

## AGENDA ITEM SUMMARY

August 18, 2015

City Council

### STAFF

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John Stokes, Natural Resources Director

### SUBJECT

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Resolution 2015-075 Authorizing the Execution of a Mineral Non-Development Lease at Soapstone Prairie Natural Area with the State Land Board.

### EXECUTIVE SUMMARY

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The purpose of this item is to authorize the Execution of a Mineral Non-Development Lease at Soapstone Prairie Natural Area with the State Land Board.

### STAFF RECOMMENDATION

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Staff recommends adoption of the Resolution.

### BACKGROUND / DISCUSSION

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Ever since the City acquired Soapstone Prairie Natural Area in 2004, the City has worked closely with the State Land Board (SLB) regarding its mineral interests. There have been several positive outcomes based on the relationship, including a collaborative *Energy by Design Plan* for Soapstone and Meadow Springs Ranch, as well as associated agreements that administer potential mineral exploration or production on both properties. The proposed mineral non-development lease described in this Agenda Item Summary is the latest product of the City and State's partnership. The lease would ensure that 3,800 acres of state mineral ownership at Soapstone would be protected from unwanted mineral development for 20 years; in return the City's Natural Areas Department would compensate the State with \$387,226 in lease payment over five years. The proposed lease is an alignment with the Natural Areas Master Plan adopted in 2014 and its objective of influencing mineral development on Soapstone and managing for the best possible conservation and financial outcomes for the City.

Colorado, like many western states, recognizes separate ownership of the surface estate and the mineral estate and the private property rights associated with each. When different parties own the surface and minerals, this is commonly referred to as "severed" or "split" estates. Because the mineral rights on Soapstone Prairie Natural Area (SPNA) and Meadow Springs Ranch (MSR) are owned separately by parties other than the City, these properties are considered split estates and the mineral rights are described as "severed" from the properties. The City's ownership is referred to as a "surface estate" or "surface ownership".

Several parties own mineral rights underlying the City properties which together amount to 46,000 acres. About one-third of the mineral rights are owned by Anadarko Land Corp, Anadarko E&P Company LP (together referred to as "Anadarko"), one-third by the State of Colorado's State Land Board (SLB), and one-third by a variety of private interests. Anadarko obtained its mineral rights on SPNA and MSR from the Union Pacific Railroad. These rights were reserved by the federal government when western lands were originally patented, and then conveyed to the railroad in a patchwork of odd-numbered sections. The SLB acquired its rights when Colorado was granted statehood by the federal government, and it manages them for the financial support of Colorado's public schools. The SLB reserved these mineral rights when it conveyed surface ownership to the City.

Several years ago, the SLB, with the encouragement of the Natural Areas Department, embarked on an *Energy by Design* (EbD) planning process for the interests it holds at SPNA and MSR. EbD sets forth a strict conservation framework that protects natural and cultural resources, while allowing the SLB to access its minerals. Adherence to EbD provisions will be required of any SLB lessee that wishes to explore or produce minerals on SPNA or MSR. Staff will work to ensure, as much as possible, that entities that may lease, explore, or produce minerals on areas that adjoin SLB interests will abide by the terms of EbD. Because so much mineral estate is held by the SLB, it should make sense for companies to follow the prescriptions on adjoining lands.

It is worth noting that the EbD approach represents a major departure from previous mineral leasing efforts by the SLB; furthermore, the SLB delayed its leasing program by several years to finish EbD and for this reason it was not able to take advantage of the very active leasing market of several years ago.

Following the completion of EbD, NAD began discussions with the SLB to hold the State's minerals on SPNA in a "non-development" status. This option allows the City to prevent development of the State's minerals on SPNA for a period of twenty (20) years.

The non-development lease allows time for improvements in technology and regional infrastructure that could lead to a further reduction in surface activities. This includes regional pipelines (which reduce truck traffic and gas flares), reduced well density (trending toward well pads with multiple wells and increasingly longer bore lengths), and regulatory, exploration and development options that minimize hydraulic fracking related issues. In addition, given the fact that owners of non-State minerals may be interested in exploration activities, the non-development lease can be used to strengthen the negotiating position of the City and to implement the concepts of EbD. Furthermore, if there ever is production on adjoining parcels that happen to access (or drain) SLB minerals, the City could receive a royalty from this production.

The City has commissioned three separate studies of the mineral potential on SPNA and MSR. In short, the studies have found limited potential for hydrocarbon development; however, that potential increases from west to east. Thus, it could be more likely that hydrocarbon development would be successful on MSR and less likely on SPNA.

In 2014 the SLB auctioned approximately 2,500 acres of mineral lease on MSR. The Wastewater Utility decided not to pursue a non-development lease given the mineral reports finding a low probability of commercial deposits, the management goals of MSR, and the fact that Energy by Design has been embraced by the SLB.

On the other hand, the Natural Areas Department decided to proceed with a non-development lease on SPNA based on its primary conservation mission and the extraordinary conservation and recreation values of the property. In addition, while there appears to be a low probability of commercial hydrocarbon deposits on SPNA, staff did not want to forgo an opportunity to lock down what is essentially a good insurance policy while there was an opportunity to do so. In addition, as noted above, the non-development lease can be used to strengthen the negotiating position of the City with adjoining non-State mineral owners and to implement the concepts of EbD. Moreover, staff believes the cost of the lease at ~\$5.00 an acre per year represents a reasonable price point.

Finally, although Fort Collins voters approved a hydraulic fracking moratorium thru 2018 that applies to City-owned lands, the moratorium is the subject of litigation. Even if the moratorium is upheld, its term ends far sooner than the proposed SSN non-development lease.

### **CITY FINANCIAL IMPACTS**

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The City's Natural Areas Department will pay the State Land Board \$387,226 over five years for the 20-year non-development lease. The funds would be disbursed from the City's already-appropriated and dedicated land conservation funds.

**BOARD / COMMISSION RECOMMENDATION**

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At its August 12, 2015 meeting, the Land Stewardship and Conservation Board will have its final consideration of the lease. Results of that meeting will be provided to Council in its Read-Before packet on August 18.

**PUBLIC OUTREACH**

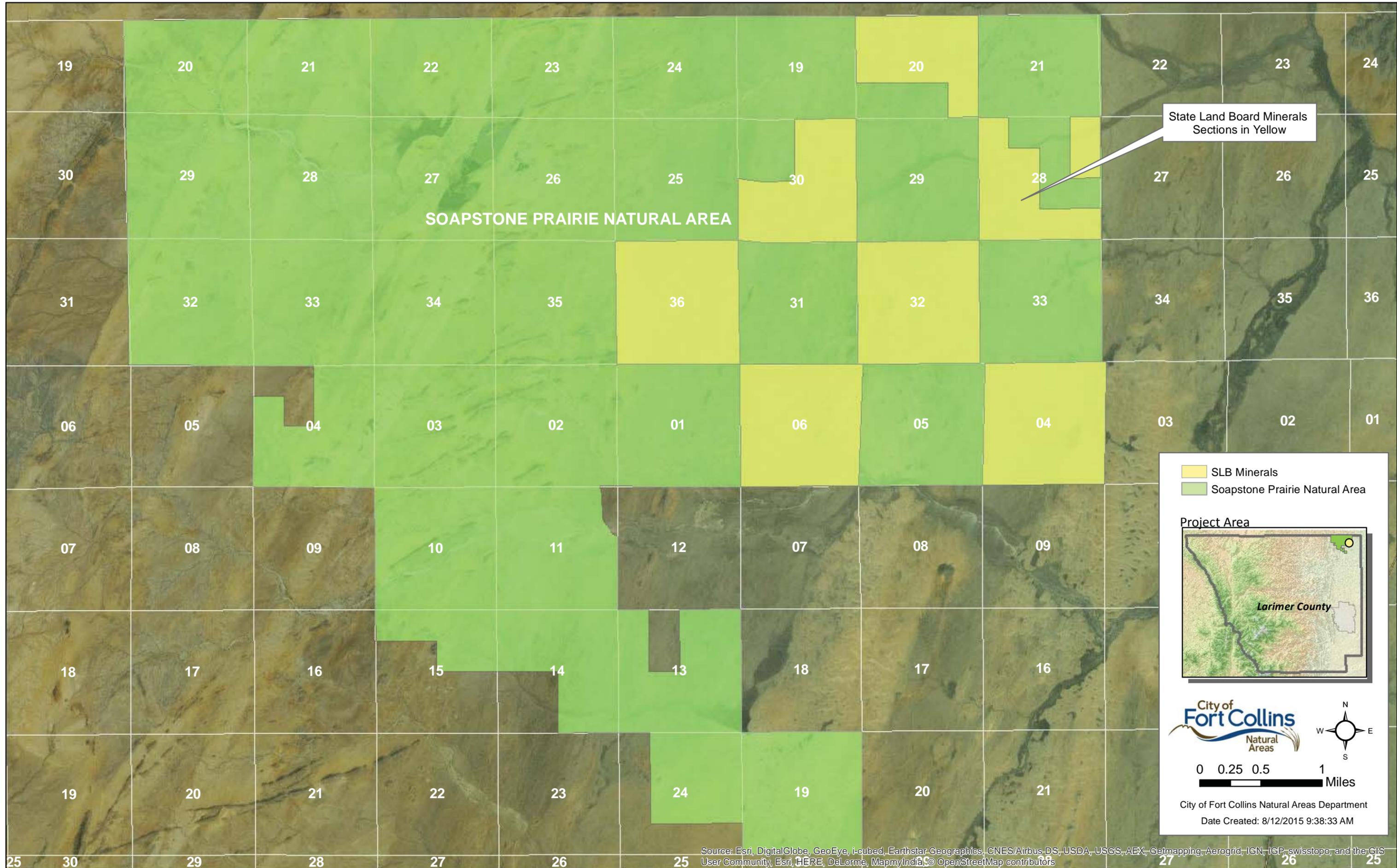
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Staff has discussed this transaction with the Land Conservation and Stewardship Board as well as the State Land Board.

**ATTACHMENTS**

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1. Map of State Land Board Non-Development Lease Sections (PDF)



Source: Esri, DigitalGlobe, GeoEye, i-cubed, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community, Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors

RESOLUTION 2015-075  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING THE EXECUTION OF A MINERAL NON-DEVELOPMENT LEASE  
AT SOAPSTONE PRAIRIE NATURAL AREA WITH THE STATE LAND BOARD

WHEREAS, the City is the owner of properties located in northern Larimer County known as Soapstone Prairie Natural Area (“Soapstone”); and

WHEREAS, the City generally does not own the mineral rights associated with Soapstone; and

WHEREAS, approximately one-third of the mineral rights under Soapstone are owned by the State of Colorado’s State Land Board, which reserved the mineral rights when it conveyed surface ownership of portions of Soapstone to the City over ten years ago; and

WHEREAS, the State Land Board owns land and mineral rights around the state that it manages for the financial support of Colorado’s schools and other public institutions; and

WHEREAS, to protect the natural and cultural resources at Soapstone from unwanted mineral development, in particular oil and gas drilling, City Natural Areas staff has been negotiating with the State Land Board to acquire a non-development lease for 3,800 acres of state-owned minerals on Soapstone; and

WHEREAS, a draft of the proposed Mineral Non-Development Lease between the City and the State Land Board is attached as Exhibit “A” and incorporated herein by reference (the “Lease”); and

WHEREAS, under the terms of the Lease the City would pay the State Land Board \$387,226 over a period of five years in exchange for the state agreeing not to develop its mineral rights on Soapstone for the next twenty years; and

WHEREAS, the Land Conservation and Stewardship Board considered the Lease at its regular meeting on August 12 and recommended that the City Council authorize it; and

WHEREAS, Section 29-1-203 of the Colorado Revised Statutes allows governments to cooperate or contract with one another to provide any function, service or facility lawfully authorized to each of the cooperating or contracting units; and

WHEREAS, under Section 1-22 of the City code, intergovernmental agreements and other cooperative arrangements between the City and other governmental entities are to be submitted to the City Council for review, unless they fit within one of the exceptions that permit authorization by the City Manager.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS, that the City Manager is hereby authorized to enter into the Mineral Non-Development Lease between the City and the State Land Board in substantially the form attached hereto as Exhibit “A”, with such modifications, additional terms and conditions, or future

amendments as the City Manager, in consultation with the City Attorney, determines are necessary or 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 18th day of August, A.D. 2015.

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Mayor

ATTEST:

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City Clerk



STATE OF COLORADO  
 STATE BOARD OF LAND COMMISSIONERS  
 1127 Sherman Street, Suite #300, Denver, CO 80203

**MINERAL NON-DEVELOPMENT LEASE**

**NO. LT** [REDACTED]

THIS AGREEMENT (Agreement), dated this [REDACTED] day of [REDACTED], 2015 (the Effective Date) made and entered into by and between the STATE OF COLORADO, acting by and through the STATE BOARD OF LAND COMMISSIONERS, whose address is 1127 Sherman Street, Room 300, Denver, CO 80202, hereinafter called the State, and THE CITY OF FORT COLLINS, COLORADO, a Municipal Corporation, whose address is 300 LaPorte Avenue, P. O. Box 580, Fort Collins, CO 80522, hereinafter called the Surface Owner:

WITNESSETH

WHEREAS, the Surface Owner has applied for a mineral development restriction covering all minerals underlying the land described below and has paid a filing fee in the amount of \$0.00; and,

WHEREAS, said application has been approved by the State; and,

WHEREAS, the Surface Owner is the record owner of the surface interest of the land covered hereby, or is the designated agent or trustee for the record owner or owners (proof of said ownership to be furnished at the State's request); and,

WHEREAS, to protect the surface, the Surface Owner desires to acquire from the State an agreement to restrict the development of the mineral estate owned by the State; and,

THEREFORE, for and in consideration of the premises and subject to any existing mineral leases in effect at the time this Agreement is executed, the State covenants and agrees that it will not lease, or cause to be developed, any and all minerals owned by the State, except as described herein, in the following land (the Subject Lands), situated in the County of Larimer, State of Colorado, more particularly described as follows:

ACRES	SUBDIVISION	SEC.TWP.RGE.	PATENTS
410.78	Lots 1,2,3,4, S2N2,N2S2,SESE	20 - 12N - 68W	Yes
440	E2NE, NWNW, S2NW, SW, S2SE	28 - 12N - 68W	Yes
474.88	NE, S2	30 - 12N - 68W	Yes
640	ALL	32 - 12N - 68W	Yes
640	ALL	36 - 12N - 69W	Yes
636.40	ALL	4 - 11N - 68W	Yes
630.70	ALL	16 - 11N - 68W	Yes

Containing 3,872.76 acres, more or less.

FUND: School

(NOTE: The State assumes no responsibility for the accuracy of the legal descriptions to the extent that such descriptions were furnished by the Surface Owner nor does it admit any liability for loss or damage due to inaccuracy on the Surface Owner's part in describing the land subject to this Agreement.)

Subject to the following existing mineral leases: None

- TERM** -- The term of this Agreement shall be twenty (20) years from the hour of twelve o'clock noon on the date hereof, to the hour of twelve o'clock noon on [REDACTED], 2035.
- RENTS** -- The Surface Owner shall pay to the State total compensation of \$387,226.00, payable in five equal installments of \$77,445.20 each, commencing on the date that this Agreement is signed by the Surface Owner and continuing annually on or before each of the next four anniversary dates of the Effective Date of this Agreement.

3. PENALTIES -- A penalty shall be imposed for, but not limited to, late payments, improper payments, violation of any covenant of this lease, or false statements made to the State. Penalties shall be determined by the State and may be in the form of, but not limited to, interest, fees, and fines.
4. SURRENDER -- The Surface Owner may at any time surrender and cancel this Agreement insofar as the same covers all or any portion of the land herein, provided that this surrender clause shall become inoperative immediately and concurrently with the institution of any suit in any court of law by the Surface Owner, the State, or any assignee of either to enforce this Agreement or any of its terms, express or implied. If this Agreement is terminated for any reason, no rental or bonus refund shall be made, nor will rental or bonus be transferred or credited in any way to another account. All paid up rental and bonus shall be forfeited unless otherwise agreed to by the State.
5. RECEIPT FOR PAYMENTS -- This Agreement shall not be in effect until the State has received cash or the cash proceeds of any check tendered in payment for fees, bonus, or rental. All payments shall be made on or before the date due and any default may subject this Agreement to cancellation as set out in Paragraph 13.
6. TRANSFER AND ASSIGNMENT -- The parties expressly agree that the mineral development restrictions set forth in this Agreement run with the land, and shall be binding upon all subsequent owners of all or any portion of the land covered hereby.

If a portion of the subject surface estate is sold or transferred and an assignment of the mineral development restriction for that parcel is approved, a new agreement shall be issued to the assignee covering the assigned land, containing the same terms and conditions as this Agreement and limited as to term as this Agreement is limited, and the assignor shall be released and discharged from all further obligations and liabilities as to that portion so assigned. An assignment shall not extend the term of this Agreement.

7. PROTECTION FROM OFFSET DRAINAGE -- In case of offset drainage from the Subject Lands, the Surface Owner will be offered an oil and gas lease or will allow the State to offer an oil and gas lease to a third party lessee, allowing development of oil or gas owned by the State underlying this surface or, in lieu of leasing, Surface Owner may pay an in-lieu royalty based on technical information and set by the State. Offset drainage is defined as a producing oil and gas well drilled on a spacing unit or legal location where any portion of the spacing unit or legal location is adjoining the Subject Lands.
8. NO RIGHT TO DEVELOP MINERALS -- Except as expressly set forth herein, this Agreement does not give the Surface Owner any authority to explore for, prospect, develop, extract or use any minerals owned by the State.
9. UNIT AGREEMENTS -- In the event the State permits the Subject Lands herein to be unitized or pooled with other lands, the terms of this Agreement shall be modified to conform to such unit agreement.
10. GOVERNMENT CONTROL -- Any matter over which the United States Government assumes exclusive control is exempted from any of the provisions of this Agreement.
11. EXTENSION -- Any request for an extension of the term of this Agreement will not be considered prior to the last year of the Agreement term. All requests must be in writing. The granting of an extension will be at the option of the State.
12. COMPLIANCE WITH LAW -- Nothing in this Agreement shall be construed as a waiver by the State of any right or remedy given to it by law for the administration of State-owned minerals, or construed in a manner that requires either party to violate applicable federal, state or local laws.
13. FORFEITURE -- Upon failure or default of the Surface Owner or its assignee to comply with any of the provisions or covenants hereof, the State is hereby authorized to cancel this Agreement, and such cancellation shall extend to, and include, all rights hereunder as to the whole of the tract so claimed or possessed by the Surface Owner or its assignee so defaulting, but shall not extend to nor affect the rights of any surface owner or approved assignee claiming land separated from this Agreement by assignment; provided, that in the event of any such default or failure to comply with any of the terms and conditions hereof, the State shall, before any such cancellation may be made, send by certified mail to the Surface Owner or assignee so defaulting, to the post office address of the Surface Owner or assignee, as shown by the records of the State, a notice of intention to cancel for such default, specifying the same, and if within thirty (30) days from the date of mailing said notice, the Surface Owner or assignee shall have paid all rents or bonuses in default, and shall have begun in good faith to correct such other default as may have been specified, and shall thereafter diligently prosecute the correction of such default, there shall not be a cancellation therefor. If such default is not corrected, or correction thereof is not begun in good faith as hereinabove required, within thirty (30) days after the mailing of such notice, this Agreement will

terminate and be cancelled by operation of this paragraph without further action by the State, or further notice to the Surface Owner.

- 14. FALSE STATEMENTS -- Misrepresentation or false statements on the part of the applicant or Surface Owner, or failure to comply with any of the conditions set out in this Agreement or in the application which is a part hereof, may subject this Agreement to cancellation by the State.
- 15. CONDEMNATION -- If the State's mineral estate shall be taken in any condemnation proceeding, this Agreement shall automatically terminate as of the date of taking. The award for such condemnation shall be paid to the State. If only a portion of the mineral estate is taken by condemnation, the State may, at its option, terminate this Agreement or terminate only that portion of the Agreement covering the mineral estate so taken.
- 16. SUCCESSORS CLAUSE -- The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, legal representatives, successors or assigns of the Surface Owner.
- 17. APPROPRIATION -- Surface owner obligations hereunder are subject to annual appropriation of funds sufficient and intended therefor by Surface Owner's City Council, in its sole discretion, however, failure to pay the Paragraph 2 - Rents obligations will result in termination of this Agreement as set out in Paragraph 13 of this Agreement.

IN WITNESS WHEREOF, The parties hereto have executed the foregoing, the same to be effective as of the day and year first above written.

STATE:

COLORADO STATE BOARD OF LAND COMMISSIONERS

\_\_\_\_\_  
Pete Milonas, Minerals Director

ATTEST

State of COLORADO

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by Pete Milonas, in his capacity as Minerals Director of Colorado State Board of Land Commissioners, as being authorized to execute same.

(SEAL)

Notary Public \_\_\_\_\_

My Commission Expires \_\_\_\_\_

SURFACE OWNER:  
CITY OF FORT COLLINS, COLORADO,  
A Municipal Corporation

By: \_\_\_\_\_  
Darin A. Atteberry, City Manager

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

State of COLORADO

County of Larimer

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of 2015, by  
Darin A. Atteberry as City Manager for the City of Fort Collins, Colorado, as being authorized to execute same.

(SEAL)

Notary Public \_\_\_\_\_

My Commission Expires \_\_\_\_\_