that 90% of permits related to fugitive dust activities were for sites less than 5 acres; these projects are scattered throughout the city in areas of dense population and cause the most impact. The other 10% is made up of sites 5 acres or larger, and many of these were outliers that tended to be more on the outskirts of town with fewer residents, causing less impact. There were almost as many complaints relating to sites less than 5 acres in size as for sites greater than 5 acres. Other projects or activities are difficult to measure in acres such as trackout, roads, and hauling truck activity. Based on this, the City would like to remove the 5 acre threshold from the ordinance to better address fugitive dust in Fort Collins and make all sites of all sizes subject to the same requirements at all times.
- A draft questionnaire was presented for Board feedback and is intended for businesses that must obtain a building permit from the City to gauge how the Fugitive Dust ordinance has affected them over the past year.

Discussion
- There was discussion about the fact that sites that received dust complaints in the past year were only required to show that they had performed best management mitigation practices, regardless of whether they were effective or not.
  - Jenna indicated that there is no explicit language in the ordinance that specifies that practices have to be done effectively. From her experience, she believes that best management practices are too vague (for example, the manual suggests the use of water to help manage dust, but does not state how much must be used for a certain surface area to be effective).
- What about post-complaint follow-up?
  - Complaints are always followed up to inform the party that submitted the complaint of the actions taken toward resolution.
- What is the nature of the source sites that received complaints over the past year?
  - Complaints were received for a variety of sources, but most of them were construction sites. The City has trained almost 100 local contractors on best management practices.
- It was pointed out that the AQAB previously made recommendations regarding the 5-acre clause, but they were not considered when the ordinance was passed a year ago.
  - Jenna explained that, at the time, it was thought that it would be over-burdensome to small businesses. After a year, there is little evidence that it will overburden small businesses.
- A discussion followed on the complicated nature of jurisdiction with regards to dust complaints.
  - Jenna stated that the City’s jurisdiction only covered sources within City limits, excluding agricultural sources and a few others, which are covered by state regulations. It was noted that while a source may not be within City limits, its dust can certainly affect residents. Jenna explained that she has developed good working relationships with both the county and state and will continue to work with them on mitigation.
- What about public outreach, since it’s likely that many citizens are unaware of their own contributions to the fugitive dust issue?
  - Jenna responded that public outreach will be included in the plan to address fugitive dust in Fort Collins; however, since the dust ordinance is still new to the City, it is her goal to get industry in line first, then get citizens on board. In addition to enforcement, she’s been working with construction management classes at CSU and hopes to increase the presence of the Fugitive Dust website to improve public awareness.
- The Environmental Service Department needs to provide a report on the effects of the Fugitive Dust Ordinance to City Council (as prescribed upon the implementation of the ordinance a year ago). The department would like to get the thoughts of Board members prior to writing a formal memo to Council.
While no formal vote was made or formal action taken by the AQAB, Board members generally agreed on removing the 5-acre threshold. The individual opinions of the members present suggest that they support the direction that the Environmental Service Department is moving with regards to the proposed recommendations related to the ordinance.

*Staff Follow-Up: Cassie will collect unofficial feedback from Board members on the questionnaire by Friday, 9/29/17.*

- Mark requests to extend the meeting until 8:30 and the Board agrees.

**Board Updates**

- Vara volunteered with the Poudre Valley Rural Electric Association, Inc. to help install solar panels at the new Coyote Ridge Community Solar Farm, which will generate electricity for low-cost housing, non-profits and co-op members. Private citizens, instructors from CMC and CSU students all volunteered to help with the installation.
- Arsineh recently travelled to Carlsbad to analyze methane emissions from natural gas and found that pipelines are a significant source of emissions. She feels that the Board should consider pipelines as an emission source in future discussions.
- Mark attended Transportation Board, Energy Board and Zoning Board meetings last month and informed them of AQAB’s desire to coordinate with them. He plans to attend the Natural Resources Board this week with the same intent.
- Mark attended a workshop on 8/31/17 which demonstrated the EPA’s Energy Star Portfolio Manager Tool for benchmarking building energy use.
- Salud Family Health purchased the old Forney Industries building on Laporte and wants to make it into a community health hub. They’ve had 2 work sessions to decide what to do with the site; they are considering everything from a basic health center to a community health/education center. Mark plans to go to the final workshop to make suggestions about radon education and a few other significant items discussed during AQAB meetings.
- Mark and Chris attended an AWMA meeting on 9/12/17 at which Cassie presented an overview of the City’s air quality program and Bryan Bibeau from Air Resource Specialists highlighted a new ozone monitoring site coming online in Fort Collins in late 2017, and a Sky Quality Monitor system, which will support the City’s Dark Sky program initiatives.
- Mark has asked for suggestions on how to keep the time in check during meetings, as the Board frequently runs over time. He suggests presenters sending out their slides in advance.

**Staff Updates**

- Cassie is coordinating with Larimer County to discuss the NCAR FRAPPE study. She will keep the Board updated.

**Meeting Adjourned:** 8:28 pm  
**Next Meeting:** October 16, 2017
MEMORANDUM

TO: Mayor and Councilmembers
THRU: Darin Atteberry, City Manager
       Jeff Mihelich, Deputy City Manager
       Jacqueline Kozak Thiel, Chief Sustainability Officer
       Lucinda Smith, Environmental Services Director
FROM: Cassie Archuleta, Environmental Program Manager
       Jenna Channel, Associate Environmental Planner
CC: Eric Keselburg, Compliance Supervisor
    Jody Hurst, Assistant City Attorney II
DATE: March 28, 2018
SUBJECT: Fugitive Dust Ordinance – 1 Year Impacts Report

The purpose of this memorandum is to provide a report summarizing impacts following one year of implementation of Ordinance NO 044, 2016, more commonly known as the fugitive dust ordinance, related to control of particulate matter emissions.

Bottom-Line
During the first year of implementation, forty-one (41) complaints were received, and all were resolved with voluntary compliance (i.e., no written warnings or citations were issued). Upon review, staff is recommending that the small source distinction and associated written warning requirements be removed from the ordinance.

Background
Fugitive dust is defined as solid particulate matter emitted into the air by mechanical process or natural forces. Examples of dust-generating sources include saw cutting, construction activities, unpaved roads and mechanical blowing. Dust emissions are a concern because inhaling fine dust particles can be a health hazard, and visible dust can also be considered a safety hazard and a nuisance.

The fugitive dust ordinance was adopted unanimously by City Council on May 3, 2016, with enforcement beginning on November 1, 2016. The ordinance requires the use of reasonable control measures if off-property transport of visible dust is observed. A provision of the ordinance stated that small sources, defined as sources less than 5 acres in size, be provided 2 written warnings prior to being subject to a violation.

Following 1 year of implementation, which concluded on November 1, 2017, staff has prepared the attached Fugitive Dust Ordinance, 1-Year Impacts Report. A key recommendation in this report is the removal of the small source distinction and associated warning requirements from the
ordinance language, and instead using the City's standard compliance procedures. Per justification:

- This would simplify understanding of the ordinance and implementation, as staff often encountered confusion regarding whether the ordinance applies to small sources. The only distinction related to small sources is the requirement that two written warnings be issued prior to being subject to a violation.
- In practice, all forty-one (41) complaints received during the first year of implementation were provided with initial education and outreach (regardless of size), and all complaints were resolved with voluntary compliance (i.e., no written warnings or citations were issued). Given the voluntary compliance success rate, it seems that continuing the small source distinction is not helpful or necessary.
- Removal of the warning requirements from this ordinance would not remove opportunities for outreach and written warnings, but it would provide more consistent requirements for all sources. Initial education and outreach to encourage voluntary compliance continues to be part of the City's strategic objectives (NLSH 1.7). Also, per general citation procedures (Sec 19-65(a)(1) of Municipal Code), it is already standard practice for compliance officers to provide a written warning, in the form of a notice of violation with an opportunity to correct, for all civil infractions (including fugitive dust).

**Next Steps**

Staff will continue implementing the Fugitive Dust Ordinance with a focus on education, outreach and voluntary compliance. Continued implementation will include additional streamlining of complaint and enforcement tracking, and administrative updates to documentation and processes.

Unless staff receives different direction, staff will bring an ordinance update to Council in the summer of 2018 which removes the small source definition, and associated written warning requirements. This proposed change has been reviewed by the City Attorney's Office and is supported by the Air Quality Advisory Board.

**ATTACHMENT:** Fugitive Dust Ordinance, 1-Year Impacts Report
INTRODUCTION

The purpose of this report is to provide a summary of impacts following the first year of implementation of Ordinance NO 044, 2016, more commonly known as the fugitive dust ordinance, related to particulate matter emissions. Implementation began November 1, 2016, and included the following provision:

Section 4. The City Manager shall provide for the monitoring of the impacts of this Ordinance during the first full year after full implementation of its requirements, and shall review and report in writing to the City Council the effectiveness of the requirements including any recommendations related to the thresholds for application of the various requirements to properties and projects.

The first year of implementation was completed on October 31, 2017, and this report provides an overview regarding impacts, recommendations and next steps. In summary:

- Forty-one (41) dust emission complaints were received during the first year of implementation, all sources were offered education and outreach, and all complaints were investigated and resolved through voluntarily compliance, as no written warnings or citations were issued.
- Per recommendations related to a small source size threshold, staff recommends removing this requirement from the ordinance language. The only distinction for small sources (currently defined as properties less than or equal to 5 acres in size) is that owners or operators be provided two written warnings before being subject to a violation. It is recommended that complaints for all sources instead be addressed through a continued focus on voluntary compliance, and using existing standard procedures for civil infractions which already include written warnings and opportunities to correct before a citation is issued.

OVERVIEW

On May 3, 2016, the City Council of the City of Fort Collins unanimously passed Ordinance NO 044, 2016 which requires that owners or operators of dust-generating sources use reasonable measures to control particulate matter emissions. The ordinance was not designed to eliminate dust, but rather to address concerns regarding impacts from uncontrolled emissions. Enforcement for municipal operations began on March 22, 2016 and full community-wide implementation began November 1, 2016.

For purposes of this ordinance, fugitive dust is defined as solid particulate matter emitted into the air by mechanical processes or natural forces, but not emitted through a stack, chimney or vent. The ordinance requires that any owner or operator of a dust generating activity or source implement control measures as defined in a separate Dust Prevention and Control Manual, to prevent, minimize and mitigate the generation of dust.
A violation of the ordinance occurs if:

- There is evidence of off-property transport of fugitive dust emissions, and
- Control measures, as defined in the *Dust Prevention and Control Manual*, were not implemented.

Additionally, if the lot or parcel is less than 5 or equal to acres in size (defined as a small source), the ordinance includes a provision requiring that two written warnings are issued stating that the “property has yielded off-property transport of fugitive dust” prior to being subject to a violation.

**Background**

Development of local fugitive dust control requirements was originally considered in 2013, as a recommendation from the City’s Air Quality Advisory Board (AQAB). The recommendation requested that the City address gaps in existing State and County regulations related to complaints and potential health impacts from dust generating activities.

Per existing State regulations, the Colorado Department of Public Health and Environment (CDPHE) Air Quality Control Commission (AQCC) Regulation 1, Section III.D related to the emission control for particulate matter, requires that:

> III.D.1.a.(i). Every owner or operator of a source or activity that is subject to this Section III.D. shall employ such control measures and operating procedures as are necessary to minimize fugitive particulate emissions into the atmosphere through the use of all available practical methods which are technologically feasible and economically reasonable and which reduce, prevent and control emissions so as to facilitate the achievement of the maximum practical degree of air purity in every portion of the State.

The Larimer County Health Department, through delegated authority from the CDPHE AQCC, performs inspections per the State requirements as well as implements their own land use codes addressing fugitive dust.

While there is some overlap in State regulations and the new City ordinance (e.g., paved and unpaved roadways, construction activities, demolition activities, etc.), several gaps were identified in State regulations, including:

- Construction activities related to clearing and leveling of areas less than 5 acres are not included
- Some sources, including street sweeping, saw cutting and mechanical blowing are not included
- State and County inspection and compliance resources are limited

Between 2014 and 2016, a *Dust Prevention and Control Manual* was developed and included by reference in the ordinance. The manual identifies industry standard control measures for sources and activities that commonly generate dust within City limits. The manual was developed cooperatively through a stakeholder process that included City staff, members of the AQAB, the construction industry, and local lawn and garden business representatives.
Education and Outreach

Between adoption in May 2016, and the first year of enforcement which ended in November 2017, staff implemented education and outreach efforts which included:

- Development of an internal Implementation & Enforcement Plan to ensure consistent internal procedures
- Training of City staff, including operators of potential dust generating sources, inspectors and compliance officers
- Training and orientation offered to the general public and affected community quarterly. These trainings were attended by over 100 developers, builders and other businesses (e.g., lawn and garden).
- Trainings and orientation conducted on-site for contractors and staff upon request
- Presentations for the CSU Construction Management Program and Associated Landscape Contractors of Colorado (ALCC)
- Development of a fugitive dust outreach video, which is available online (fcgov.com/dust)
- Development of a quick reference pocket field guide

Education and outreach materials were reviewed by representatives of the CDPHE, who indicated they had considered developing a similar education program related to State requirements for control of fugitive particle emissions. In recognition of the City’s education and outreach efforts related to this new ordinance, the State awarded the City a Bronze Environmental Achievement Award by the CDPHE’s Environmental Leadership Program, with recognition from the Governor’s office.

Enforcement

For the first year, it was determined that enforcement would be complaint driven, with no preemptive inspections for compliance. Between November 2016 and November 2017, staff responded to forty-one (41) complaints related to dust. All owners and operators were provided with initial education and outreach, and all complaints were resolved through voluntary compliance without issuance of any written warnings or citations.

If additional actions were deemed necessary beyond initial education and outreach, enforcement procedures may have included:

- A written warning, notifying the sources of the requirements
- A notice of violation (NOV), with an opportunity to correct
- Issuance of a citation for a violation

A citation for a violation could carry a penalty of $500 for a first citation and $1,000 for a second citation.
Small Source Threshold

A key point of Council discussion prior to adoption of the ordinance was the incorporation of a threshold to separate large and small sources. A threshold of a five (5) acres property size was adopted in the ordinance language, with the distinction being that small sources (defined as a single lot or parcel with a total area of not more than 5 acres) are not subject to a violation until two (2) written warnings have been issued stating that the property has yielded off-property transport of fugitive dust.

Per the 41 complaints received between November 2016 and November 2017:
- Eleven (11) complaints were related to lot sizes greater than five acres (> 5)
- Eighteen (18) complaints were related to lots of less than or equal to five acres (≤ 5)
- Twelve (12) complaints were related to projects of undetermined acreage (e.g., unpaved roads or roadwork)

In practice, all sources were offered education and outreach when complaints were received, and no written warnings were issued for any size source.

Permitted projects

Part of the initial discussion in determining the 5 acre threshold included consideration of property sizes for permitted project approvals. Between November 2016 and November 2017, 751 permits were issued with potential dust generating operations (commercial, residential, new addition or demolition), with property sizes as follows:
- ≤ 5 acres: 725 permits (97% of permits, 31.5% of total area)
- > 5 acres: 26 permits (3% of permits, 68.5% of total area)

These proportions are similar to the proportions reviewed when the ordinance was adopted (in 2015, 91% of permits were ≤ 5 acres). A map depicting permitted projects is included below, along with property size and permitted project areas (which is sometimes larger than property size). Also depicted are the approximate locations of the dust complaints.
Figure 1. Map depicting project boundaries and property sizes for permits received between November 2016 and November 2017, and approximate dust complaint locations.
IMPACTS

Staff resources
When adoption of the ordinance was considered, it was anticipated that there would be a low number of complaints, and that implementation would be decentralized without additional resources. In practice, resources required during the first year of implementation included:

- Environmental Services staff led development of training materials, education and outreach, initial routing of complaints, and complaint and enforcement tracking.
- Departments with field inspectors were designated to conduct site visits and identify violations.
- A new Environmental Compliance Inspector position was created in CDNS and designated to support the compliance of waste reduction and recycling requirements and other environmental issues including fugitive dust.
- A new Construction Inspector with the Engineering Department was assigned to assist with dust enforcement.

Cost
Following the first year of implementation, companies and contractors operating locally were invited to complete a questionnaire and provide feedback regarding impacts relating to the Ordinance. Approximately 1,000 emails containing the questionnaire were sent to construction-development permit holders; in addition, the Associated Landscape Contractors of Colorado (ALCC) also sent the questionnaire to their members.

City staff received thirty-seven (37) responses which indicated:

- 21 out of 37 (57%) of respondents were familiar with the requirements of the Fugitive Dust Ordinance.
- 21 out of 37 (57%) of respondents usually work with properties that are less than five (< 5) acres.
- 25 out of 37 (68%) of respondents felt knowledgeable on how to prevent, minimize, and mitigate dust.
- 17 out of 37 (46%) of respondents report that dust control had always been a part of their operations.
- 22 out of 37 (58%) respondents agreed that their operating costs had increased. Of these:
  - 16 (43%) indicated they had spent more on equipment
  - 12 (32%) indicated they had spent more water sources/suppressants
  - 14 (38%) indicated they had spent more on staff time

Additionally, two respondents indicated they would follow up with staff to provide cost estimates demonstrating financial impact. Results were anonymous, and as of this report, no follow up has been received by staff.

Without representations of actual cost, estimates of costs impacts are difficult. It is also difficult to represent the incremental impacts related to the City ordinance, as many of the requirements were already required through State regulations. Factors that contribute to the difficulties in estimating cost include:
ATTACHMENT 1

- The type, quantity, and frequency for application of dust suppression media, such as water, is not defined.
- Multiple options are available in the dust control guidance, varying from no or low cost (e.g., minimizing drop heights), to higher cost practices (e.g., use of a water truck).

A more thorough investigation of cost impacts could support the development of a resource guide, which could be used as part of education and outreach efforts to help owners and operations understand the range of options available, how to implement them, and resources necessary to implement.

RECOMMENDATIONS AND NEXT STEPS

For the first year of implementation, staff was directed to track impacts, and re-evaluate the threshold used to define small sources. Additionally, during the Council session discussion, staff indicated that the need for additional resources would be evaluated. Recommendations for continued improvements are listed below.

Small Source Threshold Requirements

It is recommended that references to small sources be removed from the ordinance language. Currently, the only distinction is the requirement that two (2) written warnings be provided to small sources in a one year period prior to issuing a violation. Factors that influenced the overall effectiveness of the small sources distinction included:

- The distinction adds complexity to the ordinance, as staff often encountered confusion regarding whether the ordinance applies to small sources.
- Property size is not necessarily equivalent to the disturbed area where dust is generated, and it is difficult to quantify linear work (e.g., roadwork) into acreage to determine source size.
- In practice, all forty-one (41) complaints received during the first year of implementation were provided with initial education and outreach (regardless of size), and all complaints were resolved with voluntary compliance (i.e., no written warnings or citations were issued).
- Removal of the warning requirements from this ordinance would not remove opportunities for outreach and written warnings, but it would provide more consistent requirements for all sources. Per general citation procedures (Sec 19-65(a)(1) of Municipal Code), it is already standard practice for compliance officers to provide a written warning, in the form of a notice of violation with an opportunity to correct, for all civil infractions (including fugitive dust).

Implementation and Enforcement

Additional streamlining of implementation and enforcement is proposed, including:

- Transition of field inspection forms, complaint tracking information, and enforcement response to the City’s centralized enforcement tracking database (Accela).
- Integration of requirements to submit dust control plans (which consist of a checklist of activities and options), into the City’s Development Review Process for all development and construction projects with potential dust generating activities. This is already required per the Dust Prevention
ATTACHMENT 1

and Control Manual for sources ≥ 5 acres, but a process to facilitate submission and review plans is not yet in place.

Administrative Updates to Dust Enforcement Manual

The Dust Prevention and Control Manual was adopted by reference in the ordinance. The manual was meant to be somewhat dynamic, in order to reflect consistency with nationally recognized practices for controlling fugitive dust. Administrative revisions are proposed to consist of:

- Changing the terminology “Best Management Practices” to “Control Measures”, in order to be consistent with language used in the City’s stormwater requirements, and the State’s particulate emissions requirements.
- Changing terminology of “required” and “additional” control measures, to “primary” and “contingency” control measures, respectively, to better reflect how the options should be implemented.
- Additional of a “how-to” section to provide additional guidance on how control measures should be implemented.
- Development and inclusion of a cost resource guide to identify a range of costs and other considerations for implementation of specific control measures.

Staff resources

It was indicated that following the first year of implementation, staff would report on the need for additional resources. It is recommended that:

- No additional resources be provided for proactive inspection and compliance at this time. Prior to adoption, there was discussion regarding the need for proactive inspection and compliance, especially for large construction projects. Currently, response is complaint driven and additional resources would be required for more proactive inspection and compliance. Because complaint driven responses have been successful (e.g., there was no evidence of a violation following outreach), resources for proactive enforcement are not currently recommended, but could be considered in the future.
- Continued resources should be allocated to support implementation, education and outreach. Voluntary compliance through education and outreach has been the primary focus of this ordinance implementation. Environmental Services Department staff has absorbed the primary responsibility of this role by providing compliance support through education, outreach, complaint tracking routing, and follow-up. Dedicated resources for the first year of implementation, averaged approximately 10 hrs/week staff time, which would have otherwise been allocated to other air quality outreach efforts (such as wood burning and anti-idling). Continued allocation of these resources to fugitive dust efforts is recommended to sustain support and implement recommendations and next steps as described in this report.
ORDINANCE NO. 108, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 12, ARTICLE X, OF THE CODE OF THE CITY
OF FORT COLLINS TO REMOVE THE SMALL SCALE SOURCE
DEFINITION AND WARNING REQUIREMENTS FOR FUGITIVE DUST

WHEREAS, on May 3, 2017 City Council adopted Ordinance 044, 2016 enacting a new Article X in Chapter 12 of the City Code (the “Dust Control provisions”), regulating particular matter emissions, sometimes referred to as “fugitive dust,” and adopting the Dust Prevention and Control Manual to protect the health, safety, and general welfare of the public; and

WHEREAS, following the first year of implementation of the Dust Control Provisions, which concluded on November 1, 2017, staff reviewed the effectiveness of the Dust Control Provisions and provided the 1-Year Impacts Report (the “Impacts Report”) to Council on March 28-2018; and

WHEREAS, a key recommendation in the Impacts Report was removal of the definition of “small scale source” and associated warning requirements for violation by a small scale source in order to simplify understanding and application of the Dust Control Provisions by removing the distinction between a “small scale source” and any other “dust generating activity or source;” and

WHEREAS, the only distinction related to a “small scale source” and any other dust generating activity or source is a requirement that two written warnings be issued prior to issuance of a citation; and

WHEREAS, in practice, all complaints received since the Dust Control Provisions were adopted have been resolved with voluntary compliance and in light of this record of effective compliance, the addition of two written warnings prior to citing a small scale source appears to be unnecessary; and

WHEREAS, removal of the distinction between small scale sources and other dust generating activities or sources would not alter the enforcement practice of outreach, education and written warnings, but would provide consistent requirements for any citation from all such activities or sources; and

WHEREAS, for the foregoing reasons, staff recommends adoption of this Ordinance and believes that modification of the Dust Control Provisions to eliminate distinctions based on a small scale source will continue to effectively protect the health, safety, and general welfare of the public in connection with fugitive dust.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.
Section 2. That Section 12-151 of the Code of the City of Fort Collins is hereby amended by the deletion of the definition “Small scale source.”

*Small scale source* shall mean a dust generating activity or source occurring on real property within the City that consists of a single lot or parcel with a total area of not more than five (5) acres.

Section 3. That Section 12-153 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 12-153. - Prevention of fugitive dust emissions.

(a) Bulk materials transport: Any person who is an owner or lessee of property within the City on which a dust generating activity or source is located and for which vehicles are used to transport bulk materials to or from the property on a public or private road or on a public right of way shall comply with and expressly require all contractors and subcontractors to comply with the required best management practices and, to the extent set forth therein, the additional best management practices in Section 3.6 of the dust control manual.

(b) Saw cutting or grinding: Any person, owner or operator that cuts or grinds asphalt, concrete, brick, tile, stone, or other masonry materials and whose operations are a dust generating activity or source shall comply with and expressly require all contractors and subcontractors to comply with the required best management practices and, to the extent set forth therein, the additional best management practices in Section 3.10 of the dust control manual.

(e) Other dust generating activities or sources: Any person who conducts, or is an owner or operator of, a dust generating activity or source shall comply with the provisions of the dust control manual.

(d) Violation: It shall not be considered a violation of this section if off-property transport of fugitive dust emissions occurs while dust control measures are being implemented consistent with the dust control manual.

(e) Best management practices: Educational materials regarding best management practices for dust control shall be made available by the City to owners and operators of dust generating activities, including but not limited to, a checklist or other descriptive material.

Section 4. That Section 12-160 of the Code of the City of Fort Collins is hereby deleted in its entirety.
Sec. 12-160.—Limitations on violations and penalties—Small scale source.

No owner or operator of a small scale source is required to comply with the provisions of Section 12-153(c) or is subject to prosecution under that provision, unless, within one (1) year immediately preceding the date of the alleged violation:

(1) such owner or operator has been issued and served by personal service, served to the registered agent, or by certified mail, a written warning and notice stating that the subject property has yielded off property transport of fugitive dust and that he or she must prevent, mitigate, and minimize fugitive dust; and

(2) such owner or operator, after having been issued and served with the written warning in Section 12-160(1), is issued and has been served by personal service, served to the registered agent, or by certified mail, an additional written warning and notice that the subject property has after the service of such prior warning and notice yielded off property transport of fugitive dust and that he or she must immediately comply with the provisions of Section 12-153(c).

Section 5. Notwithstanding any provision of the Dust Control Provisions to the contrary, the City Manager is hereby authorized to adopt conforming changes to the Dust Control Manual to implement the changes approved in this Ordinance and, after such adoption, shall deliver an updated copy of the Dust Control Manual to the City Clerk and the City Clerk shall keep the updated Dust Control Manual on file in accordance with City Code Section 12-152.

Introduced, considered favorably on first reading, and ordered published this 21st day of August, A.D. 2018, and to be presented for final passage on the 4th day of September, A.D. 2018.

Introduced, considered favorably on first reading, and ordered published this 21st day of August, A.D. 2018, and to be presented for final passage on the 4th day of September, A.D. 2018.

______________________________
Mayor

ATTEST:

______________________________
City Clerk
Passed and adopted on final reading on the 4th day of September, A.D. 2018.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
AGENDA ITEM SUMMARY
August 21, 2018
City Council

STAFF
Martina Wilkinson, Assistant City Traffic Engineer
Joe Olson, City Traffic Engineer
Brad Yatabe, Legal

SUBJECT
Items Relating to Adequate Public Facilities for Transportation.

EXECUTIVE SUMMARY
A. First Reading of Ordinance No. 109, 2018, Amending Article 3 of the Land Use Code Regarding Adequate Public Facilities Standards for Transportation Levels of Service.

B. First Reading of Ordinance No. 110, 2018, Amending Larimer County Urban Area Street Standards Related to Land Use Code Adequate Public Facilities Requirements.

The purpose of this item is to consider revisions to the Land Use Code (“LUC”) and the Larimer County Urban Area Street Standards (“LCUASS”) as they relate to Adequate Public Facilities (“APF”) standards for transportation levels of service. The changes will make the standards current and consistent and provide for Alternative Mitigation Strategies in cases where typical improvements are not feasible, not proportional to impact, or not desired by the City.

STAFF RECOMMENDATION
Staff recommends adoption of the Ordinances on First Reading.

BACKGROUND / DISCUSSION
The purpose of this item is to refine LUC Sections 3.7.3, Adequate Public Facilities, and 3.6.4, Transportation Level of Service Standards, and the associated LCUASS standards and processes for evaluating intersections. The effort is in response to community interest and concern raised in connection with various projects. City Council provided direction to staff to review the current status, propose refinements, and create flexibility in the process.

Goals of the Transportation Related Changes to Adequate Public Facilities (APF)

The goals of the changes in Code, standards, and process include the following:

- The overall basis of APF remains unchanged: developments must review their impacts and make improvements if required to meet standards.
- If typical improvements needed for overall intersection function are not proportional, not feasible, or not desired by the City, then an Alternative Mitigation Strategy may be used to provide a way forward in a manner acceptable to the City while still having development mitigate their impacts.
- The revisions will combine two processes into one, reflect current standards, be consistent across documents, acknowledge changing development patterns (such as infill), and allow for consideration of a holistic transportation review based on City interests.
Summary of the Proposed Changes

The following LUC and LCUASS changes are proposed. The full set of changes are included. (Attachment 2)

<table>
<thead>
<tr>
<th>Section of Code or Standard</th>
<th>Current Text</th>
<th>Proposed Change</th>
</tr>
</thead>
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| LUC 3.6.4 - Transportation Level of Service Requirements | Identifies standards for transportation function | • Makes evaluation standards current and consistent with LCUASS  
• Defines nominal impact |
| LUC 3.7.3 - Adequate Public Facilities | Establishes mechanism to ensure adequate infrastructure is available with developments | • Makes evaluation standards for transportation current and consistent with LCUASS  
• Outlines process for improvements based on alternative mitigation for overall intersection function  
• Details threshold for APF exception for transportation |
| LCUASS Chapter 1 -. Section 1.9.4 - Variances and Appeal Processes | Outlines variance process for designs that don’t meet standards | • Clarifies applicability of variances for instances when pedestrian, bicycle, or vehicular approaches or movements at intersections do not meet standards. |
| LCUASS Chapter 4 - Section 4.2.2 Types of Studies | Description of when Transportation Impact Study (TIS) is not required. | • Clarifies that certain transportation Adequate Public Facilities requirements don’t apply if TIS is waived. |
| LCUASS Chapter 4 - Section 4.5.2 Significant Negative Impacts in Fort Collins | Defines a significant negative impact | • Makes the threshold easier to understand and calculate. |
| LCUASS Chapter 4 - Section 4.6 Mitigation Measures | Discusses options for mitigation when proposals do not meet transportation levels of service | • Clarifies the process for when proposals cannot meet transportation levels of service  
• Adds Alternative Mitigation Strategy process for proposals where overall intersection levels of service are not met, and typical improvements are not proportional, feasible, or desired by the City. |

Background

In 1997, the City adopted LUC Section 3.7.3 to establish a mechanism that ensures that public facilities and services needed to support development are available concurrently with the impacts of such developments. The transportation element of the APF ordinance details the required vehicular Level of Service (“LOS”) at substantially impacted intersections. If the LOS is not met, then the development is required to make improvements to reach an acceptable LOS, or the project cannot move forward. There are several challenges with the current status:

• APF was historically envisioned to address greenfield intersections on the fringes of the City, and some of its restrictions are difficult to meet or may not be wanted in infill areas.
• The evaluation for APF is in addition to other and different requirements within the City’s street standards (i.e. there are currently two separate processes). (Attachment 1)
• The APF transportation criteria is dated and not consistent with other standards.
Agenda Item 14

- The City’s existing APF ordinance does not limit a developer’s responsibility to a “proportionate share” of improvements based on impact and does not offer any flexibility for alternative mitigation.

City staff previously identified the challenges noted above and presented opportunities for refinement to City Council at work sessions in August 2016 and again in April 2018. General direction from Council has been:

- Support to retain APF but create flexibility to recognize alternative mitigation for transportation impacts.
- Support to establish a mechanism for proportional share contributions for transportation impacts.
- Support to better accommodate infill and re-development patterns in the city, as well as, recognition of the multi-modal transportation interests of the community.
- Support to update and consolidate the process with current transportation standards and make it consistent across documents LCUASS and the LUC.

Proposed APF Refinement

The refined process will be as generally outlined in Attachment 2. The following are noted:

- The transportation APF element in the Land Use Code will be aligned with LCUASS.
- Insignificant and/or nominal impact developments are limited to those where traffic impact studies (“TIS”) are waived due to their small size. The criteria for a TIS waiver will be consistent with LCUASS.
- Mitigation for Level of Service (LOS) issues remain the same if reasonable/proportional mitigation is possible, or where Level of Service issues are limited to intersection approaches or movements.

In locations where overall intersection LOS is not met (the current APF threshold), and typical roadway improvements to meet LOS are not feasible, not desired by the City, or not proportional, a site-specific Alternative Mitigation Strategy can be developed. This strategy:

- Will be developed by a multidisciplinary team composed of City staff. The strategy can be proactively developed in locations of known APF issues, or can be concurrently developed during a development’s review process once impacts are known;
- Identifies localized transportation improvements that the City supports and that helps mitigate the development’s impact in the area of the APF constrained intersection;
- Is site specific to each location;
- May include roadway, intersection, signal, and/or multi-modal improvements (such as bicycle, pedestrian or transit facilities); and
- Should be constructible within a three-year timeframe.
- May include determination that no reasonably related and proportionate mitigation is possible or desired by the City.

Examples of this might include alternate route improvements (i.e., Timberline/Vine) to address impacts at Lemay/Vine, bike or transit infrastructure in the downtown area to address impacts at College/Mountain, sidewalk improvements to address impacts in the vicinity of College/Harmony.

Once the strategy is developed, and an applicant’s impact is known, staff will determine what portion (or all) of the strategy a development must complete based upon anticipated vehicular trips through the APF constrained location. The implementation could include either construction or proportional monetary contribution towards a specific upcoming project (within three years).

If the applicant is willing to implement its portion of the strategy, then that is noted in the recommendation of approval for the project and memorialized in the development agreement. If the developer is not willing to implement the strategy, they can pursue a Takings Determination through LUC Division 2.13.
**Agenda Item 14**

**Relationship of Alternative Mitigation Strategy to Transportation Capital Expansion Fees**

The City has a Transportation Capital Expansion Fee ("TCEF") program (previously called the Street Oversizing Program) which collects revenue from new developments to mitigate overall transportation impacts of growth. The TCEF fees are predominantly based on the cost to add capacity to the existing transportation network needed for growth and focus on funding roadway widening (complete streets) along arterial and collector roadway segments. The fees also include a limited contribution toward citywide intersection and multimodal improvements. The TCEF fees paid by a developer cannot be used to address existing deficiencies.

The proposed Alternative Mitigation Strategy is intended to address a development’s impact on localized transportation concerns that may not be funded (in full or part) by TCEF and/or able to be constructed within a reasonable timeframe (i.e. three years). Therefore, the strategy will serve as a companion to TCEF. Similar to TCEF fees, the Alternative Mitigation Strategy cannot address existing deficiencies.

**Clarifications After Planning and Zoning Board Hearing**

There are several minor clarifications made to the proposed changes after the Planning and Zoning Board hearing. This includes a formatting change in Land Use Code section 3.7.3 to add a sub-header, minor changes in LCUASS Chapter 4 to ensure that the usage of the term “proportional” is consistently linked with the term “reasonable” where appropriate, and a minor edit to LCUASS section 4.6.8 to clarify that the Alternative Mitigation Strategy may be challenged as a taking pursuant to Land Use Code Division 2.13.

**CITY FINANCIAL IMPACTS**

This proposal does not directly affect City financial resources. The changes are structured such that developments will contribute their proportional share towards mitigation of transportation impacts.

**BOARD / COMMISSION RECOMMENDATION**

The Transportation Board reviewed the proposal at two work sessions and took unanimous action at their May 16, 2018, meeting to endorse the proposed modifications to APF.

The Planning and Zoning Board reviewed the proposal at three work sessions. At its July 19, 2018, the Board, as part of its consent agenda, unanimously recommended that Council approve the proposed changes.

**PUBLIC OUTREACH**

In the past two years, staff has completed outreach to those sections of the community affected by and/or interested in the details related to APF standards. In addition to outreach to relevant boards and commissions, multiple meetings and conversations have been held with stakeholders in the development community to better understand the complexities and important considerations to keep in mind as the proposal was developed.

**ATTACHMENTS**

1. Current Status (PDF)
2. Proposed Process (PDF)
3. Council Minutes Work Session Summary APF (PDF)
4. Transportation Board Letter- 2018 APF ordinance (PDF)
Intersection Review - Current

Adequate Public Facilities
In the Land Use Code

- Check overall intersection LOS against Table II in MMLOS manual
- Does it meet MMLOS LOS?
  - NO
  - Does project meet exception of 50 trips in peak hour through intersection?
    - NO
    - Make Improvements?
      - NO
      - Wait
    - YES
    - Project Can Proceed
  - YES
- Make Improvements?
  - NO
  - Project Can Proceed

LCUASS

- Check overall intersection as well as approach and movement LOS against Table 4-3 in LCUASS
- Does it meet LCUASS LOS?
  - NO
  - Is there a “significant negative impact”? (Does overall intersection delay change by more than 2%?)
    - NO
    - Request variance – technical review
      - APPROVED
    - YES
    - RECOMMEND DENIAL
  - YES
- Make Improvements?
  - NO
  - Project Can Proceed

Challenges:
- Table II in MMLOS is dated, not consistent with LCUASS and incomplete
- No variance procedures or flexibility
- Not proportional to impact
- No opportunities for alternative mitigation (all or nothing)

Note:
- LCUASS also has volume warrants for auxiliary turn lanes regardless of level of service.
- Variance criteria is not specifically outlined
Intersection Review - Proposed

Check overall intersection as well as approach and movement LOS against Table 4-3 in LCUASS

Does it meet LOS?

YES

NO

Is it a minimal or insignificant impact?

YES

NO

Can Level of Service be restored with improvements that are reasonable and proportional?

YES

Make Improvements

NO

If Intersection LOS is problem

City develops site specific Alternative Mitigation Strategy. Determines proportional contribution.

If Approach or Movement LOS is problem

Request variance through LCUASS – technical review

APPROVED

RECOMMEND DENIAL

Is applicant willing to implement Strategy?

YES

Implement Development’s portion of strategy

NO

Takings Determination LUC Div. 2.13

Project Can Proceed

Packet Pg. 128
MEMORANDUM

Date: August 11, 2016

To: Mayor and City Councilmembers

Through: Darin Atteberry, City Manager
          Laurie Kadrich, PDT Director

From: Joe Olson, City Traffic Engineer
       Rick Richter, Director of Infrastructure

Re: Work Session Summary – August 9th, 2016 re: Adequate Public Facilities

At the August 9, 2016 City Council Work Session, Laurie Kadrich, Joe Olson and Rick Richter presented information regarding the status of the transportation related element of Adequate Public Facilities in the Land Use Code. All Councilmembers were present with Councilmember Overbeck attending via phone.

Discussion Summary

- Staff presented the background of the Adequate Public Facilities (APF) Ordinance, its interrelationship with the standards in the Larimer County Urban Area Street Standards (LCUASS), and identified opportunities for refinement in light of a changing context of growth patterns and transportation interests in Fort Collins.
- A proposed approach was presented that would consolidate the two processes (APF and LCUASS review) into one process, update the standards to be current, consistent and complete, and provide consideration of flexibility/alternative mitigation through a Modification of Standard process.

Council Feedback

- The Council generally supported the concept of combining the transportation requirements of APF and LCUASS into one set of standards.
- The Council is generally supportive of adding flexibility to the standards through some sort of Modification of Standard process.
The Council commented on the importance of defining 'insignificant impact', the process of determining and implementing proportionality, and the criteria to review a Modification of Standards.

Council expressed interest in maintaining a consistent and fair overall APF process, and wants to ensure that new development continues to pay for infrastructure related to their development.

Council identified the Planning and Zoning Board, the Transportation Board and the Economic Advisory Commission as groups to be included in an outreach effort.

**Next Steps**

Staff will:

- Work on the development of a new combined transportation review process, focusing on identifying how 'insignificant impact' is defined, and developing a process to determine proportional impact.
- Further examine whether an administrative variance would be appropriate for LCUASS.
- Reach out to the above mentioned Boards and Commissions.
- Draft proposed changes to the APF ordinance for consideration by Council.
MEMORANDUM

DATE: April 25, 2018

TO: Mayor Troxell and City Councilmembers

THRU: Darin Atteberry, City Manager
       Jeff Mihelich, Deputy City Manager
       Laurie Kadrich, Director PDT

FROM: Joe Olson, City Traffic Engineer
       Martina Wilkinson, Assistant City Traffic Engineer

RE: April 24, 2018 Work Session Summary – Adequate Public Facilities

At the April 24, 2018 City Council Work Session, Joe Olson and Martina Wilkinson presented information regarding the proposed changes to the transportation element of Adequate Public Facilities in the Land Use Code. All Councilmembers were present.

Presentation Summary

- Staff presented the background of the Adequate Public Facilities (APF) Ordinance, its interrelationship with the standards in the Larimer County Urban Area Street Standards (LCUASS), and identified challenges with the current status. Results from a previous Council work session with guidance to pursue flexibility in the ordinance were reviewed.
- A proposed approach to develop Alternative Mitigation Strategies in locations where overall intersections do not meet Level of Service (LOS) requirements AND typical improvements are not feasible, not wanted by the City or not proportional to impact was presented.
- The presentation included details of how the strategies would be developed and a series of examples were used to help illustrate potential implementation.
- Questions for Council were related to whether the Council was comfortable with the proposed approach, and whether staff should move forward with final outreach and implementation of the changes.

Discussion and Council Feedback

- The Council was generally supportive of the concept of the Alternative Mitigation Strategies.
- Council commented on the benefits of flexibility, and greater inclusiveness of multi-modal interests in the transportation system.
- Council indicated interest in ensuring that development continues to be responsible for their “fair share” of improvements.
- The Council noted the importance of keeping track of the mitigation agreements, being cognizant of priorities if City funding is proposed to be utilized to supplement projects and not creating additional financial liability for the City in terms of operations/maintenance.
- Council provided guidance to move forward with final outreach and bringing proposed changes to the Land Use Code and Ordinance forward for consideration.

**Next Steps**

Staff will:
- Finalize the details of a new combined transportation review process for intersections, including the element of Alternative Mitigation Strategies.
- Staff will complete outreach to the Transportation Board, Planning and Zoning Board, and various interested community members (primarily the development community).
- Staff will bring proposed changes to the Land Use Code to Planning and Zoning and to the APF ordinance to Council for consideration - likely in July.
DATE: July 10, 2018

TO: Mayor Troxell and City Councilmembers

FROM: Eric Shenk, Transportation Board Chair, on behalf of the Transportation Board

CC: Darin Atteberry, City Manager

RE: Adequate Public Facilities Ordinance

The Transportation Board reviewed the Adequate Public Facilities (APF) Ordinance presented by Joe Olson and Martina Wilkinson at our May 16, 2018 meeting. They discussed the current limitations of the APF Ordinance with its lack of flexibility and lack of variance process. The proposed alternative mitigation strategy includes a multi-disciplinary City staff team to evaluate development sites that fall outside the current APF guidelines and recommend appropriate variances. There is also a mechanism for developers to appeal variances via the Planning and Zoning Board.

The Transportation Board voted unanimously to endorse the proposed modification of the APF Ordinance on a 9-0 vote.

Respectfully submitted,

C. Eric Shenk, Transportation Board Chair
ORDINANCE NO. 109, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE 3 OF THE LAND USE CODE REGARDING
ADEQUATE PUBLIC FACILITIES STANDARDS FOR
TRANSPORTATION LEVELS OF SERVICE

WHEREAS, on December 2, 1997, by its adoption of Ordinance No. 190, 1997, the City Council enacted the Fort Collins Land Use Code (the "Land Use Code"); and

WHEREAS, at the time of the adoption of the Land Use Code, it was the understanding of staff and the City Council that the Land Use Code would most likely be subject to future amendments, not only for the purpose of clarification and correction of errors, but also for the purpose of ensuring that the Land Use Code remains a dynamic document capable of responding to issues identified by staff, other land use professionals and citizens of the City; and

WHEREAS, since its adoption, City staff and the Planning and Zoning Board have continued to review the Land Use Code and identify and explore various issues related to the Land Use Code and have now made new recommendations to the Council regarding certain issues that are ripe for updating and improvement; and

WHEREAS, the purpose of the Adequate Public Facilities requirement is to ensure that public facilities and services needed to support development are available concurrently with the impacts of such development; and

WHEREAS, the proposed changes to the Adequate Public Facilities Land Use Code relate to the transportation requirements and are intended to ensure that such requirements are reasonably related and roughly proportional to the impacts of development; and

WHEREAS, through its adoption of Ordinance No. 110, 2018, Council has made policy changes to the Larimer County Urban Area Street Standards specific to the City in coordination with these Land Use Code amendments to facilitate implementation of the Adequate Public Facilities transportation requirements; and

WHEREAS, the City Council has determined that the recommended Land Use Code amendments are in the best interests of the City and its citizens.

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

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

Section 2. That Section 3.6.4 of the Land Use Code is hereby amended to read as follows:
3.6.4 - Transportation Level of Service Requirements

(A) **Purpose.** In order to ensure that the transportation needs of a proposed development can be safely accommodated by the existing transportation system, or that appropriate mitigation of impacts will be provided by the development, the project shall demonstrate that all adopted Level of Service (LOS) standards will be achieved for all modes of transportation as set forth in this Section 3.6.4.

(B) **General Standard.** All development plans shall adequately provide vehicular, pedestrian and bicycle facilities necessary to maintain the adopted transportation level of service standards. The vehicular level of service standards are those contained in Table 4-3 of the Larimer County Urban Area Street Standards (LCUASS). The bicycle and pedestrian level of service standards are those contained in Part II of the City of Fort Collins Multimodal Transportation Level of Service Manual. Mitigation measures for levels of service that do not meet the standards are provided in Section 4.6 of LCUASS, for the following modes of travel: motor vehicle, bicycle and pedestrian. The No Transit level of service LOS standards contained in Part II of the Multi-modal Transportation Manual will not be applied for the purposes of this Section. Notwithstanding the foregoing, adopted level of service standards need not be achieved where the necessary improvements to achieve such standards are not reasonably related and proportional to the impacts of the development. In such cases, the Director may require improvements or a portion thereof that are reasonably related and proportional to the impacts of the development or the requirement may be varied or waived pursuant to LCUASS Section 4.6.

(C) **Transportation Impact Study, Nominal Impact.** In order to identify those facilities that are necessary in order to comply with these standards, development plans may be required to include the submittal of a Transportation Impact Study, to be approved by the Traffic Engineer, consistent with the Transportation Impact Study guidelines as established in LCUASS Chapter 4 of the Larimer County Urban Area Streets Standards. Should a Transportation Impact Study not be required pursuant to LCUASSS Chapter 4, a proposed development shall be deemed to have a nominal impact and shall not be subject to the transportation level of service requirements described in this Section 3.6.4.

Section 3. That Section 3.7.3 of the Land Use Code is hereby amended to read as follows:

3.7.3 - Adequate Public Facilities

(A) **Purpose.** The purpose of the adequate public facilities (APF) management system is to establish an ongoing mechanism which ensures that public facilities and services needed to support development are available concurrently with the impacts of such development.

(B) **Applicability.** This Section shall apply to all development in the City.

(C) **APF Management System.**

(1) **APF Management System Established.** In order to implement the City's Principles and Policies, the adequate public facilities management system ("APF management system") is hereby established. The APF management system is
incorporated into and shall be part of the development review procedures as well as the process for issuance of Building Permits.

(2) \textit{General Requirements.} The approval of all development shall be conditioned upon the provision of adequate public facilities and services necessary to serve new development. No Building Permit shall be issued unless such public facilities and services are in place, or the commitments described in subparagraph (E)(1)(a)(2) below have been made, or with respect to transportation facilities, a variance under LCUASS Section 4.6.7 or an alternative mitigation strategy under LCUASS Section 4.6.8 has been approved. Under this APF management system, the following is required:

(a) The City shall adopt and maintain level of service standards for the following public facilities: transportation, water, wastewater, storm drainage, fire and emergency services, electrical power and any other public facilities and services required by the City.

(b) No site specific development plan or Building Permit shall be approved or issued in a manner that will result in a reduction in the levels of service below the adopted level of service standards for the affected facility, except as expressly permitted under this Section 3.7.3 (and the referenced provisions of LCUASS).

(D) \textit{Level of Service Standards.} For the purpose of review and approval of new development and the issuance of Building Permits, the City hereby adopts the following level of service standards for the public facilities and services identified below:

(1) \textit{Transportation.}

(a) All development must have access to the Improved Arterial Street Network or to a street for which funds have been appropriated to fund improvement as an arterial street as more specifically required in Division 3.3.2, Subdivision Improvements, (F) Off-site Public Access Improvements.

(b) Except as provided in subsection (E)(1) below, all development shall meet or exceed the following transportation level of service standards:

1. The vehicular level of service standards for overall intersection level of service standards contained in Table 4-3 of the Larimer County Urban Area Street Standards (LCUASS). Alternative mitigation strategies are provided in LCUASS Section 4.6.8.

2. The bicycle and pedestrian level of service standards are contained in Part II of the City of Fort Collins Multi-modal Transportation Level of Service Manual. Variances for levels of service that do not meet the standards are provided in LCUASS Section 4.6.7 for the following modes of travel: motor vehicle, bicycle and pedestrian. The
3. No transit LOS level of service standards contained in Part II of the Multi-modal Transportation Manual will not be applied for the purposes of this Section.

(c) If any off-site improvements are required by the standards contained in this Section, repayments for the costs of such improvements shall be provided to the developer in accordance with the provisions of 3.3.2(F)(2).

(2) Water. All development shall provide adequate and functional lines and stubs to each lot as required by the current city’s or special district, as applicable, design criteria and construction standards.

(3) Wastewater. All development shall provide adequate and functional mains and stubs to each lot as required by the current city’s or special district, as applicable, design criteria and construction standards.

(4) Storm Drainage. All development shall provide storm drainage facilities and appurtenances as required by Sections 26-544 and 10-37 of the Municipal Code and by all current city’s storm drainage master plans, design criteria and construction standards.

(5) Fire and Emergency Services. All development shall provide sufficient fire suppression facilities as required by the Fire Code.


(E) Minimum Requirements for Adequate Public Facilities.

(1) The city’s APF management system shall ensure that public facilities and services to support development are available concurrently with the impacts of development. In this regard, the following standards shall be used to determine whether a development meets or exceeds the minimum requirements for adequate public facilities:

(a) For transportation facilities, at a minimum, the city shall require that, at the time of issuance of any Building Permit issued pursuant to a site specific development plan, all necessary facilities and services, as described in Section (D)(1) above, are either:

1. in place and available to serve the new development in accordance with the development agreement, or
2. funding for such improvements has been appropriated by the city or provided by the developer in the form of either cash, nonexpiring letter of credit, or escrow in a form acceptable to the city.

(b) Notwithstanding the foregoing, with respect to improvements required to maintain the applicable transportation facilities’ level of service where, as determined by the Director, such improvements are not reasonably related to and proportional to the impacts of the development or
currently desired by the City, a Building Permit may be issued pursuant to a site specific development plan provided the developer has:

1. Agreed in the development agreement to install or fund improvements, or a portion thereof, that are reasonably related and proportional to the impacts of the development on the affected transportation facility or facilities; or

2. Obtained a variance regarding the affected transportation facility or facilities under LCUASS Section 4.6.7; or

3. Agreed in the development agreement to implement an alternative mitigation strategy as defined by LCUASS Section 4.6.8, or portion thereof, to adequately mitigate the reasonably related and proportional impacts of the development on the affected transportation facility or facilities; or

4. Funding for such improvements has been appropriated by the City or provided by the developer in the form of either cash, nonexpiring letter of credit, or escrow in a form acceptable to the City.

For water and wastewater facilities, at a minimum, the City shall require that, at the time of issuance of any building permit issued pursuant to a site-specific development plan, all necessary facilities and services, as described in Section (D)(2) and (3) above, are in place and available to serve the new development in accordance with the approved utility plan and development agreement for the development.

For storm drainage facilities, the City shall require that all necessary facilities and services, as described in Section (D)(4) above, are in place and available to serve the new development in accordance with the approved drainage and erosion control report, utility plans and development agreement for such development. The timing of installation of such facilities and service shall be as follows:

1. Where multiple building permits are to be issued for a project, twenty-five (25) percent of the building permits and certificates of occupancy may be issued prior to the installation and acceptance of the certification of the drainage facilities. Prior to the issuance of any additional permits, the installation and acceptance of the certification of the drainage facilities shall be required.

2. For projects involving the issuance of only one (1) building permit and certificate of occupancy, the installation and acceptance of the certification of the drainage facilities shall be required prior to the issuance of the certificate of occupancy.
For fire and emergency services, at a minimum, the city shall require that, at the time of issuance of any building permit issued pursuant to a site-specific development plan, all necessary facilities and services, as described in Section (D)(5) above, are in place and available to serve the site within the new development where the building is to be constructed in accordance with the Fire Code and the development agreement.

For electric power facilities, the following minimum requirements shall apply:

1. For residential development: The developer must coordinate the installation of the electric system serving the development with the city's electric utility. In addition, each application for a building permit within the development must show the name of the development, its address, each lot or building number to be served, and the size of electric service required. The size of electric service shall not exceed that originally submitted to the electric utility for design purposes. Costs for installation of the electric service line to the meter on the building will be payable upon the issuance of each building permit.

2. For Commercial/Industrial Development: The following documents/information shall be provided to the city's electric utility with each application for a building permit:
   a. an approved and recorded final plat;
   b. the final plan (two copies);
   c. the utility plan;
   d. a one-line diagram of the electric main entrance;
   e. a Commercial Service Information Form (C-1 form) completed by the developer/builder for each service, and approved by the electric utility (Blank forms are available at the Electric Utility Engineering Department, 970-221-6700);
   f. the transformer location(s), as approved by the electric utility;
   g. the name and address of the person responsible for payment of the electric development charges; and
   h. the name, of the development, building address and lot or building number.

3. Compliance with Administrative Regulations: The developer shall also comply with all other administrative regulations and policies of the electric utility, including, without limitation, the Electric Construction Policies, Practices and Procedures, and the Electric Service Rules and Regulations, copies of which may be obtained from the electric utility.

Transportation APF Exception. Nominal Impact. For the purpose of the transportation APF requirements contained in this Section, a proposed development shall be deemed to have a nominal impact and shall not be subject to the APF requirements for transportation if the development proposal is not required to complete a Traffic Impact Study per the
requirements in Chapter 4 - Transportation Impact Study of the Larimer County Urban Area Street Standards, generates less than fifty (50) peak hour trips as defined by the Transportation Impact Study guidelines maintained by the city.

Introduced, considered favorably on first reading, and ordered published this 21st day of August, A.D. 2018, and to be presented for final passage on the 4th day of September, A.D. 2018.

__________________________________
Mayor

ATTEST:

_______________________________
City Clerk

Passed and adopted on final reading on the 4th day of September, A.D. 2018.

__________________________________
Mayor

ATTEST:

_______________________________
City Clerk
ORDINANCE NO. 110, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING LARIMER COUNTY URBAN AREA STREET STANDARDS
RELATED TO LAND USE CODE ADEQUATE PUBLIC FACILITIES REQUIREMENTS

WHEREAS, on January 2, 2001, the City Council adopted the Larimer County Urban Area Street Standards ("LCUASS"), with the adoption of Ordinance No. 186, 2010; and

WHEREAS, Council adopted the current version of LCUASS in February 2007, and such version has been subsequently amended from time to time; and

WHEREAS, LCUASS Section 1.6.2.A. states that policy revisions to LCUASS may be made by City Council by ordinance or resolution provided a public hearing regarding the policy revision is held and City staff makes a recommendation on the policy revision to City Council; and

WHEREAS, this LCUASS policy revision is proposed in connection with the proposed Adequate Public Facilities transportation requirements Land Use Code amendments set forth in Ordinance No. 109, 2018; and

WHEREAS, the City Council has determined that the recommended LCUASS amendments are in the best interests of the City and its citizens.

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

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

Section 2. That Section 1.9.4 of the Larimer County Urban Area Street Standards is hereby amended to read as follows:

1.9.4 Variances and Appeals Processes

A. Variances

... 

2. The variance request(s) shall include the following:

a. Identifying Issue. Identification of the standard to be waived or varied and why the standard is unfeasible or is not in the public interest.

b. Proposing Alternate Design. Identification of the proposed alternative design or construction criteria.
c. Comparing to Standards. A thorough description of the variance request including impact on capital and maintenance requirements, costs, and how the new design compares to the standard.

d. Justification. The Professional Engineer must determine and state that the variance will not be detrimental to the public health, safety and welfare, will not reduce design life of the improvement nor cause the Local Entity additional maintenance costs. The proposed plan (as varied) must advance the public purpose of the standard sought to be varied equally well or better than would compliance with such standard.

e. Applicability to Transportation Level of Service Review (City of Fort Collins City Limits Only). Based on Section 4.6 of these standards, a variance may be requested for development proposals that do not meet Level of Service standards for 1 -pedestrian, 2 – bicycle, and 3 -vehicular approaches or movements at an intersection. The variance may be submitted only in cases where the level of service cannot be restored or improved with improvements that are reasonably related and proportional to the development proposal’s impact. The variance request must include items a-d above. The requested variance may include alternative mitigation measures that address the development’s impact or relief from the applicable standard. A variance for development proposals that do not meet Level of Service standards for overall operation of an intersection is not available under this section 1.9.4 and is addressed in LCUASS Section 4.6 and City of Fort Collins Land Use Code Section 3.7.3.

f. Approval or Denial of Variance. Based upon review of the plans and additional information submitted, and an analysis of the criteria set forth in this subsection (2), the Local Entity Engineer may approve or deny the variance request. If the Local Entity Engineer approves the variance request, the plans will continue to be reviewed and approved within the typical review process. If the Local Entity Engineer denies the variance request, the developer shall subsequently submit revised plans in compliance with these Standards. The Local Entity Engineer shall provide a written response outlining the basis for all approvals or denials of variance requests.

Section 3. That Section 4.2.2 of the Larimer County Urban Area Street Standards is hereby amended to read as follows:
4.2.2 Types of Study

... 

E. No TIS Required.

Upon submittal of a Transportation Worksheet (Attachment “C”) by the Applicant and/or written acceptance by the Local Entity Engineer, the TIS requirement may be waived if all of the criteria below are satisfied:

Note that in Loveland (GMA and city limits), the proposed land use will be exempt from demonstrating compliance with the transportation Adequate Community Facilities requirements, if the TIS requirement is waived.

In Fort Collins (city limits only), the proposed land use will be exempt from demonstrating compliance with the Adequate Public Facilities requirements in the Land Use Code if the TIS requirement is waived.

... 

Section 4. That Section 4.5.2 of the Larimer County Urban Area Street Standards is hereby amended to read as follows:

4.5.2 Significant Negative Impacts in Fort Collins (GMA and City Limits)

This section applies primarily to vehicular related impacts associated with the proposed project. A project is defined as significantly impacting a study intersection when one of the following criteria are satisfied:

A. For Signalized Intersections.

1. When the added project traffic causes movements, approaches or the overall intersection to fail the minimum acceptable level of service standards in Table 4-3; or

2. When the background traffic conditions (without project traffic) causes an intersection to fail the minimum acceptable level of service standards; and when the project adds additional traffic (10 or more trips during the peak hour) causes more than a two (2) percent increase in the overall intersection delay; or

3. When added project traffic is determined to create potential safety problems.

... 

Section 5. That Section 4.6 of the Larimer County Urban Area Street Standards is hereby amended to read as follows:
4.6 Mitigation Measures

When a project’s vehicular impacts are determined to not meet the minimum acceptable level of service standard, the TIS shall include feasible measures, which would mitigate the project’s impacts. The mitigation measures are intended to be in addition to the minimum required improvements necessary to meet the Local Entity’s standards and codes. The goal of the mitigation measure(s) should be to minimize the demand for trips by single occupant vehicles and to increase the use of alternative modes.

In Fort Collins (GMA and City Limits only)

When a project’s impacts are determined to not meet the minimum acceptable level of service (LOS) standard, the TIS shall include feasible measures that would mitigate the project’s impacts. The mitigation measures may be in addition to other minimum required improvements necessary to meet the Local Entity’s standards and codes. Potential mitigation categories/strategies are listed below and may not be all-inclusive.

The intersection LOS should be recalculated to reflect the effectiveness of the proposed mitigation measures and show that the project-related impacts have been reduced to an acceptable LOS for all transportation modes (vehicle, bicycles, and pedestrians, and public transit). The LOS findings should be shown in tabular form. The following mitigation categories are listed in order of priority: If mitigation that is reasonably related and proportional to impact is not feasible (or not desired by the City) to address the specific LOS issue then the following can occur:

1. For bicycle and pedestrian level of service issues Section 4.6.7 Variances can be utilized.

2. For vehicular level of service issues related to intersection approaches or movements, Section 4.6.7 Variances can be utilized.

3. For vehicular level of service issues related to overall intersections Section 4.6.8 Alternative Mitigation Strategies can be utilized.

Section 6. That Section 4.6.7 of the Larimer County Urban Area Street Standards is hereby amended to read as follows:

4.6.7 Variances

Requests for variances to the requirement for mitigation measures should follow the process outlined in Section 1.9.4. In the City of Fort Collins City Limits, such a variance is applicable for level of service issues related to bicycle, pedestrian and/or intersection approach or movements.
Section 7. That Section 4.6.8 of the Larimer County Urban Area Street Standards is hereby amended to read as follows:

4.6.8 Alternative Mitigation Strategies (City of Fort Collins city limits only)

In cases where a study intersection does not meet overall level of service standards, and reasonably related and proportional mitigation to address the level of service is not possible or not desired by the City, an Alternative Mitigation Strategy may be requested and considered using the following process:

1. The applicant submits preliminary information from the Transportation Impact Study related to the intersection, the impact, mitigation measures considered, discussion related to feasibility and any recommendations for alternative mitigation to the City.

2. City identifies a multi-departmental team of staff members (at least two). Members may typically include Engineering, Traffic Operations, FCMoves, Streets and/or Planning.

3. The team reviews the submitted information, develops an Alternative Mitigation Strategy and identifies the reasonably related and proportional contribution based on impact. The Strategy should be specifically linked to project impact, and may include improvements for any mode of travel at the impacted intersection or elsewhere, or a fee in lieu of improvements towards a project anticipated to be constructed within three years. If the City Engineer determines that no reasonably related and proportional mitigation based on impact is possible or desired by the City Engineer, no alternative mitigation may be required.

4. Implementation of an identified Alternative Mitigation Strategy serves as fulfillment of intersection level of service requirements. The administrative determination with regard to an Alternative Mitigation Strategy is final and may only be appealed pursuant to City of Fort Collins Land Use Code Division 2.1.3.

Section 8. That Section 4.7.1 of the Larimer County Urban Area Street Standards is hereby amended to read as follows:

4.7 Report Conclusions

4.7.1 Recommended Improvements

The findings of the Transportation Impact Study should be provided in summary format, including the identification of any areas of significant impacts and recommended improvements/mitigation measures to achieve the LOS standards for all modes

A. Geometric Improvements.
The TIS shall include recommendations for all geometric improvements such as pavement markings, signs, adding through or turn lanes, adding project access and assorted turn lanes, acceleration lanes, and changes in medians. Sufficient dimensions/data shall be identified to facilitate review. Anticipated right-of-way needs shall also be identified. This information shall be made available to the project civil engineer for use in preparing scaled drawings.

**City of Fort Collins City Limits Only:** If variance requests or Alternative Mitigation Strategies are being utilized, those shall be detailed in the report.

Introduced, considered favorably on first reading, and ordered published this 21st day of August, A.D. 2018, and to be presented for final passage on the 4th day of September, A.D. 2018.

______________________________
Mayor

ATTEST:

______________________________
City Clerk

Passed and adopted on final reading on the 4th day of September, A.D. 2018.

______________________________
Mayor

ATTEST:

______________________________
City Clerk
AGENDA ITEM SUMMARY
City Council

August 21, 2018

STAFF

Kerri Allison, Real Estate Specialist II
Sue Beck-Ferkiss, Social Policy and Housing Programs
Ingrid Decker, Legal

SUBJECT

First Reading of Ordinance No. 111, 2018 Authorizing the Lease of, and the Grant of an Option to Purchase, City-Owned Property at 317 and 321 South Sherwood Street to Faith Family Hospitality of Fort Collins, Inc.

EXECUTIVE SUMMARY

The purpose of this item is to obtain approval for a lease of City-owned property located at 317-321 South Sherwood to the non-profit corporation, Faith Family Hospitality of Fort Collins, Inc., a Colorado nonprofit corporation (FFH). FFH currently provides three core programs including case management, day center and an overnight shelter for families experiencing homelessness in Fort Collins. This facility will allow FFH to expand its program to include transitional housing. FFH is requesting a less than market lease rate of $25 per month for a period of up to 25 years, including an option to purchase said property between the third year and fifteenth year of the lease at a purchase price of $700,000. This purchase price was supported by the Council Finance Committee.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The City purchased two buildings in the 1980s at 317 and 321 South Sherwood. These properties were purchased for a facility for victims of domestic abuse. The funding for these purchases came from CDBG funding. Crossroads Safehouse operated at this site for over 30 years until it moved in 2011.

When the building became vacant and available, City staff followed a public process to identify a potential tenant for the property, beginning with a neighborhood listening session in 2014. Neighbors within a 1,000-foot boundary, as well as non-profit organizations, were invited. The City team spent time investigating the property and its condition. The City moved forward with an open house, tour, and a survey to all interested organizations. The survey included the question of what organizations would need from the City to proceed with using the property to provide services. Most organizations needed quite a bit of support from the City to proceed. The City followed up with one question, “Would you be interested in a low-cost lease with your organization being responsible for all maintenance?” There was one positive answer and that was Faith Family Hospitality.

Faith Family Hospitality supports families experiencing homelessness to achieve sustainable self-sufficiency in a timely and dignified manner. They are currently running their program using many area churches. The ability to rent this facility allows them to help more families transition out of homelessness. All participants must successfully complete the FFH emergency shelter program, must have an income but not enough to rent a home for themselves. The goal is to successfully transition these families into permanent housing, with the family able to pay for the housing costs.
Since FFH will be responsible for all costs associated with the property, it requested a purchase option to be incorporated in the lease. To identify a value of the property, the City acquired an appraisal of this property in 2016. While the appraised value was over $1M, staff and the Council Finance Committee concluded that the $700,000 amount was acceptable to all parties. The City understands that housing this vulnerable population often requires some public investment.

Factors considered when establishing the value included the potential costs to FFH to get the property ready for its program, which includes:
- Testing the building systems and potential asbestos issues. (Changes in their design eliminated the possibility of disturbing asbestos).
- Engineering costs for studying the flow and design of the alley. (FFH has already contributed $32,500.00 for designing the required portion of the alley and the City will pay the remainder, as well as assume responsibility for paving the alley.)
- Constructing a required employee parking lot.

The purchase price established is $700,000. The breakdown is:

\[
\begin{align*}
$1,160,000 & \text{ appraised value of property} \\
-250,000 & \text{FFH upfront investment (this is an at least cost and will probably be more)} \\
-210,000 & \text{Value of City's contribution to the community} \\
\$700,000 & \text{Purchase Option Price}
\end{align*}
\]

The use of this property by FFH benefits the community by providing a needed service – group housing for families, and the use is supported by City Policy (Affordable Housing Strategic Plan) and the City’s Strategic Plan (working with partners to address homelessness).

**CITY FINANCIAL IMPACTS**

Annual rent collected from this lease will result in $300 per year in rent revenue for a total of $7,500 over the course of 25 years. Rent for this space is based on the lease rate determined by staff for a bona fide non-profit organization like FFH. FFH will be responsible for expenses of all utilities, property maintenance including plumbing, electrical and heating and air conditioning, communication services, trash services and taxes. In addition, FFH will be responsible for any tenant finish costs.

**PUBLIC OUTREACH**

Neighborhood hearing session in 2014  
Open House and Tour June 26, 2015  
Neighborhood meeting was held, 215 N. Mason Community room, February 10, 2017  
Hearing for modification requests, on May 24, 2017  
Council notification letter mailed to neighboring properties, August 7, 2018

**ATTACHMENTS**

1. Location Map 317-321 Sherwood (PDF)  
2. Finance Committee Meeting Minutes July 11, 2017 (PDF)
Mark Jackson; We have put an operational improvement process in place which is designed so we are not reliant on one person for grants - we created 2 full time positions; one is day to day financial analyst – and the second is intended to run the grant process. Minimize deficit with process improvements. When applying for Federal Funds we have to go through a state and regional process as well. We are now going to begin that process earlier in the year.

Mayor Troxell; 20% local match - Do you use as cost share? - Grant Application Status

Kurt Ravenschlag; grants are formula grants - we receive them annually based on a formula that FTA uses. We try to access these funds as soon as possible.

Mayor Troxell; are there organizations with best practices? Like CSU Office of Sponsored Programs Federal Acquisition Regulation ‘FAR’ which have different rule sets - thinking there is help out there.

D. Sherwood House Transaction

Helen Matson, Real Estate Services Manage
Kerri Allison, Real Estate Specialist II
Sue Beck-Ferkiss, Social Sustainability Specialist

SUBJECT FOR DISCUSSION
Sherwood House Transaction - Staff’s proposal to grant a lease to Faith Family Hospitality (“FFH”) with an option to purchase the property for $70,000. We are proposing a lease rate of $300 a year or $25 per month.

EXECUTIVE SUMMARY
The City purchased two buildings in the 1980’s at 317 and 321 S. Sherwood. These properties were purchased for facility for victims of domestic abuse. The funding for these purchases came from CDBG funding. Crossroads operated at this site for over 30 years and they moved in 2011.

City staff reached out to the public through neighborhood meetings. The response from the neighborhood was generally in favor of keeping the asset and uses it to help the homeless. Staff proceeded and chose a non-profit to use the facility as the neighborhood had desired. Faith Family Hospitality has completed the development review process and we are preparing to take the lease to Council for their acceptance. The proposed lease includes an option to purchase the facility.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED
The direction we are looking for from the Finance Committee is to see if the Committee generally agrees with staff and the direction outlined below.

BACKGROUND/DISCUSSION (details of item – History, current policy, previous Council actions, alternatives or options, costs or benefits, considerations leading to staff conclusions, data and statistics, next steps, etc.)

When the building became vacant, the City needed to hold onto the property for at least three years. That requirement came out of CDBG loans granted for this property over the years. CDBG has a requirement that properties that have received loans cannot be disposed until three years following the last payment on loans. If not followed, the owner would need to pay back all loans awarded on the property over the years.
When this time period was getting close, Staff followed a public process to identify a potential tenant for the Property. We started with our initial Neighborhood Listening Session in 2014. Neighbors within a 1,000 foot boundary as well as non-profit organizations were invited. The City team spent time investigating the property and its condition. We moved forward with an open house and tour, a survey to all interested organizations. The survey included the question of what was needed from the City to proceed. Most organizations needed quite a bit of support from the City to proceed. We followed up with one question, “Would you be interested in a low-cost lease with your organization being responsible for all maintenance?” We had one positive answer and that was Faith Family Hospitality.

Faith Family Hospitality supports families experiencing homelessness to achieve sustainable self-sufficiency in a timely and dignified manner. They are currently running their program using many area churches. The ability to rent this facility allows them to help more families transition out of homelessness. All participants must successfully complete the FFH emergency shelter program; they must have an income but not enough to rent a home for themselves. The goal is to successfully transition these families into obtaining and maintaining housing.

Since our selected tenant will be responsible for all costs associated with the property, they wanted to have the ability to purchase the site at a later date. To identify a value of the property the City acquired an appraisal of this property in 2016. Our direction to the appraiser was to value the property “as is” as to its highest and best use and to value the land only value. This is a unique situation—we have two homes that have been combined, we have a very large two-story addition on the south house and it encompasses two parcels. The appraiser (Foster Valuation) concluded that the highest and best use of this property was to use it as a group home. Foster concluded that the existing structures had value and would be used more efficiently as a group home, with a value of $1,160,000. The value assigned for the land alone is $500,000.

Staff used this information to calculate a proposed purchase price for FFH. There are some issues with the value as assigned. This value takes into account the improvements and the potential use, but it did not calculate what it would take to get the improvements ready for occupation. If we were to offer this property for sale on the open market, there is not a lot of interest for group homes and the number allowed would be dictated by the development review process.

The value of the land alone is set at $500,000. It would be more likely that a potential purchaser would want to separate the structures. There is a cost to separate the properties. Staff has estimated that the cost to separate homes would cost at least $300,000.

Factors considered when establishing the value included the potential costs to FFH to get their program ready which includes testing the building systems and potential asbestos issues. Changes in their design eliminated disturbing asbestos. They also have encountered have engineering costs for studying the flow of the alley, they will contribute $45,000 for paving the alley and the City will pay the remainder. They are also required to pave the required employee parking lot.

The purchase price we have established is $700,000. The breakdown is:

$1,160,000 appraised value of property
-250,000 FFH upfront investment (this is an at least cost and will probably be more)
-210,000 Value of City’s contribution to the community
$ 700,000 Purchase Option Price
The lease term we are proposing is at least five years at a rental rate of $300/year. Included in the Lease Agreement, we will include the option to purchase. If FFH does purchase this property, the City will have a deed restriction that the property be used for a public purpose, such as affordable housing for special needs populations.

The use of this property by FFH benefits the community by providing a needed service - transitional housing for families and the use is supported by City Policy (Affordable Housing Strategic Plan) and the Strategic Plan (working with partners to address homelessness).

CFC Discussion:

Crossroad was the previous tenant and they moved to a larger facility in late 2011

Proposal to grant a low cost lease with 5 year term to Faith Family Hospitality (FFH) with an option to purchase the property at end the lease for $700,000. Proposed lease rate of $300 per year or $25 per month.

City would pave the alley
Sue Beck-Ferkiss; we haven’t finalized negotiation for the alley but the parties are very close

Ross Cunniff; is there a renewal option on the lease?

Helen Matson; yes

Ross Cunniff; How did we pick $300 per year?

Helen Matson; this is what we do for non-profits - standard

Ross Cunniff; concerns about the way the deal looks - we are giving a grant to FFH - no competitive process other than they said they would do it

Helen Matson; we invited all interested parties and showed the property - they were the only final respondent

Mike Beckstead; we are making a contribution - we didn’t go through a competitive process. This is a $460K opportunity cost - a choice we are making - the $1.1M appraisal price highest and best use as a group home - value of land only is $500K

Ross Cunniff; there is a portion of this that is in effect a grant to FFH

Helen Matson; we intend to make sure the documents protect the city’s interest and investment - we are not going to reimburse them - we will get a better building back at the end of the day.

CBP funds were used to purchase originally - Community Block Grant – we have passed the time periods – Not encumbered at all

General Support from Council Finance
Darin Atteberry; we have watched this from a distance and appreciate the collaboration and good work coming down to the end. We have had little hick ups along the way that have delayed us -really appreciate the effort and diligence very much.

E. Raw Water / Cash in Lieu
Donnie Dustin, P.E., Water Resources Manager
Lance Smith, Utilities Strategic Finance Director
Carol Webb, Water Resources and Treatment Operations Manager

SUBJECT FOR DISCUSSION: Changes to the Utilities Raw Water Requirements

EXECUTIVE SUMMARY
The purpose of this work session is to provide the Council Finance Committee with an overview of the proposed changes to the Utilities Raw Water Requirement system and associated cash-in-lieu rate, and actions taken by Utilities staff following direction given at the February 14, 2017 City Council work session. Staff will be seeking adoption of these changes at the August 15 and September 5 City Council regular meetings.

Utilities staff recommends the following changes:

- Adjust Raw Water Requirement (RWR) schedules to reflect recent (lower) water use
  - Use number of bedrooms for indoor component of residential schedule
- Adjust the Cash-In-Lieu (CIL) rate per a hybrid cost approach
  - Increase CIL rate to $16,700 per acre-foot of requirement
- Accept cash, existing City-issued water certificates and credits, North Poudre Irrigation Company shares, and CBT units for RWR satisfaction
  - No longer allow dedication of other water rights
- Review and adjust (if necessary) the CIL rate biennially
- Review and adjust (if necessary) the RWR schedules every 5 to 7 years
- Implement RWR and CIL rate changes on April 1, 2018
- Change Code from “Raw Water Requirements” to “Water Supply Requirements”

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED
1. What questions or feedback does the Council Finance Committee have regarding the proposed changes?
2. Does the Council Finance Committee support these changes and recommend bringing them to the full City Council for adoption?

BACKGROUND/DISCUSSION
The Raw Water Requirements (“RWR”) are a dedication of water rights or cash-in-lieu of water rights (“CIL”) to ensure that adequate water supply and associated infrastructure are available to serve the water needs of development (including re-development needing increased water service). Changes to the RWR and CIL rate have not been made for many years.

Staff presented the proposed changes to the RWR and CIL rate at the February 14, 2017 City Council work session. The material provided for that work session, which contains more detailed information on the background and proposed changes, are included as ATTACHMENT 1. Council direction was to consider delayed
ORDINANCE NO. 111, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE LEASE OF, AND THE GRANT OF AN OPTION TO PURCHASE,
CITY-OWNED PROPERTY AT 317 AND 321 SOUTH SHERWOOD STREET
TO FAITH FAMILY HOSPITALITY OF FORT COLLINS, INC.

WHEREAS, the City is the owner of two adjacent parcels of property located at 317 and 321 South Sherwood Street in Fort Collins, more particularly described as Lots 3 and 4, Block 73 (together, the “Property”); and

WHEREAS, the City purchased the property in the 1980s to provide a facility for victims of domestic violence, and the City lease the Property to Crossroads Safehouse for 30 years until Crossroads purchased its own property and moved its program; and

WHEREAS, City staff conducted a public process to find a potential new non-profit tenant for the Property that would use it for a purpose of benefit to the City and its residents; and

WHEREAS, through that process the City identified Faith Family Hospitality of Fort Collins, Inc. (“FFH”) as the only organization interested in leasing the Property and being responsible for maintaining it; and

WHEREAS, FFH supports families experiencing homelessness to help them become self-sufficient and transition into permanent housing; and

WHEREAS, City staff believes it is in the best interests of the community to lease the Property to FFH with an option to purchase the Property; and

WHEREAS, City staff and FFH have negotiated a proposed lease by which the City would lease the Property to FFH for up to 25 years at a lease rate of $25 per month, and grant FFH an option to purchase the Property at any time between the third and fifteenth years of the lease at a purchase price of $700,000, after which time any purchase would have to be renegotiated; and

WHEREAS, a copy of the draft lease agreement is attached hereto and incorporated herein as Exhibit “A” (the “Lease”); and

WHEREAS, under the terms of the Lease, FFH would also pay for all utilities, property maintenance, communication services, trash services, janitorial services and taxes related to the Property; and

WHEREAS, Section 23-113(b) of the City Code authorizes the City Council to lease any and all interests in real property owned in the name of the City if the City Council first finds that the lease is in the best interests of the City; and

WHEREAS, if the proposed term of the lease exceeds twenty years, the lease must be approved by the City Council by ordinance; and
WHEREAS, Section 23-111(a) of the City Code authorizes the City Council to sell, convey or otherwise dispose of any and all interests in real property owned in the name of the City, provided that the City Council, first finds, by ordinance, that such sale or other disposition is in the best interests of the City; and

WHEREAS, under Section 23-114 of the City Code, any sale or lease of City property interests must be for an amount equal to or greater than the fair market value of such interest unless the City Council determines that such sale or lease serves a bona fide public purpose, based on the five factors listed in Section 23-114; and

WHEREAS, leasing the Property to FFH for less than fair market value, and granting FFH an option to purchase the Property for less than fair market value, serves a bona fide public purpose because:

(1) The use to which the Property will be put promotes health, safety or general welfare and benefits a significant segment of the citizens of Fort Collins by providing transitional housing for families experiencing homelessness to stabilize their lives;

(2) The use to which the Property will be put supports Strategy 4.3 of the City’s Affordable Housing Strategic Plan, which is to increase housing and associated services for people with special needs (this category includes those who are homeless, seniors, persons with disabilities, and victims of domestic violence,) as well as Strategic Objective 1.2 of the City’s Strategic Plan, which calls for collaborating with other agencies to make homelessness rare, short lived and non-recurring;

(3) The financial support provided by the City through the below-market lease of the Property and potential sale of the Property will be leveraged with other funding and assistance received by FFH;

(4) The lease and sale of the Property will not result in any direct financial benefit to any private person or entity, except to the extent such benefit is only an incidental consequence and is not substantial relative to the public purpose being served; and

(5) Neither leasing the Property for less than fair market rent nor selling the Property for less than fair market value will interfere with current City projects or work programs, hinder workload schedules or divert resources needed for primary City functions or responsibilities.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.
Section 2. That the City Council hereby finds that leasing the Property located at 317 and 321 South Sherwood Street under the terms listed above is in the best interests of the City.

Section 3. That the City Council hereby finds that granting FFH an option to purchase the Property on the terms and conditions listed above is in the best interests of the City.

Section 4. That the City Council further finds that such lease and potential sale for less than fair market value serves a bona fide public purpose for the reasons stated in the recitals above.

Section 5. That the City Manager is hereby authorized to execute the Lease in substantially the form attached hereto as Exhibit “A” together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City, including any necessary changes to the legal description of the Property, as long as such changes do not materially increase the size or change the character of the Property leased.

Section 6. That the City Manager is further authorized to execute a purchase and sale agreement with FFH for the sale of the Property on terms and conditions consistent with this Ordinance and the Mayor is hereby authorized to execute such other documents as are necessary to convey the Property to FFH, if FFH exercises its option to purchase the Property in the manner described in the Lease.

Introduced, considered favorably on first reading, and ordered published this 21st day of August, A.D. 2018, and to be presented for final passage on the 4th day of September, A.D. 2018.

__________________________________________________________________________

Mayor

ATTEST:

__________________________________________________________________________

City Clerk
Passed and adopted on final reading on the 4th day of September, A.D. 2018.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into this ___ day of ______________, 2018, by and between THE CITY OF FORT COLLINS, COLORADO, a Colorado municipal corporation hereinafter referred to as "the Lessor," and FAITH FAMILY HOSPITALITY OF FORT COLLINS, INC., a Colorado Nonprofit Corporation, ("FFH"), hereinafter referred to as "the Lessee".

WITNESSETH:

WHEREAS, the Lessor is the owner of that certain parcel of real estate, together with the improvements located thereon, situated in the County of Larimer, State of Colorado, being Lots 3 & 4, Block 73 in the City of Fort Collins, County of Larimer, Colorado, the street address of which is 317/321 South Sherwood Street, Fort Collins, Colorado (the "Leased Premises"); and,

WHEREAS, the Lessor desires to lease to the Lessee the Leased Premises, to use for operation of transitional housing for families experiencing homelessness, including space for offices, storage, and other related incidental purposes, and the Lessee desires to lease the Leased Premises from the Lessor.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements herein contained and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto do hereby covenant, promise and agree to and with each other as follows:

ARTICLE I

Lease of the Leased Premises

1.1 The Lessor does hereby lease, demise and let unto the Lessee, and the Lessee does hereby hire and take from the Lessor the Leased Premises.

ARTICLE II

Term

2.1 The term of this Lease is for a period of fifteen (15) years commencing on ______________, 2018 and terminating at midnight on ______________, 20__ ("Initial Term"). At the end of the Initial Term of this Lease, Lessee can renew this Lease for an additional ten (10) year term, subject to Lessor’s consent, which shall not be unreasonably withheld. If Lessee wishes to renew the Lease for a subsequent term, Lessee shall notify Lessor no less than sixty (60) days prior to the end of the Initial Term.

2.2 This Lease will not be recorded; but, at the request of the Lessee, the Lessor and the Lessee will execute a Memorandum of Lease for recording, containing the names of the
parties, the legal description of the Leased Premises, the term of the Lease and such other information as the parties shall mutually agree upon.

ARTICLE III

Option to Purchase

3.1 After the third year of this Lease, until the end of the third term (fifteenth year) of the Lease (the “Option Period”), provided the Lease is still in effect and Lessee is not in default in the keeping and performing of any of the conditions and covenants of this Lease, Lessee shall have the option to purchase the Leased Premises at the price of $700,000. Lessee can exercise the option by providing written notice to the Lessor (“Notice of Exercise.”)

3.2 Exercise of this option is subject to Lessor’s confirmation that Lessee is in compliance with the terms of this Lease, including the purposes for which Lessee is using the Leased Premises, and is in good standing with the State of Colorado. Lessor will notify Lessee within thirty (30) days of receipt of the Notice of Exercise of the City’s agreement to convey the Leased Premises, and the parties shall enter into an Agreement of Purchase and Sale in a form reasonably acceptable to both parties.

3.3 The purchase price of the Leased Premises during the term of the Option is fixed and will not be adjusted to reflect any changes in the appraised value resulting from improvements or other changes made to the Leased Premises during the term of the Lease by either party, including appreciation, inflation, or any other factors. The Lessor agrees that it shall convey the Leased Premises to the Lessee free and clear of all liens and encumbrances, except non-monetary encumbrances of record as of the date of execution of this Lease Agreement. The foregoing notwithstanding, the Lessor shall have the right during the Option Period to encumber the property with easements to third parties, provided that any such easement either: (i) benefits the Leased Premises (such as for utilities service); (ii) does not significantly reduce the value of the Leased Premises; or (iii) is temporary in nature and would expire prior to conveyance of the Leased Premises to the Lessee.

ARTICLE IV

Rent

4.1 The Lessee will pay to the Lessor during the term of this Lease an annual rental in the amount of Three Hundred Dollars ($300.00). Such rent must be paid in advance, without demand or notice, in monthly installments of Twenty-Five Dollars ($25.00) due on the first day of each month commencing _________________, 2018.

4.2 The Lessee must make all rent payments to the Lessor at such place as the Lessor may, from time to time, designate in writing. For the present, the Lessor designates Real Estate Services, 300 Laporte Avenue, Building B, P.O. Box 580, Fort Collins, CO 80522-0580, as the place for making rental payments. All such rent must be paid in current legal tender of the United States as the same is then by law constituted. If Lessor agrees to an extension of time for the
payment of any installment of rent or accepts any money other than of the kind herein specified, that will not be a waiver of Lessor’s right to insist on having all other payments of rent made in the manner and at the time herein specified.

4.3 The City Council has determined that, while the rental rates set forth in this Lease are below-market, Lessee’s use of the Leased Premises serves a bona fide public purpose because:

a) The use to which the Leased Premises will be put, promotes the general welfare and benefits a significant segment of the citizens of Fort Collins by providing transitional housing for families experiencing homelessness to stabilize their lives;

b) The use to which the Leased Premises will be put supports Strategy 4.3 of the City’s Affordable Housing Strategic Plan, which is to increase housing and associated services for people with special needs. This category includes those who are homeless, seniors, persons with disabilities, and victims of domestic violence;

c) The financial support provided by the Lessor through the below-market rent will be leveraged with other funding or assistance;

d) This Lease will not result in any direct financial benefit to any private person or entity, except to the extent such benefit is only an incidental consequence and is not substantial relative to the public purpose being served; and

e) Leasing the Leased Premises for less than fair market rent will not interfere with any of Lessor’s current projects or work programs, hinder workload schedules, or divert resources needed for Lessor’s primary functions or responsibilities.

4.4 The rental amount set forth above is in addition to the Lessee’s obligations with respect to the payment of real and personal property taxes, tenant insurance and the Lessee’s obligations with respect to the payment of utilities and all maintenance of the Leased Premises.

**ARTICLE V**

**Use of Leased Premises**

5.1 The Lessee may use the Leased Premises for operation of transitional housing for families experiencing homelessness, including offices, storage and other related incidental purposes. The Lessor makes no representations that transitional housing is permitted within the zoning classification to which the Leased Premises are subject. The Lessee and its clients/residents must not use the Leased Premises in such a manner as to violate any applicable law, rule, ordinance, or regulation of any governmental body. The Lessee may, upon obtaining the Lessor’s prior written consent, use the Leased Premises for any other lawful purpose.

5.2 The possession, consumption or cultivation of marijuana plants or products, including hydroponic cultivation, is prohibited on the Premises.
5.3 The Lessor reserves the right to monitor and review the performance of the Lessee to assure that the Leased Premises are being used in accordance with this Article V, and that all other terms of this Lease are being satisfactorily met. The Lessee shall cooperate with the Lessor relating to such monitoring and review, and make available to the Lessor any documents or other information requested by the Lessor relevant to the Lessor’s monitoring and review.

ARTICLE VI

Parking

6.1 This Lease includes the right to use alleyways adjacent to the Leased Premises. On-street parking is available on South Sherwood Street through the City of Fort Collins Parking Services Permit Program. The Lessee is responsible for notifying its agents, employees and business invitees they are permitted the use of the driveways and rear parking area on the Leased Premises.

ARTICLE VII

Maintenance and Repair

7.1 The Lessee must, during the term of this Lease and at its sole expense, keep the Leased Premises in a clean and orderly and safe condition, free of litter, debris, and any unsightly or dangerous condition as required by ordinances, resolutions, statutes and health, sanitary and police regulations. All such work must be done promptly and whenever necessary.

7.2 Except as otherwise provided in this Lease the Lessee, during the term of the Lease, will, at its expense, keep and maintain the exterior walls, foundation and roof of the Leased Premises. Any major repairs or replacements needed to the plumbing, electrical and the heating and air conditioning system during the term of the Lease will be the sole responsibility of the Lessee. The Lessee will also be responsible for performing any routine maintenance and minor repair of systems located on the Leased Premises. including plumbing, electrical and heating and air conditioning.

7.3 The Lessee will also replace any and all plate, window and other glass (structural or otherwise) in, on or about the Leased Premises, which may be broken or destroyed with glass of the same or similar quality. Any such replacement will be at Lessee’s cost during the term of this Lease.

7.4 The Lessee must neither permit nor suffer any disorderly noise or nuisance on the Leased Premises having any tendency to annoy or disturb any persons occupying adjacent premises. The Lessee will neither hold nor attempt to hold the Lessor liable for any injury or damage, either approximate or remote, occasioned through or caused by defective electrical wiring or the breaking or stoppage of plumbing or sewage upon the Leased Premises, whether said breakage or stoppage results from freezing or otherwise. The Lessee must not permit or suffer the Leased Premises or the walls thereof to be endangered by over loadings nor permit the Leased Premises to be used for any purpose which would render the insurance thereon void or insurance risks more hazardous without the prior written consent of the Lessor, which consent may be conditioned upon the Lessee obtaining additional specific insurance coverage for such
more hazardous risks.

7.5 The Lessee is responsible for complying with all applicable City Code provisions related to the use and maintenance of public rights of way adjoining the Leased Premises including the removal of snow and ice from adjacent public walkways.

ARTICLE VII

Alterations and Improvements

8.1 All alterations, additions, improvements or changes to the Leased Premises by the Lessee subsequent to the commencement of the Lease term ("Modifications") are subject to the written approval of the Lessor, which approval shall not be unreasonably withheld. Modifications that do not directly relate to the permitted uses of the Leased Premises under this Lease or that will negatively impact the value of the Leased Premises may not be permitted. All Modifications must be done in a good and workmanlike manner without impairing the structural soundness of the building and in compliance with the building and zoning laws and all other laws, ordinances, orders, rules, regulations and requirements of all federal state or municipal governments and the appropriate departments, commissions, boards and officers thereof. The Lessee must procure certificates of occupancy, if required by law. Furthermore, Lessee must not begin any Modifications until any contractor or subcontractor engaged for such purpose delivers to the Lessee (with a copy to the Lessor) a certificate showing that proper workmen's compensation insurance is in full force and effect, covering any persons performing such work, and that the same may not be canceled without at least ten (10) days prior written notice to the Lessor. Furthermore, Lessee must not begin any Modifications until the Lessee has procured and paid for all required municipal and other governmental permits and authorizations of the various municipal departments and governmental subdivisions having jurisdiction over the matter.

8.2 The Lessor reserves the right, from time to time (without invalidating or modifying this Lease), at the Lessor's expense, to make alterations, changes and additions to the Leased Premises as needed to manage or protect the Lessor's interest in the Leased Premises; provided, however, that such alterations, changes or additions do not unreasonably interfere with the Lessee's use and enjoyment of the Leased Premises, and the Lessor agrees to in good faith work with the Lessee to minimize any impacts likely to result from construction of any alterations, changes or additions to the Leased Premises. Except as otherwise agreed by the parties, the Lessee is solely responsible for any alterations, changes or additions to the Leased Premises related to Lessee's intended use of the Leased Premises.

8.3 Lessee must not begin any changes or alterations unless there is conspicuously placed on the Leased Premises the following notice:

NOTICE

Notice is hereby given pursuant to section 38-22-105 (2), C.R.S., that the owners of the within premises have not ordered any construction or reconstruction of the improvements on these premises; and the owners' interest in the premises shall not be subject to any lien on account of any construction, alteration, removal, addition, repair or other improvements of the
premises.

8.4 At the end of the term of this Lease, all fixtures, equipment, additions and alterations, except trade fixtures and appliances installed by the Lessee, shall be and remain the property of the Lessor. However, the Lessor may require the Lessee to remove any or all such fixtures, equipment, additions and alterations and restore the Leased Premises to the condition that existed immediately prior to such change and installation, normal wear and tear excepted, all at the Lessee’s cost and expense. All such work must be done in a good and workman like manner and must consist of new materials unless otherwise agreed to by the Lessor.

**ARTICLE IX**

Covenant of Title

9.1 The Lessor covenants that it is well seized of and has good title to lease the Leased Premises.

**ARTICLE X**

Taxes, Real and Personal

10.1 Upon commencement of the term of this Lease Agreement, the Lessee shall be responsible for payment of the real property taxes and assessments, if any, that may be imposed upon the Leased Premises.

10.2 The Lessee must pay all sales and use taxes that may be imposed as the result of the business conducted on the Leased Premises and all personal property taxes assessed against personal property situated thereon during the term of this Lease.

10.3 If Lessee fails to pay any such taxes, the Lessor may pay the same (but is under no obligation to do so), and the amount so paid will be due to Lessor from Lessee at the time of the next monthly rental payment. The Lessor, by paying any such amount, does not waive any of its rights hereunder regarding such default.

10.4 The Lessee is not required to pay any tax, assessment, tax lien or other imposition or charge upon or against the Leased Premises or any part thereof or the improvements at any time situated thereon so long as the Lessee, in good faith and with due diligence, contests the same or the validity thereof by appropriate legal proceedings that have the effect of preventing the collection of the tax, assessment, tax lien or other imposition or charge so contested. However, pending any such legal proceedings, the Lessee must give the Lessor such reasonable security as may be demanded by the Lessor to insure payment of the amount of the tax, assessment, tax lien or other imposition or charge and all interest and penalties thereon.

**ARTICLE XI**

Insurance

11.1 The Lessee, at its sole cost and expense, must procure, pay for and keep in full
force and effect a policy of commercial general liability insurance covering the Leased Premises and the improvements thereon, insuring the Lessee in an amount not less than One Million Dollars ($1,000,000) covering bodily injury, including death to persons, personal injury and property damage liability arising out of a single occurrence. Such coverage must include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Leased Premises (including acts or omissions of the Lessee).

11.2 All policies of insurance carried by the Lessee must name the Lessee as insured and name the Lessor as an additional insured. The policy or policies must contain a provision that the policy or policies cannot be canceled or materially altered either by the insureds or the insurance company until thirty (30) days prior written notice thereof is given to the Lessee and the Lessor. Upon issuance or renewal of any such insurance policy, the Lessee must provide the Lessor with a certificate of insurance showing evidence of coverage that names the City of Fort Collins as additional insured. Any such policies must contain waivers of subrogation and waivers of any defense based on invalidity arising from any act or neglect of any assignees or sub lessees of the Lessee.

11.3 Any insurance policy purchased by the Lessee must be written by an insurance carrier which has a current rating by Best's Insurance Reports of "A" (excellent) or better and a financial rating of "A" or better or such equivalent classification as may hereinafter be required customarily for properties similarly situated and approved by the Lessor and the insurance carrier must be authorized by law to do business in the State of Colorado. Notwithstanding anything to the contrary contained herein, the Lessee's obligation to carry insurance as provided herein may be brought within the coverage of a "blanket" policy or policies of insurance carried and maintained by the Lessee, so long as such policy or policies segregate the amount of coverage applicable to the Leased Premises. If the Lessee fails to procure, maintain and/or pay for at the times and for the duration specified herein any insurance required by this Lease, or fails to carry insurance required by law or governmental regulation, the Lessor may (but without obligation to do so) at any time or from time to time and without notice, procure such insurance and pay the premiums therefore. In such event, the Lessee must repay the Lessor all sums so paid by the Lessor, together with interest thereon, at the rate of eight percent (8%) per annum, and any costs or expenses incurred by the Lessor in connection therewith, within ten (10) days following the Lessor's written demand to the Lessee for such payment.

**ARTICLE XII**

**Utilities**

12.1 The Lessee must pay all charges for gas, electricity, water, sewer, light and power, janitorial services, telephone and other communication services used, rendered or supplied upon or in the Leased Premises.

**ARTICLE XIII**

**Signs**

13.1 The Lessee must not affix, erect or maintain on the Leased Premises any sign or
advertisement without first obtaining the Lessor's approval, which approval shall not be unreasonably withheld. The Lessee is responsible for all costs of erection and maintenance of such sign or advertisement.

**ARTICLE XIV**

**Subletting and Assignment**

14.1 Except for housing clients of Lessee's program, the Lessee must not assign this Lease any interest or any part thereof, any right or privilege appurtenant thereto, nor mortgage or hypothecate the leasehold without the prior written consent of the Lessor, which consent will not be unreasonably withheld. Lessor's consent to one assignment or hypothecation is not a consent to any subsequent assignment or hypothecation; and, unless Lessee has obtained Lessor's written consent, any assignment or transfer or attempted assignment or transfer of this lease or any interest therein or hypothecation either by the voluntary or involuntary act of the Lessee or by operation of law or otherwise, may, at the option of the Lessor, terminate this Lease; and any such purported assignment or transfer without such consent will be null and void. The Lessor's consent to any such assignment does not relieve the Lessee from any obligation under this Lease unless the Lessor expressly agrees in writing to relieve the Lessee from such obligation.

14.2 If Lessee assigns this Lease or if the Leased Premises or any part thereof is sublet or occupied by anyone other than the Lessee or the Lessee's clients, the Lessor may collect rent from the assignee, subtenant or occupant and employ the net amount collected to the rent herein reserved. No such collection will release the Lessee from the complete performance of Lessee's obligations under this Lease.

**ARTICLE XV**

**Mechanic's Liens**

15.1 The Lessee agrees to pay or cause to be paid promptly all bills and charges for material, labor or otherwise in connection with or arising out of any alterations, additions or changes made by the Lessee or its agents or subtenants to the Leased Premises; and the Lessee agrees to hold the Lessor free and harmless against all liens and claims of liens for such labor and materials, or either of them, filed against the Leased Premises or any part thereof and from and against any expense and liability in connection therewith. The Lessee further agrees to discharge (either by payment or by filing the necessary bond or otherwise) any mechanic's, materialman's or other liens against the Leased Premises arising out of any payment due or alleged to be due for any work, labor, services, materials or supplies claimed to have been furnished at the Lessee's request in, on or about the Leased Premises and to indemnify the Lessor against any lien or claim of lien attached to or upon the Leased Premises or any part thereof by reason of any act or omission on the Lessee's part. The Lessee has, however, the right to contest any mechanic's liens or claims filed against the Leased Premises, provided the Lessee diligently prosecutes any such contest and at all times effectively stays or prevents any sale of the Leased Premises under execution or otherwise, and pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien and thereafter procures record satisfaction or release thereof. The Lessee also agrees to defend any such contest on behalf of
Lessor, at the Lessee’s cost and expense.

**ARTICLE XVI**

**Condemnation**

16.1 If, as a result of any exercise of the power of eminent domain (hereinafter referred to as "proceedings"), any of the following happen:

(a) the title to the whole or substantially all of the Leased Premises is taken;

(b) the Leased Premises are deprived of adequate ingress or egress to or from all public streets and highways abutting the Leased Premises; or

(c) all or substantially all of the parking area outside of the Leased Premises is taken;

and the Lessee cannot reasonably operate in the remainder of the Leased Premises the business being conducted on the Leased Premises at the time of such taking, then this Lease will terminate as of the date of such taking pursuant to such proceedings. For the purpose of construing the provisions of this Article, "proceedings" shall include any negotiated settlement of any matter involving a condemnation and a "taking" shall be deemed to occur when title to the Leased Premises or possession thereof is acquired by a governmental authority, whichever first occurs.

16.2 If, during the term of this Lease, title to less than the whole or title to less than substantially all of the Leased Premises is taken in any such proceedings and the Lessee can reasonably operate in the remainder of the Leased Premises the business being conducted on the Leased Premises at the time of such taking, this Lease will not terminate.

16.3 All damages awarded for any taking described in this Article are the property of the Lessor, except to the extent that any amount thereof is specifically attributable to the Lessee’s trade fixtures and to the extent that the Lessor is permitted by law to recover any damages it may sustain as the result of such taking.

**ARTICLE XVII**

**Total or Partial Destruction**

17.1 If, during the term of this Lease, the Leased Premises or any part thereof is destroyed or so damaged by fire or other casualty as to become untenantable, then, at Lessor’s option, the term hereby created will cease; this Lease will become null and void from the date of such damage or destruction; and the Lessee must immediately surrender the Leased Premises and its interest therein to the Lessor. The Lessee must pay rent within said term only to the time of such surrender, provided, however, that the Lessor exercises such option to so terminate this Lease by notice in writing delivered to the Lessee within thirty (30) days after such damage or destruction. If the Lessor does not elect to terminate this Lease, this Lease will continue in full force and effect, and the Lessor will repair the Leased Premises with all reasonable speed, placing the same in as good a condition as it was at the time of the damage or destruction and
for that purpose may enter upon the Leased Premises; and rent will abate in proportion to the extent and duration of the untenantability. In either event, the Lessee must remove all rubbish, debris, merchandise, furniture, furnishings, equipment and other items of its personal property within five (5) days after request by the Lessor. If the Leased Premises are only slightly injured by fire or the elements so as to not render the same untenantable and unfit for occupancy, then the Lessor shall determine within thirty (30) days whether Lessor will make repairs. If so, Lessor will repair the same with all reasonable speed and, in that case, rent will not abate. If Lessor decides not to make repairs, Lessor will notify Lessee and give Lessee the option of making repairs at Lessee’s expense or terminating the Lease. Lessee will notify Lessor within sixty (60) days of Lessor’s notice whether Lessee wishes to make repairs or terminate the Lease. Lessee is not entitled to any compensation from or claim against the Lessor for any inconvenience or annoyance arising from the necessity of repairing any portion of the Leased Premises, however the necessity may occur.

**ARTICLE XVIII**

**Holding Over**

18.1 Any holding over after the expiration of the term of this Lease Agreement, with the consent of the Lessor, will be construed as a tenancy from month to month on the same terms and conditions herein specified and at the same rental provided for herein.

**ARTICLE XIX**

**Default of Lessee**

19.1 If any one or more of the following events (herein referred to as "an event of default") happens:

(a) The Lessee defaults in the due and punctual payment for the rent or any other amounts required to be paid hereunder and such default continues for three (3) days after the receipt of written notice from the Lessor;

(b) The Lessee neglects or fails to perform or observe any of Lessee's other obligations hereunder, and the Lessee fails to remedy the same within fifteen (15) days after the Lessee receives written notice from the Lessor specifying such neglect or failure (or Lessee fails to begin such cure within said fifteen (15) days and proceed with due diligence to complete said cure when the default is of such nature that it cannot be cured within said fifteen (15) day period); or

(c) The Lessee (i) is adjudicated bankrupt or insolvent, (ii) files a petition in bankruptcy for reorganization or for the adoption of an arrangement under the Bankruptcy Act (as now or in the future amended) or (iii) makes an assignment of its property for the benefit of its creditors.

Then, and in any one or more such events, the Lessor has the right, at its election and while such event of default continues, to give the Lessee written notice of its intention to terminate this Lease on the date of such given notice or any later date specified therein; and on such specified
date, the Lessee's right to possession of the Leased Premises will cease; and this Lease will be
terminated.

19.2 If the Lessor must commence any action or proceeding to enforce any obligation of
the Lessee under this Lease, the Lessor is entitled to a reimbursement of all costs and expenses
incurred in said matter, including reasonable attorney's fees.

19.3 The Lessor reserves the right to make any payments or perform any action required
hereunder by the Lessee (but is not required to do so); and all amounts expended by the Lessor,
together with interest at the rate of eight percent (8%) per annum, must be paid by the Lessee
within 30 days following notification of such expenditures.

ARTICLE XX

Interest and Late Charges

20.1 Any amount due to the Lessor from the Lessee under this Lease Agreement not
paid when due will bear interest at the rate of eight percent (8%) per annum from the due date
until paid. Payments of such interest will not excuse or cure any default by the Lessee under this
Lease Agreement. In addition, if the Lessee fails to pay any payment when due and such failure
continue for a period of ten (10) days following the due date, the Lessee must pay to the Lessor a
monthly collection service charge of five percent (5%) of the late payment amount, which is due
and payable immediately.

ARTICLE XXI

Attorneys' Fees

21.1 The Lessee will pay and indemnify the Lessor against all legal costs and charges,
including legal costs and attorneys' fees, lawfully and reasonably incurred in obtaining
possession of the Leased Premises after default of the Lessee, or incurred after the Lessee
surrenders possession upon the expiration or sooner termination of this Lease, or incurred in
enforcing any covenant of the Lessee herein contained or any right granted to the Lessor.

ARTICLE XXII

Lessee to Save Lessor Harmless

22.1 The Lessee will indemnify, release, and hold the Lessor harmless from all claims,
demands, judgments, costs, and expenses, including attorneys' fees, arising out of any accident
or occurrence causing injury to any person or property whomsoever or whatsoever due directly or
indirectly to the condition of the Leased Premises, or the use or neglect of the Leased Premises
by the Lessee, its agents, employees and business invitees or any person or persons (and their
agents, employees, and business invitees) holding under the Lessee, unless such accident or
occurrence results from any tortious misconduct or negligent act or omission on the part of the
Lessor, its agents and employees.

22.2 The Lessee will further indemnify, release and hold harmless the Lessor from any
damages and all penalties arising out of any failure of the Lessee, in any respect, to comply with all of the requirements and provisions of this Lease Agreement. The Lessee covenants that the Lessee will keep and save the Lessor and the Lessor's interest in and to the Leased Premises forever harmless from any penalty, damage or charge imposed by any violation of any laws, whether occasioned by an act of neglect of the Lessee, or by another or others in the Leased Premises holding under or through the Lessee.

**ARTICLE XXIII**

**Hazardous Material**

23.1 As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the state of Colorado or the United States Government. The term "hazardous material" includes, without limitation, any material or substance that is: (i) defined as a "hazardous substance" under appropriate state law provisions; (ii) petroleum; (iii) asbestos; (iv) designated as "hazardous substance" pursuant to section 311 of the Federal Water Pollution Control Act (33 U.S.C. section 1321); (v) defined as "hazardous waste" pursuant to section 1004 of the Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6903); (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601); or (vii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. Section 6991).

23.2 Excepting commonly used products stored in an appropriate location within approved containers, including, by way of example and not of limitation, cleaning products, gasoline and motor oil, the Lessee must not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Leased Premises by the Lessee, its agents, employees, contractors or invitees, without the prior written consent of the Lessor (which Lessor will not unreasonably withhold as long as the Lessee demonstrates to the Lessor's reasonable satisfaction that such hazardous material is necessary or useful to the Lessee's business and will be used, kept and stored in a manner which complies with all laws regulating any such Hazardous Material). If the Lessee breaches the obligation stated in the preceding sentence, or if the presence of Hazardous Material on the Leased Premises caused or permitted by the Lessee results in contamination of the Leased Premises or if contamination of the Leased Premises by Hazardous Material otherwise occurs for which the Lessee is legally liable to the Lessor for damage resulting therefrom, then the Lessee will release, indemnify, defend and hold the Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution value of the Leased Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Leased Premises, damages, arising from adverse impact or marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Lease term as a result of such contamination. This indemnification of the Lessor by the Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean up, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or groundwater on or under the Leased Premises. Without limiting the foregoing, if the presence of any Hazardous Material on the Leased Premises caused or permitted by the Lessee results in
any contamination of the Leased Premises, the Lessee must promptly take all actions at its sole expense as are necessary to return the Leased Premises to the condition existing prior to the introduction of any such Hazardous Material to the Leased Premises; provided that the Lessee first obtains Lessor’s approval of such action, which approval will not be unreasonably withheld so long as such action would not potentially have any material adverse affect on the Leased Premises.

ARTICLE XXIV

Notices

24.1 Any notice or other communication given by either party hereto to the other relating to this Lease Agreement must be hand delivered, sent by overnight commercial courier, or sent by registered or certified mail, return receipt requested, addressed to such other party at their respective addresses set forth below; and such notice or other communication shall be deemed given when so hand delivered or mailed:

If to the Lessor, to:
City of Fort Collins
Real Estate Services
P.O. Box 580
Fort Collins, CO 80522-0580

If to the Lessee, to:
Faith Family Hospitality of Fort Collins, Inc.
Annette Zacharias, Executive Director
317/321 S. Sherwood Street
Fort Collins, CO 80524

Where permitted by law, Lessor may also deliver notice to Lessee by posting in a conspicuous place on the Leased Premises.

ARTICLE XXV

[This Article Intentionally Omitted]

ARTICLE XXVI

Legal Compliance, Discrimination

26.1 The Lessee must comply with all Federal, State and local laws, including, to the extent applicable, the requirements of the Americans with Disabilities Act (ADA) and the Fair Housing Act (FHA). The Lessor does not represent that the Leased Premises meet the requirements of the ADA or FHA for the purposes of Lessee’s intended use of the Leased Premises. Any improvements required to bring the Leased Premises into compliance with the ADA or FHA for the purposes of Lessee’s intended use are Lessee’s sole responsibility, and Lessee will indemnify and defend the Lessor against any claims brought under the ADA or FHA regarding the Leased Premises.
26.2 The Lessee will not discriminate against any person applying for services to be provided on the Leased Premises on the basis of religion and will not limit such services or give preference to persons on the basis of religion. The Lessee will not require religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such services on the Leased Premises.

26.3 In providing services and other benefits on the Leased Premises the Lessee shall not discriminate on the grounds of any protected class recognized under federal, state or local law.

**ARTICLE XXVII**

**Time of the Essence**

27.1 Time is of the essence of this Agreement and each and every provision hereof.

**ARTICLE XXVIII**

**Lessor’s Right of Entry**

28.1 Lessor reserves the right at all reasonable times and with reasonable notice of not less than forty-eight (48) hours, and at all times during emergencies, for Lessor or Lessor’s agents to enter the Leased Premises for the purpose of inspecting and examining the same, or to show the same to prospective purchasers or tenants, or to make such repairs, alterations, improvements or additions as Lessor may deem necessary or desirable; provided, however, that such rights shall be subject to the following conditions: (i) such entry, regardless of the purpose, shall not unreasonably interfere with the Lessee’s use and enjoyment of the Leased Premises; (ii) any such repairs, alterations, improvements or additions to the Leased Premises shall not unreasonably interfere with the Lessee’s use and enjoyment of the Leased Premises; and (iii) the Lessor agrees to in good faith work with the Lessee to minimize any impacts likely to result from construction of any repairs, alterations, improvements or additions to the Leased Premises. During the ninety days prior to the expiration of the term of this Lease or any renewal term, Lessor may exhibit the Leased Premises with prior notice and so as not to interfere with regular use of the space, to prospective tenants or purchasers and place up on the Leased Premises, the usual notice advertising the Leased Premises for sale or lease, as the case may be, which notices Lessee shall permit to remain thereon without molestation.

28.2 In the event of an emergency, in order to protect or minimize the risk of harm to life or property if Lessee shall not be personally present to open and permit an entry into the Leased Premises, or at any time when for any reason an entry therein shall be necessary or permissible, Lessor or Lessor’s agents may enter the same by a master key or may forcibly enter the same, without rendering Lessor or such agents liable therefore, and without in any manner affecting the obligations and covenants of this Lease. Nothing herein contained, however, shall be deemed or construed to impose upon Lessor any obligation, responsibility, or liability whatsoever for the care, maintenance or repair of the building or any part thereof, except as otherwise herein specifically provided.
ARTICLE XXIX

[This Article Intentionally Omitted]

ARTICLE XXX

Miscellaneous

30.1 Words of the masculine gender include the feminine and neuter genders; and when the sentence so indicates, words of the neuter gender refer to any gender. Words in the singular include the plural and vice versa.

30.2 This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto and, along with the Development Agreement Between the City of Fort Collins and Faith Family Hospitality of Fort Collins, Inc., dated ________2018 (the “Development Agreement”) is deemed to be and contain the entire understanding and agreement between the parties hereto with respect to their rights and obligations in and to the Leased Premises. There should not be deemed to be any other terms, conditions, promises, understandings, statements or representations, express or implied, concerning this Lease Agreement unless set forth in writing and signed by both parties hereto. In the event of a conflict between this Lease Agreement and the Development Agreement, the terms of the Development Agreement will control.

30.3 The section headings used herein are for convenience of reference only and in no way define, limit or prescribe the scope or intent of any provision under this Lease Agreement.

30.4 Subject to the provisions hereof the benefits of this Lease Agreement and the burdens hereunder inure to and are binding upon the parties hereto and their respective heirs, administrators, successors and permitted assigns.

30.5 No waivers by either party hereto of any one or more of the terms, covenants, conditions and agreements of this Lease Agreement shall be deemed, to imply or constitute a waiver of any succeeding or other breach hereunder; and the failure of either party hereto to insist upon strict performance of the terms, conditions, covenants and agreements herein contained or any of them do not constitute and should not be considered as a waiver or relinquishment of the a party’s rights thereafter to enforce any such default or term, condition, covenant or agreement; and the same will continue in full force and effect.

30.6 The remedies of the Lessor under this Lease are cumulative, and no one of them shall be construed as exclusive of any other or of any other remedy provided by law. This lease is governed by and its terms construed under the laws of the State of Colorado.

30.7 The Lessor reserves the right to grant such utility easements and other easements as it desires over, across and under portions of the parking area so long as such easements do not unreasonably interfere with the Lessee’s continuing use of the Leased Premises.

30.8 At any time, and from time to time, the Lessee agrees, upon request in writing from the Lessor, to execute, acknowledge and deliver to the Lessor a statement in writing 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 modified and stating the modifications) and the date to which the rent and other charges have been paid.

30.9 No act or thing done by the Lessor or the Lessor's agents or employees during the term hereof will be considered as an acceptance of the surrender of the Leased Premises, and no agreement to accept such surrender will be valid unless in writing signed by the Lessor. No employee of the Lessor or the Lessor's agent has any power to accept the keys to the Leased Premises prior to the termination of this Lease. The delivery of keys to an employee of the Lessor or to the Lessor's agent will not operate as a termination of this Lease or a surrender of the Leased Premises.

30.10 The Lessee, upon the expiration or termination of this Lease, either by lapse of term or otherwise, agrees to peaceably surrender to the Lessor the Leased Premises, including the alterations, additions, improvements, changes and fixtures other than the Lessee's movable trade fixtures, equipment and furniture, in broom-clean condition and in good repair, as hereinabove provided, and except for acts of God and ordinary wear, and damage by fire or other casualty not caused by the negligence of the Lessee or anyone under the Lessee's control.

30.11 If Lessee does not purchase the Leased Premises pursuant to Article III above, then upon any expiration or termination of this Lease Agreement, all Lessee's rights and obligations as Developer under the Development Agreement will revert to Lessor as owner of the Leased Premises.

30.12 The Lessee acknowledges and agrees that the Lessee has not relied upon any statements, representations, agreements or warranties except such as are expressed herein.

30.13 Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or a partnership or a joint venture between the parties hereto, it being agreed that none of the provisions set forth herein nor any acts of the parties herein shall be deemed to create a relationship between the parties hereto other than the relationship of Lessor and Lessee.

30.14 By executing this Lease, the Lessee is deemed to have accepted the Leased Premises in their present condition "as is". The Lessee acknowledges that the Leased Premises, in their present condition, comply fully with the Lessor's covenants and obligations hereunder.

30.15 Attorney Fees. In the event that any litigation is commenced by one party hereto against the party hereto, which litigation results from or arises out of this Lease Agreement, the court shall award to the prevailing party all reasonable costs and expenses, including attorneys' fees and other legal expenses.

30.16 Financial obligations of the Lessor in subsequent fiscal years are subject to the appropriation of funds sufficient and intended for such purposes by Lessor's City Council in its sole discretion.
IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed the day and year first above written.

THE LESSOR:

THE CITY OF FORT COLLINS, COLORADO,
a Municipal Corporation

Date:_______________ By: _________________________________

Darin A. Atteberry, City Manager

ATTEST:

City Clerk

AppROVED AS TO FORM:

Senior Assistant City Attorney

(Printed Name) (Printed Name)
THE LESSEE:

FAITH FAMILY HOSPITALITY OF FORT COLLINS, INC., a Colorado Non-Profit Corporation

By: ______________________________
    Annette Zacharias
    Executive Director

ATTEST:

_________________________
Name

_________________________
Title
AGENDA ITEM SUMMARY
August 21, 2018

SUBJECT
First Reading of Ordinance No. 112, 2018, Declaring Certain City-Owned Property on North College Avenue as Road Right-of-Way for Suniga Road.

EXECUTIVE SUMMARY
The purpose of this item is to declare property owned by the City as road right-of-way to be constructed and used for Suniga Road at College Avenue.

The City owns a parcel of property located at 1000 North College Avenue. In 2018, the City Engineering Department designed improvements for the Suniga Road and College Avenue connection across the City’s property. The project will construct a new arterial roadway between College Avenue and Blondel Street. Improvements include construction of a complete arterial street which includes 4 travel lanes, protected bike lanes, landscaped parkways, medians, sidewalks and utility improvements. This Ordinance officially declares this City owned parcel needed for Suniga Road as road right-of-way.

STAFF RECOMMENDATION
Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION
Suniga Road was first included in the Transportation Planning Master Street Plan in October 1999. At the time, the alignment was referred to as “New Vine Drive”. By City Council resolution in early 2015, New Vine Drive became officially known as Suniga Road. The first segment of Suniga Road between Redwood Drive and Blondel Street was completed in 2016. Development and growth near the Suniga Road alignment continues to move forward, putting increased volumes of traffic on the existing street network. Additionally, as the Lemay Avenue / Vine Drive overpass continues to be planned, this portion of Suniga Road will provide a key connection to the arterial roadway network.

The City purchased the parcel located at 1000 N. College Avenue in 2007 in connection with North College improvements. The parcel is managed by the City Engineering Department. The City Engineering Department has designed right-of-way improvements associated with the alignment of Suniga Road in accordance with the City’s Master Street Plan. The design includes the City owned property as right-of-way.

CITY FINANCIAL IMPACTS
Approximately 90% of the project funds come from the Transportation Capital Expansion Fee (TCEF) and General Fund. The City 2017-2018 BFO process approved transportation offer 1.12 - “Suniga Road Improvements”. The project is being coordinated closely with COFC Utilities staff that will include system upgrades.
ATTACHMENTS

1. Location Map for Suniga-College ROW Dedication (PDF)
Suniga-College Right of Way Dedication Location Map
ORDINANCE NO. 112, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
DECLARING CERTAIN CITY-OWNED PROPERTY ON NORTH
COLLEGE AVENUE AS ROAD RIGHT-OF-WAY FOR SUNIGA ROAD

WHEREAS, the City owns a parcel of property located at 1000 North College Avenue in Fort Collins as more particularly described on Exhibit “A”, attached hereto and incorporated herein by reference (the “Property”); and

WHEREAS, the City purchased the Property in 2007 in connection with improvements to North College Avenue; and

WHEREAS, the City’s Engineering Department intends to construct a new arterial roadway (Suniga Road) across the Property between College Avenue and Blondel Street (the “Project”); and

WHEREAS, to accommodate the Project, Engineering is seeking to convert the Property to road right-of-way; and

WHEREAS, to establish a public record that the Property is intended for use by the City as right-of-way for a public roadway and related improvements, including without limitation public utilities, pedestrian, transit and bicycle access and improvements, landscaping, and such other related purposes as may now or in the future be determined appropriate, staff recommends that the City Council declare the Property to be right-of-way; and

WHEREAS, converting property owned by the City in fee simple to right-of-way constitutes a conveyance of an interest in such property, as doing so creates certain public rights in the property that would not otherwise exist on City-owned property; and

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

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

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

Section 2. That the City Council hereby declares that the real property described on Exhibit “A” shall constitute right-of-way for City streets and related improvements, including without limitation public utilities, pedestrian, transit and bicycle access and improvements, landscaping, and such other related purposes as may now or in the future be determined appropriate, and hereby finds that such declaration is in the best interests of the City.
Section 3. That the City Clerk shall cause this Ordinance to be recorded in the real property records of the Larimer County Clerk and Recorder’s office once the Ordinance becomes effective in accordance with Article II Section 7 of the City Charter.

Introduced, considered favorably on first reading, and ordered published this 21st day of August, A.D. 2018, and to be presented for final passage on the 4th day of September, A.D. 2018.

__________________________________
Mayor

ATTEST:

_______________________________
City Clerk

Passed and adopted on final reading on the 4th day of September, A.D. 2018.

__________________________________
Mayor

ATTEST:

_______________________________
City Clerk
EXHIBIT A

LEGAL DESCRIPTION:

A parcel of land situate in the Southwest quarter of Section 1, Township 7 North, Range 69 West, of the 6th P.M., City of Fort Collins, County of Larimer, State of Colorado, described in that certain Warranty Deed, dated August 3, 1995, recorded in the records of the Clerk and Recorder of Larimer County, Colorado, at Reception No. 95046927, and being more particularly described as follows:

Considering the West line of said Southwest quarter, as monumented by 3 ¼” diameter brass cap at the Southwest corner and 3” diameter aluminum cap at the West quarter corner, as bearing North 0°38’34” East and with all bearings contained herein relative thereto:

Commencing at the Southwest corner of said Section 1; thence along said West line of the Southwest quarter, North 00°38’34” East 1343.00 feet; thence South 89°21’26” East 40.00 feet to the East right-of-way of College Avenue, said point also being the TRUE POINT OF BEGINNING of this description; thence along said East right-of-way, North 00°38’34” East 44.00 feet; thence South 89°21’26” East 150.00 feet; thence South 00°38’34” West 44.00 feet to a point on the boundary of that certain parcel of land as described in Reception #86038788, records of said County; thence along said boundary, North 89°21’26” West 150.00 feet to the true point of beginning. The above described parcel contains 0.15 acres or 6,599 square feet, more or less, and is subject to all rights-of-way, easements, and restrictions now in use or on record.
AGENDA ITEM SUMMARY
City Council

AGENDA ITEM SUMMARY
August 21, 2018

STAFF

Kai Kleer, Associate Planner
Judy Schmidt, Legal

SUBJECT


EXECUTIVE SUMMARY

The purpose of this item is to initiate annexation proceedings for the Hughes Stadium Annexation, containing 164 acres, into the City of Fort Collins. The Annexation is located at the northwest corner of South Overland Trail and Dixon Canyon Road. The Annexation area is owned and administered by Colorado State University and is the former location of Hughes Stadium. The requested zoning for the property contained within the annexation area is Transition (T) which is intended for properties for which there are no specific and immediate plans for development. The surrounding properties are a mixture of recreational, residential and commercial land uses.

The proposed Resolution makes a finding that the annexation petition substantially complies with the Municipal Annexation Act of 1965, determines that a hearing should be established regarding the annexation, and directs notice be given of the hearing. The hearing will be held at the time of First Reading of the annexation and zoning ordinances; not less than thirty days’ prior notice is required by State law.

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

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

This is a 100% voluntary annexation for the 164-acre property that, prior to demolition, contained the Colorado State University’s Hughes Stadium. The subject property is not located within the Fort Collins Growth Management Area (GMA); however, the proposed annexation lies within a future GMA expansion area as indicated by the City of Fort Collins Structure Plan. A Growth Management Area amendment is expected to be processed in conjunction with the City’s update to City Plan which is scheduled for adoption by April 2019.

The City of Fort Collins is authorized to annex outside the GMA pursuant to Section 1, Subsection 8(F) of the Larimer County and City of Fort Collins Intergovernmental Agreements (IGA) which states:

“The County Agrees that the City, in its sole discretion, (except as provided in Section 8(B) of this agreement) may annex outside the Fort Collins GMA. The City agrees that proposed annexations outside the GMA will be sent via Certified Mail to the Board of County Commissioners for review and comment at least thirty-five (35) days prior to the scheduled public hearing of the annexation before the City Council.”
On June 22, 2018 a letter (Attachment 4) from Larimer County Community Development was received waiving formal action as described above.

The Hughes Stadium Annexation gains the required 1/6 contiguity to existing city limits from a common boundary with the following annexations:

- Becksted Addition; February 1966
- Foothills Annexation; August 1970
- Second Foothills Annexation; March 1971
- Third Foothills Annexation; March 1972
- Mountain Shadows Annexation; April 1972
- Maxwell Open Space Annexation; April 1990
- Pine Ridge Third Annexation; January 1994
- Pine Ridge Fifth Annexation; November 2001

Therefore, the requirement that no less than one-sixth of the perimeter boundary be contiguous to the existing City of Fort Collins municipal boundary has been satisfied.

The Hughes Stadium Annexation does create an enclave of the property that contains the Holiday Twin Drive-In theater. An enclave is defined as any unincorporated area is entirely contained within the boundaries of a municipality, at which time City Council may annex such territory once the subject property is surrounded for a minimum of three (3) years. Based on the Hughes Stadium Annexation schedule, a future City Council could consider annexation of the Holiday Twin Drive-In enclave as soon as November 2021.

The requested zoning for this annexation is the Transition (T), zone district. The Transition zone district is intended for properties for which there are no specific and immediate plans for development. Colorado State University’s stated objectives for future development of the property are as follows:

- Select a master developer to present a plan that best serves the collective interests of CSU, Larimer County, and the City of Fort Collins
- Include consideration of opportunities for environmentally conscious development principles
- Include consideration of opportunities for provision of affordable and workforce housing
- Effectively collaborate with the surrounding community

Staff recommends that the property contained within the subject annexation also be placed into the Residential Neighborhood Sign District. A map amendment will be necessary.

CITY FINANCIAL IMPACTS

There are virtually no financial impacts associated with this 164-acre annexation.

BOARD / COMMISSION RECOMMENDATION

The Planning and Zoning Board will conduct a public hearing of the annexation and zoning request on September 20, 2018. The Board’s recommendation will be forwarded to City Council as part of the First Reading of the annexation and zoning ordinances on October 2, 2018.
PUBLIC OUTREACH

The City of Fort Collins Land Use Code and the Colorado Revised Statutes do not stipulate that a neighborhood meeting be held in conjunction with a voluntary annexation.

However, prior to the formal submittal of the Hughes Stadium Annexation, Colorado State University and consultants, CAA ICON, hosted two listening sessions at the Drake Centre on September 20, 2017 and October 18, 2017. The meeting offered five “listening” stations where either staff or consultants were available to interact and receive feedback (Attachments 5&6) on the following five topic areas; redevelopment process, existing site, land use context, community needs & values and transportation (Attachment 7).

In addition to the in-person events, Colorado State University hosted an online form that started on August 28, 2017 and is still available today. During the period between August 28, 2017 - December 21, 2017 more than 100 community members were able to communicate their ideas, questions and concerns (Attachment 8).

Combined, approximately 700 comments, questions and/or concerns were logged by CSU and CAA ICON. The resulting feedback is described by three primary themes:

1. **Open Space**: Preservation of open space and access to natural/recreational opportunities.
2. **Housing**: Mix of choices, low density, workforce housing, innovative and affordable
3. **Neighborhood Center**: neighborhood-oriented services

Additional public outreach will be required prior to the submittal of a development application/request for zoning to the City of Fort Collins.

ATTACHMENTS

1. Hughes Annexation Petition Cover Letter (PDF)
2. Hughes Stadium Annexation Petition (PDF)
3. Hughes Stadium Draft Annexation Map (PDF)
4. Larimer County IGA Memo (PDF)
5. September 20, 2017 Listening Session Feedback (PDF)
6. October 18, 2017 Listening Session Feedback (PDF)
7. Sept & Oct Listening Session Exhibits (PDF)
8. Aug 28 - Dec 21, 2017 Online Feedback (PDF)
9. Vicinity Map(PDF)
July 18, 2018

Hand Delivered
Mayor Wade Troxell
Mayor Pro Tem Gerry Horak
City Manager Darin Atteberry
281 N. College Avenue
Fort Collins, CO 80522

Re: Annexation of Hughes Stadium Property

Dear Mayor Troxell, Mayor Pro Tem Horak, and City Manager Atteberry:

The purpose of this letter is to request that the City of Fort Collins annex the Hughes Stadium property (approximately 164 acres) owned by the Board of Governors of the Colorado State University System. The Petition for Annexation and related fees and supporting documents are being submitted to the City contemporaneously with this letter.

As I believe you are aware, the University has initiated an RFQ/RFP process to select a developer to redevelop the Hughes property. Since it is unclear as to how the property will ultimately be developed, the University is requesting, based on City staff recommendation, a Transition (T) zoning district as the initial zoning applied to the property upon annexation. The most likely scenario for development is believed to be a mix of residential uses with potentially some neighborhood commercial, if feasible.

We believe that this annexation supports and is consistent with the City's current City Plan, and hope that the City will support and assist with this request and you will initiate whatever course of action is needed to allow for this Annexation process.

Fred Haberecht with CSU Facilities Management and Rick Callan with CSURF Real Estate have been designated by the University to work with the City on this project. Feel free to contact either of them, or myself, if needed.

Sincerely,

Lynn Johnson
PETITION FOR ANNEXATION

THE STATE BOARD OF AGRICULTURE OF COLORADO, NOW KNOWN AS THE BOARD OF GOVERNORS OF THE COLORADO STATE UNIVERSITY SYSTEM, ACTING BY AND THROUGH COLORADO STATE UNIVERSITY (hereinafter referred to as the "Petitioners") hereby petition the Council of the City of Fort Collins, Colorado for the annexation of an area, to be referred to as the Hughes Stadium Annexation to the City of Fort Collins. Said area, consisting of approximately One Hundred Sixty Four (164') acres, is more particularly described on Attachment "A," attached hereto.

The Petitioners allege:

1. That it is desirable and necessary that such area be annexed to the City of Fort Collins.
2. That the requirements of Sections 31-12-104 and 31-12-105, C.R.S., exist or have been met.
3. That not less than one-sixth (1/6) of the perimeter of the area proposed to be annexed is contiguous with the boundaries of the City of Fort Collins.
4. That a community of interest exists between the area proposed to be annexed and the City of Fort Collins.
5. That the area to be annexed is urban or will be urbanized in the near future.
6. That the area proposed to be annexed is integrated with or capable of being integrated with the City of Fort Collins.
7. That the Petitioners herein comprise more than fifty percent (50%) of the landowners in the area and own more than fifty percent (50%) of the area to be annexed, excluding public streets, alleys and lands owned by the City of Fort Collins.
8. That the City of Fort Collins shall not be required to assume any obligations respecting the construction of water mains, sewer lines, gas mains, electric service lines, streets or any other services or utilities in connection with the property proposed to be annexed except as may be provided by the ordinance of the City of Fort Collins.

Further, as an express condition of annexation, Petitioners consent to the inclusion into the Municipal Subdistrict, Northern Colorado Water Conservancy District (the "Subdistrict") pursuant to §37-45-136(3.6) C.R.S., Petitioners acknowledge that, upon inclusion into the Subdistrict, Petitioners' property will be subject to the same mill levies and special assessments as are levied or will be levied on similarly situated property in the Subdistrict at the time of inclusion of Petitioners' lands. Petitioners agree to waive any right to an election which may exist pursuant to Article X, §20 of the Colorado Constitution before the Subdistrict can impose such mill levies and special assessments as it has the authority to impose. Petitioners also agree to waive, upon inclusion, any right which may exist to a refund pursuant to Article X, §20 of the Colorado Constitution.

WHEREFORE, said Petitioners request that the Council of the City of Fort Collins approve the annexation of the area described on Attachment "A." Furthermore, the Petitioners request that said area be placed in the T-Transitional Zone District pursuant to the Land Use Code of the City of Fort Collins.
(Check box if applicable). The Petitioners reserve the right to withdraw this petition and their signatures therefrom at any time prior to the commencement of the roll call of the City Council for the vote upon the second reading of the annexation ordinance.

Individual Petitioners signing this Petition represent that they own the portion(s) of the area described on Attachment "A" as more particularly described below:

A tract of land situate in the County of Larimer, State of Colorado, to-wit:

See Legal Description on Attachment 'A'

IN WITNESS WHEREOF, I/we have executed this Petition for Annexation this 18th day of July, 2018.

THE STATE BOARD OF AGRICULTURE OF COLORADO, NOW KNOW AS THE BOARD OF GOVERNORS OF THE COLORADO STATE UNIVERSITY SYSTEM, ACTING BY AND THROUGH COLORADO STATE UNIVERSITY

By: _______ Lynn Johnson, Vice President for University Operations

Address: c/o CSURF Real Estate Office – Rick Callan
P.O. Box 483, Fort Collins, CO 80522
ATTACHMENT “A”

LEGAL DESCRIPTION OF THE ANNEXATION

A parcel of land situate in the East Half of Section 20, Township 7 North, Range 69 West of the 6th P.M., being more particularly described as follows:

Considering the East line of the Northeast Quarter of said Section 20 as bearing South 00°16'25" West and with all bearings contained herein relative thereto:

BEGINNING at the Southeast corner of Foothills Annexation to the City of Fort Collins, recorded at Book 1439 Page 17 Larimer County Clerk and Recorder, said corner also being the Northwest corner of Becksted Addition to the City of Fort Collins recorded at Reception No. 910170 Larimer County Clerk and Recorder; thence along the West line of said Becksted Addition, said line also being the East line of said Sector 20, South 00°16'25" West, 1,390.85 feet to the East Quarter corner of said Section 20, said point also being the Northwest corner of Mountain Shadows Annexation to the City of Fort Collins recorded at Book 1500 Page 6 Larimer County Clerk and Recorder; thence along the West line of said Mountain Shadows Annexation, said line also being the East line of said Section 20, South 00°17'42" West, 690.54 feet to a point on the Northerly line of Pine Ridge 5th Annexation to the City of Fort Collins recorded at Reception No. 200113963 Larimer County Clerk and Recorder; thence along said Pine Ridge 5th Annexation the following three (3) courses and distances, North 89°42'16" West; thence, South 00°17'42" West; thence, South 78°29'11" West, 1,114.50 feet to a point on the Northeast corner of Pine Ridge 3rd Annexation to the City of Fort Collins, recorded at Reception No. 99006010 Larimer County Clerk and Recorder; thence along the Northerly line of said Pine Ridge 3rd Annexation, said line also being the Northerly right of way line of Dixon Canyon Road, South 78°29'11" West, 948.91 feet; thence departing said line of Pine Ridge 3rd Annexation, and continuing along said Northerly right of way line, said line also being the Northerly line of State Board of Agriculture Lands as recorded at Reception No. 10510582, South 78°29'53" West, 623.65 feet; thence departing said line, and along the Easterly line of said State Board of Agriculture Lands, North 00°30'58" East, 878.03 feet to the Southeast corner of Maxwell Open Space Annexation to the City of Fort Collins recorded at Reception No. 90017479 Larimer County Clerk and Recorder; thence along the East line of said Maxwell Open Space Annexation, North 00°31'43" East, 1,573.16 feet; thence departing said line, and along the line of said State Board of Agriculture Lands the following six (6) courses and distances, North 57°47'42" East, 65.46 feet; thence along a curve concave to the Northwest having a central angle of 25°26'23", an arc length of 149.40 feet with a radius of 336.48 feet, and the chord of which bears North 45°04'30" East, 148.18 feet; thence along a curve concave to the Northwest having a central angle of 31°42'57", an arc length of 133.40 feet with a radius of 240.99 feet, and the chord of which bears North 16°32'04" East, 131.70 feet; thence, North 00°30'42" East, 111.20 feet; thence along a curve concave to the East having a central angle of 23°27'51", an arc length of 96.85 feet with a radius of 98.85 feet, and the chord of which bears North 11°47'37" East,

96.17 feet; thence, North 86°25'25" East, 1,487.45 feet to the Southwest corner of Foothills 3rd Annexation to the City of Fort Collins recorded at Book 1497 Page 190 Larimer County Clerk and Recorder; thence along the South line of said Foothills 3rd Annexation, North 86°25'25" East, 25.79 feet to the Southwest Corner of Foothills 2nd Annexation to the City of Fort Collins recorded at Book 1456 Page 668 Larimer County Clerk and Recorder; thence along the South line of said Foothills 2nd Annexation, North 86°25'25" East, 446.63 feet to the Southwest Corner of Foothills Annexation to the City of Fort Collins recorded at Book 1439 Page 17 Larimer County Clerk and Recorder; thence along the South line of said Foothills Annexation, North 86°25'25" East, 479.58 feet to the Point of Beginning.

The above described tract of land contains 7,130,110 square feet or 163.68 acres, more or less, and is subject to all easements and rights-of-way now on record or existing.

(revised 3/31/08)
ATTACHMENT “B”

STATE OF COLORADO

COUNTY OF LARIMER

The undersigned, being first duly sworn upon his oath states:

That he was the circulator of the attached Petition for Annexation and that each signature therein is the signature of the person whose name it purports to be.

Circulator’s Signature

Subscribed and sworn to before me this 17 day of July, 2018, by Rick Callan.

WITNESS my hand and official seal.

Commission Expiration: 2/12/2020

Notary Public:

KATHI L. MCDONALD
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20044005075
MY COMMISSION EXPIRES 02-12-2020

revised 3/31/08
ATTACHMENT “C”

ATTORNEY CERTIFICATION

I, Jean M. Christman, an attorney licensed to practice in the State of Colorado, hereby certify that, as of the date of this certificate, the signers of this Annexation Petition for the area referred to as the Hughes Stadium Annexation to the City of Fort Collins are the owners of real property in the area proposed for annexation. Furthermore, I certify that said owners constitute more than 50% of the landowners in the area proposed for annexation, as said area is described on Attachment “A” of said Annexation Petition, and own more than 50% of the land in said area, exclusive of streets and alleys.

Date: 7-17-18

Signature: [Signature]

Attorney Reg. No.: 15,937

[Signature]
LARIMER COUNTY | Community Development

P.O. Box 1190, Fort Collins, Colorado 80522-1190, Planning (970) 498-7683 Building (970) 498-7700, Larimer.org

June 22, 2018

City of Fort Collins
Attn: Cameron Gloss, AICP
281 N. College
Fort Collins, Colorado 80524

RE: Annexation of the CSU Hughes Stadium Property

Mr. Gloss,

Larimer County is aware that CSU is proposing to annex the Hughes stadium site located at the northwest corner of Overland Trail and County Road 42E into the City of Fort Collins. The County is aware that the property is currently situated outside of the jointly adopted Fort Collins GMA, which GMA is implemented by the existing Fort Collins-Larimer County Inter-Governmental Agreement (IGA).

Formal action to allow annexation of properties outside the GMA by the County is not required in accordance with Section 8.F of the IGA, which IGA Section reads as follows:

"The County Agrees that the City, in its sole discretion, (except as provided in Section 8(B) of this agreement) may annex outside the Fort Collins GMA. The City agrees that proposed annexations outside the GMA will be sent via Certified Mail to the Board of County Commissioners for review and comment at least thirty-five (35) days prior to the scheduled public hearing on the annexation before the City Council."

Should there be any further questions regarding this matter, I can be reached at (970) 498-7721 or mlafferty@larimer.org.

Respectfully,

[Signature]

Matt Lafferty, AICP
Principal Planner

cc. Linda Hoffmann, County Manager
    Board of County Commissioners
    Lesli Ellis, Community Development Director
Hughes Neighborhood Listening Session – Feedback by Attendees

September 20, 2017, 6-8 p.m.
Drake Centre; Fort Collins, CO

CSU and CAA ICON offered five “listening” stations as described below where attendees could ask questions and provide their feedback. Each station was manned by CSU and/or CAA ICON representatives. The below are nearly 400 comments, questions and concerns which were logged by station notetakers or written by attendees on comment boards.

Redevelopment Process Station

1. Requested that all boards on display at meeting be posted online for reference.
2. Does CSU/City of FC have any idea of timeline for Annexation?
3. Do not annex property. Low cost housing is more affordable if the property is left within the county.
4. Imperative that the property go through the Annexation and P&Z Process.
5. Recommends emphasis on recreational development
6. Recommends that the public be provided the selection criteria for the future developer.
7. Work with Great Outdoors Colorado, City of Fort Collins, Loveland, and Larimer County to preserve as open space and Multiuse recreational.
8. No Housing
9. No Apartment Buildings
10. Preserve Existing Landscape
11. No Development – Leave in County
12. No Low-income housing
13. Hughes is last piece of open space in Fort Collins. Leave as Open Space
14. Develop into Music Venue
15. Leave Open
16. Emphasis on recreation
17. Is there a projected timeline for the overall Development?
18. If Developed – Prefer Mix Use
19. Festival Site/ Park and Ride
20. Be clear about potential interests. Transparency.
21. Prefer Small Housing Development
22. Site to be utilized as Park and Ride
23. CSU/City to provide feasibility study to develop the property based on the case study of “The Eden Project”.
24. Leave as Open Space/Recreational
25. Can you be denied Annexation?
26. What are the city’s boundaries? At what point can they no longer annex property?
27. Are their examples of other projects within the city that have recently been annexed?
28. You’ve already lied to us to get us here to “listen” to us. You’ve already make up your mind to develop. This isn’t about listening to us. It’s you (CSU) telling us what you’ve already decided. It’s going to hurt Fort Collins, wildlife, and people to develop that land and opens
up our foothills for more housing. You pay for it. No one wins again, but CSU.

29. This is a very rare property – Keep it for recreation and nature. We don’t need more housing up against the foothills.

30. Please keep this open space or recreation based. Please do what’s right for community and not CSU’s pocketbook.

31. Develop into a Senior Living Community

32. Ed Zdnek – Working with Miller Family (Land owners with 40 acre lot to the north).
   a. Would like to be included in the planning process.
   b. Millers are developing the property to the north.
   c. Potentially developing a Continuing Care Residential Community with Open Space.

33. Please keep it open for Recreation, Peace, Dog, and their human enjoyment. Being so close to nature in today’s crazy world is good for everyone. Thank you.

34. CSU to gift land to city. Keep Open

35. Combined FC/Loveland community GOCO money to preserve open space, maybe multi-use outdoor recreation, hike/mtn bike trails, picnic area, etc.

36. Can city of Fort Collins purchase the property?

37. Multi-Use – Open space (especially retention areas, west, trails, etc.) & residential, affordable housing for CSU Employees. Especially staff and others.

38. There is plenty of low-income housing on the west side already. No more of that, please.


40. No housing, shopping malls, or development of any kind.

41. BRB – Getting louder over past year.

**Existing Site Station**

1. Artery status of Overland Trail?
2. Annexation process?
3. Will there be high density housing built to offset demo process?
4. If new development is built – will it feed into CSU’s goal of being green/carbon neutral?
5. Hopeful whatever is built is innovative and an example for the future
6. Land banking – future of affordable housing
7. Communal work with City of Fort Collins, Loveland, Larimer County Parks, and Great Outdoor Colorado (GOCO) for multi-recreational and outdoor use exclusively
8. Run an analysis – recommend a traffic and noise study
9. Worried about too much traffic and noise – sound reverberates off foothills – nervous about noise
10. Native animals could be impacted – concern for overall environmental impacts
11. Across Maxwell area where the land deviation exists – could be turned into another reservoir
12. Hopes for partnership with Larimer County, City of Fort Collins, and CSU to buy the land and extend open spaces
13. Take down Hughes
14. If land is developed – develop on NE side with same density as along Sumac
15. Build townhomes and/or single family homes from SE to SW side along foothills (similar to Ponds development)
16. Concern for impacts on Pineridge, Maxwell, and Dixon Reservoir
17. If area’s developed – wants single family and low density to preserve recreational flavor and whole west side
18. Development should embrace recreation – should be some form of recreational area that embraces outdoor/active culture
19. Develop something that everyone can enjoy
20. Mom/Pop shops would be fine but keep recreational culture represented
21. Development should be low density – anti inner city high density
22. If not developing – use space for high schools or something community supported
23. Leave for festivals for city, county, and CSU
24. Park n ride to new stadium
25. Should reflect CSU’s message for sustainability and green living
26. Don’t build high density developments along foothills – housing can happen anywhere – keep as green and nature based as possible
27. Development could be mixed use i.e. low-density housing, recreational, and retail and restaurants
28. Implement traffic study – Overland is narrow with few through streets and there’s also another high density development across the way
29. Pro low income housing – keep in mind when looking for ways to develop
30. Would be interesting to turn Hughes into something – studio apartments?
31. If Hughes is torn down hope that the materials are recycled
32. Keep existing trees – spent time and effort being cultivated
33. Respect and preserve culture of the west side – neighborhood focused/recreational
34. Preserve as much open space as possible
35. What would the Maxwell’s want? It was their land
36. Preserving safety of the area – lots of trails and open space that people currently feel comfortable using all times of day and night
37. Traffic, noise, and density are concerns – wants to keep view of mountains preserved – want single family/2 story housing
38. Keep recreational feel
39. Please listen to residents and not developers
40. Focus on housing for local CSU employees before opening up to the community
41. Contact Niantic (Pokémon Go creator) and remove Pokémon Go Gym “Sonny Lubick Field at Hughes Stadium.” – could be a safety hazard when/if demo and development begins
42. Fence backing up to Sumac that CSU maintains – what’s going to happen when/if demolition and/or development begins
43. Maintain green characteristics – selling point of buying a house in this part of town
44. Safety concerns about low income housing around trails and outdoor spaces
   o Dan’s answer – talk about priority given to CSU employees
45. Will there be a lock on low income housing? – concern about people buying low and selling high
46. Turn area into schools for growing population
47. If developed as low-income housing for CSU employees – how will that be managed? Concerned about it turning into student housing which brings noise, trash, parties, etc.
48. You lied to us telling us it wasn’t being redeveloped to get us to come here. You said you were going to hear us about whether it should be redeveloped. We’re not being heard. You’re going to pay for it regardless. I hope you will consider the impact for the animals, people, and environment.

49. Concern about the drainage area, trees there, and impact on neighborhood if that’s changed.

50. Concern for the value of existing homes if low income housing is built

51. Traffic and traffic noise that comes with building additional homes are a concern

52. Please preserve the history of the area/space

53. Encouraged by though of housing mixed with recreational space

54. Safety concerns regarding traffic if area is developed

55. Maintain integrity of the foothills

56. Create a multi-use recreational area

57. Do not care if Hughes stays or gets torn down

58. NO housing or commercial retail developments

59. Would rather see a golf course developed (if financial gain is the motivator) than housing. Golf course – open space, tourist attraction, brings in money, etc.

60. Area is the last existing open space recreational area left in town

61. Not excited about low income housing

62. Would like to see open space funds (GOCO) used for preservation of space

63. Concerned about Sea Surf being involved in the development of the project
   - Dan’s answer – they won’t be

64. If area gets developed I will move away

65. Once you start to fill the area with something that could potentially ruin it there are long standing and far reaching negative effects

66. Like the open space idea – don’t want housing or retail. If it gets developed wants it turned into a park (like what they’re doing on Zeigler over by Fossil Creek HS). That way you’re using the land but preserving the integrity of the environment

67. Small concert venue would be nice – would encourage community interaction

68. Capitalize on and preserve open space – dovetailed with master trail plans of city and county

69. Keep culture of the west side of town

70. Already have plenty of high density housing on the west side

71. There’s lots of wildlife in the area – please keep area as wild as possible

72. Would like the city to take it and use it for an ice rink and outdoor concerts

73. Sacrificed centrally located housing in favor of a stadium used infrequently in central Fort Collins – don’t compound the error by establishing housing in the foothills

74. Hopes for a senior-living focus in new development

75. Are they thinking/targeting faculty housing opposed to student housing?
   - Dan’s answer – Yes

76. Curious about what types of home will be built if area is developed – singe family, condos, etc.

77. Wants to preserve trails

78. Curious about the time frame
   - Dan’s answer – will take several months before anything occurs

79. Transit is weak in that area – improve public transit (buses) which could help with traffic and parking concerns
80. Tell CSU to keep/preserve a pocket of land – don’t sell everything
81. Keep continuity with the land to the North – Miller property
82. Move government facilities in downtown Fort Collins to Hughes area – develop high taxed housing properties downtown
83. Turn area into sports fields/facilities for kids
84. Keep some open space truly open/natural for kids to explore in
85. Keep it open for recreation, nature, and peace and quiet next to city
86. It’s special to be able to take your dog into the area
87. Don’t cram it full of houses and retail like Walgreens and Starbucks

**Land Use Context Station:**

(+1) = agreement by another person who wants to second the comment

1. No major housing construction; no condos
2. Does the property have to be annexed into the city? Why? A developer would have more latitude and flexibility if it wasn’t annexed.
3. No concert venue due to concern for noise.
4. Because the land was given to CSU for practically nothing, ethically they should raise the money to tear down stadium, make natural area at CSU’s expense, and give the land back to the people.
5. Once a little housing is there, it will continue to spread. We’ve seen that in other areas nearby.
6. 800 homes would be huge amount of traffic.
7. What is the GMA (Growth Management Area) process?
8. There is plenty of low income housing on the west side of town. Don’t need more.
9. Don’t want to see wildlife diminished by this project.
10. Wants full transparency in the RFQ/RFP process with all the submittals posted online for the public (not just the shortlist submittals, but all of them).
11. Wants low density housing, not high density—or wants open space—no retail, but recreation is okay.
12. In old town, city and county buildings don’t collect tax (low tax base). Put this issue in front of the community by putting the low income housing (high tax base) in old town, then move the city and county buildings to the Hughes area where there is lower traffic impact.
13. Consider how the adjacent Miller property coexists with the Hughes site cooperatively. The Miller property has not had any contact from CSU/Facilities or from Icon on planning.
14. Concern about low income housing—what it will do for safety of recreation for kids, women, and family, as well as for the property value of the neighborhood.
15. Keep open space/recreational
16. Would a new school go in, if more housing went in? Could a low density neighborhood handle that? Who would pay for the school?
17. Do developers have to set aside a certain amount of park/recreation/open space if housing goes in?
18. Is there any idea of how much space that area would support?
19. Velodrome for cyclists could bring in income.
20. High density housing is a concern because city is already doing it; do it by I-25, not in a place with natural boundaries.
21. Leave the property for festivals for the City, County, and CSU.
22. The property could become a Park & Ride to transport people to the new on-campus stadium.
23. (This commenter has been in Fort Collins since 1967) A special quality of Fort Collins has been the ability to protect open spaces in this community, so it can be watershed and natural landscape. It is important to have a buffer between the developed city and the rest of the foothills.
24. If developed, restrict the property to low-density mixed use.
25. Would like no development—or make the property a concert venue to compete with Red Rocks.
26. Mostly worried about traffic
27. Against more housing and traffic, especially given the development on Drake and Overland.
28. Ecological effects—concern over the traffic along the reservoir road (“Every day will be like game day”)
29. Make it a high end golf course, restaurant okay too, to provide income. It would preserve the view of the foothills while being natural but manicured.
30. (Sarcasm intended) It should be a gated community reserved for the most elite of the 1% comprised of McMansions and servant quarters. Or, a commune for hippies.
31. Think about using natural materials with respect to absorbing sound.
32. Concern for flood planning
33. (+1) Would like it to be a natural area—it’s a very special space. Keep growth on the east side. There are wonderful animals that live on this property.
34. 18 years ago when she moved here, it was originally communicated to this person that this area would remain a green belt all the way to Loveland. She is very concerned about high density growth in this belt.
35. Existing roads aren’t adequate.
36. This is an area that the community uses.
37. Preference for lack of buildings; maintaining the view is important.
38. Suggestion to add another reservoir on this property that connects to the bottom of Horsetooth.
39. Don’t want to see homes built; this will maintain view and space and promote tourism.
40. Will there be an environmental assessment (from human to wildlife to noise, etc.)?
41. Leave the space natural—no development (no parking lots, parks, houses); trails are okay
42. No need to keep developing.
43. Treasures the open space; the property is unique—the interface with the prairie, foothills.
44. What is the zoning for the space? Question about the area represented as LMN (represented in the map).
45. Don’t add traffic—concern about more vehicles and pollution and the environment. Concern about the animals that live on that parcel.
46. Concern that what comments that are received from residents will be put aside for what makes the most money.
47. Keep it natural—open space for community and dogs.
48. No housing, shopping malls, or development of any kind.
49. What is low income or affordable housing? Who does it include? Would like this defined.
50. No more shopping malls or big name stores, no hotels or resorts. Preference for an art center and crafts-based area, could have a healing center and alternative businesses, old town unique feel is okay; no box stores. Other ideas: Bike paths, open space, community farm, a place where
art is integrated with open space, eco-friendly landscaping for kids and animals, eliminating the use of toxic stuff like pesticides. More like the Gardens on Spring Creek.

51. No students.
52. “Agriburbia”—a combination of agriculture and houses together, right under the “A”
53. Mode of sustainable living with good building materials and the use of vegetable gardens.
54. Low density development with a feeling of space.
55. Have a development for profit, do not have low income housing tax credits used, but instead have it with a proper mix of affordable housing.
56. Incorporate housing in a balanced/aesthetic/open way. There’s already high density condos/housing near here.
57. Keep it a dog/human focused area—like having a dog pool.
58. CSU said this property was too valuable not to develop. However, the property is too valuable to develop.
59. Need for innovative transit-oriented workforce housing, mixed use with recreational space merging into open space around it.
60. Currently serves as space for running and dogs.
61. Limit traffic
62. NO HOUSING, NO COMMERCIAL
63. Venue where it maintains integrity of the foothills, animals, open space/multi-use (hiking, golf course), which would bring in tourist recreation based money.
64. Ask CSU to raise employee wages to not be forced to provide low income housing.
65. Support low-density development, however make reasonable and appealing if high density low income housing, then target families—but then issue of traffic, so provide resources within the neighborhood and promote alternative transit.
66. Is there a potential buyer already for this property?
67. Will CSU lease the land? –Steady revenue
68. What is the economic value?
69. What about this space for senior housing? A community of different levels of care; a building that includes daycare for seniors and children.
70. Would like to hear a wish list from the City of Fort Collins before any developers come on board or any more meetings occur.
71. Integrity of the open space recreation is important; protect it. That’s the reason why I moved to my neighborhood.
72. “You lied to us. The letter said you were going to listen about whether we are redeveloping or not. If you take down the stadium, raise your own money for it. Please consider the animals, the people, and the environment.”
73. (+1) Sell to Stryker/music venue (Fort Collins Red Rocks)
74. Low density—acreages/horse properties
75. (+1) Detention pond – impacts of development, will it handle
76. No “Destination” Development
77. No retail
78. 10 pm Quiet time
79. (+1) Like Observatory Village or Rigden Farm, Bucking Horse would be great.
80. Community feel, mixed, nothing big.
81. Planned community
82. If CSU owns land & private developers build- is it taxable on land & improvements?
83. Not money driven
84. Not multi-million dollar homes
85. What is affordable?
86. Lower density
87. Mixed use
88. Neighborhood retail—no big box.
89. Repurpose Hughes to other uses
90. If more housing, what are the impacts on local schools?
91. Engage PSD early in the discussion
92. No new traffic lights
93. Low density/no traffic
94. Preserve open space
95. Mixed better—No development
96. Low height—two story maximum
97. Overland/Drake impacts
98. Keep feel of area
99. This is a big PR show—won’t change desire to development
100. Stay as is—given to CSU should remain with public purpose—CSU doesn’t need –tear down—return to people as a natural area—ethical thing to do.
101. (+1) Leave natural / no development
102. (+1) No parking lots
103. (+1) Trails open space are ideal
104. (+1) Critical to conserve wildlife habitat and corridors
105. (+1) Travesty to develop
106. (+1) Poudre District Library & other community uses such as Gardens and other recreation if developed
107. Secondary reservoir—whole site with associated open space.
108. Lied to us to get us here. Letter said “talk about” whether to develop.
109. If develop—raise money yourself.
110. Please consider animals, people, and environment.
111. Take stadium down at CSU expenses and leave land alone.
112. Reflect “proposed” trail, City-Bike FC.
113. Connections for bike connections between city natural areas.
114. Strengthen trail connections
115. Connect natural areas—County and City.
116. CSU should keep this property: no more land, sale is short-sighted
117. Maintain easement for City connections
118. Will money override values
119. Trail connection to neighborhoods east of Overland Trail.

Community Needs & Values Station:

1. Move & Expand the Holiday Twin Drive In to this new space!
2. Open space & capitalizing on what is already there
   a. Connect trails

Hughes Neighborhood Listening Session
b. Keep disc golf course
   c. Add Velodrome
3. Open space, close to nature
   a. Keep the peaceful atmosphere
   b. Keep the views of the ridge
   c. Keep the openness/visibility
4. Velodrome for bicyclists
5. Space for festivals – CSU & City
6. Parking area to transport fans to new stadium
7. Use space so community can benefit ex. like Spring Creek Gardens – but doesn’t necessarily need to be a garden
8. No more traffic lights – don’t make something that would make this happen
9. Keep it in county zoning
10. Utilize space so community can benefit i.e. Spring Creek Gardens
11. Minimize traffic & control traffic
12. Permanent home for farmer’s market - This ties to CSU’s mission & education
13. Place for dog(s) to roam without city restriction
14. Open space & mixed housing (affordable +, not low income)
15. Low light – respect the culture of the west side of town
16. Keep integrity of open space, not be an eye sore, protects property values
17. Encourage conservation & land trust groups to purchase land & gift it to the city for open space
18. 100% opposed to construction (housing, retail, commercial)
19. Open space trails
20. New library location & open space & community gardens & conserve wildlife corridor & habitat
21. Open space – lots & lots
22. Protect passage/migration areas of wildlife
23. Straight bus-line from overland to campus
   a. Would ease parking issues on campus
   b. Important for staff & faculty
   c. Important for affordability & access to campus
24. If developed, can they use local developer?
25. Green energy space/sustainable space/eco-friendly
   a. Solar power
   b. Create an example of what can be done with sustainability & green energy
26. No retail/no commercial
27. Velodrome
28. Outdoor gym/fitness area
29. Keep Frisbee golf!
30. Keep water retention
31. Protect wildlife & incorporate into design & encourage more wildlife
32. Why does it need to be annexed? Why does CSU want to get rid of it? Can CSU repurpose it to their benefit? Can CSU repurpose for CSU?
   a. Use for educational purpose -> research on plants, land, animals, environment
33. Low-density/low-profile & sustainable living
34. No Walmart! No retail/no commercial
35. Community gardens – weave in w/ educational purpose of CSU
36. Farmer’s market
37. Keep integrity of CSU as Ag School
   a. Repurpose space to support mission
   b. Education
38. Protect mountain bike trails
39. Low profile & minimize traffic
40. If land gets developed for affordable housing and/or CSU staff/faculty, how will it be regulated?
   a. Concern for property turning into rentals by CSU staff/faculty kids/college students
   b. Concern of rental property vs. ownership
41. If land is developed. Make low profile & blend in w/ surroundings & environment
42. Maintain integrity of foothills
43. No eye sores!
44. Wildlife refuge & be mindful of wildlife & their habitat
45. Create parking low profile, no high rises
46. If developed make multi-use
47. No hotels, resorts, commercial/big-name stores
48. Large park!
   a. New recreational opportunities
49. Non-chain, local food
50. Food truck rally night(s)
51. No bars or brewery or distilleries
52. Quiet space
53. Multi-use space
   a. Has retention ponds – keep
   b. Keep open space
   c. Some affordable housing – keep towards Overland
      i. CSU staff
54. Multi-use space
   a. Keep the views (nature & mountains)
   b. Keep the trails
   c. Connectivity/ability to connect to nearby spaces/parks/open space
   d. Make a “City Park 2”
   e. Recreation
55. Take stadium down & leave alone
   a. Wildlife viewing
   b. Lied to us about redevelopment
   c. Protect the wildlife
   d. CSU must raise money for taking down stadium/whatever happens
   e. No housing or construction because we lose it all
56. Tear down stadium & give land back to the people
57. Make all natural area
58. No housing, no commercial development
59. Affordable Housing – only part of the space, maintaining natural area
   a. Limit business & local, not commercial/non-local
60. Maintain integrity of foothills
61. Faculty/staff housing & open space/natural area
   a. Mixed type of housing
62. Open Space
63. Open space w/ recreation opportunities
64. Maintain outdoor community space – Fort Collins/Loveland/County to work together to create
65. Open space
   a. Protect interface between the mountains & prairie
   b. Close to wildlife habitat
   c. Non-manicured – keep it natural
   d. Unstructured
   e. We want to come to see nature
66. Open space
   a. Conserved space, protect interface between mountains & prairie
   b. Trails for walking
   c. Wildlife conservation space
   d. Central wildlife corridor
67. Lower crime at Elizabeth/Overland & mitigate this issue
68. Open space
   a. Walking trails
   b. Natural habitat
69. Open space
70. Recreation space
71. If there must be structures, build affordable housing (2-story max height, low profile)
   a. NO retrial space
72. Open space/recreation
   a. Yoga studio
73. Open space/recreation
   a. No condo & no residential
   b. No commercial
74. Open space & recreation
   a. Keep the natural views
   b. No man-made structures
75. Open space/recreation
   a. Maintain viewshed
   b. Don’t lose access to trails
   c. Don’t lose user ability of open space/personal recreation
   d. Keep values of Fort Collins biking/transit/sustainability & inclusivity
76. More open space
77. Additional reservoir
78. West Elizabeth needs additional traffic light at Overland Trail (or a roundabout)
79. More open space/recreation – large space
80. Lower traffic
81. Additional traffic lights on Overland
82. Affordable housing
a. Lower cost of construction  
b. If CSU sells Hughes land to developer, could some of the money go back to developer in a covenant to help cover development cost so it makes it more affordable to lower income brackets?

83. Leave space open (natural preserve)  
a. Not much open space along foothills now

84. Low profile if developed

85. Park-like  
a. Mountain bike park  
b. Ball fields  
c. Picnic areas

86. Recreation/open space/bike path/walking paths/sledding hill/dog park  
a. No additional construction (housing, buildings)  
b. No additional congestion/traffic

87. Open space  
a. Link to other open spaces nearby  
b. Create pedestrian/open space corridor  
c. Unstructured recreation – nature-based

88. Protect access to trails from neighborhoods

89. Low density housing

90. Need for openness

91. Increase park area & accessibility to parks

92. No gas stations / no big box retail

Traffic, Multimodal Access Station:

<table>
<thead>
<tr>
<th># IN FAVOR</th>
<th>STATEMENT/ISSUE/SUGGESTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Multiple buses on multiple routes that’s paid by the developer</td>
</tr>
<tr>
<td>3</td>
<td>Roundabouts are great!</td>
</tr>
<tr>
<td>3</td>
<td>Plan ahead – make sure whatever goes in has traffic capacity to accommodate BEFORE it becomes a problem. Proactive, please.</td>
</tr>
<tr>
<td>5</td>
<td>Moved to the west side of town to avoid the traffic and congestion happening in other areas that are already more developed. Please do not put in more housing/traffic, high rises, etc. Keep it beautiful, scenic, and a beauty that attracts outdoor enthusiasts!</td>
</tr>
<tr>
<td>1</td>
<td>Pedestrian crossing lights from neighborhoods on east side</td>
</tr>
<tr>
<td>5</td>
<td>Accentuate open space already in place – dovetail with current master planning for trails and trail</td>
</tr>
<tr>
<td>1</td>
<td>Speed bumps on Overland</td>
</tr>
<tr>
<td>2</td>
<td>No speed bumps on Overland</td>
</tr>
<tr>
<td>2</td>
<td>Mixed use open space/residential (some affordable)</td>
</tr>
<tr>
<td>1</td>
<td>Tell CSU to keep part as something easy on the eyes/breathing room and sell the rest</td>
</tr>
<tr>
<td>2</td>
<td>Speed bumps on Stuart</td>
</tr>
<tr>
<td>1</td>
<td>Build overpass or means to cross Drake to get to Overland Park – if traffic increases</td>
</tr>
<tr>
<td>1</td>
<td>Zipcar station pick-up point within development and bus line to help congestion</td>
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<tr>
<td>4</td>
<td>Concern with overloading of Drake &amp; Prospect</td>
</tr>
<tr>
<td>2</td>
<td>Increased housing will increase traffic to Horsetooth Reservoir for recreation</td>
</tr>
<tr>
<td>1</td>
<td>Light at Dixon Canyon Rd./Overland</td>
</tr>
<tr>
<td>6</td>
<td>CSU tear down stadium and return property to the people to make into a natural space @ CSU’s expense</td>
</tr>
<tr>
<td>3</td>
<td>Once building starts it will never stop and lead to increased expense and traffic</td>
</tr>
<tr>
<td>4</td>
<td>Congestion on Drake is terrible</td>
</tr>
<tr>
<td>5</td>
<td>Decrease traffic by affordable housing so CSU employees do not have to commute in to Fort Collins</td>
</tr>
<tr>
<td>3</td>
<td>Shuttle service for employees and students to campus</td>
</tr>
<tr>
<td>2</td>
<td>Shuttle service to games and events for fans</td>
</tr>
<tr>
<td>6</td>
<td>Greenway through property on Overland to Prospect</td>
</tr>
<tr>
<td>2</td>
<td>You lied to us – the letter said we were talking tonight about whether to redevelop or not. If you do, you raise the money yourself, including the stadium demo and leave the land as open space and consider animals, people, and the environment – not the money.</td>
</tr>
<tr>
<td>6</td>
<td>Interested in reducing traffic &amp; pollution</td>
</tr>
<tr>
<td>24</td>
<td>In favor of more open space</td>
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<tr>
<td>8</td>
<td>Affordable options for housing</td>
</tr>
<tr>
<td>11</td>
<td>More bike lanes</td>
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<tr>
<td>5</td>
<td>More transportation options</td>
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<tr>
<td>1</td>
<td>City/County partnership</td>
</tr>
<tr>
<td>6</td>
<td>No lights on Overland which causes congestion</td>
</tr>
<tr>
<td>3</td>
<td>No lights on Elizabeth which causes congestion</td>
</tr>
<tr>
<td>1</td>
<td>No lights on Mulberry which causes congestion</td>
</tr>
<tr>
<td>11</td>
<td>Roundabout on Overland and W Elizabeth and Mulberry is very dangerous</td>
</tr>
<tr>
<td>7</td>
<td>Stoplight at Overland and W Elizabeth</td>
</tr>
<tr>
<td>9</td>
<td>Relieve congestion on Prospect</td>
</tr>
<tr>
<td>1</td>
<td>Light on Yorkshire/Drake needs to be on a regular timed cycle</td>
</tr>
<tr>
<td>1</td>
<td>Yorkshire/Drake light cycle is okay as is</td>
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<tr>
<td>5</td>
<td>Volume concerns on Stuart</td>
</tr>
<tr>
<td>8</td>
<td>Stoplight at Overland/Drake needed</td>
</tr>
<tr>
<td>1</td>
<td>Opposed to stoplight at Overland/Drake. If something is needed – prefer roundabout</td>
</tr>
<tr>
<td>8</td>
<td>Wildlife concerns with traffic (more roadkill)</td>
</tr>
<tr>
<td>9</td>
<td>Overland/Drake – roundabout should be added</td>
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<tr>
<td>6</td>
<td>Add pedestrian sidewalk on east and west side of street</td>
</tr>
<tr>
<td>4</td>
<td>Noise reduction needed with added traffic</td>
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<tr>
<td>4</td>
<td>There is only transit to CSU but not downtown. Please add downtown too!</td>
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<tr>
<td>5</td>
<td>Sell the land to Pat Stryker for music venue – Red Rocks of Ft. Collins</td>
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<tr>
<td>3</td>
<td>Add low density housing</td>
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<tr>
<td>3</td>
<td>Use some of the acreage for horses</td>
</tr>
<tr>
<td>11</td>
<td>Protect wildlife migration with corridor</td>
</tr>
<tr>
<td>4</td>
<td>Do not widen Overland to 4 lanes</td>
</tr>
<tr>
<td>2</td>
<td>Keep the speed limits low</td>
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<tr>
<td>1</td>
<td>Add housing development like Harmony cottages</td>
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<tr>
<td>2</td>
<td>Encourage living and playing in the area vs. driving elsewhere</td>
</tr>
<tr>
<td>6</td>
<td>Do not make the area a retail or destination spot</td>
</tr>
<tr>
<td>2</td>
<td>Add a stoplight and pedestrian crossing at Hampshire/Drake</td>
</tr>
<tr>
<td>12</td>
<td>Use Hughes to connect Maxwell and Pineridge as a natural open space</td>
</tr>
<tr>
<td>2</td>
<td>Widen Dixon Canyon Rd. if development happens</td>
</tr>
<tr>
<td>1</td>
<td>Will traffic study push traffic to Dixon Canyon Rd?</td>
</tr>
<tr>
<td>1</td>
<td>Left turn on westbound land on Dixon Canyon Rd</td>
</tr>
<tr>
<td>1</td>
<td>Would like to partner and have involvement in the planning process for the 40 acre Miller property north of the Hughes Stadium property</td>
</tr>
<tr>
<td>1</td>
<td>Relocate the city offices out to Hughes since they currently occupy prime real estate space and generate no taxable income. Instead rent that space to tax generating occupants</td>
</tr>
</tbody>
</table>
Hughes General Public Listening Session – Feedback by Attendees

October 18, 2017, 6-8 p.m.
Drake Centre; Fort Collins, CO

CSU and CAA ICON offered five “listening” stations as described below where attendees could ask questions and provide their feedback. Each station was manned by CSU and/or CAA ICON representatives. The below are 200 comments, questions and concerns which were logged by station notetakers or written by attendees on comment boards.

Redevelopment Process Station

1. Build High Density Affordable Housing
2. Will the Public Open Land remain the same?
3. Parking Garage/Shared parking for access
4. Medium to Higher Density Affordable Housing/Housing of some sort
5. What are the possibilities so far regarding redevelopment?
6. Are you putting affordable housing/apartments on the site?
   a. Answer: Nothing has been decided as of yet.
7. Where do investors come into the process?
8. Work with Habitat for Humanity for a portion of the property to create affordable housing
9. Has developer been selected?
   a. Answer: No
10. Where are these and other comments/feedback going?
    a. Answer: We are collecting feedback and will eventually share it on the website.
11. Keep it for open space
12. Keep some of it for open space and views
13. Concert Venue
14. Will you be soliciting different concept plans from developers?
15. What is the timeline?
16. Who owns the property?
   a. Answer: The Board of Governors
17. Mountain Bike Park (like Valmont in Boulder)
18. How is the Hughes property zoned?
19. How many acres is the property?
   a. Answer: Approx. 160 Acres
20. Is the development going to be owned by CSU or privately owned?
   a. Answer: Privately Owned
21. Capitalize on the asset of the property
22. Something where you can remember Hughes
23. Something more than just housing
24. Maximize the asset for CSU
25. Can we keep the Frisbee Golf Course?
26. Emphasize open space
27. Connect Spring Creek Trail to Maxwell to Poudre
28. Private individuals purchase and donate to the city as Open Space
29. Ethics of sustainability integral to the ongoing project
30. Bike park (see Valmont Park in Boulder)
31. If Fort Collins grows, we need to preserve open and rec space to support it
32. “Outdoor lifestyle” = reason for FC desirable place to live INCLUDING attracting top CSU faculty
33. A mountain bike park would provide recreational opportunities for FC residents AND visitors.
   Progressive, forward thinking!
   a. Agree! Progressive and forward thinking is key. Affordable housing is not for this space –
      prime real estate
34. Open space/park/trails
35. I would like to see the history of the stadium maintained. I like the idea of an outdoor adventure
   park for CSU students and the Ft. Collins community alike. There could be a sports complex, boat
   and equipment rental, and various summer camps to drive in revenue for the university as well as
   climbing walls, sledding hills, and other activities that bring mountain experiences closer to
   home
36. How does this impact the legacy of CSU and the City of Fort Collins? People come to school or
   move here for our “lifestyle” and access to open space. There is plenty of area in F.C. to develop,
   but not many unique areas like this to preserve as open space
   a. AMEN!

Existing Site Station

1. Could expand parking area for Maxwell (might not be part of the property)
2. Would be nice to create a safe and fun sledding area for kids
3. Turn into huge construction laboratory to design housing of next century. CSU has several
   relevant depts (construction management, engineering, interior design, landscape architecture).
   City has housing needs (students, seniors, etc.). This land could be used to develop new designs,
   train students for the new century’s needs, give students the opportunity to design for new
   century, train a new generation of skilled craftsmen, and provide needed housing
4. Keep Frisbee golf course – does get used and its presence is appreciated
5. Concerned about any development abutting the mountains – issue for fire spread
6. Concerned about traffic esp. at the Drake and Overland intersection
7. Concerned about another large track of houses with nothing else to offer – wouldn’t even mind
   a mixed use commercial/residential development
8. Love to see mixed use development of commercial and residential – not high density
9. Suggest zero energy homes and buildings
10. Why the rush to sell and get rid of the property?
11. Is there a fiduciary duty to our citizens for open space?
12. How large is the land
13. 160 acres
14. Concerned about traffic if the area gets developed
15. Keep the Frisbee golf course
16. Concerned about traffic esp. at Drake and Taft – currently not a lot feeding in from Overland
   Trail. Worried especially with other development already being built
17. Keep detention pond
18. County road heavily used by runners and bikers for hiking, running, and getting to Horsetooth
   and trails in Maxwell area
19. Not adequate parking along Overland
20. Overland needs to be expanded anyway
21. Intersection at Drake and Overland is archaic – could be redesigned
22. Concerns about development of land and height of structures effecting leisure and enjoyment of the outdoors
23. With continued increasing land value in Fort Collins – possibly very valuable land in the future?
24. Why isn’t CSU looking to expand the equine center
25. Why turn the land over now when it could be used to expand vet program (one of the best in the country)
26. How much does it cost to hold lease of land – building housing now seems short sited
27. What/how will development impact trail use for hikers and bikers – safety issue
28. CSU is an agricultural school – losing sight of that by developing that open space
29. If they’re going to take away this open space are they going to offset it with other open space?
30. Recommend that CSU and the city collaborate to keep costs down on affordable housing by selling some parcels of land at under-appraised value and the city reducing costs for utilities and permits
31. Recommend a variety of different housing types to meet the needs for affordable housing i.e. clusters of duplex houses, very small one-story houses, and stacked apartments for rent
32. Build a second unit with Fort Collins housing authority replicating the big complex on S. College Ave (“Housing First” – housing for homeless families and managed by housing authority) including all the amenities such as case managers, advising, etc.
33. More trees and greenery
34. Preserve the view
35. Preserve the site and turn it into an alternative sports venue – world class track racing venue (cycling). Use the budge you have to convert it instead of demolishing it.
36. Convert Hughes Stadium into a giant terraced horticultural/botanical research greenhouse with a bowl shaped, rain capturing fabric translucent lid. The bowl shaped interior would have varied cooler and warmer growing zones depending on their elevation from the floor. Snow will melt on contact, and rain would be collected at the bottom and drain thru to a green machine. People will come to see this for sure – the world’s first stadium converted to a botanical garden!!! This idea comes from my brother, a celebrated architect. He has done worldwide projects. He happens to be Fort Collins based. He developed Block #1 and helped with 5 star city building. Currently working on confluence project in Old Town.
37. I would like something innovative and unique to Fort Collins. No simply another densely packed area of large houses. Combine with ample open space possible mixed use, other creative ideas. We don’t simply need more boredom and traffic on the west side.
38. Agree!
39. Me too!
40. I would very much like to preserve the trails going up behind Hughes to the open spaces. If this property is sold and developed, in a year this access will disappear – this area is heavily used by bikers, runners, and walkers. Doing mixed use would be ideal – recreation, horticulture, creative community gathering, etc. use would be ideal
41. Our own Red Rocks type area would be perfect and what we deserve!!!
42. Sorry...no!! We don't need a Red Rocks...we have a $220 million stadium!! We need AFFORDABLE HOUSING.
43. Let’s not lose sight of the fact this property is directly beneath one of the Horsetooth reservoir dams – potential safety consideration for only residential development
44. Also high density of wild life in this area that would be impacted by further development, not to mention fire hazard
45. Convert to pumped-storage hydropower (renewable energy): requires Hughes for storage – remaining lands use for 2nd Olympic training park or supplemental terraced ‘grow’ facility (legal cannabis) – pay of bonds in 4 months – Adam P. Million
46. Mixed use – open space/recreation; housing, including “housing first” units for homeless families/individuals; below market (housing authority type) apts/condos (not prices “beginning in the low 300s) for working people that support all of us who live here
47. Please be mindful to keep connections to open space and Horsetooth intact with appropriate zoning and density to keep gradient to open space healthy.
48. We can and should build affordable housing in other areas of the city. Open space near Horsetooth is limited and decreasing. This is an opportunity to offer the citizens of this community increased recreational/outdoor/natural use of beautiful land. Keep it recreational
49. Re: above comment: I don’t think we can build affordable housing in other areas of the city. There is just not available sites elsewhere
50. I would like to see something new and different, aside from housing and land conservation! The space I unique but also next to the electrical center, mountains, and my house. I run up the trails and want something worthwhile!!! CSU housing does not make sense. DO IT!
51. Please consider making it into a park which would include grass sports fields, trails, a bike park, open space. We need more open space to absorb carbon emissions and give recreational opportunities and preserve wild life habitat
52. We don’t need brightly lit (reference to grass sports fields above). Night time darkness is GOOD!

**Land Use Context Station:**

1. Affordable housing either for CSU-related or general public
2. Need affordable housing; can CSU include non-profits in RFQ process, so development fees can be reduced?
3. Tiny house community (500-1000SF small homes and micros homes)
   a. Comment stating “are not affordable”!
4. LEED ND (Neighborhood Development) Certified
5. Height restriction on buildings
6. Please no commercial
7. Expand Maxwell parking
8. We could think (not exclusively) of public park or a “children’s” park
   a. This won’t stop other plans, necessarily.
   b. Most important: A creative park/space for children. Would connect us to the future and next generation!
9. Wouldn’t mind a mix of open space/mixed use development to break monotony of west side. Wouldn’t mind some commercial integrated with housing
10. A mass of dense rooftops would be detrimental to the premier foothills property
11. Preserving open space, recreational areas and wildlife habitat is critical as areas near Hughes are being developed
a. I agree (3x)

12. If housing is developed, hope there is some affordable housing for CSU employees
13. How would development of property affect adjacent natural areas, including access points (human vs. wildlife access) and G.A.P. (continuity/contiguous/pathway) issues?
14. Expand Maxwell parking and trail system
15. If there is development for housing – mixed use, different sizes and densities.
16. Continued access to Maxwell is very important for neighbors
17. Tiny affordable homes
   a. I agree.
18. Expand Maxwell wilderness area – we need dark space!
   a. Yes!
19. Desire open space to keep overland biker safety
20. Park multiuse would be viable option
21. Horse park in Northern Colorado to serve Wyoming/Fort Collins/Greeley for Eng/Western competitions and education
22. Municipal garden/farm for example: Jessup Farm, bike/family friendly
23. Is there any way to connect CDC/Infectious Disease Campus Section to Stadium Property to develop large employment center for drug/disease research?
24. Good opportunity to provide land use that would absorb carbon emissions rather than cost $ to build infrastructure, pavement. Consider renewable energy for part of the space
25. Does the school district have a role in determining whether they have capacity for the number of students that would need to be served in a new development? (In addition to those that will come from the new development at the corner of Drake and Overland? 
   a. Great concern!
26. NO retail near foothills, traffic and lights after dark – NOT wanted!!
   a. Agree!!!
27. Need integrated bicycle and pedestrian facilities: paths/walkways connecting to existing trails to the west. Integrated recreational amenities like cycle cross course, crit. course, pump track, ...
28. Keep the space open, I’m concerned if we turn the land into affordable housing this doesn’t solve our housing problem. It’s only a Band-Aid to our current problem. Plus, we’re already having issues over water rights in FoCo.

Community Needs & Values Station:

1. Keep the views of the foothills
2. Integrated retail and residential would be okay if done tastefully. Do not want subsidized low income housing – too much crime in area already. Sorry.
3. Should be like Red Rocks kind of area
4. Would like it to stay natural, but single family housing would be more appropriate than affordable housing
5. Concern with far more traffic
6. It’s not easy to get around without a vehicle near this property
7. Are there other areas that make more sense for affordable housing that is more convenient?
8. Likes that it’s so open and nothing is really on the west side
9. University should retain control/ownership of the property no matter what is done with it (all of it can be done.) Concern that the space will be needed long-term for the university as it expands.
10. Keep Fort Collins unique, not just build home – I agree
11. Open space is #1 in terms of values – ideal opportunity for CSU to walk-the-talk of environmentalism
12. Would like to see some of the property set aside for affordable housing (not market price) – even housing given to staff, students, employees (lowest owners.) Could alleviate this city concern.
13. Housing for the homeless – a portion of the property
14. “Housing First”
15. No “free” or “given” housing – not sustainable and will encourage more movement to Fort Collins
16. Beautiful land/property – already tree there – keep that value added
17. Impact on schools – where will kids go to school in this area if more development is added?
   a. I agree
   b. (Redistricting?) I agree
18. Mixed development and recreational sports + health activities – integrate bike, paths and connectivity to the paths that go west. From a developer perspective – mixing can be really good.
19. Nonprofits and developers partner in RFQ/RFP process to ensued reduced city fees for development
20. Opposed to retail and commercial
21. No more bright lights at night!
22. Expand Maxwell parking area, county road is access for bikes and pedestrians
23. Cap the height of development (no 6-8 story buildings)
24. Keep detention pond for flood control
25. Open to low cost housing (Low density – done properly)
26. Higher density that backs up to the other higher density makes a buffer with what’s already there
27. Open space is good, such as with Frisbee golf

28. It’s okay to have some retail – community focused retail, so people don’t always have to drive – can walk/bike to it.
29. Consider traffic on Drake due to future developments, please!
30. Is there a “Land Swap” or other opportunity between CSU and City of Fort Collins?
31. Is the land suitable for construction?
   a. Geotech reports?
   b. Soil reports?
32. Support annexation → mitigate potential fire threat
33. Will community be a part of selection committee/process?
34. Will there be transparency with where money goes with sale of property?
35. Adequate parking requirements
36. What is “GMA” – Growth Management Area?
37. Encourage “smaller” housing (1200 sq. ft.) – a smaller footprint – more efficient, “innovative” housing (zero energy use, solar, eco)
   a. Or 600-750 sq. ft. for a single person or person with a child
38. Provide public access paths to the open spaces if there is development
39. Open spaces, views and recreation are the most important community values.
   a. I agree.
40. Plenty of other spaces for affordable housing out by I-25 – don’t get rid of existing open spaces
41. Some of the land (maybe 10-15 acres) could be used as “experiment” or “research” housing
   a. A large organization (BRE TRUST) in London recently asked I.B.E. if we would consider a research housing development, funded by industry, in Fort Collins!
42. If we miss this opportunity, the loss will be immeasurable – opportunity for discreet segments, some for purchase, others open space/parks for children, different uses, some for affordable rent housing.
43. Balance need for food related retail in this part of town with congestion that heavy retail brings so near to open space.
44. Small grocery store (with 3 types of laundry detergent instead of 27)
45. Need to provide bike trail link between Spring Canyon Park and extend north to the Poudre.
   a. I agree.
46. Wouldn’t mind retail if integrated into neighborhood. No 7-Elevens or Fast Food.
   a. I agree.
47. More Trees.
   a. I agree.
48. Homes that are affordable for “regular” people too – not just limited to low income and homeless for qualification
49. Maintain:
   a. Biker Safety
   b. Egress and wildlife to trails
50. Farm use and park use
51. Water concern with 600-800 homes
   a. Doesn’t solve our housing issues!
52. Access through 168 acres to trails; multiuse and horse, pedestrian, bike friendly
53. Agriculture Learning Center

**Traffic, Multimodal Access Station:**

1. More housing = more traffic = more people moving here = more business = 😊
   A mix of outdoor recreational activity areas interspersed would be nice to get people off their computers and outside. Fort Collins just came in 1st in outdoor encouragement opportunities for citizens.
2. Disagree with the above. People will move here... always have, probably always will... the choice becomes how the area will develop (not if!) and how will people be encouraged to enjoy the wonderful environment here.
3. Connect to public transit in more meaningful way – none of the most obvious uses will reduce traffic congestion without transit solutions. East to west to Max line.
4. Agree with third point. Move away from cars/parking and toward public transportation.
5. Second needing connection to public transit! Hopefully some affordable housing will be developed & families will need bus line transportation.

6. To move more people from property to downtown, complete overland as 4 lane as in City plan and connect to larger east/west roads from Vine to Drake. Look for new bypass route for north circle of city.

7. Can City purchase property?

8. Can group of alumni purchase property?
   - As a non-profit, etc.

9. Like others concerned about the traffic with more cars on the road with runners and bikers it’s already becoming more and more unsafe to run along the roads.

10. What is a good solution for the traffic at the corner of Drake and Overland trail

11. Traffic, traffic, traffic, how to handle?

12. Need better transit on west side of town that connects to city center

13. Improve intersection of Drake & Overland.

14. Agree with improving intersection of Drake & Overland – Roundabout?

15. Roundabouts at Prospect and Cedarwood/Hampshire for traffic calming

16. Overland Trail needs an overhaul to accommodate more development (honestly it needs it already). Would love to see an east – west Max line from CSU to O.T. and then down to Hughes property, plus expanded/safer bike ways.

17. Concerns about too much traffic on O.T. (@ capacity now)

18. This concern goes away with any future development as roads and intersections are relatively easy to redesign and incorporate into development plans.

19. Trail concerns

20. Bicycle facilities

21. Recreational facilities as part of Development – Pump track, cycle cross course

22. Support bicycle, pedestrian, transit on Overland Trail

23. If housing, where will children go to school? – Elementary schools full

24. Concern about traffic load at intersection of Drake & Overland – another housing development currently underway

25. Dixon Canyon Road sees high volume of bikes and runners and heavy use for parking by those accessing Horsetooth, Maxwell & Pine Ridge

26. Concern about traffic on Drake – other development underway already

27. Concern about traffic on Prospect

28. Would be ideal to have bike path going north from Spring Canyon to Poudre

29. If higher-density housing, make sure there’s enough parking so it doesn’t spill over into neighborhood

30. How will this affect Taft Hill Rd.?

**Additional:** The following concept for a cycling and fitness theme park was shared by an attendee:

What if a visionary developer wanted to create something unique located in a world class city?

Imagine the

* ________ Cell Phone Co. Kids Bike Safety Town
* ________GPS Co. paved Crit/Skate/Ski Course
* ________Broadband Co. MTB Courses
* ________Sporting Goods Co. CrossCourse
* ________Energy Bar Co. BMX Course
* ________Bike Components Co. Trials Course
* Energy Drink Co. Fitness Center
* Innovative Toy Co. Playground
* Bike Tool Co. Free (self-help) shop
* Grocery Co. Healthy Food Court
* Bike/Sports Equipment Co. Mall
* Brewing Co. Velodrome/Concert
* Amphitheatre with Classrooms or Gym under the stands

*JUST fill in the blanks with your favorite brands (with $$$)

"AT THE" * Fort Collins (or Colorado, or NoCo, or Foothills, or Rocky Mountain, or Northern Colorado)

(*circle one) CYCLING AND FITNESS PARK
Sustainability and Innovation are essential! Think THEME PARK based public (CSU, Front Range Community College, PSD, City of FC, Larimer County, State of CO) private (food, beverage, merchandise, and naming sponsors) partnership with facilities AND programming for affordable housing, education, fitness and recreation.

Add a Mixed Use Private RE Development to include:
Affordable Loft Condos and Apartments, plus commercial business and professional offices above a healthy retail grocer, bike, sportswear
University, Community College, K-12, and Private Industry Classroom, Lab, and Field Courses that relate to the disciplines and passions supported by the Center
An auto fuel and recharge station.
Cooperative Relationships with Downtown, Midtown, and Uptown private convention and lodging businesses public transportation connections, including bikeshare.

This becomes: THE LIFECYCLE CENTER
Hughes Stadium Site: Redevelopment Process and Path

**Quasi-Judicial Path for Annexation into the City**

1. City of Fort Collins Concept Review
2. City of Fort Collins Planning & Zoning (P&Z) Board Review & Recommendations
3. City Council: 1st Reading for Approval of Annexation
4. Larimer County: Review Process
5. Larimer County Commissioner Approval Process
6. City of Fort Collins: 2nd Reading to Approve and Adopt the Annexation
7. Effective 10 Days after 2nd Reading

**Legislative Path to Amend the IGA to Revise the GMA Boundary Map (if Required)**

1. CSU writes formal letter to City of Fort Collins to initiate Annexation Process.
2. CSU writes formal letter to Larimer County and City of Fort Collins requesting an IGA amendment to bring the property into the Growth Management Area (GMA).
3. If Amendment to the IGA Agreement to Revise the GMA Boundary Map is Required...

**Opportunity for Public Input**

- City of Fort Collins Planning & Zoning (P&Z) Board Review Process
- Larimer County Planning Commission Review Process
- Larimer County Commissioner Approved Process

Listening Sessions with the Neighborhood and Community

**Selected Developer Starts Development Review Process**

See Chart on Next Page
FUTURE HUGHES STADIUM SITE DEVELOPMENT REVIEW PROCESS THROUGH CITY OF FORT COLLINS

DEVELOPMENT REVIEW PROCESS THROUGH THE CITY OF FORT COLLINS

Step 1: Jump In With Your Eyes Open
- From application to zoning introduction to conceptual development review.
- Goal: Make sure your development idea is flexible.

Step 2: Sign Up for Conceptual Review
- You meet with staff to review your application.
- Goal: Prepare your proposal for the development review submittal.

Step 3: Submit Application
- You submit all required documents:
  - Application
  - Zoning
  - Other documents
- Goal: Submit all required information.

Step 4: Attend Staff Review
- You meet with staff to discuss your application.
- Goal: Answer questions and provide feedback.

Step 5: Present at a Public Hearing
- Your plans are reviewed by City departments and outside agencies.
- Goal: Get your proposal ready for hearing.

Step 6: Submit Final Plans
- You submit the final plans (evolution of the original application).
- Goal: Get your proposal ready for recordation.

Step 7: Attend Staff Review
- You meet with staff to discuss the revised final plans.
- Goal: Prepare your proposal for the development review submittal.

Step 8: Sign Development Agreement
- You sign the Development Agreement.
- Goal: Get your proposal ready for recordation.

For Applicants:

FCGOV.COM/DRG

Development Review Guide

Schedule Building Inspections
- Multiple inspections required:
  - Fire alarm, sprinkler work
  - Non-traditional work
  - Electrical, plumbing, etc.
- Schedule building inspections from City Building Services.

Get Development Improvement for Public Improvements
- Development Agreement from City which requires underground utilities and public amenities.
- Schedule building inspections with City and outside agencies.

Receive Building Permit
- Approval of site plan and building permit is required.
- Schedule with City and outside agencies.

Receive Certificate of Occupancy or Letter of Completion
- Receive Certificate of Occupancy or Letter of Completion.
Native Grassland

Approx 27 acres

Stormwater Detention

Hughes Stadium Site: Existing Site Context

Adjacent Open Space

Maxwell Natural Area

Pineridge Natural Area

Horsetooth Mountain Open Space

Horsetooth Reservoir Area

Lory State Park

Sept. 20, 2017

Packet Pg. 220

Attachment: Sept & Oct Listening Session Exhibits (7045 : Hughes Stadium Annexation)
EXISTING SITE: Site Character Imagery

1. Image 1
2. Image 2
3. Image 3
4. Image 4
5. Image 5
6. Image 6
7. Image 7
8. Image 8
9. Image 9
10. Image 10
11. Image 11
12. Image 12
LAND USE CONTEXT

Hughes Stadium Site: Land Use Context

- RF - Residential Foothills District
- POL - Public Open Lands District
- MMN - Medium Density Mixed-Use Neighborhood
- LMN - Low Density Mixed-Use Neighborhood
- NC - Neighborhood Commercial
- RL - Low Density Residential Neighborhood

Sept. 20, 2017

Attachment: Sept & Oct Listening Session Exhibits (7045 : Hughes Stadium Annexation)
COMMUNITY NEEDS AND VALUES

- Open space
- Affordable housing
- Views
- Multiple modes of traffic (multi-modal)
- Recreation
- Neighborhood retail/commercial

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TRAFFIC AND MULTI-MODAL ACCESS

LEGEND
- Planned City Trail/Shared Use Path
- Traffic Count Location and Number of Trips (2016 Data City of FC)
- Collector 2 Lane Road
- Arterial 4 Lane Road

Maxwell Natural Area
Horsetooth Reservoir
Dixon Reservoir
Dixon Canyon Rd.
Sumac St.
Pecan St.
Ross Dr.
Azalea Dr.

Esta: Sept & Oct Listening Session Exhibits (7045 : Hughes Stadium Annexation)
The below comments were received between August 28 and October 31, 2017, through the Hughes website online feedback form. More than 100 community members have used the online form to email their ideas, questions and concerns. All feedback received is cut and pasted below with all identifying information about the submitter removed. CSU will continue to update this document as more input is received via the online feedback form.

1. I would like to see any type of program/project that would benefit the Northern Colorado/CSU community.
   * Low-income housing for CSU staff and students (not like the upscale/overpriced housing options near campus)
   * Non-profit Fort Collins Rec outdoor adventure park with subsidies for Fort Collins residents
     (http://www.colorado.com/ziplining-aerial-parks/epic-sky-trek)
   * Convert the stadium to a large seating amphitheater for outdoor concerts
   * A really awesome outdoor space for residents.
   * A tree research area (in other words an area where CSU can plant a variety of species of trees to learn how different trees grow and adapt to Colorado weather and species) or gardens since the CSU gardens were relocated with the new stadium

   What I don't want to see
   * Investment opportunity for a corporation for high end housing (similar to the ponds) or high end student housing like those near campus
   * No green space or parks for residents
   * Removal of disc golf course

2. What type of housing are they planning for the redevelopment of Hughes Stadium? I am a resident in this neighborhood and do not want to see low income housing in my neighborhood. Can you provide more details on the type of housing?

3. What is the best method for me to give specific feedback to Colorado State University, in particular Tony Frank, and to the Board of Governors? Will we be able to see the comments and information that you collect and forward to CSU and the Board of Governors?

4. My highest priority is natural features, trails, wildlife and open space. Please fully explore a sale to the City of Fort Collins Natural Areas Department so that it can be preserved as an open space. The department has a large conservation fund and can pay fair market value. I am a neighbor and the reason I chose this area is the access to the outdoors. Please don't pave paradise!

5. I live in Quail Hollow Neighborhood, very near Hughes Stadium.
   I don't recall seeing an invitation for the September listening session. Is there a way for me to attend? Thank you
6. Overcrowding the west side and the foothills is not good for the city or the natural areas near by the proposed site. If it has to be developed larger lots and buffers to minimize the amount of vehicle traffic is preferred. Since there is no shortage of buyers in Fort Collins making some arbitrary non-market based price should not be done. Cramming more apartments like the area just north of the site will increase traffic, noise and lights on the foothills ecosystem. The city just paid a large sum to buy the BACK half of the Horsetooth Rock area which is viewed by only a few daily so putting more housing next to the foothills effects all in the city and lessens the open areas.

7. This would be a great place to build an outdoor amphitheater to compete with Red Rocks and have CSU build a west campus since student population is growing. No other universities in America are selling their land for development. I would hate to see another boring development take this over and ruin this side of town.

8. Please keep it natural, no dense housing projects, please. A concert venue would be nice. Something tasteful.

9. We live on Coneflower Dr, in the Ponds subdivision. We have not received an email, or physical invitation to this Sept 20th Listening Session. Please send an invitation, as our neighborhood is adjacent to Hughes Stadium, and we wish to attend.

10. A concert venue or the drive in theater could move there. Please do not sell it to residential developers. There is too much housing construction on the west side of Fort Collins. The open space is critical to Fort Collins’ culture and values.

11. I definitely feel that CSU should look at developing affordable housing for its employees. The cost of living is so high here, and it is becoming harder and harder for us to hire employees for jobs that pay below $24 hour. This is our chance to develop housing that can be used by our employees - Fort Collins is rapidly running out of room to build housing. I am a CSU employee, and feel very strongly about this.

12. Regarding the affordable housing option: The west and north-west portions of Fort Collins already have a very high concentration of lower income housing. Schools such as Bauder Elementary, Blevins Middle School, Lincoln Middle School etc are already at a 70% free and reduced lunch rate - a valid proxy for determining the percentage lower income families in an attendance area. While I understand the Universities need for developing lower income housing for staff, it is important to consider the impact to those schools and communities that are already struggling to provide the support and resources needed to assist those families in need. Affordable housing projects in Fort Collins need to more fairly dispersed into other school attendance areas (east and south-east Fort Collins) where funding and resources are more available. Bottom line - affordable housing is needed in the city but concentrating it all on the west side of Fort Collins will only hurt already struggling schools and the community. Feel free to call me any time. I haven't received an invite to
the September open house but would like to attend as I live less than 1 mile west of Hughes. Thank you for your consideration.

13. Good morning, Hughes Stadium (re-development) gatekeepers;

Ever since Hughes Stadium was built, a key component of its 'sizzle' was the natural backdrop. If you read past articles about Hughes Stadium, time and again, it is described as being nestled in the foothills, splendor and beauty surrounding it, making it a 'special' place, not because of the stadium, but because of what it lay next to.

Turning the now defunct Hughes Stadium into housing will be a lost opportunity for future generations. The noble sounding "build affordable housing' for the masses is a bunch of bull - you all know that. No matter what the price point is (and housing nestled against the foothills isn't going to be given away), or how many houses are built, housing availability will still be chronically short in Fort Collins. At current growth rates, Northern Colorado will be a blob of indistinguishable development from Cheyenne into Denver in less than 50 years. There is no vision in adding to that reality - and really, putting housing on this site shows no effort at making Fort Collins, and Colorado, a better place, a special place.

Against the wisdom of the bean counters, the true visionary choice for Colorado State University is to protect this land for future generations. CSU is a Land Grant University - national land given to the State to teach citizens about agriculture. There is no better way to honor this legacy than to protect this land, taking advantage of the natural resource in place, and adding something that will be a true gift to the citizens of Colorado, something that will last forever.

This is from Colorado State University's own website:
"At Colorado State University, sustainability is foundational to who we are. As a land-grant university, we’re compelled to steward, conserve, and protect the world around us. It's central to everything we do - from academics, research, and operations to outreach. It's an ongoing mission that we embrace together."

When there is money to be made, there are bad choices to be had. The singular opportunity to protect and preserve this space is the higher and greater use for the old Hughes Stadium footprint - it fits with the vision that Colorado State University itself says is important, helps to protect a unique Colorado ecosystem, and ensures that as growth and development continue unabated, the citizens of Fort Collins and Colorado have a legacy from Colorado State University that provides a respite, instead of chewing up this beautiful site with housing and development that will economically benefit only a handful of citizens.

14. I hope this land is not developed as affordable housing. When have few enough open spaces. I hope this can be maintained as open for the citizens to enjoy. Its location is optimal for this. We do not need more homes or apartments blocking one the views left. I think more residential units would be the worst possible uses of this land.
15. The land including Hughes Stadium should not be sold or leased for development. CSU has made a commitment to achieving 100% "renewable" sourcing of electricity and this land could be advantageously used to install a massive solar photovoltaic farm serving the CSU campus, thus showcasing a part of CSU's contribution towards mitigating climate change. Alternatively, this land could be used as part of a pumped hydroelectric energy storage project (using Horsetooth reservoir), but my preliminary estimations are that this may not be feasible. Thank you

16. Open space has the greatest long-term benefit to the people of Fort Collins and northern Colorado. While the idea of affordable workforce housing sounds appealing, I have no faith that that could ever be achieved. It's simply rhetoric. Once the land has been declared for sale, the highest bidder will eventually win.

17. I have commented to the City and city council that I think we should build a large recreation/bike park for our residents. Something akin to Valmont Park in Boulder. With the announcement that Hughes will have to be demolished and the rewriting of the City Plan, I think the ideal location for that park would be in the stadium's grave and the ideal time is now. The location already has existing bike trails (up Maxwell), a disc golf course, and is near enough town but not in the way of current development to be ideally useful and successful. We have wonderful bike paths and some great hiking/biking trails in town. What we are missing, however, is a quality bike park. Valmont Bike Park in Boulder is a great example and has been hugely successful. These efforts reduce crime, encourage healthy living, and increases the quality of life for residents. Boulder was able to re-draw their city Master Plan and open the park within just a couple of years, and I think Fort Collins could be even more successful using Boulder's signature project as a guide. PLEASE consider this option. It will have a large impact on the City, and draw more quality students and workers to the town and University. Thank you.

18. Northern Colorado lacks a large concert venue that is big enough to attract bigger, more well-known acts which bring a huge list of benefits. With minor retrofitting, part of the stadium could be converted to that kind of concert venue and amphitheater and still maintain a piece of Hughes as part of its legacy. Think Red Rocks, but right here in town, and similar to Red Rocks, it doesn't need to be limited to concerts. They host a variety of events, have day uses, and it adds a sense of place and community. Not all of the land in the area would be required for a concert venue either, and it could still allow those other pieces to be developed as the market sees fit. It would be a great add to our community, become a huge economic draw, and become a landmark that has historical and sentimental value. Fort Collins overall is slowly developing the arts and music scene. It would build upon that and add a place of entertainment and culture, as well as some geographical balance to Fort Collins by adding a destination to the west side. Having an anchor facility would bring Fort Collins to a new level that all residents could enjoy and appreciate.

19. Hello,

I live in the area of Hughes Stadium but unfortunately I won't be able to make it to the Neighborhood Listening Session, so I would like to make sure my voice is heard on how to proceed
with this unique opportunity of development in west-central Fort Collins (of course FC must eventually annex the site in order to provide proper zoning, permitting, etc).

I am glad that CSU is seeking ideas for this site, and I like what the web page says about community needs ("affordable housing, walkable neighborhood, community culture, sustainability"). Here is my vision for the site which I hope someone will listen to: a mixed-use, walkable/bikeable neighborhood - not just residential! - with a *grid* of narrow streets (no dead-end cul-de-sacs!) that have bike lanes, easy transit to Fort Collins' main attractions of CSU and Old Town, buildings close to the sidewalks like they are in Old Town, pedestrian-scale infrastructure like lighting and bike racks rather than gigantic wide open parking lots, and almost everything a community would need within walking/biking distance including an elementary school, restaurants, houses of worship, and a local market. The site is approximately 2500 feet by 2500 feet, and it would take the average person only about 10 minutes to walk from one side to another which is nothing. Biking would be even faster!

Add a transit station near the edge that connects to both the CSU transit station and the Downtown transit station. With the huge size of this location, if density is done properly, it could serve tens of thousands of people and allow Fort Collins to grow WISELY instead of sprawling out all the way towards Wellington. It could be an ideal location right up against the beautiful natural asset of the foothills and those trails/lakes/creeks, but also easy access to Campus West and CSU. Find a way to connect trails in the neighborhood to the Spring Creek Trail just south of the site, along with the Natural Areas just to the west.

Avoid sprawling apartments where parking lots surround the buildings like Rams Pointe, instead have the buildings up against a street for a more urban feel. Aim for unique living like lofts above retail & restaurants for the multi-unit buildings that front the street. Red brick buildings of 3-5 stories can be beautiful and aren't too imposing, rather than the bland beige stucco of some parts of 70's era Campus West or the giant dorm towers on campus near Moby Arena. There should also be plenty of room for single family housing provided that it's done in a traditional manner with houses close to the street, with front porches, on narrow but deep lots (think of the Old Town neighborhoods). Houses on 0.20 of an acre is plenty to work with, and alleys provide multiple ways to traverse the neighborhood while also hiding cars. Additionally lofts should be available for purchase, not just rent, to encourage property ownership and longevity in the neighborhood.

Work with Poudre School District to make sure neighboring elementary schools can handle the incoming load of new housing. Kids should be able to safely walk and bike to elementary school without fear of being struck by a car going 40mph!

DO NOT widen roads. Overland Trail and Prospect so far west can stay 2-lane roads. Instead add *safe* bike lanes, build trails, and work with Transfort to make riding buses easy (routes that operate every 20 minutes is ideal, and if a coffee shop is nearby to wait in while the bus comes that is even better!)

Avoid big-box retail of all kind, including grocery. Those have no charm and encourage driving.
Instead think of a small local market, similar to Beavers or the Fort Collins Food Co-op, that would meet most day-to-day needs of residents and would also make the big trips to King Soopers, Safeway, or Costco less frequent (this equals less cross-town traffic!)

Do away with parking minimums for this development, but learn the lessons of The Summit and provide real transit options instead. Consider financial incentives for those who don’t drive a car.

Remember that it doesn't have to be all done at once. Building in phases, incrementally over time, is a workable approach. Developers likely won’t agree to this because they want their money back quick, so you might have to sub-divide the site into smaller acreage and sell to different developers. Don’t worry they will still come crawling because of how hot Fort Collins is!

I hope that this provides a vision for a more sustainable, traditional, new-urbanist spot in west Fort Collins. I can’t wait to ride my bike and come visit!

20. I am a FC resident and want to see something built here for the community! What I mean: since the stadium is so far west, it isn’t practical to tear it down for a regional attraction since people from other cities would have to drive across town to get there, clogging the roads. Instead let us turn it into a Community Attraction, for the residents! How about a "New Town" (similar to Old Town) with all the charm and fun places that could go there. Loft studios, retail, bars and restaurants.

Make it accessible with transit with bus stops that go to CSU, and trails, like to Spring Creek trail. Make it easy and safe to walk around this new development, not like the new Super Target at Harmony and Corbett, too many blazing cars! Make it something that Fort Collins residents will be proud of! Not chain restaurants and strip malls! Thank you for listening.

21. We live in the neighborhood that is invited to the listening session. However, we were out of town most of the summer and didn't get the invite in time. We would like to be invited to the invitation only listening session. Please let me know how to get on the list.

22. I would like to see the University strategically keep the property and expand the veterinary equine and food animal veterinary center. I am not in favor of selling the property to a developer, as it would impact the access and egress to the dam, centennial road and to the trails and wildlife.

23. I share concern about the fate of the Hughes stadium site, and hope that it can be preserved as open space or agricultural land.

I am a member-owner of Poudre Valley Community Farms, (PVCF) which purchases land and leases it back to farmers for local food production. This model provides farmers access to land that might otherwise be lost to development at relatively low costs. I’d encourage you to explore this model—and the idea of converting Hughes stadium into farm land more generally.
Converting the Hughes stadium site to agricultural land for local food production would be enormously beneficial to the community, and would align much better with CSU’s mission as a land-grant university than would converting the site into a housing subdivision. I hope you will consider the former concept – as well as simply converting Hughes into open space – seriously.

24. I am a musician, business person, and teacher at PSD Laurel Elementary School of Arts & Technology. I would like to share this idea for a perfect use of the old Hughes Stadium site. Interested parties would include Pat Stryker/The Bohemian Foundation and all participants in the Fort Collins arts and education community.

Please view this link to enjoy the Idaho Shakespeare Amphitheater. It is a flexible venue that fits perfectly into an outdoor, foothills locale.

In addition to supporting our performing arts community, this is a perfect draw for residents and visitors to northern Colorado. http://idahoshakespeare.org/

25. Hello! I am a Fort Collins resident for 2 decades and I found this web page from the Coloradoan article. First I want to say to the ICON Venue Group that we do not want a Texas or California style MEGA development here in our town. At least ICON is based in Denver so they should know that we Coloradoans like to BIKE and WALK and enjoy our beautiful state! Too much out of state developers not knowing our Colorado CULTURE building things that no one likes, like General Growth and that Foothills mall, what a mess, it's like they were making it up as they went along and didn't have a PLAN.

And speaking of Colorado, this spot where Hughes was built is GORGEOUS and UNIQUE right up against the foothills. Whatever is built there should HONOR that BEAUTY as well as the CSU TRADITIONS like the big A on the mountains!

If there's a neighborhood, I hope it's SMALL and the houses have front PORCHES so people can have COMMUNITY and chat with their neighbors. If there's restaurants, I hope they have PATIOS next to large SIDEWALKS so people can have COMMUNITY and have their DOGS with them outside. I hope there are PLAZAS and SQUARES so people can informally gather and LINGER and have COMMUNITY. Also, aside from neighborhoods and restaurant uses, don't forget the other uses that can help build COMMUNITY:

Libraries
Schools
Churches, Synagogues, Mosques (YES even in this day and age there is LOVE!)
Bus Stops (being inside our own cars having ROAD RAGE in traffic does not build community!)
Coffee Shops
Corner Stores (make it CLASSY like Fort Collins Food Co-op, NOT a 7-11 or Loaf-N-Jug!)
Trails

THANK YOU FOR LISTENING! Please make us PROUD to be FORT COLLINS!
26. I can't attend the listening session, but I have some concerns... It seems like ICON only has experience building arenas and stadiums based on their website... So why are they involved in deciding what goes here? Seems like a conflict of interest if you ask me!! Of course they'll want to build another stadium!!
   I live on the west side town in the Rossborough neighborhood and everyone here likes it nice and quiet... Except for game days at Hughes but those are over now. We would oppose any gigantic "attractions" on that side of town that bring crowds and noise and traffic.
   The drive-in is unique and not a problem, everyone loves it, but some new taxpayer-subsidized sports stadium like ICON builds all over the world?? No thanks!!

27. Hughes stadium and its surrounding property should include an easement along the foothills that could be donated to the City of Fort Collins. This natural area should be used as a park. This would go a long toward repairing CSU's and Dr. Franks reputation to residents of the city.

28. Due to the traffic concerns on the West side of town an additional housing development of up to 1000 single/multi-family dwellings seems inappropriate. It would be best if the University were to partner with Poudre R-1, The Fort Collins Soccer Club, Fort Collins Youth Baseball, etc. and the City of Fort Collins to develop sporting venues which could support these activities.

29. During the development process CSU should be held accountable for maintaining the property. The weeds, the bone yard of discarded materials from CSU, etc. are an eyesore and a haven for the transients in town.

30. Why should we think that anyone is going to listen to what the community says? It was the perfect location for a stadium, as past attendance has shown. The next best use would be a community park. High density residential use would make the poorly planned road system in the area a nightmare in early morning and evening hours, I get the feeling that these "listening sessions" will be one sided. Please prove me wrong.

31. Affordable, aka low income housing will negatively affect property values. I am opposed. Additionally, traditional "affordable housing" is provided as high density housing. More units per land measure equals more$$ for developer, right? This would add greater population utilizing the services and infrastructure, not to mention additional traffic, adding to the increased transit problems already associated with CSU. Let's put them in Tony's front yard. I support addition to Maxwell Natural area, CSU agricultural use or other LOW density usage.

32. Unfortunately, I am on travel for work this week and will not be able to attend the meeting. We live in the Ponds neighborhood off of Overland Trail and have been impacted by CSU game day traffic for 17 years up until this year. We learned to deal with it and planned as best we could to avoid driving on Overland Trail during games.

   Traffic has been increasing on Overland Trail over the years as it has in much of the city. It would be extremely nice for us if the new use for the Hughes stadium land be not something that would severely increase traffic on this already busier road. I was hoping the garden area that had to be
moved due to the construction of the new stadium could have been moved to Hughes. Then have the cross country teams run at this site through the gardens and CSU could have had another world class athletic facility.

Maybe there are other options for CSU besides selling it for development. I realize that CSU needs to make money, but I recommend something that better fits the boundary here between dense urban development and the Foothills.

33. We prefer NOT to have anything like the mall, shopping square, etc. I know this may not work out economically, but would LOVE to have them as nature area, if you take the stadium down. Or, somehow use the stadium as it is (or do a bit of taking down so as not to be needing frequent maintenance) for, maybe, youth athlete training etc.

34. I think it is a shame to tear down such a beautiful facility. I think it should be USED!

35. Thank you for hosting the neighborhood listening session on September 20th. It was very informative and well organized.

I agree with CSU’s decision to have the property annexed into the City of Fort Collins. It makes sense to have the city control ultimate development of the site.

I would like to see the plot developed for affordable and workforce housing primarily for CSU staff. I think the idea of having Habitat for Humanity use part of the lot in the same way they are doing Harmony & Taft Hill will significantly improve our community. Most of the lot should be for townhouses and smaller homes. WE DO NOT NEED ANY MORE 4,000 SQFT McMANSIONS eating up land and not contributing to our community.

WE need to encourage transit routes into the section which should include the underserved areas east of Hughes Stadium. WE also need bikeways, like Spring Creek bikeway, to connect residents to the city without forcing them to use automobiles every time.

36. I was at the Listening Session last night (Sept. 20). I found it to be helpful and liked that my voice was being "heard". One question that I neglected to ask: Will the public have access to the list of developers that have submitted an RFP and RFQ?

37. Whatever goes in there, don't widen Overland Trail, because of induced traffic (it's a *provable* fact that adding more lanes to roads brings in more traffic - if you don't believe this, read about it!) Lots of cyclists including me ride along here, we need bigger bike lanes, but *not* more cars! Keep Overland Trail on a road diet please! So whatever goes in there, please don't make it something that will bring in more traffic and then the traffic study says "Oh we need to widen the roads" - *wrong*!

38. At least some of the property could be designated for "affordable housing" as defined by HUD and FHA standards because there is very little, if any, truly affordable housing for first time home
buyers in the lower middle income range of earnings, young families, and persons in the service and hospitality jobs so vital to the economy of Fort Collins. Developers and builders could be given the land which should shave $15-30,000 or more off the ultimate price of a home to the initial home buyer, and a deed restriction and/or covenant could run with the land keeping the home in the affordable "pool" for 20-30 years. Affordable housing is not "low-income" housing although some of that might be considered as well. It is not sub-standard housing. It is generally a bit smaller and with fewer frills but good quality starter housing. There should be some reasonable restrictions on profiteering on this land by developers and builders. Some of the "profit" or income from the land should go to the real estate department at the University for scholarships to study and come up with more, new, and creative ideas for providing affordable housing in Fort Collins to its hard working citizens who could not otherwise afford to buy a home in Fort Collins, Loveland, or this area generally. There should be some neighborhood commercial area which would be retained by the University Endowment so the net profit could benefit the worthy students who might need financial assistance and especially in those curricula which are needed and will benefit the society of the future...not to faculty or administrative salaries and benefits.

39. I strongly encourage the University to consider the long term impact this large space and the use of it will have on the Fort Collins community. Understandable why decisions have to be made on what to do with the land and of course money is a factor, but a broader look at the appeal of our hills/open space/trails to our town. People from all over the region come to these trails to hike, run, and bike. My concern is the long term affect if the spaced is subdivided and the inevitable increase of foot traffic. Living near to this space I am also concerned about overall traffic increase/patterns. I have seen one too many accidents in the last year with the increase in automobiles during busy times on Overland Trail.

The general consensus of the community near to the old stadium is that the University is asking the community for input but the decision has been made - subordinate for lower income housing. Many feel that no matter what they say, their voice will not be heard. Please do the right thing and listen to the residents and take their ideas/input seriously and not just for "show". I haven't met a person yet that has said, "Yes, add new homes which will increase the traffic on the trails and roads".

40. Senior housing cottages, coexisting with affordable housing for CSU staff, in a park like setting. If the homes can go up the west foothill a quarter of the way it could be beautifully tiered and then down into the "valley"... The stadium hill road going up to Horsetooth needs to be at least 3 lanes, and overland trail needs to be 4 lanes. Overland trail and drake road needs to be A ROUND A BOUT...thank you for reading this!!!

41. The thing about Fort Collins that sets it apart from all other cities in the Front Range, and in our county, actually, is the abundance of open spaces. Repurposing Hughes Stadium into a recreation area/open space will benefit our city for generations to come. We've got to stop the sprawl of development against the foothills.

42. Hello, I am writing to provide feedback on the Hughes Stadium property, as we were unfortunately unable to attend the Neighborhood Listening Session that was held on the 20th.
As a home-owner/resident in the immediately surrounding area to the Hughes property (and as a small business owner here in Fort Collins), my hope is that the property will end up being used for some type of recreation; for example: a park, an open space with trails for walking/bike-riding, a place for athletes to train, etc. At the very least, whether the property is leased or sold, my hope is that whatever company takes over its use keeps that area’s wide-open, picturesque scenery (being right up against the foothills) and will be mindful of the environment, as it already seems very wasteful to be tearing down the stadium (which, based on my understanding, will be part of the eventual plan), as opposed to re-purposing it as some type of outdoor athletic/training facility, for example.

As Fort Collins is already becoming overly congested and housing developments (apartment buildings, etc.) are already being squeezed into what feels like every inch of space that we have left, having something that is open and natural would be wonderful in keeping Fort Collins a destination for people who want to get out and explore - really keeping with the community culture. As it is, I talk to more and more people over the years that think about leaving Fort Collins (including myself and my family) due to the increasing congestion, roadwork and construction...which is unfortunate. So I think something that keeps the sanctity of the natural area on that property would go a long way in terms of sustainability for the area.

I’m not sure what ideas or proposals might already have been shared at the listening session, but thanks very much for your time and consideration. If you could please email me back at the email address indicated, so I know my comments were received, I would greatly appreciate it. Thank you!

43. I would love to see this transform into a natural area, park, or other place to be outside enjoying our beautiful community.

44. The Hughes Stadium property should be maintained as open space for the city of Fort Collins. Access to the foothills adds value to the community, and to the university - it’s already hard enough to compete with CU/Boulder for outdoor-oriented students.

45. No housing....change into natural area or fair venue.

46. Open space along with some affordable, sustainable housing (but not low-income housing).

47. Just make sure that some open space is preserved. Super high density housing there after many years of a large open area would be devastating.

48. Please, please, please NOT another housing development. A big park or natural area would be best for the community!

49. The easy solution is to force through housing that no one wants. That is what happened with the new on campus stadium. The city didn't want it, but CSU did so they said they would use private finding, which ended up being insufficient. So, they bonded it out to get their money. It feels like CSU is going to do the same thing here. People overwhelmingly do not want housing on this very
unique piece of land. Have it be natural space, a park, recreation center, or music venue. Nearly anything would be better than more housing on this side of town. Overland Trail already feels packed for a small road because the city comes to this side of town to get to the mountains, hike the "A Trail", mountain bike, etc. At the first community meeting, it was very clear and overwhelming that people do not want housing there. I hope an institute for higher learning will be more creative with this awesome piece of land than but more houses on it. One would only hope.

50. The area immediately surrounding Hughes Stadium - to the north, west, south and even east, has been a paradise for many residents for many years. I'm sure you have heard many stories, but I want to impress upon you that this space has afforded a rich history and spiritual wonderment to all that have wandered the trails. Personally, I have a connection that spans over thirty years. Selfishly, I want to protect those memories and experiences that have ultimately made me who I am (I am a CSU graduate, upstanding and contributing citizen), and I am just one of many thousands (no data to back up that number, just the folks I have seen their daily, year in and year out over decades, now). We have been borrowing freely, exploring and enjoying that which was never ours in the first place, without compensation, and I sincerely thank you for giving me (us) a wonderful place in FC to grow up in and experience life. We have no right to ask, demand, kibitz or negotiate any preservation of this space - I know this. If I had a magic wand or a winning lottery ticket - any means to buy and maintain this incredible part of Fort Collins and my life, I would do it within a heartbeat.

You have a choice, and obviously you have a business and legacy to maintain. I respectfully ask that you consider some option that will preserve the beautiful space surrounding the old stadium - at least to the north and west. If housing is built there, the new residents will love and appreciate this space, too - for decades to come.

Thank you for providing a forum for feedback.

51. Please preserve the nature of the property in some way. I realize that the almighty dollar is calling and CSU stands to make a tidy profit from selling the land. Putting in any kind of housing development, especially high-density will forever alter the neighborhoods that feed into this area. Where Hughes sits it really a destination area while Prospect and Drake are the only road in ... and out! In my opinion, high-density will be a disaster in planning. I can barely turn in or out of my neighborhood from Yorkshire onto Drake. Just since I’ve moved here the traffic has multiplied exponentially. Do we really want out of control growth and a re-make of one of the most scenic and photographed areas of FoCo...turning it into an urban jungle?

52. I would love to see it continue to be a space that can be shared with our community. An open space... Place for concerts... Natural area...etc.

53. Make it an open air park or outdoor music venue. Open some of the land up to student gardening. They can sell the food like a CSA. Use it for student hands-on learning. Please don’t put housing there. The Mountains Edge property will be full of multi-family homes soon and will totally fill
Overland Trail with too much traffic. Don't make the west side of FC like the East side. Let's come up with low impact, outdoor learning solutions everyone can enjoy.

54. Will there be a genuine community input process? The "listening session" was what I would call "we're doing this because we have to" and not designed to have a discussion. The overwhelming majority of people want no development, but I think protecting a large part by keeping open space with low density development might be acceptable to many. People are talking on neighborhood forums about how CSU has already made up their mind and will sell to the highest bidder. I hope this is not the case. I'm hoping that LEED design concepts will be incorporated and that wildlife corridors will be maintained. Traffic studies and mitigation will be of utmost importance since the only collectors from Overland in that area are Drake and Prospect. Prospect is only three lanes (middle turn lane, so essentially two lanes) from Overland to Taft Hill. Traffic will be increasing a lot, especially with the housing development going in on the NE corner of Drake and Overland. I hope CSU does right by the community, even though they have shown they don't really care about community input since they agreed to "listening sessions", probably to avoid conflict.

55. I think the area needs to be developed to reflect the best of permaculture systems and values especially given we are supposed to be an agricultural school and have been an agricultural area that has been encroached upon by development that does not reflect consciousness about the fragile bio-system we live in that includes the air which has become painfully poor due to traffic and lack of development of a public transit system of consequence. I would therefore suggest an intentional community with gardens and housing and entertainment and shop services that demonstrates environmental acuity. Such a small example of this kind of system has been developed in Buena Vista and could be used to model this project. I can only hope you would consider this given the evidence of environmental decline that has occurred with the developments presently and has further created an imbalance in all socioeconomic strata.

56. Please no housing!!! The building that is going on in this town is sad. Any little piece of open space is being turned into something. Soon there will be none left. Please turn it into a natural area.

57. I currently live in The Ponds subdivision, close to Hughes Stadium. I plead to keep the property as a natural area/open space (maybe with an event center), and to NOT develop housing. This property has a long history with Fort Collins as a natural area and connector to other open space. Fort Collins is often on "best place to live" lists because of the mindfulness put behind our natural area planning and open space opportunities. There is value in keeping this property natural, and contributing to the quality of life of its CURRENT residents. Sacrificing the property to the highest housing develop goes against the characteristics and qualities of what makes Fort Collins great.

58. This property is one of the only remaining areas along the foothills in the City. It is a gem! Please don't add more housing here to an area that has much more potential. Selling this land that CSU acquired for nearly nothing to make a huge profit and going against what the community wants is NOT the answer. No one that lives in this area wants more house here. It will affect traffic, light and noise pollution and overall enjoyment of our natural areas and open spaces. Please try to be more conscious of what is best for our community. As it is now, Fort Collins citizens think CSU is only
thinking of themselves -- please prove us wrong. Everyone I talked to (including myself) that attended the community listening sessions believe that our voice doesn't matter, that CSU will do whatever is best for their pocketbook and that is their only motive. Prove us all wrong. Do the right thing. Be a hero, not a developer of open space. Don't ruin the beauty of our community and upset citizens with another greedy choice. Sell the land to the City for a fair price for natural areas or recreation. Don't pack a bunch of housing in this area. We don't want more housing in this area. Please, do something you can be proud of for generations to come!!

59. I am most concerned about the plan to handle the increase in traffic and people in this area. I am not a proponent for more congestion, foot and vehicle traffic and possibly more crime. I question the true motivation of CSU in this endeavor believing what they are most interested in is increasing revenue and influence for the university. Please consider continuing to keep the area a low key residential area. Fort Collins has plenty of growth in other parts of town and the city is not keeping up with infrastructure needs to support that growth.

60. This land was purchased with public funds, as CSU is a state school. The idea that it can now sell this land, for profit, to a developer and not pay taxes on the property is absurd. This land, which is bordered by City of Fort Collins Natural Areas, should be sold back to the city and remain public property. Adding housing in an area set aside for outdoor recreation would be a huge, irreversible mistake and one that will forever decrease the quality of life for all Fort Collins residents and visitors who now are able to peacefully access and enjoy the adjoining property. There are plenty of areas already under development that are in much more logical locations to build housing, and ones with more correct property tax status. If CSU were to lease the land, it would therefore have to provide all emergency and support services as the City and County are not receiving property taxes to fund such support. This land should be returned to the City of Fort Collins and the city should decide how best to use it. That’s the only course of action that is reasonable.

61. Despite the neighborhood meetings and online feedback forms, I fear CSU has already made the decision to develop this land for some kind of density housing, commercial use and/ or lease it to the highest bidder for development, no matter what the impact on the environment, water, land and neighborhood community. I live in a nearby neighborhood to Hughes Stadium. PLEASE do not make the old stadium and land into more housing with a retail mini mall! Leave open space around Hughes and if the land must be used, then limit use and buildings for one of CSU's horticulture or green land management programs. Let's not add more density and stress to the land and water resources that we already have. We don't want Overland Trail to become a 4-lane highway for all the traffic! CSU is supposed to be the 'green university' so how about bringing those green concepts to this opportunity in an innovative way that benefits this particular environment, Horsetooth reservoir and Fort Collins? The idea of CSU developing some kind of housing for their low-paid employees is ridiculous as CSU should not be in the business of real estate development.

62. My first choice would be to keep it an open space. Keep Fort Collins unique and beautiful. Second choice, sell it back to the City for the cost of demolishing the old stadium. The city could work with the CSU Design program and students in landscape architecture to design a sustainable city-owned recreation center on the current stadium footprint. CSU could attract high quality
students to these and other programs by using this as a demo project and the City would benefit from a state of the art recreation and art center that serves the public and preserves surrounding open space.

63. This area should be kept as open space/ recreational. No houses, condos, or development of any kind other than hiking/ mountain bike trails. Please keep me informed as plans progress.

64. Please don’t put more low income housing here. Keep it as beautiful open space!

65. I am strongly against housing or music venues. I realize CSU wants to make money. I hope the university also considers he burden on city infrastructure that housing or music venues would create. Many homeowners have intentionally chosen this end of town for its lack of traffic and/or noise. Low income housing may cause property values in the area to drop. We need to consider open space management. We need to consider environmental concerns. I pray city officials will speak up and university officials will seriously listen.

66. The west side of Fort Collins suffers the worst air quality. Adding more housing will exacerbate this. Please do not develop as high density. This side of town can’t support the traffic (even with more lanes on Overland).

67. I live on the west side of town close to the stadium. I think housing is the worst option for the city. Prospect Road is already an irritating road to drive on and adding a larger population to the west side would make it so much worse. I think the area should be for recreation, open space, park system, bike park, amphitheater. The land is located in an ideal spot for outdoor recreation. Please no housing!

68. Please do not turn this property into low-cost housing. It is a beautiful site and deserves better than cheaply built housing. The surrounding area already has enough shoddy construction. I would like to see it turned into a nature appreciation area. In keeping with the golf Frisbee course already there, maybe add a bicycle course, skate park, ropes course, etc. Make it an area the entire community can use and enjoy, not a rapidly deteriorating eyesore of shabby housing. Take into consideration how much it will cost to build the infrastructure necessary to support the addition of hundreds of people. Do NOT try to cram as many ugly, cheap apartment complexes as possible into this area. Yes, that would fit in perfectly with the housing that is already in the area but not at all fitting for the scenic setting. I especially would not like to see development such as that which has recently been built on Willox Lane (west of McDonalds). A prime example of ugly, cheap construction that was allowed to be built because the area was already ugly and economically depressed. Please do not destroy the beauty of the area that Hughes Stadium occupies. Use this area for recreational and educational purposes, please.

69. Please maintain open space for this property. We will never get it back if it is developed. We have new housing going in on the corner of Harmony and Taft Hill, housing going in on Horsetooth just East of Taft Hill. Traffic is getting worse by the day in this area and if this land is developed it will
become intolerable. I bet if the land were offered to the city, we could come up with a way to purchase it.

70. The property needs to be deed restricted to allow for reasonably priced, attainable housing only.

71. Open space is most important to me. My preference would be to keep the entire thing as a natural area, but that doesn't seem realistic from what I've read. Please, please work with City of Fort Collins Natural Areas Dept to conserve as much of the open space, trails, wildlife habitat and other natural values on this site.

72. Please, no housing. That beautiful foothills area is prime for a foothills park, open-space, watch beautiful sunsets, bike, stroll, walk, enjoy fresh clean air in a rural setting as our "choice city" was meant to be! Please don't ruin our "choice city" with more tall apartments, condos and air pollution infiltrating those beautiful foothills and Overland Trail access. Please don't let the "almighty dollar" rule and ruin your lives and ours forever. We could all enjoy a lovely, open-space park for a long, long time while we are on this earth!

73. I live in the area and would NOT like to see high density housing, nor low or affordable housing. The area already has a high level of low income housing and it is a major eyesore. The area is starting to look like "the projects" and additional low income housing will make the area worse. The area should be kept as open space or CSU botanical / green house facilities. If CSU is concerned about affordable housing for its employees, then CSU should pay its employees a better wage!

74. While I want affordable housing in Fort Collins, surely any for profit housing in place of Hughes Stadium will be on par with current rental / housing rates and therefore not affordable. I also live just off Mulberry and walk my two kids and two dogs east on Mulberry to City Park and do not want more traffic on Mulberry; if massive housing units were built West of us then surely there would be more traffic on Mulberry than already is. People speed on Mulberry, they run the red light on Bryan, they race to pass each other, none of these are helping keep our city safe and why I don't want more housing West of us.

75. I am totally opposed to housing being built at Hughes Stadium our city is being inundated with more large complex housing which impacts city streets and detracts from the charm of our city. Keep it open space!!!!

76. No more housing! Outside public pool, fitness center for families kids and/or concert venue! Absolutely no housing!!

77. I am not ok with a music venue! I live very near the corner of Drake and Overland. When they started the music for the marathon at 6:30 Saturday morning it worked me from my bed! The sound of the announcer from the football game was regularly audible in our house. I can't fathom how loud a concert venue would be, with the sound reflecting off of the hills into our neighborhood. Please, this is not red rocks, out alone in the hills. We do not want an open concert venue across the street from our neighborhood.
Those are my only two cents. Appreciate the opportunity to respond.

78. Please, please, please do not put in new housing on the stadium grounds. It will ruin the quality of life for both the people that live on the west side, as well as for the wild life that calls this area home. We have all moved to this side of town to get away from the busy side of FC, and adding a huge development would take so much of that away. It will increase traffic and possibly lower our home values, by taking away such a beautiful recreational area. We love going sledding there in the winters, playing Frisbee golf and hiking in the spring, summer and fall. Please, if anything, turn it into a music venue that will bring something positive to the area. A music venue is something that the city of Fort Collins is missing and just think of what it can bring to the city. I understand that this is business and that money is the bottom line. I guess I am just hoping that you care more about the people of Fort Collins, than you do the bottom line. Thank you for your time.

79. Housing and/or commercial development is the last thing this area needs! This part of the City is crowded and there is minimal open space and few recreational opportunities. Bike paths end on busily trafficked streets and biking is becoming increasingly dangerous. Housing development is rampant on the South side with new "communities" in FOCO, and developments in Loveland which eventually will merge into a densely populated megalopolis. One of the successes of FOCO that has drawn so many new residents, is the small town feel in a City that has so much to offer. As the population grows, and as the present population ages, more activities are needed for youth lest FOCO follow the example of so many other cities where youth have inadequate opportunities to keep them active and fall prey to drugs and alcohol, which is already a significant problem here. With increased traffic, seniors will have more difficulty getting around town to carry out their routine errands, and to enjoy the cultural events. The Old Town area, that has so much to offer, has become almost inaccessible if you are not in walking distance in the evenings and weekends. The stadium area would be a perfect location to serve both the existing and the future population with indoor and outdoor recreational activities, hands-on classes (e.g. pottery, stained glass, jewelry making, weaving), lectures, live theater, and other venues to draw people of varied ages.

80. My husband attended the first "listening" session, where it was made abundantly clear that no one associated with the redevelopment plan wants to hear concerns or opposition to what has obviously already been decided. The density of population in this area is already intense, the unique environmental area in question cannot be replaced ... yet build, build, build is all that is ever offered. It is well known that Overland Trail Road is not a good candidate for expansion due to its lovely route along the foothills. Adding congestion, pollution and too many people is a recipe for disaster. Decisions need to be made with regard to what is best for the environment and our future not the wallets of developers and CSU.

81. I am strongly opposed to the demolition of Hughes stadium with housing development. As it is, you cannot even cross Overland without an extended wait due to severe traffic. A new housing development will greatly exacerbate this problem and make west Fort Collins a gridlock just like central Fort Collins and downtown. I know that expressing my opinion will do nothing to stop this
process but feel obligated to state my strong opinions as a faculty member at CSU. I am so disappointed with this decision.

82. I am a neighbor in the Ponds and can see the stadium lights from my back porch and have listened to the games that were held at the stadium for close to a decade, (which is easy to hear from our house). I welcome the use of the stadium as a music venue or some other public event spot. I do not believe high density housing is a good use of the property and am strongly opposed to this type of development in particular. It would have a negative impact on the adjacent neighborhoods. We already have lots of high density and low income housing in the immediate vicinity.

83. No more houses, please! We do not need more traffic, more congestion, more noise, more people on this side of town! This property would best serve the public as an open-space/park. Please help Fort Collins retain its nice-place-to-live character by not succumbing to the short-sighted "more is better" ideology! What happened to the "quality of life" view that used to be on the forefront of city planners?

84. I agree with the idea of using the NE corner of the property for CSU employee housing, as it would expand the residential housing directly north (Sumac St). I am much more passionate about maintaining the remaining land as open space, natural habitat and keeping the CSU disc golf course. I would support a community garden on the site, perhaps near future housing. I am in favor of demo and removal of Hughes Stadium.

I am very passionate about no other development on the entire site, including turning any of it into a park or adding additional landscaping. I would like to find out if the dirt parking lots could be re-planted with prairie grasses after removing the noxious weeds.

The beauty of this area and a few other open spaces is not due to resources and amenities on the ground, but in the unobstructed views of the big sky.

85. I am a 2 time CSU graduate, long time Fort Collins resident, and Colorado native. I am currently a resident of the Quail Hollow neighborhood which sits at the intersection of Overland and Taft Hill Road, very near the stadium location. I am sorry I couldn't attend the listening session last night but I had a funeral to attend.

I would like to very strongly advocate for selling the land so that it can be preserved as open space/recreational use. It is adjacent to the Pine Ridge Natural Area, at the base of popular mountain biking trails, and is used by the City's children as a sled hill all winter. We have so much rapid development going on within our community that the qualities that make it the recently named "4th happiest" city in the nation are going to be tested. One reason we are so happy is due to our amazing open space and recreational areas within biking distance of the city and our neighborhoods.

I believe development of the property into residential or affordable housing would cause real disruption to this area due to increased traffic along Drake/Overland, negatively impact the few remaining wildlife corridors on the west edge of town, mar our views of this beautiful area, create
conflicts with long established recreational use, and necessitate expensive roadwork to accommodate increased congestion in the area.

My vision for this property is one in which the land, if annexed by the city, is designated for a natural open space and recreational area to augment our quality of life and embrace our wildlife as well. My vision includes habitat hero gardens (pollinators), a sled hill for the kids, a conduit for mountain bikers and hikers, and the like. Please consider open space and recreation and prioritize it over residential or commercial development. It isn't the right space for that and this is one of our last crown jewels in the area for open space (certainly within city limits)!

86. Let’s keep Hughes Stadium as natural of an area as possible. Our beautiful state of Colorado is becoming so overrun with overwhelming population I fear it will be ruined. Please keep a little piece of paradise around for our future generations to enjoy.

87. Please leave it as open space, we really need it.

88. The west side of town is already too congested and Overland Tr/ Prospect/Drake already have trouble handling existing traffic at times. In addition, the foothills open space helps make FoCo what it is. Please do not develop it further. CSU has already gone against public opinion by building the new on campus stadium. Please do not further disrespect FoCo by selling this land to a developer.

89. Please consider not developing this area with MORE housing. Fort Collins is really beginning to lose its charm with the incessant building in almost every corner of this city. The additional traffic on Overland, being one lane, and Prospect between Overland and Taft will be ridiculous if the projected housing comes to fruition. Let's think about Fort Collins and not about lining the pockets of developers.

90. There is a lot of great Open Space along Overland, and Hughes is such an icon of our community, especially with the A-Trail there. These types of spaces are quickly getting swallowed up by development and West Fort Collins is beginning to lose what makes it special - a place to access trails, view the Foothills, and appreciate that Fort Collins is so unique in that it sits at this "urban-rural interface."

I understand the need for affordable housing, but I feel we should be building "up" closer to and more densely within the city. The development that is sprawling into our more rural areas across Fort Collins is so ugly, cookie cooker, and not the types of homes that are built to last years and conserve water and energy.

I would love to see the Hughes stay a cultural icon in some way, celebrating a natural landscape that is becoming so uncommon. It would be great to see a skate park, bike park, playground, something that can engage youth and families, or be a place for music, events and festivals - the events/festivals downtown have become so standardized and everyone feels exactly like the one before. It was so nice having events like the Peach Festival when it was still at Hughes.
91. Would really like to see this unique property left as open space/foothills buffer. A concert venue at most. The push for "low-income housing for CSU employees" seems unrealistic and unworkable in fact - a mere talking point. (Plenty of low-income housing on this side of town already. What happened to the City's vision of mixed-density neighborhoods?) More housing would affect both the traffic on limited arterials and pollution in this area. Back in the 1980s, there was concern about further development west of Overland Trail negatively impacting air quality along the foothills. (What happened to that?) A recent study indeed showed Fort Collins' pollution is worse on the west side.


93. Please take the traffic situation into consideration when deciding what to put in place of Hughes Stadium. The situation in town is already VERY difficult with very few good east-west avenues through the city. Adding additional housing would significantly impact the traffic situation. Spreading out the housing a bit more would help, but the proposed "affordable housing" would be sure to increase the traffic problem exponentially. Thank you for your consideration.

94. I am a resident of Westgate Townhomes (the neighborhood which shares a fence-line with the stadium on the north side). As a resident, I would like to offer my feedback regarding any redevelopment. I think the property should be used for open space. This area already has a very high concentration of rental properties, usually with more than one tenant, which has created quite a bit of traffic congestion during busy times and a lot of noise pollution. Also, the scenery and character of the area would be ruined if this area was developed for housing.

95. Is there a possibility that this could be used as a High School sports complex?

96. Hope CSU chooses to sell to a developer with low-cost housing in mind. Whatever CSU chooses to do, remember all of Fort Collins has to live with that choice. Thank you.

97. The Hughes Stadium property has been a fantastic resource for Fort Collins residents, even outside of games and special events. The disc golf and sledding hill are popular and trails behind the stadium are an important connection between the local open spaces. I would vastly prefer a continuation of a public space, be that open space or an auditorium. Our foothills public lands are a great draw for the city: an ugly dense development alongside the road to Horsetooth Reservoir would be a shame. The west side of town lacks the infrastructure investment and high tax base of the southeast part of town - how would the city cope with hundreds of new homes? We on the west side would like to keep things less crowded.

98. Let it return to grassland and utilize it as open space or natural area for all residents. I'd be happy if the disc golf course got an upgrade too. NO CONDOS!!
99. This property should NOT be used to build more housing or residential areas. Keeping this space open and natural is crucial to the environment of Fort Collins. We are known for being natural and agricultural and we need to keep it that way!

100. As a CSU Alumni 1990, 2000 and a thirty year Fort Collins Resident. The Hughes property should be donated to open space. Located next to Dixon reservoir and a key view shed entry into Horsetooth Reservoir the last thing the City of Fort Collins needs is more apartments right there. It’s tragic that the decision to develop this has already been made any community engagement is a farce, developers clearly drive government and approval processes. Maintaining livability and desirability of current residents means nothing.

101. It would be great if CSU could convert the Hughes Stadium property into open space or a recreation area. With the neighboring natural areas, it would be beneficial to keep the space free of residential housing units. The traffic and light pollution would impact the surrounding natural areas in a negative way. With so many areas of Fort Collins filling up with houses, we have very few real open spaces for CSU students and city residents to enjoy. If given the opportunity, I think it is worth preserving this space and the surrounding natural areas.

A second idea would be to convert it into a natural space that could be utilized by CSU classes, so that it has some functionality for the school. Some extension classrooms or laboratories could be built, that would preserve some open space while serving an academic purpose. This would not negatively impact the other natural areas as much as residential housing, and could provide a fun learning environment for students.

102. The space around Hughes Stadium should be developed and maintained as open space/recreational space. It is such an important space for those uses currently- both the Frisbee golf course and the space around the stadium. Coyote, deer, and other wildlife are also frequent users of these spaces and with the proposed impending development on the corner of Drake and Overland and ever-expanding development filling in space northwards on the west side of Overland, having these wildlife and recreation areas on the edge of town are important to support those animals and prevent them moving even further into town than they already do. Please take a long look at the current use and its enrichment of the current community and its importance ecologically during this process. IF the option does not exist for the land to be used as open space/recreational space it should be used for something innovational and beneficial to the community... some type of community garden with family programming...tiny house cohousing... something that isn't just more housing or businesses, and something that honors the importance of this space.

103. Bikes

104. You should build a BMX race park!

105. Want me a BMX bahk park pls and thanks.
106. I am a homeowner living on Overland Trail. I am concerned that the Hughes stadium land will turn into yet another large housing development. Please do not litter the west side of town with more crumby condos, automobiles, noise, pollution, and traffic.

There needs to be a wildland-urban transition from the foothills to town. The space between the foothills and Overland Trail should be preserved for this purpose. Filling it with housing would be a desecration to the landscape and to the community. I would encourage the City of Fort Collins to act reverently and turn the Hughes space into public open space or natural area.

107. Please do NOT build housing on the Hughes land. This will destroy the open space around that area! This is a great collaborative opportunity for the City, County and CSU to work together to keep this land undeveloped. So many possibilities, including an area that students can use for environmental studies, etc. The idea of all of those homes on that land makes me sick. Keep this land as some kind of natural open space.

108. Preserve the existing parking as a renewable energy hub with wind/solar energy hookups provided by the city of Fort Collins for short/long-term lot rental and fee-based charging of electric vehicles, RVs and tiny homes in support of local tourism by providing an Overland Trail alternative to U.S. 287 through Fort Collins. The existing field could also be preserved and rented as a soccer field for both men and women at the collegiate/olympic/professional levels by installing metal bleachers after the concrete bleachers are removed. The existing waste removal infrastructure could be used to support waste removal for both the soccer field and renewable energy transportation hub. Women's soccer in particular is looking for non-artificial turf to play on and the high number of days of sunshine we experience makes Colorado an ideal location. The existing stadium is an ideal location for promoting local tourism with access to both the Poudre and Big Thompson canyons via Horsetooth Reservoir. The parking could also be used by alumni and family members of CSU students for short-term rentals and to provide long-term rentals and affordable housing for CSU employees, students and the homeless.

109. I would like to see this turned into some sort of active/sport outdoor recreation area, with a mix of things like the Frisbee golf course; running and biking circuits (like the Valmont Bike Park in Boulder); maybe a fitness park or open-use courts for yoga, tai chi, and other meet ups/classes; and most of all, fitness stairs that go up the hills (Like the Lyon Steps in San Francisco or the Baldwin Hills Overlook in L.A.). This all would act as both a popular tourist destination and a spot for locals to enjoy the outdoors. You could even zone in some commercial pads to allow cafes, outdoorsy shops, bike repair shops, food trucks, etc. to serve the type of people frequenting this area.

Lyon Steps: https://urbanhikersf.blogspot.com/2013/05/wordless-wednesday-lyon-street-steps.html
Valmont Bike Park: https://bouldercolorado.gov/parks-rec/valmont-bike-park
Outdoor fitness court: https://nationalfitnesscampaign.com/the-fitness-court1/
110. I'm a homeowner who lives at XXX Ross Drive Unit XXX, which is directly across from Hughes Stadium.

As a homeowner who has lived across from the stadium for four years, I am very interested in seeing the land be used for open space/recreation. I believe using the land for open space/recreation is the most consistent with its current context. Maxwell, directly to the west of the stadium, is used by walkers and hikers. The disc golf field is utilized by the community. And, the grounds of the stadium are home to hundreds of dog walkers like myself. My two beagles and I walk the area at least a few times each week. Further, dozens of families with children use the area for sledding in the winter. These are only a few examples, but they illustrate that the area is already being utilized recreationally on a daily basis by multiple different groups within our local community. Developing the area for commercial or residential use would be a loss for walkers and hikers, disc golfers, those with dogs, and families with children, among others.

111. Big mistake to build the new stadium. Hughes could have been renovated at a much lower cost, but that wasn't good enough for the bigwigs running CSU.

112. Ask CSU to annex land back to the city then let city turn the land into a beautiful golf course.

113. Of course this Stadium needs to be torn down and become open space to preserve for future generations! Look at the map, it is surrounded by natural areas, lakes, the reservoir, trails, the historic A on the hillside. Think of the legacy we will be leaving here. Do we as a community want to pass down a strip mall with a 20-year life, or open space and trails for people to enjoy for many decades to come? ICON may not like this idea because they are builders and they don't make money from this, but those who came before us had the foresight to save land as open space rather than sprawl and pave in every direction, and we are grateful, let us show our gratitude by doing the same. Fort Collins resident for 18 years!

114. Hello,

I'm writing to provide feedback on the Hughes Stadium property, as I could not attend the Neighborhood Listening Session that was held on the 20th.

As a home-owner/resident in the immediate surrounding area to the Hughes property (and as a multiple small business owner here in Fort Collins), my hope is that the property will end up being used for some type of recreation; such as a park, an open space with trails for walking/hiking or especially as a place for athletes to train such as an athletic park or even a cycling velodrome. At the very least, whether the property is leased or sold, I hope that whatever company takes over its use keeps that area's wide-open landscape and will be mindful of the environment, as it already seems very wasteful to be tearing down the stadium (which, based on my understanding, will be part of the eventual plan) as opposed to re-purposing it as some type of outdoor athletic/training facility, for example.

As Fort Collins is already becoming drastically overly congested and housing developments
(apartment buildings, etc.) are being squeezed into what feels like every inch of space that we have left, having something that is open and natural would be great to keep Fort Collins a destination for people who want to get out and explore. I talk to more and more people over the years that think about leaving Fort Collins (including myself and my family) due to the increased congestion, constant roadwork and construction...which is unfortunate. So I think something that keeps the beauty of the natural area on that property would go a long way in terms of sustainability for the community.

I'm not sure what ideas or proposals might already have been shared at the listening session, but thanks very much for your time and consideration.

115. I am a 46 year Fort Collins resident, CSU Alumni and a graduate of the College of Natural Resources and believe that if CSU is truly the “Green University” they should turn the site into open space. I intend to fight any other option.

116. I agree with the idea of using the NE corner of the property for CSU employee housing, as it would expand the residential housing directly north (Sumac St). I am much more passionate about maintaining the remaining land as open space, natural habitat and keeping the CSU disc golf course. I would support a community garden on the site, perhaps near future housing. I am in favor of demo and removal of Hughes Stadium. I am very passionate about no other development on the entire site, including turning any of it into a park or adding additional landscaping. I would like to find out if the dirt parking lots could be re-planted with prairie grasses after removing the noxious weeds. The beauty of this area and a few other open spaces is not due to resources and amenities on the ground, but in the unobstructed views of the big sky.

117. The VAST majority of the LOCAL COMMUNITY does NOT want the land to be developed into even more homes and/or condos. Part of the reason we bought our first home in this neighborhood is because it backs up into open space. Huge numbers of citizens currently use the area as a recreation area/open space not to mention it is a major gateway to Horsetooth. CSU is supposed to be pro green but they aren’t. If CSU sells this land to developers, I will officially be disgusted to be a graduate. I will never donate money to the school and my children will not attend. I know countless people in the area who feel the exact same way. CSU does not have the best interest of the citizens of Fort Collins in mind. They’ve turned into a greedy institution. They should think a little bit harder about the long term effects of this decision and not just the financial gains. Hopefully the decision hasn’t already been made and you aren’t just taking input from actual citizens as a formality. I will say that most people sadly think this to be the case. All eyes are on you, CSU. Don’t blow it.

118. Please no retail or homes. The traffic is already going to be increased with the new homes going in on Drake and Overland. I really wish someone from CSU lived over in our quiet neck of the woods and realized how awful it will be to add thousands of more cars to this area. There really is no respect from CSU regarding the quality of life in this town. Listen to the neighbors that will have to live next to this development. I would suggest keeping it an open space or a concert venue. The temporary use as a concert venue would be far less hideous than housing. It wouldn't be a concert
venue nightly so dealing with extra cars would be the occasional thing instead of daily (like a development).

119. I’m a professor emeritus at CSU. We live very near to the Hughes Stadium area. Very broadly, my recommendation is to create most of the area around Hughes into a friendly and usable open space. There might well be some spaces for small but needed housing projects. But fundamentally, I urge that the area become a public park. A generous park for future residents of Larimer County would be precious and broadly appreciated. To me, a smaller public Children’s Park might also be considered. Altogether, instead of aiming at strictly practical goals to please us now, we should think of a gift for the next generations to our remarkable community.

120. PLEASE - NO housing at the Hughes property!!! I am a local resident of the area and the consensus is that we DON’T want more housing, more traffic and more property development! The traffic has greatly increased on Overland Trail road, as well as W Mulberry and W Drake that connect to Overland. Many are concerned about additional pressure on the land, water resources and air quality. So, CSU - NO housing, please!

121. I am aware that FoCo needs more low-income / affordable housing, and hope that will be included in the re-development. The Drake & Overland Trail intersection is already very busy and dangerous. It will need to be improved when the Hughes stadium property is redeveloped. What is the plan for this? Will traffic lights be installed? Also, I am concerned about traffic on Drake and Overland Trail. Will additional bus lines be provided to reduce traffic? I believe they are needed. Will there be any efforts to mitigate the traffic noise from Drake and Overland?

122. I have read the feedback thus far and requesting the property be kept as open space is overwhelming. I hope CSU is listening this time.

123. Why doesn’t the university designate the land for preservation of natural grasses and wildlife? That would go a long way to make peace with the town and might make it easier to work with them later on!

124. I’d love to see the area become a natural area. There is already too much new development in front of Horsetooth, so it’d be nice to have some natural space preserved there.

125. The Hughes stadium property is very special in that it is next to existing open space, and a tremendous opportunity to expand our outdoor recreation opportunities. As FTC grows, the existing trails are becoming overcrowded. Selling this land to a developer is the wrong long-term decision. Please make it into open space.

126. The overall property could showcase two of the most compelling and historic areas of study at CSU: Sustainability & Agriculture. The entire property can become a mix of housing surrounding a central gathering place located where the existing field is today. This central gathering place can be a mixed-use space, activated as a pedestrian village lane, greenspace, and/or farmer’s market facility. The existing stands on both sides can be re-purposed into LIHTC affordable apartments as
well as market-rate condos that incorporate the unique concrete support arches on the west side. There are several examples of this adaptive reuse in Europe, using old soccer stadiums. Surrounding the village that was formerly the stadium, community gardens as well as CSU experimental gardens could exist side-by-side, sharing infrastructure. Additionally, value-added agriculture ventures could be incubated, such as a hop farm, commercial kitchen incubation, finished retail products, etc. Finally, a mix of housing types is essential (including tiny home village), and LMN zoning would seem to be appropriate here. Ultimately, the former Hughes Stadium property could become an agricultural village, designed and developed with advanced sustainability techniques.

127. Hi - I live within a mile of Hughes, and would love to see it preserved as open space. If not, please please please be sure that the light pollution from whatever is developed does not shut down the Drive-In Theater. The owners have said before that if Hughes is developed, that the lights would be the end of the theater. Let's keep this piece of history alive and plan any development as dark-sky approved.

128. Please keep it as open space or turn it into an amphitheater to preserve the Colorado beauty and heritage. Thank you!

129. The open space backing up to foothills is unique and of high value to the entire Fort Collins community... some combination of gardens and open space for mountain biking, hiking, dog park, etc.

130. Please preserve the area as an outdoor recreational multipurpose area. We moved here 10 years ago and were impressed by the open fields throughout the town, the great parks and the ease of driving in Fort Collins. I was so inspired by what I thought was one of the most stunning settings for a stadium. Now every vacant lot is either filled in or has a yellow sign to redevelop. The growth here is exponential as is the traffic. The town is getting over run with cheap LEGO block apartments and housing developments at the expense of green areas. There is very little to be excited about here. The town is getting uglier by the day.

In addition, the city is already one of the most polluted cities in the country and west Fort Collins has the worst air quality in the city limits. The brown cloud and the diesel smell is getting worse, let’s not add even more cars and houses. There are so many great recreational ideas for this area. I would like to see the city put in a cross country track in the winter. I ski at my local park and would love to have a groomed path. We could use more winter sports here. Please don’t pave over this gem of an area. Thank you. Please keep this gem of an area natural.

131. A considerable sized music venue would be a great fit. It would also help bring revenue to the city since anytime a major act is in the state we have to travel to Denver area. There is no decent venue in northern Colorado or within the Wyoming area. The location also has enough space to support parking for a large venue as well.
132. I feel the powers that be should be thinking outside the box. The suggestions people have provided so far are typical. Housing in Fort Collins is not and never will be affordable for most people. Open space. We have enough. Fort Collins certainly needs much more than it has to make it an appealing place to live, in reality, rather than in hype. In any case, my idea for that space is a bit unusual and maybe not practical, but would hopefully appeal to many people. I suggest that the space be turned primarily into a bicycle velodrome. This might appeal to Olympic hopefuls. Also, I imagine there would be space enough for an outdoor roller skating venue (ice skating is too common) and also a skateboard park. Maybe you could throw in a full size running track. There is a sad lack of activities here for young people and a skateboard park might be something kids would really use plus give them physical activity.

133. I’d love to see a music venue replace Hughes stadium … it’s a perfect location.

134. I am a long time resident with a family in Fort Collins. I believe Hughes stadium should remain as recreational/event type facility. The open space on all sides of the stadium are an integral and priceless commodity for the City of Fort Collins. The trails have become a major recreational area for the town and is getting more traffic each year. I am afraid if this property is developed into housing that the trail system will be overcrowded and will lose its appeal to many people. Not to mention the traffic on Overland. I believe the city should purchase this property for a once in a lifetime chance and provide a park/open space connecting a continuous area of open space to the north and south.

If it is developed into housing, then they should be mandated to upgrade and enhance the entire trail system to allow mountain biking and hiking on separate trails since it will surely become overcrowded. This is the gateway to the foothills of the Rocky Mountains, please don’t develop it into housing and ruin this area of town? Go east or north for more housing, there is plenty of open space. By the way, there is a dam just above the property, do we want houses below it? I hope profit hungry developers don’t get their way with this property, if so, this will be a big hit to the City of Fort Collins way of life. Thank you.

135. I think this is the perfect opportunity to move the basketball games offsite; Moby should be moved to the Hughes site. Think of how much better access there will be, and far fewer parking issues. This would be a great opportunity to showcase our foothills to returning Alumni. There is no good reason to keep Moby on campus; it should be torn down in favor of a parking garage for the football games.

136. I very much liked (and copied) this entry in the Coloradoan on 11/30/17. Thanks for asking! A mixed-use, walkable/bikeable neighborhood, not just residential, with a grid of narrow streets (with) bike lanes, easy transit to ... main attractions of CSU and Old Town, buildings close to the sidewalks like they are in Old Town, pedestrian-scale infrastructure like lighting and bike racks rather than gigantic wide open parking lots, and almost everything a community would need within walking/biking distance, including an elementary school, restaurants, houses of worship and a local market. With the huge size of this location, if density is done properly, it could serve tens of
thousands of people and allow Fort Collins to grow wisely instead of sprawling all the way toward Wellington.

137. I would love to see this area developed into an amphitheater as a venue for music and other entertainment. It is in a beautiful location nestled against the foothills. The music scene in Fort Collins has always been big. Being a college town with a diverse population, it is a natural fit. I think it would also be a great venue for events like New West Fest, the 4th of July Fireworks show, Craft Shows for local artisans during the warm months. Possibly a Colorado Winter Wonderland 2-3 day event with local shops having booths selling Xmas gifts and showing off what their shops sell in their Old Town stores and restaurants. Maybe even have a skating rink for the event. Very quaint, very Colorado. Stuff like this makes people feel good, puts a smile on your face. So, it could be used as a multi-use venue with lots of local events mixed in with some small-medium sized concerts featuring nationally known artists. I am envisioning a multi-use amphitheater venue that offers a variety of music concerts with special local events throughout the year. There will ALWAYS be a need for more affordable housing. Please, let’s use this this area for something special.

138. Starting as a freshman at CSU 23 years ago, I have enjoyed the open space around Hughes Stadium for walks, sports and a quiet place to read a book. Now as a resident of Quail Hollow, just across Drake, I would be heartbroken to lose that open space. Please help protect our wildlife, dark night sky, quiet atmosphere, and decent traffic flow by keeping the old Hughes an open area. I am in favor of selling to our Department of Natural Resources and other proposals that keep the area as natural and wild as possible.

139. Many residents in this area's highest priority is natural features, trails, wildlife, and open space. Please fully explore a sale to the City of Fort Collins Natural Areas Department so that it can be preserved as open space. The department has a large conservation fund and can pay fair market value. I am a neighbor, and the reason I chose this area is the access to the outdoors. Please don't pave paradise! This area, on the East side of Overland is already low-income, high density housing. Fort Collins doesn't need more housing, it needs open space preserved for future and current generations.

140. If Hughes will not be used for a music venue, as the plan is already to demolish it no matter the cost, then please let the land be incorporated into Maxwell Natural Area to provide more space for wildlife, natural resources, hiking trails, and the beauty of what most of us moved to this area for. As the City of Fort Collins continues to sprawl and become overly developed, the last thing we need is more housing to cram an overabundance of people in our idyllic town. Please think about the impacts on the natural environment here before adding more concrete and asphalt to our already warming globe.

141. Please preserve the open space and nature that is present today. Housing, commercial development, and traffic will not preserve what is disappearing in our landscape. Taking down the stadium will allow for continued use of the area for low impact recreation in a natural park setting. The area is a part of the foothills which continues to be encroached upon. Preserving this landscape will allow individuals and families to enjoy the reason why we will allow choose Colorado to be our
HUGHES ONLINE FEEDBACK FORM
COMMENTS: Aug. 28-Dec. 21, 2017

home. Please consider what our future holds. We can travel to Denver to see developed landscapes. Let us keep something natural and beautiful.

142. Not housing. Not housing. Not housing. Not housing. How is it that the stadium location is too far from campus to host football games 6 times a year, but ideal for housing? Tear it down and put in a park and open space. As it has been used by west side residents for 299 days a year.

143. I applaud CSU and the City opening an idea forum for citizens. Wish they would have done same for the on campus stadium. That blemish and personal failings by CSU to do the right thing put a damper on our home team spirits. Since 1978, we have enjoyed going to games at Hughes Stadium. More than the lure of watching the home team was the experience of that great scenic location and the chance to connect with friends at the tailgating area. I doubt very much that we will ever go to the new stadium.

I appreciated the suggestions by the people who live close to that area and many wanted to retain the natural beauty as augmented by trails and maybe a pond or park, or nature center, bike trails so it feeds into the pride of Fort Collins, which is its parks and trail system. I also think the idea of some quadrant allocated to employee housing or low income housing would be a nice marriage of creating a place for low income people that anyone would be proud to enjoy. I know of a small group in Fort Collins wanting to design a community for an underserved market.

I love Fort Collins and as a long time strategic thinker for HP and for other large organizations, I see opportunities for Fort Collins to create examples that other states follow. Stuff like closing the gap between industry and education, diversity appreciation, strengthening business and market ecosystems are just a few examples of the scope of my involvements. I'd love to see the land around Hughes Stadium used to increase the value of living here by allocating a large portion to something natural.

144. My family and I have lived our entire life in Fort Collins and we love this city. We are supportive of CSU as a key component of the Fort Collins community. The city needs to manage growth and part of that is the continuing encroachment into our foothills. We would prefer to see the area become open space to also support our wildlife. Please consider our environment by using the land for open space. Thank you.

145. I live in the Ponds Neighborhood and I moved there because of the easy access to the sledding hills at Hughes Stadium and the bike paths and running paths. I am hopeful that whatever plans will keep some of that resource for the community. I know my sons will love the Frisbee golf as they grow older. I wanted to make a suggestion of gardens and perhaps a hops field for your brewery classes and degree. I read in a magazine a few weeks ago about a small college in Texas that turned their football field into a vegetable and spices garden. [https://www.pbs.org/newshour/show/one-college-turns-football-field-farm-sees-students-transform](https://www.pbs.org/newshour/show/one-college-turns-football-field-farm-sees-students-transform)

The school now makes most of the vegetables that the school uses for its student meal plan (which
saved on costs to the school) as well as allow the students to sell the left over vegetables at a farmers market. The students loved it because it was a peaceful place to connect with the earth and the out of state recruitment went through the roof as students really identified with that type of atmosphere.

You also have significant land and you might be able to grow your own hops or grain for the beer classes and you might also start to be a leader in developing new hops in this field. I think that would fit in with the Fort Collins community and you might even be able to get sponsorship from the local breweries to assist in this process and in keeping up with the land. It would be another good partnership that you have with the community and the business community.

146. I think it would be great to keep a portion of the stadium as a music venue. This would create a unique venue and would also preserve part of the history of the site (being a stadium). Being a unique venue with a scenic view, this would be a draw for people to come watch a show. People would also be able to recall their times spent at the stadium. Additionally, parkland surrounding the stadium could act as a sound buffer and provide recreational opportunities.

147. Public bike park similar to Valmont bike park in Boulder. Funding could be raised publicly through donations/grants and maintained through city employee structure and volunteers. In addition to bike trails and obstacles, a playground and skate park could also be integrated to appeal to more recreationalists. There is plenty of space and enough interest from the Fort Collins bike community to make this a reality. The worst thing would be a high density housing development. Look at what Boulder had been able to accomplish with Valmont...while keeping it public.

148. Instead of selling the land to a developer at a discount for affordable housing, why not sell it at fair market value to the city and keep it as a natural area or open space? Use the additional money from the sale to raise the pay of your employees. $10 per hour is pathetic in this day and age. My college work study job paid more than that 20 years ago. CSU should be ashamed if their pay is that low.

149. I do not agree with the idea of building housing on the Hughes Stadium property. I don't think that Overland Trail can handle the traffic increase that would happen as a result. At best, I think the space could be reserved as a natural area. I know that the city can afford to purchase and maintain the space. Most people I know who live on the west side of town enjoy hiking the trail behind the stadium that is part of the Maxwell Natural Area. If the stadium must be demolished, perhaps it could be replaced with a live music/events venue. Fort Collins is in need of a larger venue that would attract more diverse acts than theaters such as the Aggie and Lincoln Center. As the population continues to increase, acts that attract larger audiences will be interested in making a stop in Fort Collins.

So I believe the ideal use of this land would be a mixed use live music/events venue surrounded by a natural area complete with a disc golf course, gardens, a play area, a dog park (which is greatly needed in this area) and scenic paths winding throughout. The paths could be open to pedestrian and bicycle traffic. The gardens could include community vegetable gardens as well as a home for
native flowers and plants such as are in other parks in town. Some of the space could be left open for public use such as exists in City Park. Of course in the summer it could be utilized as an outdoor event space. Having a music venue on the property could help fund the Parks department if operated by the city. As someone who lives near Hughes Stadium I have seen the deer, coyotes and other wildlife who frequent the area. I shudder to think that they would never be seen in this area again if it became built up like the east side of town.

Please respect all of what makes Fort Collins great: the nature, the wildlife and most of all its residents. Keep Fort Collins the unique place that it is by refraining from building housing and paving over one of its most scenic and enjoyable pieces of property.

150. I have lived by the stadium for 16 years and would like to see a plan that is best for our property values and traffic situation.

151. Open space, no homes at all. And please no homes or housing. Make it like Spring Creek.

152. Open space, bike and walking paths like Spring Creek Park down the road. A large fishing pond, playgrounds, mountain bike paths, outdoor concert venue, Frisbee golf course, 9 hole chipping and putting golf course. No more homes or student housing please.

153. In favor of expanding CSU equine program or a large community garden, maybe a bike trail as well. NO HOUSING WHATSOEVER.

154. Please do not consider high density housing! Natural areas, horse trails, biking, hiking should be explored! We do not need more high density housing. Consider mixed use natural areas and park areas to be used by the public.

155. I believe that CSU should follow the example of Indiana University and use the site of the stadium for an arboretum. Of course the site of their former stadium was on campus.

156. First, thanks for soliciting feedback on this process, and making it easy to do so online. I live about a half a mile from the entrance to Hughes Stadium. This area is a gorgeous natural space; as other have mentioned, that’s what made Hughes Stadium such a wonderful venue.

It's a unique, often-photographed part of the FoCo foothills that make FoCo (and CSU) a wonderful place. With that I mind, I ask that you prioritize protecting the natural character, and unique ecosystem, of this area. The sale to the City of Fort Collins as a natural space would be the best option. I think a park emphasizing trails could mesh nicely with the area as well.

157. The land Hughes is a special place, a scarce resource in this town. It's still mostly open, and right by the foothills and other wonderful open spaces. It's one of the little things that makes Fort Collins, the city that CSU calls home, a great place to live. The trails, meadows, and running access have given the public a place to recreate and enjoy nature.
Keeping this property open to the community in some fashion – an amphitheater, an open space, a garden, so on and so forth – keeps this special spot in town part of the vibrant community that makes CSU a great place to study. Developing new housing that shuts out the public & nature, reverses that.

I'm not opposed to housing development. But there are many other places to build housing around town, on land that is not quite so special. Please consider how this property can be kept a part of the community, rather than a development of ritzy housing that cordons off ever more of the foothills for the enjoyment of a few.

158. I know CSU does not want the property, but for years they held there cross country meets there. I think it should stays as it is, minus Hughes Stadium, for cross country meets for CSU and for the local high schools. CU in Boulder has a nice piece of open undeveloped land that they use for cross country meets.

159. My suggestion for the property is to do an exchange with the Gardens on Spring Creek for their property. Build your housing at the Gardens property as that area is already tuned in for additional traffic with the new stadium. Set up the Gardens at Hughes location with more room for the Gardens and build an amphitheater as part of the Gardens there. The Gardens has been fighting to put a music venue in anyway.

160. In considering options for the Hughes Stadium property, my priorities are:

1. Open space. Close-in open space and wildlife habitat is critical to a quality community. Ideally the entire site would be set aside in perpetuity, administered by City of Fort Collins Natural Areas or Larimer County Open Lands program, with restoration efforts to jumpstart natural processes on disturbed portions of the property. If not the whole acreage, let’s set aside the bulk of the property and consider the following priority on a small portion . . .

2. Cluster development. If some sort of housing and/or commercial development is deemed part of the property’s future, smart design must allow it to be clustered on a small portion of the property, ideally adjacent to existing development and roads, so that priority 1 above can also be accomplished. Clustering can reduce infrastructure costs, making development more affordable. I'll hold up my own neighborhood as an example of what's possible. Greyrock Commons, in NW Fort Collins, is a 16-acre site. Zoning would allow 30 houses to be built on 1/2-acre lots, fragmenting the entire site. However we chose to cluster the 30 houses on about 4 acres so that 75% of the property could be preserved as open space. Over 20+ years, we have worked to restore native vegetation and have seen extremely positive results in terms of diverse habitat and wildlife. The approach we took benefits residents, neighbors and the environment.

161. Open space, open space, open space! Once we develop that land and that view we will never get it back. But why are you asking for our feedback? Tom Milligan, VP of External Affairs was already quoted as saying that the space would definitely be "monetized", which means that leaving the land open and natural really isn't an option to CSU because it doesn't generate income. His
quote in last Thursday's Coloradoan ("We are going above and beyond what is traditionally done in terms of gathering input.") indicates to me that they are more interested in saying 'See, we went out of our way to ask for input.' than 'We will take your input seriously.

162. I am a 24-year resident of west Fort Collins not far from Hughes Stadium. For 22 1/2 of those years I was also employed as a Research Associate at CSU. As for the fate of the stadium property, I think the last thing most residents want to see is more development. Keeping most of the property as open space and/or park land would provide the greatest benefit to the citizens of Fort Collins. However, I am acutely aware of the high cost of housing in this region and the difficulty many CSU employees have affording a place to live. Therefore, perhaps 25% or so of the property could be developed as affordable housing for the CSU workforce.

I sincerely hope the University will take the community's input to heart, rather than completely ignoring it as they did when the decision to build the new stadium was made.

163. Do not build housing! Build housing out east or north of Wellington. Our traffic situation is a huge problem already. Either leave it open space or a multiuse recreation park. Field space for athletics is hard to find and at a premium. So an athletic park w multiple fields for soccer, lacrosse, football, etc. would be nice. Hope CSU does not decide to get greedy and develop into housing. I am a CSU alumni and am supporting the new stadium and all the other new upgrades to the University. But sometimes it feels like they want everybody to buy in to their projects but don’t really give back or share their facilities.

164. This is an opportunity for CSU and Fort Collins to do the right thing and not blindly follow the developers($). This area is far too important to the community to just throw up more condensed housing to the detriment of all else. We as West Fort Collins residents would appreciate a truly respectful community and nature oriented approach!
RESOLUTION 2018 - 072
OF THE COUNCIL OF THE CITY OF FORT COLLINS
FINDING SUBSTANTIAL COMPLIANCE AND
INITIATING ANNEXATION PROCEEDINGS FOR THE
HUGHES STADIUM ANNEXATION

WHEREAS, a written petition, together with four (4) prints of an annexation map, has been filed with the City Clerk requesting the annexation of certain property to be known as the Hughes Stadium Annexation, as more particularly described below; and

WHEREAS, the City Council desires to initiate annexation proceedings for the Hughes Stadium Annexation in accordance with the Municipal Annexation Act, Section 31-12-101, et seq., Colorado Revised Statutes.

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

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

Section 2. That the City Council hereby accepts the annexation petition for the Hughes Stadium Annexation, more particularly described as situate in the County of Larimer, State of Colorado, to wit:

A parcel of land situate in the East Half of Section 20, Township 7 North, Range 69 West of the 6th P.M., being more particularly described as follows:

Considering the East line of the Northeast Quarter of said Section 20 as bearing South 00°16'25" West and with all bearings contained herein relative thereto:

BEGINNING at the Southeast corner of Foothills Annexation to the City of Fort Collins, recorded at Book 1439 Page 17 Larimer County Clerk and Recorder, said corner also being the Northwest corner of Becksted Addition to the City of Fort Collins recorded at Reception No. 910170 Larimer county Clerk and Recorder; thence along the West line of said Becksted Addition, said line also being the East line of said Section 20, South 00°16'25" West, 1,390.85 feet to the East Quarter corner of said Section 20, said point also being the Northwest corner of Mountain Shadows Annexation to the City of Fort Collins recorded at Book 1500 Page 6 Larimer County Clerk and Recorder; thence along the West line of said Mountain Shadows Annexation, said line also being the East line of said Section 20, South 00°17'42" West, 690.54 feet to a point on the Northerly line of Pine Ridge 5th Annexation to the City of Fort Collins recorded at Reception No. 200113963 Larimer County Clerk and Recorder; thence along said Pine Ridge 5th Annexation the following three (3) courses and distances, North 89°42'16" West; thence, South 00°17'42" West; thence, South 78°29'11" West, 1,114.50 feet to a point on the Northeast corner of Pine Ridge 3rd Annexation to the City of Fort Collins, recorded at Reception No. 99006010 Larimer County Clerk and Recorder; thence along the Northerly line of said Pine Ridge 3rd Annexation, said line also being the Northerly right of way
line of Dixon Canyon Road, South 78°29'11" West, 948.91 feet; thence departing said line of Pine Ridge 3rd Annexation, and continuing along said Northerly right of way line, said line also being the Northerly line of State Board of Agriculture Lands as recorded at Reception No. 10510582, South 78°29'53" West, 623.65 feet; thence departing said line, and along the Easterly line of said State Board of Agriculture Lands, North 00°30'58" East, 878.03 feet to the Southeast corner of Maxwell Open Space Annexation to the City of Fort Collins recorded at Reception No. 90017479 Larimer County Clerk and Recorder; thence along the East line of said Maxwell Open Space Annexation, North 00°31'43" East, 1,573.16 feet; thence departing said line, and along the line of said State Board of Agriculture Lands the following six (6) courses and distances, North 57°47'42" East, 65.46 feet; thence along a curve concave to the Northwest having a central angle of 25°26'23", an arc length of 149.40 feet with a radius of 336.48 feet, and the chord of which bears North 45°04'30" East, 148.18 feet; thence along a curve concave to the Northwest having a central angle of 31°42'57", an arc length of 133.40 feet with a radius of 240.99 feet, and the chord of which bears North 16°32'04" East, 131.70 feet; thence, North 00°30'42" East, 111.20 feet; thence along a curve concave to the East having a central angle of 23°27'51", an arc length of 96.85 feet with a radius of 98.85 feet, and the chord of which bears North 11°47'37" East, 96.17 feet; thence, North 86°25'25" East, 1,487.45 feet to the Southwest corner of Foothills 3rd Annexation to the City of Fort Collins recorded at Book 1497 Page 190 Larimer County Clerk and Recorder; thence along the South line of said Foothills 3rd Annexation, North 86°25'25" East, 25.79 feet to the Southwest Corner of Foothills 2nd Annexation to the City of Fort Collins recorded at Book 1456 Page 668 Larimer County Clerk and Recorder; thence along the South line of said Foothills 2nd Annexation, North 86°25'25" East, 446.63 feet to the Southwest Corner of Foothills Annexation to the City of Fort Collins recorded at Book 1439 Page 17 Larimer County Clerk and Recorder; thence along the South line of said Foothills Annexation, North 86°25'25" East, 479.58 feet to the Point of Beginning.

The above described tract of land contains 7,130,110 square feet or 163.68 acres, more or less.

Section 3. That the City Council hereby finds and determines that the annexation petition for the Hughes Stadium Annexation is in substantial compliance with the Municipal Annexation Act in that the annexation petition contains the following:

(1) An allegation that it is desirable and necessary that such area be annexed to the municipality;

(2) An allegation that the requirements of Colorado Revised Statutes sections 31-12-104 and 31-12-105 exist or have been met;

(3) An allegation that the signers of the petition comprise more than fifty percent of the landowners in the area and own more than fifty percent of the area proposed to be annexed, excluding public streets and alleys and any land owned by the annexing municipality;
(4) The signatures of such landowners;

(5) A request that the annexing municipality approve the annexation of the area proposed to be annexed;

(6) The mailing address of each such signer;

(7) The legal description of the land owned by such signer;

(8) The date of signing of each signature; and

(9) The affidavit of the circulator of such petition that each signature therein is the signature of the person whose name it purports to be.

Section 4. That the City Council hereby finds and determines that the annexation map, four copies total, accompanying the annexation petition for the Hughes Stadium Annexation is in substantial compliance with the Municipal Annexation Act in that the map contains the following:

(1) A written legal description of the boundaries of the area proposed to be annexed;

(2) A map showing the boundary of the area proposed to be annexed;

(3) Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks; and

(4) Next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the annexing municipality and the contiguous boundary of any other municipality abutting the area proposed to be annexed.

Section 5. That the Notice attached hereto as Exhibit “A” is hereby adopted as a part of this Resolution. Said Notice establishes the date, time and place when a public hearing will be held regarding the passage of annexation and zoning ordinances pertaining to the above described property. The City Clerk is directed to publish a copy of this Resolution and said Notice as provided in the Municipal Annexation Act.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of August, A.D. 2018.

_________________________________
Mayor

ATTEST:

_________________________________
City Clerk
NOTICE

TO ALL PERSONS INTERESTED:

PLEASE TAKE NOTICE that the City Council of the City of Fort Collins has adopted Resolution 2018-072 initiating annexation proceedings for the Hughes Stadium Annexation, consisting of approximately 164 acres and generally located at the northwest corner of South Overland Trail and Dixon Canyon Road, said Annexation being more particularly described in Resolution 2018-072.

That, on October 2, 2018, at the hour of 6:00 p.m., or as soon thereafter as the matter may come on for hearing in the Council Chambers in the City Hall, 300 LaPorte Avenue, Fort Collins, Colorado, the Fort Collins City Council will hold a public hearing upon the annexation petition and zoning request for the purpose of finding and determining whether the property proposed to be annexed meets the applicable requirements of Colorado law and is considered eligible for annexation and for the purpose of determining the appropriate zoning for the property included in the Annexation. At such hearing, any persons may appear and present such evidence as they may desire.

The Petitioner has requested that the Property included in the Annexation be placed in the Transition (“T”) Zone District.

The City of Fort Collins will make reasonable accommodations for access to City services, programs and activities and will make special communication arrangements for persons with disabilities. Please call 221-6515 (V/TDD: Dial 711 for Relay Colorado) for assistance.

Dated this _____ day of _______________, A.D. 2018.

_____________________________________
City Clerk
AGENDA ITEM SUMMARY
City Council

Agenda Item 18

Agenda Item 18

AGENDA ITEM SUMMARY
City Council

August 21, 2018

STAFF
Martina Wilkinson, Assistant City Traffic Engineer
Joe Olson, City Traffic Engineer
Chris Van Hall, Legal

SUBJECT

Resolution 2018-073 Authorizing the Execution of an Intergovernmental Agreement Between the City and the Colorado Department of Transportation for Signal and Safety Improvements at the Intersection of College Avenue and Troutman Parkway.

EXECUTIVE SUMMARY

The purpose of this item is to enable the City to undertake signal and safety improvements at the intersection of College Avenue and Troutman Parkway. This roadway is also State Highway 287 and is under the jurisdiction and responsibility of the Colorado Department of Transportation (CDOT). The City will complete the improvements and CDOT will fully (100%) reimburse the City for the cost of the project.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

CDOT completed an Intersection Prioritization study on its highway system in the region and identified necessary improvements to the intersection of College Avenue and Troutman Parkway. The recommended improvements consist of new signal poles with longer mast arms, upgrades to aging conduit, the addition of flashing yellow arrows, replacing the signal cabinet, adding audible pedestrian signals, and improving pedestrian accessibility. CDOT has identified funding to complete the improvements. The contract reflects that the budgeted funding from the State is $250,000. The City will complete the work and CDOT will fully reimburse the City for the project.

CITY FINANCIAL IMPACTS

This proposal does not affect City financial resources. The improvements are fully funded by CDOT. No appropriation is necessary because the Traffic Department has sufficient budgeted and uncommitted funds to do the work and get reimbursed by CDOT for this project.
RESOLUTION 2018-073
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY AND THE COLORADO DEPARTMENT OF TRANSPORTATION FOR SIGNAL AND SAFETY IMPROVEMENTS AT THE INTERSECTION OF COLLEGE AVENUE AND TROUTMAN PARKWAY

WHEREAS, the Colorado Department of Transportation (“CDOT”) completed an Intersection Prioritization study on their highway system in the region and identified necessary improvements to the intersection of College Avenue and Troutman Parkway (the “Intersection”); and

WHEREAS, the recommended Intersection improvements consist of new signal poles with longer mast arms, upgrades to aging conduit, the addition of flashing yellow arrows, replacing the signal cabinet, adding audible pedestrian signals, and improving pedestrian accessibility (the “Project”); and

WHEREAS, CDOT and the City wish to enter into an intergovernmental agreement where the City will construct the Project at the Intersection and CDOT will fully reimburse the City for the costs to construct the Project up to the Project budget of $250,000 (the “IGA”); and

WHEREAS, Article II, Section 16 of the City Charter empowers the City Council, by ordinance or resolution, to enter into contracts with governmental bodies to furnish governmental services and make charges for such services, or enter into cooperative or joint activities with other governmental bodies; and

WHEREAS, Section 29-1-203 of the Colorado Revised Statutes provides that governments may cooperate or contract with one another to provide certain services or facilities when such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve; and

WHEREAS, the City Council has determined that IGA is in the best interests of the City and provides the public benefit of upgrading traffic signals within the City and that the Mayor be authorized to execute the IGA between the City and CDOT in support thereof.

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

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

Section 2. That the Mayor is hereby authorized to enter into the IGA, in substantially the form attached hereto as Exhibit A, together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or to effectuate the purposes of this Resolution.
Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of August, A.D. 2018.

_____________________________
Mayor

ATTEST:

_____________________________
City Clerk
CONTRACT

THIS CONTRACT made this ___ day of ________________ 20___, by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation hereinafter referred to as the “State” or “CDOT” and CITY OF FORT COLLINS hereinafter referred to as the “Contractor” or the “Local Agency.”

RECITALS

1. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
2. Pursuant to 43-2-104.5 C.R.S. as amended, the State may contract with Local Agencies to provide maintenance and construction of highways that are part of the State (or local agency) highway system.
3. Local Agency anticipates a project for the DESIGN AND CONSTRUCTION AT US 287 & TROUTMAN INTERSECTION and by the date of execution of this contract, the Local Agency and/or the State has completed and submitted a preliminary version of CDOT form #463 describing the general nature of the Work. The Local Agency understands that before the Work begins, the Local Agency must receive an official written “Notice to Proceed” prior to commencing any part of the Work. The Local Agency further understands, before the Work begins, the form #463 may be revised as a result of design changes made by CDOT, in coordination with the Local Agency, in its internal review process. The Local Agency desires to perform the Work described in form #463, as it may be revised.
4. The Local Agency has requested that State funds be made available for project FSA M455-126 (22461) US 287 & Troutman Intersection referred to as the “Project” or the “Work.” Such Work will be performed in the City of Fort Collins, Colorado, specifically described in Exhibit A.
5. The State has funds available and desires to provide funding for the Work, as shown in Exhibit C.
6. The Local Agency desires to comply with all State and other applicable requirements, including the State’s general administration of the Project through this contract, in order to obtain State funds for the Project.
7. The Local Agency has estimated the total cost of the Work and is prepared to accept the State funding for the Work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to complete the Work under the Project.
8. This contract is executed under the authority of §§ 29-1-203, 43-1-110; 43-1-116, 43-2-101(4) (c) and 43-2-144, C.R.S.
9. The Local Agency is adequately staffed and suitably equipped to undertake and satisfactorily complete some or all of the Work.
10. The Local Agency can more advantageously perform the Work.

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work
The Project or the Work under this contract shall consist of the DESIGN AND CONSTRUCTION AT US 287 & TROUTMAN INTERSECTION, in the City of Fort Collins, Colorado, as more specifically described in Exhibit A.

Section 2. Order of Precedence
In the event of conflicts or inconsistencies between this contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:
1. Special Provisions contained in Section 27 of this contract
2. This contract
3. Exhibit A (Scope of Work)
4. Exhibit B (Option Letter)
5. Exhibit C (Funding Provisions)
Section 3. Term
This contract shall be effective upon approval of the State Controller or designee, or on the date made, whichever is later. The term of this contract shall continue through the completion and final acceptance of the Project by the State and the Local Agency, or for five (5) years after the date of execution, whichever is sooner.

Section 4. Project Funding Provisions
A. The Local Agency has estimated the total cost of the Work and is prepared to accept the State funding for the Work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to complete the Work under the Project.
B. The parties hereto agree that this contract is contingent upon all funds designated for the Project herein being made available from State sources, as applicable. Should these sources fail to provide necessary funds as agreed upon herein, the contract may be terminated by either party, provided that any party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination.
C. Funding will be detailed in Exhibit C (Funding Provisions).

Section 5. Project Payment Provisions
A. The State will reimburse the Local Agency for incurred costs relative to the Project following the State’s review and approval of such charges, subject to the terms and conditions of this contract. Provided however, that charges incurred by the Local Agency prior to the date this contract is executed by the State Controller will not be charged by the Local Agency to the Project, and will not be reimbursed by the State.
B. The State will reimburse the Local Agency’s reasonable, allocable, allowable costs of performance of the Work, not exceeding the maximum total amount described in Section 5. The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the allowability and allocability of costs under this contract. The Local Agency shall comply with all such principles. To be eligible for reimbursement, costs by the Local Agency shall be:
   1. In accordance with the provisions of Section 5 and with the terms and conditions of this contract;
   2. Necessary for the accomplishment of the Work;
   3. Reasonable in the amount for the goods and services provided;
   4. Actual net cost to the Local Agency (i.e. the price paid minus any refunds, rebates, or other items of value received by the Local Agency that have the effect of reducing the cost actually incurred);
   5. Incurred for Work performed after the effective date of this contract;
C. The Local Agency shall establish and maintain a proper accounting system in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme) to assure that Project funds are expended and costs accounted for in a manner consistent with this contract and Project objectives.
   1. All allowable costs charged to the Project, including any approved services contributed by the Local Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in detail the nature of the charges.
   2. Any check or order drawn up by the Local Agency, including any item which is or will be chargeable against the Project account shall be drawn up only in accordance with a properly signed voucher then on file in the office of the Local Agency, which will detail the purpose for which said check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents shall be clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other such documents.
D. If the Local Agency is to be billed for CDOT incurred costs, the billing procedure shall be as follows:
   1. Upon receipt of each bill from the State, the Local Agency will remit to the State the amount billed no later than 60 days after receipt of each bill. Should the Local Agency fail to pay moneys due the State within 60 days of demand or within such other period as may be agreed between the parties hereto, the Local Agency agrees that, at the request of the State, the State Treasurer may withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to the State. Interim funds, until the State is reimbursed, shall be payable from the State Highway Supplementary Fund (400).
2. If the Local Agency fails to make timely payment to the State as required by this section (within 60 days after the date of each bill), the Local Agency shall pay interest to the State at a rate of one percent per month on the amount of the payment which was not made in a timely manner, until the billing is paid in full. The interest shall accrue for the period from the required payment date to the date on which payment is made.

E. The Local Agency will prepare and submit to the State, no more than monthly, charges for costs incurred relative to the Project. The Local Agency’s invoices shall include a description of the amounts of services performed, the dates of performance and the amounts and description of reimbursable expenses. The invoices will be prepared in accordance with the State’s standard policies, procedures and standardized billing format to be supplied by the State.

F. To be eligible for payment, billings must be received within 60 days after the period for which payment is being requested and final billings on this contract must be received by the State within 60 days after the end of the contract term.
   1. Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds, encumbered for the purchase of the described services. The liability of the State, at any time, for such payments shall be limited to the amount remaining of such encumbered funds.
   2. In the event this contract is terminated, final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit.
   3. Incorrect payments to the Local Agency due to omission, error, fraud or defalcation shall be recovered from the Local Agency by deduction from subsequent payment under this contract or other contracts between the State and Local Agency, or by the State as a debt due to the State.
   4. Any costs incurred by the Local Agency that are not allowable under 49 C.F.R. 18 shall be reimbursed by the Local Agency, or offset against current obligations due by the State to the Local Agency, at the State’s election.

Section 6. Option Letter Modification
An option letter may be used to authorize the Local Agency to begin a phase without increasing total budgeted funds, increase or decrease the encumbrance amount as shown on Exhibit C, and/or transfer funds from one phase to another. Option letter modification is limited to the specific scenarios listed below. The option letter shall not be deemed valid until signed by the State Controller or an authorized delegate.

A. Option to begin a phase and/or increase or decrease the encumbrance amount
   The State may authorize the Local Agency to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidents or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in Exhibit A and at the same terms and conditions stated in the original contract, with the total budgeted funds as shown on Exhibit C remaining the same. The State may increase or decrease the encumbrance amount for a particular phase by replacing the original funding exhibit (Exhibit C) in the original contract with an updated Exhibit C-1 (subsequent exhibits to Exhibit C-1 shall be labeled C-2, C-3, etc.). The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to Exhibit B. If the State exercises this option, the contract will be considered to include this option provision.

B. Option to transfer funds from one phase to another phase
   The State may permit the Local Agency to transfer funds from one phase (Design, Construction, Environmental, Utilities, ROW Incidents or Miscellaneous) to another as a result of changes to State, federal, and local match. The original funding exhibit (Exhibit C) in the original contract will be replaced with an updated Exhibit C-1 (subsequent exhibits to Exhibit C-1 shall be labeled C-2, C-3, etc.) and attached to the option letter. The funds transferred from one phase to another are subject to the same terms and conditions stated in the original contract with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to Exhibit B.
C. Option to do both Options A and B

The State may authorize the Local Agency to begin a phase as detailed in Exhibit A, and encumber and transfer funds from one phase to another. The original funding exhibit (Exhibit C) in the original contract will be replaced with an updated Exhibit C-1 (subsequent exhibits to Exhibit C-1 shall be labeled C-2, C-3, etc.) and attached to the option letter. The addition of a phase and encumbrance and transfer of funds are subject to the same terms and conditions stated in the original contract with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to Exhibit B.

Section 7. State and Local Agency Commitments

The Scope of Work in Exhibit A describes the Work to be performed and assigns responsibility of that Work to either the Local Agency or the State. The “Responsible Party” referred to in this contract means the Responsible Party as identified in the Scope of Work in Exhibit A.

A. Design [if applicable]

1. If the Work includes preliminary design or final design (the “Construction Plans”), or design work sheets, or special provisions and estimates (collectively referred to as the “Plans”), the Responsible Party shall comply with the following requirements, as applicable:
   a. perform or provide the Plans, to the extent required by the nature of the Work.
   b. prepare final design (Construction Plans) in accord with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by CDOT.
   c. prepare special provisions and estimates in accord with the State’s Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by CDOT.
   d. include details of any required detours in the Plans, in order to prevent any interference of the construction work and to protect the traveling public.
   e. stamp the Plans produced by a Colorado Registered Professional Engineer.
   f. provide final assembly of Plans and contract documents.
   g. be responsible for the Plans being accurate and complete.
   h. make no further changes in the Plans following the award of the construction contract except by agreement in writing between the parties. The Plans shall be considered final when approved and accepted by the parties hereto, and when final they shall be deemed incorporated herein.

2. If the Local Agency is the Responsible Party:
   a. The Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document “ADA Accessibility Requirements in CDOT Transportation Projects”.
   b. It shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with State requirements.
   c. It may enter into a contract with a consultant to do all or any portion of the Plans and/or of construction administration. Provided, however, that if federal-aid funds are involved in the cost of such work to be done by a consultant, that consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 CFR Part 172 and with any procedures implementing those requirements as provided by the State. If the Local Agency does enter into a contract with a consultant for the Work:
      (1) it shall submit a certification that procurement of any design consultant contract complied with the requirements of 23 CFR 172.5(1) prior to entering into contract. The State shall either approve or deny such procurement. If denied, the Local Agency may not enter into the contract.
      (2) it shall ensure that all changes in the consultant contract have prior approval by the State. Such changes in the contract shall be by written supplement agreement. As soon as the contract with the consultant has been awarded by the Local Agency, one copy of the executed contract shall be submitted to the State. Any amendments to such contract shall also be submitted.
      (3) it shall require that all consultant billings under that contract shall comply with the State’s standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
      (4) it (or its consultant) shall use the CDOT procedures described in Exhibit A to administer that design consultant subcontract, to comply with 23 CFR 172.5(b).
(5) it may expedite any CDOT approval of its procurement process and/or consultant contract by submitting a letter to CDOT from the certifying Local Agency’s attorney/authorized representative certifying compliance with 23 CFR 172.5(b).

(6) it shall ensure that its consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:

(a) “The design work under this contract shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third party beneficiary of this contract for that purpose.”

(b) “Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.”

(c) “The consultant shall review the construction contractor’s shop drawings for conformance with the contract documents and compliance with the provisions of the State’s publication, Standard Specifications for Road and Bridge Construction, in connection with this work.”

(d) The State, in its discretion, will review construction plans, special provisions and estimates and will cause the Local Agency to make changes therein that the State determines are necessary to assure compliance with State requirements.

B. Construction [if applicable]

1. If the Work includes construction, the Responsible Party shall perform the construction in accordance with the approved design plans and/or administer the construction all in accord with the Scope of Work in Exhibit A. Such administration shall include Project inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing contractor claims; construction supervision; and meeting the Quality Control requirements as described in the Scope of Work in Exhibit A.

2. The State shall have the authority to suspend the Work, wholly or in part, by giving written notice thereof to the Local Agency, due to the failure of the Local Agency or its contractor to correct Project conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.

3. If the Local Agency is the Responsible Party:

   a. it shall appoint a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform that administration. The LAPE shall administer the Project in accordance with this contract, the requirements of the construction contract and applicable State procedures.

   b. if bids are to be let for the construction of the Project, it shall advertise the call for bids upon approval by the State and award the construction contract(s) to the low responsible bidder(s) upon approval by the State.

      (1) The Local Agency has the option to accept or reject the proposal of the apparent low bidder for work on which competitive bids have been received. The Local Agency must declare the acceptance or rejection within 3 working days after said bids are publicly opened.

      (2) By indicating its concurrence in such award, the Local Agency, acting by or through its duly authorized representatives, agrees to provide additional funds, subject to their availability and appropriation for that purpose, if required to complete the Work under this Project if no additional federal-aid funds will be made available for the Project. This paragraph also applies to projects advertised and awarded by the State.

   c. If all or part of the construction work is to be accomplished by Local Agency personnel (i.e. by force account), rather than by a competitive bidding process, the Local Agency will ensure that all such force account work is accomplished in accordance with the pertinent State specifications and requirements with 23 CFR 635, Subpart B, Force Account Construction.

      (1) Such work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency and the State in advance of the Work, as provided for in 23 CFR 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.

      (2) An alternative to the above is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 CFR Part 31.
(3) Rental rates for publicly owned equipment will be determined in accordance with the State’s Standard Specifications for Road and Bridge Construction § 109.04.

(4) All force account work shall have prior approval of the State and shall not be initiated until the State has issued a written notice to proceed.

C. State’s obligations
1. The State will perform a final Project inspection prior to Project acceptance as a Quality Control/Assurance activity. When all Work has been satisfactorily completed, the State will sign a final acceptance form.
2. Notwithstanding any consents or approvals given by the State for the Plans, the State will not be liable or responsible in any manner for the structural design, details or construction of any major structures that are designed by or are the responsibility of the Local Agency as identified in the Scope of Work in Exhibit A, within the Work of this contract.

Section 8. ROW Acquisition and Relocation
If the Project includes right of way, prior to this Project being advertised for bids, the Responsible Party will certify in writing to the State that all right of way has been acquired in accordance with the applicable State and federal regulations, or that no additional right of way is required.

Any acquisition/relocation activities must comply with: all applicable federal and State statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (P.L. 91-646) and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 CFR Part 24); CDOT’s Right of Way Manual; and CDOT’s Policy and Procedural Directives.

Allocation of Responsibilities are as follows:
• Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) activities, if any, and right of way incidentals (expenses incidental to acquisition/relocation of right of way – 3114 charges);
• Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) but no participation in incidental expenses (3114 charges); or
• No federal participation in right of way acquisition (3111 charges) and relocation activities (3109 expenses).

Regardless of the option selected above, the State retains oversight responsibilities. The Local Agency’s and the State’s responsibilities for each option is specifically set forth in CDOT’s Right of Way Manual. The manual is located at http://www.dot.state.co.us/ROW_Manual/.

If right of way is purchased for a State highway, including areas of influence of the State highway, the Local Agency shall immediately convey title to such right of way to CDOT after the Local Agency obtains title.

Section 9. Utilities
If necessary, the Responsible Party will be responsible for obtaining the proper clearance or approval from any utility company, which may become involved in this Project. Prior to this Project being advertised for bids, the Responsible Party will certify in writing to the State that all such clearances have been obtained.

Section 10. Railroads
In the event the Project involves modification of a railroad company’s facilities whereby the Work is to be accomplished by railroad company forces, the Responsible Party shall make timely application to the Public Utilities Commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Responsible Party shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 CFR 646, subpart B, concerning federal-aid projects involving railroad facilities, including:
A. Executing an agreement setting out what work is to be accomplished and the location(s) thereof, and that the costs of the improvement shall be eligible for federal participation.
B. Obtaining the railroad’s detailed estimate of the cost of the Work.
C. Establishing future maintenance responsibilities for the proposed installation.
D. Prescribing future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
E. Establishing future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

Section 11. Environmental Obligations
The Local Agency shall perform all Work in accordance with the requirements of the current federal and State environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.
Section 12. Maintenance Obligations
The Local Agency will maintain and operate the improvements constructed under this contract at its own cost and expense during their useful life, in a manner satisfactory to the State. The Local Agency will make proper provisions for such maintenance obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations which define the Local Agency’s obligations to maintain such improvements. The State will make periodic inspections of the Project to verify that such improvements are being adequately maintained.

Section 13. Record Keeping
The Local Agency shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this contract. The Local Agency shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The Local Agency shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the State to inspect the Project and to inspect, review and audit the Project records.

This contract may be terminated as follows:
A. Termination for Convenience. The State may terminate this contract at any time the State determines that the purposes of the distribution of moneys under the contract would no longer be served by completion of the Project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.
B. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Local Agency of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Local Agency under this contract shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Local Agency shall be obligated to return any payments advanced under the provisions of this contract. Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined. If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency’s action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.
C. Termination Due to Loss of Funding. The parties hereto expressly recognize that the Local Agency is to be paid, reimbursed, or otherwise compensated with federal and/or State funds which are available to the State for the purposes of contracting for the Project provided for herein, and therefore, the Local Agency expressly understands and agrees that all its rights, demands and claims to compensation arising under this contract are contingent upon availability of such funds to the State. In the event that such funds or any part thereof are not available to the State, the State may immediately terminate or amend this contract.

Section 15. Legal Authority
The Local Agency warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the Local Agency to its terms. The person(s) executing this contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this contract.

Section 16. Representatives and Notice
Each individual identified below is the principal representative of the designating party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such party’s principal representative at the address set forth below. In addition to but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either party may from time to time designate
by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

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<tr>
<th>If to State</th>
<th>If to the Local Agency</th>
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<tbody>
<tr>
<td>CDOT Region: 4</td>
<td>City of Fort Collins</td>
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<tr>
<td>Jake Schuch</td>
<td>Britney Sorenson</td>
</tr>
<tr>
<td>Project Manager</td>
<td>Traffic Systems Engineer</td>
</tr>
<tr>
<td>10601 W. 10th St.</td>
<td>626 Linden Street</td>
</tr>
<tr>
<td>Greeley, CO 80634</td>
<td>Fort Collins, CO 80524</td>
</tr>
<tr>
<td>970-350-2205</td>
<td>970-416-2268</td>
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Section 17. Successors
Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 18. Third Party Beneficiaries
It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

Section 19. Governmental Immunity
Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

Section 20. Severability
To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

Section 21. Waiver
The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

Section 22. Entire Understanding
This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

Section 23. Survival of Contract Terms
Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agency.

Section 24. Modification and Amendment
This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification
of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

Section 25. Disputes
Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the contract in accordance with the Chief Engineer’s decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Section 26. Statewide Contract Management System
If the maximum amount payable to the Local Agency under this Contract is $100,000 or greater, either on the Effective Date or at any time thereafter, this §24-101-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on State contracts and inclusion of contract performance information in a statewide contract management system.

The Local Agency’s performance shall be subject to evaluation and review in accordance with the terms and conditions of this contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, policies and guidance. Evaluation and review of the Local Agency’s performance shall be part of the normal contract administration process and the Local Agency’s performance will be systematically recorded in the statewide Contract Management System. Areas of evaluation and review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of the Local Agency’s obligations under this contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of the Local Agency’s obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final evaluation, review and rating shall be rendered within 30 days of the end of the contract term. The Local Agency shall be notified following each performance evaluation and review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance evaluation and review determine that the Local Agency demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Transportation, and showing of good cause, may debar the Local Agency and prohibit the Local Agency from bidding on future contracts. The Local Agency may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of the Local Agency, by the Executive Director, upon showing of good cause.

Section 27. Special Provisions
The Special Provisions apply to all contracts except where noted in italics.
1. CONTROLLER'S APPROVAL. CRS §24-30-202(1). This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
2. FUND AVAILABILITY. CRS §24-30-202(5.5). Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. GOVERNMENTAL IMMUNITY. No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
4. INDEPENDENT CONTRACTOR. The Local Agency shall perform its duties hereunder as an independent contractor and not as an employee. Neither the Local Agency nor any agent or employee of the Local Agency shall be deemed to be an agent or employee of the State. The Local Agency and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or
otherwise provide such coverage for the Local Agency or any of its agents or employees. Unemployment insurance benefits will be available to the Local Agency and its employees and agents only if such coverage is made available by the Local Agency or a third party. The Local Agency shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. The Local Agency shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. The Local Agency shall (a) provide and keep in force workers’ compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

5. **COMPLIANCE WITH LAW.** The Local Agency shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

6. **CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.

7. **BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

8. **SOFTWARE PIRACY PROHIBITION.** Governor's Executive Order D 002 00. State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. The Local Agency hereby certifies and warrants that, during the term of this contract and any extensions, the Local Agency has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Local Agency is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.** CRS §§24-18-201 and 24-50-507. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. The Local Agency has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the Local Agency’s services and the Local Agency shall not employ any person having such known interests.

10. **VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.** [Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State’s vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. **PUBLIC CONTRACTS FOR SERVICES.** CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] The Local Agency certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), the Local Agency shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to the Local Agency that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. The Local Agency (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if the Local Agency has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §§8-17.5-102(5), by the Colorado Department of Labor and Employment. If the Local Agency participates in the Department program, the Local Agency shall deliver to the contracting State...
agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that the Local Agency has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If the Local Agency fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, the Local Agency shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. The Local Agency, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.
US 287 and Troutman Intersection
22461
Scope of Work:

The Colorado Department of Transportation (“CDOT”) will provide funding to the City of Fort Collins for Fort Collins to complete safety improvements at the intersection of College (US 287) and Troutman (Hereinafter referred to as “this work”). CDOT and Fort Collins believe it will be beneficial to perform this work because it will reduce the potential for crashes at the intersection. This intersection was listed in the top 25 of the Region 4 Intersection Prioritization Study.

The project will replace signal poles, upgrade aging conduit, add flashing yellow arrows, replace the signal cabinet, add audible pedestrian signals, and improve pedestrian accessibility.

Fort Collins will build these improvements through an access permit.
EXHIBIT B – OPTION LETTER

SAMPLE IGA OPTION LETTER
(This option has been created by the Office of the State Controller for CDOT use only)

NOTE: This option is limited to the specific contract scenarios listed below AND may be used in place of exercising a formal amendment.

Date: State Fiscal Year: Option Letter No. Option Letter CMS Routing # Option Letter SAP #

Original Contract CMS # Original Contract SAP #

Vendor name: __________________________________________________________

SUBJECT:
Option to unilaterally authorize the Local Agency to begin a phase which may include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (does not apply to Acquisition/Relocation or Railroads) and to update encumbrance amounts (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

Option to unilaterally transfer funds from one phase to another phase (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

Option to unilaterally do both A and B (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

REQUIRED PROVISIONS:

Option A (Insert the following language for use with the Option A):
In accordance with the terms of the original Agreement (insert CMS routing # of the original Agreement) between the State of Colorado, Department of Transportation and (insert the Local Agency’s name here), the State hereby exercises the option to authorize the Local Agency to begin a phase that will include (describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous) and to encumber previously budgeted funds for the phase based upon changes in funding availability and authorization. The encumbrance for (Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous) is (insert dollars here). A new Exhibit C-1 is made part of the original Agreement and replaces Exhibit C. (The following is a NOTE only, please delete when using this option. Future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.).

Option B (Insert the following language for use with Option B):
In accordance with the terms of the original Agreement (insert CMS # of the original Agreement) between the State of Colorado, Department of Transportation and (insert the Local Agency’s name here), the State hereby exercises the option to transfer funds from (describe phase from which funds will be moved) to (describe phase to which funds will be moved) based on variance in actual phase costs and original phase estimates. A new Exhibit C-1 is made part of the original Agreement and replaces Exhibit C. (The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.; and no more than 24.99% of any phase may be moved using this option letter. A transfer greater than 24.99% must be made using a formal amendment).
Option C (Insert the following language for use with Option C):
In accordance with the terms of the original Agreement ([insert CMS routing # of original Agreement]) between the State of Colorado, Department of Transportation and ([insert the Local Agency's name here]), the State hereby exercises the option to 1) release the Local Agency to begin a phase that will include (describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous); 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from ([describe phase from which funds will be moved]) to ([describe phase to which funds will be moved]) based on variance in actual phase costs and original phase estimates. A new Exhibit C-1 is made part of the original Agreement and replaces Exhibit C. ([The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.; and no more than 24.99% of any phase may be moved using this option letter. A transfer greater than 24.99% must be made using a formal amendment]).

(The following language must be included on ALL options):
The total encumbrance as a result of this option and all previous options and/or amendments is now ([insert total encumbrance amount]), as referenced in Exhibit ([C-1, C-2, etc., as appropriate]). The total budgeted funds to satisfy services/goods ordered under the Agreement remains the same: ([indicate total budgeted funds]) as referenced in Exhibit ([C-1, C-2, etc., as appropriate]) of the original Agreement.

The effective date of this option letter is upon approval of the State Controller or delegate.

APPROVALS:

State of Colorado:
John W. Hickenlooper, Governor

By: __________________________ Date: _________________
Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

State Controller
Robert Jaros, CPA, MBA, JD

By: __________________________

Date: __________________________

Form Updated: December 19, 2012
EXHIBIT C– FUNDING PROVISIONS

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work to be $250,000.00, which is to be funded as follows:

<table>
<thead>
<tr>
<th>1. BUDGETED FUNDS</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. State Funds</td>
</tr>
<tr>
<td>(100.00% of Participating Costs) $250,000.00</td>
</tr>
<tr>
<td>b. Local Agency Matching Funds</td>
</tr>
<tr>
<td>(20.00% of Participating Costs) $0.00</td>
</tr>
<tr>
<td>TOTAL BUDGETED FUNDS                                   $250,000.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. ESTIMATED PAYMENT TO LOCAL AGENCY</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. State Funds Budgeted                                $0.00</td>
</tr>
<tr>
<td>TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY                $250,000.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3. FOR CDOT ENCUMBRANCE PURPOSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Total Encumbrance Amount                            $250,000.00</td>
</tr>
<tr>
<td>b. Less ROW Acquisition 3111 and/or ROW Relocation 3109 $0.00</td>
</tr>
<tr>
<td>Net to be encumbered as follows:                       $250,000.00</td>
</tr>
</tbody>
</table>

Note: No funds are currently available. Design and Construction funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.

<table>
<thead>
<tr>
<th>WBS Element 22461.10.50</th>
<th>Performance Period Start*/End Date</th>
<th>Misc.</th>
<th>3404</th>
<th>$0.00</th>
</tr>
</thead>
</table>
| 1) Phase Performance Period Start Date; 2) The execution of the document encumbering funds for the respective phase; and 3) Local Agency receipt of the official Notice to Proceed. Any work performed before these three milestones are achieved will not be reimbursable.
B. Matching Funds
The matching ratio for this Work is 100.00% State funds to 0.00% Local Agency funds, it being understood that such ratio applies only to the $250,000.00 of total budgeted funds, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total cost of performance of the Work is less than $250,000.00, then the amounts of Local Agency and State funds will be decreased in accordance with the funding ratio described herein.

C. Maximum Amount Payable
The maximum amount payable to the Local Agency under this Agreement shall be $250,000.00 (for CDOT accounting purposes, the state funds of $250,000.00 and the Local Agency matching funds of $0.00 will be encumbered for a total encumbrance of $250,000.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

The maximum amount payable shall be reduced without amendment when the actual amount of the Local Agency’s awarded contract is less than the budgeted total of the State funds and the Local Agency matching funds. The maximum amount payable shall be reduced through the execution of an Option Letter as described in Section 6 of this contract.
AGENDA ITEM SUMMARY
August 21, 2018

STAFF

Brad Buckman, Manager, Civil Engineering
John Duval, Legal

SUBJECT

Resolution 2018-074 Approving and Authorizing the Execution of an Intergovernmental Agreement with the Town of Timnath for Financial Participation in the I-25/Prospect Interchange Improvements.

EXECUTIVE SUMMARY

The purpose of this item is to enter into an Intergovernmental Agreement with the Town of Timnath and the City of Fort Collins regarding Timnath’s portion ($2.5 million) of financial participation in the reconstruction of the interchange at I-25 and Prospect Road.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

The Colorado Department of Transportation (CDOT) is making improvements to Interstate Highway 25 (I-25) in Northern Colorado beginning in 2018. These improvements were identified in the North I-25 Environmental Impact Statement (Record of Decision 2011). The improvements include repair or replacement of two bridges, expansion of a third managed lane in each direction, and bus slip ramps and a park and ride facility at Larry Kendall Parkway in Loveland. The project boundaries are SH-14 (Mulberry) to the north and SH-402 (Loveland) to the south.

The interchange at Prospect Road and I-25 is aging infrastructure that is currently beyond its design lifespan and is failing in level of service (congestion) at peak periods of travel. Existing and planned development in the area are exacerbating congestion and safety issues. The interchange and Prospect Road are a critical gateway into central Fort Collins, as well as Timnath. City of Fort Collins staff worked closely with CDOT during preliminary design phases to ensure improvements to the interchange meet the City’s needs, design standards, and integrates with the City’s road network.

City staff worked with CDOT Project Managers, Town of Timnath, and private property interests proximate to the interchange throughout the past year and a half to develop a private-public funding partnership model to share costs related to the interchange improvements. City of Fort Collins will act as primary agent with CDOT on the funding agreement, with separate repay agreements to the City from Town of Timnath, and the private property interests. Council is being asked in this agenda item to consider the Resolution to approve an intergovernmental agreement between the Town of Timnath and the City of Fort Collins under which Timnath will agree to pay, over a twenty (20) year period, $2.5 million toward the total reconstruction cost of the interchange at I-25 and Prospect Road, with Fort Collins and Timnath also agreeing to share sales tax revenues generated from certain privately-owned properties near the interchange (the “IGA”).
Agenda Item 19

Fort Collins will begin issuing payment to CDOT in April 2019 and continue payments for a three-year period to CDOT. City of Fort Collins’ share in the interchange improvements is $8.25 million. Details of these agreements are outlined in the Financial Impacts Section below.

On July 24, 2018, the Timnath Town Council approved the IGA.

CITY FINANCIAL IMPACTS

Total cost for CDOT to improve the interchange is estimated at $31 million. This includes an additional $7 million (beyond CDOT’s basic interchange design standard) for urban design amenities required by the City of Fort Collins and to be paid by Fort Collins, Timnath and private property interests. CDOT will share in 50% of the base design portion, or $12 million. The remaining $19 million will be split across the City, property owners, and Timnath at 43.4%, 43.4%, and 13.2%, respectively. Timnath’s share is based on traffic studies with the City and property owners evenly splitting the remaining $16.5 million cost at $8.25 million each.

The City proposes to finance the cost of this project through Certificates of Participation (COPs). The principal borrowed is the balance of the $19 million costs after accounting for right-of-way (ROW) contributions and Transportation Capital Expansion Fees (TCEF). The net amount currently projected is $17.1 million but will depend on final negotiations and ROW contributions. The City would be responsible for debt service in full and then separately collect from Timnath and the property owners under the aforementioned repayment agreements. The City share includes approximately $1.4 million contribution from Transportation Capital Expansion Fees (TCEF).

There is a BFO offer in the 2019/2020 budget requesting annual funding that would meet the debt obligation of the City for the COPs. Final approval of budget is in November of 2018 and final issuance of debt and subsequent payments will not occur until 2019. A standalone ordinance will be needed for the debt issuance.

The below table displays both cost sharing and debt service sharing, subject to final negotiations:

<table>
<thead>
<tr>
<th>Partners Share Allocation ($ in millions)</th>
<th>Total</th>
<th>FC</th>
<th>Property</th>
<th>Timnath</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overpass Cost</td>
<td>$19.00</td>
<td>$8.25</td>
<td>$8.25</td>
<td>$2.50</td>
</tr>
<tr>
<td>% Share of Cost</td>
<td>43.4%</td>
<td>43.4%</td>
<td>43.4%</td>
<td>13.2%</td>
</tr>
<tr>
<td>Less ROW Value</td>
<td></td>
<td></td>
<td>$0.5</td>
<td></td>
</tr>
<tr>
<td>Less TCEF</td>
<td>$0.7</td>
<td>$0.7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Debt Obligation</td>
<td>$17.10</td>
<td>$7.55</td>
<td>$7.05</td>
<td>$2.50</td>
</tr>
<tr>
<td>% Share of Debt</td>
<td>44.2%</td>
<td>41.2%</td>
<td>14.6%</td>
<td></td>
</tr>
<tr>
<td>Borrow - Principle</td>
<td>$17.10</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Term</td>
<td>20</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest</td>
<td>4.50%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payment Share (unrounded)</td>
<td>$1,314,582</td>
<td>$580,415</td>
<td>$541,977</td>
<td>$192,190</td>
</tr>
</tbody>
</table>

Per Resolution 2018-004, approved on January 2, 2018, the City agreed to remit $17 million to CDOT, spread over the next three years, beginning in April 2019. These funds represent the total public-private share for improving the I-25 interchange at Prospect Road ($12 million for interchange improvements; $5 million for urban design elements). While the total urban design requirement is $7 million, $5 million would be included in the CDOT IGA and managed during the CDOT Corridor Improvements Project. The remaining $2 million for urban design will be included in a City-managed project to complete the irrigation and landscaping after the CDOT project is completed. CDOT will provide $12 million towards the interchange improvements, to be included in the overall North I-25 Corridor Improvements Project, segments 7 and 8.
Per Resolution 2018-005, approved on January 2, 2018, the property owners of land on each quadrant of the interchange agreed to remit $8.25 million plus applicable interest minus any contributions of rights-of-way to the City of Fort Collins. Property owners will pay for their share of the interchange improvements through a combination of mill levy, impact fees, and public improvement fees.

TIMNATH’S SHARE

Under the IGA, Timnath will pay Fort Collins a total of $2.5 million over twenty (20) years in fully amortized payments accruing interest at the rate the City will incur in the COPs transaction. Timnath’s first payment to Fort Collins for the Timnath Share under the IGA shall be due and payable one (1) year after the date Fort Collins closes on its COPs financing. The COPs Interest Rate shall begin to accrue on the principal of the Timnath Share on the date Fort Collins closes on its COPs financing. The IGA also includes a sharing of sales tax revenues as detailed in Section 3 of the IGA. This obligation to share collected sales tax revenues shall begin in the first calendar year that the total gross taxable sales generated from the Timnath Properties is equal to or greater than ten million dollars ($10,000,000).

BOARD / COMMISSION RECOMMENDATION

City staff regularly presents updates to the I-25 Corridor Improvements Project, including the Prospect interchange funding proposal, to the Transportation Board (to date February 2016, November 2016, March 2017, September 2017). While no action is taken, the Board is generally supportive of steps to improve I-25 and the Prospect interchange, and appreciates efforts to include design elements for bicycle, pedestrian and transit users.

PUBLIC OUTREACH

CDOT has conducted numerous public meetings regarding the I-25 Improvements Project throughout Northern Colorado. CDOT Project Managers also attended Fort Collins Council work sessions in December 2016 and January 2018.

ATTACHMENTS

1. Resolution 2018-004  (PDF)
2. Resolution 2018-005  (PDF)
RESOLUTION 2018-004
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE
INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF FORT COLLINS AND
THE COLORADO DEPARTMENT OF TRANSPORTATION FOR THE INTERSTATE 25
IMPROVEMENTS BETWEEN STATE HIGHWAY 14 AND STATE HIGHWAY 402

WHEREAS, Interstate 25 ("I-25") serves as the primary north-south highway connection
for North Colorado, including Fort Collins and is the primary route for the City’s regional
connectivity to commerce, health care, education and employment; and

WHEREAS, the Colorado Department of Transportation ("CDOT") will make
improvements to I-25 in Northern Colorado beginning in 2017, with actual construction
commencing in 2018 and ending in 2020; and

WHEREAS, planned improvements to I-25 between SH-14 (Mulberry) and SH-402
(Loveland) include repair or replacement of two bridges, expansion of a third managed lane in
each direction, and slip ramps and a park and ride at Larry Kendall Parkway in Loveland (the
"North I-25 Improvements Project"); and

WHEREAS, the City has previously entered into an Intergovernmental Agreement dated
April 14, 2017, with CDOT to commit $2.25 million of local funds to support the North I-25
Improvements Project as part of the 2017-2018 budget (the "IGA") and agreed to remit an
additional $2.2 million in funds over a five-year period to accelerate the Project pursuant to
Resolution 2016-077, which authorized the Mayor to execute an Intergovernmental Agreement for
Funding I-25 Improvements with Larimer County and seven other municipalities; and

WHEREAS, the Prospect/I-25 Interchange (the "Interchange") has failing levels of service
at peak travel times and there is an opportunity for the City to partner with CDOT, the Town of
Timnath, and property owners around the Interchange (the "Property Owners") to make
improvements to the Interchange as part of the North I-25 Improvements Projects, which timing
would result in an estimated savings of $7 million in the cost of the Interchange improvements;
and

WHEREAS, CDOT has proposed an amendment to the IGA whereby the City will
contribute a total $19.25 million for the Northern I-25 Improvement Projects, including
improvements to the Interchange, and CDOT will reconstruct the existing diamond interchange at
I-25 and Prospect Road, including reconstruction of the ramps, bridge and Prospect Road (the
"Amendment"); and

WHEREAS, under the Amendment, work on improving the Interchange is expected to start
after July 1, 2018 and will result in a reconstructed Prospect Road with four through lanes, a raised
median, left turn lanes, and pedestrian and bicycle facilities; and

WHEREAS, to fund the additional $17 million for the Interchange improvements under
the Amendment, the City will be entering into separate agreements with the Town of Timnath and
Property Owners where the Town of Timnath will pay up to an estimated $2.5 million toward the Interchange improvements, the Property Owners are anticipated to pay an estimated $7.05 million toward the Interchange improvements after receiving credit for right-of-way dedications and credit for transportation capital expansion fees, and the City will pay the remaining $8.1 million toward the Interchange improvements; and

WHEREAS, Article II, Section 16 of the City Charter empowers the City Council, by ordinance or resolution, to enter into contracts with governmental bodies to furnish governmental services and make charges for such services, or enter into cooperative or joint activities with other governmental bodies; and

WHEREAS, Section 29-1-203 of the Colorado Revised Statutes provides that governments may cooperate or contract with one another to provide certain services or facilities when such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve; and

WHEREAS, the City Council has determined that Interchange improvements and the Amendment are necessary for the public health, safety and welfare; and

WHEREAS, the City Council has also determined that the Interchange improvements to be funded under the Amendment serve the public purpose of expanding and facilitating I-25 as a critical and primary route connecting the City and its citizens to commerce, health care, education and employment.

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

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

Section 2. That the Amendment is hereby approved and the Mayor is authorized to enter into it in substantially the form attached hereto as Exhibit "A", together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or to effectuate the purposes of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 2nd day of January, A.D. 2018.

Mayor

ATTEST:

City Clerk

SEAL
STATE OF COLORADO AMENDMENT
Amendment #: 1 Project #: 21506
SIGNATURE AND COVER PAGE

<table>
<thead>
<tr>
<th>State Agency</th>
<th>Amendment Routing Number</th>
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</thead>
<tbody>
<tr>
<td>Department of Transportation, Colorado Bridge Enterprise</td>
<td>17-HA4-XC-00072-M0002</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Original Agreement Routing Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>CITY OF FORT COLLINS</td>
<td>17-HA4-XC-00072</td>
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<table>
<thead>
<tr>
<th>Agreement Maximum Amount</th>
<th>Agreement Performance Beginning Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A--Revenue Contract</td>
<td>The later of the effective date or April 14, 2017</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Initial Agreement expiration date</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 13, 2022</td>
</tr>
</tbody>
</table>

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

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

**CONTRACTOR**
City of Fort Collins

By: ____________________________
Name of Authorized Individual

Title: ____________________________
Official Title of the Authorized Individual

By: ____________________________
Signature

Date: ____________________________

**STATE OF COLORADO**
John W. Hickenlooper, Governor
Department of Transportation

Joshua Laipply, P.E., Chief Engineer
(For): Shailen P. Bhatt, Executive Director

Date: ____________________________

In accordance with §24-30-202 C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.

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

By: ____________________________
Office of the State Controller, Controller Delegate

Date: ____________________________

Printed name of signatory
1) PARTIES
Amendment (the "Contract") is entered into by and between the Contractor, CITY OF FORT COLLINS (hereinafter called "Contractor") and the State of Colorado, for the use and benefit of the Department of Transportation and the Colorado Bridge Enterprise (hereinafter collectively called "State").

2) TERMINOLOGY
Except as specifically modified by this Amendment, all terms used in this Amendment that are defined in the Agreement shall be construed and interpreted in accordance with the Agreement.

3) EFFECTIVE DATE AND ENFORCEABILITY
A. Amendment Effective Date
This Amendment shall not be valid or enforceable until the Amendment Effective Date shown on the Signature and Cover Page for this Amendment. The State shall not be bound by any provision of this Amendment before that Amendment Effective Date, and shall have no obligation to pay Contractor for any Work performed or expense incurred under this Amendment either before or after of the Amendment term shown in §3.B of this Amendment
B. Amendment Term
The Parties’ respective performances under this Amendment and the changes to the Agreement contained herein shall commence on the Amendment Effective Date shown on the Signature and Cover Page for this Amendment and shall terminate on the termination of the Agreement.

4) PURPOSE
A. The Parties entered into the Agreement for Local Agency making funds available for improvements to North Interstate-25, Project SH 402 - SH 14 (21506).
B. The Parties now desire to delete Exhibit A in its entirety. This will be replaced with Exhibit A-1 with an updated CITY OF FORT COLLINS not to exceed reimbursement amount.

5) MODIFICATIONS
Exhibit A – Scope of Work
Exhibit A – Scope of Work is removed and replaced in its entirety with Exhibit A-1 attached hereto and incorporated herein by reference. Upon execution of this Amendment, all references in the Agreement to Exhibit A will be replaced with Exhibit A-1.

6) LIMITS OF EFFECT
This Amendment is incorporated by reference into the Agreement, and the Agreement and all prior amendments or other modifications to the Agreement, if any, remain in full force and effect except as specifically modified in this Amendment. Except for the Special Provisions contained in the Agreement, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Agreement or any prior modification to the Agreement, the provisions of this Amendment shall in all respects supersede, govern, and control. The provisions of this Amendment shall only supersede, govern, and control over the Special Provisions contained in the Agreement to the extent that this Amendment specifically modifies those Special Provisions.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK
North I-25

Fort Collins - $12M Contribution for Interchange; $5M Contribution for the urban design elements (aesthetic/landscape enhancements) for the interchange ($17M Total Contribution)

Scope of Work

Reconstruct the existing diamond interchange at I-25 and Prospect Road, including reconstruction of the ramps, bridge, and Prospect Road. Prospect Road will be reconstructed to a configuration with four through lanes, with a raised median, left turn lanes, and pedestrian and bicycle facilities. Work is expected to start on the interchange after July 1, 2018.

Urban design elements to be included in the North I-25 Project are per the “CDOT Project” column in the table below.

<table>
<thead>
<tr>
<th>ITEM DESCRIPTION</th>
<th>CDOT PROJECT</th>
<th>CITY/TOWN PROJECT</th>
</tr>
</thead>
<tbody>
<tr>
<td>BRIDGE ENHANCEMENTS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Structural Concrete Stain on Bridge Curb, Girders, MSE Walls</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Upgraded Pedestrian Rail on Bridge</td>
<td>X</td>
<td></td>
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<tr>
<td>Median &amp; Pork Chop Island Cover Material (Color Concrete)</td>
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<td></td>
</tr>
<tr>
<td>Irrigation Sleeves and Pull Boxes</td>
<td>X</td>
<td></td>
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<tr>
<td>GORE AREAS AND RAMPS</td>
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</tr>
<tr>
<td>Earthwork/Import (related to Landscape/Urban Design)</td>
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<td></td>
</tr>
<tr>
<td>Stone Outcrops (including design, mock ups, installation)</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Boulders</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Cobble Swales</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Landscape Design</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Soil Conditioning</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Fine Grading</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Turf Reinforcement Mat</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Seed</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Boulders</td>
<td></td>
<td>X</td>
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<tr>
<td>Landscaping (Trees, Shrubs, Ornamental Grasses, Perennials, Mulch, etc)</td>
<td>X</td>
<td></td>
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<tr>
<td>Irrigation Design</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Irrigation Tap, Meter &amp; Backflow</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Irrigation Sleeves</td>
<td>X</td>
<td></td>
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<tr>
<td>Irrigation System</td>
<td>X</td>
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</tr>
<tr>
<td>PROSPECT ROAD</td>
<td></td>
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<tr>
<td>Prospect Rd. Median - Perforated Pipe Underdrain</td>
<td>X</td>
<td></td>
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<tr>
<td>Prospect Rd. Median – Membrane</td>
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<tr>
<td>Prospect Rd. Median – Rock Filter Material</td>
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<tr>
<td>Prospect Rd. Median - Topsoil</td>
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<tr>
<td>Prospect Rd. Median – Double Curb</td>
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<tr>
<td>Electrical conduit for City Street Lights</td>
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<td></td>
</tr>
<tr>
<td>Electrical controls and service for City Street Lights</td>
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</table>
City Street Lights/Electrical | X
---|---
Landscape Design | X
Soil Conditioning | X
Fine Grading | X
Seed | X X
Turf Reinforcement Mat | X X
Boulders | X
Trees, Shrubs, Ornamental Grasses & Perennials, Mulch, etc | X
Irrigation Design | X
Irrigation Tap, Meter & Backflow | X
Irrigation Sleeves | X
Irrigation Sleeves | X
Monument Sign - Fort Collins | X
Monument Sign - Timnath | X

**Technical Requirements:**

**Design:**

- CDOT shall consult with the Local Agency throughout the preparation of the Plans and submit to the Local Agency for its review the proposed Plans prior to CDOT's acceptance of Release for Construction Plans. The Local Agency must provide comments on the proposed Plans within 10 calendar days after the proposed Plans are referred to it. CDOT will require the Design Build Contractor to address all issues identified by the Local Agency provided those issues are not in conformance with the Contract Documents.

- The Local Agency shall waive all review fees for design.

- The Local Agency shall not require additional design reviews beyond those required by the contract.

**Construction:**

- The Local Agency shall waive all permit fees for street use permits.

- The Local Agency requires that Infrastructure that becomes City of Fort Collins inventory follow inspection requirements per LCUASS Standards.

- The Local Agency requires that infrastructure within City of Fort Collins Right-of-Way be follow final acceptance requirements per LCUASS Standards.

- CDOT shall consult with the Local Agency for its review of traffic control plans related to road closures.

- The Local Agency requires 7 calendar days of advance notification for road closures.
North Interstate-25 Phase 1 Project

Funding Table / Payment Schedule for City of Fort Collins

<table>
<thead>
<tr>
<th>Name of Local Agency / Funding Partner</th>
<th>2016 Amount</th>
<th>2017 Date of Payment</th>
<th>2018 Amount</th>
<th>2019 Date of Payment</th>
<th>2020 Amount</th>
<th>2020 Date of Payment</th>
<th>Total Contribution Amount</th>
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<tbody>
<tr>
<td>City of Fort Collins - Overall Project Scope</td>
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<td>December</td>
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<td>December</td>
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<tr>
<td>City of Fort Collins - Prospect Interchange</td>
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<td>$4,000,000.00</td>
<td>December</td>
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<tr>
<td>City of Fort Collins - Urban Design Elements</td>
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<td>$1,866,666.67</td>
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<td>$5,000,000.00</td>
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<td>CITY OF FORT COLLINS - TOTAL</td>
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<td></td>
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<td>$19,250,000.00</td>
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Packet Pg. 292
RESOLUTION 2018-005
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING AND AUTHORIZING THE EXECUTION OF
A MEMORANDUM OF UNDERSTANDING WITH BENEFITTED
PROPERTY OWNERS REGARDING FINANCIAL PARTICIPATION
IN THE I-25/PROSPECT INTERCHANGE IMPROVEMENTS

WHEREAS, the interchange at Interstate Highway 25 and Prospect Road (the
"Interchange") is owned by the State of Colorado and operated and maintained by the Colorado
Department of Transportation ("CDOT"); and

WHEREAS, the Interchange is within the City's boundaries and adjacent to its four (4)
corners are several undeveloped parcels of privately-owned land, which parcels are also within the
City's boundaries; and

WHEREAS, Fort Collins/I-25 Interchange Corner, LLC ("FCIC") is the fee title owner of
a parcel of land adjacent to the northwest corner of the Interchange (the "FCIC Parcel"); and

WHEREAS, Gateway at Prospect Apartments, LLC ("GAPA") is the fee title owner of a
parcel of land also adjacent to the northwest corner of the Interchange (the "GAPA Parcel"); and

WHEREAS, Land Acquisition and Management, LLC represents a group of tenants in
common ("LAAM Owners") who are the fee title owners of the three (3) parcels of land adjacent
to the northeast corner of the Interchange (the "LAAM Owners Parcels"); and

WHEREAS, Paradigm Properties LLC ("Paradigm") is the fee title owner of the two (2)
parcels of land adjacent to the southeast corner of the Interchange (the "Paradigm Parcels"); and

WHEREAS, the Colorado State University Research Foundation ("CSURF") is the fee title
owner of the two (2) parcels of land adjacent to the southwest corner of the Interchange (the
"CSURF Parcels"); and

WHEREAS, FCIC, GAPA, the LAAM Owners, Paradigm and CSURF are hereafter
collectively referred to as the "Property Owners" and the FCIC Parcel, GAPA Parcel, the LAAM
Owners Parcels, Paradigm Parcels and CSURF Parcels are hereafter collectively referred to as the
"Properties"; and

WHEREAS, CDOT has notified the City that it is planning a project to significantly modify
and improve the Interchange by reconstructing its ramps and bridge and by reconstructing Prospect
Road to a configuration with four (4) through lanes, a raised median, left turn lanes and pedestrian
and bicycle facilities, and CDOT is expected to begin construction of this project after July 1, 2018
(the "Project"); and

WHEREAS, the Project will also include certain urban design improvements requested by
the City that are typically required under the City’s development standards (the "Urban Design
Features"); and

-1-
WHEREAS, the Project and the Urban Design Features will provide significant public benefits to the City and its residents, and they will benefit the Property Owners by materially increasing the value of their Properties; and

WHEREAS, CDOT estimates that the total cost of the Project, as originally proposed by it, will be approximately $24 million, but it has indicated that it will only provide $12 million to fund the Project, leaving a $12 million deficit; and

WHEREAS, the Urban Design Features planned by the City will add an additional $7 million to the cost of the Project, bringing the total Project cost to $31 million; and

WHEREAS, CDOT has asked the City to participate in the Project by funding the $12 million deficit originally identified by CDOT, but the City is only willing to consider funding this deficit if the additional $7 million of Urban Design Features are included in the Project and if the Property Owners share in funding this $19 million deficit; and

WHEREAS, the City has also asked Timnath to share in funding this deficit because Timnath will also experience significant public benefits from the Project; and

WHEREAS, the City and Timnath have been negotiating a separate agreement under which Timnath would reimburse the City for up to $2.5 million of the $19 million deficit to be paid over a twenty (20) year period, thereby leaving a $16.5 million deficit (the "Remaining Deficit"); and

WHEREAS, the City and the Property Owners have negotiated the "Memorandum of Understanding Pertaining to Development of Interstate Highway 25 and Prospect Road Interchange" attached as Exhibit "A" and incorporated by reference (the "MOU"); and

WHEREAS, the City and the Property Owners acknowledge in the MOU that the MOU is not a binding agreement, but that they nevertheless intend to cooperate in good faith to negotiate and enter into a binding agreement under which the parties would agree to equally share in the payment of the Remaining Deficit; and

WHEREAS, the MOU contemplates that the City and the Property Owners will equally share the Remaining Deficit by the Property Owners agreeing to reimburse the City over time a collective fifty-percent (50%) share estimated to be approximately $8.25 million, plus interest, (the "Shared Deficit") to be paid from a combination of property tax, public improvement fees ("PIF") and other fees imposed on and collected from future development occurring on the Properties as provided in the service plan of a proposed metropolitan district to be organized under the Colorado Special District Act (the "District Act") identified in the MOU as the "I-25/Prospect Interchange Metro District" (the "I-25/Prospect Interchange Metro District"); and

WHEREAS, the MOU also contemplates that the City will credit against the Property Owners' portion of the Shared Deficit the value of the Property Owners' land dedicated to CDOT for the Project and the Urban Design Features and a share of the transportation capital expansion fees anticipated to be paid to the City under Fort Collins Code Section 7.5-32 related to the future development of the Properties (the "Owners' Share"); and
WHEREAS, the Property Owners also wish to form other metropolitan districts under the District Act to use to construct and fund some or all of the basic public infrastructure needed in the future development of their individual Properties, whether such development is commercial or residential, and for maintenance of such infrastructure and for all other purposes allowed by the District Act and the approved service plans (the “Development Metro Districts”); and

WHEREAS, the I-25/Prospect Interchange Metro District and the Development Metro Districts shall be collectively referred to as the “Metro Districts”; and

WHEREAS, the Metro Districts cannot be created under the District Act without the Council of the City of Fort Collins (the “City Council”) approving a service plan for each of the Metro Districts (each a “Service Plan” and collectively “Service Plans”) which, together with the District Act, will govern the operation of the Metro Districts and their authority to impose, collect, spend and pledge property taxes and fees; and

WHEREAS, the Service Plans will also delineate the type of basic public infrastructure and services the Metro Districts will be authorized to provide and how the Metro Districts will cooperate with each other, the City and the Property Owners to fund regional and local infrastructure; and

WHEREAS, the Property Owners are further willing, subject to the City Council’s approval of the Service Plans, to record against their respective Properties for the benefit of a party to be determined in accordance with applicable law, a covenant, free and clear of all prior liens and encumbrances, except real property taxes, imposing a PIF at a rate from 0.5 % to 1.0%, net of any administrative fees for collection, on all future retail sales on the Properties that are also subject to the City’s sales tax under Article III of City Code Chapter 25, (the “PIF Covenant”) and for that collected PIF to be irrevocably pledged, either in the PIF Covenant itself or in a separate assignment and pledge document executed by the original beneficiary of the PIF Covenant, for the payment of the Owners’ Share; and

WHEREAS, the actual amounts of the PIF, fees and property tax that are contemplated to be paid to the City on an annual basis for the Owners’ Share will be calculated based on a payout of approximately twenty (20) years; and

WHEREAS, the City Council hereby finds that the MOU is necessary for the public’s health, safety and welfare and is in the best interests of the City and its residents, businesses and public and private organizations.

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

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

Section 2. That the MOU is hereby approved and the Mayor is authorized to execute it substantially in the form attached as Exhibit “A”, together with such revisions and amendments as the City Manager, in consultation with the City Attorney, determines to be
necessary and appropriate to protect the interests of the City or to effectuate the purposes of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 2nd day of January, A.D. 2018.

Mayor

ATTEST:

City Clerk
MEMORANDUM OF UNDERSTANDING PERTAINING TO DEVELOPMENT OF INTERSTATE HIGHWAY 25 AND PROSPECT ROAD INTERCHANGE

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this _____ day of January, 2018, (this “MOU”) by and between the City of Fort Collins, Colorado, a Colorado home rule municipality (the “City”); Fort Collins/I-25 Interchange Corner, LLC, a Colorado limited liability company (“FCIC”); Gateway at Prospect Apartments, LLC, a Colorado limited liability company (“GAPA”); Land Acquisition and Management, LLC, a Colorado limited liability company (“LAAM”) representing a group of tenants in common (collectively, the “LAAM Owners”); Paradigm Properties LLC, a California limited liability company (“Paradigm”); and Colorado State University Research Foundation, a Colorado non-profit corporation (“CSURF”). The City, FCIC, GAPA, the LAAM Owners, Paradigm and CSURF shall hereafter be collectively referred to as the “Parties.”

RECITALS

WHEREAS, the interchange at Interstate Highway 25 and Prospect Road (the “Interchange”) is owned by the State of Colorado and operated and maintained by the Colorado Department of Transportation (“CDOT”); and

WHEREAS, the Interchange is within the City’s boundaries and adjacent to its four (4) corners are several undeveloped parcels of privately-owned land, which parcels are also within the City’s boundaries; and

WHEREAS, FCIC is the fee title owner of a parcel of land adjacent to the northwest corner of the Interchange, which parcel is legally described and depicted in the attached Exhibit “A” incorporated herein (the “FCIC Parcel”); and

WHEREAS, GAPA is the fee title owner of a parcel of land adjacent to the northwest corner of the Interchange, which parcel is legally described and depicted in the attached Exhibit “B” incorporated herein (the “GAPA Parcel”); and

WHEREAS, the LAAM Owners are the fee title owners of the three (3) parcels of land adjacent to the northeast corner of the Interchange, which parcels are legally described and depicted in the attached Exhibit “C” incorporated herein (the “LAAM Owners Parcels”); and

WHEREAS, Paradigm is the fee title owner of the two (2) parcels of land adjacent to the southeast corner of the Interchange, which parcels are legally described and depicted in the attached Exhibit “D” incorporated herein (the “Paradigm Parcels”); and

WHEREAS, CSURF is the fee title owner of the two (2) parcels of land adjacent to the southwest corner of the Interchange, which parcels are legally described and depicted in the attached Exhibit “E” incorporated herein (the “CSURF Parcels”); and

WHEREAS, hereafter, FCIC, GAPA, the LAAM Owners, Paradigm and CSURF shall be collectively referred to as the “Property Owners” and the FCIC Parcel, GAPA Parcel, the LAAM Owners Parcels, Paradigm Parcels and CSURF Parcels shall be collectively referred to as the “Properties”; and
WHEREAS, CDOT has notified the City that it is planning a project to significantly modify and improve the Interchange by reconstructing its ramps and bridge and by reconstructing Prospect Road to a configuration with four (4) through lanes, a raised median, left turn lanes and pedestrian and bicycle facilities, with this work to include certain enhanced urban design elements, and expected to begin construction after July 1, 2018 (the “Project”); and

WHEREAS, the Project will provide significant public benefits to the City and its residents, and it will benefit the Property Owners by materially increasing the value of the Properties; and

WHEREAS, the City, the Property Owners and the Town of Timnath, Colorado (“Timnath”) intend to share in the cost of certain urban design improvements in the Project required under the City’s development standards (the “Urban Design Features”); and

WHEREAS, CDOT estimates that the total cost of the Project, as originally proposed by it, will be approximately $24 million, but it has indicated that it will only provide $12 million to fund the Project, leaving a $12 million deficit; and

WHEREAS, the Urban Design Features planned by the City will add an additional $7 million to the cost of the Project, bringing the total Project cost to $31 million; and

WHEREAS, CDOT has asked the City to participate in the Project by funding the $12 million deficit originally identified by CDOT, but the City is only willing to consider funding this deficit if the additional $7 million of Urban Design Features are included in the Project and if the Property Owners share in funding this $19 million deficit; and

WHEREAS, the City has also asked Timnath to share in funding this deficit because Timnath will also experience significant public benefits from the Project; and

WHEREAS, the City and Timnath are attempting to negotiate a separate agreement in which Timnath would reimburse the City for $2.5 million of the $19 million deficit to be paid over a twenty (20) year period, a copy of which agreement is attached as Exhibit “F” and incorporated herein, (the “Timnath Agreement”) thereby leaving a $16.5 million deficit (the “Remaining Deficit”); and

WHEREAS, the City and the Property Owners have agreed to equally share the Remaining Deficit by the Property Owners agreeing to reimburse the City over time a collective fifty-percent (50%) share estimated to be approximately $8.25 million, plus interest as hereinafter provided, from a combination of property tax, public improvement fees (“PIF”) and Project Fees (defined below), as will be set forth in the service Plan of the I-25/Prospect Interchange Metro District (defined below), imposed on and collected from development occurring on the Properties (the “Shared Deficit”); and

WHEREAS, the City has also agreed, as described in Sections 3 and 4 below, to credit against the Property Owners’ portion of the Shared Deficit the value of the Property Owners’ land dedicated to CDOT for the Project, including the dedication of rights of way for the Project and Urban Design Features, and a share of the transportation capital expansion fees that are anticipated to be paid to the City pursuant to Fort Collins Code Section 7.5-32 related to the future development of the Properties (the “Owners’ Share”); and
WHEREAS, the Property Owners wish to fund their payment of the Owners’ Share by including all of the Properties in a master metropolitan district (the “I-25/Prospect Interchange Metro District”), which will be created, organized and operated under Title 32 of the Colorado Revised Statutes (“District Act”); and

WHEREAS, the Property Owners also wish to use other metropolitan districts to construct and fund some or all of the basic public infrastructure that will be needed in connection with the future development of their individual Properties, whether such development is commercial or residential in nature, as well as for maintenance of such infrastructure and for all other purposes allowed by the District Act (the “Development Metro Districts”); and

WHEREAS, the I-25/Prospect Interchange Metro District and the Development Metro Districts shall be collectively referred to herein as the “Metro Districts”; and

WHEREAS, because the formation of each of the Metro Districts contemplated hereby will affect the development and tax base of the Properties and will provide funding for the Project and other public improvements, each of the Metro Districts will contribute to essential regional and local public infrastructure that will have significant community benefits, including the provision of transportation improvements within the City; and

WHEREAS, under the District Act the Metro Districts cannot be created without the Council of the City of Fort Collins (the “City Council”) approving a service plan for each of the Metro Districts (each a “Service Plan” and collectively “Service Plans”) which, together with the District Act, will govern the operation of the Metro Districts and, among other things, their authority to impose, collect, spend and pledge property taxes and Project and District Fees; and

WHEREAS, the Service Plans will also delineate the type of basic public infrastructure and services the Metro Districts are authorized to provide and how the Metro Districts are intended to cooperate with each other, the City and the Property Owners to fund regional and local infrastructure; and

WHEREAS, the Property Owners are further willing, subject to the City Council’s approval of the Service Plans, to record against their respective Properties for the benefit of a party to be determined in accordance with applicable law, a covenant, free and clear of all prior liens and encumbrances, except real property taxes, imposing a PIF at a rate from 0.5 % to 1.0%, net of any administrative fees for collection, on all future retail sales on the Properties that are also subject to the City’s sales tax under Article III of City Code Chapter 25, (the “PIF Covenant”) and for that collected PIF to be irrevocably pledged, either in the PIF Covenant itself or in a separate assignment and pledge document executed by the original beneficiary of the PIF Covenant, for the payment of the Owners’ Share; and

WHEREAS, the actual amounts of the PIF, Project Fees and property tax to be paid to the City on an annual basis for the Owners’ Share will be calculated based on a payout of approximately twenty (20) years; and

WHEREAS, this MOU sets forth the Parties’ understanding of how the Owners’ Share will be funded and paid over time to the City from the sources identified herein.
NOW, THEREFORE, the Parties hereby set forth their acknowledgements, understandings and intentions under this MOU:

1. **Purpose.** The Parties acknowledge and agree that, except as specifically set forth below, the purpose of this MOU is not to bind the Parties to any obligation but to set forth the Parties’ intention to cooperate in good faith to negotiate a binding agreement under which the Property Owners will pay the Owners’ Share to the City (the “**Binding Agreement**”), including how the Property Owners intend to use the Metro Districts to pay eligible Project and other public improvement costs.

2. **Metro Districts.**

   a. The Parties agree that the Binding Agreement will set out the process and timeline by which the Property Owners will submit to the City a Service Plan for each of the Metro Districts for City staff review and City Council’s subsequent formal consideration. Nothing contained herein or in the Binding Agreement shall be deemed to limit the discretion of the City Council in the public hearing process as it considers resolutions of approval of the Service Plans. Each Property Owner may prepare Service Plans and petition the formation of Development Metro Districts as separate “taxing” and “service” districts. Such Service Plans shall be consistent with and satisfy the requirements of the District Act and include, without limitation, the following provisions:

      i. Authority for the Development Metro Districts to impose a property tax levy of up to 80 mills less the amount of the Project Mill Levy (defined below) on the Properties and all other taxable property within the boundaries of the Development Metro Districts to be used to fund the construction, operation and maintenance of public improvements, including basic infrastructure, related to the future development of the Properties (the “**Development Mill Levy**”);

      ii. Authority for the I-25/Prospect Interchange Metro District to impose a property tax mill levy at a rate not less than 5.0 mills nor greater than 10.0 mills, net of administrative costs of collection, on the Properties and all other taxable property within the boundaries of the I-25/Prospect Interchange Metro District (the “**Project Mill Levy**”).

      iii. Authority for the I-25/Prospect Interchange Metro District to impose development fees on future development on the Properties in amounts agreed to in the Binding Agreement, in an amount to be determined but not to exceed $5,000 per net developable acre, payable at the time of issuance of each vertical development permit, (“**Project Fees**”) and to enter into an intergovernmental agreement with the City to irrevocably pledge all of the revenues from the Project Mill Levy, the Project Fees and the PIF received by the I-25/Prospect Interchange Metro District to the payment of the costs of the Project in an amount not greater than the Owners’ Share (the “**Capital Pledge Agreement**”). The Parties agree to proceed in good faith to
negotiate substantially final forms of the Capital Pledge Agreement and the Binding Agreement for attachment as exhibits to the Service Plan for the I-25/Prospect Interchange Metro District, giving specific attention to (a) the method of calculation and adjustment, if any, of the Owners’ Share, (b) the timing, duration, and terms of payment from the above-referenced sources of the obligation of the I-25/Prospect Interchange Metro District under the Capital Pledge Agreement; and (c) the effect of delays, if any, in the issuance and publication by the Federal Emergency Management Agency of a final Letter of Map Revisions for the Boxelder Creek Drainage upon such payments. The Binding Agreement and the Service Plans will also reserve to each Metro District the right to charge additional fees or charges for services, programs or facilities furnished by such Metro Districts in addition to those identified herein as being related to the Project ("District Fees"), the revenue from which shall not be pledged to the City;

iv. Condition that the I-25/Prospect Interchange Metro District must submit a ballot issue to its electorate at a May 8, 2018, organizational election that complies with all applicable requirements of Colorado’s Taxpayer’s Bill of Rights (known as “TABOR”) and any other applicable law in order to authorize the I-25/Prospect Interchange Metro District to impose the Project Mill Levy and to approve the Capital Pledge Agreement as a binding multiple-fiscal year obligation for payment of the Owners’ Share from all or any combination of proceeds of the Project Mill Levy, the Project Fees and the portion of the PIF received by the I-25/Prospect Interchange Metro District, and the voters of the I-25/Prospect Interchange Metro District must approve such ballot issue;

v. Condition that the Development Metro Districts cannot impose any of the Development Mill Levy, impose any Project or District Fees or issue any debt unless and until the I-25/Prospect Interchange Metro District and the City have entered into the Capital Pledge Agreement;

vi. Condition that the Development Metro Districts cannot impose any of the Development Mill Levy, impose any Project or District Fees or issue any debt without the Property Owners recording against each of their respective Properties the PIF Covenant, in a form first approved by and acceptable to the City, to be in effect until the Owners’ Share is paid in full to the City;

vii. Condition that the Capital Pledge Agreement shall not be entered into and no Project Mill Levy or Project or District Fees shall be imposed or collected unless and until any proposed Metro District Service Plans, containing the authorities referenced above, that have been duly filed with the City are approved as contemplated in this MOU;

viii. Requirement that the Project Mill Levy and the Project Fees collected by the I-25/Prospect Interchange Metro District to pay the Owners’ Share as required by the Capital Pledge Agreement shall expire when the Owners’
Share is paid in full to the City. The Property Owners and/or each Development Metro District shall retain the right to continue to impose, collect, receive and apply the PIF and any District Fees deemed appropriate by such Property Owner and/or Development Metro District to the extent authorized in the Service Plans and the District Act; and

ix. Requirement that the I-25/Prospect Interchange Metro District and its right to impose taxes and fees shall terminate upon the payment in full of the Owners’ Share.

3. **Property Owners’ Right-of-Way Credit.** The Parties understand that CDOT will be seeking to acquire from one or more of the Property Owners portions of their Properties to be used as right-of-way for the Project (“Project ROW”). The Binding Agreement will provide that affected Property Owners may elect, in lieu of collecting direct compensation from CDOT, to dedicate their portion of the Project ROW compensation to CDOT and the value of that dedication will be applied as a credit against the Owners’ Share (“ROW Credit”). The value of the ROW Credit is not currently known by the Parties, but is currently estimated to be within a range of $500,000 to $1,000,000. The agreed value of the ROW Credit (solely for purposes of the Binding Agreement) will be addressed in the Binding Agreement. None of the Property Owners intends, by the execution of this MOU or any document contemplated hereby, to waive its rights to full and just compensation for the taking of its property or to due process with respect to such right of way acquisition.

4. **Property Owners’ Credit for Transportation Capital Expansion Fees.** The City currently has $1.4 million of transportation capital expansion fee revenues (“TCEFs”) available to help fund this Project. In recognition of the TCEFs that the Property Owners are likely to pay to the City when they develop their Properties, the City is willing to agree in the Binding Agreement to credit one half of these available TCEFs, or $700,000, to the payment of the Owners’ Share, so long as the Property Owners are not in default of any applicable terms and conditions of the Binding Agreement (“TCEF Credit”).

5. **Owners’ Share after Credits.** The Parties anticipate that if the Binding Agreement grants to the Property Owners a ROW Credit of $500,000 and the TCEF Credit of $700,000, the remaining balance of the Owners’ Share will be approximately $7.05 million plus interest as provided in paragraph 6 below.

6. **I-25/Prospect Interchange Metro District’s Obligation to Fund Owners’ Share.** The Project Mill Levy, the Project Fees and any PIF revenues received by the I-25/Prospect Metro District shall be imposed, secured and collected in the manner provided by law, and the revenues derived from such taxes and fees shall be pledged pursuant to the Capital Pledge Agreement for payment of the Owners’ Share. The obligation of the I-25/Prospect Interchange Metro District to pay the Owners’ Share under the Capital Pledge Agreement shall be approved by the electors of the I-25/Prospect Interchange Metro District as provided in Section 2(a)(iv) hereof and shall constitute the unconditional, valid and binding limited tax general obligation of the I-25/Prospect Interchange Metro District, secured by its covenant to impose general ad valorem property taxes at a rate not to exceed 10.0 mills in each year, net of administrative costs of collection, together with the proceeds of PIFs and other available funds and revenues to pay an amount equal to each
annual installment of the Owners’ Share identified in the Capital Pledge Agreement. Nothing herein prevents agreements among the Property Owners for the allocation or sharing of all or a portion of the Owners’ Share, provided that any agreement among and between the Property Owners or among and between the Metro Districts for the allocation of liability or rights of contribution for payment of the Owners’ Share, will be pursuant to separate agreement(s) to which the City will not be a party nor bound to in any way. In the event that revenues allocated in the Capital Pledge Agreement to pay any annual installment of the Owners’ Share are not sufficient, the unpaid amount of that installment shall accrue interest from the date payment is due until paid at the interest rate the City charges under its “Inter-agency Loan Program” found in Section 8.8 of its “Financial Management Policy 8.”

7. **Future Negotiations.** Upon the full execution of this MOU, the Parties intend to proceed diligently and in good faith to negotiate the Binding Agreement consistent with the acknowledgements, understandings and intentions stated in this MOU. The primary representatives and legal counsel in these negotiations for the City and each of the Property Owners shall be those persons designated in Section 10(a). It is the Parties’ intention to complete these negotiations and enter into the Binding Agreement by March 7, 2018.

8. **Capped Costs.** The Parties acknowledge and agree that for purposes of the Property Owners’ obligations under this MOU, the Binding Agreement and all other agreements contemplated herein, total Project cost and the total cost of the Urban Design Feature shall be capped at the amounts set forth in the Recitals.

9. **Miscellaneous.**

   a. **Representatives and Notice.** The Parties’ respective designated representatives and legal counsel for negotiations and communications concerning the Binding Agreement, and their contact information, are as follows:

   For the City: Mike Beckstead  
   Chief Financial Officer  
   300 LaPorte Avenue  
   PO Box 580  
   Fort Collins, CO 80524  
   970-221-6795  
   mbeckstead@fcgov.com  

   John Duval  
   Deputy City Attorney  
   300 LaPorte Avenue  
   PO Box 580  
   Fort Collins, CO 80524  
   970-416-2488  
   jduval@fcgov.com  

   For FCIC and GAPA: Fort Collins/I-25 Interchange Corner, LLC and/or
Gateway at Prospect Apartments, LLC
c/o Neihart Land Company, LLC
580 Hidden Valley Road
Colorado Springs, CO 80919
Attn: R. Tim McKenna
719-641-6527
tim.mckenna@neihartland.com

With a copy to:
Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, CO 80202
Attn: Carolynne C. White, Esq.
303-223-1197
CWhite@BHFS.com

For LAAM:
Land Acquisition and Management, LLC
#4 West Dry Creek Cr, Suite 100
Littleton, CO 80120
Attn: Rick White
303-601-5463
rwhite@laam.biz

With a copy to:
Kutak Rock LLP
1801 California Street, Suite 3100
Denver, Colorado 80202
Attn: Daniel C. Lynch, Esq.
303-292-7875
dan.lynch@kutakrock.com

And a copy to:
Kutak Rock LLP
1801 California Street, Suite 3100
Denver, Colorado 80202
Attn: Robert C. Roth, Jr., Esq.,
(303) 292-7802
Robert.RothJr@KutakRock.com

For Paradigm:
Paradigm Properties, LLC
2300 Knoll Drive, Suite A, 2nd Floor
Ventura, CA 93003
Attn: Jeffrey Hill
jeffreyahill@gmail.com

With a copy to:
Kutak Rock LLP
1801 California Street, Suite 3100
Denver, Colorado 80202
Attn: Daniel C. Lynch, Esq.
b. **Execution in Counterparts and Facsimile Signatures.** This MOU may be executed in multiple counterparts and with facsimile signatures; each of which will be deemed an original and all of which taken together will constitute one and the same memorandum of understanding.

c. **Recordation of Agreement.** This MOU shall not be recorded in the office of the Larimer County Clerk and Recorder.
IN WITNESS WHEREOF, the Parties have executed this MOU as the date and year first above written.

FCIC:

FORT COLLINS/I-25 INTERCHANGE CORNER, LLC,
a Colorado limited liability company

By:  MCKENNA MANAGEMENT, LLC,
a Colorado limited liability company
its co-Manager

By: _____________________________
Name: R. Tim McKenna
Title: Manager

[Signatures continue on following page(s)]
GAPA:

GATEWAY AT PROSPECT APARTMENTS, LLC, a Colorado limited liability company

By: MCKENNA MANAGEMENT, LLC, a Colorado limited liability company its co-Manager

By: _____________________________
Name: R. Tim McKenna
Title: Manager

[Signatures continue on following page(s)]
LAAM:

LAND ACQUISITION AND MANAGEMENT, LLC,
a Colorado limited liability company, as representative of
100% of the ownership interests in the LAAM Owners Parcels

By: ______________________________
Name: ____________________________
Title: Manager

[Signatures continue on following page(s)]
Paradigm:

PARADIGM PROPERTIES, LLC,
a California limited liability company

By: ______________________________
Name: Jeffrey A. Hill
Title: Managing Member

[Signatures continue on following page(s)]
CSURF:

COLORADO STATE UNIVERSITY RESEARCH FOUNDATION,
a Colorado nonprofit corporation

By: ______________________________
Name: Kathleen Henry
Title: CEO and President
RESOLUTION 2018-074
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING AND AUTHORIZING THE EXECUTION OF AN
INTERGOVERNMENTAL AGREEMENT WITH THE TOWN OF
TIMNATH FOR FINANCIAL PARTICIPATION IN THE
I-25/PROSPECT INTERCHANGE IMPROVEMENTS

WHEREAS, the interchange at Interstate Highway 25 and Prospect Road (the “Interchange”) is owned by the State of Colorado (the “State”) and operated and maintained by the Colorado Department of Transportation (“CDOT”); and

WHEREAS, CDOT is in the process of implementing a construction project to significantly modify and improve the Interchange by reconstructing its ramps and bridge and by reconstructing Prospect Road to a configuration with four through lanes, a raised median, left turn lanes and pedestrian and bicycle facilities, with this work to include certain enhanced urban design elements and expected to begin after July 1, 2018 (the “Project”); and

WHEREAS, CDOT has estimated that the total cost of the Project will be approximately $31 million, but it has indicated that it will only provide $12 million to fund the Project, leaving a $19 million deficit (the “Deficit”); and

WHEREAS, CDOT has asked Fort Collins to participate in the Project by funding the Deficit and, to memorialize Fort Collins’ obligation to fund the Deficit, CDOT and Fort Collins have entered into the “State of Colorado Amendment, Amendment #:1, Project #: 21506” (the “CDOT IGA”); and

WHEREAS, while the Interchange is within Fort Collins’ boundaries and the Project will provide significant transportation and economic benefits to Fort Collins and its residents, others will experience significant direct benefits from the Project as well, including Timnath and five private entities (the “Property Owners”) that own several parcels of real property located within Fort Collins’ boundaries that are adjacent to the four corners of the Interchange (the “Fort Collins Properties”); and

WHEREAS, Timnath will benefit from the Project because the Interchange serves as a gateway into Timnath and the Project will benefit several other privately-owned properties located to the east of Interstate Highway 25 along and near Prospect Road, which are now either in Timnath’s boundaries or in its growth management area to be annexed into Timnath when developed (the “Timnath Properties”); and

WHEREAS, Fort Collins has entered into the CDOT IGA and agreed to pay the Deficit to CDOT with the understanding that Timnath and the Property Owners will share in funding the Deficit; and

WHEREAS, Fort Collins has therefore asked Timnath, and Timnath has agreed, to share in funding the Deficit by a reimbursing Fort Collins for $2.5 million of the Deficit, plus an interest rate factor, to be paid in annual payments and fully amortized over a twenty
year period ("Timnath’s Share"), thereby leaving a deficit of approximately $16.5 million (the "Remaining Deficit"); and

WHEREAS, Fort Collins and the Property Owners have also agreed in a “Binding Agreement Pertaining to Development of Interstate Highway 25 and Prospect Road” to equally share this Remaining Deficit by the Property Owners agreeing to reimburse the Fort Collins over time their fifty-percent share, plus interest ("Owners’ Share"); and

WHEREAS, as the Binding Agreement provides, the Owners’ Share will be reduced by a $500,000 credit the Property Owners will receive for the value of rights-of-way they will dedicate to CDOT for the Project without receiving compensation (the “ROW Credit”) and for $700,000 representing one-half of the transportation capital expansion fees the Fort Collins has available to contribute to the Project (the “TCEF Credit”); and

WHEREAS, Fort Collins and Timnath have agreed that the annual payments for Timnath’s Share will include an interest rate factor that will be determined based on the interest rate factor that Fort Collins will incur in financing the Deficit less the ROW Credit and the TCEF Credit ("Financed Deficit"), which Fort Collins currently anticipates funding by issuing tax-exempt certificates of participation ("COPs"); and

WHEREAS, this interest rate factor will be applied to Timnath’s Share to calculate Timnath’s annual payments to be fully amortized over twenty years as hereafter provided; and

WHEREAS, as further consideration for this Agreement, Fort Collins and Timnath have also agreed to share in sales tax revenues collected by them from the Fort Collins Properties and the Timnath Properties ("Revenue Sharing"); and

WHEREAS, the terms and conditions for payment of Timnath’s Share and the Revenue Sharing are set forth in the “Intergovernmental Agreement Between the Town of Timnath and the City of Fort Collins Pertaining to the Reconstruction of the Interchange at Interstate Highway 25 and Prospect Road,” attached as Exhibit “A” and incorporated herein by reference (the “IGA”); and

WHEREAS, the City Council hereby finds that the IGA is necessary for the public’s health, safety and welfare and is in the best interests of the City and its residents, businesses and public and private organizations.

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

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

Section 2. That the IGA is hereby approved and the Mayor is authorized to execute the IGA in substantially the form attached hereto as Exhibit “A,” together with such additional terms and conditions as the City Manager, in consultation with the City Attorney,
determines to be necessary and appropriate to protect the interests of the City or to effectuate the purposes of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of August, A.D. 2018.

_____________________________
Mayor

ATTEST:

_____________________________
City Clerk
INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF TIMNATH AND THE CITY OF FORT COLLINS PERTAINING TO THE RECONSTRUCTION OF THE INTERCHANGE AT INTERSTATE HIGHWAY 25 AND PROSPECT ROAD

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into this ___ day of July __, 2018, (this “Agreement”) by and between the Town of Timnath, a Colorado home rule town, (“Timnath”) and the City of Fort Collins, a Colorado home rule city, (“Fort Collins”). Timnath and Fort Collins shall hereafter be jointly referred to as “Parties” or individually as “Party.”

RECITALS

WHEREAS, the interchange at Interstate Highway 25 and Prospect Road (the “Interchange”) is owned by the State of Colorado (the “State”) and operated and maintained by the Colorado Department of Transportation (“CDOT”); and

WHEREAS, CDOT has notified Fort Collins it is planning a project to significantly modify and improve the Interchange by reconstructing its ramps and bridge and by reconstructing Prospect Road to a configuration with four through lanes, a raised median, left turn lanes and pedestrian and bicycle facilities, with this work to include certain enhanced urban design elements and expected to begin after July 1, 2018 (the “Project”); and

WHEREAS, CDOT has estimated that the total cost of the Project will be approximately $31 million, but it has indicated that it will only provide $12 million to fund the Project, leaving a $19 million deficit (the “Deficit”); and

WHEREAS, CDOT has asked Fort Collins to participate in the Project by funding the Deficit and, to memorialize Fort Collins’ obligation to fund the Deficit, CDOT and Fort Collins have entered into the “State of Colorado Amendment, Amendment #:1, Project #: 21506,” which is attached as Exhibit “A” and incorporated herein (the “CDOT IGA”); and

WHEREAS, while the Interchange is within Fort Collins’ boundaries and the Project will provide significant transportation and economic benefits to Fort Collins and its residents, others will experience significant direct benefits from the Project as well, including Timnath and the five (5) private entities that own the parcels of real property located within Fort Collins’ boundaries that are adjacent to the four (4) corners of the Interchange (the “Property Owners”); and

WHEREAS, the properties owned by the Property Owners located with the boundaries of Fort Collins are legally described and depicted in Exhibit “B” attached and incorporated herein (the “Fort Collins Properties”); and
WHEREAS, Timnath will benefit from the Project because the Interchange serves as a gateway into Timnath and the Project will benefit several privately-owned properties located to the east of Interstate Highway 25 along and near Prospect Road now either in Timnath’s boundaries or in its growth management area to be annexed into Timnath when developed as the Parties have agreed in their “Seventh Amendment to Intergovernmental Agreement” dated October 28, 2014; and

WHEREAS, these privately-owned properties are legally described and depicted in Exhibit “C” attached and incorporated herein (the “Timnath Properties”); and

WHEREAS, Fort Collins has entered into the CDOT IGA and agreed to pay the Deficit to CDOT with the understanding that Timnath and the Property Owners will share in funding the Deficit; and

WHEREAS, Fort Collins has therefore asked Timnath, and Timnath has agreed, to share in funding the Deficit by a reimbursing Fort Collins for $2.5 million of the Deficit, plus an interest rate factor, to be paid in annual payments and fully amortized over a twenty (20) year period (“Timnath’s Share”), thereby leaving a deficit of approximately $16.5 million plus any Project cost overruns (the “Remaining Deficit”); and

WHEREAS, Fort Collins has also asked the Property Owners to share equally with it in funding the Remaining Deficit; and

WHEREAS, Fort Collins and the Property Owners have agreed in a “Binding Agreement Pertaining to Development of Interstate Highway 25 and Prospect Road,” which is attached as Exhibit “D” and incorporated herein, (the “Binding Agreement”) to equally share this Remaining Deficit by the Property Owners agreeing to reimburse the Fort Collins over time their fifty-percent (50%) share, plus interest (“Owners’ Share”); and

WHEREAS, as the Binding Agreement provides, the Owners’ Share will be reduced by a $500,000 credit the Property Owners will receive for the value of rights-of-way they will dedicate to CDOT for the Project without receiving compensation (the “ROW Credit”) and for $700,000 representing one-half of the transportation capital expansion fees the Fort Collins has available to contribute to the Project (the “TCEF Credit”); and

WHEREAS, Fort Collins and Timnath have agreed that the annual payments for Timnath’s Share will include an interest rate factor that will be determined based on the interest rate factor that Fort Collins will incur in financing the Deficit less the ROW Credit and the TCEF Credit (“Financed Deficit”), which Fort Collins currently anticipates funding by issuing tax-exempt certificates of participation (“COPs”); and

WHEREAS, this interest rate factor will be applied to Timnath’s Share to calculate Timnath’s annual payments to be fully amortized over twenty (20) years as hereafter provided; and
WHEREAS, as further consideration for this Agreement, Fort Collins and Timnath have also agreed to share in sales tax revenues collected by them from the Fort Collins Properties and the Timnath Properties on the terms and conditions hereafter agreed.

NOW, THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties agree as follows:

1. **Timnath Share Obligation.** Timnath agrees to pay Fort Collins the total principal amount of two million five hundred thousand dollars ($2,500,000) payable in twenty (20) fully amortized annual payments (the “Timnath Share”). These annual payments shall include interest equal to the interest rate factor Fort Collins agrees to pay on the COPs it issues to fund its payment of the Financed Deficit (“COPs Interest Rate”). By way of example and not limitation, if the COPs Interest Rate is 4.5%, Timnath’s annual payments for the Timnath Share shall be $192,190.00.

2. **Payment of Timnath Share and Interest Accrual Dates.** Timnath’s first payment to Fort Collins for the Timnath Share under this Agreement shall be due and payable one (1) year after the date Fort Collins closes on its COPs financing. The COPs Interest Rate shall begin to accrue on the principal of the Timnath Share on the date Fort Collins closes on its COPs financing. By way of example and not limitation, if Fort Collins closes on its COPs financing on October 15, 2018, Timnath’s first payment for the Timnath Share shall be due on October 15, 2019, and the COPs Interest Rate shall begin to accrue on the principal of the Timnath Share on October 15, 2018.

3. **Sharing Sales Tax Revenues.** Fort Collins and Timnath agree to share the sales tax revenues they collect in the future from the Fort Collins Properties and the Timnath Properties, respectively, as provided in this Section 3.

This obligation to share collected sales tax revenues shall begin in the first calendar year that the total gross taxable sales generated from the Timnath Properties is equal to or greater than ten million dollars ($10,000,000). Timnath must provide Fort Collins with written notice when this $10 million threshold amount has been reached. When this occurs, Timnath shall pay to Fort Collins, on or before April 1 of the next calendar year, thirteen percent (13%) of the sales tax revenues Timnath collects from the Timnath Properties that are attributable to its base sales tax rate of three percent (3%) and Fort Collins shall pay to Timnath, on or before April 1 of that next calendar year, thirteen percent (13%) of the sales tax revenues Fort Collins collects from the Fort Collins Properties that are attributable to its base sales tax rate of two and one quarter percent (2.25%). This sharing of sales tax revenues shall continue for each calendar year thereafter, even if the gross taxable sales generated from the Timnath Properties falls below $10 million in any subsequent year. In addition, the Parties’ payments for each such calendar year shall continue to be paid in arrears on or before April 1 of the succeeding calendar year.

By way of example and not limitation, if in 2025 the Timnath Properties generate for the first time $10 million of gross taxable sales and the Fort Collins Properties generate $9 million of gross taxable sales in that year, Timnath shall pay Fort Collins $39,000 by April 1, 2026, representing 13% of Timnath’s sales taxes revenues collected from the $10 million of gross taxable sales at its 3% base sales tax rate, and Fort Collins shall pay Timnath $29,250 by April 1, 2026,
representing 13% of Fort Collins' sales tax revenues collected from the $9 million of gross taxable sales at its 2.25% base sales tax rate.

This obligation to share sales tax revenues shall terminate in the year when the total net sales tax revenues paid by Fort Collins to Timnath under this Section less the sales tax amounts paid by Timnath to Fort Collins under the Section, equals $2.5 million plus the sum of all interest payments made by Timnath under Section 1 above. However, even if Timnath has not netted shared sales tax revenues of at least $2.5 million plus the sum of all interest payments made by Timnath under Section 1 above, this obligation shall nevertheless terminate after the Parties' payments under this Section 3 have been made for the fifteenth calendar year following the first calendar year for which payments were required. By way of example and not limitation, if 2025 is the first calendar year for which revenue sharing payments are required, this obligation to share sales tax revenues shall terminate after the payments for the 2040 calendar year have been made.

4. Inspection and Audit of Records. The Parties shall each have the right, but not the obligation, to inspect, audit and copy the tax records of the other Party concerning the sales tax revenues collected from their respective properties. Accordingly, Fort Collins may inspect, audit and copy Timnath's tax records for the Timnath Properties and Timnath may inspect, audit and copy Fort Collins' tax records for the Fort Collins Properties. However, each Party may redact from their respective tax records being inspected, audited or copied by the other Party any taxpayer identifying information which that Party reasonably believes must be kept confidential by that Party's charter or code or by state law. In the event of any inadvertent disclosure of a taxpayer’s identity and corresponding tax information, the Party conducting the inspection or audit agrees to keep that taxpayer’s identity and tax information confidential.

5. TABOR. The Parties understand and acknowledge that they are subject to the Colorado's Taxpayer's Bill of Rights in Article X, Section 20 of the Colorado Constitution ("TABOR"). Thus, the Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is therefore understood and agreed that this Agreement does not create for either Party a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR. Consequently, all payment obligations in this Agreement are expressly dependent and conditioned upon the continuing availability of properly and annually appropriated funds. Therefore, all financial obligations in this Agreement are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with ordinances and resolutions of the responsible Party and other applicable law.

6. Remedies Upon Default. Upon the failure of either Party to comply with any of its obligations contained herein (a "Default"), the non-defaulting Party shall provide written notice of the Default to the defaulting Party. Immediately upon receipt of such notice, the defaulting Party shall promptly proceed to cure such Default within thirty (30) days, or if not susceptible of cure within thirty (30) days, within such time as agreed upon by the non-defaulting Party for the cure of such Default. If the defaulting Party fails to cure or remedy the Default within the time period prescribed, the non-defaulting Party may proceed to protect and enforce any or all of its rights and the obligations of the defaulting Party under this Agreement by suit in equity or action at law, in a court of competent jurisdiction, whether for the specific performance of any covenants or agreements contained in this Agreement or otherwise, or take any action authorized or permitted under applicable law, and shall be entitled to require and enforce the performance of all acts and
things required to be performed hereunder by the other Party. Each and every remedy of either Party shall, to the extent permitted by law, be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity. In addition to the foregoing, if one Party fails for any reason, including non-appropriation of funds, to make its sales tax revenue sharing payment for any calendar as required by Section 3 of this Agreement, but the other Party makes its payment for that calendar year, the Party making its payment shall be entitled to a complete refund of its payment from the Party failing to make its payment.

7. **Amendments.** This Agreement may only be amended, changed, modified or altered in writing signed by both Parties.

8. **Implementing Agreements and Further Assurances.** The Parties agree to execute such documents, and take such action, as will be reasonably requested by the other Party to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained.

9. **Term; Termination.** This Agreement shall remain in force and effect until the Timnath Share is paid in full to Fort Collins and the Parties’ obligations to share sales tax revenues have terminated as provided in Section 3 of this Agreement. In the event, however, Fort Collins does not close on its COPs financing on or before December 31, 2019, this Agreement shall terminate and both Parties shall be released all remaining obligations under this Agreement.

10. **No Third-Party Beneficiaries.** No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, entity, association or organization not a party hereto, and no such other person, entity, association or organization shall have any right or cause of action hereunder.

11. **Jointly Drafted; Rules of Construction.** The Parties agree that this Agreement was jointly drafted and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

12. **Notices.** All notices, certificates or other communications to be given hereunder shall be sufficiently given and shall be deemed given when delivered or sent by certified mailed (return receipt requested) or by overnight mail, postage prepaid, addressed as follows:

If to Timnath:

Town of Timnath
4800 Goodman
Timnath CO 80547
Attn: Town Manager

with a copy to:

White Bear Ankele Tanaka & Waldron
C/O Robert G. Rogers
748 Whalers Way, Suite 210
Fort Collins CO 80525

If to Fort Collins:

City of Fort Collins
300 Laporte Avenue
P.O. Box 580
Fort Collins, CO 80522-0580
Attn: City Manager

with a copy to:

City Attorney’s Office
300 LaPorte Avenue
PO Box 580
Fort Collins, Colorado 80522

The Parties may, by written notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

13. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado and the venue for any judicial proceedings related to this Agreement shall be in Larimer County District Court.

14. **Section Headings.** The captions or headings herein are for convenience or reference only and shall in no way define or limit the scope or intent of any provision or section of this Agreement.

15. **Usage of Terms.** When the context in which words are used herein indicates that such is the intent, words in the singular number shall include the plural and vice versa. All pronouns and any variations thereof shall be deemed to refer to all genders.

16. **Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF,** the Parties have executed this Agreement as the date and year first above written.
TOWN OF TIMNATH, COLORADO

BY: __________________________
    Mayor

ATTEST:

_____________________________
Town Clerk

APPROVED AS TO FORM:

_____________________________
Town Attorney

CITY OF FORT COLLINS, COLORADO

BY: __________________________
    Wade O. Troxell, Mayor

ATTEST:

_____________________________
City Clerk
Printed Name: __________________

APPROVED AS TO FORM:

_____________________________
Deputy City Attorney
Printed Name: __________________
## STATE OF COLORADO AMENDMENT

**Amendment #: 1**  
**Project #: 21506**

### SIGNATURE AND COVER PAGE

<table>
<thead>
<tr>
<th>State Agency</th>
<th>Amendment Routing Number</th>
<th>Contractor</th>
<th>Original Agreement Routing Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Transportation</td>
<td>17-HA4-XC-00072-M0002</td>
<td>CITY OF FORT COLLINS</td>
<td>17-HA4-XC-00072</td>
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</table>

<table>
<thead>
<tr>
<th>Agreement Maximum Amount</th>
<th>N/A—Revenue Contract</th>
<th>Agreement Performance Beginning Date</th>
<th>Initial Agreement expiration date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>The later of the effective date or April 14, 2017</td>
<td>April 13, 2022</td>
</tr>
</tbody>
</table>

### THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

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

<table>
<thead>
<tr>
<th>CONTRACTOR</th>
<th>STATE OF COLORADO</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Fort Collins</td>
<td>John W. Hickenlooper, Governor</td>
</tr>
<tr>
<td></td>
<td>Department of Transportation</td>
</tr>
</tbody>
</table>

By: _____________________________  
**Name of Authorized Individual**  
Title: ___________________________  
**Official Title of the Authorized Individual**

By: _____________________________  
Signature

Date: ___________________________

---

<table>
<thead>
<tr>
<th>STATE OF COLORADO</th>
<th>STATE CONTROL Controller Delegate</th>
</tr>
</thead>
<tbody>
<tr>
<td>John W. Hickenlooper, Governor</td>
<td>Robert Jaros, CPA, MBA, JD</td>
</tr>
<tr>
<td>Department of Transportation</td>
<td></td>
</tr>
<tr>
<td>Colorado Bridge Enterprise</td>
<td>N/A</td>
</tr>
</tbody>
</table>

By: _____________________________  
**Office of the State Controller, Controller Delegate**

Printed name of signatory

Date: ___________________________
1) PARTIES
Amendment (the "Contract") is entered into by and between the Contractor, CITY OF FORT COLLINS (hereinafter called "Contractor") and the State of Colorado, for the use and benefit of the Department of Transportation and the Colorado Bridge Enterprise (hereinafter collectively called "State").

2) TERMINOLOGY
Except as specifically modified by this Amendment, all terms used in this Amendment that are defined in the Agreement shall be construed and interpreted in accordance with the Agreement.

3) EFFECTIVE DATE AND ENFORCEABILITY
A. Amendment Effective Date
This Amendment shall not be valid or enforceable until the Amendment Effective Date shown on the Signature and Cover Page for this Amendment. The State shall not be bound by any provision of this Amendment before that Amendment Effective Date, and shall have no obligation to pay Contractor for any Work performed or expense incurred under this Amendment either before or after of the Amendment term shown in §3.B of this Amendment.

B. Amendment Term
The Parties’ respective performances under this Amendment and the changes to the Agreement contained herein shall commence on the Amendment Effective Date shown on the Signature and Cover Page for this Amendment and shall terminate on the termination of the Agreement.

4) PURPOSE
A. The Parties entered into the Agreement for Local Agency making funds available for improvements to North Interstate-25, Project SH 402 - SH 14 (21506).

B. The Parties now desire to delete Exhibit A in its entirety. This will be replaced with Exhibit A-1 with an updated CITY OF FORT COLLINS not to exceed reimbursement amount.

5) MODIFICATIONS
Exhibit A — Scope of Work
Exhibit A — Scope of Work is removed and replaced in its entirety with Exhibit A-1 attached hereto and incorporated herein by reference. Upon execution of this Amendment, all references in the Agreement to Exhibit A will be replaced with Exhibit A-1.

6) LIMITS OF EFFECT
This Amendment is incorporated by reference into the Agreement, and the Agreement and all prior amendments or other modifications to the Agreement, if any, remain in full force and effect except as specifically modified in this Amendment. Except for the Special Provisions contained in the Agreement, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Agreement or any prior modification to the Agreement, the provisions of this Amendment shall in all respects supersede, govern, and control. The provisions of this Amendment shall only supersede, govern, and control over the Special Provisions contained in the Agreement to the extent that this Amendment specifically modifies those Special Provisions.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK
North I-25

Fort Collins - $12M Contribution for Interchange; $5M Contribution for the urban design elements (aesthetic/landscape enhancements) for the interchange ($17M Total Contribution)

Scope of Work

Reconstruct the existing diamond interchange at I-25 and Prospect Road, including reconstruction of the ramps, bridge, and Prospect Road. Prospect Road will be reconstructed to a configuration with four through lanes, with a raised median, left turn lanes, and pedestrian and bicycle facilities. Work is expected to start on the interchange after July 1, 2018.

Urban design elements to be included in the North I-25 Project are per the “CDOT Project” column in the table below.

<table>
<thead>
<tr>
<th>ITEM DESCRIPTION</th>
<th>CDOT PROJECT</th>
<th>CITY/TOWN PROJECT</th>
</tr>
</thead>
<tbody>
<tr>
<td>BRIDGE ENHANCEMENTS</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Structural Concrete Stain on Bridge Curb, Girders, MSE Walls</td>
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<td></td>
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<tr>
<td>Upgraded Pedestrian Rail on Bridge</td>
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<tr>
<td>Median &amp; Pork Chop Island Cover Material (Color Concrete)</td>
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<tr>
<td>Irrigation Sleeves and Pull Boxes</td>
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</tr>
<tr>
<td>GORE AREAS AND RAMPS</td>
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<tr>
<td>Earthwork/Import (related to Landscape/Urban Design)</td>
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<td></td>
</tr>
<tr>
<td>Stone Outcrops (including design, mock ups, installation)</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Boulders</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Cobble Swales</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Landscape Design</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Soil Conditioning</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Fine Grading</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Turf Reinforcement Mat</td>
<td>X</td>
<td></td>
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<tr>
<td>Seed</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Boulders</td>
<td>X</td>
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<tr>
<td>Landscaping (Trees, Shrubs, Ornamental Grasses, Perennials, Mulch, etc)</td>
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<td>Irrigation Design</td>
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<td>Irrigation Tap, Meter &amp; Backflow</td>
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<td>Irrigation Sleeves</td>
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<td>Irrigation System</td>
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<td>PROSPECT ROAD</td>
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<td>Prospect Rd. Median - Perforated Pipe Underdrain</td>
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<td>Prospect Rd. Median – Membrane</td>
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<td>Prospect Rd. Median – Rock Filter Material</td>
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<td>Prospect Rd. Median - Topsoil</td>
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<td>Prospect Rd. Median – Double Curb</td>
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<td>City Street Lights/Electrical</td>
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<td>Soil Conditioning</td>
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<td>Turf Reinforcement Mat</td>
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<td>Boulders</td>
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<td>Trees, Shrubs, Ornamental Grasses &amp; Perennials, Mulch, etc</td>
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<td>Monument Sign - Fort Collins</td>
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<tr>
<td>Monument Sign - Timnath</td>
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<td></td>
</tr>
</tbody>
</table>

Technical Requirements:

Design:

- CDOT shall consult with the Local Agency throughout the preparation of the Plans and submit to the Local Agency for its review the proposed Plans prior to CDOT's acceptance of Release for Construction Plans. The Local Agency must provide comments on the proposed Plans within 10 calendar days after the proposed Plans are referred to it. CDOT will require the Design Build Contractor to address all issues identified by the Local Agency provided those issues are not in conformance with the Contract Documents.

- The Local Agency shall waive all review fees for design.

- The Local Agency shall not require additional design reviews beyond those required by the contract.

Construction:

- The Local Agency shall waive all permit fees for street use permits.

- The Local Agency requires that Infrastructure that becomes City of Fort Collins inventory follow inspection requirements per LCUASS Standards.

- The Local Agency requires that Infrastructure within City of Fort Collins Right-of-Way be follow final acceptance requirements per LCUASS Standards.

- CDOT shall consult with the Local Agency for its review of traffic control plans related to road closures.

- The Local Agency requires 7 calendar days of advance notification for road closures.
<table>
<thead>
<tr>
<th>Name of Local Agency / Funding Source</th>
<th>Summary of Contributions to Phase I Project</th>
<th>2019</th>
<th>Amount</th>
<th>Date of Payment</th>
<th>2020</th>
<th>Amount</th>
<th>Date of Payment</th>
<th>Total Contributions Amount</th>
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<tr>
<td>City of Fort Collins - Overall Project Set-Aside</td>
<td>$1,241,000.00</td>
<td>December</td>
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<td>$1,440,000.00</td>
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<td>$2,681,000.00</td>
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<td>$2,880,000.00</td>
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<tr>
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<td></td>
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</tbody>
</table>

Attachment: Exhibit A (7064 : Timnath IGA-I/25 Prospect Interchange RESO)
FORT COLLINS/I-25 INTERCHANGE CORNER, LLC – Legal Description

WEST PARCEL
Lots Two (2) through Five (5) Inclusive, Block One (1), Lot 1 and Lot 2, Block 2, Boxelder Estates Second Filing and a parcel of land all located in Section Sixteen (16), Township Seven North (T.7N.), Range Sixty-eight West (R.68W.), Sixth Principal Meridian (6th P.M.), City of Fort Collins, County of Larimer, State of Colorado and being more particularly described as follows:

COMMENCING at the South Quarter Corner (S1/4) of said Section 16 and assuming the South line of the Southeast Quarter (SE1/4) of said Section 16 as bearing South 88°37'47" East, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2642.32 feet with all other bearings contained herein relative thereto:

THENCE North 00°05'58" West along the West line of said SE1/4, said line being the West line of said Boxelder Estates Second Filing a distance of 360.01 feet to the Northwest corner of said Lot 1, Block 1 and the POINT OF BEGINNING;

THENCE continuing North 00°05'58" West along said West line of said SE1/4 a distance of 736.49 feet to the Northeast corner of a parcel of land described in Larimer County Records under Reception No. 95076406;
THENCE North 88°37'47" West along the North line of said parcel a distance of 315.26 feet to the Southeast corner of a parcel of land described in Larimer County Records under Reception No. 20140007506;
THENCE North 25°38'27" West along the East line of said parcel a distance of 264.37 feet to the Southeast corner of a parcel of land described in Larimer County Records under Reception No. 93054775;
THENCE along said parcel the following three courses and distances:
THENCE North 00°04'59" West a distance of 1649.54 feet;
THENCE North 89°55'01" East a distance of 200.00 feet;
THENCE North 00°04'59" West a distance of 216.34 feet to a point on the South line of a parcel of land described in Larimer County Records under Reception No. 133800200;
THENCE South 83°46'07" East along said South line a distance of 232.09 feet to the Southeast corner of said parcel, said point also being on the East line of Sunrise Estates extended;
THENCE North 0°09'06" West along said East line a distance of 1117.52 feet to a point on the South line of Crossroads East Business Center;
THENCE along said South line the following five courses and distance:
THENCE South 26°03'51" East a distance of 448.11 feet;
THENCE South 49°12'58" East a distance of 1510.22 feet;
THENCE South 24°38'28" East a distance of 195.19 feet;
THENCE South 58°21'28" East a distance of 132.96 feet to the Southeast corner of said Crossroads East Business Center;
THENCE North 00°05'58" West along the East line of said Crossroads East Business Center a distance of 33.04 feet to a point on the South line of Smithfield Subdivision;
THENCE along said South line the following four courses and distances:
THENCE South 65°38'51" East a distance of 353.30 feet;
THENCE South 79°38'51" East a distance of 300.00 feet;
THENCE North 56°51'09" East a distance of 197.00 feet;
THENCE North 68°51'09" East a distance of 141.86 feet to a point on the West line of Interstate Highway 25;
THENCE along said West line the following two courses and distances:
THENCE South 00°06'04" E a distance of 601.01 feet;
THENCE South 01°41'08" W a distance of 408.31 feet to the North line of Interstate Land PUD First Filing;
THENCE along said Interstate Land PUD First Filing the following two courses and distances:
THENCE North 76°43'38" West a distance of 300.61 feet;
THENCE South 11°30'44" West a distance of 629.05 feet to the west line of Interstate Highway 25 Frontage Road;
THENCE along said Interstate Highway 25 Frontage Road the following six courses and distances:
THENCE South 85°19'01" West a distance of 289.72 feet;
THENCE South 81°44'11" West a distance of 157.09 feet to a point on a curve, said curve being non-tangent to aforesaid line;
THENCE along the Arc of a Curve concave to the Northwest a distance of 493.65 feet, whose Delta is 62°57'26", whose Radius is 449.26 feet and whose long chord bears South 43°20'16" West a distance of 469.19 feet;
THENCE South 04°56'21" West along a line being non-tangent to aforesaid curve a distance of 157.09 feet;
THENCE South 01°21'31" West a distance of 455.56 feet;
THENCE South 46°21'35" West a distance of 141.42 feet to the North Right of Way of Prospect Avenue;
THENCE North 88°38'38" West along said North Right of Way a distance of 194.86 feet to the Southeast corner of said Lot 3, Block 2;
THENCE along said Lot 3, Block 2 the following three courses and distances:
THENCE North 01°20'56" East a distance of 270.01 feet;
THENCE North 88°39'04" West a distance of 290.40 feet;
THENCE South 01°20'56" West a distance of 269.97 feet to the North Right of Way of Prospect Avenue;
THENCE North 88°38'38" West a distance of 95.05 feet to the East Right of Way of Boxelder Drive said point being a Point of Curvature (PC);
THENCE along said Boxelder Drive the following five courses and distances:
THENCE along the Arc of a Curve concave to the Northeast a distance of 23.56 feet, whose Delta is 89°42'35", whose Radius is 15.00 feet and whose Long Chord bears North 43°31'51" West a distance of 21.11 feet to a Point of Tangency (PT);
THENCE North 01°20'56" East a distance of 314.95 feet;
THENCE North 88°39'04" West a distance of 60.00 feet to the East line of Lot 5, Block 1 of said Boxelder Estates Second Filing;
THENCE along said Boxelder Estate Second Filing the following three courses and distances:
THENCE South 01°20'56" West a distance of 314.95 feet to PC;
THENCE along the arc of a curve that is concave to the Northwest a distance of 23.61 feet, whose Delta is 90°09'21" whose Radius is 15.00 feet and whose Long Chord bears South 46°25'45" West a distance of 21.24 feet to a FT, said point being on the North line of said Prospect Avenue;
THENCE North 88°38'38" West a distance of 330.68 feet to the East line of said Lot 1, Block 1;
THENCE North 00°06'04" West along said East line a distance of 330.01 feet to the Northeast corner of said Lot 1, Block 1;
THENCE North 88°39'04" West along the North line of said Lot 1, Block 1 a distance of 120.13 feet to the POINT OF BEGINNING.

EAST PARCEL
A parcel of land located in the Southeast Quarter (SE1/4) of Section Sixteen (16), Township Seven North (T.7N.), Range Sixty-eight West (R.68W.), Sixth Principal Meridian (6th P.M.), City of Fort Collins, County of Larimer, State of Colorado and being more particularly described as follows:

COMMENCING at the Southeast corner of said Section 16 and assuming the South line of the Southeast Quarter (SE1/4) of said Section 16 as bearing South 88°38'38" East, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2642.32 feet with all other bearings contained herein relative thereto:
THENCE North 88°38'38" West along said South line a distance of 1242.00 feet;
THENCE North 01°21'22" West a distance of 30.00 feet to a point on the East line of Interstate Highway 25
Frontage Road and to the POINT OF BEGINNING:

THENCE along said East line the following eight courses and distances:
THENCE North 43°38'25" West a distance of 141.39 feet;
THENCE North 01°21'.31" East a distance of 455.57 feet;
THENCE North 04°46'04" East a distance of 142.46 feet to a point on a curve, said curve being non-tangent to
aforesaid line;
THENCE along the Arc of a Curve tangent to the Southeast a distance of 405.75 feet, whose Delta is 62°57'26", whose
Radius is 369.26 feet and whose Long Chord bears North 43°20'18" East a distance of 385.64 feet;
THENCE North 81°54'28" East along a line being non-tangent to aforesaid curve a distance of 142.46 feet;
THENCE North 85°18'51" East a distance of 289.72 feet;
THENCE North 81°44'11" East a distance of 157.09 feet to a point on a curve, said curve being non-tangent to
aforesaid line;
THENCE along the Arc of a Curve concave to the Northwest a distance of 220.16 feet, whose Delta is 28°04'38", whose
Radius is 449.26 feet and whose Long Chord bears North 60°46'41" East a distance of 217.96 feet;
THENCE North 89°54'36" East a distance of 79.52 feet to the West Right of Way of Interstate Highway 25;
THENCE along said West Right of Way the following five courses and distances:
THENCE South 00°06'04" East a distance of 379.24 feet;
THENCE South 10°16'03" West a distance of 201.18 feet;
THENCE South 26°30'01" West a distance of 560.45 feet;
THENCE South 60°51'55" West a distance of 99.88 feet;
THENCE North 88°35'20" West a distance of 203.23 feet to the East line of a parcel of land described in Larimer
County Records under Reception No. 2011081250;
THENCE along the East and North sides of said parcel the following two courses and distances:
THENCE North 00°05'08" West a distance of 158.22 feet;
THENCE North 88°38'38" West a distance of 410.00 feet to the Northwest corner of a parcel of land described in
Larimer County Records under Reception No. 2008007886;
THENCE South 00°05'08" East a distance of 199.99 feet to the North Right of Way of Prospect Avenue;
THENCE North 88°38'38" West along said North line a distance of 59.24 feet to the POINT OF BEGINNING.

EXCEPTING FROM ALL OF THE FOREGOING THE FOLLOWING REAL PROPERTY LOCATED IN THE CITY OF FORT
COLLINS, LARIMER COUNTY, COLORADO:

A TRACT OF LAND LOCATED IN SECTION 16, TOWNSHIP 7 NORTH, RANGE 68
WEST OF THE 6TH P.M., CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF
COLORADO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
CONSIDERING THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 16 AS
BEARING NORTH 00°11'16" EAST AND WITH ALL Bearings contained herein
relative thereto; COMMENCING AT THE SOUTH QUARTER CORNER OF
SECTION 16; THENCE ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF
SECTION 16, NORTH 00°11'16" EAST, 360.01 FEET TO THE POINT OF BEGINNING;
THENCE, NORTH 00°11'16" EAST, 776.89 FEET; THENCE, NORTH 90°00'00" EAST,
835.33 FEET; THENCE, SOUTH 48°21'44" EAST, 446.92 FEET; THENCE, SOUTH
58°32'55" WEST, 129.64 FEET; THENCE, SOUTH 24°25'35" WEST, 303.45 FEET;
THENCE, SOUTH 00°50'59" WEST, 222.69 FEET; THENCE, NORTH 88°21'50" WEST, 290.40 FEET; THENCE, SOUTH 01°38'10" WEST, 240.47 FEET; THENCE, NORTH 88°21'25" WEST, 110.00 FEET; THENCE, NORTH 01°38'10" E, 300.46 FEET; THENCE, NORTH 88°21'50" WEST, 60.00 FEET; THENCE, SOUTH 01°38'10" WEST, 302.45 FEET; THENCE, NORTH 88°21'25" WEST, 346.42 FEET; THENCE, NORTH 00°11'10" EAST, 302.51 FEET; THENCE, NORTH 88°21'50" WEST, 120.13 FEET TO THE POINT OF BEGINNING
Exhibit "B"

GAPA Parcel
GATEWAY AT PROSPECT APARTMENTS, LLC – LEGAL DESCRIPTION

The following real property located in the County of Larimer and State of Colorado:

A TRACT OF LAND LOCATED IN SECTION 16, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH P.M., CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 16 AS BEARING NORTH 00°11'16" EAST AND WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 16; THENCE ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 16, NORTH 00°11'16" EAST, 360.01 FEET TO THE POINT OF BEGINNING; THENCE, NORTH 00°11'16" EAST, 776.89 FEET; THENCE, NORTH 90°00'00" EAST, 835.33 FEET; THENCE, SOUTH 48°21'44" EAST, 446.92 FEET; THENCE, SOUTH 58°32'55" WEST, 129.64 FEET; THENCE, SOUTH 24°25'35" WEST, 303.45 FEET; THENCE, SOUTH 00°50'59" WEST, 222.69 FEET; THENCE, NORTH 88°21'50" WEST, 290.40 FEET; THENCE, SOUTH 01°38'10" WEST, 240.47 FEET; THENCE, NORTH 88°21'25" WEST, 110.00 FEET; THENCE, NORTH 01°38'10" E, 300.46 FEET; THENCE, NORTH 88°21'50" WEST, 60.00 FEET; THENCE, SOUTH 01°38'10" WEST, 302.45 FEET; THENCE, NORTH 88°21'25" WEST, 346.42 FEET; THENCE, NORTH 00°11'10" EAST, 302.51 FEET; THENCE, NORTH 88°21'50" WEST, 120.13 FEET TO THE POINT OF BEGINNING
Exhibit “C”
LAAM Owners Parcels
EXHIBIT A

LEGAL DESCRIPTION

PARCEL I: (NORTHWEST PARCEL)

A PARCEL OF LAND BEING PART OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 15 AND ASSUMING THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 15 AS BEARING SOUTH 89 DEGREES 56 MINUTES 23 SECONDS EAST, AS DETERMINED BY A GPS OBSERVATION A DISTANCE OF 2638.04 FEET WITH ALL OTHER BEARINGS CONTAINED HEREIN RELATIVE THEREO;

THENCE NORTH 00 DEGREES 09 MINUTES 39 SECONDS EAST ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER A DISTANCE OF 1332.46 FEET TO THE SOUTHEAST CORNER OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 15, SAID POINT BEING THE TRUE POINT OF BEGINNING.

THENCE NORTH 89 DEGREES 47 MINUTES 03 SECONDS WEST ALONG THE SOUTH LINE OF SAID NORTH HALF SOUTHWEST QUARTER A DISTANCE OF 637.70 FEET; THENCE SOUTH 00 DEGREES 03 MINUTES 22 SECONDS WEST A DISTANCE OF 804.25 FEET TO THE NORTHERLY LINE OF THAT PARCEL OF LAND AS DESCRIBED IN THAT DEED AS RECORDED NOVEMBER 30, 1972 IN BOOK 1531 ON PAGE 759 OF THE RECORDS OF THE LARIMER COUNTY CLERK AND RECORDER (LCCR);

THENCE ALONG SAID NORTHERLY LINE BY THE FOLLOWING FIVE (5) COURSES AND DISTANCES;

THENCE NORTH 54 DEGREES 55 MINUTES 30 SECONDS WEST (REC. SOUTH 55 DEGREES 01 MINUTES EAST) A DISTANCE OF 474.72 FEET; THENCE NORTH 76 DEGREES 16 MINUTES 30 SECONDS WEST (REC. SOUTH 76 DEGREES 22 MINUTES EAST) A DISTANCE OF 163.85 FEET;

THENCE NORTH 84 DEGREES 56 MINUTES 30 SECONDS WEST (REC. 85 DEGREES 02 MINUTES EAST) A DISTANCE OF 548.82 FEET;

THENCE NORTH 67 DEGREES 49 MINUTES 30 SECONDS WEST (REC. 67 DEGREES 55 MINUTES EAST) A DISTANCE OF 88.13 FEET; THENCE NORTH 54 DEGREES 45 MINUTES 30 SECONDS WEST (REC. SOUTH 54 DEGREES 51 MINUTES EAST) A DISTANCE OF 949.54 FEET TO THE EASTERLY LINE OF THAT PARCEL OF LAND AS DESCRIBED IN THAT DEED AS RECORDED JULY 31, 1947 IN BOOK 838 ON PAGE 175 OF THE RECORDS OF THE LCCR;

THENCE ALONG THE EASTERLY LINE OF THE AFORESAID PARCEL OF LAND BY THE FOLLOWING TWO (2) COURSES AND DISTANCES;

THENCE NORTH 00 DEGREES 14 MINUTES 26 SECONDS EAST (REC. NORTH 0 DEGREES 13 MINUTES EAST) A DISTANCE OF 1151.18 FEET,

THENCE NORTH 09 DEGREES 23 MINUTES 57 SECONDS WEST A DISTANCE OF 59.72 FEET (REC. NORTH 9 DEGREES 15 MINUTES WEST, 60.8 FEET) TO THE NORTH LINE OF SAID SOUTHWEST QUARTER. FROM SAID POINT THE WEST QUARTER CORNER OF SAID SECTION 15 BEARS NORTH 89 DEGREES 35 MINUTES 57 SECONDS WEST A DISTANCE OF 45.00 FEET (REC. NORTH 89 DEGREES 27 MINUTES WEST, 45.0 FEET); THENCE SOUTH 89 DEGREES 35 MINUTES 57 SECONDS EAST ALONG SAID NORTH LINE A DISTANCE OF 2598.20 FEET TO THE CENTER QUARTER CORNER OF SAID SECTION 15; THENCE SOUTH 00 DEGREES 08 MINUTES 25 SECONDS WEST ALONG THE EAST LINE.
OF SAID NORTH HALF SOUTHWEST QUARTER A DISTANCE OF 1331.29 FEET TO THE TRUE POINT OF BEGINNING, COUNTY OF LARIMER, STATE OF COLORADO.

PARCEL II: (CENTER PARCEL)

A PARCEL OF LAND BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 15 AND ASSUMING THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 15 AS BEARING SOUTH 89 DEGREES 56 MINUTES 23 SECONDS EAST, AS DETERMINED BY GPS OBSERVATION, A DISTANCE OF 2638.04 FEET WITH ALL OTHER Bearings CONTAINED HEREFIN RELATIVE THERETO;

THENENCE NORTH 89 DEGREES 56 MINUTES 38 SECONDS WEST ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER A DISTANCE OF 635.26 FEET TO THE TRUE POINT OF BEGINNING;

THENENCE CONTINUING NORTH 89 DEGREES 56 MINUTES 38 SECONDS WEST ALONG SAID SOUTH LINE A DISTANCE OF 615.25 FEET TO THE SOUTHEAST CORNER OF THAT PARCEL OF LAND DESCRIBED IN THAT SPECIAL WARRANTY DEED AS RECORDED DECEMBER 12, 1988 AT RECEPTION NO. 88059158 OF THE RECORDS OF THE LARIMER COUNTY CLERK AND RECORDER (LCCR). FROM SAID POINT THE SOUTHWEST CORNER OF SAID SECTION 15 BEARS NORTH 89 DEGREES 56 MINUTES 38 SECONDS WEST A DISTANCE OF 1396.68 FEET (REC. NORTH 89 DEGREES 47 MINUTES 48 SECONDS WEST, 1396.83 FEET);

THENENCE ALONG THE EASTERLY AND NORTHERLY LINES OF THE AFORESAID PARCEL OF LAND BY THE FOLLOWING TEN (10) COURSES AND DISTANCES; THENENCE NORTH 00 DEGREES 03 MINUTES 22 SECONDS EAST A DISTANCE OF 30.14 FEET (REC. SOUTH 00 DEGREES 02 MINUTES 12 SECONDS WEST, 30.00 FEET); THENENCE NORTH 46 DEGREES 03 MINUTES 57 SECONDS WEST A DISTANCE OF 144.25 FEET (REC. SOUTH 46 DEGREES 10 MINUTES 18 SECONDS EAST, 144.50 FEET); THENENCE NORTH 03 DEGREES 42 MINUTES 35 SECONDS WEST A DISTANCE OF 88.12 FEET (REC. SOUTH 03 DEGREES 32 MINUTES 38 SECONDS EAST, 88.12 FEET) TO THE BEGINNING POINT (BP) OF A CURVE. THE AFORESAID LINE BEING NON-TANGENT TO SAID CURVE; THENENCE ALONG THE ARC OF A CURVE WHICH IS CONCAVE TO THE SOUTHWEST A DISTANCE OF 420.69 FEET, WHOSE RADIUS IS 449.26 FEET, WHOSE DELTA IS 53 DEGREES 39 MINUTES 09 SECONDS, AND WHOSE LONG CHORD BEARS NORTH 37 DEGREES 18 MINUTES 04 SECONDS WEST A DISTANCE OF 405.49 FEET TO THE END POINT (EP) OF SAID CURVE (REC. ARC AS 420.85 FEET, RADIUS AS 449.26 FEET, LONG CHORD AS SOUTH 37 DEGREES 17 MINUTES 58 EAST, 405.63 FEET - TANGENT CURVE);

THENENCE NORTH 71 DEGREES 01 MINUTES 26 SECONDS WEST ALONG A LINE NON-TANGENT TO THE AFORESAID CURVE A DISTANCE OF 157.06 FEET (REC. SOUTH 71 DEGREES 03 MINUTES 19 SECONDS EAST, 157.09 FEET);

THENENCE NORTH 74 DEGREES 37 MINUTES 05 SECONDS WEST A DISTANCE OF 494.34 FEET (REC. SOUTH 74 DEGREES 38 MINUTES 09 SECONDS EAST, 494.43 FEET); THENENCE NORTH 71 DEGREES 15 MINUTES 15 SECONDS WEST A DISTANCE OF 142.50 FEET (REC. SOUTH 71 DEGREES 13 MINUTES 36 SECONDS EAST, 142.46 FEET) TO THE BP OF A CURVE. THE AFORESAID LINE BEING NON-TANGENT TO SAID CURVE; THENENCE ALONG THE ARC OF A CURVE WHICH IS CONCAVE TO THE NORTHEAST A DISTANCE OF 347.08 FEET, WHOSE RADIUS IS 369.26 FEET, WHOSE DELTA IS 53 DEGREES 51 MINUTES 16 SECONDS, AND WHOSE LONG CHORD BEARS NORTH 37 DEGREES 12 MINUTES 05 SECONDS WEST A DISTANCE OF 334.44 FEET (REC. ARC AS 347.06 FEET, RADIUS AS 449.26 FEET, LONG CHORD AS SOUTH 37 DEGREES 12 MINUTES 34 SECONDS EAST, 334.43 FEET - TANGENT CURVE);
THENCE NORTH 00 DEGREES 13 MINUTES 24 SECONDS EAST ALONG A LINE NON-TANGENT TO
THE AFORESAID CURVE A DISTANCE OF 359.23 FEET (REC. SOUTH 00 DEGREES 13 MINUTES 00
SECONDS WEST, 359.17 FEET);

THENCE NORTH 54 DEGREES 47 MINUTES 20 SECONDS WEST A DISTANCE OF 24.25 FEET (REC.
SOUTH 34 DEGREES 51 MINUTES 00 SECONDS EAST, 24.37 FEET) TO THE EASTERLY LINE OF THAT
PARCEL OF LAND DESCRIBED IN WARRANTY DEED AS RECORDED JULY 31, 1947 IN BOOK 838 ON
PAGE 175 OF THE RECORDS OF THE LCCR;

THENCE NORTH 00 DEGREES 14 MINUTES 26 SECONDS EAST (REC. NORTH 0 DEGREES 13 MINUTES
EAST) ALONG SAID EAST LINE ALONG DISTANCE OF 1.15 FEET TO THE SOUTHERLY LINE OF THAT
PARCEL OF LAND AS DESCRIBED IN THAT DEED RECORDED NOVEMBER 30, 1972 IN BOOK 1531 ON
PAGE 759 OF THE RECORDS OF LARIMER COUNTY CLERK AND RECORDED (LCCR); THENCE
ALONG SAID SOUTHERLY LINE BY THE FOLLOWING FIVE (5) COURSES AND DISTANCES; THENCE
SOUTH 54 DEGREES 45 MINUTES 30 SECONDS EAST (REC. SOUTH 54 DEGREES 51 MINUTES EAST) A
DISTANCE OF 920.25 FEET; THENCE SOUTH 67 DEGREES 49 MINUTES 30 SECONDS EAST (REC.
SOUTH 67 DEGREES 55 MINUTES EAST) A DISTANCE OF 101.38 FEET; THENCE SOUTH 84 DEGREES
56 MINUTES 30 SECONDS EAST (REC. SOUTH 85 DEGREES 02 MINUTES EAST) A DISTANCE OF 552.56
FEET;

THENCE SOUTH 76 DEGREES 16 MINUTES 30 SECONDS EAST (REC. SOUTH 76 DEGREES 22 MINUTES
EAST) A DISTANCE OF 150.63 FEET; THENCE SOUTH 54 DEGREES 55 MINUTES 30 SECONDS EAST
(REC. SOUTH 55 DEGREES 01 MINUTES EAST) A DISTANCE OF 500.33 FEET; THENCE SOUTH 00
DEGREES 03 MINUTES 22 SECONDS WEST A DISTANCE OF 468.93 FEET TO THE TRUE POINT OF
BEGINNING, COUNTY OF LARIMER, STATE OF COLORADO.

PARCEL III (SOUTHWEST PARCEL)

A PARCEL OF LAND BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 7
NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF
COLORADO AND BEING ALL THAT PART OF SAID SOUTHWEST QUARTER LYING BETWEEN THAT
PARCEL OF LAND AS DESCRIBED IN THAT SPECIAL WARRANTY DEED AS RECORDED DECEMBER
12, 1988 AT RECEPTION NO. 88059158 OF THE RECORDS OF THE LARIMER COUNTY CLERK AND
RECORDED (LCCR) AND DESCRIBED IN THAT SPECIAL WARRANTY DEED AS RECORDED MARCH 5,
1964 IN BOOK 1239 ON PAGE 491 OF THE RECORDS OF THE LCCR AND BEING MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 15 AND ASSUMING THE SOUTH
LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 15 AS BEARING SOUTH 89 DEGREES 56
MINUTES 23 SECONDS EAST A DISTANCE OF 2638.04 FEET WITH ALL OTHER BEARINGS
CONTAINED HEREIN RELATIVE THERETO;

THENCE NORTH 89 DEGREES 56 MINUTES 38 SECONDS WEST ALONG THE SOUTH LINE OF SAID
SOUTHWEST QUARTER A DISTANCE OF 1530.49 FEET TO THE SOUTHWEST CORNER OF THAT
PARCEL OF LAND AS DESCRIBED IN THAT SPECIAL WARRANTY DEED AS RECORDED DECEMBER
12, 1988 AT RECEPTION NO. 88059158 OF THE RECORDS OF THE LCCR. SAID POINT BEING THE
TRUE POINT OF BEGINNING. FROM SAID POINT THE SOUTHWEST CORNER OF SAID SECTION 15
BEARS NORTH 89 DEGREES 56 MINUTES 38 SECONDS WEST A DISTANCE OF 1116.89 FEET (REC.
NORTH 89 DEGREES 57 MINUTES 48 SECONDS WEST, 1116.83 FEET);

THENCE CONTINUING NORTH 89 DEGREES 56 MINUTES 38 SECONDS WEST ALONG SAID SOUTH
LINE A DISTANCE OF 286.70 FEET TO THE SOUTHWEST CORNER OF THAT PARCEL OF LAND AS
DESCRIBED IN THAT SPECIAL WARRANTY DEED AS RECORDED MARCH 5, 1964 IN BOOK 1239 ON
PAGE 491 OF THE RECORDS OF THE LCCR. FROM SAID POINT THE SOUTHWEST CORNER OF SAID
SECTION 15 BEARS NORTH 89 DEGREES 56 MINUTES 38 SECONDS WEST A DISTANCE OF 830.19
FEET (REC. SOUTH 89 DEGREES 58 MINUTES WEST, 828.0 FEET); THENCE ALONG THE EASTERLY
AND NORTHERLY LINE OF THE AFORESAID PARCEL OF LAND BY THE FOLLOWING FIVE (5) COURSES AND DISTANCES; THENCE NORTH 00 DEGREES 03 MINUTES 22 SECONDS EAST A DISTANCE OF 30.25 FEET (REC. SOUTH 0 DEGREES 02 MINUTES EAST, 30.0 FEET); THENCE NORTH 65 DEGREES 47 MINUTES 58 SECONDS WEST A DISTANCE OF 112.37 FEET (REC. SOUTH 65 DEGREES 40 MINUTES 30 SECONDS EAST, 109.7 FEET), THENCE SOUTH 89 DEGREES 57 MINUTES 38 SECONDS WEST A DISTANCE OF 299.87 FEET (REC. NORTH 89 DEGREES 58 MINUTES EAST, 300.0 FEET); THENCE NORTH 57 DEGREES 18 MINUTES 47 SECONDS WEST A DISTANCE OF 106.29 FEET (REC. SOUTH 57 DEGREES 20 MINUTES EAST, 106.3 FEET); THENCE NORTH 26 DEGREES 20 MINUTES 46 SECONDS WEST (REC. SOUTH 26 DEGREES 21 MINUTES EAST) A DISTANCE OF 458.81 FEET TO THE SOUTHWEST CORNER OF THAT PARCEL OF LAND DESCRIBED AS DESCRIBED IN THAT SPECIAL WARRANTY DEED AS RECORDED DECEMBER 12, 1988 AT RECEPTION NO. 88059158 OF THE RECORDS OF THE LCCR; THENCE ALONG THE SOUTHWESTERLY AND WESTERLY LINE OF THE AFORESAID PARCEL OF LAND BY THE FOLLOWING TEN (10) COURSES AND DISTANCES; THENCE NORTH 11 DEGREES 15 MINUTES 16 SECONDS WEST A DISTANCE OF 200.00 FEET (REC. SOUTH 11 DEGREES 21 MINUTES 00 SECONDS EAST, 200 FEET); THENCE NORTH 78 DEGREES 47 MINUTES 06 SECONDS EAST A DISTANCE OF 63.20 FEET (REC. SOUTH 78 DEGREES 39 MINUTES 00 SECONDS WEST, 63.21 FEET) TO A POINT ON A CURVE (POC). THE AFORESAID LINE BEING NON-TANGENT TO SAID CURVE; THENCE ALONG THE ARC OF A CURVE WHICH IS CONCAVE TO THE NORTHEAST A DISTANCE OF 105.75 FEET, WHOSE RADIUS IS 449.26 FEET, WHOSE DELTA IS 13 DEGREES 29 MINUTES 11 SECONDS, AND WHOSE LONG CHORD BEARS SOUTH 57 DEGREES 20 MINUTES 38 SECONDS EAST A DISTANCE OF 105.50 FEET TO THE END POINT (EP) OF SAID CURVE (REC. ARC 105.71 FEET, RADIUS IS 449.26 FEET, LONG CHORD BEARS NORTH 57 DEGREES 23 MINUTES 41 SECONDS WEST, 105.47 FEET - TANGENT CURVE); THENCE SOUTH 71 DEGREES 07 MINUTES 20 SECONDS EAST ALONG A LINE NON-TANGENT TO AFORESAID CURVE A DISTANCE OF 157.11 FEET (REC. NORTH 71 DEGREES 03 MINUTES 19 SECONDS WEST, 157.09 FEET); THENCE SOUTH 74 DEGREES 36 MINUTES 31 SECONDS EAST A DISTANCE OF 494.39 FEET (REC. NORTH 74 DEGREES 38 MINUTES 09 SECONDS WEST, 494.43 FEET); THENCE SOUTH 71 DEGREES 11 MINUTES 43 SECONDS EAST A DISTANCE OF 142.46 FEET (REC. NORTH 71 DEGREES 13 MINUTES 36 SECONDS WEST, 142.46 FEET) TO THE BEGINNING POINT (BP) OF A CURVE. THE AFORESAID LINE BEING NON-TANGENT TO SAID CURVE; THENCE ALONG THE ARC OF A CURVE WHICH IS CONCAVE TO THE SOUTHWEST A DISTANCE OF 345.90 FEET, WHOSE RADIUS IS 369.26 FEET, WHOSE DELTA IS 53 DEGREES 40 MINUTES 15 SECONDS, AND WHOSE LONG CHORD BEARS SOUTH 37 DEGREES 16 MINUTES 05 SECONDS EAST A DISTANCE OF 333.39 FEET TO THE EP OF THE SAID CURVE (REC. ARC 345.90 FEET, RADIUS IS 369.26 FEET, LONG CHORD BEARS NORTH 37 DEGREES 17 MINUTES 58 SECONDS WEST 333.39 FEET - TANGENT CURVE);

THENCE SOUTH 03 DEGREES 28 MINUTES 31 SECONDS EAST ALONG A LINE NON-TANGENT TO THE AFORESAID CURVE A DISTANCE OF 73.50 FEET (REC. NORTH 03 DEGREES 22 MINUTES 20 SECONDS WEST, 73.50 FEET);

THENCE SOUTH 43 DEGREES 58 MINUTES 46 SECONDS WEST A DISTANCE OF 138.50 FEET (REC. NORTH 43 DEGREES 50 MINUTES 15 SECONDS EAST, 138.35 FEET); THENCE SOUTH 00 DEGREES 03 MINUTES 22 SECONDS WEST A DISTANCE OF 30.14 FEET (REC. NORTH 0 DEGREES 02 MINUTES 12 SECONDS EAST, 30.00 FEET) TO THE TRUE POINT OF BEGINNING, COUNTY OF LARIMER, STATE OF COLORADO.
LAAM PARCELS

EXHIBIT B
Exhibit “D”
Paradigm Parcels
EXHIBIT D-1

PARCELS 2 AND 3 FROM LEGAL DESCRIPTION IN TITLE COMMITMENT 597-F0531420-383-TOW DATED OCTOBER 5, 2015 (PARADIGM PARCELS)

PARCEL 2:
A TRACT OF LAND LOCATED IN THE NW ¼ OF SECTION 22, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH P.M., CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
CONSIDERING THE NORTH LINE OF SAID NW ¼ AS BEARING S 89°59'00"E AND WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO, IS CONTAINED WITHIN THE BOUNDARY LINES WHICH BEGIN AT A POINT ON THE NORTH LINE OF THE SAID NW1/4 WHICH BEARS S89°59'E, 1199.65 FEET FROM THE NW CORNER OF SAID SECTION 22, AND RUN THERE FROM S89°59'E 118.59 FEET ALONG THE SAID NORTH LINE; THENCE SOUTH 77.95 FEET; THENCE S89°59'E 27.06 FEET; THENCE S15°16'W 1035.05 FEET ALONG THE CENTERLINE OF THE SAND DIKE DITCH; THENCE WEST 971.76 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 25; THENCE ALONG SAID EASTERLY RIGHT OF WAY NO613'E 211.40 FEET, AND AGAIN N18°21'30"E 458.46 FEET; THENCE S89°59'E 810.90 FEET; THENCE N15°36'E 447.99 FEET TO THE POINT OF BEGINNING, EXCEPTING THEREFROM ANY PORTION CONVEYED TO THE COLORADO STATE DEPARTMENT OF HIGHWAYS BY INSTRUMENTS RECORDED MAY 23, 1947 IN BOOK 833 AT PAGE 522 AND MAY 23, 1988 AT RECEPTION NO. 88023148, AND ALSO EXCEPT THAT PORTION CONVEYED IN THE WARRANTY DEED RECORDED JANUARY 3, 2005 AT RECEPTION NO. 20050000154, COUNTY OF LARIMER, STATE OF COLORADO.

PARCEL 3:
A TRACT OF LAND LOCATED IN THE NW ¼ OF SECTION 22, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH P.M., CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
CONSIDERING THE NORTH LINE OF SAID NW ¼ AS BEARING S 89°59'00"E AND WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO, IS CONTAINED WITHIN THE BOUNDARY LINES WHICH BEGIN AT A POINT WHICH BEARS N89°15'9"W 1446.03 FEET FROM THE NORTH ¼ CORNER OF SAID SECTION 22 AND RUN THERE FROM N89°59'W 371.65 FEET; THENCE S00°01'W 30 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT OF WAY LINE OF INTERSTATE NO 25; THENCE S65°47'W 109.70 FEET ALONG SAID RIGHT OF WAY LINE; THENCE N89°59'W 300 FEET ALONG SAID RIGHT OF WAY LINE; THENCE S52°25'W 70.10 FEET ALONG SAID RIGHT OF WAY LINE; THENCE S18°21'W 330.54 FEET ALONG SAID RIGHT OF WAY LINE; THENCE S89°59'E 810.90 FEET; THENCE N15°36'E 447.99 FEET TO THE POINT OF BEGINNING, COUNTY OF LARIMER, STATE OF COLORADO.
EXHIBIT D-2
PARCELS 2 AND 3 (PARADIGM PARCELS)
Exhibit “E”

CSURF Parcels
DESCRIPTION: CSURF PARCEL

A Tract of land located in Section 21, and Section 22, Township 7 North, Range 68 West of the Sixth Principal Meridian, City of Fort Collins, County of Larimer, State of Colorado, being more particularly described as follows:

Considering the South line of the Southwest Quarter of said Section 21 as bearing South 89° 01' 48" East, and with all bearing contained herein relative thereto:

Commencing at the Northeast Corner of said Section 21; thence, North 88° 38' 29" West, 1241.97 feet; thence, South 01° 21' 31" West, 30.00 feet to the POINT OF BEGINNING, said point being the Northeast corner of an Easement granted to the State Department of Highways as recorded at Reception No. 88026808 of the Larimer County Clerk and Recorder; thence, South 44° 05' 25" West along the Southeasterly line of said Easement, Recorded at 88026808, 37.44 feet to the Southerly line of a parcel of land described at Reception No. 20060041498 of the Larimer County Clerk and Recorders; thence, South 88° 38' 29" East along said Southerly line and the Easterly prolongation thereof, 345.55 feet to the Westerly line of a parcel of land described within Exhibit A at Book 1992, Page 280 of the Larimer County Clerk and Recorder; thence, South 61° 58' 19" East along said Westerly line, 35.56 feet to the Northerly line of said parcel described within Book 1992, Page 280; thence, North 89° 50' 02" East along said Northerly line, 13.83 feet to the Westerly line of a parcel of land described at Book 1234, Page 241 of the Larimer County Clerk and Recorder; thence, South 64° 24' 59" East along said Westerly line, 4.65 feet to the Southerly line of a parcel of land described within said Book 1234, Page 241, said Southerly line being parallel with and 75.00 feet Southerly of, as measured at a right angle to the North line of the Northeast Quarter of said Section 21; thence, South 88° 38' 29" East along said Southerly line, 300.00 feet to the Westerly Right-of-Way line of Interstate Highway No. I-25; thence, along the Westeny Right-of-Way lines of Interstate Highway No. I-25 the following 9 courses and distances: South 50° 23' 59" East, 72.51 feet; thence, South 18° 02' 31" East, 798.28 feet; thence, South 06° 22' 28" East, 704.20 feet; thence, South 00° 05' 56" East, 53.90 feet; thence along a curve concave to the east having a central angle of 06° 33' 06" with a radius of 11583.00 feet, an arc length of 1324.50 feet and the chord of which bears South 03° 24' 23" East, 1323.78 feet; thence, South 05° 48' 32" West, 417.50 feet; thence along a curve concave to the east having a central angle of 03° 00' 00" with a radius of 11680.00 feet, an arc length of 611.57 feet and the chord of which bears South 10° 09' 58" East, 611.50 feet; thence, South 25° 42' 58" East, 425.50 feet; thence, South 12° 55' 58" East, 968.64 feet to the South line of the Southwest Quarter of said Section 22; thence, South 89° 43' 29" West along the South line of the Southwest Quarter of said Section 22, 344.34 feet to the Southeast corner of said Section 21; thence, North 89° 01' 48" West along the South line of the Southeast Quarter of said Section 22, 713.93 feet; thence parallel with and 20 feet Westerly of the centerline of an existing access road the following 15 courses and distances: thence, North 30° 07' 30" West, 653.11 feet; thence along a curve concave to the northeast having a central angle of 27° 35' 32" with a radius of 424.29 feet, an arc length of 204.33 feet and the chord of which bears North 16° 19' 44" West, 202.35 feet; thence,
North 02° 31' 58" West, 432.64 feet; thence, North 00° 56' 51" West, 512.69 feet; thence, North 22° 22' 44" West, 121.69 feet; thence, North 03° 04' 28" West, 129.58 feet; thence along a curve concave to the southwest having a central angle of 42° 50' 08" with a radius of 157.27 feet, an arc length of 117.58 feet and the chord of which bears North 24° 29' 32" West, 114.86 feet; thence, North 45° 54' 36" West, 71.28 feet; thence along a curve concave to the east having a central angle of 30° 41' 12" with a radius of 330.34 feet, an arc length of 176.92 feet and the chord of which bears North 30° 34' 00" West, 174.82 feet; thence, North 15° 13' 24" West, 100.27 feet; thence along a curve concave to the southwest having a central angle of 20° 34' 23" with a radius of 289.75 feet, an arc length of 104.04 feet and the chord of which bears North 25° 30' 36" West, 103.48 feet; thence, North 35° 47' 47" West, 144.89 feet; thence along a curve concave to the northeast having a central angle of 37° 10' 11" with a radius of 364.33 feet, an arc length of 236.55 feet and the chord of which bears North 17° 12' 42" West, 232.42 feet; thence, North 01° 22' 24" East, 921.36 feet; thence along a curve concave to the southeast having a central angle of 17° 07' 56" with a radius of 707.08 feet, an arc length of 211.43 feet and the chord of which bears North 09° 56' 22" East, 210.64 feet; thence, North 89° 40' 07" East, 6.45 feet to the Southerly prolongation of the Westerly line of said Easement, Recorded at Reception No. 88026808; thence, North 17° 24' 16" East along said Southerly prolongation and also along the Westerly line of said Easement, Recorded at Reception No. 88026808, 673.89 feet; thence along the Westerly and Northerly lines of that Easement granted to the State Department of Highways at Reception No. 88026808 of the Larimer County Clerk and Recorders the following 5 courses: thence along a curve concave to the east having a central angle of 40° 05' 20" with a radius of 532.96 feet, an arc length of 372.90 feet and the chord of which bears North 02° 38' 24" West, 365.34 feet; thence, North 22° 41' 04" West, 110.41 feet; thence along a curve concave to the northeast having a central angle of 15° 37' 22" with a radius of 612.96 feet, an arc length of 167.14 feet and the chord of which bears North 14° 52' 23" West, 166.62 feet; thence, North 45° 28' 31" West, 146.18 feet to a line being 30.00 feet Southerly, as measured at a right angle, of the North line of the Northeast Quarter of said Section 21; thence, South 88° 38' 29" East along a line parallel with and 30.00 feet Southerly of, as measured at a right angle to the North line of the Northeast Quarter of said Section 21, 280.00 feet to the POINT OF BEGINNING.

The above described Tracts of land contains 6204458 square feet or 142.43 acres more or less and is subject to all easements and rights-of-way now on record or existing.

January 15, 2018

CNS

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AREA 1

1. PROSPECT PROPERTY LLC (.50)
   DINGS ANN M LIVING TRUST (.50)

   A tract of land situated in the NW1/4 of Section 22, Township 7 North, Range 68 West of the 6th
   P.M., which considering the North line of the said NW 1/4 as bearing S89°59' E and with all
   bearings contained herein, relative thereto, is contained within the boundary lines which begin at a
   point on the centerline of the Sand Dike Ditch which bears S89°59' E 1318.24 feet, and again
   South 77.95 feet, and again S89°59' E 27.06 feet, and again S15°16' W 1035.05 feet from the
   Northwest corner of said Section 22, and run thence S15°16' W 351.38 feet along the centerline
   of the Sand Dike Ditch; thence West 916.17 feet to a point on the Easterly right of way line of
   Interstate Highway No. 25; thence N06°13'E 340.99 feet along said Easterly right of way line;
   thence East 971.76 feet to the POINT OF BEGINNING.

   County of Larimer
   State of Colorado

2. MAXEY-URBEN-MAXEY LLC

   A tract of land situated in the Northwest 1/4 of Section 22, Township 7 North, Range 68 West of the Sixth P.M., Larimer
   County, Colorado, which considering the North line of said Northwest 1/4 as bearing S 89°59' E. and with all bearings
   contained herein relative thereto, is contained within the boundary lines which begin at a point on the centerline of the Sand
   Dike Ditch which bears S 89°59' E. 1318.24 feet, and again South 77.95 feet, and again S. 89°59' E 27.06 feet, and again S
   15°16' W 1386.43 feet from the Northwest corner of said Section 22, and run thence S 15°16' W 377.29 feet along the
   centerline of the Sand Dike Ditch; thence West 830.81 feet to a point on the Easterly right of way line of Interstate
   Highway No. 25; thence along said Easterly right of way line along the arc of a 11,333.00 foot radius curve to the right a
   distance of 159.57 feet, the long chord of which bears N 00°57'22" W 159.55 feet, and again N 00°16' E. 53.90 feet, and
   again N 06°13' E 151.41 feet; thence East 916.17 feet to the Point of Beginning.

   County of Larimer,
   State of Colorado

3. COMMERCIAL NET LEASE REALTY INC
   NATIONAL RETAIL PROPERTIES INC

   A Tract Of Land Situated In The Northwest 1/4 Of Section 22, Township 7 North, Range 68
   West Of The 6th Principal Meridian, Larimer County, Colorado, Which Considering The North
   Line Of Said Northwest 1/4 As Bearing South 89 Degrees 59 Minutes East, And With All
   Bearings Contained Herein, Relative Thereto, And More Particularly Described As Follows:

   Beginning At A Point On The Centerline Of Sand Dike Ditch Which Bears South 89 Degrees 59
   Minutes East 1318.24 Feet, And Again South 77.95 Feet, And Again South 89 Degrees 59
   Minutes East 27.06 Feet, And Again South 15 Degrees 16 Minutes West 1763.72 Feet From The
   Northwest Corner Of Said Section 22 And Run Thence South 15 Degrees 16 Minutes West
   287.00 Feet Along Said Centerline; Thence West 745.28 Feet To A Point On The Easterly Right
   Of Way Line Of Interstate Highway 25; Thence Along Said Easterly Right Of Way Line Along
   The Arc Of A 11,333.00 Foot Radius Curve To The Right A Distance Of 277.07 Feet, The Long
   Chord Of Which Bears North 02 Degrees 03 Minutes 37 Seconds West 277.04 Feet; Thence East
   830.81 Feet To The Point Of Beginning, County Of
   Larimer, State Of Colorado.
4. ABC LAND CORPORATION LLC

A tract of land situate in the Northwest ¼ of Section 22, Township 7 North, Range 68 West of the 6th P.M., Larimer County, Colorado, which considering the North line of said Northwest ¼ as bearing N 89°59' West and with all bearings contained herein relative thereto, is contained within the boundary lines which begin at a point on the centerline of the Sand Dike Ditch which bears N 89°59' West 1327.44 feet, and again South 77.95 feet, and again S 89°59' East 27.06 feet, and again S 15°16' West 2058.72 feet from the North ¼ corner of said Section 22 and run thence West 745.28 feet to the East line of Interstate Highway No. 25; thence along said East line on the arc of a 11.333 foot radius curve to the left a distance of 548.89 feet, the long chord of which bears S 03°26'09" West 548.84 feet, to a point on the centerline of the Sand Dike Ditch; thence along said centerline, N 54°19' East 838.08 feet, and again along said centerline on the arc of a 71.20 foot radius curve to the left a distance of 48.53 feet, the long chord of which bears N 34°47'30" East 47.59 feet, and again along said centerline N 15°16' East 20.70 feet to the point of beginning.

5. VAN DYKVOS LLC

PARCEL 1:

A part of the Southwest 1/4 of Section 22, Township 7 North, Range 68 West of the 6th P.M., County of Larimer, State of Colorado, lying East of Interstate Highway No. 25 and the East 16.50 feet of the Northwest 1/4 of said Section 22 which is all more particularly described as considering the West line of the said Southwest 1/4 as bearing W 00°16'00" E and with all bearings contained herein relative thereto is contained within the boundary lines which begin at the center 1/4 corner of said Section 22 and run thence S 00°15'38" W 1254.16 feet along the East line of the said Southwest 1/4; thence N 89°56'41" W 1179.41 feet; thence N 00°15'38" E 1257.41 feet to a point on the North line of the said Southwest 1/4; thence S 89°47'12" W 1162.90 feet along the said North line; thence N 00°21'48" E 2639.46 feet along the West line of the East 16.50 feet of the said Northwest 1/4; thence S 89°51'12" W 15.50 feet to the North 1/4 corner of said Section 22; thence S 00°21'48" W 2639.46 feet along the East line of said Northwest 1/4 to the point of beginning, County of Larimer, State of Colorado.

(Street Address: 2100 Southeast Frontage Road, Fort Collins, Colorado)

PARCEL 2:

A tract of land situate in the SW1/4 of Section 22, Township 7 North, Range 68 West of the 6th P.M., County of Larimer, State of Colorado, which considering the West line of the said SW1/4 as bearing W 00°16'00" E and with all bearings contained herein relative thereto is contained within the boundary lines which begin at a point on the East line of the said SW1/4 which bears S 00°15'38" W, 1254.16 feet from the center 1/4 corner of said Section 22 and run thence S 00°15'38" W, 1390.61 feet along the said East line to the 91/4 corner of said Section 22; thence W 89°56'41" W, 2047.49 feet along the South line of said SW1/4 to a point on the Masterly line of Interstate Highway No 25; thence along the said Masterly line N 12°34'00" W, 1025.05 feet and again N 00°44'00" E, 416.30 feet and again along the arc of a 11240.00 foot radius curve to the right a distance of 588.58 feet, the long chord of which bears N 09°48'20" W, 588.51 feet and again W 20°48'30" W, 397.40 feet and again along the arc of a 11375.00 foot radius curve to the right a distance of 285.47 feet, the long chord of which bears N 05°37'01" W, 285.46 feet to a point on the North line of the said SW1/4; thence S 89°47'12" E, 1367.17 feet along the said North line; thence S 00°15'38" W, 1257.41 feet; thence S 89°56'41" E, 1179.41 feet to the point of beginning, County of Larimer, State of Colorado.

(Vacant land, no street address assigned)

TOGETHER WITH all rights, title, and interest of Seller in and to one-half (1/2) share of the capital stock of The Lake Canal Company, four (4) shares of the capital stock of The Sand Dike Ditch Company, one (1) City of Greeley water tap, and two (2) irrigation wells known as the McLaughlin Wells bearing Permit No. 11423 and No. 11424.
6. J-B INVESTMENTS INC

A TRACT OF LAND SITUATE IN THE NW 1/4 OF SECTION 22, TOWNSHIP 7 NORTH, RANGE 60 WEST OF THE 6TH P.M., WHICH CONSIDERING THE NORTH LINE OF SAID NW 1/4 AS BEARING NORTH 89 DEGREES 59 MINUTES WEST AND WITH ALL Bearings contained herein Relative thereto, are more Particularly described as follows:

BEGIN AT A POINT ON THE NORTH LINE OF SAID NW 1/4 WHICH BEARS NORTH 89 DEGREES 59 MINUTES WEST 1217.31 FEET FROM THE NORTH 1/4 CORNER OF SAID SECTION 22, AND RUN THENCE SOUTH 15 DEGREES 35 MINUTES WEST 870.76 FEET; THENCE SOUTH 06 DEGREES 06 MINUTES EAST 715.12 FEET TO A POINT ON THE CENTERLINE OF A LATERAL IRRIGATION DITCH; THENCE ALONG THE CENTERLINE OF SAID LATERAL IRRIGATION DITCH ON THE FOLLOWING BEARINGS AND DISTANCES: SOUTH 22 DEGREES 15 MINUTES 15 SECONDS WEST 108.26 FEET AND AGAIN SOUTH 07 DEGREES 14 MINUTES WEST 27.36 FEET, AND AGAIN SOUTH 09 DEGREES 23 MINUTES EAST 47.01 FEET, AND AGAIN SOUTH 01 DEGREES 06 MINUTES EAST 191.16 FEET, AND AGAIN SOUTH 13 DEGREES 04 MINUTES EAST 317.58 FEET, AND AGAIN SOUTH 23 DEGREES 39 MINUTES EAST 79.55 FEET, AND AGAIN SOUTH 39 DEGREES 20 MINUTES 30 SECONDS EAST 117.32 FEET, AND AGAIN SOUTH 00 DEGREES 06 MINUTES WEST 116.41 FEET, AND AGAIN SOUTH 09 DEGREES 36 MINUTES 45 SECONDS EAST 142.29 FEET, AND AGAIN SOUTH 34 DEGREES 16 MINUTES EAST 108.43 FEET, AND AGAIN SOUTH 17 DEGREES 14 MINUTES EAST 104.00 FEET, AND AGAIN SOUTH 23 DEGREES 26 MINUTES EAST 205.61 FEET, AND AGAIN SOUTH 18 DEGREES 35 MINUTES EAST 135.85 FEET, AND AGAIN SOUTH 24 DEGREES 22 MINUTES EAST 85.66 FEET, AND AGAIN SOUTH 45 DEGREES 50 MINUTES EAST 79.85 FEET, AND AGAIN SOUTH 24 DEGREES 44 MINUTES 30 SECONDS EAST 15.66 FEET (16.45 FEET DEERED) TO A POINT ON THE SOUTH LINE OF SAID NORTHWEST 1/4; THENCE ALONG SAID SOUTH LINE NORTH 89 DEGREES 59 SECONDS WEST 2299.69 FEET (N 89 DEGREES 59' 06" W, 2296.06 FEET DEERED) TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY NO. 25; THENCE ALONG SAID EAST RIGHT-OF-WAY LINE ON THE ARC OF AN 11,333.00 FOOT RADIUS CURVE TO THE RIGHT A DISTANCE OF 34.68 FEET, THE LONG CHORD OF WHICH BEARS NORTH 04 DEGREES 40 MINUTES WEST 34.68 FEET TO A POINT ON THE CENTERLINE OF THE SAND DUNE DITCH; THENCE ALONG THE CENTERLINE OF SAID SAND DUNE DITCH NORTH 54 DEGREES 19 MINUTES EAST 838.08 FEET, AND AGAIN ALONG THE CENTERLINE OF THE SAND DUNE DITCH ON THE ARC OF A 71.20 FOOT RADIUS CURVE TO THE LEFT A DISTANCE OF 48.53 FEET, THE LONG CHORD OF WHICH BEARS NORTH 34 DEGREES 47 MINUTES 30 SECONDS EAST 47.59 FEET, AND AGAIN ALONG THE CENTERLINE OF THE SAND DUNE DITCH NORTH 15 DEGREES 16 MINUTES EAST 2071.42 FEET; THENCE NORTH 89 DEGREES 59 MINUTES WEST 27.06 FEET; THENCE NORTH 77.95 FEET TO THE NORTH LINE OF SAID NW 1/4; THENCE ALONG SAID NORTH LINE SOUTH 89 DEGREES 59 MINUTES EAST 110.11 FEET TO THE POINT OF BEGINNING.

COUNTY OF LARIMER, STATE OF COLORADO

7. MEADOWS AT PROSPECT ROAD LLC

A TRACT OF LAND SITUATE IN THE NORTH WEST ONE-QUARTER OF SECTION 22, TOWNSHIP 7 NORTH, RANGE 60 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO, WHICH CONSIDERING THE NORTH LINE OF SAID NORTH WEST ONE-QUARTER AS BEARING DUE WEST AND WITH ALL Bearings contained herein Relative thereto is contained within the Boundary Lines which Begin at a point which BEARS WEST 1217.31 FEET AND AGAIN S 15 DEGREES 35' W 503.92 FEET FROM the NORTH QUARTER CORNER OF SAID SECTION 22 and Run Thence S 86 DEGREES 07' E 696.00 FEET to a point on the Center line of the existing Irrigation Lateral Ditch; Thence along said Center line S 03 DEGREES 09' E 181.95 FEET and again S 32 DEGREES 40' W 112.23 FEET;
AND AGAIN S 21 DEGREES 31' W 84.22 FEET; THENCE N 86 DEGREES 07' W 713.12
FEET; THENCE N 15 DEGREES 35' E 366.84 FEET ALONG A LINE 50 FEET EASTERLY OF
AND PARALLEL TO THE EASTERLY BANK OF THE SAND DIKE DITCH TO THE POINT OF
BEGINNING,

8. MEADOWS AT PROSPECT ROAD LLC
A tract of land situate in the North West One-quarter of Section 22, Township 7
North, Range 68 West of the 6th P.M., County of Larimer, State of Colorado,
which considering the North line of said North West One-quarter as bearing due
West and with all bearings contained herein relative thereto is contained
within the boundary lines which begin at a point which bears West 1197.79 Feet
from the North Quarter corner of said Section 22 and run Thence South 30.00
Feet to a point on the center line of the Lake Canal; Thence along said center
line on the following courses and distances: S 22 DEGREES 00' 30" E 67.31
Feet; and again S 34 DEGREES 59' E 67.20 Feet; and again S 54 DEGREES 08' E
148.40 Feet; and again S 45 DEGREES 35' E 258.76 Feet; and again S 51 DEGREES
49' 30" E 98.71 Feet to a point on the center line of an Irrigation Lateral
Ditch; Thence S 03 DEGREES 09' E 56.10 Feet; Thence N 86 DEGREES 07' W 696.00
FEET; THENCE N 15 DEGREES 35' E 503.92 FEET ALONG A LINE PARALLEL TO AND 50
FEET EASTERLY OF THE EASTERLY BANK OF THE SAND DIKE DITCH; THENCE EAST 109.52
FEET TO THE POINT OF BEGINNING;

9. BEKIAN FAMILY TRUST
A tract of land situate in the Northwest Quarter of Section 22,
Township 7 North, Range 68 West of the 6th P.M., which considering the
North line of said Northwest Quarter as bearing due West and with all
bearings contained herein relative thereto is contained within the
boundary lines which begin at a point which bears West 916.02 feet from
the North Quarter corner of said Section 22 and
run Thence West 191.77 feet,
thence South 30.00 feet to a point on the center line of the Lake
Canal;
thence along said center line on the following courses and distances:
South 22 degrees 00 minutes 30 seconds East 67.31 feet;
and again South 34 degrees 59 minutes East 67.20 feet;
and again South 54 degrees 08 minutes East 148.40 feet;
and again South 45 degrees 35 minutes East 10.86 feet;
thence North 242.03 feet to the point of beginning,
EXCEPT any portion contained within County Road 44.

County of Larimer, State of Colorado.

10. TROXELL BARBARA Y
A tract of land situate in the Northwest Quarter of
Section 22, Township 7 North, Range 68 West of the 6th P.M., which
considering the North line of said Northwest quarter as bearing due
West and with all bearings contained herein relative thereto is con-
tained within the boundary lines which begin at a point which bears
West 731.02 feet from the North Quarter corner of said Section 22 and
runs Thence West 185.00 feet, Thence South 242.03 feet to a point on
the centerline of the Lake Canal, thence South 45°35' East 247.90
feet along said center line thence South 51°49'30" East 10.08 feet
along said center line, thence North 421.76 feet to the point of be-
ginning. Also known as 4417 East Prospect.
11. ALVAREZ ALBERTO
A tract of land situate in the Northwest 1/4 of Section 22, Township 7 North, Range 68 West of the 6th P.M., County of Larimer, State of Colorado, considering the North line of the said Northwest 1/4 as bearing West and with all bearings contained herein relative thereto, beginning at a point on the North line which bears West 435.68 feet from the North 1/4 corner of said Section 22 and runs thence South 634.90 feet to the centerline of the Lake Canal Ditch; thence along said centerline North 46°42'30" West 91.19 feet; thence North 61°04' West 118.22 feet; thence North 55°54'40" West 57.86 feet; 51°49'30" West 98.71 feet; thence leaving the said centerline and running North 421.76 feet to the North line of the said Northwest 1/4; thence along said North line, East 295.34 feet to the Point of Beginning, County of Larimer, State of Colorado.

12. GRAY VAL/DELORES K
A tract of land situate in the Northwest ¼ of Section 22, Township 7 North, Range 68 West of the 6th P.M., Larimer County, Colorado, considering the North line of the said Northwest ¼ as bearing West and with all bearings contained herein relative thereto, beginning at a point on the North line which bears West 312.84 feet from the North ¼ corner of said Section 22 and runs thence South 715.88 feet to the centerline of the Lake Canal Ditch; thence along the said centerline North 66°52'30" West 73.33 feet and again North 46°42'30" West 76.06 feet; thence leaving said centerline and running thence North 634.90 feet to the North line of said Northwest ¼; thence along the said North line, East 122.84 feet to the Point of Beginning, County of Larimer, State of Colorado.

13. JIRON JOAQUIN E
A tract of land in the Northwest Quarter of Section 22, Township 7 North, Range 68 West of the 6th P.M., Larimer County, Colorado, which considering the North line of the said Northwest Quarter as bearing due West and with all bearings contained herein relative thereto, is contained within the boundary lines which begin at a point on the North line of the said Northwest Quarter which bears West 193.62 feet from the North Quarter corner of said Section 22, and run thence West 119.22 feet along said North line; thence South 141.00 feet; thence East 117.09 feet; thence North 0 degrees 52' East 141.02 feet to the Point of Beginning, County of Larimer, State of Colorado.

14. SIGNORELLI JACKLYN C
A TRACT OF LAND SITUATE IN THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF COLORADO DESCRIBED AS FOLLOW:
BEGINNING AT A POINT ON THE NORTH LINE OF THE SAID NORTHWEST 1/4 WHICH BEARS WEST 16.5 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 22, THENCE WEST 177.12 FEET ALONG SAID NORTH LINE, THENCE SOUTH 0 DEGREES 52 MINUTES WEST 180.02 FEET, THENCE EAST 177.59 FEET TO A POINT 16.5 FEET WEST OF THE EAST LINE OF THE SAID NORTHWEST 1/4; THENCE NORTH 0 DEGREES 43 MINUTES EAST 180.01 FEET TO THE POINT OF BEGINNING, COUNTY OF LARIMER, STATE OF COLORADO.

15. MANNON KENNETH M
MANNON JOAN M
A tract of land situate in the NW¼ of Section 22, Township 7 North, Range 68 West of the 6th P.M., Larimer County, Colorado, which considering the North line of the said NW¼ as bearing due West and with all bearings contained herein relative thereto are more particularly described as follows: Begin at a point which bears
West 16.50 feet and again S 0°43' W 180.01 feet from the North
1/4 corner of said Section 22 and run thence West 177.59 feet;
thereafter N 0°52' E 39.00 feet; thence West 117.09 feet; thence South
515.42 feet; thence S 66°52'30" E 124.97 feet; thence S 80°07'
E 174.09 feet to a point 16.50 feet West of the East line of the
said NW\(\frac{1}{4}\); thence N 0°43' E 555.41 feet to the point of beginning.

16. BATH RICHARD LARRY
Parcel I:
A tract of land situate in the Northwest one-quarter of Section 22, Township 7 North, Range 68 West
of the Sixth Principal Meridian, Larimer County, Colorado, which considering the East line of the said
Northwest One-Quarter as bearing North 00° 13 minutes East and with all bearings contained herein
relative thereto is contained within the boundary lines which begin at a point on the West line of a
16.5 Foot access lane which bears west 16.5 feet and again South 00° 13 minutes West 1162.26 feet
from the North One-Quarter corner of said Section 22, and runs thence West 753.59 feet to the
centerline of a irrigation lateral, thence along said centerline South 01° 07 minutes East 89.67 feet,
and again South 13° 05 minutes East 212.27 feet; Thence East 702.67 feet to a point on the West
line of the said 16.5 foot access lane; Thence along said West line North 00° 13 minutes East 296.42
feet to the Point of Beginning.
Parcel II:
A tract of land situate in the Northwest Quarter of Section 22, Township 7 North, Range 68 West
of the Sixth Principal Meridian, Which considering the East line of the said Northwest Quarter as bearing
South 00° 13 Minutes West and with all bearings contained herein relative thereto are more particularly
described as follows:
Beginning at the intersection the centerline of the Lake Canal and the West line of a 16.50 foot Lane
which bears West 16.50 feet and again South 00° 13 minutes West 797.39 feet from the North
Quarter Corner of said Section 22 and run thence along the said centerline North 80° 07 Minutes 30
Seconds West 175.64 feet and again North 66° 52 minutes 30 seconds West 204.15 feet and again
North 46° 42 Minutes 30 Seconds West 167.25 feet and again North 61°04 minutes West 118.22
feet and again North 55°54 minutes 40 seconds West 57.86 feet and again North 51°49 minutes 30
seconds West 10.08 feet to a point on the centerline of an irrigation lateral; Thence along said
centerline, South 03°09 Minutes East 238.05 feet and again South 32°40 minutes West 112.23 feet
and again South 21°31 minutes West 84.22 feet and again South 22°14 minutes 15 seconds West
108.26 feet and again South 07°13 minutes West 27.36 feet and again South 09°24 minutes East
47.01 feet and again South 01°07 minutes East 101.49 feet; Thence East 753.59 feet to a point on the
West line of the said 16.50 foot lane; Thence along said West line, North 00°13 minutes East
384.69 feet the point of beginning, County of Larimer, State of Colorado.

17. PHILLIPS JENNY K/ROBIN T
LOT 2, H. R. PHILLIPS M.R.D. NO. 95-EX0810

18. PHILLIPS H R/NEVA J
LOT 1, H. R. PHILLIPS M.R.D. NO. 95-EX0810

19. EKBLAD LARRY R/LINDA M
LOT 1, HACIENDA DE ARBOLES M.R.D. NO. 00-S1481

20. EKBLAD LARRY R/LINDA M
LOT 2, HACIENDA DE ARBOLES M.R.D. NO. 00-S1481
21. WILLIS BETTY FAMILY LIMITED

Commencing at a point 2,161 feet South of the NE corner of Section 22, Township 7 North, Range 68 West of the 6th P.M., thence West 200 feet; thence South 70 feet; thence East 200 feet; thence North 70 feet to the point of beginning;

also

Commencing at a point 1740 feet South of the Northeast corner of the NE$rac{1}{4}$ of Section 22, Township 7 North, Range 68 West of the 6th P.M., thence South to the SE corner of said NE$rac{1}{4}$; thence West to the Southwest corner of the NE$rac{1}{4}$ of said Section 22; thence North to the center line of The Lake Canal Ditch, which is also a point 787 feet South of the Northwest corner of the said NE$rac{1}{4}$ of said Section 22; thence Southeasterly along the center line of said ditch to a point 857 feet due West of the point of beginning; thence East 857 feet to the point of beginning; excepting rights of way for roads and ditches as the same now exist; together with the South 4 feet of Lots 44, 45, 46, 47, and 48 of Homestead Estates a subdivision of a portion of said Section 22; also together with Two (2) shares of the capital stock of The Lake Canal Company and One (1) share of the capital stock of The Lake Canal Reservoir Company;

also

Commencing at the Southeast corner of the Southwest Quarter (SW$rac{1}{4}$) of the Northeast Quarter (NE$rac{1}{4}$) of Section 22, in Township 7 North of Range 68 West of the 6th P.M., thence North to the center of the Lake Canal Ditch, which traverses the Northeast Quarter (NE$rac{1}{4}$) of said Section 22, thence Northwesterly along the center of the said Lake Canal Ditch to a point on the West line of the Northeast Quarter (NE$rac{1}{4}$) of said Section 22, which is 787 feet South of the Northwest corner of the said Northeast Quarter (1) of said Section 22, thence South to the Center of said Section 22, thence East to the point of beginning; excepting rights of way for roads and ditches as the same now exist; together with Two (2) shares of the capital stock of The Lake Canal Company and One (1) share of the capital stock of The Lake Canal Reservoir Company;
a/k/a 1921 So. County Road #5, Fort Collins, CO 80525

and

The South four feet (S.4') of Lots 44, 45, 46, 47 and 48 of Homestead Estates a subdivision of a portion of Section 22, Township 7 North, Range 68 West of the 6th P.M., Larimer County, Colorado.
AREA 2

22. Poudre R-1 School District

A parcel of land being part of the South Half (S1/2) of Section Fifteen (15), Township Seven North (T.7N.), Range Sixty-Eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado and being more particularly described as follows:

BEGINNING at the Southeast Corner of said Section 15 and assuming the South line of the Southeast Quarter (SE1/4) of said Section 15 as bearing North 89°56'23" West, as determined by a GPS observation, a distance of 2638.04 feet with all other bearings contained herein relative thereto:

THENCE North 89°56'23" West a distance of 2638.04 feet to the South Quarter Corner of said Section 15;
THENCE North 89°56'38" West along the South line of the Southwest Quarter (SW1/4) of said Section 15 a distance of 635.26 feet;
THENCE North 00°03'22" East a distance of 468.93 feet to the Southerly line of that strip of land as described in that Warranty Deed as recorded November 30, 1972 in Book 1531 on Page 759 of the record of the Larimer County Clerk and Recorder (LCCR);
THENCE along said Southerly line by the following two (2) courses and distances:
THENCE South 54°55'30" East (Rec. S. 55°01' E.) a distance of 764.90 feet;
THENCE South 89°53'30" East (Rec. S. 89°59' E.) a distance of 8.89 feet to the East line of said SW1/4;
THENCE North 00°09'39" East along said East line a distance of 54.76 feet to the Northerly line of the aforesaid parcel of land;
THENCE North 54°55'30" East (Rec. S. 55°01' E.) along said Northerly line a distance of 775.87 feet;
THENCE North 00°03'22" East a distance of 804.25 feet to the North line of the South Half of the Southwest Quarter (S1/2 SW1/4) of said Section 15;
THENCE South 89°47'03" East along said North line a distance of 637.70 feet to the Northeast Corner of said S1/2 SW1/4;
THENCE South 89°48'01" East along the North line of the South Half of the Southeast Quarter (S1/2 SE1/4) a distance of 2639.15 feet to the Northeast Corner of said S1/2 SE1/4;
THENCE South 00°12'32" West along the East line of said S1/2 SE1/4 a distance of 1326.04 feet to the POINT OF BEGINNING.
BINDING AGREEMENT PERTAINING TO DEVELOPMENT OF INTERSTATE HIGHWAY 25 AND PROSPECT ROAD INTERCHANGE

THIS BINDING AGREEMENT (this "Agreement") is made and entered into this ___ day of April, 2018 (the "Effective Date"), by and between the City of Fort Collins, Colorado, a Colorado home rule municipality (the "City"); Fort Collins/I-25 Interchange Corner, LLC, a Colorado limited liability company ("FCIC"); Gateway at Prospect Apartments, LLC, a Colorado limited liability company ("GAPA"); a group of tenants in common comprised of the CW Subtrust, M. Jennet White, Christopher White, Eric S. White, Jane E. White, Jason R. White, Daniel A. White, New Direction IRA, Inc. FBO Barbara Ann Medina IRA, Booren Limited Liability Partnership, Dunkin Limited Liability Limited Partnership, Laura Snortland Fairfield, Robert C. Roth, Jr. and Robert Taylor (collectively, the "TIC Owners"); Paradigm Properties LLC, a California limited liability company ("Paradigm"); and Colorado State University Research Foundation, a Colorado non-profit corporation ("CSURF") (each a "Party" and collectively the "Parties").

WITNESSETH:

WHEREAS, pursuant to a Memorandum of Understanding dated as of January 30, 2018 (the "MOU") by and among the City and the other parties identified therein (together with the TIC Owners, the "Owners"), the City and the Owners established a non-binding outline of documents and terms to be negotiated for the sharing of costs of improvements to the highway interchange at Interstate Highway I-25 and Prospect Road in the City; and

WHEREAS, one of the documents contemplated by the MOU was a binding agreement between the Property Owners and the City, identified as the Binding Agreement, whereby the Property Owners would agree to pay the Owners' Share to the City from various pledged revenues and to memorialize other commitments between the Parties;

WHEREAS, this Agreement shall constitute the Binding Agreement contemplated by the MOU;

NOW, THEREFORE, for and in consideration of the promises and mutual covenants and understandings herein, the Parties hereby agree as follows:

ARTICLE 1

DEFINED TERMS AND INTERPRETATION

1.1 Definitions. Capitalized terms used herein and not defined in the Recitals above or elsewhere in this Agreement shall have the meanings, respectively, specified in Exhibit "A" hereto.

1.2 Interpretation. In this Agreement, unless the context expressly indicates otherwise, the following words shall be interpreted as set forth below:
EXHIBIT D

(a) The words "herein," "hereunder," "hereby," "hereto," "hereof" and any similar words, refer to this Agreement as a whole and not to any particular article, section, or subdivision hereof; the word "heretofore" means before the date of execution of the Agreement; and the term "hereafter" means after the date of execution of this Agreement.

(b) All definitions, terms, and words shall include both the singular and the plural, and, except as otherwise expressly defined in the text of this Agreement, all capitalized words or terms shall have the meanings specified in Exhibit "A" attached hereto.

(c) Words of the masculine gender include correlative words of the feminine and neuter genders, and words importing the singular number include the plural number and vice versa.

(d) The captions or headings of this Agreement are for convenience only, and in no way define, limit, or describe the scope or intent of any provision, article, or section of this Agreement.

(e) All schedules, exhibits, and addenda referred to herein are incorporated herein by this reference.

ARTICLE 2

FINANCING OF OWNERS' SHARE.

2.1 Owners' Share. The Owners' Share shall be the share of the costs of the Project to be funded by the Interchange District in accordance with the terms and provisions of this Agreement and the Capital Pledge Agreement. The Owners have agreed to fund costs of the Project in the amount of $8,250,000, plus financing costs and interest as provided in the Capital Pledge Agreement. Upon execution and delivery of this Agreement, the City shall grant the TCEF Credit in the amount of $700,000 to reduce the principal amount of the Owners' Share to $7,550,000, plus financing costs, as set forth in the Capital Pledge Agreement. The City shall additionally grant the ROW Credit in the amount of $500,000 to further reduce the principal amount of the Owners' Share upon compliance with the provisions set forth in Section 2.3 hereof.

The Owners hereby agree to take all reasonable action necessary to ensure that the Interchange District pays the Pledged Revenues to the City in an amount equal to the Owners' Share, the manner and timing of such payments being further described in the Capital Pledge Agreement, the form of which is attached as Exhibit "B" hereto and by this reference made a part hereof.

2.2 Interchange PIF. Each Owner hereby agrees that it will record with respect to its Property in the Interchange District an Interchange PIF Covenant touching, concerning and running with the land, as further described in the Capital Pledge Agreement. The form of each Owner's Interchange PIF Covenant may differ provided that it contain provisions requiring that the collected Interchange PIF be included as a component of the Pledged Revenues. The Owners reserve the right to impose additional PIFs, that are not the Interchange PIF, to pay public improvement costs related to the development of their respective Properties. Each Development
EXHIBIT D

Metropolitan District shall have the right to receive such additional PIF revenues, which revenues shall not be required to be pledged to the City for payment of the Owners’ Share.

The Interchange PIF Covenant shall provide that the City has the right to review the records relating to the imposition and collection of the Interchange PIF. The City shall have the right to review the Interchange PIF Covenant to confirm that the provisions thereof comply with the provisions of this Agreement and the Capital Pledge Agreement.

The Owners hereby acknowledge that pursuant to the provisions of the Service Plans, the Development Metropolitan Districts are not authorized to impose the Development Mill Levy, impose any District Fees, or issue any debt until each of the Owners records the Interchange PIF Covenant against its respective Property.

Upon payment in full of the Owners’ Share, the City acknowledges and agrees that the Interchange PIF may be terminated by the Owners. Upon payment in full of the Owners’ Share, each Owner shall have the right to continue to impose and collect the Interchange PIF with respect to its respective Property and apply the Interchange PIF revenues to permissible costs, as determined in the sole discretion of each respective Owner.

2.3 **Property Owners’ ROW Credit.** CDOT is currently seeking to acquire from one or more of the Owners portions of their Properties to be used as Project ROW. In lieu of collecting direct compensation from CDOT, the Owners have elected to dedicate a portion of the Project ROW compensation in an amount equal to $500,000 to CDOT. So long as no event of default has occurred and is continuing under this Agreement or the Capital Pledge Agreement, the City shall grant the ROW Credit in the amount of $500,000 to reduce the principal amount of the Owners’ Share upon receipt of written acknowledgement by CDOT that (a) the Owners have dedicated Project ROW to CDOT in an amount at least equal to $500,000, and (b) CDOT has granted a credit to the City toward the costs of the Project in an amount equal to $500,000. The ROW Credit may be applied as a credit to the principal payments due from the Interchange District to the City pursuant to the Capital Pledge Agreement in any order and in any amount as designated in writing by the Owners to the City and the Interchange District. Upon determination by the Owners of the application of the ROW Credit, the Payment Schedule shall be revised by the City to reflect such ROW Credit, as further set forth in the Capital Pledge Agreement.

None of the Property Owners intends, by the execution of this Agreement or the Capital Pledge Agreement, to waive its rights to full and just compensation for the taking of its property or to due process with respect to such Project ROW acquisition.

2.4 **Property Owners’ Credit for Transportation Capital Expansion Fees.** The City acknowledges that it has $1.4 million of TCEF available to help fund the Project. In recognition of the TCEF that the Owners are likely to pay to the City when they develop their respective properties, the City has agreed to credit one half of these available TCEFS, or $700,000, to the payment of the Owners’ Share upon execution and delivery of this Agreement, as further set forth in Section 2.1 hereof.
ARTICLE 3

DISTRICTS.

3.1 Approval of Service Plans. The Parties acknowledge that the TIC Owners, CSURF, FCIC and GAPA have each submitted a consolidated Service Plan for their respective Development Metropolitan Districts for customary review and processing by the City, and the Owners have further caused the Service Plan for the Interchange District to be submitted to the City. The City Council shall consider resolutions of approval for each Service Plan described above no later than March 6, 2018. The Parties acknowledge and agree that it is within the City Council’s sole discretion whether it will approve the Service Plans, and nothing herein shall be construed to require such approval by the City Council. Nothing in this Agreement shall prevent the filing of additional Service Plans at a later date.

3.2 Interchange District Boundaries. Each of the Properties will be included within the boundaries of the Interchange District, which inclusion will be reflected in the overall boundary map contained in the District’s Service Plan.

3.3 Project Mill Levy. The Service Plan for the Interchange District shall authorize such District to impose the Project Mill Levy. The Pledged Project Mill Levy Revenues shall be pledged pursuant to the Capital Pledge Agreement for payment of the Owners’ Share.

3.4 Specific Ownership Taxes. The Specific Ownership Taxes received by the Interchange District in each year from the levy of the Project Mill Levy shall be pledged pursuant to the Capital Pledge Agreement for payment of the Owners’ Share.

3.5 Project Fees. The Service Plan for the Interchange District shall authorize such District to impose Project Fees, which shall be pledged pursuant to the Capital Pledge Agreement for payment of the Owners’ Share.

3.6 District Fees and Development Mill Levy. In addition to providing for payment of the Owners’ Share by the Interchange District, the Owners intend to use the Development Metropolitan Districts to pay eligible public improvement costs related to the development of their respective Properties. Subject to the provisions set forth in the Service Plans and in Section 2.2 hereof relating to the recording of the Interchange PIF Covenant against all Properties, each Development Metropolitan District shall have the right to charge District Fees and impose a Development Mill Levy, and such revenues shall not be required to be pledged to the City for payment of the Owners’ Share.

3.7 Capital Pledge Agreement. The Owners hereby acknowledge that pursuant to the provisions of the Service Plans, the Development Metropolitan Districts are not authorized to impose the Development Mill Levy, impose any District Fees, or issue any debt until the Interchange District and the City execute and deliver the Capital Pledge Agreement.
ARTICLE 4

CITY FUNDING OF PROJECT

4.1 City Funding of Project. The City agrees that, subject to annual appropriation by the City Council, it shall fund all the costs of the Project that are not being paid by CDOT. The Parties acknowledge and agree that the Owner's Share shall not be increased or decreased in the event of cost overruns or cost savings in connection with the Project.

ARTICLE 5

TERM

5.1 Conditions Subsequent; Term. The Parties acknowledge that the Interchange District is submitting the necessary ballot questions to its electorate at the Election that will authorize the organization of the Interchange District and approve ballot questions that authorize the imposition of the Project Mill Levy and the execution and delivery of the Capital Pledge Agreement, in compliance with TABOR and any other applicable law. In the event that (a) the Election is not held on May 8, 2018, or (b) the ballot questions are not approved, or (c) the Interchange District does not execute the Capital Pledge Agreement at its first meeting of the Board after the Election, this Agreement shall terminate and be of no further force and effect. In the event that the Election is held, the ballot questions are approved at the Election, and the Capital Pledge Agreement is executed and delivered by the Interchange District, this Agreement shall remain in full force and effect until the payment in full of the Owners' Share.

ARTICLE 6

DEFAULT & REMEDIES

6.1 Default & Remedies. If any Party fails to perform or observe any obligation or condition required by this Agreement (a "Defaulting Party"), a Party not in default (a "Non-Defaulting Party") may deliver written notice to the Defaulting Party specifically describing such default or defaults ("Default Notice"). The Defaulting Party shall, after receipt of the Default Notice, have thirty (30) days to cure the default or defaults described in the Default Notice, unless the default or defaults cannot reasonably be cured within thirty (30) days, then the Defaulting Party shall have ninety (90) days after receipt of written notice from the Non-Defaulting Party to cure (collectively, the "Cure Period"). If any default described in the Default Notice remains uncured after expiration of the Cure Period, a Non-Defaulting Party may, as its sole remedies, seek specific performance or injunctive relief. In no event shall any Party be liable for damages, including, but not limited to, punitive, exemplary, or consequential damages, including, without limitation, lost profits, whatever the nature of a breach by any other Party of its obligations under this Agreement, and the Parties hereby waive all claims for damages, including, but not limited to, punitive, exemplary, or consequential damages.
ARTICLE 7

MISCELLANEOUS.

7.1 Cooperation. The Parties agree to cooperate on a reasonable basis upon execution of this Agreement to complete any item contemplated herein that is not completed prior to the Effective Date.

7.2 Representatives and Notice. The Parties' respective designated representatives and legal counsel for negotiations and communications concerning the Agreement, and their contact information, are as follows:

For the City:
Mike Beckstead
Chief Financial Officer
300 LaPorte Avenue
PO Box 580
Fort Collins, CO 80524
970-221-6795
mbeckstead@fcgov.com

John Duval
Deputy City Attorney
300 LaPorte Avenue
PO Box 580
Fort Collins, CO 80524
970-416-2488
jduval@fcgov.com

For FCIC and GAPA:
Fort Collins/I-25 Interchange Corner, LLC and/or Gateway at Prospect Apartments, LLC
c/o Neihart Land Company, LLC
580 Hidden Valley Road
Colorado Springs, CO 80919
Attn: R. Tim McKenna
719-641-6527
tim.mckenna@neihartland.com

With a copy to:
Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, CO 80202
Attn: Carolynne C. White, Esq.
303-223-1197
cwhite@BHFS.com
EXHIBIT D

For the TIC Owners:  
Land Acquisition and Management, LLC  
#4 West Dry Creek Cr, Suite 100  
Littleton, CO 80120  
Attn: Rick White  
303-601-5463  
rwhite@laam.biz

With a copy to:  
Kutak Rock LLP  
1801 California Street, Suite 3100  
Denver, Colorado 80202  
Attn: Daniel C. Lynch, Esq.  
303-292-7875  
dan.lynch@kutakrock.com

And a copy to:  
Kutak Rock LLP  
1801 California Street, Suite 3100  
Denver, Colorado 80202  
Attn: Robert C. Roth, Jr., Esq.,  
(303) 292-7802  
Robert.RothJr@KutakRock.com

For Paradigm:  
Paradigm Properties, LLC  
2300 Knoll Drive, Suite A, 2nd Floor  
Ventura, CA 93003  
Attn: Jeffrey Hill  
jeffreyahill@gmail.com

With a copy to:  
Kutak Rock LLP  
1801 California Street, Suite 3100  
Denver, Colorado 80202  
Attn: Daniel C. Lynch, Esq.  
303-292-7875  
dan.lynch@kutakrock.com

For CSURF:  
Colorado State University Research Foundation  
2537 Research Boulevard, Suite 200  
Fort Collins, CO 80526  
Attn: Rick Callan  
Senior Real Estate Analyst  
970-492-4502  
Rick.Callan@colostate.edu

With a copy to:  
Colorado State University Research Foundation  
2537 Research Boulevard, Suite 200  
Fort Collins, CO 80526  
Attn: Donna Baily, Esq.
All notices or documents delivered or required to be delivered under the provisions of this Agreement shall be deemed received one day after hand delivery or three days after mailing. Any party by written notice so provided may change the address to which future notices shall be sent, and may provide the manner in which notices may be given, including without limitation, electronic mail.

7.3 Recordation of Agreement. This Agreement shall not be recorded in the office of the Larimer County Clerk and Recorder.

7.4 General Provisions.

(a) This Agreement and the Capital Pledge Agreement constitute the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement and the Capital Pledge Agreement and supersede all prior and contemporaneous understandings or agreements of the Parties, including without limitation, the MOU. This Agreement may not be contradicted by evidence of any prior or contemporaneous statements or agreements. No Party has been induced to enter into this Agreement by, nor is any party relying on, any representation, understanding, agreement, commitment, or warranty except those expressly set forth in this Agreement.

(b) If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions hereof, then such stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

(c) It is intended that there be no third-party beneficiaries of this Agreement. Nothing contained herein, expressed or implied, is intended to give to any person other than the Parties any claim, remedy, or right under or pursuant hereto, and any agreement, condition, covenant, or term contained herein required to be observed or performed by or on behalf of any Party hereto shall be for the sole and exclusive benefit of the other Party.

(d) This Agreement may not be assigned or transferred by any Party without the prior written consent of all the other Parties. Any such assignment or transfer without the required prior written consent shall be deemed null and void and of no effect.

(e) This Agreement shall be governed by and construed under the applicable laws of the State of Colorado. Venue for any judicial action to interpret or enforce this
Agreement shall be in Larimer County District Court of the Eighth Judicial District for the State of Colorado.

(f) This Agreement may be amended or supplemented by the Parties, but any such amendment or supplement must be in writing and must be executed by all the Parties.

(g) If the date for making any payment or performing any action hereunder shall be a legal holiday or a day on which banks in Denver, Colorado are authorized or required by law to remain closed, such payment may be made or act performed on the next succeeding day which is not a legal holiday or a day on which banks in Denver, Colorado are authorized or required by law to remain closed.

(h) Each of the Parties has participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party.

(i) This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(j) The Parties each covenant that they will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such acts, instruments, and transfers as may reasonably be required for the performance of their respective obligations hereunder.

(k) This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
IN WITNESS WHEREOF, the Parties have executed this Agreement as the date and year first above written.

FCIC:

FORT COLLINS/I-25 INTERCHANGE CORNER, LLC,
a Colorado limited liability company

By: MCKENNA MANAGEMENT, LLC,
a Colorado limited liability company
   its co-Manager

By: _________________________________
Name: R. Tim McKenna
Title: Manager

[Signatures continue on following page(s)]
EXHIBIT D

GAPA:

GATEWAY AT PROSPECT APARTMENTS, LLC,
a Colorado limited liability company

By: MCKENNA MANAGEMENT, LLC,
a Colorado limited liability company
its co-Manager

By: ___________________________
Name: R. Tim McKenna
Title: Manager

[Signatures continue on following page(s)]
EXHIBIT D

TIC Owners:

TENANTS-IN-COMMON

CW SUBTRUST

By:
   David R. White, Trustee

M. JENNET WHITE, an Individual

CHRISTOPHER WHITE, an Individual
EXHIBIT D

TENANTS-IN-COMPON

ERIC S. WHITE, an Individual

JANE E. WHITE, an Individual

JASON R. WHITE, an Individual

DANIEL A. WHITE, an Individual
EXHIBIT D

TENANTS-IN-COMMON

NEW DIRECTION IRA, INC. FBO BARBARA
ANN MEDINA IRA

By: ____________________________
Name: __________________________
Title: __________________________

Approved:

______________________________
Barbara Medina

BOOREN LIMITED LIABILITY LIMITED
PARTNERSHIP

By: ____________________________
Steven M. Booren, General Partner

By: ____________________________
Marie S. Booren, General Partner

DUNKIN LIMITED LIABILITY LIMITED
PARTNERSHIP

By: ____________________________
Douglas S. Dunkin, General Partner

By: ____________________________
Karrie L. Dunkin, General Partner

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TENANTS-IN-COMMON

LAURA SNORTLAND FAIRFIELD, an Individual

ROBERT C. ROTH, JR., an Individual

ROBERT TAYLOR, an Individual

[Signatures continue on following page(s)]
Paradigm:

PARADIGM PROPERTIES, LLC,
a California limited liability company

By: __________________________
Name: Jeffrey A. Hill
Title: Managing Member

[Signatures continue on following page(s)]
CSURF:

COLORADO STATE UNIVERSITY RESEARCH FOUNDATION,
a Colorado nonprofit corporation

By: ___________________________
Name: Kathleen Henry
Title: CEO and President

[Signatures continue on following page(s)]
CITY OF FORT COLLINS, COLORADO
a municipal corporation

By: ________________________________
    Mayor

ATTEST:

____________________________
    City Clerk

APPROVED AS TO FORM:

____________________________
    Deputy City Attorney

[Signatures end]
EXHIBIT D

Exhibit "A"

Master Glossary of Terms
APPENDIX A
MASTER GLOSSARY OF TERMS

"Binding Agreement" means the Binding Agreement Concerning the Development of Interstate Highway 25 and Prospect Road Interchange by and among the City and the Owners.

"Capital Pledge Agreement" means the Capital Pledge Agreement by and between the Interchange District and the City.

"Carryover Costs" has the meaning set forth in Section 2.04(d) of the Capital Pledge Agreement.

"CDOT" means the Colorado Department of Transportation.

"Certificates of Participation" means the Certificates of Participation that are expected to be executed and delivered to finance a portion of the costs of the Interchange Project that are not being paid by CDOT or Timnath. If the Certificates of Participation finance more than one project, the term "Certificates of Participation" shall mean only that pro rata portion of such Certificates that are allocable to the financing of the Interchange Project.

"City" means the City of Fort Collins, a home rule municipality and political subdivision of the State of Colorado.

"City Council" means the City Council of the City.

"CSURF" means the Colorado State University Research Foundation, a Colorado nonprofit corporation.

"CSURF Parcels" means the property owned by CSURF and described in the Binding Agreement.

"Development Metropolitan Districts" means, collectively, Gateway at Prospect Metropolitan District Nos. 1-7; Rudolph Farms Metropolitan District Nos. 1-6; and SW Prospect I25 Metropolitan District Nos. 1-7.

"Development Mill Levy" means each of the mill levies imposed by the Development Metropolitan Districts.

"Districts" means and includes the Interchange District and the Development Metropolitan Districts.

"District Act" means Title 32, Article 1, Colorado Revised Statutes, as amended.

"District Fees" means and includes the fees imposed by the Development Metropolitan Districts pursuant to the District Act for services, programs or facilities furnished or to be furnished by them. District Fees are not required to be pledged as security for the obligations of the Interchange District.

"Election" means the election to be held by the Interchange District on May 8, 2018.
"Eligible Operational Costs" means the actual and reasonable operating and administrative expenses incurred by the Interchange District each year in an amount that does not exceed that amount budgeted by the Interchange District for operating and administrative expenses in such year, as such budget may be amended in accordance with the Capital Pledge Agreement. Revenues generated from the Project Mill Levy may be applied by the District to the payment of Eligible Operational Costs and the Interchange District shall receive a credit against the Owners' Share in each year in an amount equal to the Eligible Operational Costs for such year, as further set forth in the Capital Pledge Agreement.

"FCIC" means Fort Collins/I-25 Interchange Corner, LLC, a Colorado limited liability Company.

"FCIC Parcel" means the property owned by FCIC and described in the Binding Agreement.

"Formation Costs" means the reasonable and necessary costs, fees and expenses, including attorneys' fees, costs and expenses, incurred by the Owners or the Interchange District in connection with the formation of the Interchange District, including without limitation, drafting and negotiating the service plan for the Interchange District, the preparation of the financing plan attached to the service plan, and the costs of the Election. Formation Costs shall also include the share of the costs of drafting and negotiating the Binding Agreement and the Capital Pledge Agreement that are reasonably related and allocable to the formation of the Interchange District. Formation Costs shall not include the costs incurred in connection with the formation of the Development Districts. Revenues generated from the Project Mill Levy may be applied by the Interchange District to the payment or reimbursement of Formation Costs in an amount not exceeding $200,000 as further set forth in the Capital Pledge Agreement. The Interchange District shall not receive a credit against the Owners' Share in an amount equal to the Formation Costs.

"GAPA" means Gateway at Prospect Apartments, LLC, a Colorado limited liability company.

"GAPA Parcel" means the property owned by GAPA and described in the Binding Agreement.

"Interchange District" means the I-25/Prospect Interchange Metropolitan District formed pursuant to the District Act and having boundaries which include all of the Owners' Properties.

"Interchange" means the highway interchange currently located at Interstate Highway I-25 and Prospect Road in the City.

"Interchange District Financing Costs" means the reasonable costs of issuance incurred in connection with the execution and delivery of the Certificates of Participation that are allocable to the financing of the Owners' Share with a portion of the proceeds of the Certificates of Participation, including, without limitation, the fees and expenses of bond counsel, disclosure counsel and counsel to the underwriter, trustee fees and expenses, rating agency fees, insurance premiums, capitalized interest, and similar fees and expenses. If the Certificates of Participation are executed and delivered prior to the ROW Credit being granted, the percentage of costs of
EXHIBIT D

issuance to be allocated to the Interchange District shall be equal to $7,550,000 divided by the total net proceeds of the Certificates of Participation to be applied to finance the Interchange Project (in a total amount not exceeding $19,000,000). If the ROW Credit has been granted prior to the execution and delivery of the Certificates of Participation, the percentage of costs of issuance to be allocated to the Interchange District shall be equal to $7,050,000 divided by the total net proceeds of the Certificates to be applied to finance the Interchange Project (in a total amount not exceeding $18,500,000). Notwithstanding the foregoing, in no event shall the Interchange District Financing Costs exceed an amount equal to two percent (2%) of the principal amount of the Owners’ Share as calculated at the time the Certificates of Participation are executed and delivered.

“Interchange PIF” means a PIF imposed on the Properties at a rate of 0.75% on all future retail sales on the Properties that are subject to the City’s sales tax under Article III in City Code Chapter 25.

“Interchange PIF Collection Agent” means, collectively, an entity or entities retained by the Owners, as the declarants under the applicable Interchange PIF Covenant, with the approval of the Interchange District, for the purpose of collecting, accounting for, and disbursing the Interchange PIF revenue in accordance with the applicable Interchange PIF Covenant. The Owners shall not be required to have one entity serve as Interchange PIF Collection Agent for all the Interchange PIF Covenants.

“Interchange PIF Collection Agreement” means an agreement or agreements related to the collection and remittance of the Interchange PIF revenue between the applicable Owner and the Interchange PIF Collection Agent. Any of the other Owners and the Interchange District may also be parties to the PIF Collection Agreement.

“Interchange PIF Covenant” means the recorded instrument by which an Interchange PIF is imposed.

“Mou” the Memorandum of Understanding dated as of January 30, 2018, by and among the City and the Owners or their authorized representatives.

“Owners” or “Property Owners” means and includes FCIC, GAPA, the TIC Owners, Paradigm and CSURF.

“Owners’ Share” means the share of the cost of the Project to be funded by the Interchange District in accordance with the terms and provisions of the Binding Agreement and the Capital Pledge Agreement. The Owners’ Share shall be funded solely from the Pledged Revenues.

“Paradigm” means Paradigm Properties LLC, a California limited liability company.

“Paradigm Parcels” means the two parcels of land owned by Paradigm and described in the Binding Agreement.

“Parties” means, collectively, the parties to the Binding Agreement or the Capital Pledge Agreement, as applicable.
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"Payment Schedule" means the schedule that sets forth the Owners' Share payments due in each year, including both a principal component and an interest component, as further set forth in the Capital Pledge Agreement.

"PIF" means and includes any fee imposed for the provision of public improvements or services within the whole or any portion of the Interchange District or any District by the recording of covenants binding and running with any or all of the Properties by the Owners thereof.

"PIF Collection Agent" means the entity or agent retained to collect the Interchange PIF.

"Pledged Project Mill Levy Revenues" means the revenues derived from the Project Mill Levy, net of (a) any reasonable costs of collection, (b) Formation Costs, (c) Eligible Operational Costs paid by the Interchange District, and (d) any Carryover Costs.

"Pledged Revenues" means the following:

(a) Pledged Project Mill Levy Revenues;
(b) Specific Ownership Taxes;
(c) revenues generated from the Project Fees;
(d) revenues generated from the Interchange PIF, net of any reasonable costs of collection; and
(e) any other legally available moneys which the Interchange District determines, in its sole discretion, to apply to the payment of the Owners' Share.

"Project" means the project to significantly modify and improve the Interchange by reconstructing its ramps and bridge and by reconstructing Prospect Road to a configuration with four through lanes, a raised median, left turn lanes and pedestrian and bicycle facilities, together with the Urban Design Features. The Project will be funded cooperatively by CDOT, the City, Timnath and the Interchange District, pursuant to the Binding Agreement, the Capital Pledge Agreement and the Timnath Agreement.

"Project Fees" means fees imposed by the Interchange District pursuant to the Capital Pledge Agreement that are pledged to the payment of the Owners' Share. The Project Fees shall be imposed in accordance with Addendum A attached hereto and by this reference made a part hereof. Project Fees shall not be pledged as security for obligations of the Development Metropolitan Districts.

"Project Mill Levy" means a general ad valorem property tax levy imposed by the Interchange District at a rate not less than 7.5 mills and not more than 10 mills in accordance with the Capital Pledge Agreement. In the event the method of calculating assessed valuation is changed after January 1, 2018, such minimum or maximum mill levy, as applicable, will be increased or decreased to reflect such changes, such increases to be determined by the Board of the
EXHIBIT D

Interchange District in good faith (and such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by such mill levy, as adjusted, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation to assessed valuation shall be deemed a change in the method of calculating assessed valuation.

"Project ROW" means those portions of the Properties to be used as rights of way for the Project, whether acquired by CDOT from the Property Owners by condemnation or purchase.

"Properties" means and includes the CSURF Parcels, FCIC Parcel, GAPA Parcel, TIC Owners Parcel and the Paradigm Parcels.

"Property Owners" means and includes FCIC, GAPA, the TIC Owners, Paradigm and CSURF.

"ROW Credit" means a credit to be applied by the City against the payment of the Owners’ Share in the amount of $500,000, subject to the conditions stated in Section 2.3 of the Binding Agreement.

"Service Plan" means and includes the service plan filed pursuant to the District Act with respect to each of the Districts.

"Service Plans" means, collectively, all of the Service Plans.

"Specific Ownership Taxes" means the specific ownership tax revenues received by the Interchange District in each year pursuant to Section 42-3-107(24), C.R.S. that is attributable to the dollar amount of ad valorem taxes generated from the Project Mill Levy.

"Supplemental Act" means Part 2 of Article 57, Title 11, C.R.S.

"TCEF" means the City Transportation Capital Expansion Fee that is imposed pursuant to Fort Collins Code Section 7.5-32.

"TCEF Credit" means a credit to be applied by the City against the payment of the Owners’ Share in an amount equal to $700,000. The TCEF Credit shall be applied at the time of execution and delivery of the Binding Agreement.

"TABOR" means Colorado Constitution, Article X, Section 20.

"TIC Owners" means the CW Subtrust, M. Jennet White, Christopher White, Eric S. White, Jane E. White, Jason R. White, Daniel A. White, New Direction IRA, Inc, FBO Barbara Ann Medina IRA, Booren Limited Liability Partnership, Dunkin Limited Liability Limited Partnership, Laura Snortland Fairfield, Robert C. Roth, Jr. and Robert Taylor, as tenants in common.

"TIC Owners Parcel" means, collectively, the parcel or parcels owned by the TIC Owners and described in the Binding Agreement.

"Timnath" means the Town of Timnath, Colorado.
"Timnath Agreement" means the agreement between the City and Timnath, providing for Timnath's reimbursement to the City of a portion of the costs of the Project.

"Urban Design Features" means certain design improvements in the Project required under the City's development standards, that will add approximately $7,000,000 to the cost of the Project, which improvements are generally described on Addendum B attached hereto and by this reference made a part hereof.
Addendum A

Project Fee Schedule by Land Use Type

<table>
<thead>
<tr>
<th>Land Use Type</th>
<th>Fee/Acre</th>
<th>Fee/Unit</th>
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</thead>
<tbody>
<tr>
<td>Light Industrial (Code 110)</td>
<td>$2,400</td>
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</tr>
<tr>
<td>50k+ GLA Commercial (Shopping Center - Code 820)</td>
<td>$12,200</td>
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<tr>
<td>Convenience Store (Code 853)</td>
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<td>200k+ GLA Office (Code 710)</td>
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<tr>
<td>Hotel (Code 310)</td>
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<tr>
<td>Single Family Detached Residential (Code 210)</td>
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<tr>
<td>Single Family Attached (Code 220)</td>
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</tr>
<tr>
<td>Multi- Family (Code 221)</td>
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Addendum B

Urban Design Features

<table>
<thead>
<tr>
<th>ITEM DESCRIPTION</th>
<th>CDOT PROJECT</th>
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</thead>
<tbody>
<tr>
<td>BRIDGE ENHANCEMENTS</td>
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</tr>
<tr>
<td>Structural Concrete Stain on Bridge Curb, Girders, MSE Walls</td>
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</tr>
<tr>
<td>Upgraded Pedestrian Rail on Bridge</td>
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</tr>
<tr>
<td>Median &amp; Pork Chop Island Cover Material (Color Concrete)</td>
<td>X</td>
</tr>
<tr>
<td>Irrigation Sleeves and Pull Boxes</td>
<td>X</td>
</tr>
<tr>
<td>GORE AREAS AND RAMPS</td>
<td>X</td>
</tr>
<tr>
<td>Earthwork/Import (related to Landscape/Urban Design)</td>
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</tr>
<tr>
<td>Stone Outcrops (including design, mock ups, installation)</td>
<td>X</td>
</tr>
<tr>
<td>Boulders</td>
<td>X</td>
</tr>
<tr>
<td>Cobble Swales</td>
<td>X</td>
</tr>
<tr>
<td>Turf Reinforcement Mat</td>
<td>X</td>
</tr>
<tr>
<td>Seed</td>
<td>X</td>
</tr>
<tr>
<td>Boulders</td>
<td>X</td>
</tr>
<tr>
<td>Irrigation Design</td>
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</tr>
<tr>
<td>Irrigation Tap, Meter &amp; Backflow</td>
<td>X</td>
</tr>
<tr>
<td>Irrigation Sleeves</td>
<td>X</td>
</tr>
<tr>
<td>PROSPECT ROAD</td>
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<tr>
<td>Prospect Rd. Median - Perforated Pipe Underdrain</td>
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<td>Prospect Rd. Median – Membrane</td>
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<td>Prospect Rd. Median – Rock Filter Material</td>
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<td>Prospect Rd. Median - Topsoil</td>
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<td>Prospect Rd. Median – Double Curb</td>
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<td>Electrical conduit for City Street Lights</td>
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<td>Irrigation Design</td>
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<tr>
<td>Irrigation Tap, Meter &amp; Backflow</td>
<td>X</td>
</tr>
<tr>
<td>Irrigation Sleeves</td>
<td>X</td>
</tr>
</tbody>
</table>
EXHIBIT D

Exhibit "B"

Capital Pledge Agreement
CAPITAL PLEDGE AGREEMENT

This CAPITAL PLEDGE AGREEMENT, made and entered into as of ____ __, 2018 (this “Capital Pledge Agreement” or this “Agreement”), by and between the I-25/PROSPECT INTERCHANGE METROPOLITAN DISTRICT, a special district organized and existing under the laws of the State of Colorado (the “Interchange District”) and the CITY OF FORT COLLINS, a Colorado home rule municipality (the “City”) (each a “Party” and jointly the “Parties),

WITNESSETH:

WHEREAS, pursuant to a Memorandum of Understanding dated as of January 30, 2018 (the “MOU”) by and among the City and the other parties identified therein (the “Owners”), the City and the Owners established a non-binding outline of documents and terms to be negotiated for the sharing of costs of improvements to the highway interchange at Interstate Highway I-25 and Prospect Road in the City; and

WHEREAS, one of the documents contemplated by the MOU was an intergovernmental agreement between the Interchange District and the City, identified as the Capital Pledge Agreement, whereby the Interchange District would pledge certain revenues as security for its obligation to pay the Owners’ Share of the cost of such improvements; and

WHEREAS, this Agreement shall constitute the Capital Pledge Agreement contemplated by the MOU;

NOW, THEREFORE, for and in consideration of the promises and mutual covenants and understandings herein, the Parties hereby agree as follows:

ARTICLE 8

DEFINITIONS AND INTERPRETATION

8.1 Definitions. Capitalized terms used herein and not defined in the Recitals above or elsewhere in this Agreement shall have the meanings, respectively, specified in Appendix A hereto.

8.2 Interpretation. In this Agreement, unless the context expressly indicates otherwise, the following words shall be interpreted as set forth below:

(a) The words “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar words, refer to this Agreement as a whole and not to any particular article, section, or subdivision hereof; the word “heretofore” means before the date of execution of the Agreement; and the term “hereafter” means after the date of execution of this Agreement.

(b) All definitions, terms, and words shall include both the singular and the plural, and, except as otherwise expressly defined in the text of this Agreement, all capitalized words or terms shall have the meanings specified in Appendix A attached hereto.
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(c) Words of the masculine gender include correlative words of the feminine and neuter genders, and words importing the singular number include the plural number and vice versa.

(d) The captions or headings of this Agreement are for convenience only, and in no way define, limit, or describe the scope or intent of any provision, article, or section of this Agreement.

(e) All schedules, exhibits, and addenda referred to herein are incorporated herein by this reference.

ARTICLE 9

FUNDING OF THE PROJECT; PAYMENT OBLIGATION

9.1 Covenant of the City to Finance Project. The City agrees that, subject to annual appropriation by the City Council, it shall fund all the costs of the Project that are not being paid by CDOT. The City expects to finance a portion of such costs through the execution and delivery of the Certificates of Participation.

9.2 Calculation of Owners’ Share. The Owners’ Share shall be the share of the costs of the Project to be funded by the Interchange District in accordance with the terms and provisions of the Binding Agreement and this Capital Pledge Agreement. The Owners agreed to fund costs of the Project in the amount of $8,250,000, plus financing costs and interest as provided in this Agreement. In connection with the execution and delivery of the Binding Agreement, the City granted the TCEF Credit in the amount of $700,000, which reduced the amount that the Owners’ agreed to pay to fund the Project to $7,550,000, plus financing costs and interest. The City has agreed in the Binding Agreement to grant the ROW Credit in the amount of $500,000 to further reduce the principal amount of the Owners’ Share upon compliance with the provisions set forth in Section 2.3 of the Binding Agreement.

The initial principal amount of the Owners’ Share shall be calculated on the date of execution and delivery of the Certificates of Participation. The principal amount of the Owners’ Share shall be an amount equal to $7,550,000, plus the Interchange District Financing Costs, less the ROW Credit to the extent that the ROW Credit has been granted on or prior to the execution and delivery of the Certificates of Participation. Upon the execution and delivery of the Certificates of Participation, the City shall determine the Interchange District Financing Costs which shall be added to the principal amount of the Owners’ Share. The principal amount of the Owners’ Share shall bear per annum interest at the net effective interest rate borne by the Certificates of Participation beginning on the date of execution and delivery of the Certificates of Participation. The City shall prepare or cause to be prepared a Payment Schedule that sets forth a twenty year principal amortization of the Owners’ Share, bearing interest at the net effective interest rate on the Certificates of Participation, with level debt service payments rounded to the nearest $1000. The Payment Schedule shall set forth the principal amount due in each year, plus the interest due in each year. The City shall remit such Payment Schedule to the Interchange District and the Owners, and such Payment Schedule shall be binding on the Parties absent manifest error.
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In the event that all of the outstanding Certificates of Participation are refinanced by the City at a lower interest rate, the interest rate on the Owners’ Share shall be reduced to the net effective interest rate borne by the refunding certificates or other refunding obligations, and the City shall prepare a revised Payment Schedule reflecting the lower interest rate.

The Interchange District acknowledges and agrees that the obligation to pay the Owners’ Share is not contingent on the Certificates of Participation remaining outstanding. The obligation to pay the Owners’ Share shall continue notwithstanding that the City may prepay all or any portion of the outstanding Certificates of Participation, or that an event of default or an event of non-appropriation may occur under the lease documents relating to the Certificates of Participation.

9.3 Funding of Owners’ Share.

The Interchange District agrees to fund the Owners’ Share solely from the Pledged Revenues, as follows:

9.3.1 The Owners’ Share shall be payable in twenty installments in the amount set forth in the Payment Schedule on or prior to December 1 of each year, beginning December 1, 2019, subject to adjustment for prepayment of principal and the ROW Credit as hereinafter set forth.

9.3.2 On or prior to the last day of each month, the Interchange District shall remit or cause to be remitted to the City all Pledged Revenues that it or the PIF Collection Agent received through the last day of the prior month. The City shall provide written acknowledgement to the Interchange District of the receipt of such Pledged Revenues, including the amount of Project Fee revenues that have been collected and retained by the City pursuant to Section 2.05 hereof.

9.3.3 On or prior to December 1 of any given year, the Interchange District shall provide written notice to the City of the amount of revenues from the Project Mill Levy that have been applied to the payment or reimbursement of Formation Costs, if any. The Interchange District shall have the right to apply revenues from the Project Mill Levy to the repayment or reimbursement of Formation Costs, but the Interchange District shall not receive a credit toward the Owners’ Share in the event of such repayment or reimbursement.

9.3.4 On or prior to December 1 of any given year, the Interchange District shall also provide written notice to the City of the Eligible Operational Costs incurred by the Interchange District in such year, together with any documentation of such Eligible Operational Costs as reasonably requested by the City. The amount of the Eligible Operational Costs incurred by the Interchange District in each year shall be applied as a credit (i) first toward the interest due on the Owners’ Share in such year, and (ii) second toward the principal amount of the Owners’ Share due in such year.

9.3.5 In the event that on December 1 of any given year the amount of Pledged Revenues remitted to the City in such year, plus the amount of the Eligible Operational Costs for such year, are less than the Owners’ Share due on or prior to December 1 of such year, after any credit as hereinafter set forth, the amount of any such deficit shall begin to bear interest on December 1 of such year, until such deficit is paid, at a fixed rate equal to the rate the City then charges under its “Inter-agency Loan Program” found in Section 8.8 of its “Financial Management Policy 8”. Any Pledged Revenues thereafter remitted shall be applied (i) first to any interest due on such deficit,
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(ii) second to the repayment of the principal amount of such deficit that remains outstanding, (iii) third to the annual interest payment due on or prior to the following December 1, and (iv) fourth to the annual principal payment due on or prior to the following December 1. In the event that on December 1 of any given year the amount of Pledged Revenues remitted to the City, plus the amount of the Eligible Operational Costs for such year, are more than the amount of the Owners’ Share due on or prior to December 1 of such year, and any deficit from any prior years, plus interest on any such deficit, have been paid in full, then such excess Pledged Revenues shall be credited first against the interest amount of the Owners’ Share due in the next subsequent year, and then against the principal amount of the Owners’ Share due in the next subsequent year.

9.3.6 No later than December 31 in each year, the City shall provide the Interchange District with a summary of (i) the Pledged Revenues received in such year through December 1 of such year, (ii) the amount of the Eligible Operational Costs credited to the payment of the interest and principal of the Owners’ Share in such year, (iii) the amount of any credit or deficit remaining as of December 1 of such year, (iv) the amount of unpaid interest, if any, as of December 1 of such year, and (v) the total amount of the Owners’ Share paid or credited through December 1 of such year.

9.3.7 The Parties acknowledge and agree that so long as (i) the Project Mill Levy, the Project Fees and the Interchange PIF are being imposed and collected in accordance with the Binding Agreement and this Capital Pledged Agreement, and (ii) the Interchange District is remitting or causing the remittance of all the Pledged Revenues to the City in accordance with the provisions of this Capital Pledge Agreement, then in the event that there are insufficient Pledged Revenues to pay the full amount of the Owners’ Share due in any year, this shall not constitute an event of default hereunder, but the unpaid amount of the Owners’ Share shall remain outstanding until paid in full and interest shall accrue on any payment deficit as set forth in Section 2.03(e) hereof.

9.3.8 The Interchange District may prepay the Owners’ Share in whole or in part in any amount, on any date, without prepayment premium. Any such prepayment shall be applied first to any unpaid interest due on the Owners’ Share. After any such unpaid interest has been paid, the remainder of such prepayment may be applied against the principal amounts due on the Owners’ Share in inverse order of the principal payments due, or pro-rata to payments that are due, or in such other manner as determined in writing by the Interchange District. Upon any such partial prepayment, the Interchange District shall provide the City with a revised Payment Schedule.

9.3.9 The ROW Credit shall be applied as a credit against the principal amount of the Owners’ Share, as provided in Section 2.3 of the Binding Agreement. Upon the granting of such ROW Credit, the Owners have the right under the Binding Agreement to determine how the ROW Credit will be applied against the principal amount of the Owners’ Share. Upon receipt of written notice by the Interchange District from the Owners of the application of the ROW Credit, the Interchange District shall provide the City and the Owners with the revised Payment Schedule reflecting such ROW Credit.

9.3.10 The obligation of the Interchange District to pay the Owners’ Share as provided herein shall constitute a special and limited obligation of the Interchange District, payable solely from and to the extent of the Pledged Revenues. The Pledged Revenues are hereby pledged by the Interchange District to the City for the payment of the Owners’ Share. The Interchange District
EXHIBIT D

hereby elects to apply all of the provisions of the Supplemental Act to this Capital Pledge Agreement and the payment obligations hereunder.

9.3.11 In no event shall the total or annual obligations of the Interchange District hereunder exceed the maximum amounts permitted under its electoral authority and applicable law.

9.4 Imposition of Project Mill Levy; Eligible Operational Costs; Formation Costs.

9.4.1 In order to fund a portion of the Owners’ Share and to pay for Eligible Operational Costs and Formation Costs, the Interchange District agrees to levy on all of the taxable property in such Interchange District, in addition to all other taxes, direct annual taxes for collection in each of the years when this Agreement is in effect, in the amount of the Project Mill Levy. The Pledged Project Mill Levy Revenues shall be included in the Pledged Revenues and applied as provided herein.

9.4.2 The Interchange District shall provide the City with an itemization of the Formation Costs incurred by the Interchange District that are to be paid or reimbursed from revenues generated from the Project Mill Levy, in an amount not exceeding $200,000. The City shall have the right to review the Formation Costs to confirm that such costs, fees and expenses qualify as Formation Costs for purposes of this Agreement. Upon receipt of the net revenues generated from the Project Mill Levy, and after the City’s confirmation of the Formation Costs, the Interchange District may apply such revenues to the payment or reimbursement of all or any portion of the Formation Costs until such Formation Costs are paid or reimbursed in full. The Interchange District acknowledges and agrees that it shall not receive a credit against the Owners’ Share to the extent that it applies revenues from the Project Mill Levy to the payment of all or any portion of the Formation Costs.

9.4.3 The Interchange District shall provide the City with a copy of its proposed budget for the subsequent fiscal year setting forth the amount of administrative and operating expenses budgeted for the Interchange District for the subsequent fiscal year. If a budget amendment is required due to circumstances that could not have been reasonably foreseen at the time the original budget was adopted, the Interchange District shall provide the City with a copy of the proposed budget amendment setting forth the amount of additional administrative and operating expenses anticipated for the applicable year, and the reason for the increase. The City shall have the right to review the budget and any subsequent budget amendment to confirm that the amount so budgeted for administrative and operating expenses is reasonable, and that any amendment to the budget was the result of circumstances that could not have been reasonably foreseen. The Eligible Operational Costs for any year shall not exceed the amount set forth in the budget and any such budget amendment, as reviewed and approved by the City. The Interchange District agrees that any administrative and operating costs incurred by the Interchange District that exceed the amount so budgeted for any year, including any approved budget amendment, shall not constitute Eligible Operational Costs for purposes of this Agreement and shall not be paid or reimbursed from the revenues generated from the Project Mill Levy or any other Pledged Revenues.

9.4.4 Upon receipt of the net revenues generated from the Project Mill Levy, the Interchange District may apply such revenues to the payment of Eligible Operational Costs and any Carryover Costs (as hereinafter defined). In the event that there are not sufficient revenues generated from the Project Mill Levy in any year to pay the Eligible Operational Costs, such deficit shall constitute
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"Carryover Costs" for purposes of this Agreement, and the next available revenues generated from the Project Mill Levy may be applied first to the repayment of these Carryover Costs. In the event that there are not sufficient revenues generated from the Project Mill Levy in any year to pay any outstanding Carryover Amounts and the Eligible Operational Costs in such year, any such deficit amount shall be added to the outstanding Carryover Costs. The City acknowledges and agrees that the Interchange District will receive a credit each year against the Owners’ Share in an amount equal to the Eligible Operating Costs incurred by the Interchange District for such year, as further set forth in Section 2.03(d) hereof.

9.4.5 This Section 2.04 is hereby declared to be the certificate of the Interchange District to the Board of County Commissioners of Larimer County indicating the aggregate amount of taxes to be levied for purposes of this Agreement and the payment obligations hereunder.

9.4.6 It shall be the duty of the Interchange District annually at the time and in the manner provided by law for the levying of the Interchange District’s taxes, if such action shall be necessary to effectuate the provisions of this Agreement, to ratify and carry out the provisions hereof with reference to the Project Mill Levy and collection of the proceeds thereof, and to require the officers of the Interchange District to cause the appropriate officials of Larimer County to levy the Project Mill Levy and to extend and collect such taxes in the manner provided by law, for the purpose of providing funds for the payment of the Owners’ Share promptly as the installments of the same, respectively, become due. The proceeds of the Pledged Project Mill Levy Revenues, when collected, shall be applied only to the payment of the Owners’ Share due hereunder.

9.4.7 The Project Mill Levy shall be levied, assessed, collected, and enforced at the time and in the form and manner and with like interest and penalties as other general taxes in the State of Colorado.

9.4.8 The Interchange District shall pursue all reasonable efforts to collect, or cause the collection of, delinquent ad valorem property taxes within its boundaries.

9.4.9 Upon payment in full of the Owners’ Share, the Interchange District’s obligation to impose the Project Mill Levy shall terminate.

9.4.10 Nothing herein shall be construed to require the Interchange District to impose an ad valorem property tax levy in excess of the Project Mill Levy. Except as provided by the Service Plan of the Interchange District, nothing herein shall be construed to prevent the Interchange District from imposing an ad valorem property tax levy in excess of the Project Mill Levy to pay administrative expenses in excess of the Eligible Operational Costs or for other lawful purposes.

9.4.11 The Specific Ownership Taxes received by the Interchange District in each year from the levy of the Project Mill Levy shall be included in the Pledged Revenues and applied only to the payment of the Owners’ Share due hereunder.

9.5 Imposition of Project Fees. In order to provide additional Pledged Revenues to fund the Owners’ Share, the Interchange District agrees to impose and collect or cause the collection of the Project Fees, which Project Fees shall be included in the Pledged Revenues and applied as provided herein. The Interchange District agrees to take all necessary and proper steps promptly to adopt, impose and enforce the payment of Project Fees at the time of issuance of each vertical
development permit by the City. For the purpose of administering and facilitating the collection of Project Fees, the City agrees to promptly notify the Interchange District whenever application is made for a vertical building permit for structures or other improvements on any of the Properties, and to collect the Project Fees on behalf of the Interchange District. The City shall send written notice each month to the Interchange District as to the amount of Project Fees so collected in such month. The City shall be allowed to retain the Project Fees so collected and shall credit the Project Fees so collected, without deduction for any collection costs, to the amounts due to the City hereunder, in accordance with Section 2.03 hereof. The Interchange District shall not modify, amend or repeal the resolution or resolutions imposing the Project Fees in any manner or to any extent that would result in a reduction of the rates or amount of Project Fees without the prior written consent of the City.

Upon payment in full of the Owners’ Share, the Interchange District’s obligation to impose the Project Fees shall terminate.

9.6 Collection of PIF Revenues. As provided in the Binding Agreement, the Owners have caused or will cause to be recorded with respect to the Properties in the Interchange District the Interchange PIF Covenant, touching, concerning and running with the land, whereby during the term of this Agreement there are to be collected and paid to the Interchange District the proceeds derived from the imposition of a retail sales tax PIF at a rate equal to 0.75%, net of any reasonable administrative fees for collection, on all future retail sales on the Properties that are also subject to the City’s sales taxes under Article III, Chapter 25 of the City Code, which amounts, when and as received by the Interchange District, shall be included in the Pledged Revenues. The Interchange PIF revenues shall be collected pursuant to the terms and provisions of the Interchange PIF Collection Agreement. The City shall have the right to review the Interchange PIF Collection Agreement to confirm compliance with the terms and provisions of the Binding Agreement and this Capital Pledge Agreement.

9.7 Payment and Application of Pledged Revenues. On or prior to the last day of each month, the Interchange District shall remit or cause to be remitted to the City all Pledged Revenues that it or the PIF Collection Agent received through the last day of the prior month. Such payment shall be made in lawful money of the United States of America by check mailed or delivered, or by wire transfer, to the City or as otherwise directed by the City. The City shall acknowledge in writing the receipt of all amounts paid to it by the Interchange District or the PIF Collection Agent from Pledged Revenues.

The books and records of the Interchange District and the PIF Collection Agent pertaining to the collection and receipt of the Pledged Revenues shall be open for inspection by the authorized representatives of the City during business hours upon reasonable notice.

The books and records of the City pertaining to the collection and receipt of the Project Fees shall be open for inspection by the authorized representatives of the Interchange District during business hours upon reasonable notice. Such access shall be subject to the provisions of the Colorado Open Records Act contained in Article 72 of Title 24, C.R.S. In the event of disputes or litigation between the Parties hereto, all access and requests for such records shall be made in compliance with the Colorado Open Records Act.
EXHIBIT D

9.8 Effectuation of Pledge of Security, Current Appropriation. The sums required to pay the amounts due hereunder are hereby appropriated for that purpose, and said amounts for each year shall be included in the annual budget and the appropriation measures to be adopted or passed by the Board of the Interchange District in each year while any of the obligations herein authorized are outstanding and unpaid. No provisions of any constitution, statute, resolution or other order or measure enacted after the execution of this Agreement shall in any manner be construed as limiting or impairing the obligation of the Interchange District under this Agreement to impose and collect the Project Mill Levy, to impose and collect the Project Fees and to collect the PIF's.

In addition, and without limiting the generality of the foregoing, the obligations of the Interchange District to transfer or cause the transfer of funds to the City as provided herein shall survive any court determination of the invalidity of this Capital Pledge Agreement as a result of a failure, or alleged failure, of any of the directors of the Interchange District to properly disclose, pursuant to State of Colorado law, any potential conflicts of interest related hereto in any way, provided that such disclosure is made on the record of Interchange District’s meetings as set forth in its official minutes.

9.9 Limited Defenses; Specific Performance. It is understood and agreed by the Interchange District that its obligations hereunder are absolute, irrevocable, and unconditional except as specifically stated herein, and so long as any obligation of the Interchange District hereunder remains unfulfilled, any obligations remain outstanding or any costs in connection therewith remain unpaid, such Interchange District agrees that notwithstanding any fact, circumstance, dispute, or any other matter, it will not assert any rights of setoff, counterclaim, estoppel, or other defenses to its payment obligations, or take or fail to take any action which would delay a payment to the City or impair the City’s ability to receive payments due hereunder. Notwithstanding that this Agreement specifically prohibits and limits defenses and claims of the Interchange District, in the event the Interchange District believes that it has valid defenses, setoffs, counterclaims, or other claims other than specifically permitted by this Section 2.09, it shall, nevertheless, make all payments to the City as provided herein, and then may seek to recover such payments by actions at law or in equity for damages or specific performance, respectively.

9.10 Future Exclusion of Property. The Interchange District shall not consent to the exclusion of any real property from within its boundaries without the prior written consent of the City Council, which consent shall be evidenced by resolution.

9.11 Additional Covenants of the Interchange District. The Interchange District additionally covenants as follows:

9.11.1 The Interchange District will not issue or incur bonds, notes, or other obligations payable in whole or in part from, or constituting a lien upon, the general ad valorem taxes of such Interchange District (other than general ad valorem taxes imposed for the purpose of funding operation, maintenance and administrative costs incurred by the Interchange District, provided that such taxes are not imposed in excess of the amount permitted under its Service Plan after first taking into account the imposition of the Project Mill Levy), Project Fees or Interchange PIF’s included in Pledged Revenues, other than obligations subject to annual appropriation and which are expressly subject to the obligations of the Interchange District hereunder, without the prior written consent of the City.
EXHIBIT D

9.11.2 At least once a year in the time and manner provided by law, the Interchange District will cause an audit to be performed of the financial records relating to its revenues and expenditures. In addition, at least once a year in the time and manner provided by law, the Interchange District will cause a budget to be prepared and adopted. Copies of the budget and the audit will be filed and recorded in the places, time, and manner provided by law.

ARTICLE 10

REPRESENTATIONS AND WARRANTIES

10.1 Representations and Warranties of the Interchange District. The Interchange District hereby makes the following representations and warranties with respect to itself:

10.1.1 The Interchange District is a quasi-municipal corporation and political subdivision duly organized and validly existing under the laws of the State.

10.1.2 The Interchange District has all requisite corporate power and authority to execute, deliver, and to perform its obligations under this Capital Pledge Agreement. The Interchange District’s execution, delivery, and performance of this Capital Pledge Agreement has been duly authorized by all necessary action. The authorization for issuance of debt, fiscal year spending, revenue collections and other constitutional matters requiring voter approval by the Interchange District for purposes of this Capital Pledge Agreement was approved at the Election in accordance with law and pursuant to due notice. The performance of the terms of this Capital Pledge Agreement by the Interchange District requires no further electoral approval.

10.1.3 The Interchange District is not in violation of any of the applicable provisions of law or any order of any court having jurisdiction in the matter, which violation could reasonably be expected to materially adversely affect the ability of the Interchange District to perform its obligations hereunder. The execution, delivery and performance by the Interchange District of this Capital Pledge Agreement (i) will not violate any provision of any applicable law or regulation or of any order, writ, judgment, or decree of any court, arbitrator, or governmental authority, (ii) will not violate any provision of any document or agreement constituting, regulating, or otherwise affecting the operations or activities of the Interchange District in a manner that could reasonably be expected to result in a material adverse effect upon its financial condition or ability to meet its obligations when due, and (iii) will not violate any provision of, constitute a default under, or result in the creation or imposition of any lien, mortgage, pledge, charge, security interest, or encumbrance of any kind on any of the revenues or other assets of the Interchange District pursuant to the provisions of any mortgage, indenture, contract, agreement, or other undertaking to which the Interchange District is a party or which purports to be binding upon the Interchange District or upon any of its revenues or other assets which could reasonably be expected to result in a material adverse effect upon its financial condition or ability to meet its obligations when due.

10.1.4 The Interchange District has obtained all consents and approvals of, and has made all registrations and declarations with any governmental authority or regulatory body required for the execution, delivery, and performance by the Interchange District of this Capital Pledge Agreement.
10.1.5 There is no action, suit, inquiry, investigation, or proceeding to which the Interchange District is a party, at law or in equity, before or by any court, arbitrator, governmental or other board, body, or official which is pending in connection with any of the transactions contemplated by this Capital Pledge Agreement nor, to the best knowledge of the Interchange District is there any basis therefor, wherein an unfavorable decision, ruling, or finding could reasonably be expected to have a material adverse effect on the validity or enforceability of, or the authority or ability of the Interchange District to perform its obligations under, this Capital Pledge Agreement.

10.1.6 This Capital Pledge Agreement constitutes the legal, valid, and binding obligation of the Interchange District, enforceable against the Interchange District in accordance with its terms (except as such enforceability may be limited by bankruptcy, moratorium, or other similar laws affecting creditors’ rights generally and provided that the application of equitable remedies is subject to the application of equitable principles).

ARTICLE 11
DEFAULT AND REMEDIES

11.1 Events of Default. The occurrence or existence of any one or more of the following events shall be an “Event of Default” hereunder, and there shall be no default or Event of Default hereunder except as provided in this Section:

11.1.1 the Interchange District fails or refuses to impose the Project Mill Levy, or the Project Fees, or to enforce its rights in connection with the Interchange PIF’s, or to remit or cause the remittance of the Pledged Revenues as required by the terms of this Capital Pledge Agreement;

11.1.2 any representation or warranty made by either Party in this Capital Pledge Agreement proves to have been untrue or incomplete in any material respect when made;

11.1.3 either party fails in the performance of any other of its covenants in this Capital Pledge Agreement, and such failure continues for 60 days after written notice specifying such default and requiring the same to be remedied is given to either of the Parties hereto;

11.1.4 the Interchange District commences proceedings for dissolution or consolidation with another metropolitan district during the term of this Agreement; or

11.1.5 (i) the Interchange District shall commence any case, proceeding, or other action (A) under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization, or relief of debtors, seeking to have an order for relief entered with respect to it or seeking to adjudicate it insolvent or bankrupt or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition, or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, or other similar official for itself or for any substantial part of its property, or shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against it any case, proceeding, or other action of a nature referred to in clause (i) and the same shall remain undismissed within 90 days following the date of filing; or (iii) there shall be commenced against it any case, proceeding, or other action seeking issuance of a warrant of attachment, execution, distraint, or similar process against all or any substantial part of its property which results in the entry of an order for any such relief which shall not have been vacated,
discharged, stayed, or bonded pending appeal within 90 days from the entry thereof; or (iv) it shall take action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clauses (i), (ii) or (iii) above; or (v) it shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due.

11.2 **Remedies For Events of Default.** Subject to Section 2.09 hereof, upon the occurrence and continuation of an Event of Default, either Party may proceed to protect and enforce its rights against the Party causing the Event of Default by mandamus or such other suit, action, or special proceedings in equity or at law, in any court of competent jurisdiction, including, without limitation, an action for specific performance, provided that no special or consequential damages shall be awarded in connection with any Event of Default hereunder. In the event of any litigation or other proceeding to enforce any of the terms, covenants or conditions hereof, the prevailing party in such litigation or other proceeding shall obtain, as part of its judgment or award, its reasonable attorneys' fees and costs.

**ARTICLE 12**

**MISCELLANEOUS**

12.1 **Pledge of Revenue.** The creation, perfection, enforcement, and priority of the pledge of the Pledged Revenues to secure or pay the payment obligations of the Interchange District shall be governed by Section 11-57-208 of the Supplemental Act and this Capital Pledge Agreement. The Pledged Revenues shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against any of the Interchange District irrespective of whether such persons have notice of such liens.

12.2 **No Recourse Against Officers, Agents or Owners.** Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Board of Directors of the Interchange District, or any officer or agent thereof, acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the payment obligations of the Interchange District. Such recourse shall not be available either directly or indirectly through the Board or the Interchange District, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of this Capital Pledge Agreement and as a part of the consideration hereof, the City specifically waives any such recourse. In addition to the immunities provided by the Supplemental Act and this Section to such Board members, officers or agents in their official capacities, there shall not be personal recourse to any Owner under any provision of this Agreement.

12.3 **Conclusive Recital.** Pursuant to Section 11-57-210 of the Supplemental Act, it is hereby recited that this Capital Pledge Agreement and each of the obligations of the Interchange District hereunder are issued pursuant to the Supplemental Act, and such recital is conclusive evidence of the validity and the regularity of this Capital Pledge Agreement and such obligations after their delivery for value. The Interchange District hereby acknowledges the receipt of value for the execution and delivery of this Capital Pledge Agreement and the issuance of the obligations evidenced hereby, in the form of the City's commitment to finance the Project in accordance with
the terms and provisions of the Binding Agreement and this Capital Pledge Agreement, other good and valuable consideration.

12.4 Limitation of Actions. Pursuant to Section 11-57-212, C.R.S., no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the authorization, execution, or delivery of this Capital Pledge Agreement shall be commenced more than thirty days after the authorization of this Capital Pledge Agreement.

12.5 Notices. Except as otherwise provided herein, all notices or payments required to be given under this Agreement shall be in writing and shall be hand delivered or sent by certified mail, return receipt requested, or air freight, to the following addresses:

I-25/Prospect Interchange Metropolitan District:

With a copy to: White Bear Ankele Tanaka & Waldron
c/o Robert G. Rogers, Esq.
2154 E. Commons Ave, Suite 2000
Centennial, CO 80122
303-858-1800
rrogers@wbapc.com

City of Fort Collins: Mike Beckstead
Chief Financial Officer
300 LaPorte Avenue
PO Box 580
Fort Collins, CO 80524
970-221-6795
mbeckstead@fcgov.com

With a copy to: John Duval
Deputy City Attorney
300 LaPorte Avenue
PO Box 580
Fort Collins, CO 80524
970-416-2488
jduval@fcgov.com

All notices or documents delivered or required to be delivered under the provisions of this Agreement shall be deemed received one day after hand delivery or three days after mailing. Any party by written notice so provided may change the address to which future notices shall be sent, and may provide the manner in which notices may be given, including without limitation, electronic mail.
12.6 Findings and Determinations Relative to Service Plan and Electoral Debt Limitations. The Board of Directors of the Interchange District has made, and by approval of this Capital Pledge Agreement hereby makes, the following findings and determinations relative to the limitations on indebtedness set forth in its Service Plan and applicable electoral authorization:

12.6.1 Pursuant to its Service Plan, Interchange District is permitted to issue “Debt” (as defined therein) in the maximum principal amount of $__________. The maximum principal amount, total repayment cost and annual repayment cost of the Debt of the Interchange District approved at the Election were $__________, $__________, and $__________, respectively, and the payment obligations of the Interchange District do not exceed any of such approved amounts. $__________ of such principal authorization is allocated to the payment obligations evidenced by this Capital Pledge Agreement.

12.6.2 Prior to the execution and delivery of this Capital Pledge Agreement the Interchange District had no Debt outstanding.

12.6.3 As of the date of its execution and delivery this Capital Pledge Agreement represents the sole Debt of the Interchange District.

12.7 General.

12.7.1 This Capital Pledge Agreement and the Binding Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Capital Pledge Agreement and the Binding Agreement and supersede all prior and contemporaneous understandings or agreements of the parties, including without limitation, the MOU. This Capital Pledge Agreement may not be contradicted by evidence of any prior or contemporaneous statements or agreements. No Party has been induced to enter into this Capital Pledge Agreement by, nor is any party relying on, any representation, understanding, agreement, commitment, or warranty except those expressly set forth in this Capital Pledge Agreement.

12.7.2 If any term or provision of this Capital Pledge Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Capital Pledge Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Capital Pledge Agreement. If any provision or part thereof of this Capital Pledge Agreement is stricken in accordance with the provisions hereof, then such stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

12.7.3 It is intended that there be no third-party beneficiaries of this Capital Pledge Agreement, other than the Owners. Nothing contained herein, expressed or implied, is intended to give to any person, other than the Owners, any claim, remedy, or right under or pursuant hereto, and any agreement, condition, covenant, or term contained herein required to be observed or performed by or on behalf of any Party hereto shall be for the sole and exclusive benefit of the other Party, and the Owners.
12.7.4 This Capital Pledge Agreement may not be assigned or transferred by any Party without the prior written consent of the other Party. Any such assignment or transfer without the required prior written consent shall be deemed null and void and of no effect.

12.7.5 This Capital Pledge Agreement shall be governed by and construed under the applicable laws of the State of Colorado. Venue for any judicial action to interpret or enforce this Capital Pledge Agreement shall be in Larimer County District Court of the Eighth Judicial District for the State of Colorado.

12.7.6 This Capital Pledge Agreement may be amended or supplemented by the Parties, but any such amendment or supplement must be in writing and must be executed by both Parties.

12.7.7 If the date for making any payment or performing any action hereunder shall be a legal holiday or a day on which banks in Denver, Colorado are authorized or required by law to remain closed, such payment may be made or act performed on the next succeeding day which is not a legal holiday or a day on which banks in Denver, Colorado are authorized or required by law to remain closed.

12.7.8 Each Party has participated fully in the review and revision of this Capital Pledge Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Capital Pledge Agreement. The language in this Capital Pledge Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party.

12.7.9 This Capital Pledge Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

12.7.10 The Interchange District and the City shall have the right to access and review each other’s records and accounts, at reasonable times during regular office hours, for purposes of determining compliance with the terms of this Agreement. Such access shall be subject to the provisions of the Colorado Open Records Act contained in Article 72 of Title 24, C.R.S. In the event of disputes or litigation between the Parties hereto, all access and requests for such records shall be made in compliance with the Colorado Open Records Act.

12.7.11 The Parties each covenant that they will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such acts, instruments, and transfers as may reasonably be required for the performance of their obligations hereunder.

(1) This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

12.8 Effective Date and Termination Date. This Agreement shall become effective on ____________, 2018, and shall remain in effect until the payment in full of the Owners’ Share.
EXHIBIT D

IN WITNESS WHEREOF, the Interchange District and the City have executed this Capital Pledge Agreement as of the day and year first above written.

INTERCHANGE DISTRICT

By: ____________________________
Title: ____________________________

ATTEST:

______________________________
Secretary

CITY OF FORT COLLINS

By: ____________________________
Mayor

ATTEST:

______________________________
City Clerk
EXHIBIT D

Exhibit “C”

FCIC Parcel
EXHIBIT D

Exhibit "D"

GAPA Parcel
EXHIBIT D

Exhibit "E"

TIC Owners Parcels
EXHIBIT D

Exhibit "F"

Paradigm Parcels
EXHIBIT D

Exhibit "G"

CSURF Parcels
AGENDA ITEM SUMMARY
City Council

AGENDA ITEM SUMMARY
August 21, 2018

STAFF
Kaley Zeisel, Transfort Capital Planning/Grant Compliance Mgr
Dean Klingner, Transfort and Parking Interim General Manager
Drew Brooks, Director of Transit
Chris Van Hall, Legal

SUBJECT
Resolution 2018-075 Authorizing the Execution of an Intergovernmental Agreement Between the City and Colorado State University for Game Day Transportation Services.

EXECUTIVE SUMMARY
The purpose of this item is to authorize the Mayor to sign the Game Day Intergovernmental Agreement ("IGA") for the provision of enhanced public transportation services from the City, by CSU, to assist in managing the flow of people entering and exiting CSU’s on-campus stadium during major events, such as home football games.

STAFF RECOMMENDATION
Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION
The City entered an IGA with CSU in 2015, referred to as the “Stadium IGA,” in which CSU agreed to purchase, and the City agreed to provide, enhanced public transit services to assist with managing the flow of people entering and exiting the stadium during major events. This Stadium IGA does not specify service options or related costs for the purchase of public transportation services, necessitating the separate Game Day IGA.

Transfort provided enhanced services for all six CSU home football games during the 2017 season and saw an average increased ridership of 15,000 riders per game. There will be six home football games during the 2018 season, and game day ridership increases are expected to remain static from 2017. Enhanced transit services include higher frequencies and trailer buses along the Mason Corridor (MAX) and West Elizabeth. Existing, base, Transfort services will continue pre-game, during, and post-game. Through this IGA, Transfort agrees to provide buses and operators to the extent possible based on available resources.

This IGA includes reimbursement from CSU for:

- Enhanced transit services beginning 2.5 hours prior to the game start time and continuing 1 hour after the game ends. This includes Operators’ salaries, benefits and insurance; fuel; fleet maintenance expenses; operational assistance and support personnel salaries and benefits.
- Associated traffic control performed by the City.
- Reimbursement for the first two games of Neighborhood Outreach.

The funds for the expenditure and reimbursement for transit services were appropriated previously through the 2017-18 BFO process; therefore, no appropriations are required for this action.
The term of this agreement extends through the 2018 regular football season and includes any post-season games; the agreement may be renewed each subsequent year upon mutual written agreement. The IGA authorizes the City Manager to execute annual service addendums and amendments that do not impose greater obligations than the IGA and are subject to appropriation.

**CITY FINANCIAL IMPACTS**

$108,225 was appropriated to the 2018 budget during the 2017/2018 BFO cycle to cover expected Game Day Expenses. Included in the IGA is the list of reimbursable costs for the City. CSU will be invoiced the actual amount for Game Day related costs. This is expected to be cost neutral for the City.
RESOLUTION NO. 2018-075
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY AND COLORADO STATE UNIVERSITY FOR GAME DAY TRANSPORTATION SERVICES

WHEREAS, the City entered into an intergovernmental agreement with Colorado State University (“CSU”) in 2015 (the “Stadium IGA”), in which CSU agreed to purchase, and the City agreed to provide, additional public transit services to assist with managing the flow of people entering and exiting the stadium during major events; and

WHEREAS, the City and CSU now wish to enter into an intergovernmental agreement to specify service options and related costs for the City to provide transportation services for all six of CSU’s home football games, and any postseason games (the “Game Day IGA”); and

WHEREAS, under the Game Day IGA, the City will provide enhanced public transit services for CSU home football games, including higher frequencies and trailer buses along the Mason Corridor (MAX) and West Elizabeth, which services will continue pre-game, during and post-game; and

WHEREAS, under the Game Day IGA, CSU will reimburse the City for the enhanced transit services beginning 2.5 hours prior to the game starting and continuing 1 hour after the game ends, associated traffic control performed by the City and reimbursement for neighborhood outreach associated with the first two games; and

WHEREAS, Article II, Section 16 of the City Charter empowers the City Council, by ordinance or resolution, to enter into contracts with governmental bodies to furnish governmental services and make charges for such services, or enter into cooperative or joint activities with other governmental bodies; and

WHEREAS, Section 29-1-203 of the Colorado Revised Statutes provides that governments may cooperate or contract with one another to provide certain services or facilities when such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve; and

WHEREAS, the City Council has determined that the Game Day IGA is in the best interests of the City and provides the public benefit of providing enhanced and efficient public transportation during CSU home football games within the City and that the Mayor be authorized to execute the Game Day IGA between the City and CSU in support thereof.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.
Section 2. That the Mayor is hereby authorized to enter into the Game Day IGA, in substantially the form attached hereto as Exhibit “A,” together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or to effectuate the purposes of this Resolution.

Section 3. That the City Manager is hereby authorized to execute service addendums and amendments in accordance with and subject to the provisions of Section 1.2 of the Game Day IGA.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of August, A.D. 2018.

______________________________

Mayor

ATTEST:

______________________________

City Clerk
INTERGOVERNMENTAL AGREEMENT
for Purchase of Supplemental Game Day Transportation Services

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”), is made and entered into by and between the Board of Governors of the Colorado State University System, acting by and through Colorado State University (“CSU” or “University”), and the City of Fort Collins, Colorado, a Colorado municipal corporation (“City” or “Transfort”). The City and CSU are referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

A. The City and CSU entered into an Intergovernmental Agreement related to an On-Campus Stadium, dated April 13, 2015 (the “Stadium IGA”) which, among other items, addressed the need to mitigate neighborhood and transportation impacts of CSU’s new on-campus stadium.

B. The Stadium IGA states the following: “CSU agrees to purchase at the City’s generally established price and/or rate for provision of contractual transit services, and the City agrees to the extent of its practical and legal ability to provide, additional City public transportation services, particularly additional services from Transfort, including MAX bus rapid transit service, to assist with managing the flow of people to and from Major Events at the Stadium. Such additional public transportation services will be provided to CSU upon appropriate notice and subject to available capacity, provided that the City shall use its best efforts to plan for such additional capacity in advance based on the information provided to the City by CSU, and shall not unreasonably withhold such services. CSU and the City agree to discuss on a regular basis those supplemental transportation services to be requested by CSU and provided by the City for Major Events at the Stadium.”

C. The Stadium IGA does not identify agreed upon service options or related costs for CSU’s purchase of public transportation services from the City.

D. As set forth in this Agreement, the City and CSU agree to identify service options or related costs for CSU’s purchase of public transportation services from the City.

NOW, THEREFORE, the Parties agree as follows:

1. TERM

1.1 The term of this Agreement will begin on the date it is fully executed by the Parties (the “Effective Date”) and shall continue through the entirety of the 2018 CSU football season, including postseason play.

1.2 Upon mutual written agreement by the parties prior to July 1 of each subsequent year, this Agreement for Game Day Services and Reparking Services (as described by each yearly Service Addendum) may be renewed under the terms and conditions herein.
Subsequent yearly Service Addendums and other amendments to this agreement may be executed by the City Manager, provided that such Service Addendums and other amendments do not impose obligations substantially greater than those contemplated herein, and are subject to appropriation of funds.

2. CONFLICT OF TERMS

2.1 In the event of any conflict between the terms of this Agreement and any subsequent Service Addendum, the modifications and conditions of a yearly Service Addendum shall control during that respective year.

CSU GAME DAY TRANSIT AND TRAFFIC CONTROL SERVICES

3. ASSUMPTIONS

3.1 The 2017 CSU football season averaged 15,000 riders per game. This agreement assumes ridership will remain consistent for the 2018 season.

3.2 There will be six (6) home games (each a “Game Day”), with the possibility for postseason games as described in Paragraph 6.1 of this Agreement. Kickoff times and days vary and are subject to change.

3.3 In the event CSU is required to host additional, post-season games, including a conference championship game, the City will provide the same services as any regular season Game Day hereunder.

3.4 Base transit service will continue to operate during Game Day. Enhanced service on two (2) primary corridors to the south and west of campus are expected to need enhanced service to meet Game Day demand.

3.5 Traffic control on campus will be provided by CSU to efficiently and safely move attendees and transit vehicles to and from the stadium, at parking access points, and other potential conflict points.

3.6 Basic set up of overall traffic control off campus will be provided by CSU. Detailed pattern management (especially along Shields) before, during and after the game, including shifting from ingress to egress patterns will be performed by the City of Fort Collins Traffic Operations staff.

3.7 At all times, the Game Day transit services will operate within the City of Fort Collins as part of the City’s transportation system.

3.8 The Game Day Services and Repark Services for the 2018 CSU football season will be pursuant to this Agreement and the service addendum attached to this Agreement as Exhibit A.
3.9 CSU must notify the City of the dates of games and the kickoff times as soon as reasonably possible so that the City can adjust and plan service.

4. FEES AND SERVICES

4.1 The City will provide bus operations for six (6) Game Days and the associated bus operator salaries, benefits, insurance, bus stop and wayfinding signs, queue fencing, fuel (biodiesel and Compressed Natural Gas), fleet maintenance expenses, and support personnel salaries and benefits (the “Game Day Services”). Support personnel include customer service staff, additional dispatchers and Road Supervisors, and maintenance staff. No additional bus operation costs incurred by the City, direct or indirect, shall be the responsibility of CSU.

4.2 The Game Day service level and cost are subject to adjustment based on ridership and other information gathered from each game upon mutual agreement by both parties.

4.3 The City shall invoice, and CSU shall remit payment, no later than thirty (30) days after actual receipt of each invoice, the actual costs of providing the Game Day Services, as well as the City-provided Traffic Control and signage services associated with each Game Day.

4.4 CSU will be responsible for City costs related to door hangers, utility inserts and Neighborhood Outreach for the first two (2) games, which costs will be invoiced pursuant to Paragraph 4.3.

4.5 CSU will be responsible for City costs related to neighborhood signage (barricades for RP3) and parking lot signage, Transfort staging traffic control located behind the Downtown Transit Center, and management along Shields.

4.6 Exhibit F outlines estimated expenses for the entirety of the season. These estimates are intended to be a guide, but are not be representative of the final, total cost.

5. SERVICE CHARACTERISTICS AND OPERATIONS

5.1 As fully described in each Service Addendum, Game Day Services will be enhanced with higher frequencies (see Exhibit B) and trailer buses along the Mason Corridor (MAX), and West Elizabeth and the ADA Shuttle (HORN detour). See Exhibits C, D, and E for Game Day Service route maps.

5.2 CSU will be responsible for actual costs the City incurs related to the Game Day Services for two and one-half (2.5) hours prior to “kick-off” and one (1) hour after the game ends.

5.3 During the football game, transportation service extensions may be adjusted based on service needs and coordination between the parties.
5.4 Post-game target is to clear Game Day attendees within one (1) hour following the conclusion of the respective game.

5.5 Existing services will continue pre-, during, and post-game. Additional vehicles will be staged in the area around the stadium during the game to accommodate a mass exodus from the stadium when needed. Staging will occur at the CSU Transit Center, the Downtown Transit Center, and along the MAX corridor. These vehicles will be used on the standard, agreed-upon routes.

5.6 Transfort will provide buses and operators to the extent possible based on available resources. Additionally, pursuant to Section 4.2, upon agreement with CSU, services may be increased or decreased, and fees adjusted, to account for changes in event schedule, available resources or expected transit demand.

5.7 Routes and service will be provided as per the chart of headways by route, attached hereto in each yearly Service Addendum and incorporated by this reference. Combined service headways equal pre-existing, base frequencies plus service on those routes added for Game Day Services. For example, MAX typically runs at ten (10) minute headways, and by adding five (5) minute headways (additional buses) the route will offer five (5) minute headways (approximately). However, actual headways will vary, and post-game service is intended to allow buses to be staged in a line to facilitate the boarding process and departure as soon as a bus is sufficiently full. In effect, headways may be lower than five (5) minutes during peak service.

6. SERVICE CONSIDERATIONS

6.1 CSU will notify the City immediately via email upon learning that CSU will host a postseason game as described in Section 3.3. If such notice is received by the City less than thirteen (13) days prior to such postseason game, the Parties will work together to ensure the Game Day Services for any postseason game are provided to the greatest degree possible. Any postseason game will be treated as an additional Game Day under this Agreement for the purposes of costs and services, however, the City has the right to unilaterally adjust the level of service for a postseason game based on available resources at the time it is made aware of a postseason game.

6.2 All vehicles used for the Game Day Services will be ADA accessible. Federal regulations require that complementary door-to-door Paratransit service will also be provided within ¾ mile of the shuttle routes, which service will be provided by Transfort’s Dial-A-Ride service pursuant to the terms and conditions of that service.

6.3 Game Day Services include Transfort support services including additional customer support services, dispatchers and road supervisors providing supervision during the entirety of the enhanced service.

6.4 Ridership during Game Days and for repark will be tracked using automatic passenger counters that are installed on Transfort’s fleet of vehicles. Transfort will provide this information to CSU after each game as soon as practical.
7. MARKETING AND COMMUNICATIONS

7.1 City and CSU acknowledged that effective communication about Game Day Services is essential for ensuring Game Day Services provide a viable means of transportation to and from the stadium on Game Days.

7.2 Announcements to existing and potential ticket holders regarding the availability of transit for Game Day transportation will be provided by CSU in a manner determined by CSU at its sole discretion, but at a minimum such announcements will be made via direct email.

7.3 The City/Transfort will use existing communication tools to post information regarding the transportation services at the following areas and in the following ways:

7.3.1 Rider alerts at Transit Centers (DTC, CTC and STC) and inside regular fixed route buses;

7.3.2 Transfort website;

7.3.3 Email to the Transfort newsletter distribution list;

7.3.4 Announcements in social media accounts (Twitter, Facebook, etc.);

7.3.5 Utility bill inserts; and

7.3.6 Door hangers.

TRANSIT SERVICES FOR STUDENT REPAIR

8. ASSUMPTIONS

8.1 Lots will be available for student repark. These may include, but are not limited to:

8.1.1 Westfall surface parking #115;

8.1.2 Parmelee surface parking #145;

8.1.3 Allison surface parking #170;

8.1.4 S. College Avenue parking garage (#577); and

8.1.5 Lake Street parking garage (#570), for overflow if necessary

8.2 The lots listed in Section 8.1 represent approximately 2,000 parking spaces.
8.3 There are approximately 2,000 residence hall permits sold each year (including Laurel Village).

8.4 Residence hall occupants will not be assigned parking in a particular location.

8.5 Residence hall occupants will be required to relocate or repark vehicles by 8 p.m. on evenings prior to Saturday Game Days. Reparked vehicles may be retrieved from repark lots at any time and may resume normal permit parking beginning four (4) hours after a game concludes. Reparked vehicles must be retrieved from the reparking lots by 7 a.m. the following business day.

8.6 Currently, the Around the Horn Campus Shuttle transit (the “Horn”) operates ten (10) minute frequencies from 7:00 a.m. – 6:30 p.m. weekdays when CSU is in session and thirty (30) minute frequencies on Saturdays and weekdays when CSU is out of session. During Game Days, the Horn Campus Shuttle will be detoured due to closures and to accommodate ADA Lot Access.

9. FEES AND SERVICES

9.1 If so described in a Service Addendum, the City will provide bus operations, in addition to regular services, for the Horn campus shuttle route, and the associated expenses for bus operator salaries, benefits, operator uniforms, insurance, fuel (bio-diesel and Compressed Natural Gas), fleet maintenance expenses and the “Repark Services”.

9.2 The Repark service level is subject to adjustment based on ridership and other information gathered after each game. Services may be reduced or expanded upon agreement between the Parties depending on demand.

9.3 The City shall invoice CSU after instance of Repark Services the actual cost of providing the services. CSU shall remit payment no later than thirty (30) days after actual receipt of each invoice.

9.4 CSU will provide communication to occupants of residence halls about the availability of the Horn for student repark. Information may include service hours, times, frequencies and pickup/drop off locations.

9.5 Exhibit F outlines estimated expenses for the entirety of the season. These estimates are intended to be a guide, but are not be representative of the final, total cost.

GENERAL TERMS AND CONDITIONS

10. REPRESENTATIVES AND NOTICES

10.1 The Parties hereby designate the following representatives for purposes of managing this Agreement and receiving notices hereunder. A Party may change its designated
representative(s) at any time by service of notice in the same manner as any other notice. Any notice required or desired to be given under this Agreement shall be deemed received when hand-delivered to the other Party or sent by certified mail, return receipt requested, to such Party at the following addresses:

<table>
<thead>
<tr>
<th>UNIVERSITY:</th>
<th>CITY:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Doug Max</td>
<td>Drew Brooks</td>
</tr>
<tr>
<td>Senior Associate Athletic Director for Facilities &amp; Event Management</td>
<td>Transfort Parking Services Director</td>
</tr>
<tr>
<td>0120 Campus Delivery</td>
<td>250 N. Mason</td>
</tr>
<tr>
<td>Colorado State University</td>
<td>Fort Collins, CO 80524</td>
</tr>
<tr>
<td>Fort Collins, CO 80523</td>
<td>AND</td>
</tr>
<tr>
<td>AND</td>
<td>Office of the City Manager</td>
</tr>
<tr>
<td>Vice President for University Operations</td>
<td>City of Fort Collins</td>
</tr>
<tr>
<td>318 Administration</td>
<td>P.O. Box 580</td>
</tr>
<tr>
<td>Colorado State University</td>
<td>Fort Collins, CO 80522</td>
</tr>
<tr>
<td>Fort Collins, CO 80523</td>
<td>With a copy to:</td>
</tr>
<tr>
<td></td>
<td>Office of the General Counsel</td>
</tr>
<tr>
<td></td>
<td>0006 Campus Delivery</td>
</tr>
<tr>
<td></td>
<td>Fort Collins, CO 80523-0006</td>
</tr>
</tbody>
</table>

Proof of service of any notice in accordance with this provision may be required.

11. TERMINATION

11.1 TERMINATION FOR DEFAULT. A Party will be considered in default of its obligations under this Agreement if such Party should fail to observe, to comply with, or to perform any term, condition, or covenant contained in this Agreement. The non-defaulting Party shall provide written notice to the defaulting Party of any such default. The defaulting Party shall have ten (10) days after receipt of such notice to remedy said default. During the ten (10) day period in which the defaulting Party may cure the default, the Parties will make reasonable attempts to resolve the claimed default. If the default is not cured by the end of this ten (10) day period, the non-defaulting Party may declare this Agreement terminated, but shall not be relieved of its obligations incurred prior to the date of termination.

11.2 TERMINATION FOR CONVENIENCE. Either Party has the right to terminate this Agreement, or any yearly Service Addendum, for any or no reason upon not less than thirty (30) days’ advance written notice to the other Party.

12. MISCELLANEOUS PROVISIONS
12.1 Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes any previous contracts, understandings, or agreements of the parties, whether verbal or written, concerning the Game Day Services. Any amendment or Service Addendums to this Agreement must be in writing and signed by both Parties.

12.2 Waiver of Breach. The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach of the same or other provision hereof.

12.3 Severability. In the event that any provision of this Agreement is held unenforceable for any reason, the remaining portions of this Agreement shall remain in full force and effect.

12.4 Assignment. No assignment of this Agreement or the rights and obligations thereunder shall be valid without the specific written consent of both parties hereto.

12.5 Independent Contractors. Each Party and its governing board, officers, directors, employees, and agents are independent contractors in relation to the other Party with respect to all matters arising under this Agreement. This Agreement shall not be construed to create any partnership, joint venture, nor other agency relationship between the parties, who are independent of one another. The City and its employees shall not be considered employees of the University for any purpose whatsoever and are not entitled or eligible for any employment benefit or compensation from the University, for example, medical benefits, retirement benefits, or worker’s compensation coverage.

12.6 Choice of Law. This Agreement shall be governed by the laws of the State of Colorado, without regard to the conflict of laws provision thereof.

12.7 Third Party Beneficiaries. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the City and the University. Any services or benefits that third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

12.8 Controller’s Approval. C.R.S. § 24-30-202(1). This Agreement shall not be valid until it has been approved by the Colorado State University Controller or designee.

12.9 Fund Availability. C.R.S. § 24-30-202(5.5). Financial obligations of the University and the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

12.10 Liability; Governmental Immunity. Each Party shall be solely responsible for its actions, including the actions of its employees or authorized volunteers. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, by either Party, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., or the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671, et seq., as applicable now or hereafter amended.
12.11 Employee Financial Interest/Conflict of Interest. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. The City has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the City’s services and the City shall not employ any person having such known interests.

12.12 Nothing in this Agreement, or in the Game Day Services, is considered by the Parties to fall within the definition of “charter service” within the meaning of the United States Federal Transit Administration (“FTA”) Regulations at 49 CFR Part 604, implementing U.S.C. 5232(d). The Parties agree that any direction from FTA, its officials, agents or consultants, to alter the Game Day Services to comply with 49 CFR Part 604 will be complied with and will not constitute a breach of this Agreement.

12.13 This Agreement, and the Game Day Services, is to be construed in accordance with 49 U.S.C. §5333(b) and nothing in this Agreement is meant to, or will be construed to, displace mass transit employees in Fort Collins.

12.14 This Agreement, and any amendment or Service Addendum, may be executed by either Party in counterpart, each of which shall be deemed an original, and which together shall constitute one and the same document. Delivery of an executed Agreement by one party to the other may be made by facsimile transmission, including e-mail.

[SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT:

CITY:
CITY OF FORT COLLINS, COLORADO

By: ___________________________
    Wade Troxell, Mayor

Date: _________________________

ATTEST:

By: ___________________________
    City Clerk

APPROVED AS TO FORM:

By: ___________________________
    Deputy City Attorney

UNIVERSITY:

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR
Board of Governors of the Colorado State University System,
acting by and through Colorado State University
Dr. Anthony Frank, President

By: ___________________________
    Lynn Johnson
    Vice President for University Operations

Date: _________________________

REQUIRED APPROVALS:

By: ___________________________
    Steve Cottingham
    Deputy Director of Athletics

Date: _________________________

Account No.: ____________________

LEGAL SUFFICIENCY:
Cynthia H. Coffman, Attorney General, State of Colorado

By: ________________________________
    Grant N. Calhoun, JD
    Assistant Legal Counsel / Director of Contracting Services
    Office of the General Counsel

ALL CONTRACTS MUST BE APPROVED BY THE COLORADO STATE UNIVERSITY CONTROLLER

C.R.S. § 24-30-202 and University Policy require that the University Controller approve all state contracts. This Agreement is not valid until the University Controller, or such assistant as he may delegate, has signed it. The City is not authorized to begin performance until this Agreement is signed and dated below. If performance begins prior to the date below, the University and/or State of Colorado may not be obligated to pay for the goods and/or services provided.

COLORADO STATE UNIVERSITY CONTROLLER

By: ________________________________

Name: ________________________________

Date: ________________________________

Packet Pg. 418
2018 SERVICE ADDENDUM
GAME DAY TRANSPORTATION SERVICES

EXHIBIT A: 2018 REPAIR SERVICES CHARACTERISTICS AND OPERATIONS

- Around the Horn Campus Shuttle operating hours will be extended to accommodate student repark transportation needs.
- When not on detour for Gameday Service as the ADA Stadium Shuttle or due to other events, the Horn will continue regular service routing.
- Service on Sundays (and all other periods) will be open to the public. Required complementary paratransit (Dial-A-Ride, DAR) is included in the Sunday service. Trips on DAR would be available ¾ mile from the Horn route.
- CSU Athletics will be invoiced for additional HORN service outside normal operating hours, as defined below.

- Service Frequencies

  **Saturday football games**
  
  **Friday**
  
  7:00 a.m. – 6:30 p.m.…………………10 minutes
  (normal operating hours)
  
  6:30 p.m. – 8:00 p.m.…………………20 minutes**
  (extended operating hours)
  
  **Sunday**
  
  8:00 a.m. – 11:00 a.m. ……………20 minutes**
  (extended operating hours)

  **Friday football games**
  
  **Thursday**
  
  7:00 a.m. – 6:30 p.m.…………………10 minutes
  (normal operating hours)
  
  **Saturday**
  
  8:00 a.m. – 6:30 p.m. ……………20 minutes
  (normal operating hours)

  **Around the HORN Alignment**

  **Additional HORN service that will be invoiced to CSU Athletics.**
EXHIBIT B: ENHANCED GAME DAY SERVICE HEADWAYS

<table>
<thead>
<tr>
<th>Enhanced Route/Corridor</th>
<th>Headway - Minutes</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Baseline Service</td>
<td>Pre-Game</td>
<td>During Game</td>
<td>Post-Game</td>
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<tr>
<td></td>
<td>Combined</td>
<td>Added+</td>
<td>Combined</td>
<td>Added+</td>
<td>Combined</td>
<td>Added+</td>
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</tr>
<tr>
<td>MAX</td>
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<td>3</td>
<td>5</td>
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<tr>
<td>Route 3 (Elizabeth)</td>
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<td>30</td>
<td>0</td>
<td>30</td>
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<tr>
<td>ADA Shuttle (HORN detour)</td>
<td>20</td>
<td>5</td>
<td>20</td>
<td>5</td>
<td>20</td>
<td>5</td>
<td>20</td>
</tr>
</tbody>
</table>

* "Added+" means additional services beyond existing baseline service.
EXHIBIT C: MAX ROUTE MAP
EXHIBIT D: ROUTE 3 MAP (WEST ELIZABETH)
EXHIBIT E: ADA CAMPUS SHUTTLE ROUTE (HORN DETOUR)

- Begins 4 hours prior to kickoff
- ADA-accessible lot to stadium

Diagram details:
- Paid parking
- Shuttle stop
- Route direction
- Elevator access
### EXHIBIT F: ESTIMATED EXPENSES FOR 2018 SEASON

<table>
<thead>
<tr>
<th>Department</th>
<th>Labor/Expense?</th>
<th>Item</th>
<th>Date</th>
<th>Estimate</th>
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<tbody>
<tr>
<td>Transport</td>
<td>Labor</td>
<td>Labor</td>
<td>Saturday, August 25, 2018</td>
<td>$10,100</td>
</tr>
<tr>
<td>Transport</td>
<td>Expense</td>
<td>Queue Fencing</td>
<td>One Time</td>
<td>$1,500</td>
</tr>
<tr>
<td>Transport</td>
<td>Expense</td>
<td>Vehicle Costs (Fuel/Maintenance)</td>
<td>Saturday, August 25, 2018</td>
<td>$2,600</td>
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<tr>
<td>Transport</td>
<td>Expense/Labor</td>
<td>Reparking</td>
<td>Saturday, August 25, 2018</td>
<td>$450</td>
</tr>
<tr>
<td>Traffic</td>
<td>Expense</td>
<td>Traffic Control</td>
<td>Saturday, August 25, 2018</td>
<td>$4,600</td>
</tr>
<tr>
<td>Neighborhood Services</td>
<td>Labor</td>
<td>Labor</td>
<td>Saturday, August 25, 2018</td>
<td>$1,200</td>
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<tr>
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<td>Labor</td>
<td>Labor</td>
<td>Saturday, September 08, 2018</td>
<td>$10,100</td>
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<td>Transport</td>
<td>Expense</td>
<td>Vehicle Costs (Fuel/Maintenance)</td>
<td>Saturday, September 08, 2018</td>
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<tr>
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<td>Expense/Labor</td>
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<td>Saturday, September 08, 2018</td>
<td>$450</td>
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<tr>
<td>Traffic</td>
<td>Expense</td>
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<td>$4,600</td>
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<tr>
<td>Neighborhood Services</td>
<td>Labor</td>
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<td>$1,200</td>
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<tr>
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<tr>
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<td>Saturday, September 22, 2018</td>
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</tr>
<tr>
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<td>Expense/Labor</td>
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<td>Saturday, September 22, 2018</td>
<td>$450</td>
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<tr>
<td>Traffic</td>
<td>Expense</td>
<td>Traffic Control</td>
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<td>$4,600</td>
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<td>Saturday, October 13, 2018</td>
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<tr>
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<td>Expense</td>
<td>One Time</td>
<td>$350</td>
<td></td>
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</tbody>
</table>
AGENDA ITEM SUMMARY
August 21, 2018

STAFF

Mark Sears, Natural Areas Manager
John Stokes, Natural Resources Director
Ingrid Decker, Legal

SUBJECT

Resolution 2018-076 Authorizing the Mayor to Execute an Intergovernmental Agreement with Larimer County to Partner on the Purchase of an 800 Acre Inholding at Red Mountain Open Space.

EXECUTIVE SUMMARY

The purpose of this item is for City Council to consider the proposed intergovernmental agreement (IGA) with Larimer County to partner 50/50 on the purchase of the 800-acre inholding owned by Rick and Mike Gallegos in Red Mountain Open Space. The County is the lead on the purchase and will own and manage the property; the City will hold a conservation easement on the property.

The County closed on the property on August 1 and was willing to assume the risk of paying for the full cost of the property if this IGA is not approved. As a part of the negotiated purchase the County had to agree to close on the property on August 1.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

The Natural Areas Department (City) and Larimer County Open Lands (County) have been working together since 2003 to conserve land in the Laramie Foothills to meet shared land conservation goals. In 2004 the City partnered with the County to purchase the Red Mountain Open Space (RMOS) and in 2007 to purchase a 1,480-acre inholding in RMOS from Gallegos.

Shortly after the 2007 inholding purchase from Gallegos, Gallegos purchased a nearby 800-acre parcel from friends, which is also an inholding in RMOS. The 800-acre property consists primarily of Table Mountain, a low mountain with a flat mesa top that is a beautiful and dominant part of the landscape as one enters Red Mountain Open Space and peers down into the “Big Hole” valley from Soapstone Prairie Natural Area. It is heavily used by elk as a refuge. The property has been a high priority for the County and City for many years as a critical part of the Larimer Foothills Mountains to Plains project area and especially as it relates to the RMOS. However, when it was first placed on the market at $4M, staff considered the cost to be too high. Over the last few years the owners have dropped the price and recently agreed to sell the property to the County for $2,250,000. Staff from both organizations believe this is a fair price and were not comfortable taking the risk that the land would be sold to a developer to be subdivided into 35 acre lots.

If Council agrees, the proposed transaction between the City and the County authorizes the City to pay 50% of the value of the property and retain a conservation easement. This is a model that the City and County have used in the past on other collaborative projects, most recently the Horsetooth Foothills properties. Staff is proposing the 50/50 partnership for the following reasons:
• City residents are approximately 50% of the County residents.

• RMOS lies north of the City and will likely benefit City residents as much, if not more than many of the County residents who live south of the City. Most visitors to Soapstone Prairie are from within the Fort Collins’ Growth Management Area.

• Over 1/3 of the City revenues for the Natural Areas Department come from the County – Help Preserve Open Space Sales Tax.

• The County and City have a long history of leveraging each other’s resources to accomplish conservation of mutual interest and benefit that would be difficult, if not impossible, to achieve without sharing resources.

The City currently holds a conservation easement on the original Red Mountain purchase and County and City staff are recommending that the County grant a conservation easement on the remaining 1,480 acres of Red Mountain that was purchased jointly from Gallegos in 2007. Therefore, if the IGA is approved the City will hold a CE on the entire RMOS.

CITY FINANCIAL IMPACTS

The total cost to acquire the 800-acre inholding will be $2,250,000, plus closing and due diligence costs; The City’s share will be $1,125,000, plus approximately half of the due diligence costs.

BOARD / COMMISSION RECOMMENDATION

At its July 11, 2018 meeting, the Land Conservation and Stewardship Board voted unanimously to recommend that City Council approve the IGA with Larimer County to partner on the purchase of the Gallegos Inholding in Red Mountain Open Space.

PUBLIC OUTREACH

Natural Areas staff presented the proposed partnership to the Land Conservation and Stewardship Board in a public meeting on July 11, 2018.
Larimer County Open Lands staff presented the proposed partnership to the County Open Lands Board in a public meeting on July 26, 2018.
Larimer County staff presented the proposed partnership to the Board of County Commissioners on July 31, 2018.

ATTACHMENTS

1. Gallegos Inholding - Red Mountain Map (PDF)
2. Land Conservation and Stewardship Board minutes, July 11, 2018 (PDF)
Gallegos Inholdings Map

Red Mountain Open Space

Soapstone Natural Area

1480 +/- acre Gallegos property (previously purchased by County)

800 +/- acre Gallegos property (under contract)

*All cross-hatched areas are encumbered by existing conservation easements
Land Conservation & Stewardship Board
July 11, 2018
Minutes Excerpt

Proposed IGA with Larimer County – Partner on Purchase of Red Mountain Inholding

John reported that Dan Gulley and Mark Sears have been working on the purchase of an 800-acre parcel inholding in Red Mountain Open Space. The property has been a priority for the County and City for many years as a critical part of the Larimer Foothills Mountain to Plains project. The owners recently agreed to sell the property to the County for $2,250,000.00. If City Council agrees with the proposed transaction, the City and the County would each pay 50% of the value of the property. The County will own the property and the City will retaining a conservation easement. John reported that City Council requires an IGA. NAD would like to go to City Council on August 21st to obtain approval. NAD will close on the property in early August and then a conservation easement will be completed.

Discussion:

Kelly asked how NAD determined the purchase price and if it was an appropriate fair market value. John explained NAD’s extensive acquisition experience allows for familiarity with market values. The value of this property is higher than it would normally be. Because it’s surrounded by open space, it has a higher value. The price agreement was agreed upon by both the County and the City.

VICKY MCLANE MADE A MOTION RECOMMENDING THAT CITY COUNCIL APPROVE AN IGA WITH LARIMER COUNTY TO PARTNER ON THE PURCHASE OF THE GALLEGOS INHOLDING IN RED MOUNTAIN OPEN SPACE.

MARCIA PATTON-MALLORY SECONDED THE MOTION

THE MOTION WAS APPROVED 9-0
RESOLUTION 2018-076
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH LARIMER COUNTY TO PARTNER ON THE PURCHASE OF AN 800 ACRE INHOLDING AT RED MOUNTAIN OPEN SPACE

WHEREAS, to meet shared land conservation goals, the City and Larimer County (“County”) have been working together since 2003 to conserve land in the Laramie Foothills – Mountains to Plains Conservation Area, including the Red Mountain Open Space (“Red Mountain”) directly west of the City’s Soapstone Prairie Natural Area; and

WHEREAS, the County has acquired an inholding parcel in Red Mountain, approximately 800 acres in size, known as Gallegos Ranch; and

WHEREAS, the City wishes to acquire a conservation easement on the Gallegos Ranch property, as well as on another previously purchased inholding parcel at Red Mountain (together, the “Red Mountain Inholding”), to cooperate with the County on the costs and responsibilities of conserving those properties; and

WHEREAS, the City already holds a conservation easement on the rest of Red Mountain; and

WHEREAS, the City and County have negotiated a proposed intergovernmental agreement regarding the Red Mountain Inholding, a copy of which is attached hereto as Exhibit “A” and incorporated herein by reference (the “IGA”); and

WHEREAS, under the terms of the IGA the City would pay the County $1,125,000, representing half the cost of acquiring Gallegos Ranch, plus a portion of the due diligence costs incurred by the County for the acquisition, and the County would convey to the City a conservation easement on the Red Mountain Inholding; and

WHEREAS, the City’s portion of the funds has already been appropriated; and

WHEREAS, the IGA would also give the City a right of first refusal if the County ever wishes to sell all or a portion of the Red Mountain Inholding; and

WHEREAS, at its regular meeting on July 3, 2018, the Land Conservation and Stewardship Board voted to recommend that the City Council approve the IGA; and

WHEREAS, Article II, Section 16 of the City Charter empowers the City Council, by ordinance or resolution, to enter into contracts with governmental bodies to furnish governmental services and make charges for such services, or enter into cooperative or joint activities with other governmental bodies; and

WHEREAS, Section 29-1-203 of the Colorado Revised Statutes provides that governments may cooperate or contract with one another to provide certain services or facilities
when such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve; and

WHEREAS, the City Council has determined that acquisition of a conservation easement on the Red Mountain Inholding is in the best interests of the City.

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

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

Section 2. That the City Council hereby authorizes the Mayor to execute the IGA between the City and the County, in substantially the form attached hereto as Exhibit “A,” together with such modifications and additions as the City Manager, in consultation with the City Attorney, determines necessary or appropriate to protect the interests of the City or further the purposes of this Resolution, as set forth above.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of August, A.D. 2018.

_________________________________
Mayor

ATTEST:

__________________________
City Clerk
INTERGOVERNMENTAL AGREEMENT
CONCERNING THE RED MOUNTAIN INHOLDING CONSERVATION PROJECT

This Intergovernmental Agreement (Agreement) is made this ___ day of ____________, 2018, by and between the CITY OF FORT COLLINS, COLORADO (the "City") and LARIMER COUNTY, COLORADO (the “County”).

WHEREAS, part 2 of Article 1 of Title 29, C.R.S. authorizes governments to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each, including the sharing of costs; and

WHEREAS, the County has imposed a sales and use tax via the "Help Preserve Open Spaces Initiative" for the purchase and maintenance of open space, natural areas, wildlife habitat, parks and trails and a portion of the funds generated by said sales tax are distributed to municipalities located within Larimer County, including the City; and

WHEREAS, the City has imposed a dedicated 0.25% sales and use tax known as "Open Space Yes!", portions of the revenues from which are intended and available for the purchase and maintenance of open space, natural areas, and trails; and

WHEREAS, the parties recognize through the Larimer County Open Lands Master Plan and Fort Collins Natural Areas Master Plans that certain lands in the Laramie Foothills – Mountains to Plains Conservation Area (“Conservation Area”) are important to be conserved through various means such as fee acquisition, conservation easements, and regulatory measures; and

WHEREAS, the parties have historically worked cooperatively to conserve the Conservation Area, provide limited recreation, and protect and promote the quality of life, wildlife, the natural environment and the character of the region; and

WHEREAS, the Larimer County Natural Resources Department and the City of Fort Collins Natural Areas Department share common goals in conserving land in the Conservation Area, and by this IGA intend to form a partnership to carry out a land conservation project known as the “Red Mountain Inholding Conservation Project” to conserve in fee approximately 800 acres of land and in conservation easement approximately 2,280 acres of land; and

WHEREAS, the County intends to acquire through purchase of fee interest, the real property referred to as “Gallegos Ranch”, described in Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, the County will convey a conservation easement (the “Conservation Easement”) to the City on the Gallegos Ranch and on a 1,480-acre parcel referred to as “Previous Joint Purchase,” which was acquired by a joint acquisition in 2007 and is described in Exhibit B, attached hereto and incorporated herein by reference, both of which shall be referred to together as the “Red Mountain Inholding,” and

WHEREAS, the parties desire to cooperate and contract with one another concerning the sharing of costs and responsibilities for the conservation of the Red Mountain Inholding.
NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

A. **Subject Properties/Easements**

1. The County will acquire the Gallegos Ranch and convey the Conservation Easement to the City on the Red Mountain Inholding, subject to prior approval by the Larimer County Board of County Commissioners in its discretion.

2. The City of Fort Collins will prepare the Conservation Easement instrument covering the entire Red Mountain Inholding in collaboration with the County and will pay all transaction costs associated with the Conservation Easement. The City shall submit the Conservation Easement, upon completion of the transaction, to the Larimer County Clerk and Recorder for recording in the real property records of the County and shall provide a copy of the recorded Conservation Easement to the County upon completion of recording.

3. The cost for conserving the Red Mountain Inholding, including the purchase price for the Gallegos Ranch, conveyance of the Conservation Easement, closing costs, title insurance, Phase I Environmental Assessment Reports, and Baseline Reports is estimated to be approximately $2,270,000 as shown in Exhibit C.

4. The County and City shall be responsible to pay the estimated costs designated to each of them as shown on Exhibit C.

5. The County and City will share equally all costs that are incurred during final negotiations and closing and which are not designated in Exhibit C. If either the City or County determines it is unable to pay its share of any unanticipated costs, they agree to negotiate in good faith to reach a resolution such that the acquisition may be completed. Such resolution may include modifying the amount each party will pay for the unanticipated costs.

6. Within 30 days following the closing of the fee and conservation easement acquisitions, the County will prepare a summary report similar to Exhibit C showing the exact costs paid by each party.

7. Acquisition of Gallegos Ranch and conveyance of the Conservation Easement shall occur at closings set at mutually agreed date(s), time(s) and location(s), at which each party shall bring purchasing funds as described below and on Exhibit C, unless otherwise agreed by parties.

8. Until such time as the above-referenced closing and conveyance of the property interests shall occur, the County shall remain the primary negotiator of the Gallegos Ranch property purchase and shall have the discretion to make decisions related to the negotiations including choice of title company and other administrative matters, consistent with this Agreement. The parties shall promptly inform the other party of new developments in the negotiations and new
material information related to Gallegos Ranch and the Conservation Easement or the acquisitions thereof.

B. Management of the Red Mountain Inholding Property

1. The County will manage the 800-acre Gallegos Ranch property as a part of its Red Mountain Open Space and in accordance with the Red Mountain Open Space Management Plan (which will be updated to reflect this acquisition) and subsequent updates.

2. Emergency Circumstances. In the event of emergency circumstances requiring immediate response prior to the adoption of updated Management Plans which will be used to guide the management of the Red Mountain Inholding, the County shall be entitled to use reasonable discretion in responding to such circumstances. If possible, the County shall consult with the City in advance of any action being taken. In the event advance consultation is not reasonably possible, the County shall limit its actions to those necessary to address the existing emergency and shall make reasonable efforts to inform the City promptly of any such event and chosen course of action.

C. Subsequent Sale and/or Transfer of Gallegos Ranch or Conservation Easement Interests

1. Once the closings have occurred on the Gallegos Ranch acquisition and Conservation Easement conveyance, if the County desires to sell all or any portion of its fee interest in the Red Mountain Inholding, or if the City desires to sell its conservation easement interest, the “Selling Party” shall provide written notice to the Non-selling Party of its intention to sell its fee or conservation easement interest. (“Notice of Intent to Sell”). The Non-selling Party shall have a right of first refusal (“Option”) to purchase such interest (“Interest”) for the fair market value of the interest being sold as determined by an appraiser selected by the parties. The Non-Selling party shall notify the Selling Party within 30 days following the completion of the appraisal whether it intends to purchase the Interest. The parties shall then work in good faith to negotiate a purchase and sale agreement and any necessary documents for completion of the sale. The Option shall expire if the Non-selling party does not, within 30 days of the completion of the appraisal, notify the Selling Party that it intends to purchase the Interest. If the Non-selling Party timely notifies the Selling party of its intent to purchase, the Option shall nonetheless expire two years after the date of the Notice of Intent to Purchase if the parties have not closed on the conveyance of the Interest by that time.

2. If the Non-selling Party declines to purchase the Interest, the Selling Party may then convey the Interest to a third-party as it chooses. Any sale of the County’s fee interest shall be subject to the terms of the Conservation Easement and any other existing encumbrances, restrictions or conditions applicable to the conveyed property. In the event the County desires to sell all or any portion of its fee interest in the Red Mountain Inholding, including easements or rights of way, and the City notifies the County of an adverse impact of the proposed sale on the remaining interests in the Red Mountain Inholding or the Conservation Easement, the parties agree to negotiate in good faith to resolve the issue prior to the sale.
3. In the event all or any portions of the fee interest or Conservation Easement in the Red Mountain Inholding are sold the net proceeds from such sale shall be divided between the County and the City in the same percentage as their respective contributions to the initial purchase payments for acquiring the property interests sold as defined in Exhibit C. In the event all or any portion of the subject properties is taken by eminent domain, the net proceeds from such disposition shall be divided between the County and the City in the same percentage as their respective contributions to the initial purchase payments for acquiring the property interests sold as defined in Exhibit C. Proceeds from such conveyance shall be subject to the provisions of each party’s respective applicable policies, ordinances, resolutions and plans.

D. General Provisions.

1. Each party agrees to execute all additional instruments and documents necessary to effectuate the transactions and purposes described herein, subject to any necessary approvals.

2. This Agreement shall be binding upon and inure to the benefit of the parties’ respective successors and permitted assigns.

3. Financial obligations of the parties payable after the current fiscal year are contingent upon the governing bodies of the parties, in their discretion, appropriating funds sufficient and intended for such purposes.

4. Nothing in this Agreement waives the immunities, limits of liability, or other terms and conditions of the Colorado Governmental Immunity Act as now in force or hereafter amended.

5. Any notices required or permitted to be given shall be in writing and personally delivered to the office of the parties hereof by first class mail, postage prepaid, as follows:

<table>
<thead>
<tr>
<th>John Stokes</th>
<th>Gary Buffington</th>
</tr>
</thead>
<tbody>
<tr>
<td>Natural Areas Director</td>
<td>Natural Resources Director</td>
</tr>
<tr>
<td>City of Fort Collins – Natural Areas Department</td>
<td>Larimer County Natural Resources Department</td>
</tr>
<tr>
<td>PO Box 580, Fort Collins, CO 80522</td>
<td>1800 S County Rd 31, Loveland, CO 80537</td>
</tr>
<tr>
<td><a href="mailto:jstokes@fcgov.com">jstokes@fcgov.com</a></td>
<td><a href="mailto:buffingk@larimer.org">buffingk@larimer.org</a></td>
</tr>
</tbody>
</table>

Any such notice shall be effective (i) in the case of personal delivery, when the notice is actually received, or (ii) in the case of first class mail, the third day following deposit in the United States mail, postage prepaid, addressed as set forth above. Any party may change these persons or addresses by giving notice as required above.
IN WITNESS WHEREOF, the parties hereto have executed this Intergovernmental Agreement concerning the Red Mountain Inholding Conservation Project, on the day and year first above written.

THE CITY OF FORT COLLINS, COLORADO,
A Municipal Corporation

By: ______________________________
Wade O. Troxell, Mayor

ATTEST:

____________________________
City Clerk

____________________________
(print name)

APPROVED AS TO FORM:

____________________________
Assistant City Attorney

____________________________
(print name)
LARIMER COUNTY, COLORADO

By: __________________________________________
    Chair, Board of County Commissioners

ATTEST:

______________________________
Clerk

APPROVED AS TO FORM:

______________________________
County Attorney
EXHIBIT A

Legal Description of the Gallegos Ranch Property

The South ½ of the South ½ of Section 7 and the North ½ of Section 18, all in Township 11 North, Range 69 West of the 6th P.M.; and the East ½ of Section 12, Township 11 North, Range 70 West of the 6th P.M., except reservations in Deed recorded in Book 1223 at Page 29 of the records of the County Clerk and Recorder of Larimer County; and commencing at the Southeast corner of the West ½ of said Section 12; thence West along section line 311.00 feet; Thence North parallel to the North and South quarter section line 140.00 feet; Thence East parallel to the South section line 311.00 feet to the quarter section line; Thence South along said section line 140.00 feet to the Point of Beginning, County of Larimer, State of Colorado.
EXHIBIT B

Legal Description of the Previous Joint Purchase Property

The North ½ of the Northwest ¼ and the Southeast ¼ of the Northwest ¼ of Section 4, Township 11 North, Range 69 West of the 6th P.M. County of Larimer, State of Colorado; and

All of Section 5 and Section 6, Township 11 North, Range 69 West, of the 6th P.M., County of Larimer, State of Colorado, except the Southeast ¼ of the Southwest ¼ and the Southwest ¼ of the Southeast ¼ of Section 6; and

The Northeast ¼ of Section 8, Township 11 North, Range 69 West of the 6th P.M. County of Larimer, State of Colorado;
## EXHIBIT C

### Red Mountain Inholding

**DRAFT IGA COST DATA (updated 8/2/18)**

*The Costs are Estimates and are Subject to Change*

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<thead>
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<th>Property</th>
<th>Larimer County</th>
<th>Fort Collins</th>
<th>Total</th>
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</thead>
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<tr>
<td><strong>Gallegos Ranch - Fee Acquisition</strong></td>
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<tr>
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<tr>
<td>Closing Costs</td>
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<tr>
<td>Environmental Assessments</td>
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<tr>
<td>Baseline Reports</td>
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<td></td>
<td>$6,800</td>
</tr>
<tr>
<td>Survey ?</td>
<td>$</td>
<td></td>
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<tr>
<td><strong>Conservation Easement Conveyance</strong></td>
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<td>Title commitment</td>
<td>TBD</td>
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<td>Closing Costs</td>
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8/10/2018
AGENDA ITEM SUMMARY
August 21, 2018
City Council

STAFF

Helen Matson, Real Estate Services Manager
Ken Mannon, Operations Services Director
Ingrid Decker, Legal

SUBJECT

Resolution 2018-077 Authorizing a Parking Agreement with Confluence FC, LLC for City Property at 424 Pine Street.

EXECUTIVE SUMMARY

The purpose of this item is to authorize the City Manager to execute a parking agreement to allow Confluence FC, LLC to share 17 parking spaces in the United Way parking lot at 424 Pine Street. United Way is the City's tenant and in its existing lease, it has the right to use the parking lot for its purposes and to pay for the maintenance of the lot.

STAFF RECOMMENDATION

Staff recommends the adoption of the Resolution.

BACKGROUND / DISCUSSION

Confluence is planning a residential development at the corner of Willow Street and Linden Street. During the planning stage, Confluence identified space for thirty parking spaces at its site. Its lender is requiring Confluence to also obtain the right to use some off-site parking. Confluence originally approached United Way hoping to obtain the right to park in up to seventeen spaces in United Way's lot on Pine Street, including seven spaces that would be reserved for occupants of Confluence at all times. The other ten spaces would be for use at any time weekday evenings, weekends from Friday evening to Monday morning, and holidays. See Attachment 1 for a location map that shows the Confluence Development and the United Way parking lot. A depiction of the restriped parking lot is provided as Attachment 2. The seven spaces that are reserved for Confluence are highlighted in yellow.

This parking agreement was originally negotiated between United Way and Confluence, and they asked the City to give its approval for the agreement. United Way has been leasing the Pine Street property from the City since 1985, at a non-profit rate. Its current lease makes United Way responsible for all building and parking lot maintenance and snow removal. However, these expenses have become a burden and United Way is now looking at other locations to lease. With United Way likely to soon terminate its lease for the Pine Street property, Operation Services has decided that it would be better for all if the City took over responsibility of the parking lot and entered into the parking agreement with Confluence, with United Way's consent as the current tenant.

In exchange for the right to use the parking spaces, Confluence has agreed to repave the entire lot with asphalt including mill and overlay. It will also restripe the parking lot, which adds ten parking spots. Confluence estimates that these services will cost $70,000, which will be covered by Confluence. The City has agreed to pay up to $30,000 if there are additional costs above the $70,000 estimate needed to repair unexpected subsurface defects.
The initial term of the parking agreement would be for ten years. At the end of the initial term, if both parties agree, the agreement could be extended for two successive five-year terms, with additional compensation to be negotiated. If a new tenant leases the property, that lease would be made subject to the parking agreement with Confluence.

The right to use parking spaces on the City's property constitutes a license or revocable permit from the City that, pursuant to the City Charter and Code, requires the City Council’s approval as the use will not be completed in five years or less.

CITY FINANCIAL IMPACTS

City staff recommends approving this Parking Agreement with Confluence. Confluence will make necessary improvements to the lot and its restriping plan shows an addition of 10 spaces. The $70,000 repaving costs covers the fair market value of parking fees for the initial ten-year agreement. Any renewal terms would be subject to negotiation of additional appropriate compensation.

ATTACHMENTS

1. Location Map (PDF)
2. Restriped parking area and designated parking spaces (PDF)
Seven spaces reserved for Confluence

Ten (10) spaces are available anywhere in the United Way parking lot. These spaces are non-exclusive and have time restrictions.
RESOLUTION 2018-077
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING A PARKING AGREEMENT WITH CONFLUENCE FC, LLC
FOR CITY PROPERTY AT 424 PINE STREET

WHEREAS, the City is the owner of a parcel of real property located at 424 Pine Street
in Fort Collins (the “City Property”); and

WHEREAS, the City Property, which includes an office building and parking area is
presently occupied by United Way of Larimer County, Inc. (“United Way”), pursuant to a lease
agreement between United Way and the City; and

WHEREAS, Confluence FC, LLC (“Confluence”) has proposed a residential and
commercial development on nearby property at 401 Linden Street (the “Confluence Building”); and

WHEREAS, Confluence will provide approximately 30 onsite parking spaces for
occupants of the Confluence Building, but is seeking additional offsite parking to meet its
lender’s requirements and the occupants needs; and

WHEREAS, the City and Confluence have negotiated a proposed parking agreement
(“Parking Agreement”) for the use of 17 parking spaces on the City Property for a period of ten
years (the “Initial Term”); and

WHEREAS, ten spaces would be non-exclusive and limited to use only on weekends,
holidays and at night, and seven spaces would be reserved for Confluence permit holders at all
times; and

WHEREAS, Confluence would issue parking permits to specific occupants for use of the
parking spaces; and

WHEREAS, as consideration for the Initial Term of the Parking Agreement Confluence
has agreed to repave and restripe the parking lot on the City Property at its expense in
accordance with City specifications, which work is estimated to cost $70,000; and

WHEREAS, City staff has determined that the value to the City of the parking
improvements is equivalent to the fair market value of the parking rights that would be granted to
Confluence for the Initial Term; and

WHEREAS, the proposed restriping plan for the parking lot would create an additional
10 parking spaces; and

WHEREAS, following the Initial Term, if the City and Confluence agree, the Parking
Agreement could be renewed for two additional five-year terms, but the parties would have to
agree on appropriate compensation to the City for each renewal; and
WHEREAS, if the City wishes to terminate the Parking Agreement during the Initial Term, the City would reimburse Confluence for a pro-rated portion of the repaving costs, subject to annual appropriation of funds; and

WHEREAS, the Parking Agreement would be subject to approval by United Way as the current tenant, and any future tenant on the City Property would lease the City Property subject to the Parking Agreement; and

WHEREAS, Article XI, Section 10 of the City Charter authorizes the City Council to permit the use or occupancy of any street, alley, or public place, provided that such permit shall be revocable by the City Council at its pleasure, whether or not such right to revoke is expressly reserved in such permit.

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

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

Section 2. That the City Manager is hereby authorized to execute the Parking Agreement with Confluence on terms and conditions consistent with this Resolution, together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary or appropriate to protect the interests of the City or to effectuate the purposes of this Resolution, including any necessary corrections to the legal description of the City Property, so long as such changes do not result in a material increase or change in character of the rights permitted under this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of August, A.D. 2018.

_________________________________
Mayor

ATTEST:

_________________________________
City Clerk
AGENDA ITEM SUMMARY
City Council
August 21, 2018

STAFF

Delynn Coldiron, City Clerk
Rita Knoll, Chief Deputy City Clerk
Ryan Malarky, Legal

SUBJECT

First Reading of Ordinance No. 113, 2018, Amending Chapter 7 of the Code of the City of Fort Collins to Amend Requirements and Procedures Related to Campaigns and Campaign Finance in City Elections.

EXECUTIVE SUMMARY

The purpose of this item is to consider proposed amendments to the City’s election campaign code provisions that will raise the threshold requirement for reporting of independent expenditures, ensure that the campaign violation complaint process applies to reporting of independent expenditures, and require “paid for by” disclaimers on campaign communications for registered committees. There are also various clean-up items that provide changes for added clarity and to reconcile conflicts created by the proposed amendments.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading. The Election Committee considered and recommended adoption of key portions of the Ordinance.

BACKGROUND / DISCUSSION

In 2015, Council formed an ad hoc committee to review, discuss and recommend changes to the City Code and Charter regarding elections and other related matters. In 2017, Council made the ad hoc committee a standing committee of the Council for the purpose of identifying and evaluating ideas for improvements to City election laws and practices and anticipating adjustments that may be needed to adapt to a rapidly changing legal and technological environment. Councilmembers Cunniff, Overbeck, and Stephens have continuously served in this capacity since 2015.

Since the original formation of the ad hoc Committee, Council has considered and adopted four Ordinances amending various provisions of Chapter 7. This Ordinance represents a continuation of the work to make improvements. Most of the amendments contained in this Ordinance are considered to be noncontroversial and enacting them at this time will be advantageous as preparations begin for the 2019 City Election.

A summary of the proposed amendments, in the order they appear in the ordinance follows:

Increased Threshold for Reporting Independent Expenditures:

This Ordinance changes the threshold requirements for reporting independent expenditures from $100 to an amount to be determined by Council. Staff research has found that there is some movement by courts to scrutinize more closely burdens on political speech. As well, staff research found that other Colorado home-rule municipalities have higher thresholds; from $250 to $1,000, with $1,000 as the most prevalent applicable limit. The Colorado Constitution and corresponding state laws require reporting of independent expenditures exceeding $1,000. This is the reporting requirement for all statutory municipalities (172). The Election Code
Committee recommends an increase in the reporting threshold to support the City’s and the public’s interest in shedding light on spending in City elections, while respecting freedom of political speech. This would also more appropriately align the City’s reporting requirements for independent expenditures with State law and other municipalities.

At the July Work Session there was support for some level of increase to be determined by Council at First Reading. The Work Session Summary is attached. (Attachment 1)

Changes have been included in this Ordinance that make it clear that registered committees that report their expenditures through a campaign finance report are not required to also report them as an independent expenditure to avoid duplicate reporting efforts.

“Paid for By” Disclaimer on Campaign Communications

This Ordinance requires a “paid for by” disclaimer on campaign communications for all registered committees. Because registered committees are already subject to reporting and other process requirements, it was determined that this added step would not be unreasonably burdensome and would provide important transparency to the voting public in connection with local campaign literature and advertising. The Ordinance, as drafted, does not require “paid for by” disclosure on independent expenditures.

Change in Requirements for Registering Committees

This Ordinance eliminates the overlap that currently exists between the various committees.

The Ordinance includes a change to the definition of “Issue Committee” to make clear that two or more persons that either take contributions or make expenditures (and not just those that do both) to support or oppose ballot measures must register as an issue committee. As well, the definition makes it clear that any person, as defined by the Article, that accepts contributions to support or oppose ballot measures must also register as an issue committee. The existing definition of “person” in the Article reads: “Any individual, partnership, committee, association, corporation, labor organization or other organization or group of persons.”

The Ordinance includes a similar change to the definition of “Political Committee” to make it clear that two or more persons that either take contributions or make expenditures (and not just those that do both) to support or oppose candidates must register as a political committee. Likewise, the definition makes it clear that any person, as defined by the Article, that accepts contributions to support or oppose candidates must also register as a political committee. The proposed changes eliminate the ability for political committees to make contributions in support of or opposition to ballot issues.

Any single person, or other person, who does not accept contributions, but chooses to spend their own money to support or oppose candidates or issues are subject to Independent Expenditure requirements.

The need to review and update the various types of campaign committees, and the plan to reorganize this portion of Chapter 7 was discussed at the August Election Code Committee meeting. Staff hoped to bring more widespread updates of this Article to the Council for consideration as part of this Ordinance; however, the magnitude and complexity of those changes made it impractical to have them ready. Staff anticipates proposing an editorial rewriting of this Article after the April 2019 election and will work with the Election Code Committee to prepare recommendations for Council at that time.

Extension of Campaign Violation Provisions to Independent Expenditures

Staff has identified that the current Code provisions concerning the complaint process for campaign violations cover violations by registered committees, but the complaint process does not specifically cover violations by persons who may make independent expenditures. This Ordinance adds the term “person” to ensure that independent expenditure violations are subject to the citizen complaint process.
Other Clean-Up Items

This Ordinance includes various clean-up items to help add clarity and reconcile conflicts created by the prior and proposed amendments. An example is to change certain definitions in Code Section 7-132 to clarify the distinctions between the various types of campaign committees, and to reconcile these with other amendments. There are also small wording changes in several sections.

Some of these items were discussed briefly at the August Election Code Committee meeting, while some were identified after that meeting took place.

A red-lined version of the Ordinance comparing it to the version that was provided for Council discussion at the Work Session in July is attached for reference (Attachment 3). The updated Ordinance, without red-lines, provides a simpler look at the proposed changes.

CITY FINANCIAL IMPACTS

Any financial impacts as a result of these amendments will be negligible.

PUBLIC OUTREACH

Meetings of the Election Code Committee are posted on the City’s website in advance of the meeting. Several members of the community regularly attend Committee meetings and provide input to the Committee on topics on the agenda and other items of interest. These issues were discussed most recently at the Committee’s August 2, 2018, meeting. Draft minutes from that meeting are attached. (Attachment 2)

ATTACHMENTS

1. Comparison Between Work Session Ordinance and Current Ordinance (DOCX)
2. Work Session Summary, July 17, 2018 (PDF)
3. Election Code Committee minutes, August 2, 2018 (draft) (PDF)
4. Powerpoint presentation (PDF)
ORDINANCE NO. 113, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 7 OF THE CODE OF THE CITY OF FORT COLLINS
TO AMEND REQUIREMENTS AND PROCEDURES RELATED TO
CAMPAIGNS AND CAMPAIGN FINANCE IN CITY ELECTIONS

WHEREAS, Chapter 7 of the City Code sets out procedures and requirements for
redistricting of Council districts, for the conduct of City elections, for disclosure of campaign
finance information, and other related matters; and

WHEREAS, in 2015, the City Council formed an ad hoc committee, including
Councilmembers Cunniff, Overbeck and Stephens, to review, discuss and recommend the most
beneficial changes to the Code and City Charter regarding elections and other related matters; and

WHEREAS, in January 2017, Council made the ad hoc Committee a standing committee
of the Council for the purpose of identifying and evaluating ideas for improvements to City
election laws and practices and anticipating adjustments that may be needed to adopt to a changing
legal and technological environment, for Council consideration; and

WHEREAS, as a result of the Committee’s work (as both an ad hoc committee and a
standing committee), Ordinance No. 021, 2016, Ordinance No. 005, 2017, Ordinance No. 045,
2018, and Ordinance No. 077, 2018, were considered and adopted by the Council to update various
provisions of Chapter 7; and

WHEREAS, the Committee continued to meet in 2017 and 2018, and has recommended
additional clarifications and amendments to Chapter 7; and

WHEREAS, the Committee has recommended that the threshold for reporting independent
expenditures be raised from $100 to $1,000, a higher amount to be determined by City Council; and

WHEREAS, the Committee has recommended the creation of a new requirement that
committees otherwise required to register with the City also be required to include disclaimers on
campaign communications to identify the committee making the communication, whether the
communication is coordinated with a candidate or particular committee, and the source of funding for
the communication; and

WHEREAS, staff has recommended that the definitions for candidate committee,
issue committee, and political committee be changed to require registration and reporting of those
persons that at a minimum accept contributions, rather than only applying to those persons that
accept contributions and make expenditures; and

WHEREAS, staff has recommended that the citizen complaint process for campaign
violations be changed to also apply to violations committed by individual persons, including
violations related to independent expenditures; and
WHEREAS, staff has recommended changes to certain definitions in Code Section 7-132 in order to clarify the distinctions between the various types of campaign committees, and to reconcile them with other amendments; and

WHEREAS, these amendments generally improve and clarify the City’s campaign finance disclosure and election requirements and processes; and

WHEREAS, these amendments further the City’s and the public’s interest in shedding light for the public on the expenditure of money to influence the outcome of City elections, while balancing respecting the speakers’ interest in freedom of political speech; and

WHEREAS, the Council desires to enact the recommendations of the Committee and staff in order to clarify and improve the various provisions of Chapter 7, as set forth below.

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

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

Section 2. That the following definitions contained in Section 7-133 of the Code of the City of Fort Collins are hereby amended, in the definition of “independent expenditure,” to read as follows:

Sec. 7-132. Definitions.

... 

Candidate committee shall mean a person, including the candidate, or persons with the common purpose of receiving contributions and of making expenditures under the authority of a candidate. A candidate shall have only one (1) candidate committee. A candidate committee shall be considered open and active until the committee has filed a termination report with the City Clerk.

Contribution shall mean:

(1) The payment, loan, pledge or advance of money, or guarantee of a loan, made to any candidate committee, issue committee or political committee;

(2) Any payment made to a third party for the benefit of any candidate committee, issue committee or political committee;

(3) Anything of value given, directly or indirectly, to a candidate committee for the purpose of promoting the candidate's nomination, retention, recall or election; or
With regard to a contribution for which the contributor receives compensation or consideration of less than equivalent value to such contribution, including, but not limited to, items of perishable or nonpermanent value, goods, supplies, services or participation in a campaign-related event, an amount equal to the value in excess of such compensation or consideration as determined by the candidate committee, issue committee or political committee.

**Contribution** shall not include:

1. Services provided without compensation by individuals volunteering their time on behalf of a candidate, candidate committee, political committee or issue committee or small-scale issue committee;

2. Funds collected subsequent to the election to pay the cost of a requested recount pursuant to 7-46.

**Contribution in kind** shall mean the fair market value of a gift or loan of any item of real or personal property, other than money, made to or for any candidate committee, issue committee, small-scale issue committee or political committee for the purpose of influencing the passage or defeat of any issue or the nomination, retention, election or defeat of any candidate. Personal services shall be considered a contribution in kind by the person paying compensation therefor. In determining the value to be placed on contributions in kind, a reasonable estimate of fair market value shall be used.

**Contribution in kind** shall not include an endorsement of a candidate or an issue by any person and shall not include the payment of compensation for legal and accounting services rendered to a candidate, candidate committee, political committee or issue committee or small-scale issue committee if the person paying for the services is the regular employer of the individual rendering the services and the services are solely for the purpose of ensuring compliance with the provisions of this Article.

**Expenditure** shall mean the payment, distribution, loan or advance of any money by any candidate committee, political committee or issue committee. **Expenditure** shall also include the payment, distribution, loan or advance of any money by a person for the benefit of a candidate committee, political committee or issue committee or small-scale issue committee that is made with the prior knowledge and consent of an agent of the committee. An expenditure occurs when the actual payment is made or when there is a contractual agreement and the amount is determined.

**Independent expenditure** shall mean the payment of money by any natural person for the purpose of advocating the election, defeat or recall of a candidate, which expenditure is not controlled by, or coordinated with, any candidate or any agent of such candidate. **Independent expenditure** shall include expenditures for political messages which unambiguously refer to any specific public office or candidate for such office.
Independent expenditure shall also include the payment of money by any natural person for supporting or opposing a ballot issue or ballot question that is not controlled by, or coordinated with, an issue committee or a small-scale issue committee. Independent expenditure shall include, but not be limited to, advertisements placed for a fee on another person's website or advertisement space provided for no fee or a reduced fee where a fee ordinarily would have been charged.

**Independent expenditure** shall not include:

1. Expenditures made by persons, other than political committees, in the regular course and scope of their business and political messages sent solely to their members; or
2. Expenditures made by small-scale issue committees; or
3. Any news articles, editorial endorsements, opinion or commentary writings, or letters to the editor printed in a newspaper, magazine or other periodical not owned or controlled by the candidate, or communications other than advertisements posted or published on the internet for no fee.

Section 3. That Section 7-133 of the Code of the City of Fort Collins is hereby amended, in the definition of “political committee,” to read as follows:

**Political committee** shall mean two:

1. Two (2) or more persons who are elected, appointed, or chosen, or have associated themselves, for the purpose of accepting contributions and/or making expenditures to support or oppose any ballot issue or ballot question; or
2. Any partnership committee, association, corporation, labor organization or other organization or group of persons that has accepted contributions or made expenditures to support or oppose any ballot issue or ballot question. For purposes of this Paragraph (2), the term expenditure shall not include contributions, as defined in this Section.

**Issue committee** shall not include political committees, or candidate committees, or small-scale issue committees, or candidate committees, as otherwise defined in this Section.
Political committee shall mean:

(1) Two or more persons who are elected, appointed or chosen, or have associated themselves, for the purpose of accepting contributions or making expenditures to support or oppose one (1) or more candidates, contributions to candidate committees, issue committees or other political committees, or for the purpose of making independent expenditures.

(2) Any person that has accepted contributions for the purpose of supporting or opposing one (1) or more candidates.

Political committee shall not include:

(1) Issue committees or candidate committees as otherwise defined in this Section; or

(2) Any partnership, committee, association, corporation, labor organization or other organization or group of persons previously established for a primary purpose outside of the scope of this Article.

Political message

Unexpended campaign contributions shall mean a message delivered by telephone, any print or electronic media or other written material which advocates the election or defeat, or balance of funds on hand in any candidate or which unambiguously refers to a committee, issue committee, or political committee or small-scale issue committee following an election, less the amount of all unpaid monetary obligations incurred prior to such the election.

Section 3. That Section 7-134 (c) and (d) of the Code of the City of Fort Collins are hereby amended to read as follows:

Sec. 7-134. - Registration of committees; termination.

(c) Any candidate, committee, political committee, or issue committee or registered small-scale issue committee that has registered with the City Clerk, but has not engaged in any election activities or reported any contributions accepted or expenditures made, may terminate at any time by filing an amended committee registration indicating the nature of the amendment is termination of the committee and verifying that no contributions have been received or expenditures made since registration occurred pursuant to § 7-134. Alternatively, the committee shall file a campaign report indicating no contributions have been received or expenditures made, and indicating it is a termination report.
Section 4 (d) Any political committee, or issue committee or registered small-scale issue committee that has not taken the necessary steps to terminate pursuant to Subsection (c) above must have properly disposed of all funds and must file a termination report no later than seventy (70) days after the election.

Section 4. That Section 7-135(b), (d) and (g) of the Code of the City of Fort Collins are hereby amended to read as follows:

Sec. 7-135. Campaign contributions/expenditures.

... Joint contributions. No person shall make a contribution jointly with another person through the issuance of a check drawn on a jointly owned account unless: (i) the total amount of the joint contribution is less than the maximum amount that can be contributed by one (1) person under the contribution limits established in Subsection (a) of this Section or (ii) the check is signed by all owners of the account, in which event the amount of the total contribution shall be allocated equally among all such persons unless a different allocation is specified on the face of the check. No candidate committee, issue committee, or political committee shall knowingly accept a contribution made in violation of this Subsection (b).

... No candidate committee, issue committee, small-scale issue committee or political committee shall knowingly accept contributions from any person who is not a citizen of the United States, from a foreign government or from any foreign corporation that does not have authority to transact business in this State pursuant to Article 115 of Title 7, C.R.S.

... Reimbursements prohibited. No person shall make a contribution to a candidate committee, issue committee, small-scale issue committee or political committee with the expectation that some or all of the amounts of such contribution will be reimbursed by another person. No person shall be reimbursed for a contribution made to any candidate committee, issue committee, small-scale issue committee or political committee, nor shall any person make such reimbursement. An unexpended campaign contribution returned to a contributor by a candidate committee pursuant to § 7-135(a)(4)(c) shall not be considered a reimbursement.

Section 5. That Section 7-135 of the Code of the City of Fort Collins is amended to add a new subsection (h), to read as follows:

Sec. 7-135. Campaign contributions/expenditures.
(h) A candidate committee, issue committee, small-scale issue committee or political committee shall not coordinate its expenditures with any other such committee in a manner that circumvents any restrictions or limitations on campaign contributions, expenditures or reporting set forth in this Article.

Section 6. That Section 7-136(g) and (i) of the Code of the City of Fort Collins are hereby amended to read as follows:

Sec. 7-136. Disclosure; filing of reports.

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(g) Any report that is deemed by the City Clerk to be incomplete or inconsistent with the requirements of this Article shall be accepted on a conditional basis, and the committee’s registered agent treasurer shall be notified in writing as to any deficiencies found. Such notice may be delivered in person, by mail, by fax, or, if an electronic mail address is on file with the City Clerk, by electronic mail. The committee’s registered agent treasurer shall have seven (7) business days from the date of delivery of such notice to file an amended report that cures the deficiencies. Any such amended report shall supersede the original report filed for the reporting period.

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(i) Except as specified in this Subparagraph (i), the disclosure requirements specified in this Article shall not apply to a small-scale issue committee. To the extent there is any conflict between the small-scale issue committee provisions of Subparagraphs (i), (j), (k), and (l) of this Section 7-136, those Subparagraphs shall control. Any small-scale issue committee shall disclose or file reports about the contributions or expenditures it has made or received or otherwise register as an issue committee in connection with accepting or making such contributions or expenditures in accordance with the following alternative requirements:

Section 7. That Section 7-139 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-139. Independent expenditures.

Any natural person, excluding a committee required to register under this Article, or political committee who makes independent expenditures in connection with all City of Fort Collins matters on any particular ballot totaling in the aggregate more than one hundred dollars ($100.) nine hundred ninety-nine dollars ($999.) shall report any such independent expenditures made after that threshold is met to the City Clerk on a form provided by the City Clerk.
such independent expenditures to the City Clerk no later than three (3) business days after the day that such funds are obligated to pay for said independent expenditure. Said notice shall include the following information, together with any other information required:

... 

Section 58. That reserved a new Section 7-140 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-140. Responsibility for communications.

(a) Whenever a candidate, candidate committee, issue committee, political committee or registered small-scale issue committee makes an expenditure for the purpose of financing communications expressly advocating a particular result in an election, or solicits any contribution or contribution in-kind through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing or any other type of general public political advertising, such communication if paid for or authorized by a candidate, candidate committee, issue committee, political committee, registered small-scale issue committee, or any agent for the same, shall clearly state that the communication is paid for by that candidate, candidate committee, issue committee, political committee or registered small-scale issue committee.

(b) In regard to the different forms of communication set forth in subsection (a) of this Section 7-140, “communication” shall include, but shall not be limited to:

(1) Websites or social media of a candidate, candidate committee, issue committee, political committee or registered small-scale issue committee available to the general public; and

(2) Advertisements placed for a fee on another person’s website or social media.

(c) The statement required by this Section 7-140 must be clear and conspicuous in the communication. The statement required herein shall not apply to communications where including the statement would be impractical, such as:

(1) Bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed;

(2) Skywriting, water towers, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; or

(3) Checks, receipts, and similar items of minimal value that are used for purely administrative purposes and do not contain a political message.
(d) Nothing herein shall be deemed to alleviate any person from complying with federal campaign finance law, as applicable.

Section 69. That Section 7-141(b) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-141. - Expenditures for political advertising; rates and charges.

(b) Any radio or television station, newspaper, internet advertiser or website provider, social media provider or periodical that charges an issue committee, small-scale issue committee or candidate committee a lower rate for use of space, materials or services than the rate such station, newspaper, internet advertiser or website provider, social media provider or periodical or supplier charges another issue committee or candidate committee for the same ballot measure or public office for comparable use of space, materials or services shall report the difference in such rate as a contribution in kind to the issue committee or candidate committee that is charged such lower rate.

Section 10. That Section 7-145 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-145. Allegation of campaign violation.

(a) Any candidate or registered elector of the City ("complainant") who has reason to believe a violation of Chapter 7, Article V, of this Code, has occurred by any person, candidate, candidate committee, issue committee, small-scale issue committee or political committee may file a written complaint to the City Clerk, no later than sixty (60) days after the alleged violation has occurred.

Introduced, considered favorably on first reading, and ordered published this 17th/21st day of June/August, A.D. 2018, and to be presented for final passage on the 21st/4th day of August/September, A.D. 2018.

__________________________________
Mayor

ATTEST:
Passed and adopted on final reading on this 21st, the 4th day of August, September, A.D. 2018.

__________________________________  __________________________________________________________

__________________________________  ________________________________

Mayor

ATTEST:

__________________________________  ________________________________

City Clerk
MEMORANDUM

DT: July 18, 2018

TO: Mayor Troxell and City Councilmembers

TH: Darin Atteberry, City Manager
    Jeff Mihelich, Deputy City Manager

FM: Delynn Coldiron, City Clerk
    Carrie Daggett, City Attorney
    Rita Knoll, Chief Deputy City Clerk

RE: July 17, 2018 Work Session Summary: Possible Election Code Amendments

Councilmembers Present: Mayor Pro Tem Horak, Councilmembers Cunniff, Martinez, Overbeck, Stephens and Summers.

Overview:

Staff presented proposed election-related Code amendments, including:

1. Changing the reporting threshold for independent expenditure from $100 to $1,000

2. Extending violation provisions to include violations of independent expenditure reporting requirements, and

3. Requiring “paid for by” statements on election materials for registered committees

The Election Code Committee had discussed and supported Items 1 and 3. Item 2 was identified by staff after the Committee had met and was presented as a clean-up item.

Council Discussion:

Some concern was expressed about the proposed $1,000 threshold, and some Councilmembers expressed support for a smaller increase. At least one Councilmember expressed concern about extending the violation provisions as this could provide another opportunity for citizens to sue one another. Several Councilmembers expressed support for requiring “paid for by” statements on election materials for registered committees. Some Councilmembers expressed interest in also requiring “paid for by” statements for independent expenditures.
Follow Up:

Staff plans to bring revised Code changes to Council on August 21, 2018. The ordinance will contain a blank for the reporting threshold for independent expenditures for Council to fill in if Council moves forward to adopt the ordinance. The ordinance will also include a requirement for “paid for by” statements. The agenda materials will include materials clarifying the different types of committees, the requirements for each, independent expenditures, and the threshold for independent expenditures in other jurisdictions.

With regard to the Election Code Committee, staff was asked to explore either posting draft minutes from the previous meeting on the website when a long delay will ensue, or using some other means of addressing long delays in approval of the minutes. Staff will follow up on this request.
August 2, 2018

ELECTION CODE COMMITTEE MEETING

12:00 PM

PRESENT: Stephens, Cunniff, Malarky, Knoll, Gonzales, Daggett
(Councilmember Overbeck was absent)

CITIZENS PRESENT: Marge Norskog, Jody Deschenes, Robbie Moreland, Anne Thompson, Sarah Pitts, Jan Rossi

1. CALL MEETING TO ORDER

Councilmember Stephens called the meeting to order.

2. CITIZEN COMMENT

Marge Norskog thanked the Committee for publishing its working draft and presented the Committee with a chart comparing various municipalities regarding various election-related topics. She stated protecting election integrity is paramount and supported some of the changes made since the Council work session. However, she expressed concern about the $1,000 independent expenditure limit without a “paid for by” requirement. She stated no city with its own election code that is the size of Fort Collins or smaller has a $1,000 limit. Anonymous communication undermines election integrity.

Jody Deschenes thanked the Committee for holding an August meeting. She requested a balance be found between freedom of speech and election transparency and integrity. It is not undue hardship to require additional text on advertisements and constituents deserve to know who is attempting to influence elections. Candidates and voters will be protected by requiring “paid for by” statements on all candidate, committee, and outside group advertising. She also opposed raising the independent expenditure threshold above $200.

Robbie Moreland stated using Denver and Colorado as benchmarks for the $1000 independent expenditure amount is not accurate. The threshold for requiring independent expenditure reporting should be as consequential in the state as it is in Fort Collins and noted $1000 can buy a great deal of advertising in Fort Collins. She supported requiring “paid for by” statements on all independent expenditure ads as well as candidate and issue committee ads because anonymous free speech does not allow for the enforcement of reporting requirements, nor does it assure election integrity.

Sarah Pitts reported on the League of Women Voters assessment of money in elections, stating campaign finance regulation should enhance political equality for all citizens, ensure transparency, protect the representative democracy from distortion by big money, and combat corruption.

Jan Rossi suggested all candidates and committees should be required to report any expenditures over $200 and requested “paid for by” statements be required for all campaign items.

Anne Thompson, League of Women Voters, discussed the importance of transparency in elections and encouraged the Committee to listen to the speakers.

Councilmember Stephens thanked the speakers. She stated the City’s goals were to be in line with the State of Colorado as much as possible. She noted money cannot be eliminated from politics.

Councilmember Cunniff thanked the speakers for their time and commitment to these issues.

City Attorney Daggett stated this item will go before Council on August 21 and September 4 for First and Second Readings. She noted the Ordinance will include a blank for the independent expenditure limit for Council to choose that amount.
3. APPROVAL OF JULY 5, 2018 COMMITTEE MEETING MINUTES

Councilmember Cunniff made a motion, seconded by Councilmember Stephens, to adopt the July 5, 2018 Committee meeting minutes. The motion was adopted by unanimous consent.

4. DISCUSSION ITEMS

Follow-up and Discussion of July 17, 2018 Council Work Session (independent expenditures and paid for by requirements) and Further Recommendations

City Attorney Daggett noted the Ordinance coming forward with a blank for the independent expenditure amount was part of the discussion at the Work Session. After examining this Code Section, staff has determined that some language needs to be added and a new approach to referencing committees needs to be developed. Other than those changes, the Ordinance is conceptually the same as what was presented at the Work Session.

City Attorney Daggett stated requiring someone to report an expenditure as a committee and also as an independent expenditure is overly confusing; therefore, the addition of the word “natural” will make clear independent expenditures apply to individuals spending money not in coordination with the candidate.

Councilmember Cunniff asked about the threshold for small scale issue committees. City Attorney Daggett replied they must register as a small-scale issue committee at $200 and must start reporting as an issue committee at $5,000.

City Attorney Daggett discussed case law related to small-scale issue committees and stated the City’s language regarding them matches the State’s language.

Councilmember Stephens asked about the initial small-scale issue committee language. City Attorney Daggett replied there was no dollar threshold for registration; as soon as any money was spent, registration and reporting were required.

Councilmember Cunniff asked about corporations making expenditures to advocate for a certain election outcome. City Attorney Daggett read the definition of an issue committee, which does include corporations.

Councilmember Cunniff suggested using language related to a natural person and corporations and other groups when discussing independent expenditures.

Chief Deputy City Clerk Knoll noted the reporting of independent expenditures does not include a disclosure of contributions.

Councilmember Cunniff stated any party soliciting contributions has effectively created a committee.

Chief Deputy City Clerk Knoll suggested placing corporations back in under the definition of political committee and allowing political committees to make independent expenditures.

City Attorney Daggett noted a corporation would not need to register as a committee unless they are soliciting contributions.

Councilmember Cunniff stated the term “election outcome advocate” could be a good catch-all reference.

City Attorney Daggett stated staff will look at the independent expenditure language with a focus on not narrowing related to natural persons but focusing on existing persons or entities not taking contributions. Staff will also look at ensuring any individual or entity taking contributions is a committee.
Councilmember Cunniff expressed concern the $5,000 amount for small-scale issue committees to switch to full issue committees may be too high. Chief Deputy City Clerk Knoll replied committees are required to go back to the beginning and report everything if they hit the $5,000 threshold. The plan for independent expenditures is to have a check box that indicates the first report following the expenditure of whatever amount Council deems fit. This would then require expenditures to be reported from then on.

City Attorney Daggett stated Section 5 of the Ordinance is written to have the “paid for by” requirement apply to any committee, including small-scale issue committees. As written, this requirement does not apply to independent expenditures.

Councilmember Cunniff stated it would be important to include the requirement for independent expenditures if the limit is set higher. He stated it would be more uniform to require the statement for all expenditures.

City Attorney Daggett suggested having an exception. Councilmember Cunniff suggested having a size requirement for materials, such as 10 square inches.

Assistant City Attorney Ryan Malarky stated the proposal is a condensed version of the federal “paid for by” requirements.

City Attorney Daggett noted the “paid for by” requirement excludes apparel, as written. She reviewed the minor changes to other sections of the Ordinance.

Staff discussed the formation of flow charts for committees.

Councilmember Cunniff suggested rephrasing one of the whereas statements regarding furthering the City’s interest to furthering the public interest.

**Education/Orientation**

Councilmember Stephens asked about the formation of an educational component. Chief Deputy City Clerk Knoll replied the Clerk’s Office will not be able to form a large educational outreach as the focus is on material formation for this election and education for the next election.

**Motion to amend Committee Recommendation**

Councilmember Cunniff made a motion, seconded by Councilmember Stephens, that the Committee recommend the independent expenditure amount be raised from $100 without specifying the new amount and presenting a blank in the Ordinance. The motion was adopted by unanimous consent.

Chief Deputy City Clerk Knoll stated the minutes for this meeting could be posted as draft minutes online as they will not be officially adopted until the Committee meets again after the election.

5. **ADJOURNMENT**

The meeting adjourned by unanimous consent at 1:15 PM.
Proposed Changes

- Independent Expenditure Reporting
- “Paid for By” Disclaimers
- Change in Requirements for Registering Committees
- Independent Expenditure Violations
- Clean-Up Items
<table>
<thead>
<tr>
<th>Issue</th>
<th>Recommended Action</th>
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<tbody>
<tr>
<td>1. Independent Expenditure Reporting Threshold</td>
<td>Adopt Code language changing threshold requirement from $100 to a higher amount as</td>
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<td>determined by Council.</td>
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<td>2. Paid for By Disclaimer</td>
<td>Adopt Code language that:</td>
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<td>• Requires this for registered committees.</td>
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<td>• Does not include Independent expenditures.</td>
</tr>
<tr>
<td></td>
<td>Incremental approach will allow review of impacts before expanding requirement.</td>
</tr>
</tbody>
</table>
## Proposed Code Amendments

<table>
<thead>
<tr>
<th>Issue</th>
<th>Recommended Action</th>
</tr>
</thead>
</table>
| **4. Change in Requirements for Registering Committees** | • Adopt proposed changes that:  
  • Eliminate overlap between committees.  
  • Clarify the definition of Political and Issue Committees. |
| **5. Independent Expenditure Violations** | • Adopt Code language to ensure failure to report independent expenditures is covered under complaint process provisions. |
| **6. Clean-Up Items** | • Adopt recommendations to clarify and reconcile conflicts. |
### Committees

<table>
<thead>
<tr>
<th>Committee</th>
<th>Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Candidate Committee</strong></td>
<td>• Must register.</td>
</tr>
<tr>
<td></td>
<td>• Contributions/expenditures under authority of a candidate.</td>
</tr>
<tr>
<td></td>
<td>• One committee per candidate.</td>
</tr>
<tr>
<td></td>
<td>• Limits on contributions accepted per person.</td>
</tr>
<tr>
<td></td>
<td>• Reporting required on any monies received or expended.</td>
</tr>
<tr>
<td><strong>Political Committee</strong></td>
<td>• Must register.</td>
</tr>
<tr>
<td></td>
<td>• Two or more persons associated to take contributions or make expenditures.</td>
</tr>
<tr>
<td></td>
<td>• Any person (defined by Article) that accepts contributions.</td>
</tr>
<tr>
<td></td>
<td>• Contributions/expenditures only to support or oppose candidates.</td>
</tr>
<tr>
<td></td>
<td>• Reporting required on any monies received or expended.</td>
</tr>
</tbody>
</table>

Image from showmeinstitute.org
Committees

Issue Committee (Not Small Scale)

- Must register.
- 2 or more persons associated to take contributions or make expenditures.
- A person (defined by Article) that takes contributions.
- Contributions/expenditures to support or oppose any ballot issue or ballot question.
- Reporting required on any monies received or expended.

Small-Scale Issue Committee

- Requires registration only after contributions/expenditures exceed $200.
- Contributions/expenditures limited to $5,000 or less.
- Contributions/expenditures to support or oppose any ballot issue or ballot question.
- No reporting is required on any monies received or expended.

Image from showmeinstitute.org
Enforcement

Image from showmeinstitute.org
THANK YOU!
ORDINANCE NO. 113, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 7 OF THE CODE OF THE CITY OF FORT COLLINS
TO AMEND REQUIREMENTS AND PROCEDURES RELATED TO
CAMPAIGNS AND CAMPAIGN FINANCE IN CITY ELECTIONS

WHEREAS, Chapter 7 of the City Code sets out procedures and requirements for
redistricting of Council districts, for the conduct of City elections, for disclosure of campaign
finance information, and other related matters; and

WHEREAS, in 2015, the City Council formed an ad hoc committee, including
Councilmembers Cunniff, Overbeck and Stephens, to review, discuss and recommend the most
beneficial changes to the Code and City Charter regarding elections and other related matters; and

WHEREAS, in January 2017, Council made the ad hoc Committee a standing committee
of the Council for the purpose of identifying and evaluating ideas for improvements to City
election laws and practices and anticipating adjustments that may be needed to adopt to a
changing legal and technological environment, for Council consideration; and

WHEREAS, as a result of the Committee’s work (as both an ad hoc committee and a
standing committee), Ordinance No. 021, 2016, Ordinance No. 005, 2017, Ordinance No. 045,
2018, and Ordinance No. 077, 2018, were considered and adopted by the Council to update
various provisions of Chapter 7; and

WHEREAS, the Committee continued to meet in 2017 and 2018, and has recommended
additional clarifications and amendments to Chapter 7; and

WHEREAS, the Committee has recommended that the threshold for reporting
independent expenditures be raised from $100 to a higher amount to be determined by City
Council; and

WHEREAS, the Committee has recommended the creation of a new requirement that
committees otherwise required to register with the City also be required to include disclaimers on
campaign communications to identify the committee making the communication, whether the
communication is coordinated with a particular committee, and the source of funding for the
communication; and

WHEREAS, staff has recommended that the definitions for candidate committee, issue
community, and political committee be changed to require registration and reporting of those
persons that at a minimum accept contributions, rather than only applying to those persons that
accept contributions and make expenditures; and

WHEREAS, staff has recommended that the citizen complaint process for campaign
violations be changed to also apply to violations committed by individual persons, including
violations related to independent expenditures; and

-1-
WHEREAS, staff has recommended changes to certain definitions in Code Section 7-132 in order to clarify the distinctions between the various types of campaign committees, and to reconcile them with other amendments; and

WHEREAS, these amendments generally improve and clarify the City’s campaign finance disclosure and election requirements and processes; and

WHEREAS, these amendments further the City’s and the public’s interest in shedding light for the public on the expenditure of money to influence the outcome of City elections, while respecting the speakers’ interest in freedom of political speech; and

WHEREAS, the Council desires to enact the recommendations of the Committee and staff in order to clarify and improve the various provisions of Chapter 7, as set forth below.

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

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

Section 2. That the following definitions contained in Section 7-132 of the Code of the City of Fort Collins are hereby amended to read as follows:

Sec. 7-132. Definitions.

... 

Candidate committee shall mean a person, including the candidate, or persons with the common purpose of receiving contributions and or making expenditures under the authority of a candidate. A candidate shall have only one (1) candidate committee. A candidate committee shall be considered open and active until the committee has filed a termination report with the City Clerk.

Contribution shall mean:

(1) The payment, loan, pledge or advance of money, or guarantee of a loan, made to any candidate committee, issue committee or political committee;

(2) Any payment made to a third party for the benefit of any candidate committee, issue committee or political committee;

(3) Anything of value given, directly or indirectly, to a candidate committee for the purpose of promoting the candidate's nomination, retention, recall or election; or

(4) With regard to a contribution for which the contributor receives compensation or consideration of less than equivalent value to such contribution, including, but not limited...
to, items of perishable or nonpermanent value, goods, supplies, services or participation in a campaign-related event, an amount equal to the value in excess of such compensation or consideration as determined by the candidate committee, issue committee or political committee.

**Contribution** shall not include:

1. Services provided without compensation by individuals volunteering their time on behalf of a candidate, candidate committee, political committee, or issue committee or small-scale issue committee;

2. Funds collected subsequent to the election to pay the cost of a requested recount pursuant to 7-46.

**Contribution in kind** shall mean the fair market value of a gift or loan of any item of real or personal property, other than money, made to or for any candidate committee, issue committee, small-scale issue committee or political committee for the purpose of influencing the passage or defeat of any issue or the nomination, retention, election or defeat of any candidate. Personal services shall be considered a contribution in kind by the person paying compensation therefor. In determining the value to be placed on contributions in kind, a reasonable estimate of fair market value shall be used.

**Contribution in kind** shall not include an endorsement of a candidate or an issue by any person and shall not include the payment of compensation for legal and accounting services rendered to a candidate, candidate committee, political committee, or issue committee or small-scale issue committee if the person paying for the services is the regular employer of the individual rendering the services and the services are solely for the purpose of ensuring compliance with the provisions of this Article.

**Expenditure** shall mean the payment, distribution, loan or advance of any money by any candidate committee, political committee or issue committee. **Expenditure** shall also include the payment, distribution, loan or advance of any money by a person for the benefit of a candidate committee, political committee, or issue committee or small-scale issue committee that is made with the prior knowledge and consent of an agent of the committee. An expenditure occurs when the actual payment is made or when there is a contractual agreement and the amount is determined.

... 

**Independent expenditure** shall mean the payment of money by any person for the purpose of advocating the election, defeat or recall of a candidate, which expenditure is not controlled by, or coordinated with, any candidate or any agent of such candidate. **Independent expenditure** shall include expenditures for political messages which unambiguously refer to any specific public office or candidate for such office. Independent expenditure shall also include the payment of money by any person for supporting or opposing a ballot issue or ballot question that is not controlled by, or
coordinated with, an issue committee or a small-scale issue committee. Independent expenditure shall include, but not be limited to, advertisements placed for a fee on another person's website or advertisement space provided for no fee or a reduced fee where a fee ordinarily would have been charged.

*Independent expenditure* shall not include:

(1) Expenditures made by persons, other than political committees, in the regular course and scope of their business and political messages sent solely to their members; or

(2) Expenditures made by small-scale issue committees; or

(3) Any news articles, editorial endorsements, opinion or commentary writings, or letters to the editor printed in a newspaper, magazine or other periodical not owned or controlled by the candidate, or communications other than advertisements posted or published on the internet for no fee.

*Issue committee* shall mean:

(1) Two (2) or more persons who are elected, appointed or chosen, or have associated themselves, for the purpose of accepting contributions and/or making expenditures to support or oppose any ballot issue or ballot question; or

(2) Any partnership committee, association, corporation, labor organization or other organization or group of persons that has accepted contributions or made expenditures to support or oppose any ballot issue or ballot question. For purposes of this Paragraph (2), the term expenditure shall not include expenditures made by persons in the regular course and scope of their business or in connection with communications sent solely to their members. The term expenditure also does not include a contribution, as defined in this Section.

*Issue committee* shall not include political committees, small-scale issue committees, or candidate committees as otherwise defined in this Section.

...  

*Political committee* shall mean:

(1) Two (2) or more persons who are elected, appointed or chosen, or have associated themselves, for the purpose of accepting contributions or making expenditures to support or oppose one (1) or more candidates, contributions to candidate committees, issue committees or other political committees, or for the purpose of making independent expenditures.
(2) Any person that has accepted contributions for the purpose of supporting or opposing one (1) or more candidates.

*Political committee* shall not include:

(1) Issue committees or candidate committees as otherwise defined in this Section; or

(2) Any partnership, committee, association, corporation, labor organization or other organization or group of persons previously established for a primary purpose outside of the scope of this Article.

... 

*Unexpended campaign contributions* shall mean the balance of funds on hand in any candidate committee, issue committee, or political committee or small-scale issue committee following an election, less the amount of all unpaid monetary obligations incurred prior to the election.

Section 3. That Section 7-134 (c) and (d) of the Code of the City of Fort Collins are hereby amended to read as follows:

**Sec. 7-134. - Registration of committees; termination.**

... 

(c) Any candidate committee, political committee, or issue committee or registered small-scale issue committee that has registered with the City Clerk, but has not engaged in any election activities or reported any contributions accepted or expenditures made, may terminate at any time by filing an amended committee registration indicating the nature of the amendment is termination of the committee and verifying that no contributions have been received or expenditures made since registration occurred pursuant to § 7-134. Alternatively, the committee shall file a campaign report indicating no contributions have been received or expenditures made, and indicating it is a termination report.

(d) Any political committee, or issue committee or registered small-scale issue committee that has not taken the necessary steps to terminate pursuant to Subsection (c) above must have properly disposed of all funds and must file a termination report no later than seventy (70) days after the election.

Section 4. That Section 7-135(b), (d) and (g) of the Code of the City of Fort Collins are hereby amended to read as follows:
Sec. 7-135. Campaign contributions/expenditures.

... 

(b) Joint contributions. No person shall make a contribution jointly with another person through the issuance of a check drawn on a jointly owned account unless: (i) the total amount of the joint contribution is less than the maximum amount that can be contributed by one (1) person under the contribution limits established in Subsection (a) of this Section or (ii) the check is signed by all owners of the account, in which event the amount of the total contribution shall be allocated equally among all such persons unless a different allocation is specified on the face of the check. No candidate committee, issue committee or political committee shall knowingly accept a contribution made in violation of this Subsection (b).

... 

(d) No candidate committee, issue committee, small-scale issue committee or political committee shall knowingly accept contributions from any person who is not a citizen of the United States, from a foreign government or from any foreign corporation that does not have authority to transact business in this State pursuant to Article 115 of Title 7, C.R.S.

... 

(g) Reimbursements prohibited. No person shall make a contribution to a candidate committee, issue committee, small-scale issue committee or political committee with the expectation that some or all of the amounts of such contribution will be reimbursed by another person. No person shall be reimbursed for a contribution made to any candidate committee, issue committee, small-scale issue committee or political committee, nor shall any person make such reimbursement. An unexpended campaign contribution returned to a contributor by a candidate committee pursuant to § 7-135(a)(4)(c) shall not be considered a reimbursement.

Section 5. That Section 7-135 of the Code of the City of Fort Collins is amended to add a new subsection (h), to read as follows:

Sec. 7-135. Campaign contributions/expenditures.

... 

(h) A candidate committee, issue committee, small-scale issue committee or political committee shall not coordinate its expenditures with any other such committee in a manner that circumvents any restrictions or limitations on campaign contributions, expenditures or reporting set forth in this Article.
Section 6. That Section 7-136(g) and (i) of the Code of the City of Fort Collins are hereby amended to read as follows:

Sec. 7-136. Disclosure; filing of reports.

... (g) Any report that is deemed by the City Clerk to be incomplete or inconsistent with the requirements of this Article shall be accepted on a conditional basis, and the committee’s registered agent treasurer shall be notified in writing as to any deficiencies found. Such notice may be delivered in person, by mail, by fax, or, if an electronic mail address is on file with the City Clerk, by electronic mail. The committee’s registered agent treasurer shall have seven (7) business days from the date of delivery of such notice to file an amended report that cures the deficiencies. Any such amended report shall supersede the original report filed for the reporting period.

... (i) Except as specified in this Subparagraph (i), the disclosure requirements specified in this Article Section shall not apply to a small-scale issue committee. To the extent there is any conflict between the small-scale issue committee provisions of Subparagraphs (i), (j), (k), and (l) of this Section 7-136, those Subparagraphs shall control. Any small-scale issue committee shall disclose or file reports about the contributions or expenditures it has made or received or otherwise register as an issue committee in connection with accepting or making such contributions or expenditures in accordance with the following alternative requirements:

Section 7. That Section 7-139 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-139. Independent expenditures.

Any person, excluding a committee required to register under this Article, or political committee who makes independent expenditures in connection with any particular ballot totaling in the aggregate more than one hundred dollars ($100.) dollars ($_____) shall report any such independent expenditures made after that threshold is met to the City Clerk on a form provided by the City Clerk no later than three (3) business days after the day that such funds are obligated to pay for said independent expenditure. Said notice shall include the following information, together with any other information required:

...
Sec. 7-140. Responsibility for communications.

(a) Whenever a candidate, candidate committee, issue committee, political committee or registered small-scale issue committee makes an expenditure for the purpose of financing communications expressly advocating a particular result in an election, or solicits any contribution or contribution in-kind through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing or any other type of general public political advertising, such communication if paid for or authorized by a candidate, candidate committee, issue committee, political committee, registered small-scale issue committee, or any agent for the same, shall clearly state that the communication is paid for by that candidate, candidate committee, issue committee, political committee or registered small-scale issue committee.

(b) In regard to the different forms of communication set forth in subsection (a) of this Section 7-140, “communication” shall include, but shall not be limited to:

(1) Websites or social media of a candidate, candidate committee, issue committee, political committee or registered small-scale issue committee available to the general public; and

(2) Advertisements placed for a fee on another person’s website or social media.

(c) The statement required by this Section 7-140 must be clear and conspicuous in the communication. The statement required herein shall not apply to communications where including the statement would be impractical, such as:

(1) Bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed;

(2) Skywriting, water towers, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; or

(3) Checks, receipts, and similar items of minimal value that are used for purely administrative purposes and do not contain a political message.

(d) Nothing herein shall be deemed to alleviate any person from complying with federal campaign finance law, as applicable.

Section 9. That Section 7-141(b) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-141. - Expenditures for political advertising; rates and charges.

...
(b) Any radio or television station, newspaper, internet advertiser or website provider, social media provider or periodical that charges an issue committee, small-scale issue committee or candidate committee a lower rate for use of space, materials or services than the rate such station, newspaper, internet advertiser or website provider, social media provider or periodical or supplier charges another issue committee or candidate committee for the same ballot measure or public office for comparable use of space, materials or services shall report the difference in such rate as a contribution in kind to the issue committee or candidate committee that is charged such lower rate.

... 

Section 10. That Section 7-145 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7-145. Allegation of campaign violation.

(a) Any candidate or registered elector of the City ("complainant") who has reason to believe a violation of Chapter 7, Article V, of this Code, has occurred by any person, candidate, candidate committee, issue committee, small-scale issue committee or political committee may file a written complaint to the City Clerk, no later than sixty (60) days after the alleged violation has occurred.

... 

Introduced, considered favorably on first reading, and ordered published this 21st day of August, A.D. 2018, and to be presented for final passage on the 4th day of September, A.D. 2018.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
Passed and adopted on final reading on the 4th day of September, A.D. 2018.

__________________________
Mayor

__________________________
City Clerk
AGENDA ITEM SUMMARY
City Council
August 21, 2018

STAFF

Rebecca Everette, Senior Environmental Planner
Cassie Archuleta, Senior Environmental Planner
Lucinda Smith, Environmental Sustainability Director
Laurie Kadrich, Director of PDT
Brad Yatabe, Legal

SUBJECT

First Reading of Ordinance No. 114, 2018, Amending Article 3 of the Land Use Code Regarding Buffering Requirements for Development in Relation to Oil and Gas Facility Locations.

EXECUTIVE SUMMARY

The purpose of this item is to present Land Use Code updates related to buffering new development from existing oil and gas wells for Council consideration. The staff recommendation includes the following Code changes:

1. Increase buffer for residential development near existing oil and gas operations from 350 feet to 500 feet.
2. Add a new 1000-foot buffer requirement for high occupancy buildings near oil and gas operations.
3. Allow a reduced setback (150 feet minimum) near plugged and abandoned wells if specific requirements and performance standards are met.
4. Create an additional means of disclosure to future property owners as part of any required recorded declaration.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Purpose and Intent

Staff initiated a review of the current oil and gas buffers with a goal of ensuring that Land Use Code (LUC) regulations will continue to protect the health and safety of Fort Collins residents and provide predictability for developers into the future.

The intent of the proposed changes is to match or exceed Colorado Oil and Gas Conservation Commission (COGCC) requirements, ensure the safest possible condition for current and future residents, incentivize the plugging and abandonment of active wells, and support additional investigation of plugged and abandoned wells. The following goals guided staff’s analysis:

1. Increase the required buffers for new development around existing oil and gas operations to provide greater protection to residents and improve consistency with state regulations;
2. Allow consideration of reduced buffers around plugged and abandoned wells if the surrounding area has been deemed safe for development;
3. Facilitate site investigation and sampling around plugged wells, at a developer’s expense; and
4. Encourage developers to permanently plug and abandon active wells rather than keeping wells in operation near residential development.

Summary of Proposed Land Use Code Updates

The current staff recommendation includes the following Code changes:

1. Increase buffer for residential development near existing oil and gas operations from 350 feet to 500 feet.
2. Add a new 1000-foot buffer requirement for high occupancy buildings near oil and gas operations.
3. Allow a reduced setback (150 feet minimum) near plugged and abandoned wells if specific requirements and performance standards are met.
4. Create an additional means of disclosure to future property owners as part of any required recorded declaration.

The initial staff recommendation was modified based on input from the general public, landowners and other stakeholders, and boards and commissions. The full set of proposed changes is included in Attachment 1.

Follow-up from City Council Work Session

Staff presented the proposed Land Use Code updates at the June 19, 2018, Work Session. Council was generally supportive of the proposed Land Use Code changes and appreciated the amount and type of outreach conducted by staff. Questions and discussion focused on the level of risk associated with plugged and abandoned wells, as well as how various requirements and thresholds had been determined, including the minimum 150-foot buffer around plugged and abandoned wells. Based on Council’s direction, staff followed up on a number of questions and comments described in more detail in this agenda item summary.

Current Oil and Gas Operations in Fort Collins

The Fort Collins Growth Management Area (GMA) contains 16 active wells (all operated by Prospect Energy) and 30 wells that have been abandoned. Prospect Energy’s operations in the Fort Collins Field are limited to oil production; no natural gas is extracted or produced within the GMA. The Fort Collins Field consists of unpressurized oil that is bonded to bedrock. Water pressure is used to force oil upward, and the resulting product is approximately 97% water and 3% oil, with almost no associated gas.

Unlike natural gas operations in other communities along the Front Range, continuous flaring does not occur at the Fort Collins wells, as there is little to no gas that would need to be flared. There is little possibility for methane to migrate upward from the formation for either active or abandoned wells.

Abandoned wells in Fort Collins vary significantly in age, with some wells abandoned as far back as the 1920s and others abandoned within the last year. As such, the amount and precision of information about these wells (e.g., exact locations or details about how they were plugged) also varies. Unknown or undiscovered wells in the Fort Collins Field are very unlikely given the low levels of production that have occurred in this field over the past century.

Oil and Gas Buffers

The COGCC regulates permitting and setbacks for new wells near existing buildings but does not regulate the reverse situation: permitting and setbacks for new development near existing oil and gas infrastructure. The Land Use Code currently requires a buffer of at least 350 feet between existing oil and gas operations (both active and abandoned) and new residential development.

The previously adopted 350-foot buffer was specifically intended to match the COGCC setback requirements for new wells, which were 350 feet at the time of adoption. Since then, the COGCC has updated its setbacks for new oil and gas wells to 500 feet. COGCC further distinguishes between general residential development and land uses deemed to be “high occupancy,” which includes certain schools, hospitals, nursing homes,
correctional facilities, and daycare centers. The state requires a setback of 1,000 feet between these uses and new wells.

Staff recommends updating the City's buffer requirements to 500 feet for residential development and 1,000 feet for high occupancy uses, consistent with current state-level regulation and City Council's previous direction. The code changes also include a clause that would automatically increase the required buffer if state requirements also increase in the future.

**Plugged and Abandoned Wells and Associated Risks**

Plugged and abandoned wells have been permanently removed from production and filled with a combination of concrete plugs, slurries, and other materials. Many of the older wells in Fort Collins were abandoned prior to current regulations and state oversight. As such, there is uncertainty about if, when, and how the wells were plugged, and it is possible that some of these wells would not meet the current COGCC standards. Risks related to plugged and abandoned wells are very difficult to quantify, as it is highly dependent on site-specific conditions, production type, well construction details, plugging and abandonment techniques, and age of wells. Staff has been unable to find research documenting failure rates or contamination risks for wells with the same combination of production type, well age, and site conditions present in the Fort Collins Field. It is possible that the integrity of wells plugged many decades ago has changed as they have aged. While there have been no known issues with any abandoned wells in Fort Collins, there have been documented safety incidents related to old, improperly plugged wells in other communities, primarily in natural gas fields that differ significantly from the Fort Collins Field.

It is in the community's interest to understand the existing conditions, and therefore potential risks, related to the various abandoned wells throughout the city. The Land Use Code does not distinguish between operational (active) wells and wells that have been plugged and abandoned. However, wells that have been abandoned to current state standards have a much lower potential for environmental contamination, public health impacts, and public safety incidents. Further, well sites in Fort Collins have a comparatively lower risk of methane leaks, as no natural gas is produced from the Fort Collins Field. As such, a reduced setback may be appropriate in situations where the City can verify that wells have been properly plugged and no leaks or contamination have occurred.

In addition, a reduced setback for properly abandoned wells would create a stronger incentive for land developers to coordinate the abandonment of active wells on development sites, rather than keeping wells in operation as new development occurs. Allowing a reduced setback would encourage the developer to work with an oil and gas operator to remove the well from operation, therefore significantly reducing public health and safety risks near future residential properties.

There was a question at the City Council work session related to the impact of expansive soils and other geotechnical conditions on the long-term integrity of plugged and abandoned wells. Staff has discussed this concern with a qualified geotechnical engineer, who stated that the risk for expansive soils impacting a plugged and abandoned well is very low. Expansive soils only expand and contract when moisture is added, which typically only occurs as a result of heavy irrigation (e.g., for turf landscaping). The maximum “wetting depth” for heavily irrigated areas is 15 to 20 feet of soil. Even in the event that there are irrigated, expansive soils around a plugged and abandoned well, there is a low likelihood that the soils could put enough pressure on a concrete well casing to cause a barrier failure.

**Alternative Compliance Option**

Staff recommends an alternative compliance option that would allow for a reduced buffer (150 foot minimum) if the City can verify that plugging and abandonment have occurred in accordance with current COGCC standards and no contamination is present on a site. A buffer of 150 feet would provide adequate space for equipment to replug or maintain a permanently plugged well in the future, if needed. The following sampling and monitoring measures would be required to determine whether alternative compliance would be appropriate. The required measures replicate the sampling methods used in Longmont to document the condition of plugged and abandoned wells in that community:
1. Site survey, historical research and/or physical locating techniques to determine exact location and extent of oil and gas operations and facilities.
2. Documentation of plugging activities, abandonment and any subsequent inspections.
3. Soil sampling, including soil gas testing.
4. Groundwater sampling.
5. Installation of permanent groundwater wells for future site investigations or monitoring.
6. Additional requirements as determined by staff and/or the decision-maker.

The following verification and performance standards would need to be satisfied for a reduced buffer to be approved:

1. Written report verifying that the soil and groundwater samples meet applicable EPA and State residential regulations.
2. Verification that a reduced buffer would not pose a greater health or safety risk for future residents or users of the site than baseline site conditions.
3. Remediation of environmental contamination to background levels, if necessary.
4. Well repair or replugging of a previously abandoned well, if necessary.

Disclosure to Future Property Owners

The Land Use Code currently requires notification about oil and gas wells to be placed on the plat for a new subdivision. Based on feedback from boards and the public, staff determined that this method of notification may be easily overlooked by a future homebuyer, so an additional method of notification is appropriate. Staff recommends a requirement that developers include information about any existing oil and gas wells as part of any recorded declaration required under the Colorado Common Interest Ownership Act for all properties within 1000 feet of any wells. This information would be more readily available to all future property owners.

CITY FINANCIAL IMPACTS

Adoption of these Code changes will not have a significant impact on City resources. Additional staff time may be required to review alternative compliance requests for plugged and abandoned wells; however, this is comparable to the amount of time staff already dedicates to environmental concerns on various development projects.

BOARD / COMMISSION RECOMMENDATION

Staff held extensive discussions with the Planning and Zoning Board (3 work sessions and 2 hearings), Natural Resources Advisory Board (3 meetings) and Air Quality Advisory Board (4 meetings) over the past nine months. All three boards have provided recommendations on the currently proposed changes. The staff recommendation and three board recommendations are summarized in Table 1 below.

A follow-up meeting was held with members of each board on June 4, 2018. The purpose of this meeting was to confirm understanding of the proposed code changes and clarify the recommendations of each board. The boards all support increased buffers around active wells, and they also share concerns about uncertainty and lack of data for older plugged and abandoned wells. There was discussion, but not consensus, about the measurement of buffers (i.e., to a property line rather than the nearest occupied building). All three boards felt that more stringent monitoring and accountability requirements should be applied if reduced buffers will be considered.

Based on public input and board recommendations, staff made the following modifications to the proposed Code changes:

- Do not allow parks, playgrounds, recreational fields or community gathering spaces to be placed within a buffer, both for residential and high occupancy uses
• Require a minimum of five years of annual monitoring of plugged and abandoned wells (if a reduced buffer is granted)
• Require a certification that the site is free from contamination and is safe for residential use (if a reduced buffer is granted)
• Require remediation of any environmental contamination, repair of a damaged well, or re-plugging of a well if determined to be necessary (if a reduced buffer is granted)

**TABLE 1. PROPOSED LAND USE CODE CHANGES AND BOARD RECOMMENDATIONS**

<table>
<thead>
<tr>
<th>Code Change (Staff Recommendation)</th>
<th>Planning and Zoning Board</th>
<th>Natural Resource Adv. Board</th>
<th>Air Quality Adv. Board</th>
</tr>
</thead>
</table>
| 1. Increase buffer around both active and abandoned wells to at least 500’ for residential development | Supported staff recommendation | • Supported 500’ buffer  
• Supported measuring buffer to nearest property line, rather than nearest occupied building | • Supported 500’ buffer  
• Supported measuring buffer to nearest property line, rather than nearest occupied building  
• Do not allow variances to setbacks |
| 2. Require a buffer of at least 1000’ around both active and abandoned wells for High Occupancy Building Units* | Supported staff recommendation | • Supported 1000’ buffer  
• Supported measuring buffer to nearest property line, rather than nearest occupied building  
• Supported excluding playgrounds and parking lots from buffers | • Supported 1000’ buffer  
• Supported measuring buffer to nearest property line, rather than nearest occupied building  
• Do not allow variances to setbacks |
| 3. Allow decision maker to consider a reduced buffer around abandoned wells, if additional site testing occurs and the site is deemed safe for residential development (150’ min buffer) | • Did not support staff recommendation  
• Consider buffer reduction requests on a case-by-case basis only  
• Determine site sampling and/or monitoring requirements on a case-by-case basis only | • Supported staff recommendation with additions  
• Require identification of responsible party if plugged well fails  
• Add requirements for repair, annual third-party monitoring, and bonding to address any future well integrity issues  
• Require regular inspections | • Did not support staff recommendation  
• Apply same buffers as for active wells, with no variances allowed |
4. Require an additional method of notification (property covenant) for all properties within 1000’.

<table>
<thead>
<tr>
<th>Code Change (Staff Recommendation)</th>
<th>Planning and Zoning Board</th>
<th>Natural Resource Adv. Board</th>
<th>Air Quality Adv. Board</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supported staff recommendation</td>
<td>Supported staff recommendation</td>
<td>Supported staff recommendation</td>
<td>Supported staff recommendation</td>
</tr>
</tbody>
</table>

* High Occupancy Building Units include certain schools, hospitals, nursing homes, correctional facilities, and daycare centers.

PUBLIC OUTREACH

Feedback from stakeholders and the broader community was gathered through the following outreach activities:

- Direct mailing to property owners within 1000 feet of existing oil and gas wells, with information on proposed code changes and opportunities for comment (1110 letters mailed)
- Online questionnaire to collect feedback on proposed changes, advertised through direct mailing, email lists, social media, news release, and Nextdoor website (228 completed responses)
- Online recorded video presentation with background information and explanation of the proposed code changes: [https://youtu.be/QUCAkpeUHgo](https://youtu.be/QUCAkpeUHgo)
- Email notifications to all members of the public and land developers who expressed a specific interest in these code changes
- Four designated drop-in times to meet with staff to discuss comments and concerns (16 attendees total)
- Presentations at Planning & Zoning Board, Natural Resources Advisory Board, and Air Quality Advisory Board work sessions
- Individual phone calls and emails to discuss questions and concerns as needed

In addition to broad community outreach, staff also consulted with the following targeted groups:

- Colorado Oil and Gas Conservation Commission (COGCC) staff
- Representative of Prospect Energy (local oil and gas operator)
- Representatives for the Country Club Reserve and Montava development projects
- Poudre School District (property owner in Mountain Vista area)
- City of Longmont staff to discuss their program related to plugged and abandoned wells
- Terracon (private consultant) to discuss investigation methods, costs for plugged and abandoned wells, and geotechnical considerations

A general summary of public input and associated revisions to the original staff recommendation are presented in Table 2. See Attachments 2-4 for the public engagement plan, questionnaire results and a complete record of comments.

**TABLE 2. SUMMARY OF PUBLIC INPUT AND REVISIONS**

<table>
<thead>
<tr>
<th>Public Input</th>
<th>Staff Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Majority supported increased buffer around active wells</td>
<td>Kept the increased buffer around active wells and added a new buffer for high occupancy building units</td>
</tr>
<tr>
<td>Majority had concerns about reduced buffers around plugged and abandoned wells, including:</td>
<td>Eliminated automatic buffer reduction for plugged and abandoned wells; developed alternative compliance option with specific sampling, monitoring and performance requirements instead</td>
</tr>
<tr>
<td>- Health impacts and safety risks</td>
<td></td>
</tr>
<tr>
<td>- Potential for long-term failure of wells</td>
<td></td>
</tr>
<tr>
<td>- Adequacy of state regulations and inspections</td>
<td></td>
</tr>
<tr>
<td>Public Input</td>
<td>Staff Response</td>
</tr>
<tr>
<td>-------------------------------------------------</td>
<td>-------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Support for additional research, site investigation, testing and monitoring requirements</td>
<td>Added requirements for site investigation and sampling in exchange for buffer reduction (alternative compliance)</td>
</tr>
<tr>
<td>Support for additional methods of notification to future residents</td>
<td>Created an additional method of disclosure through property covenants</td>
</tr>
</tbody>
</table>

**ATTACHMENTS**

1. Council Work Session Follow Up  (PDF)
2. Public Engagement Plan   (PDF)
3. Online Questionnaire Results  (PDF)
4. Public Comments Received To-Date  (PDF)
5. Planning and Zoning Board minutes, April 19, 2018 and March 15, 2018  (PDF)
6. Natural Resources Advisory Board Recommendation and Minutes  (PDF)
7. Air Quality Advisory Board Recommendation and Minutes  (PDF)
8. PowerPoint Presentation  (PDF)
MEMORANDUM

DATE: June 22, 2018

TO: Mayor and Councilmembers

THRU: Darin Atteberry, City Manager
       Jeff Mihelich, Deputy City Manager
       Laurie Kadrich, Director of Planning, Development and Transportation

FROM: Rebecca Everette, Senior Environmental Planner

RE: June 19 Work Session Agenda Item #1: Oil and Gas Land Use Code Updates – Follow Up

The purpose of this Memo is to follow up on questions and summarize next steps for the Oil and Gas Land Use Code Updates, Work Session Item #1 on June 19, 2018. In attendance were Mayor Troxell, Mayor Pro Tem Horak, and Councilmembers Cunniff, Overbeck and Stephens. Councilmember Martinez participated from home, and Councilmember Summers requested additional information from staff following the work session.

Staff requested feedback on the following questions:

1. Does Council have feedback about the proposed staff recommendation?
2. Is any additional information needed prior to formal Council consideration of the proposed Land Use Code changes?

Council was generally supportive of the proposed Land Use Code changes and appreciated the amount and type of outreach conducted by staff over the past nine months. Questions and discussion focused on the level of risk associated with plugged and abandoned wells, as well as how various requirements and thresholds had been determined, including the minimum 150-foot buffer around plugged and abandoned wells.

Attached are an email and graphic provided by the Colorado Oil and Gas Conservation Commission that provide additional detail on plugged and abandoned wells.

Based on Council direction, staff intends to pursue the following next steps:

- Consult with a geologist and/or geotechnical engineer on how soil conditions, including expansive soils, could potentially impact the long-term integrity of plugged and abandoned wells
- Include performance standard(s) in the code language that focuses on minimizing potential health and safety impacts and verifying the condition of abandoned wells
- Describe potential for long-term risks associated with plugged and abandoned wells, both quantitatively and qualitatively, in the future Agenda Item Summary for this topic
- Schedule a date for the code changes to be formally considered by Council
Information and graphic from COGCC re P&A wells.

Sent from my T-Mobile 4G LTE Android device

--------- Forwarded message ---------
From: "Morton - DNR, Marc" <marc.morton@state.co.us>
Date: Jun 21, 2018 1:40 PM
Subject: Re: Inquiry from FTC LGD concerning 05-069-05110 and 05-069-06255
To: Cassie Archuleta <carchuleta@fcgov.com>
Cc:

Per your request, attached is a depiction (cartoon) of a well Plugging and Abandonment (P&A), shown next to a producing well.

The well on the left is the producing well, the well on the left is a similar well that has been plugged and abandoned. Note that is has various cement plugs and a a cast iron bridge plug placed around the well bore, per an approved COGCC Form 6 (Well Abandonment - Notice of Intent). Note that in this case, one of the requirements was to cut the conductor casing four feet below the land surface.

In general, P&A'd wells pose extremely low risk. Note that developers should evaluate lands (conduct due diligence) for their presence, as well as presence of other features of environmental concern. This is normally done by conducting a Phase I Environmental Site Assessment, by a well qualified and experienced environmental consulting firm.

COGCC does not regulate how close a structure may built to an existing of inactive well, but COGCC recommends developers not build on top of P&A'd wells.

I hope this helps.

Marc

Marc K. Morton
Local Government Liaison
**Well Plugging & Abandonment (P&A)**

**WELL PLUGGING EXAMPLE** - Details depend on the well construction, geologic, and engineering characteristics.

1. Cut casing 4 feet below grade and add 10 sacks cement.
2. Add 50 sacks cement surface casing shoe plug.
3. Add 40 sacks cement stub plug.
4. 2 sacks cement and cast iron bridge plug.

**Diagram Details**
- **Cemented Conductor**
- **Surface Casing**
- **Producing Casing**
- **Perforations**
- **AQUIFER(S)**
- **Ground Surface**
- **Hydrocarbon Formation**
PUBLIC ENGAGEMENT SUMMARY

PROJECT TITLE: UPDATES TO OIL AND GAS REGULATIONS

OVERALL PUBLIC INVOLVEMENT LEVEL: INVOLVE

BOTTOM LINE QUESTION: Should the City’s Land Use Code regulations related to reciprocal setbacks (distance between new development and existing oil and gas operations) to reflect current state standards and incentivize the decommissioning of active wells?

KEY STAKEHOLDERS:

- Residents living in close proximity to existing and past oil and gas operations, primarily in northeast Fort Collins
- Landowners with existing and past oil and gas operations on their properties
- Oil and gas operator (Prospect Energy)
- Environmental protection advocates
- Land developers and development review applicants, particularly in northeast Fort Collins
- General public

TIMELINE:

Phase 1: Community Engagement
Timeframe: December 2017 to January 2018

Key Messages:

- Colorado Oil and Gas Conservation Commission (COGCC) regulations include setbacks for new oil and gas wells near existing buildings, but they do not regulate new development near existing oil and gas infrastructure (reciprocal setbacks). The Land Use Code currently requires a reciprocal setback of at least 350 feet from all oil and gas wells (both active and plugged/abandoned).
- The previously adopted reciprocal setback requirements were specifically intended to match the COGCC setback requirements for new wells, which were 350 feet at the time. Since then, COGCC has updated its setbacks for new oil and gas wells to 500 feet. Updating the City’s reciprocal setback requirements to 500 feet would be consistent with City Council’s previous direction.
- The Land Use Code does not distinguish between operational (active) wells and wells that have been permanently plugged and abandoned. However, a reduced buffer for wells that have been plugged and abandoned to current state standards may be appropriate. A reduced setback for these wells would create a stronger incentive for land developers to coordinate the plugging and abandonment of wells on development sites, rather than keeping the wells in operation as new development occurs.
- The recently approved Water’s Edge development project received approval for reduced setbacks from plugged and abandoned wells (100 and 150 feet). The Planning and Zoning Board determined that the reduced setbacks would advance the purpose of the standard equally well or better than a 350-foot setback.

Tools and Techniques:

- Direct mailing to property owners and residents near existing oil and gas wells with information on proposed code changes.
• Online recorded video presentation with background information and explanation of the proposed code changes.
• Online survey for community members to provide feedback on proposed changes, advertised through direct mailing, social media, news release, and Nextdoor website.
• Designated drop-in times to meet with staff to discuss comments and concerns.
• Staff attendance at City Councilmembers’ regular listening sessions, as requested.

PHASE 2: Board & Commission Engagement
Timeframe: December 2018

Key Messages: See above.

Tools and Techniques:
• Planning & Zoning Board – Dec 8
• Air Quality Advisory Board – Dec 18
• Natural Resources Advisory Board – Dec 20
• Chamber of Commerce LLAC (by request)
• Other community groups (by request)

PHASE 3: Public Hearings
Timeframe: February to April 2018

Key Messages: See above.

Tools and Techniques:
• Planning & Zoning Board Work Session – TBD, February/March
• Planning & Zoning Board Hearing – TBD, February/March
• City Council Hearings (first and second readings) – TBD, March/April
### Oil and Gas Land Use Code Updates - Survey Results

#### Response Counts

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<th>Count</th>
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<tr>
<td>Complete</td>
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<tr>
<td>Partial</td>
<td>69</td>
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**Totals: 297**
**Code Change #1: Development near Active Oil and Gas Wells**

- **Current Code Standard:** New development must be at least 350 feet from existing active oil and gas wells.
- **Proposed Code Update:** New development must be at least 500 feet from existing active oil and gas wells.

1. This code change protects the health and safety of those who live near oil and gas operations.

<table>
<thead>
<tr>
<th>Value</th>
<th>Percent</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Disagree</td>
<td>14.0%</td>
<td>35</td>
</tr>
<tr>
<td>Disagree</td>
<td>9.6%</td>
<td>24</td>
</tr>
<tr>
<td>Neutral</td>
<td>7.6%</td>
<td>19</td>
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<tr>
<td>Agree</td>
<td>28.0%</td>
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<tr>
<td>Strongly Agree</td>
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</tr>
<tr>
<td>No Opinion/Not Sure</td>
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</table>

Totals: 250
Code Change #1: Development near Active Oil and Gas Wells

- **Current Code Standard**: New development must be at least 350 feet from existing active oil and gas wells.
- **Proposed Code Update**: New development must be at least 500 feet from existing active oil and gas wells.

2. This code change minimizes the potential negative impacts of oil and gas operations.

---

<table>
<thead>
<tr>
<th>Value</th>
<th>Percent</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
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<tr>
<td>Disagree</td>
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<tr>
<td>Neutral</td>
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</tr>
<tr>
<td>Agree</td>
<td>27.6%</td>
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<tr>
<td>Strongly Agree</td>
<td>21.5%</td>
<td>53</td>
</tr>
<tr>
<td>No Opinion/Not Sure</td>
<td>3.7%</td>
<td>9</td>
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</tbody>
</table>

Totals: 246
Code Change #1: Development near Active Oil and Gas Wells

- **Current Code Standard**: New development must be at least 350 feet from existing active oil and gas wells.
- **Proposed Code Update**: New development must be at least 500 feet from existing active oil and gas wells.

3. This code change considers the rights of property owners and land developers.

<table>
<thead>
<tr>
<th>Value</th>
<th>Percent</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
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<tr>
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<td>Agree</td>
<td>36.8%</td>
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<tr>
<td>Strongly Agree</td>
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<td>48</td>
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<tr>
<td>No Opinion/Not Sure</td>
<td>5.3%</td>
<td>13</td>
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</table>

**Totals**: 247
Code Change #1: Development near Active Oil and Gas Wells

- **Current Code Standard:** New development must be at least 350 feet from existing active oil and gas wells.
- **Proposed Code Update:** New development must be at least 500 feet from existing active oil and gas wells.

4. This code change is likely to encourage developers to plug and abandon active wells.

### Online Questionnaire Results

<table>
<thead>
<tr>
<th>Value</th>
<th>Percent</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Disagree</td>
<td>12.6%</td>
<td>31</td>
</tr>
<tr>
<td>Disagree</td>
<td>20.3%</td>
<td>50</td>
</tr>
<tr>
<td>Neutral</td>
<td>19.9%</td>
<td>49</td>
</tr>
<tr>
<td>Agree</td>
<td>23.6%</td>
<td>58</td>
</tr>
<tr>
<td>Strongly Agree</td>
<td>6.9%</td>
<td>17</td>
</tr>
<tr>
<td>No Opinion/Not Sure</td>
<td>16.7%</td>
<td>41</td>
</tr>
</tbody>
</table>

**Totals:** 246
Code Change #1: Development near Active Oil and Gas Wells

- **Current Code Standard:** New development must be at least 350 feet from existing active oil and gas wells.
- **Proposed Code Update:** New development must be at least 500 feet from existing active oil and gas wells.

5. This code change aligns with my own personal values or priorities.
6. Do you have any questions or comments about this proposed code change?

<table>
<thead>
<tr>
<th>Count</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>No</td>
</tr>
<tr>
<td>1</td>
<td>1) At 12/11 COGCC meeting, the board talked about oil and gas companies walking away and leaving tax payer with bill to plug/cleanup site. Codes changes should minimize this behavior within city limits. 2) Feet is not the right issue. What really matters is how much poisons leaving pad to adjacent properties. Maybe scrubbers on site A allow a setup back of 10'. Maybe number of wells times poisons means 1000' for another site. Size/number of tanks tells us max impact of explosions. Code change should try to protect property rights of both sides using data, you can do it so long as it explosion won’t take out neighbor and poisons won’t make neighbor sick. As soon as the oil and gas says, but we have the right to kill and injury, then we can shut them down as a clear and present danger.</td>
</tr>
<tr>
<td>1</td>
<td>500 feet doesn’t seem enough. Fort Collins should strongly enforce safety concerns both from the danger of improperly capped wells along with the overall danger of drilling beneath an individual’s property. Seismic shifting from drilling is a real danger and Colorado needs to hold drillers accountable for future damage homeowners may suffer such as cracked foundations or walls.</td>
</tr>
<tr>
<td>1</td>
<td>500 feet from existing wells for development is definitely not enough distance. It should be a minimum of 2,000 feet. Peoples’ health is affected by less than that. Asthma and cancer are two effects of being closer. And, birth defects, such as spina bifida are increased by being as close as 10 miles. We need to keep development away from drilling. Let us never forget Firestone.</td>
</tr>
<tr>
<td>1</td>
<td>500 feet is an improvement over 350 feet, but it isn’t enough to protect developers and land owners. I wish the City of FC would go farther.</td>
</tr>
<tr>
<td>1</td>
<td>500 feet is not a significantly greater distance than 350 ft, when we’re talking about the risks associated with O&amp;G development. It needs to stop already. And furthermore, COGCC is an absolute useless commission and a farce, as demonstrated by their apathy and disinterest in promoting public health, safety and environmental and wildlife impacts over the profits of the O&amp;G industry. The agency does not represent the citizens of Colorado, it represents the financial interests of the oil and gas industry. In fact, recently, the COGCC and its lawyer, State Attorney General Cynthia Coffman, argued to the State Supreme Court that the COGCC should not have the authority to put the health and safety of the people of Colorado above the interests of oil and gas developers. What??</td>
</tr>
<tr>
<td>1</td>
<td>500 feet is not enough. We are more than 500 feet from a active well and the chemical odors are horrible. I wonder what they are doing to the environment and health of this neighborhood.</td>
</tr>
<tr>
<td>1</td>
<td>500 feet lessens the impacts of O&amp;G minimally, but every increment helps, though this is woefully inadequate. Developers should absolutely locate and have the old and abandoned wells sealed. Since cement is what they use to seal it and it is guaranteed to crack down the line, these plugged wells are but a temporary fix. But standards, in general, are very low and short-sighted for the safety of humans and life in general when it comes to the O&amp;G industry. Though our state’s standards may be touted as the best, they are all absurdly inadequate.</td>
</tr>
<tr>
<td>1</td>
<td>500 feet setbacks are not enough to protect our community. I recommend that City staff attend COGCC hearings in person or remotely to experience first hand the concerns of local communities and individuals impacted by oil and gas industrial operations in their neighborhoods. These communities’ health and safety are negatively impacted by these industrial operations. Fort Collins has the opportunity to show it’s commitment to it’s residents’ health and safety and mandate a setback of at least 2500 ft. from homes and schools.</td>
</tr>
<tr>
<td>1</td>
<td>500 ft from homes and schools is a joke and dose nothing to portect those living near wells ..we need a buffer of at least 1000ft on ALL wells and much stricter regulations on protecting air and water.This 100ft poroseal on capped wells is a slap in the face of what the residents of Ft Collins want and have voiced loudly against ..This poroseal dose absolutely nothing to safeguard the heath and safety of residents and once again shows our voices matter less to the city council then oil and gas CEOS who line your pockets ..</td>
</tr>
<tr>
<td>1</td>
<td>500 ft is better than 350. The best option would be to opt out of oil and gas extraction and invest, heavily, in renewable energy infrastructure.</td>
</tr>
<tr>
<td>1</td>
<td>500 ft is still too close</td>
</tr>
<tr>
<td>1</td>
<td>500’ is not really a sufficient distance. Significant negative health impacts have been shown to within half a mile of active wells.</td>
</tr>
</tbody>
</table>
500ft still seems arbitrarily small. Reducing the setback for plugged wells also seems like a "setback".

A setback of 5000 feet may not be adequate to protect city residents from the harmful effects of VOC's. Noise and odors from such activities are not compatible with residential living in Colorado.

Alignment with State law is a necessity. Requiring an even greater setback would be wise but impractical.

Answering this on the day following the fire near the graveyard in Windsor at the Oil Well site there. It occurs to me that the science isn’t fully developed to the point where we know exactly what is safe in terms of distance from neighborhoods. There is also science that indicates there is more air pollution due to the fracking and a increased amount of earthquakes, minor for sure but a concern.

Ban all oil and gas. There is no such thing as clean oil and gas or safe Oil and Gas. The excuse that we will lose jobs is a pathetic distraction. Stop letting our politicians get bought out by oil and gas. Our politicians do not represent us they represent oil and gas. When will we learn that we can not eat our money? Will it be after everything is dead in the water is poisoned? Will it be after we cannot breathe because the air is poison? All for what? Jobs? Money? You literally have to be paid by some evil piece of shit to believe that oil and gas is necessary. I believe good people are swept up by fat paychecks and ignoring the facts.

Ban wells all together. When a well is abandoned it should become a solar panel field instead. Also the question saying it would motivate gas and oil companies to plug abandoned wells, does that mean they are not required to? That seems unsafe and unhealthy for everyone that lives near there.

Based on studies in other states, the 500 feet is still too conservative a set back. My responses above were influenced by that.

COGCC standards are minimums that are based only on political agreements with the oil & gas industry. These standards are not based on best available science and do not give priority to protecting public health and safety. Based on science, setback distance should be minimum 1500’ and to ensure safety 2500’. The City of Fort Collins should give highest priority to protecting public health and safety, and the burden of proving that public health and safety are adequately protected should be on the industry. Any operator who operate in proximity to habitation areas should be required to post a substantial financial bond to ensure that any costs from accidents or other events will be fully compensated.

Can we not make the buffer bigger? I'm glad it is being increased, but "the University of Maryland’s School of Public Health recommended that state [Colorado] set a distance of 2,000 feet from any well." [Link](http://phpa.dhmh.maryland.gov/OEHFP/EH/Shared%20Documents/Reports/MDMarcellusShalePublicHealthFinalReport08.15.2014.pdf)

Colorado health studies have shown that there are health impacts within 1/2 mile of an oil and gas well. The original setback standards had no basis in public health, according an admission of the Director of the COGCC when I worked on this issue in 2012. 500’ is better than the puny setback of 100’, which is certainly not adequate. This view is the basis of my answers to this survey.

Doesn't go far enough and health and safety issues should outweigh property-owner and land-developer "rights" to monetary gains.

Even 500 feet is not enough.

Even a 500 ft buffer does not protect property values. If a well is sited 500 ft from my back fence, that's essentially in my backyard and as a result, I will likely lose all the equity in my house as well as lose the value it had when I bought it!

Fort Collins must address reciprocal "takings" that are granted to frackers. That is to say the loss of homeowner property value that happens when nearby fracking degrades the neighborhood because of noise, stench, danger (that is mitigated slightly in this proposed change), air pollution, etc. This issue is ignored by the state, the Governor, and the City. The frackers are held harmless while they cry instantly about their rights to frack if denied the ability to develop their "rights." The frackers accept no reciprocal responsibility. They must be held fiscally responsible for property value takings.

Fracking is dangerous to people's health & safety with this being supported by more & more studies. Neither proposed change is good or far enough to protect people's health & safety.

Given our image as a champion of green energy and climate friendly policies, Fort Collins should ideally not allow oil and gas development within city limits, but to the extent that we continue to do so, we should make all possible changes to increase the health and safety of those in our community.

How long will they have to comply? Who will enforce the new regulations?
I agree it makes sense to have the same requirements as the State. I am for incentive to cap and stop active wells. Greater distance is better but I am unsure if it is actually still safe enough for the nearby residents or schools.

I am in favor of limiting fracking within city limits as much as possible. I am also in favor of having fracking operations as far away as possible from water sources (rivers, reservoirs).

I believe some reports suggest 1000 feet or more setbacks. I will send them in if I can find them again. Thanks.

I believe the setback should be at least 1,000 feet.

I disagree with question 2 because I feel that this code change would reduce the potential negative impacts of O&G operations, but certainly would not minimize them.

I do not feel this set back is far enough considering what happened in Firestone earlier this year. Why put people's lives and property in danger?

I do support overall this change to increase setbacks and will be important to development in the rest of the GMA. Would it possible to integrate natural/open space, as the increased setback will likely (I assume) render some areas undevelopable?

I don't know why you are asking me this. I don't know anything about this stuff.

I don't think the a setback of 500 feet is adequate. 1000 feet would be more appropriate.

I like the increase to 500 feet, but I see no need to reduce setback of new development from plugged and abandoned wells from 350.

I really do not want this code change I'm ok with 350 feet.

I still find it hard to believe that oil and gas companies can set up wells/drills what have you in the middle of residential areas. This fact hugely impacted where I bought my house and why I live in Fort Collins as appose to Windsor for example. Having oil and gas operations close to homes negatively impacts the property value of those homes and could potentially negatively impact the health of those residents.

I suggest that the setback distance of new homes, subdivisions and schools should be 1,000 feet. As for plugged and abandoned wells, are you sure they won't be brought back into use in the event that oil and gas prices rise? If so, then I'd suggest that they also have a 1,000 foot buffer. A very detailed study was released yesterday with evidence that babies born to women living near fracking sites were found to be below weight. The science is still out on some of the impacts of fracking and we should be as conservative about the public health impacts. Finally, in the future when fossil fuels are entirely phased out, the buffered lands could be developed so the land use code should take that into consideration in the layout of streets and land uses.

I support any effort to increase the setback from residences. I live near a well and the constant strong toxic odors emanating from the well are horrible. I worry about the impact on my family's health from inhaling these toxic odors.

I support the increase in off set from 350 to 500 feet for existing active oil and gas wells. However I do not believe this is large enough. Any explosion could impact homes within 500 feet. Recent explosions around the country are evidence of this. Also fumes and other toxic compounds can easily travel 500 feet negatively impacting residential health.

I think FC should wait for the CDPHE report to be out in 2018 on the health & environmental impacts of fracking and wells. New scientific data is constantly being discovered on long term & far reaching impacts (i.e. air contamination). Ergo the vote for the moratorium-to give more time for scientific research. CSU has done some studies. 150 additional feet is a start but may not be enough to keep families safe. Plugging abandoned wells should be required and not an option. The overall process of what goes on underground will come to back to haunt everyone. Mother Nature does not like being messed with and she will let us know in not so subtle ways. Money can be better spent on alternative fuel sources. Thank you for the opportunity to share my thoughts.

I think at the very least, 500 ft setbacks to match State Law is needed.

I think it should be more than 500 feet.

I think the setback for active well should be far greater than 500 feet.
<table>
<thead>
<tr>
<th>Count</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>I think the setback should be even farther away. That is why I disagreed with many of the statements!</td>
</tr>
<tr>
<td>1</td>
<td>I think the setback should be much more. We need to protect our city, residents, children, pregnant women, and animals from the toxic materials and fumes! Please protect us!!</td>
</tr>
<tr>
<td>1</td>
<td>I want to say strongly disagree but I think my statistics can be viewed incorrectly in bar charts. I strongly disagree with all of these because I think any housing and development should be FAR more than 500 ft in distance. If we are truly a &quot;green&quot; city we will say NO to fracking, the city will pay landowners to plug and discontinue fracking sites. More information is needed to educate ALL Fort Collins residents -public and politics alike- on the impacts of fracking, and living in proximity to fracking sites.</td>
</tr>
<tr>
<td>1</td>
<td>I want whatever reduces the number of active wells and protects the population. Renewable energy!</td>
</tr>
<tr>
<td>1</td>
<td>I wish the set back was even further!</td>
</tr>
<tr>
<td>1</td>
<td>I would honestly like it to be even more - even 500 feet from where my kids sleep seems too close.</td>
</tr>
<tr>
<td>1</td>
<td>I would like to see a greater set back from new and abandoned wells. At least 1,000 feet, and preferably more. No new wells would be most preferable.</td>
</tr>
<tr>
<td>1</td>
<td>I would like to see this increased even more, to at least 1000 feet and perhaps the proposed 2500 foot setback. I know municipalities currently have little power to do so, though.</td>
</tr>
<tr>
<td>1</td>
<td>I would offer to make the setback even further. Fort Collins has one of the worst air qualities in the country, most likely due to the booming oil and gas industry. While I understand we all need and use natural gas, we need to focus on clean energy and and avoid archaic forms of fuel altogether in order to protect our health today and in the future.</td>
</tr>
<tr>
<td>1</td>
<td>I would prefer a larger setback than 500 feet.</td>
</tr>
<tr>
<td>1</td>
<td>I would propose 1000 feet from wells.</td>
</tr>
<tr>
<td>1</td>
<td>I would strongly prefer no drilling in City limits, and encourage the Council to put pressure on our elected representatives in Denver to ensure the safety of all coloradans. Do we need energy sources? Absolutely. Do oil and gas operations pose multiple health, environmental, and safety risks? They do.</td>
</tr>
<tr>
<td>1</td>
<td>I'd like the state to require even larger buffers.</td>
</tr>
<tr>
<td>1</td>
<td>I'd like to see the setback increased to 2,500 feet.</td>
</tr>
<tr>
<td>1</td>
<td>I'm glad the distance is being increased to 500 feet but I would prefer 1000 feet. I have seen too many reports of oil and gas leakages underground.</td>
</tr>
<tr>
<td>1</td>
<td>If the intent is to match the State O/G setback standards, would the setback be reduced if the state setbacks are reduced?</td>
</tr>
<tr>
<td>1</td>
<td>In general, people should be able to do what they want with their property. Putting a burden on developers to plug nearby gas wells is likely to favor the most wealthy and connected developers over upstarts. Really, drillers should have to escrow the funds to plug their well properly, and some portion of severance tax revenue should go to keeping old wells From blowing up people's houses.</td>
</tr>
<tr>
<td>1</td>
<td>Increasing the set-back is an unnecessary and excessive change and doesn't respect the land rights of the oil rights established far before the pressure to build houses. We live across the street from two rigs. We don't like it but the builder knew it when he built and we knew it when we bought. Decreasing the setback for plugged wells is a good idea. It's not being used anymore so it makes sense... if the oil company is willing to cap it knowing it won't ever be able to be used again.</td>
</tr>
<tr>
<td>1</td>
<td>It is just and much needed in our city. One only has to look at the map of existing wells, active or not to see that it is a siege encroaching on our beautiful land. The noise, pollution and risk for tax-paying residents needs to be protected.</td>
</tr>
<tr>
<td>1</td>
<td>It is not sufficiently protective of public health and safety, or groundwater protection.</td>
</tr>
<tr>
<td>1</td>
<td>It is still an inadequate buffer distance for the protection of public health and safety. Whether or not this provides an incentive for developers to plug active wells will depend on who owns the wells and makes the most money, not on public safety.</td>
</tr>
<tr>
<td>Count</td>
<td>Response</td>
</tr>
<tr>
<td>-------</td>
<td>----------</td>
</tr>
<tr>
<td>1</td>
<td>Keep them out of town</td>
</tr>
<tr>
<td>1</td>
<td>Laws should be considered to stop gas, oil, coal, and mineral extraction as far from human habitation as possible so as to mitigate potential health and safety concerns.</td>
</tr>
<tr>
<td>1</td>
<td>Looks good!</td>
</tr>
<tr>
<td>1</td>
<td>Mirroring state codes and regs will keep FC and Larimer county out of court and save tax monies.</td>
</tr>
<tr>
<td>1</td>
<td>My only question is &quot;where is the data that suggests that either 350 feet or 500 feet is sufficient to protect the health and safety of residents?&quot; This seems somewhat arbitrary and capricious, but may serve to satisfy some who are looking for any increase to make them &quot;feel better&quot; about this subject. Lets see the data....</td>
</tr>
<tr>
<td>1</td>
<td>My personal priority is to have not fracking at all.</td>
</tr>
<tr>
<td>1</td>
<td>My preference would be for the minimum setback to be more than 500 feet. However, I prefer the 500 feet setback regulation to the 350 feet setback regulation.</td>
</tr>
<tr>
<td>1</td>
<td>Needs to protect people and property more</td>
</tr>
<tr>
<td>1</td>
<td>New development should be MORE than 500 feet, at least 1000, and should certainly be more than that for schools.</td>
</tr>
<tr>
<td>1</td>
<td>Not a big enough buffer! Somewhere between 1,000 and 2,500 feet would be better.</td>
</tr>
<tr>
<td>1</td>
<td>Oil &amp; gas operators do not protect residents’ needs; they only protect their own bottom line. These codes are still too easy on them.</td>
</tr>
<tr>
<td>1</td>
<td>Oil &amp; gas producers should have to plug old wells if not in use regardless if they are to be reopened.</td>
</tr>
<tr>
<td>1</td>
<td>Oil and gas development is dangerous and dirty. It hurts wildlife and our air quality. It adds dirty trucks to our roads. Oil and gas development has no business growing anywhere near our large city.</td>
</tr>
<tr>
<td>1</td>
<td>Oil and gas operations should not be allowed within the City limits. Horizontal drilling techniques give access to mineral rights owners while protecting the health and safety of surface rights owners and residents. Increased cost to mineral right owners should not be taken into consideration.</td>
</tr>
<tr>
<td>1</td>
<td>Overall, I would like to see oil and gas operations more, and not less regulated, considering the serious risks regarding safety and public health. I don’t have much trust in the industry, which is highly profit-driven, spends a lot of money to try and influence policies to work on their behalf, and appears to want to milk every last dime of profits from what can be extracted. I’d hate to see Fort Collins becoming anything like neighboring Weld County, which is oil and gas crazy, and consequently has some of the worst air quality and other related issues in the region, and which unfortunately influences the air quality in the Fort Collins area.</td>
</tr>
<tr>
<td>1</td>
<td>Please make it 10,000 feet</td>
</tr>
<tr>
<td>1</td>
<td>Safety and a larger buffer should be a priority</td>
</tr>
<tr>
<td>1</td>
<td>Safety first!!!! There have been too many accidents. One is two many. We need to protect people and the environment first and foremost!</td>
</tr>
<tr>
<td>1</td>
<td>Seems like good idea to conform with the state.</td>
</tr>
<tr>
<td>1</td>
<td>Setback distance should be doubled to 1000 ft for new wells; no development should be permitted within 1000 ft of non-productive or abandoned wells.</td>
</tr>
<tr>
<td>1</td>
<td>Setbacks from active wells should be even greater.</td>
</tr>
<tr>
<td>1</td>
<td>Slant drilling allows oil and gas companies to drill long distances. Increase the setback to 1/2 mile.</td>
</tr>
</tbody>
</table>
Stop coddling the oil and gas industry. They are exporting record amounts of our oil and gas, not paying enough taxes, and not working in the interest of our communities, or our country. We get stuck with the mess, and pay higher prices at the pump.

The code changes appear to be an attempt to move oil and gas further away from residential areas, but in my opinion areas zoned residential should not have ANY oil and gas production.

The contribution of fracking to overall pollution in this region is obvious, documented and frightening. MUCH more needs to be done. The setbacks are a 2% solution in my opinion.

The energy companies are raping Colorado!! No one in the industry can be trusted with the public’s welfare—they have proven that over & over again!! All I have to do is drive into Weld County to see the disgusting results of how much they care about the public!! ALL THEY CARE ABOUT IS MONEY!

The further the better.

The oil and gas industry has proven time and time again that its only real interest is making profits. Certainly not being environmental stewards for the community and certainly not invested in the health interests of the people living around work areas. The laws in this state allow oil and gas companies to hide the toxic chemicals that they are using from the public because the frack fluid mixtures are “proprietary information”. I have zero interest in having an industry regulated by laughable laws anywhere near where I live. Especially considering that most of these companies have enough money to buy the city of Fort Collins outright.

The proposed change is not consistent with the State standards related to new residential next to existing wells. The proposed changes do not respect the property owner in any way.

The further the better.

The oil and gas industry has proven time and time again that its only real interest is making profits. Certainly not being environmental stewards for the community and certainly not invested in the health interests of the people living around work areas. The laws in this state allow oil and gas companies to hide the toxic chemicals that they are using from the public because the frack fluid mixtures are “proprietary information”. I have zero interest in having an industry regulated by laughable laws anywhere near where I live. Especially considering that most of these companies have enough money to buy the city of Fort Collins outright.

The setbacks are woefully inadequate to protect public health and safety.

The set back should be more like 1000 or 2000 ft, but also instead of punishing real estate developers, new oil and gas wells should be set back 1 mile from existing development!

The way to get developers to plug and abandon active wells is to make penalties for problems that arise so severe that developers have to protect themselves financially against that happening or face possible bankruptcy.

There are numerous studies linking proximity to wells and increased risk of neurological and congenital defects. One study showed increased risk of negative health effects for people living closer than half a mile away. I believe that even 500 foot setbacks are not sufficient, and that the setback should be increased to 2,500 feet to reduce risk to residents in a meaningful way.

There should be a public meeting/hearing about these proposed changes and how they will affect the entire community; especially those nearer wells.

This code change aligns with my own personal values because it is preventing the toxic health detriments that oil is known to cause, but by how much? I am certainly in favor of this but wondering if there’s a way to make sure each well is even farther from neighborhoods. Can we isolate wells and make a regulation not to develop anywhere near, to a distance of 2000-5000 ft? Can we regulate how many new wells are built? Is there a safer way to plug them? Studies show that 10% of plugged oil wells leak. I would also like to urge city council to set up a very well publicized meeting to talk about this, as this is a matter of severe health repercussions.

This code change does not address the issue of unmarked flowlines, contamination of water sources and increased set-backs for schools.

This code change does not specifically address visual impact, noise and/or air quality. Distance may not mitigate all of those, depending on terrain and other characteristics.

This code change will likely drive the cost of new homes up. Reducing a developers investment and interest. There needs to be a better way to insulate nearby residents from industrial equipment without hogging up all this land.

This code seems fairly clearly targeted at reducing oil and gas production. The science behind it is questionable at best. Even as the city is discussing energy subsidies for low income households, this policy will directly lead to higher energy prices. This is just bad policy, plain and simple.
<table>
<thead>
<tr>
<th>Count</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>This is not a well-designed survey. It is simply an opinion poll, but asks for no information about the respondent to contextualize the results. How much does s/he know about fracking? What demographic does s/he come from? Further, when s/he disagrees with the first statement, does it mean s/he doesn't think the code goes far enough or, rather, that the code change is unnecessary to protect public health? Your results will be equivocal and could be interpreted to support different agendas. I suggest you go back to the drawing board and hire a nonpartisan survey firm.</td>
</tr>
<tr>
<td>1</td>
<td>This is taking away from the rights of the landowners near Oil &amp; Gas wells. State Law requires O &amp; G development to be at least 500 feet from residential units, true. What you're doing here is requiring that residential development be 500 feet from existing O &amp; G units. This is not the same thing. Allow developers to develop at 350 from existing O &amp; G, if they choose to do so. If Buyers won't buy the homes at that distance, the developer will learn quickly. It's called personal choice, as in, the Buyer can choose to live that close, or not. Making this change will do nothing to encourage developers to plug and abandon active wells. Making the second change may do so.</td>
</tr>
<tr>
<td>1</td>
<td>This is way too close to neighborhoods to give a buffer from potential hazards. Why can't our city be proactive in setting tough standards to avoid cases like the explosion in Frederick that killed 2 unsuspecting people in their home.</td>
</tr>
<tr>
<td>1</td>
<td>This new regulation would protect the health and safety everyone involved. People over profit.</td>
</tr>
<tr>
<td>1</td>
<td>Though any setback is better than none, this is extremely minimal. I support this and any incremental setback, and encourage keeping up with the state standards ONLY if they put buildings and people farther away from fracking wells, active or inactive. My own personal values would see us shutting down wells within 10 miles of any people. Since this only addresses new wells, I doubt it would impact whether or not developers did anything to address abandoned wells.</td>
</tr>
<tr>
<td>1</td>
<td>To change the setback by 150 feet is hardly going to make a difference in the safety of nearby residents. The operators of these wells use undisclosed materials, many of which are likely to be carcinogenic. They don't dispose of fracking wastewater responsibly, either. I am completely against fracking in Larimer county.</td>
</tr>
<tr>
<td>1</td>
<td>We don't know that even 500 ft is enough for safety. These wells are leaking methane into our air which we all share....the industry needs to be shut down because we are destroying the ozone layer and the future of the planet's ecosystem, as well as the human species.</td>
</tr>
<tr>
<td>1</td>
<td>We need to be dramatically stepping away from all fossil fuel development. ESPECIALLY FRACKING.</td>
</tr>
<tr>
<td>1</td>
<td>We should do anything we can to protect the safety of people living in Ft Collins. With so much development occurring in our city we need to protect the health and safety of people who live or will live here. The State does little to protect us from oil and gas operations and the people of Ft Collins have made it clear that we don't want oil and gas operations in backyard so anything the city can do to protect people living in new developments is a great thing.</td>
</tr>
<tr>
<td>1</td>
<td>We should not be encouraging plugging and abandoning of active oil and gas wells.</td>
</tr>
<tr>
<td>1</td>
<td>What we know about VOC's from oil and gas operations is that they are very toxic. It would be better to increase setbacks even more than 500' for public health, but an increase is better than nothing.</td>
</tr>
<tr>
<td>1</td>
<td>Whatever we can do to maintain public health and safety, we should do. We should be the leader.</td>
</tr>
<tr>
<td>1</td>
<td>Where is this idea coming from? Do we want the city to look like and have the same issues as the towns and cities in Weld County?</td>
</tr>
<tr>
<td>1</td>
<td>While I agree that increasing the distance from wells for new (I assume housing) will have an effect on protecting those who might move into these new developments, it really does nothing to protect existing property owners whose homes are closer to wells. I also am not confident that plugged and abandoned wells are necessarily safe. There are apparently no standards for those or requirements that any standards be followed.</td>
</tr>
<tr>
<td>1</td>
<td>Who will be inspecting plugged and abandoned Wells to ensure they are safe? After the home exploded in Firestone, we all know the existing system for safety inspections isn't working.</td>
</tr>
<tr>
<td>1</td>
<td>Why are we not making the rules more stringent and request even more distance between wells and developments in the city limits? My experience is that plugging a well (even according to current regs) doesn't always adequately protect against blowouts over time.</td>
</tr>
</tbody>
</table>
| 1     | Why would anyone want to plug a production well when our country needs all forms of energy and yes that includes fossil fuels.
Without a clearer statement on the safety requirements for "plugged" wells the safety of residents is still at risk. Repeats of the Firestone event are possible. The safety requirements for developers/operators for plugging wells need to be clearly stated and should have been included in this questionnaire. Placing Colorado residents in harms way should never be permitted.

Would support this part of proposal.

safety first

the city rules should match the state rules. the rights of the mineral rights owner should also be respected and considered. be clear that the rules would apply to the surface location and not the bottom hole location. subsurface production could be safely performed under developments.

this is insufficiently protective of public health and safety and our water resources.
Code Change #2: Development near Plugged and Abandoned Oil and Gas Wells

- **Current Code Standard:** New development must be at least 350 feet from plugged and abandoned oil and gas wells.
- **Proposed Code Update:** New development must be at least 100 feet from plugged and abandoned oil and gas wells. Wells would need to be plugged and abandoned to current state standards, and additional safety or monitoring requirements may apply.

7. This code change protects the health and safety of those who live near oil and gas operations.

<table>
<thead>
<tr>
<th>Value</th>
<th>Percent</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Disagree</td>
<td>45.6%</td>
<td>103</td>
</tr>
<tr>
<td>Disagree</td>
<td>19.9%</td>
<td>45</td>
</tr>
<tr>
<td>Neutral</td>
<td>9.3%</td>
<td>21</td>
</tr>
<tr>
<td>Agree</td>
<td>15.0%</td>
<td>34</td>
</tr>
<tr>
<td>Strongly Agree</td>
<td>7.1%</td>
<td>16</td>
</tr>
<tr>
<td>No Opinion/Not Sure</td>
<td>3.1%</td>
<td>7</td>
</tr>
</tbody>
</table>

Totals: 226
Code Change #2: Development near Plugged and Abandoned Oil and Gas Wells

- **Current Code Standard:** New development must be at least 350 feet from plugged and abandoned oil and gas wells.
- **Proposed Code Update:** New development must be at least 100 feet from plugged and abandoned oil and gas wells. Wells would need to be plugged and abandoned to current state standards, and additional safety or monitoring requirements may apply.

8. This code change minimizes the potential negative impacts of oil and gas operations.

<table>
<thead>
<tr>
<th>Value</th>
<th>Percent</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Disagree</td>
<td>42.4%</td>
<td>95</td>
</tr>
<tr>
<td>Disagree</td>
<td>23.2%</td>
<td>52</td>
</tr>
<tr>
<td>Neutral</td>
<td>7.6%</td>
<td>17</td>
</tr>
<tr>
<td>Agree</td>
<td>16.1%</td>
<td>36</td>
</tr>
<tr>
<td>Strongly Agree</td>
<td>6.7%</td>
<td>15</td>
</tr>
<tr>
<td>No Opinion/Not Sure</td>
<td>4.0%</td>
<td>9</td>
</tr>
</tbody>
</table>

Totals: 224
Code Change #2: Development near Plugged and Abandoned Oil and Gas Wells

- **Current Code Standard:** New development must be at least 350 feet from plugged and abandoned oil and gas wells.
- **Proposed Code Update:** New development must be at least 100 feet from plugged and abandoned oil and gas wells. Wells would need to be plugged and abandoned to current state standards, and additional safety or monitoring requirements may apply.

9. This code change considers the rights of property owners and land developers.

<table>
<thead>
<tr>
<th>Value</th>
<th>Percent</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Disagree</td>
<td>28.6%</td>
<td>64</td>
</tr>
<tr>
<td>Disagree</td>
<td>14.7%</td>
<td>33</td>
</tr>
<tr>
<td>Neutral</td>
<td>19.6%</td>
<td>44</td>
</tr>
<tr>
<td>Agree</td>
<td>25.4%</td>
<td>57</td>
</tr>
<tr>
<td>Strongly Agree</td>
<td>7.1%</td>
<td>16</td>
</tr>
<tr>
<td>No Opinion/Not Sure</td>
<td>4.5%</td>
<td>10</td>
</tr>
</tbody>
</table>

Totals: 224
Code Change #2: Development near Plugged and Abandoned Oil and Gas Wells

- **Current Code Standard**: New development must be at least 350 feet from plugged and abandoned oil and gas wells.
- **Proposed Code Update**: New development must be at least 100 feet from plugged and abandoned oil and gas wells. Wells would need to be plugged and abandoned to current state standards, and additional safety or monitoring requirements may apply.

10. This code change is likely to encourage developers to plug and abandon active wells.

<table>
<thead>
<tr>
<th>Value</th>
<th>Percent</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Disagree</td>
<td>18.7%</td>
<td>42</td>
</tr>
<tr>
<td>Disagree</td>
<td>18.2%</td>
<td>41</td>
</tr>
<tr>
<td>Neutral</td>
<td>17.3%</td>
<td>39</td>
</tr>
<tr>
<td>Agree</td>
<td>24.0%</td>
<td>54</td>
</tr>
<tr>
<td>Strongly Agree</td>
<td>9.3%</td>
<td>21</td>
</tr>
<tr>
<td>No Opinion/Not Sure</td>
<td>12.4%</td>
<td>28</td>
</tr>
</tbody>
</table>

Totals: 225
Code Change #2: Development near Plugged and Abandoned Oil and Gas Wells

- **Current Code Standard:** New development must be at least 350 feet from plugged and abandoned oil and gas wells.
- **Proposed Code Update:** New development must be at least 100 feet from plugged and abandoned oil and gas wells. Wells would need to be plugged and abandoned to current state standards, and additional safety or monitoring requirements may apply.

11. This code change aligns with my own personal values or priorities.

![Pie chart showing responses to the code change question]

<table>
<thead>
<tr>
<th>Value</th>
<th>Percent</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Disagree</td>
<td>43.1%</td>
<td>97</td>
</tr>
<tr>
<td>Disagree</td>
<td>23.6%</td>
<td>53</td>
</tr>
<tr>
<td>Neutral</td>
<td>8.9%</td>
<td>20</td>
</tr>
<tr>
<td>Agree</td>
<td>12.0%</td>
<td>27</td>
</tr>
<tr>
<td>Strongly Agree</td>
<td>9.3%</td>
<td>21</td>
</tr>
<tr>
<td>No Opinion/Not Sure</td>
<td>3.1%</td>
<td>7</td>
</tr>
</tbody>
</table>

Totals: 225
12. Do you have any questions or comments about this proposed code change?

<table>
<thead>
<tr>
<th>Count</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>100 feet don’t make a fucking difference when you poison the water table and the air. How is this so complicated? In this bullshit. Don’t add another fucking hundred feet. Stop poisoning us stop poisoning us stop poisoning us stop poisoning us stop poisoning us to stop poisoning us to stop poisoning us to stop poisoning us. You're getting poison to. Your family is getting poisoned. We're all getting poisoned. What is a hundred feet? what is 500 ft when we are all getting poisoned?</td>
</tr>
<tr>
<td>1</td>
<td>100 feet is much too close!</td>
</tr>
<tr>
<td>1</td>
<td>100 feet is not enough. This would be terrible for the environment and our health.</td>
</tr>
<tr>
<td>1</td>
<td>100 ft is even more ridiculous than 500 ft!</td>
</tr>
<tr>
<td>1</td>
<td>100 ft setbacks are not adequate to protect the health and safety of Fort Collins residents. I recommend that the City engage with the City of Longmont to learn more about their efforts to study plugged and abandoned (P&amp;A) wells within their city limits. Before Fort Collins can make any determination re setbacks from (P&amp;A) wells, the City must study soil samples, air samples and water samples near P&amp;A wells. The City at this point does not have enough evidence to arbitrarily set a 100 ft. setback from P&amp;A wells. This proposed code update should be tabled until the City has adequately studied the P&amp;A wells sites within City limits.</td>
</tr>
<tr>
<td>1</td>
<td>Again, safety first. Keep the current 350 ft set back.</td>
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<tr>
<td>1</td>
<td>All wells, whether abandoned or active, should require the 500 foot minimum setback. This would make landowners think twice before allowing drilling operations on their land, as it would be permanently condemned for future use.</td>
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<tr>
<td>1</td>
<td>Any effort to increase the distance between residences and well is a positive move. I live very close to a well in Hearthfire and the toxic odors that emanate daily are frightening. I am very worried about the health and welfare of my family.</td>
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<td>1</td>
<td>Any person who votes in favor of reducing offsets to such a low distance risks personal liability for any injuries or deaths resulting from such negligent disregard for the risks. The lesson from the Firestone explosion (similar but not identical circumstances) should make clear how incredibly irresponsible it would be to decrease any existing setback from new development.</td>
</tr>
<tr>
<td>1</td>
<td>Any reduction of setbacks for abandoned wells is a move in the wrong direction.</td>
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<tr>
<td>1</td>
<td>As long as the plugs are inspected by someone other than the developer or oil&amp;gas company!</td>
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<tr>
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<td>As we've seen in other cases, I'm concerned that even if wells are abandoned, they could still pose a rise to ground water and other environmental issues. I prefer the existing 350 foot setback.</td>
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<tr>
<td>1</td>
<td>Changing the code to 100 feet puts residents at greater risk for their health and safety. &quot;Fraccidents&quot; are happening on a regular basis. the pockets of oil and gas are so deep they routinely avoid putting extra safety precautions in place because the amounts they pay out for accidents are a drop in the bucket for them. We must place more accountability on their shoulders.</td>
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<tr>
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<td>Considering the explosion in Firestone I think it's a dangerous idea to decrease this distance. It should be kept the same or increased.</td>
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<td>1</td>
<td>Ditto my comments in previous section</td>
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<td>Do we have enough science to know that current plugging is adequate to increase health and safety. I would agree with stronger setbacks.</td>
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<tr>
<td>1</td>
<td>Don’t trust O&amp;G operators to adequately plug their facilities after abandonment, nor will a developer do it. Both are greedy pigs motivated by their money, and neither will voluntarily invest in a money-losing venture.</td>
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<td>Even a plugged well can pose a hazard, and is an eyesore. I do not think the setback should be reduced to 100 feet, perhaps a compromise of 200 feet would be reasonable to still provide some incentive, but reduce the visual blight.</td>
</tr>
<tr>
<td>1</td>
<td>Even after watching the video, I really don’t know what is best regarding safety for nearby residents, i.e., should we be much stricter about proximity to active and closed wells. And is the State strict enough?</td>
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<tr>
<td>1</td>
<td>Fort Collins traditionally DOES NOT LOWER environmental protections! Did Pruitt and Trump assume leadership positions in FC?</td>
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<td>1</td>
<td>Fracking is dangerous to people’s health &amp; safety with this being supported by more &amp; more studies. Neither proposed change is nearly far enough to protect people’s health &amp; safety.</td>
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<tr>
<td>1</td>
<td>From my research, I can find no state or city data that reveals all abandoned wells or their pipelines. We’ve had one house blow up in our state. Again, we are taxpayers. Stop siding with big oil and gas with these weak code changes.</td>
</tr>
<tr>
<td>1</td>
<td>Given the danger from plugged and abandoned wells as seen in the Firestone explosion, we should not be placing more homes next to abandoned wells by reducing the distance allowed</td>
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<tr>
<td>1</td>
<td>Housing should not be developed within 5000 feet of an abandoned petroleum or gas well. The harmful effects of such wells are not fully understood.</td>
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<tr>
<td>1</td>
<td>How can a mineral right holder re-use a plugged and abandoned well?</td>
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<tr>
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<td>How can allowing closer proximity to potentially dangerous conditions be safer??</td>
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<td>How long will be given to comply with new regulations? Who will enforce the new regulations?</td>
</tr>
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<td>How were these abandoned and plugged wells inspected in 2017?</td>
</tr>
<tr>
<td>1</td>
<td>I DO NOT support reducing the offset from 350 to 100 feet for plugged or abandoned wells. First this assumes that the company properly plugged the well. Secondly if they have not then the health and safety risks posed to residential homes is increased. In addition this may have negative impacts on property values. Face it no one wants to live next to oil and gas.</td>
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<td>1</td>
<td>I am concerned about having plugged and abandoned wells so close to homes. There are so many wells, and so few safety inspectors, so how do we insure that a well that was plugged or abandoned is still safe even years later?</td>
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<tr>
<td>1</td>
<td>I am not clear why a REDUCED setback for abandoned wells would create a stronger incentive to plug them.</td>
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<tr>
<td>1</td>
<td>I believe the setback should remain the same. Even though the wells are inactive and capped, they might still pose a hazard to nearby development if periodic air sampling at the cap is not done to ensure no slow build-up of gas fumes is occurring inside the well. Allowing defunct wells to be much closer increases the potential hazard of the density and speed of gas fumes impacting nearby dwellings. This testing may already be required, but I didn’t find any information readily seen in the links provided. I also believe there should be codes requiring all new developments to have these wells capped within the existing plats and setback zones, instead of just incentives.</td>
</tr>
<tr>
<td>1</td>
<td>I do not favor relaxing the existing required setback.</td>
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<td>1</td>
<td>I do not want this distance to be reduced.</td>
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<tr>
<td>1</td>
<td>I presume that “Development” means buildings occupied by people, e.g., housing. If not, my answers could change.</td>
</tr>
<tr>
<td>1</td>
<td>I think FC should wait for the CDPHE report to be out in 2018 on the health &amp; environmental impacts of fracking and wells. New scientific data is constantly being discovered on long term &amp; far reaching impacts (i.e. air contamination). Ergo the vote for the moratorium-to give more time for scientific research. CSU has done some studies. 150 additional feet is a start but may not be enough to keep families safe. Plugging abandoned wells should be required and not an option. The overall process of what goes on underground will come to back to haunt everyone. Mother Nature does not like being messed with and she will let us know in not so subtle ways. Money can be better spent on alternative fuel sources. Thank you for the opportunity to share my thoughts.</td>
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<td>I think this proposed change will drive up the cost of land for future development, perhaps contrary to the City’s desire for more affordable housing.</td>
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<td>I would prefer the setback to be larger. I don’t think 100ft incurs compliance on the part of the industry or safety on the part of the civilians.</td>
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<td>I’m not sure I trust that the “plugging” will last or be safe long term after recent explosions.</td>
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<tr>
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<td>I’m not sure the data is completely in on this issue. Why change the distance if we do not 100% know what the results will be for our children. No.</td>
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<tr>
<td>1</td>
<td>If a well is legally plugged, then I’m ok building there.</td>
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<td>If people want to build closer to a well, they should be allowed to do so. Let the market assess the risks.</td>
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<tr>
<td>1</td>
<td>If we are truly a “green” city we will say NO to fracking, the city will pay landowners to plug and discontinue fracking sites. More information is needed to educate ALL Fort Collins residents -public and politics alike- on the impacts of fracking, and living in proximity to fracking sites.</td>
</tr>
<tr>
<td>1</td>
<td>In no way should the set back be reduced!</td>
</tr>
<tr>
<td>1</td>
<td>Inactive wells should be required to be plugged according to the highest standards, with no counterpart of incentives.</td>
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<tr>
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<td>It seems unlikely that a developer would incur the cost and liability of plugging a well so that construction of houses could occur nearby.</td>
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<td>It’ll be easier to just leave that probably. What can be done realistically with 250 feet? A bike trail?</td>
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<td>It’s nice to say that the abandoned wells need to meet state standards, but who will ensure this? I don’t believe the state is enforcing it’s standards effectively. Until I have more confidence that plugged wells are really safe I can’t support a reduced setback.</td>
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<tr>
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<td>Just because you gave one variance does not make it right to give any more. Talk to Jason Elkins at the City of Longmont for their experience and work on P&amp;A wells.</td>
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<tr>
<td>1</td>
<td>KEEP THE SET BACK AT 350’!!!</td>
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<tr>
<td>1</td>
<td>Keep the drillers out of Fort Collins. Force drilled wells to be properly capped. Hold drillers liable for future damage by requiring insurance policies from the drillers that will pay for property and human damage.</td>
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<tr>
<td>1</td>
<td>Laws should be considered to stop gas, oil, coal, and mineral extraction as far from human habitation as possible so as to mitigate potential health and safety concerns.</td>
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<td>Leave at 350’ for plugged and abandoned well.</td>
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<td>Makes it worse by bringing homes and wells closer.</td>
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<td>Mirroring state regs will be a benefit to FC and Larimer county</td>
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<tr>
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<td>Mistakes can still be made, just like the fatal home explosion in Firestone.</td>
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<tr>
<td>1</td>
<td>No</td>
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<tr>
<td>1</td>
<td>No way would I support this.</td>
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<tr>
<td>1</td>
<td>Not enough information</td>
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<td>On its face, it looks like this proposed move is based on money, rather than public health.</td>
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</table>
Perhaps things have tightened up since the tragic explosion in Firestone, but I am skeptical. I would want to know more about what the City, and for that matter Larimer County and the State would be doing to be sure abandoned wells and pipelines have been properly capped and sealed before I would favor any reduction in the safety zone around any development, existing or new.

Pipeline infrastructure deteriorates with time. This merely pushes the problem into the future. The responsibility for plugging active wells and monitoring the integrity of all pipelines should reside with O&G extraction companies, not housing developers (language in #10 is unclear as to whom is being referred to by use of the word "developers").

Please address frackers fiscal responsibility for their "takings" from private property owners.

Please make it 10,000 feet.

Please see my first comment.

Reducing the setback for a capped well makes sense. Since there is no industrial equipment and the well heads are properly Capped. It makes no sense to enforce a large setback when that land could be useful to nearby residents.

Reducing these distances will greatly increase the risk of communities being affected by leaking, plugged oil wells. Stanford’s research demonstrated that plugged gas wells had a high likelihood of leaking. This is dangerous for communities living near these wells.

Same as before. And, plugged and abandoned wells will fail over time. I know. I’m an environmental scientist. You’re just kicking the can down the road so that future generations will have to contend with the destruction we’ve caused.

Same comments as first part.

See my above answer. 500 feet is not enough distance from wells for development. It needs to be much further. 2,000 feet would be a minimum.

Setback should be at least 1000 ft for abandoned/plugged wells; development of these areas should not be permitted.

Since Firestone’s "oops" which left 2 people dead, there have been a dozen more, with other lives lost. They didn’t make the headlines, however. This is a morally bankrupt play by developers, putting the lives of anyone building within at least 150 feet at risk. When wells are plugged they use concrete, which cracks. Not if, but when, it happens they can cause explosions like we’ve seen recently. We should not be playing Russian Roulette with our citizens’ lives just so developers can build more homes over these time bombs!

Stanford has studied plugged wells and shown that about 10% of these leak. Therefore I personally would treat them in a similar fashion as active wells. There are numerous studies linking proximity to wells and increased risk of neurological and congenital defects. One study showed increased risk of negative health effects for people living closer than half a mile away. I believe that even 500 foot setbacks are not sufficient, and that the setback should be increased to 2,500 feet.

Still not convinced this will achieve the goals stated but it’s better than nothing.

Suggested language for a new rule: "New development must be at least **500 feet** from plugged and abandoned oil and gas wells. Wells would need to be plugged and abandoned to current state standards, and additional safety or monitoring requirements may apply."

The 100 ft. not far enough. Again consider what happened in Firestone. Oil company thought well was abandoned and plugged. A house blew up and lives were lost.

The argument in favor seems like a “best guess” which may be wishful thinking. There have been a number of reports of poorly plugged wells. I doubt the state has the staff to confirm that abandoned wells are adequately plugged, nor the ability to check these wells in succeeding years. I also question whether the 100 foot separation is adequate for safety.

The current code should be left as is, or made more stringent.
The energy companies are raping Colorado!! No one in the industry can be trusted with the public’s welfare-they have proven that over & over again!!! All I have to do is drive into Weld County to see the disgusting results of how much they care about the public!! ALL THEY CARE ABOUT IS MONEY!

The setbacks undermine public health and safety and should be at least 2,000 feet.

There have been problems monitoring the quality of other aspects of the safety of inactive wells, therefore I have no confidence in the resources and discipline being available to ensure safety while reducing buffers.

There is no meaningful advantage provided by reducing the setback other than to benefit of developers. This perennial power move is tiresome for all of us who are not developers. Surveys and public notices feel like a technicality and minor speed bump to the inevitable. Sigh.

This allows developers and O & G operations owners to decide if they want to plug underperforming wells, because it opens up more development potential. It allows the landowner to make decisions that benefit his/her wants and needs.

This code change does not address setbacks from flow-lines, whether active or not. All flow-lines need to be mapped / disconnected at the source and removed before allowing less set-back. Soil testing for escaping hydrocarbons should be mandatory for at least 5 years prior to reducing the set-backs.

This code change would make it impossible for an unused well to ever be used again if a development is built closer than the 500 feet as currently required. This proposed rule is a underhanded way to limit oil and gas industry and mineral rights owners from exercising their rights. City Council should be ashamed of themselves for proposing this underhanded proposed code change.

This is a morally bankrupt proposal. Since Firestone's “oops” that took two lives, there have been a dozen other accidents and others have lost their lives. O&G intends to frack every square mile of our state, according to an aside of an industry rep, and this just gives the developers more to work with while endangering lives needlessly. Recent research in "Science Advances" shows a causal relationship between proximity to all fracking wells, producing, and non-producing, within a 10-mile radius, on newborns’ health and mortality with a sampling of over 1,125,000 cases! The closer one lives to the wells, the higher the impacts. I sent this data to our city council last week. We should not be playing Russian roulette with our citizens’ lives so we can build more homes.

This is crazy! Why do these companies get to ruin our groundwater?

This is insane....are you all on the payroll of the oil and gas industry and developers....there is no way that you are considering the health and safety of the citizens of Ft. Collins.

This is not a well-designed survey. It is simply an opinion poll, but asks for no information about the respondent to contextualize the results. How much does s/he know about fracking? What demographic does s/he come from? Further, when s/he disagrees with the first statement, does it mean s/he doesn’t think the code goes far enough or, rather, that the code change is unnecessary to protect public health? Your results will be equivocal and could be interpreted to support different agendas. I suggest you go back to the drawing board and hire a nonpartisan survey firm.

This is not based on public health and safety interests, but rather development interests.

This is ridiculous to reduce the setback to 100 feet, given the recent home explosion in Firestone and other similar systemic problems. This needs to be INCREASED NOT DECREASED!

This small a setback is pretty much terrible for public health and the preservation of property rights. I consider the heavy hand the COGCC uses against Front Range towns and cities a violation of civil rights.

We need to maintain a safe distance from plugged wells. The recent explosions are clear evidence of this. If you let this happen, I think the location of the wells need to be disclosed to any future buyer. You also need to be ready and willing to take responsibility for any damages and loss of life if the wells explode. I think this is incredibly irresponsible and shows your lack of care for the residents of our community!

We should not be encouraging the plugging and abandoning of active oil and gas wells.
What evidence do you base the assumption that the change will encourage OG developers to plug their abandoned wells? The well owners are almost never the same as the surface owners (who are the ones who would benefit by being able to build more housing under this rule change). There is no incentive for operators to do anything. What are the reasons OG operators leave abandoned wells improperly plugged? I'm sure there is some financial or regulatory incentive and if they are not surface owners they have no stake in surface development.

What is the evidence that the code change and the reduction in proximity to plugged and abandoned wells will encourage developers to plug and abandon active wells? Is that coming from oil and gas developers themselves? How has this affected new development?

What makes you think you can rely on industry to abide by the capping regs? (How silly!)

While plugging and abandonment for today's standards may work, locations of historical wells or their P&A process is not always known. In addition, it is the infrastructure that would be an issue and that is the area that needs to be fully evaluated for construction activities. In addition, poorly constructed and then poorly P&A'd wells could lead to conduits for contamination. There are variables here that need further evaluation before reducing the setback.

While the idea that plugged wells are better than active ones is sound, plugged wells are known to be environmental hazards, and can be unplugged easily. Given this, maintaining a distance of 350 feet from these wells is more likely to protect people now and into the future.

Who will plug these wells for developers? Will Fort Collins suggest a professional company and will the city then have an inspection process?

Why do they need an incentive to develop closer if they plug? They should be required to do this.

You are putting your voting citizens at risk for health issues and underweight births.

You know whether this would encourage developers to plug Wells which are no longer active, one would need to know what the cost was and if it was cost-effective for those Developers and landowners to do so.
13. Do you have any additional comments on the proposed Land Use Code changes or other oil and gas topics?

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<th>Count</th>
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<tr>
<td>3</td>
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<tr>
<td>2</td>
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<td>A 500 foot setback is not enough to be healthy for those who live in the area. One half mile from a well is the distance considered safe for home owners and for water supplies. Certainly lowering the already low standards we have for setbacks from homes, either those in existence or those that are to be built, is a bad idea. The city has an obligation to protect the homeowner's health and the value of that home. Thank you.</td>
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<td>&quot;Orphan wells&quot; were a pretty noxious problem offshore and onshore in Louisiana, where I lived for eight years prior to coming to Fort Collins. The city is increasing the safety margin for new development around active wells. I think we take the inactive status a little too much at face value if we reduce the safety zone for development near supposedly inactive wells.</td>
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<td>1</td>
<td>Again, the proposed changes and the existing policy is dramatically more harmful to the property owner than the State standards. Property owners should be able to choose to build closer to existing wells.</td>
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<td>Aligning the City's codes with the State's makes sense, however I remain curious as to why this movement continues to shut down energy production?</td>
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<td>Although conflicts of public safety with O&amp;G development are minor in Fort Collins now, changes in energy pricing require stringent regulation now to protect citizens in the future.</td>
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<td>An increased bond for oil companies would be nice, though that may be at the state level. If, as they say, there isn't much chance of them exceeding the current bond, then a higher amount shouldn't be much more expensive. Let the insurance companies take the risk, not the public.</td>
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<td>Anything that can be done to limit O&amp;G development, especially fracking, should be done.</td>
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<td>1</td>
<td>As a toxicologist and as someone who's dealt with oil and gas exploration and extraction in NV, I know exactly what is involved and what kind of mess it leaves on the landscape. That should NOT be happening in residential areas at all!</td>
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<tr>
<td>1</td>
<td>As an environmental scientist, I strongly suggest we terminate with oil and gas development in this state as soon as possible.</td>
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<tr>
<td>1</td>
<td>As long as the City of Fort Collins gets their money, they really don't care about this. These changes are meant to benefit the land developers and the City. Rich get richer and City collects permit $</td>
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<tr>
<td>1</td>
<td>Better maintained wells and citizen education is needed. Setbacks do very little to increase &quot;safety&quot;. Large setbacks drive up the cost of homes and development and occupy land that could otherwise be useful to a neighborhood.</td>
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<td>1</td>
<td>COGCC has not even come close to doing its job of protecting citizens from oil and gas development. Instead they have basically become a propaganda group promoting fossil fuels. They have put a little lipstick on the pig to try to keep Colorado citizens from banning fracking as many cities including Fort Collins did several years ago before the state sued us. Fort Collins should do everything in its power to fight back and create the strictest limits possible on oil and gas if they truly want to protect their citizens.</td>
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<td>Can you please notify those impacted of the location of wells that are within 1000 feet of their home? People have the right to know where they are.</td>
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<td>For me, the most important aspect of the reduced setback for plugged wells is the thorough inspection to ensure that it was plugged properly.</td>
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<tr>
<td>1</td>
<td>Fracked oil and gas is a lot cleaner than other fossil fuels and can sustain us for the time being. Let's use it while it's useful and build the solar future at the same time.</td>
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1 Fracking this close to adults & kids is extreme energy development which is isn't safe & shouldn't be allowed. Studies show the closer you live to fracking the more serious health consequences there are. These proposals don’t protect the public’s health & safety!

1 Given the recent explosions in Weld county, we must be very careful to protect our residents.

1 Health studies and recent explosions and fires have shown that the setbacks favor O&G companies not residents.

1 Health, safety and environmental sustainability should have priority over property rights. Colorado’s dual estate system is outdated; mineral extraction and urban development don’t belong in the same neighborhood.

1 How did you go from voting to prevent oil and gas development within the city to these proposed changes?

1 How do these impact real estate? Our realtors and buyers made aware of all plugged, active or proposed wells? I might think this to be an important piece of buying decision... like the way radon tests are suggested. Full transparency.

1 I also am not in favor of removing language related to the fracking moratorium. I still think we should limit or prohibit oil and gas development within City limits.

1 I am a resident of south Fort Collins for 24 years. I strongly oppose oil and gas development near residential areas and feel our state has overridden the views of the majority on this issue.

1 I appreciate the opportunity to fill out a survey, it helps me feel like I am in the loop

1 I believe that fractured wells must be handled separately from non-fractured wells as the risk of hydrocarbon escape and contamination of the surrounding area is greater and these sites need monitoring long after the well-head is capped.

1 I can’t see any reason for reducing the setbacks other than a give away to developers.

1 I do not believe it is appropriate to develop new neighborhoods around or near either active or inactive wells.

1 I feel the distances between existing wells and new wells should be increased. Also, we need more funding to have stricter safety guidelines for Oil and Gas development. Also, it us the concern of everyone living in the front range that HYDRAULIC FRACKURING STOP ASAP.

1 I hope that the City chooses to protect our lovely city! Protect our health, our aesthetic, our air, our water, and our property values! We need to invest in clean energy!! We want to continue to attract high quality people and businesses to our area! Let’s keep focus great! ...and clean!

1 I think FC should wait for the CDPHE report to be out in 2018 on the health & environmental impacts of fracking and wells. New scientific data is constantly being discovered on long term & far reaching impacts (i.e. air contamination). Ergo the vote for the moratorium-to give more time for scientific research. CSU has done some studies. 150 additional feet is a start but may not be enough to keep families safe. Plugging abandoned wells should be required and not an option. The overall process of what goes on underground will come to back to haunt everyone. Mother Nature does not like being messed with and she will let us know in not so subtle ways. Money can be better spent on alternative fuel sources. Thank you for the opportunity to share my thoughts.

1 I think the type of operations in an area should be included in the determination of setbacks. Some low-flow operations may not be as critical as high volume operations.

1 I think there should be widely publicized public hearings on this proposal. Maps should be available showing the locations and well log information of all active and abandoned wells (plugged, not plugged and whether they are just temporarily abandoned or not), monitoring status and findings, well permit applications, and underlying pipelines, and all of this information in relation to current and planned development, hydrogeology, and surface waters. Information on well locations, pipelines and their status, and mineral rights ownership should also be readily available to the public and individuals to consider prior to real estate transactions. Also, locations of abandoned wells are supposed to be marked under CO law, but we have a couple even in my neighborhood that are not marked. One of them, drilled in 1999 and abandoned in 2000, is not even designated as plugged on COGCC publicly available information. A local recent news story cited a homeowner in south Fort Collins who recently
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<th>Count</th>
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<tr>
<td>1</td>
<td>I was on the water board years ago and endorsed the regulations adopted by council which exceeded State standards at that time. I apparently missed an opportunity to input earlier in this new consideration of proposed changes and am doing now.</td>
</tr>
<tr>
<td>1</td>
<td>I would like better protection for citizens/residents over oil &amp; gas companies.</td>
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<tr>
<td>1</td>
<td>I would like to keep a Timnath like situation, of fracking near homes and schools, from happening in Fort Collins. Any weakening of regulations would cause alarm.</td>
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<tr>
<td>1</td>
<td>I would like to see Fort Collins pursue some stronger regulations or another moratorium (like other cities on the Front Range have done). That map showing the wells does not imply that Fort Collins won't soon see development. Fracked wells often have shorter production lives, fracking allows expansion into areas previously not economic to develop and OG resources are usually found in contiguous areas. We need to get in front of this once more and not cave in to the arguments that there isn't much development here. There wasn't much development anywhere on the Front Range 10 years ago.</td>
</tr>
<tr>
<td>1</td>
<td>I would like to think the 100-foot provision would work, but I would like to see reports indicating success from other areas where it has been tried. At present it may be wishful thinking.</td>
</tr>
<tr>
<td>1</td>
<td>I would really like to see the City take a VERY strong stance on this issue rather than compromising yet more of the health and safety of City residents and our environment in the interest of energy development.</td>
</tr>
<tr>
<td>1</td>
<td>I would suggest that the developers of houses and schools be required to install permanent air quality monitoring equipment within range of active fracking sites and that the data be continuously available to the residents and parents of students.</td>
</tr>
<tr>
<td>1</td>
<td>I'd like to see our leaders aggressively protecting our environment, especially our water and air. Thanks!</td>
</tr>
<tr>
<td>1</td>
<td>I'm just lucky I live in an area of Fort Collins without any of these issues but looking out of your back yard to see a lit up tower pumping oil or gas 24/7 seems like a nightmare. I really hope groundwater is not being ruined for people who need it and suddenly earthquakes start happening.</td>
</tr>
<tr>
<td>1</td>
<td>I'm not against fracking. I very much want to see these areas of town developed.</td>
</tr>
<tr>
<td>1</td>
<td>Intensive development of oil and gas in this area has resulted in the harmful leakage of methane and ethane, contributing to the formation of dangerous ozone levels and global warming.</td>
</tr>
<tr>
<td>1</td>
<td>It is a start in the right direction, but it is not significant enough. We can do better.</td>
</tr>
<tr>
<td>1</td>
<td>It is not a question of IF the P&amp;A wells will leak; it is a question of when. They all leak sometime down the line, and they need to be monitored continuously.</td>
</tr>
<tr>
<td>1</td>
<td>It's a shame that Fort Collins' moratorium on fracking was repealed. Fracking produces hazardous waste and above all irreversibly contaminates our ground water. If there is opportunity to reduce fracking in our area I hope the city government will take action.</td>
</tr>
<tr>
<td>1</td>
<td>It's critically important for the City to pursue all means necessary to assess the risks associated with oil and gas development and adjust the code to address them. Risks should include public health, environment, economic, social and ethical dimensions.</td>
</tr>
<tr>
<td>1</td>
<td>It’s time for the city of Fort Collins to advocate for the plugging and abandoning of all wells within city limits, and for us to move toward a 100% renewable energy goal.</td>
</tr>
<tr>
<td>1</td>
<td>Keep the drillers out of Fort Collins. No oil exploration! Close the wells that currently exist. Require drillers to prove they have properly capped wells. Hold drillers accountable for improperly capped wells by requiring up front insurance policies that protect property owners from drilling activity.</td>
</tr>
<tr>
<td>1</td>
<td>Keep the oil and gas industry out of our city. Much of our local economy and tourist appeal is based on the cleanliness of our water, &amp;g will ruin that and bleed the town dry only to scurry away from their mess once the viable product is consumed in the ground. O&amp;g as an industry is equivalent to the people who go through the trouble of taking shopping carts only to realize that once they deposit their purchases in their vehicle that they no longer have interest in returning the cart to an area that isn't threatening to other vehicles in the parking lot.</td>
</tr>
<tr>
<td>Count</td>
<td>Response</td>
</tr>
<tr>
<td>-------</td>
<td>----------</td>
</tr>
<tr>
<td>1</td>
<td>Keep the original 350' setback when building ANYTHING near land previously used for oil &amp; gas purposes!!! Tell the Developers to stop being so damn greedy!</td>
</tr>
<tr>
<td>1</td>
<td>Keep them out of town</td>
</tr>
<tr>
<td>1</td>
<td>Laws should be considered to stop gas, oil, coal, and mineral extraction as far from human habitation as possible so as to mitigate potential health and safety concerns.</td>
</tr>
<tr>
<td>1</td>
<td>Let's limit oil and gas out of Fort Collins as much as possible. Please do more to stimulate growth of the solar industry. I'd like the Earth to not have melted when my kids are grown.</td>
</tr>
<tr>
<td>1</td>
<td>None</td>
</tr>
<tr>
<td>1</td>
<td>Not aggressive enough to protect health &amp; safety of citizens. Question: can they drill for oil &amp; gas on city open space? Who owns the mineral rights under city parks and open spaces?</td>
</tr>
<tr>
<td>1</td>
<td>Note earlier comments.</td>
</tr>
<tr>
<td>1</td>
<td>Of course increasing setbacks from oil and gas industrial operations from 350 to 500 ft is an improvement but is not enough of a setback to address the health and safety concerns of Fort Collins residents. A seemingly arbitrary setback of 100 ft for plugged ad abandoned wells can not be considered until the safety of P&amp;A wells is studied. I don't see how the 100 ft setback encourages developers to properly plug wells. What evidence does the City have for this theory? Endangering city residents on a theory is reckless. Again, this proposed change should be abandoned until safety studies have been conducted and more than a theory can be relied on for developers plugging wells.</td>
</tr>
<tr>
<td>1</td>
<td>Oil and Gas companies are given too much control. Citizens need to have more protection to maintain a quality of life and safe living environment.</td>
</tr>
<tr>
<td>1</td>
<td>Oil and Gas operations are industrial operations which pose health and safety hazards to those around them. They have no place in populated or residential areas. Setbacks of 500 feet are not enough, I believe they should be closer to 1000 feet.</td>
</tr>
<tr>
<td>1</td>
<td>Oil and gas operators are less trustworthy than developers. Don't let either of them off the hook by reducing any standards; if you do, you are just pandering to the money at the expense of our City's residents.</td>
</tr>
<tr>
<td>1</td>
<td>Please do not pander to the anti-oil and gas constituency.</td>
</tr>
<tr>
<td>1</td>
<td>Please make ALL setbacks as far as possible from homes. Though the state Supreme Court rode over us, the people of Fort Collins have clearly voted to not have oil and gas production in our city limits. And the home explosions in Firestone and other cities highlight the need for more stringent, not less strict, setbacks from abandoned or plugged oil/gas wells. Thanks for asking for our input!</td>
</tr>
<tr>
<td>1</td>
<td>Please make sure you do the research to see what the state requires now for a distance that development must be away from existing O &amp; G operations. The way you're justifying the first suggestion is not valid.</td>
</tr>
<tr>
<td>1</td>
<td>Please please protect people and the environment not the oil companies. They are making plenty of money.</td>
</tr>
<tr>
<td>1</td>
<td>Please stop worrying so much about the oil and gas community and pay attention to the safety of your citizens.</td>
</tr>
<tr>
<td>1</td>
<td>Please think about the environment. I live next to these wells and it is terrible. We had no idea that we would be smelling these chemicals when we moved in here.</td>
</tr>
<tr>
<td>1</td>
<td>Set back to 500 ft. is a good idea. 100 ft for capped wells is not sufficient, at least until there is far better verification that energy companies are really following the rules for capping &amp; sealing. (To date, this has not been demonstrated.)</td>
</tr>
<tr>
<td>1</td>
<td>Thank you for including the thoughts of residents in your decision.</td>
</tr>
<tr>
<td>1</td>
<td>Thanks for paying attention to safety &amp; concerns of our residents. Fort Collins has a history of considering our input and I appreciate it. More evidence should be presented on whether the code changes improve safety.</td>
</tr>
<tr>
<td>Count</td>
<td>Response</td>
</tr>
<tr>
<td>-------</td>
<td>----------</td>
</tr>
<tr>
<td>1</td>
<td>The City has jurisdiction on surface operations. This should be used fully. I would NOT, as a future property owner, purchase a house where oil or gas operations had previously occurred. The proposed changes, notably the 150 foot setback from previous wells, does not protect residents. Land used for oil and gas operations should not be developed.</td>
</tr>
<tr>
<td>1</td>
<td>The City should consider applying a Municipal Carbon Tax, not a severance tax that is the purview of the State, but carbon pollution tax.</td>
</tr>
<tr>
<td>1</td>
<td>The citizens of Colorado deserve full disclosure from COCG on the locations of all oil and gas infrastructure.</td>
</tr>
<tr>
<td>1</td>
<td>The city council needs to enact much stricter regulations on all future wells and operators... And start putting the voices of the residents and citizens they work for over the needs of oil and gas company CEOs... Our air quality is horrid due to the operations and unchecked negligence of companies like Extraction... The council needs to do much more to protect our air and water and there needs to be much more transparently on campaign donations to members of the city council from oil and gas companies.</td>
</tr>
<tr>
<td>1</td>
<td>The city needs to do everything possible to minimize oil and gas impact on people and property. This industry has too much power.</td>
</tr>
<tr>
<td>1</td>
<td>The city should fight strongly against all oil and gas drilling in city limits.</td>
</tr>
<tr>
<td>1</td>
<td>The proposed change is going in the right direction, but I would like to see even greater setbacks than what COGA is supporting.</td>
</tr>
<tr>
<td>1</td>
<td>The second part of these changes seems to go against any voice I've seen from various voted on proposals. They would seem to come from a few deep pockets and not the many voices of the community.</td>
</tr>
<tr>
<td>1</td>
<td>This is a violation of the rights of the public and homeowners to satisfy an industry that shouldn't continue to operate. They are jeopardizing the future of the nation's children through their denial and fraud around climate change.</td>
</tr>
<tr>
<td>1</td>
<td>This issue, like so many, is a complex intersection of understanding the structure and operation of oil and gas, social concerns, and financial benefit (environment, people, profit). Despite the complexity, here's hoping that the profit of a few carries much less weight to the potential well-being of many.</td>
</tr>
<tr>
<td>1</td>
<td>This seems to preserve the interests of the oil and gas industry and land developers, but creates grave health concerns for residents and potential residents.</td>
</tr>
<tr>
<td>1</td>
<td>Too little, too late!</td>
</tr>
<tr>
<td>1</td>
<td>We as a city need to divest from fossil fuels. Banning fracking is not enough if we are benefitting from exploiting our neighboring county. There must be incentives from the city to stop our dependence on oil and gas and turn to TRULY green options if we want to be a truly green city, which clearly we are not. (And should stop glorifying ourselves as such)</td>
</tr>
<tr>
<td>1</td>
<td>We can do even better than state standards. 500 feet is not a great distance. I challenge the city to go above and beyond with more proactive measures separating oil and gas from development.</td>
</tr>
<tr>
<td>1</td>
<td>We need even more regulation of current wells. I don't think we should have to live with the toxic odors that we experience daily.</td>
</tr>
<tr>
<td>1</td>
<td>We need to encourage the oil &amp; gas industry.</td>
</tr>
<tr>
<td>1</td>
<td>We should be investing in renewable sources of energy that have little to no impact on the environment or human health and safety.</td>
</tr>
<tr>
<td>1</td>
<td>We were informed we are within 1,000 feet of an abandoned or plugged oil or gas well. We would like to know the exact location of that well. Heard horror stories of supposed plugged wells exploding, etc. How confident is the city that that would not happen in Fort Collins?</td>
</tr>
<tr>
<td>1</td>
<td>What happened to the unfortunate homeowners in Firestone should never happen again!</td>
</tr>
</tbody>
</table>
When is it enough? Where are the impact studies by non-biased groups on our natural environment and quality of life? Who is doing that homework? As a Colorado native who’s family has resided in this state for 120 years, I can hardly believe the welcome mat we have laid out for gas and oil. Within reason, we can accommodate new industry but we are far beyond that now. It feels Orwellian when I drive around NE Colorado or browse satellite views of our state.

Where exactly are new proposed wells planned for? I specifically moved to Fort Collins/Larimer County to avoid living anywhere near a fracking operation for the health and safety of my family. All of this fracking is highly irresponsible, with very little transparency, accountability or public knowledge of what substances they are using. The almighty dollar is given top consideration for short term gain over the long term health and safety of residents and wildlife. I knew Weld county was a joke when it comes to “regulation” of oil and gas operations but I really had hoped for better from Fort Collins and Larimer county officials.

Would like the City to continue doing what it can to eliminate fracking in the city and surrounding as much as possible.

Yes - I think we need to always speak out against fracking. It is very dangerous.

Yes stop poisoning the natural areas. What is this insane war on dandelions and mullein? Land Management doesn't even quantify if what they do is effective. They just get their new ATVs every couple years and their poison from Monsanto and spray it in our natural areas. They're trying to control things that have seeds in the soil for over a hundred fifty years and they're not quantifying if they're even effective. This is a disgusting abuse of money and power and it's poisoning our natural areas, our Rivers, and us. We live in High chaparral desert and everyone thinks they need green grass Lawns. How insane. how many times are you going to poison your yard, mow it, waste drinking water, and get no food from it? And native plants are noxious weeds? You have to be insane or paid by chemical companies to think that this is a good idea. Larimer County goes 2 hours into the mountains to poison shit the white man brought here with no proof what they are doing is working. And call them natura

Yes, recent studies published in Science Advances, shows a causal relationship between fracking, and infant mortality/birth weights. In a study using over 1,125,000 mothers, it was shown that fracking negatively affects newborns, the most vulnerable to the effects of this toxic way to acquire energy. I sent a copy of this study to our council last week. Since so many underground wells have yet to be located, we are seeing what is called "frack hits," wherein different O&G companies accidentally drill into old wells put, presumably by a competitor (if they are even still in business) causing chaos and leeching into the ground and nearby water. The way we plug old wells is temporary at best. We need to be very careful how we approach these issues. This is pretty clearly something to help developers build more homes, which wouldn't be bad if it weren't for the O&G issues in CO.

amend code to align with state code and leave the rest alone.

http://www.lpdirect.net/casb/crs/34-60-103.html See section 5.5 State law says corporate life is more important that human and wild life. This should be part of legislative agenda to fix.

no, seems logical to adopt what the state already has approved

please respect the rights of all parties and not just the views of just vocal activists or folks with an agenda
14. What part of the city do you live in (by quadrant)?

<table>
<thead>
<tr>
<th>Value</th>
<th>Percent</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>East of College &amp; North of Drake</td>
<td>31.5%</td>
<td>70</td>
</tr>
<tr>
<td>East of College &amp; South of Drake</td>
<td>23.4%</td>
<td>52</td>
</tr>
<tr>
<td>West of College &amp; North of Drake</td>
<td>24.3%</td>
<td>54</td>
</tr>
<tr>
<td>West of College &amp; South of Drake</td>
<td>17.1%</td>
<td>38</td>
</tr>
<tr>
<td>Don’t live in the city</td>
<td>3.6%</td>
<td>8</td>
</tr>
</tbody>
</table>

Totals: 222
15. What part of the city do you work in?

<table>
<thead>
<tr>
<th>Value</th>
<th>Percent</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>East of College &amp; North of Drake</td>
<td>11.1%</td>
<td>24</td>
</tr>
<tr>
<td>East of College &amp; South of Drake</td>
<td>13.0%</td>
<td>28</td>
</tr>
<tr>
<td>West of College &amp; North of Drake</td>
<td>25.0%</td>
<td>54</td>
</tr>
<tr>
<td>West of College &amp; South of Drake</td>
<td>8.3%</td>
<td>18</td>
</tr>
<tr>
<td>Work outside Fort Collins</td>
<td>13.4%</td>
<td>29</td>
</tr>
<tr>
<td>Don’t currently work/am retired</td>
<td>28.7%</td>
<td>62</td>
</tr>
<tr>
<td>Am a student</td>
<td>0.5%</td>
<td>1</td>
</tr>
</tbody>
</table>

**Totals: 216**
16. Do you own or rent your residence?

<table>
<thead>
<tr>
<th>Value</th>
<th>Percent</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Own</td>
<td>86.0%</td>
<td>185</td>
</tr>
<tr>
<td>Rent</td>
<td>10.7%</td>
<td>23</td>
</tr>
<tr>
<td>Prefer not to answer</td>
<td>3.3%</td>
<td>7</td>
</tr>
</tbody>
</table>

Totals: 215
17. What is your gender?

### Gender Distribution

<table>
<thead>
<tr>
<th>Value</th>
<th>Percent</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>44.2%</td>
<td>95</td>
</tr>
<tr>
<td>Female</td>
<td>45.1%</td>
<td>97</td>
</tr>
<tr>
<td>Non-binary</td>
<td>0.5%</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>0.9%</td>
<td>2</td>
</tr>
<tr>
<td>Prefer not to answer</td>
<td>9.3%</td>
<td>20</td>
</tr>
</tbody>
</table>

**Totals:** 215

---

**Pie Chart:**
- 44% Male
- 45% Female
- 9% Prefer not to answer
- 1% Other
- 1% Non-binary
18. What is your race or ethnicity?

<table>
<thead>
<tr>
<th>Value</th>
<th>Percent</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>American Indian or Alaska Native</td>
<td>0.5%</td>
<td>1</td>
</tr>
<tr>
<td>Asian</td>
<td>1.9%</td>
<td>4</td>
</tr>
<tr>
<td>White</td>
<td>79.5%</td>
<td>167</td>
</tr>
<tr>
<td>Hispanic, Latinx, or Spanish origin</td>
<td>2.9%</td>
<td>6</td>
</tr>
<tr>
<td>Native Hawaiian or Other Pacific Islander</td>
<td>0.5%</td>
<td>1</td>
</tr>
<tr>
<td>Another race or ethnicity</td>
<td>1.0%</td>
<td>2</td>
</tr>
<tr>
<td>Prefer not to answer</td>
<td>16.7%</td>
<td>35</td>
</tr>
</tbody>
</table>
19. What is your annual household income?

<table>
<thead>
<tr>
<th>Value</th>
<th>Percent</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>$24,999 or less</td>
<td>5.2%</td>
<td>11</td>
</tr>
<tr>
<td>$25,000-49,999</td>
<td>8.5%</td>
<td>18</td>
</tr>
<tr>
<td>$50,000-74,999</td>
<td>12.8%</td>
<td>27</td>
</tr>
<tr>
<td>$75,000-99,999</td>
<td>14.2%</td>
<td>30</td>
</tr>
<tr>
<td>$100,000-149,999</td>
<td>18.0%</td>
<td>38</td>
</tr>
<tr>
<td>$150,000-199,999</td>
<td>8.1%</td>
<td>17</td>
</tr>
<tr>
<td>$200,000 or more</td>
<td>7.6%</td>
<td>16</td>
</tr>
<tr>
<td>Prefer not to answer</td>
<td>25.6%</td>
<td>54</td>
</tr>
</tbody>
</table>

Totals: 211
20. What is your age?

<table>
<thead>
<tr>
<th>Value</th>
<th>Percent</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>18-24</td>
<td>0.9%</td>
<td>2</td>
</tr>
<tr>
<td>25-34</td>
<td>14.7%</td>
<td>31</td>
</tr>
<tr>
<td>35-44</td>
<td>19.4%</td>
<td>41</td>
</tr>
<tr>
<td>45-54</td>
<td>14.7%</td>
<td>31</td>
</tr>
<tr>
<td>55-64</td>
<td>21.8%</td>
<td>46</td>
</tr>
<tr>
<td>65-74</td>
<td>18.5%</td>
<td>39</td>
</tr>
<tr>
<td>75+</td>
<td>2.4%</td>
<td>5</td>
</tr>
<tr>
<td>Prefer not to answer</td>
<td>7.6%</td>
<td>16</td>
</tr>
</tbody>
</table>

Totals: 211
Oil & Gas Land Use Code Changes –
Listening Sessions

Background
As part of the effort to update sections of the Land Use Code related to the buffers around oil and gas wells, four public listening sessions were held on December 19, January 2, January 9 and January 10. There were 16 attendees in total at the four sessions. The following notes summarize the questions and comments received by staff during those conversations.

Summary

Listening Session #1 – December 19, 2017

- Attendee #1
  - Concerned that the locations and conditions of plugged and abandoned wells are uncertain
  - Jason Elkins, City of Longmont, recently presented to the League of Women Voters about Longmont’s efforts to inventory and evaluate plugged and abandoned wells in their city, including locating the wells, groundwater monitoring and other site investigations. He has determined that 150 ft is a more appropriate buffer around plugged and abandoned wells than 100 feet, and that all wells will eventually leak over time.
  - Recommended contacting Mr. Elkins to understand Longmont’s program; use as a model for identifying and monitoring plugged and abandoned wells [Note: staff subsequently followed up with Longmont staff with questions and discussion]
  - Noted that this topic is of great interest in the local League of Women Voters chapter

- Attendee #2
  - Health, economic and financial concerns about the proposed changes
  - We should not be doing any favors for the oil and gas industry, they aren’t doing us any favors, supports any way to restrict oil and gas development
  - Less than 1% of Colorado jobs are in oil and gas; one of the smallest economic sectors but wields the most power
  - Colorado has very low severance taxes for oil and gas; is it possible for the City to charge an additional tax for drilling in the city?
  - Increase setbacks to at least 2500 feet; can’t trust the oil and gas industry to protect the health and wellbeing of residents
  - Concerns about potential explosions, leaks and spills
  - Recommend copying Boulder’s new regulations for Fort Collins
Concern that drilling might be possible on Fort Collins parks and open spaces, especially Soapstone Natural Area – recommended notifying the public about any possibility for oil and gas development on City lands

Material disposal
- Where is frac water disposed? Where is the nearest disposal facility?
- Disposal of dirt from well excavation is unregulated and being dumped into landfills, despite containing uranium and other toxic materials

Concerned about impacts of aquifer migration and contamination on future water sources; nobody knows what’s happening underground

Notification for new homeowners near wells and flowlines needs to be improved

- Attendee #3
  - Received letter, questions about location and status of wells near property (near Lindenmeier Lake)

- Attendees #4 and #5
  - Received letter, questions about location and status of wells near property (near Dean Acres)

Listening Session #2 – January 2, 2018

- Attendees #1 and #2
  - Received letter, questions about location and status of wells near property (near Lindenmeier Lake)

- Attendee #3
  - Representing some friends as well
  - Supportive of changes and anything to reduce oil and gas activity in Fort Collins
  - Why not just keep the setbacks for plugged and abandoned wells the same as they are now (350’)? Accomplishes the same goal in a similar way
  - Moratorium – how can the City recognize all the work that citizens put into that? A lot of people worked hard to make that happen

- Attendee #4
  - Concerned about leaks and failure of plugged wells over time, possible explosions in the future
  - Concerned about frac hits – when an operator hits an unknown abandoned well when drilling horizontally for a new well, which compromises the old well and can cause leaks/contamination
  - Concerned about impacts to air quality, water quality, public health, accidents and deaths from explosions
  - What impact do water injection wells have on aquifers?
  - Shared articles with more information (attached)

Listening Session #3 – January 9, 2018

- Attendee #1 – City Councilmember Bob Overbeck
- Attendee #2
Don’t need to worry about active wells, they will go away eventually; more concerned about plugged and abandoned wells
Don’t want new wells to be permitted in the City
Discourage landowners to allow new wells due to future potential buffers that would apply
If property values reflected “condemnation” of a 500’ buffer, then a potential buyer would think twice
Concern about contamination, cave-ins and other potential risks with abandoned wells
Future landowners should be aware of risks, need to better notify property owners – similar to floodplain alerts?
Adopt rules in a way that does not encourage future oil and gas development
If we have doubts about a well and whether it meets standards, then a narrower buffer should not be allowed

Attendee #2
How is science being used to help make these decisions?
Where is more research needed?
Testing and analysis – does the City have the expertise in-house to review that type of information, e.g., and on-staff inspector?
Post all available oil and gas data on the City’s online GIS maps
  ▪ Highlight wells with more uncertainty about location and condition
  ▪ Be as transparent as possible
Double check the number of abandoned wells in Fort Collins
When did horizontal drilling and fracking become a viable production method?
There is a CSU faculty member (Jeffrey Collett) researching leaked methane from wells at a distance using a handheld device capable of triangulation
  ▪ Could be used to pinpoint problem areas
  ▪ Monitoring technology is rapidly enhancing

Attendee #3
What about monitoring of wells after a development goes in?
  ▪ Do methane testing once a year on all plugged wells, including the wells that were recently abandoned in Water’s Edge
  ▪ Put burden on developer to fund annual monitoring
Long-term studies of plugged and abandoned wells in Pennsylvania show a 5% failure rate, odorless gas migrating upward from plugged wells
Change measurement of buffer to the nearest lot line rather than the nearest building
Where is produced water taken and disposed of? Can it be injected back into wells?
Greeley is experiencing basement flooding issues – is it from water injection wells driving groundwater upward?

Listening Session #4 – January 10, 2018
Attendees #1 and #2
We all share the same groundwater and public natural resources
- Don’t want any oil and gas development in Colorado
- Support the first change (increase buffer around active wells)
- Concerns about second change (reduce buffer around abandoned wells)
- Concerns about long term durability of concrete in wells, leaks in the long term
- Fracking has so many unforeseen issues and environmental and public health concerns
- Concerned about the toxicity of the chemicals used in fracking, and potential impacts to water quality
- Question the motives and influence of the oil and gas industry
- Still interested in another moratorium and outright ban of fracking; would set a precedent for other communities

- Attendee #3
  - Property values should go up if a well is abandoned rather than active, which should be enough financial incentive for developers
  - A narrower setback does not take the mineral rights off the table; only allow a narrower setback if the mineral rights have been purchased; that’s the only permanent fix
  - Health and environment info – we don’t have the full picture and all the information
  - Do not reduced setbacks
There is a huge explosive reach that can happen even when the operator is doing everything correctly. And true there will be no storage tanks in the area of Waters Edge. But the above article shows the overall dangers of oil and gas and this is in just a short period of time.

Wells leak eventually and even if they are plugged and abandoned, like the recent one in Berthoud, where there was a 300 barrel leak (12,600 gallons of oil product) that spilled on land and even covered the road...... THEY LEAK as concrete is a joke...it always cracks over time!! (It is thought that this possibly occurred from fracking that was happening about a mile away as increased pressure in the shale damaged the well that had been plugged since the early 80's) Extraction and Synergy were the two oil companies fracking nearby.

The wells in that area of Waters Edge may be plugged and abandoned before they build. That may sound great but it does not necessarily mean that there won't be a problem later. It is just crazy to build houses that close to wells.

There is a great diagram to show seven ways a PLUGGED well can leak.( it is at the very bottom) Just because they plug those wells, it does NOT assure that there will not be leaking at a later date.

**A dozen fires and explosions at Colorado oil and gas facilities in 8 months since fatal blast in Firestone**
New pipeline rules proposed but they don’t deal with fatalities from oil and gas industry fires and explosions.

By BRUCE FINLEY | bfinley@denverpost.com | The Denver Post
PUBLISHED: December 6, 2017 at 7:51 pm | UPDATED: December 19, 2017 at 3:26 pm

At least a dozen explosions and fires have occurred along Colorado oil and gas industry pipelines in the eight months since two men were killed when a home blew up in Firestone, a Denver Post review of state records found. Two of those explosions killed workers.

The state has not taken any enforcement action in the April 17 Firestone deaths, saying there is no rule — and none is proposed — covering oil and gas industry accidents that lead to fatalities.

Colorado oil and gas industry regulators have responded to the Firestone disaster by proposing modifications of existing rules — to be hashed out in meetings next month — for pipelines under well pads that they call “flowlines.”

But none of the changes deals with industrial accidents that result in deaths. The Colorado Oil and Gas Conservation Commission, set up by lawmakers to ensure orderly extraction of oil and gas consistent with environmental protection and public safety, lacks the authority to punish companies for fatal explosions, agency spokesman Todd Hartman said. Any COGCC enforcement action for other reasons against Anadarko Petroleum would have to begin “within one year of discovery of a violation,” Hartman said in a prepared response to Denver Post queries. Anadarko owned the leaking underground line blamed for the Firestone disaster.

“The COGCC’s focus is on the release of hydrocarbons into the environment, an issue that falls within the agency’s jurisdiction,” Hartman said. “COGCC continues to evaluate the underlying facts at issue, including facts that may be developed through the ongoing National Transportation Safety Board investigation in which COGCC is a participating party.”
State information officers did not respond to repeated requests to hear directly from COGCC director Matt Lepore on environmental and public health risks from fires and explosions.

NTSB investigators still are gathering information on the Firestone blast and no conclusions have been reached, NTSB spokesman Keith Holloway said. But that agency, too, lacks enforcement authority and will not take action against Anadarko, Holloway said.

"The NTSB's investigation is purely from a safety perspective," he said. "NTSB is not a regulatory agency and does not have any enforcement authority and therefore will not levy penalties or look at the accident from a criminal perspective. I'm not exactly sure who would impose penalties in this case."

Local prosecutors? No Weld County agency is considering enforcement action against Anadarko in relation to the Firestone explosion, county spokeswoman Jennifer Finch said.

After the Firestone disaster, data that Colorado regulators obtained from oil and gas companies reveal 120,815 underground flowline segments within 1,000 feet of buildings. The data show 428 segments failed integrity tests. State regulators have not determined how many miles of underground lines this represents, Hartman said. Nor have maps been made to find the locations of underground lines in relation to Colorado's growing Front Range communities.

Colorado's population boom has led to more people moving closer to oil and gas facilities.

The oil and gas industry also is expanding, with the latest state records indicating more than 54,600 active wells statewide and quadrupled production since 2012. Much of the new oil extracted in Colorado comes from increasingly populated Weld County, north of Denver.

The Firestone blast killed brothers-in-law Mark Martinez and Joey Irwin and seriously injured Erin Martinez.

Anadarko Petroleum, company spokeswoman Jennifer Brice said, "will continue to cooperate with all agencies, including the National Transportation Safety Board and the COGCC, until all investigations are complete, while also continuing to work with regulators, elected officials & others to build upon the actions we've already taken to improve safety."
(photo: A home explosion in Firestone Monday, April 17, 2017 killed two and sent two people to the hospital.)
The following are among at least 12 fires and explosions at oil and gas facilities after the Firestone blast:
• One Anadarko contract worker was killed and two others were injured May 25 when a tank exploded near Mead. The workers were changing "dump lines" and "one or more tanks exploded," according to a report filed in COGCC's database. The U.S. Occupational Health and Safety recently issued citations to Anadarko and three contractor companies for violations at the site, with penalties totaling about $70,000, OSHA area director Herb Gibson said.
• A 61-year-old man died after fire broke out Nov. 16 during work on a blocked DCP Midstream oil and gas pipeline near Galeton, east of Greeley. That man, later identified as George Cottingham of Greeley, was one of three workers injured in the fire. The COGCC did not receive a report on this incident, Hartman said, because the pipeline was a "gathering line" outside the agency's regulatory purview.
• A worker was injured May 8 near Greeley when fumes from a Synergy Resources Corp. tank ignited. Greeley firefighters responded.
• A worker was injured June 19 in Weld County after a fire at a Great Western Operating Company well pad. The company report to COGCC said "leaking valve and fluid caught fire" and "one person was taken to the hospital." The worker was treated and released.
• At the north edge of Brighton, a truck driver sought medical care but was not hospitalized after fleeing a fire that broke out Oct. 12 at a Great Western facility. Brighton firefighters racing to the scene asked contractors to close off gas flows from wells, according to the COGCC report. This fire was the second in a three-week period at the same site. On Sept. 20, Brighton firefighters "set unmanned ground valves to spray cool water on other process equipment as a mitigation technique to isolate the incident."
• On Nov. 7, hydrocarbons spilled into a combustion device, causing it to catch fire at SRC Energy facilities in Weld County. Greeley firefighters responded. No injuries were reported.
• On Sept. 12, a lightning strike apparently led to an explosion at Berry Petroleum facilities in Garfield County. The blast blew a 300-barrel tank 150
The Colorado Oil and Gas Association industry group and several of its member companies are participating in a safety working group initiated by Hickenlooper.

"There are safety councils in Colorado’s different oil and gas basins that exist to promote safety and environmental protection within the industry. By and large, the oil and gas sector has a solid safety record,” COGA president Dan Haley said. “The results of the state’s first-of-its kind, comprehensive exam of flowlines, with a 99.65 percent passage rate, demonstrate our ongoing commitment to safety. Out of the small remainder, no major leaks were reported, and the upcoming flowline rulemaking at the COGCC will further strengthen existing safety rules.”

Yet some Colorado Front Range families living near oil and gas facilities remain worried and have joined “protectors” groups that protest industry expansion near people. The recent fires and explosions have piqued concerns.

“I’m sure there are pipelines under my house. But I don’t know where they are,” Erie resident David Adler, 25, said while holding his 1-year-old daughter, Harper, at a recent neighborhood demonstration. “After Firestone, I would like the lines to be mapped. I am afraid I’ll have natural gas leaking into my house and that it could cause an explosion.”
Collett CSU Bio 201608

Jeffrey L. Collett, Jr.
Ph.D. Environmental Engineering 1989, California Institute of Technology
M.S. Environmental Engineering 1985, California Institute of Technology
B.S. Chemical Engineering 1984, Massachusetts Institute of Technology

Group Leader: Collett Research Group
Atmospheric Chemistry / Air Quality Program
Department of Atmospheric Science  CSU  Fort Collins, Colorado USA

Environmental chemistry, aqueous phase chemistry and cloud microphysics measurements, gas and aerosol scavenging, precipitation and deposition processes, and air quality.

Biosketch

Professor Jeff Collett received a B.S. in Chemical Engineering from MIT in 1984 and M.S. and Ph.D. degrees in Environmental Engineering from Caltech in 1985 and 1989. Following completion of the Ph.D., he spent two years as a postdoctoral research associate in the Laboratory for Atmospheric Physics at ETH-Zurich and three years as an assistant professor at the University of Illinois holding joint appointments in the Institute for Environmental Studies and the Environmental Engineering Program in the Department of Civil Engineering. He came to Colorado State University in Fall 1994 where he joined the growing Atmospheric Chemistry Program. Dr. Collett was twice named to the Incomplete List of Teachers Rated as Excellent by their Students at the University of Illinois and was named an Office of Naval Research Young Investigator in 1992. His research concerns cloud and precipitation chemistry, the role of clouds as processors of tropospheric particles and trace gases, and the impacts of atmospheric aerosol particles on regional visibility. His interests focus on process-oriented field research, instrument development and environmental chemistry.


Current Research Projects

Title: North Front Range oil and gas air pollutant emission and dispersion study.
Sponsor: Colorado Department of Public Health and Environment.
Project period: 2013-2016
Dear City Council Member,

As you debate the safe distance for setbacks between developments and fracking operations, this just released, peer-reviewed research from Princeton University may be helpful in your deliberations. Thank you.

-Harv Teitelbaum

December 13, 2017

Princeton University, Woodrow Wilson School of Public and International Affairs

Summary:
Health risks increase for infants born to mothers living within 2 miles of a hydraulic fracturing site, according to a new study.


Hydraulic fracturing negatively impacts infant health -- ScienceDaily

Health risks increase for infants born to mothers living within 2 miles of a hydraulic fracturing site, according to a study published Dec. 13 in Science Advances. The research team found that infants born within a half a mile from a fracking site were 25 percent more likely to be born at low birth weights, leaving them at greater risk of infant mortality, ADHD, asthma, lower test scores, lower schooling attainment and lower lifetime earnings.
"Given the growing evidence that pollution affects babies in utero, it should not be surprising that fracking, which is a heavy industrial activity, has negative effects on infants," said co-author Janet M. Currie, the Henry Putnam Professor of Economics and Public Affairs at Princeton University. "As local and state policymakers decide whether to allow hydraulic fracturing in their communities, it is crucial that they carefully examine the costs and benefits, including the potential impacts from pollution," said study co-author Michael Greenstone, the Milton Friedman Professor in Economics and director of the Energy Policy Institute at the University of Chicago. "This study provides the strongest large-scale evidence of a link between the pollution that stems from hydraulic fracturing activities and our health, specifically the health of babies."

Using records from more than 1.1 million births across Pennsylvania from 2004 to 2013, the researchers compared infants born to mothers living near a drilling site to those living farther away from a site, before and after fracking began at that site.

The most significant impacts were seen among babies born within .6 miles of a site, as those babies were 25 percent more likely to be low birth weight, that is born under 5.5 pounds.

Infants born to mothers living between half a mile and 2 miles saw their risk of low birth weight decrease by about a half to a third. Infants born to mothers living beyond 2 miles experienced little to no impact to their health.
"These results suggest that hydraulic fracturing does have an impact on our health, though the good news is that this is only at a highly localized level," said Currie, who directs the Center for Health and Wellbeing at Princeton's Woodrow Wilson School of Public and International Affairs. "Out of the nearly 4 million babies born in the United States each year, about 29,000 of them are born within about a half mile of a fracking site."

"While we know pollution from hydraulic fracturing impacts our health, we do not yet know where that pollution is coming from -- from the air or water, from chemicals onsite, or an increase in traffic," said co-author Katherine Meckel, assistant professor at the University of California, Los Angeles. "Until we can determine the source of this pollution and contain it, local lawmakers will be forced to continue to make the difficult decision of whether to allow fracking in order to boost their local economies -- despite the health implications -- or ban it altogether, missing out on the jobs and revenue it would bring."

This study follows previous work by Currie, Greenstone and others on the local economic benefits, which found the average household living near a hydraulic fracturing site benefits by as much as $1,900 per year. This was because of a 7 percent increase in average income, driven by rises in wages and royalty payments, a 10 percent increase in employment, and a 6 percent increase in housing prices. However, the authors cautioned that the housing prices could change if further information about the
environmental and health impacts of hydraulic fracturing were revealed.

"Housing prices are not fixed; they are based on many factors including how well the job market is and how safe the area is to live in," Currie said. "As these results and others on the health impacts from hydraulic fracturing become mainstreamed into the consciousness of homeowners and home buyers, the local economic benefits could decrease."

Materials provided by Princeton University, Woodrow Wilson School of Public and International Affairs.
Original written by B. Rose Kelly. Note: Content may be edited for style and length.
Hi,

Let me see if I got this right.

If I own mineral rights on a parcel. The new recommended rules would allow someone to build a structure on their property close enough to my property that when I want to exercise my mineral rights in the future I would not be able to do so due to other setbacks. Despicable and deceitful.

No need to contact me any further, I am disgusted with Fort Collins’ management and planning and your progressive, social engineering policies.

Dana Nance
Hi Rebecca,

I hesitated to respond because I'm not sure exactly where the process is at or if decisions have already been made. I did take the time to look at some of the other information presented on the city website including the video for the Technical Air Quality Reports from last November.

I would like to know by what criteria were the proposed set-backs established?

Research that indicates that the health impacts for VOCs are particularly significant within **half a mile** of a fracking operation: *"The assessment concluded that residents living less than a half mile away (2640 feet) are at greater risk for health effects than those living more than a half mile from wells."* (Health Impacts of Fracking). The same report cites a study conducted in Garfield County that showed at 30% increase in congenital birth defects for children born within a **10 miles** radius of oil and gas operations.

Hours before the December 22nd explosion near Windsor, the NCAR Boulder Reservoir station recorded extremely high levels of carcinogenic VOC's **25 miles** away from the source. These emission levels were high enough to have merited an evacuation of the surrounding neighborhoods in Windsor, but this, of course, did not happen.

And, as to the safety of placing homes within 100' of "properly" capped and sealed abandoned wells and pipelines. I don't know how we can assume that the same human error that led to the Firestone incident couldn't happen again. As Joel Dyer stated in his May 2017 article published in the Boulder Weekly Turning Point:What to do about the oil and gas industry's 60,000 miles of pipe bombs under our communities and homes.:"Pipe is pipe. According to the industry's own literature, a small percentage of wellbores will fail shortly after the well is drilled. Over the next 20 years, 60 percent of all wellbores will fail, and over time all wellbores will eventually fail.”

This is just a small sampling of the data that would indicate that the proposed 100' and 500' set-backs are grossly inadequate for maintaining public health and safety.

Thank you for your efforts to solicit citizen input.

Sincerely,
Gayla Maxwell Martinez

On Mon, Feb 12, 2018 at 1:35 PM, Rebecca Everette <reverette@fcgov.com> wrote:
Rebecca Everette

From: Jan M <jannieski84@gmail.com>
Sent: Monday, February 12, 2018 8:54 PM
To: Rebecca Everette
Subject: Re: Oil and Gas Setbacks | Follow Up from Online Survey

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks for contacting me. I would support what you are trying to do, increase set backs from wells. Do we have evidence that plugged wells will not create the same issues.

I work in public health and would be interested in any efforts that protect clean air and avoid contaminating our water. People live in Fort Collins for the quality of life that it offers, not the quality of its oil & gas!

Thanks.
Jan

On Mon, Feb 12, 2018 at 1:35 PM, Rebecca Everette <reverette@fcgov.com> wrote:

Good afternoon,

I am contacting you because you recently completed an online survey on potential changes to the setbacks between oil and gas facilities and new residential development in the City of Fort Collins. Thank you for taking the time to review the information and share your thoughts. Because you requested follow-up from City staff, I am reaching out to see if you would like to chat directly about your questions or comments. We are currently working to revise the code changes based on the feedback we’ve received so far, so I want to be sure we are not missing out on any important questions, ideas or perspectives.

I would be happy to discuss your questions or comments over the phone, via email, or in person at a time that is convenient for you; my contact information is below. More information on various oil and gas topics can be found at http://fcgov.com/oilandgas. I look forward to hearing from you!

Thank you,

Rebecca

Rebecca Everette, AICP
Senior Environmental Planner
Rebecca Everette

From: Joseph Horan <joho7218@aol.com>
Sent: Friday, December 22, 2017 6:58 AM
To: Rebecca Everette
Subject: Re: Oil and Gas Setbacks | Follow Up from Online Survey

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks very much for your reply Rebecca.

My only issue was with the fact that without the needed information about how a well is plugged, answers to the questionnaire pertaining to plugged wells are moot to some degree. Residents are unaware of the mechanisms for plugging, and as wells vary from "played out" to fairly active, from more water than hydrocarbons, from more gaseous to more liquid, etc., simply referring to a well as "plugged" could be very misleading.

I am happy to visit the sites of the Colorado Oil and Gas Conservation Commission and review their recommendations. However, I still feel the public should be made aware about the potential risks involved with a "plugged" well. And those risks clearly will vary from well to well depending on specific production variables of the individual well as well as its age, lateral collection systems etc.

As I said in my comments in the questionnaire, a repeat of the Firestone event should be avoided at all costs. Public safety, NOT developer wishes and tax revenues generated by developing land closer to existing wells, should be the driver in this discussion.

Thanks and Merry Christmas!

Joe Horan

-----Original Message-----
From: Rebecca Everette <reverette@fcgov.com>
To: joho7218 <joho7218@aol.com>
Sent: Wed, Dec 20, 2017 3:47 pm
Subject: Oil and Gas Setbacks | Follow Up from Online Survey

Good afternoon,

I am contacting you because you recently completed an online survey related to potential oil and gas code changes in the City of Fort Collins. Thank you for taking the time to review the information and share your thoughts! Because you requested follow-up from City staff, I am reaching out directly about your questions and comments. We received the following responses in your survey:

"Without a clearer statement on the safety requirements for "plugged" wells the safety of residents is still at risk. Repeats of the Firestone event are possible. The safety requirements for developers/operators for plugging wells need to be clearly stated and should have been included in this questionnaire. Placing Colorado residents in harms way should never be permitted."

More information on the Colorado Oil and Gas Conservation Commission’s regulations can be found here: http://cogcc.state.co.us/reg.html#overview. Specific requirements for plugged and abandoned wells are in section 319 of the COGCC rules, available here: http://cogcc.state.co.us/documents/reg/Rules/LATEST/300Series.pdf.

I would be happy to discuss your questions or comments over the phone, via email, or in person at a time that is convenient for you; my contact information is below. I would also like to make you aware of additional opportunities to
Hi Rebecca,

Sorry, I’ve been out of town for the past 2 weeks. I’m not sure if there is anything further to discuss.

Many citizens are concerned about the safety of living near oil and gas wells. Particularly those which are capped are of concern as it’s unclear how much they are monitored and exactly how they are if they are.

That said, we actually live very close to an active well and have experienced little to no problems. But I worry that relaxing setbacks may be asking for problems down the road.

Joe Horan

Sent from AOL Mobile Mail
Hi Rebecca - It looks like I missed the scheduled sessions on this subject and that the survey is no longer open for responses. However, I did want to provide feedback and hope it will be taken into account in the decision-making process.

Specifically, related to the abandoned wells, moving from 350 ft. to 100 ft. is literally and figuratively going in the wrong direction. This proposed change makes some assumptions that should not be taken lightly which put in jeopardy the health & safety of Fort Collins residents (current or future). Particularly, the notion that plugging is "permanent" without any opportunity for change in condition or failure over time is troubling. To my knowledge, the methods and materials used for plugging today are what are known and available without significant historical data to show how they withstand time, environmental, or geological factors. The "permanence" is further not enforced or monitored by (a lacking number of State) inspectors over 5, 10, 20, 50 years.

The City is known to be data-driven; however, this proposed change is arguably not data-driven. In another subject area, the conclusion would likely be we don't have the data to know if, long-term, this is the right thing to do or not, and such a change would therefore not be made. Without this decision revolving around absolute data, known long-term facts, it is a potential risk to human health, safety and piece of mind for those who knowingly or unknowingly end up 100 ft from an abandoned well. In an extreme case, this change could cause direct injury or loss of human life. It could certainly reduce City residents' property values in the immediate area of an abandoned well that experiences any issue over time.

Consider the language used in the following excerpts from an article related to plugged/plugging wells:

\[
\text{When companies cease production, they are supposed to plug wells with cement to reduce the risk of leaks, and to restore vegetation and wildlife habitat aboveground.}
\]

["reducing the risk" of leaks is different than eliminating leaks or expecting no leaks to occur]

\[
\text{Orphaned wells are more likely than properly plugged “abandoned” wells to leak pollutants, including methane gas, which can contaminate groundwater and even trigger explosions.}
\]

[orphaned wells are "more likely" to leak - i.e. properly plugged wells can leak too]

I would like to understand why the City feels as though plugging is in fact "permanent" and what data shows this to be the case, including in an age of natural disasters which are increasing in magnitude and scope (including USGS documented human-caused seismic activity in areas of increased oil & gas activity). More importantly, if there is no risk over time, I'd like to understand why there is a setback at all. Why is it 350 ft. at...
the state level and why must it even be 100 ft. if there is no risk? Why not 10 ft.? I'd suggest it is because there is an implied ongoing level of risk but would appreciate the confirmation of such.

Regards,

Kevin Krause
3100 Rockwood Dr,
813 E. Elizabeth
Good morning Rebecca, after thinking about what the City is trying to do with setbacks, I think it is the right thing to do, i.e. align the City’s regulatory policies with those of the State.

I spent 42 years in the electric utility industry, both at the retail (distribution) and wholesale (generation/transmission) levels. Twenty eight of those were as a CEO and I learned regulatory policies are the most beneficial when they are applied and enforced consistently across the board. As a result of my background, I serve as the liaison between our HOA and Prospect Energy here in Hearthfire. As a result of my association with Prospect, I am aware of the events surrounding the Waters Edge well closure events.

My position has always been, if our country is to have a growing economy to support and provide for it’s citizens, we need all forms of energy to meet the demands of that economy. Don’t disadvantage one over the other! Having said that, I have determined my views in this instance, while honorable and just, simply do not fit with the City’s view of the world. Thank you for agreeing to meet with me, but I see no value in taking of your time.

Sincerely,

Ron

Hi Ron,

Yes, I am available that week. There are two drop in sessions (1/9, 1-4pm and 1/10, 3-6pm) if either of those windows work for you. I am also available on Thursday, 1/11 from 10-noon or 1-4pm. Let me know if any of those timeframes will work.

Thanks,
Rebecca

Rebecca Everette
Senior Environmental Planner
Planning Services | City of Fort Collins
reverette@fcgov.com | 970.416.2625 direct
Good morning Rebecca, thank you for responding to my comments. With this being the busy time of the year, I would look forward to meeting with you after the first of the year, to listen and learn. Would you be available the week of the 8th of January?

Ron Harper

From: Rebecca Everette [mailto:reverette@fcgov.com]
Sent: Wednesday, December 20, 2017 4:00 PM
To: rmhhome11@comcast.net
Subject: Oil and Gas Setbacks | Follow Up from Online Survey

Good afternoon,

I am contacting you because you recently completed an online survey related to potential oil and gas code changes in the City of Fort Collins. Thank you for taking the time to review the information and share your thoughts! Because you requested follow-up from City staff, I am reaching out directly about your questions and comments. We received the following responses in your survey:

- Why would anyone want to plug a production well when our country needs all forms of energy and yes that includes fossil fuels
- Aligning the City's codes with the State's makes sense, however I remain curious as to why this movement continues to shut down energy production?

I would be happy to discuss your questions or comments over the phone, via email, or in person at a time that is convenient for you; my contact information is below. I would also like to make you aware of additional opportunities to learn more and provide input on the proposed code changes. The upcoming “drop-in” times allow for individual conversations with City staff. All drop-in sessions will be held at 215 N. Mason St., Conference Room 2B (second floor):

- Tuesday, January 2, 1-4 pm
- Tuesday, January 9, 1-4 pm
- Wednesday, January 10, 3-6pm

More information on various oil and gas topics can be found at http://fcgov.com/oilandgas. I look forward to hearing from you!

Thank you,

Rebecca

Rebecca Everette, AICP
Senior Environmental Planner
Planning Services | City of Fort Collins
reverette@fcgov.com | 970.416.2625 direct

Click here to tell us about our service, we want to know!
Thank you, Cassie,

It was very helpful. I have attached the map I was able to create with this tool – mostly for all my neighbors. Guys, check out if there is anything else close to your houses.

Best,
Vadim
Let me know if you have any troubles with the map, and I can help navigate. If you have any concerns about the well, the COGCC would probably be the best resource. Easiest way to contact them might be to use the “Complaints” link on their home page.

Let me know if there is anything else I can help with.

Regards,
Cassie

CASSIE ARCHULETA
Environmental Program Manager – Air Quality
City of Fort Collins
970-416-2648 office

From: Vadim [mailto:vbmalkov@gmail.com]
Sent: Monday, December 25, 2017 12:39 PM
To: Cassie Archuleta <carchuleta@fcgov.com>
Cc: 'Galiya Malkov' <gsmalkov@gmail.com>; reneedoak@aol.com; Rebecca.Kubala@uchealth.org; sabbaila@aol.com; mlreed45@gmail.com; tinateresa63@gmail.com
Subject: notice of land use code changes
Importance: High

Dear Cassie,

We received a letter from the City (see the attached), asking for a feedback on suggested land use code changes, because our property is within 1000 ft of a well.

I would love to provide a feedback using the web site you suggested and it would be very beneficial for us to know where exactly the well is located in relation to our house (526 Jansen Dr, Ft. Collins).

Also, before providing the feedback, we, all the neighbors copied, would like to know the status of the well(s) in question – what type (oil or gas), active or plugged/abandoned.

Please reply to this email (you can reply all) at your earliest convenience with answers to the above questions.

Best,
Vadim Malkov
526 Jansen Dr.
Ft.Collins, CO 80525
Rebecca - thank you for letting me, and others, know about the proposed changes to the setbacks for P&A wells. What an improvement from the original proposal, and I am so glad that you have been in touch with Jason Elkins. I think Longmont has used common sense in their approach to P&A wells, along with a basic concern about health and safety effects.

I would appreciate knowing when you are making presentations to the various Boards so that I could sit in on one as a member of the public.

Keep up the good work.

Vicky

On Wed, Feb 14, 2018 at 2:06 PM, Rebecca Everette <reverette@fcgov.com> wrote:

Hi Vicky,

Based on what we heard from the online survey and other outreach activities, we are currently revising the proposed code changes to better reflect the priorities and concerns of the Fort Collins community. There was broad support for increasing the setback around active wells to 500 feet, so that proposal has not changed.

In regard to plugged and abandoned wells, staff is now proposing a different code change. We heard concerns, including your own, about the uncertainty and potential risk associated with abandoned wells. We are now proposing an increased setback around plugged and abandoned wells that would match the setback for active wells (500 ft), with the option for a reduced setback only if additional testing and monitoring is conducted to eliminate uncertainty and identify any leaks or contamination.

The minimum setback that could be allowed around properly plugged wells would be 150 ft. After discussions with the COGCC, the local oil and gas operator, consultants, and Jason Elkins in Longmont, we have determined that this buffer distance would provide adequate space for equipment to re-plug or maintain a plugged well in the future (if needed) and the installation of long-term monitoring equipment. This is also consistent with the setbacks required by the City of Longmont. By allowing a reduced setback in some cases, it would create an incentive for developers to work with oil and
gas companies to permanently take wells out of operation, thus reducing the amount of oil and gas activity in the community.

We are also exploring better ways to notify future property owners of their proximity to a plugged and abandoned well. Currently, the City requires disclosure on the subdivision plat to all properties within a 1000-ft radius, but there may be better methods to ensure residents are properly notified.

These proposed changes will be presented to various boards in March and to City Council in April. Please let me know if you have additional questions or if you would like to discuss further. I appreciate your ongoing involvement in these code changes!

Thanks,

Rebecca

Rebecca Everette
Senior Environmental Planner
Planning Services | City of Fort Collins
reverette@fcgov.com | 970.416.2625 direct

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From: Vicky McLane [mailto:vmhmclane@gmail.com]
Sent: Monday, February 12, 2018 4:30 PM
To: Rebecca Everette
Subject: Re: Oil and Gas Setbacks | Follow Up from Online Survey

Rebecca - I appreciate the email. Can you be specific about what revisions are being considered since I may want to meet with you again if I am still uncomfortable with them?

Thanks, Vicky
Cassie - what an interesting meeting last night, though it was discouraging in terms of several Council members. My partner Bob thought that Ken Summers said there were three injection wells, you thought he meant three producing wells, but he failed to mention the other active wells and the plugged and abandoned.

I think it is important to distinguish between injection wells, producing wells, active wells, and whatever other types there are. And then we have the plugged and abandoned - no problem... Let me quote from an email I received about the well in Berthoud that spouted:

"Also, REGARDING THE LARIMER ISSUES........ I did ask Ellsworth about the Berthoud spill on October 29. LOTS OF OILY MESS!!! I suggested that it was a frack hit from Extraction and or Synergy as they are horizontally drilling just east of that OLD well that leaked like a Jed Clampett episode. By the way, he NEVER denied it was a frack hit.

As you may recall, Extraction and Synergy showed up to the incident (on a Sunday morning) to help build a BERM around the spill. Really Good Samaritans!! From what I heard it got over the road and was estimated at up to 300 barrel spill. I asked Ellsworth the API # for that well. He said that the well was not in their system. It was one that just was not recorded. REALLY??? How many others are "not recorded". He did say it was from 1930 and just missed getting in their files. I don't really believe that but either way, there is a PROBLEM with COGCC recording and reporting."

My point in sharing with you is that the plugged and abandoned wells are potentially quite dangerous, and until Fort Collins gets a handle on their accurate location and does some monitoring, we are all in the dark.
Last, when is staff going to start the public involvement process on potential updates on oil and gas regulations? Specifically, on the reduced setback for P&A wells. It seems to me that if anything were to change, the setback should be increased, not reduced.

Hope you have a good Thanksgiving. I am in no rush for a response to this email.
Rebecca Everette

From: jim@tbgroup.us
Sent: Monday, October 02, 2017 9:24 AM
To: Rebecca Everette
Cc: Cody Snowdon; Dan Mogen
Subject: Re: Country Club Reserve Wetland

Follow Up Flag: Follow up
Flag Status: Flagged

Rebecca,

It appears that the well may indeed be on our site. Ouch! We are working to confirm this with the State.

In regard to the upcoming potential policy change related to oil and gas facilities, here would be our perspective.

The existing policy/code treats each type of well in the same way. In our opinion and experience a plugged and abandoned well, compared to a water injection well, compared to a producing well are very different and should be treated differently.

In our case we bought this property prior to the new City oil and gas setbacks. These setbacks greatly affect our ability to plan and develop our property. It is my understanding that the policy was written to impact the oil and gas developer and not to unfairly burden the property owner. Especially if the mineral estate was severed from the property ownership. However that is exactly what is happening in our case. We do not own the minerals and we do not get any revenue from the wells. The City requirements are not a burden on the mineral estate in any way and are only a burden on us.

I remember a comment from a City staff member in the past, that the value of the land when we bought was reduced because of the existing wells and the associated City buffers, so we have not been harmed by the City setback and buffer requirements. That is not true in our case. When we bought the property the City followed the State setbacks. The new City setback requirements and buffer requirements create a huge burden on our property. We are getting no benefit from the wells. The owner of the wells does not have to participate in the cost of the buffering. The burden falls entirely on us as the property owner.

We would suggest to the City that the buffer to plugged and abandoned wells would follow State required setbacks. I have attached the standard that we received from the State. Especially in our case, where we would only need to be this close on about half of the well. The other half would be open and accessible for any future testing/remediation work.

In our circumstance, with Urban Estate zoning with the cluster option, if this buffer to plugged and abandoned wells could be reduced it would create at least some semblance of fairness to us as the property owner.

As always, I appreciate your assistance and willingness to discuss our property. If you have any questions please don’t hesitate to let us know.

Thanks,

Jim Birdsall
January 5, 2018

Ms. Rebecca Everette, AICP
Senior Environmental Planner, Planning Services
City of Fort Collins
PO Box 580
Fort Collins, CO 80522-0580

RE: Proposed Changes to Oil and Gas Regulations

Dear Rebecca,

Thank you for inviting the public to share their thoughts on the potential Land Use Code updates related to new residential and commercial development near oil and gas operations. On behalf of HF2M and the Montava Development team, we would like to offer the following comments for your consideration.

We have been working closely with city staff and other stakeholders over the past several months to create a master plan for the nearly 850-acre development parcel west of the Anheuser-Busch brewery. The master plan envisions a true traditional neighborhood development with an integrated mix of uses including housing, employment, schools, parks, natural areas and agriculture.

While the master plan is an outstanding opportunity to fulfill the visions and goals of the Mountain Vista Subarea plan, the land carries many constraints on development which will make it difficult to achieve every goal fully. We have a creative and visionary developer and design team to deliver a balanced and successful outcome for the community.

As we continue through the master planning process, we are encouraged by the City’s consideration of updates to the Land Use Code to align with the state standards. We support both updates being considered:

1. Increasing the setback for new development from existing, active oil and gas wells from 350 feet to 500 feet to match the state standard for new wells, and
2. Reducing the setback for new development from permanently plugged and abandoned wells from 350 feet to 100 feet if the wells are plugged to current state standards.

We hope that city staff will support and recommend these changes for City Council approval.

Sincerely,

Angela K. Milewski
BHA Design, Inc.
City survey on proposed land use code changes re: potential proximity of Oil & Gas wells to new development.

Suggestions:
- Have a couple of well-publicized meetings about these proposed changes, as their impact could be widespread.
- Make publicly available COGCC maps showing the locations and monitoring status (when was the last time monitoring was of all active, inactive and abandoned wells, both plugged and unplugged) as well as flow lines/pipes (I have not seen these made available yet).
- In relation to existing and proposed developments and drinking water wells and intersecting surface water;
- Require developers to identify and disclose locations of wells and flow lines in relation to planned developments during permitting as you may change decision makers;
- Require reClinton to disclose these same locations to potential buyers;
- Require all abandoned and plugged existing and past flow lines, as well as active wells, be inspected recently before approving developments or rezoning;
- Let the public know the results and status of well monitoring that was extensive done throughout the state in the wake of the Firestone tragedy.

over
Even seemingly "safe" plugged wells have not formally caused any problems, can be damaged over time or due to subsurface changes caused by new fracking wells, and can re-start operations at wells that have been inactive for many years, as happened in the case of the Firestone explosion.

The less protective change would reduce the permitted distance between new developments and abandoned and plugged oil and gas development from 350 feet to 100 feet. While there are many variables affecting risk, shorter distances and denser development around abandoned wells will surely expose new people and structures to the documented risks associated with abandoned and plugged wells, even those that are plugged. (e.g., research at Stanford of 10% of the plugged wells they surveyed led to this reason alone provides a rate for not decreasing the allowable distance.

Furthermore, why should new development subject to greater risk than established development, apart from the narrow intent of maximizing development?

Thank you,

Edmund Leveying
105 Oxford LN #184L
Fort Collins, Co 80525

email: population stabilization
phone: (970) 308-1146
Good afternoon Rebecca,

Thank you for including me in this morning's email on the above topic. Yes, in my position as state lead for Sierra Club Colorado's Beyond Oil & Gas Campaign, I have some additional input which I would request be shared with City Council.

There have been many peer-reviewed studies finding statistically relevant health effects at distances up to 10 miles or more from fracking operations. Examples would be childhood leukemia at up to 10 miles (McKenzie et al, CU), and asthma at up to 12 miles from fracking operations (Rasmussen et al, JAMA). However, the bulk of independent, peer-reviewed research seems to be coalescing around the distance of most significant health impact being approximately 1/2 mile, or 2500 feet.

The industry will no doubt discount all non-supportive studies. They may also point to the now discredited CDPHE small-scale meta survey of a few dozen research studies, in which the agency head largely dismissed research showing health harm. However, the best meta study done to date was conducted by Hays and Shonkoff, and published in the Public Library of Science (PLOS) in 2016. It concluded the following:

"84% of public health studies contain findings that indicate public health hazards, elevated risks, or adverse health outcomes; 69% of water quality studies contain findings that indicate potential, positive association, or actual incidence of water contamination; and 87% of air quality studies contain findings that indicate elevated air pollutant emissions and/or atmospheric concentrations. This paper demonstrates that the weight of the findings in the scientific literature indicates hazards and elevated risks to human health as well as possible adverse health outcomes associated with UNGD." (unconventional natural gas drilling, i.e. fracking operations)

There is also the not insignificant risk of explosion, as we've seen from Firestone and Windsor. Various studies have been and are being conducted as to the actual blast radius potential vis a vis the predicted blast radius. While there are no conclusive studies, much of the data I've seen suggest that actual blast radii are approximately twice the predicted distances. There are many variables, of course, such as chemical mix, volumes and pressures, but a good starting initial real-world expected blast radius would be approximately 1,000 feet, with an evacuation zone many times larger.

These are just some of the risks and hazards I hope you will consider as you face the expected pressure and threats from the industry to compromise health and safety. The best supported setback distance, supported by the best available peer-reviewed research, would start at 2500'.

Thank you for your time and consideration.

Harv Teitelbaum
Lead, Beyond Oil and Gas Campaign
Sierra Club, Colorado Chapter
303-877-1870
Hi Rebecca - we wanted to make sure that staff and council members had seen this as next steps are taken in Fort Collins: Old well that spilled near Berthoud was improperly plugged, report finds. It is understood that the concept around the changes being put forth is to ensure wells are plugged to standards and monitored adequately but the concern remains: what if that doesn't happen as intended for one reason or another and how are residents impacted?

Thanks again,
Kevin & Adrian

On Tue, Feb 20, 2018 at 11:19 AM, Kevin Krause wrote:
Thanks, Rebecca!

On Tue, Feb 20, 2018 at 11:11 AM, Rebecca Everette <reverette@fcgov.com> wrote:

Hi Kevin,

Yes, I will add you to the list. Here is our upcoming schedule for boards and City Council (this will be added to the website and an email will be sent this week).

- March 15 – Planning & Zoning Board Hearing (6pm, 300 Laporte, City Council Chambers)
- March 19 – Air Quality Advisory Board (5:30pm, 222 Laporte, Colorado River Conference Room)
- March 21 – Natural Resources Advisory Board (6pm, 222 Laporte, Colorado River Conference Room)
- April 3 – City Council Hearing (6pm, 300 Laporte, City Council Chambers)

Thanks,
Rebecca
Thank you, Rebecca. Appreciate the reply and details. We'd definitely like to stay in the loop on any updates and particularly the details of what it will take for certain wells to achieve the proposed 150 ft buffer as that is the critical one. Is there a mailing list we can be a part of?

Regards,

Kevin

On Wed, Feb 14, 2018 at 3:15 PM, Evangeline Ramirez <eramirez@fcgov.com> wrote:

Dear Mr. Krause,

Thank you for your recent inquiry in regards to the survey input for proposed oil and gas related land use changes. Please see the following response provided by Senior Environmental Planner, Rebecca Everette on behalf of Councilmember Overbeck and City Manager Atteberry.

Kind Regards,

Gigi Ramirez | Administrative Support II
Mr. Krause,

Thank you for your email, as well as your comments at the December Natural Resources Advisory Board meeting. Although the survey has closed, it is certainly not too late for input, so I appreciate your questions and comments.

Based on what we heard from the online survey and other outreach activities, we are currently revising the proposed code changes to better reflect the priorities and concerns of the Fort Collins community. There was broad support for increasing the setback around active wells to 500 feet, so that proposal has not changed.

In regard to plugged and abandoned wells, however, staff is now proposing a different code change. We heard concerns, including your own, about the uncertainty and potential risk associated with abandoned wells. We are now proposing an increased setback around plugged and abandoned wells that would match the setback for active wells (500 ft), with the option for a reduced setback only if additional testing and monitoring is conducted to eliminate uncertainty and identify any leaks or contamination. We agree that regulatory decisions should be based on good data and should err on the side of protecting public health and safety.

The minimum setback that could be allowed around properly plugged wells would be 150 ft. After discussions with the Colorado Oil and Gas Conservation Commission, the local oil and gas operator, consultants, and staff in other communities, we have determined that this buffer distance would provide adequate space for equipment to re-plug or maintain a plugged well in the future (if needed) and the installation of long-term monitoring equipment. This is also consistent with the setbacks required by the City of Longmont. By allowing a reduced setback in some cases, it would create an incentive for developers to work with oil and gas companies to permanently take wells out of operation, thus reducing the amount of oil and gas activity in the community.
We are also exploring better ways to notify future property owners of their proximity to a plugged and abandoned well. Currently, the City requires disclosure on the subdivision plat to all properties within a 1000-ft radius, but there may be better methods to ensure residents are properly notified.

These proposed changes will be presented to various boards in March and to City Council in April. Please let me know if you have additional questions or if you would like to discuss your comments further.

Thank you,

Rebecca Everette

Rebecca Everette
Senior Environmental Planner
Planning Services | City of Fort Collins
reverette@fcgov.com | 970.416.2625 direct

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Original Request

From: Bob Overbeck
Sent: Tuesday, February 13, 2018 9:52 AM
To: Kevin Krause <kevkrause@gmail.com>
Cc: Rebecca Everette <reverette@fcgov.com>; Ray Martinez <raymartinez@fcgov.com>; Darin Atteberry <DATTEBERRY@fcgov.com>; SAR Admin Team <SAR-Admin-Team@fcgov.com>; Carrie Daggett <CDAGGETT@fcgov.com>
Subject: Re: Proposed Oil & Gas Related Land Use Changes

Kevin,

Thank you for taking the time to share your feedback, concerns and questions on LUC changes related to abandoned / plugged wells. Let me ask staff to follow up with your inquiry.

Darin,

Please respond to Kevin's concerns and questions.

Regards,
Bob

Sent from my iPhone
On Feb 13, 2018, at 8:14 AM, Kevin Krause <kevkrause@gmail.com> wrote:
Hi Rebecca - It looks like I missed the scheduled sessions on this subject and that the survey is no longer open for responses. However, I did want to provide feedback and hope it will be taken into account in the decision-making process.

Specifically, related to the abandoned wells, moving from 350 ft. to 100 ft. is literally and figuratively going in the wrong direction. This proposed change makes some assumptions that should not be taken lightly which put in jeopardy the health & safety of Fort Collins residents (current or future). Particularly, the notion that plugging is "permanent" without any opportunity for change in condition or failure over time is troubling. To my knowledge, the methods and materials used for plugging today are what are known and available without significant historical data to show how they withstand time, environmental, or geological factors. The "permanence" is further not enforced or monitored by (a lacking number of State) inspectors over 5, 10, 20, 50 years.

The City is known to be data-driven; however, this proposed change is arguably not data-driven. In another subject area, the conclusion would likely be we don't have the data to know if, long-term, this is the right thing to do or not, and such a change would therefore not be made. Without this decision revolving around absolute data, known long-term facts, it is a potential risk to human health, safety and piece of mind for those who knowingly or unknowingly end up 100 ft from an abandoned well. In an extreme case, this change could cause direct injury or loss of human life. It could certainly reduce City residents' property values in the immediate area of an abandoned well that experiences any issue over time.

Consider the language used in the following excerpts from an article related to plugged/plugging wells:

When companies cease production, they are supposed to plug wells with cement to reduce the risk of leaks, and to restore vegetation and wildlife habitat aboveground.

["reducing the risk" of leaks is different than eliminating leaks or expecting no leaks to occur]

Orphaned wells are more likely than properly plugged “abandoned” wells to leak pollutants, including methane gas, which can contaminate groundwater and even trigger explosions.

[orphaned wells are "more likely" to leak - i.e. properly plugged wells can leak too]

I would like to understand why the City feels as though plugging is in fact "permanent" and what data shows this to be the case, including in an age of natural disasters which are increasing in magnitude and scope.
(including USGS documented human-caused seismic activity in areas of increased oil & gas activity). More importantly, if there is no risk over time, I'd like to understand why there is a setback at all. Why is it 350 ft. at the state level and why must it even be 100 ft. if there is no risk? Why not 10 ft.? I'd suggest it is because there is an implied ongoing level of risk but would appreciate the confirmation of such.

Regards,

Kevin Krause
3100 Rockwood Dr,
813 E. Elizabeth
Old well that spilled near Berthoud was improperly plugged, report finds

New well 3,200 feet away also might have contributed to spill

By Pamela Johnson

Reporter-Herald Staff Writer

Loveland Reporter-Herald

Posted: Thu Mar 08 10:29:33 MST 2018

Pressure caused by new drilling coupled with an improperly plugged well is suspected to have caused drilling mud to bubble out of an old well near Berthoud in late October.

"The cement and abandonment did not happen correctly," Stuart Ellsworth, engineering manager for Colorado Oil and Gas Conservation Commission, said this week. "The records that we found were paper records that said the cement was there."

But after digging up the well site to investigate the spill, officials learned that the required amount of cement plugs were, in fact, not installed. In a previous interview, Ellsworth explained that the general process of capping a well requires at least four layers of cement plugs at strategic locations.

"There was the top cement, and we believe that was all that was there," Ellsworth said. "It was inadequate."

Records, however, falsely indicated that the well, which was capped and abandoned in 1984, had the correct amount of cement plugs, according to the report. While it is unclear how this happened 34 years ago, the commission has changed its rules in the intervening years to prevent this type of occurrence.

"Today, what we do different is ask for documentation, third-party vendor verification," said Ellsworth. "We ask for the contractor's invoice. We don't care about the dollars, we are about the volume ... for how much cement was delivered and how much cement was placed."

That documentation started in the 1990s, and the commission also does unannounced random inspections of wells that are being plugged and abandoned.

But it wasn't the improper plugging alone that caused the drilling mud and small amounts of oil and gas to seep through holes in the welded cap on private property in the 2500 block of Colo. 60. The old well was apparently disturbed by new drilling into the same formation, resulting in the pressure needed to cause the drilling mud to bubble to the surface.

Oddly enough, several wells drilled into the Niobrara Formation within a few hundred feet of this old well, including one that was only 98 feet away did not cause the pressure, Ellsworth said. Authorities believe the culprit was a well drilled in April 2017 that was much farther away and, unlike the closer wells, was perpendicular to the 1984, he reported.

"That's one of the oddities about this situation," said Ellsworth. "There was a well less than 100 feet away that did not cause this to happen, but there's a well more than 3,000 feet away that may have caused this event."

The Colorado Oil and Gas Commission reviews requests to drill within 1,500 feet of an old well to make sure this sort of situation does not happen. That review occurred in this case, though officials were relying on the records that indicated the 1984 well had been plugged properly.

The landowner noticed the sludge discharging into his pasture and onto his driveway and ditch, heading toward the road, and called the fire department about 9 a.m. Sunday, Oct. 29. Emergency crews arrived and created dirt berms to contain the spill, and were soon joined by a drilling company with wells nearby and the company's special vacuum trucks to stop the flow.

The company, Extraction Oil and Gas, remained onsite after the Colorado Oil and Gas Commission responded throughout the more than 12 days it took to properly replug the well.

Because this well was abandoned and the original company no longer exists, the commission took charge of plugging the well. Initial estimates were that 300 barrels of drilling mud, containing some oil, spilled from the well.

Pamela Johnson: 970-699-5405, johnsonp@reporter-herald.com, www.twitter.com/RHPamelaJ.
Rebecca Everette

From: Laura Shaffer <laura.shaffer@gmail.com>  
Sent: Friday, March 02, 2018 3:16 PM  
To: Rebecca Everette  
Subject: Re: Oil & Gas Code Changes | Update and Opportunity for Input

Dear Rebecca

Thanks for the unexpected update (I realize I signed up, but I still didn't expect much!). I really appreciate hearing from the city on this issue. It's just great that Fort Collins city government is so responsive.

I really like the proposed Land Use Code changes. I think those changes better reflect what folks in Fort Collins rightly believe to be safe. I'm so glad to live in a city committed to its residents' safety and willing to make these changes -- and in particular doing so in response to feedback that the city sought out itself.

Thank you

Laura Shaffer

On Fri, Mar 2, 2018 at 10:05 AM, Rebecca Everette <reverette@fcgov.com> wrote:

Good morning,

You are receiving this email because you have expressed an interest in the proposed changes to the required buffers around oil and gas wells. Currently, the City’s Land Use Code requires a buffer of 350 feet between all new residential development and oil and gas operations (including both active and abandoned wells).

Based on community outreach conducted between December 2017 and February 2018, staff has revised the code changes that were initially proposed. The following Land Use Code changes will be presented to City Council in April 2018:

1. Increase the buffer between new development and existing oil and gas operations from 350 feet to 500 feet. This would apply to both active and permanently abandoned wells.

2. Increase the buffer between “High Occupancy Uses” and existing oil and gas operations from 350 feet to 1,000 feet. High Occupancy Uses include schools, hospitals, nursing homes, correctional facilities and daycare centers.

3. Allow an option of a reduced setback around plugged and abandoned wells if additional investigation, soil sampling and groundwater testing are completed and accepted by the City. The minimum setback that could be obtained would be 150 feet from the plugged well.
4. Require an additional method of notification to future property owners about the presence of nearby oil and gas operations.

City staff will present the proposed code changes for discussion at the following upcoming meetings:

- March 15 – Planning & Zoning Board Hearing (6:00 pm, 300 Laporte, City Council Chambers)
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If you would like to provide additional input on the proposed code changes, I encourage you to attend any of the meetings above or send your comments directly to me. All written comments will be shared with City Council, who will ultimately decide whether to approve the proposed changes.

The input we have received to-date has been extremely valuable and we appreciate your continued involvement. For more information, please do not hesitate to contact me. Please feel free to forward this email to any friends, colleagues, or neighbors we may have missed.

Thanks,

Rebecca Everette, AICP
Senior Environmental Planner

City of Fort Collins
reverette@fcgov.com
970.416.2625 direct

http://fcgov.com/oilandgas
Thank you for your email. I think it's important to hear from the actual oil company out here, I think it is called Prospect Energy: and a representative from them about soil testing and ground water testing. I heard initially that they had their own people, "Talon", trying to locate an unused well site on the 80 acres east of us for the information of the proposed development. Some how we heard that some kind of agreement was made between the developers and the city planners to not use them. They know more than anyone about this oil field. Marsha Lotz

On Mar 2, 2018 10:05 AM, "Rebecca Everette" <reverette@fcgov.com> wrote:

Good morning,

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Thanks,

Rebecca Everette, AICP
Senior Environmental Planner
City of Fort Collins
reverette@fcgov.com

970.416.2625 direct

http://fcgov.com/oilandgas
Rebecca Everette

From: Doug and Nancy <dnmatkin@netzero.net>
Sent: Sunday, March 11, 2018 9:39 AM
To: Rebecca Everette
Subject: Re: Oil & Gas Code Changes | Update and Opportunity for Input

Follow Up Flag: Follow up
Flag Status: Flagged

The original notice that we received stated that we live within 1,000 feet of an abandoned or plugged gas/oil well. We live at the intersection of Precision Drive and Northern Lights Drive in Morningside Village. We would like you to pinpoint the location of that gas/oil well for us.

I think the proposed buffers are sufficient, except for the setback around plugged or abandoned wells. I don’t think there should be a reduced setback for these. The current buffer should remain in place regardless of any further investigation.

Thank you.

Nancy Matkin

From: Rebecca Everette
Sent: Friday, March 02, 2018 10:05 AM
To: Undisclosed-recipients:
Subject: Oil & Gas Code Changes | Update and Opportunity for Input

Good morning,

You are receiving this email because you have expressed an interest in the proposed changes to the required buffers around oil and gas wells. Currently, the City’s Land Use Code requires a buffer of 350 feet between all new residential development and oil and gas operations (including both active and abandoned wells).

Based on community outreach conducted between December 2017 and February 2018, staff has revised the code changes that were initially proposed. The following Land Use Code changes will be presented to City Council in April 2018:

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2. Increase the buffer between “High Occupancy Uses” and existing oil and gas operations from 350 feet to 1,000 feet. High Occupancy Uses include schools, hospitals, nursing homes, correctional facilities and daycare centers.
3. Allow an option of a reduced setback around plugged and abandoned wells if additional investigation, soil sampling and groundwater testing are completed and accepted by the City. The minimum setback that could be obtained would be 150 feet from the plugged well.
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The input we have received to-date has been extremely valuable and we appreciate your continued involvement. For more information, please do not hesitate to contact me. Please feel free to forward this email to any friends, colleagues, or neighbors we may have missed.

Thanks,

Rebecca Everette, AICP  
Senior Environmental Planner  
City of Fort Collins  
reverette@fcgov.com  
970.416.2625 direct  

http://fcgov.com/oilandgas

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New Rule in Your City, Your State Leaves Drivers Fuming  
Better Finances  
http://thirdpartyoffers.netzero.net/TGL3242/5aa54da736e04da51695st04vuc
Rebecca Everette

From: Angela Milewski <amilewski@bhadesign.com>
Sent: Tuesday, March 13, 2018 9:18 AM
To: 'Max Moss'
Cc: Rebecca Everette
Subject: RE: Oil & Gas Code Changes | Update and Opportunity for Input
Attachments: Potential OG well setbacks 11x17.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Rebecca,
Here is the diagram showing the wells nearby Montava.
Thanks,
Angie

Angela K. Milewski | BHA Design Incorporated
970.223.7577

From: Max Moss <Max@hf2m.com>
Sent: Tuesday, March 13, 2018 9:11 AM
To: Angela Milewski <amilewski@bhadesign.com>
Cc: Rebecca Everette <reverette@fcgov.com>
Subject: Re: Oil & Gas Code Changes | Update and Opportunity for Input

Thanks Angie,

Rebecca, there are two main concerns we have.
1. How it impacts the two abandoned/capped wells on our property.
2. How it impacts the same type well on Tom Moores land as it relates to this setback which encroaches across our property line and could impair the school districts ability to use the site we are considering swapping with them for the high school site. Angie will share maps with you, we might as well be very direct about this, because it has huge implications on the development plan for Montava and the entire mountain vista sub area.

Max Moss

President | HF2M Colorado
430 N College Ave. Suite 410
Fort Collins, CO 80524
Cell# 512-507-5570
www.montava.com

On Mar 13, 2018, at 10:01 AM, Angela Milewski <amilewski@bhadesign.com> wrote:

Rebecca,

Do the buffers apply to new buildings/structures within these distances? Or simply the lot or property associated with a new development?
It seems that the buffer is increasing for both active and abandoned wells, with potential but no certainty for setback reductions. Since the PDT has been working hard to make the Development Review process more predictable, this seems to add to the uncertainty of the potential for setback reductions.

I’m planning to send you a letter shortly with some specific concerns for the proposed language. I am leaving town later today so unfortunately cannot attend the P&Z hearing, but hope that you can include our comments for the hearing and for future board/commission/council hearings.

Thanks,
Angie

Angela K. Milewski | BHA Design Incorporated
970.223.7577

From: Rebecca Everette <reverette@fcgov.com>
Sent: Friday, March 2, 2018 10:05 AM
Cc: recipient list not shown:
Subject: Oil & Gas Code Changes | Update and Opportunity for Input

Good morning,

You are receiving this email because you have expressed an interest in the proposed changes to the required buffers around oil and gas wells. Currently, the City’s Land Use Code requires a buffer of 350 feet between all new residential development and oil and gas operations (including both active and abandoned wells).

Based on community outreach conducted between December 2017 and February 2018, staff has revised the code changes that were initially proposed. The following Land Use Code changes will be presented to City Council in April 2018:

1. Increase the buffer between new development and existing oil and gas operations from 350 feet to 500 feet. This would apply to both active and permanently abandoned wells.
2. Increase the buffer between “High Occupancy Uses” and existing oil and gas operations from 350 feet to 1,000 feet. High Occupancy Uses include schools, hospitals, nursing homes, correctional facilities and daycare centers.
3. Allow an option of a reduced setback around plugged and abandoned wells if additional investigation, soil sampling and groundwater testing are completed and accepted by the City. The minimum setback that could be obtained would be 150 feet from the plugged well.
4. Require an additional method of notification to future property owners about the presence of nearby oil and gas operations.

City staff will present the proposed code changes for discussion at the following upcoming meetings:

- March 15 – Planning & Zoning Board Hearing (6:00 pm, 300 Laporte, City Council Chambers)
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If you would like to provide additional input on the proposed code changes, I encourage you to attend any of the meetings above or send your comments directly to me. All written comments will be shared with City Council, who will ultimately decide whether to approve the proposed changes.
The input we have received to-date has been extremely valuable and we appreciate your continued involvement. For more information, please do not hesitate to contact me. Please feel free to forward this email to any friends, colleagues, or neighbors we may have missed.

Thanks,

Rebecca Everette, AICP  
Senior Environmental Planner  
City of Fort Collins  
reverette@fcgov.com  
970.416.2625 direct

http://fcgov.com/oilandgas
Rebecca Everette

From:        Angela Milewski <amilewski@bhadesign.com>
Sent:        Tuesday, March 13, 2018 8:14 AM
To:          Rebecca Everette
Cc:          Cameron Gloss; Max Moss
Subject:     RE: Oil & Gas Code Changes | Update and Opportunity for Input
Attachments: O-G Setback Letter to Boards.pdf

Rebecca,

Thanks again for sharing the updated information with us and allowing us to make comment. I would like to share this letter with our comments, similar to those shared during the public and community outreach phase. I hope that this can be shared with the Planning and Zoning Board for their review this week.

Thank you,
Angie

Angela K. Milewski | BHA Design Incorporated
970.223.7577

From: Rebecca Everette <reverette@fcgov.com>
Sent: Friday, March 2, 2018 10:05 AM
Cc: recipient list not shown:
Subject: Oil & Gas Code Changes | Update and Opportunity for Input

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Rebecca Everette, AICP
Senior Environmental Planner
City of Fort Collins
reverette@fcgov.com
970.416.2625 direct

http://fcgov.com/oilandgas
March 12, 2018

Ms. Rebecca Everette, AICP
Senior Environmental Planner, Planning Services
City of Fort Collins
PO Box 580
Fort Collins, CO 80522-0580

RE: Proposed Changes to Oil and Gas Regulations

Dear Rebecca,

Thank you for sharing the latest recommendations under consideration regarding required buffers around oil and gas wells. We support the city’s considerations to make changes to the setbacks that take into consideration the status of the wells and the potential surrounding uses – increased setbacks from active wells and decreased setbacks from permanently abandoned wells.

These changes to the code have the potential to provide both better protections for the community, but also more certainty and predictability for property owners who wish to develop their lands in areas where wells are present.

Unfortunately, the most recent code changes do not achieve this potential for both protections and predictability. The proposed code changes create greater restrictions, increased uncertainty and little predictability for property owners who wish to develop their properties in a manner that is otherwise compliant with the Land Use Code. For a property owner with permanently capped and abandoned wells who provides investigations, soil sampling and groundwater testing to demonstrate that the lands adjacent to the wells are safe, the setback for development would be automatically increased from 350 feet to either 500 or 1,000 feet depending on their planned land uses. While these costly investigations and testing activities may allow the setback to be reduced, the proposed code changes leave this as a discretionary reduction acceptance by the City.

The City of Fort Collins Planning, Development and Transportation Department has been working diligently over the last several months to take specific measures to create a development review process that is predictable, timely, logical, accountable and customer-focused. These setback changes as currently written would have the opposite effect creating increased cost and less certainty for property owners even with permanently abandoned well sites.

Please consider revising the planned code changes to align with the state standards by:

1. Increasing the setback for new development from existing, active oil and gas wells from 350 feet to 500 feet to match the state standard for new wells, and
2. Reducing the setback for new development from permanently plugged and abandoned wells from 350 feet to 100 feet if the wells are plugged to current state standards.
We provided this input during your community outreach period and continue to offer this as a logical approach to provide both better protection for the community and predictability for property owners who wish to develop their land otherwise meeting the requirements of the Land Use Code and goals of City Plan.

We hope that you will share this input with the boards and commissions that are currently reviewing these changes and with City Council for their consideration.

Sincerely,

Angela K. Milewski
BHA Design, Inc.
March 12, 2018

Ms. Rebecca Everette, AICP
Senior Environmental Planner, Planning Services
City of Fort Collins
PO Box 580
Fort Collins, CO 80522-0580

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We hope that you will share this input with the boards and commissions that are currently reviewing these changes and with City Council for their consideration.

Sincerely,

Angela K. Milewski
BHA Design, Inc.
Hi Rebecca,

I would like to thank you for the presentation you made to the Planning and Zoning Board last night. If I had seen your presentation before preparing my own comments I would have made some modifications.

First of all, I would congratulate the city for making a real effort to bring set-back regulations up to date and above all to incentivize developers to plug wells which are currently active. I would acknowledge that you and your team have clearly spent a lot of time studying the details and preparing a plan that considers input from various stakeholders. Fort Collins has benefited from a long history of outstanding local government and I believe that is more true today than ever. You have set high standards which in turn leads to high expectations.

This is why I would like to encourage the city to go beyond the status quo. It’s clear that this process of getting approval for new regulations is long and arduous so if we are going to do it, lets reach beyond just catching up to current practice. The dual estate laws that currently constrain best practice were created in the 19th century when state demographics were entirely different from the reality we live with today. Unfortunately, local governments do not have authority to change those outdated laws. However, we do have the opportunity to position the city of Fort Collins for a much safer, healthier tomorrow through the changes that are being considered right now!

The set-back regulations that have been proposed are outmoded. On-going scientific research is making that more and more clear every day. Municipal and state governments across the nation have been side-blinded by the rapid advancement of unconventional oil and gas extraction, but the numbers are now coming in and it is imperative that we pay attention!

This is an opportunity. The evidence needed to make a clear and logical argument for greater set-back distances--for both active and abandoned wells--is out there. Future generations of Fort Collins residents will thank us if we can act with foresight and courage at this crucial moment.

I would like to make available to you three documents that summarize some the most recent research. Clearly, none of us have the time to read all 1200 peer-reviewed studies that are now available, but even a brief review of the most pertinent information makes an incontrovertible case for the need to proceed with utmost caution. This has been the approach of most European nations who see the United States as a giant experiment on the impacts of fracking on human health. So far the results of that experiment are confirming their original hesitancy. I would prefer that our community not be a part of this experiment, (although we are already participating thanks to the significant amount of ozone floating in from Weld County). Greater set-back distances will, at the very least, minimize the mix of residential zoning with hazardous industrial activity.

Here are the links that I would like to encourage you to take a look at:

Health Impacts of Fracking Summary specific to Colorado. (The full report, Too Dirty, too Dangerous, can be found on the website of Physicians for Social Responsibility.

The Harms of Fracking: New Report Details Increased Risks of Asthma, Birth Defects and Cancer (There is a link at the beginning of this article to the full 266 page report. I suggest that you look specifically at the section titled "Abandoned and active oil and natural gas wells as pathways for gas and fluid migration," p.151.)

Measure benzene, damn it! Includes a critique of the CSU study.

Again, thank you for the work you have already put in on this project and for keeping the community informed and updated.
Best regards,
Gayla Maxwell Martinez
Hello Rebecca,

How can I find out about any ex-parte or other communications or interactions Board members may have had with oil/gas industry personnel subsequent to the initial proposing of these Code changes? We are very interested in knowing, as the industry is notorious for back-room “turning” of public figures. Please let me know. Thank you.

Harv Teitelbaum
Lead, Beyond Oil & Gas Campaign, Sierra Club Colorado
Harv.Teitelbaum@rmc.sierraclub.org
303.877.1870

On Mar 29, 2018, at 9:25 AM, Rebecca Everette <reverette@fcgov.com> wrote:

Hello,

I wanted to provide a brief update on the proposed Land Use Code changes related to oil and gas buffers. The Planning & Zoning Board, Air Quality Advisory Board and Natural Resources Advisory Board have all decided to continue their discussions on this topic and finalize their recommendations to City Council at their April board meetings. The City Council hearing date has been delayed to accommodate these schedule changes. Please see below for the updated schedule of board meetings and hearings:

- April 16 – Air Quality Advisory Board (5:30 pm, 222 Laporte, Colorado River Conference Room) – final recommendation
- April 18 – Natural Resources Advisory Board (6:00 pm, 222 Laporte, Colorado River Conference Room) – final recommendation
- April 19 – Planning & Zoning Board Hearing (6:00 pm, 300 Laporte, City Council Chambers) – final recommendation
- June 5 – City Council Hearing (6:00 pm, 300 Laporte, City Council Chambers) – consideration and first reading of proposed ordinance

Please let me know if you have any questions.

Thanks,

Rebecca Everette
Senior Environmental Planner
Planning Services | City of Fort Collins
reverette@fcgov.com | 970.416.2625 direct
From: Rebecca Everette  
Sent: Friday, March 02, 2018 10:05 AM  
Subject: Oil & Gas Code Changes | Update and Opportunity for Input

Good morning,

You are receiving this email because you have expressed an interest in the proposed changes to the required buffers around oil and gas wells. Currently, the City’s Land Use Code requires a buffer of 350 feet between all new residential development and oil and gas operations (including both active and abandoned wells).

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The input we have received to-date has been extremely valuable and we appreciate your continued involvement. For more information, please do not hesitate to contact me. Please feel free to forward this email to any friends, colleagues, or neighbors we may have missed.

Thanks,

Rebecca Everette, AICP  
Senior Environmental Planner  
City of Fort Collins  
reverette@fcgov.com  
970.416.2625 direct

http://fcgov.com/oilandgas
Hi Rebecca. A question came up in a team meeting last week about the “science” behind the setback discussion. Since jurisdictions differ on these requirements, and in fact other jurisdictions have 150’ setbacks on active wells, not capped and abandoned, we wanted to understand the science behind the recommendations being considered.

Can you help us with that so we understand?

Max Moss
President | HF2M Colorado
430 N College Ave. Suite 410
Fort Collins, CO 80524
Cell# 512-507-5570
www.montava.com

On Apr 2, 2018, at 5:59 PM, Jayroe, Jason <JJayroe@trcsolutions.com> wrote:

Thanks Angie-

In our experience there is likely nothing left on the surface to indicate the location of the well and depending on the age of the well, the records might not be very accurate. Our recommendation is to conduct a geophysical survey as a non-intrusive way to locate the well. We are looking into this but we are unsure if the Brownfield grant will cover any costs associated with identifying the location of the plugged and abandoned oil and gas wells. We should know more about this by the end of this week.

-Jason

From: Angela Milewski [mailto:amilewski@bhadesign.com]
Sent: Monday, April 2, 2018 4:16 PM
To: Jayroe, Jason <JJayroe@trcsolutions.com>
Cc: 'Max Moss' <Max@hf2m.com>
Subject: RE: Montava - Oil & Gas Wells

Jason,

I’m sorry for the delay in my response – I had to check our files to verify. While we did have a bit of surveying work done to help locate the water wells on the site, the locations of the oil/gas wells have not been surveyed nor confirmed. We are simply showing these locations on our mapping, assuming they exist based on the available mapping from the COGCC website – see below for a screen shot.
Rebecca - I would like to provide some additional feedback regarding the newly revised code changes and ask that the feedback is shared with council as well as the members of the boards mentioned below ahead of their next meetings.

#1 and #2: The 500 ft and 1,000 ft buffers are inadequate minimums. More and more data continues to come out that has highlighted the air quality and related health concerns at these distances. At 500 ft the concentrations of carcinogens and other concerning particles can be significantly elevated. As there is no invisible shield at 500 ft, for example, exposures and health concerns are still very present and concerning at 501 ft, 510 ft, 550 ft, 600 ft, etc. Here is one of the newest articles...from yesterday and associated research. Happy to provide others if helpful.

#3: This continues to be an uninformed, inappropriate change that does not put the health and safety of Fort Collins residents first. There is no way around that fact. This distance should remain at 500 ft.

Related, I attended a recent session where Broomfield city staff walked through their newly created program to monitor plugged and abandoned wells. It is clear that a percentage of such wells fail over time (a percentage which certainly increases over time). Their planned monitoring program is comprehensive and ongoing...it is not a single event but instead continues indefinitely because conditions and potential negative effects change and can come about over time. That means that their program and anything like it which would be absolutely required (the ongoing monitoring portion vs. just initial monitoring), needs to be funded ongoing and thus is a burden upon city taxpayers. That is the full time staff position, the technology development, maintenance and ongoing operational costs to do so effectively. Said differently, we (residents) should not be funding this and if the idea is to incentivize developers to ensure that wells are properly plugged so they can develop more and make more profit; if anything, they should be funding the ongoing, indefinite monitoring that is required to put homes or otherwise closer than appropriate to such wells. Not getting both the language requiring ongoing, indefinite monitoring for any plugged and abandoned well as well as requiring that developers fund this into any updated city code is a miss and I would consider it reckless.

#4: It would be great to see more detail on this. It is critical that the true risks are conveyed and if this is the case as it should be, it will reduce the value of such properties. As a result, lower income families will likely occupy such properties, creating a divide and risk that they should not have to experience for the sake of more development.

Please confirm you can send these items on as requested so they are available to the board members and council ahead of further consideration. I appreciate it.

Thank you,
Kevin Krause
Rebecca and Cassie - I am sure you have read about this study, but just in case you haven’t, here it is. Would you share it with your respective Boards since I think it is an important piece of the oil and gas picture?

Thanks, Vicky

---------- Forwarded message ---------
From: Doug Henderson <dhender@gmail.com>
Date: Mon, Apr 9, 2018 at 10:12 AM
Subject: Fwd: New study shows unacceptable health risk levels for those living near oil and gas facilities
To: Cassie Archuleta <carchuleta@fcgov.com>, Terry Gilbert <gilberrt@co.larimer.co.us>, Vicky McLane <vmhmclane@gmail.com>, Fort Collins City Council <cityleaders@fcgov.com>

The body of evidence about health dangers and harm from oil & gas operations is large and keeps expanding -- there are now over 1,300 studies and articles.

Here is news of a scientific study conducted in the Front Range. And thank goodness at least one public health agency in the Front Range dares to publicize credible information about health dangers and harm from oil & gas.

---------- Forwarded message ---------
From: Boulder County Health <bouldercounty@public.govdelivery.com>
Date: Mon, Apr 9, 2018 at 9:21 AM
Subject: New study shows unacceptable health risk levels for those living near oil and gas facilities

The findings indicate that state and federal regulatory policies may not protect the health of populations living near oil & gas facilities.

Having trouble viewing this email? View it as a Web page.
New study shows unacceptable health risk levels for those living near oil and gas facilities

Lifetime cancer risk for those living within 500ft of an oil & gas facility is eight times higher than the EPA’s upper risk threshold

Boulder County, Colo. - A recently released study of air samples collected across Colorado's Northern Front Range shows elevated health risk for residents in proximity to oil and gas development. The study, led by Lisa McKenzie, PhD, MPH, Assistant Research Professor, at the Colorado School of Public Health, collated hundreds of samples from three analyses sponsored by the National Aeronautics and Space
Administration (NASA), Boulder County Public Health, and the Colorado Department of Public Health and Environment. Boulder County Commissioners funded the analysis included in the study in 2014 in order to quantify methane, ozone, and volatile organic compound (VOC) levels from sites across Boulder County.

The study found that the lifetime cancer risk for people living within 500 feet of an oil and gas facility is eight times higher than the Environmental Protection Agency’s upper risk threshold (8.3 per 10,000 vs 1 per 10,000 population respectively).

The findings indicate that state and federal regulatory policies may not protect the health of populations living near oil and gas facilities. In particular, the risk of negative health effects is significant even at the 500-foot setback between newly-drilled oil and gas wells and existing homes, as required by Colorado’s current regulations.

“The study provides further evidence that people living close to oil and gas facilities are at the greatest risk of acute and chronic health issues due to air pollutants emitted by those facilities,” said Pam Milmoe, Boulder County Public Health Air Quality Program Coordinator. “The results underscore the importance of not locating extraction facilities near homes, schools, and recreation areas, and having policies that require effective monitoring and reducing emissions from oil and gas facilities, for sites already in those areas.”

The study considered more factors than what previous health risk studies included, such as short-term, repeated nighttime peaks, when levels can be higher due to temperature inversions, and childhood exposures. It also incorporated the most recent benzene health information and cites Boulder County’s 2017 analysis of data collected with the aid of an infrared camera that detected gas leaks at 65% of the 145 oil and gas sites inspected in Boulder County.

“The results of this health study should support additional emission controls on wellsite equipment, and stronger leak detection and repair requirements statewide, just as we used the gas leak data to support stronger regulations recently adopted by the state Air Quality Control Commission,” said Milmoe.

“We have always been, and certainly with release of this study, are increasingly concerned about the health risks associated with oil and gas development in such close proximity to residential areas,” said Deb Gardner, Boulder County Commissioner. “A 500 foot setback, as required by current Colorado law, is clearly not adequate to protect the health and safety of our residents. This study demonstrates the need for immediate action by the Colorado Oil and Gas Conservation Commission, the state legislature, and the courts to safeguard the lives of Colorado residents against the devastating health effects of oil and gas development near businesses, homes, and schools.”

See the press release from the University of Colorado.

The study is available at https://pubs.acs.org/doi/10.1021/acs.est.7b05983.

For more information about Boulder County’s work in response to oil and gas development, visit the Oil & Gas Development webpage.
Good afternoon Rebecca,

Thanks for keeping me in the loop on this. In addition to the previous email I sent about safe/non-safe buffer distances, researched health risks, and explosion evacuation zones, I wanted to mention a fracking exposure situation I wrote about in the Boulder Daily Camera that affected Ft. Collins-area residents without their knowledge. I've bolded the section below that directly pertains to the Ft. Collins area. As you can see, venting releases of toxic fracking emissions are not uncommon, and are almost always unreported. We only looked into the Windsor toxic gas venting because of the fire and explosion. Please share with City Council as they make their deliberations on buffers. Thank you.

-Harv Teitelbaum

Was Windsor fracking site sending pollution to BoCo for 12 hours prior to explosion and fire?
Boulder Daily Camera, March 10, 2018

In the days following Dec. 22, 2017, researchers from INSTAAR were making their routine examination of measurements registered at the Boulder Reservoir. What puzzled them were readings of exceptionally high levels of the atmospheric pollutants ethane, propane, benzene, and toluene, chemicals known to have toxic effects on human health and produce ozone, a harmful air pollutant linked to some 10,000 premature deaths in the U.S. every year. The levels of these four pollutants, associated with natural gas production, that day measured higher than any ever recorded at the station, representing exposures 10-100 times background levels.

It was not long after that the researchers learned of a major explosion and fire at an Extraction Gas production site in Windsor, almost 50 miles away, that same day. Was there a connection to the high pollutant readings at the Boulder monitoring station?

Using the monitoring station's own meteorological capabilities along with data from NOAA, the scientists looked at wind "back trajectories," which are the paths the air took before hitting the station that day. Knowing that the Boulder readings for the four pollutants spiked roughly during the hours between 2 p.m. and 8 p.m., they wondered if the back trajectory data would show any wind trajectories during that same window directly connecting the monitoring station to the vicinity of the Windsor site.

Yes, at the time of the spike, wind trajectories closely aligned with the Windsor area. Tracing back in time, trajectories indicated the plumes left the Windsor well site area early in the morning of Dec. 22. But correlation is not causation. And wind trajectories, such as those that traced back roughly 7-10 hours to the Windsor well area, become less reliable with each hour of rewound time. Therefore, more evidence was needed.
In addition to measuring wind plumes backward from the station, forward wind trajectory information is also available from NOAA. So the researchers next looked for any forward wind trajectories from Windsor that aligned with the backward trajectories from Boulder for the same window of time. And again they found them. Between 6-8 a.m. forward trajectories from Windsor closely aligned with the later day back trajectories from the Boulder Reservoir station. This added confidence that the plume had heavy natural gas influence and originated in the area of the Windsor well site.

The Colorado Oil and Gas Conservation Commission conducted an on-site field inspection the night of the explosion and fire, but was unable to observe any obvious causes. The 60-day accident report, filed on Feb. 23 by the operator, Extraction, said only that the investigation was still "ongoing" and that "gas and ignition source are still being investigated" by "third party fire investigators." In other words, they still didn't know, or weren't saying, what caused the explosion and fire. However, the report did mention several possibilities, including an "(o)pen line or valve, or leak on flash gas management system," along with several other possible natural gas venting sources.

While there is much we still don't know, evidence suggests a connection between venting of natural gas-related toxics at the Windsor well site and the high readings at the Boulder Reservoir monitoring station on Dec. 22. With this, we can draw additional conclusions.

Considering dissipation over time and distance, the concentration levels of the pollutants were undoubtedly considerably higher closer to their source about 50 wind miles away. Those neighborhoods closer to the Windsor site would have been exposed to even higher levels of these toxics, for perhaps longer periods of time, and along multiple wind trajectories.

For example, the forward wind trajectories from Windsor indicate that after 9 a.m., wind from the Windsor site shifted toward the north, which would have taken any plumes directly over the greater Fort Collins area, about 10 miles away, with some outlying communities considerably closer and therefore potentially exposed to more highly concentrated emissions.

A review of approximately 10 months worth of atmospheric readings from the Boulder monitoring station for the ethane/propane pair found many similar, but smaller spiking events for these same chemicals. The backward wind trajectories for most of these events traced back to either Greeley, Weld County, or the Broomfield area. It may be that major natural gas venting events at fracking sites are not uncommon.

The Boulder County commissioners are to be commended for funding the CU/INSTAAR monitoring which helped produce this data. Hopefully, they will use it wisely in determining how best to address the planned fracking onslaught into Boulder County.

Harv Teitelbaum leads the Beyond Oil & Gas Campaign for Sierra Club Colorado.

On Fri, 1 Jun 2018 at 09:54, Rebecca Everette <reverette@fcgov.com> wrote:
Good morning,

Thank you for your interest in the proposed Land Use Code changes related to the buffers around oil and gas wells. City Council has decided to discuss this item at an upcoming worksession prior to considering the adoption of any code changes. No public comment will be heard at the worksession, and no formal decision will be made. Instead, Council will provide direction to staff on next steps related to the code changes. A final hearing date has not been scheduled. Here is the worksession info:

- **City Council Works session – Tuesday, June 19**
- 6:00 pm at City Hall, 300 Laporte
- You can attend in person, watch on TV (Channel 14), or stream live at [https://www.fcgov.com/fctv/](https://www.fcgov.com/fctv/)

The following advisory boards have provided recommendations to City Council on the proposed code changes:

- Planning & Zoning Board
- Natural Resources Advisory Board
- Air Quality Advisory Board

Please contact me if you have questions or need additional information.

Thanks,

**Rebecca Everette, AICP**
Senior Environmental Planner

Planning Services | City of Fort Collins
reverette@fcgov.com | 970.416.2625 direct

[https://www.fcgov.com/oilandgas/](https://www.fcgov.com/oilandgas/)
Rebecca Everette

From: Gayla Martinez <gmaxwellmartinez@gmail.com>
Sent: Friday, June 22, 2018 11:30 AM
To: City Leaders; Rebecca Everette
Subject: Comments regarding latest draft of proposed changes for buffer zones in relation to oil & gas operations

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mayor Troxel and City Council,

I would like to make a few comments on the latest draft of proposed changes for set-back regulations in regards to new housing and existing oil and gas wells. My concerns are related to the 150’ variance given to developers who are willing to properly plug abandoned wells.

As was stated in the recent work session (06/19/18), conventional oil wells have a much lower failure rate than wells associated with hydraulic fracturing. According to a study cited by Anthony Ingraffea (TEDX Albany 2013), “Unconventional wells show a 58% higher risk of experiencing structural integrity issues relative to conventional wells.” However, Dr. Ingraffea goes on to present data that surprisingly show conventional wells drilled after 2009 failing at a much higher rate than older conventional wells. He suggests that there are two possible explanations for this unexpected statistic: 1) the more recent wells were poorly constructed (despite industry claims of improving technology and safety standards), 2) older wells are often not inspected and therefore leaks are not detected. General assumptions about the integrity of older, conventional oil wells may be based on incomplete data, (i.e. most have not been inspected and many have not even been located).

In the same presentation, Dr. Ingraffea, shows graphs from an industry study in Alberta that recorded 15%-16% leakage rates for conventional wells. So, although the wells in NE Fort Collins are safer than fracked wells, the potential for integrity loss is still present and this potential grows with time.

This brings me to my first concern. It would seem that requiring monitoring for only the first 5 years after a well is plugged misses the point that deterioration takes place over time. The chances of a properly plugged well experiencing leakage in the first 5 years is extremely low. The chances of that plug deteriorating after 60 years is close to 100%.

Secondly, it was mentioned that if a problem does occur, remediation would be passed on to the state through the COGCC. The money set-aside for this purpose is grossly underfunded. (For a clear admission of this lack of funding see the Youtube recording of the COGCCmeeting for March 19, 2018, minutes marker 2:45-2:48). State regulations currently require a plugging bond of only $10,000-$20,000/individual well and a statewide blanket bond of $60,000 for operators with fewer than 100 wells, $100,000 for operators with 100 or more wells. The city’s estimate of the cost of plugging one well is $84,000. I think it would be naïve to assume that the state will be ready to cover remediation costs given the total number of plugged and abandoned wells that Coloradans will be dealing with in the future.

My second concern has to do with the assumption that the only wells needing to be addressed are those currently existing in the NE quadrant of the city. It may seem improbable that in remaining undeveloped land, wells for hydraulic fracturing could be drilled, used and abandoned before the area is built out (this being the only circumstance in which the rules under consideration would apply). However, ten or fifteen years ago, most of us would have found it difficult to imagine the aggressive rapidity with which this industry has grown all along the Front Range. Currently, the COGCC has a backlog of approximately 4,000 drilling applications. We cannot afford the luxury of assuming that SE Fort Collins will never be fracked.
Based on these arguments, I would like to suggest two changes to the current draft:

1) Require **on-going yearly inspections** of all plugged and abandoned wells. With the new monitoring technologies that are currently coming out this process can be expected to become increasingly cost and time efficient.

2) Specify that the **150' variance applies only to conventional wells designed to extract oil**. No reduced set-backs should be allowed for wells drilled to extract natural gas using hydraulic fracturing.

The city should also be considering it’s own plans for covering the costs of remediation in the case of well failure.

I want to express appreciation for the time and effort that council members, city staff and advisory boards have put into working on this proposal to update and improve set-back regulations. The final outcome will be a reflection your combined expertise.

Thank you,

Gayla Maxwell Martinez
July 19, 2018

Georgia Locker  
713 Duke Square  
Fort Collins, CO  80525

Dear Ms. Locker:  

Thank you for writing to City Council and me regarding the Council Work Session on June 19th and the topic of setbacks from oil wells currently in Fort Collins.

Fort Collins has most restrictive regulations regarding plugged and abandoned wells. We will continue to monitor the situation and this item is scheduled to come to Council again on August 21st. We appreciate you reaching out with your thoughts.

Sincerely,

[Signature]

Wade Troxell  
Mayor

/sek

Cc: City Councilmembers  
    Darin Atteberry, City Manager  
    Rebecca Everette, Senior Manager, Building and Development Review
Dear Mayor Troxell and City Council,

I attended the work session held by the Council on June 19, 2018, dealing with setbacks from the oil wells that currently exist in north Fort Collins. Having done so, I have some thoughts about the setbacks discussed.

First, I am pleased that you are considering raising setbacks for new development in that area, both for single residence homes and for high occupancy buildings. I HOPE THAT YOU WILL ALSO CONSIDER DEVELOPMENT IN OTHER PARTS OF THE CITY, WHEN CONSIDERING SETBACKS, ESPECIALLY BECAUSE THERE COULD BE PERMITS FILED TO DRILL IN OTHER LOCALITIES. An article reports that one man has recently discovered an abandoned well under his driveway, in SE Fort Collins.

For the present plugged and abandoned wells, the setback considered (150 feet) is less than the present 300 feet. Having talked with an expert in this area, that seems to be acceptable. It will allow workers and equipment access, in case of a leak. BUT, THE DISCUSSION OF ONLY MONITORING A PLUGGED OIL WELL FOR FIVE YEARS DOES NOT SEEM ADEQUATE. THERE ARE MONITORS THAT CAN BE PLACED AT EACH WELL, TO MONITOR THE AIR AND THE SOIL. SINCE PLUGS GENERALLY FAIL IN ABANDONED WELLS BY 60 YEARS, IT APPEARS TO ME THAT MONITORING BECOMES MORE IMPORTANT, THE OLDER THE WELL IS, NOT LESS.

AS PER A RECENT ARTICLE, PUBLISHED BY COLORADO STATE UNIVERSITY (published in SCIENCE on June 21, 2018), A STUDY FINDS THAT THE U.S. OIL AND GAS INDUSTRY EMITS NEARLY 60% MORE METHANE THAN THE ENVIRONMENTAL PROTECTION AGENCY HAS REPORTED (13 MILLION METRIC TONS). We certainly do not want to have any wells in this area contributing to that huge amount.

If there is a problem with pollution in the future, have you considered who will pay to fix it? The COGCC apparently does not have money to do so, from what I have read. WILL BONDING BE SOMETHING TO BE ADDRESSED WITH THE ABOVE?

Thank you for the time that you and city staff are putting into this most important issue.

Georgia Locker

Georgia Locker

713 Duke Square, Fort Collins, 80525

(970)482-4875

cc: Rebecca Everette

RECEIVED

JUL 03 2018

City Manager's Office
Chair Schneider called the meeting to order at 6:00 p.m.

Roll Call: Carpenter, Hansen, Heinz, Hobbs, Rollins, Whitley and Schneider
Absent: None
Staff Present: Shepard, Yatabe, Tatman-Burruss, Frickey, Everette and Gerber

***BEGIN EXCERPT***

Discussion Agenda:

Member Rollins recused herself from this item.

4. Oil and Gas Buffers - Land Use Code Changes

Project Description: Updates to Land Use Code Sections 3.8.26 (Residential Buffering) and 5.1.2 (Definitions) as they relate to development near existing oil and gas operations, including updates to setbacks and disclosure requirements.

Recommendation: Approval

Secretary Gerber reported that citizen emails and letters were received and are as follows. Jerry Dauth provided three articles about Oil and Gas for the Board’s consideration. The Board received comment and recommendation from the Natural Resources Advisory Board. Received Code Amendments (to include language that exempts approved development plans. Joyce Devaney sent a letter stating that she is in favor of increased setbacks and hopes that the Board votes in favor as well. Joyce is very concerned about the health effects of fracking.
Disclosures

Member Whitley disclosed that he had ex parte communication in the form of a presentation he attended presented by the League of Women’s Voters in Longmont Colorado.

Staff and Applicant Presentations

Planner Everette gave a brief overview of current and proposed Land Use Code regarding oil and gas wells, their type, how many are known to exist, their locations and development potential near these wells. Planner Everette followed up with clarification and answers to questions asked at the previous months P&Z hearing.

Member Hobbs asked if a slide in the presentation could be revisited. Member Hobbs read a bullet point at the bottom of a slide; the direct approval of any sampling plan is required prior to sampling occurring and such plan may be required to include, but is not limited to the following. Member Hobbs remarked and asked that this is a menu of the types of things that a Director of Planning could ask for, but it is not a complete list of all the things that are required, is that correct? Planner Everett responded that that is correct. That the way the code is currently written, allows some flexibility depending on the situation of that particular site.

Public Input (3 minutes per person)

Jerry Dauth, 1925 Serramonte Dr., emphasized the safety of larger buffers zones. There is evidence that states that plugged wells can leak. Would like measuring to be done over time.

Vicky Mclane, 1607 Ticonderoga Dr., asks that the setback not be reduced for plugged and abandoned wells. She is requesting that the setback be increased to 500’. The risk of cancer is 8 times higher if the setback is less. There is a high leakage rate for plugged wells. Would like continuous monitoring, Vicky knows that it is expensive, but also knows that there is equipment not yet vetted, but in process at CSU.

Gayla Martinez, 3378 Liverpool St., she seconded what Vicky Mclane requested. Gayla is requesting that the setbacks not be less than 500’. Gayla offered two points to support the argument; 1) Quote from Professor Anthony Ingraffea of Cornell University, “it is physically impossible to ensure that a well will not leak”. 2) Study lead by Lisa McKinzie of Colorado School of Public Health “lifetime cancer risks for those living within 500’ of wells is 8 times higher”.

Staff Response

Planner Everette appreciated the comments received from the three citizens. Planner Everette stated that all studies reviewed by the citizens were also reviewed by commenter staff and have informed the staff recommendation and added that many of the studies that relate to well leakage and failure also include active and fracked wells. It is hard to tease out how much leakage is associated with plugged and abandoned wells in particular.

Board Questions

Member Hansen spoke to the amount of $100,000 salary for staff that the City of Longmont pays to have this person monitor wells. The question was, how many wells is this one individual overseeing and how does it compare to the number of wells in Fort Collins? Planner Everett stated that the number of wells in Longmont is comparable to that of Fort Collins. 10 to 20 active and 20-30 plugged and abandoned wells. The $100,000 per year includes oversight of a contractor that goes out and does the sampling and at about $2,500 to $3,000 a well. They are able to sample all of their plugged and abandoned wells across the City. Not necessarily every well every year, but the ones they have the most concerns about, they are able to hit each year. The Longmont program started with initial site investigation and surveying, which is costlier. Roughly $16,000 per well. Staff has estimated that just the initial site investigation would cover about 6 wells in the first year at $100,000.

Member Heinz requested clarification. There is a $100,000 position of someone who oversees a contractor that does the testing? And then the contractor charges $2,000 to $3,000 per well. Planner Everett explained that
there is a dedicated staff person that has their own salary that is separate from $100,000. The $100,000 is just to pay a contractor to do the annual site sampling and recording.

Member Heinz asked about the setback reduction from 350’ to 150’. Why did this change come up, why the reduction? Planner Everette responded for all wells, active or plugged and abandoned under the proposed code changes the new buffer would be 500’ for residential development or 1000’ for high occupancy building units. This would be the starting point. A developer could pursue alternative compliance for a reduced buffer. The 150’ minimum was determined in consultation with the City of Longmont contractors that do site sampling around wells in Colorado and around the country and the Colorado Oil and Gas Conservation Commission staff. The consensus from the groups is that 150’ would be a safe radius for residential development, even if some leakage or site contamination were to occur. Member Heinz asked if the default was 500’, but that if they meet some certain criteria, they could possibly go to 150’. Planner Everette stated that was correct and it would be up to the P&Z Board or an administrative hearing officer to decide.

Chair Schneider asked for clarification regarding which type of wells, natural gas or oil, we have in Fort Collins. Planner Everette responded that it was correct, we have oil wells. Chair Schneider stated that all the research and studies were based on natural gas wells leaking. He did not see anything regarding oil wells leaking. Planner Everette stated that much of the research lumps it all together. It is hard to determine what the leakage rate would look like. The most recent well to be drilled in Fort Collins was in the 1990’s. We do not have much of the newer oil and gas production that other communities have.

Chair Schneider asked if staff looked at setting different setbacks depending on if it is an oil well or natural gas well. Planner Everette stated that staff did not consider separate setbacks for different types of production. It was asked about the potential for natural gas production in Fort Collins, there is no way to rule it out. It is not impossible, but not likely in the short term, near future there would be any natural gas interest in Fort Collins.

Member Carpenter asked if staff looked at adding another requirement to the alternative compliance so that it does have to be somehow the operator that will pay for the continuous monitoring or annual monitoring? Planner Everette stated that staff has not added recommendation for ongoing annual monitoring. There are options for funding and staff wanted to leave that type of consideration up to the Board and City Council as to whether that type of cost is something that is worth putting on the developer or more likely a future homeowner that would live adjacent to that well, or if it is something the City would be willing to take on.

Member Hobbs stated that the code verbiage does not require that monitoring equipment is ever installed, it’s one of a number of things that could be asked for, correct? Planner Everette replied that is how it is worded, correct. Staff’s intent is that would be required at all times, but that is not how the code language is worded.

Member Hansen asked for verification Planner Everette responded that that was correct.

Member Hansen asked if a developer chose to respect the 500’ setback, then they would not be required to verify location or do any testing or provide any monitoring, is this correct? Planner Everette responded that is correct. That is how the proposed code language is written. Member Hansen followed up by stating it would be advantageous to the City and its citizens to encourage developers to do that kind of study. Have you gotten any feedback on the cost versus the benefit? Planner Everette pulled up a slide on cost. For Plugging and abandoning a well is roughly $84,000, the cost for research and sampling if a well is already abandoned is roughly $31,000. The thought behind the alternative compliance option was that it would create a strong financial incentive for a developer to complete the sampling and site investigation and survey work in exchange for developable acreage. Requirements could be shifted around so that certain requirements could applicable no matter what the buffer distance is. The intent behind requiring the full sampling plan and analysis in exchange for the reduced buffer is that there would be a financial incentive for that.

**Board Deliberation**

Chair Schneider does not see how the City could demand of the developer extended testing as most often once the site is complete the LLC dissolves and the HOA takes over, and it becomes their burden and probably becomes dues to homeowners. Member Heinz asked if he meant the real estate developer that shows up to do the development, not the oil developer? Chair Schneider, correct. Member Hobbs pointed out that the Board needs to
accept the fact that there may not be HOA's in some areas. Member Hobbs agrees with Member Hansen in that his concerns center on the alternative compliance issue. In this case we are talking about public health and it is felt that it is difficult to ask the P&Z Board and City staff to administer in perpetuity. Member Whitley wanted to know if staff had considered eliminating alternative compliance or making it more stringent? Member Hobbs responded that he feels we are dealing with a public safety issue that is difficult to access or predict the long-term effects. He feels it is not correct to place responsibility for that on a Planning and Zoning staff. In his view, this is something that needs environmental and scientific experts to deal with, and even then, you don't know what is going to happen to a well in the future. Airing on the side of being conservative, preference would be to eliminate the alternative compliance and leave the setback at 500’ for abandoned wells. Member Whitley, Heinz and Carpenter all agreed. Member Schneider disagreed as he feels that due diligence needs to be completed to get the reduced setback and that people are willingly buying and willing living in that area. If someone has a major concern, then they should probably not live in that area. It is no different than an airport, people choose to live there. Also, we do not know what the future holds in the way of technology. Member Heinz feels that maybe it could get modified and setback then. She does not want to be responsible for health risks. We just do not know. Chair Schneider stated that we are talking about oil wells, if it were gas wells he might have a different opinion. He just does not see the same risk as fracking. Member Whitley asked what risks have been identified so far? There is no telling what might come in the future. Member Hansen stated that there is also an environmental health concern and if we do not give developers some incentive to investigate and possibly remedy substandard conditions at these wells, there could be a ticking time bomb that we don’t even know about. Even at the projected cost we have, that's really cheap developable acreage, this is a huge incentive, even if the costs increase 3 to 5 times.

Member Hobbs feels that the potential hazards and the potential monitoring of those hazards, the technology to monitor that in real time and in perpetuity is evolving. It is important to keep in mind that we are talking about a hand full of locations within the GMA. Member Hobbs is willing to say there could be situations where the economics curve and the cost of monitoring that satisfied the surrounding citizens and this board, both of which would be voices that would be heard in such a situation, could be arrived at. He feels that the alternative compliance is too much of an open door and that treating those handful of what are currently 5 active and 10 abandoned wells with the ability for a developer to come in with a modification like we saw Waters Edge do and propose something that works, that I would agree to. But, I agree to eliminating the alternative compliance.

Member Carpenter agrees with not eliminating the alternative compliance and that we have no way of saying that gas is more harmful than oil. We just don’t have that information in front of us. Member Carpenter would like to get rid of the alternative compliance. They can recommend with a modification. Chair Schneider asked if they would feel better if it was a mandated stipulation, here are the things that need to be done? Member Hansen’s concern with eliminating alternative compliance and opening it up for modifications, is that there is no set of standards that we want to see to justify reducing from 500’ to 200’ or 150’. You will have people coming in to reduce it to 50’, because the land use code will not have any standard to set what we expect out of those modifications. Member Carpenter agrees and feels there could not be a modification. Member Heinz stated that anyone could ask for a modification, but it would make sense if it were, “could be no closer than X”, and in the event that someone was asking for a modification they would have to meet these seven criteria. At that point it would be almost the same as allowing the alternative compliance. Member Heinz is concerned for the health of the people than the developer getting more place to live. Member Whitley agreed. Chair Schneider is concerned because when the Board approved Waters Edge, there was only one person that objected, he is trying to understand. Member Carpenter feels as though they have more information at this point. At the time the previous project went through, there was no data. This time we have been give much more information. Member Whitley suspects that Waters Edge would be different if it were brought up now.

Member Heinz asked if it would make sense to break this up if we are not going to agree to all of the recommendations? Member Whitley asked if they could just eliminate the object of compliance section, section C? Chair Schneider responded that it could be part of the motion.

**Member Hobbs made a motion that the Fort Collins Planning and Zoning Board submit a recommendation to City Council to approve the land use code amendments relating to oil and gas buffers as submitted in the staff report with the exception of 3.8.26C4C and that this recommendation is based upon the agenda materials presented at work session, this hearing and the public comments that we have heard tonight.** Member Whitley seconded. Chair Schneider asked City Attorney Yatabe if the motion made sense. Attorney Yatabe stated yes. Member Hobbs commented that he is appreciative of staff’s work. Having reciprocal buffers
that work in conjunction with the State setbacks that they require of the oil and gas producers. He feels that the way that it has been designed to parallel that into changes that changes. These setbacks will change if the State setbacks become greater. This is a good set to do that and it is a good step to have better notification on the plats for potential land or homeowners to allow a conscious decision of living close to either an abandoned well or existing well. Member Carpenter also thanked staff for their patience in answering all the questions and helping to educate the Board so that they could make an informed decision on the issue. Member Whitley also thanked staff on this new and evolving information. Member Heinz thanked the citizens who attended every meeting to say something and show their passion. Member Hansen appreciated staff’s efforts. He is not in support of the motion as it currently stands. Member Heinz asked if they could make a motion to Council that the City take it upon itself to test out some of those abandoned wells? Chair Schneider thanked the citizens for being active and involved. Staff came to the Board with very well drafted land use code change for oil and gas, unfortunately he cannot support those changes based on the motion. He would like to have the ability to look at potential reductions that people are going to put in the time to look at the wells and make sure they are safe and clean. He does not feel we have all the research yet. He feels there should be the alternative compliance available. **Vote: 4:2 (Schneider and Hansen dissenting).**

***END EXERPT***

Minutes respectfully submitted by Shar Gerber.
Chair Schneider called the meeting to order at 6:00 p.m.

Roll Call: Carpenter, Hansen, Heinz, Hobbs, Rollins, Schneider and Whitley

Absent: Rollins

Staff Present: Gloss, Yatabe, Tatman-Burruss, Everette, and Gerber

***BEGIN EXCERPT***

Discussion Agenda:

3. OIL AND GAS LAND USE CODE CHANGES

Project Description: Updates to Land Use Code Sections 3.8.26 (Residential Buffering) and 5.1.2 (Definitions) as they relate to development near existing oil and gas operations, including updates to setbacks and disclosure requirements.

Recommendation: Approval

Secretary Gerber reported that Harv Teitelbaum of the Sierra Cub, expressed concerns about the health risks and safety hazards related to fracking. Kevin & Adrian Krause questioned the setback requirements for plugged/abandoned wells, and expressed concerns about health and safety risks, lack of long-term data, and potential reductions in property values. This email included an article about an oil spill near Berthoud. Laura Shaffer supports the proposed Land Use Code changes. Marsha Lotz commented that it would be important to hear from Prospect Energy regarding soil and groundwater testing. Max Moss, with HF2M Colorado, and Angela
Milewski, with BHA Design, expressed concerns about impacts of the proposed changes on the Montava development project, particularly for plugged and abandoned wells. They proposed alternative changes that they would support. Nancy Matkin supports the code changes, except the reduced setback for plugged/abandoned wells, and would also like to know exactly where the well near her is located.

**Staff and Applicant Presentations**

Planner Everette, Senior Environmental Planner, gave a brief overview of this project in relation to the code changes that will be considered and how they relate to the buffer standards around existing oil and gas operations. Additional information is available for discussion if needed.

**Clarifying Questions**

Member Carpenter, asked Planner Everette to revisit the Montava piece in regard to a school and what would happen. Planner Everette explained that the property is currently owned by the Poudre School District and is intended for a new High School. The buffer for high occupancy building units would be measured from the edge of the oil and gas operation site to the nearest corner of an occupied building. Currently this would not prevent a school from being built on this site, if the buffer were to apply, it would prevent an edge of the school building from being located in that buffer. Montava is partnering with the School District to determine the exact location. Member Carpenter asked if the School District would have to work around this so that we did not have any piece of the school in the zone. Planner Everette explained the complicating factor with schools is the review process which is different than the typical Type I, Type II processes.

**Public Input (3 minutes per person)**

Vickey McLane, 1607 Ticonderoga Dr., supports a 500ft. setback for plugged and abandoned wells. Mrs. McLane stated it is not known by the City or COGCC how many wells and their locations have been plugged and abandoned and if they have been plugged properly. Mrs. McLane feels that all plugs fail sooner or later, so we are not dealing with absolute permanence on these plugged and abandoned wells. It is important that we have a maximum setback to protect human health and safety and she feels the records are very clear about the dangers of not having an adequate setback.

Gayla Maxwell Martinez, 3378 Liverpool St., asked what the reasoning that is the data or evidence on which these proposed setback distances are based? She is not asking for an explanation of the legal or conventional precedent, but such precedence does not constitute good planning for our current realities or recognition of new knowledge and understanding that might guide us to better choices for our community’s future. Quoted Dr. Sandra Steingraber.

**Staff Response**

Planner Everette responded to Ms. McLane. Requirements we have built into the alternative compliance that would help us to identify the exact location of the wells, this would be a requirement for the developer to locate any wells on their property including the ones that we are aware of and pinpoint with GSP the exact location of those wells. We would also require investigation in to when and how those wells were plugged using any historic research and data that we can find, as well as any site investigations that may need to occur. There are methods such as ground penetrating radar that can be used to assess what is happening underground. Soil, ground water and soil gas testing will also be required to determine whether any impacts are occurring. Alternative compliance requires a point-in-time snapshot of what is happening on-site in terms of testing, and does not require further ongoing monitoring, which is something that could be considered.

Planner Everette responded to Ms. Martinez. Regarding the scientific reasoning for the setback distance and concerns about fracking, impacts to human health and the impacts of oil and gas operations on air quality and various pollutants that can impact air quality and public health. Those studies that have been done to our knowledge have been done for active oil and gas operations. We do not dispute any of the findings that were stated. One of the stated goals of these code changes would be to incentivize developers to work with operators to remove active oil and gas operations and to permanently plug and abandon those wells so that those air quality impacts would not be occurring in proximity to our residents within the City limits. Articles have been reviewed and
reasoning distance for setbacks come from the Colorado Oil and Gas Conservations Commissions standards for their new wells and matching those standards.

Board Questions / Deliberation

Member Hobbs asked Planner Everette to explain what other cities in Colorado are doing in terms of instituting reciprocal setbacks. Planner Everette responded that it is variable along the Front Range and that the City looked at the best practices. It is inconsistent and a majority did not have reciprocal setbacks or the number varied widely, some matched the States requirements, some were narrower and some communities have adopted wider requirements. The only community found to have a setback from plugged and abandoned wells is Longmont at 150’.

Member Hobbs asked what the process would be if the State mandates setbacks that are different from what the proposed code change will be. Will we be back to square one? Planner Everette stated that the City of Fort Collins would increase if the State increased. Member Hobbs asked for clarification regarding the State not having a setback for plugged and abandoned wells. Planner Everette responded that is correct. Member Hobbs asked, what if they instituted a setback? Planner Everette responded that it covers both active and plugged and abandoned wells and that the default buffer would be 500’ unless a developer sought alternative compliance.

Member Heinz asked about legal liability and the City. Mr. Yatabe responded that it is a very fact specific inquiry. It is difficult to answer but generally the City has quite a bit of governmental immunity along those lines, but there are exceptions and we would have to examine it at that time. Member Heinz asked if in general there could be liability back on the City? Mr. Yatabe responded that it depends on what is happening, and that he could not say that there is not potential liability, but again it is a very fact-based inquiry.

Member Hansen spoke to the map of Montava regarding two wells near the site that are not on the property in question, if these are abandoned wells that need testing and monitoring set up, I do not see the incentive that you were hoping for because the owner of that well is not affected by that property, has that been thought through at all? Planner Everette pointed out the two wells and stated that the developer would be impacted by the buffers around those wells even though the wells are not on their property, the developer would still have an incentive to try to work with the adjacent property owner to do the site investigation. They would need to determine if it is in their best interest. Member Hansen asked, so they just must hope that their neighbor is willing to cooperate with them? Planner Everette responded yes. Member Hansen asked if the standard would have to apply if it were just outside the City limits? Planner Everette responded yes, if a well was affecting the development property then we would be considering those wells that are outside the City limits.

Member Whitley asked about monitoring. I believe we are asking for the installation of permanent monitoring for the future use. How easy would it be to convert that to active monitoring in perpetuity if there is a problem with say methane leaking? Planner Everette spoke to soil and ground water monitoring on an annual basis, this is not a continuous monitoring. Air quality monitoring can be continuous and this is what Longmont is doing. Member Whitley asked if Longmont was the only community doing this? Planner Everette responded that Longmont is the only community that she is aware of that has a comprehensive program where they are evaluating all their plugged and abandoned wells in particular and that is something the City has chosen to fund. Member Whitley assumes that they have more plugged and abandoned wells than we do. Do you have an estimate of the liability of the cost of putting in air monitoring around Fort Collings? Planner Everette responded that Longmont has a comparable number of wells to Fort Collins. Planner Everette asked for a moment to look up the costing.

Chair Schneider asked Planner Gloss or Mr. Yatabe asked about the setbacks at time of final plat and if existing developments would not have these setbacks put onto them. For instance, if an individual wanted to add onto their home, could they with the new setbacks in place? Planner Everette responded that the setbacks would apply to any project that had to go through the development review process. No, they would not be held to the new setback standards, if they were submitting for an unplatted project, then the setbacks would follow the Land Use Code. Member Schneider asked for clarification in that an existing home could be added to and would not have to comply because of the setbacks at the time because you already have a building there. Planner Everette deferred to Planner Gloss and Mr. Yatabe. Mr. Yatabe spoke to the intent and that this was for projects moving forward, however; he would like to speak to Planner Everette and staff for further clarification.
Chair Schneider asked if there is an existing daycare or in-home daycare within the new setback, are they ok or would you consider them non-conforming? Planner Everette would like to get and research for clarification. Planner Gloss responded that he believes this would be a legal non-conforming use, that it is an existing condition that new regulations are creating the non-conformity, although we should be clarifying in the code change to make certain that the language is crystal clear.

Chair Schneider talked of his concern with school sites and PSD development. Example, they do not have to follow our setbacks, correct? They follow their own rules and regulations. Planner Gloss, as you recall, they are bound by the Site Plan advisory review which follow State statutes and the three criteria are based on the location character and extend of the development relative to our adopted plans. That is the charge of the Board when that development plan would come in for the School District. It is hard to say until you have something in front of you, exactly how you would apply this criteria in that case. Member Schneider asked if there have been any conversations with PSD to ask if they will comply? Planner Everette responded that there is not been any direct outreach to PSD. Member Schneider asked if this was time pressing issue or should we get some clarifications on the code language before we make a recommendation to Council to make sure that we have our information that we need, since we will potentially be the governing body on interpreting these rules and regulations for future work, is this something that we might want to consider tabling to get better clarification? Planner Everette responded that this is not something that has urgency that is being mandated. This would be up to the Board to consider.

Member Schneider addressed the Board regarding their thoughts to any uncertainty or needed clarification. He does not want to push this forward without having full understanding. Member Whitley shares Member Schneider’s concerns, he would like to have more time to look at it.

Member Heinz asked if there was a sense of wanting to get it confirmed before we get more development proposals out in this area. Planner Everette responded that it is certainly a potential and that there is one development proposal that is actively in development review at this time that these standards would not apply to that has wells on its site that will be coming before the Board in the next couple months. The Montava project is the largest development project that we are aware of that has wells on the property, as well as adjacent properties with wells that could be affected but do not have any pending development proposals. Member Schneider asked for clarification. Wouldn’t they still have to comply because nothing has been built at this point, even if they are in the process now? Planner Gloss responded that once you have a completed development application in, you are subject to the standards that are in affect at the time of submittal. Member Schneider felt that he had heard that this would be retroactive to all development plans. Planner Everette responded that this would apply to any development plans moving forward that are submitted once this code change was adopted. For instance, if Montava were to be submitted next week, these code changes would not be in effect, they would be subject to our current code requirements.

Member Hobbs shared concerns with PSD. What could we accomplish with negotiations? Would they not want to look at this on a case-by-case basis, or do you think that we could negotiate an acceptance of these setbacks in general? What do you think we could get there? Chair Schneider - As an example the City of Fort Collins put into a mandate, no more cellphone towers on City owned property, then PSD followed suite with that. I would rather move forward knowing that PSD is wanting and willing to comply with these also instead of having us go through a review and then get challenged. Member Carpenter asked if this was something that if Poudre School District was not going to do, would we consider not doing it? They either are onboard or not. Member Schneider does not disagree, but he feels it would be nice to have that communication factor established and set before we move forward, especially if there are other clarifying questions that need to be addressed. Member Heinz – Does it make sense to recommend that Council talk to PSD. Member Schneider replied no and that staff would talk to PSD. Member Schneider does not understand why communication with PSD did not happen this time, especially when we knowingly have a site with impact. Member Heinz does not feel she needs the information to make a decision. Member Carpenter feels the same as Member Heinz, she is ready to move forward with a decision, no real reason to put if off any longer, except for the legal clarifications.

Member Hobbs asked Planner Everette, up until these code changes are adopted, the current status quo for the Montava project would be the State regulation or 500’ from an abandoned well, is that correct? Planner Everett responded no. If Montava were subject to the current code requirements the required buffer would be 350’, because it would be under the Fort Collins code, not the State. This would apply to both active and plugged and abandoned wells unless they pursued a modification. Member Hobbs spoke of his concern over waiting was that
something could come in that would have a smaller radius from these wells from Montava. Given that we have 350" now along with a potential of having a modification like Waters Edge, Mr. Hobbs does not see any problem in delaying so that the issues could be worked out.

Member Whitley asked Planner Everette if she had found the cost estimates from Longmont. She did not have that information on hand but provided alternative cost scenarios. Member Heinz asked Planner Everette to pull up previous slides and discuss the buffers and incidents that have happened in the past.

Member Heinz asked Planner Everette what the approximate area that the homes were built away from abandoned or plugged wells. Planner Everette responded that in the Trinidad case the home was built directly on top of the well and that they were not aware of the well. The well was not properly plugged. In Firestone, the well was not directly adjacent to the home but rather the incident was caused by a flow line leading from a well that was not plugged and abandoned, it was a shut-in well that had not been properly disconnected from the flow line. Member Heinz asked what a shut-in well was. Planner Everette explained that a shut-in well has been temporarily turned off, has not been plugged, has not been abandoned, however, there is an option for it to be reactivated if needed.

Member Carpenter asked if there were monitors available for individual homes. Planner Everette has not yet followed up on that question. Member Carpenter requested the Planner Everette provide that information.

Member Heinz asked about data collected from Longmont. Planner Everette stated it was private as they have yet to publish publicly.

Member Whitley asked how hard it would be to change the wording to reflect Longmont’s air quality monitoring? Planner Everette responded that it would not be difficult to add that to the code changes, that you would just need to evaluate what the consequence of that would be and insure that the Board agrees on that. Member Whitley stated he had asked for the numbers, but that they were not available.

Chair Schneider stated that it might be another good reason to postpone, to gather some more information, and that he would feel uncomfortable adding this as a requirement without having background. Member Heinz asked what kind of background he needed? Member Schneider responded that between cost and effectiveness, who does it, etc. Member Heinz asked if they also measuring effectiveness? Planner Everette responded by asking, if they are measuring the effectiveness of the monitors themselves? Member Heinz responded yes to Member Schneider clarified, yes, how effective are the monitors, the cost, how far do they read? Planner Everette responded that that staff can get that information, we do not have that information currently. Member Schneider stated that just having that background would let us know how far away we are monitoring, what the other parameters that we are looking at and how much do they really protect.

Member Whitley asked if Longmont is keeping this information confidential and how open would they be to share any of this information with us confidentially? Planner Everette could not speak to how open they would be to share confidential information; however, they will be releasing the information to the public once they have finalized their reports. Planner Everette did let the Board know that there is a presentation that the City of Longmont will be coming to the City of Fort Collins to give on March 19th that will showcase their program and maybe in that presentation might be some of the desired information.

Member Whitley asked staff if they could put off consideration of this until after that meeting? Member Whitley is very interested in attending the presentation.

Member Heinz asked the members of the Board if they could postpone until special meeting? Member Schneider stated that the special session scheduled for March 29th has already been posted and could not be added at this time. It would have to be discussed at April’s meeting.

Member Whitley asked if postponing this for one month would be that big of a problem? Planner Everette responded that there is no issue except Council, etc. However, if the Board wishes to postpone, then they should.

Member Hobbs asked Planner Everette if the people from Longmont were coming up to present to the Fort Collins Air Quality Advisory Board or the Natural Resources Advisory Board? Planner Everette stated that they are not coming up to present to those advisory boards, but that Jason Elkins was invited by the League of Women Voters
to come give the presentation to the broader community. The presentation will take place at the Coloradoan at 11:30 a.m.

Member Hobbs asked if it will be televised on Channel 14? Planner Everette responded that she did not believe there are plans to televise. This is not a City sponsored event. The Coloradoan may film it.

Planner Gloss commented to the Board that they have the discretion to move it to the April 19th hearing or you could just continue it without a specific date. The notification would be less of an issue because it is a legislative item.

Member Carpenter asked if it going to go ahead and go to Council, or will it wait until after our recommendation, because she did not want to get into a situation where Council hears it without our recommendation? Planner Gloss responded yes, we would wait until after the Board's recommendation to take it on to the City Council.

Member Hobbs asked Planner Everette if she would be attending the presentation. Planner Everette replied yes. Members Hobbs would like to hear an update at the next work session from Planner Everette along with her notes or views on the Fort Collins Air Quality and Natural Resources Board’s issues that they have come up with, especially the Air Quality Board. Member Schneider asked if Member Hobbs is requesting to continue to a later date at this point. Member Hobbs thought Planner Gloss’s suggestion was to continue with an open continuation. Planner Gloss feels as though the assignments given to staff could be turned around fast enough to bring it back before the Board on April 19th. Member Hobbs feels that it would be good to move this forward and get it to Council.

Member Heinz asked if their attendance would be considered ex parte information? Mr. Yatabe responded that since this is a legislative matter, you can attend the presentation with a strong suggestion that if you do attend you disclose so that you can put information on the record. This is not an issue as far as an ex parte communication.

Member Whitley asked if an invitation was needed to go to the presentation? Planner Everette responded no, it is open to the public.

Member Hansen would like to include some specific action items to justify why this is being continued. Member Whitley believes the Board is looking for more information from the Air Quality Board and Natural Resources Board and the group from Longmont’s presentation on Monday to enable the Board to make a more balanced decision.

Member Heinz asked if in specific, are there not items with PSD that we want to include in that? Chair Schneider replied with PSD and the legal matters, legal non-conforming and additional clarifications items to make sure the code language is solid, the effectiveness, estimates of cost for monitoring and the radius. Member Carpenter add, and the estimates of cost for monitoring.

Member Hansen made a motion continue this Land Use Code changes in regard to Oil and Gas wells and facilities to be continued to April 19th with the goal of researching and adding to the proposed changes to get more information of the effectiveness of active air monitoring and associated costs, PSD discussion initiation, to get input back to P&Z from other Fort Collins Boards and Commissions, to research the availability of in home monitoring for the gasses that may be associated with failing plugged and abandoned wells. Member Whitley seconded. Vote: 6:0.

***END EXCERPT***
MEMORANDUM

NATURAL RESOURCES ADVISORY BOARD

DATE: May 1, 2018
TO: Mayor and City Council Members
FROM: Nancy DuTeau, on behalf of the Natural Resources Advisory Board (NRAB)
SUBJECT: Land Use Code Updates for Oil & Gas operations

Regulation of oil & gas operations is a complicated issue in Colorado. The Colorado Oil and Gas Conservation Commission (COGCC) standards for permitting and operation, including setbacks, are not based on scientific evidence of health and economic effects on citizens, but rather a compromise with special interests, primarily Oil & Gas Producers and Developers. NRAB strongly recommends Council direct staff to use all mechanisms available within city authority to increase protection of health of residents and to reduce air and property contamination. In addition, we recommend city leadership adopt positions advocating evidence-based state standards for permitting and operation.

The COGCC has the authority to permit new oil & gas wells as well as set standards for operation and closing of wells. The state is responsible for inspections for compliance with operation standards and has an orphan well fund for sealing abandoned wells. The Colorado Department of Public Health and the Environment (CDPHE) has a mobile unit for sampling air quality in residential areas in response to complaints of residents of health effects from chemical exposures at sites.

The city, on the other hand, has two main ways to control interactions between Oil & Gas operations and residents:

- the City has authority through Land Use Code to set buffers between oil & gas operations and new development, including buffer and site characteristics.
- the City creates operator agreements with producers for individual permitted sites

NRAB recommends that Council adopt proposed changes to the Land Use Code to reflect the new state regulations for setbacks for new wells, to apply to new development near existing and abandoned oil & gas operations (reciprocal setbacks) with the addition of:

- 3.8.26 (C) (4) (a) “Buffer Yard D areas may include paved areas, notwithstanding paragraph (1) above, with the exception of playgrounds and parking lots of high occupancy building units”.
- 3.8.26 (C) (4) (c) Require identification of Responsible Party when plugged well seal fails; add requirements for repair, annual third-party monitoring, bonding requirements to address any future well integrity issues, and inspection.
- Amend the Land Use Code definition for where the buffer (reciprocal setback) is measured to be from the edge of the property line to the edge of the well site, as opposed to the edge of the nearest occupied building.

The NRAB recommends that the City operator agreement for producers at individual sites include:
- specific requirements for monitoring as outlined in 3.8.26 (C) (4) (c) (i) (B).

Additional Recommendations

Citizens of Fort Collins are deeply engaged in the debate about regulation of Oil & Gas operations in our state and the effects on their health and property. This is clearly shown by the passage of a citizen-initiated moratorium on fracking within our city and on city land in 2013. NRAB has been following this issue for several years with technical presentations by outside scientific groups like -- CSU and National Center for Atmospheric Research for example -- some of whom have been hired by the City to perform analysis on air quality, toxic gas levels at active wells, and contributions to ozone, in addition to presentations at regular meetings by staff. NRAB recommends that Council move forward with:

- Verifying Poudre Fire Authority (PFA) readiness for abandoned well seal failures and active well accidents. There are 10 active and 20 abandoned wells within city limits. No wells sealed recently or in the past will remain sealed indefinitely, because the current technology does not create a permanent seal.
- Installing a 3rd air monitoring station in Southeast Fort Collins as recommended in City-funded study by National Center for Atmospheric Research. Results of wind analysis document impact of gases from daytime upslope winds from oil & gas operations in Weld County on ozone levels in our city.
- Approving an Economic Analysis of health and economic effects on citizen health and property contamination, including impacts of natural gas and other pollutants from operations outside the city.
- Pursuing ways to protect Natural Areas, parks and open spaces from oil & gas operations whether the source is within or beyond City boundaries.
- Urging the COGCC to increase buffer zones and to change the measurement of setbacks from edge of well site to edge of property. Current setback measures to the edge of buildings which, for schools, increases exposure of children on playgrounds and for other facilities increases exposure to those who choose to enjoy outdoor spaces.

cc: Darin Atteberry
Lindsay Ex
Ryan Mounce, Barry Noon and Elizabeth Hudetz had a lively discussion about the various opportunities for the community to get involved in creating this plan. Non-profit input, community workshops, community ambassadors, and interactive web sites are only a few of the activities planned to gather input from community members. Ryan said that at the website for City Planning, there is a list of events and activities for community involvement. Ryan said that notably engaged to the process is CSU Leadership, Faculty, Staff and Students. Upon completion of this discussion, Nancy DuTeau thanked him for his updates and, thereafter, Ryan Mounce exited. Rebecca Everette stayed for the following discussion.

**VII. OIL & GAS REGULATIONS RECOMMENDATION DRAFT**

Last month Rebecca Everette, Sr. Environmental Planner – City of Fort Collins asked the NRAB for a recommendation for proposed Land use changes such as 1. Increased the buffer for Residential Development to 500 ft. (from 350 ft.), 2. The buffer for High Occupancy Residential Buildings to 1,000 ft., 3. Reduce the buffer on Permanently Abandoned wells to 150 ft. (giving Developers incentives with additional land availability), 4. Notice to future property owners via the property title search system, and 5. Enhanced Code Definitions. There is a scheduled discussion on these items in a Planning and Zoning meeting Thursday, April 19, 2018.

Nancy DuTeau said that the NRAB members wanted to specify that the measurement from existing wells for “new development” should begin at the property line instead of the building. This was important in the case of parking lots and playgrounds. The NRAB also wanted to proscribe a way to determine a responsible party for well seal failures.

There ensued some discussion on the different government agencies, oversight and responsibilities for development codes, rules and regulations. For example dormant, functioning, and new wells all acquiesce to various and different levels of government (Federal, State, County and City) depending on the particular property and well characteristics. The recommendation requested today is quite narrow. Rebecca Everette explained that operator agreements could address liability for new wells, but that is not this evening’s issue. The instant issue is for the City and use Code changes to match the State regulations on Land Developers not Oil and Gas companies. Upon request, Rebecca defined “occupied building” under the codes to mean residential, office/retail, and schools. Places like storage facilities are not included. She mentioned that there are ten (10) active and three (3) producing wells in Fort Collins.

Elizabeth Hudetz resumed her espousal for the highest buffer zone possible in all scenarios (2,500 ft.). One matter driving her advocacy is fear of increased illness (cancer rates) near wells. Also, she expressed much concern that there are not nearly enough inspectors for the high number of wells and that concrete seals on wells are expensive but not permanent solutions and will, at some point, crack. Lawsuits brought by citizens and municipalities against oil and gas companies encourage Elizabeth. Nancy DuTeau added that wind patterns affect the ozone by wells located outside the county from drifting pollutants from neighboring communities with more dense oil and gas operations. Danielle Buttke said that Alzheimer’s is now linked to pollutants. There was agreement among NRAB members that the trend is going toward tougher regulations on oil and gas development.

Barry Noon wanted to add Bond Requirements on Developers for potential failures and incidents at abandoned wells. Discussion ensued that the measurements of buffer distances start at the property line.

Nancy DuTeau focused the discussion on tonight’s requirement of a recommendation for the Planning and Zoning meeting tomorrow for the specific request. The NRAB will continue to work on the formal memo (via email) for City Council recommendations due mid-May.

Elizabeth Hudetz made a motion that buffer measurements should begin at the edge of playgrounds and parking lots, not at the building/structure and that the City of Fort Collins should changes its buffer measurement. Additionally, include annual third-party monitoring and require developer bond requirements for failures. Luke Caldwell seconded this motion. The Vote Passed unanimously.
Nancy DuTeau thanked Rebecca for her time. Rebecca Everette also thanked the NRAB for their patience with the technicality of the issues.

VIII. UPDATES AND ANNOUNCEMENTS

- Elizabeth Hudetz was enthusiastic about an event this Sunday (April 22) for Earth Day with Colorado Rising and Fort Collins City Plan Ambassador Program. Scheduled discussion about the 2,500-ft. set-back initiative for Oil & Gas development. Avogadro's Number from 2-5 PM.
- Bob Mann attended the Wasteshed Advisory meeting last month and after recounting the highlights, he noticed that he needed to re-visit some follow up dates as there are conflicting meetings and presentation in the coming weeks. He will update the NRAB members re same.
- Luke Caldwell mentioned the Northern Colorado Recycling Roundtable on April 24, 6-8:30 PM. RSVP @ CAFR.org.
- Lindsay gave an overview of the upcoming Super Board meeting.

IX. ADJOURNMENT

Meeting adjourned at 9:13 PM.
Gayla Maxwell Martinez gave an impassioned speech leading up to the evening’s discussion regarding Oil and Gas Proposed Buffer Zones. The legacy of her family extends far into Fort Collins history and her love and concern for the City of Fort Collins is apparent.

First, she noted the impressive work that the City of Fort Collins has done with the natural areas and its diligence and protectionism in regards to the Oil and Gas Regulations within the City’s purview. During a Master Naturalist Training Class, she learned that the City does not own the mining rights on their natural areas, which greatly concerns her. She discovered that the oil in the area is minimal and does not attract Industry interest, however other neighboring areas have greater risk.

Gayla cautions that the Oil and Gas Industry (“Industry”) is too aggressive. She pointed out the challenges Boulder, Colorado faces with numerous legal battles re their effort to thwart invasive drilling. She emphasizes that The City of Fort Collins can only be protective for so long until the Industry (and developers) pushes back with legal challenges here as well.

Gayla continued by asserting her recommendation that the buffer zones should be at least ½ mile. Dangers of diminutive buffer zones are documented by numerous science-based and peer edited essays. She says the Industry record in Colorado for oil spills and accidents has been dismal, even within the past two weeks. Her preference is to extend the buffer zone as far back as possible.

### II. APPROVAL OF MINUTES:

Nancy DuTeau and NRAB members made a few revisions and clarifications to the February 21, 2018 Natural Resources Advisory Board (“NRAB”) draft meeting minutes.

Luke Caldwell made a motion to approve, as amended, the February 21, 2018 minutes; seconded by Elizabeth Hudetz. The motion passed unanimously.

### IV. OIL AND GAS REGULATIONS RECOMMENDATION

Rebecca Everette, Sr. Environmental Planner, City of Fort Collins, made a presentation to the NRAB to solicit comment and City Council recommendations re proposed code changes. These code changes consist primarily of modifications to existing buffer zones to match the State of Colorado regulations. The current buffer zone matched the State of Colorado regulations when enacted. This meeting is part of the outreach effort by the department to gather feedback and support from the community and various Boards and Commissions of the City of Fort Collins. An example of community outreach effort is a mailing to residents within 1000 ft. of a well apprising residents of an opportunity to express concerns. The concerns were primarily regarding the exact location of wells and health and safety. This public input resulted in revisions to the proposed code changes.

Rebecca gave an overview of the number of wells located in the City of Fort Collins. Of the sixteen- (16) total operating wells, only ten- (10) were within city limits and an additional thirty- (30) are abandoned wells from various decades. There have been no new wells drilled since the 1990s.

The proposed changes are:

- Increase the buffer for Residential Development to 500 ft. (from 350 ft.)
- Add a buffer for High Occupancy Building Units of 1,000 ft.
- Allow for a reduced buffer on Permanently Abandoned wells if specific site investigation requirements are met, with a minimum buffer of 150 ft. (giving Developers incentives with additional land availability)
- Notice to future property owners via the property covenants
- Updating relevant code definitions

The additional buffer on High Occupancy Buildings (schools, nursing homes, childcare centers, hospitals, etc.) would provide additional protection for vulnerable (elderly, children and infirm) populations. Luke Caldwell wanted to examine the criteria for the 1,000-ft. buffer. He thought perhaps this buffer zone would be appropriate for shrapnel from an explosion, for example, but wondered about escaped gases that can travel over 1,000 feet. He offered that enhanced ventilation or other safety equipment be considered. Rebecca Everette mentions that technology such as monitors and radon mitigation systems exist.

Questioning the “tiers system,” Ling Wang added that 1,000 ft. could be the standard for every site. Rebecca explained that the buffer zones reflect a compromise position between the interested parties. Added difficulties such as site-specific
topography and wind-direction, for example, vary in each locale; thus, the “zones” pose challenges for scientific, well-documented studies.

Rebecca noted that the Colorado Oil and Gas Conservation Commission (COGCC) sets buffer regulations for new oil and gas wells. In contrast, the City of Fort Collins regulates how close the wells will come to the populace. Nancy DuTeau asked whether the City of Fort Collins could be stricter in their regulations than the State of Colorado. Rebecca replied that “Operator Agreements” contracts clauses might mitigate any concerns, but other communities have run into legal issues related to additional regulation for oil and gas operations.

As part of her presentation, Rebecca showed a Fort Collins City map with an “imaginary well.” Around the well were several circles representing the various buffer zones allowing NRAB members to observe a representation of the proposed buffer zones in an actual populated setting. Another illustration displayed an actual Fort Collins Neighborhood with a well (Hearth Fire). She also showed the development plans for Water’s Edge, which reflect a “variance” granted to the developer with assurances of mitigation on abandoned wells in the project. “Alternative Compliance” is a method to provide flexibility to developers on certain standards and could allow for reduced buffer zones if certain requirements are met.

Rebecca reviewed the COGCC requirements for plugging and abandoning wells. Elizabeth Hudetz was concerned about the endurance since cement and concrete can crack over time. Rebecca agreed that there would always be risk of failure and leakage, but that the 150’ buffer zone is generous for the risk. An assessment and analysis of an Abandoned Well failure in Trinidad, Colorado (in the 1980’s) showed that the failure resulted in about ½ acre of seepage that is less than the 150’ buffer zone currently contemplated. Jay Adams inquired about the nature and permanency of the marker for such wells to which Rebecca replied that they are similar to manhole covers commonly found in city streets. These are likely not visible from the street. Rebecca Everette went on to explain that a reduced buffer (150 ft.) at Abandoned Wells is an incentive to developers to seal the wells in accordance with state standards.

Luke Caldwell asked about monitoring for failures. Rebecca said there are several options for reporting such as the Colorado Oil and Gas Conservation Commission, the Colorado Department of Public Health and Environment, and the Environmental Protection Agency. Luke also asked who might be responsible for repair. Rebecca said that it would be a “case specific” determination depending on the individual circumstances. A modest “Orphaned Well” fund exists for wells that no longer have a responsible party in business. Luke noted that the “Waters’ Edge” senior development (north of Fort Collins Country Club) might put the Homeowners Association (HOA) at risk in that case.

Expressing trepidation for federal support in this issue (reporting), Elizabeth Hudetz noted that the Environmental Protection Agency of the United States is experiencing adversity in its current administration. Rebecca replied that the State of Colorado Agencies are the primary organizations to address any issues. She was concerned that any Federal and State regulations or policies were in flux. Elizabeth specifically mentioned the “Martinez Case” (a legal challenge to current Oil and Gas state “fracking” - regulations, climate and public health standards) currently winding its way through the Colorado court system. (Note: “fracking” is water, chemicals and other materials injected to the terrain at high pressure to break rock and extract oil and gas.) There are potential significant implications on the industry standards therefrom. Elizabeth Hudetz advocates setting higher standards immediately.

Elizabeth Hudetz discussed recent concerns from the Greeley community surrounding the issue and related that back to the public comment from Gayla Martinez earlier in the evening. She said that there are documented impacts to the health of a fetus by a low birth rate, for example, within a mile of a “fracking” site. She finalized these concerns by noting that a 4-year-old child’s death at “Hearth Fire” may be a result of impotent regulations. She is concerned about the residents and future residents in our community. Rebecca Everette agreed that there are documented health impacts.

Danielle Buttke mentioned the well monitoring costs. Building upon that line of thinking, it was mentioned that a NICU (Neonatal Intensive Care) admission was upwards at $100K, therefore any monitoring costs would be reasonable in comparison.

Danielle Buttke inquired about any requirement for disclosure to future residents. Rebecca said there are existing requirements for disclosure as well as a proposal for an additional method of notice within property title searches.

Another detail brought to light by Elizabeth Hudetz is that there are only 17 well inspectors for thousands of wells and that seems insufficient for a vigilant program. Danielle Buttke added that any standards without monitoring, response and responsibility is ineffective.

General agreement that the diesel-spill incident on Riverside Drive was handled well by the responders.
Nancy DuTeau brought up the idea of a moratorium and Rebecca said that the intention was a casualty in a prior legal challenge. Elizabeth Hudetz added that perhaps the "Martinez Case" would give us some margin in this area since the judges seem to be ruling (thus far) in favor of enhanced regulations.

Nancy DuTeau also wanted to analyze the considerations of City versus State regulations, specifically how that influences NRAB recommendations to City Council. Nancy thought it would not be appropriate (at the City level) to increase buffer zones. Rebecca Everette said that the basic request is to change the City standards to meet what is required at the State of Colorado level.

Elizabeth Hudetz advocated for a moratorium and 1,000-ft. buffer zone minimum especially near schools and outdoor/recreation areas. Elizabeth and Nancy DuTeau discussed that the present issue before the NRAB (recommendation) is a separate question from the dispute (and potential resulting regulations) in the “Martinez Case”.

Concerning the parties involved in the negotiation between developers and oil and gas operators, Elizabeth Hudetz said it is appropriate to consider third-party oversight.

Nancy DuTeau concluded the discussion by noting that April 13, 2018 is the due date for a first draft of recommendations. The Fort Collins City Council will review all observations, commentary and recommendations in June 2018.

V. POUDRE RIVER WHITESTRATER PARK RECOMMENDATION
Kurt Friesen - Park Planning and Development Director, City of Fort Collins began his presentation by introducing his colleagues. Joining Kurt this evening to assist is Jeff Mihelich - Deputy City Manager, Adam Jokerst, Water Resources Engineer, and Matt Day, Sr Landscape Architect from the City of Fort Collins. The purpose of the presentation tonight is to outline a plan for additional funding for optional features on the Poudre River Whitewater Park. The presenters hope that the NRAB will recommend their enhanced design to the City Council of Fort Collins.

Jeff Mihelich noted that this project is a legacy project initiated in 2011. The project is located near the intersection of College Avenue and Vine. The project has successfully moved forward such that construction bids will be accepted in the near future. He was enthusiastic about the project overall.

Kurt Friesen gave a high-level overview of various segments of the project. First, he noted that the property acquisition phase is complete which was necessary for visibility from the road, safety of visitors, and a park site. A bridge will connect downtown Fort Collins (southside) with the North side business and residential area of the Poudre River. It will become part of the Trail System and provide pedestrian access. The proposed “South Bank Wall” is a plaza with shade structure and more funds are necessary to add seating to encourage “gathering.” The landscaping will be restorative with native plantings. Concrete walks provide greater accessibility. Included in the plan is a “play area.” Lighting, cameras and emergency call boxes are proposed safety features. Included in the plan is “Dark Sky” light fixtures, which minimize glare, reduce light trespass and sky glow. Vine Drive improvements include sidewalks, bike lanes, a parkway and parking. The goal is to make the area attractive to increase interest in the area. A grant from the Poudre Heritage Alliance (“PHA” promotes Poudre River’s national significance in water development, water law and water management) might fund a “Heritage Walk” area. The most critical improvement is the flood plain and floodway. This must be completed at the front end and not in “stages.” This is a costly and time-sensitive part of the plan.

Of interest was the 1865 Coy Ditch in the proposed area that previously irrigated the family farmland. In 1958, the City purchased the water rights. In 1980, the water was used to irrigate a now-defunct golf course and now will be reworked as part of a low-impact water improvement operation within the Whitewater Park Project. This modification also helps correct flooding and erosion issues while slowing flow in the play area.

Jay Adams was interested in the South Bank of the River and its impact on the business in that area. Kurt Friesen said that the North College business area is evolving and the bridge will provide North and South businesses reciprocal access. The neighbors on both sides of the river are in support.

Luke Caldwell asked for an overview of the River Access for ADA individuals. Kurt replied that a properly sloped concrete sidewalk ramp from the sidewalk to the edge of the river provides access for ADA individuals. Two “pools” provide kayak river access and a kayak “play” area. This increases the season for kayakers during the “off season” on the Poudre River traditional recreational areas. In addition, river tubing is encouraged.
code updates in an effort to better control light pollution.

One of the goals is to pursue International Dark Sky Certification for Soapstone National Area which offers darker than natural conditions with outstanding views of the cosmos. Gary and Cassie have been working on night sky monitoring to gain a baseline for the City of Fort Collins to additionally be certified.

The aggregation of lights from neighboring cities creates a sky dome where the cosmos is invisible to the naked eye. Among the nuisances of light are glare, Sky glow and light trespass. Ideally, selecting minimum and energy efficient lighting to the areas needed for security, walking and visibility will reduce light pollution.

Potential Land Use Code updates would set light limits on maximum pole height, position of light mount as well as hours of operation, thus limiting backlight, up-light and glare (BUG ratings).

**Discussion**

How is Fort Collins addressing this lighting issue? Gary: Building code standards are in place for all new developments within the City.

Luke likes the regulation proposed that 75% of light fixtures be efficiency lamps. Why not aim for 95%. Gary: We would like to see target, an achievable goal in order to gage success.

John asks what the timeline is? Rebecca: A 2018 timeline is set with the code update being presented to the Council in the Spring 2018.

Bob inquires whether there will be any door to door outreach encouragement for porch light upgrades in 2018? Rebecca: This was on the table but did not take place.

Bob asks how does warm verses cool lighting affect us? Rebecca: Blue during the day and red at night would be better for humans and wildlife, and there is still some research going on in this regard.

Gary reminds the Board that LED is usually perceived as a brighter light. Rebecca: Education is still needed in this area.

Nancy requested that safety be redefined to include access to buildings if there were ADA guidelines or in general, e.g., having lighting to unlock a door, outside doorway access into the building.

**AGENDA ITEM 3: Update on Oil and Gas Regulations**

Rebecca Everette, Sr. Environmental Planner and Cassie Archuleta, Environmental Program Manager provided a presentation about Land Use Code requirements for buffering between oil and gas operations and new land development. Code changes will be considered by City Council in early 2018. (Information/Discussion: 40 min.).

One of the Board Members is recording the presentation.

The Planning Department’s focus is on the development and land use for current and existing oil and gas development that may come into use in the future. There will be three code changes going before the City Council. 1) Remove references to the 2013 hydraulic fracturing (fracking) moratorium 2) Increase setback requirements for new development projects near existing, active oil and gas operations from 350 ft. to 500 ft. 3) Reduce setback requirements for
new development projects near plugged and abandoned oil and gas wells from 350 ft. to 150 ft.

Oil and gas is regulated by the State. Fort Collins does not regulate the permitting or regulating; that is done by the State. Fort Collins may determine the zone districts such as new wells and industrial districts which are only found in small parts of city. Mitigation requirements, fencing, landscaping, and visual impact to properties are outlined by the City. All properties should be notified, within 1000 ft. of active or abandoned wells, with disclosures whether they be plugged and abandoned, may be both; prior to 1950’s, abandonment.

Reciprocal setback: Distance between new land development and existing oil and gas operations. Current code is 350 ft. buffer for new development. Proposed code to increase to 500 ft. for new developments as the state standard is 500 ft. Fort Collins wants to be consistent with the state standards. Code is measured in relation to circumference.

Discussion

Elizabeth: The Martinez Ruling states that there will be no more permits allows until it is safe for humans and animals. The City should essentially be in a moratorium. Oil and Gas is not following the law right now. Rebecca: I will look into that with the City Attorney Office.

Luke: Is the 500; buffer related to air quality impacts related to human health? Cassie: This is the current State level. The air level goes down the further out we go.

Elizabeth: There is a new study, recently release, indicating the causal relationship between health and wells in which the Hearthfire was an inevitable time bomb. Studies have shown that within 10 miles does have a causal relationship on people’s health. Rebecca: Our production in Fort Collins is very low.

John: In Weld County, what is the average distance in high production areas. Cassie: They can locate multiple wells on one pad with up to 20 or 30 on one pad.

Nancy: Broomfield County is unique and one of the strictest in the state.

Luke: What is the designation of abandoned wells? Rebecca: It is a permanent thing. Cassie: This includes abandoning the mineral rights.

Luke: I understand the financial incentive for reducing the buffer zone in abandoned and plugged wells, and as long as there is continued monitoring, why not use as a community green space after adequate testing is completed?

John: Concrete is not good in the long term. The wells still need monitoring. We need to make individuals aware of the long term dangers associated with these abandoned wells.

Nancy: Broomfield developers were responsible for mapping all the old and abandoned wells.

John: In the areas that surround the abandoned sites, what landscaping would mitigate the wells? Rebecca: The wells are tapped below ground. You would not see the well on the surface. There would be landscaping or a marker as indicated.

Cassie: Water is pumped down to push dead oil out. With gas wells you may see some coloration. These are different than the big wells in Weld County.

Jay: What is the enforcement for the plugging and the abandonment? Rebecca: State does the
inspecting upon abandonment. Verify. Complaints, inspection is made by the State.

Carrie: The state has an orphan well program.

Elizabeth: There are fewer inspectors to number of wells.

Ling: What constitutes a new well for monitoring – what is the timeframe? Rebecca: Current, now, current abandonment. We do not know how far back, 2013?

Jay: There are new housing developments going on near the wells outlined in the map, towards the east of town. I am worried and not a believer. Rebecca: There is housing, much nearer the well than 350 ft. previously. Remember that the 350 ft. was established in 2013.

Elizabeth: Frack hitting is going on. It is hitting old wells causing damage to the environment. Toxicity, explosions, Greeley wells exploded. I emailed the Firestone video to the board.

John: What about the industrial zone? Rebecca: She will provide.

Luke: If new wells were to come in where would they be allowed? Rebecca: A lot of the industrial zone is near Anheiser Bush area. Montavo area, east south.

Elizabeth: They drill where they feel it is best, not having consideration for the residents. It is against the law to perform new fracking. We are on a moratorium.

Jay: Do you have an expanded map? Rebecca to send extended map.

Elizabeth: Does the city have emergency blast zone? Cassie: We have one operator in town and we do have an emergency response team trained to manage this type of event.

Elizabeth has handed out two pages of questions. Questions are prepared by Shane Davis and Wendall Bradley. Due to the time constraint of the meeting, Nancy DuTeau, Chair has asked the presented to get back with the Board with their answers to these numerous questions.

There is an online survey available: http://gcgov.com/oilandgas. There are also drop-in times to speak with city staff personally with any questions.

Updates and Announcements

- Thank you to John Bartholow for 8 years of service.
- Thank you to Katy McLaren for sharing her knowledge and experience.
- Update on E-bikes including trails and widening of trails.

Meeting Adjourned: 8:43 p.m.

Next Meeting: January 17, 2018
MEMORANDUM

Date: May 22, 2018

To: Mayor and City Councilmembers

From: Mark Houdashelt, AQAB Chair

CC: Air Quality Advisory Board
    Darin Atteberry, City Manager

Re: AQAB Recommendation Related to Oil and Gas Land Use Code Updates

The Air Quality Advisory Board (AQAB) has considered the issue of development setbacks from oil and gas facilities in Fort Collins. As you are all aware from Fort Collins' failed attempt to enact a moratorium on oil and gas development, this is a complicated and controversial issue. Currently, the Colorado Oil and Gas Conservation Commission (COGCC) has the authority to regulate setbacks of new oil and gas operations from existing development, while local jurisdictions can regulate setbacks of development from existing oil and gas operations. However, the COGCC’s authority and decision-making criteria are being challenged by local initiatives in Longmont and Thornton, for example, and by the Martinez v. Colorado Oil and Gas Conservation Commission case being considered by the Colorado Supreme Court.

Currently, City Staff is recommending that the Land Use Code be changed, such that:

- The buffer required between new residential development and existing oil and gas operations be increased from 350 feet to 500 feet, and the buffer required between new High Occupancy Building Units and existing oil and gas operations be set at 1000 feet. The proposed buffers are the same as those designated by the COGCC for new oil and gas operations and existing development/HOBUs (the COGCC buffers), and Staff is also proposing that these new buffers automatically vary to match the COGCC buffers should the COGCC buffers change.

- An alternative compliance buffer of no less than 150 feet be considered by the appropriate decision-maker around plugged and abandoned wells, and the fencing requirements in place for the larger buffer not apply for the alternative compliance buffer, if the following specific conditions are met:
  - A site survey confirms the well location;
  - Confirmation that the plugging or re-plugging of the well meets current State standards;
  - Soil, air and groundwater sampling are performed;
  - Permanent monitoring equipment is installed for future use;
  - The area is deemed safe for residential development; and
Other site-specific requirements, as needed and appropriate, are met.

- Any new properties or buildings within 1000 feet of a plugged and abandoned well show information about the well in the property covenant, in addition to that currently required to be included in the recorded subdivision plat.

Given the situation within Colorado, and taking into account the proposal from Fort Collins staff, the AQAB recommends the following changes to City Code related to oil and gas setbacks:

- For minimum setbacks of new development from existing oil and gas operations, we recommend that the City implement setbacks consistent with those recommended by staff. Additionally, the Board recommends that:
  - setbacks from active wells are not eligible for variances.
  - setbacks are measured from property lines as opposed to the edge of the nearest occupied building.

- For minimum setbacks of new development from plugged and abandoned wells, the situation is more uncertain, as little research has been performed on the failure rates, health impacts and other potential dangers associated with these types of facilities. Therefore, we recommend that the City implement the same setbacks between new development and plugged and abandoned wells as those adopted between new development and existing oil and gas operations with no alternative compliance buffer allowed, as the Board feels that staff’s proposed code changes for alternative compliance buffers is incomplete. For example, there is not any requirement for remediation following initial testing and/or ongoing monitoring (and notifications of testing results) and subsequent remediation.

The AQAB appreciates the opportunity to express our thoughts to City Council on this important issue, and we would be happy to reconsider this recommendation should the Staff proposal change, more information become available, or some of the concerns expressed above be addressed.
Questions from the AQAB regarding proposed oil and gas facility setbacks in Fort Collins – March 2018
Responses from Rebecca Everette, Senior Environmental Planner, Planning Services, 4/13/18

SETBACKS

In your presentation, you indicated that a reduced setback around plugged and abandoned wells would incentivize developers to ensure these wells are properly plugged and abandoned. How big a concern is this? What would be done differently if developers didn’t take responsibility for this? Does the City have an estimate of the number of plugged and abandoned wells (and which specific wells) that would potentially be attractive to development? What about operating wells that would cease production and be plugged?

- Within City limits, there are approximately four abandoned wells that would affect future development projects. Other active and abandoned wells are located on sites with pending development applications, previously approved development plans, or previously built neighborhoods.
- If redevelopment were to occur in existing neighborhoods that contain active or abandoned wells, there would be an incentive for developers to plug and abandon active wells or conduct site sampling around wells that were previously abandoned.
- There are other wells (both active and abandoned) outside City limits but within the Growth Management Area that could eventually be annexed into the City and developed or redeveloped. Well locations are available online at: http://cogcc.state.co.us/maps.html#/gisonline

What evaluation of risk went into the COGCC decision for the 500’ setback, in terms of airborne concentrations of various VOCs and the criteria that it would meet at the boundary, for oil and/or gas production? In other words, how are setback distances chosen? Does the info that Cassie got from the COGCC answer this?

- From COGCC staff: “There was no scientific justification for the 500 and 1000 foot setbacks. A main goal if the 2013 setback rulemaking was to reduce nuisance impacts during drilling and completion, noise, dust, light, etc., beef up required mitigation measures when in those kinds of sites, and provide more information to citizens, local governments, surface owner, and Building Unit owners.”

What criteria must a child care facility meet to be classified as a High Occupancy Building Unit by the State (for the purpose of setback requirements)? COGCC presentation says “capacity of 5 people or more.” Is that 5 children, or does it include caregivers?

- Colorado Revised Statutes (CRS 26-6-102(5)): “Child care center” means a facility, by whatever name known, that is maintained for the whole or part of a day for the care of five or more children who are eighteen years of age or younger and who are not related to the owner, operator, or manager thereof, whether the facility is operated with or without compensation for such care and with or without stated educational purposes…”
Are Thornton’s or Longmont’s proposed regulations relevant to what is being considered for Fort Collins? For example, would Fort Collins consider a 750 ft. setback from active wells like Longmont is trying to impose?

- Longmont requires a 750’ buffer around active wells and a 150’ buffer around plugged and abandoned wells. Thornton’s recently adopted buffers only apply to new wells, not development near existing wells. Longmont’s code language:
  - “(A) Proposed occupied buildings shall be 750 feet or more from existing oil and gas wells and production facilities. (B) Platted residential lots, sports fields and playgrounds shall be 750 feet or more, or the maximum distance practicable as determined by the city, from existing oil and gas wells and production facilities. (C) Proposed unoccupied buildings and other structures shall comply with local fire code requirements. (D) Proposed public roads and major above ground utility lines shall be located 150 feet or more from existing oil and gas wells and production facilities.”
  - “(A) Proposed occupied structures or additions, sports fields or playgrounds shall be located 150 feet or more from existing plugged and abandoned or dry and abandoned oil and gas wells. (B) Proposed unoccupied structures shall be located 50 feet or more from existing plugged and abandoned or dry and abandoned wells. (C) No proposed residential lots shall include any portion of plugged and abandoned or dry and abandoned oil and gas wells.”

- Broomfield requires a minimum buffer of 200 feet for residential lots and 500 feet for public or private school buildings.
  - For plugged and abandoned wells, Broomfield requires a “well maintenance and workover easement” that is a minimum of 50 ft by 100 ft.
  - Verification required that demonstrates, “that the well or former production site has been remediated of hydrocarbon contamination to background levels.”
  - No utility lines allowed within 10 ft of a plugged and abandoned well

- Berthoud, Frederick and Windsor require buffers between new development and existing wells, which range between 150 and 350 ft.

- It is within the City of Fort Collins’ local government authority to adopt buffers around existing wells. The City Council can adopt any buffer distance they deem necessary to protect public health and safety.

Are higher setbacks from plugged and abandoned wells required for High Occupancy Building Units? What about Designated Outside Activity Areas and Urban Mitigation Areas?

- The proposed 1,000 ft setback for High Occupancy Building Units would apply to both active and abandoned wells, unless an applicant pursued the Alternative Compliance option for an abandoned well. The minimum setback around an abandoned well location would be 150 feet for both residential development and High Occupancy Building Units.
Why are alternative compliance buffers exempt from fencing requirements? Does this mean that residents and others can access the area all the way up to the P&A well site?

- Under the proposed code changes, plugged and abandoned wells that meet the requirements for a reduced buffer would be exempt from the fencing requirement. This would allow the buffer area to be used for public benefit once it has been determined that no contamination is present on the site (e.g., park space, community gardens, solar arrays).

How is disturbed surface estimated for P&A wells to determine oil and gas “location”? Is setback measured from well bore or edge of previous well operations?

- The buffer would be measured from the outer edge of the oil and gas location, which is defined (in the proposed code language) as: “(1) the area where the operator of an oil and gas facility has disturbed the land surface in order to locate an oil and gas facility or conduct oil and gas operations, or both; or (2) the area where the operator of an oil and gas facility intends to disturb the land surface in order to locate an oil and gas facility or conduct oil and gas operations, or both, and such facility or operations have received all required permits prior to submission of a residential development plan for the construction of dwellings or high occupancy building within one-thousand feet of the permitted oil and gas facility or operations, even if disturbance of the land surface to locate the oil and gas facility or conduct operations has yet to occur on the site.”

- “Oil and gas facility” is defined (in the proposed code language) as: “equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment, or processing of oil or natural gas. This term shall include equipment or improvements associated with active, inactive, temporarily abandoned, and plugged and abandoned wells.”

**IMPACTS**

What is the impact of plug and cap failure in terms of concentrations and risks? What overall impacts were seen in the 7-8% of plugged and abandoned wells that failed? For those that failed, how long did the leakage occur before it was detected, and would monitoring have allowed mitigation to occur early enough to significantly reduce the impacts of the failure?

- Failure rates, concentrations, risks, impacts and timelines would be highly variable depending on the characteristics and geology of the field, the age of the well, how it was plugged, and other site-specific conditions. Numerous studies have been conducted related to wellbore integrity and failure rates, though staff has not been able to find any that include information for Colorado oil and gas wells. Failure rates worldwide, based on various studies, range from 1.9% to 75% depending on the location, type of production, age and other factors.

- There is a distinction between well barrier failure (a single point of failure that does not lead to a leak) and well integrity failure (failure of multiple barriers that leads to a leak). Well integrity failure is far less common than well barrier failure.

- For all Colorado leak incidents that staff is aware of, the leaks have been from gas associated with wells, and the failure in Berthoud was due to impacts from nearby horizontal drilling. Very little gas is associated with the oil produced in Fort Collins, and the oil is not naturally pressurized, as it requires water flooding and pumping to bring water and oil to the surface.
Can the City commit to ongoing monitoring of P&A wells to include sampling of groundwater from installed groundwater well by developer, soil sampling and soil gas sampling? You may have answered this last month, but maybe the specific details regarding who performs monitoring and how often should be explained again.

- Such a commitment would need to be made by City Council and funding would need to be provided via the biennial budget or another funding mechanism. Such a monitoring program would require additional staff and financial resources. Staff has not explored how ongoing monitoring would be potentially completed by the City of Fort Collins, though the monitoring that is currently occurring in Longmont and planned for Broomfield could be used as models.
- Staff plans to propose a budget offer for the 2019-2020 budget that would fund initial site investigation and research for a number of plugged and abandoned wells, but would not include site sampling or ongoing monitoring.

How will testing and remediation be accomplished if P&A wells are on private property outside of development site?

- It would be the obligation of the developer to work with adjacent property owners to conduct site investigation, sampling and remediation (if needed). If contamination issues are found, remediation resources from the Colorado Oil and Gas Conservation Commission (COGCC) may also be available.
- If adjacent property owners are not cooperative, the decision maker for the project could consider a Modification of Standard depending on site-specific considerations and if it has been determined there is no contamination on the development site itself.

**CODE**

What is the appropriate language if the code requirement would be based on a minimum distance that cannot be altered by variance?

- The exact language would need to be determined/reviewed by the City Attorney’s Office, but would be similar to, “This section shall not be subject to the Modification of Standards procedure described in Section 2.8 of the Land Use Code.”

In your initial presentation to the AQAB last year, you indicated that setbacks would be measured from property lines, not property dwellings. Is the proposed code consistent with this?

- In the current code measures the buffer to the corner of the nearest occupied dwelling, which is consistent with how COGCC measures buffers for new wells. The AQAB asked staff to consider measurement to the property line instead at their December meeting.
- The proposed code changes do not change how the buffers would be measured (still measured to the nearest occupied building) in order to maintain consistency with COGCC and to avoid significantly impacting very large properties (e.g., parks, natural areas, agriculture sites).

City code seems to indicate that the buffer area is fenced off so that people cannot enter. Is that correct? If so, is any kind of signage required to indicate the purpose of the fence?

- That is correct; the purpose of the fencing is to prevent public access. The code (current and proposed) does not contain language requiring any kind of signage, though public safety or notification signage would be allowed.
• Under the proposed code changes, plugged and abandoned wells that meet the requirements for a reduced buffer would be exempt from the fencing requirement. This would allow the buffer area to be used for public benefit (e.g., park space, community gardens, solar arrays).

Can you please review the requirements for notification if buildings are within 1000 ft. of P&A well? Is there a way to inform residents of High Occupancy Building Units, since owners may not be on-site?
• Currently notification occurs via the recorded subdivision plat for any development sites within 1,000 feet of a well. This information is publically available on the City’s website, but it would be a property owner, resident or tenant’s responsibility to locate the plat.
• An additional form of notification is proposed in the updated code changes, which would require information about the well to be included in a covenant for any new properties/buildings within 1,000 feet of the well. This information would appear during a title search during the purchase of a property, and is also information that an owner or resident could look up themselves.
• In 2017, the City sent a notification letter to all property owners within 1,000 feet of an existing well. It would be the responsibility of those property owners to notify any residents or tenants that were not directly contacted. Well locations are readily available online at: http://cogcc.state.co.us/maps.html#/gisonline

Section 3.826(C)(4)(c)(i)(B) says that “such plan may be required to include” five specific items? Why would all five not always be required? Under what condition would some not be required?
• An applicant would be required “to demonstrate that the well has been properly abandoned and that soil, air and water quality have not been adversely impacted by oil and gas operations or facilities.” The exact details of the sampling plan may vary depending on site-specific conditions or new technology that comes available. For example, the COGCC already has exact, known locations for some plugged and abandoned wells, so a site survey and historical research may not be needed.
Karen moved and Jim seconded a motion to support the reduction of the vector index to 0.5. 
Motion failed, 3-4-1.

- The motion failed due to the Board expressing concern over a lack of data. The Board would like quantifiable data regarding the potential reduction of pesticide use or in human cases associated with the proposed reduced threshold.

Mark moved and Vara seconded a motion to maintain an index threshold of 0.75 with the expectation that this year be used as a pilot study to provide more substantial evidence for a decrease in the threshold. 
Motion passed, 7-1-0.

Jim moved to add amendment below to above motion:

Jim stated that this issue can be revisited if AQAB members are provided rationale for the reduction in vector index based on EPA risk assessment, CDC guidance, local epidemiology, or vector index and incidence data and other quantitative inputs to decision-making and ecotoxicology impacts.

**AGENDA ITEM 2: Oil and Gas - Land Use Code Updates**

The Board continued its discussion regarding a recommendation for proposed updates to the Land Use Code associated with development near oil and gas operations. Mark presented a draft recommendation based on the Board’s previous discussion. Two options within the recommendation required further specification by the Board:

Option #1: implement setbacks consistent with those designated in COGCC setbacks (500 ft) between existing development and new oil and gas operations.

Option #2: take into consideration the documented health impacts of producing oil and gas operations and, following the leads of some other cities, implement setbacks of 750/1000/1500/2000/2500 feet for new residential development around existing oil and gas ops and 750/1000/1500/2000/2500 for High Occupancy Building Units around existing oil and gas facilities.

Mark moved, and Chris seconded a motion to implement setbacks consistent with those recommended by City staff for new oil and gas operations [Option #1 above]
Motion passed, 6-2-0.

The Board reiterated the reservations that they previously discussed regarding the implementation of setbacks for new residential development around existing oil and gas operations. The primary concerns discussed included the lack of data available to justify setback distances and the specifications associated with alternative compliance options. The consensus is that it will be easier to make a recommendation once the CDPHE health risk assessment on emissions from oil and gas operations has been released in summer of 2018.

The Board also discussed the opportunity for changes in setback distances by variance. Rebecca noted that there is currently a process to apply for a variance, stating that all standards in that section of the code are modifiable by the decision-maker based on the criteria that changes cannot be detrimental to the public good, they must be equal or better than the current plan or are nominal or non-consequential. Rebecca cited a recent variance granted (for Waters Edge), which was based on the condition that they plug and abandon the well. Variance compliance and alternative compliance are different mechanisms.
Jim moved, and Arsineh seconded the motion to incorporate language into the Board’s recommendation that setbacks from active wells are not eligible for variances.

Motion passed, 6-2-0

Mark moved, and Greg seconded the motion to implement the same default setbacks for plugged and abandoned wells as for operating wells [500 feet]

Motion passed, 7-1-0

Vara moved, and Mark seconded the motion to prohibit alternative compliance until risks associated with plugged and abandoned wells can be characterized

Motion withdrawn

- Jim and Cassie discussed the previous motion (which was subsequently withdrawn) to prohibit alternative compliance. Cassie noted that the downside to removing alternative compliance is that there’s no longer an incentive to plug and abandon active wells. It also eliminates the opportunity to obtain test results.

- Mark asked for clarification on the rules of plugging and abandoning wells and what the benefits of a developer doing so would be.
  - Cassie stated that if an operator is done producing from an active well, then they need to plug and abandon the well according to COGCC rules. If a developer encounters a previously plugged and abandoned well, then the testing must be performed for the reduced setback. For a previous development, the developer at Waters Edge initiated a process to plug and abandon active wells on the property for reduced setback. The benefit to the community is that they remove an active, operating well.

- Greg and Arsineh discussed the time between plugging and testing, noting that this time frame may have significant effects on the results depending on what’s being tested. For example, ground water moves very slowly, but soil gases move relatively quickly so timing may prove to be significant.

- Jim noted that dramatic reductions in setbacks will create a potential for reduced property values in the future; however, the risk incurred at various setback distances was still not clear.
  - Cassie replied that the well failures documented in literature are not for the same kind of wells present in Fort Collins, so it is difficult to predict changes in property value. We currently have development that preceded the current land use code requirements, with building right up to these old wells.

- Greg asked where City Council stands on this issue.
  - Cassie stated that during the last code change, Council chose to match COGCC specifications. The current proposal would update code to match recent COGCC updates.

- The Board discussed concerns with contamination and the involvement of COGCC. Cassie noted that the COGCC has a program to react to orphan well issues, including remediation. Fort Collins has dead oil which must be actively pumped to the surface, so a well failure would not be expected to include spurting oil, etc. It is not clear the exact liability that COGCC would take on with regards to property values, etc.

*Staff follow up:* Cassie will send a revised version of recommendation to Board based on the changes agreed upon at this meeting.

*Board members should review the recommendation and come back with a clear idea of what they would like to include.*

**AGENDA ITEM 3: City Council Future Committee Meeting on Boards and Commissions**
AGENDA ITEM 1: Oil and Gas - Land Use Code Updates

Rebecca Everette, Senior Environmental Planner, presented the results of community outreach and proposed code changes for consideration. This item is scheduled to go before Council on June 5, 2018. She is hoping for a recommendation from the Board.

- Currently, Prospect Energy is the only operator within the City and most oil and gas activity is concentrated in the Hearthfire neighborhood in northeast Fort Collins. There are 10 active wells within City limits and 16 within the growth management area. There are 20 abandoned wells within City limits and 30 within the growth management area.

- Code changes under consideration include:
  - Increase buffer requirement for residential development near existing oil and gas operations from 350’ to 500’. This change is consistent with current state regulations.
  - Add a buffer requirement of 1000’ for high occupancy buildings near oil and gas operations including public/private schools, nursing facilities, hospitals, life care institutions, correctional facilities and child care facilities. This change is also consistent with current state regulations.
  - A reduced setback (minimum 150’) near plugged and abandoned wells if specific requirements are met (via alternative compliance:
    - a site survey confirms the well location
    - confirmation that plugging or re-plugging the well meets current state standards
    - soil, air and groundwater sampling are performed regularly
    - installation of permanent monitoring equipment for future use
    - the area is deemed safe for residential development
  - Create an additional means of disclosure to future property owners

- Current COGCC plugging requirements:
  - “Plugs must permanently prevent migration of oil, gas, water, or other substance from the formation or horizon in which it originally occurred.”
  - Spaces between cement plugs should be filled with water, mud or other fluids of sufficient density to maintain appropriate pressure levels
  - Cement plugs must be a minimum of 100’ long and extend at least 100’ above each “zone” to be protected
    - Cement plug required from surface to 50’ in depth
    - Permanent markers at surface

- Current disclosure includes a radius note on the plat that shows all properties within 1000’ of an existing well. City staff are proposing an additional requirement for a recorded declaration of all properties within 1000’ for future property buyers.

- Outreach included:
  - The City mailed notifications to every property owner within 1000’ of any active or plugged well,
  - Emailed stakeholders and developers,
  - Developed an online questionnaire,
  - Created a City-wide posting on Nextdoor
  - Offered one-on-ones to residents.

- Public Comment
  - Majority support increased buffer around active wells
  - Majority concerned about reduced buffers around plugged/abandoned wells, health impacts and long-term failures
  - Majority agree that additional research and sampling is required

Discussion
Chris asked what is done with sampling data and if there are certain monitoring standards that must be met for alternative compliance. If sampling results are high, would a reduced setback be allowed?

- Rebecca responded that exact techniques/methods are not detailed within codes because technology and data standards change over time. The resolution of the code, as explicitly specified within its purposes and goals, is to adequately protect residences and mitigate any harmful contaminants. If high levels of contaminants or leaks were discovered, they would be reported to the state/COGCC and a reduced buffer would likely be denied unless remediated.

Arsineh noted that it is common for casings to fail over the long-term and enquired whether the City could monitor for such failures over the long-term, especially in soils and water?

- At this time the proposed code changes would only require initial sampling by the developer; no long-term sampling measures are stipulated, nor have they been budgeted for. City Staff has been exploring Longmont’s model; their program conducts initial sampling, followed by subsequent annual monitoring at all wells to check for soil vapor and groundwater contamination. The equipment to sample soil and water can be easily installed and the City has already priced such equipment.

Arsineh enquired about the point from which setback distances were measured.

- Rebecca responded that setback distances are determined from the overall operation site, including the well bore, the pad and any equipment involved in the operation.

Mark and Rebecca discussed the issue that occurred in Firestone which originated from a cut flowline attached to an active gas well. There may be flowlines coming from abandoned wells in Fort Collins, but if there are, any new development would have to identify those.

Vara enquired whether or not residential child care facilities fall under the high-occupancy designation with regards to the 1000’ setback rule.

Staff Follow-Up: Rebecca will clarify how the state defines childcare operations; it likely depends upon how they’re licensed.

Vara asked when these codes would take effect and who they would impact.

- Rebecca stated that the new requirements would only apply to new development projects and would be paid for by the developer; the new buffers would not apply to existing structures. Furthermore, the majority of plugged and abandoned wells are already developed, so it’s unlikely that there will be a lot of new development in such areas as there is not much room for infill.

Harry asked if the financial cost/benefits of the proposed code changes have been calculated.

- Rebecca provided a cost per site breakdown and stated that there is a high incentive to perform testing to attain the 150’ setback radius; as much as ~16 acres of developable land could be gained by complying with testing and reporting requirements.

Karen asked if the City will require developers to utilize certain companies for testing, and if the City would consider performing the monitoring work themselves.

- Rebecca replied that the City cannot endorse a private contractor for any work, but they can review qualifications. She noted that they don’t currently have staff with the expertise to perform ongoing monitoring and that Council would have to approve funding to hire such staff members. This has been discussed.

Matt asked if there is anything written in code that allows it to evolve with state setback changes?

- Rebecca responded affirmatively and noted that the language in the new code is meant to be flexible enough to change with COGCC requirements. The City will continue to evaluate this code as more information becomes available.

Matt expressed concern that annual testing may not be frequent enough. Residents could potentially be
exposed to harmful emissions for extended periods of time between testing. He asked if the new code would allow customer concerns or complaints to drive more frequent testing at sites that have been approved for a reduced buffer. For example, if residents noticed the emission of a strong odor, would they have the power to force immediate testing (and mitigation)?

- Cassie replied that the state would likely respond and ask for sampling at such a time. She went on to note that if a developer encounters a plugged and abandoned well that they were previously unaware of, they must take ownership of it, especially if it was damaged during construction.

- Mark asked if Fort Collins has the authority to specify setbacks that surpass the State’s.
  - Rebecca responded that other local communities have adopted buffer requirements that are higher than the State’s requirements and that Fort Collins could as well, but she noted that it could generate legal challenges from developers.

- Mark requested more data regarding failure rates of plugged and abandoned wells and asked who is liable for the resulting safety and air quality impacts.
  - Rebecca cited a 7-8% failure rate of plugged and abandoned wells based on data from a study in Alberta, Canada. Longmont has found that chemicals used during remediation have greater impacts on soil and groundwater than well leaks have had; however, there are not currently many studies on this topic.

- Jim and Rebecca discussed the setback distances adopted by other cities. Longmont has adopted 750’, Thornton has adopted >1000’, but many communities still don’t require buffers. Jim expressed a desire to see data regarding the effects to air quality and groundwater at each of the proposed setback distances and would like to understand the COGCC and Longmont’s methodology for choosing these distances.

- Vara also expressed concerns about mitigation for natural disasters affecting oil and gas infrastructure and area integrity.

The Board decided that they are not ready to make an official recommendation at this time. Members would like to know exactly how and why the proposed setback distances have been chosen, what constitutes a well failure, and what the potential health impacts associated with a failure are. CDPHE is currently working on a health risk assessment on emissions from oil and gas operations that will be released in 2018. Rebecca noted that these setback distances can be reevaluated after the study has been released. The Board will make a recommendation at the next meeting after discussing how setback distances are chosen with Rebecca.

Staff Follow-Up: Rebecca will provide more information about how setback distances were chosen at the next AQAB meeting.

AGENDA ITEM 2: Board Elections

Harry moved, and Jim seconded a motion to elect Mark as the Chair for the next term
Motion passed, 8-0-0.

Mark moved, and Harry seconded a motion to elect Vara as the Vice Chair
Motion passed, 8-0-0.

AGENDA ITEM 3: Discussion Items

Coordination with other committees

- The AQAB previously decided to participate in the Economic Advisory Committee project to organize
MINUTES
CITY OF FORT COLLINS
AIR QUALITY ADVISORY BOARD

Date: Monday, December 18, 2017
Location: Colorado River Room, 222 Laporte Ave.
Time: 5:30–8:00 p.m.

For Reference
Mark Houdashelt, Chair
Ross Cunniff, Council Liaison 970-420-7398
Cassie Archuleta, Staff Liaison 970-416-2648

Board Members Present
Arsineh Hecobian
Mark Houdashelt, Chair
Harry Edwards
Chris Wood
Tom Griggs
Vara Vissa, Vice-Chair
Gregory Miller
Jim Dennison
Greg Clark

Board Members Absent
None

Staff Present
Cassie Archuleta, Staff Liaison

Guests
Rebecca Everette, Sr. Environmental Planner.

Call to Order: 5:35 p.m.

Approval of Minutes

Tom moved and Harry seconded a motion to approve the October minutes with corrections. Motion passed, 9-0-0.

AGENDA ITEM 1: Oil and Gas Setbacks

Rebecca Everette, Sr. Environmental Planner presented overview of proposed code changes under consideration relating to setbacks for new development near oil and gas operations.

Presentation
The City is considering several code changes related to oil and gas development. Current proposals include:

- Remove references to the 2013 hydraulic fracturing moratorium.
- Increase setback requirements for new development projects near existing, active oil and gas operations from 350 ft. to 500 ft.
- Reduce setback requirements for new development projects near plugged and abandoned wells from 350 ft. to 100 ft.

Fort Collins does not have authority over the permitting or regulating of oil and gas wells; that is done by the State. Fort Collins can determine reciprocal setbacks, which are the distances between new land development and existing oil and gas operations. Current code specifies a 350-ft. buffer for new development. Proposed code change would increase to 500 ft. for active wells to be consistent with the state standards for new wells. A second proposed code change would reduce the reciprocal setback for plugged and abandoned wells to 100 feet.

**Discussion**

- Do we keep an inventory of these wells?
  - The Colorado Oil and Gas Conservation Commission (COGCC) keeps maps of wells, but accuracy of older locations is questionable.

- What do the 20 known plugged and abandoned wells in Fort Collins look like?
  - Plugged and abandoned wells look like the surface. They are plugged below the ground with a possible surface marker. They are capped below the surface, usually covered by grass and difficult to identify. Surveyor’s would be able to find, but not totally obvious. States have pulled together documentation and they continue to update this documentation on both active and inactive wells.

- Why do the wells in Weld County have a wall around them?
  - These are sound, light and noise barriers required by the 32-ft. barrier walls. The well’s operating hours are curtailed if located near neighborhoods.

- What is the meaning behind the 500-foot selected state standards? Would 250 feet make a difference in air quality?
  - Possibly. Depending upon the site, the reduction of the concentration of an air contaminant can be significant. A health risk assessment is being performed using some of the newer data from a front range study.

- There is a school near Greeley. That school building is the distance indicator to the well, with a playground being in between. This makes the distance closer to the individuals, children. Property line indicator seems more beneficial.
  - The Land Use Code uses the building as the indicator. We have worked with builders to use the property line and are considering changing the code to reflect this as well.

- Are wells in clusters or individual?
  - Fort Collins generally has one well per site. Some new well pads in other communities have upwards of 30 wells.

- The 500-ft. setback may be more appropriate for small communities. Has 1,000 ft. been suggested for high occupancy uses (e.g., hospitals, schools, nursing homes)?
  - This will be considered in the code updates.

- Exposures and risks need to be evaluated as concrete will degrade over time. Can we place a requirement for buyers to know what is around them? Press the Developers to notify buyers? Perform their due diligence?
  - The City currently requires notification on the subdivision plat. However, this may not be the best way to notify future property owners, so staff is exploring alternatives.

- Who is monitoring the abandoned wells?
Soil and gas monitoring requirements were built in beyond the State’s specifications for the Water’s Edge development. Previous plugged and abandoned wells are not monitored. Longmont is looking into monitoring their plugged and abandoned wells.

- What is the schedule for City Council?
  - This is not on the six-month calendar as yet. Staff are meeting with various boards to take the temperatures from those boards and conducting an online survey and drop-in sessions to gather community input. Once input has been compiled, staff will determine next steps and a timeline for board recommendations and City Council.

http://fcgov.com/oilandgas has online survey available and schedule for drop-in conversations with City staff regarding the proposed setback changes.

AGENDA ITEM 2: Annual Report

Mark Houdashelt, chair, led a discussion on the Annual Report. The final report is due by January 31, 2018. This report was sent out to members, consisting of 3 sections. Feedback and suggestions for changes requested for the rough draft.

Discussion

Board members expressed comments:

- Was an Executive summary needed? Would that give the document a higher likelihood of being read by the City Council?
  - There is usually not a one-paragraph Executive report.
- Section 3 shows that this is a very active board.
- The annual Report discusses how Board activities address items in the work plan in depth.
- All goals have been accomplished for the year.
- The 2nd Section of the Annual Report was added with intent of outlining the additional board member meetings and activities outside the scope of regular meeting attendance.

The Board discussed various ways to shorten or improve the Annual Report but decided to wait until next year to make any major format changes. The Board chair agreed to seek feedback from the Council Liaison regarding the usefulness of the various types of information presented under the current AQAB Annual Report format.

Staff follow-up: Board suggested that a standard template be developed, and Cassie Archuleta offered to look into it.

Board Updates

- The Board discussed the potential use of E-Bikes on City bike trails. City law is not currently in accordance with new State law. At this time, E-bikes can be ridden on the City trails only if the motor is off or the rider has a disability. Limited research has been performed on E-bikes; primarily related to safety and not air quality. Boulder has allowed E-bikes on their trails. Some have recommended there be speed limits on the trails if E-bikes are allowed there.
- Mark brought up discussion regarding the potential for the AQAB to focus more on climate change. He noted that Ross Cunniff suggested that a subcommittee possibly be created to provide more
Updates to Oil and Gas Buffer Regulations
Rebecca Everette, Sr. Environmental Planner
Recommended Changes

1. Increase buffer requirement for residential development near existing oil and gas operations (from 350 ft to 500 ft)

2. Add buffer requirement for “high occupancy building units” near oil and gas operations (1,000 ft)

3. Allow a reduced setback (150 ft min) near plugged and abandoned wells if specific requirements are met (via alternative compliance)

4. Create an additional means of disclosure to future property owners
Current Operations:
- One operator – Prospect Energy
- Exclusively oil production (97% water, 3% oil)
- Limited flaring of gas, very low potential for combustion or explosions

Existing Wells:
- 16 active wells *(10 in city limits)*
- 30 abandoned wells *(20 in city limits)*

Source: [http://cogcc.state.co.us/maps.html#gisonline](http://cogcc.state.co.us/maps.html#gisonline) (10/1/2017)
Background

- Land Use Code **does not** regulate:
  - Siting and permitting of new wells
  - Oil and gas production / operations

- Land Use Code **does** regulate:
  - Setback of new development near existing wells (active and abandoned)
  - Fencing, landscaping and screening measures
  - Disclosure to future property owners
Reciprocal Setbacks / Buffers

- State setbacks for **new** wells:
  - General development: 500 ft
  - High Occupancy Building Units: 1,000 ft

- Current Fort Collins buffer around **existing** wells:
  - Residential development: 350 ft

- Proposed code updates to match State:
  - Residential development: 500 ft
  - High Occupancy Building Units: 1,000 ft

*if State setbacks increase, City buffers would automatically increase to match*
Plugged & Abandoned Wells

- Wells vary in age, production level and techniques, site conditions
- No known issues with Fort Collins P&A wells, some issues seen in other Colorado communities
- Risk of leakage difficult to quantify, varies greatly based on context
- Impacts from expansive soils unlikely

Important to understand history and conditions at each well location
Plugged and abandoned wells have been permanently removed from operation.

**Proposed code update:** Allow a reduced buffer (150 ft min) if verified that:

- Soil and groundwater have not been contaminated by oil and gas activities
- Reduced buffer would not pose a greater health/safety risk for residents
- Remediation has been completed, if necessary
- Well repair or re-plugging completed, if needed
### Incentive for Site Sampling / Remediation

<table>
<thead>
<tr>
<th>Buffer Radius</th>
<th>Area (ac)</th>
<th>Area Gained w/ 150’ buffer</th>
</tr>
</thead>
<tbody>
<tr>
<td>150 ft</td>
<td>1.6 ac</td>
<td>-</td>
</tr>
<tr>
<td>500 ft</td>
<td>18.0 ac</td>
<td><strong>16.4 ac</strong></td>
</tr>
<tr>
<td>1,000 ft</td>
<td>72.1 ac</td>
<td><strong>70.5 ac</strong></td>
</tr>
</tbody>
</table>

- Est. cost for research and sampling: $16,000
- Est. cost for plugging and abandoning a well: $84,000
Disclosure to Future Property Owners

- **Proposed addition:**
  - Recorded declaration on titles for all properties within 1,000 ft of existing well
Community Outreach

- Mailing to affected property owners
- Email to stakeholders and developers
- Online questionnaire
- Citywide posting on Nextdoor
- Drop-in sessions to talk with staff
- Discussions with Planning & Zoning Board, Air Quality Advisory Board and Natural Resource Advisory Board
- Individual phone calls and emails

*Over 1,100 people directly contacted*
Recommended Modifications

Based on board input, the following changes were made to proposed code language:

- No parks, playgrounds, recreational fields or public gathering spaces allowed in buffers
- Require 5 years of annual monitoring (for P&A wells)
- Certify that the site is free from contamination and is safe for residential use
- Require professional third-party opinion on the safety of a reduced setback
- Require remediation of environmental contamination, well repair, or re-plugging if necessary
1. Increase buffer requirement for residential development near existing oil and gas operations (from 350 ft to 500 ft)
2. Add buffer requirement for “high occupancy building units” near oil and gas operations (1,000 ft)
3. Allow a reduced setback (150 ft min) near plugged and abandoned wells if specific requirements are met (via alternative compliance)
4. Create an additional means of disclosure to future property owners
ORDINANCE NO. 114, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE 3 OF THE LAND USE CODE REGARDING BUFFERING REQUIREMENTS FOR DEVELOPMENT IN RELATION TO OIL AND GAS FACILITY LOCATIONS

WHEREAS, on December 2, 1997, by its adoption of Ordinance No. 190, 1997, the City Council enacted the Fort Collins Land Use Code (the "Land Use Code"); and

WHEREAS, at the time of the adoption of the Land Use Code, it was the understanding of staff and the City Council that the Land Use Code would most likely be subject to future amendments, not only for the purpose of clarification and correction of errors, but also for the purpose of ensuring that the Land Use Code remains a dynamic document capable of responding to issues identified by staff, other land use professionals and citizens of the City; and

WHEREAS, since its adoption, City staff and the Planning and Zoning Board have continued to review the Land Use Code and identify and explore various issues related to the Land Use Code and have now made new recommendations to the Council regarding certain issues that are ripe for updating and improvement; and

WHEREAS, the proposed changes to the Residential Buffering Land Use Code requirements are to ensure the health and safety of the residents of development in close proximity to oil and gas facility locations; and

WHEREAS, the City Council has determined that the recommended Land Use Code amendments are in the best interests of the City and its citizens.

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

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

Section 2. That Section 3.8.26 of the Land Use Code is hereby amended to read as follows:

3.8.26 Residential Buffering for Residential and High Occupancy Building Units

(A) Applicability. These standards apply only to applications for that include residential development uses and, to the extent legally applicable, high occupancy building units. Standards regarding Buffer Yard D shall not apply to any lot for which a site specific development plan with vested rights was approved prior to [Insert Effective Date of Ordinance] so long as such site specific development plan was, or is, valid at the time of issuance of any building permit for the construction or modification of any dwelling unit or high occupancy building unit on such lot.
(B) **Purpose.** The purpose of this Section is to provide standards to separate residential land uses and high occupancy building units from existing industrial uses, in order to eliminate or minimize potential nuisances such as dirt, litter, noise, glare of lights and unsightly buildings or parking areas, or to provide spacing to reduce adverse impacts of noise, odor, air pollutants, hazardous materials or site contamination, or danger from fires or explosions.

(C) **Buffer standards.** Buffer yards shall be located on the outer perimeter of a lot or parcel and may be required along all property lines for buffering purposes and shall meet the standards as provided in this Section.

1. Only those structures used for buffering and/or screening purposes shall be located within a buffer yard. The buffer yard shall not include any paved area, except for pedestrian sidewalks or paths or vehicular access drives which may intersect the buffer yard at a point which is perpendicular to the buffer yard and which shall be the minimum width necessary to provide vehicular or pedestrian access. Fencing and/or walls used for buffer yard purposes shall be solid, with at least seventy-five (75) percent opacity.

2. There are four (4) types of buffer yards which are established according to land use intensity as described in Chart 1 below. Buffer yard distances are established in Chart 2 below and specify deciduous or coniferous plants required per one hundred (100) linear feet along the affected property line, on an average basis.

3. The buffer yard requirements shall not apply to temporary or seasonal uses or to properties which are separated by a major collector street, arterial street, or highway.

4. **Additional Standards Applicable to Buffer Yard D.** The following requirements shall also apply to development located in Buffer Yard D:

   a. **Measured.** For purposes of Buffer Yard D standards, the buffer yard shall be measured as the distance from the outer edge of an existing oil and gas operation site location to the nearest wall or corner of any dwelling or high occupancy building unit proposed in the residential development. The term existing oil and gas operation site location shall include the impact area of any well that has received all required permits prior to submission of the residential development plan, even if drilling has yet to occur on the site. Buffer Yard D areas may include paved areas, notwithstanding paragraph (1) above.
(b) **Minimum Buffer Distances.** The following minimum buffer distances shall apply:

1. **Residential Development.** The minimum buffer between a dwelling and any oil and gas location shall be five hundred (500) feet, or the Colorado Oil and Gas Conservation Commission designated setback distance, whichever is greater. Public playgrounds, parks, recreational fields, or community gathering spaces shall not be placed within a buffer. Private common areas within a buffer shall not contain playgrounds, parks, recreational fields, or community gathering spaces.

2. **High Occupancy Building Units.** The minimum buffer between a high occupancy building unit and any oil and gas location shall be one thousand (1,000) feet, or the Colorado Oil and Gas Conservation Commission designated setback distance, whichever is greater. Public or private playgrounds, parks, recreational fields, or community gathering spaces shall not be allowed within a buffer.

(c) **Alternative compliance buffer reduction from plugged and abandoned wells.** Upon applicant request, the decision maker may approve a reduced buffer distance from a plugged and abandoned well for which reclamation has been completed, all of the aforementioned in accordance with Colorado Oil and Gas Conservation Commission regulations, in lieu of the minimum buffer distances set forth in the immediately preceding Subsection (b), provided that the approved reduced buffer is no less than 150 feet from the permanently abandoned well and meets the requirements specified below.

1. **Procedure.** To request alternative compliance, an alternative compliance buffer reduction plan shall be prepared and submitted in accordance with the submittal requirements established by the Director. At a minimum, the plan must:

   a) Clearly identify and discuss the proposed buffer reduction and the ways in which the plan will equally well or better eliminate or minimize the nuisances and reduce the adverse effects referenced in the purpose of this Section than would a plan which complies with the separation and spacing standards of this Section.
b) Include information regarding environmental testing and monitoring for the site. Site investigation, sampling, and monitoring shall be conducted to demonstrate that the well has been properly abandoned and that soil, air and water quality have not been adversely impacted by oil and gas operations or facilities or other sources of contamination. Such sampling and monitoring shall be conducted by a qualified environmental engineering or consulting firm with experience in oil and gas investigations. Director approval that the sampling and monitoring plan contains the information required pursuant to this subsection b) is required prior to sampling occurring and such plan shall include, but is not limited to, the following:

1) Site survey, historical research, and/or physical locating techniques to determine exact location and extent of oil and gas operations and facilities.

2) Documentation of plugging activities, abandonment and any subsequent inspections.

3) Soil sampling, including soil gas testing.

4) Groundwater sampling.

5) Installation of permanent groundwater wells for future site investigations.

6) A minimum of five (5) years of annual soil gas and groundwater monitoring at the well location.

(c) Upon completion of the site investigation and sampling, not including the ongoing monitoring, the consultant must provide a written report verifying that the soil and groundwater samples meet applicable EPA and State residential regulations and that a reduced buffer would not pose a greater health or safety risk for future residents or users of the site. Otherwise, the decision maker may specify an appropriate buffer distance or require
that the following actions be completed by a qualified professional before development may occur, including but not limited to:

1) Remediation of environmental contamination to background levels.

2) Well repair or re-plugging of a previously abandoned well.

2. **Review Criteria.** To approve an alternative compliance buffer reduction plan, the decision maker must first find that the proposed alternative plan eliminates or minimizes the nuisances and reduces the adverse effects referenced in the purpose of this Section equally well or better than would a plan which complies with the separation and spacing standards of this Section. An approved alternative compliance buffer reduction plan shall be exempt from the screening requirements of Chart 2 – Buffer Yard Types and below Subsection (e) regarding fencing.

(bd) **Disclosure.** If any residential development or dwelling, or high occupancy building unit is proposed to be located within one thousand (1,000) feet of an existing oil and gas operation location, then the following requirements shall apply:

1. At such time as the property to be developed is platted or replatted, the plat shall show the one-thousand-foot radius from such oil and gas location and shall contain a note informing subsequent property owners that certain lots shown on the plat are in close proximity to an existing oil and gas operation location.

2. For residential developments requiring a declaration pursuant to the Colorado Common Interest Ownership Act, a statement shall be included in such declaration specifying the lots within such residential development upon which dwellings may be constructed that are within one thousand (1,000) feet of an oil and gas location. The approved plat for such residential development shall be attached to the recorded declaration. Where no such declaration is required, the property owner shall record a statement on the property where the dwelling is located indicating that such property is located within one thousand feet of an oil and gas location.
Fencing. If any residential development is proposed to be located within five hundred (500) feet of an existing oil and gas operation location, and if an existing fence does not surround the oil and gas operation location, the developer must erect a fence that restricts public access to the oil and gas location must be erected by the developer along the property boundary between the oil and gas operation location and the development that restricts public access to the oil and gas operation.

**Chart 1**

**Land Use Intensity Categories**

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Intensity Category</th>
<th>Buffer Yard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Airports/airstrips</td>
<td>Very High</td>
<td>C</td>
</tr>
<tr>
<td>Composting facilities</td>
<td>High</td>
<td>B</td>
</tr>
<tr>
<td>Dry cleaning plants</td>
<td>Very High</td>
<td>C</td>
</tr>
<tr>
<td>Feedlots</td>
<td>Very High</td>
<td>C</td>
</tr>
<tr>
<td>Heavy industrial uses</td>
<td>Very High</td>
<td>C</td>
</tr>
<tr>
<td>Light industrial uses</td>
<td>High</td>
<td>B</td>
</tr>
<tr>
<td>Junkyards</td>
<td>High</td>
<td>B</td>
</tr>
<tr>
<td>Outdoor storage facilities</td>
<td>High</td>
<td>B</td>
</tr>
<tr>
<td>Recreation vehicle, boat, truck storage</td>
<td>Medium</td>
<td>A</td>
</tr>
<tr>
<td>Recycling facilities</td>
<td>High</td>
<td>B</td>
</tr>
<tr>
<td>Agricultural research laboratories</td>
<td>High</td>
<td>B</td>
</tr>
<tr>
<td>Resource extraction</td>
<td>Very High</td>
<td>C</td>
</tr>
<tr>
<td>Oil and gas operations, including plugged and abandoned wells</td>
<td>Very High</td>
<td>D</td>
</tr>
<tr>
<td>Transportation terminals (truck, container storage)</td>
<td>High</td>
<td>B</td>
</tr>
<tr>
<td>Warehouse &amp; distribution facilities</td>
<td>High</td>
<td>B</td>
</tr>
<tr>
<td>Workshops and custom small industry</td>
<td>Medium</td>
<td>A</td>
</tr>
</tbody>
</table>

**Chart 2**

**Buffer Yard Types**

<table>
<thead>
<tr>
<th>Type - Base Standard (plants per 100 linear feet along affected property line)*</th>
<th>Option Width</th>
<th>Plant Multiplier **</th>
<th>Option: Add 6' Wall</th>
<th>Option: Add 3' Berm or 6' Fence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buffer Yard A:</td>
<td>15 feet</td>
<td>1.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>20 feet</td>
<td>.90</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 Shade Trees</td>
<td>25 feet</td>
<td>.80</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 Ornamental Trees or Type 2 Shrubs ***</td>
<td>30 feet</td>
<td>.70</td>
<td>.65</td>
<td>.80</td>
</tr>
<tr>
<td>3 Evergreen Trees</td>
<td>35 feet</td>
<td>.60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plant Type</td>
<td>Width 1</td>
<td>Width 2</td>
<td>Width 3</td>
<td>Width 4</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>15 Shrubs (33% Type 1, 67% Type 2)</td>
<td>40 feet</td>
<td>.50</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Buffer Yard B:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15 feet</td>
<td>15 feet</td>
<td>1.25</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20 feet</td>
<td></td>
<td>1.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>25 feet</td>
<td></td>
<td>.90</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Shade Trees</td>
<td>30 feet</td>
<td>.80</td>
<td>.75</td>
<td>.85</td>
</tr>
<tr>
<td>4 Ornamental Trees or Type 2 Shrubs ***</td>
<td>35 feet</td>
<td>.70</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 Evergreen Trees</td>
<td>40 feet</td>
<td>.60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>25 Shrubs (Type 2)</td>
<td>45 feet</td>
<td>.50</td>
<td></td>
<td></td>
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<tr>
<td><strong>Buffer Yard C:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25 feet</td>
<td></td>
<td>1.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>30 feet</td>
<td></td>
<td>.90</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 Shade Trees</td>
<td>35 feet</td>
<td>.80</td>
<td>.75</td>
<td>.85</td>
</tr>
<tr>
<td>6 Ornamental Trees or Type 2 Shrubs ***</td>
<td>40 feet</td>
<td>.70</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Evergreen Trees</td>
<td>45 feet</td>
<td>.60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>30 Shrubs (Type 2)</td>
<td>50 feet</td>
<td>.50</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Buffer Yard D:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>350-500 feet</td>
<td></td>
<td>1.25</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>High occupancy building unit</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Oil and gas facility</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* "Base standard" for each type of buffer yard is that width which has a plant multiplier.

** "Plant multipliers" are used to increase or decrease the amount of required plants based on providing a buffer yard of reduced or greater width or by the addition of a wall, berm or fence.

*** Shrub types: Type 1: 4’ - 8’ High Type 2: Over 8’ High

Section 3. That Section 5.1.2 of the Land Use Code is hereby amended by the addition of three new definitions which read in their entirety as follows:

*High occupancy building unit* shall mean any building type listed in the Colorado Oil and Gas Conservation Commission definition of a High Occupancy Building Unit set forth in the Code of Colorado Regulations.

*Oil and gas facility* shall mean equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment, or
processing of oil or natural gas. This term shall include equipment or improvements associated with active, inactive, temporarily abandoned, and plugged and abandoned wells.

*Oil and gas location* shall mean: (1) the area where the operator of an oil and gas facility has disturbed the land surface in order to locate an oil and gas facility or conduct oil and gas operations, or both; or (2) the area where the operator of an oil and gas facility intends to disturb the land surface in order to locate an oil and gas facility or conduct oil and gas operations, or both, and such facility or operations have received all required permits prior to submission of a residential development plan for the construction of dwellings or high occupancy building within one-thousand feet of the permitted oil and gas facility or operations, even if disturbance of the land surface to locate the oil and gas facility or conduct operations has yet to occur on the site.

Introduced, considered favorably on first reading, and ordered published this 21st day of August, A.D. 2018, and to be presented for final passage on the 4th day of September, A.D. 2018.

____________________________
Mayor

ATTEST:

____________________________
City Clerk

Passed and adopted on final reading on this 4th day of September, A.D. 2018.

____________________________
Mayor

ATTEST:

____________________________
City Clerk
AGENDA ITEM SUMMARY

City Council

AGENDA ITEM SUMMARY

August 21, 2018

STAFF

Josh Birks, Economic Health Director
Tom Leeson, Director, Comm Dev & Neighborhood Svrs
John Duval, Legal

SUBJECT

Resolution 2018-079  Adopting a Revised Policy for Reviewing Service Plans of Metropolitan Districts.

EXECUTIVE SUMMARY

The purpose of this item is to consider adoption of a revised policy for reviewing service plans for Title 32 Metropolitan Districts (“Metro Districts”). In 2008, the City Council adopted the existing policy by Resolution 2008-069. At that time, Council responded to changing market conditions to enable the use of Metro Districts to primarily support commercial development. Residential development faces similar market conditions, as well as constrained land supply. The proposed revisions address these conditions while furthering several City goals.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

Policy Context

In 2008, the City Council adopted a policy for reviewing proposed service plans for Title 32 Metropolitan District (“Metro Districts”) Service Plans (“Service Plans”) by Resolution 2008-069. The policy was intended to aid commercial development addressing escalating infrastructure costs and to compete with commercial development in adjacent communities. At the time, City Council preferred to adopt a policy that excluded residential developments, except mixed-use projects. The policy included a limit on the assessed value ratio between commercial and residential to 90 percent / 10 percent.

Today, residential development faces similar market conditions - rising infrastructure, construction, and land costs - as well as constrained land supply and limited access to key resources, such as water. In addition, the City’s population forecast indicates that build-out of the community will likely happen in the next 25 to 30 years. An update to the Metro District policy will address these market conditions and enable residential development to deliver several City objectives.

Summary of Work to Date

City Council has reviewed the purpose and nature of Metro Districts and the existing policy in three previous work sessions, on October 24, 2017, November 28, 2017, and July 10, 2018. At the most recent work session, Council provided the following direction on the draft policy and model service plan:

- **Public Benefits** - Council provided a variety of feedback on the public benefits described in the policy: (a) appreciate the increased specificity; (b) maintain focus on achieving community “stretch” goals, (c)
consider a systems approach and the interplay between the various objectives; and (d) avoid "checking boxes".

- **Transparency** - Council provided feedback regarding public notice, financial transparency, and engagement: (a) supports providing a form of notice to be used during real estate transactions; (b) supports publishing and sharing financial statements of districts provided as part of the annual report requirement; and (c) encourages board meetings occur more frequently than the minimum annual requirement.

- **Affordable Housing** - Council shared the following feedback on affordable housing: (a) attainable or workforce housing could also be part of the objectives; (b) concern about the ability to deliver affordable housing with increased property tax costs; and (c) please share some examples of how a metro district would affect some individual homeowners cost of living.

- **Policy as Framework** - Staff reiterated, and Council agreed that the policy should establish a framework for creating and evaluating Service Plans that will deliver extraordinary public benefits - Council retains the final approval of all Service Plans regardless of the adopted policy.

- **Other** - Remove the limitation on covenants currently in the Model Service Plan.

**Requested Council Follow-Up**

At the July 10, 2018 City Council Work Session, follow-up was requested on several aspects of the proposed revisions to the Metro District policy. These areas included: transparency, affordable housing, and impacts to the cost of home ownership. Below is additional information on each area.

**Transparency**

Metro Districts follow the same “sunshine” laws as any other governmental entity in Colorado, as well as additional requirements in the Metro District statutes. Specifically, a Metro District must notice all meetings by posting the time and place of the meeting at three locations within the district and publishing notice in a widely distributed publication. In addition, all State required annual financial reports are published on the Department of Local Affairs website and viewable by the public. In addition to these steps required by the State, the City has included the following items in the Metro District Policy and Model Service Plan:

- Consent for the City to publish on its own website the annual report and fiscal statements submitted by a Metro District on the City’s own website. This will be hosted on a new section of the website including general information about Metro Districts, links to DOLA information and Metro Districts, as well as the reports as submitted by existing Metro Districts in the City. Staff will work to have this new section of the website complete by the 2019 reporting period – approximately third quarter of 2019.
- The Model Service Plan indicates that all Metro Districts will host a minimum of three meetings annually. The intent is to host these meetings generally on a quarterly basis with the ability to elect to take one quarter off based on vacation and holiday schedules. A Metro District may meet more frequently as it may choose.

**Affordable Housing**

During Council discussion, the concept of delivering affordable housing via a Metro District was explored and ultimately needed additional clarification. There are several methods for delivering affordable housing that a developer requesting a Metro District might employ. The objective is to deliver the reduced-cost housing without adding additional property tax burden to the purchaser. This could be achieved in the manners described below – other methods may exist:

- **Carve Out** – A developer could elect to carve out the affordable housing lots from a Metro District. The net result is that the lots benefit from adjacent infrastructure constructed, in part, by the Metro District yet do not have the added burden of property taxes associated with the Metro District.
- **Land Bank** – A developer could elect to sell a portion of their property to the City’s land bank program at a market or discounted rate. The Land Bank property could then either be included or excluded from the Metro District. If included in the Metro District, any affordable housing development could take into account
the added property tax burden in developing its sales or rental price with the objective of still delivering a product affordable at the target Area Median Income ("AMI").

- **Land Trust** – A developer could elect to transfer or sell affordable housing lots to a Land Trust operating in the State or Region. The Land Trust could then manage the property in such a way as to minimize the impact of the added property tax from the Metro District to the home owner.

As stated, the above are some examples of how a developer might deliver affordable housing while minimizing the impacts of added Metro District property taxes. However, the above list is certainly not exhaustive.

**Impact on a Typical Homeowner**

Finally, Council requested an analysis comparing the cost of home ownership in and out of a Metro District. A comparative analysis is provided below. The scenarios include:

- **Baseline** – An estimate of home ownership cost including mortgage (principal and interest), property taxes, insurance, and utility costs. The assumptions in this baseline scenario come from average sales price data, historic utility data, and market-based assumptions in interest rate and insurance costs.
- **Metro District** – This scenario uses the baseline assumptions and adds the property tax cost associated with a Metro District, assuming a 50.000 Mill Levy tax.
- **Metro District w/ Zero Energy Ready** – This scenario uses the baseline and metro district scenario assumptions and adds the estimated savings from a home constructed to the Department of Energy Zero Energy Ready standard.
- **Metro District with Zero Energy Ready and Solar** – This scenario uses the baseline and metro district with Zero Energy Ready assumptions and adds rooftop solar. Many homes with rooftop solar see negative utility bills for electricity due to net metering. However, to be conservative in the analysis this scenario assumes the monthly utility cost to be zero.

**Table 1
Home Ownership Cost Comparison by Scenario**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>House Sales Price</td>
<td>$ 400,000</td>
<td>$ 400,000</td>
<td>$ 400,000</td>
<td>$ 400,000</td>
</tr>
<tr>
<td>Monthly Payments/Expenses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mortgage</td>
<td>$ 1,530</td>
<td>$ 1,530</td>
<td>$ 1,530</td>
<td>$ 1,530</td>
</tr>
<tr>
<td>Property Taxes (Excl. Metro)</td>
<td>$ 220</td>
<td>$ 220</td>
<td>$ 220</td>
<td>$ 220</td>
</tr>
<tr>
<td>Metro District Taxes</td>
<td>$ -</td>
<td>$ 120</td>
<td>$ 120</td>
<td>$ 120</td>
</tr>
<tr>
<td>Home Insurance</td>
<td>$ 100</td>
<td>$ 100</td>
<td>$ 100</td>
<td>$ 100</td>
</tr>
<tr>
<td>Electricity Bill</td>
<td>$ 60</td>
<td>$ 60</td>
<td>$ 40</td>
<td>$ -</td>
</tr>
<tr>
<td>Total Monthly Cost</td>
<td>$ 1,910</td>
<td>$ 2,030</td>
<td>$ 2,010</td>
<td>$ 1,970</td>
</tr>
<tr>
<td>Difference vs. Code</td>
<td>$ -</td>
<td>$ 120</td>
<td>$ 100</td>
<td>$ 60</td>
</tr>
</tbody>
</table>
As shown in Table 1 above, a Metro District with 50 Mills increases the total cost of homeownership by 6.3 percent when other factors are considered. This is a significant increase in the monthly cost of home ownership. However, the two examples of homes built to standards that exceed the current code for energy efficiency and include rooftop solar both reduce the impact of the Metro District on the cost of homeownership. These scenarios provide a view of the type of housing that may occur within Metro Districts because of the extraordinary benefit requirement of the policy. The real measure of impact is on attainability of housing, which is illustrated in Table 2 below.

### Table 2
Impact on Income and Attainability by Scenario

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Monthly Cost</td>
<td>$1,930</td>
<td>$2,030</td>
<td>$2,010</td>
<td>$1,970</td>
</tr>
<tr>
<td>Annual Cost</td>
<td>$23,160</td>
<td>$24,360</td>
<td>$24,120</td>
<td>$23,640</td>
</tr>
<tr>
<td>Annual Salary Required</td>
<td>$77,200</td>
<td>$81,200</td>
<td>$80,400</td>
<td>$78,800</td>
</tr>
<tr>
<td>Monthly Salary Required</td>
<td>$6,433</td>
<td>$6,770</td>
<td>$6,700</td>
<td>$6,567</td>
</tr>
<tr>
<td>Hourly Salary Required</td>
<td>$37.12</td>
<td>$39.04</td>
<td>$38.65</td>
<td>$37.88</td>
</tr>
<tr>
<td>Hourly Difference vs. Code</td>
<td>-$</td>
<td>$1.92</td>
<td>$1.53</td>
<td>$0.76</td>
</tr>
</tbody>
</table>

The net impact on housing attainability has been shown in several ways – annual salary, monthly salary, and hourly salary. Table 2 above shows the difference between the hourly salary between the scenarios. Homes built to Zero Energy Ready standard and including rooftop solar have the least impact on attainability with only a 2 percent impact. The impact on salary ranges from 2 percent to 5 percent; however, the overall net effect is not a significant impact on the socio-economic class of household that can afford the homes within a Metro District. In addition, if a value could be assigned to the other types of benefits that may occur in a metro district, such as smart growth design principles (e.g., increased walkability, more open space) and mixed incomes (i.e., because affordable housing development is interspersed amongst market rate housing), the increased cost of taxes from a Metro District may become a fair exchange of value.

**Primary Changes to Policy and Model Service Plan Since July 10, 2018**

Based on feedback from City Council and continued internal discussions, the following changes have been made to the proposed policy and Model Service Plan (A redline version of the Policy has been included as Attachment 1):

**Policy Changes:**

- **Systems Approach** - The Policy Objectives section of the revised Policy now references ways in which the delivery of proposed extraordinary benefits work together as a system to deliver greater benefit to the community than individually.
- **Workforce Housing** - Under the Policy Objectives section of the revised Policy the Strategic Priorities now includes workforce housing as a potential public benefit to be delivered or facilitated by a proposed Metro District (see below for additional details).
- **Public Improvements and Estimated Costs** - The section previously labeled Infrastructure Preliminary Development Plan in the policy has been retitled and adjusted for consistency with the Model Service Plan.
- **Multiple District Model Service Plan** - Finally, the policy now includes two versions of the Model Service Plan.
Plan, one for stand-alone districts and one for consolidated services plans that include multiple districts.

- **Regional Improvements** – The policy now includes a section related to the Regional Improvements concept, including a purpose statement and guidance on eligible improvements.

**Model Service Plan Changes:**

- **Public Benefits** - Clarification that the description of public benefits must be specific and measurable to the extent possible.
- **Covenant Control Prohibition** - This section has been removed from the attached version based on Council feedback.
- **Public Art Requirement** - This section has been removed as the current Art In Public Places code explicitly excludes “any improvements made by any special improvement district.” Any application of the Art In Public Places policy to Metro Districts should be done in context of the larger program.
- **Disclosure to Purchasers** - An exhibit is attached to the Model Service Plan specifying the form of notice that must be provided to purchasers of residential property in a District.
- **Elimination of Mill Levy Cap** - This section which would allow the elimination of the Mill Levy Cap when the issued debt is 50% or less of the assessed value of taxable property in the District, has been removed from the Model Service Plan as it does not represent an approach to operating a District the City wants to apply in all cases. Any inclusion of this provision will be considered on a case-by-case basis in the future and will need to be explicitly proposed by the applicant.

**Public Benefits**

The updated policy (Attachment 1) supports the formation of a Metro District regardless of development type when a District delivers extraordinary public benefits. The public benefits should be: (1) aligned with the goals and objectives of the City whether such extraordinary public benefits are provided by the Metro District or by the entity developing the Metro District because Metro Districts exist to provide public improvements; and (2) not be practically provided by the City or an existing public entity, within a reasonable time and on a comparable basis.

The policy identifies four key public benefit focus areas, including:

1. **Environmental Sustainability Outcomes**: Development of public improvements that deliver or facilitate the delivery of specific and measurable environmental outcomes, including but not limited to: (i) reduction of Green House Gases (GHG), (ii) conservation of water or energy, (iii) encourage multimodal transportation, (iv) enhance community resiliency - against future environmental events (e.g., flooding, drought, etc.); (v) increase renewable energy capacity; and/or (vi) deliver other environmental outcomes.

2. **Critical Public Infrastructure**: Development of public improvements that address or facilitate addressing significant infrastructure challenges previously identified by the City, either within the development or the area immediately adjacent to the District, whether such improvements address a locally significant challenge or a City-wide challenge.

3. **Smart Growth Management**: Development of public improvements that deliver or facilitate the delivery of specific design components that: (i) increase the density of development within the District; (ii) establish, enhance or address the walkability and pedestrian friendliness of the District; (iii) increase the availability of transit and/or multimodal oriented facilities; (iv) create compelling public spaces; and/or (v) encourage mixed-use development patterns.

4. **Strategic Priorities**: Development of public improvements that deliver or facilitate the delivery of strategic priorities specified in existing long-term strategic planning documents, such as City Plan, Affordable Housing Plan, Economic Health Strategic Plan, and applicable Sub-Area Plans. These priorities include, but are not limited to:

   a. **Affordable Housing**: Deliver or facilitate the delivery of additional affordable housing units at the City’s defined level of Area Median Income (“AMI”) or below. The City defines Affordable Housing as units affordable to a household earning 80 percent of AMI.
b. **Workforce Housing**: Deliver or facilitate the delivery of workforce housing units in the City’s defined range of AMI. For purposes of this policy, Workforce Housing units shall be defined as units affordable to a household earning between 80 percent and 120 percent of AMI.

c. **Infill/Redevelopment**: Enable the infill or redevelopment of property within the City, especially when such development is consistent with City Plan.

d. **Economic Health Outcomes**: Enable delivery of specific and measurable economic outcomes, such as:
   (i) job growth; (ii) retention of an existing business; and/or (iii) construction of a missing economic resource.

The policy provides additional detail on these proposed focus areas by including a list of examples to illustrate the City’s desired outcomes.

**Comparison of Policy Versions**

Following Council guidance, the updated policy retains most of the existing prescriptive elements. The primary changes to the policy include:

- **Mill Levy Cap**: The updated policy would increase the Mill Levy Cap from 40 Mills to 50 Mills with no more than 40 Mills dedicated to debt;
- **Basic Infrastructure**: The updated policy allows the funding of basic infrastructure by Metro Districts only to the extent the infrastructure enables extraordinary public benefit outcomes;
- **Dissolution Limit**: The updated policy requires that the district dissolve within 40 years unless a majority of the district board is residents and votes to refund the debt realizing a net present value saving for the district; and
- **Commercial/Residential Ratio**: The updated policy removes a specific commercial to residential ratio requirement - instead a District must provide extraordinary public benefit to utilize the tool.

The table below provides a side-by-side comparison of key policy provisions:

<table>
<thead>
<tr>
<th>Table 3</th>
<th>Key Policy Provision Comparison</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mill Levy Caps</strong></td>
<td>Existing</td>
</tr>
<tr>
<td>Mill Levy Caps</td>
<td>40 Mills</td>
</tr>
<tr>
<td><strong>Basic Infrastructure</strong></td>
<td>Not favored</td>
</tr>
<tr>
<td>Eminent Domain</td>
<td>Prohibited</td>
</tr>
<tr>
<td>Debt Limitation</td>
<td>100% of Capacity</td>
</tr>
<tr>
<td><strong>Dissolution Limit</strong></td>
<td>40 years</td>
</tr>
<tr>
<td>Citizen Control</td>
<td>As early as possible</td>
</tr>
<tr>
<td>Multiple Districts</td>
<td>Projected over an extended period</td>
</tr>
<tr>
<td><strong>Commercial/Residential Ratio</strong></td>
<td>90% to 10%</td>
</tr>
</tbody>
</table>

In addition, the new policy requires the use of a Model Service Plan *(Attachment 2 and Attachment 3)* that stipulates many additional limitations on the tool. These limitations are based on common practice by several other communities and include but are not limited to:

- **Eminent Domain** - The District is not authorized to exercise its statutory power of eminent domain without first obtaining resolution approval from the City Council.
Agenda Item 25

- **Fire Protection Restriction** - The District is not authorized to plan, design, acquire, construct, install, relocate, redevelop, finance, own, operate or maintain fire protection facilities or services, unless such facilities and services are provided pursuant to an intergovernmental agreement with the Poudre Fire Authority.
- **Public Safety Services** - The District is not authorized to provide policing or safety enforcement services.
- **Golf Construction Restriction** - The District is not authorized to plan, design, acquire, construct, install, relocate, redevelop, finance, own, operate or maintain a golf course unless such activity is pursuant to an intergovernmental agreement with the City.
- **Television Relay and Translation Restriction** - The District is not authorized to plan, design, acquire, construct, install, relocate, redevelop, finance, own, operate or maintain television relay and translation facilities and services.
- **Potable Water and Wastewater Treatment Facilities** - The District is not authorized to plan, design, acquire, construct, install, relocate, redevelop, finance, own, operate or maintain potable water and wastewater treatment facilities.
- **Sales and Use Tax Exemption Limitation** - The District is not allowed to exercise any sales and use tax exemption in the Fort Collins City Code.
- **Consolidation Limitation** - Districts are not allowed to file a request with any Court to consolidate with another Title 32 district without the prior written consent of the City Council.

The biggest additional limitations in the Model Service Plan include:

- **Overlap Limitation** - The boundaries of a District shall not overlap with another district unless the aggregate mill levy for payment of Debt of the overlapping Districts will not at any time exceed the policy's allowed maximum debt mill levy of 40 mills.
- **Initial Debt Limitation** - A District may not issue debt, impose a mill levy for payment of debt, or impose fees for the purpose of repayment of debt before approval by the City of a development plan that secures the public benefits to be delivered and/or an Intergovernmental Agreement (“IGA”) further securing the delivery of the public benefits.

**Regional Improvements Provision**

The proposed draft of the Model Service Plan (**Attachment 2**) includes a section that enables the support of regional improvements. This section is inserted for discussion purposes. The approach may create a viable method for funding much needed regional infrastructure in areas where Metro Districts are likely to be used to support residential development. **The section is optional.**

The regional improvements section provides the ability for the City to request a Metro District to collect and remit an additional mill levy, not subject to the policy maximum mill levy, to the City. These revenues are intended to fund regional improvements required in part by the project within the Metro District. Examples of such improvements could include: vehicular grade separated crossings of railroad lines, improvements to address regionally significant storm water issues, or intersections connecting City streets to an Interstate or similar system.

The regional improvements section (See **Attachment 2**) stipulates:

- The City must identify the type of regional improvements that could be funded with the additional mill.
- Limits the mill to a maximum of 5.000.
- The City and the Metro District must enter into an Intergovernmental Agreement (“IGA”) identifying the specific improvement and anticipated length of collection for the mill.

These stipulations are intended to protect the residents and owners in the District as well as create transparency regarding the use of funds.
Review Process

The process for reviewing Metro District Service Plans includes two primary phases - Letter of Intent ("LOI") and Service Plan Application. The two phases are outlined below and in Attachment 3 - Metro District Service Plan Review Process and Attachment 4 - Interdisciplinary Team Project Charter:

- **Letter of Intent (LOI)** - First phase of the Metro District Service Plan Review process and shall contain (see Policy for specifics):
  - Summary narrative of the proposed development and Metro District purpose
  - Sketch plan of the proposed district, showing: property locations and boundaries, surrounding land uses, proposed use(s), proposed improvements, existing natural features, utility locations, and photographs (if helpful)
  - District need justification
  - Explanation of public benefit and plan to assure delivery by the District
  - District proposal and Service Plan specifics

- **Service Plan Application Review** - Key phase of Metro District Service Plan Review process, including:
  - Formal application submittal by applicant (see Policy and Application for details)
  - Third-Party financial review (if needed) of the Service Plan financial plan assumptions and feasibility
  - Formal staff review and meetings with applicant
  - Council Finance Review based on completed analysis by staff and third-parties - includes a formal recommendation by staff of alignment with existing policy
  - Council work session (if needed) to review specifics of a proposed Service Plan
  - City Council consideration - final step, all Service Plans require Council approval

Evaluation Framework/Criteria

To provide Council information and assessment consistent with this Policy, staff will review and report on Metro District proposals in the following areas:

- **Public Benefit Assessment and Triple Bottom Line Scan**: To comprehensively and consistently evaluate District proposals, an interdisciplinary staff team, inclusive of representatives from Planning, Economic Health, Sustainability, and other Departments as appropriate, will be formed. This team will rely on the City's Triple Bottom Line evaluation approach, and other means, to assess a District proposal consistent with this Policy and City Goals and Objectives more broadly.

- **Financial Assessment**: All District proposals are required to submit a Financial Plan to the City for review. Utilizing the District Financial Plan, and other supporting information which may be necessary, the City will evaluate a District's debt capacity and servicing ability. Additionally, should a District desire to utilize District funding for basic improvements, as determined by the City in its sole discretion, staff will assess the value of this benefit against the public benefits received in exchange.

- **Policy Evaluation**: All proposals will be evaluated against this Policy and the City’s Model Service Plan, with any areas of difference being evaluated and reported on.
Performance Assurances

A key aspect of the updated policy is the requirement to deliver public benefit. To assure that these benefits are delivered in cases where a Metro District itself will not provide the public benefits, the City will require several performance assurances, including:

- **Approved Development Plan** - The Model Service Plan identifies an Approved Development Plan - a development plan or other process established by the City (including but not limited to approval of a final plat or PUD by the City Council) - as the controlling document regarding public improvements to be financed and constructed by a District. This Plan will also document and require as part of the land use approval process the aspects of promised public benefits that cannot be enforced through a Metro District Service Plan.

- **Intergovernmental Agreement** - In some cases, an Approved Development Plan may not be able to enforce the public benefit requirements part of a Metro District Service Plan. In these cases, an Intergovernmental Agreement may also be required to enforce the performance requirements associated with a proposal.

- **Initial Restriction of Powers** - All Metro Districts will include a limitation on the initial use of two key powers (1) levy or collect revenue for the repayment of debt, and (2) issue debt. These powers will be prohibited until an Approved Development Plan and/or Intergovernmental Agreement are executed and in place.

Fees and Staffing

The updated policy includes adjustments to the fees charged to applicants. The intent of the fees is to offset the cost of staffing the intake and review of Metro District Service Plan applications.

**CITY FINANCIAL IMPACTS**

The proposed fee structure should assure that there is no financial impact from the review of proposed Metro District Service Plans. Additionally, statutes - reinforced by the Model Service Plan - isolate the City from any exposure to the on-going operating or debt costs of an individual Metro District. Therefore, there should be no financial impact to the City.

**BOARD / COMMISSION RECOMMENDATION**

The proposed policy was presented to the Economic Advisory Commission on August 15, 2018. Meeting minutes were not available at the time this Agenda Item Summary was printed.

**ATTACHMENTS**

1. Metro District Policy (showing changes since July 10, 2018 Work Session)    (PDF)
2. Model Service Plan (showing changes since July 10, 2018 Work Session)    (PDF)
3. Metro District Service Plan Review Process    (PDF)
4. Interdisciplinary Team Charter - May 2018    (PDF)
5. Work Session Summary, July 10, 2018    (PDF)
6. Powerpoint presentation    (PDF)
Introduction.

This policy establishes the criteria, guidelines and processes to be followed by City Council and City staff in considering and by applicants in submitting to the City service plans for the organization of metropolitan districts or amendments to those plans ("Policy"), as provided in Colorado’s Special District Act in Article 1 of Title 32 of the Colorado Revised Statutes (the “Act”). The Act provides that metropolitan districts are quasi-municipal corporations and political subdivisions ("District") that can be organized within the boundaries of a municipality provided the municipality’s governing body approves by resolution the proposed service plan for the District. Under the Act, the service plan constitutes the document that delineates the specific powers and functions the District can exercise, including the facilities and services it can provide, the taxes it can impose and its permitted financial arrangements (the “Service Plan”). The Act requires Districts to conform to their Service Plans.

Section 1 – Policy Objectives and Statements.

A. This Policy generally supports the formation of a District where it will deliver extraordinary public benefits that align with the goals and objectives of the City whether such extraordinary public benefits are provided by the District or by the entity organizing the District because the District exists to provide public improvements.

B. A District, when properly structured, can enhance the quality of development in the City. The City is receptive to District formation that provides extraordinary public benefits which could not be practically provided by the City or an existing public entity, within a reasonable time and on a comparable basis. It is not the intent of the City to create multiple entities which would be construed as competing or duplicative.

C. The approval of a District Service Plan is at the sole discretion of City Council, which may reject, approve, or conditionally approve Service Plans on a case-by-case basis. Nothing in this Policy is intended, nor shall it be construed, to limit this discretion of City Council, which retains full authority regarding the approval, terms, conditions and limitations of all Service Plans.

D. Policy Objectives.

The City will evaluate a proposed District and its Service Plan based on the District’s ability to deliver public benefits through extraordinary development outcomes, specific examples are provided in Exhibit A and generally occur in the following four focus areas:
1. **Environmental Sustainability Outcomes**: Development of public improvements that deliver or facilitate the delivery of specific and measurable environmental outcomes, including but not limited to: (i) reduction of Green House Gases ("GHG"), (ii) conservation of water or energy, (iii) encourage multimodal transportation, (iv) enhance community resiliency – against future environmental events (e.g., flooding, drought, etc.); (v) increase renewable energy capacity; and/or (vi) deliver other environmental outcomes.

2. **Critical Public Infrastructure**: Development of public improvements that address or facilitate addressing significant infrastructure challenges previously identified by the City, either within or proximate to the District, whether such improvements address a locally-significant challenge or a City-wide challenge.

3. **Smart Growth Management**: Development of public improvements that deliver or facilitate the delivery of specific design components that: (i) increase the density of development within the District; (ii) establish, enhance or address the walkability and pedestrian friendliness of the District; (iii) increase the availability of transit and/or multimodal oriented facilities; (iv) create compelling public spaces; and/or (v) encourage mixed-use development patterns.

4. **Strategic Priorities**: Development of public improvements that deliver or facilitate the delivery of strategic priorities specified in the City’s existing long-term strategic planning documents, such as City Plan, Affordable Housing Plan, Economic Health Strategic Plan, and applicable Sub-Area Plans. These priorities include, but are not limited to:
   
   a. **Affordable Housing**: Deliver or facilitate the delivery of additional affordable housing units at the City’s defined level of Area Median Income (“AMI”) or below. The City defines Affordable Housing as units affordable to a household earning 80 percent of AMI.
   
   b. **Workforce Housing**: Deliver or facilitate the delivery of workforce housing units in the City’s defined range of AMI. For purposes of this policy, Workforce Housing units shall be defined as units affordable to a household earning between 80 percent and 120 percent of AMI.
   
   c. **Infill/Redevelopment**: Enable the infill or redevelopment of property within the City, especially when such development is consistent with City Plan.
   
   d. **Economic Health Outcomes**: Enable delivery of specific and measurable economic outcomes, such as: (i) job growth; (ii) retention of an existing business; and/or (iii) construction of a missing economic resource.

In determining whether a proposed District delivers extraordinary public benefits, the City may consider: (i) ways in which the proposed improvements exceed the City’s minimum requirements and standards; (ii) ways in which the existence of the District facilitates the
extraordinary public benefits and whether the extraordinary benefits are feasible without the District; and (iii) ways in which the proposed extraordinary benefits work together as a system to deliver greater benefit to the community than individually; and (iv) any other factors the City deems relevant under the circumstances.

E. Policy Statements:

1. **Limited Use:** The City wishes to exact a high standard of use for Districts thereby limiting their use. An applicant project is expected to deliver extraordinary benefits across multiple City objectives two or more of the objectives described in Section 1.D. of this Policy.

2. **Broad and Demonstrable Public Benefit:** Districts are expected to provide broad public benefit and the applicant will be asked to demonstrate and provide assurances of those benefits. The City will utilize the Service Plans, development agreements, and other contractual agreements to document and enforce District commitments.

3. **District Governance:** It is the intent of the City that owner/resident control of Districts occur as early as feasible. Service Plans should include governance structures that encourage and accommodate this. The use of control Districts (also known as “service” or “managing” Districts) that allow developers to control the other Districts that provide the tax revenues beyond the time needed to repay the issued debt, is to be discouraged.

4. **Basic Infrastructure Improvements:** A District proposing to fund basic infrastructure improvements will not be favorably received except when used to offset higher costs associated with delivering public benefit through extraordinary development outcomes (see Exhibit A for examples).

5. **Minimum District Size:** A District proposed to issue less than $7 million of authorized debt will not be considered.

Section 2 – Evaluation Criteria

A. To provide City Council with information and an assessment consistent with this Policy, staff will review and report on District proposals in the following areas:

1. **Public Benefit Assessment and Triple Bottom Line Scan:** To comprehensively and consistently evaluate District proposals, an interdisciplinary staff team, inclusive of representatives from Planning, Economic Health, Sustainability, and other Departments as appropriate, will be formed. This team will rely on the City’s Triple Bottom Line evaluation approach, and other means, to assess a District proposal consistent with this Policy and City goals and objectives more broadly.

2. **Financial Assessment:** All District proposals are required to submit a Financial Plan to the City for review. Utilizing the District’s Financial Plan, and other supporting information which may be necessary, the City will evaluate a District’s debt capacity and servicing ability.
Additionally, should a District desire to utilize District funding for basic infrastructure improvements, as determined by the City in its sole discretion, staff will assess the value of this benefit against the public benefits received in exchange.

3. **Policy Evaluation:** All proposals will be evaluated by City staff against this Policy and the City’s “Model Service Plan” attached as **Exhibit “B”**, with any areas of difference being identified, evaluated and reported to City Council.

**Section 3 – Application Process**

A. **Process Overview:** The application process is designed to provide early feedback to an applicant, adequate time for a comprehensive staff review, and the appropriate steps and meeting opportunities with decision makers.

B. **Letter of Interest:** Applicant will provide City with a Letter of Interest and pre-application fee (refer to fees below). The Letter of Interest shall contain the following:

1. Summary narrative of the proposed development and District proposal.

2. Sketch plan showing: property location and boundaries; surrounding land uses; proposed use(s); proposed improvements (buildings, landscaping, parking/drive areas, water treatment/detention, drainage); existing natural features (water bodies, wetlands, large trees, wildlife, canals, irrigation ditches); utility line locations (if known); and photographs (helpful but not required).

3. Clear justification for why a District is needed.

4. Explanation of public benefits, making specific reference to this Policy and other relevant City documents.

5. District proposal and Service Plan specifics, including: District powers and purpose; District infrastructure and costs; mill levy rate (both debt and, operations and maintenance); term of District; forecasted period of build-out; proposed timeline for formation; and current development status of project.

C. **Preliminary Staff Meeting with Applicant (Optional):** Based on an initial review of the Letter of Interest, staff may meet with the applicant to discuss the District proposal, potential public benefits, initial staff feedback, the evaluation process, fees, and other application elements.

D. **Formal Application and Service Plan Submittal:** Upon taking account of staff input, applicant may submit a formal application for consideration following the requirements specified in the City’s District Application, including the Service Plan in which the applicant shall highlight the substantive provisions that deviate from this Policy and the Model Service Plan attached as **Exhibit “B”**.
E. **Formal Staff Review:** An interdisciplinary staff team will review the applicant submittal along with any follow-up documentation that is requested in order to assess the application according to this Policy and other appropriate City policy. Applicants should expect several rounds of feedback and review from City staff.

F. **Council Finance Committee Meeting:** The Council Finance Committee will review all District proposals and provide feedback and recommendations.

G. **Council Work Session Meeting (optional):** Based on the magnitude and complexity of the development project and District proposal, staff and/or the Council Finance Committee may recommend a Council Work Session.

H. **Council Regular Meeting:** City Council meeting to consider Service Plan approval.

H. **Council Public Hearing:** The City Council will conduct a noticed public hearing at a regular or special Council meeting to consider resolution approval of Service Plan. The Service Plan Applicant must cause a written notice of the public hearing to be mailed by first-class mail to all fee title owners of real property within the boundaries of the proposed District(s) and of any future inclusion area proposed in the Service Plan and such notice shall be mailed no later than thirty (30) days before the scheduled hearing date. A notice shall also be published once in a newspaper of general circulation in the City no later than thirty (30) days before the scheduled hearing date. The mailed and published notices shall include the following information:

1. A description of the general nature of the public improvements and services to be provided by the District;

2. A description of the real property to be included in the District and in any proposed future inclusion area, with such property being described by street address, lot and block, metes and bounds if not subdivided, or such other method that reasonably apprises owners that their property will or could be included in the District’s boundaries;

3. A statement of the maximum amount of property tax mill levy that can be imposed on property in the District under the proposed Service Plan;

4. A statement that property owners desiring to have the City Council consider excluding their properties from the District must file a petition for exclusion with the Fort Collins City Clerk’s Office no later than ten (10) days before the scheduled hearing date in accordance with Section 32-1-203(3.5) of the Colorado Revised Statutes;

5. A statement that a copy of the proposed Service Plan can be reviewed in the Fort Collins City Clerk’s Office; and

6. The date, time and location of the City Council’s public hearing on the Service Plan.

**Section 4 –Service Plan**
A. **Purpose:** In addition to the requirements of the Act, a Service Plan should memorialize the understandings and agreements between the District and the City, as well as the considerations that compelled the City to authorize the formation of the District. The Service Plan must also include all applicable information required by the Act.

B. **Compliance with Applicable Law:** Any Service Plan submitted to the City for approval must comply with all state, federal and local laws and ordinances, including the Act.

C. **Model Service Plan:** To clearly communicate City requirements and streamline legal review, the City will require the use of its Model Service Plan attached as Exhibit B. With justification, the City may consider deviations in the proposed Service Plan, but generally all Service Plans should include the following:

1. **Eminent Domain NOT Authorized:** The Service Plan shall contain language that prohibits the District from exercising the power of eminent domain. However, the City may choose to exercise its power of eminent domain to construct public improvements within the District in which case the District and the City will enter into an intergovernmental agreement concerning the public improvements and funding for that use of eminent domain.

2. **Maximum Mill Levy:** The Service Plan shall restrict the District’s total mill levy authorization for both debt service and operations and maintenance to fifty (50) mills, subject to adjustment as provided below. A portion of the Maximum Mill Levy may be utilized by the District to fund operations and maintenance functions, including customary administrative expenses incurred in operating the District such as accounting and legal expenses and otherwise complying with applicable reporting requirements. No more than ten (10) mills may be used for operations and maintenance (the “Operations and Maintenance Mill Levy”).
   a. Increased mill levies may be considered for Districts that are predominately commercial in use, at the sole discretion of the City Council.
   b. The Maximum Mill Levy may be adjustable from the base year of the District as provided for in the Model Service Plan, so that to the extent possible, the actual tax revenues generated by the District’s mill levy, as adjusted, for changes occurring after the base year, are neither diminished nor enhanced as a result of the changes.

3. **Debt Term Limit:** A District shall be allowed no more than forty (40) years for the levy and collection of taxes used to service debt unless a majority of the Board of Directors of the District imposing the mill levy are residents of such District and have voted in favor of a refunding of a part or all of the Debt and such refunding is for one or more of the purposes authorized in C.R.S. Section 11-56-104.
4. **District Dissolution:** Perpetual Districts shall not be allowed except in cases where ongoing operations and maintenance are required. Except where ongoing operations and maintenance has been authorized, a District must be dissolved as soon as practical upon:
   
a. The payment of all debt and obligations; and
   
b. The completion of District development activity.

5. **District Fees:** Impact fees, development fees, service fees, and any other fees must be identified with particularity in the District Service Plan. Impact and development fees must not be levied or collected against the end user – i.e., residents and/or non-developer owners.

6. **Notice Requirements:** The Service Plan shall require that the District use reasonable efforts to assure that all developers of the property located within the District provide written notice to all purchasers of property in the District regarding the District’s existing mill levies, its maximum debt mill levy, as well as a general description of the District’s authority to impose and collect rates, fees, tolls and charges. The form of notice shall be filed with the City prior to the initial issuance of the debt of the District imposing the mill levy.

7. **Annual Report:** The Service Plan must obligate the District to file an annual report not later than September 1 of each year with the City Clerk for the year ending the preceding December 31, the requirements of which may be waived in whole or in part by the City Manager. Details of the Annual Report are included in the Model Service Plan.

D. **Service Plan Requirements:** In additional to all other information required in a Service Plan by the Act, a Service Plan must include the following:

1. **Financial Plan:** The Service Plan must include debt and operating financial projections prepared by an investment banking firm or financial advisor qualified to make such projections. The financial firm must be listed in the Bond Buyers Marketplace or, in the City’s sole discretion, other recognized publication as a provider of financial projections. The Financial Plan must include debt issuance and service schedules and calculations establishing the District’s projected maximum debt capacity (the “Total Debt Limitation”) based on assumptions of:
   
   (i) **Projected Interest Rate** on the debt to be issued;  
   
   (ii) **Projected Assessed Valuation** of the property within the District; and  
   
   (iii) **Projected Rate of Absorption** of the assessed valuation within the District. These assumptions must use market-based, market comparable valuation and absorption data and may use an annual inflation rate of three percent (3%) or the Consumer Price Index for the preceding 12-month period for the Denver-Boulder-Greeley statistical region as prepared by the U.S. Department of Labor Statistics, whichever is lesser.

   a. **Total Debt Limitation:** The total debt authorized in the Service Plan must not exceed 100% of the projected maximum debt capacity as shown in the Financial Plan.
b. **Administrative, Operational and Maintenance Costs:** The Financial Plan must also include foreseeable administrative, operational and maintenance costs.

2. **Infrastructure Preliminary Development Plan:** Every Service Plan must include, in addition to all materials, plans and reports required by the Act, an *Infrastructure Preliminary Development Plan* ("IPDP"). This IPDP is a summary of public improvements to be constructed and/or installed by the district (the "Public Improvements"). The description of these Public Improvements must include, at a minimum:
   
   1. A map or maps, and construction drawings of such a scale, detail and size as required by the Planning Department, providing an illustration of public improvements proposed to be built, acquired or financed by the District;
   
   2. A written narrative and description of the public improvements; and
   
   3. A general description of the District’s proposed role with regard to the same.

Due to the preliminary nature of the IPDP, the Service Plan must indicate that the City’s approval of the IPDPPublic Improvements shall not bind the City and its boards and commissions, and City Council in any way relating to the review and consideration of land use applications within the District.

3. **Intergovernmental Agreement:** Any intergovernmental agreement which is required, or known at the time of formation of the District to likely be required, to fulfill the purposes of the District, must be described in the Service Plan, along with supporting rationale. The Service Plan must provide that execution of intergovernmental agreements which are likely to cause substantial increase in the District’s budget and are not described in the Service Plan will require the prior approval of City Council.

4. **Extraterritorial Service Agreement:** The Service Plan must describe any planned extraterritorial service agreement. The Service Plan must provide that any extraterritorial service agreement by the District that are not described in the Service Plan will require prior approval of City Council.

**Section 5 – Regional Improvements**

A. **Purpose:** A Service Plan may include a section addressing the planning, design, acquisition, funding, construction, installation, relocation and/or redevelopment of Regional Improvements. Such section is intended to ensure that the privately-owned properties to be developed in a District that benefit from the Regional Improvements pay a reasonable share of the associated costs.

B. **Eligible Improvements:** The City, to facilitate transparency, will include a list or exhibit in any Service Plan including a Regional Improvements section that clearly identifies the improvements...
to be funded, in part or whole, by a Regional Mill to be levied by the District. In selecting improvements to be included in a Service Plan the City will apply the following standards:

1. Benefit to End User – Regional Improvements should have a clear benefit to the private-owned properties funding the Regional Mill Levy. The City may establish this connection either through previous identification of the infrastructure need and/or through a technical analysis, such as a traffic impact analysis.

2. Specificity – When possible, the City should include as much specificity about the Regional Improvements to be included in a Service Plan as possible, while noting that any details are preliminary and may be subject to change as planning, design, acquisition, funding, construction, installation, relocation and/or redevelopment of the Regional Improvements occurs.

3. No Other Funding Exists – The City will exclude improvements, either in part or whole, for which funding mechanisms exists to support the planning, design, acquisition, funding, construction, installation, relocation and/or redevelopment. By way of example, the City collects Capital Expansion Fees to support street oversizing, however, several bridge structures necessary to facilitate grade separated crossings of railroad infrastructure were not included in the calculation of these Fees; therefore, the bridges would be and eligible Regional Improvement, where the road surface itself would not.

Section 5 – Fees

A. No request to create a Metro District shall proceed until the fees set forth herein are paid when required. All checks are to be made payable to the City of Fort Collins and sent to the Economic Health Office.

1. Letter of Intent Submittal Fee: A Letter of Intent is to be submitted to the City's Economic Health Office and a non-refundable $2,500 fee shall be paid at the time of submittal of the Letter.

2. Application Fee: An application along with a draft Service Plan (based on the Model Service Plan) is to be submitted to the City's Economic Health Office and a $7,500 non-refundable fee along with a $7,500 deposit towards the City's other expenses shall be paid at the time of submittal of the Application and draft Service Plan.

3. Annual Fee: Each District shall pay an annual fee for the City's on-going monitoring of each Metro District. This annual fee shall be $500 or if multiple Districts exist serving a single project, then the annual fee shall be $500 plus $250 for each additional District beyond the first (e.g., the annual fee for Consolidated ABC Metro Districts 1 to 7 shall be $500 plus $250 times six or $2,000).

4. Non-Model Service Plan Fee: A District proposal requesting a substantial deviation from this Policy or the Model Service Plan, shall pay an additional non-refundable fee of $5,000 at the
time of submitting its application; the City shall in its sole and reasonable discretion determine if a draft Service Plan proposes a substantial deviation from this Policy or the Model Service Plan.

5. **Other Expenses:** If the deposits paid in subsections 2 and 6 are not sufficient to cover all the City’s other expenses, the applicant for a District shall pay all reasonable consultant, legal, and other fees and expenses incurred by the City in the process of reviewing the draft Service Plan or amended Service Plan prior to adoption, documents related to a bond issue and such other expenses as may be necessary for the City to incur to interface with the District. All such fees and expenses shall be paid within 30 days of receipt of an invoice for these additional fees and expenses.

6. **Service Plan Amendment Fee:** If a proposed amendment to a Service Plan is submitted to the City’s Economic Health Office, it should be submitted with a non-refundable $2,500 fee along with a $2,500 deposit towards the City’s other expenses and shall be paid at the time of submittal of the application and draft amended Service Plan.
EXHIBIT A
PUBLIC BENEFIT EXAMPLES

The following list of examples is meant to be illustrative of the types of projects that deliver the defined public benefits in this policy. Projects that deliver similar or better outcomes will also be considered on their merits.

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<tr>
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<td>1. Green House Gas Reductions</td>
<td>- See subsequent sub-categories</td>
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<td>2. Water and/or Energy Conservation</td>
<td>- District-wide non-potable water system(s)</td>
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<td></td>
<td>- District-wide renewable energy systems(s)</td>
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<td></td>
<td>- Delivery of 20% or more rooftop solar</td>
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<tr>
<td></td>
<td>- Greywater reuse system(s) - if allowed by law</td>
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<td>3. Multimodal Transportation</td>
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<td></td>
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<td></td>
<td>- Enhanced pedestrian crossings</td>
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<td>- Utility scale renewable project(s)</td>
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<td>- Regional Stormwater Facilities</td>
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<td><strong>High Quality and Smart Growth Management</strong></td>
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</table>
| 1. Increase density | - Alley load construction  
- Smaller Lot Size  
- Increased multifamily development |
| 2. Walkability & Pedestrian Friendliness | - Wider than required sidewalks  
- Enhanced pedestrian crossings  
- Underpass(es)  
- Trail system enhancements |
| 3. Increase availability of Transit | - Improved bus stops  
- Restricted access guideways for bus operations  
- Transfer facilities |
| 4. Public Spaces | - Pocket Parks  
- Neighborhood Parks (beyond code requirements) |
| **Strategic Priorities** | |
| 1. Affordable Housing | - Units permanently affordable to 80% Area Median Income  
- Land dedicated to City's land bank program |
| 2. Infill/Redevelopment | - Address environmental contamination / concern  
- Consolidate wetlands or natural area (positive benefits) |
| 3. Economic Health Outcomes | - Facilitate job growth (at or above County median income)  
- Retain an existing business |
City of Fort Collins

Title 32 Metropolitan District Model Service Plan

This model service plan template should be referenced in conjunction with the City of Fort Collins Policy for Reviewing Service Plans for Title 32 Metropolitan Districts.

Revised: August 21, 2018
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I. INTRODUCTION

A. Purpose and Intent.

The District, which is intended to be an independent unit of local government separate and distinct from the City, is governed by this Service Plan, the Special District Act and other applicable State law. Except as may otherwise be provided by State law, City Code or this Service Plan, the District's activities are subject to review and approval by the City Council only insofar as they are a material modification of this Service Plan under C.R.S. Section 32-1-207 of the Special District Act.

It is intended that the District will provide all of the Public Improvements for the Project for the use and benefit of all anticipated inhabitants and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements by the issuance of Debt.

It is intended that the District also requires the District to pay a portion of the cost of the Regional Improvements as part of ensuring that development and those privately-owned properties to be developed in the District that benefit from development the Regional Improvements pay a reasonable share of the associated costs.

The District is not intended to provide ongoing operations and maintenance services except as expressly authorized in this Service Plan.

It is the intent of the District to dissolve upon payment or defeasance of all Debt incurred or upon a court determination that adequate provision has been made for the payment of all Debt, and except that if the District is authorized in this Service Plan to perform continuing operating or maintenance functions, to retain only the power the District shall continue in existence for the sole purpose of providing such functions and shall retain only the powers necessary to impose and collect the taxes or Fees authorized in this Service Plan to pay for the costs of those functions.

It is intended that the District shall comply with the provisions of this Service Plan and that the City may enforce any non-compliance with these provisions as provided in Section XVIII of this Service Plan.

B. Need for the District.

There are currently no other governmental entities, including the City, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction, installation, relocation, redevelopment and financing of the Public Improvements needed for the Project. Formation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible.

C. Objective of the City Regarding District's Service Plan.
The City’s objective in approving this Service Plan is to authorize the District to provide for the planning, design, acquisition, construction, installation, relocation and redevelopment of the Public Improvements from the proceeds of Debt to be issued by the District. **Except as specifically provided in this Service Plan, all** Debt is expected to be repaid by taxes and Fees imposed and collected for no longer than the Maximum Debt Mill Levy Imposition Term for residential properties and at a tax mill levy no higher than the Maximum Debt Mill Levy for commercial and residential properties, and/or repaid by Fees, as long as such Fees are not imposed or collected from Taxable Property owned or occupied by an End User, for the purpose of creating a capital cost payment obligation as further described in the Financial Plan, will insulate property owners from excessive tax and Fee burdens to support the servicing of the Debt and will result in a timely and reasonable discharge of the Debt.

**D. Relevant Intergovernmental Agreements.**

Add description of any relevant intergovernmental agreements.

**E. City Approvals.**

Any provision in this Service Plan requiring “City” or “City Council” approval or consent shall require the City Council’s prior written approval or consent exercised in its sole discretion. Any provision in this Service Plan requiring “City Manager” approval or consent shall require the City Manager’s prior written approval or consent exercised in the City Manager’s sole discretion.

**II. DEFINITIONS**

In this Service Plan, the following words, terms and phrases which appear in a capitalized format shall have the meaning indicated below, unless the context clearly requires otherwise:

**Aggregate Mill Levy:** means the total mill levy resulting from adding the District’s Debt Mill Levy and Operating Mill Levy. The District’s Aggregate Mill Levy does not include any Regional Mill Levy that the District may levy.

**Aggregate Mill Levy Maximum:** means the maximum number of combined mills that the District may levy for its Debt Mill Levy and Operating Mill Levy, at rate not to exceed fifty (50) mills, the limitation set in Section IX.B.1.

**Approved Development Plan:** means a City-approved development plan or other land-use application required by the City Code for identifying, among other things, public improvements necessary for facilitating the development of property within the Service Area.

**Board:** means the duly constituted Board of Directors of the District.

**Bond, Bonds or Debt:** means bonds, notes or other multiple fiscal year financial obligations for the payment of which a District has promised to impose an ad valorem property tax

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mill levy, Fees or other legally available revenue. Such terms do not include intergovernmental agreements pledging the collection and payment of property taxes or Fees in connection with a service district and taxing district(s) structure, if applicable, and other contracts through which a District procures or provides services or tangible property.

City: means the City of Fort Collins, Colorado, a home rule municipality. Any provision in this Service Plan requiring “City” approval shall be deemed to require the City Council’s prior written approval, exercised in its sole discretion.

City Code: means collectively the City’s Municipal Charter, Municipal Code, Land Use Code and ordinances as all are now existing and hereafter amended.

City Council: means the City Council of the City of Fort Collins, Colorado. Any exercise of approval or other power by the City Council under this Service Plan shall be deemed to be exercised by the City Council in its sole discretion.

City Manager: means the City Manager of the City of Fort Collins, Colorado.

C.R.S.: means the Colorado Revised Statutes.

Debt Mill Levy: means a property tax mill levy imposed on Taxable Property by the District for the purpose of paying Debt as authorized in this Service Plan, at a rate not to exceed the limitations set in Section IX.B.

Developer: means a person or entity that is the owner of property or owner of contractual rights to property in the Service Area that intends to develop the property.

Developer Obligation: means any agreement executed by the District for the purpose of borrowing funds from any Developer or related party developing or selling land within the Service Area or who is a member of the Board.

District: means the [Name of District] organized under and governed by this Service Plan.

District Boundaries: means the boundaries of the area legally described in Exhibit “A” attached hereto and incorporated by reference and as depicted in the District Boundary Map.

District Boundary Map: means the map of the District Boundaries attached hereto as Exhibit “B” and incorporated by reference.

End User: means any owner, or tenant of any owner, of any property within the District, who is intended to become burdened by the imposition of ad valorem property taxes and/or Fees. By way of illustration, a resident homeowner, renter, commercial property owner or commercial tenant is an End User. A Developer and any person or entity that constructs homes or commercial structures is not an End User.

External Financial Advisor: means a consultant that: (1) is qualified to advise Colorado governmental entities on matters relating to the issuance of securities by Colorado governmental entities including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; (2) shall be an underwriter, investment banker, or individual listed as a public finance advisor in the Bond Buyer’s Municipal Market Place or, in the City’s sole discretion, other recognized publication as a provider of financial projections; and (3) is...
not an officer or employee of the District or an underwriter of the District’s Debt.

Fees: means the fees, rates, tolls, penalties and chargers the District is authorized to impose and collect under this Service Plan.

Financial Plan: means the Financial Plan described in Section IX of this Service Plan which is prepared or approved by an External Financial Advisor in accordance with the requirements of this Service Plan and describes (a) how the Public Improvements are to be financed; (b) how the Debt is expected to be incurred; and (c) the estimated operating revenue derived from property taxes and any Fees for the first budget year through the year in which all District Debt is expected to be defeased or paid in the ordinary course. In the event the Financial Plan is not prepared by an External Financial Advisor, the Financial Plan is to be accompanied by a letter of support from an External Financial Advisor.

Inclusion Area Boundaries: means the boundaries of the property that is anticipated to be added to the District Boundaries after the District organization, which property is legally described in Exhibit “C” attached hereto and incorporated by reference and depicted in the map attached hereto as Exhibit “D” and incorporated herein by reference.

Maximum Debt Authorization: means the total Debt the District is permitted to issue as set forth in Section IX.B.8 of this Service Plan.

Maximum Debt Mill Levy Imposition Term: means the maximum term during which the District’s Debt Mill Levy may be imposed on property developed in the Service Area for residential use, which shall include residential properties in mixed-use developments. This maximum term shall not exceed forty (40) years from December 31 of the year this Service Plan is approved by City Council.

Operating Mill Levy: means a property tax mill levy imposed on Taxable Property for the purpose of funding District administration, operations and maintenance as authorized in this Service Plan, including, without limitation, repair and replacement of Public Improvements, and imposed at a rate not to exceed the limitations set in Section IX.B.

Planned Development: means the private development or redevelopment of the properties in the Service Area under an Approved Development Plan.

Project: means the installation and construction of the Public Improvements for the Planned Development.

Public Improvements: means the improvements and infrastructure the District is authorized by this Service Plan to fund and construct for the Planned Development to serve the future taxpayers and inhabitants of the District, except as specifically prohibited or limited in Section 221 of this Service Plan. Public Improvements shall include, without limitation, the improvements and infrastructure described in Exhibit “E” attached hereto and incorporated by reference. Public Improvements do not include Regional Improvements.

Regional Improvements: means any regional public improvement identified by the City for funding, in whole or part, by a Regional Mill Levy levied by the District, including, without limitation, the public improvements described in Exhibit “F” attached hereto and incorporated by reference.

Regional Mill Levy: means the property tax mill levy imposed on Taxable Property for the purpose of planning, designing, acquiring, funding, constructing, installing, relocating
and/or redeveloping the Regional Improvements and/or to fund the administration and overhead costs related to the Regional Improvements as provided in Section X of this Service Plan.

**Service Area**: means the property within the District Boundaries and the property in the Inclusion Area Boundaries when it is added, in whole or part, to the District Boundaries.

**Special District Act**: means Article 1 in Title 32 of the Colorado Revised Statutes, as amended.

**Service Plan**: means this service plan for the District approved by the City Council.

**Service Plan Amendment**: means a material modification of the Service Plan approved by the City Council in accordance with the Special District Act, this Service Plan and any other applicable law.

**State**: means the State of Colorado.

**Taxable Property**: means the real and personal property within the District Boundaries and within the Inclusion Area Boundaries when added to the District Boundaries that will be subject to the ad valorem property taxes imposed by the District.

**Vicinity Map**: means the map attached hereto as Exhibit “G” and incorporated by reference depicting the location of the Service Area within the regional area surrounding it.

### III. BOUNDARIES AND LOCATION

The area of the District Boundaries includes approximately [Insert Number] acres and the total area proposed to be included in the Inclusion Area Boundaries is approximately [Insert Number] acres. A legal description and map of the District Boundaries are attached hereto as Exhibit A and Exhibit B, respectively. A legal description and map of the Inclusion Area Boundaries are attached hereto as Exhibit C and Exhibit D, respectively. It is anticipated that the District’s Boundaries may expand or contract from time to time as the District undertakes inclusions or exclusions pursuant to the Special District Act, subject to the limitations set forth in this Service Plan. The location of the Service Area is depicted in the vicinity map attached as Exhibit “G”.

### IV. DESCRIPTION OF PROJECT, PLANNED DEVELOPMENT, PUBLIC BENEFITS & ASSESSED VALUATION

#### A. Project and Planned Development.

Describe the nature of the Project and Planned Development, estimated population at build out, timeline for development, estimated assessed value after 5 and 10 years and estimated sales tax revenue. Also, please identify all plans, including but not limited to Citywide Plans, Small Area Plans, and General Development Plans that apply to any portion of the District’s Boundaries or Inclusion Area Boundaries and describe how the Project and Planned Development are consistent with the applicable plans. Please state if the proposed District is to be located within an urban renewal area and if the proposed development is
anticipating the use of tax increment financing (TIF). If the District intends to pursue TIF, please provide information on how the TIF financing will interact with the District’s financing and how the necessary Public Improvements will be shared across the two funding sources.

Approval of this Service Plan by the City Council does not imply approval of the development of any particular land-use for any specific area within the District. Any such approval must be contained within an Approved Development Plan.

B. Public Benefits.

Please describe the public benefits to be delivered by the Service Plan that comply with the requirements of the City’s Metro District Service Plan Policy. The description must include specific and measurable objectives for the public benefits to be delivered by the Service Plan. Examples of specific and measurable approaches can be found in the City’s Metro District Service Plan Policy.

C. Assessed Valuation.

The current assessed valuation of the Service Area is approximately [Dollar Amount] and, at build out, is expected to be [Dollar Amount]. These amounts are expected to be sufficient to reasonably discharge the Debt as demonstrated in the Financial Plan.

V. INCLUSION OF LAND IN THE SERVICE AREA

Other than the real property in the Inclusion Area Boundaries, the District shall not add any real property to the Service Area without the City’s approval and in compliance with the Special District Act. Once the District has issued Debt, it shall not exclude real property from the District’s boundaries without the prior written consent of the City Council.

VI. DISTRICT GOVERNANCE

The District’s Board shall be comprised of persons who are a qualified “eligible elector” of the District as provided in the Special District Act. It is anticipated that over time, the End Users who are eligible electors will assume direct electoral control of the District’s Board as development of the Service Area progresses. The District shall not enter into any agreement by which the End Users’ electoral control of the Board is removed or diminished.

VII. AUTHORIZED AND PROHIBITED POWERS

A. General Grant of Powers.

The District shall have the power and authority to provide the Public Improvements, the Regional Improvements and related operation and maintenance services, within and without the District Boundaries, as such powers and authorities are described in the Special District Act, other applicable State law, common law and the Colorado Constitution, subject to the prohibitions, restrictions and limitations set forth in this Service Plan.

If, after the Service Plan is approved, any State law is enacted to grant additional powers or authority to metropolitan districts by amendment of the Special District Act or otherwise, such powers and authority shall be deemed to be a part hereof and available to be exercised by the Districts upon prior resolution approval of the City Council approving the exercise

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of such powers or authority by the District. Such approval by the City Council shall not constitute a Service Plan Amendment.

A. **Prohibited Improvements and Services and other Restrictions and Limitations.**

The District’s powers and authority under this Service Plan to provide Public Improvements and services and to otherwise exercise its other powers and authority under the Special District Act and other applicable State law, are prohibited, restricted and limited as hereafter provided. Failure to comply with these prohibitions, restrictions and limitations shall constitute a material modification under this Service Plan and shall entitle the City to pursue all remedies available at law and in equity as provided in Section XVII: of this Service Plan:

1. **Covenant Control Prohibition**
   - The District is not authorized to impose, manage or provide covenant enforcement actions.

2. **Eminent Domain Restriction**
   - The District shall not exercise its statutory power of eminent domain without first obtaining resolution approval from the City Council. This restriction on the District’s exercise of its eminent domain power is being voluntarily acquiesced to by the District and shall not be interpreted in any way as a limitation on the District’s sovereign powers and shall not negatively affect the District’s status as a political subdivision of the State as conferred by the Special District Act.

3. **Fee Limitation**
   - All Fees imposed for the repayment of Debt, if authorized by this Service Plan, shall be authorized to be imposed by the District upon all property within the District Boundaries only if such Fees are due and payable no later than upon the issuance of a building permit by the City. Notwithstanding any of the foregoing, this Fee limitation shall not apply to any Fee imposed to fund the operation, maintenance, repair or replacement of Public Improvements or the administration of the District, nor shall this Fee limitation apply if the majority of the District’s Board is composed of End Users.

4. **Operations and Maintenance**
   - The primary purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The District shall dedicate the Public Improvements to the City or other appropriate jurisdiction or owners’ association in a manner consistent with the Approved Development Plan and the City Code, provided that nothing herein requires the City to accept a dedication. The District is specifically authorized to operate and maintain any part or all of the Public Improvements not otherwise conveyed or dedicated to the City or another appropriate governmental entity. The District shall also be specifically authorized to conduct operations and maintenance functions related to the Public Improvements that are not provided by the City or other governmental entity, or to the extent that the District’s proposed operational and maintenance functions included services or activities that
exceed those provided by the City or other governmental entity. Additionally, the District shall be authorized to operate and maintain any part or all of the Public Improvements not otherwise conveyed or dedicated to the City or another appropriate governmental entity until such time that the District dissolves.

5.4 Fire Protection Restriction

The District is not authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, own, operate or maintain fire protection facilities or services, unless such facilities and services are provided pursuant to an intergovernmental agreement with the Poudre Fire Authority. The authority to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain fire hydrants and related improvements installed as part of the Project’s water system shall not be limited by this subsection.

6.5 Public Safety Services Restriction

The District is not authorized to provide policing or other security services. However, the District may, pursuant to C.R.S. § 32-1-1004(7), as amended, furnish security services pursuant to an intergovernmental agreement with the City.

7.6 Grants from Governmental Agencies Restriction

The District shall not apply for grant funds distributed by any agency of the United States Government or the State without the prior written approval of the City Manager. This does not restrict the collection of Fees for services provided by the District to the United States Government or the State.

8.7 Golf Course Construction Restriction

Acknowledging that the City has financed public golf courses and desires to coordinate the construction of public golf courses within the City’s boundaries, the District shall not be authorized to plan, design, acquire, construct, install, relocate, redevelop, finance, own, operate or maintain a golf course unless such activity is pursuant to an intergovernmental agreement with the City.

9.8 Television Relay and Translation Restriction

The District is not authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, own, operate or maintain television relay and translation facilities and services, other than for the installation of conduit as a part of a street construction project, unless such facilities and services are provided pursuant to prior written approval from the City Manager.

9. Potable Water and Wastewater Treatment Facilities

Acknowledging that the City and other existing special districts operating within the City currently own and operate treatment facilities for potable water and wastewater that are available to provide services to the Service Area, the District shall not plan,
design, acquire, construct, install, relocate, redevelop, finance, own, operate or maintain such facilities without obtaining the City Council’s prior written approval.

10. Sales and Use Tax Exemption Limitation

The District shall not exercise any sales and use tax exemption in otherwise available to the District under the City Code.

11. Sub-district Restriction

The District shall not create any sub-district pursuant to the Special District Act without the prior written approval of the City Manager.

12. Initial Debt Limitation

On or before the effective date of approval by the City of (a) an Approved Development Plan that secures the Public Benefits described in Section IV.B of this Service Plan, and/or (b) by an intergovernmental agreement between the District and the City further securing the delivery of the Public Benefits described in Section IV.B, as necessary, the District shall not: (i) issue any Debt; nor (ii) impose the Debt Mill Levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; nor (iii) impose and collect any Fees used for the purpose of repayment of Debt.

12. Privately Placed Debt Limitation

Prior to the issuance of any privately placed Debt, the District shall obtain the certification of an External Financial Advisor substantially as follows:

We are [I am] an External Financial Advisor within the meaning of the District’s Service Plan.

We [I] certify that (1) the net effective interest rate (calculated as defined in C.R.S. Section 32-1-103(12)) to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

13. Special Assessments

The District shall not impose special assessments without the prior written approval of the City Council.

VIII. PUBLIC IMPROVEMENTS AND ESTIMATED COSTS

Exhibit E summarizes the type of Public Improvements that are projected to be constructed and/or installed by the District. The cost, scope, and definition of such Public Improvements may

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vary over time. The total estimated costs of Public Improvements, as set forth in Exhibit H, excluding any improvements paid for by the Regional Mill Levy necessary to serve the Planned Development, are approximately [Dollar Amount] in [Year] dollars and total approximately [Dollar Amount] in the anticipated year of construction dollars. The cost estimates are based upon preliminary engineering, architectural surveys, and reviews of the Public Improvements set forth in Exhibit E and include all construction cost estimates together with estimates of costs such as land acquisition, engineering services, legal expenses and other associated expenses. Maps of the anticipated location, operation, and maintenance of Public Improvements are attached hereto as Exhibit F. Changes in the Public Improvements or cost, which are approved by the City in an Approved Development Plan, shall not constitute a Service Plan Amendment. In addition, due to the preliminary nature of the Project, the City shall not be bound by this Service Plan in reviewing and approving the Approved Development Plan and the Approved Development Plan shall supersede the Service Plan with regard to the cost, scope, and definition of Public Improvements.

The design, phasing of construction, location and completion of Public Improvements will be determined by the District to coincide with the phasing and development of the Planned Development and the availability of funding sources. The District may, in its discretion, phase the construction, completion, operation, and maintenance of Public Improvements or defer, delay, reschedule, rephase, relocate or determine not to proceed with the construction, completion, operation, and maintenance of Public Improvements, and such actions or determinations shall not constitute a Service Plan Amendment. The District shall also be permitted to allocate costs between such categories of the Public Improvements as deemed necessary in its discretion.

The Public Improvements shall be listed using an ownership and maintenance matrix in Exhibit E, either individually or categorically, to identify the ownership and maintenance responsibilities of the Public Improvements.

The City Code has development standards, contracting requirements and other legal requirements related to the construction and payment of public improvements and related to certain operation activities. Relating to these, the District shall comply with the following requirements:

A. Development Standards.

The District shall ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City Code and of other governmental entities having proper jurisdiction, as applicable. The District directly, or indirectly through any Developer, will obtain the City’s approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work. Unless waived by the City, the District shall be required, in accordance with the City Code, to post a surety bond, letter of credit, or other approved development security for any Public Improvements to be constructed by the District. Such development security may be released in the City Managers discretion when the District has obtained funds, through Debt issuance or otherwise, adequate to insure the construction of the Public Improvements, unless such release is prohibited by or in conflict with any City Code provision or State law. Any limitation or requirement concerning the time within which the City must review the District’s proposal or application for an Approved Development Plan or other land use approval is hereby waived by the District.

B. Contracting.

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The District shall comply with all applicable State purchasing, public bidding and construction contracting requirements and limitations.

C. Land Acquisition and Conveyance.

The purchase price of any land or improvements acquired by the District from the Developer shall be no more than the then-current fair market value as confirmed by an independent MAI appraisal for land and by an independent professional engineer for improvements. Land, easements, improvements and facilities conveyed to the City shall be free and clear of all liens, encumbrances and easements, unless otherwise approved by the City Manager prior to conveyance. All conveyances to the City shall be by special warranty deed, shall be conveyed at no cost to the City, shall include an ALTA title policy issued to the City, shall meet the environmental standards of the City and shall comply with any other conveyance prerequisites required in the City Code.

D. Equal Employment and Discrimination.

In connection with the performance of all acts or activities hereunder, the District shall not discriminate against any person otherwise qualified with respect to its hiring, discharging, promoting or demoting or in matters of compensation solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability, and further shall insert the foregoing provision in contracts or subcontracts entered into by the District to accomplish the purposes of this Service Plan.

E. Public Art Requirement

The District shall initiate and implement a public art program as currently set forth in Article XII of City Municipal Code Chapter 23, as amended, or any similar ordinances hereafter adopted by the City Council.

IX. FINANCIAL PLAN/PROPOSED DEBT

This Section IX of the Service Plan describes the nature, basis, method of funding and financing limitations associated with the acquisition, construction, completion, repair, replacement, operation and maintenance of Public Improvements. This section also describes the District’s obligation to help finance certain Regional Improvements.

Notwithstanding any provision to the contrary contained in this Service Plan, the District shall not be authorized to impose the Debt Mill Levy, the Operating Mill Levy or any other taxes and/or Fees for any purpose unless and until (a) the District and/or the Developer has obtained an Approved Development Plan that secures the Public Benefits described in Section IV.B of this Service Plan, or (b) the City and District, at the City’s option, have entered into an intergovernmental agreement securing the delivery of the Public Benefits described in Section IV.B. Failure to comply with this provision shall constitute a material modification under this Service Plan and shall entitle the City to all remedies available at law and in equity as provided in Section XVII of this Service Plan.

A. Financial Plan.
The District’s Financial Plan, attached as Exhibit J and incorporated by reference, reflects the District’s anticipated schedule for incurring Debt to fund Public Improvements in support of the Project. The Financial Plan also reflects the schedule of all anticipated revenues flowing to the District derived from District mill levies, Fees imposed by the District, specific ownership taxes, and all other anticipated legally available revenues. The Financial Plan incorporates all of the provisions of this Section IX.

Based upon the assumptions contained therein, the Financial Plan projects the issuance of Bonds to fund Public Improvements and anticipated Debt repayment based on the development assumptions and absorptions of the property in the Service Area by End Users. The Financial Plan anticipates that the District will acquire, construct, and complete all Public Improvements needed to serve the Service Area.

The Financial Plan demonstrates that the District will have the financial ability to discharge all Debt to be issued as part of the Financial Plan on a reasonable basis. Furthermore, the District will secure the certification of an External Financial Advisor who will provide an opinion as to whether such Debt issuances are in the best interest of the District at the time of issuance.

B. Mill Levies

It is anticipated that the District will impose a Debt Mill Levy and an Operating Mill Levy on all property within the Service Area. In doing so, the following shall apply:

1. Aggregate Mill Levy Maximum

The Aggregate Mill Levy shall not exceed in any year the Aggregate Mill Levy Maximum, which is fifty (50) mills.

2. Regional Mill Levy Not Included in Other Mill Levies

The Regional Mill Levy shall not be counted against the Aggregate Mill Levy Maximum.

3. Operating Mill Levy

The District may impose an Operating Mill Levy of up to fifty (50) mills until the District imposes a Debt Mill Levy. Once the District imposes a Debt Mill Levy, the District’s Operating Mill Levy shall not exceed ten (10) mills at any point.

4. Assessed Value and Mill Levies

At such time as the Debt is equal to or less than fifty percent (50%) of the District’s assessed valuation of Taxable Property, either on the date of issuance or at any time thereafter, the Debt Mill Levy to be imposed to pay on the Debt, shall not be subject to the Aggregate Mill Levy Maximum and may be unlimited as to rate and may be levied at the rate necessary to pay the Debt service on such Debt, provided however that the District shall not issue additional Debt that would cause the aggregate Debt to exceed fifty percent (50%) of the District’s Taxable Property then assessed value. For the purposes of the forgoing, the District may provide that such Debt shall remain secured by such unlimited mill levy, notwithstanding any subsequent change in the District’s Debt to assessed valuation ratio. All Debt issued by the District must otherwise be
4. **Gallagher Adjustments**

   In the event the State’s method of calculating assessed valuation for the Taxable Property changes after approval of this Service Plan, the District’s Aggregate Mill Levy, Debt Mill Levy, Operating Mill Levy, and Aggregate Mill Levy Maximum, amounts herein provided may be increased or decreased to reflect such changes; such increases or decreases shall be determined by the District’s Board in good faith so that to the extent possible, the actual tax revenues generated by such mill levies, as adjusted, are neither enhanced nor diminished as a result of such change.

5. **Excessive Mill Levy Pledges**

   Any Debt issued with a mill levy pledge, or which results in a mill levy pledge, that exceeds the Aggregate Mill Levy Maximum or the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Service Plan and shall not be an authorized issuance of Debt unless and until such material modification has been approved by a Service Plan Amendment.

6. **Refunding Debt**

   The Maximum Debt Mill Levy Imposition Term may be exceeded for Debt refunding purposes if: (1) a majority of the District Board is composed of End Users and have voted in favor of a refunding of a part or all of the Debt; or (2) such refunding will result in a net present value savings as set forth in C.R.S. Section 11-56-101 et seq.

7. **Maximum Debt Authorization**

   The District anticipates approximately [Dollar Amount] in project costs in [Year] dollars as set forth in Exhibit E, and anticipate issuing approximately [Dollar Amount] in Debt to pay such costs as set forth in Exhibit J, which Debt issuance amount shall be the amount of the Maximum Debt Authorization. The District shall not issue Debt in excess of the Maximum Debt Authorization. The District must seek prior resolution approval by the City Council to issue Debt in excess of the Maximum Debt Authorization to pay the actual costs of the Public Improvements set forth in Exhibit E plus inflation, contingencies and other unforeseen expenses associated with such Public Improvements. Such approval by the City Council shall not constitute a material modification of this Service Plan requiring a Service Plan Amendment so long as increases are reasonably related to the Public Improvements set forth in Exhibit E and any Approved Development Plan.

C. **Maximum Voted Interest Rate and Underwriting Discount**

   The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. The maximum interest rate on any Debt is not permitted to exceed Twelve Percent (12%). The maximum underwriting discount shall be three percent (3%). Debt, when issued, will comply with
all relevant requirements of this Service Plan, the Special District Act, other applicable State law and federal law as then applicable to the issuance of public securities.

D. *Interest Rate and Underwriting Discount Certification.*

The District shall retain an External Financial Advisor to provide a written opinion on the market reasonableness of the interest rate on any Debt and any underwriter discount payed by the District as part of a Debt financing transaction. The District shall provide this written opinion to the City before issuing any Debt based on it.

E. *Disclosure to Purchasers.*

The District will use reasonable efforts to assure that all Developers provide written notice to all purchasers of property in the District notifying them of the District’s existing mill levies, the Maximum Debt Mill Levy Imposition Term and of the District’s authority to impose and collect Fees. The form of notice shall be filed with the City prior to the initial issuance of the Debt of the District imposing the mill levy which is the subject of the Maximum Debt Mill Levy Imposition Term.

In order to notify future End Users who are purchasing residential lots or dwellings units in the Service Area that they will be paying, in addition to the property taxes owed to other taxing governmental entities, the property taxes imposed under the Debt Mill Levy, the Operating Mill Levy and possibly the Regional Mill Levy, the District shall not be authorized to issue any Debt under this Service Plan until there is included in the Developer’s Approved Development Plan provisions that require the following:

1. That the Developer, and its successors and assigns, shall prepare and submit to the City Manager for his approval a disclosure notice in substantially the form attached hereto as Exhibit K (the “Disclosure Notice”);

2. That when the Disclosure Notice is approved by the City Manager, the Developer shall record the Disclosure Notice in the Larimer County Clerk and Recorders Office; and

3. That the approved Disclosure Notice shall be provided by the Developer, and by its successors and assigns, to each potential End User purchaser of a residential lot or dwelling unit in the Service Area before that purchaser enters into a written agreement for the purchase and sale of that residential lot or dwelling unit.

F. *External Financial Advisor.*

An External Financial Advisor shall be retained by the District to provide a written opinion as to whether any Debt issuance is in the best interest of the District once the total amount of Debt issued by the District exceeds Five Million Dollars ($5,000,000). The External Financial Advisor is to provide advice to the District Board regarding the proposed terms and whether Debt conditions are reasonable based upon the status of development within the District, the projected tax base increase in the District, the security offered and other considerations as may be identified by the Advisor. The District shall include in the transcript of any Bond transaction, or other appropriate financing documentation for related Debt instrument, a signed letter from the External Financial Advisor providing an official opinion on the structure of the Debt, stating the Advisor’s
opinion that the cost of issuance, sizing, repayment term, redemption feature, couponing, credit spreads, payment, closing date, and other material transaction details of the proposed Debt serve the best interest of the District.

Debt shall not be undertaken by the District if found to be unreasonable by the External Financial Advisor.

G. Disclosure to Debt Purchasers.

District Debt shall set forth a statement in substantially the following form:

“By acceptance of this instrument, the owner of this Debt agrees and consents to all of the limitations with respect to the payment of the principal and interest on this Debt contained herein, in the resolution of the District authorizing the issuance of this Debt and in the Service Plan of the District. This Debt is not and cannot be a Debt of the City of Fort Collins”

Similar language describing the limitations with respect to the payment of the principal and interest on Debt set forth in this Service Plan shall be included in any document used for the offering of the Debt for sale to persons, including, but not limited to, a Developer of property within the Service Area.

H. Security for Debt.

The District shall not pledge any revenue or property of the City as security for the indebtedness set forth in this Service Plan. Approval of this Service Plan shall not be construed as a guarantee by the City of payment of any of the District’s obligations; nor shall anything in the Service Plan be construed to create any responsibility or liability on the part of the City in the event of default by the District in the payment of any such obligation.

I. TABOR Compliance.

The District shall comply with the provisions of the Taxpayer’s Bill of Rights in Article X, § 20 of the Colorado Constitution ("TABOR"). In the discretion of the Board, the District may set up other qualifying entities to manage, fund, construct and operate facilities, services, and programs. To the extent allowed by law, any entity created by a District will remain under the control of the District’s Board.

J. District's Operating Costs.

The estimated cost of acquiring land, engineering services, legal services and administrative services, together with the estimated costs of the Districts’ organization and initial operations, are anticipated to be [Dollar Amount], which will be eligible for reimbursement from Debt proceeds.

In addition to the capital costs of the Public Improvements, the Districts will require operating funds for administration and to plan and cause the Public Improvements to be operated and maintained. The first year’s operating budget is estimated to be [Dollar Amount].

Ongoing administration, operations and maintenance costs may be paid from property taxes collected through the imposition of an Operating Mill Levy, not subject to exceed ten (10) mills, as set forth in Section IX.B.3, as well as from other revenues legally available to the District.
X. REGIONAL IMPROVEMENTS

The District shall be authorized to provide for the planning, design, acquisition, funding, construction, installation, relocation, redevelopment, administration and overhead costs related to the provision of Regional Improvements. At the discretion of the City, the District shall impose a Regional Improvement Mill Levy on all property within the District under the following terms:

A. Regional Mill Levy Authority.

The District shall seek the authority to impose an additional Regional Mill Levy of five (5) mills as part of the District’s initial TABOR election. The District shall also seek from the electorate in that election the authority under TABOR to enter into an intergovernmental agreement with the City obligating the District to pay as a multiple-fiscal year obligation the proceeds from the Regional Mill Levy to the City. Obtaining such voter-approval of this intergovernmental agreement shall be a precondition to the District issuing any Debt under this Service Plan.

B. Regional Mill Levy Imposition.

The District shall impose the Regional Mill Levy at a rate not to exceed five (5) mills within one year of receiving written notice from the City Manager to the District requesting the imposition of the Regional Mill Levy and stating the mill rate to be imposed.

C. City Notice Regarding Regional Improvements.

Such notice from the City shall provide a description of the Regional Improvements to be constructed and an analysis explaining how the Regional Improvements will be beneficial to property owners within the Service Area. The City shall require that planned developments that (i) are adjacent to the Service Area and (ii) will benefit from the Regional Improvement also impose a Regional Mill Levy, to the extent possible.

D. Regional Improvements Authorized Under Service Plan.

If so notified by the City Manager, the Regional Improvements shall be considered public improvements that the District would otherwise be authorized to design, construct, install, re-design, re-construct, repair or replace pursuant to this Service Plan and applicable law.

E. Expenditure of Regional Mill Levy Revenues.

Revenue collected through the imposition of the Regional Mill Levy shall be expended as follows:

1. Intergovernmental Agreement

   If the City and the District have executed an intergovernmental agreement concerning the Regional Improvements, then the revenue from the Regional Mill Levy shall be used in accordance with such agreement;

2. No Intergovernmental Agreement

   If no intergovernmental agreement exists between the District and the City, then the revenue from the Regional Mill Levy shall be paid to the City, for use by the City in the planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of Regional Improvements which benefit the End Users of the District as prioritized and determined by the City.
F. Regional Mill Levy Term.

The imposition of the Regional Mill Levy shall not exceed a term of twenty-five (25) years from December 31 of the tax collection year after which the Regional Mill Levy is first imposed.

G. Completion of Regional Improvements.

All Regional Improvements shall be completed prior to the end of the twenty-five (25) year Regional Mill Levy term.

H. City Authority to Require Imposition.

The City’s authority to require the initiation of the imposition of a Regional Mill Levy shall expire fifteen (15) years after December 31st of the year in which the District first imposes a Debt Mill Levy.

I. Regional Mill Levy Not Included in Other Mill Levies.

The Regional Mill Levy imposed shall not be applied toward the calculation of the Aggregate Mill Levy.

J. Gallagher Adjustment.

In the event the method of calculating assessed valuation is changed after the date of approval of this Service Plan, the Regional Mill Levy may be increased or shall be decreased to reflect such changes; such increases or decreases shall be determined by the District in good faith so that to the extent possible, the actual tax revenues generated by the Regional Mill Levy, as adjusted, are neither enhanced nor diminished as a result of such change.

XI. CITY FEES

The District shall pay all applicable City fees as required by the City Code.

XII. BANKRUPTCY LIMITATIONS

All of the limitations contained in this Service Plan, including, but not limited to, those pertaining to the Aggregate Mill Levy Maximum, Maximum Debt Mill Levy Imposition Term and Fees, have been established under the authority of the City in the Special District Act to approve this Service Plan. It is expressly intended that by such approval such limitations: (i) shall not be set aside for any reason, including by judicial action, absent a Service Plan Amendment; and (ii) are, together with all other requirements of State law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral approval necessary under applicable non-bankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

XIII. ANNUAL REPORTS AND BOARD MEETINGS

A. General.

The District shall be responsible for submitting an annual report to the City Clerk no later than September 1st of each year following the year in which the Order and Decree creating the

Revised: August 21, 2018
District has been issued. These documents may be made available to the public on the City’s website.

B. Board Meetings.

The District’s board of directors shall hold at least one public board meeting in three of the four quarters of each calendar year, beginning in the first full calendar year after the District’s creation. Notice for each of these meetings shall be given in accordance with the requirements of the Special District Act and other applicable State Law. This requirement shall not apply when a majority of the board of directors are End Users.

B.C. Report Requirements.

Unless waived in writing by the City Manager, the District annual report must include the following in the Annual Report:

1. Narrative
   A narrative summary of the progress of the District in implementing its Service Plan for the report year.

2. Financial Statements
   Except when exemption from audit has been granted for the report year under the Local Government Audit Law, the audited financial statements of the District for the report year including a statement of financial condition (i.e., balance sheet) as of December 31 of the report year and the statement of operation (i.e., revenue and expenditures) for the report year.

3. Capital Expenditures
   Unless disclosed within a separate schedule to the financial statements, a summary of the capital expenditures incurred by the District in development of improvements in the report year.

4. Financial Obligations
   Unless disclosed within a separate schedule to the financial statements, a summary of financial obligations of the District at the end of the report year, including the amount of outstanding Debt, the amount and terms of any new District Debt issued in the report year, the total assessed valuation of all Taxable Property within the Service Area as of January 1 of the report year and the current total District mill levy pledged to Debt retirement in the report year.

5. Board Contact Information
   The names and contact information of the current board members, any District manager and the attorney for the District shall be listed in the report. The District’s current office address, phone number, email address and any website address shall also be listed in the report.

5-6. Other Information

Revised: August 21, 2018
Any other information deemed relevant by the City Council or deemed reasonably necessary by the City Manager.

C.D. Reporting of Significant Events

The annual report shall include information as to any of the following that occurred during the report year:

1. Boundary changes made or proposed to the District Boundaries as of December 31 of the report year.
2. Intergovernmental Agreements with other governmental entities, either entered into or proposed as of December 31 of the report year.
3. Copies of the District’s rules and regulations, if any, or substantial changes to the District’s rules and regulations as of December 31 of the report year.
4. A summary of any litigation which involves the District’s Public Improvements as of December 31 of the report year.
5. A list of all facilities and improvements constructed by the District that have been dedicated to and accepted by the City as of December 31 of the report year.
6. Notice of any uncured events of default by the District, which continue beyond a ninety (90) day period, under any Debt instrument.
7. Any inability of the District to pay its obligations as they come due, in accordance with the terms of such obligations, which continue beyond a ninety (90) day period.

D.E. Failure to Submit

In the event the annual report is not timely received by the City Clerk or is not fully responsive, notice of such default shall be given to the District Board at its last known address. The failure of the District to file the annual report within forty-five (45) days of the mailing of such default notice by the City Clerk may constitute a material modification of the Service Plan, at the discretion of the City Manager.

XIV. SERVICE PLAN AMENDMENTS

This Service Plan is general in nature and does not include specific detail in some instances. The Service Plan has been designed with sufficient flexibility to enable the District to provide required improvements, services and facilities under evolving circumstances without the need for numerous amendments. Modification of the general types of improvements and facilities making up the Public Improvements, and changes in proposed configurations, locations or dimensions of the Public Improvements, shall be permitted to accommodate development needs consistent with the then-current Approved Development Plans for the Project. Any action of the District, which is a material modification of this Service Plan requiring a Service Plan Amendment as provided in Section XV below or any other applicable provision of this Service Plan, shall be deemed to be a material modification to this Service Plan unless otherwise expressly provided in this Service Plan. All other departures from the provisions of this Service Plan shall be considered on a case-by-case basis as to whether such departures are a material modification under this Service Plan or the Special District Act.
XV. MATERIAL MODIFICATIONS

Material modifications to this Service Plan may be made only in accordance with C.R.S. Section 32-1-207 as a Service Plan Amendment. No modification shall be required for an action of the District that does not materially depart from the provisions of this Service Plan, unless otherwise provided in this Service Plan.

Departures from the Service Plan that constitute a material modification requiring a Service Plan Amendment include, without limitation:

1. Actions or failures to act that create materially greater financial risk or burden to the taxpayers of the District;
2. Performance of a service or function, construction of an improvement, or acquisition of a major facility that is not closely related to an improvement, service, function or facility authorized in the Service Plan;
3. Failure to perform a service or function, construct an improvement or acquire a facility required by the Service Plan; and
4. Failure to comply with any of the prohibitions, limitations and restrictions of this Service Plan.

Actions that are not to be considered material modifications include without limitation changes in quantities of improvements, facilities or equipment; immaterial cost differences; and actions expressly authorized in this Service Plan.

XVI. DISSOLUTION

Upon independent determination by the City Council that the purposes for which the District was created have been accomplished, the District shall file a petition in district court for dissolution as provided in the Special District Act. In no event shall dissolution occur until the District has provided for the payment or discharge of all of its outstanding indebtedness and other financial obligations as required pursuant to State law.

XVII. SANCTIONS

Should the District undertake any act without obtaining prior City Council approval or consent, as required in this Service Plan, or that constitutes a material modification to this Service Plan requiring a Service Plan Amendment as provided herein or under the Special Districts Act, the City Council may impose one (1) or more of the following sanctions, as it deems appropriate:

1. Exercise any applicable remedy under the Special District Act;
2. Withhold the issuance of any permit, authorization, acceptance or other administrative approval, or withhold any cooperation, necessary for the District’s development or construction or operation of improvements or provision of services;
3. Exercise any legal remedy under the terms of any intergovernmental agreement under which the District is in default; or
4. Exercise any other legal and equitable remedy available under the law, including seeking injunctive relief against the District, to ensure compliance with the provisions of the Service Plan or applicable law.

Revised: August 21, 2018
XVIII. CONCLUSION

It is submitted that this Service Plan, as required by C.R.S. Section 32-1-203(2), establishes that:

1. There is sufficient existing and projected need for organized service in the Service Area to be served by the District;

2. The existing service in the Service Area to be served by the District is inadequate for present and projected needs;

3. The District is capable of providing economical and sufficient service to the Service Area; and

4. The Service Area does have, and will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

XIX. RESOLUTION OF APPROVAL

The District agrees to incorporate the City Council’s resolution of approval approving this Service Plan, including any conditions on any such approval, into the copy of the Service Plan presented to the District Court for and in Larimer County, Colorado.
Key Concepts:

- **Community Benefit/Outcome Area** – The benefit/outcome corresponding to the portion of the Metro District Service Plan review policy on which the applicant is requesting consideration. (See the Metro District Policy for additional details). The benefit/outcome areas are listed below with the corresponding lead department and executive:

<table>
<thead>
<tr>
<th>Benefit/Outcome</th>
<th>Lead Department(s)</th>
<th>Executive Sponsor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental Sustainability Outcomes</td>
<td>Environmental Services, or Utilities (Various)</td>
<td>Chief Sustainability Officer, or Utilities Executive Director (or designee)</td>
</tr>
<tr>
<td>Critical Public Infrastructure</td>
<td>Engineering, Streets, or Utilities (Various)</td>
<td>Director PDT (or designee), or Utilities Executive Director (or designee)</td>
</tr>
<tr>
<td>Smart Growth Management</td>
<td>CDNS</td>
<td>Director PDT (or designee)</td>
</tr>
<tr>
<td>Strategic Priorities</td>
<td>Various</td>
<td>Various</td>
</tr>
</tbody>
</table>

Process Phases:

- **Letter of Intent (LOI)** – First phase of the Metro District Service Plan Review process and shall contain (see Policy for specifics):
  - Summary narrative of the proposed development and Metro District purpose
  - Sketch plan of the proposed district, showing: property locations and boundaries, surrounding land uses, proposed use(s), proposed improvements, existing natural features, utility locations, and photographs (if helpful)
  - District need justification
  - Explanation of public benefit and plan to assure delivery by the District
  - District proposal and Service Plan specifics

- **Service Plan Application Review** – Key phase of Metro District Service Plan Review process, including:
  - Formal application submittal by applicant (see Policy and Application for details)
  - Third-Party financial review (if needed) of the Service Plan financial plan assumptions and feasibility
  - Formal staff review and meetings with applicant
  - Council Finance Review based on completed analysis by staff and third-parties – includes a formal recommendation by staff of alignment with existing policy
  - Council work session (if needed) to review specifics of a proposed Service Plan
  - City Council consideration – final step, **all Service Plans require Council approval**

- **Compliance/Annual Review/Amendments** – By statute and the City’s policy each existing Metro District must submit an annual report (see policy for specifics) to be reviewed by the Metro District Lead; Amendments will be initially reviewed by the Metro District Lead
Key Roles:

- **Interdisciplinary Team** – Provide initial review of all Letters of Intent submitted to the City for consideration; provide on-going review and support of the existing policy, and recommend participants for a project team associated with each Service Plan submittal
  - **Team Members** – The Metro District Coordinator and representatives from Finance, Planning, Development, and Transportation (PDT), City Attorney’s Office (CAO), and Utilities (See the Interdisciplinary Team Charter for additional Details)

- **Metro District Lead** – Responsible for managing the overall timeline and review of a specific Service Plan request, including City Council review (Council Finance and City Council meetings); negotiation and review of the Service Plan itself – ensuring alignment with policy; and coordination of third-party reviews (financial and engineering, as needed)
  - **Redevelopment Coordinator** – (Economic Health) acts in this role on all Service Plans submitted to the City

- **Project Co-Lead** – Leads review of Community Benefit/Outcome being delivered by a proposed Service Plan; responsible for ensuring City obtains assurance of benefit/outcome delivery; makes the final recommendation to Council on the benefit/outcome
  - **Subject Matter Expert** – Recommended by the interdisciplinary team from the lead department for the given benefit/outcome (See Key Concepts for details)

- **Project Team** – Review a specific Service Plan request for alignment and delivery of Community Benefit/Outcomes, provide quality control of third-party analyses, and make final recommendation to Council
  - **Team Members** – Lead by the Metro District Lead and Project Co-Lead; assigned by the Interdisciplinary Team

- **Executive Sponsor** – Provides oversight for consistency with Citywide objectives, engages at “bookends and milestones” and provides final approval of Service Plan terms
  - **Varies** – generally the Executive Lead Team member that oversees the area in which the specific community benefit/outcome is being delivered by the project

- **Subject Matter Experts** – Provide expertise in a specific subject matter relevant to the review of a given proposed Service Plan, may include members of a variety of departments
  - **Varies** – determined during the project team formation process; selected in consultation with the Director overseeing the department with the desired subject matter expertise

- **Legal Support** – Provides legal review of the Service Plan on behalf of the City and Council; provides a final recommendation regarding the legal aspects of a Service Plan proposal
  - **City Attorney** – An attorney assigned to the project by the CAO

- **Financial Support (If Needed)** – Provides financial review of the Service Plan on behalf of the City and Council; provides a recommendation regarding the financial impacts on the City
  - **Finance Representative** – A representative from the Finance Department assigned by the Chief Financial Officer (CFO)
Project Team Charter
Metro District Service Plan Review – Interdisciplinary Team

Project Team Name: Metro District Service Plan Review - Interdisciplinary Team

Strategic Goal: Economic Health & High Performing Government

Project Lead: Josh Birks

Date: May 24, 2018

Project Statement:

The City has seen a rise in the number of Metropolitan District (Metro District) applications submitted for Council Consideration. Between 2008 and 2017, staff facilitated the review of four Metro District applications. Thus far in 2018 alone, the City has received four Metro District applications with an additional three to four anticipated for the fall 2018 election. Furthermore, market signals suggest that this increase in Metro District applications will continue:

1. Growing scarcity of land and water resources in the community – applying pressure to construction costs and thus housing prices; and
2. Increasing pressure from the development community in response to market pressures impacting land price and construction costs to enable the use of Metro Districts for residential development.

The City of Fort Collins adopted a Policy Concerning Approval of Metro Districts Service Plans in 2008. The policy was adopted in response to requests to consider the use of Metro Districts by several developers. This policy was reviewed and updated by City Council in 2018. The revised policy supports the use of Metro Districts for residential development, if such development delivers on one or more community benefit identified in the policy.

Business Case:

In response, to changing conditions and market pressure, a revised Policy has been adopted by City council. The new policy identified a new process for reviewing and evaluating proposed Metro District Service Plans that include residential development. The new process addresses several current deficiencies in the City’s review of Metro District Service plans, including:

1. A haphazard approach without a clear project lead and ambiguous staff roles;
2. Impacts to staff work load without warning and unclear deadlines; and
3. Inconsistency in analysis and evaluation of proposed Metro District Service plans.

Therefore, the revised policy describes a process that includes the formation of an interdisciplinary team to review all Service Plans submitted to the City. In addition, the policy outlines a multistep process intended to optimize the investment of staff time.
Measureable Objectives

1. Time to review a proposed Service Plan and obtain Council Review (Target: 120 days)
2. Contain Project Management and Third-Party Review Costs to collected fees
3. Manage unreimbursed staff time and engagement to a minimum, excluding project specific “consulting” staff time (Target: 4 hours per month)

Other objectives

1. Develop and adhere to specific Service Plan review timelines
   a. Commit to specific turn-around timelines at each phase of the process
   b. Adhering to these timelines creates clarity for internal staff and external customers
2. Manage staff work load impacts
   a. Clarity of role and expectation for each member of the interdisciplinary team; and
   b. Clarity of role and expectation for each member of a Service Plan review team
3. Clarity of Service Plan review cost and budget coverage, including:
   a. Any outside counsel expenses,
   b. Third-party review expenses (e.g., Financial Plans, Improvement Plans, etc.), and
   c. Project management expenses (EHO will provide all project management).
4. Improved customer service
   a. Greater clarity regarding Service Plan requirements
   b. Clear timelines and turnaround commitments
5. Deliver increased community benefits from adopted/supported Service Plans

Scope – Team Roles

The Interdisciplinary team will perform several roles, including:

1. **Letter of Intent Review** – The team will review all Letters of Intent submitted by developers to the City for consideration of a Metro District Service Plan, the review will include:
   a. An evaluation of the proposal for consistency with the adopted Policy,
   b. Comments regarding the projects delivery of community benefit and approach to Metro District use, and
   c. A recommendation on whether to proceed with the application for a Service Plan approval by City Council.

2. **Project Team Formation** – The team will recommend participants for a project team associated with each Letter of Intent that is recommend proceed to Service Plan submittal.

3. **Policy Review & Support** – Finally, the team will provide on-going review and support of the existing policy by recommending changes to the policy when needed or warranted.
Team Members and Role by department:

<table>
<thead>
<tr>
<th>Role</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>EXECUTIVE SPONSOR</td>
<td>Jeff Mihelich, Deputy City Manager</td>
</tr>
<tr>
<td>PROJECT TEAM (Interdisciplinary Review Team)</td>
<td></td>
</tr>
<tr>
<td>Josh Birks (EHO - Project Director)</td>
<td></td>
</tr>
<tr>
<td>John Duval (CAO)</td>
<td></td>
</tr>
<tr>
<td>Patrick Rowe (EHO - Project Manager)</td>
<td></td>
</tr>
<tr>
<td>Theresa Connor (Utilities)</td>
<td></td>
</tr>
<tr>
<td>Travis Storin (Finance)</td>
<td></td>
</tr>
<tr>
<td>Various, as needed</td>
<td></td>
</tr>
<tr>
<td>Tom Leeson (PDT)</td>
<td></td>
</tr>
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</table>

Time Frames/Meeting Frequency

The team will meet several times throughout the year being mindful to meet only when necessary:

- **Letter of Intent Review** – The team will meet as needed to review letters of intent from applicants wishing to request Council approval of a Service Plan – given that eligible TABOR elections for metro districts either occur once or twice a year these meetings will likely occur between with similar frequency.
- **Policy Review** – The team should meet at least twice a year to discuss the current policy and process to determine if changes to either are needed or required by statute – these meetings might be best scheduled after the eligible TABOR election(s) each year to reflect on the recently completed review process.
- **Ad Hoc** – The team may meet at other times during the year to provide guidance to a project team evaluating a specific Service Plan application or for any other purpose they deem necessary.

High Level Risks:

- Limited availability of Interdisciplinary Team Members
- Sense of urgency
- Uncertainty regarding political will to execute on the new policy

Constraints:

- Need to develop and refine the new process while continuing to review and process Metro District applications
- Urgency to respond to existing applications by the November 2018 election – and the associated timeline
- Need to refine the method for delivering on defined community benefits

Assets/Opportunities:

- Policy allowed fees and expense reimbursement
- Existing experience and expertise on staff
- Commitment from “typically” impacted departments to improve the existing process
### Project Manager Assigned and Authority Level

Patrick Rowe shall be the project manager and has the authority to request team members and will work with Management to secure any necessary resources to complete the project.

### Cost/Budget/Financial Assumptions:

Key costs include: labor costs of project manager/lead, third-party review expenses (including outside counsel), and staff time of interdisciplinary team members.

<table>
<thead>
<tr>
<th>Project Sponsor Authorization:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Josh Birks, Economic Health &amp; Redevelopment Director</td>
</tr>
</tbody>
</table>
MEMORANDUM

DATE: July 13, 2018
TO: Mayor and Councilmembers
THRU: Darin Atteberry, City Manager; Jeff Mihelich, Deputy City Manager; and Jacqueline Kozak-Thiel, Chief Sustainability Officer
FROM: Josh Birks, Economic Health and Redevelopment Director
RE: JULY 10, 2018 WORK SESSION SUMMARY: METRO DISTRICT POLICY REVISIONS

Staff Present: Josh Birks, Tom Leeson, John Duval

During the discussion of the proposed updates to the City Council Policy for Reviewing Proposed Service Plans for Title 32 Metropolitan Districts ("Metro District Policy"), Council offered the following feedback:

- **Public Benefits** – Council provided a variety of feedback on the public benefits described in the policy: (a) appreciate the increased specificity; (b) maintain focus on achieving community “stretch” goals, (c) consider a systems approach and the interplay between the various objectives; and (d) avoid “checking boxes”.

- **Transparency** – Council provide feedback regarding public notice, financial transparency, and engagement: (a) supportive of providing a form of notice to be used during real estate transactions; (b) support publishing and sharing financial statements of districts provided as part of the annual report requirement; and (c) encourage board meetings occur more frequently than the minimum annual requirement.

- **Affordable Housing** – Council shared the following feedback on affordable housing: (a) attainable or workforce housing could also be part of the objectives; (b) concern about the ability to deliver affordable housing with increased property tax costs; and (c) please share some examples of how a metro district would affect an individual homeowners cost of living.

- **Policy as Framework** – Staff reiterated and council agreed that the policy should establish a framework for creating and evaluating Service Plan that will deliver extraordinary public benefits – Council retains the final approval of all Service Plans.

- **Other** – Remove the limitation on covenants currently in the Model Service Plan.

**Next Steps:** Incorporate feedback from Council and present the policy for adoption on August 21, 2018.
Introduction

10/24/17 Work Session
- Foundational information on purpose and innerworkings

11/28/17 Work Session
- Conceptual Policy Revisions

07/10/18 Work Session
- Draft Policy and Model Service Plan

Today
July Work Session Summary

- Public Benefits – Maintain focus on “stretch goals”; systems approach
- Transparency – Increase visibility of financials
- Affordable Housing – Impact on attainability; how might it work
- Policy as a Framework
<table>
<thead>
<tr>
<th></th>
<th>Old</th>
<th>New</th>
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<tbody>
<tr>
<td>Mill Levy Caps</td>
<td>40 Mills</td>
<td>50 Mills</td>
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<tr>
<td>Basic Infrastructure</td>
<td>Not favored</td>
<td>To enable public benefit</td>
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<td>Eminent Domain</td>
<td>Prohibited</td>
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<td>Citizen Control</td>
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<td>Multiple Districts</td>
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<td>Projected over an extended period</td>
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<tr>
<td>Commercial/Residential Ratio</td>
<td>90% to 10%</td>
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Public Benefits

Environmental Sustainability
- GHG Reduction
- Water/Energy Conservation
- Multimodal Transportation
- Enhance Resiliency
- Increase Renewable Capacity

Critical Public Infrastructure
- Existing significant infrastructure challenges
  - On-site
  - Off-site

Smart Growth Management
- Increase density
- Walkability/Pedestrian Infrastructure
- Availability of Transit
- Public Spaces
- Mixed-Use

Strategic Priorities
- Affordable Housing
- Infill/Redevelopment
- Economic Health Outcomes
City Website + 3 Meetings Annually + Board Contact Info. = Transparency
Affordable Housing

Carve Out
- Exclude Lots from District
- No Added Tax Cost

Land Bank
- Deed to City
- Sell to City
- Price Includes Tax Burden

Land Trust
- Allows for dispersed lots
- Carve Out Lots
- Trust Mitigates Tax Burden
- Price Includes Tax Burden
## Impact on Attainability

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<tr>
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<td>Property Taxes (Excl. Metro)</td>
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<td>$220</td>
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<tr>
<td>Metro District Taxes</td>
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<td>$120</td>
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<td>Home Insurance</td>
<td>$100</td>
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<td>Electricity Bill</td>
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<td>Total Monthly Cost</td>
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<td>$120</td>
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<td>-----------------------------</td>
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<td><strong>Total Monthly Cost</strong></td>
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<td><strong>Annual Cost</strong></td>
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<td><strong>Monthly Salary Required</strong></td>
<td>$ 6,433</td>
<td>$ 6,770</td>
<td>$ 6,700</td>
<td>$ 6,567</td>
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<tr>
<td><strong>Hourly Salary Required</strong></td>
<td>$ 37.12</td>
<td>$ 39.04</td>
<td>$ 38.65</td>
<td>$ 37.88</td>
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<td><strong>Hourly Difference vs. Code</strong></td>
<td>$ -</td>
<td>$ 1.92</td>
<td>$ 1.53</td>
<td>$ 0.76</td>
</tr>
</tbody>
</table>
City Council retains final approval authority over all Service Plans.
Staff Recommends Adoption of the Resolution
Policy Context

Historic:
- Adopted in 2008
- Market Conditions
  - Rising infrastructure costs
  - Increased competition from adjacent communities
- Developer Request
  - Leveling of the playing field

Current:
- Market Conditions
  - Rising construction costs
  - Constrained land supply
  - Limited access to key resources (e.g., water)
- Developer Request
  - Requesting clarity of objectives

Objective: Clarify Key Community Benefits to Achieve
Regional Improvements

Optional Mill Levy
Max – 5.00 Mills
Max 25 Years
At City Request

Service Plan
Identifies Types of Improvements
Creates method for initiating
Requires disclosure

IGA
Specifies improvement
Specifies length of collection
Creates contractual obligation

OPTIONAL
Review Process

1. Submit LOI
2. Interdisciplinary Team Review
3. Comments
4. Recommend
5. Council Finance Review
6. Recommend
7. Council Approval
8. District Formation
9. Submit Application
10. Interdisciplinary Team Review
11. Comments
12. Recommend
13. YES
14. NO
15. YES
16. NO
17. YES
Evaluation Framework/Criteria

- Triple Bottom Line Scan
- Financial Assessment
- Policy Evaluation
- Interdisciplinary Staff Review
Performance Assurances

- Development Agreements
- Service Plan
- Restrict Powers:
  - Mill Levy
  - Debt Issuance
  - Others

Photo Credit: Congress for New Urbanism
Revised Fees

Old:
- LOI – N/A
- Application - $2,000
- Other Expenses
- Annual – $0
- Amendment - $250

New:
- LOI - $2,500
- Application - $7,500
- Other Expenses
- Non-Model Service Plan - $5,000
- Annual - $500 = $250 per
- Amendment - $2,500

Objective: No City costs or negative staff impacts
RESOLUTION 2018-079
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ADOPTING A REVISED POLICY FOR REVIEWING SERVICE
PLANS OF METROPOLITAN DISTRICTS

WHEREAS, Title 32 of the Colorado Revised Statutes permits the organization of a variety of governmental districts to finance, construct and operate certain public improvements and services to serve the residents and businesses in those districts; and

WHEREAS, a metropolitan district (“Metro District”) is one such district and it is specifically authorized to be organized under the Special District Act in Article 1 of Title 32 of the Colorado Revised Statutes (the “Act”); and

WHEREAS, before a Metro District can be organized within the boundaries of a municipality, the Act requires that the governing body of the municipality approve by resolution the Metro District’s proposed “Service Plan,” which is the document governing the Metro District’s powers under the Act, such as its taxing power, power to issue debt, and the public improvements and services it can provide (the “Service Plan”); and

WHEREAS, in July 2008, the City Council adopted Resolution 2008-069 in which it approved a policy that sets forth various guidelines concerning the Council’s review and approval of Metro District Service Plans (the “2008 Policy”); and

WHEREAS, prior to the adoption of the 2008 Policy, the City Council had approved no Service Plans; and

WHEREAS, the City Council considered and adopted the 2008 Policy for several reasons, but primarily to address market conditions that were then adversely affecting commercial development, including escalating costs to construct public infrastructure, so the 2008 Policy was approved to favor the use of Metro Districts for commercial development or mixed-used developments in which no more than 10% of their assessed value would be residential uses; and

WHEREAS, residential development is today facing similar market conditions, including rising costs for land, water, infrastructure and construction, which is creating a disincentive for residential development in the City to provide residents with the kind of special benefits that would also help the City to achieve its various policy objectives, such as affordable housing, environmental sustainability and smart growth; and

WHEREAS, in evaluating whether the 2008 Policy should be revised to be more favorable to residential development, City staff has studied the issue this past year and conducted work sessions with the Council and the Council Finance Committee to get input and direction on the issue; and

WHEREAS, based on that study and consultation, City staff is recommending that the City Council replace in its entirety the 2008 Policy by adopting the “City of Fort Collins Policy
for Reviewing Service Plans for Metropolitan Districts” dated August 21, 2018, attached as Exhibit “A” and incorporated herein by reference (the “2018 Policy”); and

WHEREAS, the City Council finds that the adoption of the 2018 Policy is in the best interest of the City and its residents, businesses and organizations, and that it is necessary for the public’s health, safety and welfare.

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

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

Section 2. That the City Council hereby approves and adopts the 2018 Policy. The 2018 Policy shall replace and supersede the 2008 Policy with regard to all Metro District Service Plans and all material modifications of Service Plans considered by the City Council after the adoption of this Resolution. However, applicants who have already paid the fees required under the 2008 Policy for a Service Plan or material modification of a Service Plan to be considered by City Council after the adoption of this Resolution are not be required to pay additional fees under the 2018 Policy. Also, those applicants who have already provided the public notice required under the 2008 Policy for a Service Plan or material modification of a Service Plan to be considered after the adoption of this Resolution are not required to comply with additional or different public notice provisions in the 2018 Policy.

Section 3. That in approving and adopting the 2018 Policy, the City Council also intends to reserve to itself the sole discretion to approve, or not, all future Service Plans and material modifications to Service Plans regardless of the provisions of the 2018 Policy.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of August, A.D. 2018.

__________________________________________
Mayor

ATTEST:

__________________________________________
City Clerk
CITY OF FORT COLLINS POLICY FOR REVIEWING SERVICE PLANS FOR
METROPOLITAN DISTRICTS

August 21, 2018

Introduction.

This policy establishes the criteria, guidelines and processes to be followed by City Council and City staff in considering and by applicants in submitting to the City service plans for the organization of metropolitan districts or amendments to those plans ("Policy"), as provided in Colorado’s Special District Act in Article 1 of Title 32 of the Colorado Revised Statutes (the "Act"). The Act provides that metropolitan districts are quasi-municipal corporations and political subdivisions ("District") that can be organized within the boundaries of a municipality provided the municipality’s governing body approves by resolution the proposed service plan for the District. Under the Act, the service plan constitutes the document that delineates the specific powers and functions the District can exercise, including the facilities and services it can provide, the taxes it can impose and its permitted financial arrangements (the "Service Plan"). The Act requires Districts to conform to their Service Plans.

Section 1 – Policy Objectives and Statements.

A. This Policy generally supports the formation of a District where it will deliver extraordinary public benefits that align with the goals and objectives of the City whether such extraordinary public benefits are provided by the District or by the entity organizing the District because the District exists to provide public improvements.

B. A District, when properly structured, can enhance the quality of development in the City. The City is receptive to District formation that provides extraordinary public benefits which could not be practically provided by the City or an existing public entity, within a reasonable time and on a comparable basis. It is not the intent of the City to create multiple entities which would be construed as competing or duplicative.

C. The approval of a District Service Plan is at the sole discretion of City Council, which may reject, approve, or conditionally approve Service Plans on a case-by-case basis. Nothing in this Policy is intended, nor shall it be construed, to limit this discretion of City Council, which retains full authority regarding the approval, terms, conditions and limitations of all Service Plans.

D. Policy Objectives.

The City will evaluate a proposed District and its Service Plan based on the District’s ability to deliver public benefits through extraordinary development outcomes, specific examples are provided in Exhibit “A” and generally occur in the following four focus areas:

1. Environmental Sustainability Outcomes: Development of public improvements that deliver or facilitate the delivery of specific and measurable environmental outcomes, including but
not limited to: (i) reduce Green House Gases (“GHG”), (ii) conserve water or energy, (iii) encourage multimodal transportation, (iv) enhance community resiliency – against future environmental events (e.g., flooding, drought, etc.); (v) increase renewable energy capacity; and/or (vi) deliver other environmental outcomes.

2. **Critical Public Infrastructure:** Development of public improvements that address or facilitate addressing significant infrastructure challenges previously identified by the City, either within or proximate to the District, whether such improvements address a locally-significant challenge or a City-wide challenge.

3. **Smart Growth Management:** Development of public improvements that deliver or facilitate the delivery of specific design components that: (i) increase the density of development within the District; (ii) establish, enhance or address the walkability and pedestrian friendliness of the District; (iii) increase the availability of transit and/or multimodal oriented facilities; (iv) create compelling public spaces; and/or (v) encourage mixed-use development patterns.

4. **Strategic Priorities:** Development of public improvements that deliver or facilitate the delivery of strategic priorities specified in the City’s existing long-term strategic planning documents, such as City Plan, Affordable Housing Plan, Economic Health Strategic Plan, and applicable Sub-Area Plans. These priorities include, but are not limited to:

   a. **Affordable Housing:** Deliver or facilitate the delivery of additional affordable housing units at the City’s defined level of Area Median Income (“AMI”) or below. The City defines Affordable Housing as units affordable to a household earning 80 percent of AMI.

   b. **Workforce Housing:** Deliver or facilitate the delivery of workforce housing units in the City’s defined range of AMI. For purposes of this policy, Workforce Housing units shall be defined as units affordable to a household earning between 80 percent and 120 percent of AMI.

   c. **Infill/Redevelopment:** Enable the infill or redevelopment of property within the City, especially when such development is consistent with City Plan.

   d. **Economic Health Outcomes:** Enable delivery of specific and measurable economic outcomes, such as: (i) job growth; (ii) retention of an existing business; and/or (iii) construction of a missing economic resource.

In determining whether a proposed District delivers extraordinary public benefits, the City may consider: (i) ways in which the proposed improvements exceed the City’s minimum requirements and standards; (ii) ways in which the existence of the District facilitates the extraordinary public benefits and whether the extraordinary benefits are feasible without the District; (iii) ways in which the proposed extraordinary benefits work together as a system to
deliver greater benefit to the community than individually; and (iv) any other factors the City
deems relevant under the circumstances.

E. Policy Statements:

1. **Limited Use:** The City wishes to exact a high standard of use for Districts thereby limiting
their use. An applicant project is expected to deliver extraordinary benefits across multiple
City objectives two or more of the objectives described in Section 1.D. of this Policy.

2. **Broad and Demonstrable Public Benefit:** Districts are expected to provide broad public
benefit and the applicant will be asked to demonstrate and provide assurances of those
benefits. The City will utilize the Service Plans, development agreements, and other
contractual agreements to document and enforce District commitments.

3. **District Governance:** It is the intent of the City that owner/resident control of Districts occur
as early as feasible. Service Plans should include governance structures that encourage and
accommodate this. The use of control Districts (also known as “service” or “managing”
Districts) that allow developers to control the other Districts that provide the tax revenues
beyond the time needed to repay the issued debt, is to be discouraged.

4. **Basic Infrastructure Improvements:** A District proposing to fund basic infrastructure
improvements will not be favorably received except when used to offset higher costs
associated with delivering public benefit through extraordinary development outcomes (see
Exhibit A for examples).

5. **Minimum District Size:** A District proposed to issue less than $7 million of authorized debt
will not be considered.

Section 2 – Evaluation Criteria

A. To provide City Council with information and an assessment consistent with this Policy, staff will
review and report on District proposals in the following areas:

1. **Public Benefit Assessment and Triple Bottom Line Scan:** To comprehensively and
consistently evaluate District proposals, an interdisciplinary staff team, inclusive of
representatives from Planning, Economic Health, Sustainability, and other Departments as
appropriate, will be formed. This team will rely on the City’s Triple Bottom Line evaluation
approach, and other means, to assess a District proposal consistent with this Policy and City
goals and objectives more broadly.

2. **Financial Assessment:** All District proposals are required to submit a Financial Plan to the
City for review. Utilizing the District’s Financial Plan, and other supporting information
which may be necessary, the City will evaluate a District’s debt capacity and servicing ability.
Additionally, should a District desire to utilize District funding for basic infrastructure
improvements, as determined by the City in its sole discretion, staff will assess the value of this benefit against the public benefits received in exchange.

3. **Policy Evaluation:** All proposals will be evaluated by City staff against this Policy and the City's "Model Service Plan", with any areas of difference being identified, evaluated and reported to City Council. Attached as Exhibit "B" is the single-district Model Service Plan and attached as Exhibit "C" is the multi-district Model Service Plan.

**Section 3 – Application Process**

A. **Process Overview:** The application process is designed to provide early feedback to an applicant, adequate time for a comprehensive staff review, and the appropriate steps and meeting opportunities with decision makers.

B. **Letter of Interest:** Applicant will provide City with a Letter of interest and pre-application fee (refer to fees below). The Letter of Interest shall contain the following:

1. Summary narrative of the proposed development and District proposal.

2. Sketch plan showing: property location and boundaries; surrounding land uses; proposed use(s); proposed improvements (buildings, landscaping, parking/drive areas, water treatment/detention, drainage); existing natural features (water bodies, wetlands, large trees, wildlife, canals, irrigation ditches); utility line locations (if known); and photographs (helpful but not required).

3. Clear justification for why a District is needed.

4. Explanation of public benefits, making specific reference to this Policy and other relevant City documents.

5. District proposal and Service Plan specifics, including: District powers and purpose; District infrastructure and costs; mill levy rate (both debt and, operations and maintenance); term of District; forecasted period of build-out; proposed timeline for formation; and current development status of project.

C. **Preliminary Staff Meeting with Applicant (Optional):** Based on an initial review of the Letter of Interest, staff may meet with the applicant to discuss the District proposal, potential public benefits, initial staff feedback, the evaluation process, fees, and other application elements.

D. **Formal Application and Service Plan Submittal:** Upon taking account of staff input, applicant may submit a formal application for consideration following the requirements specified in the City’s District Application, including the Service Plan in which the applicant shall highlight the substantive provisions that deviate from this Policy and the appropriate Model Service Plan (see Exhibits "B" and "C").
E. **Formal Staff Review:** An interdisciplinary staff team will review the applicant submittal along with any follow-up documentation that is requested in order to assess the application according to this Policy and other appropriate City policy. Applicants should expect several rounds of feedback and review from City staff.

F. **Council Finance Committee Meeting:** The Council Finance Committee will review all District proposals and provide feedback and recommendations.

G. **Council Work Session Meeting (optional):** Based on the magnitude and complexity of the development project and District proposal, staff and/or the Council Finance Committee may recommend a Council Work Session.

H. **Council Public Hearing:** The City Council will conduct a noticed public hearing at a regular or special Council meeting to consider resolution approval of Service Plan. The Service Plan Applicant must cause a written notice of the public hearing to be mailed by first-class mail to all fee title owners of real property within the boundaries of the proposed District(s) and of any future inclusion area proposed in the Service Plan and such notice shall be mailed no later than thirty (30) days before the scheduled hearing date. A notice shall also be published once in a newspaper of general circulation in the City no later than thirty (30) days before the scheduled hearing date. The mailed and published notices shall include the following information:

1. A description of the general nature of the public improvements and services to be provided by the District;

2. A description of the real property to be included in the District and in any proposed future inclusion area, with such property being described by street address, lot and block, metes and bounds if not subdivided, or such other method that reasonably apprises owners that their property will or could be included in the District's boundaries;

3. A statement of the maximum amount of property tax mill levy that can be imposed on property in the District under the proposed Service Plan;

4. A statement that property owners desiring to have the City Council consider excluding their properties from the District must file a petition for exclusion with the Fort Collins City Clerk's Office no later than ten (10) days before the scheduled hearing date in accordance with Section 32-1-203(3.5) of the Colorado Revised Statutes;

5. A statement that a copy of the proposed Service Plan can be reviewed in the Fort Collins City Clerk's Office; and

6. The date, time and location of the City Council's public hearing on the Service Plan.

**Section 4 – Service Plan**
A. **Purpose:** In addition to the requirements of the Act, a Service Plan should memorialize the understandings and agreements between the District and the City, as well as the considerations that compelled the City to authorize the formation of the District. The Service Plan must also include all applicable information required by the Act.

B. **Compliance with Applicable Law:** Any Service Plan submitted to the City for approval must comply with all state, federal and local laws and ordinances, including the Act.

C. **Model Service Plan:** To clearly communicate City requirements and streamline legal review, the City will require the use of its appropriate Model Service Plan (See Exhibits “B” and “C”). With justification, the City may consider deviations in the proposed Service Plan, but generally all Service Plans should include the following:

1. **Eminent Domain NOT Authorized:** The Service Plan shall contain language that prohibits the District from exercising the power of eminent domain. However, the City may choose to exercise its power of eminent domain to construct public improvements within the District in which case the District and the City will enter into an intergovernmental agreement concerning the public improvements and funding for that use of eminent domain.

2. **Maximum Mill Levy:** The Service Plan shall restrict the District’s total mill levy authorization for both debt service and operations and maintenance to fifty (50) mills, subject to adjustment as provided below. A portion of the Maximum Mill Levy may be utilized by the District to fund operations and maintenance functions, including customary administrative expenses incurred in operating the District such as accounting and legal expenses and otherwise complying with applicable reporting requirements. No more than ten (10) mills may be used for operations and maintenance (the “Operations and Maintenance Mill Levy”).

   a. Increased mill levies may be considered for Districts that are predominately commercial in use, at the sole discretion of the City Council.

   b. The Maximum Mill Levy may be adjustable from the base year of the District as provided for in the Model Service Plan, so that to the extent possible, the actual tax revenues generated by the District’s mill levy, as adjusted, for changes occurring after the base year, are neither diminished nor enhanced as a result of the changes.

3. **Debt Term Limit:** A District shall be allowed no more than forty (40) years for the levy and collection of taxes used to service debt unless a majority of the Board of Directors of the District imposing the mill levy are residents of such District and have voted in favor of a refunding of a part or all of the Debt and such refunding is for one or more of the purposes authorized in C.R.S. Section 11-56-104.
4. **District Dissolution:** Perpetual Districts shall not be allowed except in cases where ongoing operations and maintenance are required. Except where ongoing operations and maintenance has been authorized, a District must be dissolved as soon as practical upon:

   a. The payment of all debt and obligations; and

   b. The completion of District development activity.

5. **District Fees:** Impact fees, development fees, service fees, and any other fees must be identified with particularity in the District Service Plan. Impact and development fees must not be levied or collected against the end user – i.e., residents and/or non-developer owners.

6. **Notice Requirements:** The Service Plan shall require that the District use reasonable efforts to assure that all developers of the property located within the District provide written notice to all purchasers of property in the District regarding the District’s existing mill levies, its maximum debt mill levy, as well as a general description of the District’s authority to impose and collect rates, fees, tolls and charges. The form of notice shall be filed with the City prior to the initial issuance of the debt of the District imposing the mill levy.

7. **Annual Report:** The Service Plan must obligate the District to file an annual report not later than September 1 of each year with the City Clerk for the year ending the preceding December 31, the requirements of which may be waived in whole or in part by the City Manager. Details of the Annual Report are included in the Model Service Plan.

D. **Service Plan Requirements:** In addition to all other information required in a Service Plan by the Act, a Service Plan must include the following:

1. **Financial Plan:** The Service Plan must include debt and operating financial projections prepared by an investment banking firm or financial advisor qualified to make such projections. The financial firm must be listed in the Bond Buyers Marketplace or, in the City’s sole discretion, other recognized publication as a provider of financial projections. The Financial Plan must include debt issuance and service schedules and calculations establishing the District’s projected maximum debt capacity (the “Total Debt Limitation”) based on assumptions of: (i) **Projected Interest Rate** on the debt to be issued; (ii) **Projected Assessed Valuation** of the property within the District; and (iii) **Projected Rate of Absorption** of the assessed valuation within the District. These assumptions must use market-based, market comparable valuation and absorption data and may use an annual inflation rate of three percent (3%) or the Consumer Price Index for the preceding 12-month period for the Denver-Boulder-Greeley statistical region as prepared by the U.S. Department of Labor Statistics, whichever is lesser.

   a. **Total Debt Limitation:** The total debt authorized in the Service Plan must not exceed 100% of the projected maximum debt capacity as shown in the Financial Plan.
b. **Administrative, Operational and Maintenance Costs:** The Financial Plan must also include foreseeable administrative, operational and maintenance costs.

2. **Public Improvements and Estimated Costs:** Every Service Plan must include, in addition to all materials, plans and reports required by the Act, a summary of public improvements to be constructed and/or installed by the district (the "Public Improvements"). The description of these Public Improvements must include, at a minimum:

   1. A map or maps, and construction drawings of such a scale, detail and size as required by the Planning Department, providing an illustration of public improvements proposed to be built, acquired or financed by the District;
   2. A written narrative and description of the public improvements; and
   3. A general description of the District’s proposed role with regard to the same.

Due to the preliminary nature, the Service Plan must indicate that the City’s approval of the Public Improvements shall not bind the City, its boards and commissions, and City Council in any way relating to the review and consideration of land use applications within the District.

3. **Intergovernmental Agreement:** Any intergovernmental agreement which is required or known at the time of formation of the District to likely be required, to fulfill the purposes of the District, must be described in the Service Plan, along with supporting rationale. The Service Plan must provide that execution of intergovernmental agreements which are likely to cause substantial increase in the District’s budget and are not described in the Service Plan will require the prior approval of City Council.

4. **Extraterritorial Service Agreement:** The Service Plan must describe any planned extraterritorial service agreement. The Service Plan must provide that any extraterritorial service agreement by the District that are not described in the Service Plan will require prior approval of City Council.

**Section 5 – Regional Improvements**

A. **Purpose:** A Service Plan may include a section addressing the planning, design, acquisition, funding, construction, installation, relocation and/or redevelopment of Regional Improvements. Such section is intended to ensure that the privately-owned properties to be developed in a District that benefit from the Regional Improvements pay a reasonable share of the associated costs.

B. **Eligible Improvements:** The City, to facilitate transparency, will include a list or exhibit in any Service Plan including a Regional Improvements section that clearly identifies the improvements to be funded, in part or whole, by a Regional Mill to be levied by the District. In selecting improvements to be included in a Service Plan the City will apply the following standards:
1. **Benefit to End User** – Regional Improvements should have a clear benefit to the private-owned properties funding the Regional Mill Levy. The City may establish this connection either through previous identification of the infrastructure need and/or through a technical analysis, such as a traffic impact analysis.

2. **Specificity** – When possible, the City should include as much specificity about the Regional Improvements to be included in a Service Plan as possible, while noting that any details are preliminary and may be subject to change as planning, design, acquisition, funding, construction, installation, relocation and/or redevelopment of the Regional Improvements occurs.

3. **No Other Funding Exists** – The City will exclude improvements, either in part or whole, for which funding mechanisms exist to support the planning, design, acquisition, funding, construction, installation, relocation and/or redevelopment. By way of example, the City collects Capital Expansion Fees to support street oversizing, however, several bridge structures necessary to facilitate grade separated crossings of railroad infrastructure were not included in the calculation of these Fees; therefore, the bridges would be and eligible Regional Improvement, where the road surface itself would not.

**Section 5 – Fees**

A. No request to create a Metro District shall proceed until the fees set forth herein are paid when required. All checks are to be made payable to the City of Fort Collins and sent to the Economic Health Office.

1. **Letter of Intent Submittal Fee:** A Letter of Intent is to be submitted to the City’s Economic Health Office and a non-refundable $2,500 fee shall be paid at the time of submittal of the Letter.

2. **Application Fee:** An application along with a draft Service Plan (based on the Model Service Plan) is to be submitted to the City’s Economic Health Office and a $7,500 non-refundable fee along with a $7,500 deposit towards the City’s other expenses shall be paid at the time of submittal of the Application and draft Service Plan.

3. **Annual Fee:** Each District shall pay an annual fee for the City’s on-going monitoring of each Metro District. This annual fee shall be $500 or if multiple Districts exist serving a single project, then the annual fee shall be $500 plus $250 for each additional District beyond the first (e.g., the annual fee for Consolidated ABC Metro Districts 1 to 7 shall be $500 plus $250 times six or $2,000).

4. **Non-Model Service Plan Fee:** A District proposal requesting a substantial deviation from this Policy or the Model Service Plan, shall pay an additional non-refundable fee of $5,000 at the time of submitting its application; the City shall in its sole and reasonable discretion
determine if a draft Service Plan proposes a substantial deviation from this Policy or the Model Service Plan.

5. **Other Expenses:** If the deposits paid in subsections 2 and 6 are not sufficient to cover all the City's other expenses, the applicant for a District shall pay all reasonable consultant, legal, and other fees and expenses incurred by the City in the process of reviewing the draft Service Plan or amended Service Plan prior to adoption, documents related to a bond issue and such other expenses as may be necessary for the City to incur to interface with the District. All such fees and expenses shall be paid within 30 days of receipt of an invoice for these additional fees and expenses.

6. **Service Plan Amendment Fee:** If a proposed amendment to a Service Plan is submitted to the City's Economic Health Office, it should be submitted with a non-refundable $2,500 fee along with a $2,500 deposit towards the City's other expenses and shall be paid at the time of submittal of the application and draft amended Service Plan.
EXHIBIT A
PUBLIC BENEFIT EXAMPLES

The following list of examples is meant to be illustrative of the types of projects that deliver the defined public benefits in this policy. Projects that deliver similar or better outcomes will also be considered on their merits.

<table>
<thead>
<tr>
<th>Category / Sub-Category</th>
<th>Example Projects</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Environmental Sustainability Outcomes</strong></td>
<td></td>
</tr>
<tr>
<td>1. Green House Gas Reductions</td>
<td>- See subsequent sub-categories</td>
</tr>
</tbody>
</table>
| 2. Water and/or Energy Conservation | - District-wide non-potable water system(s)  
- District-wide renewable energy system(s)  
- Delivery of 20% or more rooftop solar  
- Greywater reuse system(s) - if allowed by law |
| 3. Multimodal Transportation | - Buffered bike lanes  
- Wider than required sidewalks  
- Enhanced pedestrian crossings  
- Underpass(es) |
| 4. Enhance Community Resiliency | - Significant stormwater improvements (previously identified)  
- Improvements to existing bridges |
| 5. Increase Renewable Energy Capacity | - District-wide renewable energy systems(s)  
- Set aside land for community solar garden(s)  
- Utility scale renewable project(s) |
| **Critical Public Infrastructure** | |
| 1. Within District Area | - Community Park Land (beyond code requirements)  
- Regional Stormwater Facilities  
- Major arterial development  
- Parking Structures (Publicly Accessible) |
| 2. Adjacent to Proposed District | - Contribution to major interchange/intersection  
- Contribution to grade separated railroad crossings |

(Continued on next page)
<table>
<thead>
<tr>
<th>Category / Sub-Category</th>
<th>Example Projects</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Quality and Smart Growth Management</td>
<td></td>
</tr>
<tr>
<td>1. Increase density</td>
<td>- Alley load construction</td>
</tr>
<tr>
<td></td>
<td>- Smaller Lot Size</td>
</tr>
<tr>
<td></td>
<td>- Increased multifamily development</td>
</tr>
<tr>
<td>2. Walkability &amp; Pedestrian Friendliness</td>
<td>- Wider than required sidewalks</td>
</tr>
<tr>
<td></td>
<td>- Enhanced pedestrian crossings</td>
</tr>
<tr>
<td></td>
<td>- Underpass(es)</td>
</tr>
<tr>
<td></td>
<td>- Trail system enhancements</td>
</tr>
<tr>
<td>3. Increase availability of Transit</td>
<td>- Improved bus stops</td>
</tr>
<tr>
<td></td>
<td>- Restricted access guideways for bus operations</td>
</tr>
<tr>
<td></td>
<td>- Transfer facilities</td>
</tr>
<tr>
<td>4. Public Spaces</td>
<td>- Pocket Parks</td>
</tr>
<tr>
<td></td>
<td>- Neighborhood Parks (beyond code requirements)</td>
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</table>

<table>
<thead>
<tr>
<th>Strategic Priorities</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Affordable Housing</td>
<td>- Units permanently affordable to 80% Area Median Income</td>
</tr>
<tr>
<td></td>
<td>- Land dedicated to City's land bank program</td>
</tr>
<tr>
<td>2. Infill/Redevelopment</td>
<td>- Address environmental contamination / concern</td>
</tr>
<tr>
<td></td>
<td>- Consolidate wetlands or natural area (positive benefits)</td>
</tr>
<tr>
<td>3. Economic Health Outcomes</td>
<td>- Facilitate job growth (at or above County median income)</td>
</tr>
<tr>
<td></td>
<td>- Retain an existing business</td>
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</tbody>
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EXHIBIT B
MODEL SERVICE PLAN

Attachment: Exhibit A (7072: Metro District Policy RESO)
EXHIBIT C
MODEL SERVICE PLAN
This model service plan template should be referenced in conjunction with the City of Fort Collins Policy for Reviewing Service Plans for Metropolitan Districts.

Revised: August 21, 2018
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Revised: August 21, 2018
I. INTRODUCTION

A. Purpose and Intent.

The District, which is intended to be an independent unit of local government separate and distinct from the City, is governed by this Service Plan, the Special District Act and other applicable State law. Except as may otherwise be provided by State law, City Code or this Service Plan, the District's activities are subject to review and approval by the City Council only insofar as they are a material modification of this Service Plan under C.R.S. Section 32-1-207 of the Special District Act.

The District will provide all of the Public Improvements for the Project at the sole expense of all anticipated inhabitants and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements by the issuance of Debt.

[Add if Applicable] It is intended that this Service Plan also requires the District to pay a portion of the cost of the Regional Improvements as part of ensuring that those privately-owned properties to be developed in the District that benefit from the Regional Improvements pay a reasonable share of the associated costs.

The District is not intended to provide ongoing operations and maintenance services except as expressly authorized in this Service Plan.

It is the intent of the District to dissolve upon payment or defeasance of all Debt incurred or upon a court determination that adequate provision has been made for the payment of all Debt, except that if the District is authorized in this Service Plan to perform continuing operating or maintenance functions, the District shall continue in existence for the sole purpose of providing such functions and shall retain only the powers necessary to impose and collect the taxes or Fees authorized in this Service Plan to pay for the costs of those functions.

It is intended that the District shall comply with the provisions of this Service Plan and that the City may enforce any non-compliance with these provisions as provided in Section XVII of this Service Plan.

B. Need for the District.

There are currently no other governmental entities, including the City, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction, installation, relocation, redevelopment and financing of the Public Improvements needed for the Project. Formation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible.

C. Objective of the City Regarding District's Service Plan.

Revised: August 21, 2018
The City’s objective in approving this Service Plan is to authorize the District to provide for the planning, design, acquisition, construction, installation, relocation and redevelopment of the Public Improvements from the proceeds of Debt to be issued by the District. Except as specifically provided in this Service Plan, all Debt is expected to be repaid by taxes and Fees imposed and collected for no longer than the Maximum Debt Mill Levy Imposition Term for residential properties. A tax mill levy may not exceed the Maximum Debt Mill Levy. Fees imposed for the payment of Debt shall be due no later than upon the issuance of a building permit unless a majority of the Board which imposes such a Fee is composed of End Users as provided in Section VII.B.2. Debt which is issued within these parameters and, as further described in the Financial Plan, will insulate property owners from excessive tax and Fee burdens to support the servicing of the Debt and will result in a timely and reasonable discharge of the Debt.

D. Relevant Intergovernmental Agreements.

[Add description of any relevant intergovernmental agreements.]

E. City Approvals.

Any provision in this Service Plan requiring “City” or “City Council” approval or consent shall require the City Council’s prior written approval or consent exercised in its sole discretion. Any provision in this Service Plan requiring “City Manager” approval or consent shall require the City Manager’s prior written approval or consent exercised in the City Manager’s sole discretion.

II. DEFINITIONS

In this Service Plan, the following words, terms and phrases which appear in a capitalized format shall have the meaning indicated below, unless the context clearly requires otherwise:

Aggregate Mill Levy: means the total mill levy resulting from adding the District’s Debt Mill Levy and Operating Mill Levy. The District’s Aggregate Mill Levy does not include any Regional Mill Levy that the District may levy.

Aggregate Mill Levy Maximum: means the maximum number of combined mills that the District may levy for its Debt Mill Levy and Operating Mill Levy, at a rate not to exceed the limitation set in Section IX.B.1.

Approved Development Plan: means a City-approved development plan or other land-use application required by the City Code for identifying, among other things, public improvements necessary for facilitating the development of property within the Service Area.

Board: means the duly constituted Board of Directors of the District.

Bond, Bonds or Debt: means bonds, notes or other multiple fiscal year financial obligations for the payment of which a District has promised to impose an ad valorem property tax mill levy, Fees or other legally available revenue. Such terms do not include contracts through which a District procures or provides services or tangible property.

City: means the City of Fort Collins, Colorado, a home rule municipality.
City Code: means collectively the City’s Municipal Charter, Municipal Code, Land Use Code and ordinances as all are now existing and hereafter amended.

City Council: means the City Council of the City of Fort Collins, Colorado.

City Manager: means the City Manager of the City of Fort Collins, Colorado.

C.R.S.: means the Colorado Revised Statutes.

Debt Mill Levy: means a property tax mill levy imposed on Taxable Property by the District for the purpose of paying Debt as authorized in this Service Plan, at a rate not to exceed the limitations set in Section IX.B.

Developer: means a person or entity that is the owner of property or owner of contractual rights to property in the Service Area that intends to develop the property.

Developer Obligation: means any agreement executed by the District for the purpose of borrowing funds from any Developer or related party developing or selling land within the Service Area or who is a member of the Board.

District: means the [Name of District] organized under and governed by this Service Plan.

District Boundaries: means the boundaries of the area legally described in Exhibit “A” attached hereto and incorporated by reference and as depicted in the District Boundary Map.

District Boundary Map: means the map of the District Boundaries attached hereto as Exhibit “B” and incorporated by reference.

End User: means any owner, or tenant of any owner, of any property within the District, who is intended to become burdened by the imposition of ad valorem property taxes and/or Fees. By way of illustration, a resident homeowner, renter, commercial property owner or commercial tenant is an End User. A Developer and any person or entity that constructs homes or commercial structures is not an End User.

External Financial Advisor: means a consultant that: (1) is qualified to advise Colorado governmental entities on matters relating to the issuance of securities by Colorado governmental entities including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; (2) shall be an underwriter, investment banker, or individual listed as a public finance advisor in the Bond Buyer’s Municipal Market Place or, in the City’s sole discretion, other recognized publication as a provider of financial projections; and (3) is not an officer or employee of the District or an underwriter of the District’s Debt.

Fees: means the fees, rates, tolls, penalties and charges the District is authorized to impose and collect under this Service Plan.

Financial Plan: means the Financial Plan described in Section IX of this Service Plan which is prepared or approved by an External Financial Advisor in accordance with the requirements of this Service Plan and describes (a) how the Public Improvements are to be financed; (b) how the Debt is expected to be incurred; and (c) the estimated operating revenue derived from property taxes and any Fees for the first budget year through the year in which all District Debt is expected to be defeased or paid in the ordinary course. In the event the Financial Plan is not prepared by an External Financial Advisor, the Financial Plan
is to be accompanied by a letter of support from an External Financial Advisor.

**Inclusion Area Boundaries:** means the boundaries of the property that is anticipated to be added to the District Boundaries after the District organization, which property is legally described in Exhibit “C” attached hereto and incorporated by reference and depicted in the map attached hereto as Exhibit “D” and incorporated herein by reference.

**Maximum Debt Authorization:** means the total Debt the District is permitted to issue as set forth in Section IX.B.8 of this Service Plan.

**Maximum Debt Mill Levy Imposition Term:** means the maximum term during which the District’s Debt Mill Levy may be imposed on property developed in the Service Area for residential use, which shall include residential properties in mixed-use developments. This maximum term shall not exceed forty (40) years from December 31 of the year this Service Plan is approved by City Council.

**Operating Mill Levy:** means a property tax mill levy imposed on Taxable Property for the purpose of funding District administration, operations and maintenance as authorized in this Service Plan, including, without limitation, repair and replacement of Public Improvements, and imposed at a rate not to exceed the limitations set in Section IX.B.

**Planned Development:** means the private development or redevelopment of the properties in the Service Area under an Approved Development Plan.

**Project:** means the installation and construction of the Public Improvements for the Planned Development.

**Public Improvements:** means the improvements and infrastructure the District is authorized by this Service Plan to fund and construct for the Planned Development to serve the future taxpayers and inhabitants of the District, except as specifically prohibited or limited in this Service Plan. Public Improvements shall include, without limitation, the improvements and infrastructure described in Exhibit “E” attached hereto and incorporated by reference. Public Improvements do not include Regional Improvements.

**Regional Improvements:** means any regional public improvement identified by the City for funding, in whole or part, by a Regional Mill Levy levied by the District, including, without limitation, the public improvements described in Exhibit “F” attached hereto and incorporated by reference.

**Regional Mill Levy:** means the property tax mill levy imposed on Taxable Property for the purpose of planning, designing, acquiring, funding, constructing, installing, relocating and/or redeveloping the Regional Improvements and/or to fund the administration and overhead costs related to the Regional Improvements as provided in Section X of this Service Plan.

**Service Area:** means the property within the District Boundaries and the property in the Inclusion Area Boundaries when it is added, in whole or part, to the District Boundaries.

**Special District Act:** means Article 1 in Title 32 of the Colorado Revised Statutes, as amended.

**Service Plan:** means this service plan for the District approved by the City Council.
Service Plan Amendment: means a material modification of the Service Plan approved by the City Council in accordance with the Special District Act, this Service Plan and any other applicable law.

State: means the State of Colorado.

Taxable Property: means the real and personal property within the District Boundaries and within the Inclusion Area Boundaries when added to the District Boundaries that will be subject to the ad valorem property taxes imposed by the District.

Vicinity Map: means the map attached hereto as Exhibit “G” and incorporated by reference depicting the location of the Service Area within the regional area surrounding it.

III. BOUNDARIES AND LOCATION

The area of the District Boundaries includes approximately [Insert Number] acres and the total area proposed to be included in the Inclusion Area Boundaries is approximately [Insert Number] acres. A legal description and map of the District Boundaries are attached hereto as Exhibit A and Exhibit B, respectively. A legal description and map of the Inclusion Area Boundaries are attached hereto as Exhibit C and Exhibit D, respectively. It is anticipated that the District’s Boundaries may expand or contract from time to time as the District undertakes inclusions or exclusions pursuant to the Special District Act, subject to the limitations set forth in this Service Plan. The location of the Service Area is depicted in the vicinity map attached as Exhibit G.

IV. DESCRIPTION OF PROJECT, PLANNED DEVELOPMENT, PUBLIC BENEFITS & ASSESSED VALUATION

A. Project and Planned Development.

[Describe the nature of the Project and Planned Development, estimated population at build out, timeline for development, estimated assessed value after 5 and 10 years and estimated sales tax revenue. Also, please identify all plans, including but not limited to Citywide Plans, Small Area Plans, and General Development Plans that apply to any portion of the District’s Boundaries or Inclusion Area Boundaries and describe how the Project and Planned Development are consistent with the applicable plans. Please state if the proposed District is to be located within an urban renewal area and if the proposed development is anticipating the use of tax increment financing (TIF). If the District intends to pursue TIF, please provide information on how the TIF financing will interact with the District’s financing and how the necessary Public Improvements will be shared across the two funding sources.]

Approval of this Service Plan by the City Council does not imply approval of the development of any particular land-use for any specific area within the District. Any such approval must be contained within an Approved Development Plan.

B. Public Benefits.

Revised: August 21, 2018
[Described the public benefits to be delivered by the Service Plan that comply with the requirements of the City’s Metro District Service Plan Policy. The description must include specific and measurable objectives for the public benefits to be delivered by the Service Plan. Examples of specific and measurable approaches can be found in the City’s Metro District Service Plan Policy.]

C. Assessed Valuation.

The current assessed valuation of the Service Area is approximately [Dollar Amount] and, at build out, is expected to be [Dollar Amount]. These amounts are expected to be sufficient to reasonably discharge the Debt as demonstrated in the Financial Plan.

V. INCLUSION OF LAND IN THE SERVICE AREA

Other than the real property in the Inclusion Area Boundaries, the District shall not add any real property to the Service Area without the City’s approval and in compliance with the Special District Act. Once the District has issued Debt, it shall not exclude real property from the District’s boundaries without the prior written consent of the City Council.

VI. DISTRICT GOVERNANCE

The District’s Board shall be comprised of persons who are a qualified “eligible elector” of the District as provided in the Special District Act. It is anticipated that over time, the End Users who are eligible electors will assume direct electoral control of the District’s Board as development of the Service Area progresses. The District shall not enter into any agreement by which the End Users’ electoral control of the Board is removed or diminished.

VII. AUTHORIZED AND PROHIBITED POWERS

A. General Grant of Powers.

The District shall have the power and authority to provide the Public Improvements, the Regional Improvements and related operation and maintenance services, within and without the District Boundaries, as such powers and authorities are described in the Special District Act, other applicable State law, common law and the Colorado Constitution, subject to the prohibitions, restrictions and limitations set forth in this Service Plan.

If, after the Service Plan is approved, any State law is enacted to grant additional powers or authority to metropolitan districts by amendment of the Special District Act or otherwise, such powers and authority shall be deemed to be a part hereof and available to be exercised by the Districts if the City Council first approves the exercise of such powers or authority by the District. Such approval by the City Council shall not constitute a Service Plan Amendment.

B. Prohibited Improvements and Services and other Restrictions and Limitations.

The District’s powers and authority under this Service Plan to provide Public Improvements and services and to otherwise exercise its other powers and authority under the Special District Act and other applicable State law, are prohibited, restricted and limited as hereafter provided. Failure to comply with these prohibitions, restrictions and limitations shall constitute a material modification under this Service Plan and shall entitle the City to pursue all remedies available at law and in equity as provided in Section XVII of this Service Plan.

Revised: August 21, 2018
1. **Eminent Domain Restriction**

The District shall not exercise its statutory power of eminent domain without first obtaining resolution approval from the City Council. This restriction on the District's exercise of its eminent domain power is being voluntarily acquiesced to by the District and shall not be interpreted in any way as a limitation on the District's sovereign powers and shall not negatively affect the District's status as a political subdivision of the State as conferred by the Special District Act.

2. **Fee Limitation**

All Fees imposed for the repayment of Debt, if authorized by this Service Plan, shall be authorized to be imposed by the District upon all property within the District Boundaries only if such Fees are due and payable no later than upon the issuance of a building permit by the City. Notwithstanding any of the foregoing, this Fee limitation shall not apply to any Fee imposed to fund the operation, maintenance, repair or replacement of Public Improvements or the administration of the District, nor shall this Fee limitation apply if a majority of the District’s Board is composed of End Users.

3. **Operations and Maintenance**

The primary purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The District shall dedicate the Public Improvements to the City or other appropriate jurisdiction or owners’ association in a manner consistent with the Approved Development Plan and the City Code, provided that nothing herein requires the City to accept a dedication. The District is specifically authorized to operate and maintain any part or all of the Public Improvements not otherwise conveyed or dedicated to the City or another appropriate governmental entity. The District shall also be specifically authorized to conduct operations and maintenance functions related to the Public Improvements that are not provided by the City or other governmental entity, or to the extent that the District’s proposed operational and maintenance functions included services or activities that exceed those provided by the City or other governmental entity. Additionally, the District shall be authorized to operate and maintain any part or all of the Public Improvements not otherwise conveyed or dedicated to the City or another appropriate governmental entity until such time that the District dissolves.

4. **Fire Protection Restriction**

The District is not authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, own, operate or maintain fire protection facilities or services, unless such facilities and services are provided pursuant to an intergovernmental agreement with the Poudre Fire Authority. The authority to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain fire hydrants and related improvements installed as part of the Project’s water system shall not be limited by this subsection.

5. **Public Safety Services Restriction**

Revised: August 21, 2018
The District is not authorized to provide policing or other security services. However, the District may, pursuant to C.R.S. § 32-1-1004(7), as amended, furnish security services pursuant to an intergovernmental agreement with the City.

6. **Grants from Governmental Agencies Restriction**

The District shall not apply for grant funds distributed by any agency of the United States Government or the State without the prior written approval of the City Manager. This does not restrict the collection of Fees for services provided by the District to the United States Government or the State.

7. **Golf Course Construction Restriction**

Acknowledging that the City has financed public golf courses and desires to coordinate the construction of public golf courses within the City’s boundaries, the District shall not be authorized to plan, design, acquire, construct, install, relocate, redevelop, finance, own, operate or maintain a golf course unless such activity is pursuant to an intergovernmental agreement with the City.

8. **Television Relay and Translation Restriction**

The District is not authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, own, operate or maintain television relay and translation facilities and services, other than for the installation of conduit as a part of a street construction project, unless such facilities and services are provided pursuant to prior written approval from the City Manager.

9. **Potable Water and Wastewater Treatment Facilities**

Acknowledging that the City and other existing special districts operating within the City currently own and operate treatment facilities for potable water and wastewater that are available to provide services to the Service Area, the District shall not plan, design, acquire, construct, install, relocate, redevelop, finance, own, operate or maintain such facilities without obtaining the City Council’s prior written approval.

10. **Sales and Use Tax Exemption Limitation**

The District shall not exercise any sales and use tax exemption otherwise available to the District under the City Code.

11. **Sub-district Restriction**

The District shall not create any sub-district pursuant to the Special District Act without the prior written approval of the City Manager.

12. **Privately Placed Debt Limitation**
Prior to the issuance of any privately placed Debt, the District shall obtain the certification of an External Financial Advisor substantially as follows:

We are [I am] an External Financial Advisor within the meaning of the District’s Service Plan.

We [I] certify that (1) the net effective interest rate (calculated as defined in C.R.S. Section 32-1-103(12)) to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

13. Special Assessments

The District shall not impose special assessments without the prior written approval of the City Council.

VIII. PUBLIC IMPROVEMENTS AND ESTIMATED COSTS

Exhibit E summarizes the type of Public Improvements that are projected to be constructed and/or installed by the District. The cost, scope, and definition of such Public Improvements may vary over time. The total estimated costs of Public Improvements, as set forth in Exhibit H, excluding any improvements paid for by the Regional Mill Levy necessary to serve the Planned Development, are approximately [Dollar Amount] in [Year] dollars and total approximately [Dollar Amount] in the anticipated year of construction dollars. The cost estimates are based upon preliminary engineering, architectural surveys, and reviews of the Public Improvements set forth in Exhibit E and include all construction cost estimates together with estimates of costs such as land acquisition, engineering services, legal expenses and other associated expenses. Maps of the anticipated location, operation, and maintenance of Public Improvements are attached hereto as Exhibit I. Changes in the Public Improvements or cost, which are approved by the City in an Approved Development Plan, shall not constitute a Service Plan Amendment. In addition, due to the preliminary nature of the Project, the City shall not be bound by this Service Plan in reviewing and approving the Approved Development Plan and the Approved Development Plan shall supersede the Service Plan with regard to the cost, scope, and definition of Public Improvements.

The design, phasing of construction, location and completion of Public Improvements will be determined by the District to coincide with the phasing and development of the Planned Development and the availability of funding sources. The District may, in its discretion, phase the construction, completion, operation, and maintenance of Public Improvements or defer, delay, reschedule, rephase, relocate or determine not to proceed with the construction, completion, operation, and maintenance of Public Improvements, and such actions or determinations shall not constitute a Service Plan Amendment. The District shall also be permitted to allocate costs between such categories of the Public Improvements as deemed necessary in its discretion.

Revised: August 21, 2018
The Public Improvements shall be listed using an ownership and maintenance matrix in Exhibit E, either individually or categorically, to identify the ownership and maintenance responsibilities of the Public Improvements.

The City Code has development standards, contracting requirements and other legal requirements related to the construction and payment of public improvements and related to certain operation activities. Relating to these, the District shall comply with the following requirements:

A. Development Standards.

The District shall ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City Code and of other governmental entities having proper jurisdiction, as applicable. The District, directly, or indirectly through any Developer, will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work. Unless waived by the City, the District shall be required, in accordance with the City Code, to post a surety bond, letter of credit, or other approved development security for any Public Improvements to be constructed by the District. Such development security may be released in the City Managers discretion when the District has obtained funds, through Debt issuance or otherwise, adequate to insure the construction of the Public Improvements, unless such release is prohibited by or in conflict with any City Code provision or State law. Any limitation or requirement concerning the time within which the City must review the District's proposal or application for an Approved Development Plan or other land use approval is hereby waived by the District.

B. Contracting.

The District shall comply with all applicable State purchasing, public bidding and construction contracting requirements and limitations.

C. Land Acquisition and Conveyance.

The purchase price of any land or improvements acquired by the District from the Developer shall be no more than the then-current fair market value as confirmed by an independent MAI appraisal for land and by an independent professional engineer for improvements. Land, easements, improvements and facilities conveyed to the City shall be free and clear of all liens, encumbrances and easements, unless otherwise approved by the City Manager prior to conveyance. All conveyances to the City shall be by special warranty deed, shall be conveyed at no cost to the City, shall include an ALTA title policy issued to the City, shall meet the environmental standards of the City and shall comply with any other conveyance prerequisites required in the City Code.

D. Equal Employment and Discrimination.

In connection with the performance of all acts or activities hereunder, the District shall not discriminate against any person otherwise qualified with respect to its hiring, discharging, promoting or demoting or in matters of compensation solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability, and further shall insert the foregoing provision in contracts or subcontracts entered into by the District to accomplish the purposes of this Service Plan.

Revised: August 21, 2018
IX. **FINANCIAL PLAN/PROPOSED DEBT**

This Section IX of the Service Plan describes the nature, basis, method of funding and financing limitations associated with the acquisition, construction, completion, repair, replacement, operation and maintenance of Public Improvements.

Notwithstanding any provision to the contrary contained in this Service Plan, the District shall not be authorized to impose the Debt Mill Levy, the Operating Mill Levy or any other taxes or Fees for any purpose unless and until (a) the District and/or the Developer has obtained an Approved Development Plan that secures the Public Benefits described in Section IV.B of this Service Plan, or (b) the City and District, at the City’s option, have entered into an intergovernmental agreement securing the delivery of the Public Benefits described in Section IV.B. Failure to comply with this provision shall constitute a material modification under this Service Plan and shall entitle the City to all remedies available at law and in equity as provided in Section XVII of this Service Plan.

A. **Financial Plan.**

The District’s Financial Plan, attached as Exhibit J and incorporated by reference, reflects the District’s anticipated schedule for incurring Debt to fund Public Improvements in support of the Project. The Financial Plan also reflects the schedule of all anticipated revenues flowing to the District derived from District mill levies, Fees imposed by the District, specific ownership taxes, and all other anticipated legally available revenues. The Financial Plan incorporates all of the provisions of this Section IX.

Based upon the assumptions contained therein, the Financial Plan projects the issuance of Bonds to fund Public Improvements and anticipated Debt repayment based on the development assumptions and absorptions of the property in the Service Area by End Users. The Financial Plan anticipates that the District will acquire, construct, and complete all Public Improvements needed to serve the Service Area.

The Financial Plan demonstrates that the District will have the financial ability to discharge all Debt to be issued as part of the Financial Plan on a reasonable basis. Furthermore, the District will secure the certification of an External Financial Advisor who will provide an opinion as to whether such Debt issuances are in the best interest of the District at the time of issuance.

B. **Mill Levies.**

It is anticipated that the District will impose a Debt Mill Levy and an Operating Mill Levy on all property within the Service Area. In doing so, the following shall apply:

1. **Aggregate Mill Levy Maximum**

   The Aggregate Mill Levy shall not exceed in any year the Aggregate Mill Levy Maximum, which is fifty (50) mills.

2. **Regional Mill Levy Not Included in Other Mill Levies**
EXHIBIT B

The Regional Mill Levy shall not be counted against the Aggregate Mill Levy Maximum.

3. **Operating Mill Levy**

The District may impose an Operating Mill Levy of up to fifty (50) mills until the District imposes a Debt Mill Levy. Once the District imposes a Debt Mill Levy, the District’s Operating Mill Levy shall not exceed ten (10) mills at any point.

4. **Gallagher Adjustments**

In the event the State’s method of calculating assessed valuation for the Taxable Property changes after approval of this Service Plan, the District’s Aggregate Mill Levy, Debt Mill Levy, Operating Mill Levy, and Aggregate Mill Levy Maximum, amounts herein provided may be increased or decreased to reflect such changes; such increases or decreases shall be determined by the District’s Board in good faith so that to the extent possible, the actual tax revenues generated by such mill levies, as adjusted, are neither enhanced nor diminished as a result of such change.

5. **Excessive Mill Levy Pledges**

Any Debt issued with a mill levy pledge, or which results in a mill levy pledge, that exceeds the Aggregate Mill Levy Maximum or the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Service Plan and shall not be an authorized issuance of Debt unless and until such material modification has been approved by a Service Plan Amendment.

6. **Refunding Debt**

The Maximum Debt Mill Levy Imposition Term may be exceeded for Debt refunding purposes if: (1) a majority of the District Board is composed of End Users and have voted in favor of a refunding of a part or all of the Debt; or (2) such refunding will result in a net present value savings.

7. **Maximum Debt Authorization**

The District anticipates approximately [Dollar Amount] in project costs in [Year] dollars as set forth in Exhibit E and anticipate issuing approximately [Dollar Amount] in Debt to pay such costs as set forth in Exhibit J, which Debt issuance amount shall be the amount of the Maximum Debt Authorization. The District shall not issue Debt in excess of the Maximum Debt Authorization. The District must seek prior resolution approval by the City Council to issue Debt in excess of the Maximum Debt Authorization to pay the actual costs of the Public Improvements set forth in Exhibit E plus inflation, contingencies and other unforeseen expenses associated with such Public Improvements. Such approval by the City Council shall not constitute a material modification of this Service Plan requiring a Service Plan Amendment so long as increases are reasonably related to the Public Improvements set forth in Exhibit E and any Approved Development Plan.
C. Maximum Voted Interest Rate and Underwriting Discount.

The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. The maximum interest rate on any Debt is not permitted to exceed Twelve Percent (12%). The maximum underwriting discount shall be three percent (3%). Debt, when issued, will comply with all relevant requirements of this Service Plan, the Special District Act, other applicable State law and federal law as then applicable to the issuance of public securities.

D. Interest Rate and Underwriting Discount Certification.

The District shall retain an External Financial Advisor to provide a written opinion on the market reasonableness of the interest rate on any Debt and any underwriter discount paid by the District as part of a Debt financing transaction. The District shall provide this written opinion to the City before issuing any Debt based on it.

E. Disclosure to Purchasers.

In order to notify future End Users who are purchasing residential lots or dwellings units in the Service Area that they will be paying, in addition to the property taxes owed to other taxing governmental entities, the property taxes imposed under the Debt Mill Levy, the Operating Mill Levy and possibly the Regional Mill Levy, the District shall not be authorized to issue any Debt under this Service Plan until there is included in the Developer’s Approved Development Plan provisions that require the following:

1. That the Developer, and its successors and assigns, shall prepare and submit to the City Manager for his approval a disclosure notice in substantially the form attached hereto as Exhibit K (the “Disclosure Notice”);

2. That when the Disclosure Notice is approved by the City Manager, the Developer shall record the Disclosure Notice in the Larimer County Clerk and Recorders Office; and

3. That the approved Disclosure Notice shall be provided by the Developer, and by its successors and assigns, to each potential End User purchaser of a residential lot or dwelling unit in the Service Area before that purchaser enters into a written agreement for the purchase and sale of that residential lot or dwelling unit.

F. External Financial Advisor.

An External Financial Advisor shall be retained by the District to provide a written opinion as to whether any Debt issuance is in the best interest of the District once the total amount of Debt issued by the District exceeds Five Million Dollars ($5,000,000). The External Financial Advisor is to provide advice to the District Board regarding the proposed terms and whether Debt conditions are reasonable based upon the status of development within the District, the projected tax base increase in the District, the security offered and other considerations as may be identified by the Advisor. The District shall include in the transcript of any Bond transaction, or other appropriate financing documentation for related Debt instrument, a signed letter from the External Financial Advisor providing an official opinion on the structure of the Debt, stating the Advisor’s opinion that the cost of issuance, sizing, repayment term, redemption feature, couponing, credit
spreads, payment, closing date, and other material transaction details of the proposed Debt serve
the best interest of the District.

Debt shall not be undertaken by the District if found to be unreasonable by the External
Financial Advisor.

G. Disclosure to Debt Purchasers.

District Debt shall set forth a statement in substantially the following form:

"By acceptance of this instrument, the owner of this Debt agrees and
consents to all of the limitations with respect to the payment of the
principal and interest on this Debt contained herein, in the resolution
of the District authorizing the issuance of this Debt and in the
Service Plan of the District. This Debt is not and cannot be a Debt
of the City of Fort Collins"

Similar language describing the limitations with respect to the payment of the principal and
interest on Debt set forth in this Service Plan shall be included in any document used for the
offering of the Debt for sale to persons, including, but not limited to, a Developer of property
within the Service Area.

H. Security for Debt.

The District shall not pledge any revenue or property of the City as security for the
indebtedness set forth in this Service Plan. Approval of this Service Plan shall not be construed
as a guarantee by the City of payment of any of the District’s obligations; nor shall anything in the
Service Plan be construed to create any responsibility or liability on the part of the City in the event
default by the District in the payment of any such obligation.

I. TABOR Compliance.

The District shall comply with the provisions of the Taxpayer's Bill of Rights in Article X,
§ 20 of the Colorado Constitution ("TABOR"). In the discretion of the Board, the District may set
up other qualifying entities to manage, fund, construct and operate facilities, services, and
programs. To the extent allowed by law, any entity created by a District will remain under the
control of the District's Board.

J. District’s Operating Costs.

The estimated cost of acquiring land, engineering services, legal services and
administrative services, together with the estimated costs of the District’s organization and initial
operations, are anticipated to be [Dollar Amount], which will be eligible for reimbursement from
Debt proceeds.

In addition to the capital costs of the Public Improvements, the District will require
operating funds for administration and to plan and cause the Public Improvements to be operated
and maintained. The first year’s operating budget is estimated to be [Dollar Amount].

Ongoing administration, operations and maintenance costs may be paid from property
taxes collected through the imposition of an Operating Mill Levy, subject to the limitations set
forth in Section IX.B.3, as well as from other revenues legally available to the District.

X. REGIONAL IMPROVEMENTS

Revised: August 21, 2018
The District shall be authorized to provide for the planning, design, acquisition, funding, construction, installation, relocation, redevelopment, administration and overhead costs related to the provision of Regional Improvements. At the discretion of the City, the District shall impose a Regional Improvement Mill Levy on all property within the District under the following terms:

A. Regional Mill Levy Authority.

The District shall seek the authority to impose an additional Regional Mill Levy of five (5) mills as part of the District’s initial TABOR election. The District shall also seek from the electorate in that election the authority under TABOR to enter into an intergovernmental agreement with the City obligating the District to pay as a multiple-fiscal year obligation the proceeds from the Regional Mill Levy to the City. Obtaining such voter-approval of this intergovernmental agreement shall be a precondition to the District issuing any Debt under this Service Plan.

B. Regional Mill Levy Imposition.

The District shall impose the Regional Mill Levy at a rate not to exceed five (5) mills within one year of receiving written notice from the City Manager to the District requesting the imposition of the Regional Mill Levy and stating the mill levy rate to be imposed.

C. City Notice Regarding Regional Improvements.

Such notice from the City shall provide a description of the Regional Improvements to be constructed and an analysis explaining how the Regional Improvements will be beneficial to property owners within the Service Area. The City shall require that planned developments that (i) are adjacent to the Service Area and (ii) will benefit from the Regional Improvement also impose a Regional Milly Levy, to the extent possible.

D. Regional Improvements Authorized Under Service Plan.

If so notified by the City Manager, the Regional Improvements shall be considered public improvements that the District would otherwise be authorized to design, construct, install re-design, re-construct, repair or replace pursuant to this Service Plan and applicable law.

E. Expenditure of Regional Mill Levy Revenues.

Revenue collected through the imposition of the Regional Mill Levy shall be expended as follows:

1. Intergovernmental Agreement

If the City and the District have executed an intergovernmental agreement concerning the Regional Improvements, then the revenue from the Regional Mill Levy shall be used in accordance with such agreement;

2. No Intergovernmental Agreement

If no intergovernmental agreement exists between the District and the City, then the revenue from the Regional Mill Levy shall be paid to the City, for use by the City in the planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of Regional Improvements which benefit the End Users of the District as prioritized and determined by the City.

F. Regional Mill Levy Term.

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Revised: August 21, 2018
The imposition of the Regional Mill Levy shall not exceed a term of twenty-five (25) years from December 31 of the tax collection year after which the Regional Mill Levy is first imposed.

G. Completion of Regional Improvements.

All Regional Improvements shall be completed prior to the end of the twenty-five (25) year Regional Mill Levy term.

H. City Authority to Require Imposition.

The City’s authority to require the initiation of the imposition of a Regional Mill Levy shall expire fifteen (15) years after December 31st of the year in which the District first imposes a Debt Mill Levy.

I. Regional Mill Levy Not Included in Other Mill Levies.

The Regional Mill Levy imposed shall not be applied toward the calculation of the Aggregate Mill Levy.

J. Gallagher Adjustment.

In the event the method of calculating assessed valuation is changed after the date of approval of this Service Plan, the Regional Mill Levy may be increased or shall be decreased to reflect such changes; such increases or decreases shall be determined in the District Board’s good faith so that to the extent possible, the actual tax revenues generated by the Regional Mill Levy, as adjusted, are neither enhanced nor diminished as a result of such change.

XI. CITY FEES

The District shall pay all applicable City fees as required by the City Code.

XII. BANKRUPTCY LIMITATIONS

All of the limitations contained in this Service Plan, including, but not limited to, those pertaining to the Aggregate Mill Levy Maximum, Maximum Debt Mill Levy Imposition Term and Fees, have been established under the authority of the City in the Special District Act to approve this Service Plan. It is expressly intended that by such approval such limitations: (i) shall not be set aside for any reason, including by judicial action, absent a Service Plan Amendment; and (ii) are, together with all other requirements of State law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral approval necessary under applicable non-bankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

XIII. ANNUAL REPORTS AND BOARD MEETINGS

A. General.

The District shall be responsible for submitting an annual report to the City Clerk no later than September 1st of each year following the year in which the Order and Decree creating the District has been issued. The annual report may be made available to the public on the City’s website.
B. Board Meetings.

The District’s Board shall hold at least one public board meeting in three of the four quarters of each calendar year, beginning in the first full calendar year after the District’s creation. Notice for each of these meetings shall be given in accordance with the requirements of the Special District Act and other applicable State Law. This requirement shall not apply when a majority of the directors on the Board are End Users.

C. Report Requirements.

Unless waived in writing by the City Manager, the District’s annual report must include the following:

1. Narrative
   A narrative summary of the progress of the District in implementing its Service Plan for the report year.

2. Financial Statements
   Except when exemption from audit has been granted for the report year under the Local Government Audit Law, the audited financial statements of the District for the report year including a statement of financial condition (i.e., balance sheet) as of December 31 of the report year and the statement of operation (i.e., revenue and expenditures) for the report year.

3. Capital Expenditures
   Unless disclosed within a separate schedule to the financial statements, a summary of the capital expenditures incurred by the District in development of improvements in the report year.

4. Financial Obligations
   Unless disclosed within a separate schedule to the financial statements, a summary of financial obligations of the District at the end of the report year, including the amount of outstanding Debt, the amount and terms of any new District Debt issued in the report year, the total assessed valuation of all Taxable Property within the Service Area as of January 1 of the report year and the current total District mill levy pledged to Debt retirement in the report year.

5. Board Contact Information
   The names and contact information of the current directors on the Board, any District manager and the attorney for the District shall be listed in the report. The District’s current office address, phone number, email address and any website address shall also be listed in the report.

6. Other Information
   Any other information deemed relevant by the City Council or deemed reasonably necessary by the City Manager.

D. Reporting of Significant Events.
EXHIBIT B

The annual report shall also include information as to any of the following that occurred during the report year:

1. Boundary changes made or proposed to the District Boundaries as of December 31 of the report year.

2. Intergovernmental Agreements with other governmental entities, either entered into or proposed as of December 31 of the report year.

3. Copies of the District’s rules and regulations, if any, or substantial changes to the District’s rules and regulations as of December 31 of the report year.

4. A summary of any litigation which involves the District’s Public Improvements as of December 31 of the report year.

5. A list of all facilities and improvements constructed by the District that have been dedicated to and accepted by the City as of December 31 of the report year.

6. Notice of any uncured events of default by the District, which continue beyond a ninety (90) day period, under any Debt instrument.

7. Any inability of the District to pay its obligations as they come due, in accordance with the terms of such obligations, which continue beyond a ninety (90) day period.

E. Failure to Submit.

In the event the annual report is not timely received by the City Clerk or is not fully responsive, notice of such default shall be given to the District Board at its last known address. The failure of the District to file the annual report within forty-five (45) days of the mailing of such default notice by the City Clerk may constitute a material modification of this Service Plan, in the discretion of the City Manager.

XIV. SERVICE PLAN AMENDMENTS

This Service Plan is general in nature and does not include specific detail in some instances. The Service Plan has been designed with sufficient flexibility to enable the District to provide required improvements, services and facilities under evolving circumstances without the need for numerous amendments. Modification of the general types of improvements and facilities making up the Public Improvements, and changes in proposed configurations, locations or dimensions of the Public Improvements, shall be permitted to accommodate development needs consistent with the then-current Approved Development Plans for the Project. Any action of the District, which is a material modification of this Service Plan requiring a Service Plan Amendment as provided in in Section XV below or any other applicable provision of this Service Plan, shall be deemed to be a material modification to this Service Plan unless otherwise expressly provided in this Service Plan. All other departures from the provisions of this Service Plan shall be considered on a case-by-case basis as to whether such departures are a material modification under this Service Plan or the Special District Act.

XV. MATERIAL MODIFICATIONS

Material modifications to this Service Plan may be made only in accordance with C.R.S. Section 32-1-207 as a Service Plan Amendment. No modification shall be required for an action

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of the District that does not materially depart from the provisions of this Service Plan, unless otherwise provided in this Service Plan.

Departures from the Service Plan that constitute a material modification requiring a Service Plan Amendment include, without limitation:

1. Actions or failures to act that create materially greater financial risk or burden to the taxpayers of the District;

2. Performance of a service or function, construction of an improvement, or acquisition of a major facility that is not closely related to an improvement, service, function or facility authorized in the Service Plan;

3. Failure to perform a service or function, construct an improvement or acquire a facility required by the Service Plan; and

4. Failure to comply with any of the prohibitions, limitations and restrictions of this Service Plan.

Actions that are not to be considered material modifications include without limitation changes in quantities of improvements, facilities or equipment; immaterial cost differences; and actions expressly authorized in this Service Plan.

XVI. DISSOLUTION

Upon independent determination by the City Council that the purposes for which the District was created have been accomplished, the District shall file a petition in district court for dissolution as provided in the Special District Act. In no event shall dissolution occur until the District has provided for the payment or discharge of all of its outstanding indebtedness and other financial obligations as required pursuant to State law.

XVII. SANCTIONS

Should the District undertake any act without obtaining prior City Council approval or consent or City Manager approval or consent as required in this Service Plan, or that constitutes a material modification to this Service Plan requiring a Service Plan Amendment as provided herein or under the Special Districts Act, the City Council may impose one (1) or more of the following sanctions, as it deems appropriate:

1. Exercise any applicable remedy under the Special District Act;

2. Withhold the issuance of any permit, authorization, acceptance or other administrative approval, or withhold any cooperation, necessary for the District’s development or construction or operation of improvements or provision of services;

3. Exercise any legal remedy under the terms of any intergovernmental agreement under which the District is in default; or

4. Exercise any other legal and equitable remedy available under the law, including seeking injunctive relief against the District, to ensure compliance with the provisions of the Service Plan or applicable law.

XVIII. CONCLUSION

It is submitted that this Service Plan, as required by C.R.S. Section 32-1-203(2), establishes that:

Revised: August 21, 2018
1. There is sufficient existing and projected need for organized service in the Service Area to be served by the District;

2. The existing service in the Service Area to be served by the District is inadequate for present and projected needs;

3. The District is capable of providing economical and sufficient service to the Service Area; and

4. The Service Area does have, and will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

XIX. RESOLUTION OF APPROVAL

The District agrees to incorporate the City Council’s resolution approving this Service Plan, including any conditions on any such approval, into the copy of the Service Plan presented to the District Court for and in Larimer County, Colorado.
NOTICE OF INCLUSION IN A RESIDENTIAL METROPOLITAN DISTRICT
AND POSSIBLE PROPERTY TAX CONSEQUENCES

Legal description of the property and address:

(Insert legal description and property address).

This property is located in the following metropolitan district:

(Insert District Name).

In addition to standard property taxes identified on the next page, this property is subject to a metropolitan district mill levy (another property tax) of up to:

(Insert mill levy maximum).

Based on the property's inclusion in the metropolitan district, an average home sales price of $300,000 could result in ADDITIONAL annual property taxes up to:

(Insert amount).

The next page provides examples of estimated total annual property taxes that could be due on this property, first if located outside the metropolitan district and next if located within the metropolitan district. **Note: property that is not within a metropolitan district would not pay the ADDITIONAL amount.**

The metropolitan district board can be reached as follows:

(Insert contact information).

You may wish to consult with: (1) the Larimer County Assessor's Office, to determine the specific amount of metropolitan district taxes currently due on this property; and (2) the metropolitan district board, to determine the highest possible amount of metropolitan district property taxes that could be assessed on this property.
ESTIMATE OF PROPERTY TAXES

Annual Tax Levied on Residential Property With $300,000 Actual Value Without the District

<table>
<thead>
<tr>
<th>Taxing Entity</th>
<th>Mill Levies (2017**)</th>
<th>Annual tax levied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insert entity</td>
<td>Insert amount</td>
<td>$ Insert amount</td>
</tr>
<tr>
<td>Larimer County</td>
<td>Insert amount</td>
<td>$ Insert amount</td>
</tr>
<tr>
<td>City of Fort Collins</td>
<td>Insert amount</td>
<td>$ Insert amount</td>
</tr>
<tr>
<td>Insert entity</td>
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<tr>
<td>Insert entity</td>
<td>Insert amount</td>
<td>$ Insert amount</td>
</tr>
<tr>
<td>TOTAL:</td>
<td>Insert total</td>
<td>$ Insert amount</td>
</tr>
</tbody>
</table>

Annual Tax Levied on Residential Property With $300,000 Actual Value With the District (Assuming Maximum District Mill Levy)

<table>
<thead>
<tr>
<th>Taxing Entity</th>
<th>Mill Levies (2017**)</th>
<th>Annual tax levied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insert District Name</td>
<td>Insert amount</td>
<td>$ Insert amount</td>
</tr>
<tr>
<td>Insert entity</td>
<td>Insert amount</td>
<td>$ Insert amount</td>
</tr>
<tr>
<td>Larimer County</td>
<td>Insert amount</td>
<td>$ Insert amount</td>
</tr>
<tr>
<td>City of Fort Collins</td>
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<td>Insert entity</td>
<td>Insert amount</td>
<td>$ Insert amount</td>
</tr>
<tr>
<td>TOTAL:</td>
<td>Insert total</td>
<td>$ Insert total</td>
</tr>
</tbody>
</table>

**This estimate of mill levies is based upon mill levies certified by the Larimer County Assessor’s Office in December 20_, for collection in 20_, and is intended only to provide approximations of the total overlapping mill levies within the District. The stated mill levies are subject to change and you should contact the Larimer County Assessor’s Office to obtain accurate and current information.
This model service plan template should be referenced in conjunction with the City of Fort Collins Policy for Reviewing Service Plans for Metropolitan Districts.
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<table>
<thead>
<tr>
<th>Intergovernmental Agreement</th>
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</thead>
<tbody>
<tr>
<td>No Intergovernmental Agreement</td>
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<tr>
<td>Regional Mill Levy Term</td>
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<tr>
<td>Completion of Regional Improvements</td>
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<tr>
<td>City Authority to Require Imposition</td>
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<tr>
<td>Regional Mill Levy Not Included in Other Mill Levies</td>
</tr>
<tr>
<td>Gallagher Adjustment</td>
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<td>City Fees</td>
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<tr>
<td>Bankruptcy Limitations</td>
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I. INTRODUCTION

A. Purpose and Intent.

The Districts, which are intended to be independent units of local government separate and distinct from the City, are governed by this Service Plan, the Special District Act and other applicable State law. Except as may otherwise be provided by State law, City Code or this Service Plan, the Districts’ activities are subject to review and approval by the City Council only insofar as they are a material modification of this Service Plan under C.R.S. Section 32-1-207 of the Special District Act.

It is intended that the Districts will provide all of the Public Improvements for the Project for the use and benefit of all anticipated inhabitants and taxpayers of the District. The primary purpose of the Districts will be to finance the construction of these Public Improvements by the issuance of Debt.

[Add if Applicable] It is intended that this Service Plan also requires the Districts to pay a portion of the cost of the Regional Improvements as part of ensuring that those privately-owned properties to be developed in the District that benefit from the Regional Improvements pay a reasonable share of the associated costs.

The Districts are not intended to provide ongoing operations and maintenance services except as expressly authorized in this Service Plan.

It is the intent of the Districts to dissolve upon payment or defeasance of all Debt incurred or upon a court determination that adequate provision has been made for the payment of all Debt, except that if the Districts are authorized in this Service Plan to perform continuing operating or maintenance functions, the Districts shall continue in existence for the sole purpose of providing such functions and shall retain only the powers necessary to impose and collect the taxes or Fees authorized in this Service Plan to pay for the costs of those functions.

It is intended that the Districts shall comply with the provisions of this Service Plan and that the City may enforce any non-compliance with these provisions as provided in Section XVII of this Service Plan.

B. Need for the Districts.

There are currently no other governmental entities, including the City, located in the immediate vicinity of the Districts that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction, installation, relocation, redevelopment and financing of the Public Improvements needed for the Project. Formation of the Districts is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible.

C. Objective of the City Regarding Districts’ Service Plan.
The City's objective in approving this Service Plan is to authorize the Districts to provide for the planning, design, acquisition, construction, installation, relocation and redevelopment of the Public Improvements from the proceeds of Debt to be issued by the Districts. Except as specifically provided in this Service Plan, all Debt is expected to be repaid by taxes and Fees imposed and collected for no longer than the Maximum Debt Mill Levy Imposition Term for residential properties. A tax mill levy may not exceed the Maximum Debt Mill Levy. Fees imposed for the payment of Debt shall be due no later than upon the issuance of a building permit unless a majority of the Board which imposes such a Fee is composed of End Users as provided in Section VII.B.2. Debt which is issued within these parameters and, as further described in the Financial Plan, will insulate property owners from excessive tax and Fee burdens to support the servicing of the Debt and will result in a timely and reasonable discharge of the Debt.

D. Relevant Intergovernmental Agreements.

[Add description of any relevant intergovernmental agreements.]

E. City Approvals.

Any provision in this Service Plan requiring “City” or “City Council” approval or consent shall require the City Council’s prior written approval or consent exercised in its sole discretion. Any provision in this Service Plan requiring “City Manager” approval or consent shall require the City Manager’s prior written approval or consent exercised in the City Manager’s sole discretion.

II. DEFINITIONS

In this Service Plan, the following words, terms and phrases which appear in a capitalized format shall have the meaning indicated below, unless the context clearly requires otherwise:

Aggregate Mill Levy: means the total mill levy resulting from adding the Districts’ Debt Mill Levy and Operating Mill Levy. The Districts’ Aggregate Mill Levy does not include any Regional Mill Levy that the District may levy.

Aggregate Mill Levy Maximum: means the maximum number of combined mills that the Districts may each levy for their Debt Mill Levy and Operating Mill Levy, at a rate not to exceed the limitation set in Section IX.B.1.

Approved Development Plan: means a City-approved development plan or other land-use application required by the City Code for identifying, among other things, public improvements necessary for facilitating the development of property within the Service Area.

Board or Boards: means the duly constituted Board or Boards of Directors of the Districts, or the boards of directors of all of the Districts in the aggregate.

Bond, Bonds or Debt: means bonds, notes or other multiple fiscal year financial obligations for the payment of which a District has promised to impose an ad valorem property tax mill levy, Fees or other legally available revenue. Such terms do not include contracts through which a District procures or provides services or tangible property.
City: means the City of Fort Collins, Colorado, a home rule municipality.

City Code: means collectively the City's Municipal Charter, Municipal Code, Land Use Code and ordinances as all are now existing and hereafter amended.

City Council: means the City Council of the City of Fort Collins, Colorado.

City Manager: means the City Manager of the City of Fort Collins, Colorado.

C.R.S.: means the Colorado Revised Statutes.

Debt Mill Levy: means a property tax mill levy imposed on Taxable Property by the Districts for the purpose of paying Debt as authorized in this Service Plan, at a rate not to exceed the limitations set in Section IX.B.

Developer: means a person or entity that is the owner of property or owner of contractual rights to property in the Service Area that intends to develop the property.

Developer Obligation: means any agreement executed by the District for the purpose of borrowing funds from any Developer or related party developing or selling land within the Service Area or who is a member of the Board.

District: means any one of the [Names of Districts], individually, organized under and governed by this Service Plan.

Districts: means the [Names of Districts], collectively, organized and governed under this Service Plan.

District No. 1 Boundaries: means the boundaries of the area legally described in Exhibit “A-1” attached hereto and incorporated by reference and as depicted in the District No. 1 Boundary Map.

District No. 2 Boundaries: means the boundaries of the area legally described in Exhibit “A-2” attached hereto and incorporated by reference and as depicted in the District No. 2 Boundary Map.

District No. 3 Boundaries: means the boundaries of the area legally described in Exhibit “A-3” attached hereto and incorporated by reference and as depicted in the District No. 3 Boundary Map.

District No. 1 Boundary Map: means the map of the District No. 1 Boundaries attached hereto as Exhibit “B-1” and incorporated by reference.

District No. 2 Boundary Map: means the map of the District No. 2 Boundaries attached hereto as Exhibit “B-2” and incorporated by reference.

District No. 3 Boundary Map: means the map of the District No. 3 Boundaries attached hereto as Exhibit “B-3” and incorporated by reference.

End User: means any owner, or tenant of any owner, of any property within the Districts, who is intended to become burdened by the imposition of ad valorem property taxes and/or Fees. By way of illustration, a resident homeowner, renter, commercial property owner or commercial tenant is an End User. A Developer and any person or entity that constructs homes or commercial structures is not an End User.

External Financial Advisor: means a consultant that: (1) is qualified to advise Colorado
governmental entities on matters relating to the issuance of securities by Colorado governmental entities including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; (2) shall be an underwriter, investment banker, or individual listed as a public finance advisor in the Bond Buyer’s Municipal Market Place or, in the City’s sole discretion, other recognized publication as a provider of financial projections; and (3) is not an officer or employee of the Districts or an underwriter of the Districts’ Debt.

Fees: means the fees, rates, tolls, penalties and charges the Districts are authorized to impose and collect under this Service Plan.

Financial Plan: means the Financial Plan described in Section IX of this Service Plan which is prepared or approved by an External Financial Advisor in accordance with the requirements of this Service Plan and describes (a) how the Public Improvements are to be financed; (b) how the Debt is expected to be incurred; and (c) the estimated operating revenue derived from property taxes and any Fees for the first budget year through the year in which all District Debt is expected to be defeased or paid in the ordinary course. In the event the Financial Plan is not prepared by an External Financial Advisor, the Financial Plan is to be accompanied by a letter of support from an External Financial Advisor.

Inclusion Area Boundaries: means the boundaries of the property that is anticipated to be added to the Districts’ Boundaries after the Districts’ organization, which property is legally described in Exhibit “C” attached hereto and incorporated by reference and depicted in the map attached hereto as Exhibit “D” and incorporated herein by reference.

Maximum Debt Authorization: means the total Debt the Districts are permitted to issue as set forth in Section IX.B.8 of this Service Plan.

Maximum Debt Mill Levy Imposition Term: means the maximum term during which the Districts’ Debt Mill Levy may be imposed on property developed in the Service Area for residential use, which shall include residential properties in mixed-use developments. This maximum term shall not exceed forty (40) years from December 31 of the year this Service Plan is approved by City Council.

Operating Mill Levy: means a property tax mill levy imposed on Taxable Property for the purpose of funding the Districts’ administration, operations and maintenance as authorized in this Service Plan, including, without limitation, repair and replacement of Public Improvements, and imposed at a rate not to exceed the limitations set in Section IX.B.

Planned Development: means the private development or redevelopment of the properties in the Service Area under an Approved Development Plan.

Project: means the installation and construction of the Public Improvements for the Planned Development.

Public Improvements: means the improvements and infrastructure the Districts are authorized by this Service Plan to fund and construct for the Planned Development to serve the future taxpayers and inhabitants of the Districts, except as specifically prohibited or limited in this Service Plan. Public Improvements shall include, without limitation, the improvements and infrastructure described in Exhibit “E” attached hereto and incorporated by reference. Public Improvements do not include Regional Improvements.
Regional Improvements: means any regional public improvement identified by the City for funding, in whole or part, by a Regional Mill Levy levied by the Districts, including, without limitation, the public improvements described in Exhibit “F” attached hereto and incorporated by reference.

Regional Mill Levy: means the property tax mill levy imposed on Taxable Property for the purpose of planning, designing, acquiring, funding, constructing, installing, relocating and/or redeveloping the Regional Improvements and/or to fund the administration and overhead costs related to the Regional Improvements as provided in Section X of this Service Plan.

Service Area: means the property collectively within the District No 1 Boundaries, the District No. 2 Boundaries, the District No. 3 Boundaries and the property in the Inclusion Area Boundaries when it is added, in whole or part.

Special District Act: means Article 1 in Title 32 of the Colorado Revised Statutes, as amended.

Service Plan: means this service plan for the Districts approved by the City Council.

Service Plan Amendment: means a material modification of the Service Plan approved by the City Council in accordance with the Special District Act, this Service Plan and any other applicable law.

State: means the State of Colorado.

Taxable Property: means the real and personal property within the Service Area that will be subject to the ad valorem property taxes imposed by the Districts.

Vicinity Map: means the map attached hereto as Exhibit “G” and incorporated by reference depicting the location of the Service Area within the regional area surrounding it.

III. **BOUNDARIES AND LOCATION**

The Service Area, without the Inclusion Area Boundaries, includes approximately [Insert Number] acres and the total area proposed to be included in the Inclusion Area Boundaries is approximately [Insert Number] acres. A legal description and map of each of the Districts’ boundaries are attached hereto as Exhibits A-1, A-2 and A-3 and Exhibit B-1, B-2 and B-3, respectively. A legal description and map of the Inclusion Area Boundaries are attached hereto as Exhibit C and Exhibit D, respectively. It is anticipated that the boundaries of the Districts may expand or contract from time to time as the Districts undertake inclusions or exclusions pursuant to the Special District Act, subject to the limitations set forth in this Service Plan. The location of the Service Area is depicted in the vicinity map attached as Exhibit G.

IV. **DESCRIPTION OF PROJECT, PLANNED DEVELOPMENT, PUBLIC BENEFITS & ASSESSED VALUATION**

A. Project and Planned Development.
[Describe the nature of the Project and Planned Development, estimated population at build out, timeline for development, estimated assessed value after 5 and 10 years and estimated sales tax revenue. Also, please identify all plans, including but not limited to Citywide Plans, Small Area Plans, and General Development Plans that apply to any portion of the Districts’ Boundaries or Inclusion Area Boundaries and describe how the Project and Planned Development are consisent with the applicable plans. Please state if the proposed Districts are to be located within an urban renewal area and if the proposed development is anticipating the use of tax increment financing (TIF). If the Districts intend to pursue TIF, please provide information on how the TIF financing will interact with the Districts’ financing and how the necessary Public Improvements will be shared across the two funding sources.]

Approval of this Service Plan by the City Council does not imply approval of the development of any particular land-use for any specific area within the Districts. Any such approval must be contained within an Approved Development Plan.

B. Public Benefits.

[Described the public benefits to be delivered by the Service Plan that comply with the requirements of the City’s Metro District Service Plan Policy. The description must include specific and measurable objectives for the public benefits to be delivered by the Service Plan. Examples of specific and measurable approaches can be found in the City’s Metro District Service Plan Policy.]

C. Assessed Valuation.

The current assessed valuation of the Service Area is approximately [Dollar Amount] and, at build out, is expected to be [Dollar Amount]. These amounts are expected to be sufficient to reasonably discharge the Debt as demonstrated in the Financial Plan.

V. INCLUSION OF LAND IN THE SERVICE AREA

Other than the real property in the Inclusion Area Boundaries, the District shall not add any real property to the Service Area without the City’s approval and in compliance with the Special District Act. Once the District has issued Debt, it shall not exclude real property from the Districts’ boundaries without the prior written consent of the City Council.

VI. DISTRICT GOVERNANCE

The Districts’ Boards shall be comprised of persons who are a qualified “eligible electors” of the Districts as provided in the Special District Act. It is anticipated that over time, the End Users who are eligible electors will assume direct electoral control of the Districts’ Boards as development of the Service Area progresses. The Districts shall not enter into any agreement by which the End Users’ electoral control of any of the Boards is removed or diminished.

VII. AUTHORIZED AND PROHIBITED POWERS

A. General Grant of Powers.

The Districts shall have the power and authority to provide the Public Improvements, the Regional Improvements and related operation and maintenance services, within and without the Service Area, as such powers and authorities are described in the Special District Act, other
applicable State law, common law and the Colorado Constitution, subject to the prohibitions, restrictions and limitations set forth in this Service Plan.

If, after the Service Plan is approved, any State law is enacted to grant additional powers or authority to metropolitan districts by amendment of the Special District Act or otherwise, such powers and authority shall be deemed to be a part hereof and available to be exercised by the Districts if the City Council first approves the exercise of such powers or authority by the Districts. Such approval by the City Council shall not constitute a Service Plan Amendment.

B. Prohibited Improvements and Services and other Restrictions and Limitations.

The Districts’ powers and authority under this Service Plan to provide Public Improvements and services and to otherwise exercise its other powers and authority under the Special District Act and other applicable State law, are prohibited, restricted and limited as hereafter provided. Failure to comply with these prohibitions, restrictions and limitations shall constitute a material modification under this Service Plan and shall entitle the City to pursue all remedies available at law and in equity as provided in Section XVII of this Service Plan:

1. Eminent Domain Restriction

The Districts shall not exercise their statutory power of eminent domain without first obtaining resolution approval from the City Council. This restriction on the Districts’ exercise of the eminent domain power is being voluntarily acquiesced to by the Districts and shall not be interpreted in any way as a limitation on the Districts’ sovereign powers and shall not negatively affect the Districts’ status as a political subdivision of the State as conferred by the Special District Act.

2. Fee Limitation

All Fees imposed for the repayment of Debt, if authorized by this Service Plan, shall be authorized to be imposed by the Districts upon all property within their respective boundaries only if such Fees are due and payable no later than upon the issuance of a building permit by the City. Notwithstanding any of the foregoing, this Fee limitation shall not apply to any Fee imposed to fund the operation, maintenance, repair or replacement of Public Improvements or the administration of the Districts, nor shall this Fee limitation apply to a District if a majority of the District’s Board is composed of End Users.

3. Operations and Maintenance

The primary purpose of the Districts is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The Districts shall dedicate the Public Improvements to the City or other appropriate jurisdiction or owners’ association in a manner consistent with the Approved Development Plan and the City Code, provided that nothing herein requires the City to accept a dedication. The Districts are specifically authorized to operate and maintain any part or all of the Public Improvements not otherwise conveyed or dedicated to the City or another appropriate governmental entity. The Districts shall also be specifically authorized to conduct operations and maintenance functions related to the Public Improvements that are not
provided by the City or other governmental entity, or to the extent that the Districts’
proposed operational and maintenance functions included services or activities that
exceed those provided by the City or other governmental entity. Additionally, the
Districts are authorized to operate and maintain any part or all of the Public
Improvements not otherwise conveyed or dedicated to the City or another appropriate
governmental entity until such time that the Districts dissolve.

4. Fire Protection Restriction

The Districts are not authorized to plan for, design, acquire, construct, install, relocate,
redevelop, finance, own, operate or maintain fire protection facilities or services, unless
such facilities and services are provided pursuant to an intergovernmental agreement
with the Poudre Fire Authority. The authority to plan for, design, acquire, construct,
install, relocate, redevelop, finance, operate or maintain fire hydrants and related
improvements installed as part of the Project’s water system shall not be limited by this
subsection.

5. Public Safety Services Restriction

The Districts are not authorized to provide policing or other security services. However,
the District may, pursuant to C.R.S. § 32-1-1004(7), as amended, furnish security
services pursuant to an intergovernmental agreement with the City.

6. Grants from Governmental Agencies Restriction

The Districts shall not apply for grant funds distributed by any agency of the United
States Government or the State without the prior written approval of the City Manager.
This does not restrict the collection of Fees for services provided by the Districts to the
United States Government or the State.

7. Golf Course Construction Restriction

Acknowledging that the City has financed public golf courses and desires to coordinate
the construction of public golf courses within the City’s boundaries, the Districts shall
not be authorized to plan, design, acquire, construct, install, relocate, redevelop,
finance, own, operate or maintain a golf course unless such activity is pursuant to an
intergovernmental agreement with the City.

8. Television Relay and Translation Restriction

The Districts are not authorized to plan for, design, acquire, construct, install, relocate,
redevelop, finance, own, operate or maintain television relay and translation facilities
and services, other than for the installation of conduit as a part of a street construction
project, unless such facilities and services are provided pursuant to prior written
approval from the City Manager.

9. Potable Water and Wastewater Treatment Facilities
Acknowledging that the City and other existing special districts operating within the City currently own and operate treatment facilities for potable water and wastewater that are available to provide services to the Service Area, the Districts shall not plan, design, acquire, construct, install, relocate, redevelop, finance, own, operate or maintain such facilities without obtaining the City Council’s prior written approval.

10. **Sales and Use Tax Exemption Limitation**

The Districts shall not exercise any sales and use tax exemption otherwise available to the Districts under the City Code.

11. **Sub-district Restriction**

The Districts shall not create any sub-district pursuant to the Special District Act without the prior written approval of the City Manager.

12. **Privately Placed Debt Limitation**

Prior to the issuance of any privately placed Debt, the Districts shall obtain the certification of an External Financial Advisor substantially as follows:

We are [I am] an External Financial Advisor within the meaning of the District’s Service Plan.

We [I] certify that (1) the net effective interest rate (calculated as defined in C.R.S. Section 32-1-103(12)) to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

13. **Special Assessments**

The Districts shall not impose special assessments without the prior written approval of the City Council.

**VIII. PUBLIC IMPROVEMENTS AND ESTIMATED COSTS**

Exhibit E summarizes the type of Public Improvements that are projected to be constructed and/or installed by the Districts. The cost, scope, and definition of such Public Improvements may vary over time. The total estimated costs of Public Improvements, as set forth in Exhibit H, excluding any improvements paid for by the Regional Mill Levy necessary to serve the Planned Development, are approximately [Dollar Amount] in [Year] dollars and total approximately [Dollar Amount] in the anticipated year of construction dollars. The cost estimates are based upon preliminary engineering, architectural surveys, and reviews of the Public Improvements set forth in Exhibit E and include all construction cost estimates together with estimates of costs such as land acquisition, engineering services, legal expenses and other associated expenses. Maps of the
anticipated location, operation, and maintenance of Public Improvements are attached hereto as Exhibit I. Changes in the Public Improvements or cost, which are approved by the City in an Approved Development Plan, shall not constitute a Service Plan Amendment. In addition, due to the preliminary nature of the Project, the City shall not be bound by this Service Plan in reviewing and approving the Approved Development Plan and the Approved Development Plan shall supersede the Service Plan with regard to the cost, scope, and definition of Public Improvements.

The design, phasing of construction, location and completion of Public Improvements will be determined by the Districts to coincide with the phasing and development of the Planned Development and the availability of funding sources. The Districts may, in their discretion, phase the construction, completion, operation, and maintenance of Public Improvements or defer, delay, reschedule, rephase, relocate or determine not to proceed with the construction, completion, operation, and maintenance of Public Improvements, and such actions or determinations shall not constitute a Service Plan Amendment. The District shall also be permitted to allocate costs between such categories of the Public Improvements as deemed necessary in its discretion.

The Public Improvements shall be listed using an ownership and maintenance matrix in Exhibit E, either individually or categorically, to identify the ownership and maintenance responsibilities of the Public Improvements.

The City Code has development standards, contracting requirements and other legal requirements related to the construction and payment of public improvements and related to certain operation activities. Relating to these, the Districts shall comply with the following requirements:

A. Development Standards.

The Districts shall ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City Code and of other governmental entities having proper jurisdiction, as applicable. The Districts directly, or indirectly through any Developer, will obtain the City’s approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work. Unless waived by the City, the Districts shall be required, in accordance with the City Code, to post a surety bond, letter of credit, or other approved development security for any Public Improvements to be constructed by the Districts. Such development security may be released in the City Managers discretion when the constructing District has obtained funds, through Debt issuance or otherwise, adequate to insure the construction of the Public Improvements, unless such release is prohibited by or in conflict with any City Code provision or State law. Any limitation or requirement concerning the time within which the City must review the Districts’ proposals or applications for an Approved Development Plan or other land use approval is hereby waived by the Districts.

B. Contracting.

The Districts shall comply with all applicable State purchasing, public bidding and construction contracting requirements and limitations.

C. Land Acquisition and Conveyance.

The purchase price of any land or improvements acquired by the Districts from the Developer shall be no more than the then-current fair market value as confirmed by an independent MAI appraisal for land and by an independent professional engineer for improvements. Land,
easements, improvements and facilities conveyed to the City shall be free and clear of all liens, encumbrances and easements, unless otherwise approved by the City Manager prior to conveyance. All conveyances to the City shall be by special warranty deed, shall be conveyed at no cost to the City, shall include an ALTA title policy issued to the City, shall meet the environmental standards of the City and shall comply with any other conveyance prerequisites required in the City Code.

D. Equal Employment and Discrimination.

In connection with the performance of all acts or activities hereunder, the Districts shall not discriminate against any person otherwise qualified with respect to its hiring, discharging, promoting or demoting or in matters of compensation solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability, and further shall insert the foregoing provision in contracts or subcontracts entered into by the Districts to accomplish the purposes of this Service Plan.

IX. FINANCIAL PLAN/PROPOSED DEBT

This Section IX of the Service Plan describes the nature, basis, method of funding and financing limitations associated with the acquisition, construction, completion, repair, replacement, operation and maintenance of Public Improvements.

Notwithstanding any provision to the contrary contained in this Service Plan, the Districts shall not be authorized to impose the Debt Mill Levy, the Operating Mill Levy or any other taxes or Fees for any purpose unless and until (a) the Districts and/or the Developer has obtained an Approved Development Plan that secures the Public Benefits described in Section IV.B of this Service Plan, or (b) the City and Districts, at the City's option, have entered into an intergovernmental agreement securing the delivery of the Public Benefits described in Section IV.B Failure to comply with this provision shall constitute a material modification under this Service Plan and shall entitle the City to all remedies available at law and in equity as provided in Section XVII of this Service Plan.

A. Financial Plan.

The Districts' Financial Plan, attached as Exhibit J and incorporated by reference, reflects the Districts' anticipated schedule for incurring Debt to fund Public Improvements in support of the Project. The Financial Plan also reflects the schedule of all anticipated revenues flowing to the Districts derived from the Districts' mill levies, Fees imposed by the Districts, specific ownership taxes, and all other anticipated legally available revenues. The Financial Plan incorporates all of the provisions of this Section IX.

Based upon the assumptions contained therein, the Financial Plan projects the issuance of Bonds to fund Public Improvements and anticipated Debt repayment based on the development assumptions and absorptions of the property in the Service Area by End Users. The Financial Plan anticipates that the Districts will acquire, construct, and complete all Public Improvements needed to serve the Service Area.
The Financial Plan demonstrates that the Districts will have the financial ability to discharge all Debt to be issued as part of the Financial Plan on a reasonable basis. Furthermore, the Districts will secure the certification of an External Financial Advisor who will provide an opinion as to whether such Debt issuances are in the best interest of the Districts at the time of issuance.

B. Mill Levies.

It is anticipated that the Districts will impose a Debt Mill Levy and an Operating Mill Levy on all property within the Service Area. In doing so, the following shall apply:

1. **Aggregate Mill Levy Maximum**

   The Aggregate Mill Levy shall not exceed in any year the Aggregate Mill Levy Maximum, which is fifty (50) mills.

2. **Regional Mill Levy Not Included in Other Mill Levies**

   The Regional Mill Levy shall not be counted against the Aggregate Mill Levy Maximum.

3. **Operating Mill Levy**

   The Districts may each impose an Operating Mill Levy of up to fifty (50) mills until the Districts imposes a Debt Mill Levy. Once a District imposes a Debt Mill Levy, that District’s Operating Mill Levy shall not exceed ten (10) mills at any point.

4. **Gallagher Adjustments**

   In the event the State’s method of calculating assessed valuation for the Taxable Property changes after approval of this Service Plan, the Districts’ Aggregate Mill Levy, Debt Mill Levy, Operating Mill Levy, and Aggregate Mill Levy Maximum, amounts herein provided may be increased or decreased to reflect such changes; such increases or decreases shall be determined by the Districts’ Boards in good faith so that to the extent possible, the actual tax revenues generated by such mill levies, as adjusted, are neither enhanced nor diminished as a result of such change.

5. **Excessive Mill Levy Pledges**

   Any Debt issued with a mill levy pledge, or which results in a mill levy pledge, that exceeds the Aggregate Mill Levy Maximum or the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Service Plan and shall not be an authorized issuance of Debt unless and until such material modification has been approved by a Service Plan Amendment.

6. **Refunding Debt**

   The Maximum Debt Mill Levy Imposition Term may be exceeded for Debt refunding purposes if: (1) a majority of the issuing District’s Board is composed of End Users
and have voted in favor of a refunding of a part or all of the Debt; or (2) such refunding
will result in a net present value savings.

7. **Maximum Debt Authorization**

The Districts anticipate approximately [Dollar Amount] in project costs in [Year]
dollars as set forth in **Exhibit E** and anticipate issuing approximately [Dollar Amount]
in Debt to pay such costs as set forth in **Exhibit J**, which Debt issuance amount shall
be the amount of the Maximum Debt Authorization. The Districts collectively shall
not issue Debt in excess of the Maximum Debt Authorization. The Districts must seek
prior resolution approval by the City Council to issue Debt in excess of the Maximum
Debt Authorization to pay the actual costs of the Public Improvements set forth in
**Exhibit E** plus inflation, contingencies and other unforeseen expenses associated with
such Public Improvements. Such approval by the City Council shall not constitute a
material modification of this Service Plan requiring a Service Plan Amendment so long
as increases are reasonably related to the Public Improvements set forth in **Exhibit E**
and any Approved Development Plan.

C. **Maximum Voted Interest Rate and Underwriting Discount.**

The interest rate on any Debt is expected to be the market rate at the time the Debt is issued.
The maximum interest rate on any Debt is not permitted to exceed Twelve Percent (12%). The
maximum underwriting discount shall be three percent (3%). Debt, when issued, will comply with
all relevant requirements of this Service Plan, the Special District Act, other applicable State law
and federal law as then applicable to the issuance of public securities.

D. **Interest Rate and Underwriting Discount Certification.**

The Districts shall retain an External Financial Advisor to provide a written opinion on the
market reasonableness of the interest rate on any Debt and any underwriter discount payed by the
Districts as part of a Debt financing transaction. The Districts shall provide this written opinion
to the City before issuing any Debt based on it.

E. **Disclosure to Purchasers.**

In order to notify future End Users who are purchasing residential lots or dwellings units
in the Service Area that they will be paying, in addition to the property taxes owed to other taxing
governmental entities, the property taxes imposed under the Debt Mill Levy, the Operating Mill
Levy and possibly the Regional Mill Levy, the Districts shall not be authorized to issue any Debt
under this Service Plan until there is included in the Developer's Approved Development Plan
provisions that require the following:

1. That the Developer, and its successors and assigns, shall prepare and submit to the
City Manager for his approval a disclosure notice in substantially the form attached
hereto as **Exhibit K** (the “Disclosure Notice”);

2. That when the Disclosure Notice is approved by the City Manager, the Developer
shall record the Disclosure Notice in the Larimer County Clerk and Recorders
Office; and
3. That the approved Disclosure Notice shall be provided by the Developer, and by its successors and assigns, to each potential End User purchaser of a residential lot or dwelling unit in the Service Area before that purchaser enters into a written agreement for the purchase and sale of that residential lot or dwelling unit.

F. External Financial Advisor.

An External Financial Advisor shall be retained by the Districts to provide a written opinion as to whether any Debt issuance is in the best interest of the Districts once the total amount of Debt issued by the Districts exceeds Five Million Dollars ($5,000,000). The External Financial Advisor is to provide advice to the Districts’ Boards regarding the proposed terms and whether Debt conditions are reasonable based upon the status of development within the Districts, the projected tax base increase in the Districts, the security offered and other considerations as may be identified by the Advisor. The Districts shall include in the transcript of any Bond transaction, or other appropriate financing documentation for related Debt instrument, a signed letter from the External Financial Advisor providing an official opinion on the structure of the Debt, stating the Advisor’s opinion that the cost of issuance, sizing, repayment term, redemption feature, couponing, credit spreads, payment, closing date, and other material transaction details of the proposed Debt serve the best interest of the Districts.

Debt shall not be undertaken by the Districts if found to be unreasonable by the External Financial Advisor.

G. Disclosure to Debt Purchasers.

Any Debt of the Districts shall set forth a statement in substantially the following form:

"By acceptance of this instrument, the owner of this Debt agrees and consents to all of the limitations with respect to the payment of the principal and interest on this Debt contained herein, in the resolution of the District authorizing the issuance of this Debt and in the Service Plan of the District. This Debt is not and cannot be a Debt of the City of Fort Collins"

Similar language describing the limitations with respect to the payment of the principal and interest on Debt set forth in this Service Plan shall be included in any document used for the offering of the Debt for sale to persons, including, but not limited to, a Developer of property within the Service Area.

H. Security for Debt.

The Districts shall not pledge any revenue or property of the City as security for the indebtedness set forth in this Service Plan. Approval of this Service Plan shall not be construed as a guarantee by the City of payment of any of the Districts’ obligations; nor shall anything in the Service Plan be construed to create any responsibility or liability on the part of the City in the event of default by the Districts in the payment of any such obligations.

I. TABOR Compliance.

The Districts shall comply with the provisions of the Taxpayer’s Bill of Rights in Article X, § 20 of the Colorado Constitution ("TABOR"). In the discretion of the Districts’ Boards, the Districts may set up other qualifying entities to manage, fund, construct and operate facilities,
services, and programs. To the extent allowed by law, any entity created by a District will remain under the control of the District’s Board.

J. Districts’ Operating Costs.

The estimated cost of acquiring land, engineering services, legal services and administrative services, together with the estimated costs of the Districts’ organization and initial operations, are anticipated to be [Dollar Amount], which will be eligible for reimbursement from Debt proceeds.

In addition to the capital costs of the Public Improvements, the Districts will require operating funds for administration and to plan and cause the Public Improvements to be operated and maintained. The first year’s operating budget is estimated to be [Dollar Amount].

Ongoing administration, operations and maintenance costs may be paid from property taxes collected through the imposition of an Operating Mill Levy, subject to the limitations set forth in Section IX.B.3, as well as from other revenues legally available to the Districts.

X. REGIONAL IMPROVEMENTS

The Districts shall be authorized to provide for the planning, design, acquisition, funding, construction, installation, relocation, redevelopment, administration and overhead costs related to the provision of Regional Improvements. At the discretion of the City, the Districts shall impose a Regional Improvement Mill Levy on all property within the Districts’ boundaries under the following terms:

A. Regional Mill Levy Authority.

The Districts shall seek the authority to impose an additional Regional Mill Levy of five (5) mills as part of the Districts’ initial TABOR election. The Districts shall also seek from the electorate in that election the authority under TABOR to enter into an intergovernmental agreement with the City obligating the Districts to pay as a multiple-fiscal year obligation the proceeds from the Regional Mill Levy to the City. Obtaining such voter-approval of this intergovernmental agreement shall be a precondition to the Districts issuing any Debt under this Service Plan.

B. Regional Mill Levy Imposition.

The Districts shall impose the Regional Mill Levy at a rate not to exceed five (5) mills within one year of receiving written notice from the City Manager to the Districts requesting the imposition of the Regional Mill Levy and stating the mill levy rate to be imposed.

C. City Notice Regarding Regional Improvements.

Such notice from the City shall provide a description of the Regional Improvements to be constructed and an analysis explaining how the Regional Improvements will be beneficial to property owners within the Service Area. The City shall require that planned developments that (i) are adjacent to the Service Area and (ii) will benefit from the Regional Improvement also impose a Regional Milly Levy, to the extent possible.

D. Regional Improvements Authorized Under Service Plan.
If so notified by the City Manager, the Regional Improvements shall be considered public improvements that the Districts would otherwise be authorized to design, construct, install re-design, re-construct, repair or replace pursuant to this Service Plan and applicable law.

E. Expenditure of Regional Mill Levy Revenues.
Revenue collected through the imposition of the Regional Mill Levy shall be expended as follows:

1. Intergovernmental Agreement
   
   If the City and the Districts have executed an intergovernmental agreement concerning the Regional Improvements, then the revenue from the Regional Mill Levy shall be used in accordance with such agreement;

2. No Intergovernmental Agreement
   
   If no intergovernmental agreement exists between the Districts and the City, then the revenue from the Regional Mill Levy shall be paid to the City, for use by the City in the planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of Regional Improvements which benefit the End Users of the Districts as prioritized and determined by the City.

F. Regional Mill Levy Term.

The imposition of the Regional Mill Levy shall not exceed a term of twenty-five (25) years from December 31 of the tax collection year after which the Regional Mill Levy is first imposed.

G. Completion of Regional Improvements.

All Regional Improvements shall be completed prior to the end of the twenty-five (25) year Regional Mill Levy term.

H. City Authority to Require Imposition.

The City’s authority to require the initiation of the imposition of a Regional Mill Levy shall expire fifteen (15) years after December 31st of the year in which the Districts first imposes a Debt Mill Levy.

I. Regional Mill Levy Not Included in Other Mill Levies.

The Regional Mill Levy imposed shall not be applied toward the calculation of the Aggregate Mill Levy.

J. Gallagher Adjustment.

In the event the method of calculating assessed valuation is changed after the date of approval of this Service Plan, the Regional Mill Levy may be increased or shall be decreased to reflect such changes; such increases or decreases shall be determined by the Districts’ Board in good faith so that to the extent possible, the actual tax revenues generated by the Regional Mill Levy, as adjusted, are neither enhanced nor diminished as a result of such change.

XI. CITY FEES

The Districts shall pay all applicable City fees as required by the City Code.

XII. BANKRUPTCY LIMITATIONS
All of the limitations contained in this Service Plan, including, but not limited to, those pertaining to the Aggregate Mill Levy Maximum, Maximum Debt Mill Levy Imposition Term and Fees, have been established under the authority of the City in the Special District Act to approve this Service Plan. It is expressly intended that by such approval such limitations: (i) shall not be set aside for any reason, including by judicial action, absent a Service Plan Amendment; and (ii) are, together with all other requirements of State law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral approval necessary under applicable non-bankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

XIII. ANNUAL REPORTS AND BOARD MEETINGS

A. General.

Each of the Districts shall be responsible for submitting an annual report to the City Clerk no later than September 1st of each year following the year in which the Order and Decree creating the Districts has been issued. The Districts may file a consolidated annual report. The annual report may be made available to the public on the City’s website.

B. Board Meetings.

Each of the Districts’ Boards shall hold at least one public board meeting in three of the four quarters of each calendar year, beginning in the first full calendar year after the Districts’ creation. Notice for each of these meetings shall be given in accordance with the requirements of the Special District Act and other applicable State Law. This requirement shall not apply when a majority of the directors on the District’s Board are End Users.

C. Report Requirements.

Unless waived in writing by the City Manager, each of the Districts’ annual reports must include the following:

1. Narrative

   A narrative summary of the progress of the District in implementing the Service Plan for the report year.

2. Financial Statements

   Except when exemption from audit has been granted for the report year under the Local Government Audit Law, the audited financial statements of the District for the report year including a statement of financial condition (i.e., balance sheet) as of December 31 of the report year and the statement of operation (i.e., revenue and expenditures) for the report year.

3. Capital Expenditures

   Unless disclosed within a separate schedule to the financial statements, a summary of the capital expenditures incurred by the District in development of improvements in the report year.
4. Financial Obligations

Unless disclosed within a separate schedule to the financial statements, a summary of financial obligations of the District at the end of the report year, including the amount of outstanding Debt, the amount and terms of any new District Debt issued in the report year, the total assessed valuation of all Taxable Property within the Service Area as of January 1 of the report year and the current total District mill levy pledged to Debt retirement in the report year.

5. Board Contact Information

The names and contact information of the current directors on the District’s Board, any District manager and the attorney for the District shall be listed in the report. The District’s current office address, phone number, email address and any website address shall also be listed in the report.

6. Other Information

Any other information deemed relevant by the City Council or deemed reasonably necessary by the City Manager.

D. Reporting of Significant Events.

The annual report shall also include information as to any of the following that occurred during the report year:

1. Boundary changes made or proposed to the District’s boundaries as of December 31 of the report year.
2. Intergovernmental Agreements with other governmental entities, either entered into or proposed as of December 31 of the report year.
3. Copies of the District’s rules and regulations, if any, or substantial changes to the District’s rules and regulations as of December 31 of the report year.
4. A summary of any litigation which involves the District’s Public Improvements as of December 31 of the report year.
5. A list of all facilities and improvements constructed by the District that have been dedicated to and accepted by the City as of December 31 of the report year.
6. Notice of any uncured events of default by the District, which continue beyond a ninety (90) day period, under any Debt instrument.
7. Any inability of the District to pay its obligations as they come due, in accordance with the terms of such obligations, which continue beyond a ninety (90) day period.

E. Failure to Submit.

In the event the annual report is not timely received by the City Clerk or is not fully responsive, notice of such default shall be given to the District’s Board at its last known address. The failure of the District to file the annual report within forty-five (45) days of the mailing of
such default notice by the City Clerk may constitute a material modification of this Service Plan, in the discretion of the City Manager.

XIV. SERVICE PLAN AMENDMENTS

This Service Plan is general in nature and does not include specific detail in some instances. The Service Plan has been designed with sufficient flexibility to enable the Districts to provide required improvements, services and facilities under evolving circumstances without the need for numerous amendments. Modification of the general types of improvements and facilities making up the Public Improvements, and changes in proposed configurations, locations or dimensions of the Public Improvements, shall be permitted to accommodate development needs consistent with the then-current Approved Development Plans for the Project. Any action of one or more of the Districts, which is a material modification of this Service Plan requiring a Service Plan Amendment as provided in in Section XV below or any other applicable provision of this Service Plan, shall be deemed to be a material modification to this Service Plan unless otherwise expressly provided in this Service Plan. All other departures from the provisions of this Service Plan shall be considered on a case-by-case basis as to whether such departures are a material modification under this Service Plan or the Special District Act.

XV. MATERIAL MODIFICATIONS

Material modifications to this Service Plan may be made only in accordance with C.R.S. Section 32-1-207 as a Service Plan Amendment. No modification shall be required for an action of the Districts that does not materially depart from the provisions of this Service Plan, unless otherwise provided in this Service Plan.

Departures from the Service Plan that constitute a material modification requiring a Service Plan Amendment include, without limitation:

1. Actions or failures to act that create materially greater financial risk or burden to the taxpayers of any of the Districts;

2. Performance of a service or function, construction of an improvement, or acquisition of a major facility that is not closely related to an improvement, service, function or facility authorized in the Service Plan;

3. Failure to perform a service or function, construct an improvement or acquire a facility required by the Service Plan; and

4. Failure to comply with any of the prohibitions, limitations and restrictions of this Service Plan.

Actions that are not to be considered material modifications include without limitation changes in quantities of improvements, facilities or equipment; immaterial cost differences; and actions expressly authorized in this Service Plan.

XVI. DISSOLUTION

Upon independent determination by the City Council that the purposes for which the Districts were created have been accomplished, the Districts shall file a petition in district court for dissolution as provided in the Special District Act. In no event shall dissolution occur until the Districts have provided for the payment or discharge of all of its outstanding indebtedness and other financial obligations as required pursuant to State law.
XVII. **SANCTIONS**

Should any of the Districts undertake any act without obtaining prior City Council approval or consent or City Manager approval or consent as required in this Service Plan, or that constitutes a material modification to this Service Plan requiring a Service Plan Amendment as provided herein or under the Special Districts Act, the City Council may impose one (1) or more of the following sanctions, as it deems appropriate:

1. Exercise any applicable remedy under the Special District Act;

2. Withhold the issuance of any permit, authorization, acceptance or other administrative approval, or withhold any cooperation, necessary for the District’s development or construction or operation of improvements or provision of services;

3. Exercise any legal remedy under the terms of any intergovernmental agreement under which the District is in default; or

4. Exercise any other legal and equitable remedy available under the law, including seeking injunctive relief against the District, to ensure compliance with the provisions of the Service Plan or applicable law.

XVIII. **CONCLUSION**

It is submitted that this Service Plan, as required by C.R.S. Section 32-1-203(2), establishes that:

1. There is sufficient existing and projected need for organized service in the Service Area to be served by the Districts;

2. The existing service in the Service Area to be served by the Districts is inadequate for present and projected needs;

3. The Districts are capable of providing economical and sufficient service to the Service Area; and

4. The Service Area does have, and will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

XIX. **RESOLUTION OF APPROVAL**

The Districts agree to incorporate the City Council’s resolution approving this Service Plan, including any conditions on any such approval, into the copy of the Service Plan presented to the District Court for and in Larimer County, Colorado.
NOTICE OF INCLUSION IN A RESIDENTIAL METROPOLITAN DISTRICT
AND POSSIBLE PROPERTY TAX CONSEQUENCES

Legal description of the property and address:

(Insert legal description and property address).

This property is located in the following metropolitan district:

(Insert District Name).

In addition to standard property taxes identified on the next page, this property is subject to a metropolitan district mill levy (another property tax) of up to:

(Insert mill levy maximum).

Based on the property’s inclusion in the metropolitan district, an average home sales price of $300,000 could result in ADDITIONAL annual property taxes up to:

(Insert amount).

The next page provides examples of estimated total annual property taxes that could be due on this property, first if located outside the metropolitan district and next if located within the metropolitan district. **Note: property that is not within a metropolitan district would not pay the ADDITIONAL amount.**

The metropolitan district board can be reached as follows:

(Insert contact information).

You may wish to consult with: (1) the Larimer County Assessor’s Office, to determine the specific amount of metropolitan district taxes currently due on this property; and (2) the metropolitan district board, to determine the highest possible amount of metropolitan district property taxes that could be assessed on this property.
**ESTIMATE OF PROPERTY TAXES**

**Annual Tax Levied on Residential Property With $300,000 Actual Value Without the District**

<table>
<thead>
<tr>
<th>Taxing Entity</th>
<th>Mill Levies (2017**)</th>
<th>Annual tax levied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insert entity</td>
<td>Insert amount</td>
<td>$ Insert amount</td>
</tr>
<tr>
<td>Larimer County</td>
<td>Insert amount</td>
<td>$ Insert amount</td>
</tr>
<tr>
<td>City of Fort Collins</td>
<td>Insert amount</td>
<td>$ Insert amount</td>
</tr>
<tr>
<td>Insert entity</td>
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<tr>
<td>Insert entity</td>
<td>Insert amount</td>
<td>$ Insert amount</td>
</tr>
</tbody>
</table>

**TOTAL:**

Insert total  
$ Insert amount

**Annual Tax Levied on Residential Property With $300,000 Actual Value With the District (Assuming Maximum District Mill Levy)**

<table>
<thead>
<tr>
<th>Taxing Entity</th>
<th>Mill Levies (2017**)</th>
<th>Annual tax levied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insert District Name</td>
<td>Insert amount</td>
<td>$ Insert amount</td>
</tr>
<tr>
<td>Insert entity</td>
<td>Insert amount</td>
<td>$ Insert amount</td>
</tr>
<tr>
<td>Larimer County</td>
<td>Insert amount</td>
<td>$ Insert amount</td>
</tr>
<tr>
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<tr>
<td>Insert entity</td>
<td>Insert amount</td>
<td>$ Insert amount</td>
</tr>
</tbody>
</table>

**TOTAL:**

Insert total  
$ Insert total

**This estimate of mill levies is based upon mill levies certified by the Larimer County Assessor’s Office in December 20__ for collection in 20___, and is intended only to provide approximations of the total overlapping mill levies within the District. The stated mill levies are subject to change and you should contact the Larimer County Assessor’s Office to obtain accurate and current information.**
AGENDA ITEM SUMMARY
City Council
August 21, 2018

STAFF

Teresa Roche, Chief Human Resources Officer
Jenny Lopez Filkins, Legal

SUBJECT

Resolution 2018-078 Appointing Councilmembers to Serve on an Ad Hoc Council Committee to Develop an Anti-Harassment Policy.

EXECUTIVE SUMMARY

The purpose of this item is to appoint City Councilmembers to an ad hoc Council Committee to develop an anti-harassment policy.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

In recent months, news of workplace harassment allegations is common and reinforces the importance of workplace culture. Several Colorado governmental bodies have adopted anti-harassment policies that apply to members of those governmental bodies and, in some cases, those employees appointed by the governmental bodies.

Harassment claims can arise at any level of an organization from the governing body itself to those appointed by a governing body. An anti-harassment policy sets the tone for the entire organization, describes a process for filing and handling harassment complaints and identifies possible outcomes in the event harassment is substantiated.

Council has been asked to appoint Councilmembers to an ad hoc committee to review, discuss and recommend an anti-harassment policy for City Council adoption. It is anticipated that the committee will meet two to four times in September to October to discuss anti-harassment policy options and considerations. The recommendations of the ad hoc committee will be brought forward at a future City Council meeting.
RESOLUTION 2018-078
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPOINTING COUNCILMEMBERS TO SERVE ON AN AD HOC COUNCIL
COMMITTEE TO DEVELOP AN ANTI-HARASSMENT POLICY

WHEREAS, workplace harassment allegations have become common in the news and reinforce the importance of workplace culture; and

WHEREAS, several Colorado governmental bodies have recently adopted anti-harassment policies that apply to members of those governmental bodies and, in some cases, those employees appointed by the governmental body; and

WHEREAS, harassment claims can arise at any level of an organization from the governing body to those appointed by a governing body; and

WHEREAS, an anti-harassment policy sets the tone for the entire organization, describes a process for filing and handling harassment complaints and identifies possible outcomes in the event harassment is substantiated; and

WHEREAS, because there are many options and considerations in developing an anti-harassment policy requiring review and discussion, City Council desires to appoint three Councilmembers to an ad hoc committee to review, discuss and recommend an anti-harassment policy for City Council adoption.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the City Council hereby appoints Councilmembers _____________________________ to an ad hoc committee to review and develop an anti-harassment policy that describes a process for filing and handling harassment complaints and identifies possible outcomes in the event harassment is substantiated.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of August, A.D. 2018.

_________________________________
Mayor

ATTEST:

_________________________________
City Clerk