Regular Meeting
July 16, 2019
6:00 pm

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. Proclamation Proclaiming the Week of July 20, 2019 as Flood Awareness Week.
B. Proclamation Proclaiming August 6, 2019 as Neighborhood Night Out.
C. Proclamation Recognizing the Importance of the 2020 Census.
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.

- PRESENTATION
  A. Housing Catalyst Presentation to Councilmember Cunniff.

- PUBLIC COMMENT

  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.]

- PUBLIC COMMENT 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.

If the presiding officer determines that the number of items pulled from the Consent Calendar by citizens is substantial and may impair the Council’s ability to complete the planned agenda, the presiding officer may declare that the following process will be used to simplify consideration of the Citizen-Pulled Consent Items:

1. All citizen-pulled items (to be listed by number) will be considered as a group under the heading “Consideration of Citizen-Pulled Consent Items.”

2. At that time, each citizen wishing to speak will be given a single chance to speak about any and all of the items that have been moved to that part of the agenda.

3. After the citizen comments, any Councilmember may specify items from the list of Citizen-Pulled Consent Items for Council to discuss and vote on individually. Excluding those specified items, Council will then adopt all “Citizen-Pulled Consent Items” as a block, by a single motion, second and vote.

4. Any Citizen-Pulled Consent Items that a Councilmember has asked to be considered individually will then be considered using the regular process for considering discussion items.

1. Items Relating to Various Amendments to the City of Fort Collins Land Use Code.

   A. Second Reading of Ordinance No. 077, 2019, Makes Various Amendments to the City of Fort Collins Land Use Code.

   B. Second Reading of Ordinance No. 078, 2019, Amends the City of Fort Collins Land Use Code Regarding Community Development and Neighborhood Services Director Variances to Certain Land Use Code Standards.

   These Ordinances, unanimously adopted on First Reading on July 2, 2019, adopt a variety of revisions, clarifications and additions to the Land Use Code.


   This Ordinance, unanimously adopted on First Reading on July 2, 2019, Appropriates The purpose of this item is to appropriate $193,650 of $682,000 in grant award revenues from Bloomberg Philanthropies, as part of the Bloomberg Mayor’s Challenge, into the Fort Collins Utilities Light and Power fund and Economic Health Office for the purposes of ongoing project management and operations of Epic Homes and a sub-grant to Colorado State University for indoor air quality research. The remaining $488,350 of the 2019 balance of funds will be appropriated for Epic Loan capital in alignment with pending third-party capital agreements.
3. **Items Relating to Sales Tax Code Updates.**

   A. Second Reading of Ordinance No. 085, 2019, Amends Article XVIII of Chapter 15 of the Code of the City of Fort Collins Relating to Short-Term Rental Licenses.

   B. Second Reading of Ordinance No. 086, 2019, Amends Article II of Chapter 25 of the Code of the City of Fort Collins Relating to the City’s Tax Rebate Programs.

   C. Second Reading of Ordinance No. 087, 2019, Amends Article III of Chapter 25 of the Code of the City of Fort Collins Relating to the Imposition, Collection, and Enforcement of the City’s Sales and Use Taxes.

   These Ordinances, unanimously adopted on First Reading on July 2, 2019, amend City Code sections in Chapter 15 and 25 to provide clarification for definitions and the application of various sections of the Code.

4. **Second Reading of Ordinance No. 088, 2019, Designating the Maneval/Mason/Sauer Property, 100 1st Street, Fort Collins, Colorado, as a Fort Collins Landmark Pursuant to Chapter 14 of the Code of the City of Fort Collins.**

   *This item is a quasi-judicial matter and if considered on the discussion agenda, it will be considered in accordance with the procedures described in Section 1(e) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.*

   This Ordinance, unanimously adopted on First Reading on July 2, 2019, considers the request for landmark designation of the Maneval/Mason/Sauer Property, 100 1st Street. This is a voluntary designation at the property owner’s request. The Landmark Preservation Commission unanimously recommends approving this landmark designation.

5. **Items Relating to Delivery of Telecommunication Services by Fort Collins Connexion.**

   A. Second Reading of Ordinance No. 089, 2019, Amending Chapter 26 of the Code of the City of Fort Collins to Further Authorize and Implement the City’s Provision of Telecommunication Facilities and Services as Provided in City Charter Article XII, Section 7.

   B. Second Reading of Ordinance No. 091, 2019, Authorizing the Purchasing Agent to Enter into Licensing Contracts With a Term Length in Excess of Five Years for the Acquisition of Video Content Rights in Furtherance of Fort Collins Connexion’s Delivery of Telecommunication Services.

   These Ordinances were unanimously adopted on First Reading on July 2, 2019. Ordinance No. 089, 2019 adopts a variety of revisions, clarifications and additions to City Code Chapter 26 pertaining to Utility Services to accommodate telecommunication services. Ordinance No. 091, 2019 approves long term licensing agreements with a term up to seven years for video content to be delivered to Connexion’s subscribers.

   The following changes to Ordinance No. 089, 2019 have been made since First Reading:

   1. Section 26-575(a): removed reference to agreement by subscriber to abide by terms and conditions of service and rules and regulations; replace with mandatory language (shall be subject to….);

   2. Section 26-576(d): substituted defined term “telecommunication subscriber” for “telecommunication customer”) for consistency;
3. Section 26-579(c): adjusted definitions of Code violation to exclude nonpayment by a subscriber so failure to pay is not punishable as a criminal violation, leaving termination of service and other legal recourse such as collection as enforcement mechanisms for nonpayment.

4. Section 26-583(a): clarified language regarding relationship of franchise fees to PILOT by indicating all franchise fees paid shall be a credit against the PILOT amounts due, and to provide that PILOT shall be paid by the telecommunication division and may (not must) be charged directly to subscribers.

6. **First Reading of Ordinance No. 092, 2019, Appropriating Prior Year Reserves in the General Fund for the Police Interview Room Camera Replacement.**

   The purpose of this item is to appropriate funds from the Fort Collins Police Services Asset Forfeiture federal and state accounts (in the amount of $101,000) to partially fund the purchase of a replacement interview room recording system at the Fort Collins Police Services building, 2221 South Timberline Road. These funds will be used in conjunction with other identified funds from core budget and contract savings.

7. **Items Relating to 2018 International Code Amendments.**

   A. **First Reading of Ordinance No. 094, 2019, Amending Chapter 5, Article II, Division 2 of the Code of the City of Fort Collins for the Purpose of Enacting Local Amendments to the 2018 International Building Code.**

   B. **First Reading of Ordinance No. 095, 2019, Amending Chapter 5, Article II, Division 2 of the Code of the City of Fort Collins for the Purpose of Enacting Local Amendments to the 2018 International Residential Code.**

   The purpose of this item is to revise two Code requirements first proposed in both the International Building Code (the “IBC”) and the International Residential Code (the “IRC”). The first proposed change relates to an asphalt shingle roof covering requirement exemption where compliance is difficult given certain circumstances.

   The second proposed change relates to an electric vehicle charging (EV ready) conduit requirement that was submitted to be included in the 2018 codes as adopted in January but was missed and not included in the final ordinance version as intended. Adopting these two Ordinances will make the above changes in both the IRC, which applies to residential property, and the IBC, which applies to commercial property.

8. **First Reading of Ordinance No. 096, 2019, Approving the Waiver of Certain Fees for the Mason Place Affordable Housing Project.**

   The purpose of this item is to present Housing Catalyst's request for affordable housing fee waivers for the Mason Place permanent supportive housing project under development at 3750 South Mason Street, currently the site of the Midtown Arts Center. All 60 units of this project target residents making no more than 30% area median income (AMI) and therefore qualify for discretionary fee waivers. The request is to approve the waiver of 100% of the waivable fees up to the amount of $330,000.

9. **First Reading of Ordinance No. 097, 2019, Approving and Authorizing Execution of the Second Amendment to Permanent Easement dated April 27, 2006, to Public Service Company of Colorado Related to the Northside Aztlan/Poudre River Site.**

   The purpose of this item is to amend an existing easement located on City property that includes the Northside Aztlan/United Way parcel, 226 Willow Street, and a portion of the Gustav Swanson Natural Area (the “City Property”), sometimes referred to as the Aztlan/Poudre River EPA Removal Action Site, at 112 Willow Street.
10. First Reading of Ordinance No. 098, 2019, Authorizing the Execution of First and Second Amended and Restated Conservation Easements on the Hazelhurst Property and Assignment of a Conservation Easement to Larimer County.

The purpose of this item is to authorize the execution of a First Amended and Restated Conservation Easement on the Hazelhurst property located at 2887 West Trilby Road. The amended and restated conservation easement will allow for the subdivision of the 45-acre property into two parcels: a 5-acre parcel to be retained by Glenn and Margaret Hazelhurst and a 40-acre parcel to be purchased in fee by the Natural Areas Department. Staff is also seeking authorization to subsequently enter into a Second Amended and Restated Conservation Easement that will split the Conservation Easement into two agreements, one that will apply to the 5-acre tract the Hazelhursts retain and another one encumbering the 40-acre parcel purchased by the City, so that the conservation easement can be managed separately on each parcel. The conservation easement on the City's parcel would then be assigned to and held by Larimer County through its Open Lands department.

11. Items Relating to the Fossil Creek Reservoir Area Plan-Transfer of Density Units Program Closure.

A. Resolution 2019-077 Amending the Fossil Creek Reservoir Area Plan to Close the Transfer of Density Units Program.

B. Resolution 2019-078 Approving and Authorizing the Mayor to Execute Amendment Number Two to the Intergovernmental Agreement Between the City and Larimer County Regarding Cooperation on Managing Urban Development Within the Fort Collins Growth Management Area to Close the Transfer of Density Units Program and Update Certain References.

The purpose of this item is to consider closure to the Fossil Creek Reservoir Transfer of Density Units (TDU) Program, adopted September 22, 1998, by the Larimer County Board of Commissioners. The TDU Receiving Area is essentially annexed and built out, with only one remaining parcel with limited development potential. This item includes amendments to both the Fossil Creek Reservoir Area Plan and the Intergovernmental Agreement Regarding Cooperation on Managing Urban Development.

12. Resolution 2019-079 Authorizing the City Manager to Execute an Agreement with Numerous Stakeholders Regarding a Joint Study of the Boxelder Creek Watershed Dams.

The purpose of this item is to enter into an agreement with key stakeholders to study a series of key flood control dams upstream of Fort Collins known as the “Boxelder Creek Watershed Dams.” The stakeholders that will be parties to this agreement are: Larimer County, the Town of Wellington, the Town of Timnath, and the North Poudre Irrigation Company. The study will be used as the basis for subsequent discussions and potential agreements related to the dams, including capital improvements and long-term operations and maintenance needs and responsibilities.


The purpose of this item is to approve artwork that will be placed in the Poudre River Whitewater Park to mark the Cache la Poudre River National Heritage Area.


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


The purpose of this item is to reappoint Thomas Fleming to a three-year term on the Northern Colorado Regional Airport Commission.
CONSENT CALENDAR FOLLOW-UP

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

STAFF REPORTS

A. Business Trespass and College Avenue Traffic Safety. (staff: John Feyen)
B. Neighborhood Services Regarding Block Party Trailer. (staff: Marcy Yoder)

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.

16. Second Reading of Ordinance No. 090, 2019, Appropriating Unanticipated Grant Revenue in the General Fund for Updating Policies, Codes and Regulations Affecting the Quality and Quantity of Affordable Housing in Fort Collins. (staff: Meghan Overton; no staff presentation; 5 minute discussion)

This Ordinance, adopted on First Reading on July 2, 2019 by a vote of 6-0 (Gorgol recused). Appropriates unanticipated grant revenue awarded by the Colorado Department of Public Health and Environment (CDPHE) through its Health Disparities Grant Program (HDGP) to implement critical updates to policies, codes and regulations affecting the quality and quantity of affordable housing with a specific lens on reducing health inequities in Fort Collins. This housing affordability and health equity project will use CDPHE grant funds in the amount of $795,657 in reimbursable grant funding over a two-year grant cycle (State Fiscal Year 2020-2021).

17. Resolution 2019-082 Making Findings of Fact and Conclusions of Law Regarding the Appeal of the Planning and Zoning Board’s Decision Approving the Sunshine House at Bucking Horse Major Amendment MJA190001. (staff: Tom Leeson; no staff presentation; 10 minute discussion)

The purpose of this item is to make findings of fact and conclusions of law regarding the appeal of the Sunshine House at Bucking Horse Major Amendment (MJA#190001). The hearing for the appeals was held July 2, 2019.
18. Resolution 2019-084 Initiating the Rezoning of the Hughes Stadium Annexation Property.  (staff: Cameron Gloss; 5 minute staff presentation; 30 minute discussion)

The purpose of this item is to initiate the rezoning of the Hughes Stadium Annexation property that amends the City of Fort Collins Zoning Map from the current Transition (T) zone district and directs City staff to prepare a rezoning application on behalf of the City and make a recommendation to the Planning and Zoning Board (the “Board”) and City Council regarding the appropriate zoning.

19. First Reading of Ordinance No. 099, 2019 Imposing a Moratorium Until August 30, 2020, Upon Certain Development of Existing Mobile Home Parks.  (staff: Tom Leeson; 5 minute staff presentation; 15 minute discussion)

The purpose of this item is to impose a moratorium upon the City’s acceptance of any application for development of any kind that, if granted, could result in the partial or total closing or reduction in capacity of any mobile home park in existence on the effective date of this Ordinance, and would remain in effect through the earlier of August 30, 2020, or until City Council adopts an ordinance containing regulations that address the identified issues and concerns.

- 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 call a Special Meeting, 6:45 p.m., Tuesday, July 30, 2019.

“I move, pursuant to Section 2-29(a) of the City Code, that Council call a special meeting of the Council to take place on Tuesday, July 30, 2019, at 6:45 p.m. for the following purposes:

1. Consideration of a motion for an executive session to discuss certain matters related to City telecommunications facilities and services.

2. Consideration of First Reading of an Ordinance calling a Special Election for November 5, 2019 in Conjunction with the Larimer County Coordinated Election.”

C. Consideration of a motion to cancel the August 6, 2019 Regular Council Meeting for Neighborhood Night Out.

“I move that Council cancel its regular meeting of August 6, 2019, pursuant to City Code Section 2-28(a), due to Neighborhood Night Out.”

- 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.
PROCLAMATION

WHEREAS, April to September is the season most commonly associated with snowmelt flooding and thunderstorm flash flooding; and

WHEREAS, Fort Collins has experienced the social, economic and environmental consequences of loss of life and damage to property caused by flood disasters; and

WHEREAS, emergency preparedness depends on the leadership and efforts of public officials dedicated to public safety and requires the establishment of farsighted and proactive public policy; and

WHEREAS, Fort Collins Utilities was awarded a Community Rating System Class 2 designation by the Federal Emergency Management Agency, recognizing the City’s comprehensive Stormwater and Floodplain Management Program; and

WHEREAS, Fort Collins citizens have benefited from the past investment in stormwater infrastructure, however it is important to recognize that additional infrastructure is needed to continue to mitigate flooding in areas that are not yet protected; and

WHEREAS, by being informed, prepared, and taking proper protective action, the residents of Fort Collins can reduce the potential for loss of life and damage to property when threatened by flood events.

NOW, THEREFORE, I, Wade Troxell, Mayor of the City of Fort Collins, do hereby proclaim the week of July 20-26, 2019, as

FLOOD AWARENESS WEEK

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 16th day of July, A.D. 2019.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
PROCLAMATION

WHEREAS, the first Tuesday night in August is celebrated across the nation as National Night Out; and

WHEREAS, the City of Fort Collins sponsors a unique community celebration program on August 6, 2019 called “Neighborhood Night Out;” and

WHEREAS, Neighborhood Night Out provides an exceptional opportunity for residents throughout the city to join their neighbors in promoting community through welcoming and safe neighborhoods; and

WHEREAS, the City of Fort Collins plays a vital role in assisting with neighborhood community building and quality of life within Fort Collins by supporting “Neighborhood Night Out”; and

WHEREAS, it is essential that all citizens of Fort Collins be aware of the importance that their participation can have on the vitality and enjoyment of their neighborhood; and

WHEREAS, I, along with the entire City Council, encourage Fort Collins residents to help make our community a welcoming and enjoyable place to live, work and play.

NOW, THEREFORE, I, Wade Troxell, Mayor of the City of Fort Collins, do hereby proclaim Tuesday, August 6, 2019, as

NEIGHBORHOOD NIGHT OUT

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 16th day of July, A.D. 2019.

__________________________________
Mayor

ATTEST:

_________________________________
City Clerk
PROCLAMATION

WHEREAS, the next Decennial Census will take place in 2020, and for the first-time residents can respond either online, by phone, or by mail in over 17 languages; and

WHEREAS, an accurate census count is vital to determining where to locate schools, childcare centers, roads, public transportation, and other facilities, and for making decisions concerning business growth and housing needs; and

WHEREAS, census data ensures fair Congressional representation in the U.S. House of Representatives and in redistricting state legislatures and other voting districts; and

WHEREAS, billions of dollars in federal and state funding is allocated to states and communities based on census data; and

WHEREAS, even a 1% undercount can amount to loss of representation and millions of dollars to the community; and

WHEREAS, the 2020 Census will create hundreds of thousands of temporary jobs across the nation; and

WHEREAS, the City is working in partnership with local businesses, Poudre School District, Colorado State University, the Fort Collins faith community, Larimer County United Way and local non-profits, the Library District, and regional neighbors; and

WHEREAS, we believe every single person in Fort Collins counts.

NOW, THEREFORE, I, Wade Troxell, Mayor of the City of Fort Collins, do hereby proclaim the kick-off of

“NOCO COUNTS”

and the importance of every resident participating in the 2020 Census.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 16th day of July, 2019.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
AGENDA ITEM SUMMARY
City Council
July 16, 2019

STAFF
Noah Beals, Senior City Planner/Zoning
Brad Yatabe, Legal

SUBJECT
Items Relating to Various Amendments to the City of Fort Collins Land Use Code.

EXECUTIVE SUMMARY
A. Second Reading of Ordinance No. 077, 2019, Makes Various Amendments to the City of Fort Collins Land Use Code.
B. Second Reading of Ordinance No. 078, 2019, Amends the City of Fort Collins Land Use Code Regarding Community Development and Neighborhood Services Director Variances to Certain Land Use Code Standards.

These Ordinances, unanimously adopted on First Reading on July 2, 2019, adopt a variety of revisions, clarifications and additions to the Land Use Code.

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

ATTACHMENTS
1. First Reading Agenda Item Summary, July 2, 2019 (w/o attachments) (PDF)
2. Ordinance No. 077, 2019 (PDF)
3. Ordinance No. 078, 2019 (PDF)
AGENDA ITEM SUMMARY
City Council
July 2, 2019

STAFF
Noah Beals, Senior City Planner/Zoning
Brad Yatabe, Legal

SUBJECT
Items Relating to Various Amendments to the City of Fort Collins Land Use Code.

EXECUTIVE SUMMARY
A. First Reading of Ordinance No. 077, 2019, Making Various Amendments to the City of Fort Collins Land Use Code.
B. First Reading of Ordinance No. 078, 2019, Amending the City of Fort Collins Land Use Code Regarding Community Development and Neighborhood Services Director Variances to Certain Land Use Code Standards.

The purpose of this item is to adopt a variety of revisions, clarifications and additions to the Land Use Code that are generally routine in nature that have been identified since the last update in February 2019. The proposed change to allow the Community Development and Neighborhood Services Director to process certain variances is presented as a separate ordinance because the change is not necessarily routine in nature and would allow the Director to process certain variances currently reviewed by the Zoning Board of Appeals.

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

BACKGROUND / DISCUSSION
The Land Use Code was first adopted in March 1997. Subsequent revisions have been recommended on a regular basis to make changes, additions, deletions and clarifications. While most revisions are bundled and adopted on an annual basis, other changes may occur as needed so the Land Use Code retains maximum effectiveness. The proposed changes are offered to resolve implementation issues and to continuously improve both the overall quality and user friendliness of the Code. Additional details regarding the changes are contained in the attachments to this Agenda Item Summary.

The proposed change to allow the Community Development and Neighborhood Services Director to process certain variances is presented as a separate ordinance because the change is not necessarily routine in nature and would allow the Director to process certain variances currently reviewed by the Zoning Board of Appeals. The variances the Director would review would be limited to the following:

(1) Setback encroachment of up to ten (10) percent.
(2) Fence height increase of up to one (1) foot.
(3) In the N-C-L, N-C-M, and N-C-B zone districts, the allowable floor area in the rear half of the lot increase of up to ten (10) percent, provided the increase does not exceed the allowable floor area for the entire lot.
(4) Building height increase of up to one (1) foot.
Agenda Item 7

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**BOARD / COMMISSION RECOMMENDATION**

At its May 16, 2019, regular hearing, the Planning and Zoning Board unanimously adopted staff recommendation that City Council approve the revisions.

Additionally, at its May 9, 2019, regular meeting, the Zoning Board of Appeals unanimously recommended to City Council approval of the revision to allow the Community Development and Neighborhood Services Director to process certain variances.

**PUBLIC OUTREACH**

The proposed changes were listed on “This Week in Development Review,” a weekly online notice that is posted on the Planning Department’s website and sent to approximately 435 subscribers.

**ATTACHMENTS**

1. List of Issues  (PDF)
2. Description of Issues  (PDF)
3. Ordinance Index of Issues  (PDF)
4. Planning and Zoning Board minutes, May 16, 2019 (draft)  (PDF)
5. Zoning Board of Appeals minutes, May 9, 2019 (draft)  (PDF)
ORDINANCE NO. 077, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING VARIOUS AMENDMENTS TO THE
CITY OF FORT COLLINS LAND USE CODE

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, on May 16, 2019, the Planning and Zoning Board unanimously recommended that City Council adopt the Land Use Code changes set forth herein; 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 2.1.2(C) of the Land Use Code is hereby amended to read as follows:

2.1.2 Overview of Development Review Procedures

... 

(C) Which type of development application should be submitted? To proceed with a development proposal for permitted uses, the applicant must determine what type of development application should be selected and submitted. All development proposals which include only permitted uses must be processed and approved through the following development applications: first through a project development plan (Division 2.4), and then through a final plan (Division 2.5). If the applicant desires to develop in two (2) or more separate project development plan submittals, an overall development plan (Division 2.3) will also be required.
prior to or concurrently with the project development plan. Overall development plans, PUD Overlays, basic development reviews, project development plans and final plans are the five (5) types of development applications for permitted uses. Each successive development application for a development proposal must build upon the previously approved development application, as needed, by providing additional details (through the development application submittal requirements) and by meeting additional restrictions and standards (contained in the General Development Standards of Article 3 and the District Standards of Article 4). Overall development plans, basic development reviews and project development plans may be consolidated into one (1) application for concurrent processing and review when appropriate under the provisions of Section 2.2.3. The purpose, applicability and interrelationship of these types of development applications are discussed further in Section 2.1.3.

Section 3. That Section 2.2.12 of the Land Use Code is hereby amended to read as follows:

(A) Appeals. Appeals of any final decision of a decision maker under this Code shall be only in accordance with Chapter 2, Article II, Division 3 of the City Code, unless otherwise provided in Divisions 2.3 through 2.11 and 2.16, 2.18, and 2.19 of this Code.

Section 4. That Section 2.18.3(G) of the Land Use Code is hereby amended to read as follows:

2.18.3 Basic Development Review and Minor Subdivision Review Procedures

Step 7(D)(1 and 2): (Decision and Findings): Not applicable and in substitution thereof, after consideration of the development application, the Director shall issue a written decision to approve, approve with conditions, or deny the development application based on compliance with the standards referenced in Step 8 of the Common Development Review Procedures (Section 2.2.8). The written decision shall be mailed to the applicant, to any person who provided comments during the comment period and to the abutting property owners, and shall also be posted on the City's website at www.fcgov.com.

Section 5. That Section 3.1.1 of the Land Use Code is hereby amended to read as follows:

3.1.1 - Applicability

All development applications and building permit applications shall comply with the applicable standards contained in divisions 3.1 through 3.11 with the following exceptions:
Single-family detached dwellings and extra occupancy rental houses on platted lots that are subject only to building permit review.

Accessory buildings, structures and accessory uses associated with the single-family dwellings and extra occupancy rental houses listed in (A) above.

Applications for the development noted in exceptions (A) and (B) above must comply only with the standards contained in division 3.8; and with respect to extra occupancy rental houses, the additional standards contained in Section 3.2.2(k)(1)(j).

Existing Development. In addition to the foregoing, this Land Use Code shall continue to apply to ongoing use of land in completed developments to the extent that the provisions of this Land Use Code can be reasonably and logically interpreted as having such ongoing application.

Section 6. That Section 3.2.1(A) through (I) of the Land Use Code is hereby amended to read as follows:

3.2.1 - Landscaping and Tree Protection

(A) Applicability. This Section shall apply to all development (except for development on existing lots for single-family detached dwellings) within the designated "limits of development" ("LOD") and natural habitat buffer zones established according to Section 3.4.1 (Natural Habitats and Features).

(B) Purpose. The intent of this Section is to require preparation of landscape and tree protection plans that ensure significant canopy cover is created, diversified and maintained so that all associated social and environmental benefits are maximized to the extent reasonably feasible. These benefits include reduced erosion and stormwater runoff, improved water conservation, air pollution mitigation, reduced glare and heat build-up, increased aesthetics, and improved continuity within and between developments. Trees planted in appropriate spaces also provide screening and may mitigate potential conflicts between activity areas and other site elements while enhancing outdoor spaces, all of which add to a more resilient urban forest.

(D) Tree Planting Standards. All developments shall establish groves and belts of trees along all city streets, in and around parking lots, and in all landscape areas that are located within fifty (50) feet of any building or structure in order to establish at least a partial urban tree canopy. The groves and belts may also be combined or interspersed with other landscape areas in remaining portions of the development to accommodate views and functions such as active recreation and storm drainage.
(2) **Street Trees.** Planting of street trees shall occur in the adjoining street right-of-way, except as described in subparagraph (b) below, in connection with the development by one (1) or more of the methods described in subparagraphs (a) through (d) below:

... 

(d) Wherever existing ash trees (Fraxinus species) are in the adjoining street right-of-way, the applicant shall coordinate and obtain an onsite analysis with the City Forester to determine replacement canopy shade trees either through shadow planting or other emerald ash borer mitigation methods.

(3) **Minimum Species Diversity.** To prevent uniform insect or disease susceptibility and eventual uniform senescence on a development site or in the adjacent area or the district, species diversity is required, and extensive monocultures are prohibited. The following minimum requirements shall apply to any development plan.

<table>
<thead>
<tr>
<th>Number of trees on site</th>
<th>Maximum percentage of any one species</th>
</tr>
</thead>
<tbody>
<tr>
<td>10—19</td>
<td>50%</td>
</tr>
<tr>
<td>20—39</td>
<td>33%</td>
</tr>
<tr>
<td>40—59</td>
<td>25%</td>
</tr>
<tr>
<td>60 or more</td>
<td>15%</td>
</tr>
</tbody>
</table>

(4) **Tree Species and Minimum Sizes.** The City Forester shall provide a recommended list of trees which shall be acceptable to satisfy the requirements for landscape plans, including approved canopy shade trees that may be used as street trees. The following minimum sizes shall be required (except as provided in subparagraph (5) below):

<table>
<thead>
<tr>
<th>Type</th>
<th>Minimum Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canopy Shade Tree</td>
<td>2.0&quot; caliper balled and burlapped or equivalent</td>
</tr>
<tr>
<td>Evergreen Tree</td>
<td>6.0' height balled and burlapped or equivalent</td>
</tr>
<tr>
<td>Ornamental Tree</td>
<td>1.5&quot; caliper balled and burlapped or equivalent</td>
</tr>
</tbody>
</table>
Shrubs

5 gallon or adequate size consistent with design intent or 1 gallon may be permitted if planting within the Critical Root Zone of existing trees

Any tree plantings that are in addition to those that are made as part of the approved landscape plan are exempt from the foregoing size requirements.

(F) **Tree Preservation and Mitigation.** Existing significant trees (six (6) inches and greater in diameter) within the LOD and within natural habitat buffer zones shall be preserved to the extent reasonably feasible and may help satisfy the landscaping requirements of this Section as set forth above. Such trees shall be considered "protected" trees within the meaning of this Section, subject to the exceptions contained in subsection (2) below. Streets, buildings and lot layouts shall be designed to minimize the disturbance to significant existing trees. All required landscape plans shall accurately identify the locations, species, size and condition of all significant trees, each labeled showing the applicant's intent to either remove, transplant or protect.

Where it is not feasible to protect and retain significant existing tree(s) or to transplant them to another on-site location, the applicant shall replace such tree(s) according to the following requirements and shall satisfy the tree planting standards of this Section. To the extent reasonably feasible, replacement trees shall be planted on the development site or, if not reasonably feasible, in the closest available and suitable planting site on public or private property. The closest available and suitable planting site shall be selected within one-half (½) mile (2,640 feet) of the development site, subject to the following exceptions. If suitable planting sites for all of the replacement trees are not available within one-half (½) mile (2,640 feet) of the development, then the City Forester shall determine the most suitable planting location within the City's boundaries as close to the development site as feasible. If locations for planting replacement trees cannot be located within one-half (½) mile of the development site, the applicant may, instead of planting such replacement trees, submit a payment in lieu to the City of Fort Collins Forestry Division to be used to plant replacement trees as close to the development site as possible. The payment in lieu mitigation fee per tree is determined by the City Forester and may be adjusted annually based on market rates. Payment must be submitted prior to the Development Construction Permit issuance or other required permits.

(1) A significant tree that is removed shall be replaced with not less than one (1) or more than six (6) replacement trees sufficient to mitigate the loss of contribution and value of the removed significant tree(s). The applicant shall coordinate with the City Forester to determine such loss based upon an onsite tree assessment, including, but not limited to, shade, canopy, condition, size, aesthetic, environmental and ecological value of the tree(s) to be removed. Replacement trees shall meet the following minimum size requirements unless otherwise determined by the City Forester:
(a) Canopy Shade Trees: 2.0” caliper balled and burlap or equivalent.

(b) Ornamental Trees: 2.0” caliper balled and burlap or equivalent.

(c) Evergreen Trees: 8’ height balled and burlap or equivalent.

(2) Trees that meet one (1) or more of the following removal criteria shall be exempt from the requirements of this subsection unless they meet mitigation requirements provided in paragraph 3.4.1(E)(1) of this Code:

   . . .

   (c) Siberian elm less than eleven (11) inches DBH and Russian-olive or ash (*Fraxinus* species) less than eight (8) inches DBH;

   (d) Russian-olive, Siberian elm, and ash (all *Fraxinus* species) of wild or volunteer origin, such as those that have sprouted from seed along fence lines, near structures or in other unsuitable locations;

   . . .

(G) **Tree Protection Specifications.** The following tree protection specifications shall be followed to the maximum extent feasible for all projects with protected existing trees. Tree protection methods shall be delineated on the demolition plans and development plans.

   . . .

(2) All protected existing trees shall be pruned to the City of Fort Collins Forestry Division standards.

(3) Prior to and during construction, barriers shall be erected around all protected existing trees with such barriers to be of orange construction or chain link fencing a minimum of four (4) feet in height, secured with metal T-posts, no closer than six (6) feet from the trunk or one-half (½) of the drip line, whichever is greater. Concrete blankets, or equivalent padding material, wrapped around the tree trunk(s) is recommended and adequate for added protection during construction. There shall be no storage or movement of equipment, material, debris or fill within the fenced tree protection zone. A tree protection plan must be submitted to and approved by the City Forester prior to any development occurring on the development site.

   . . .

(7) The installation of utilities, irrigation lines or any underground fixture requiring excavation deeper than six (6) inches shall be accomplished by boring under the root system of protected existing trees at a minimum depth of twenty-four (24) inches. The auger distance is established from the face of the tree (outer bark) and
is scaled from tree diameter at breast height as described in the chart below. Low pressure hydro excavation, air spading or hand digging are additional tools/practices that will help reduce impact to the tree(s) root system when excavating at depths of twenty-four (24) inches or less. Refer to the Critical Root Zone (CRZ) diagram, Figure 2, for root protection guidelines. The CRZ shall be incorporated into and shown on development plans for all existing trees to be preserved.

<table>
<thead>
<tr>
<th>Tree Diameter at Breast Height (inches)</th>
<th>Auger Distance From Face of Tree (feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-2</td>
<td>1</td>
</tr>
<tr>
<td>3-4</td>
<td>2</td>
</tr>
<tr>
<td>5-9</td>
<td>5</td>
</tr>
<tr>
<td>10-14</td>
<td>10</td>
</tr>
<tr>
<td>15-19</td>
<td>12</td>
</tr>
<tr>
<td>Over 19</td>
<td>15</td>
</tr>
</tbody>
</table>

Figure 2
Critical Root Zone Diagram

CRITICAL ROOT ZONES (top view)

Critical Root Zone (CRZ) is the distance from the trunk that equals one foot for every inch of the tree’s diameter. For example: if the tree has a trunk 12 inches in diameter, the CRZ is a 12 foot radius around the tree.

Interior Critical Root Zone (ICRZ)
Disturbance in this area would cause significant impact to the tree, potentially life threatening.

Critical Root Zone (CRZ)

Perimeter Critical Root Zone (PCRZ)
The greater the disturbance in this area, the greater post care treatment is needed.
(H) **Placement and Interrelationship of Required Landscape Plan Elements.** In approving the required landscape plan, the decision maker shall have the authority to determine the optimum placement and interrelationship of required landscape plan elements such as trees, vegetation, turf, irrigation, screening, buffering and fencing, based on the following criteria:

\[ \ldots \]

(4) creating visual interest year-round;

\[ \ldots \]

(I) **Landscape Materials, Maintenance and Replacement.**

\[ \ldots \]

(8) *Restricted Species.* City Forestry Division shall provide a list of specified tree species that shall not be planted within the limits of development and adjoining street right-of-way. For example, no ash trees (Fraxinus species) shall be planted due to the anticipated impacts of the emerald ash borer.

(9) *Prohibited species.* For prohibited species reference Chapter 27, Article II, Division 1, Sec. 27-18 of the Fort Collins Municipal Code.

\[ \ldots \]

Section 7. That Section 3.2.1(K) of the Land Use Code is hereby amended to read as follows:

(K) **Utilities and Traffic.** Landscape, utility and traffic plans shall be coordinated. The following list sets forth minimum dimension requirements for the most common tree/utility and traffic control device separations. Exceptions to these requirements may occur where utilities or traffic control devices are not located in their standard designated locations, as approved by the Director. Tree/utility and traffic control device separations shall not be used as a means of avoiding the planting of required street trees.

(1) Forty (40) feet between shade trees and streetlights. Fifteen (15) feet between ornamental trees and streetlights. (See Figure 3.)

**Figure 3**

Tree/Streetlight Separations
Section 8. That Section 3.2.4(D) of the Land Use Code is hereby amended to read as follows:

3.2.4 Site Lighting

... 

(D) **Design Standards.** The lighting plan shall meet the following design standards:

... 

(5) Light sources must minimize contrast with the light produced by surrounding uses and must produce an unobtrusive degree of brightness in both illumination levels and color rendition.

(11) All lighting shall have a nominal correlated color temperature (CCT) of no greater than three thousand (3,000) degrees Kelvin.

Section 9. That Section 3.3.2(E)(1)(e) of the Land Use Code is hereby amended to read as follows:

(E) **Required Improvements Prior to Issuance of Certificate of Occupancy.**

... 

(e) Drainage. The construction of stormwater drainage facilities required by the approved Development Plan Documents must be consistent with the Stormwater Criteria Manual as it may be modified from time to time. Such stormwater drainage
facility must be verified by an authorized City inspector at the appropriate phases of construction activities as specified in the Development Certification Checklist issued by Water Utilities Engineering and available on the City of Fort Collins website.

In the event of non-compliance, the City shall have the option to withhold building permits and/or certificates of occupancy or use any other legal remedy that may be provided in the City Code, the Land Use Code and/or the Development Agreement, as determined appropriate to ensure that the Developer properly installs all privately owned stormwater improvements associated with the development as specified in the Development Plan Documents.

In addition, a “Drainage Certification” prepared by a Professional Engineer licensed in the State of Colorado must be provided. The “Certification” must confirm to the City that all stormwater drainage facilities required to serve the property have been constructed in conformance with the approved Development Plan Documents so as to protect downstream property and the quality of Stormwater runoff from the property to comply with the City’s Municipal Separate Storm Sewer System permit. Such certification must be in the form required by the City’s Stormwater Criteria Manual and Construction Standards.

Section 10. That Section 3.3.5 of the Land Use Code is hereby amended to read as follows:

3.3.5 - Engineering Design Standards

The project must comply with all design standards, requirements and specifications for the following services as certified by the appropriate agency or variances must be granted by such agency:

- water supply
- sanitary sewer
- mass transit
- fire protection
- flood hazard areas
- telephone
- walks/bikeways
- irrigation companies
- electricity
- natural gas
- storm drainage
- cable television
- streets/pedestrians
- broadband/fiber optic
Section 11. That Section 3.4.1(D)(1)(e) of the Land Use Code is hereby amended to read as follows:

3.4.1 Natural Habitats and Features

...  

(D) Ecological Characterization and Natural Habitat or Feature Boundary Definition. The boundary of any natural habitat or feature shown on the Natural Habitats and Features Inventory Map is only approximate. The actual boundary of any area to be shown on a project development shall be proposed by the applicant and established by the Director through site evaluations and reconnaissance, and shall be based on the ecological characterization of the natural habitat or feature in conjunction with the map.

(1) Ecological Characterization Study. If the development site contains, or is within five hundred (500) feet of, a natural habitat or feature, or if it is determined by the Director, upon information or from inspection, that the site likely includes areas with wildlife, plant life and/or other natural characteristics in need of protection, then the developer shall provide to the City an ecological characterization report prepared by a professional qualified in the areas of ecology, wildlife biology or other relevant discipline. At least ten (10) working days prior to the submittal of a project development plan application for all or any portion of a property, a comprehensive ecological characterization study of the entire property must be prepared by a qualified consultant and submitted to the City for review. The Director may waive any or all of the following elements of this requirement if the City already possesses adequate information required by this subsection to establish the buffer zone(s), as set forth in subsection (E) below, and the limits of development ("LOD"), as set forth in subsection (N) below. The ecological characterization study shall describe, without limitation, the following:

...  

(e) the pattern, species and location of all non-native trees and vegetation that contribute to the site's ecological, shade, canopy, aesthetic and cooling value;

...  

Section 12. That Section 3.4.1(E) of the Land Use Code is hereby amended to read as follows:

3.4.1 Natural Habitats and Features
(E) **Establishment of Buffer Zones.** Buffer zones surrounding natural habitats and features shall be shown on the project development plan for any development that is subject to this Division. The purpose of the buffer zones is to protect the ecological character of natural habitats and features from the impacts of the ongoing activity associated with the development.

(1) **Buffer Zone Performance Standards.** The decision maker shall determine the buffer zones for each natural habitat or feature contained in the project site. The buffer zones may be multiple and noncontiguous. The general buffer zone distance is established according to the buffer zone table below, but the decision maker may reduce any portion of the general buffer zone distance so long as the reduced buffer complies with the performance standards set forth below. To mitigate a reduced portion of the buffer area, the decision maker may also enlarge any portion of the general buffer zone distance if necessary to ensure that the buffer complies with the performance standards set forth below. The buffer zone performance standards are as follows:

(c) The project shall be designed to preserve existing trees and vegetation that contribute to the site’s ecological, shade, canopy, aesthetic, habitat and cooling value. Notwithstanding the requirements of Section 3.2.1(F), all trees and vegetation within the Limits of Development must be preserved or, if necessary, mitigated based on the values established by the Ecological Characterization Study or the City Environmental Planner. Such mitigation, if necessary, shall include trees, shrubs, grasses, or any combination thereof, and must be planted within the buffer zone.

Section 13. That Section 3.5.2(D) of the Land Use Code is hereby amended by the addition of a new subparagraph (3) which reads in its entirety as follows:

(D) **Relationship of Dwelling to Streets and Parking.**

(3) At least one door providing direct access for emergency responders from the outside into each individual single family attached dwelling must be located within one hundred fifty (150) feet from the closest emergency access easement or designated fire lane as measured along paved walkways. Neither an exterior nor interior garage door shall satisfy this requirement.
Section 14. That Section 3.8.17(A)(2) of the Land Use Code is hereby amended to read as follows:

3.8.17 Building Height

... (2) Building Height Measured in Stories. In measuring the height of a building in stories the following measurement rules shall apply:

(a) A balcony or mezzanine shall be counted as a full story when its floor area is in excess of one-third (1/3) of the total area of the nearest full floor directly below it.

(b) No story of a commercial or industrial building shall have more than twenty-five (25) feet from floor to floor.

(c) A maximum vertical height of twelve (12) feet eight (8) inches shall be permitted for each residential story. This maximum vertical height shall apply only in the following zone districts: U-E; R-F; R-L; L-M-N; M-M-N; N-C-L; N-C-M; N-C-B; R-C; C-C-N; N-C; and H-C.

Section 15. That Section 4.4(B)(3)(e) of the Land Use Code is hereby amended by the addition of a new subparagraph (e) to read as follows:

... (3) The following uses are permitted in the R-L District, subject to review by the Planning and Zoning Board:

... (e) Accessory / Miscellaneous Uses:

1. Wireless Telecommunications Facilities.

Section 16. That Section 4.4(D) of the Land Use Code is hereby amended by the addition of a new subparagraph (4) which reads in its entirety as follows:

... (4) Wireless Telecommunications Facilities. Wireless telecommunications facilities must be located on a non-residential parcel and installation must be mitigated by use of stealth techniques such as steeples, bell towers, grain silos, or similar means of disguising the appearance of the facilities to mitigate its visual impacts.
Section 17. That Section 4.7 of the Land Use Code is hereby amended to read as follows:

DIVISION 4.7 Neighborhood Conservation, Low Density District (N-C-L)

(D) Land Use Standards.

... 

(2) Allowable Floor Area on Lots.

(a) The allowable floor area shall be as follows:

... 

2. On a lot that is between five thousand (5,000) square feet and ten thousand (10,000) square feet, the allowable floor area for single-family dwellings and buildings accessory to single-family dwellings shall not exceed twenty (20) percent of the lot area plus one thousand (1,000) square feet.

3. On a lot that is more than ten thousand (10,000) square feet, the allowable floor area for single-family dwellings and buildings accessory to single-family dwellings shall not exceed thirty (30) percent.

... 

(5) Accessory Buildings With Habitable Space (or Potential Future Habitable Space). Any accessory building with water and/or sewer service shall be considered to have habitable space. Any person applying for a building permit for such a building shall sign and record with the Larimer County Clerk and Recorder an affidavit stating that such accessory structure shall not be used as a dwelling unit. All applicable building permits issued for such buildings shall be conditioned upon this prohibition. Any such structure containing habitable space that is located behind a street-fronting principal building shall contain a maximum of six hundred (600) square feet of floor area. Floor area shall include all floor space within the ground floor plus that portion of the floor area of any second story having a ceiling height of at least seven and one-half (7½) feet and basement floor area where any exterior basement wall is exposed by more than three (3) feet above the existing grade at the interior side lot line adjacent to the wall. Such accessory building may be located in any area of the rear portion of a lot, provided that it complies with the setback requirements of this District and there is at least a ten-foot separation between structures.
(6) **Accessory Buildings Without Habitable Space.** Any accessory building without water and/or sewer service, which has not been declared to contain habitable space by the applicant, shall not exceed a total floor area of six hundred (600) square feet. Floor area shall include all floor space within the ground floor plus that portion of the floor area of any second story having a ceiling height of at least seven and one-half (7½) feet and basement floor area where any exterior basement wall is exposed by more than three (3) feet above the existing grade at the interior side lot line adjacent to the wall.

(E) **Dimensional Standards.**

... 

(5) Maximum building height shall be two (2) stories, except in the case of a detached dwelling unit at the rear of the lot and accessory buildings

(F) **Development Standards.**

... 

(2) Bulk and Massing

(a) **Building Height.**

1. Maximum building height shall be two (2) stories, except in the case of a detached dwelling unit at the rear of the lot

... 

(b) **Eave Height.**

1. The exterior eave height of an eave along a side lot line shall not exceed thirteen (13) feet from grade for a dwelling unit located at the rear of the lot or an accessory building with habitable space. An eave of a dormer or similar architectural feature may exceed thirteen (13) feet if set back two (2) feet from the wall below and does not exceed twenty-five (25) percent of the wall length.

2. The exterior eave height of an eave along a side lot line shall not exceed ten (10) feet from grade for an accessory building containing no habitable space. An eave of a dormer or similar architectural feature may exceed ten (10) feet if set back two (feet) from the wall below and does not exceed twenty-five (25) percent of the wall length.
3. The maximum eave height is measured at the minimum setback from an interior side-yard lot line and can be increased at a ratio of six (6) inches of additional building height for each one (1) foot of setback from the interior side property line.

34. If a second story has an exterior wall that is set back from the lower story's exterior wall, the eave height shall be the point of an imaginary line at which the upper story's roofline (if extended horizontally) would intersect with the lower story's exterior wall (if extended vertically).

Section 18. That Section 4.8 of the Land Use Code is hereby amended to read as follows:

DIVISION 4.8 Neighborhood Conservation, Medium Density District

(D) Land Use Standards.
(1) Required Lot Area. Minimum lot area shall not be less than the following: five thousand (5,000) square feet for a single-family or two-family dwelling and six thousand (6,000) square feet for all other uses.

(2) Allowable Floor Area on Lots.

(a) The allowable floor area shall be as follows:

1. On a lot of less than four thousand (4,000) square feet, the allowable floor area for single-family dwellings and buildings accessory to single-family dwellings shall not exceed fifty (50) percent of the lot area.

2. On a lot that is between four thousand (4,000) square feet and ten thousand (10,000) square feet, the allowable floor area for single-family dwellings and buildings accessory to single-family dwellings shall not exceed twenty-five (25) percent of the lot area plus one thousand (1,000) square feet.

3. On a lot that is more than ten thousand (10,000) square feet, the allowable floor area for single-family dwellings and buildings accessory to single-family dwellings shall not exceed thirty-five (35) percent of the lot area.

4. The allowable floor area for buildings containing permitted uses other than single-family dwellings and buildings accessory to single-family dwellings shall not exceed forty (40) percent of the lot area.

... 

(5) Accessory Buildings With Habitable Space (or Potential Future Habitable Space). Any accessory building with water and/or sewer service shall be considered to have habitable space. Any person applying for a building permit for such a building shall sign and record with the Larimer County Clerk and Recorder an affidavit stating that such accessory structure shall not be used as a dwelling unit. All building permits issued for such buildings shall be conditioned upon this prohibition. Any such structure containing habitable space that is located behind a street-fronting principal building shall contain a maximum of six hundred (600) square feet of floor area. Floor area shall include all floor space within the ground floor plus that portion of the floor area of any second story having a ceiling height of at least seven and one-half (7½) feet and basement floor area where any exterior basement wall is exposed by more than three (3) feet above the existing grade at the interior side lot line adjacent to the wall. Such accessory building may be located in any area of the rear portion of a lot, provided that it complies with the setback requirements of this District and there is at least a ten-foot separation between structures.
(6) **Accessory Buildings Without Habitable Space.** Any accessory building without water and/or sewer service, which has not been declared to contain habitable space by the applicant, shall not exceed a total floor area of six hundred (600) square feet. Floor area shall include all floor space within the ground floor plus that portion of the floor area of any second story having a ceiling height of at least seven and one-half (7½) feet and basement floor area where any exterior basement wall is exposed by more than three (3) feet above the existing grade at the interior side lot line adjacent to the wall.

...  

(E) **Dimensional Standards.**

...  

(5) Maximum building height shall be two (2) stories, except in the case of a detached dwelling unit at the rear of the lot and accessory buildings.

(F) **Development Standards.**

...  

(2) **Bulk and Massing.**

(a) **Building Height.**

1. Maximum building height shall be two (2) stories, except in the case of a detached dwelling unit at the rear of the lot.

...  

(b) **Eave Height.**

1. The exterior eave height of an eave along a side lot line shall not exceed thirteen (13) feet from grade for a dwelling unit located at the rear of the lot or an accessory building with habitable space. An eave of a dormer or similar architectural feature may exceed thirteen (13) feet if set back two (2) feet from the wall below and does not exceed twenty-five (25) percent of the wall length.

2. The exterior eave height of an eave along a side lot line shall not exceed ten (10) feet from grade for an accessory building containing no habitable space. An eave of a dormer or similar architectural feature may exceed ten (10) feet if set back two (2) feet from the wall below and does not exceed twenty-five (25) percent of the wall length.
3. The maximum eave height is measured at the minimum setback from an interior side-yard lot line and can be increased at a ratio of six (6) inches of additional building height for each one (1) foot of setback from the interior side property line.

4. If a second story has an exterior wall that is set back from the lower story's exterior wall, the eave height shall be the point of an imaginary line at which the upper story's roofline (if extended horizontally) would intersect with the lower story's exterior wall (if extended vertically).

Section 19. That Section 4.9 of the Land Use Code is hereby amended to read as follows:

DIVISION 4.9 Neighborhood Conservation Buffer District (N-C-B)

(D) **Land Use Standards.**

(3) **Accessory Buildings With Habitable Space (or Potential Future Habitable Space).** Any accessory building with water and/or sewer service shall be considered to have habitable space. An applicant may also declare an intent for an accessory building to contain habitable space. Any person applying for a building permit for such a building shall sign and record with the Larimer County Clerk and Recorder an affidavit stating that such accessory structure shall not be used as a dwelling unit. All building permits issued for such buildings shall be conditioned upon this prohibition. Any such structure containing habitable space that is located behind a street-fronting principal building shall contain a maximum six hundred (600) square feet of floor area. Floor area shall include all floor space within the ground floor plus that portion of the floor area of any second story having a ceiling height of at least seven and one-half (7½) feet and basement floor area where any exterior basement wall is exposed by more than three (3) feet above the existing grade at the interior side lot line adjacent to the wall. Such accessory building may be located in any area of the rear portion of a lot, provided that it complies with the setback requirements of this District and there is at least a ten-foot separation between structures.

(4) **Accessory Building without Habitable Space.** Any accessory building without water and/or sewer service, which has not been declared to contain habitable space by the applicant, shall not exceed a total floor area of six hundred (600) square feet. Floor area shall include all floor space within ground floor plus that portion of floor area of any second story having a ceiling height of at least seven and one-half (7½)
feet and basement floor area where any exterior basement wall is exposed by more than three (3) feet above the existing grade at the interior side lot line adjacent to the wall.

... 

(E) Development Standards.

(1) Building Design.

... 

(e) Front porches shall be limited to one (1) story, and the front facades of all single- and two-family dwellings shall be no higher than two (2) stories, except in the case of a detached dwelling unit at the rear of the lot and accessory buildings.

... 

(2) Bulk and Massing.

(a) Building Height.

1. Maximum building height shall be three (3) stories, except in the case of a detached dwelling unit at the rear of the lot.

... 

(b) Eave Height.

1. The exterior eave height of an eave along a side lot line shall not exceed thirteen (13) feet from grade for a dwelling unit located at the rear of the lot or an accessory building with habitable space. An eave of a dormer or similar architectural feature may exceed thirteen (13) feet if set back two (2) feet from the wall below and does not exceed twenty-five (25) percent of the wall length.

2. The exterior eave height of an eave along a side lot line shall not exceed ten (10) feet from grade for an accessory building containing no habitable space. An eave of a dormer or similar architectural feature may exceed ten (10) feet if set back two (2) feet from the wall below and does not exceed twenty-five (25) percent of the wall length.

3. The maximum eave height is measured at the minimum setback from an interior side-yard lot line and can be increased at a ratio of six (6) inches of additional building height for each one (1) foot of setback from the interior side property line.
4. If a second story has an exterior wall that is set back from the lower story's exterior wall, the eave height shall be the point of an imaginary line at which the upper story's roofline (if extended horizontally) would intersect with the lower story's exterior wall (if extended vertically).

... 

Section 20. That Section 4.22(B)(2)(c)28 of the Land Use Code is hereby amended to read as follows:

(c) **Commercial/Retail Uses:**

... 

28. Enclosed mini-storage facilities, if located at least one hundred fifty (150) feet from South College Avenue.

... 

Section 21. That the definition “Neighborhood center” contained in Section 5.1.2 of the Land Use Code is hereby amended to read as follows:

*Neighborhood center* shall mean a combination of at least two (2) uses and an outdoor space, which together provide a focal point and a year-round meeting place for a neighborhood as listed in the Low Density Mixed-Use Neighborhood zone district.

Introduced, considered favorably on first reading, and ordered published this 2nd day of July, A.D. 2019, and to be presented for final passage on the 16th day of July, A.D. 2019.

__________________________________
 Mayor

ATTEST:

__________________________________
City Clerk
Passed and adopted on final reading on the 16th day of July, A.D. 2019.

_______________________________
Mayor

_______________________________
City Clerk
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 the Community Development and Neighborhood Services Director determining certain variances to the Land Use Code; and

WHEREAS, on May 16, 2019, the Planning and Zoning Board unanimously recommended that City Council adopt the Land Use Code changes set forth herein; 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 Division 2.10 of the Land Use Code is hereby amended to read as follows:

DIVISION 2.10 - VARIANCES

2.10.2 Variances By the Director

(A) The Director shall be authorized to grant the following types of variances, subject to the variance review procedure in Section 2.10.4 below:
(1) Setback encroachment of up to ten (10) percent.

(2) Fence height increase of up to one (1) foot.

(3) In the N-C-L, N-C-M, and N-C-B zone districts, the allowable floor area in the rear half of the lot increase of up to ten (10) percent, provided the amount of increase does not exceed the allowable floor area for the entire lot.

(4) Building height increase of up to one (1) foot.

(B) The Director may refer any variance described in (A) above to the Zoning Board of Appeals for review and decision if the Director determines that the application under consideration raises questions as to compliance with the requirements for compatibility with the surrounding neighborhood that are appropriately addressed through a public hearing before the Zoning Board of Appeals that will allow the applicant or the public, or both, an opportunity to provide relevant information related to the application.

2.10.3 Variances By the Zoning Board of Appeals

The Zoning Board of Appeals shall be authorized to grant all variances not subject to the Director’s review in Section 2.10.2(A) and those referred by the Director. The Zoning Board of Appeals shall follow the variance review procedure in Section 2.10.4 below.

2.10.4 Variance Review Procedures

Step 6 (Notice): For variances reviewed by the Director or the Zoning Board of Appeals, Subsection 2.2.6(A) only applies, except that a variance reviewed by the Director shall require mailed written notice fourteen (14) days prior to the decision instead of the hearing/meeting date and for variances reviewed by the Director or the Zoning Board of Appeals, “eight hundred (800) feet” shall be changed to “one hundred fifty (150) feet,” and for single-family houses in the NCL and NCM zone districts, eight hundred (800) feet shall be changed to five hundred (500) feet for variance requests for:

Step 7(A) (Decision Maker): Not applicable, and in substitution for Section 2.2.7(A), the Director or Zoning Board of Appeals, pursuant to Chapter 2 of the City Code, shall review, consider and approve, approve with conditions, or deny applications for variance based on its compliance with all of the standards contained in Step 8.
Step 7(B)—(G)(1) Zoning Board of Appeals Review Only (Conduct of Public Hearing, Order of Proceedings at Public Hearing, Decision and Findings, Notification to Applicant, Record of Proceedings, Recording of Decisions and Plats, Filing with City Clerk): Applicable.

Step 7(B)—(C) and (E)—(G)(1) Director Review Only (Conduct of Public Hearing, Order of Proceedings as Public Hearing): Not applicable.

Step 7(D) Director Review Only (Decision and Findings): Applicable and in substitution thereof, the Director shall issue a written decision to approve, approve with conditions, or deny the variance request. The written decision shall be mailed to the applicant and to the property owners to whom notice was originally mailed and shall also be posted on the City's website at www.fcgov.com.

(H) Step 8 (Standards): Applicable, and the Director or Zoning Board of Appeals may grant a variance from the standards of Articles 3 and 4 only if it finds that the granting of the variance would neither be detrimental to the public good nor authorize any change in use other than to a use that is allowed subject to basic development review; and that:

. . .

(K) Step 11 (Lapse): Any variance that applies to the issuance of a Building Permit shall expire six (6) months after the date that such variance was granted, unless all necessary permits have been applied for; provided, however, that for good cause shown, the Director may authorize a longer term if such longer term is reasonable and necessary under the facts and circumstances of the case, but in no event shall the period of time for applying for all necessary permits under a variance exceed twelve (12) months in length. One (1) six-month extension may be granted by the Director.

(L) Step 12 (Appeals):

(1) Applicable and in substitution thereof, variances decided by the Director are appealable to the Zoning Board of Appeals. Any such appeal must be initiated by filing a notice of appeal of the final decision of the Director within fourteen (14) days after the decision that is the subject of the appeal. The appeal hearing before the Zoning Board of Appeals shall be considered a new, or de novo, hearing. The decision of the Zoning Board of Appeals on such appeals shall constitute a final decision appealable to City Council pursuant to Section 2.2.12 (Step 12).

(2) Applicable to variances reviewed by the Zoning Board of Appeals.
Introduced, considered favorably on first reading, and ordered published this 2nd day of July, A.D. 2019, and to be presented for final passage on the 16th day of July, A.D. 2019.

_______________________________
Mayor

ATTEST:

_______________________________
City Clerk

Passed and adopted on final reading on the 16th day of July, A.D. 2019.

_______________________________
Mayor

ATTEST:

_______________________________
City Clerk
AGENDA ITEM SUMMARY
City Council
July 16, 2019

STAFF

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

SUBJECT

Second Reading of Ordinance No. 084, 2019, Appropriating Unanticipated Grant Revenues From Bloomberg Philanthropies and Authorizing Transfers of Appropriations in the Light and Power Fund for Residential Efficiency Project Loans.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on July 2, 2019, Appropriates The purpose of this item is to appropriate $193,650 of $682,000 in grant award revenues from Bloomberg Philanthropies, as part of the Bloomberg Mayor’s Challenge, into the Fort Collins Utilities Light and Power fund and Economic Health Office for the purposes of ongoing project management and operations of Epic Homes and a sub-grant to Colorado State University for indoor air quality research. The remaining $488,350 of the 2019 balance of funds will be appropriated for Epic Loan capital in alignment with pending third-party capital agreements.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, July 2, 2019 (w/o attachments) (PDF)
2. Ordinance No. 084, 2019 (PDF)
AGENDA ITEM SUMMARY
City Council
July 2, 2019

STAFF

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

SUBJECT

First Reading of Ordinance No. 084, 2019, Appropriating Unanticipated Grant Revenues From Bloomberg Philanthropies and Authorizing Transfers of Appropriations in the Light and Power Fund for Residential Efficiency Project Loans.

EXECUTIVE SUMMARY

The purpose of this item is to appropriate $193,650 of $682,000 in grant award revenues from Bloomberg Philanthropies, as part of the Bloomberg Mayor’s Challenge, into the Fort Collins Utilities Light and Power fund and Economic Health Office for the purposes of ongoing project management and operations of Epic Homes and a sub-grant to Colorado State University for indoor air quality research. The remaining $488,350 of the 2019 balance of funds will be appropriated for Epic Loan capital in alignment with pending third-party capital agreements.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Bloomberg Mayors Challenge

In October 2018, Fort Collins became a winner of the 2018 Bloomberg Philanthropies Mayors Challenge and the associated $1 million prize. The 2018 Bloomberg Mayors Challenge involved over 300 cities proposing ideas to address important issues in their communities. Fort Collins focused its idea on the “climate economy”, presenting an idea to address energy efficiency and health and wellbeing in rental housing, specifically for low-to-moderate income residents, through the “Epic Homes” program.

The Bloomberg grant supports a three-year performance period through the end of 2021. The project includes a semi-annual review of the budget categories with an opportunity to revise the amounts, subject to the approval of Bloomberg.

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 https://www.bloomberg.org/.

Epic Homes

Epic Homes was selected as a winner in the Bloomberg Mayors Challenge for its innovative approach to providing health and equity benefits for low-to-moderate income renters by improving the energy efficiency of
rental homes, as 96% of Fort Collins’ low-to-moderate income residents live in rental homes. Residential property owners can take advantage of Epic Homes to make their homes more comfortable, healthy and efficient. Partnering with Colorado State University, Fort Collins is also establishing a research program which links the health and wellbeing benefits of improved indoor air quality over time.

The winning idea was developed through extensive prototyping and testing with property managers, low-income residents, and other stakeholders. It combines four main structural elements (Attachment 1):

- Leverages the existing Efficiency Works Homes program for energy efficiency assessments and upgrades
- Revitalizes an on-bill financing option for addressing financial barriers to energy efficiency upgrades utilizing third party capital providers to increase funding capacity
- Focuses on renters and low-to-moderate income residents to target a historically underserved population in energy efficiency programs, and
- Incorporates rigorous monitoring of indoor air quality, and health and wellbeing impacts from energy efficiency projects through a partnership with Colorado State University.

Fort Collins is the first city to combine these aspects into one program for residents. This will be a multi-year process of innovation and continual iteration to refine ideas and processes. The program team will be working to streamline the program and loan servicing processes, continually develop new capital sources, implement protocols for monitoring indoor air quality and energy efficiency impacts, successfully communicate internally and externally and engage with others working to accomplish similar goals.

The Bloomberg Mayors Challenge award has a three-year performance period, though the program team plans to continue this program into the future. Goals for 2021 include:

- Epic Homes will upgrade 2,000 homes, including 360 rental properties
- Documented indicators of home performance and indoor environmental quality that are associated with improved health and wellbeing
- Savings from reduced energy use and lower utility bills will be available for other family priorities, and
- Rental property owners will report financing is not a barrier to energy efficiency upgrades.

Approximately 50% of Fort Collins’ overall housing stock and 25% of single-family homes, are renter-occupied. Rental housing, property owners and property managers are an underserved market for energy efficiency upgrades. During the Champions Phase of the Bloomberg Mayors Challenge, the team discovered that many rental property owners are interested in a program to upgrade rental properties if it makes sound business sense, provided simple processes and ensured high quality work. The streamlined upgrade process and attractive on-bill financing option appealed to these rental property owners. Epic Homes will be available for any single-family home in Fort Collins, with a focus on reaching rental properties.

Health and wellbeing is another key aspect of Epic Homes. The City is partnering with Colorado State University to implement rigorous indoor air quality monitoring, as well as study the impacts of energy efficiency upgrades on overall health and wellbeing. The intent of this monitoring is to change the dialogue around energy efficiency from being about “the building” to being about “the people that live in the building.”

Epic Loans

The Epic Loan program was established in August 2018 as a part of the Champions Phase of the Bloomberg Mayors Challenge. Epic Loan has also been referred to as On-bill Financing 3.0 (OBF 3.0). The programmatic and implementation structure is substantially similar to the OBF 1.0 program managed by Utilities from 2013 through 2016. The primary differences are that the Epic Loan program is utilizing third-party capital from a variety of sources, and that the Bloomberg Mayors Challenge project will focus on implementing efficiency upgrades in
Agenda Item 6

rental properties and the measurement of indoor air quality effects. Epic Loan includes loan terms up to 15 years and attractive interest rates. Epic Loans are repaid on the property owner’s Fort Collins Utilities monthly bill.

The Home Efficiency Loan Program (HELP, aka OBF 1.0) operated from January 2013 through early 2017 when the Council-approved maximum outstanding loan balance of $1.6 million was reached. Elevations Credit Union was selected through an RFP process for energy loan financing in 2017, which offers energy efficiency loans for credit union members through loan origination and servicing independent of Utilities billing. Uptake of the program has been minimal, with an average of three to five loans issued per month, outlining the customer desire for a revitalized on-bill financing option. With the implementation of Epic Loans, Elevations loans will continue to be an option for interested customers.

Third-party capital is a critical piece of the revitalized on-bill financing to bring in additional capital to the Epic Loan program. The program will mix market capital with low- and no-cost capital to create attractive retail rates for customers; therefore, increasing the number and comprehensiveness of energy efficiency projects completed that would not have occurred without an easy financing option. Expected sources of third-party capital include the Bloomberg Mayors Challenge award, the Colorado Energy Office, national and regional banks, foundations, and impact investors.

The program team is currently in conversations and negotiations with third-party capital providers. After a review of the final lending agreements with the Council Finance Committee on July 15, 2019, the program team will provide additional details about the Epic Loan and request approval via ordinance from Council for third-party capital agreements (currently scheduled for August 20, 2019).

Epic Homes and Bloomberg Mayors Challenge Funding

The first tranche of the Bloomberg Mayors Challenge award was received in early March 2019 and appropriated via Ordinance No. 046, 2019. The $100,000 tranche was appropriated as Epic Loan capital.

The program team submitted a detailed budget for the $1 million award to Bloomberg Philanthropies in late March 2019. (Attachment 2) The remainder of the year 1 budget (submitted budget, minus the $100,000 already awarded) was received in early June. The majority of this second tranche ($488,350 of $682,000) will go towards Epic Loan capital and will be appropriated for Epic Loan capital in alignment with pending third-party capital agreements. The remainder of the 2019 funds ($193,650 of $682,000) will support a subgrant to Colorado State University to establish the indoor air quality and health/wellbeing study, project costs for Fort Collins Utilities (indoor air quality monitoring equipment, staff, supplies, travel, efficiency contractor and advisor trainings, etc.), and project costs for Economic Health. Table 1 summarizes the appropriation.

Table 1. 2019 Bloomberg Mayors Challenge Funding Summary

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Appropriated To</th>
<th>Status/Notes</th>
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<tbody>
<tr>
<td>Epic Loan capital</td>
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<td>L&amp;P balance sheet</td>
<td>To be appropriated in alignment with pending third-party capital agreements</td>
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<td>Colorado State University indoor air quality and health research subgrant</td>
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<td>Operating business unit of L&amp;P</td>
<td>Scope of work and CSU grant sub-agreement under development</td>
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<td>Grant project management and operating expenses (staff, supplies, travel, trainings, etc.)</td>
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<td>Ensure grant performance and activities through 2021</td>
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<td>Light and Power Fund Subtotal</td>
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<td></td>
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<tr>
<td>Grant project management</td>
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<td>Operating business unit</td>
<td>Ensure grant</td>
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Agenda Item 6

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>for Economic Health Office</td>
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<td>performance and activities through 2021</td>
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<tr>
<td>Economic Health Subtotal</td>
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<tr>
<td>Total</td>
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<td>Appropriation July 2</td>
<td>$193,650</td>
<td></td>
<td></td>
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</tbody>
</table>

CITY FINANCIAL IMPACTS

The funds for this appropriation have been received and are being held in Electric Utility reserves awaiting the appropriation ordinance. The appropriation of these funds will enable Utilities and Economic Health to move forward with the next phases of the project.

Third-party capital sources and lenders for the Epic Loan program will be reviewed and approved by Council Finance Committee and Council before integration into Epic Homes. Therefore, there is no financial exposure to the City.

ATTACHMENTS

1. Epic Homes Background Brief July 2 2019 (PDF)
2. Epic Homes 3-year Fort Collins Bloomberg Budget (PDF)
ORDINANCE NO. 084, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING UNANTICIPATED GRANT REVENUES FROM BLOOMBERG
PHILANTHROPIES AND AUTHORIZING TRANSFERS OF APPROPRIATIONS IN THE
LIGHT AND POWER FUND FOR RESIDENTIAL EFFICIENCY PROJECT LOANS

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, during 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 and the Energy Policy and Water Conservation Plan; and

WHEREAS, in early 2017, outstanding OBF loan balances reached the $1.6M limit set
by City Council in Ordinance No. 035, 2016, and the City began looking to third-party capital to
fund the program; 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 $1M grant over three years to further develop a program to improve energy
efficiency of low- to moderate-income rental households; and

WHEREAS, on March 3, 2019, the City Manager executed a grant agreement on behalf
of the City with Bloomberg Philanthropies, in acceptance of the grant award; and

WHEREAS, on March 19, 2019, City Council adopted Ordinance No. 046, 2019,
appropriating the first tranche of the Bloomberg grant award in the amount of $100,000, directing
the funds be used for enhanced OBF loan program capital for residential energy efficiency and
renewable energy upgrades, to be administered as the “EPIC Loan Program”; and

WHEREAS, the City recently received the second tranche of the Bloomberg grant award
in the amount of $682,000, which is available for appropriation from the Fort Collins Utilities’
Light and Power Fund to support the EPIC Loan Program; and

WHEREAS, EPIC Program loans incentivize rental and owner-occupied property owners
to invest in energy-efficient improvements, advancing public benefits to health, safety and welfare
by supporting the City’s progress toward 2030 community energy and climate objectives; and

WHEREAS, City staff and the City Manager recommend appropriating $193,650 from
the second tranche of Bloomberg Philanthropies grant award funds to increase participation by

-1-
low- and moderate-income households in the EPIC Program, including transferring $14,520 of appropriated funds to the Economic Health Office for EPIC Program loan management; and

WHEREAS, staff and the City Manager will bring recommendations for appropriating the remaining $488,350 of the second tranche with other third-party capital in a separate ordinance at a later date; and

WHEREAS, City Council determines it is desirable to continue enhancement of program incentives and financing options for EPIC/OBF loans and to provide flexibility in the administration of loans for rental and owner-occupied properties, in furtherance of conservation benefits available to ratepayers through City Utility energy efficiency and renewable energy upgrade programs; and

WHEREAS, City Council further determines improving motivations and financing options for EPIC/OBF loans for rental and owner-occupied properties will benefit utility rate payers by incentivizing conservation energy efficiency and renewable energy upgrades in an additional segment of local housing stock, reducing overall utility consumption across rate classes, as required by Article XII, Section 6, of the City Charter; 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 confirmed the appropriation of the Bloomberg Philanthropies grant award as described herein 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 the fiscal year; and

WHEREAS, the City Manager has confirmed that the appropriation of the Bloomberg Philanthropies grant award as described herein 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 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 grant revenue received from Bloomberg Philanthropies in the Light and Power Fund the sum of ONE HUNDRED NINETY-THREE THOUSAND SIX HUNDRED FIFTY DOLLARS ($193,650) for expenditure in the Light and Power Fund for the EPIC residential efficiency project loan program.

Section 3. That the unexpended appropriated amount of FOURTEEN THOUSAND FIVE HUNDRED TWENTY DOLLARS ($14,520) in the Light & Power Fund is authorized for transfer to the General Fund and appropriated therein for the Economic Health Office for project management of the EPIC residential efficiency project loan program.

Section 4. That the remaining sum of FOUR HUNDRED EIGHTY-EIGHT THOUSAND THREE HUNDRED FIFTY DOLLARS ($488,350) of unanticipated grant revenue received from Bloomberg Philanthropies shall be held in the Light and Power Fund for subsequent appropriation for the EPIC residential efficiency project loan program.

Introduced, considered favorably on first reading, and ordered published this 2nd day of July, A.D. 2019, and to be presented for final passage on the 16th day of July, A.D. 2019.

_______________________________
Mayor

ATTEST:

_______________________________
City Clerk

Passed and adopted on final reading on the 16th day of July, A.D. 2019.

_______________________________
Mayor

ATTEST:

_______________________________
City Clerk
STAFF

Jennifer Poznanovic, Project and Revenue Manager
Ryan Malarky, Legal

SUBJECT

Items Relating to Sales Tax Code Updates.

EXECUTIVE SUMMARY

A. Second Reading of Ordinance No. 085, 2019, Amends Article XVIII of Chapter 15 of the Code of the City of Fort Collins Relating to Short-Term Rental Licenses.

B. Second Reading of Ordinance No. 086, 2019, Amends Article II of Chapter 25 of the Code of the City of Fort Collins Relating to the City’s Tax Rebate Programs.

C. Second Reading of Ordinance No. 087, 2019, Amends Article III of Chapter 25 of the Code of the City of Fort Collins Relating to the Imposition, Collection, and Enforcement of the City’s Sales and Use Taxes.

These Ordinances, unanimously adopted on First Reading on July 2, 2019, amend City Code sections in Chapter 15 and 25 to provide clarification for definitions and the application of various sections of the Code.

STAFF RECOMMENDATION

Staff recommends adoption of these Ordinances on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, July 2, 2019 (w/o attachments) (PDF)
2. Ordinance No. 085, 2019 (PDF)
3. Ordinance No. 086, 2019 (PDF)
4. Ordinance No. 087, 2019 (PDF)
AGENDA ITEM SUMMARY
City Council

July 2, 2019

STAFF

Jennifer Poznanovic, Project and Revenue Manager
Ryan Malarky, Legal

SUBJECT

Items Related to Sales Tax Code Updates.

EXECUTIVE SUMMARY

A. First Reading of Ordinance No. 085, 2019, Amending Article XVIII of Chapter 15 of the Code of the City of Fort Collins Relating to Short-Term Rental Licenses.

B. First Reading of Ordinance No. 086, 2019, Amending Article II of Chapter 25 of the Code of the City of Fort Collins Relating to the City’s Tax Rebate Programs.

C. First Reading of Ordinance No. 087, 2019, Amending Article III of Chapter 25 of the Code of the City of Fort Collins Relating to the Imposition, Collection, and Enforcement of the City’s Sales and Use Taxes.

The purpose of this item is to amend City Code sections in Chapter 15 and 25 to provide clarification for definitions and the application of various sections of the Code.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinances on First Reading.

BACKGROUND / DISCUSSION

The various Code changes being requested are as follows:

Chapter 15, Article XVIII

City Code Section 15-647 establishes the term of a Short Term Rental license and the renewal date. The one-year term will remain the same; however, City staff desires to change the renewal date from December 31 to June 30. This adjustment will help staff streamline year-end tax activity. Current licenses will have an extra six months on their term as the transition occurs. A current license will expire on June 30, 2020, rather than December 31, 2019. Prior to December 31, 2019, staff will communicate the change with licensees and will issue updated licenses. No additional fees will be assessed for the one-time extension.

Chapter 25, Article II

City Code Sections 25-26 and 25-46 establish the definitions related to the City’s Tax Refund and Rebate Program. City staff desires to update references to Internal Revenue Service income tax return forms to reflect changes the IRS made for tax year 2018.

Chapter 25, Article III
City Code Section 25-75 establishes the rate of tax and distribution of the 3.85 percent total for the various voter approved taxes. City staff desires to update the language to reflect the extension of a 0.85 percent tax approved by the voters at the City’s regular election held on April 2, 2019. Staff is also recommending revisions to make Section 25-75 easier to read.

City Code Section 25-128 allows a business with more than one location to file a consolidated return. Due to staff’s desire to report by geographic location, a return for each location will be required and a consolidated return will be prohibited. This Code update reflects what is already the current practice.

City Code Section 25-147 allows a taxpayer to apply for a refund of tax paid under dispute when claiming the transaction was not taxable or claiming an exemption. City staff desires to update the language to include tax paid in error or by mistake. This Code update will bring the language back in line with previous wording, which was inadvertently removed by Ordinance No. 016, 2017.

City Code Section 25-166 outlines the confidentiality requirements for taxpayers’ financial information in returns and other records. City staff desires to add language to allow the Financial Officer to disclose financial information within the City organization or to City contractors in certain circumstances when reasonable precautions and requirements are in place to prevent the disclosure of such information to the public.
ORDINANCE NO. 085, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE XVIII OF CHAPTER 15 OF THE CODE OF THE CITY OF FORT COLLINS RELATING TO SHORT-TERM RENTAL LICENSES

WHEREAS, on March 21, 2017, the City Council adopted Ordinance No. 045, 2017, creating licensing regulations regarding the rental of dwelling units for periods of less than thirty days ("Short Term Rental") in Chapter 15 of the City Code; and

WHEREAS, those Short Term Rental regulations establish a specific term for which a short term rental license will be valid; and

WHEREAS, since the adoption of the Short Term Rental regulations, City staff has determined that adjusting the term of such licenses so that they expire on June 30 rather than December 31 will assist staff with streamlining year-end tax activity; and

WHEREAS, the City Council hereby finds that the change as proposed in this Ordinance is in the best interests of the citizens of Fort Collins and promotes health, safety and welfare of the community by contributing to the efficient administration of the Short Term Rental licensing system.

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 15-647 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-647. Term of license and renewal.

(a) Licenses issued pursuant to this Article shall be valid from the time of issuance through the following June 30. Licenses must be renewed annually and a renewed license shall be valid for the period from July 1 through the subsequent June 30.

...
Introduced, considered favorably on first reading, and ordered published this 2nd day of July, A.D. 2019, and to be presented for final passage on the 16th day of July, A.D. 2019.

ATTEST:

__________________________________
Mayor

_______________________________
City Clerk

Passed and adopted on final reading on the 16th day of July, A.D. 2019.

__________________________________
Mayor

ATTEST:

_______________________________
City Clerk
ORDINANCE NO. 086, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE II OF CHAPTER 25 OF THE CODE OF THE CITY
OF FORT COLLINS RELATING TO THE CITY’S TAX REBATE PROGRAMS

WHEREAS, Division 2 in Article II of City Code Chapter 25 authorizes a refund program to provide relief from property taxes for low-income elderly persons and disabled persons residing in the City (the “Property Tax Refund Program”); and

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

WHEREAS, the Property Tax Refund Program serves the public purpose of relieving qualified low-income elderly persons and disabled persons from the City’s portion of the ad valorem taxes applicable to their dwellings; 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, as part of the application process for both programs, an applicant is required to provide income information, and the City Code directs an applicant to provide information contained in Internal Revenue Service Forms 1040, 1040A, 1040EZ, and 1040NR; and

WHEREAS, the Internal Revenue Service (“I.R.S.”) updated its Form 1040 for tax year 2018 by consolidating the former Forms 1040, 1040A and 1040EZ; and

WHEREAS, City staff has recommended that references in the Code to specific I.R.S. forms be updated to reflect the changes the I.R.S. made for tax year 2018; and

WHEREAS, the City Council hereby finds that amending the Property Tax Refund Program and the Sales Tax Rebate Program as proposed in this Ordinance is in the best interests of the City and its taxpayers and promotes the health, safety and welfare of the community by establishing accurate requirements for the Programs.

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 25-26 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-26. Definitions.

-1-
The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this Section:

... 

Income shall mean:

(1) total income of an individual as shown on the individual's federal income tax form on the line noted for the applicable form, as set forth in the chart below, or if the individual is not required to file any such tax form with the Internal Revenue Service, the amount that would be so reported in the most applicable form if the individual was required to file; and

(2) plus any nontaxable income including, without limitation, individual retirement account distributions (not including rollovers), pensions and annuities, social security benefits, disability benefits, worker's compensation benefits and any other nontaxable income:

<table>
<thead>
<tr>
<th>I.R.S. Form 1040</th>
<th>Line 6 “Total Income”</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.R.S. Form 1040NR</td>
<td>Line 23 “Total Effectively Connected Income”</td>
</tr>
</tbody>
</table>

Section 3. That Section 25-46 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-46. Definitions.

The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this Section:

... 

Income shall mean:

(1) total income of an individual as shown on the individual's federal income tax form on the line noted for the applicable form, as set forth in the chart below, or if the individual is not required to file any such tax form with the Internal Revenue Service, the amount that would be so reported in the most applicable form if the individual was required to file; and

(2) plus any nontaxable income including, without limitation, individual retirement account distributions (not including rollovers), pensions and annuities, social security benefits, disability benefits, worker's compensation benefits and any other nontaxable income:
Introduced, considered favorably on first reading, and ordered published this 2nd day of July, A.D. 2019, and to be presented for final passage on the 16th day of July, A.D. 2019.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 16th day of July, A.D. 2019.

Mayor

ATTEST:

City Clerk
ORDINANCE NO. 087, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE III OF CHAPTER 25 OF THE CODE OF THE CITY
OF FORT COLLINS RELATING TO THE IMPOSITION, COLLECTION
AND ENFORCEMENT OF THE CITY’S SALES AND USE TAXES

WHEREAS, Article XX, Section 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 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 rate of tax imposed, including updating the rate of tax to include the extension of the eighty-five one-hundredths (0.85) percent tax approved by the voters at the City’s regular election held on April 2, 2019; and

WHEREAS, City staff has also recommended revisions to require retailers doing business at more than one location to file a separate return for each location, to clarify that the refund procedures apply to taxes paid in error or by mistake, and to provide that taxpayer financial information may be shared within the City organization or with City contractors if reasonable precautions are in place to prevent disclosure of such information to the public; and

WHEREAS, the City Council hereby finds that amending the Sales and Use Tax Code as proposed in this Ordinance is in the best interests of the City and its taxpayers and promotes the health, safety and welfare of the community by providing for the accurate and efficient imposition, collection and enforcement of the City’s sales and use taxes.

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 25-75 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-75. Rate of tax.
(a) The amount of tax hereby levied is three and eight-five hundredths (3.85) percent of the purchase price of tangible personal property and taxable services except that the amount of use tax levied on manufacturing equipment is three (3) percent of the purchase price. This tax is composed of a rate of two and twenty-five hundredths (2.25) percent that does not expire and is not restricted in the use of its proceeds and the remaining rate of one and sixty hundredths (1.60) percent is comprised of the following voter-approved taxes:

(1) A twenty-five one-hundredths (0.25) percent tax that expires at midnight on December 31, 2030, the proceeds of which are to be used for the purposes of acquiring, operating and maintaining open spaces, community separators, natural areas, wildlife habitat, riparian areas, wetlands and valued agricultural lands, and to provide for the appropriate use and enjoyment of these areas by the citizenry, pursuant to the provisions of the Citizen-Initiated Ordinance No. 1, 2002;

(2) A twenty-five one-hundredths (0.25) percent tax that expires at midnight on December 31, 2025, the proceeds of which are to be used for the purpose of paying the costs of planning, design, right-of-way acquisition, incidental upgrades and other costs associated with the repair and renovation of City streets, including, but not limited to, curbs, gutters, bridges, sidewalks, parkways, shoulders and medians;

(3) A twenty-five one-hundredths (0.25) percent tax that expires at midnight on December 31, 2025, the proceeds of which are to be used for the purpose of paying the costs of planning, design, real property acquisition, and construction, the capital projects specified in the "Community Capital Improvement Program" and five (5) years of operation and maintenance for those capital projects specified in Ordinance No. 013, 2015, all of which shall be subject to the terms and conditions of Ordinance No. 013, 2015; and

(4) An eighty-five one-hundredths (0.85) percent tax that expires at midnight on December 31, 2020, the proceeds of which are to be used in accordance with the terms and conditions of Ordinance No. 126, 2010.

When the tax described in subsection (a)(4) above expires at midnight on December 31, 2020, the eighty-five one-hundredths (0.85) percent tax approved at the City’s regular election held on April 2, 2019, shall commence. Of this tax, the rate of twenty-five one-hundredths (0.25) percent shall expire at midnight on December 31, 2030, and its revenues shall be used to fund municipal operations and maintenance and for any other public purposes. The remaining rate of sixty one-hundredths (0.60) percent shall not expire and its revenues shall be used to help sustain public safety service levels and fund municipal operations and maintenance, and to fund any other public purposes, except fifteen and sixty one-hundredths (15.6) percent of these revenues shall be used to fund the fire protection and emergency services being provided by the Poudre Fire Authority (PFA) under the City’s existing agreement with the Poudre Valley Fire Protection District (District), or in such other amount as the City and the District may agree, but absent an
agreement between them for PFA’s services, these revenues may be used as

determined by City Council.

Section 3. That Section 25-128 of the Code of the City of Fort Collins is hereby
amended to read as follows:

Sec. 25-128. Consolidation of returns prohibited.

A retailer doing business in two (2) or more places or locations, whether within or without
the City, and collecting taxes hereunder must file one (1) return for each such places or
locations. Any retailer conducting online sales must file a separate return covering online
sales.

Section 4. That Section 25-147 of the Code of the City of Fort Collins is hereby
amended to read as follows:

Sec. 25-147. Procedure for refund of disputed tax.

A refund shall be made or credit allowed for the tax paid under dispute by any person who
claims that the transaction or item was not taxable, claims an exemption as provided in this
Article, or claims that taxes were paid in error or by mistake. Such refund shall be made
by the Financial Officer after compliance with the following:

(1) Application. An application for a refund of sales or use tax paid under
dispute, paid in error by a purchaser or user who claims an exemption under
Subsection 25-73(c) or Subsection 25-74(b), or paid in error or by mistake shall be
made within three (3) years after the date of purchase, storage, use or consumption
of the goods or services whereon an exemption is claimed. Such applications must
be accompanied by the original paid invoice or sales receipt and must be made upon
such forms as shall be prescribed and furnished by the Financial Officer;

(2) Burden of proof. The burden of proving that any transaction or item is not
taxable, is exempt from the tax, or that tax was paid in error or by mistake shall be
upon the person asserting such claim under such reasonable requirements of proof
as the Financial Officer may prescribe;

Section 5. That Section 25-166 of the Code of the City of Fort Collins is hereby
amended by the addition of a new subsection (g) to read as follows:

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

...
(g) Notwithstanding the provisions of this Section, the Financial Officer may disclose financial information within the City organization or to City contractors as required for the conduct of City business or in furtherance of City purposes and objectives, so long as the release of the information is conditioned upon reasonable precautions and requirements to prevent disclosure of said information to the public.

Introduced, considered favorably on first reading, and ordered published this 2nd day of July, A.D. 2019, and to be presented for final passage on the 16th day of July, A.D. 2019.

Mayor

ATTEST:

_______________________________

City Clerk

Passed and adopted on final reading on the 16th day of July, A.D. 2019.

Mayor

ATTEST:

_______________________________

City Clerk
AGENDA ITEM SUMMARY
July 16, 2019

STAFF
Karen McWilliams, Historic Preservation Planner
Brad Yatabe, Legal

SUBJECT
Second Reading of Ordinance No. 088, 2019, Designating the Maneval/Mason/Sauer Property, 100 1st Street, Fort Collins, Colorado, as a Fort Collins Landmark Pursuant to Chapter 14 of the Code of the City of Fort Collins.

EXECUTIVE SUMMARY
This item is a quasi-judicial matter and if considered on the discussion agenda, it will be considered in accordance with the procedures described in Section 1(e) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.

This Ordinance, unanimously adopted on First Reading on July 2, 2019, considers the request for landmark designation of the Maneval/Mason/Sauer Property, 100 1st Street. This is a voluntary designation at the property owner’s request. The Landmark Preservation Commission unanimously recommends approving this landmark designation.

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

ATTACHMENTS
1. First Reading Agenda Item Summary, July 2, 2019 (w/o attachments) (PDF)
2. Ordinance No. 088, 2019 (PDF)
AGENDA ITEM SUMMARY
City Council

July 2, 2019

STAFF
Karen McWilliams, Historic Preservation Planner
Brad Yatabe, Legal

SUBJECT
First Reading of Ordinance No. 088, 2019, Designating the Maneval/Mason/Sauer Property, 100 1st Street, Fort Collins, Colorado, as a Fort Collins Landmark Pursuant to Chapter 14 of the Code of the City of Fort Collins.

EXECUTIVE SUMMARY
This item is a quasi-judicial matter and if considered on the discussion agenda, it will be considered in accordance with the procedures described in Section 1(e) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.

The purpose of this item is to consider the request for landmark designation of the Maneval/Mason/Sauer Property, 100 1st Street. This is a voluntary designation at the property owner’s request. The Landmark Preservation Commission unanimously recommends approving this landmark designation.

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

BACKGROUND / DISCUSSION
The Maneval/Mason/Sauer Property is special among Fort Collins’s historic resources because the property is significant under all four Standards of Significance for Fort Collins Landmark designation, a very rare occurrence.

Containing some of the earliest extant buildings in Buckingham Place, this property is significant under Standard 1(b), Patterns of Events, for its contributions to several aspects of Fort Collins’ history: the development and success of the Great Western Sugar Company; the physical and social distance separating the Germans from Russia and Hispanics in Buckingham Place from central Fort Collins, which is illustrated through instances of cultural misunderstanding and outright discrimination; the early efforts by Buckingham Place to incorporate as a separate town; and the property’s association with Fort Collins’ lengthy period of prohibition.

Under Standard 2, Persons/Groups, this property is associated with the Germans from Russia (Volga Germans), who emigrated from Russia in the late 1800s and early 1900s and settled in Buckingham Place and nearby Andersonville neighborhoods. The property is also associated with Fort Collins’s Hispanic community, who similarly settled predominantly in the Sugar Factory Neighborhoods. Both Hispanics and Germans from Russia faced forms of discrimination for many decades, even being denied service in some stores. The presence of the store on this property evokes this history of prejudice directed at these groups and the ways in which they reacted to overcome it. The contributions of Fort Collins’s Germans from Russia and Hispanics are a significant but often overlooked theme in the growth and development of the city.

Under Standard 3, Design/Construction, this property includes a rare example of a late-nineteenth/early-twentieth century false-front commercial building. The house also is a good example of true vernacular
architecture, Buckingham’s representative architectural form, as seen in its evolving plan, large porch, use of yard space, and collection of associated buildings, including a historic shed and privy.

And finally, under Standard 4, Information Potential, select archeological excavation on this property has a high probability of yielding significant information related to the lives of German-Russian families in Colorado in the early twentieth century.

CITY FINANCIAL IMPACTS

Recognition of a property as a Fort Collins Landmark enables its owners to qualify for financial incentive programs available only for designated properties.

BOARD / COMMISSION RECOMMENDATION

At its June 19, 2019, regular hearing, the Landmark Preservation Commission unanimously (8-0, Simpkins absent) adopted a resolution recommending Council adoption of an ordinance for landmark designation of this property.

PUBLIC OUTREACH

A public hearing on this item was held at the June 19, 2019, meeting of the Landmark Preservation Commission.

ATTACHMENTS

1. Location Map  (PDF)
2. Designation Form  (PDF)
3. Staff Report (w/o attachments)  (PDF)
4. Landmark Preservation Commission Resolution No. 4, 2019  (PDF)
ORDINANCE NO. 088, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
DESIGNATING THE MANEVAL/MASON/SAUER PROPERTY,
100 1ST STREET, FORT COLLINS, COLORADO, AS A FORT COLLINS LANDMARK
PURSUANT TO CHAPTER 14 OF THE CODE OF THE CITY OF FORT COLLINS

WHEREAS, pursuant to City Code Section 14-1, the City Council has established a
public policy encouraging the protection, enhancement and perpetuation of historic landmarks
within the City; and

WHEREAS, by resolution adopted on June 19, 2019, the Landmark Preservation
Commission (the “Commission”) determined that the Maneval/Mason/Sauer Property at 100 1st
Street in Fort Collins, as more specifically described in the legal description below (the
“Property”), is eligible for landmark designation pursuant to City Code Chapter 14, Article II,
for the property’s high degree of all seven standards of integrity under City Code Section 14-
22(b)(1-7), and for its outstanding significance to Fort Collins under all four standards of
significance contained in City Code Section 14-22(a)(1-4) as follows:

(1) Events: The Property is associated with several aspects of Fort Collins’ history
including the development and success of the Great Western Sugar Company, the
physical and social distance separating the Germans from Russia and Hispanics in
Buckingham Place from central Fort Collins illustrated through instances of cultural
misunderstanding and outright discrimination, the early efforts by Buckingham Place
to incorporate as a separate town, and Fort Collins’ lengthy period of prohibition.

(2) Persons/Groups: The Property is associated with the Germans from Russia (Volga
Germans), who emigrated from Russia in the late 1800s and early 1900s and settled in
Buckingham Place and nearby Andersonville neighborhood, and the Fort Collins’s
Hispanic community, who similarly settled predominantly in the Sugar Factory
Neighborhoods.

(3) Design/Construction: The Property includes a rare example of a late-
nineteenth/early-twentieth century false-front commercial building and the house is a
good example of true vernacular architecture, Buckingham’s representative
architectural form, as seen in its evolving plan, large porch, use of yard space, and
collection of associated buildings, including a historic shed and privy.

(4) Information Potential: The Property, by means of archeological excavation, has a
high probability of yielding significant information related to the lives of German-
Russian families in Colorado in the early twentieth century; and

WHEREAS, the Commission further determined that designation of the Property will
advance the policies and purposes set forth in City Code Sections 14-1 and 14-2 in a manner
and extent sufficient to justify designation; and

WHEREAS, the Commission recommends that the City Council designate the Property
as a Fort Collins landmark; and

-1-
WHEREAS, the owner of the Property has requested such landmark designation and desires to protect the Property; and

WHEREAS, such landmark designation will preserve the Property’s significance to the community; and

WHEREAS, the City Council has reviewed the recommendation of the Commission and desires to follow such recommendation and designate the Property as a Fort Collins landmark; and

WHEREAS, designation of the Property as a Fort Collins landmark is necessary for the prosperity, civic pride, and welfare of the public.

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 Property located in the City of Fort Collins, Larimer County, Colorado, described as follows, to wit:

LOTS 1 AND 2, BLOCK 9, BUCKINGHAM PLACE, ALSO KNOWN BY STREET AND NUMBER AS 100 1ST STREET, CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO

meets the requirements for landmark designation and is hereby designated as a Fort Collins Landmark in accordance with City Code Chapter 14.

Section 3. That alterations, additions and other changes to the buildings and structures located upon the Property will be reviewed for compliance with City Code Chapter 14, Article IV, as currently enacted or hereafter amended.

Introduced, considered favorably on first reading, and ordered published this 2nd day of July, A.D. 2019, and to be presented for final passage on the 16th day of July, A.D. 2019.

__________________________________
Mayor

ATTEST:

_______________________________
City Clerk
Passed and adopted on final reading on the 16th day of July, A.D. 2019.

_____________________________
Mayor

_____________________________
City Clerk
AGENDA ITEM SUMMARY
City Council
July 16, 2019

STAFF
Erin Shanley, Broadband Marketing Manager
Darin Atteberry, City Manager
Colman Keane, Broadband Director
Kevin Gertig, Utilities Executive Director
Lisa Rosintoski, Utilities Deputy Director, Customer Connections
Judy Schmidt, Legal
Cyril Vidergar, Legal

SUBJECT
Items Relating to Delivery of Telecommunication Services by Fort Collins Connexion.

EXECUTIVE SUMMARY
A. Second Reading of Ordinance No. 089, 2019, Amending Chapter 26 of the Code of the City of Fort Collins to Further Authorize and Implement the City’s Provision of Telecommunication Facilities and Services as Provided in City Charter Article XII, Section 7.

B. Second Reading of Ordinance No. 091, 2019, Authorizing the Purchasing Agent to Enter into Licensing Contracts With a Term Length in Excess of Five Years for the Acquisition of Video Content Rights in Furtherance of Fort Collins Connexion’s Delivery of Telecommunication Services.

These Ordinances were unanimously adopted on First Reading on July 2, 2019. Ordinance No. 089, 2019 adopts a variety of revisions, clarifications and additions to City Code Chapter 26 pertaining to Utility Services to accommodate telecommunication services. Ordinance No. 091, 2019 approves long term licensing agreements with a term up to seven years for video content to be delivered to Connexion’s subscribers.

The following changes to Ordinance No. 089, 2019 have been made since First Reading:

1. Section 26-575(a): removed reference to agreement by subscriber to abide by terms and conditions of service and rules and regulations; replace with mandatory language (shall be subject to...);
2. Section 26-576(d): substituted defined term “telecommunication subscriber” for “telecommunication customer”) for consistency;
3. Section 26-579(c): adjusted definitions of Code violation to exclude nonpayment by a subscriber so failure to pay is not punishable as a criminal violation, leaving termination of service and other legal recourse such as collection as enforcement mechanisms for nonpayment.
4. Section 26-583(a): clarified language regarding relationship of franchise fees to PILOT by indicating all franchise fees paid shall be a credit against the PILOT amounts due, and to provide that PILOT shall be paid by the telecommunication division and may (not must) be charged directly to subscribers.

STAFF RECOMMENDATION
Staff recommends adoption of these Ordinances on Second Reading.
ATTACHMENTS

1. First Reading Agenda Item Summary, July 2, 2019 (w/o attachments) (PDF)
AGENDA ITEM SUMMARY
City Council
July 2, 2019

STAFF

Erin Shanley, Broadband Marketing Manager
Darin Atteberry, City Manager
Colman Keane, Broadband Director
Kevin Gertig, Utilities Executive Director
Lisa Rosintoski, Utilities Customer Connections Manager
Judy Schmidt, Legal
Cyril Vidergar, Legal

SUBJECT

Items Relating to Delivery of Telecommunication Services by Fort Collins Connexion.

EXECUTIVE SUMMARY

A. First Reading of Ordinance No. 089, 2019, Amending Chapter 26 of the Code of the City of Fort Collins to Further Authorize and Implement the City’s Provision of Telecommunication Facilities and Services as Provided in City Charter Article XII, Section 7.

B. First Reading of Ordinance No. 091, 2019, Authorizing the Purchasing Agent to Enter into Licensing Contracts With a Term Length in Excess of Five Years for the Acquisition of Video Content Rights in Furtherance of Fort Collins Connexion’s Delivery of Telecommunication Services.

The purpose of Ordinance No. 089, 2019, is to adopt a variety of revisions, clarifications and additions to City Code Chapter 26 pertaining to Utility Services to accommodate telecommunication services. These revisions include:

1. Creation of basic authority and an operational framework for the provision of telecommunication facilities and services (broadband) (new Article VIII of Chapter 26).
2. Amendments to add the “telecommunication services division” (broadband or Connexion) as a division of the electric utility, and a part of the existing electric utility enterprise (as authorized by Section 7, Article XII of the City Charter) and to separate administration and supervision of the telecommunication services division under the direction of the City Manager from that of the electric utility under the direction of the Utilities Executive Director.
3. Amendments to customer billing and collection provisions to address the existence and treatment of the telecommunication services division.

Ordinance No. 091, 2019, will approve long-term licensing agreements with a term of up to seven years for video content to be delivered to Connexion’s subscribers. City Code Section 8-186(a) limits the term of contracts for services to a total of five years unless authorized by Council by ordinance.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinances on First Reading.
BACKGROUND / DISCUSSION

Ordinance No. 089, 2019

The following summarizes the actions by ballot measure and Council taken to date to authorize and begin construction and operation of a municipal broadband system referred to as “Connexion” or “Fort Collins Connexion”:

- At a special election on November 3, 2015, City voters authorized the City to provide high-speed internet services, including, high-bandwidth broadband services, telecommunication services, and video/television services for the City of Fort Collins.

- At a special election on November 7, 2017, City voters approved an amendment to the City Charter adding a new Section 7 to Charter Article XII (“Charter Section 7”) to authorize the City’s provision of telecommunication facilities and services, including, without limitation, “broadband Internet facilities and services,” as both terms are defined therein (“Telecommunication Facilities and Services”).

- On January 16, 2018, City Council adopted Ordinance No. 011, 2018, to amend various City Code sections to implement the authority granted in Charter Section 7 by authorizing the Electric Utility Enterprise to acquire, construct, provide, fund and contract for Telecommunication Facilities and Services and by authorizing the Electric Utility Enterprise to exercise the power to issue revenue bonds to fund the provision of Telecommunication Facilities and Services as provided in paragraph (b) of Charter Section 7.

- On January 16, 2018, City Council also adopted Ordinance No. 010, 2018, to appropriate $1.8 million from the City’s General Fund as a loan to the City’s Light and Power Fund to be used by the Electricity Utility Enterprise for start-up costs related to providing Telecommunication Facilities and Services.

- On April 3, 2018, City Council acting ex officio as the Board of the Electric Utility Enterprise adopted Ordinance No. 003 authorizing the issuance of revenue bonds to fund the construction and operation of the municipal broadband project to provide Telecommunication Facilities and Services.

The changes to City Code Chapter 26 (Utilities) set forth in this Ordinance create an operational framework for administration and supervision of the telecommunication services division of the electric utility in relationship to the administration and supervision of the electric utility and the City’s other utilities and the provision of telecommunication facilities and services to customers. In summary, the Ordinance:

- Modifies the basic structure of City utilities services to include the telecommunication facilities and services division to the electric utility and as a part of the electric utility enterprise.

- Authorizes the City Manager to administer and supervise the telecommunication services and facilities division of the electric utility, which is to be managed by the Broadband Executive Director, while supervision and management of the electric utility remains under the Utilities Executive Director.

- Delegates to the City Manager the authority to set rates, fees and charges for telecommunication services.
  - Must be at least sufficient to pay the cost of providing telecommunication facilities and services, operating and maintaining the telecommunication services system in good repair and working order, pay a 6% PILOT to the general fund, pay debt service on all bonds and other obligations, maintain adequate working capital for operational business needs, and maintain adequate funding for system extension, enlargement and replacement.
  - Different rates, fees and charges may be set for residential and business customers.
  - Requires the City Manager to notify Council of the rates, fees, and charges set from time to time at least 7 days before posting such rates on the broadband website.
  - A schedule of rates, fees and charges must be posted on the broadband website and be filed with the City Clerk for public inspection.

- Delegates to the City Manager the authority to set terms and conditions of service and promulgate rules and regulations for telecommunication services.

- Contains privacy, net neutrality and network management provisions.
• Addresses PILOT and franchise payments and benefits to be paid by telecommunication services to the City.
• Integrates telecommunication services and facilities into the overall utility billing system.

Ordinance No. 091, 2019

Ordinance No. 091, 2019, approves long-term licensing agreements with a term of up to seven years for video content to be delivered to Connexion's subscribers. This Ordinance will authorize the Purchasing Agent to execute licensing contracts for video content for up to seven years, conditioned upon the passage of Ordinance No. 006 (the "Enterprise Ordinance") by the Board of the Electric Utility Enterprise.

The longer term is necessary to gain access to proprietary video content to be delivered to Connexion subscribers. The video content licensing market is unique and limited in that it involves proprietary content, restrictions imposed by video content developers, and standardized licensing periods and contract provisions. Because the video content is unique and available only from one source, Connexion will have very limited or no bargaining power to modify the standard terms and conditions. Access to sufficient video content in high market demand will contribute to Connexion's successful delivery of telecommunication services.

The Enterprise Ordinance is scheduled to be heard by the Board at its meeting scheduled concurrently with this Council meeting.

CITY FINANCIAL IMPACTS

Ordinance No. 089, 2019

The intent of the proposed Code changes is to extend many current financial practices associated with traditional utility services to telecommunication services to protect the associated assets in a financially prudent manner.

Ordinance No. 091, 2019

The cost of obtaining video content will be passed through Connexion subscribers who subscribe to video (TV) programming.

ATTACHMENTS

1. Powerpoint presentation (PDF)
WHEREAS, at a special election on November 3, 2015, City voters authorized the City to provide high-speed internet services, including, without limitation, high-bandwidth broadband services, telecommunication services, and/or cable television services within the City’s growth management area; and

WHEREAS, at a special election on November 7, 2017, City voters approved an amendment to the City Charter adding a new Section 7 to Charter Article XII (“Charter Section 7”); and

WHEREAS, paragraph (a) of Charter Section 7 grants the City Council certain powers related to the City providing “telecommunication facilities and services,” including, without limitation, “broadband Internet facilities and services,” as both terms are defined in paragraph (f) of Charter Section 7 (“Telecommunication Facilities and Services”); and

WHEREAS, on July 20, 1993, the City Council adopted Ordinance No. 060, 1993 establishing the City’s Electric Utility as an enterprise of the City under Section 20 of Article X of the Colorado Constitution (the “Electric Utility Enterprise”) by adding Section 26-392 to the City Code; and

WHEREAS, on January 16, 2018, the City Council adopted Ordinance No. 011, 2018 (“Ordinance 011”) to amend various City Code Sections to implement the authority granted in Charter Section 7 by authorizing the Electric Utility Enterprise to acquire, construct, provide, fund and contract for Telecommunication Facilities and Services and by authorizing the Electric Utility Enterprise to exercise the power to issue revenue bonds to fund the provision of Telecommunication Facilities and Services as provided in paragraph (b) of Charter Section 7; and

WHEREAS, Ordinance 011 also amended the City Code as follows:

(a) Section 8-77 to provide that the Electric Utility Enterprise’s revenues, debt issuance proceeds and expenditures related to telecommunication facilities and services shall be deposited, expended and administered through the City’s Light and Power Fund;

(b) Sections 2-504 and 26-21 to delegate to the City Manager the direct responsibility to administer and supervise the Electric Utility Enterprise’s provision of telecommunication facilities and services and to make other conforming changes to the administration of Utility Services in light of this assignment of direct responsibility to the City Manager; and
Section 1-2 to amend the definition of service area to reflect that some service area directors do not report directly to the City Manager; and

WHEREAS, on January 16, 2018, the City Council also adopted Ordinance No. 010, 2018, to appropriate $1.8 million from the City’s General Fund as a loan to the City’s Light and Power Fund to be used by the Electricity Utility Enterprise for start-up costs related to providing Telecommunication Facilities and Services; and

WHEREAS, on April 3, 2018, the City Council acting ex officio as the Board of the Electric Utility Enterprise adopted Ordinance No. 003 authorizing the issuance of revenue bonds to fund the construction and operation of the municipal broadband project to provide telecommunications facilities and services (the “Bonds”); and

WHEREAS, on May 1, 2018, the City Council adopted Ordinance No. 056, 2018, appropriating the proceeds from the Bonds for capital, operating, debt service and art in public places expenditure associated with the construction of a broadband system to provide telecommunications facilities and services to customers within the Fort Collins Light and Power Fund; and

WHEREAS, this Ordinance adds a new Article VIII to Chapter 26 of the City Code pertaining to the telecommunication services division of the Electric Utility and a part of the Electric Utility Enterprise and will further implement the authority granted in Charter Section 7 by adopting an operational framework and the authority necessary to begin providing telecommunication facilities and services to subscribers; and

WHEREAS, the City Council hereby finds that this Ordinance 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 and of the Electric Utility’s ratepayers.

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 2-504 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 2-504. - Utility services; duties of Utilities Executive Director and City Manager.

(a) Utility services shall be and is hereby created as a service area of the City.

(b) Except as provided in paragraph (c) below, utility services shall be in the charge of the Utilities Executive Director who shall be directly responsible to the City Manager or his or her designee for the functions and duties of utility services, including, without limitation, the functions and duties necessary to provide for the design, construction, reconstruction, addition,
repair, replacement, operation and maintenance of the City's electric, water, wastewater and stormwater utilities services, and who shall have control and supervision over such agencies, service units, departments, divisions, offices or persons assigned by the City Manager.

(c) The City Manager or his or her designee shall have the direct responsibility and authority to administer and supervise all functions and activities related to the provision of telecommunication facilities and services, as this term is defined in § 7(f) of Charter Article XII by the telecommunication services division of the electric utility. In exercising this authority, the City Manager or his or her designee, including but not limited to a Broadband Executive Director, may assign to other employees such duties, assignments and functions as he or she determines necessary for the proper and efficient administration of the telecommunication services division of the electric utility in providing telecommunication facilities and services.

Section 3. That Section 26-1 of the Code of the City of Fort Collins is hereby amended to add or modify certain definitions to read as follows:

Sec. 26-1. - Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section:

... 

Broadband Executive Director shall mean the executive director of the telecommunication services division of the electric utility as appointed by the City Manager.

City Manager shall mean the City Manager of the City of Fort Collins or the designated representative of the City Manager, including but not limited to, the Broadband Executive Director with respect to telecommunication facilities and services.

Customer shall mean a user of one (1) or more City utilities, excluding telecommunication subscribers, in whose name an account for related charges or other related financial responsibilities is maintained by the Financial Officer.

Developer or subdivider shall mean any person who plats and improves undeveloped land for industrial, commercial, residential or mixed use thereby creating a demand for City utility services.

Director or Utilities Executive Director shall mean the executive director in charge of utilities services under § 2-504(b).

... 

Electric utility shall mean those departments of utility services responsible for the distribution and sale of electric service operated under the authority of the Utilities Executive Director pursuant to § 2-504(b).
Electric utility enterprise shall mean the electric utility and the telecommunication services division of the electric utility designated as a single enterprise of the City under § 26-392.

... 

Holiday shall mean the twenty-four (24) hour calendar day for each of the following: New Year's Day, Martin Luther King, Jr. Day, Memorial Day, July 4th, Labor Day, Veterans' Day, Thanksgiving Day, and Christmas.

Imminent hazard shall mean the existence of a public nuisance or any other condition or occurrence that, as determined by the Utilities Executive Director, or with respect to telecommunication facilities and services by the Broadband Executive Director, poses a threat to public health, safety and welfare. This includes, but is not limited to, a condition that:

(1) Poses a threat to any City utility system, including the telecommunication services system;

(2) Interferes with the provision of utility or telecommunication facilities and services pursuant to this Chapter; or

(3) Materially interferes with or impairs a utility's compliance with any environmental restrictions, regulations or permits applicable to the utility.

Mailing address shall mean the postal address or electronic mail address that has been provided by a customer or a telecommunication subscriber as shown in the records of the Financial Officer, and to which all utility bills and notices to said customer shall be sent.

Non-telecommunication services shall mean utility services provided by the water, wastewater, stormwater and electric utilities to a customer, excluding telecommunication services provided by the telecommunication services and facilities division to a subscriber.

... 

Payment assistance program shall mean a financial assistance program implemented by utility services to provide temporary financial assistance to qualified utility customers in paying utility service account balances, funded by donations from other City utility customers, unclaimed funds held by utility services forfeited to the City under Division 4 of Article IV of Chapter 23 of the Code, and such other funds as may be made available for such purposes from time to time. The payment assistance program shall not apply to telecommunication subscribers unless or until such time as a payment assistance program specifically for telecommunication subscribers is adopted by Council.
Stormwater utility shall mean those departments of utility services which are in charge of the stormwater facilities for the City.

Telecommunication subscriber shall mean a customer receiving telecommunication facilities and services from the telecommunication services division in whose name an account for related charges or other related financial responsibilities is maintained by the Financial Officer, which telecommunication facilities and services are subject to the provisions of Article VIII, of this Chapter 26.

Telecommunication facilities and services or telecommunication services shall have the meaning given to it in Section 7(f) of Charter Article XII.

Telecommunication services division or division shall mean that division of the electric utility responsible for providing telecommunication facilities and services operated under the authority of the City Manager pursuant to § 2-502(c).

Utility bill shall mean the bill or bills issued by the Financial Officer to a utility customer or a telecommunication subscriber for utility services furnished, charges assessed, adjusted or negotiated and payments due thereon, late payment fees, penalties and all other sums due to the City from said customer or telecommunication subscriber.

Utility services shall mean the service area created under § 2-504, including the electric utility and the telecommunication services division (which collectively comprise the electric utility enterprise) and the stormwater utility, wastewater utility and water utility (each of which are separate enterprises).

Wastewater utility shall mean those departments of utility services which are in charge of the collection and treatment of wastewater for the City.

Water utility shall mean those departments of utility services which are in charge of the production, distribution and sale of water for the City.

Section 4. That Section 26-5 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-5. - Notice requirements generally.

Unless otherwise specified, whenever notice is required to be given by the provisions of this Chapter, it shall be to the last known mailing address of the person to be notified at the mailing address as defined in § 26-1. Service of such notice shall be effective upon the date of mailing or transmission of email.
Section 5. That Article VI of Chapter 26 of the Code of the City of Fort Collins is hereby amended to read as follows:

ARTICLE VI.
ELECTRIC*

Sec. 26-391. Definitions; application.

(a) The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

*After-hours shall mean those hours between 4:00 p.m. and 8:00 a.m., Monday through Friday, all day Saturday, Sunday and holidays as defined in § 26-1.

(b) The provisions of this Article VI shall apply only to the distribution and sale of electric service operated under the authority of the Utilities Executive Director pursuant to § 2-504(b) and unless expressly stated herein or elsewhere in Chapter 26 or otherwise required by the context, the provisions of Article VIII related to the provisions of telecommunications facilities and services under the authority of the City Manager pursuant to § 2-504(c) shall not apply to the distribution and sale of electric service operated under the authority of the Utilities Executive Director pursuant to § 2-504(b) by the electric utility.

Sec. 26-392. Electric utility and telecommunication services division considered a single city-owned enterprise.

(a) The electric utility, including the telecommunication services division shall constitute a single enterprise of the City, to be known as the electric utility enterprise, which may, by ordinance of the City Council, acting ex officio as the board of such enterprise, issue its own revenue bonds or other obligations (including refunding securities) on behalf of the City, which revenue bonds or other obligations shall be payable solely from the net revenues (including special assessments) derived from the operation of the electric utility enterprise. Such revenue bonds or other obligations may be additionally secured by mortgages on or security interests in any real or personal property of the City used in the operation of the electric utility enterprise. The ordinance issuing any such revenue bonds or approving any such other obligations shall be adopted in the same manner and shall be subject to referendum to the same extent as ordinances of the City Council.

(b) Any pledge of net revenues derived from the operation of the electric utility enterprise shall be subject to limitations on future pledges thereof contained in any ordinance of the City Council authorizing the issuance of outstanding bonds or other obligations of the City payable from the same source or sources. All bonds or other obligations issued or approved by ordinance of the City Council payable from the net revenues derived from the operation of the electric utility enterprise and all revenue bonds or other obligations issued by ordinance of the board of
the electric utility enterprise payable solely from the net revenues derived from the operation of the electric utility enterprise shall be treated as having the same obligor and as being payable in whole or in part from the same source or sources.

(c) The electric utility enterprise shall also be authorized to have and exercise the following powers in furtherance of its purposes: to hold meetings concurrently with regular or special meetings of the City Council; to have and use a seal; to issue its revenue bonds for purposes related to the electric utility enterprise, including the electric utility system and the telecommunication system, in the manner in which City revenue bonds may be issued; to pledge any revenues of the electric utility enterprise, including the City's electric utility and the telecommunication services division to the payment of such revenue bonds and to pay such revenue bonds therefrom; to enter into contracts relating to the electric utility and the telecommunication services division in the manner in which City contracts may be entered into; to make representations, warranties and covenants relating to the electric utility and the telecommunication services division on behalf of the City; to exercise rights and privileges of the City relating to the electric utility and the telecommunication services division; and to bind the City to perform any obligation relating to the electric utility and the telecommunication services division other than any multiple-fiscal year direct or indirect debt or other financial obligation of the City without adequate present cash reserves pledged irrevocably and held for payments in all future years.

(d) All revenues and expenditures of the City or the enterprise relating to the electric utility and the telecommunication services division shall be considered revenues and expenditures of the electric utility enterprise and shall be accounted for in the light and power fund as more fully set forth in § 8-77.

(e) The electric utility shall annually operate and maintain the City street lighting system as an additional payment in lieu of franchise fees otherwise to be paid by the enterprise pursuant to § 23 of Charter Article V.

. . .

Sec. 26-398. [Reserved]

. . .

Section 6. That a new Article VIII entitled “Telecommunication Facilities and Services” is hereby added to Chapter 26 of the Code of the City of Fort Collins and reads in its as follows:

ARTICLE VIII

TELECOMMUNICATION FACILITIES AND SERVICES

Sec. 26-570. Purpose and establishment of telecommunication services division.
(a) The purposes of this Article are to:

(1) establish and define the telecommunication services division as a separate and distinct operational unit of the electric utility and a part of the electric utility enterprise in accordance with § 7(f) of Charter Article XII;

(2) set forth the respective responsibilities of telecommunication subscribers and telecommunication services division;

(3) promote the health, safety and welfare of the community in the use and provision of telecommunication facilities and services;

(4) provide for the equitable distribution among telecommunication subscribers of the costs of construction, expansion, replacement, maintenance and operation of telecommunication facilities and services; and

(5) provide for the safe and efficient distribution of telecommunication services to City residents to the full extent permitted by the City Charter.

(b) A telecommunication services division is hereby established as a part of the City’s electric utility and electric utility enterprise in accordance with § 7(f) of Charter Article XII, and as a separate and distinct operational unit of the electric utility and electric utility enterprise.

(c) The telecommunication services system shall consist of and include all facilities, equipment, wiring, optic fiber, and other property owned and installed or used by the telecommunication services division to provide telecommunications facilities and services, including without limitation, any broadband internet facilities using any technology having the capacity to transmit data to enable a customer to the service to originate and receive high-quality voice, data, graphics and video.

Sec. 26-571. Definitions; application

(a) The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

After-hours shall mean for the telecommunication services division, the hours and days included in the terms and conditions of service, rates fees and charges or rules and regulations adopted pursuant by the City Manager pursuant to this Article VIII.

Business telecommunication service shall mean any telecommunication facilities and services provided by the telecommunication services division that is not residential telecommunication service as defined in this Section. Business telecommunication service includes telecommunication facilities and services to small business and enterprises service.

Residential telecommunication services shall mean telecommunication facilities and services provided by the telecommunication services division to a dwelling or dwelling unit.
The provisions of this Article VIII shall apply only to the provision of telecommunication facilities and services under the authority of the City Manager pursuant to § 2-504(c) and unless expressly stated herein or elsewhere in Chapter 26 or otherwise required by the context, the provisions of Article VI related to the distribution and sale of electric service operated under the authority of the Utilities Executive Director pursuant to § 2-504(b) shall not apply to the provision of telecommunication facilities and services by the telecommunication services division.

Sec. 26-572. Telecommunication facilities and services.

(a) To the full extent authorized in Section § 7 of Charter Article XII, telecommunication services division of the electric utility is authorized to acquire, construct, provide, fund and contract as necessary to provide telecommunication facilities and services within and outside the City, and to take such other actions as may be necessary for the proper administration of said facilities and services. The City’s electric utility enterprise is also authorized to issue revenue and refunding securities and other debt obligations in the manner and to the full extent authorized in § 7(b) of Charter Article XII and in § 26-392 to fund the telecommunication services division’s provision of telecommunication facilities and services.

(b) The provisions of this § 26-572 shall supersede any contrary or conflicting provisions of the Code, including, without limitation, provisions of this Chapter 26 specifying the authority, funding, operation and supervision of the electric utility.

Sec. 26-573. Determination of rates, fees and charges; budget.

(a) Subject to the conditions set forth in this Section, the City Council has delegated to the City Manager, in whole, its authority to set rates, fees and charges for furnishing telecommunication facilities and services to telecommunication subscribers to the full extent permitted under § 7 of Charter Article XII.

(b) The City Manager shall, from time to time, set such rates, fees and charges for telecommunication facilities and services at a level at least sufficient to pay the cost of providing telecommunication facilities and services, to pay the cost of operation and maintenance of telecommunication services system in good repair and working order; to pay into the general fund in lieu of taxes such amount as may be established by Council by ordinance; to pay the principal of and interest on all bonds and other obligations issued or created for the purpose of providing telecommunication facilities and services and payable from the revenues of the City’s electric utility enterprise; to provide and maintain adequate working capital funds for the day-to-day business of the telecommunication services division; to provide and maintain an adequate fund for the replacement of depreciated and obsolete property; and for the extension, improvement, enlargement and betterment of the telecommunication services system. Such rates, fees, and charges may include a charge for damage to or failure to return telecommunication services equipment such as set top boxes, telephones, optical network terminals, modems or other moveable personal property leased or otherwise made available to
telecommunication subscribers.

(c) The City Manager shall post telecommunication rates, fees, and charges for residential telecommunication services determined in accordance with subsection (b) above to be charged from time to time on the telecommunication services division website. A copy of such rates, fees, and charges shall be filed with City Clerk and shall be available for public inspection. The City Manager shall also notify City Council in writing of such rates, fees, and charges no later than seven (7) days before such rates, fees and charges are posted on the telecommunication services division website. The schedule of rates, fees and charges adopted by the City Manager from time to time shall specify the effective date of such rates, fees and charges.

(d) The City Manager may adopt different rates, fees and charges for residential telecommunication services and business telecommunication services (including small business and enterprise services) and shall, in accordance with the processes and standards set forth in subsections (b) and (c) above, have the discretion to:

(1) determine standard rates, fees and charges for a defined set of small business services to be offered to business telecommunication subscribers from time to time; and/or

(2) determine rates, fees and charges for custom business telecommunication services, which shall be set forth in a services agreement, and to sign such services agreements on behalf of the telecommunications services division.

(e) Budgets for the telecommunication services division shall be prepared and adopted by the City Council at the same time as budgets for all utility services in accordance with § 5 of Charter Article XII.

Sec. 26-574. Terms and conditions of telecommunication facilities and services; rules and regulations.

(a) Telecommunication subscribers within and without the corporate limits of the City shall pay the rates, fees, and charges as adopted by the City Manager from time to time under § 26-573 for residential and business telecommunication services in accordance with such terms and conditions of service and subject to such general rules and regulations adopted by the City Manager from time to time. Terms and conditions of service and rules and regulations may differ for residential and business telecommunication services. Terms and conditions of service shall include an acceptable use policy for residential telecommunication services and network management practices followed by the telecommunication services division.

(b) The terms and conditions of service and general rules and regulations adopted by the City Manager from time to time shall be posted on the telecommunication services division website. A copy of such terms and conditions of service and general rules and regulations shall be filed with City Clerk which shall be available for public inspection. The terms and conditions of service and general rules and regulations adopted by the City Manager from time to time shall specify the effective date.
The applicable terms and conditions of service and general rules and regulations shall govern and control in all respects the rendering of telecommunication facilities and services and charging and collecting rates, fees and charges for the sale of such services. Such terms and conditions of service and general rules and regulation may be modified from time to time by the City Manager.

Sec. 26-575. Obtaining and terminating telecommunication facilities and services.

(a) By requesting and using telecommunication facilities and services, telecommunication subscribers accept and shall be subject to by agree to abide by the applicable terms and conditions of service and rules and regulations established pursuant to § 26-574.

(b) Requests to initiate residential telecommunication services must be made to the telecommunication services division through an electronic service request portal or by contacting the telecommunication services division and providing such information as may be required for the delivery of and payment for telecommunication facilities and services. Requests to initiate business telecommunication services may also be initiated through an electronic service portal request, by contacting the telecommunication services division, or as otherwise required by terms and conditions of service or the rules and regulations applicable to such business services.

(c) The telecommunication services division will make reasonable efforts to initiate service as soon as possible during normal business hours but makes no representation or warranty as to the division’s ability to meet a subscriber’s desired initiation date.

(d) Requests to terminate residential telecommunication services shall be made through an electronic service request portal and/or by contacting the telecommunication services division. Requests to terminate business telecommunication services may also be initiated through an electronic service portal request or by contacting the telecommunication services division, or as otherwise required by terms and conditions of service or the rules and regulations applicable to such business services. The telecommunication services division will use reasonable efforts to terminate service as soon as possible after receiving a termination request (during normal business hours) but makes no representation or warranty as to its ability to meet a subscriber’s desired termination date.

(e) A termination request given by a telecommunication subscriber does not relieve the subscriber from any minimum charges or payments required under applicable terms of service or rules and regulations.

(f) The telecommunication services division may refuse to provide service or install service equipment if the person or firm requesting the service or installation currently owes any delinquent amount for any utility or telecommunication services previously provided by utilities services, whether to the same or different premises, or if the person or firm requesting the service or installation owes a delinquent use charge, fee, deposit, assessment or any amount for any service equipment previously installed.
Sec. 26-576. Payment of rates, fees and charges; other conditions of telecommunication facilities and services.

(a) Rates, fees and charges due by residential and business telecommunication subscribers may be billed separately or incorporated into a single utility bill for all utility services. Except as expressly set forth to the contrary in this Article VIII or in Article XII, billing for telecommunication services shall be subject to the provisions of Article XII of this Chapter 26 regarding utility accounts, billing and collections.

(b) The telecommunication services division may terminate service, with or without notice and notwithstanding any provision to the contrary set forth in Article XI of this Chapter 26:

1. for failure to pay any amounts as and when they become due in accordance with the applicable terms and conditions of service; or

2. for failure to comply with all applicable terms and conditions of service, including the acceptable use policy, the general rules or regulations adopted by the City Manager or the provisions of this Article.

(c) It shall be unlawful for any person to obtain telecommunication services and facilities from the telecommunication services division except in accordance with the terms of this Article, or to re-sell services provided by telecommunication services division unless permitted by contract or terms and conditions of service.

(d) The telecommunication services division will use reasonable diligence at all times to provide continuous service at the speeds and specifications and in accordance with network management practices set forth in the applicable terms and conditions of service from time to time, but cannot guarantee constant or uninterrupted service and shall not be liable to the telecommunication subscriber for complete or partial failure or interruption of service, fluctuations in speed or capacity, or any direct, indirect or consequential loss, cost or damages of any nature whatsoever. Telecommunication subscribers are responsible for taking whatever precautions they deem appropriate to protect against damage or loss due to interruptions of service, fluctuations of speed or service or operation in accordance with the adopted network management practices.

Sec. 26-577. Inspection; right of access.

(a) The City Manager or his or her designee, including the Broadband Executive Director, may inspect any portion of the telecommunication services system and any equipment and facilities of any telecommunication subscriber at any reasonable time to ascertain compliance with applicable ordinances, terms and conditions of service and rules and regulations. Persons or occupants of premises receiving telecommunication facilities and services shall allow telecommunication services personnel ready access to the premises, including the interior thereof, for the purposes of such inspection and performance of any of their duties and any such persons or occupants shall, by granting such access, represent and warrant to the City and the telecommunication services division that they have the legal right and authority
to grant that access. The telecommunication services division shall have the right to set up on the subscriber’s property such devices as are necessary to conduct inspection, compliance-monitoring and/or maintenance operations. Where a telecommunication subscriber has security measures in place that would require proper identification and clearance before entry into a served premises, the subscriber shall make the necessary security arrangements so that, upon presentation of suitable identification, telecommunication utility personnel will be permitted to enter without delay for the purposes of performing specific responsibilities. While performing necessary work on private property, telecommunication services division personnel shall observe all security and safety rules applicable to the premises as established by the telecommunication subscriber.

(b) If a duly authorized representative of the telecommunication services division is refused admission to a subscriber’s premises, or any City owned facilities, including communications modules and equipment, the City Manager or his or her designee, including the Broadband Director, may discontinue telecommunication services until telecommunication services division representatives are afforded access to the premises and the telecommunication facilities and equipment located thereon to accomplish inspection and/or monitoring.

Sec. 26-578. Property owner’s consent for service; indemnity to City.

(a) Telecommunication facilities and services provided pursuant to the terms of this Article shall be deemed to be provided at the request and with the consent of the owner of the real property to which service is provided, unless and until telecommunication services division receives written notice of said owner’s withdrawal of such consent. Any persons or occupants of that real property shall, by granting access, represent and warrant to the City and the telecommunication services division that they have the legal right and authority to grant such access.

(b) The City shall not be responsible for any injury to persons or damage to property occasioned or caused by the acts, omissions or negligence of the telecommunication subscriber or of any of the subscriber’s agents, employees or licensees, in installing, maintaining, operating or using any of the telecommunication subscriber’s lines, wire, equipment, machinery or apparatus, and for injury and damage caused by defects in the same.

(c) The telecommunication subscriber shall hold the City harmless and indemnify it against any and all claims and liability for injury to persons or damage to property when such injury or damage results from or is occasioned by the telecommunication facilities and equipment located on the subscriber’s side of the point of delivery unless caused by the acts, omissions, or negligence of the City's agents or employees.

(d) The telecommunication subscriber shall pay all costs that may be incurred by the City in enforcing this indemnity.

Sec. 26-579. Violations and penalties.
(a) It is unlawful for any person to tamper with, molest or damage in any manner any property, equipment, appliance or appurtenance constituting a part of telecommunication services system or for any person to trespass upon the property of the City or interfere in any manner with the operations of the telecommunication services system. Any expense caused to the City for the repair or replacement of damaged, stolen, tampered with or misused telecommunication facilities or equipment shall be charged against and collected from the person who caused the expense.

(b) Any person receiving services from the telecommunication services division agrees to and shall abide by all provisions of this Code and all the effective terms and conditions of service, including any acceptable use policy, general rules and regulations and policies and procedures adopted pursuant to § 26-574.

(c) The failure of any telecommunication subscriber to comply with any provision of this Code or any rule, regulation or policy issued thereunder (including terms and conditions of service, acceptable use policy and general rules and regulations and policies and procedures of the City, as they may exist from time to time) other than a failure to pay for telecommunication services provided to the subscriber, is a violation of this Code and, upon conviction, is punishable as provided in § 1-15. The violator may also be subject to any other penalties or liability provided by this Chapter, including the disconnection or discontinuance of any utility services until compliance is achieved.

Sec. 26-580. Records; privacy.

(a) Records of the telecommunication services division and its telecommunication subscribers shall be subject to the provisions of § 26-23 and § 26-26 relating to utility records, except as expressly set forth in this Article.

(b) Notwithstanding the provisions of subsection (a) above, to the extent that the provisions of § 26-23 or § 26-26 conflict with state or federal law applicable to telecommunication facilities and services, such federal or state law shall apply.

(c) Notwithstanding the provisions of subsection (a) above, § 26-26(2) shall not apply to the records of the telecommunication services division or its telecommunication subscribers.


(a) Any telecommunication subscriber who believes that he or she has been aggrieved by a final determination or decision regarding the application of the requirements of this Article VIII or any terms and conditions of service or rules or regulations authorized under this Article may petition the City Manager for a hearing, provided that the aggrieved party makes written application for such hearing within seven (7) days of the date of such final determination or decision. The City Manager shall appoint a hearing officer if the complaint involves a final determination or decision by the City Manager. If the complaint involves a final determination or decision by the Broadband Executive Director, the City Manager may either conduct the hearing or appoint a hearing officer, in his or her discretion. If a timely request for hearing is
made, a hearing concerning the propriety of the final determination or decision shall be granted to the aggrieved party and, after notice to the aggrieved party, the hearing shall be held within a reasonable time after the filing of the request for hearing. At the hearing, the appellant and the City may be represented by an attorney, may present evidence and may cross-examine witnesses. A verbatim transcript of the hearing shall be made.

(b) The decision of the hearing officer or City Manager shall be based upon competent evidence presented at the hearing and shall be a final decision.

Sec. 26-582. Net neutrality; network management.

(a) The telecommunication services division will treat all data on the internet equally, and not discriminate or charge differently by individual user, content, website, platform, application, type of attached equipment, or method of communication and will not intentionally block, slow down or charge money for specific websites and online content.

(b) The terms and conditions of service shall include the telecommunication services division’s network management practices as promulgated by the City Manager from time to time, which set forth the practices and policies used by the telecommunication services division to manage and transmit network traffic. The telecommunication services division shall comply with any FCC standards requiring notice of such network management practices to telecommunications subscribers.

Sec. 26-583. PILOT; franchise; revenues.

(a) In addition to the rates, fees and charges for telecommunication facilities and services set forth in § 26-573 above, the telecommunication services division shall charge telecommunication subscribers for payments in lieu of taxes (PILOT). The PILOT charge shall be six and zero-tenths (6.0) percent of the monthly rates, fees and charges billed for all telecommunication services pursuant to said § 26-575 inclusive of the franchise fees paid to the City for video sales pursuant to subsection (b) below, which amounts shall be transferred to the City general fund. All franchise fees paid under subsection (b)(2) below shall be credited against the amount of the PILOT. The telecommunication services division may elect to charge telecommunication subscribers directly for the PILOT.

(b) The telecommunication services division is hereby granted a franchise to construct, install and maintain telecommunication facilities for the purpose of providing telecommunication facilities and services over, under, across and on City rights-of-way and electric utility easements, provided that:

(1) The franchise granted hereunder is subject to all requirements of the Charter;

(2) The telecommunication services division shall pay to the City a franchise fee in an amount equal to five (5) percent of its gross annual revenues from video sales components of telecommunications facilities and services; and
(3) The telecommunication services division shall pay and provide to the City, and may charge and collect from telecommunication subscribers, such additional fees as may be required by the City or other multi-channel video programming service providers under a franchise agreement from time to time.

(4) The City Manager may require that the telecommunication services division provide such other benefits and payments to the City from time to time as may be required of other multi-channel video programming service providers under a franchise agreement in order to address competitive equity or similar provisions in such a franchise agreement.

(c) Revenues and expenses of the telecommunication services division shall be accounted for as a component of the light and power fund, in accordance with §28 of Charter Article V.

Section 7. That Article XII of Chapter 26 of the Code of the City of Fort Collins is hereby amended with the amended portions to read as follows:

Sec. 26-711. Definitions; application.

(a) The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in § 26-1 and this Section:

Financial Officer shall mean the head of the Financial Administration Unit or the designated representative of the Financial Officer.

(b) The provisions of this Article XII shall apply to customers of the electric, stormwater, water and wastewater utilities (defined as “customers” in § 26-1 to exclude “telecommunication subscribers”) and to customers of the telecommunication services division (defined as “telecommunication subscribers” in § 26-1) unless expressly stated herein or otherwise required by the context of the provisions of this Article XII.

Sec. 26-712. Utility bill and account charges authorized; procedures.

(a) The fees and charges established by this Code for services from the electric, stormwater, water and wastewater utilities may be billed together in one (1) utility bill with such fees and charges separately itemized and shall be billed to utility users not less than once each month. Service fees and charges for telecommunication facilities and services may be billed separately or included on a combined utility bill with other utility services, and such amounts shall be itemized separately and be payable in addition to all combined utility fees and charges. The Financial Officer shall collect, receive and disburse all such fees and charges for the separate utility funds in accordance with the Charter and related provisions of this Code.

(b) The following account and miscellaneous fees and charges shall apply to all City utility customers receiving electric, stormwater, water and wastewater service (but not telecommunication facilities and services) pursuant to the terms of Chapter 26, whether within or outside of the corporate limits of the City, except as otherwise expressly stated:
Other miscellaneous charges for electric, stormwater, water and wastewater service will be based on direct cost plus fifteen (15) percent indirect costs.

(c) All utility services are presumed to be furnished and supplied to the real property served without regard to the actual user or person billed for the services, except for telecommunication utility services. Therefore, all utility fees and charges other than fees and charges for telecommunication facilities and services are chargeable against and payable by the owner of such real property, as well as the person contracting for the utility service.

Sec. 26-713. - Due date; delinquency.

(a) All fees and charges for the use of utility services are due and payable in full as of the due date specified on the utility bill and become delinquent after that date. Acceptance of partial payment will not be deemed a waiver of the City's right to collect any remaining balance or to exercise any of its authorized remedies for nonpayment. Prior to service disconnection, customers may make arrangements for payment with the approval of the Utilities Executive Director, and as otherwise provided in the administrative rules and regulations adopted by the Financial Officer pursuant to § 26-720 and/or the City Manager pursuant to § 2-504 for all telecommunication facilities and services.

(b) All charges and fees on utility bills shall be effective as of the date mailed to the last known mailing address or sent electronically to the current electronic mail address of the customer or telecommunications subscriber.

(c) In case the user of any non-telecommunication services utility fails to pay a utility bill by the due date or fails to pay any other utility fee, charge, deposit or assessment prescribed by this Code, the City may disconnect either or both of the user's water and electric services to the property and has the right to enter upon private property to accomplish this purpose.

(d) Before discontinuing a utility service for nonpayment of any utility use charge, fee, deposit or assessment prescribed by this Code for electric, water, or wastewater services, the City shall give written notice (transmitted physically or electronically) to the user of the delinquency and the intent to terminate service, unless notice has been waived in writing by prior agreement concerning payment of the delinquent amounts. If the electric, water, or wastewater user files a written request with the utility prior to the termination date set forth in the notice, the utility shall schedule a protest hearing on any disputed matter relative to the proposed discontinuance of utility service. The user may appeal an unfavorable decision as provided in this Chapter.

(e) The terminated utility service will be restored after the customer or subscriber has paid in full all delinquent fees and charges, plus collection costs, together with the expenses of discontinuing and restoring service, including costs of after-hours labor and materials and specified fees, as provided in this Article.
(f) Each utility and the telecommunication services division may refuse to provide service or install service equipment if the person or firm requesting the service or installation of service equipment currently owes a delinquent amount for any utility services previously provided, whether to the same or different premises or if the person or firm requesting the service or installation of service equipment owes a delinquent utility use charge, fee, deposit, assessment or any amount for utility service equipment previously installed.

(g) If any utility refuses to provide service or install service equipment as specified herein, the person or firm requesting such service shall be provided a written refusal of service by the utilities as to the reason for the refusal and the delinquent amount that must be paid before the utilities shall fulfill the request.

(h) Notwithstanding (f) above, if any person or firm disputes the amount owed, such person or firm may receive service as requested after depositing with the utilities the full amount requested, to be held by the utilities, for a period not to exceed thirty (30) days, pending final determination by the Utilities Executive Director or City Manager of the amount owed by the requesting person or firm. Such person or firm shall submit, within fifteen (15) days after the date on the refusal of service notice, a written statement as to the disputed amount (refusal of service reply), and the Utilities Executive Director or City Manager shall make his or her final determination within fifteen (15) days after receiving such refusal of service reply. The City Manager may adopt administrative policies authorizing waiver or adjustment of disputed fees for telecommunication facilities and services, provided the City Manager determines and finds that such waiver or adjustment does not prevent the telecommunication services division from collecting the cost to deliver telecommunication services.

Sec. 26-714. - Contributions may be passed on to consumer.

A contribution to the general fund by the City's utilities pursuant to the Charter in lieu of taxes and franchise fees that would be paid by a private utility may be passed on to the user of any utility or telecommunications facilities and services. Such contributions may include required franchise payments for video program sales and delivery services.

Sec. 26-716. - Budget billing.

Single-family residential users meeting the criteria of the budget billing program may request that the Financial Officer estimate their average monthly non-telecommunication services utility charges based upon the customer's historic use of utility services and bill the customer accordingly. The monthly budget billing amount may be adjusted by the Financial Officer to reflect changes in utility rates or changes in customer usage. The Financial Officer may discontinue budget billing for any customer upon a determination that customer usage patterns or customer payment history for a particular customer indicates that the use of budget billing is not practicable.
Sec. 26-717. - Rebates.

Eligible low-income elderly and disabled residents of the City may obtain a rebate on account of their utility bills for electric, stormwater, water and wastewater service (but not telecommunication services) as provided in § 26-611, et seq.

Sec. 26-718. - Unpaid charges a lien.

(a) Any non-telecommunication services charge imposed by under this Chapter for utility services, together with interest and the collection costs, if not paid by the due date specified on the utility bill, constitute a perpetual lien on the property to which service was delivered.

... 

Sec. 26-719. - Service initiation and termination at user's request.

(a) Requests to initiate any non-telecommunication services must be made to the utilities at least one (1) business day prior to the customer's desired initiation date, and additional notice may be required to ensure services are available. Requests are managed as soon as possible during normal business hours and may incur additional fees and charges, as set forth in § 26-712 of this Code.

...

Sec. 26-720. - Administrative rules and regulations.

(a) The Financial Officer shall formulate and promulgate rules and regulations for the administration of this Article, not inconsistent with the provisions of this Article with respect to the billing and collection of utility fees and charges, credit and lending standards and rates and administrative practices for utility loan programs, which shall include, but not be limited to, efficiency-related conditions on loans for renewable energy development; extension of utility loans of up to twenty (20) years in total term length, at the option of the borrower, not to exceed the useful life of the funded improvements; and other matters relating to the administration of customer and subscriber accounts. Said rules and regulations may regulate without limitation, the forms and procedures for giving notice to customers and subscribers; policies for adjusting billed amounts as necessary to correct errors or for administrative efficiency or to achieve equity; procedures for appeals; and procedures for the documentation of liens. Any rules or regulations promulgated by the Financial Officer hereunder shall be effective upon the Financial Officer's filing of the same with the City Clerk. The City Manager may further formulate and promulgate rules and regulations that differ from those adopted by the Financial Officer for the administration of telecommunication facilities and services, which shall be effective upon the filing of the same with the City Clerk.

...
Sec. 26-722. Utility payment assistance program; purpose; funding; qualifications for assistance.

(a) The Utility Payment Assistance Program, is hereby formally established for the purpose of providing temporary financial assistance to qualified utility customers in paying past-due non-telecommunication services bills. For purposes of this Section, "past-due" shall mean a utility bill that has not been paid by the customer within twenty-three (23) days after the printing of such utility bill.

. . .

(c) Balances in the Utilities Payment Assistance Program account may be used only to pay all or a portion of the monthly non-telecommunication services bill of qualified electric and water utility customers, and only consistent with the following conditions:

. . .

Sec. 26-723. - Leased property owners.

(a) Owners of rental property served by City utilities are required to select the preferred manner for administering utility services to the rental property during tenant vacancies.

(b) Service options include:

(1) Leave utilities on: This option automatically transfers account responsibility into the property owner's name when a tenant discontinues service. A fee under Section 26-712 of this Code will be assessed to the property owner each time the services revert to the property owner. This option will not prevent discontinuance of service due to any delinquency. This option is not available with respect to telecommunication facilities and services, which are billed to and the responsibility of the telecommunication subscriber and not the property owner if different than the subscriber.

(2) Turn utilities off: This option discontinues metered utilities at the property when a tenant discontinues service. A service connection fee under § 26-712 of this Code will be assessed to the new service address account when services are reinstated. This option is automatically applied to telecommunication facilities and services accounts.

Sec. 26-724. - Residential income-qualified assistance program.

(a) Purpose. To benefit ratepayers of the affected Utilities by enabling residents with household incomes below a certain level to commit a reasonable level of household income to monthly non-telecommunication services bills and in doing so, achieve greater conservation and efficiency improvements and consumption behaviors in qualified program households.

. . .
Introduced, considered favorably on first reading, and ordered published this 16th day of July, A.D. 2019, and to be presented for final passage on the 20th day of August, A.D. 2019.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 20th day of August, A.D. 2019.

Mayor

ATTEST:

City Clerk
ORDINANCE NO. 091, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE PURCHASING AGENT TO ENTER INTO LICENSING
CONTRACTS WITH A TERM LENGTH IN EXCESS OF FIVE YEARS FOR THE
ACQUISITION OF VIDEO CONTENT RIGHTS IN FURTHERANCE OF FORT COLLINS
CONNEXION’S DELIVERY OF TELECOMMUNICATION SERVICES

WHEREAS, City Council, acting ex officio as the Board of the Electric Utility Enterprise (the “Enterprise”), will on this date consider Ordinance No. 006 (the “Enterprise Ordinance”) to approve long-term (up to 7 years) licensing contracts for rights to deliver cable or other subscriber video content, programming, and streaming services from local channels, individual channels and channel families, and video content aggregators, all as set forth therein (the “Authorized Obligations”) and authorize the City’s Purchasing Agent to sign the Authorized Obligations; and

WHEREAS, the Enterprise Ordinance is necessary as a result of the unique and limited nature of the video content licensing market, which involves proprietary content, restrictions imposed by video content developers, and standardized licensing periods and contract provisions, requiring unique contracting terms to obtain necessary video content for the Telecommunication Facilities and Services division (known as Fort Collins Connexion) of the City’s Electric Utility and a part of the Enterprise, to provide video services to subscribers; and

WHEREAS, City Code Section 8-186(a) states that no contract for services or professional services, including all renewals, shall be made by the City for a period longer than five years, unless authorized by ordinance, which ordinance shall not be passed as an emergency ordinance; and

WHEREAS, it is in the best interest of the City and the citizens of Fort Collins, including ratepayers of the Enterprise, that the Purchasing Agent be authorized to enter into Authorized Obligations for terms in excess of five years to enable Connexion to secure the video content necessary to meet market demand for and contribute to successful deliver of its telecommunication services.

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 Purchasing Agent is hereby authorized to enter into the Authorized Obligations as defined in the Enterprise Ordinance for rights to deliver cable or other subscriber video content, programming, and streaming services from local channels, individual channels and channel families, and video content aggregators for terms not to exceed 7 years.

Section 3. That the authorization set forth in this Ordinance is expressly conditioned upon approval of the Enterprise Ordinance by the Board of the Electric Utility Enterprise.
Introduced, considered favorably on first reading, and ordered published this 2nd day of July, A.D. 2019, and to be presented for final passage on the 16th day of July, A.D. 2019.

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Mayor

ATTEST:

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City Clerk

Passed and adopted on final reading on the 16th day of July, A.D. 2019.

_______________________________
Mayor

ATTEST:

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City Clerk
AGENDA ITEM SUMMARY
City Council
July 16, 2019

STAFF

Erik Martin, Police Financial Analyst II
Kevin Cronin, Police Assistant Chief
Adam McCambridge, Police Lieutenant
Mark Leinweber, Senior Project Manager
Bronwyn Scurlock, Legal

SUBJECT

First Reading of Ordinance No. 092, 2019, Appropriating Prior Year Reserves in the General Fund for the
Police Interview Room Camera Replacement.

EXECUTIVE SUMMARY

The purpose of this item is to appropriate funds from the Fort Collins Police Services Asset Forfeiture federal
and state accounts (in the amount of $101,000) to partially fund the purchase of a replacement interview room
recording system at the Fort Collins Police Services building, 2221 South Timberline Road. These funds will
be used in conjunction with other identified funds from core budget and contract savings.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The current Arbitrator interview and recording system for the criminal and internal affairs interview rooms
suffered two significant failures. The system is many years old. In 2018, Police Services requested funding for
a replacement system through the 2019/2020 Budgeting for Outcomes (BFO) process. The intent was to
replace this critical system before it failed and/or parts were unavailable. The BFO offer was pursued due to
2018 budget constraints and an inability to gain fast approval to utilize seizure funds. FCPS personnel believed
the current configuration could continue on break/fix plans if the 2019/2020 funding was allocated to other high
priority needs. Unfortunately, the offer was not accepted, and was not pursued more vigorously due to the
break/fix belief.

Since the offer was written, Police Services located and purchased the last known server parts during a
national search. These units can be used if the system goes down completely again, as it did in 2018.
Unfortunately, as is the case with any aging and frequently used technology, failure can be unpredictable and
cascading.

As a result of these unforeseen and unpredictable failures, the current system is no longer viewed as reliable.
The recording of investigative and other law enforcement related interviews is a fundamental need and
expectation of professional law enforcement practice. The system that is responsible for capturing the
interview must be 100% reliable to ensure accurate, complete and reliable evidence collection.
CITY FINANCIAL IMPACTS

The estimated cost to replace the system is $135,000. This will be partly funded from repurposing up to $20,000 from funds allocated for the costs associated with fixing the current system and $18,200 from savings from a canceled Motorola contract in Police Information Services 2019 budget. The remaining amount is being requested from an appropriation of $86,000 from the Federal Asset Forfeiture reserve and $15,000 of State Asset Forfeiture reserve.

The federal funds are administered by the Department of Justice to supplement and enhance agency resources for a restricted range of law enforcement and public safety uses. The State Asset Forfeiture program mirrors much of the federal program with a limited range of permissible law enforcement and public safety uses.

The Federal and State Seizure funds are from a distribution from the Northern Colorado Drug Task Force in 2012 and prior. The funds were acquired through the federal and state civil asset forfeiture programs. In 2012 and before, the Executive Officers Board decided to make a distribution to the City of Fort Collins from the funds that the NCDTF held.

The appropriation of this budget will draw these two reserve balances to zero, which aligns with the intent of these funds.

It is anticipated that the annual maintenance for a new system will either remain the same, if not decrease, and will not increase any ongoing costs.
ORDINANCE NO. 092, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES IN THE
GENERAL FUND FOR THE POLICE INTERVIEW
ROOM CAMERA REPLACEMENT

WHEREAS, Fort Collins Police Services (“FCPS”) Arbitrator interview and recording system for the criminal and internal affairs interview rooms suffered two significant failures resulting in an unpredictable and unreliable system; and

WHEREAS, the recording of investigative and other law enforcement related interviews is a fundamental need and expectation of professional law enforcement practices; and

WHEREAS, the system that is responsible for capturing the interview must be one-hundred percent predictable and reliable to ensure accurate and complete evidence collection for law enforcement purposes; and

WHEREAS, the estimated cost to replace the system is $135,000; and

WHEREAS, this cost will be partly funded from repurposing up to $20,000 from funds previously allocated for, but not spent on, fixing the past failure on the current system and $18,200 from savings from a cancelled Motorola contract in the FCPS Information Services 2019 budget; and

WHEREAS, the remaining cost would be covered by this requested appropriation of $86,000 from the Federal Asset Forfeiture reserve and $15,000 from the State Asset Forfeiture reserve; and

WHEREAS, this appropriation will benefit the public health, safety and welfare of the citizens of Fort Collins by ensuring a reliable and accurate system that works to guarantee accurate and complete evidence collection for law enforcement purposes; 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 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.

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 General Fund, Federal Asset Forfeiture account the sum of EIGHTY-SIX THOUSAND DOLLARS ($86,000) for expenditure in the General Fund for the Police Interview Room Camera Replacement.

Section 3. That there is hereby appropriated from prior year reserves in the General Fund, State Asset Forfeiture account the sum of FIFTEEN THOUSAND DOLLARS ($15,000) for expenditure in the General Fund for the Police Interview Room Camera Replacement.

Introduced, considered favorably on first reading, and ordered published this 16th day of July, A.D. 2019, and to be presented for final passage on the 20th day of August, A.D. 2019.

__________________________________
Mayor

ATTEST:

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City Clerk

Passed and adopted on final reading on the 20th day of August, A.D. 2019.

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Mayor

ATTEST:

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City Clerk
SUBJECT

Items Relating to 2018 International Code Amendments.

EXECUTIVE SUMMARY

A. First Reading of Ordinance No. 094, 2019, Amending Chapter 5, Article II, Division 2 of the Code of the City of Fort Collins for the Purpose of Enacting Local Amendments to the 2018 International Building Code.

B. First Reading of Ordinance No. 095, 2019, Amending Chapter 5, Article II, Division 2 of the Code of the City of Fort Collins for the Purpose of Enacting Local Amendments to the 2018 International Residential Code.

The purpose of this item is to revise two Code requirements first proposed in both the International Building Code (the “IBC”) and the International Residential Code (the “IRC”). The first proposed change relates to an asphalt shingle roof covering requirement exemption where compliance is difficult given certain circumstances.

The second proposed change relates to an electric vehicle charging (EV ready) conduit requirement that was submitted to be included in the 2018 codes as adopted in January but was missed and not included in the final ordinance version as intended. Adopting these two Ordinances will make the above changes in both the IRC, which applies to residential property, and the IBC, which applies to commercial property.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinances on First Reading.

BACKGROUND / DISCUSSION

In January 2019, Council added a new local amendment to the 2018 IRC and IBC, that requires all buildings installing asphalt shingles as roof covering to use Class 4 impact-resistant shingles. Class 4 shingles are tested to withstand hail impacts up to 2 inches in size. Since passage of this local amendment, staff has determined that not all shingle color choices are available in the Class 4 product, especially colors not commonly used, such as red. The proposed local amendments to the IRC and the IBC allow the Chief Building Official to grant a variance under one of two circumstances:

- when existing asphalt shingles are less than Class 4 impact-resistant and the owner wishes to replace existing asphalt shingles with shingles a similar color or style and there are no Class 4 impact-resistant shingles in the similar color or style.
- when the owner is repairing or adding to existing asphalt shingles that are less than Class 4 impact-resistant and the owner wants to use the same or similar materials as the current existing asphalt shingles.
Agenda Item 7

The second proposed local amendment to the IBC requires electric vehicle infrastructure (EV ready) conduit be installed to parking spaces of new buildings. EV ready provides the empty electrical conduit, from building electrical room to the parking spaces for the future install of charging stations for electric vehicles. The first draft of this local amendment proposed 5% of parking spaces provide EV ready conduit but during public review and outreach it was recommended this be changed to 10% of parking spaces to match what other communities are requiring. In addition, it was decided this should apply to hotel/motel (R-1) and multi-family (R-2) occupancies but not all other commercial occupancies. This second proposed change was inadvertently left out of the 2018 IBC ordinance that was passed in January.

The second IRC item for EV ready requires the conduit be larger than previously required and provide space for 50-amp equipment instead of 30-amp which is more appropriate for a type II charger commonly installed for today’s electric cars.

BOARD / COMMISSION RECOMMENDATION

The roof shingle item is a concern submitted by an affected citizen and has not been presented to any board or commission.

The EV ready requirement in both Codes was reviewed and presented to all the boards and commissions during the code adoption process in 2018. This revision was approved by all boards, including the Building Review Board and the Building Code Adoption Review Committee.
ORDINANCE NO. 094, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 5, ARTICLE II, DIVISION 2, OF THE
CODE OF THE CITY OF FORT COLLINS FOR THE PURPOSE OF
ENACTING LOCAL AMENDMENTS TO THE 2018 INTERNATIONAL BUILDING CODE

WHEREAS, since 1924, the City has reviewed, amended and adopted the latest
nationally recognized building standards available for the times; and

WHEREAS, on January 2, 2019, the City adopted Ordinance No. 149, 2018, which
adopted the 2018 International Building Code, with amendments (the “2018 IBC”); and

WHEREAS, one of the amendments to the 2018 IBC was adding section 1504.1.2
requiring asphalt shingles to be Class 4 impact resistant; and

WHEREAS, this amendment served the legitimate government interest of increasing
durability of asphalt shingles within the City and minimized construction waste caused by
damaged asphalt shingles that are not Class 4 impact resistant; and

WHEREAS, since the passage of the 2018 IBC, the Chief Building Official has
experienced situations where an exemption to section 1504.1.2 may have been appropriate to
permit a waiver of the requirement for the class 4 impact-resistant shingles, however, the 2018
IBC does not allow the Chief Building Official to grant exceptions for the requirements of
section 1504.1.2; and

WHEREAS, the City now wishes to further amend section 1504.1.2 of the 2018 IBC to
allow for exceptions from the requirements of section 1504.1.2 for class 4 impact-resistant
shingles, when appropriate; and

WHEREAS, the City also wishes to amend IBC Section 3605 to be consistent with
recommendations for electric vehicle ready parking that were proposed during the public review
and outreach for the 2018 IBC, which recommendations were inadvertently left out of Ordinance
No. 149, 2018; and

WHEREAS, the City Council has determined that it is in the best interest of the health,
safety and welfare of the City and its citizens to amend the 2018 IBC consistent with the 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 5-27 subsection (64) 1504.1.2 Impact resistance of asphalt
shingles of the Code of the City of Fort Collins is hereby amended to read as follows:
1504.1.2 Impact resistance of asphalt shingles. Asphalt shingles shall be Class 4 impact resistant and be tested in accordance with UL 2218 and installed in accordance with the manufacturer’s installation instructions.

**Exception #1:** When existing asphalt shingles are less than class 4 impact resistant, and the owner wishes to replace the existing asphalt shingles with tiles of a similar color or style, and there are no class 4 impact resistance shingles available that are similar color or style of the existing asphalt shingles, the Building Official may approve alternate materials that are less than class 4 impact resistant, however, the Building Official will require the highest class of impact resistance that is available that matches the color and style of the existing asphalt shingles. If no such impact resistant materials are available, the Building Official may approve non-impact resistant materials if the alternate materials meet all other applicable requirements of this Code.

**Exception #2:** When the owner is repairing or adding to existing asphalt singles that are less than class 4 impact resistant, the owner may use the same or similar materials as the current existing asphalt shingles, even if that same or similar material is not impact resistant.

Section 3. That Section 5-27 subsection (78) Section 3605 Electrical Vehicle Ready of the Code of the City of Fort Collins is hereby amended to read as follows:

**Section 3605 Electrical Vehicle Ready.** All new buildings that provide on-site parking, 5 percent R-1 & R-2 occupancy buildings that provide on-site parking, 10 percent of total parking spaces shall provide an empty conduit of 3/4 inch minimum, installed from the building electrical panel board to a junction box or capped pipe in a readily accessible location near/at the parking space, capable of supporting a 50 ampere 208/220 volt outlet.

Introduced, considered favorably on first reading, and ordered published this 16th day of July, A.D. 2019, and to be presented for final passage on the 20th day of August, A.D. 2019.

__________________________________
Mayor

ATTEST:

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City Clerk
Passed and adopted on final reading on the 20th day of August, A.D. 2019.

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Mayor

ATTEST:

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City Clerk
ORDINANCE NO. 095, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 5, ARTICLE II, DIVISION 2, OF THE
CODE OF THE CITY OF FORT COLLINS FOR THE PURPOSE
OF ENACTING LOCAL AMENDMENTS TO THE
2018 INTERNATIONAL RESIDENTIAL CODE

WHEREAS, since 1924, the City has reviewed, amended and adopted the latest
nationally recognized building standards available for the times; and

WHEREAS, on January 2, 2019, the City adopted Ordinance No. 151, 2018, which
adopted the 2018 International Residential Code, with amendments (the “2018 IRC”); and

WHEREAS, one of the amendments to the 2018 IRC was adding section R905.2.4.2
requiring asphalt shingles to be Class 4 impact resistant; and

WHEREAS, this amendment served the legitimate government interest of increasing
durability of asphalt shingles within the City and minimized construction waste caused by
damaged asphalt shingles that are not Class 4 impact resistant; and

WHEREAS, since the passage of the 2018 IBC, the Chief Building Official has
experienced situations where an exemption to section R905.2.4.2 may have been appropriate to
permit a waiver of the requirement for class 4 impact-resistant shingles, however, the 2018 IRC
does not allow the Chief Building Official to grant exceptions for the requirements of section
R905.2.4.2; and

WHEREAS, the City now wishes to further amend section R905.2.4.2 of the 2018 IRC to
allow for exceptions from the requirements of section 905.2.4.2, when appropriate; and

WHEREAS, the City also wishes to amend IRC Section E3401.5 to be consistent with
recommendations for electrical vehicle ready parking that were proposed during the public
review and outreach for the 2018 IRC, which recommendations were inadvertently left out of
Ordinance No. 151, 2018; and

WHEREAS, the City Council has determined that it is in the best interest of the health,
safety and welfare of the City and its citizens to amend the 2018 IRC consistent with the 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 5-30 subsection (54) R905.2.4.2 Impact resistance of
asphalt shingles of the Code of the City of Fort Collins is hereby amended to read as follows:
R905.2.4.2 Impact resistance of asphalt shingles. Asphalt shingles shall be Class 4 impact resistant and be tested in accordance with UL 2218 and installed in accordance with the manufacturer’s installation instructions.

**Exception #1:** When existing asphalt shingles are less than class 4 impact resistant, and the owner wishes to replace the existing asphalt shingles with tiles of a similar color or style, and there are no class 4 impact resistance shingles available that are similar color or style of the existing asphalt shingles, the Building Official may approve alternate materials that are less than class 4 impact resistant, however, the Building Official will require the highest class of impact resistance that is available that matches the color and style of the existing asphalt shingles. If no such impact resistant materials are available, the Building Official may approve non-impact resistant materials if the alternate materials meet all other applicable requirements of this Code.

**Exception #2:** When the owner is repairing or adding to existing asphalt singles that are less than class 4 impact resistant, the owner may use the same or similar materials as the current existing asphalt shingles, even if that same or similar material is not impact resistant.

Section 3. That Section 5-30 subsection (93) E3401.5 Electrical Vehicle Ready of the Code of the City of Fort Collins is hereby amended to read as follows:

**Section E3401.5 Electrical Vehicle Ready.** All new single family dwellings with an attached garage or carport shall be provided with an empty conduit of 1/2 inch (12.7 mm) 3/4 inch minimum, installed from the dwellings electrical panel board to a junction box in readily accessible location in the garage or carport, capable of supporting a 30-50 ampere 220 volt outlet.

Introduced, considered favorably on first reading, and ordered published this 16th day of July, A.D. 2019, and to be presented for final passage on the 20th day of August, A.D. 2019.

______________________________
Mayor

ATTEST:

______________________________
City Clerk
Passed and adopted on final reading on the 20th day of August, A.D. 2019.

__________________________________
Mayor

ATTEST:
__________________________________
City Clerk

-3-
First Reading of Ordinance No. 096, 2019, Approving the Waiver of Certain Fees for the Mason Place Affordable Housing Project.

EXECUTIVE SUMMARY

The purpose of this item is to present Housing Catalyst's request for affordable housing fee waivers for the Mason Place permanent supportive housing project under development at 3750 South Mason Street, currently the site of the Midtown Arts Center. All 60 units of this project target residents making no more than 30% area median income (AMI) and therefore qualify for discretionary fee waivers. The request is to approve the waiver of 100% of the waivable fees up to the amount of $330,000.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The Fort Collins Housing Authority, doing business as Housing Catalyst (HC), is a Fort Collins, mission-driven real estate developer that designs, builds and serves affordable communities in Northern Colorado. HC owns and operates a variety of properties located throughout Fort Collins and serves over 2,200 households in need of affordable housing. HC also manages the affordable housing properties owned by Villages, Ltd. HC is an experienced developer and property manager with a good history of running quality developments in Fort Collins.

HC is seeking affordable housing fee waivers of certain development and capital improvement expansion fees for Mason Place, an affordable housing project, as allowed by City Code and the Land Use Code. Mason Place is currently under development and will deliver 60 income restricted units, all of which will be targeted to households making no more than 30% of the area median income (AMI). The request from HC is provided as Attachment 1. HC has been awarded competitive 9% low income housing tax credits for the funding of this development. While HC will be the ultimate owner of the building, it is being developed by Housing Catalyst LLC and any fee waiver granted would be to Mason Place LLLP, which is the ownership entity for the tax credit partnership.

Fee Waiver History

For many years, the City provided affordable housing fee waivers for some building permit fees, development review fees and some capital expansion fees as an incentive to encourage the development of affordable housing.

- Prior to 2013, these fee waivers were for improvements or repairs and the amounts were small. City policy was changed after a new construction project received an affordable housing fee waiver of over $500,000.
• In March 2013, City Council amended its policies on fee waivers for affordable housing to allow for more discretion in determining the kinds of housing projects for which City fees should be waived.
• By adopting Ordinance No. 37, 2013, City Council limited eligibility of fee waivers to the local housing authority and limited what types of units would qualify for fee waivers. Only projects that target homeless or disabled persons, or for households whose income is no greater than 30% of the area median income (AMI) qualify.
• Furthermore, waivers were made discretionary by City Council upon a determination that the proposed waiver will not jeopardize the financial interests of the City or the timely construction of the capital improvements to be funded by the fees for which a waiver is sought.
• In 2017, this policy was broadened by City Council to allow any developer, not only the housing authority, providing qualifying units to be eligible to seek discretionary fee waivers.
• Staff has been working on improving the processing of requests for fee waivers. In addition to working closely with applicant developers to confirm fee amounts, the process was modified to provide two approval options.
  o If the developer needs the certainty that the discretionary fee waiver will be approved by City Council early in the development process, they may apply for approval of the percentage of eligible units even before the fee amounts are finalized.
  o Alternatively, if the waiver request is processed when fee amounts are final, the waiver approval can be for both the percentage of qualifying units and the fee waiver amount.
• This process improvement allows the applicant to decide on the timing of the fee waiver request. This only makes a difference in how the City handles the reimbursement or “backfill” to City departments of capital expansion fees, and appropriations. When the Council is asked to approve a fee waiver after the fee amounts are finalized, the fee waiver ordinance will contain an appropriation for backfilling waiving fees. When a fee waiver ordinance only approves the percentage of fees to be waived, a separate Council appropriation at a later date will be required for reimbursements.

Current Request

Mason Place is a 60-unit affordable housing community being developed at 3750 South Mason Street in Fort Collins. (Attachment 2)

Mason Place will be a permanent supportive housing (PSH) development. The total development of 60 units will be dedicated to households making no more than 30% AMI. This will be a community where people can live for an unlimited term and be provided on-site supportive services to help them achieve and sustain housing stability. This is a best practice for housing persons experiencing chronic homelessness, most of whom have disabilities too. This target population qualifies for affordable housing fee waivers from the City pursuant to City Code and the Land Use Code.

Because Mason Place will house the lowest income category, rents collected will mostly be used for operation and maintenance of the facility. Very little income will be available to manage debt on a development of this kind. Therefore, it is important to have as much up-front subsidy as possible in constructing this type of development project. The City has committed Affordable Housing Capital Fund funds of almost $900,000 as direct capital assistance as well as Competitive Process funds in excess of $1.1 million to this project. This project has been awarded highly competitive 9% Low Income Housing Tax Credits from the Colorado Housing and Finance Authority.

HC is seeking the waiver of certain fees for those 60 qualifying units. The total fees for this $18.7 million development project are estimated to be in excess of $686,000. The request is for 100% of eligible fees, about $325,000 (currently calculated at $324,714, Attachment 3), to be waived. Of that amount, about $264,000 (currently calculated at $263,244) are for capital expansion fees which the City has traditionally reimbursed. The fees for this project are not as high as new construction because it is adaptive reuse, so some fees have been previously collected for this location and are credited to the project. Because the plans for this development could still change slightly, HC has requested that Council approve the percentage to be waived at this time. The fee amounts are not expected to change significantly, but by approving the percentage, more
time is provided to finalize the fee amounts. The request is seeking approval of 100% of the waivable fees for the Mason Place project, not to exceed $330,000.

Assuming a fee waiver of no more than $330,000, see below for the City’s total investment in Mason Place, as well as a comparison to other waiver approved projects. The number of qualifying units is shown first with total units second after the project’s name. For example, 60 units qualify at Mason Place out of a total of 60 units (60:60). These projects all have 30% AMI targeted units but serve different demographics. Both Mason Place and Redtail Ponds are PSH. Oakridge Crossing serves income qualified seniors. The Village on Redwood and the Village on Horsetooth serve a range of household sizes and ages.

<table>
<thead>
<tr>
<th>Project</th>
<th>Total City Investment</th>
<th>Total Development costs</th>
<th>% City Support</th>
<th>Total Waiver Amount</th>
<th>Waiver per qualifying unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mason Place (60:60)</td>
<td>$2,330,000</td>
<td>$18.7 M</td>
<td>12%</td>
<td>$330,000</td>
<td>$5,500</td>
</tr>
<tr>
<td>Redtail Ponds (40:60)</td>
<td>$1,702,262</td>
<td>$12.5 M</td>
<td>14%</td>
<td>$288,000</td>
<td>$7,200</td>
</tr>
<tr>
<td>Village on Redwood (13:72)</td>
<td>$2,858,182</td>
<td>$19.4 M</td>
<td>15%</td>
<td>$100,708</td>
<td>$7,747</td>
</tr>
<tr>
<td>Village on Horsetooth (43:96)</td>
<td>$1,711,019</td>
<td>$26.5 M</td>
<td>6%</td>
<td>$352,319</td>
<td>$8,193</td>
</tr>
<tr>
<td>Oakridge Crossing (13:110)</td>
<td>$90,923</td>
<td>$22 M</td>
<td>4%</td>
<td>$90,923</td>
<td>$6,994</td>
</tr>
</tbody>
</table>

The 2019 income limits published by the U. S. Department of Housing and Urban Development for 30% of the Fort Collins AMI is $18,350 for a household of 1 and $20,950 for a household of 2. The units at Mason Place will be primarily one-bedroom units with a few two-bedroom units. Households at this income level are some of the City’s most vulnerable residents. Most of the residents will be escaping homelessness and have disabilities.

The City has established affordable housing production goals in the 2015-2019 Affordable Housing Strategic Plan (Plan). The need for financial support for these goals to be met is also stated in the Plan. The annual production goal for the current 5-year plan is 188 units. This project will deliver 60 units which is 32% of the City’s current annual goal. Since the City does not develop housing, development partners are relied upon to bring this necessary housing products to the community. This project will increase the inventory of affordable rental units and is targeting housing with supportive services for special needs populations, which are two of the strategies listed in the Plan.

As stated earlier, the City has historically used unrestricted funds to reimburse the appropriate fee funds for any capital expansion fees waived. For Mason Place, the waived capital expansion fees will be about $264,000. Traditionally the reimbursement of capital expansion fees has come from General Fund reserves. Funds from the Affordable Housing Capital Fund (AHCF) that was approved by the voters as part of the City Capital Improvements Program have also been used to partially match the general fund reserves to reimburse waived capital expansion fees. This fund will accumulate $4 million over ten years. While most of the current balance in the AHCF is already committed to this project, $100,00 was withheld for the purpose of matching general fund reserves for the purpose of fee waiver reimbursements. This project is the first to seek fee waivers this year.

**CITY FINANCIAL IMPACTS**

If the fee waivers are granted, the City will forgo the amount of the waived fees not to exceed $330,00 and will reimburse the appropriate fee funds for Capital Expansion Fees of about $264,000. The Council Finance Committee recommends that $100,00 be used from the AHCF for this reimbursement and that the balance be paid from General Fund reserves. The City Council will be asked to approve an appropriation at a later date.
BOARD / COMMISSION RECOMMENDATION

At its June 6, 2019 meeting the Affordable Housing Board voted to support this waiver request. (Attachment 4)

At its June 19, 2019 meeting the Council Finance Committee supported granting the waiver request. (Attachment 5)

PUBLIC OUTREACH

While extensive public outreach was done on the issue of waivers for the City’s Housing Affordability Policy Study, the Affordable Housing Strategic Plan, and the expansion of eligibility to all developers producing units targeting households with incomes no more than 30% AMI, outreach beyond the Affordable Housing Board meeting and the Council Finance Committee meeting has not been conducted specifically on this request.

ATTACHMENTS

1. Housing Catalyst Fee Waiver Request for Mason Place (PDF)
2. Mason Place Location Map (PDF)
3. Mason Place Fee Sheet (PDF)
4. Affordable Housing Board Minutes June 6, 2019 (PDF)
5. Council Finance Committee Minutes June 17, 2019 (Draft) (PDF)
May 15, 2019

Sue Beck-Ferkiss, Social Sustainability Specialist
Office of Social Sustainability
City of Fort Collins
22 Laporte Avenue
Fort Collins, CO 80521

Re: Mason Place Permanent Supportive Housing Development Fee Waivers

Dear Mrs. Beck-Ferkiss,

As a result of the ongoing collaboration between Housing Catalyst and the City of Fort Collins to estimate fees and waiver amounts for our Mason Place Permanent Supportive Housing project, I am writing to formally request fee waivers for the above referenced project under the City of Fort Collins City Council Ordinance: No. 037, 2013 and the associated intergovernmental agreement.

The total anticipated fees are estimated at $656,000. The anticipated fee waiver amount is estimated at $300,000, with 100% of the 60 units eligible for waiver.

To assist in this fee waiver and reimbursement request, I have enclosed the following information:

1. Schedule of units at Mason Place that will be at or below 30% of the Fort Collins/Loveland adjusted median income (60 units).
2. Mason Place Development timeline.

Thank you for your time and attention to this request. Please contact me if you require additional information.

Sincerely,

Julie J. Brewen
Executive Director
Mason Place Project Overview
Mason Place will be located at 3750 S. Mason St in Fort Collins, at the current site of the Midtown Arts Center. Based on the Housing First, Harm Reduction and Trauma Informed Care models, Mason Place will provide affordable housing and onsite services to people with special needs who are experiencing homelessness, including homeless veterans. This permanent supportive housing community will have 60 new units of housing for homeless individuals at or below 30% of the Fort Collins/Loveland adjusted median income.

<table>
<thead>
<tr>
<th>Target Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Units</td>
</tr>
<tr>
<td>60 units</td>
</tr>
<tr>
<td>60 units total</td>
</tr>
</tbody>
</table>

Mason Place Development Timeline

- Low Income Housing Tax Credit (LIHTC) Award – August 2018
- Project Development Plan Approval – June 2018
- Building Permit submitted to City of Fort Collins – May 31, 2019
- LIHTC Partnership Closing – September 2019
- Construction Start – September 2019
- Fee Waiver Request – May 2019
- Deferred Fees Due – December 1, 2019
- Construction Complete – October 2020
- Lease-up Complete – April 2021
- Construction – Permanent Loan Conversion – August 2021
<table>
<thead>
<tr>
<th>Fee</th>
<th>Waivable</th>
<th>Totals</th>
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</thead>
<tbody>
<tr>
<td>Building Permit Fee w/Subs</td>
<td>Yes</td>
<td>$31,977</td>
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<tr>
<td>DCP Application</td>
<td></td>
<td>$400</td>
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<tr>
<td>Demo Permit</td>
<td></td>
<td>$50</td>
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<tr>
<td>Development Review Fee</td>
<td>Yes</td>
<td>$4,706</td>
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<tr>
<td>Electric Capacity Fee</td>
<td></td>
<td>$83,847</td>
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<tr>
<td>Erosion Escrow</td>
<td></td>
<td>$14,513</td>
</tr>
<tr>
<td>Fire Capital Exp. (Res)</td>
<td>Yes</td>
<td>$13,695</td>
</tr>
<tr>
<td>General Govt. Capt. Exp. (Res)</td>
<td>Yes</td>
<td>$4,271</td>
</tr>
<tr>
<td>Larimer County Reg. Road (Res)</td>
<td></td>
<td>$9,780</td>
</tr>
<tr>
<td>Mailings</td>
<td>Yes</td>
<td>$204</td>
</tr>
<tr>
<td>Parkland: Community</td>
<td>Yes</td>
<td>$139,560</td>
</tr>
<tr>
<td>Parkland: Neighborhood</td>
<td>Yes</td>
<td>$98,820</td>
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<tr>
<td>PFA Development Review Fee</td>
<td></td>
<td>$250</td>
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<tr>
<td>Plan Check Fee</td>
<td>Yes</td>
<td>$15,397</td>
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<tr>
<td>Police Capital Exp. (Res)</td>
<td>Yes</td>
<td>$7,698</td>
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<tr>
<td>Poudre School District (5 or mor...)</td>
<td></td>
<td>$51,300</td>
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<tr>
<td>Sewer Dev. Review</td>
<td>Yes</td>
<td>$1,922</td>
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<tr>
<td>Sewer PIF</td>
<td></td>
<td>$123,552</td>
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<tr>
<td>Sign Posting</td>
<td>Yes</td>
<td>$50</td>
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<tr>
<td>Stormwater Dev. Review</td>
<td>Yes</td>
<td>$992</td>
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<tr>
<td>Transportation Dev Review</td>
<td>Yes</td>
<td>$3,500</td>
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<tr>
<td>Water Dev. Review</td>
<td>Yes</td>
<td>$1,922</td>
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<tr>
<td>Water PIF</td>
<td></td>
<td>$6,144</td>
</tr>
<tr>
<td>Water Right - WSR?</td>
<td></td>
<td>$71,741</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$686,291</strong></td>
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<tr>
<td><strong>Total Waivable</strong></td>
<td></td>
<td><strong>$324,714</strong></td>
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<tr>
<td><strong>Amount Due to City</strong></td>
<td></td>
<td><strong>$361,577</strong></td>
</tr>
</tbody>
</table>
Comments/Q&A:

- Rachel: What is backfill?
  - Sue: In Fort Collins, because of the TABOR (Taxpayer Bill of Rights) amendment, our attorneys are concerned about absorbing funds without reimbursement, especially of capital expansion fees. We tell developers they don’t have to pay, and we typically pull from general fund reserves to pay those fees.

- Diane: What is the total cost of the development?
  - Sue: $18.7 million

- Sue: I would like to ask the board if you’d like to make a recommendation about this request.

  Diane made a motion to support the fee waiver request for Mason Place. Catherine seconded. Approved 5-0.
Finance Committee Meeting Minutes
06/17/19
10 am - noon
CIC Room - City Hall

Council Attendees: Mayor Wade Troxell, Ross Cunniff, Ken Summers

Staff: Darin Atteberry, Kelly DiMartino, Mike Beckstead, Travis Storin, John Voss, Jackie Thiel, Kevin Gertig, Lance Smith, Don Klingler, Noelle Currell, Sue Beck-Ferkiss, Kristin Fritz, John Duval, Tyler Marr, Jo Cech, Katie Ricketts, Zach Mozer, Carolyn Koontz, Bob Adams, Marc Rademacher

Others: Kevin Jones, Chamber of Commerce

Meeting called to order at 10:09 am

Approval of Minutes from the May 20, 2019 Council Finance Committee Meeting. Ken Summers moved for approval of the minutes as presented. Mayor Troxell seconded the motion. Minutes were approved unanimously.

A. Mason Place Affordable Housing Fee Waivers
   Noelle Currell, Manager, FP&A
   Sue Beck-Ferkiss, Social Policy and Housing Programs Manager

SUBJECT FOR DISCUSSION
Affordable Housing Fee Waiver Request for Mason Place, a permanent supportive housing community.

EXECUTIVE SUMMARY
Housing Catalyst (HC), formerly known as the Fort Collins Housing Authority, has requested that certain development and capital improvement expansion fees be waived for all 60 qualifying units at Mason Place. In March 2013, City Council limited the types of projects for which fee waivers may be requested and made these waivers discretionary. Eligible projects are those constructed for homeless or disabled persons, or for households whose income falls at or below 30% of the area median income of all City residents. HC is requesting fee waivers in the approximate amount of $325,000 for the 60 qualifying units at Mason Place.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED
1. Does the Council Finance Committee (CFC) support granting the fee waiver request?
2. If CFC desires the Capital Expansion Fees to be backfilled, should this funding come from General Fund Reserves only, or from both General Fund Reserves and the Affordable Housing Capital Fund?
BACKGROUND/DISCUSSION
HC is seeking the waiver of certain development and capital improvement expansion fees for Mason Place, an affordable housing project as allowed by City Code and the Land Use Code. Mason Place is currently under development and will deliver 60 income restricted units, all of which will be targeted to households making no more than 30% of the area median income (AMI). The request from HC is attached as attachment 1. While HC will be the ultimate owner of the building, it is being developed by Housing Catalyst LLC and any fee waiver granted would be to Mason Place LLLP, which is the ownership entity for the tax credit partnership.

Fee Waiver history:
For many years, the City provided affordable housing fee waivers for some building permit fees, development review fees and some capital expansion fees as an incentive to encourage the development of affordable housing.
- In March 2013, City Council amended its policies on fee waivers for affordable housing to allow for more discretion in determining the kinds of housing projects for which City fees should be waived.
- This was after a large waiver was granted.
- By adopting Ordinance No. 37, 2013, City Council limited eligibility of fee waivers to the local housing authority and limited what types of units would qualify for fee waivers. Only projects that are constructed for homeless or disabled persons, or for households whose income is no greater than 30% of the area median income of all City residents qualify.
- Furthermore, waivers were made discretionary by City Council upon a determination that the proposed waiver will not jeopardize the financial interests of the City or the timely construction of the capital improvements to be funded by the fees for which a waiver is sought.
- This policy was changed by City Council in 2017 so that any developer providing qualifying units is eligible to seek discretionary fee waivers.
- Staff has been working on improving the method of processing requests for fee waivers. In addition to working with the applicant to confirm fee amounts, the process allows for the percentage of eligible units to be approved even before the fee amounts are finalized. However, if the waiver request is processed when fee amounts are final, the waiver approval can be for both the percentage of qualifying units and the fee amount. The process allows the applicant to decide on the timing of the fee waiver request. This only makes a difference in how the City handles the reimbursement of capital expansion fees and does not influence the project being constructed.

Current Request:
Mason Place is a 60-unit affordable housing community being constructed at 3750 South Mason Street in Fort Collins. See attachment 2 for map of location. The developer is HC. The total development of 60 units, will be dedicated to households making no more than 30% AMI. This will be a permanent supportive housing development where people can live for an unlimited term and be provided on site supportive services to help tenants achieve and sustain housing stability. This is a best practice for housing persons experiencing chronic homelessness, most of whom have disabilities too.

HC is seeking the waiver of certain fees for those 60 qualifying units. The total fees for this $18.7 million development project are estimated to be in excess of $656,000. The request is for 100% of eligible fees, about $325,000 (currently calculated at $324,714), to be waived. Of that amount, about $264,000 (currently calculated at $263,244) are for capital expansion fees which the City has traditionally reimbursed. This project is adaptive reuse and not new construction, so the fees are offset with fees previously collected for this location and are therefore not as high as a new construction project would be. Because the plans for this development could still
change slightly, HC has requested that Council approve the percentage to be waived at this time. The fee amounts are not expected to change significantly, but by approving the percentage, more time is provided to finalize the fee amounts.

The 2019 income limits published by the U.S. Department of Housing and Urban Development for 30% of the Fort Collins AMI is $18,350 for a household of 1 and $20,950 for a household of 2. The units at Mason Place will be primarily one-bedroom units with a few two-bedroom units. Households at this income level are some of the City’s most vulnerable residents. Most of the residents will be escaping homelessness and have disabilities. All units at Mason Place are eligible for fee waivers as established by City Code, and the Land Use Code.

The City has established affordable housing production goals in the 2015-2019 Affordable Housing Strategic Plan (Plan). The need for financial support for these goals to be met is also stated in the Plan. The annual production goal for the current 5-year plan is 188 units. This project will deliver 60 units which is 32% of the City’s current annual goal. Since the City does not develop housing, development partners are relied upon to bring this necessary housing product to the community. This project will increase the inventory of affordable rental units and is targeting special needs populations - which are two of the strategies listed in the Plan.

It is recommended that any capital expansion fees waived be subject to backfill by the City to reimburse city departments for fees if this waiver is granted, as has been the City’s custom to date. Traditionally backfill of capital expansion fees occurred and has come from General Fund reserves. Alternatively, funds for this request could come from the Affordable Housing Capital Fund that was approved by the voters as part of the City Capital Improvements Program. This fund will accumulate $4 million over ten years. While most of the current balance in this fund is already committed to this project, $100,00 was withheld for the purpose of matching general fund reserves for fee waiver backfill. This project is the first to seek fee waivers this year.

Board and staff support:
- The Affordable Housing Board supports this waiver request. The City’s waiver policy has greatly limited the types of projects that qualify for waivers. This policy recognizes that households earning no more than 30% AMI cannot afford market rate housing in our City at this time. The average rent is currently over $1,200 a month. A one-person household at 30% AMI would need to pay 78% of their income to pay the average rent. Ideally, renters would never pay more than 30% of their income on housing. Developers need public subsidy to produce housing that this demographic can afford.
- Staff also supports granting this waiver request.

Next Steps
- This request is ready to be presented to Council after this committee’s review.

DISCUSSION / NEXT STEPS:
$686k is the total
Total waivable fees $325k - we may ask for $330k to make sure we have some flexibility

Through 2018 we appropriated $700K through the CCIP dedicated support
$500K of that is still unspent and that amount will be dedicated to this project.
In 2019 we appropriated $400K from the CCIP will go to this project as well
All total - just over $1M of support from the City for this project
Fee waivers as investment
Direct subsidy – retain no more than 25% of any fund for backfill

We are requesting that you approve the waiver of 100% of waivable fees
The estimate today is $325K - Could be a bit of movement $330K is the ask - Affordable Housing Board has approved this request.

Ken Summers; review the support categories
Total of $1M City support
Fee Waivers = $325k
$900K coming from affordable housing capital fund
Total is $1.2M between two awards
Competitive process – annual competition for CDBG home funds

Darin Atteberry; the most important information is the cumulative ask - not just the one time ask
$1.3 - 1.5M is the actual total - Council doesn’t remember all of these different pieces from 2017

Ken Summers; CDBG allocations we approved - this request is for fee waiver
Outside of what is available through Housing Catalyst - How does that work? Being ask for fee waiver

Sue Beck-Ferkiss; in 2018 Affordable Housing Funds were committee to Housing Catalyst
CDBG funds were from 2018 as well and have been approved by Council
A lot of projects quality for the competitive process and could quality for the capital
Only projects that target 30% AMI or less are eligible for waivers - lowest wage earner units which don’t spin off rent income so more $$ are required – more subsidy on the front end. Providing permanent support housing

Kristin Fritz; Housing Catalyst
$876k Committee
$1.1M competitive
Total commitment is almost $2M before before the fee waivers

Mayor Troxell; the project is $18.7M - How is this going to be financed?

Kristin Fritz; this is a competitive tax credit project = awarded tax credits on its first round
City funding commitment was prior to the tax credit commitment
Whether or not we received federal low income tax credit
We received state money from Colorado Division of Housing
Lender – all of the financing is fully awarded – underwriting due diligence is in progress and we are set to close On September 2nd - working its way through - fully funded – completely penciled out
It is typical with the City funding process – that after an award is made we still need to go obtain the remaining pieces and then go through a contracting process

Mayor Troxell; Will the $18.7M will hold?

Kristin Fritz; Yes, that is the number - we are committed to that number and under contract
Some of that background info - overall investment - Hard complete wrap around services 0-30% AMI - tough crowd

Ross Cunniff; I sit on the housing Catalyst Board - I do support taking the waivable fees out of the General Fund other than out of the Capital Expansion Fees

Mike Beckstead; for clarification - shared or 100% out of the General Fund

Ross Cunniff; 100% out of the General Fund

Sue Beck-Ferkiss; would it all come from the General Fund reserve or should we use the money ($100K) we set aside?

Ken Summers; use the money we set aside first then the remainder from the General Fund

Mike Beckstead; I put the fees into 3 categories
   1) Utility TIFS not being waived
   2) Development Fees - waiver is requested – not backfilled
   3) Capital Expansion Fees - $264K which would get backfilled

Ross Cunniff; trying to make the Development Review Fees like a dedicated fund – so that is the only thing they are used for is development review – I would prefer it be portrayed as coming from General Fund reserves

ACTION ITEM:
In the future, I would like to find a structured way we can call these pre application proposed rebates - other than a waiver - with Housing Catalyst that could cause some financial stress
Source of funding available for projects that pre quality – pre development -Contingent on it actually being built
Being deliberate about setting aside money for these affordable housing purposes and not making it look like we are playing some kind of shell game.

Council Finance Committee (Mayor Troxell, Ken Summers and Ross Cunniff) unanimously recommended that this go forward to the full Council

ACTION ITEM: Darin Atteberry; 10% City participation - to Mike – please work with Jackie and Sue - it would be good to see where those trends are; trending up? trending down? What have we done in prior projects? A macro perspective. I agree with what Wade and Ross both said, this is a great project that will help with some serious needs. The complete stack is always important for Council

Mike Beckstead; We will make sure both the complete stack and trends are included in the Council materials.

Ken Summers; what is rate contribution for residents? Do they pay on a sliding scale?

Sue Beck-Ferkiss; housing choice vouchers that are connected to these units - residents pay 30% of their income and the government pays the rest up to the fair market standard.
ORDINANCE NO. 096, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING THE WAIVER OF CERTAIN FEES FOR THE
MASON PLACE AFFORDABLE HOUSING PROJECT

WHEREAS, by adoption of Ordinance No. 065, 1999, the City Council exempted from
the imposition of the City’s capital improvement expansion fees the land development projects
of housing authorities formed pursuant to the provisions of Section 29-4-101, et seq., and
specified various other City fees from which such projects are also to be exempted; and

WHEREAS, the financial impact of such fee waivers on the City can be substantial,
depending upon the size of the project that is exempted, and whether the lost fee revenues need
to be replaced by the City; and

WHEREAS, on March 19, 2013, the City Council adopted Ordinance No. 037, 2013,
making amendments to the City Code and Land Use Code limiting the types of projects for
which housing authorities could request fee waivers, and specifying that those waivers are to be
granted at the discretion of City Council upon a determination that proposed waivers will not
jeopardize the financial interests of the City or the timely construction of capital improvements
to be funded by the fees; and

WHEREAS, on November 21, 2017, the City Council adopted Ordinance No. 148, 2017
(the “2017 Ordinance”), which further amended the City Code and Land Use Code to create an
incentive for all developers to provide housing units affordable to those making less than 30% of
the area median income (AMI) by allowing all developers of units targeting that income bracket
to request fee waivers for the affordable portions of their projects; and

WHEREAS, the 2017 Ordinance states that the City Council can waive, by ordinance,
fees that would otherwise be imposed for an affordable housing project only if the City Council
determines that: (1) the project is intended to house homeless or disabled persons, as such terms
are defined by the Department of Housing and Urban Development (HUD), or households with
an annual income that does not exceed 30% of the AMI for the applicable household size in the
Fort Collins-Loveland metropolitan statistical area, as published by HUD; and (2) the proposed
waiver will not jeopardize the financial interests of the City or the timely construction of the
capital improvements to be funded by the fees for which a waiver is sought; and

WHEREAS, the Fort Collins Housing Authority, doing business as Housing Catalyst
(“HC”) is seeking the waiver of certain development and capital improvement expansion fees for
Mason Place, an affordable housing project in Fort Collins that will provide 60 income-restricted
units, all targeted to households making no more than 30% of AMI (the “Project”); and

WHEREAS, the City has established affordable housing production goals in the 2015-
2019 Affordable Housing Strategic Plan with an annual production goal for this five-year plan of
188 units; and
WHEREAS, the Project will deliver 60 units, 32% of the City’s current annual goal for new affordable housing units; and

WHEREAS, 100% of the Project units will be dedicated to households making no more than 30% of AMI; therefore, HC is requesting waivers for 100% of the total waivable Project fees based on the number of units eligible for such fee waivers; and

WHEREAS, the total fees for the Project are currently estimated at $324,714, but this amount could change as the Project plans are finalized, so HC is asking that the City Council approve a waiver of 100% of the waivable fees for the Project but not to exceed $330,000; and

WHEREAS, the Project fits the definition of a project eligible for fee waivers under the City Code and Land Use Code as amended by the 2017 Ordinance; and

WHEREAS, City Finance staff has determined that waiver of these fees will not jeopardize the financial interests of the City or the timely construction of the capital improvements to be funded by the fees for which the waiver is sought; and

WHEREAS, the Affordable Housing Board at its regular meeting on June 6, 2019, voted to support this waiver request; and

WHEREAS, the Council Finance Committee at its regular meeting on June 17, 2019, supported this waiver request.

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 100% of the Project is intended to house households with an annual income that does not exceed 30% of the area median income for the applicable household size in the Fort Collins-Loveland metropolitan statistical area, as published by HUD.

Section 3. That the City Council further finds that the fee waiver requested by HC will not jeopardize the financial interests of the City or the timely construction of the capital improvements to be funded by the fees for which a waiver is sought.

Section 4. That the City Council hereby approves the waiver of eligible fees for the Project in an amount not to exceed $330,000, currently calculated as follows:

<table>
<thead>
<tr>
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<th>Amount</th>
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<tr>
<td>Development Review Fees</td>
<td>$ 28,693</td>
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<tr>
<td>Building Fees</td>
<td>31,977</td>
</tr>
<tr>
<td>Capital Improvement Expansion Fees</td>
<td>264,044</td>
</tr>
</tbody>
</table>

Packet Pg. 122
Total: $ 324,714

Section 5. That the City Council hereby directs the City Manager, once the Project fees are finalized, to bring forward an ordinance appropriating funds to reimburse the appropriate funds for the fees waived by this Ordinance.

Introduced, considered favorably on first reading, and ordered published this 16th day of July, A.D. 2019, and to be presented for final passage on the 20th day of August, A.D. 2019.

Mayor

ATTEST:

_______________________________
City Clerk

Passed and adopted on final reading on the 20th day of August, A.D. 2019.

Mayor

ATTEST:

_______________________________
City Clerk
STAFF

Matt Zoccali, Environmental Regulatory Affairs Manager
Judy Schmidt, Legal

SUBJECT

First Reading of Ordinance No. 097, 2019, Approving and Authorizing Execution of the Second Amendment to Permanent Easement dated April 27, 2006, to Public Service Company of Colorado Related to the Northside Aztlan/Poudre River Site.

EXECUTIVE SUMMARY

The purpose of this item is to amend an existing easement located on City property that includes the Northside Aztlan/United Way parcel, 226 Willow Street, and a portion of the Gustav Swanson Natural Area (the “City Property”), sometimes referred to as the Aztlan/Poudre River EPA Removal Action Site, at 112 Willow Street.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Site History

- Poudre Valley Gas Company produced manufactured gas from coal and possibly oil at a former gas plant site south of the site. The gas plant closed approximately 1926.
- Various industrial facilities such as a municipal power plant, petroleum bulk plants, petroleum retail facilities, and automotive repair facilities operated at locations adjacent to the site from as early as the 1930s.
- A municipal solid waste landfill was located on the site. Little information is available about the contents of the landfill, and the exact dates the landfill operated are not known. However, aerial photographs reviewed indicate the landfill was in operation by 1941.
  - The landfill was not gated, nor was the waste monitored for content prior to disposal.
  - Open burning of wastes was conducted at the landfill until the early 1960s, when it was closed and covered with one to three feet of silty clay.
  - This landfill was operated variously by private parties and by the City of Fort Collins.

Environmental Concerns at the location

- Potential exposure to a variety of materials associated with the former landfill, including asbestos-contaminated soils and asbestos-containing debris.
- Coal-tar and chlorinated solvent contamination that poses health risks when released into the environment.

Poudre River Superfund Site

In September 2002, an oily sheen was observed and reported near the south bank of the Cache La Poudre River nearest the site. Further investigation revealed a non-aqueous phase liquid (NAPL) “plume” and
associated concentrations of organic compounds exceeded water quality criteria and other ecological screening values. The plume originated on former gas plant property (located on what is now the Schrader property) and extended out under Willow Street and the parking lot of Northside Aztlan Community Center to the Cache La Poudre River (Attachment 1).

In November 2004, a Removal Action under the Federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) was initiated by the EPA to address contamination associated with the manufactured gas plant activities. Removal action goals, along with other legal obligations, were defined and documented in an Administrative Order on Consent (AOC). The City of Fort Collins, PSCo, EPA, and Schrader Oil were identified as stakeholders and PSCo and Schrader Oil were identified as responsible parties, liable for cleanup of the site. The Removal Action was intended to:

- Prevent migration of NAPL into the riverbed.
- Prevent discharge of NAPL to surface water.
- Protect future on-site workers and recreational users.
- Allow future development consistent with these objectives.

**Voluntary Cleanup and Redevelopment Program**

In addition to the Removal Action, and to facilitate the construction of the Northside Aztlan Community Center, Handball Court, and Skatepark, the City also entered into an agreement with the CDPHE Voluntary Cleanup and Redevelopment Program (VCUP). In 2005-2006, the City gathered and submitted environmental information related to the property and specified a land use for the location (e.g., community recreation center and related facilities). In January 2007, the City received approval, in the form of a No Action Determination, from CDPHE and redeveloped the location. The No Action Determination states that as long as the steps are followed, "...it is the opinion of the Colorado Department Public Health and Environment that no further action is required to assure that this property, when used for the purposes identified... is protective of existing and proposed uses and does not pose an unacceptable risk to human health or the environment at the site. Some of these required steps include:

- Site improvements limited to specific locations.
- Site-specific Health and Safety and Material Management Plan developed and implemented.
- Installation, maintenance, monitoring, and reporting for a vapor mitigation system and active sub-slab methane detections system on the Northside Aztlan Community Center building.

**City of Fort Collins Required Actions**

The City of Fort Collins must comply with the “City-required Actions” found in several legal documents and requirements, including an Administrative Order on Consent, an Environmental Covenant, and the Colorado Department of Public Health and Environment (CDPHE) Regulated Asbestos-Contaminated Soils regulation.

The response phase of this project has closed, with EPA making a determination that the Responsible Parties have fulfilled their obligations under the AOC (Attachment 2). As the project has moved into "post-closure", the City, as the landowner, must continue to implement administrative and engineering controls to manage the location. Staff has already developed and implemented the following items to meet its legal obligations and to protect the public health and the environment:

- Land Use/Development Review, Utilities infrastructure, and CityWorks mapping systems have all been “flagged” to highlight that the area presents a specific set of required actions for any land disturbing activities
- City Utilities, Parks, Natural Areas, and Forestry Staff received initial and on going refresher training for appropriate actions when conducting work in the area
- In internal Work Order system (web-based) has been designed and implemented to ensure that regulatory staff are brought into the loop for any redevelopment, excavation, or landscaping projects being planned at or adjacent to the site.
City staff participates in routine stakeholder meetings with the EPA and Responsible Parties

Kayak Park and River District Masterplan

The City of Fort Collins’ Downtown River District Master Plan outlines proposed City projects along the Poudre River in downtown Fort Collins. Proposed Master Plan activities near the site are in progress and have the potential to impact the Removal Action remedy. Activities include the following:

- A new whitewater play park which includes the removal of the existing Coy Diversion ditch and regrading of the River bed and banks.
- A new pedestrian bridge crossing the river which has includes regrading of the Riverbank.
- New river put-in and take-out areas which are likely to involve regrading of the Riverbank.
- Riverbank stabilization improvements which involve regrading of the Riverbank.

Due to the potential of these projects to impact the remedy or related site conditions, the City and PSCo have agreed that a select number of monitoring wells and vaults along the river remain in place and not be abandoned at this time. Leaving these components in place will allow for future observation of site conditions relative to the remedy, if deemed prudent due to implementation of City projects. If the evaluation of a City project indicates potential to impact the remedy, as determined by stakeholders, then wells will be gauged prior to and after implementation of the City work. The gauging step is intended to evaluate if City projects have impacted the remedy or site conditions in the vicinity of the barrier wall, and whether any follow up actions are recommended. If the evaluation of a City project does not indicate a potential impact to the remedy, as determined by stakeholders, during that time period, then wells will be abandoned after September 2020.

A cross-department team has been convened and continued to meet to define and implement all additional steps that may be needed to ensure continued compliance with legal obligations and protection of the public health and environment at the location.

CITY FINANCIAL IMPACTS

As part of the easement modification, the City is assuming ownership of a small structure, previously housing an on-site water treatment facility, as well as a number of groundwater monitoring wells.

City Parks Department staff inspected the small building and decided it was in good shape and will be an ideal location for storage of landscaping equipment. Financial impacts to assuming ownership of the structure include incremental costs for maintenance, potential renovation for any intended use other than storage for City equipment. Building use other than equipment storage (i.e., remote work station/office) is not recommended and could potentially incur high costs for vapor mitigation to ensure vapors from the historic landfill are not impacting the indoor air quality and human health for City employees occupying the structure.

By assuming ownership of groundwater monitoring wells, the City may realize cost-savings if future monitoring activities are needed (i.e., new wells will not have to be drilled). Financial impact related to assuming ownership of the monitoring wells includes well inspection, maintaining covers and locks, periodic registration updates (if needed), and well closure costs.

ATTACHMENTS

1. CERCLA Site Map (PDF)
2. Appropriate Next Steps (PDF)
APPENDIX G

Based on information EPA has evaluated to date, EPA believes that, for an owner of property within the coal tar plume at the Poudre River Site (as described in Appendix F), the following would be appropriate reasonable steps with respect to the coal tar contamination found at the property. Additional reasonable steps may become necessary if site conditions change or new information is discovered which necessitates further reasonable steps.

1. Minimize subsurface excavations to the extent possible.
   - Provide above-ground, rather than underground, parking facilities.
   - Use caissons, piers, pilings, and/or at-grade slab building foundations.
   - Where practicable and consistent with good engineering practices, minimize burial depths of tanks, piping, foundations, and other improvements.
   - During the design of underground utility installations, the design or construction of new structures or demolition of an existing structure, take into account the potential presence of the contamination that has been delineated and, to the extent practicable and consistent with good engineering practices, minimize excavation volumes.
   - Where practicable and consistent with good engineering practices, adopt as a preference for sewer line maintenance and repair the application of an in situ liner as opposed to removing and replacing the sewer line.
   - Where practicable and consistent with good engineering practices, incorporate into new or replacement utility improvements design measures, such as protective sleeving, choice of materials and other features intended to minimize the need for future replacement or repair due to effects of subsurface contaminants.

2. Monitor for NAPL in areas in which you are performing work during any excavation.
   - Use the attached plume map to identify areas where excavations may expose NAPL.
   - Sample soil and water encountered during excavations, as well as air within work area during excavation and restoration. You are not required to characterize the extent of any contamination, but should be characterizing the soil and water accessed or moved during excavation, as well as the air within and above the excavation.
   - Properly characterize any materials that are to be removed from the excavation prior to appropriate disposal.

3. Protect workers, bystanders and building occupants.
   - Where NAPL is encountered or monitoring results indicate the presence of NAPL at levels exceeding health based standards, require workers to wear appropriate personal protective equipment and/or undertake engineering controls to accomplish the same level of worker and bystander protection.
   - Provide training for workers on visual identification of NAPL as well as
on the appropriate use of personal protective equipment.

- Where NAPL is present below or immediately adjacent to a proposed building, use building vapor monitoring, vapor intrusion systems and/or vapor venting systems, as appropriate.

4. Prevent preferential pathways that may be created by underground work.
   - Use the attached plume map to identify areas where excavations may encounter NAPL.
   - Seek professional assistance to design excavations in the identified areas that will not change pathway and/or rate of flow of the NAPL plume.

5. Properly dispose of contaminated materials that must be removed from the excavation in order to implement the work being performed.
   - Properly characterize any materials that are to be removed from the excavation.
   - Identify and use properly licensed facilities for the disposal of the contaminated materials that must be removed from the excavation.
ORDINANCE NO. 097, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING AND AUTHORIZING EXECUTION OF THE SECOND AMENDMENT TO PERMANENT EASEMENT DATED APRIL 27, 2006, TO PUBLIC SERVICE COMPANY OF COLORADO RELATED TO THE NORTHSIDE AZTLAN/POUDRE RIVER SITE

WHEREAS, in November of 2004, a removal action was initiated by the United States Environmental Protection Agency ("EPA") to address environmental contamination caused by activities of a historic manufactured gas plant located near the Northside Aztlán/United Way parcel, 226 Willow Street, and a portion of the Gustav Swanson Natural Area (the "City Property"); and

WHEREAS, the City, Public Service Company of Colorado (PSCo, DBA Xcel Energy), EPA, and Schrader Oil were identified as stakeholders and PSCo and Schrader Oil were identified as responsible parties, liable for cleanup of the contamination, including contamination in the Poudre River and on the City Property; and

WHEREAS, by adoption of Ordinance No. 146, 2004, City Council found that conveyance of an easement on the City Property to PSCo at no cost to implement the removal action and associated activities along the Poudre River was in the best interest of the City in view of the anticipated benefits to the City and the general public of the environmental cleanup activities to be conducted thereunder in the River and on the City Property and authorized the Mayor to execute the Permanent Easement Agreement; and

WHEREAS, the City and PSCo (as Grantee) entered into a Permanent Easement Agreement dated April 27, 2006, granting PSCo an easement as described therein (the "Easement") over and across the City Property, which Agreement was recorded in the real property records of the Larimer County Clerk and Recorder on May 3, 2006, at Reception Number 2006-0032893; and

WHEREAS, the City and PSCo amended the Permanent Easement Agreement on July 5, 2011 to modify the location of the telecommunications line and related easement area by execution of an Amendment to Permanent Easement Agreement recorded in the real property records of the Larimer County Clerk and Recorder on August 24, 2011, at Reception Number 20110051428; and

WHEREAS, references to the Permanent Easement Agreement hereinafter set forth shall mean the Permanent Easement as amended by the Amendment to Permanent Easement Agreement; and

WHEREAS, the removal action has been completed and PSCo has prepared and delivered to the EPA the Poudre River Removal Action Final Closure Report dated May 25, 2016, and a revised Closure Report dated March 31, 2017 ("Closure Report"); and
WHEREAS, on August 30, 2017, EPA notified the City and PSCo that in accordance with Section XXIX of the Administrative Order on Consent for Removal Action, CERCLA Docket No. CERCLA-08-2005-0003 ("AOC") the work required under the AOC has been fully performed; and

WHEREAS, the parties desire to modify the Permanent Easement Agreement to reflect that the removal action has been completed and to remove certain provisions that are now obsolete; and

WHEREAS, the vertical wall installed by PSCo as part of the removal action will remain in place indefinitely and PSCo is also voluntarily retaining certain monitoring wells and vaults along the Poudre River until approximately 2020 to monitor, if necessary, for potential changes in site conditions; and

WHEREAS, the Permanent Easement contains an "Exhibit B" that describes the Easement Area and the parties desire to replace Exhibit B with a revised description of the Easement Area to remove certain areas of City Property; and

WHEREAS, City Code Section 23-111 provides that the City Council is authorized to sell, convey or otherwise dispose of real property owned by the City, provided the Council first finds by ordinance that any sale or disposition of real property owned by the City is in the best interest of the City Fort Collins.

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

Section 1. That the City Council hereby makes any and all determinations and findings contained in the recitals set forth above and further finds that further modification of the Permanent Easement Agreement to delete obsolete provisions and revise the description of the Easement Area is in the best interests of the City.

Section 2. That the Mayor is hereby authorized to execute the Second Amendment to Permanent Easement Agreement attached hereto as Exhibit "A," and incorporated herein with such modifications as the City Manager, in consultation with the City Attorney, determines to be necessary or appropriate to protect the interests of the City and the purposes of this Ordinance.

Introduced, considered favorably on first reading, and ordered published this 16th day of July, A.D. 2019, and to be presented for final passage on the 20th day of August, A.D. 2019.

__________________________________
Mayor

ATTEST:

_______________________________
City Clerk
Passed and adopted on final reading on the 20th day of August, A.D. 2019.

__________________________________

Mayor

ATTEST:

____________________________

City Clerk
SECOND AMENDMENT TO PERMANENT EASEMENT AGREEMENT

THIS SECOND AMENDMENT TO PERMANENT EASEMENT AGREEMENT ("Second Amendment") is made and entered into this ___ day of _____, 2019, by and among THE CITY OF FORT COLLINS, COLORADO, a municipal corporation, 300 LaPorte Avenue, Fort Collins, Colorado, 80521 (the “Grantor”) and PUBLIC SERVICE COMPANY OF COLORADO a Colorado corporation d/b/a XCEL ENERGY (the “Grantee”). Grantor and Grantee are collectively referred to as the “parties.”

RECITALS AND PURPOSES

WHEREAS, Grantor and Grantee entered into a Permanent Easement dated April 27, 2006, for Grantee to implement a removal action and associated activities along the Poudre River. The Permanent Easement was recorded in the real property records of the Larimer County Clerk and Recorder on May 3, 2006, at Reception Number 2006-0032893; and

WHEREAS, Grantor and Grantee amended the Permanent Easement on July 5, 2011, to modify the location of the telecommunications line and related easement area. The Amendment to Permanent Easement Agreement was recorded in the real property records of the Larimer County Clerk and Recorder on August 24, 2011, at Reception Number 20110051428; and

WHEREAS, references to the Permanent Easement hereinafter set forth shall mean the Permanent Easement as amended by the Amendment to Permanent Easement Agreement; and

WHEREAS, the removal action has been completed and Grantee has prepared and delivered to the U.S. Environmental Protection Agency ("EPA") the Poudre River Removal Action Final Closure Report ("Closure Report") dated May 25, 2016. Grantee prepared and delivered to EPA a revised Closure Report dated March 31, 2017; and

WHEREAS, on August 30, 2017, EPA notified Grantee and Grantor that in accordance with Section XXIX of the Administrative Order on Consent for Removal Action, CERCLA Docket No. CERCLA-08-2005-0003 (“AOC”) the work required under the AOC has been fully performed; and

WHEREAS, the parties desire to modify the Permanent Easement to reflect that the removal action has been completed and to remove certain provisions of the Permanent Easement that are now obsolete; and

WHEREAS, the vertical wall installed by Grantee as part of the removal action will remain in place indefinitely. Grantee is also voluntarily retaining certain monitoring wells and vaults along the Poudre River until approximately 2020 to monitor, if necessary, for potential changes in site conditions; and
WHEREAS, the Permanent Easement contains an Exhibit B that describes the Easement Area. The parties desire to replace Exhibit B with a revised description of the Easement Area to remove certain areas of City Property.

NOW, THEREFORE, in consideration of the foregoing and the benefits to be derived therefrom, the Permanent Easement is hereby modified as follows:

1. All defined terms and conventions referenced herein shall be interpreted as defined in the Permanent Easement.

2. Paragraph 1.1 of the Permanent Easement is deleted in its entirety and replaced with the following:

   “Grant of Easement and Right of Way to the Grantee. The Grantor hereby grants, bargains, conveys, delivers, transfers and sells to the Grantee and its successors and assigns a nonexclusive, perpetual easement (the "Permanent Easement") over and through that portion of the City Property more particularly described and depicted on Exhibit B (Revised) attached hereto and incorporated herein by reference (referred to herein as the "Easement Area"), for the remaining monitoring wells, vaults, and vertical wall (the "Improvements") over and within the Easement Area, subject to the terms, conditions and restrictions set forth herein.”

3. Paragraph 1.3(A) of the Permanent Easement is deleted in its entirety and replaced with the following:

   “Grantee shall have the right to use the Easement Area for purposes of monitoring, repairing or closing the Improvements, or for removing those Improvements that present a safety hazard. Grantee shall also have the right to access City Property outside of the Easement Area to meet its obligations under this Second Amendment, provided that any such activities are conducted so as to have the minimum impacts reasonably possible. Except in the event of an emergency, the Grantee shall not install any fixtures or appurtenances, or other additional improvement of any kind, without prior written notification to the Grantor. In the event of an emergency, the Grantee shall notify the Grantor of the emergency and related installation of improvements as soon as reasonably practicable. The Grantor’s approval of this Easement Agreement or its approval in the future of any schedule is not and shall not be construed as an endorsement of or approval by the Grantor of the technical or practical sufficiency of the Improvements.”

4. Paragraph 1.3(C) of the Permanent Easement is deleted in its entirety and replaced with the following:

   “The Grantee shall have the right of vehicular and non-vehicular access across the City Property as necessary to access the Easement Area to perform any obligations under this Second Amendment, subject to Grantee's obligation to fully restore
the City Property in the event of any damage thereto. Except in the event of an emergency, vehicular access across the City Property shall be limited to existing paved roads and surfaces, to the extent practicable. For ingress and egress across the City Property to and from the Easement Area, the Grantee shall primarily use the permanent vehicular access, as described on Exhibit C, attached hereto and incorporated herein by this reference.”

5. Paragraph 1.3(D) of the Permanent Easement is deleted in its entirety.

6. Paragraph 1.3(G) of the Permanent Easement is deleted in its entirety and replaced with the following:

“The parties acknowledge and agree that all activities by the Grantee on the Easement Area, and any access across the City Property shall be carried out in a manner and on a schedule reasonably expected to minimize disturbance to and preserve the improvements on and the natural or improved features and intended purposes of, the City Property. Grantee shall be responsible for repairing or removing any Improvements installed by Grantee in the Easement Area that present a safety hazard. In the event damage has resulted from the maintenance, repair, removal or presence of the Improvements, or Grantee’s activities on the Easement Area or the City Property, the Grantee agrees to make such repairs or take such other action, promptly and at its own expense, as may be necessary to restore the same to a condition consistent with the Grantor’s standards for work on Grantor’s similarly managed properties in place at the time the need for restoration is ascertained, as reasonably determined by mutual agreement of the parties. The parties acknowledge that sensitive vegetation, habitat or other natural conditions, or specific conditions required for safe public use of the City Property, may require special effort by the Grantee to protect, restore, or replace in the event they are disturbed by the activities of the Grantee.”

7. Paragraphs 1.4(A) and (B) of the Permanent Easement are deleted in their entirety and replaced with the following:

“A. An authorized representative of the Grantee and the Grantor will meet or otherwise confer on an as-needed basis to discuss proposed City projects that may potentially impact the Improvements, including but not limited to the City of Fort Collins’ Downtown River District Master Plan, 2014. The Grantor will initiate and coordinate such meetings.

B. To the extent practicable, the parties shall provide the following information to each other, as applicable, during any such meeting:

1. Schedule and location of proposed and planned City projects;
2. Any sampling events or other activities proposed by Grantee ("site visit"); and

3. Observations of site conditions.

8. The contacts and addresses for Grantee in Section 7 of the Permanent Easement are deleted and replaced with the following:

For Grantee:
Manager, Waste and Remediation
Xcel Energy Services Inc.
1800 Larimer St., Suite 1300
Denver, CO 80202

With a copy to:
Assistant General Counsel (Environmental)
Xcel Energy Services Inc.
1800 Larimer St., Suite 1100
Denver, CO 80202

and:
Director, Real Estate Services
Xcel Energy Services Inc.
414 Nicollet Mall
Minneapolis, MN 55402

9. The Permanent Easement shall remain in full force and effect and unmodified except as expressly set forth in this Second Amendment.

IN WITNESS WHEREOF, the parties here to have executed this Second Amendment the day and year first written above.

CITY OF FORT COLLINS, COLORADO
a municipal corporation

By: ____________________________
   Wade O. Troxell, Mayor

ATTEST:
______________________________
City Clerk

APPROVED AS TO FORM:

______________________________
Assistant City Attorney
PUBLIC SERVICE COMPANY OF COLORADO, a Colorado corporation d/b/a XCEL ENERGY

By: ____________________________
DESCRIPTION, EASEMENT EXHIBIT B:

A portion of an easement previously dedicated under Reception No. 20060032893, dated May 3, 2006, located in the Northwest Quarter of Section 12, Township 7 North, Range 69 West of the 6th Principal Meridian, City of Fort Collins, County of Larimer, State of Colorado being more particularly described as follows:

Considering the North line of the Northwest Quarter of said Section 12 as bearing South 90°00’00” East and with all bearings contained herein relative thereto:

Commencing at the Northwest corner of said Section 12; thence, South 52°43’57” East, 1079.89 feet to the POINT OF BEGINNING; thence, South 25°07’44” East, 92.48 feet; thence, South 62°36’07” West, 16.39 feet; thence, South 25°24’20” East, 85.48 feet; thence, South 24°22’43” East, 111.59 feet; thence, South 25°24’20” East, 53.08 feet; thence, South 27°32’15” East, 95.17 feet; thence, South 35°39’31” East, 90.69 feet; thence, South 51°54’50” East, 61.89 feet; thence, South 37°44’45” East, 60.94 feet; thence, South 13°06’36” West, 44.94 feet; thence, South 67°46’12” West, 36.78 feet; thence, North 13°06’36” East, 51.95 feet; thence, North 37°44’45” West, 42.95 feet; thence, North 51°54’50” West, 62.44 feet; thence, North 35°39’31” West, 97.11 feet; thence, North 27°32’15” West, 97.86 feet; thence, North 25°24’20” West, 53.90 feet; thence, North 24°22’43” West, 111.59 feet; thence, North 25°24’20” West, 172.85 feet; thence, North 58°00’28” East, 47.14 feet to the POINT OF BEGINNING.

The above described easement contains 22,307 square feet or 0.512 acres more or less and is subject to all easements and rights-of-way now on record or existing.

MAK
July 2, 2019
S:\Survey Jobs\496-407\Dwg\Exhibits\496-407 Description-B.docx

FORT COLLINS: 301 North Howes Street, Suite 100, 80521 | 970.221.4158
GREELEY: 820 8th Street, 80631 | 970.395.9880 | WEB: www.northernengineering.com
EASEMENT EXHIBIT B
LOCATED IN THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 7 NORTH,
RANGE 69 WEST OF THE 6th P.M., CITY OF FORT COLLINS,
COUNTY OF LARIMER, STATE OF COLORADO.

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APPROXIMATE 50' RAILROAD RIGHT OF WAY
APPROXIMATE 100' RAILROAD RIGHT OF WAY

0 100 Feet

PAGE 2 OF 2
AGENDA ITEM SUMMARY
City Council
July 16, 2019

STAFF

David Myers, Land Conservation Manager
Tawnya Ernst, Real Estate Specialist III
John Stokes, Natural Resources Director
Ingrid Decker, Legal

SUBJECT

First Reading of Ordinance No. 098, 2019, Authorizing the Execution of First and Second Amended and Restated Conservation Easements on the Hazelhurst Property and Assignment of a Conservation Easement to Larimer County.

EXECUTIVE SUMMARY

The purpose of this item is to authorize the execution of a First Amended and Restated Conservation Easement on the Hazelhurst property located at 2887 West Trilby Road. The amended and restated conservation easement will allow for the subdivision of the 45-acre property into two parcels: a 5-acre parcel to be retained by Glenn and Margaret Hazelhurst and a 40-acre parcel to be purchased in fee by the Natural Areas Department. Staff is also seeking authorization to subsequently enter into a Second Amended and Restated Conservation Easement that will split the Conservation Easement into two agreements, one that will apply to the 5-acre tract the Hazelhursts retain and a the other encumbering the 40-acre parcel purchased by the City, so that the conservation easement can be managed separately on each parcel. The conservation easement on the City's parcel would then be assigned to and held by Larimer County through its Open Lands department.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The original 45-acre Hazelhurst Conservation Easement (Hazelhurst CE) was granted to the City on October 31, 2005.

The Hazelhurst property was conserved in order to help provide a buffer to the adjacent Coyote Ridge Natural Area and to protect the viewshed along Taft Hill Road and within the Loveland Community Separator area. The property’s grasslands support a variety of bird and wildlife species.

In late 2018 following the annual conservation easement monitoring visit, the Hazelhursts informed staff they were intending to sell their property. Staff decided to take the opportunity to make an offer to purchase fee title to 40 acres of the property as an addition to Coyote Ridge Natural Area.

In order to separate the 45-acre property into two formal, legal parcels, the conservation easement must be amended and restated to allow said subdivision (the “First Amended and Restated Conservation Easement”). Natural Areas staff is taking the property through the County’s minor land division process in order to obtain formal approval at the County level. Once the First Amended and Restated Conservation Easement is recorded, and the subdivision approved, a new plat will be recorded.
At that time, the City will purchase the 40 acres. Two Second Amended and Restated Conservation Easement documents, one for each parcel, would then be executed to split the conservation easement between the two parcels and allow each one to be managed separately. The City will assign a conservation easement to Larimer County Open Lands so that it does not hold the conservation easement on the same parcel it owns.

The Hazelhursts will retain the 5-acre parcel subject to a conservation easement that will still be held by the City and will only encumber that 5 acres.

**CITY FINANCIAL IMPACTS**

Financial impact will be approximately $237,500 to purchase the 40 acres, plus minor administrative costs to amend and restate the conservation easement. The City will not charge the County for the conveyance of the conservation easement on the 40 acre parcel because the County is agreeing to hold the conservation easement at the City’s request to facilitate the City’s purchase of the 40 acre parcel, and the County will assume the costs and responsibilities of monitoring and enforcing the conservation easement on the City's parcel at its own expense.

**BOARD / COMMISSION RECOMMENDATION**

The Land Conservation and Stewardship Board has been kept informed and is in support of this acquisition. At its July 10, 2019 meeting, the Larimer County Stewardship Board recommended Council approve the conservation easement amendments. (Attachment 3)

**ATTACHMENTS**

1. Vicinity Map (PDF)
2. Aerial Map (PDF)
3. Land Conservation and Stewardship Board Meeting Minutes, July 10, 2019 (Draft) (PDF)
Hazelhurst Vicinity Map

- Hazelhurst Conservation Easement Property
- Larimer County Landfill
- Natural Areas
- County, State or other public lands
- Conservation Easements
Hazelhurst Aerial Map

5 acres to be retained by the Hazelhursts with an access easement to W. Trilby Road

40 acres to be purchased by City as an addition to Coyote Ridge NA

Private property under conservation easement
Land Conservation & Stewardship Board
Regular Meeting
January 9, 2019

EXCERPT:

Easement to Larimer County for monitoring wells on Cathy Fromme Prairie Natural Area. Dave Myers, Land Conservation Manager presented a request by Larimer County to install monitoring wells required by the Colorado Department of Public Health and Environment. Larimer County has requested a Revocable Permit from the Natural Areas Department to insert temporary groundwater test wells to determine the location and extent of a dioxane plume. A truck-mounted drilling rig will be used to install two wells along Fossil Creek and two wells along Smith Creek. Dave demonstrated where the easements would be. Construction is estimated to begin late February or early March.

Discussion:

Environmental impacts were discussed with regards to location of trucks and drilling. Any future requested easements would be considered at the discretion of the Department. Most of the wells will be tested every month until consistent readings are obtained. Any future testing would need to be requested, but the easement is designed to accommodate the remediation. Current and future health concerns of future leakage is being addressed by the CO Dept. of Health. Any future activities, after the testing, will have to be brought back to the Board. Concern for water in the aquifers and what is the mitigation for putting water back in the aquifer. Dave reported they didn’t have a good response so there may be some water law issues.

Vicky McLane made a motion recommending that City Council approve conveyance of an easement to Larimer County on Cathy Fromme Prairie Natural Area.

Edward Reifsnyder seconded the motion. The motion was unanimously approved 7-0.
ORDINANCE NO. 098, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE EXECUTION OF FIRST AND SECOND AMENDED
AND RESTATED CONSERVATION EASEMENTS ON THE HAZELHURST PROPERTY
AND ASSIGNMENT OF A CONSERVATION EASEMENT TO LARIMER COUNTY

WHEREAS, in 2005 Glenn and Margaret Hazelhurst (“Hazelhursts”) conveyed to the City a conservation easement (the “Hazelhurst CE”) on a 45-acre parcel of land they own southwest of the intersection of Taft Hill Road and Trilby Road (the “Property”); and

WHEREAS, the City conserved the Property to help provide a buffer to the adjacent Coyote Ridge Natural Area, to protect the viewshed along Taft Hill Road and within the Loveland Community Separator area, and to preserve wildlife habitat; and

WHEREAS, the Hazelhursts wish to sell, and the City’s Natural Areas Department (NAD) wishes to purchase, 40 acres of the Property (“Parcel B”) with the Hazelhursts retaining 5 acres of the Property that has their home on it (“Parcel A”) and an access easement across Parcel B; and

WHEREAS, the Hazelhurst CE does not currently permit subdivision of the Property; and

WHEREAS, in December 2018 the City entered into an agreement to purchase Parcel B from the Hazelhursts, subject to the City Council’s approval of amendments to the Hazelhurst CE that would permit subdivision of the Property into Parcel A and Parcel B and also allow the conservation easement to be managed separately on each Parcel if either Parcel is sold; and

WHEREAS, a draft of a proposed First Amended and Restated Conservation Easement between the City and Hazelhursts is attached hereto as Exhibit “A” and incorporated herein by reference; and

WHEREAS, so that the City would not end up owning both the land and the conservation easement on Parcel B, City staff asked Larimer County, which has a long history of partnering with the City on land conservation, to accept an assignment from the City of the conservation easement on Parcel B once the City purchases it, while the City would continue to hold the conservation easement on Parcel A; and

WHEREAS City staff is recommending that the City not charge the County for conveyance of the conservation easement on Parcel B as the County has agreed to hold the conservation easement to support the City’s natural areas program and objectives and the conveyance serves a bona fide public purpose under Section 23-114 of the City Code because:

- The County’s assumption of the conservation easement promotes the general welfare and benefits the citizens of Fort Collins by allowing the City to purchase Parcel B and still maintain the conservation easement on that Parcel.
• The County’s assumption of the conservation easement allows the City to purchase Parcel B, which supports Strategic Objective 4.10 of the City’s Strategic Plan, “Expand the Natural Areas land portfolio while simultaneously maintaining existing lands and access to nature.”

• The County will expend its own funds to monitor the conservation easement on Parcel B in the future.

• The conveyance to the County 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

• Conveying the conservation easement to the County for less than fair market value will not interfere with current City projects or work programs, hinder workload schedules or divert resources needed for primary City functions or responsibilities; and

WHEREAS, as the uses on Parcel A and Parcel B would be different once the City purchases Parcel B, and the conservation easement on each Parcel would be managed by a different entity, the City, County and Hazelhurst propose further amending the Hazelhurst CE to split it into two separate agreements, one for each Parcel, and each tailored to its own Parcel, after the City purchases Parcel B; and

WHEREAS, the forms of the two proposed Second Amended and Restated Conservation Easement agreements, one between the City and Hazelhursts for Parcel A and the other between the City and County for Parcel B, are attached hereto as Exhibits B-1 and B-2 and incorporated herein by reference; and

WHEREAS, the NAD’s Conservation Easement Amendment Policy and Procedure requires that proposed amendments to conservation easements to which the City is a party be approved by the City Council by adoption of an ordinance after a public hearing; and

WHEREAS, Section 23-111(a) of the City Code authorizes the City Council to sell, convey or otherwise dispose of any interest in real property owned by 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, at its regular meeting on July 10, 2019, the Land Conservation and Stewardship Board voted to recommend that the City Council approve the amendments to the Hazelhurst CE and the assignment of the conservation easement on Parcel B to Larimer County.

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 the proposed amendments to the Hazelhurst CE and the conveyance of the conservation easement on Parcel B to Larimer County as provided herein are in the best interests of the City.

Section 3. That the Mayor is hereby authorized to execute such documents as are necessary to amend and restate the Hazelhurst Conservation Easement to complete the transactions described herein, including assignment of the conservation easement on Parcel B to Larimer County, on terms and conditions consistent with this Ordinance and the attached exhibits, together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines are necessary or appropriate to protect the interests of the City, including, but not limited to, any necessary changes to the legal descriptions of the Conservation Easement, as long as such changes do not materially increase the size or change the character of the property interest to be conveyed.

Introduced, considered favorably on first reading, and ordered published this 16th day of July, A.D. 2019, and to be presented for final passage on the 20th day of August, A.D. 2019.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk

Passed and adopted on final reading on the 20th day of August, A.D. 2019.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
FIRST AMENDED AND RESTATED DEED OF CONSERVATION EASEMENT

HAZELHURST PROPERTY

THIS FIRST AMENDED AND RESTATED DEED OF CONSERVATION EASEMENT (the “First Amended Conservation Easement” or “Deed”) is made this ____ day of ___________ 2019 (“Effective Date”), by GLEN T. HAZELHURST and MARGARET E. HAZELHURST having an address of 2887 West Trilby Road, Fort Collins, CO 80526 (“Grantor”), to CITY OF FORT COLLINS, COLORADO, a municipal corporation, having its address at 300 Laporte Avenue, Fort Collins, CO 80521 (“Grantee”). (Grantor and Grantee may be individually referred to as a “Party” and collectively referred to as “Parties.”) The following exhibits are attached and incorporated:

Exhibit A - Legal Description of Property
Exhibit B - Map of Property [including Building Envelopes and other areas designated in this Deed]
Exhibit C - Baseline Acknowledgement
Exhibit D - Parcel A Legal Description
Exhibit E - Parcel B Legal Description
Exhibit F - 5 acre Location Map
Exhibit G - Encumbrances

RECITALS

A. Grantor is the sole owner in fee simple of approximately 45 acres of real property located in Larimer County, Colorado, encumbered by a conservation easement, more particularly described in Exhibit A and generally depicted on Exhibit B (the “Property”).

B. The Property is encumbered by a Deed of Conservation Easement granted by Grantor to Grantee recorded on October 31, 2005 at Reception No. 20050092426 in the records of Larimer County, Colorado Clerk and Recorder (the “2005 Conservation Easement”).

C. The Parties wish to restate, amend, supersede and replace the 2005 Conservation Easement and enter into a new conservation easement in order to update and refine certain terms within the Easement including but not limited to: permitting subdivision of the Property into two parcels (as defined below in Paragraph ___), facilitate management of the Easement on each of said parcels if one of the parcels is conveyed out of common ownership by treating the parcels separately for purposes of the Easement and allowing this Deed to be further amended to be split into two separate document, permitting an access easement across the larger parcel for benefit of the smaller parcel if one of the

Updated 1/2016
parcels is conveyed out of common ownership, and allow for potential future public recreation (trail and trailhead).

D. The Property possesses relatively natural habitat, scenic, open space, educational, and/or recreational values (collectively, "Conservation Values") of great importance to Grantor, the people of Fort Collins and the surrounding Larimer County region and the people of the State of Colorado. In particular, the Property contains the following characteristics, which are also included within the definition of Conservation Values:

i. Relatively Natural Habitat § 1.170A-14(d)(3). The Property's ecological values include a native biotic community of foothills grasslands that provide food, shelter, and migration corridors for several wildlife species, including, but not limited to, coyotes, foxes, mule deer, mountain bluebirds, golden eagles and red-tailed hawks. The grassland community present on the Property includes a globally rare plant community. The Property sustains a variety of bird species, including, but not limited to, horned larks, western meadowlarks, lark sparrows and grasshopper sparrows. Finally, the protection of the property contributes to the ecological viability of the adjacent Coyote Ridge Natural Area.

ii. Open Space§ 1.170A-14(d)(4). The Property qualifies as open space because it will be preserved for the scenic enjoyment of the general public and will yield a significant public benefit. More specifically, preservation of the Property adds to the scenic character of the local rural landscape in which it lies because a large portion of the Property is visible to the general public from South Taft Hill Road, a paved, well-traveled road, which is actively utilized by residents of Fort Collins, Larimer County, and the State of Colorado. The Property is in the foreground of a view of the foothills of the Rocky Mountains from South Taft Hill Road, possesses aesthetic value as open space within the Fort Collins-Loveland Corridor, and helps provide a buffer of undeveloped land where there is a foreseeable trend of development in the vicinity of the Property in the near future, due primarily to the proximity of the Cities of Fort Collins and Loveland, which City Limits lie approximately one and one-half miles northeast and three miles southeast of the Property, respectively. The Property is adjacent to the Coyote Ridge Natural Area owned and managed by the City of Fort Collins. This public land includes a trail into the foothills directly west of the Property. As a result, much of the Property is highly visible from this public trail. Because of the immediate proximity to public open space, the Property provides a visual buffer and continuation of the open space already present to the west. There is a strong likelihood that development of the Property would lead to or contribute to degradation
of the scenic and natural character of the area. Preservation of the Property will add to the scenic character of the local landscape in which it lies, and will continue to provide an opportunity for the general public to appreciate the Property's scenic values. In particular, preservation of the open, undeveloped nature of the near ridgetop will preserve important scenic qualities of the Property. It should also be noted that the terms of the Conservation Easement do not permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land. As such, preservation of the Property will continue to provide an opportunity for the general public to appreciate its scenic values.

iii. Potential future public access for outdoor education and appropriate non-motorized trail recreation including hiking, wildlife watching, horseback riding, and mountain biking.

iv. Conservation of this Property is consistent with the following federal, state, and local governmental policies:

   a) C.R.S. § 33-1-101, et seq., provides in relevant part that "it is the declared policy of the State of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors."

   b) C.R.S. § 33-2-101 to 33-2-106, which provide that “it is the policy of this state to manage all nongame wildlife, recognizing the private property rights of individual owners, for human enjoyment and welfare, for scientific purposes, and to ensure their perpetuation as members of ecosystems; that species or subspecies of wildlife indigenous to this state which may be found to be endangered or threatened within the state should be accorded protection in order to maintain and enhance their numbers to the extent possible; that this state should assist in the protection of species or subspecies of wildlife which are deemed to be endangered or threatened elsewhere.”

   c) C.R.S. § 33-10-101 to 33-10-114, which provide that “it is the policy of the State of Colorado that the natural, scenic, scientific, and outdoor recreation areas of this state are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and visitors of this state.”

   d) C.R.S. § 38-30.5-101, et seq., provides for the establishment of conservation easements to maintain land "in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest, or other use or condition consistent with the protection of open land, environmental quality or life-sustaining ecological diversity, or appropriate to the conservation and preservation
of buildings, sites, or structures having historical, architectural, or cultural interest or value."

e) Fort Collins Natural Areas Master Plan (2014) states that “the mission of the Natural Areas Department is to conserve and enhance lands with natural resource, agricultural, and scenic values, while providing meaningful education and appropriate recreation opportunities” and establishes the conservation focus areas including the Foothills Corridor and Core Natural Areas which encompass the Property.

E. Grantor intends that the Conservation Values be preserved and protected in perpetuity, and that the Deed prohibit any uses that would materially adversely affect the Conservation Values or that otherwise would be inconsistent with the Purpose (defined below). The Parties acknowledge and agree that uses expressly permitted by this Deed and Grantor’s current land use patterns on the Property, including without limitation those relating to grazing existing on the Effective Date (as defined in Section 27, below), do not materially adversely affect the Conservation Values and are consistent with the Purpose.

F. By granting this Deed, Grantor further intends to (i) create a conservation easement interest that binds Grantor as the owner of the Property and also binds future owners of the Property; and (ii) convey to Grantee the right to preserve and protect the Conservation Values in perpetuity.

G. Grantee is a political subdivision of the State of Colorado, a home-rule municipality, and a “qualified organization” under I.R.C. § 170(h) and Treas. Reg. § 1.170A-14(c). The mission of Grantee’s Natural Areas Department is to conserve and enhance lands with natural resource, agricultural, and scenic values, while providing meaningful education and appropriate recreation opportunities.

H. Grantee is also a governmental entity as required under C.R.S. § 38-30.5-101, et seq., which provides for conservation easements to maintain land and water in a natural, scenic or open condition, for wildlife habitat, or for agricultural and other uses or conditions consistent with the protection of open land in Colorado.

I. Grantee is certified as license number CE.000000031 by the State of Colorado’s Division of Real Estate pursuant to C.R.S. § 12-61-724 and 4 C.C.R. 725-4, Chapter 2, to hold conservation easements for which a tax credit is claimed.

J. Grantee agrees by accepting this Deed to preserve and protect in perpetuity the Conservation Values for the benefit of this and future generations.

NOW, THEREFORE, pursuant to the laws of the State of Colorado, and in particular C.R.S. § 38-30.5-101, et seq., and in consideration of the recitals set forth above, and the mutual covenants, terms, conditions, and restrictions contained in this Deed, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Grantor voluntarily grants and conveys to Grantee, and Grantee voluntarily accepts, a conservation easement in gross in perpetuity over the
Property for the Purpose set forth below and of the nature and character and to the extent set forth in this Deed. This Deed entirely amends, restates and replaces the 2005 Conservation Easement.

1. **Purpose.** The purpose of this Deed is to ensure that Grantor preserves and protects in perpetuity the Conservation Values as they exist upon the Effective Date and as they may evolve in the future, in accordance with I.R.C. § 170(h), Treas. Reg. § 1.170A-14 and C.R.S. § 38-30.5-101 *et seq.* (“Purpose”). To effectuate the Purpose, Grantor and Grantee agree: (i) to allow those uses of the Property that are expressly permitted by this Deed, subject to any limitations or restrictions stated in this Deed, and those uses of the Property that do not materially adversely affect the Conservation Values; and (ii) to prevent any use of the Property that is expressly prohibited by this Deed or will materially adversely affect the Conservation Values. Notwithstanding the foregoing, nothing in this Deed is intended to compel a specific use of the Property, such as agriculture, other than the preservation and protection of the Conservation Values.

2. **Baseline Documentation Report.** The Parties acknowledge that a written report dated September 30, 2005 was prepared by LREP, Inc., reviewed and approved, which documents the Property’s original condition (the “Baseline Report”). Either or both parties may update the Baseline Report at any time. Both parties agree to provide a copy of the new report to the other. The Baseline Report contains a natural resources inventory of the Property and also documents existing improvements on and current uses of the Property. A copy of the Baseline Report shall be kept on file with each Party and is by this reference made a part of this Deed. The Parties acknowledge that the Baseline Report is intended to establish and accurately represent the condition of the Property as of the Effective Date, and the Parties have acknowledged the same in a signed statement, a copy of which is attached as Exhibit C. The Parties will use the Baseline Report to assure that any future changes to the Property are consistent with the Purpose. However, the Parties agree that the existence of the Baseline Report shall in no way limit the Parties’ ability to use other pertinent information in resolving any controversy that may arise with respect to the condition of the Property as of the Effective Date.

3. **Rights of Grantee.** To accomplish the Purpose, in addition to the rights of the Grantee described in C.R.S. § 38-30.5-101 *et seq.*, and the rights of Grantee described elsewhere in this Deed, the Deed conveys the following rights to Grantee:

   a. **Right to Protect the Conservation Values.** To preserve and protect the Conservation Values in perpetuity by administering, managing and enforcing the terms of this Deed;

   b. **Right to Access the Property.** To enter upon the Property at reasonable times to monitor Grantor’s compliance with and, if necessary, to enforce the terms of this Deed. Such entry shall be made upon prior reasonable notice to Grantor, except in the event Grantee reasonably determines that immediate entry upon the Property is necessary to prevent or mitigate a violation of this Deed. In the case where Grantee has determined that immediate entry is necessary, a reasonable attempt will be made to notify Grantor.
prior to such entry. Grantee shall not unreasonably interfere with Grantor’s use and quiet enjoyment of the Property when exercising any such rights;

c. **Right to Prevent Inconsistent Activities and Require Restoration of Disturbed Areas.** To prevent any activity on or use of the Property that is inconsistent with the Purpose or the express terms of this Deed and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent use; and

d. **Right of Review.** To require Grantor to consult with Grantee regarding the negotiations of any and all agreements between Grantor and third parties that may impact or disturb any portion of the surface of the Property, including but not limited to easement agreements, utility easements, right of way agreements, surface use agreements, and lease agreements (other than those specifically related to the agricultural and recreational operations of the Property), and to have the right to approve any such agreement prior to such agreement being executed. Within 60 days of consulting with Grantor in writing, Grantee shall provide Grantor with a decision or explain to Grantor why Grantee reasonably requires no more than an additional 30 days to reach a decision. Grantee’s approval shall not be unreasonably withheld, but nothing in this Deed is intended to require Grantee to approve any action or agreement that is inconsistent with the terms of this Deed.

4. **Reserved Rights.** Subject to the terms of the Deed, Grantor reserves to Grantor, and to Grantor’s personal representatives, heirs, successors, and assigns, all rights accruing from Grantor’s ownership of the Property, including (i) the right to engage in or permit or invite others to engage in all uses of the Property that are expressly permitted by this Deed, subject to any limitations or restrictions stated in this Deed, and those uses of the Property that do not materially adversely affect the Conservation Values; and (ii) to retain the economic viability of the Property and retain income derived from the Property from all sources, unless otherwise provided in this Deed, that are consistent with the terms of this Deed. Grantor may not, however, exercise these retained rights in a manner that is expressly prohibited by this Deed or that materially adversely affects the Conservation Values. Without limiting the generality of the foregoing, Grantor reserves the following specific rights:

a. **Right to Convey.** Grantor may sell, give, lease, bequeath, devise, mortgage, or otherwise encumber or convey the Property, subject to the following: (i) any lease, deed, or other conveyance or encumbrance is subject to this Deed, and any such document shall specifically incorporate the terms and conditions of this Deed by reference to this Deed; (ii) any lease or deed or other conveyance document shall specifically state which reserved rights have been exercised, if at all, and which reserved rights are specifically allocated to the new owner or lessee; and (iii) notice of any proposed conveyance or encumbrance as set forth in this Section 4.a shall be subject to the provisions of Section 19 of this Deed.

b. **Subdivision.** Grantor may subdivide the property into two tracts – an approximately 5-acre tract around the existing building envelope shown on Exhibit B (the “Building Envelope”), hereinafter referred to as Parcel A (and more particularly
described on **Exhibit D** and a tract encompassing the remaining 40+/- acres, hereinafter referred to as **Parcel B** (and more particularly described on **Exhibit E**). Parcel A and Parcel B are hereafter referred to collectively as “Parcels” or the “Property”. Both Parcels shall be subject to this Deed. If the Property is so divided, the owner(s) of either or both Parcels shall be “Grantor” unless otherwise specified herein, shall be Parties to this Deed, and may also be referred to herein individually as “Owner” or collectively as “Owners.” Should Grantor sell Parcel B, Grantor may retain an access easement across Parcel B for access to Parcel A. Any further division or subdivision of title to the Property, whether by legal or physical process, into two or more parcels of land or partial or separate interests (including but not limited to condominium interests or the partition of undivided interests) is prohibited, other than conveyances to public entities for public roads or other public improvements consistent with this Deed. Nothing in this subparagraph shall be construed to prohibit joint ownership of each parcel or ownership of the Property by an entity consisting of more than one member.

c. **Resource Management.** To accomplish the preservation and protection of the Conservation Values in perpetuity, Grantor shall operate, manage and maintain the Property in a manner that promotes the continued viability of the natural resources on the Property while maintaining any permissible productive uses of the Property, subject to the provisions of **Section 6** of this Deed. Specifically, Grantor agrees to conduct the activities listed below in a manner consistent with the Purpose. Notwithstanding the foregoing, Grantor and Grantee recognize that changes in economic conditions, in agricultural technologies, in accepted farm, ranch and forest management practices, and in the situation of Grantor may result in an evolution of agricultural, silvicultural, and other uses of the Property, and such uses are permitted if they are consistent with the Purpose.

(1) **Habitat Management.** Grantor may conduct any activities to create, maintain, restore, or enhance wildlife habitat and native biological communities on the Property, provided that such activities do not have more than a limited, short-term adverse effect on the Conservation Values.

(i) **Weed/Pest Management.** Management of land to control erosion, growth of weeds and brush, rodents, pests, insects and pathogens, fire danger and other threats is permitted consistent with applicable laws and regulations and in keeping with maintenance of the Conservation Values of the Property, and in accordance with the Land Management Plan described in **Section 6** below. The Grantor agrees to manage noxious weeds in accordance with the requirements of Larimer County, the State of Colorado and other applicable agencies.

(ii) **Maintenance/Restoration.** Maintenance, stabilization, replacement, or restoration of existing croplands, springs, ditches and pastureland, are permitted. Wetland
pond restoration and creation are permitted if and to the extent consistent with the Purpose and the terms of this Deed.

(iii) Prescribed Fire. Igniting outdoor prescribed fires for agricultural or ecological purposes shall be allowed on the Property, provided that such activity is conducted in accordance with accepted prescribed burn practices, all applicable laws or regulations, and the Land Management Plan described in Section 6 below.

(2) Agriculture. Grantor reserves the right to use the Property for grazing livestock. Grantor shall conduct all agricultural activities using stewardship and management methods that preserve the natural resources upon which agriculture is based. Long-term stewardship and management goals include preserving soil productivity, maintaining natural stream channels, preventing soil erosion, minimizing invasive species, avoiding unsustainable livestock grazing practices, and minimizing loss of vegetative cover.

(i) Grazing. Livestock grazing is permitted in accordance with sound stewardship and management practices, and shall be managed so that the overall condition of the Property is preserved at its baseline condition and in no event in less than “fair” condition (as defined by an applicable U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS) Technical Guide). For the purposes of this Deed “livestock” shall mean cattle, horses, sheep, goats, llamas, alpaca, and bison. The raising of other livestock and/or game animals shall not be permitted unless specifically approved by the Grantee and described in the Land Management Plan. The Grantor shall comply with and have responsibility for compliance of the Property with the Colorado Noxious Weed Act and any other governmental noxious weed control regulations.

(ii) Other Agricultural Uses. Gardening, beekeeping, and an orchard, all solely for consumption by the onsite residents, is allowed within in an area less than one acre in size.

(3) Timber Management. Trees may be cut to control insects and disease, to control invasive non-native species, to prevent personal injury and property damage, to promote forest health, and for fire mitigation purposes including limited and localized tree and vegetation thinning and the creation of defensible space for permitted improvements. Collecting of firewood from dead or downed trees, or the use of trees cut as part of forest health management for firewood is permitted. In addition, trimming
brush and trees to create a vehicular throughway to accomplish land management is permitted. Any large-scale fire mitigation activities or commercial timber harvesting on the Property shall be conducted on a sustainable yield basis and in substantial accordance with a forest management plan prepared by a competent professional forester. Any large-scale fire mitigation activities or timber harvesting shall be conducted in a manner that is consistent with the Purpose. A copy of the forest management plan shall be approved by Grantee prior to any large-scale fire mitigation activities or commercial timber harvesting.

d. **Recreational Activities.** Grantor reserves the right to engage in non-commercial, non-motorized passive recreational activities, such as horseback riding, hiking, cross-country skiing, snowshoeing, and other similar low-impact recreational uses, to be enjoyed solely by each Owner and such Owner’s family and guests on such Owner’s parcel. Construction of recreational trails and trailhead for public use on Parcel B is permitted in accordance with 4.f(3) of this Deed.

e. **Hunting.** No hunting, shooting, or trapping of any animals shall be permitted on the Property with the following exceptions:

1. live-trapping of prairie dogs for relocation pursuant to Section 4.1 hereof;
2. trapping of small mammals for rodent control within the Building Envelope;
3. live-trapping for research purposes; and

No public, commercial or recreational use of the Property for hunting, shooting or trapping of any animals, is allowed.

f. **Improvements on Parcel A.**

1. **Residential and Non-Residential Improvements.** Parcel A currently contains one residential structure consisting of approximately two thousand one hundred and twenty-three (2,123) square feet. Grantor may maintain, repair, replace, or reasonably enlarge this residential structure to a size that does not exceed three thousand (3,000) square feet in total (excluding unfinished basement areas but including any living space above an attached or detached garage). Any other improvements existing on Parcel A as of the Effective Date are also permitted, and Grantor may maintain, repair, replace and reasonably enlarge such improvements in their current locations without Grantee’s approval. Typical residential landscaping, which may be non-native but shall not be invasive species, is permitted within 100 feet of actual buildings within the Building Envelope and native trees, shrubs, grasses, and wildflowers may be planted outside the 100 foot limit area within the Building Envelope. Grantor reserves the right to construct or place Residential Improvements and Non-Residential Improvements, defined below, and Grantor shall provide prior notice of such construction to Grantee in accordance with Section 7 of this Deed. Once constructed, Grantor may maintain, repair, replace and reasonably enlarge such new improvements in their initially constructed locations without Grantee’s
approval. Any new Non-Residential Improvement requiring a building permit or exceeding 800 square feet in total floor area and not expressly provided for in the Land Management Plan described in Section 6 below shall require prior written approval by the Grantee, in its reasonable discretion. “Residential Improvements” shall mean covered improvements containing habitable space intended for full- or part-time human habitation, including but not limited to homes, cabins, guest houses, mobile homes, yurts, tepees, and any space attached to any such improvement such as a garage or covered porch. “Non-Residential Improvements” shall mean all other covered or uncovered agricultural and non-residential improvements that are not intended for human habitation, including but not limited to barns, hay storage areas, machine shops, sheds, free-standing garages, well houses, outhouses, gazebos, picnic areas, sport courts, pools, outdoor kitchens, parking areas, and indoor and outdoor riding arenas, fences (subject to the terms of Section 4.f of this Deed), corrals, hayracks, cisterns, stock tanks, stock ponds, troughs, fenced hay stacks, livestock feeding stations, hunting blinds, wildlife viewing platforms, sprinklers, water lines, water wells, ditches, information kiosks, trail markers and trash receptacles. The property currently contains one outbuilding consisting of approximately one thousand two hundred (1,200) square feet and another building consisting of approximately three hundred (300) square feet.

(2) Building Envelope. The 2005 Easement designated the Building Envelope consisting of 5 acres in the location now depicted on Exhibit F. The Owner of Parcel A may construct, place, replace or enlarge Residential and Non-Residential Improvements within the Building Envelope subject to the following limitations:

(i) One single family residence
(ii) Maximum square footage for single family residence shall be 3,000 square feet of living space.
(iii) Maximum square footage for any non-residential building shall not exceed 2,000 square feet in gross floor area.
(iv) Maximum square footage for all outbuildings shall not exceed 4,000 square feet.

g. Improvements on Parcel B.

(1) Residential and Non-Residential Improvements. No residential structures exist on Parcel B and no new residential structures are permitted. Non-Residential Improvements, defined below, existing as of the Effective Date are permitted, and the Owner of Parcel B may maintain, repair, replace and reasonably enlarge such improvements in their current locations without Grantee’s approval. Owner of Parcel B reserves the right to construct or place additional Non-Residential Improvements, and shall provide prior notice of such construction to Grantee in accordance with Section 7 of this Deed. Any new Non-Residential Improvement requiring a building permit or exceeding 800 square feet in total floor area and not expressly provided for in the Land Management Plan described in Section 6 below shall require prior written approval by the Grantee, in its reasonable discretion. Once constructed, the Owner may maintain, repair, replace and
reasonably enlarge such new improvements in their initially constructed locations without Grantee’s approval.

(2) Building Envelope. Owner of Parcel B may designate a building envelope (“Building Envelope”) of no more than four (4) acres. New Non-Residential Improvements may be built within the Building Envelope subject to the following limitations:

(i) Improvements will be grouped together to the extent practicable (Ex: Vault restrooms, storage building, kiosk and parking lot in one general location.)

(ii) Maximum square footage of a structure or building shall not exceed 1,000 square feet.

(iii) Maximum height of any structure shall be 15 feet.

(3) “Non-Residential Improvements” shall mean all covered or uncovered recreational, agricultural and other improvements that are not intended for human habitation, including but not limited to well houses, outhouses, gazebos, picnic areas, trailhead parking areas (including vault toilets, trash receptacles, shelters, and kiosks), loafing sheds, corrals, hayracks, cisterns, stock tanks, stock ponds, troughs, fenced hay stacks, livestock feeding stations, hunting blinds, and wildlife viewing platforms. Notwithstanding the foregoing, trail markers, interpretive signs, information kiosks, site signs, fences (subject to the terms of Section 4.f of this Deed), sprinklers, water lines, water wells and ditches may be constructed outside of the Building Envelope.

(4) Setbacks/Requirements for Improvements. In no case shall any structure be built on Parcel B within one hundred (100) feet of any stream, spring, or improvement, as identified in the Baseline Documentation or as may subsequently develop or be determined to exist on the Property, with the exception of water facilities described in paragraph 4.j below. Except for structures permitted within the Building Envelope, as shown on Exhibit B, no structure shall exceed twenty-five (25) feet in height, as measured from the average elevation of the finished grade to the highest point on a structure, unless approved by the Grantee. All development and construction must comply with local, state, and federal requirements.

h. Roads and Trails. Maintenance of existing Roads and Trails is permitted. “Roads” shall mean any road that is graded, improved or maintained, including seasonal unimproved roads and two-track roads. “Trails” shall mean any unimproved or improved path, or paved or unpaved trail constructed or established by human use, but shall not include game trails established and used by wildlife only. Prior to the construction or establishment of any Road or Trail, Grantor shall provide notice to Grantee in accordance with Section 7 of this Deed.

(1) Grantor shall not construct or establish Roads except those existing Roads depicted on Exhibit B, an access road in an easement across Parcel B as permitted in paragraph 4.b. above, or such other Roads as Grantee determines are consistent with the Purpose. Grantor shall not construct or establish any Road wider than necessary to provide...
access for all permitted uses or to meet local codes for width of access to improvements permitted by this Deed. Grantor shall not pave or otherwise surface a Road with any impervious surface, except if Grantee determines the paving of the Road is consistent with the Purpose.

(2) No Owner shall construct or establish any new Trail on the Property unless Grantee determines a new Trail is consistent with the Purpose. An Owner may construct approved Trails, and trail head access roads and parking for appropriate, public trail recreation including hiking, wildlife watching, horseback riding, and mountain biking. However, trailhead parking may not be constructed on Parcel B before 2024. Trail recreation shall be non-motorized except as required for compliance with the Americans with Disabilities Act or other applicable laws.

i. Fences. Existing fences may be maintained, repaired and replaced, and new fences may be built anywhere on the Property. The location and design of any fencing shall facilitate and be compatible with the movement of wildlife across the Property and otherwise consistent with the Purpose.

j. Water Facilities. Maintenance, development and construction of water facilities such as water wells, livestock watering wells, windmills, springs, water storage tanks, hydrants, pumps and/or well houses and similar minor agricultural infrastructure that are solely for use on the Property in conjunction with those activities on the Property permitted by this Deed, including providing drinking water for users and livestock on the Property, for use by the Grantor, Grantor’s lessees and/or invitees, are permitted. Any facilities pursuant to this paragraph shall be sited and constructed or placed so as not to substantially diminish or impair the Conservation Values of the Property and may be considered exempt from the setback requirement described in Section 4.g.(4). above.

k. Utility Improvements. Any energy generation or transmission infrastructure and other utility improvements on the Property that already exist on the Property pursuant to an easement or other instrument recorded on or prior to the Effective Date, or later approved by Grantor after notice to Grantee in accordance with Section 7 of this Deed, may be repaired or replaced with an improvement of similar size and type at their current locations on the Property without further permission from Grantee. Utility improvements include but are not limited to: (i) natural gas distribution pipelines, electric power poles, transformers, and lines; (ii) telephone and communications towers, poles, and lines; (iii) water wells, domestic water storage and delivery systems; and (v) renewable energy generation systems including but not limited to wind, solar, geothermal, or hydroelectric for use on the Property (“Utility Improvements”). Any new or expanded Utility Improvements must be consistent with the Purpose, and Grantor shall not enlarge or construct any additional Utility Improvements without Grantee’s approval. However, Grantor reserves the right to construct Utility Improvements solely to provide utility services to the improvements permitted by this Deed, provided that no Utility Improvement exceeds 35 feet in height. Utility Improvements shall be located underground to the extent practicable.
(1) **Additional Requirements.** Prior to the enlargement or construction of any Utility Improvements on the Property, Grantor shall provide notice to Grantee in accordance with Section 7 of this Deed. Following the repair, replacement, enlargement or construction of any Utility Improvements, Grantor shall promptly restore any disturbed area to a condition consistent with the Purpose.

(2) **Alternative Energy.**

   (i) Wind, solar, and hydroelectric generation facilities that are primarily for the generation of energy for use on the Property in conjunction with those activities permitted by this Deed (collectively “Alternative Energy Generation Facilities”) may be constructed in accordance with this Section 4.k(2). Notwithstanding the foregoing, no approval of Grantee shall be required if the Alternative Energy Generation Facilities permitted by this Section 4.k(2) are located within a Building Envelope or if the facilities are installed in conjunction with the operation of an agricultural improvement as described in Section 4.f(1) above. Any other Alternative Energy Generation Facilities may only be constructed with the prior written approval of Grantee in Grantee’s sole discretion. Without limiting Grantee’s right to withhold such approval in its sole discretion, factors that Grantee may consider in determining whether to grant such approval shall include but not be limited to (a) whether the installation and siting would substantially diminish or impair the Conservation Values, (b) the physical impact of the proposed facility on the Conservation Values, (c) the feasibility of less impactful alternatives, and (d) such other factors as Grantee may determine are relevant to the decision. The construction of Alternative Energy Generation Facilities that are not for use primarily in conjunction with those activities permitted by this Deed are prohibited anywhere on the Property. Nothing in this Section 4.k(2) shall be construed as permitting the construction or establishment of a wind farm or commercial solar energy production facility.

   (ii) Any energy generated by Alternative Energy Generation Facilities constructed in accordance with this Section 4.k(2) that is incidentally in excess of Grantor’s consumption may be sold, conveyed, or credited to a provider of retail electric service to the extent permitted by Colorado law.

   (iii) In the event of technological changes or legal changes that make “expanded” Alternative Energy Generation Facilities more compatible with I.R.C. Section 170(h) or any applicable successor law, Grantee in its sole discretion may approve expanded Alternative Energy Generation Facilities that would not substantially diminish or impair the Conservation Values. For the purposes of this Section 4.k(2)(iii), the term “expanded” shall mean the development of Alternative Energy Generation Facilities to an extent that is greater than the level permitted by Sections 4.k(2)(i) and 4.k(2)(ii).

1. **Animal Control.** Requirements for the control and eradication through live trapping or fumigation of prairie dogs and other animals on the Property shall be in accordance with the requirements for said activities set forth in the City Code of the City of...
Fort Collins, Colorado ("City"), as the same would apply within the City whether or not the Property is within the City limits, except to the extent compliance with the same would necessarily result in violation of an applicable requirement of Larimer County. Grantor shall be allowed to control prairie dogs but shall comply with the requirements for the use of pesticides or otherwise related to the management of prairie dogs set forth in the City Code of the City of Fort Collins, without regard to whether the Property is within the boundaries of the City of Fort Collins. Grantor shall consult with Grantee in advance of taking any action to control, eradicate, or relocate prairie dogs, and any such action shall be consistent with Grantee's requirements associated with the protection of the Conservation Values of the Property or the purposes of this Easement. In any event, when using pesticides to control animal species on the Property, Grantor shall use only EPA-approved pesticides in approved amounts properly applied to appropriate habitats. Grantee encourages establishment and retention of prairie dogs on the Property. Prairie dog visual barriers may be installed to confine the prairie dog colony to a portion of the Property. Planting of native trees, shrubs, and other native plants to enhance wildlife habitat in appropriate locations on the Property are encouraged, but will be permitted only with the consent of the Grantee.

5. **Prohibited and Restricted Uses.** Any activity on or use of the Property inconsistent with the Purpose is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or restricted as set forth below:

   a. **Development Rights.** To fulfill the Purpose, Grantor conveys to Grantee all development rights, except those expressly reserved by Grantor in this Deed, deriving from, based upon or attributable to the Property in any way, including but not limited to all present and future rights to divide the Property for the purpose of development into residential, commercial or industrial lots or units or to receive density or development credits for the same for use off of the Property ("Grantee’s Development Rights"). The Parties agree that Grantee’s Development Rights shall be held by Grantee in perpetuity in order to fulfill the Purpose, and to ensure that such rights are forever released, terminated and extinguished as to Grantor, and may not be used on or transferred off of the Property to any other property or used for the purpose of calculating density credits or permissible lot yield of the Property or any other property.

   b. **Residential, Non-Residential and Minor Non-Residential Improvements.** Grantor shall not construct or place any Residential Improvements, Non-Residential Improvements or Minor Non-Residential Improvements on the Property except in accordance with Section 4.f or 4.g of this Deed.

   c. **Recreational and Commercial Improvements.** Grantor shall not construct or place any new recreational improvement on the Property, including but not limited to athletic fields, golf courses or ranges, race tracks, airstrips, helicopter pads, or shooting ranges. Grantor shall not construct or place any new commercial improvement on the Property.

   d. **Removal of Vegetation and Timber Harvesting.** Except as otherwise set forth in this Deed, Grantor shall not remove any vegetation, including shrubs and trees, or harvest any timber from the Property except in accordance with Section 4.b(3).
e. Mineral Extraction. As of the Effective Date, Grantor owns all of the coal, oil, gas, hydrocarbons, sand, soil, gravel, rock and other minerals of any kind or description (the “Minerals”) located on, under, or in the Property or otherwise associated with the Property. This Deed expressly prohibits the mining or extraction of Minerals using any surface mining method. Notwithstanding the foregoing, Grantor and Grantee may permit mineral extraction utilizing methods other than surface mining if the method of extraction has a limited, localized impact on the Property that is not irremediably destructive of the Conservation Values. However, Grantor and Grantee agree that the following provisions shall apply to any such proposed mineral extraction by Grantor or any third party, as applicable:

(1) Soil, Sand, Gravel and Rock. Grantor may extract soil, sand, gravel or rock without further permission from Grantee so long as such extraction: (i) is solely for use on the Property for non-commercial purposes; (ii) is in conjunction with activities permitted in this Deed, such as graveling roads and creating stock ponds; (iii) is accomplished in a manner consistent with the preservation and protection of the Conservation Values; (iv) does not result in more than one half-acre of the Property being disturbed by extraction at one time, and uses methods of mining that may have a limited and localized impact on the Property but are not irremediably destructive of the Conservation Values; and (v) is reclaimed within a reasonable time by refilling or some other reasonable reclamation method for all areas disturbed. This provision shall be interpreted in a manner consistent with I.R.C. § 170(h), as amended, and the Treasury Regulations adopted pursuant thereto.\(^{11}\)

(2) Oil and Gas. Grantor, or a third party permitted by Grantor, may explore for and extract oil and gas owned in full or in part by Grantor, provided Grantor ensures that such activities are conducted in a manner that does not constitute surface mining and complies with the following conditions:

(i) The exploration for or extraction of oil, gas and other hydrocarbons is conducted in accordance with a plan (the “Oil and Gas Plan”), prepared at Grantor’s expense and approved in advance by Grantee. The Oil and Gas Plan shall describe: (a) the specific activities proposed; (b) the specific land area to be used for well pad(s), parking, staging, drilling, and any other activities necessary for the extraction of oil and gas, and the extent of the disturbance of such land area before and after reclamation; (c) the location of facilities, equipment, roadways, pipelines and any other infrastructure to be located on the Property; (d) the method of transport of oil or gas produced from the Property; (e) the method of disposal of water, mining byproducts and hazardous chemicals produced by or used in the exploration and development of the oil or gas; (f) the proposed operation restrictions to minimize impacts on the Conservation Values, including noise and dust mitigation and any timing restrictions necessary to minimize impacts to wildlife; (g) the reclamation measures necessary to minimize disturbance to and reclaim the surface of the Property, including restoring soils to the

\(^{11}\) This paragraph is only appropriate where Grantor has reserved limited development and/or road construction rights. It should be deleted if there is no reserved development on the Property.
original contours and replanting and re-establishing native vegetation using specific seed mixes and processes to ensure successful re-vegetation of the Property, including and in addition to those measures required by law; and (h) remedies for damages to the Conservation Values.

(ii) No tank batteries, refineries, secondary production facilities, compressors, gas processing plants, or other similar facilities may be located on the Property.

(iii) Areas of surface disturbance shall be mitigated promptly in accordance with the Oil and Gas Plan.

(iv) Travel for the purpose of oil or gas development shall be restricted to existing roads or to new roads approved in advance in writing by Grantee as part of the Oil and Gas Plan.

(v) Well facilities and pipelines shall either be placed underground, or screened, or concealed from view using existing topography, existing native vegetation, newly planted but native vegetation, and/or use of natural tone coloring. Pipelines shall be located along or under existing roadways to the maximum extent possible.

(vi) Drilling equipment may be located above ground without concealment or screening, provided that such equipment shall be promptly removed after drilling is completed.

(vii) Any soil or water contamination due to the exploration for or extraction of oil or gas must be promptly remediated at the expense of Grantor.

(viii) Any water, mining byproducts or hazardous chemicals produced by or used in the exploration and development of the oil or gas shall not be stored or disposed of on the Property.

(ix) Flaring to enhance oil production is prohibited; flaring for emergencies or operational necessity is permitted.

(x) Grantee shall be released and, to the extent permitted by law, indemnified and held harmless from any liabilities, damages, or expenses resulting from any claims, demands, costs or judgments arising out of the exercise of any rights by Grantor, any lessees or other third parties relating to the exploration for or extraction of oil, gas or hydrocarbons.

(3) Third-Party Mineral Extraction. If a third party owns all, or controls some, of the Minerals, and proposes to extract Minerals from the Property, Grantor shall immediately notify Grantee in writing of any proposal or contact from a third party to explore for or develop the Minerals on the Property. Grantor shall not enter into any lease, surface use agreement, no-surface occupancy agreement, or any other
instrument related to Minerals associated with the Property (each, a “Mineral Document”), with a third party subsequent to the Effective Date without providing a copy of the same to Grantee prior to its execution by Grantor for Grantee’s review and approval. Any Mineral Document shall require that Grantor provide notice to Grantee whenever notice is given to Grantor, require the consent of Grantee for any activity not specifically authorized by the instrument, and give Grantee the right, but not the obligation, to object, appeal and intervene in any action in which Grantor has such rights. Any Mineral Document must either (i) prohibit any access to the surface of the Property or (ii) limit the area(s) of disturbance to a specified area(s); (b) include provisions that ensure that the proposed activities have a limited, localized impact on the Property that is not irremediably destructive of the Conservation Values; and (c) contain a full description of the activities proposed, a description of the extent of disturbance, the location of facilities, equipment, roadways, pipelines and any other infrastructure, the proposed operation restrictions to minimize impacts on the Conservation Values, reclamation measures including and in addition to those required by law, and remedies for damages to the Conservation Values. Any Mineral Document that only permits subsurface access to Minerals but prohibits any access to the surface of the Property shall also prohibit any disturbance to the subjacent and lateral support of the Property, and shall not allow any use that would materially adversely affect the Conservation Values.

(4) This Section 5.e shall be interpreted in a manner consistent with I.R.C. § 170(h) and the Treasury Regulations adopted pursuant thereto.

f. **Trash.** The dumping or accumulation of any kind of trash or refuse on the Property, including but not limited to household trash and hazardous chemicals, is prohibited. Limited dumping or accumulation of other agriculture-related trash and refuse produced on the Property is permitted, provided that such dumping does not substantially diminish or impair the Conservation Values and is confined within a total area less than one-quarter acre at any given time. This Section 5.f shall not be interpreted to prevent the storage of agricultural products and by-products on the Property in accordance with all applicable government laws and regulations.

g. **Motorized Vehicles.** Motorized vehicles may be used only in conjunction with activities permitted by this Deed and in a manner that is consistent with the Purpose. Off-road vehicle courses for snowmobiles, all-terrain vehicles, motorcycles, or other motorized vehicles are prohibited.

h. **Commercial or Industrial Activity.**

(1) No industrial uses shall be allowed on the Property. Commercial uses are allowed, as long as they are conducted in a manner that is consistent with I.R.C. § 170(h) and the Purpose. Without limiting other potential commercial uses that meet the foregoing criteria, the following uses are allowed:

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12 If there is an active oil and gas lease on the Property, you will need to consult with Grantee about drafting certain additional protections.
Breeding and grazing livestock, such as cattle, horses, sheep, and similar animals;

(2) The foregoing descriptions of allowed commercial uses notwithstanding, commercial feed lots and other intensive growth livestock farms, such as dairy, swine, or poultry farms, are inconsistent with the Purpose and are prohibited. For purposes of this Deed, "commercial feed lot" is defined as a permanently constructed confined area or facility within which the Property is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the commercial business of the reception and feeding of livestock.

i. Signage or Billboards. No commercial signs, billboards, awnings, or advertisements shall be displayed or placed on the Property, except for appropriate and customary ranch or pasture identification signs, “for sale” or “for lease” signs alerting the public to the availability of the Property for purchase or lease, “no trespassing” signs, signs regarding the private leasing of the Property for hunting, fishing or other low-impact recreational uses, and signs informing the public of the status of ownership. Any such signs shall be located and designed in a manner consistent with the Purpose.

6. Land Management / Management Plan. Grantor and Grantee acknowledge that the preservation and protection of the Conservation Values as contemplated under this Deed require careful and thoughtful stewardship of the Property. To facilitate periodic communication between Grantor and Grantee about management issues that may impact the Conservation Values, the Property shall be operated and managed in accordance with a “Management Plan” jointly prepared and agreed upon by Grantor and Grantee on or before the Effective Date. If the Property is subdivided into two Parcels, each Parcel shall have its own Management Plan prepared and agreed to by the Grantee and the Owner of such Parcel. The Parties shall review the Management Plan at least every five years and update it if either Party determines an update is necessary.

7. Grantor Notice and Grantee Approval. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the Purpose. Whenever notice is required, Grantor shall notify Grantee in writing within a reasonable period of time prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose. Where Grantee’s approval is required, Grantor shall not undertake the requested activity until Grantor has received Grantee’s approval in writing. Grantee shall grant or withhold its approval in writing within the time frame described in Paragraph 3d above, following receipt of Grantor’s written request and sufficient supporting details as described above. Grantee’s approval may be withheld only upon Grantee’s reasonable determination that the activity as proposed is not consistent with the Purpose or the express terms of this Deed, unless this Deed provides that approval for a particular request may be withheld in the sole discretion of the Grantee.
8. **Enforcement.** The Grantee shall have the right to prevent and correct or require correction of violations of the terms of this Deed and the purposes of the Easement. The Owner of one (1) Parcel will not be held liable for violations located entirely on the other Parcel, so long as such violations were not caused by the non-occupying Owner. If Grantee finds what it believes is a violation of this Deed, Grantee shall immediately notify the Owner(s) in writing of the nature of the alleged violation. Upon receipt of this written notice, such Owner(s) shall either:

   a. Restore the Property to its condition prior to the violation; or

   b. Provide a written explanation to Grantee of the reason why the alleged violation should be permitted, in which event the Parties agree to meet as soon as possible to resolve their differences. If a resolution cannot be achieved at the meeting, the Parties may meet with a mutually acceptable mediator to attempt to resolve the dispute. Owner(s) shall discontinue any activity that could increase or expand the alleged violation during the mediation process. If the Owner refuses to undertake mediation in a timely manner or should mediation fail to resolve the dispute, Grantee may, at its discretion, take appropriate legal action. Notwithstanding the foregoing, when Grantee, in its sole discretion, determines there is an ongoing or imminent violation that could irreversibly diminish or impair the Conservation Values, Grantee may, at its sole discretion, take appropriate legal action without pursuing mediation, including but not limited to seeking an injunction to stop the alleged violation temporarily or permanently or to require the Owner(s) to restore the Property to its prior condition.

9. **Costs of Enforcement.** An Owner shall pay any costs incurred by Grantee in enforcing the terms of this Deed against such Owner, including without limitation costs and expenses of suit, attorney fees and any costs of restoration necessitated by such Owner’s violation of the terms of this Deed. If the deciding body determines that the Owner has prevailed in any such legal action, then each Party shall pay its own costs and attorney fees. However, if the deciding body determines that Grantee’s legal action was frivolous or groundless, Grantee shall pay the Owner’s costs and attorney fees in defending the legal action.

10. **No Waiver or Estoppel.** Enforcement of the terms of this Deed shall be in the Grantee’s discretion. If the Grantee does not exercise, or delays the exercise of, its rights under this Deed in the event of a violation of any term, such inaction or delay shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent violation of the same or any other term of this Deed or of any of Grantee’s rights under this Deed. Grantor waives any defense of laches, estoppel, or prescription, including the one-year statute of limitations for commencing an action to enforce the terms of a building restriction or to compel the removal of any building or improvement because of the violation of the same under C.R.S. § 38-41-119, et seq.

11. **Acts Beyond Grantor’s Control.** Nothing contained in this Deed shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the
Property resulting from causes beyond Grantor’s control, including without limitation fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. Notwithstanding the foregoing, Grantor shall take reasonable efforts to prevent third parties from performing, and shall not knowingly allow third parties to perform, any act on or affecting the Property that is inconsistent with the Purpose.

12. **Access.** No right of access by the general public to any portion of Parcel A is conveyed by this Deed.

13. **Costs and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including weed control and eradication and maintaining adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

14. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively “Taxes”), including any Taxes imposed upon, or incurred as a result of, this Deed, and shall furnish Grantee with satisfactory evidence of payment upon request.

15. **Hold Harmless.** To the extent permitted by law, Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, representatives, successors, and assigns (the “Indemnified Party”) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation reasonable attorneys’ fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of the Indemnified Party; (2) the obligations specified in Section 8; and (3) the presence or release of hazardous or toxic substances on, under or about the Property. For the purpose of this Section 15, hazardous or toxic substances shall mean any hazardous or toxic substance that is regulated under any federal, state or local law. Without limiting the foregoing, nothing in this Deed shall be construed as giving rise to any right or ability in Grantee, nor shall Grantee have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or any similar law or regulation.

16. **Real Property Interest.** The conservation easement interest created by this Deed constitutes a real property interest immediately vested in Grantee. The Parties stipulate that for Parcel B this conservation easement interest (which includes the value of
Grantee’s Development Rights) has a fair market value equal to Forty-seven and a half percent (47.5\%) of the full unencumbered fair market value of the Property (the “Easement Value Percentage”). Both Parties stipulate that for Parcel A this conservation easement interest has a fair market value equal to ten percent (10\%) of the full unencumbered fair market value of the Property (the “Easement Value Percentage”). The values at the time of this Deed shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to I.R.C. § 170(h), whether or not Grantor claims any deduction for federal income tax purposes. The Easement Value Percentage shall remain constant.

17. Condemnation or Other Extinguishment. If this Deed is taken, in whole or in part, by exercise of the power of eminent domain (“Condemnation”), or if circumstances arise in the future that render the Purpose impossible or impractical to accomplish, this Deed can only be terminated, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Each Party shall promptly notify the other Party in writing when it first learns of such circumstances. Grantee shall be entitled to full compensation for its interest in any portion of this Deed that is terminated as a result of Condemnation or other proceedings. Grantee’s proceeds shall be an amount at least equal to the Easement Value Percentage multiplied by the value of the unencumbered fee simple interest (excluding the value of any improvements) in the portion of the Property that will no longer be encumbered by this Deed as a result of Condemnation or termination. Grantor shall not voluntarily accept proceeds equal to less than the full fair market value of the affected Property unrestricted by this Deed without the approval of Grantee. Grantee shall use its proceeds in a manner consistent with the conservation purposes of this Deed. Grantee’s remedies described in this Section 17 shall be cumulative and shall be in addition to any and all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values as described in C.R.S. § 38-30.5-108.

18. Assignment.

a. This Deed is transferable, but Grantee may assign its rights and obligations under this Deed only to an organization that:

1. is a qualified organization at the time of transfer under I.R.C. § Section 170(h) as amended (or any successor provision then applicable) and the applicable regulations promulgated thereunder;

2. is authorized to acquire and hold conservation easements under Colorado law;

3. agrees in writing to assume the responsibilities imposed on Grantee by this Deed; and

b. If Grantee desires to transfer this Deed to a qualified organization having similar purposes as Grantee but Grantor has refused to approve the transfer, Grantee may
seek an order by a court with jurisdiction to transfer this Deed to another qualified organization having similar purposes that agrees to assume the responsibility imposed on Grantee by this Deed, provided that Grantor shall have adequate notice of and an opportunity to participate in the court proceeding leading to the court’s decision on the matter.

c. Upon compliance with the applicable portions of this Section 18, the Parties shall record an instrument completing the assignment in the property records of the county or counties in which the Property is located. Assignment of the Deed shall not be construed as affecting the Deed’s perpetual duration and shall not affect the Deed’s priority against any intervening liens, mortgages, easements, or other encumbrances.

19. Subsequent Transfers. Grantor shall notify the Grantee in writing at least thirty (30) days in advance of the proposed conveyance of any interest in all or any portion of the Property, including any conveyance under threat of condemnation, and shall incorporate by reference the terms and conditions of this Deed in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, except conveyance of a leasehold interest that is no longer than one year in duration or an agricultural lease, that is otherwise consistent in all respects with the terms of this Deed. The failure of Grantor to perform any act required by this Section 19 shall not impair the validity of this Deed or limit its enforceability in any way.

20. Notices. Any notice, demand, request, consent, approval, or communication that either Party is required to give to the other in writing shall be either served personally or delivered by (a) certified mail, with return receipt requested; or (b) a commercial delivery service that provides proof of delivery, addressed as follows:

To Grantor:
Glen and Margaret Hazelhurst
2887 W. Trilby Road
Fort Collins, CO 80526

To Grantee:
City of Fort Collins
Natural Areas Department
c/o John Stokes, Natural Areas Director
P.O. Box 580
Fort Collins, CO 80522

or to such other address as either Party from time to time shall designate by written notice to the other.

21. Grantor’s Title Warranty. Grantor warrants that Grantor has good and sufficient title to the Property and Grantor has access to the Property for the purposes granted or permitted to Grantee in this Deed, and Grantor promises to defend the same against all
claims whatsoever. Grantor’s warranty of title is further subject to the encumbrances set forth on Exhibit G, attached hereto and incorporated herein by this reference.

22. **Subsequent Liens on the Property.** No provisions of this Deed shall be construed as impairing the ability of Grantor to use this Property (or either Owner, if the Property is divided, to use its respective Parcel) as collateral for subsequent borrowing, provided that any deed of trust, mortgage or lien arising from such a borrowing shall not encumber less than all of the Property (or Parcel if applicable), and shall be subordinate to this Deed for all purposes so that any such instrument expressly shall be deemed to have been recorded after this Deed and so that any foreclosure of such deed of trust, mortgage or lien shall not affect any provision of this Deed, including without limitation its perpetual nature, the payment of proceeds as described in Section 17 above, and the limitation of Section 5.e.

23. **Recording.** Grantee shall record this Deed in a timely fashion in the official records of each county or counties in which the Property is situated, and may re-record it at any time as may be required to preserve its rights in this Deed.

24. **Environmental Attributes.** Unless otherwise provided in this Deed, Grantor reserves all Environmental Attributes associated with the Property. “**Environmental Attributes**” shall mean any and all tax or other credits, benefits, renewable energy certificates, emissions reductions, offsets, and allowances (including but not limited to water, riparian, greenhouse gas, beneficial use, and renewable energy), generated from or attributable to the conservation, preservation and management of the Property in accordance with this Deed. Nothing in this **Section 24** shall modify the restrictions imposed by this Deed or otherwise be inconsistent with the Purpose.

25. **Tax Benefits.** Grantor acknowledges that Grantor is responsible for obtaining legal and accounting counsel to advise Grantor regarding the applicability of federal or state tax benefits that might arise from the bargain sale (sale at less than fair market value) or donation of the Deed. Grantee makes no representation or warranty that Grantor will receive tax benefits for the bargain sale or donation of the Deed.

26. **Deed Correction.** The Parties shall cooperate to correct mutually acknowledged errors in this Deed (and exhibits), including typographical, spelling, or clerical errors. The Parties shall make such corrections by written agreement.

27. **Effective Date.** The Effective Date of this Deed shall be the date and year first written above.

28. **General Provisions.**

   a. **Controlling Law.** The interpretation and performance of this Deed shall be governed by the laws of the State of Colorado.

   b. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Deed shall be liberally construed in favor of the grant to effect the
Purpose and the policy and purpose of C.R.S. § 38-30.5-101, et seq. If any provision in this Deed is found to be ambiguous, an interpretation consistent with the Purpose that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. **Severability.** If any provision of this Deed, or the application thereof to any person or circumstance, is found to be invalid, it shall be deemed severed from this Deed, and the balance of this Deed shall otherwise remain in full force and effect.

d. **Entire Agreement.** The Recitals above are a material part of this Deed and are incorporated into this Deed. This Deed sets forth the entire agreement of the Parties with respect to the grant of a conservation easement over the Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the grant, all of which are merged in this Deed.

e. **Joint Obligation.** The obligations imposed upon Grantor and Grantee in this Deed shall be joint and several if more than one entity or individual holds either interest at any given time. If there is more than one owner of a Parcel at any time, the obligations imposed by this Deed upon the Owners shall be joint and several upon each of the Owners of such Parcel. However, the Owners of one Parcel are not liable for the obligations of the Owners of the other Parcel.

f. **Non-Merger.** A merger of this Deed and the fee title to the Property cannot occur by operation of law. No merger shall be deemed to have occurred hereunder or under any documents executed in the future affecting this Easement, unless the parties expressly state that they intend a merger of estates or interests to occur.

g. **Successors.** The covenants, terms, conditions, and restrictions of this Deed shall be binding upon, and inure to the benefit of, the Parties and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

h. **Termination of Rights and Obligations.** Provided a transfer is permitted by this Deed, a Party's rights and obligations under the Deed terminate upon transfer of the Party's interest in the Deed or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

i. **Captions.** The captions in this Deed have been inserted solely for convenience of reference and are not a part of this Deed and shall have no effect upon construction or interpretation.

j. **No Third-Party Beneficiaries.** This Deed is entered into by and between Grantor and Grantee and is solely for the benefit of Grantor and Grantee and their respective successors and assigns for the purposes set forth in this Deed. The enforcement of the terms and conditions of this Deed and all rights of action relating to such enforcement, shall be strictly reserved to the parties. Nothing contained in this Deed shall give or allow any claim or right of action whatsoever by any other third person, or by the
Owner of one Parcel against the Owner of the other Parcel. It is the express intention of
the Parties that any person or entity, other than the Parties, receiving services or benefits
under this Deed shall be deemed an incidental beneficiary only, and that the Owner of
one Parcel is not a beneficiary of the rights or responsibilities of the Owner of the other
Parcel under this Deed.

k. **Amendment.** If circumstances arise under which an amendment to or
modification of this Deed or any of its exhibits would be appropriate, Grantor and
Grantee may jointly amend this Deed so long as the amendment (i) is consistent with the
Conservation Values and Purpose of this Deed (ii) does not affect the perpetual duration
of the restrictions contained in this Deed, (iii) does not affect the qualifications of this
Deed under any applicable laws, and (iv) complies with Grantee’s procedures and
standards for amendments (as such procedures and standards may be amended from time
to time). If the Property has been divided into two Parcels, the Owner of either Parcel and
the Grantee are free to jointly amend this Deed with respect to such Parcel without the
consent of the Owner of the other Parcel; however, any amendment or modification
affecting the entire Property must be approved in writing by all parties. Alternatively, the
Grantor and Grantee may amend this Deed to create separate Deeds of Conservation
Easement for each Parcel so that each may be managed as a separate Conservation
Easement. Any amendment must be in writing, signed by the Parties, and recorded in the
records of the Clerk and Recorder of the county in which the Property is located. In order
to preserve the Deed’s priority, the Grantee may obtain subordinations of any liens,
mortgages, easements, or other encumbrances, and the Grantee may require a new title
policy. For the purposes of this paragraph, the term “amendment” means any instrument
that purports to alter in any way any provision of or exhibit to this Deed. Nothing in this
Section 28.k shall be construed as requiring Grantee to agree to any particular proposed
amendment.

l. **Change of Conditions or Circumstances.** A change in the potential
economic value of any use that is prohibited by or inconsistent with this Deed, or a change
in any current or future uses of neighboring properties, shall not constitute a change in
conditions or circumstances that make it impossible or impractical for continued use of the
Property, or any portion thereof, for conservation purposes and shall not constitute grounds
for terminating the Deed in whole or in part. In conveying this Deed, the Parties have
considered the possibility that uses prohibited or restricted by the terms of this Deed may
become more economically valuable than permitted uses, and that neighboring or nearby
properties may in the future be put entirely to such prohibited or restricted uses. It is the
intent of Grantor and Grantee that any such changes shall not be deemed to be
circumstances justifying the termination or extinguishment of this Deed, in whole or in
part. In addition, the inability of Grantor, or Grantor’s heirs, successors, or assigns, to
conduct or implement any or all of the uses permitted under the terms of this Deed, or the
unprofitability of doing so, shall not impair the validity of this Deed or be considered
grounds for its termination or extinguishment, in whole or in part.

m. **Authority to Execute.** Each Party represents to the other that such Party
has full power and authority to execute, deliver, and perform this Deed, that the
individual executing this Deed on behalf of each Party is fully empowered and authorized
to do so, and that this Deed constitutes a valid and legally binding obligation of each
Party enforceable against each Party in accordance with its terms.\(^{25}\)

\(\text{n. Obligations Subject to Annual Appropriation.}\) Any obligations of the
Grantee under this Deed for fiscal years after the year of this Deed are subject to annual
appropriation by Grantee’s governing body, in its sole discretion, of funds sufficient and
intended for such purposes.

\(\text{o. Good Faith Negotiation/Mediation.}\) Where this Deed requires the consent
of either party, such consent shall not be unreasonably withheld, conditioned, delayed or
denied. Where this Deed specifies that a decision requires the mutual agreement of the
parties, the parties shall be obligated to make best efforts to negotiate in good faith to
reach mutual agreement consistent with the Conservation Values and purposes of the
Easement. In the event that such efforts by the parties fail to result in mutual agreement
through negotiation, the parties agree to attempt to resolve their dispute through
mediation. Either party may commence the mediation process by providing the other
party with written notice setting forth the subject of the dispute, and the solution
requested. Within ten (10) days after the receipt of the notice, the other party shall
deliver a written response to the initiating party’s notice. The parties agree to meet with a
mutually acceptable mediator to attempt to resolve the dispute. The initial mediation
session shall be held within thirty (30) days after the initial notice, unless the selected
mediator cannot accommodate the parties within that time. If the parties cannot agree
upon a mediator, the Grantee will provide the Grantor with a list of at least three
professional mediation organizations in the Fort Collins/Denver area that are not
affiliated with the City of Fort Collins. The Grantor will select an organization from the
list within ten (10) days of receipt of the list, and the selected organization will be asked
to choose a mediator for the parties. The parties agree to share equally the costs and
expenses of the mediation, which shall not include the expenses incurred by each party
for its own legal representation in connection with the mediation. The provisions of this
subparagraph may be enforced by any court of competent jurisdiction, and the party
seeking enforcement shall be entitled to an award of all costs, fees and expenses,
including reasonable attorneys’ fees and other legal costs, to be paid by the party against
whom enforcement is ordered.

\(\text{p. No Waiver of Governmental Immunity.}\) Anything else in this Deed to the
contrary notwithstanding, no term or condition of this Deed shall be construed or
interpreted as a waiver, either express or implied, of any of the immunities, rights,
benefits or protection of the Colorado Governmental Immunity Act, C.R.S. §24-10-101,
et seq., as amended or as may be amended in the future (including, without limitation,
any amendments to such statute, or under any similar statute which is subsequently
enacted) (“CGIA”), subject to any applicable provisions of the Colorado Constitution and
applicable laws. The Parties acknowledge that liability for claims for injury to persons or
property arising out of the negligence of a government entity, its members, officials,

\(^{25}\) A current Statement of Authority should be recorded prior to recording of this Deed for any Party that is
an artificial entity, e.g. corporation, LLC, LLLC, Trust, etc.
agents and employees may be controlled and/or limited by the provisions of the CGIA. The Parties agree that no provision of this Deed shall be construed in such a manner as to reduce the extent to which the CGIA limits the liability of any governmental party, its members, officers, agents and employees.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Deed of Conservation Easement as of the Effective Date.

GRANTOR:

______________________________
Glen T. Hazelhurst

______________________________
Margaret E. Hazelhurst

STATE OF COLORADO )
COUNTY OF _____________)

The foregoing instrument was acknowledged before me this _____ day of _____________, 2019, by Glen T. Hazelhurst and Margaret E. Hazelhurst.

Witness my hand and official seal.

My Commission expires:

______________________________
Notary Public
GRANTEE:

CITY OF FORT COLLINS
a Colorado municipal corporation

By: __________________________
   , Mayor

ATTEST:

________________________
City Clerk

________________________
Printed Name

Approved as to Form:

________________________
Senior Assistant City Attorney

________________________
Printed Name

STATE OF COLORADO
COUNTY OF LARIMER

) ss.

The foregoing instrument was acknowledged before me this _____ day of __________, 2019, by ______________________ as Mayor of the City of Fort Collins.

Witness my hand and official seal
My commission expires:

________________________
Notary Public
Exhibit A
Current Survey and Legal Description

The legal description of the subject property is as follows:

A tract of land located in the Northwest Quarter of Section 16, Township 6 North, Range 69 West of the 6th P.M., Larimer County, Colorado and being more particularly described as follows:

Considering the North line of the Northwest Quarter as bearing North 89°58'19" East and all other bearings herein relative thereto.

Commencing at the Northwest Corner of said Section 16
Thence North 89°58'19" East, 820.77 feet along the said North line of the Northwest Quarter Section 16 to the Point of True Beginning,
Thence continuing along said North line North 89°58'19" East, 1832.45 to the North Quarter corner of said Section 16; Thence South 00°00'45" West, 2262.01 feet along the East line of the said Northwest Quarter of Section 16;
Thence South 90°00'00" West, 2388.77 feet;
Thence North 11°05'22" West, 2304.13 feet to the True Point of Beginning.

Except that parcel to Fort Collins-Loveland Water District as described in Book 2090 at Page 849 of the Larimer County Clerks Office, Larimer County, Colorado, being more particularly as follows: Considering the North line of the Northwest Quarter of said Section 16 as bearing South 89°46'00" East and with all bearings contained herein relative thereto:

Commencing at the Northwest Corner of said Section 16;
Thence along the said North line, South 89°46'00" East, 2336.58 feet;
Thence South 00°14'00" West, 30.00 feet to the True Point of Beginning;
Thence South 00°14'00" West, 350.00 feet;
Thence South 89°46'00" West, 450.00 feet;
Thence North 00°14'00" East, 350.00 feet;
Thence North 89°4600" East, 450.00 feet to the True Point of Beginning.
SECOND AMENDED AND RESTATED DEED OF CONSERVATION EASEMENT

HAZELHURST PROPERTY – 5 ACRE PARCEL

THIS SECOND AMENDED AND RESTATED DEED OF CONSERVATION EASEMENT (the “Second Amended Conservation Easement” or “Deed”) is made this _____ day of ___________ 2019 (“Effective Date”), by GLEN T. HAZELHURST and MARGARET E. HAZELHURST having an address of 2887 West Trilby Road, Fort Collins, CO 80526 (“Grantor”), to CITY OF FORT COLLINS, COLORADO, a municipal corporation, having its address at 300 Laporte Avenue, Fort Collins, CO 80521 (“Grantee”). (Grantor and Grantee may be individually referred to as a “Party” and collectively referred to as “Parties.”) The following exhibits are attached and incorporated:

Exhibit A - Legal Description of Property
Exhibit B - Map of Property
Exhibit C - Baseline Acknowledgement
Exhibit D - Encumbrances

RECITALS

A. Grantor is the sole owner in fee simple of approximately 5 acres of real property located in Larimer County, Colorado, encumbered by a conservation easement, more particularly described in Exhibit A and generally depicted on Exhibit B (the “Property”).

B. The Property is encumbered by a Deed of Conservation Easement granted by Grantor to Grantee recorded on October 31, 2005 at Reception No. 20050092426 in the records of Larimer County, Colorado Clerk and Recorder, as amended by a First Amended and Restated Deed of Conservation Easement dated ______, 2019 and recorded on _______, 2019 at Reception No. _____________ in the records of the Larimer County, Colorado Clerk and Recorder (the “First Amended Conservation Easement”).

C. The First Amended Easement encumbers both the Property and an adjacent 45 acre parcel (“Parcel B”), and permits both subdivision of the Property from Parcel B, and further amendment of the First Amended Easement to create two separate documents should the Property and Parcel B be conveyed into separate ownership.

D. The Grantee has purchased Parcel B, and the Parties wish to restate, amend, supersede and replace the First Amended Conservation Easement and enter into a new conservation easement with respect to the Property in order to facilitate management of the Easement on the Property separately from Parcel B.

Updated 1/2016
E. The Property possesses relatively natural habitat, scenic, open space, educational, and/or recreational values (collectively, "Conservation Values") of great importance to Grantor, the people of Fort Collins and the surrounding Larimer County region and the people of the State of Colorado. In particular, the Property contains the following characteristics, which are also included within the definition of Conservation Values:

i. Relatively Natural Habitat § 1.170A-14(d)(3). The Property's ecological values include a native biotic community of foothills grasslands that provide food, shelter, and migration corridors for several wildlife species, including, but not limited to, coyotes, foxes, mule deer, mountain bluebirds, golden eagles and red-tailed hawks. The grassland community present on the Property includes a globally rare plant community. The Property sustains a variety of bird species, including, but not limited to, horned larks, western meadowlarks, lark sparrows and grasshopper sparrows. Finally, the protection of the property contributes to the ecological viability of the adjacent Coyote Ridge Natural Area.

ii. Open Space§ 1.170A-14(d)(4). The Property qualifies as open space because it will be preserved for the scenic enjoyment of the general public and will yield a significant public benefit. The Property is in the foreground of a view of the foothills of the Rocky Mountains from South Taft Hill Road, possesses aesthetic value as open space within the Fort Collins-Loveland Corridor, and helps provide a buffer of undeveloped land where there is a foreseeable trend of development in the vicinity of the Property in the near future, due primarily to the proximity of the Cities of Fort Collins and Loveland, which City Limits lie approximately one and one-half miles northeast and three miles southeast of the Property, respectively. The Property is adjacent to the Coyote Ridge Natural Area owned and managed by the City of Fort Collins. This public land includes a trail into the foothills directly west of the Property. As a result, much of the Property is highly visible from this public trail. Because of the immediate proximity to public open space, the Property provides a visual buffer and continuation of the open space already present to the west. There is a strong likelihood that development of the Property would lead to or contribute to degradation of the scenic and natural character of the area. Preservation of the Property will add to the scenic character of the local landscape in which it lies, and will continue to provide an opportunity for the general public to appreciate the Property's scenic values. In particular, preservation of the open, undeveloped nature of the near ridgetop will preserve important scenic qualities of the Property. It should also be noted that the terms of the Conservation Easement do not permit a degree of intrusion or future development that would interfere with the essential
scenic quality of the land. As such, preservation of the Property will continue to provide an opportunity for the general public to appreciate its scenic values.

iii. Conservation of this Property is consistent with the following federal, state, and local governmental policies:

a) C.R.S. § 33-1-101, et seq., provides in relevant part that "it is the declared policy of the State of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors."

b) C.R.S. § 33-2-101 to 33-2-106, which provide that "it is the policy of this state to manage all nongame wildlife, recognizing the private property rights of individual owners, for human enjoyment and welfare, for scientific purposes, and to ensure their perpetuation as members of ecosystems; that species or subspecies of wildlife indigenous to this state which may be found to be endangered or threatened within the state should be accorded protection in order to maintain and enhance their numbers to the extent possible; that this state should assist in the protection of species or subspecies of wildlife which are deemed to be endangered or threatened elsewhere."

c) C.R.S. § 33-10-101 to 33-10-114, which provide that "it is the policy of the State of Colorado that the natural, scenic, scientific, and outdoor recreation areas of this state are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and visitors of this state."

d) C.R.S. § 38-30.5-101, et seq., provides for the establishment of conservation easements to maintain land "in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest, or other use or condition consistent with the protection of open land, environmental quality or life-sustaining ecological diversity, or appropriate to the conservation and preservation of buildings, sites, or structures having historical, architectural, or cultural interest or value."

e) Fort Collins Natural Areas Master Plan (2014) states that "the mission of the Natural Areas Department is to conserve and enhance lands with natural resource, agricultural, and scenic values, while providing meaningful education and appropriate recreation opportunities" and establishes the conservation focus areas including the Foothills Corridor and Core Natural Areas which encompass the Property.

F. Grantor intends that the Conservation Values be preserved and protected in perpetuity, and that the Deed prohibit any uses that would materially adversely affect the Conservation Values or that otherwise would be inconsistent with the Purpose (defined
below). The Parties acknowledge and agree that uses expressly permitted by this Deed and Grantor’s current land use patterns on the Property, including without limitation those relating to grazing existing on the Effective Date (as defined in Section 27, below), do not materially adversely affect the Conservation Values and are consistent with the Purpose.

G. By granting this Deed, Grantor further intends to (i) create a conservation easement interest that binds Grantor as the owner of the Property and also binds future owners of the Property; and (ii) convey to Grantee the right to preserve and protect the Conservation Values in perpetuity.

H. Grantee is a political subdivision of the State of Colorado, a home-rule municipality, and a “qualified organization” under I.R.C. § 170(h) and Treas. Reg. § 1.170A-14(c). The mission of Grantee’s Natural Areas Department is to conserve and enhance lands with natural resource, agricultural, and scenic values, while providing meaningful education and appropriate recreation opportunities.

I. Grantee is also a governmental entity as required under C.R.S. § 38-30.5-101, et seq., which provides for conservation easements to maintain land and water in a natural, scenic or open condition, for wildlife habitat, or for agricultural and other uses or conditions consistent with the protection of open land in Colorado.

J. Grantee is certified as license number CE.000000031 by the State of Colorado’s Division of Real Estate pursuant to C.R.S. § 12-61-724 and 4 C.C.R. 725-4, Chapter 2, to hold conservation easements for which a tax credit is claimed.

K. Grantee agrees by accepting this Deed to preserve and protect in perpetuity the Conservation Values for the benefit of this and future generations.

NOW, THEREFORE, pursuant to the laws of the State of Colorado, and in particular C.R.S. § 38-30.5-101, et seq., and in consideration of the recitals set forth above, and the mutual covenants, terms, conditions, and restrictions contained in this Deed, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Grantor voluntarily grants and conveys to Grantee, and Grantee voluntarily accepts, a conservation easement in gross in perpetuity over the Property for the Purpose set forth below and of the nature and character and to the extent set forth in this Deed. This Deed entirely amends, restates and replaces the First Amended Conservation Easement with respect to the Property.

1. Purpose. The purpose of this Deed is to ensure that Grantor preserves and protects in perpetuity the Conservation Values as they exist upon the Effective Date and as they may evolve in the future, in accordance with I.R.C. § 170(h), Treas. Reg. § 1.170A-14 and C.R.S. § 38-30.5-101 et seq. (“Purpose”). To effectuate the Purpose, Grantor and Grantee agree: (i) to allow those uses of the Property that are expressly permitted by this Deed, subject to any limitations or restrictions stated in this Deed, and those uses of the Property that do not materially adversely affect the Conservation Values; and (ii) to prevent any use of the Property that is expressly prohibited by this Deed or will
materially adversely affect the Conservation Values. Notwithstanding the foregoing, nothing in this Deed is intended to compel a specific use of the Property, such as agriculture, other than the preservation and protection of the Conservation Values.

2. **Baseline Documentation Report.** The Parties acknowledge that a written report dated September 30, 2005 was prepared by LREP, Inc., reviewed and approved, which documents the Property’s original condition (the “Baseline Report”). Either or both parties may update the Baseline Report at any time. Both parties agree to provide a copy of the new report to the other. The Baseline Report contains a natural resources inventory of the Property and also documents existing improvements on and current uses of the Property. A copy of the Baseline Report shall be kept on file with each Party and is by this reference made a part of this Deed. The Parties acknowledge that the Baseline Report is intended to establish and accurately represent the condition of the Property as of the Effective Date, and the Parties have acknowledged the same in a signed statement, a copy of which is attached as Exhibit C. The Parties will use the Baseline Report to assure that any future changes to the Property are consistent with the Purpose. However, the Parties agree that the existence of the Baseline Report shall in no way limit the Parties’ ability to use other pertinent information in resolving any controversy that may arise with respect to the condition of the Property as of the Effective Date.

3. **Rights of Grantee.** To accomplish the Purpose, in addition to the rights of the Grantee described in C.R.S. § 38-30.5-101 et seq., and the rights of Grantee described elsewhere in this Deed, the Deed conveys the following rights to Grantee:

   a. **Right to Protect the Conservation Values.** To preserve and protect the Conservation Values in perpetuity by administering, managing and enforcing the terms of this Deed;

   b. **Right to Access the Property.** To enter upon the Property at reasonable times to monitor Grantor’s compliance with and, if necessary, to enforce the terms of this Deed. Such entry shall be made upon prior reasonable notice to Grantor, except in the event Grantee reasonably determines that immediate entry upon the Property is necessary to prevent or mitigate a violation of this Deed. In the case where Grantee has determined that immediate entry is necessary, a reasonable attempt will be made to notify Grantor prior to such entry. Grantee shall not unreasonably interfere with Grantor’s use and quiet enjoyment of the Property when exercising any such rights;

   c. **Right to Prevent Inconsistent Activities and Require Restoration of Disturbed Areas.** To prevent any activity on or use of the Property that is inconsistent with the Purpose or the express terms of this Deed and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent use; and

   d. **Right of Review.** To require Grantor to consult with Grantee regarding the negotiations of any and all agreements between Grantor and third parties that may impact or disturb any portion of the surface of the Property, including but not limited to easement agreements, utility easements, right of way agreements, surface use agreements, and lease agreements (other than those specifically related to the agricultural and
recreational operations of the Property), and to have the right to approve any such agreement prior to such agreement being executed. Within 60 days of consulting with Grantor in writing, Grantee shall provide Grantor with a decision or explain to Grantor why Grantee reasonably requires no more than an additional 30 days to reach a decision. Grantee’s approval shall not be unreasonably withheld, but nothing in this Deed is intended to require Grantee to approve any action or agreement that is inconsistent with the terms of this Deed.

4. Reserved Rights. Subject to the terms of the Deed, Grantor reserves to Grantor, and to Grantor’s personal representatives, heirs, successors, and assigns, all rights accruing from Grantor’s ownership of the Property, including (i) the right to engage in or permit or invite others to engage in all uses of the Property that are expressly permitted by this Deed, subject to any limitations or restrictions stated in this Deed, and those uses of the Property that do not materially adversely affect the Conservation Values; and (ii) to retain the economic viability of the Property and retain income derived from the Property from all sources, unless otherwise provided in this Deed, that are consistent with the terms of this Deed. Grantor may not, however, exercise these retained rights in a manner that is expressly prohibited by this Deed or that materially adversely affects the Conservation Values. Without limiting the generality of the foregoing, Grantor reserves the following specific rights:

   a. Right to Convey. Grantor may sell, give, lease, bequeath, devise, mortgage, or otherwise encumber or convey the Property, subject to the following: (i) any lease, deed, or other conveyance or encumbrance is subject to this Deed, and any such document shall specifically incorporate the terms and conditions of this Deed by reference to this Deed; (ii) any lease or deed or other conveyance document shall specifically state which reserved rights have been exercised, if at all, and which reserved rights are specifically allocated to the new owner or lessee; and (iii) notice of any proposed conveyance or encumbrance as set forth in this Section 4.a shall be subject to the provisions of Section 19 of this Deed.

   b. Subdivision. Any division or subdivision of title to the Property, whether by legal or physical process, into two or more parcels of land or partial or separate interests (including but not limited to condominium interests or the partition of undivided interests) is prohibited, other than conveyances to public entities for public roads or other public improvements consistent with this Deed. Nothing in this subparagraph shall be construed to prohibit ownership of the Property by an entity consisting of more than one member.

   c. Resource Management. To accomplish the preservation and protection of the Conservation Values in perpetuity, Grantor shall operate, manage and maintain the Property in a manner that promotes the continued viability of the natural resources on the Property while maintaining any permissible productive uses of the Property, subject to the provisions of Section 6 of this Deed. Specifically, Grantor agrees to conduct the activities listed below in a manner consistent with the Purpose. Notwithstanding the foregoing, Grantor and Grantee recognize that changes in economic conditions, in
agricultural technologies, in accepted farm, ranch and forest management practices, and in the situation of Grantor may result in an evolution of agricultural, silvicultural, and other uses of the Property, and such uses are permitted if they are consistent with the Purpose.

(1) **Habitat Management.** Grantor may conduct any activities to create, maintain, restore, or enhance wildlife habitat and native biological communities on the Property, provided that such activities do not have more than a limited, short-term adverse effect on the Conservation Values.

  (i) **Weed/Pest Management.** Management of land to control erosion, growth of weeds and brush, rodents, pests, insects and pathogens, fire danger and other threats is permitted consistent with applicable laws and regulations and in keeping with maintenance of the Conservation Values of the Property, and in accordance with the Land Management Plan described in **Section 6** below. The Grantor agrees to manage noxious weeds in accordance with the requirements of Larimer County, the State of Colorado and other applicable agencies.

  (ii) **Maintenance/Restoration.** Maintenance, stabilization, replacement, or restoration of existing croplands, springs, ditches and pastureland, are permitted. Wetland pond restoration and creation are permitted if and to the extent consistent with the Purpose and the terms of this Deed.

  (iii) **Prescribed Fire.** Igniting outdoor prescribed fires for agricultural or ecological purposes shall be allowed on the Property, provided that such activity is conducted in accordance with accepted prescribed burn practices, all applicable laws or regulations, and the Land Management Plan described in **Section 6** below.

(2) **Agriculture.** Grantor reserves the right to use the Property for grazing livestock. Grantor shall conduct all agricultural activities using stewardship and management methods that preserve the natural resources upon which agriculture is based. Long-term stewardship and management goals include preserving soil productivity, maintaining natural stream channels, preventing soil erosion, minimizing invasive species, avoiding unsustainable livestock grazing practices, and minimizing loss of vegetative cover.

  (i) **Grazing.** Livestock grazing is permitted in accordance with sound stewardship and management practices, and shall be managed so that the overall condition of the Property is preserved at its baseline condition and in no
event in less than “fair” condition (as defined by an applicable U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS) Technical Guide). For the purposes of this Deed “livestock” shall mean cattle, horses, sheep, goats, llamas, alpaca, and bison. The raising of other livestock and/or game animals shall not be permitted unless specifically approved by the Grantee and described in the Land Management Plan. The Grantor shall comply with and have responsibility for compliance of the Property with the Colorado Noxious Weed Act and any other governmental noxious weed control regulations.

(ii) Other Agricultural Uses. Gardening, beekeeping, and an orchard, all solely for consumption by the onsite residents, is allowed within in an area less than one acre in size.

(3) Timber Management. Trees may be cut to control insects and disease, to control invasive non-native species, to prevent personal injury and property damage, to promote forest health, and for fire mitigation purposes including limited and localized tree and vegetation thinning and the creation of defensible space for permitted improvements. Collecting of firewood from dead or downed trees, or the use of trees cut as part of forest health management for firewood is permitted. In addition, trimming brush and trees to create a vehicular throughway to accomplish land management is permitted. Any large-scale fire mitigation activities or commercial timber harvesting on the Property shall be conducted on a sustainable yield basis and in substantial accordance with a forest management plan prepared by a competent professional forester. Any large-scale fire mitigation activities or timber harvesting shall be conducted in a manner that is consistent with the Purpose. A copy of the forest management plan shall be approved by Grantee prior to any large-scale fire mitigation activities or commercial timber harvesting.

d. Recreational Activities. Grantor reserves the right to engage in non-commercial, non-motorized passive recreational activities, such as horseback riding, hiking, cross-country skiing, snowshoeing, and other similar low-impact recreational uses, to be enjoyed solely by Grantor and Grantor’s family and guests.

e. Hunting. No hunting, shooting, or trapping of any animals shall be permitted on the Property with the following exceptions:

(1) live-trapping of prairie dogs for relocation pursuant to Section 4.1.herein;
(2) trapping of small mammals for rodent control within the Building Envelope;
(3) live-trapping for research purposes.
No public, commercial or recreational use of the Property for hunting, shooting or trapping of any animals, or for any other recreational use, is allowed.

f. Improvements.

(1) **Residential and Non-Residential Improvements.** The Property currently contains one residential structure consisting of approximately two thousand one hundred and twenty-three (2,123) square feet. Grantor may maintain, repair, replace, or reasonably enlarge this residential structure to a size that does not exceed three thousand (3,000) square feet in total (excluding unfinished basement areas but including any living space above an attached or detached garage). Any other improvements existing on the Property as of the Effective Date are also permitted, and Grantor may maintain, repair, replace and reasonably enlarge such improvements in their current locations without Grantee’s approval. Typical residential landscaping, which may be non-native but shall not be invasive species, is permitted within 100 feet of actual buildings within the Building Envelope and native trees, shrubs, grasses, and wildflowers may be planted outside the 100 foot limit area within the Building Envelope. Grantor reserves the right to construct or place Residential Improvements and Non-Residential Improvements, defined below, and Grantor shall provide prior notice of such construction to Grantee in accordance with **Section 7** of this Deed. Once constructed, Grantor may maintain, repair, replace and reasonably enlarge such new improvements in their initially constructed locations without Grantee’s approval. Any new Non-Residential Improvement requiring a building permit or exceeding 800 square feet in total floor area and not expressly provided for in the Land Management Plan described in Section 6 below shall require prior written approval by the Grantee, in its reasonable discretion. “**Residential Improvements**” shall mean covered improvements containing habitable space intended for full- or part-time human habitation, including but not limited to homes, cabins, guest houses, mobile homes, yurts, tepees, and any space attached to any such improvement such as a garage or covered porch. “**Non-Residential Improvements**” shall mean all other covered or uncovered agricultural and non-residential improvements that are not intended for human habitation, including but not limited to barns, hay storage areas, machine shops, sheds, free-standing garages, well houses, outhouses, gazebos, picnic areas, sport courts, pools, outdoor kitchens, parking areas, and indoor and outdoor riding arenas, fences (subject to the terms of **Section 4.f** of this Deed), corrals, hayracks, cisterns, stock tanks, stock ponds, troughs, fenced hay stacks, livestock feeding stations, hunting blinds, wildlife viewing platforms, sprinklers, water lines, water wells, ditches, information kiosks, trail markers and trash receptacles. The Property currently contains one outbuilding consisting of approximately one thousand two hundred (1,200) square feet and another building consisting of approximately three hundred (300) square feet.

may construct, place, replace or enlarge Residential and Non-Residential Improvements on the Property subject to the following limitations:

(i) **One single family residence**

(ii) **Maximum square footage for single family residence shall**
be 3,000 square feet of living space.

(iii) Maximum square footage for any non-residential building shall not exceed 2,000 square feet in gross floor area.

(iv) Maximum square footage for all outbuildings shall not exceed 4,000 square feet.

g. Roads and Trails. Maintenance of existing Roads and Trails is permitted. “Roads” shall mean any road that is graded, improved or maintained, including seasonal unimproved roads and two-track roads. “Trails” shall mean any unimproved or improved path, or paved or unpaved trail constructed or established by human use, but shall not include game trails established and used by wildlife only. Prior to the construction or establishment of any Road or Trail, Grantor shall provide notice to Grantee in accordance with Section 7 of this Deed.

(1) Grantor shall not construct or establish Roads except those existing Roads depicted on Exhibit B, or such other Roads as Grantee determines are consistent with the Purpose. Grantor shall not construct or establish any Road wider than necessary to provide access for all permitted uses or to meet local codes for width of access to improvements permitted by this Deed. Grantor shall not pave or otherwise surface a Road with any impervious surface, except if Grantee determines the paving of the Road is consistent with the Purpose.

(2) Grantor shall not construct or establish any new Trail on the Property unless Grantee determines a new Trail is consistent with the Purpose. Grantor may construct approved Trails, and trail head access roads and parking for appropriate, public trail recreation including hiking, wildlife watching, horseback riding, and mountain biking. Trail recreation shall be non-motorized except as required for compliance with the Americans with Disabilities Act or other applicable laws.

h. Fences. Existing fences may be maintained, repaired and replaced, and new fences may be built anywhere on the Property. The location and design of any fencing shall facilitate and be compatible with the movement of wildlife across the Property and otherwise consistent with the Purpose.

i. Water Facilities. Maintenance, development and construction of water facilities such as water wells, livestock watering wells, windmills, springs, water storage tanks, hydrants, pumps and/or well houses and similar minor agricultural infrastructure that are solely for use on the Property in conjunction with those activities on the Property permitted by this Deed, including providing drinking water for users and livestock on the Property, for use by the Grantor, Grantor’s lessees and/or invitees, are permitted. Any facilities pursuant to this paragraph shall be sited and constructed or placed so as not to substantially diminish or impair the Conservation Values of the.
j. **Utility Improvements.** Any energy generation or transmission infrastructure and other utility improvements on the Property that already exist on the Property pursuant to an easement or other instrument recorded on or prior to the Effective Date, or later approved by Grantor after notice to Grantee in accordance with Section 7 of this Deed, may be repaired or replaced with an improvement of similar size and type at their current locations on the Property without further permission from Grantee. Utility improvements include but are not limited to: (i) natural gas distribution pipelines, electric power poles, transformers, and lines; (ii) telephone and communications towers, poles, and lines; (iii) water wells, domestic water storage and delivery systems; and (v) renewable energy generation systems including but not limited to wind, solar, geothermal, or hydroelectric for use on the Property (“Utility Improvements”). Any new or expanded Utility Improvements must be consistent with the Purpose, and Grantor shall not enlarge or construct any additional Utility Improvements without Grantee’s approval. However, Grantor reserves the right to construct Utility Improvements solely to provide utility services to the improvements permitted by this Deed, provided that no Utility Improvement exceeds 35 feet in height. Utility Improvements shall be located underground to the extent practicable.

(1) **Additional Requirements.** Prior to the enlargement or construction of any Utility Improvements on the Property, Grantor shall provide notice to Grantee in accordance with Section 7 of this Deed. Following the repair, replacement, enlargement or construction of any Utility Improvements, Grantor shall promptly restore any disturbed area to a condition consistent with the Purpose.

(2) **Alternative Energy.**

(i) Wind, solar, and hydroelectric generation facilities that are primarily for the generation of energy for use on the Property in conjunction with those activities permitted by this Deed (collectively “Alternative Energy Generation Facilities”) may be constructed in accordance with this Section 4.j.2. Any other Alternative Energy Generation Facilities may only be constructed with the prior written approval of Grantee in Grantee’s sole discretion. Without limiting Grantee’s right to withhold such approval in its sole discretion, factors that Grantee may consider in determining whether to grant such approval shall include but not be limited to (a) whether the installation and siting would substantially diminish or impair the Conservation Values, (b) the physical impact of the proposed facility on the Conservation Values, (c) the feasibility of less impactful alternatives, and (d) such other factors as Grantee may determine are relevant to the decision. The construction of Alternative Energy Generation Facilities that are not for use primarily in conjunction with those activities permitted by this Deed are prohibited anywhere on the Property. Nothing in this Section 4.j.2 shall be construed as permitting the construction or establishment of a wind farm or commercial solar energy production facility.

(ii) Any energy generated by Alternative Energy Generation Facilities constructed in accordance with this Section 4.j.2 that is incidentally in excess
of Grantor’s consumption may be sold, conveyed, or credited to a provider of retail electric service to the extent permitted by Colorado law.

(iii) In the event of technological changes or legal changes that make “expanded” Alternative Energy Generation Facilities more compatible with I.R.C. Section 170(h) or any applicable successor law, Grantee in its sole discretion may approve expanded Alternative Energy Generation Facilities that would not substantially diminish or impair the Conservation Values. For the purposes of this Section 4.j(2)(iii), the term “expanded” shall mean the development of Alternative Energy Generation Facilities to an extent that is greater than the level permitted by Sections 4.j(2)(i) and 4.j(2)(ii).

1. Animal Control. Requirements for the control and eradication through live trapping or fumigation of prairie dogs and other animals on the Property shall be in accordance with the requirements for said activities set forth in the City Code of the City of Fort Collins, Colorado (“City”), as the same would apply within the City whether or not the Property is within the City limits, except to the extent compliance with the same would necessarily result in violation of an applicable requirement of Larimer County. Grantor shall be allowed to control prairie dogs but shall comply with the requirements for the use of pesticides or otherwise related to the management of prairie dogs set forth in the City Code of the City of Fort Collins, without regard to whether the Property is within the boundaries of the City of Fort Collins. Grantor shall consult with Grantee in advance of taking any action to control, eradicate, or relocate prairie dogs, and any such action shall be consistent with Grantee’s requirements associated with the protection of the Conservation Values of the Property or the purposes of this Easement. In any event, when using pesticides to control animal species on the Property, Grantor shall use only EPA-approved pesticides in approved amounts properly applied to appropriate habitats. Grantee encourages establishment and retention of prairie dogs on the Property. Prairie dog visual barriers may be installed to confine the prairie dog colony to a portion of the Property. Planting of native trees, shrubs, and other native plants to enhance wildlife habitat in appropriate locations on the Property are encouraged, but will be permitted only with the consent of the Grantee.

5. Prohibited and Restricted Uses. Any activity on or use of the Property inconsistent with the Purpose is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or restricted as set forth below:

a. Development Rights. To fulfill the Purpose, Grantor conveys to Grantee all development rights, except those expressly reserved by Grantor in this Deed, deriving from, based upon or attributable to the Property in any way, including but not limited to all present and future rights to divide the Property for the purpose of development into residential, commercial or industrial lots or units or to receive density or development credits for the same for use off of the Property (“Grantee’s Development Rights”). The Parties agree that Grantee’s Development Rights shall be held by Grantee in perpetuity in order to fulfill the Purpose, and to ensure that such rights are forever released, terminated and extinguished as to Grantor, and may not be used on or transferred off of the Property to any other property or used for the purpose of calculating density credits or permissible
lot yield of the Property or any other property.

b. **Residential, Non-Residential and Minor Non-Residential Improvements.** Grantor shall not construct or place any Residential Improvements, Non-Residential Improvements or Minor Non-Residential Improvements on the Property except in accordance with Section 4.f of this Deed.

c. **Recreational and Commercial Improvements.** Grantor shall not construct or place any new recreational improvement on the Property, including but not limited to athletic fields, golf courses or ranges, race tracks, airstrips, helicopter pads, or shooting ranges. Grantor shall not construct or place any new commercial improvement on the Property.

d. **Removal of Vegetation and Timber Harvesting.** Except as otherwise set forth in this Deed, Grantor shall not remove any vegetation, including shrubs and trees, or harvest any timber from the Property except in accordance with Section 4.b(3).

e. **Mineral Extraction.** As of the Effective Date, Grantor owns all of the coal, oil, gas, hydrocarbons, sand, soil, gravel, rock and other minerals of any kind or description (the “Minerals”) located on, under, or in the Property or otherwise associated with the Property. This Deed expressly prohibits the mining or extraction of Minerals using any surface mining method. Notwithstanding the foregoing, Grantor and Grantee may permit mineral extraction utilizing methods other than surface mining if the method of extraction has a limited, localized impact on the Property that is not irremediably destructive of the Conservation Values. However, Grantor and Grantee agree that the following provisions shall apply to any such proposed mineral extraction by Grantor or any third party, as applicable:

1. **Soil, Sand, Gravel and Rock.** Grantor may extract soil, sand, gravel or rock without further permission from Grantee so long as such extraction: (i) is solely for use on the Property for non-commercial purposes; (ii) is in conjunction with activities permitted in this Deed, such as graveling roads and creating stock ponds; (iii) is accomplished in a manner consistent with the preservation and protection of the Conservation Values; (iv) does not result in more than one half-acre of the Property being disturbed by extraction at one time, and uses methods of mining that may have a limited and localized impact on the Property but are not irremediably destructive of the Conservation Values; and (v) is reclaimed within a reasonable time by refilling or some other reasonable reclamation method for all areas disturbed. This provision shall be interpreted in a manner consistent with I.R.C. § 170(h), as amended, and the Treasury Regulations adopted pursuant thereto.\(^\text{11}\)

2. **Oil and Gas.** Grantor, or a third party permitted by Grantor, may explore for and extract oil and gas owned in full or in part by Grantor, provided Grantor ensures

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\(^{11}\) This paragraph is only appropriate where Grantor has reserved limited development and/or road construction rights. It should be deleted if there is no reserved development on the Property.
that such activities are conducted in a manner that does not constitute surface mining and complies with the following conditions:

(i) The exploration for or extraction of oil, gas and other hydrocarbons is conducted in accordance with a plan (the “Oil and Gas Plan”), prepared at Grantor’s expense and approved in advance by Grantee. The Oil and Gas Plan shall describe: (a) the specific activities proposed; (b) the specific land area to be used for well pad(s), parking, staging, drilling, and any other activities necessary for the extraction of oil and gas, and the extent of the disturbance of such land area before and after reclamation; (c) the location of facilities, equipment, roadways, pipelines and any other infrastructure to be located on the Property; (d) the method of transport of oil or gas produced from the Property; (e) the method of disposal of water, mining byproducts and hazardous chemicals produced by or used in the exploration and development of the oil or gas; (f) the proposed operation restrictions to minimize impacts on the Conservation Values, including noise and dust mitigation and any timing restrictions necessary to minimize impacts to wildlife; (g) the reclamation measures necessary to minimize disturbance to and reclaim the surface of the Property, including restoring soils to the original contours and replanting and re-establishing native vegetation using specific seed mixes and processes to ensure successful re-vegetation of the Property, including and in addition to those measures required by law; and (h) remedies for damages to the Conservation Values.

(ii) No tank batteries, refineries, secondary production facilities, compressors, gas processing plants, or other similar facilities may be located on the Property.

(iii) Areas of surface disturbance shall be mitigated promptly in accordance with the Oil and Gas Plan.

(iv) Travel for the purpose of oil or gas development shall be restricted to existing roads or to new roads approved in advance in writing by Grantee as part of the Oil and Gas Plan.

(v) Well facilities and pipelines shall either be placed underground, or screened, or concealed from view using existing topography, existing native vegetation, newly planted but native vegetation, and/or use of natural tone coloring. Pipelines shall be located along or under existing roadways to the maximum extent possible.

(vi) Drilling equipment may be located above ground without concealment or screening, provided that such equipment shall be promptly removed after drilling is completed.

(vii) Any soil or water contamination due to the exploration for or extraction of oil or gas must be promptly remediated at the expense of Grantor.
(viii) Any water, mining byproducts or hazardous chemicals produced by or used in the exploration and development of the oil or gas shall not be stored or disposed of on the Property.

(ix) Flaring to enhance oil production is prohibited; flaring for emergencies or operational necessity is permitted.

(x) Grantee shall be released and, to the extent permitted by law, indemnified and held harmless from any liabilities, damages, or expenses resulting from any claims, demands, costs or judgments arising out of the exercise of any rights by Grantor, any lessees or other third parties relating to the exploration for or extraction of oil, gas or hydrocarbons.

(3) Third-Party Mineral Extraction. If a third party owns all, or controls some, of the Minerals, and proposes to extract Minerals from the Property, Grantor shall immediately notify Grantee in writing of any proposal or contact from a third party to explore for or develop the Minerals on the Property. Grantor shall not enter into any lease, surface use agreement, no-surface occupancy agreement, or any other instrument related to Minerals associated with the Property (each, a “Mineral Document”), with a third party subsequent to the Effective Date without providing a copy of the same to Grantee prior to its execution by Grantor for Grantee’s review and approval. Any Mineral Document shall require that Grantor provide notice to Grantee whenever notice is given to Grantor, require the consent of Grantee for any activity not specifically authorized by the instrument, and give Grantee the right, but not the obligation, to object, appeal and intervene in any action in which Grantor has such rights. Any Mineral Document must either (i) prohibit any access to the surface of the Property or (ii) must (a) limit the area(s) of disturbance to a specified area(s); (b) include provisions that ensure that the proposed activities have a limited, localized impact on the Property that is not irremediably destructive of the Conservation Values; and (c) contain a full description of the activities proposed, a description of the extent of disturbance, the location of facilities, equipment, roadways, pipelines and any other infrastructure, the proposed operation restrictions to minimize impacts on the Conservation Values, reclamation measures including and in addition to those required by law, and remedies for damages to the Conservation Values. Any Mineral Document that only permits subsurface access to Minerals but prohibits any access to the surface of the Property shall also prohibit any disturbance to the subjacent and lateral support of the Property, and shall not allow any use that would materially adversely affect the Conservation Values.

(4) This Section 5.e shall be interpreted in a manner consistent with I.R.C. § 170(h) and the Treasury Regulations adopted pursuant thereto.

f. Trash. The dumping or accumulation of any kind of trash or refuse on the Property, including but not limited to household trash and hazardous chemicals, is prohibited. Limited dumping or accumulation of other agriculture-related trash and refuse

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12 If there is an active oil and gas lease on the Property, you will need to consult with Grantee about drafting certain additional protections.
produced on the Property is permitted, provided that such dumping does not substantially diminish or impair the Conservation Values and is confined within a total area less than one-quarter acre at any given time. This Section 5.f shall not be interpreted to prevent the storage of agricultural products and by-products on the Property in accordance with all applicable government laws and regulations.

g. **Motorized Vehicles.** Motorized vehicles may be used only in conjunction with activities permitted by this Deed and in a manner that is consistent with the Purpose. Off-road vehicle courses for snowmobiles, all-terrain vehicles, motorcycles, or other motorized vehicles are prohibited.

h. **Commercial or Industrial Activity.**

   (1) No industrial uses shall be allowed on the Property. Commercial uses are allowed, as long as they are conducted in a manner that is consistent with I.R.C. § 170(h) and the Purpose. Without limiting other potential commercial uses that meet the foregoing criteria, the following uses are allowed:

      (i) Breeding and grazing livestock, such as cattle, horses, sheep, and similar animals;

   (2) The foregoing descriptions of allowed commercial uses notwithstanding, commercial feed lots and other intensive growth livestock farms, such as dairy, swine, or poultry farms, are inconsistent with the Purpose and are prohibited. For purposes of this Deed, "commercial feed lot" is defined as a permanently constructed confined area or facility within which the Property is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the commercial business of the reception and feeding of livestock.

   i. **Signage or Billboards.** No commercial signs, billboards, awnings, or advertisements shall be displayed or placed on the Property, except for appropriate and customary ranch or pasture identification signs, “for sale” or “for lease” signs alerting the public to the availability of the Property for purchase or lease, “no trespassing” signs, signs regarding the private leasing of the Property for hunting, fishing or other low-impact recreational uses, and signs informing the public of the status of ownership. Any such signs shall be located and designed in a manner consistent with the Purpose.

6. **Land Management / Management Plan.** Grantor and Grantee acknowledge that the preservation and protection of the Conservation Values as contemplated under this Deed require careful and thoughtful stewardship of the Property. To facilitate periodic communication between Grantor and Grantee about management issues that may impact the Conservation Values, the Property shall be operated and managed in accordance with a “Management Plan” jointly prepared and agreed upon by Grantor and Grantee on or before the Effective Date. The Parties shall review the Management Plan at least every five years and update it if either Party determines an update is necessary.
7. **Grantor Notice and Grantee Approval.** The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the Purpose. Whenever notice is required, Grantor shall notify Grantee in writing within a reasonable period of time prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose. Where Grantee’s approval is required, Grantor shall not undertake the requested activity until Grantor has received Grantee’s approval in writing. Grantee shall grant or withhold its approval in writing within the time frame described in Paragraph 3d above, following receipt of Grantor’s written request and sufficient supporting details as described above. Grantee's approval may be withheld only upon Grantee’s reasonable determination that the activity as proposed is not consistent with the Purpose or the express terms of this Deed, unless this Deed provides that approval for a particular request may be withheld in the sole discretion of the Grantee.

8. **Enforcement.** The Grantee shall have the right to prevent and correct or require correction of violations of the terms of this Deed and the purposes of the Easement. If Grantee finds what it believes is a violation of this Deed, Grantee shall immediately notify the Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either:

   a. Restore the Property to its condition prior to the violation; or

   b. Provide a written explanation to Grantee of the reason why the alleged violation should be permitted, in which event the Parties agree to meet as soon as possible to resolve their differences. If a resolution cannot be achieved at the meeting, the Parties may meet with a mutually acceptable mediator to attempt to resolve the dispute. Grantor shall discontinue any activity that could increase or expand the alleged violation during the mediation process. If the Grantor refuses to undertake mediation in a timely manner or should mediation fail to resolve the dispute, Grantee may, at its discretion, take appropriate legal action. Notwithstanding the foregoing, when Grantee, in its sole discretion, determines there is an ongoing or imminent violation that could irreversibly diminish or impair the Conservation Values, Grantee may, at its sole discretion, take appropriate legal action without pursuing mediation, including but not limited to seeking an injunction to stop the alleged violation temporarily or permanently or to require the Grantor to restore the Property to its prior condition.

9. **Costs of Enforcement.** Grantor shall pay any costs incurred by Grantee in enforcing the terms of this Deed against Grantor, including without limitation costs and expenses of suit, attorney fees and any costs of restoration necessitated by Grantor’s violation of the terms of this Deed. If the deciding body determines that the Grantor has prevailed in any such legal action, then each Party shall pay its own costs and attorney fees. However, if the deciding body determines that Grantee’s legal action was frivolous or groundless, Grantee shall pay the Grantor’s costs and attorney fees in defending the legal action.
10. **No Waiver or Estoppel.** Enforcement of the terms of this Deed shall be in the Grantee’s discretion. If the Grantee does not exercise, or delays the exercise of, its rights under this Deed in the event of a violation of any term, such inaction or delay shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent violation of the same or any other term of this Deed or of any of Grantee’s rights under this Deed. Grantor waives any defense of laches, estoppel, or prescription, including the one-year statute of limitations for commencing an action to enforce the terms of a building restriction or to compel the removal of any building or improvement because of the violation of the same under C.R.S. § 38-41-119, et seq.

11. **Acts Beyond Grantor’s Control.** Nothing contained in this Deed shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor’s control, including without limitation fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. Notwithstanding the foregoing, Grantor shall take reasonable efforts to prevent third parties from performing, and shall not knowingly allow third parties to perform, any act on or affecting the Property that is inconsistent with the Purpose.

12. **Access.** No right of access by the general public to any portion of the Property is conveyed by this Deed.

13. **Costs and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including weed control and eradication and maintaining adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

14. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively “Taxes”), including any Taxes imposed upon, or incurred as a result of, this Deed, and shall furnish Grantee with satisfactory evidence of payment upon request.

15. **Hold Harmless.** To the extent permitted by law, Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, representatives, successors, and assigns (the “Indemnified Party”) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation reasonable attorneys’ fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of the Indemnified Party; (2) the obligations...
specified in Section 8; and (3) the presence or release of hazardous or toxic substances on, under or about the Property. For the purpose of this Section 15, hazardous or toxic substances shall mean any hazardous or toxic substance that is regulated under any federal, state or local law. Without limiting the foregoing, nothing in this Deed shall be construed as giving rise to any right or ability in Grantee, nor shall Grantee have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or any similar law or regulation.

16. **Real Property Interest.** The conservation easement interest created by this Deed constitutes a real property interest immediately vested in Grantee. The Parties stipulate that this conservation easement interest has a fair market value equal to ten percent (10%) of the full unencumbered fair market value of the Property (the “Easement Value Percentage”). The values at the time of this Deed shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to I.R.C. § 170(h), whether or not Grantor claims any deduction for federal income tax purposes. The Easement Value Percentage shall remain constant.

17. **Condemnation or Other Extinguishment.** If this Deed is taken, in whole or in part, by exercise of the power of eminent domain (“Condemnation”), or if circumstances arise in the future that render the Purpose impossible or impractical to accomplish, this Deed can only be terminated, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Each Party shall promptly notify the other Party in writing when it first learns of such circumstances. Grantee shall be entitled to full compensation for its interest in any portion of this Deed that is terminated as a result of Condemnation or other proceedings. Grantee’s proceeds shall be an amount at least equal to the Easement Value Percentage multiplied by the value of the unencumbered fee simple interest (excluding the value of any improvements) in the portion of the Property that will no longer be encumbered by this Deed as a result of Condemnation or termination. Grantor shall not voluntarily accept proceeds equal to less than the full fair market value of the affected Property unrestricted by this Deed without the approval of Grantee. Grantee shall use its proceeds in a manner consistent with the conservation purposes of this Deed. Grantee’s remedies described in this Section 17 shall be cumulative and shall be in addition to any and all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values as described in C.R.S. § 38-30.5-108.

18. **Assignment.**

   a. This Deed is transferable, but Grantee may assign its rights and obligations under this Deed only to an organization that:

      (1) is a qualified organization at the time of transfer under I.R.C. § Section 170(h) as amended (or any successor provision then applicable) and the applicable regulations promulgated thereunder;
(2) is authorized to acquire and hold conservation easements under Colorado law;

(3) agrees in writing to assume the responsibilities imposed on Grantee by this Deed; and

b. If Grantee desires to transfer this Deed to a qualified organization having similar purposes as Grantee but Grantor has refused to approve the transfer, Grantee may seek an order by a court with jurisdiction to transfer this Deed to another qualified organization having similar purposes that agrees to assume the responsibility imposed on Grantee by this Deed, provided that Grantor shall have adequate notice of and an opportunity to participate in the court proceeding leading to the court’s decision on the matter.

c. Upon compliance with the applicable portions of this Section 18, the Parties shall record an instrument completing the assignment in the property records of the county or counties in which the Property is located. Assignment of the Deed shall not be construed as affecting the Deed’s perpetual duration and shall not affect the Deed’s priority against any intervening liens, mortgages, easements, or other encumbrances.

19. Subsequent Transfers. Grantor shall notify the Grantee in writing at least thirty (30) days in advance of the proposed conveyance of any interest in all or any portion of the Property, including any conveyance under threat of condemnation, and shall incorporate by reference the terms and conditions of this Deed in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, except conveyance of a leasehold interest that is no longer than one year in duration or an agricultural lease, that is otherwise consistent in all respects with the terms of this Deed. The failure of Grantor to perform any act required by this Section 19 shall not impair the validity of this Deed or limit its enforceability in any way.

20. Notices. Any notice, demand, request, consent, approval, or communication that either Party is required to give to the other in writing shall be either served personally or delivered by (a) certified mail, with return receipt requested; or (b) a commercial delivery service that provides proof of delivery, addressed as follows:

To Grantor:
Glen and Margaret Hazelhurst
2887 W. Trilby Road
Fort Collins, CO 80526

To Grantee:
City of Fort Collins
Natural Areas Department
c/o John Stokes, Natural Areas Director
P.O. Box 580
or to such other address as either Party from time to time shall designate by written notice to the other.

21. **Grantor’s Title Warranty.** Grantor warrants that Grantor has good and sufficient title to the Property and Grantor has access to the Property for the purposes granted or permitted to Grantee in this Deed, and Grantor promises to defend the same against all claims whatsoever. Grantor’s warranty of title is further subject to the encumbrances set forth on **Exhibit D**, attached hereto and incorporated herein by this reference.

22. **Subsequent Liens on the Property.** No provisions of this Deed shall be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any deed of trust, mortgage or lien arising from such a borrowing shall not encumber less than all of the Property, and shall be subordinate to this Deed for all purposes so that any such instrument expressly shall be deemed to have been recorded after this Deed and so that any foreclosure of such deed of trust, mortgage or lien shall not affect any provision of this Deed, including without limitation its perpetual nature, the payment of proceeds as described in **Section 17** above, and the limitation of **Section 5.e.**

23. **Recording.** Grantee shall record this Deed in a timely fashion in the official records of each county or counties in which the Property is situated, and may re-record it at any time as may be required to preserve its rights in this Deed.

24. **Environmental Attributes.** Unless otherwise provided in this Deed, Grantor reserves all Environmental Attributes associated with the Property. “**Environmental Attributes**” shall mean any and all tax or other credits, benefits, renewable energy certificates, emissions reductions, offsets, and allowances (including but not limited to water, riparian, greenhouse gas, beneficial use, and renewable energy), generated from or attributable to the conservation, preservation and management of the Property in accordance with this Deed. Nothing in this **Section 24** shall modify the restrictions imposed by this Deed or otherwise be inconsistent with the Purpose.

25. **Tax Benefits.** Grantor acknowledges that Grantor is responsible for obtaining legal and accounting counsel to advise Grantor regarding the applicability of federal or state tax benefits that might arise from the bargain sale (sale at less than fair market value) or donation of the Deed. Grantee makes no representation or warranty that Grantor will receive tax benefits for the bargain sale or donation of the Deed.

26. **Deed Correction.** The Parties shall cooperate to correct mutually acknowledged errors in this Deed (and exhibits), including typographical, spelling, or clerical errors. The Parties shall make such corrections by written agreement.

27. **Effective Date.** The Effective Date of this Deed shall be the date and year first written above.

   a. Controlling Law. The interpretation and performance of this Deed shall be
governed by the laws of the State of Colorado.

   b. Liberal Construction. Any general rule of construction to the contrary
notwithstanding, this Deed shall be liberally construed in favor of the grant to effect the
Purpose and the policy and purpose of C.R.S. § 38-30.5-101, et seq. If any provision in
this Deed is found to be ambiguous, an interpretation consistent with the Purpose that
would render the provision valid shall be favored over any interpretation that would
render it invalid.

   c. Severability. If any provision of this Deed, or the application thereof to
any person or circumstance, is found to be invalid, it shall be deemed severed from this
Deed, and the balance of this Deed shall otherwise remain in full force and effect.

   d. Entire Agreement. The Recitals above are a material part of this Deed and
are incorporated into this Deed. This Deed sets forth the entire agreement of the Parties
with respect to the grant of a conservation easement over the Property and supersedes all
prior discussions, negotiations, understandings, or agreements relating to the grant, all of
which are merged in this Deed.

   e. Joint Obligation. The obligations imposed upon Grantor and Grantee in
this Deed shall be joint and several if more than one entity or individual holds either
interest at any given time. If there is more than one owner of the Property at any time, the
obligations imposed by this Deed upon the owners shall be joint and several upon each of
the owners of the Property.

   f. Non-Merger. A merger of this Deed and the fee title to the Property cannot
occur by operation of law. No merger shall be deemed to have occurred hereunder or
under any documents executed in the future affecting this Easement, unless the parties
expressly state that they intend a merger of estates or interests to occur.

   g. Successors. The covenants, terms, conditions, and restrictions of this Deed
shall be binding upon, and inure to the benefit of, the Parties and their respective personal
representatives, heirs, successors, and assigns and shall continue as a servitude running in
perpetuity with the Property.

   h. Termination of Rights and Obligations. Provided a transfer is permitted by
this Deed, a Party's rights and obligations under the Deed terminate upon transfer of the
Party's interest in the Deed or Property, except that liability for acts or omissions
occurring prior to transfer shall survive transfer.

   i. Captions. The captions in this Deed have been inserted solely for
convenience of reference and are not a part of this Deed and shall have no effect upon
construction or interpretation.
j. **No Third-Party Beneficiaries.** This Deed is entered into by and between Grantor and Grantee and is solely for the benefit of Grantor and Grantee and their respective successors and assigns for the purposes set forth in this Deed. The enforcement of the terms and conditions of this Deed and all rights of action relating to such enforcement, shall be strictly reserved to the parties. Nothing contained in this Deed shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Parties that any person or entity, other than the Parties, receiving services or benefits under this Deed shall be deemed an incidental beneficiary only.

k. **Amendment.** If circumstances arise under which an amendment to or modification of this Deed or any of its exhibits would be appropriate, Grantor and Grantee may jointly amend this Deed so long as the amendment (i) is consistent with the Conservation Values and Purpose of this Deed (ii) does not affect the perpetual duration of the restrictions contained in this Deed, (iii) does not affect the qualifications of this Deed under any applicable laws, and (iv) complies with Grantee’s procedures and standards for amendments (as such procedures and standards may be amended from time to time). Any amendment must be in writing, signed by the Parties, and recorded in the records of the Clerk and Recorder of the county in which the Property is located. In order to preserve the Deed’s priority, the Grantee may obtain subordinations of any liens, mortgages, easements, or other encumbrances, and the Grantee may require a new title policy. For the purposes of this paragraph, the term “amendment” means any instrument that purports to alter in any way any provision of or exhibit to this Deed. Nothing in this **Section 28.k** shall be construed as requiring Grantee to agree to any particular proposed amendment.

l. **Change of Conditions or Circumstances.** A change in the potential economic value of any use that is prohibited by or inconsistent with this Deed, or a change in any current or future uses of neighboring properties, shall not constitute a change in conditions or circumstances that make it impossible or impractical for continued use of the Property, or any portion thereof, for conservation purposes and shall not constitute grounds for terminating the Deed in whole or in part. In conveying this Deed, the Parties have considered the possibility that uses prohibited or restricted by the terms of this Deed may become more economically valuable than permitted uses, and that neighboring or nearby properties may in the future be put entirely to such prohibited or restricted uses. It is the intent of Grantor and Grantee that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Deed, in whole or in part. In addition, the inability of Grantor, or Grantor’s heirs, successors, or assigns, to conduct or implement any or all of the uses permitted under the terms of this Deed, or the unprofitability of doing so, shall not impair the validity of this Deed or be considered grounds for its termination or extinguishment, in whole or in part.

m. **Authority to Execute.** Each Party represents to the other that such Party has full power and authority to execute, deliver, and perform this Deed, that the individual executing this Deed on behalf of each Party is fully empowered and authorized to do so, and that this Deed constitutes a valid and legally binding obligation of each Party enforceable against each Party in accordance with its terms.
n. **Obligations Subject to Annual Appropriation.** Any obligations of the Grantee under this Deed for fiscal years after the year of this Deed are subject to annual appropriation by Grantee’s governing body, in its sole discretion, of funds sufficient and intended for such purposes.

o. **Good Faith Negotiation/Mediation.** Where this Deed requires the consent of either party, such consent shall not be unreasonably withheld, conditioned, delayed or denied. Where this Deed specifies that a decision requires the mutual agreement of the parties, the parties shall be obligated to make best efforts to negotiate in good faith to reach mutual agreement consistent with the Conservation Values and purposes of the Easement. In the event that such efforts by the parties fail to result in mutual agreement through negotiation, the parties agree to attempt to resolve their dispute through mediation. Either party may commence the mediation process by providing the other party with written notice setting forth the subject of the dispute, and the solution requested. Within ten (10) days after the receipt of the notice, the other party shall deliver a written response to the initiating party’s notice. The parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute. The initial mediation session shall be held within thirty (30) days after the initial notice, unless the selected mediator cannot accommodate the parties within that time. If the parties cannot agree upon a mediator, the Grantee will provide the Grantor with a list of at least three professional mediation organizations in the Fort Collins/Denver area that are not affiliated with the City of Fort Collins. The Grantor will select an organization from the list within ten (10) days of receipt of the list, and the selected organization will be asked to choose a mediator for the parties. The parties agree to share equally the costs and expenses of the mediation, which shall not include the expenses incurred by each party for its own legal representation in connection with the mediation. The provisions of this subparagraph may be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including reasonable attorneys’ fees and other legal costs, to be paid by the party against whom enforcement is ordered.

p. **No Waiver of Governmental Immunity.** Anything else in this Deed to the contrary notwithstanding, no term or condition of this Deed shall be construed or interpreted as a waiver, either express or implied, of any of the immunities, rights, benefits or protection of the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq., as amended or as may be amended in the future (including, without limitation, any amendments to such statute, or under any similar statute which is subsequently enacted) (“CGIA”), subject to any applicable provisions of the Colorado Constitution and applicable laws. The Parties acknowledge that liability for claims for injury to persons or property arising out of the negligence of a government entity, its members, officials, agents and employees may be controlled and/or limited by the provisions of the CGIA. The Parties agree that no provision of this Deed shall be construed in such a manner as to reduce the extent to which the CGIA limits the liability of any governmental party, its members, officers, agents and employees.
TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Deed of Conservation Easement as of the Effective Date.

GRANTOR:

________________________________________
Glen T. Hazelhurst

________________________________________
Margaret E. Hazelhurst

STATE OF COLORADO )
COUNTY OF ____________ ) ss

The foregoing instrument was acknowledged before me this _____ day of ____________, 2019, by Glen T. Hazelhurst and Margaret E. Hazelhurst.

Witness my hand and official seal.

My Commission expires:

________________________________________
Notary Public

Packet Pg. 203
GRANTEE:

CITY OF FORT COLLINS
a Colorado municipal corporation

By:______________________________
, Mayor

ATTEST:
________________________
City Clerk

________________________
Printed Name

Approved as to Form:
________________________
Senior Assistant City Attorney

________________________
Printed Name

STATE OF COLORADO
) ss.
COUNTY OF LARIMER

The foregoing instrument was acknowledged before me this _____ day of __________, 2019, by ____________________ as Mayor of the City of Fort Collins.

Witness my hand and official seal
My commission expires:

________________________
Notary Public
[Exhibits A and B to come following Minor Land Division]
SECOND AMENDED AND RESTATED DEED OF CONSERVATION EASEMENT AND ASSIGNMENT

HAZELHURST PROPERTY – 40 ACRE PARCEL

THIS SECOND AMENDED AND RESTATED DEED OF CONSERVATION EASEMENT AND ASSIGNMENT (the “Second Amended Conservation Easement” or “Deed”) is made this ___ day of __________ 2019 (“Effective Date”), by CITY OF FORT COLLINS, COLORADO, a municipal corporation, having its address at 300 Laporte Avenue, Fort Collins, CO 80521 (“Grantor”), to BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LARIMER, STATE OF COLORADO (the “Grantee”), having its address at 200 W Oak Street, Fort Collins, CO 80521. (Grantor and Grantee may be individually referred to as a “Party” and collectively referred to as “Parties.”) The following exhibits are attached and incorporated:

Exhibit A - Legal Description of Property
Exhibit B - Map of Property
Exhibit C - Baseline Acknowledgement
Exhibit D - Encumbrances

RECITALS

A. Grantor is the sole owner in fee simple of approximately 40 acres of real property located in Larimer County, Colorado, encumbered by a conservation easement, more particularly described in Exhibit A and generally depicted on Exhibit B (the “Property”).

B. The Property is encumbered by a Deed of Conservation Easement granted by Glen T. Hazelhurst and Margaret E. Hazelhurst (“Hazelhurst”) to Grantor recorded on October 31, 2005 at Reception No. 20050092426 in the records of Larimer County, Colorado Clerk and Recorder, as amended by a First Amended and Restated Deed of Conservation Easement dated ______, 2019 and recorded on _______, 2019 at Reception No. ______________ in the records of the Larimer County, Colorado Clerk and Recorder (the “First Amended Conservation Easement”).

C. The First Amended Easement encumbers both the Property and an adjacent 5 acre parcel owned by Hazelhurst (“Parcel A”), and permits both subdivision of the Property from Parcel A, and further amendment of the First Amended Easement to create two separate documents should the Property and Parcel A be conveyed into separate ownership.

D. Grantor purchased the Property from Hazelhurst and wishes to assign its interest in the Easement on the Property to Grantee, and Grantee wishes to assume ownership of the Easement from Grantor. The Parties also wish to restate, amend, supersede and replace the First Amended Conservation Easement and enter into a new conservation...
easement with respect to the Property in order to facilitate management of the Easement on the Property separately from Parcel A.

E. The Property possesses relatively natural habitat, scenic, open space, educational, and/or recreational values (collectively, “Conservation Values”) of great importance to Grantor, the people of Fort Collins and the surrounding Larimer County region and the people of the State of Colorado. In particular, the Property contains the following characteristics, which are also included within the definition of Conservation Values:

i. Relatively Natural Habitat § 1.170A-14(d)(3). The Property's ecological values include a native biotic community of foothills grasslands that provide food, shelter, and migration corridors for several wildlife species, including, but not limited to, coyotes, foxes, mule deer, mountain bluebirds, golden eagles and red-tailed hawks. The grassland community present on the Property includes a globally rare plant community. The Property sustains a variety of bird species, including, but not limited to, horned larks, western meadowlarks, lark sparrows and grasshopper sparrows. Finally, the protection of the property contributes to the ecological viability of the adjacent Coyote Ridge Natural Area.

ii. Open Space§ 1.170A-14(d)(4). The Property qualifies as open space because it will be preserved for the scenic enjoyment of the general public and will yield a significant public benefit. More specifically, preservation of the Property adds to the scenic character of the local rural landscape in which it lies because a large portion of the Property is visible to the general public from South Taft Hill Road, a paved, well-traveled road, which is actively utilized by residents of Fort Collins, Larimer County, and the State of Colorado. The Property is in the foreground of a view of the foothills of the Rocky Mountains from South Taft Hill Road, possesses aesthetic value as open space within the Fort Collins-Loveland Corridor, and helps provide a buffer of undeveloped land where there is a foreseeable trend of development in the vicinity of the Property in the near future, due primarily to the proximity of the Cities of Fort Collins and Loveland, which City Limits lie approximately one and one-half miles northeast and three miles southeast of the Property, respectively. The Property is adjacent to the Coyote Ridge Natural Area owned and managed by the City of Fort Collins. This public land includes a trail into the foothills directly west of the Property. As a result, much of the Property is highly visible from this public trail. Because of the immediate proximity to public open space, the Property provides a visual buffer and continuation of the open space already present to the west. There is a strong likelihood that development of the Property would lead to or contribute to degradation
of the scenic and natural character of the area. Preservation of the Property will add to the scenic character of the local landscape in which it lies, and will continue to provide an opportunity for the general public to appreciate the Property's scenic values. In particular, preservation of the open, undeveloped nature of the near ridgetop will preserve important scenic qualities of the Property. It should also be noted that the terms of the Conservation Easement do not permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land. As such, preservation of the Property will continue to provide an opportunity for the general public to appreciate its scenic values.

iii. Potential future public access for outdoor education and appropriate non-motorized trail recreation including hiking, wildlife watching, horseback riding, and mountain biking.

iv. Conservation of this Property is consistent with the following federal, state, and local governmental policies:

a) C.R.S. § 33-1-101, et seq., provides in relevant part that "it is the declared policy of the State of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors."

b) C.R.S. § 33-2-101 to 33-2-106, which provide that “it is the policy of this state to manage all nongame wildlife, recognizing the private property rights of individual owners, for human enjoyment and welfare, for scientific purposes, and to ensure their perpetuation as members of ecosystems; that species or subspecies of wildlife indigenous to this state which may be found to be endangered or threatened within the state should be accorded protection in order to maintain and enhance their numbers to the extent possible; that this state should assist in the protection of species or subspecies of wildlife which are deemed to be endangered or threatened elsewhere.”

c) C.R.S. § 33-10-101 to 33-10-114, which provide that “it is the policy of the State of Colorado that the natural, scenic, scientific, and outdoor recreation areas of this state are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and visitors of this state.”

d) C.R.S. § 38-30.5-101, et seq., provides for the establishment of conservation easements to maintain land "in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest, or other use or condition consistent with the protection of open land, environmental quality or life-sustaining ecological diversity, or appropriate to the conservation and preservation
of buildings, sites, or structures having historical, architectural, or cultural interest or value."

e) Fort Collins Natural Areas Master Plan (2014) states that “the mission of the Natural Areas Department is to conserve and enhance lands with natural resource, agricultural, and scenic values, while providing meaningful education and appropriate recreation opportunities” and establishes the conservation focus areas including the Foothills Corridor and Core Natural Areas which encompass the Property.

F. Grantor intends that the Conservation Values be preserved and protected in perpetuity, and that the Deed prohibit any uses that would materially adversely affect the Conservation Values or that otherwise would be inconsistent with the Purpose (defined below). The Parties acknowledge and agree that uses expressly permitted by this Deed and Grantor’s current land use patterns on the Property, including without limitation those relating to grazing existing on the Effective Date (as defined in Section 27, below), do not materially adversely affect the Conservation Values and are consistent with the Purpose.

G. By granting this Deed, Grantor further intends to (i) create a conservation easement interest that binds Grantor as the owner of the Property and also binds future owners of the Property; and (ii) convey to Grantee the right to preserve and protect the Conservation Values in perpetuity.

H. Grantee is a political subdivision of the State of Colorado, and a “qualified organization” under I.R.C. § 170(h) and Treas. Reg. § 1.170A-14(c). The mission of Grantee’s Natural Resources Department is to conserve and enhance lands with natural resource, agricultural, and scenic values, while providing meaningful education and appropriate recreation opportunities.

I. Grantee is also a governmental entity as required under C.R.S. § 38-30.5-101, et seq., which provides for conservation easements to maintain land and water in a natural, scenic or open condition, for wildlife habitat, or for agricultural and other uses or conditions consistent with the protection of open land in Colorado.

J. Grantee is certified as license number CE0035 by the State of Colorado’s Division of Real Estate pursuant to C.R.S. § 12-61-724 and 4 C.C.R. 725-4, Chapter 2, to hold conservation easements for which a tax credit is claimed.

K. Grantee agrees by accepting this Deed to preserve and protect in perpetuity the Conservation Values for the benefit of this and future generations.

NOW, THEREFORE, pursuant to the laws of the State of Colorado, and in particular C.R.S. § 38-30.5-101, et seq., and in consideration of the recitals set forth above, and the mutual covenants, terms, conditions, and restrictions contained in this Deed, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Grantor voluntarily assigns, grants and conveys to Grantee, and Grantee voluntarily assumes and accepts, a conservation easement in gross
in perpetuity over the Property for the Purpose set forth below and of the nature and character and to the extent set forth in this Deed. This Deed entirely amends, restates and replaces the First Amended Conservation Easement with respect to the Property.

1. **Purpose.** The purpose of this Deed is to ensure that Grantor preserves and protects in perpetuity the Conservation Values as they exist upon the Effective Date and as they may evolve in the future, in accordance with I.R.C. § 170(h), Treas. Reg. § 1.170A-14 and C.R.S. § 38-30.5-101 *et seq.* ("Purpose"). To effectuate the Purpose, Grantor and Grantee agree: (i) to allow those uses of the Property that are expressly permitted by this Deed, subject to any limitations or restrictions stated in this Deed, and those uses of the Property that do not materially adversely affect the Conservation Values; and (ii) to prevent any use of the Property that is expressly prohibited by this Deed or will materially adversely affect the Conservation Values. Notwithstanding the foregoing, nothing in this Deed is intended to compel a specific use of the Property, such as agriculture, other than the preservation and protection of the Conservation Values.

2. **Baseline Documentation Report.** The Parties acknowledge that a written report dated September 30, 2005 was prepared by LREP, Inc., reviewed and approved, which documents the Property’s original condition (the “Baseline Report”). Either or both parties may update the Baseline Report at any time. Both parties agree to provide a copy of the new report to the other. The Baseline Report contains a natural resources inventory of the Property and also documents existing improvements on and current uses of the Property. A copy of the Baseline Report shall be kept on file with each Party and is by this reference made a part of this Deed. The Parties acknowledge that the Baseline Report is intended to establish and accurately represent the condition of the Property as of the Effective Date, and the Parties have acknowledged the same in a signed statement, a copy of which is attached as **Exhibit C**. The Parties will use the Baseline Report to assure that any future changes to the Property are consistent with the Purpose. However, the Parties agree that the existence of the Baseline Report shall in no way limit the Parties’ ability to use other pertinent information in resolving any controversy that may arise with respect to the condition of the Property as of the Effective Date.

3. **Rights of Grantee.** To accomplish the Purpose, in addition to the rights of the Grantee described in C.R.S. § 38-30.5-101 *et seq.*, and the rights of Grantee described elsewhere in this Deed, the Deed conveys the following rights to Grantee:

   a. **Right to Protect the Conservation Values.** To preserve and protect the Conservation Values in perpetuity by administering, managing and enforcing the terms of this Deed;

   b. **Right to Access the Property.** To enter upon the Property at reasonable times to monitor Grantor’s compliance with and, if necessary, to enforce the terms of this Deed. Such entry shall be made upon prior reasonable notice to Grantor, except in the event Grantee reasonably determines that immediate entry upon the Property is necessary to prevent or mitigate a violation of this Deed. In the case where Grantee has determined that immediate entry is necessary, a reasonable attempt will be made to notify Grantor
prior to such entry. Grantee shall not unreasonably interfere with Grantor’s use and quiet enjoyment of the Property when exercising any such rights;

c. **Right to Prevent Inconsistent Activities and Require Restoration of Disturbed Areas.** To prevent any activity on or use of the Property that is inconsistent with the Purpose or the express terms of this Deed and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent use; and

d. **Right of Review.** To require Grantor to consult with Grantee regarding the negotiations of any and all agreements between Grantor and third parties that may impact or disturb any portion of the surface of the Property, including but not limited to easement agreements, utility easements, right of way agreements, surface use agreements, and lease agreements (other than those specifically related to the agricultural and recreational operations of the Property), and to have the right to approve any such agreement prior to such agreement being executed. Within 60 days of consulting with Grantor in writing, Grantee shall provide Grantor with a decision or explain to Grantor why Grantee reasonably requires no more than an additional 30 days to reach a decision. Grantee’s approval shall not be unreasonably withheld, but nothing in this Deed is intended to require Grantee to approve any action or agreement that is inconsistent with the terms of this Deed.

4. **Reserved Rights.** Subject to the terms of the Deed, Grantor reserves to Grantor, and to Grantor’s personal representatives, heirs, successors, and assigns, all rights accruing from Grantor’s ownership of the Property, including (i) the right to engage in or permit or invite others to engage in all uses of the Property that are expressly permitted by this Deed, subject to any limitations or restrictions stated in this Deed, and those uses of the Property that do not materially adversely affect the Conservation Values; and (ii) to retain the economic viability of the Property and retain income derived from the Property from all sources, unless otherwise provided in this Deed, that are consistent with the terms of this Deed. Grantor may not, however, exercise these retained rights in a manner that is expressly prohibited by this Deed or that materially adversely affects the Conservation Values. Without limiting the generality of the foregoing, Grantor reserves the following specific rights:

a. **Right to Convey.** Grantor may sell, give, lease, bequeath, devise, mortgage, or otherwise encumber or convey the Property, subject to the following: (i) any lease, deed, or other conveyance or encumbrance is subject to this Deed, and any such document shall specifically incorporate the terms and conditions of this Deed by reference to this Deed; (ii) any lease or deed or other conveyance document shall specifically state which reserved rights have been exercised, if at all, and which reserved rights are specifically allocated to the new owner or lessee; and (iii) notice of any proposed conveyance or encumbrance as set forth in this Section 4.a shall be subject to the provisions of Section 19 of this Deed.

b. **Subdivision.** Any division or subdivision of title to the Property, whether by legal or physical process, into two or more parcels of land or partial or separate interests (including but not limited to condominium interests or the partition of undivided
interests) is prohibited, other than conveyances to public entities for public roads or other public improvements consistent with this Deed. Nothing in this subparagraph shall be construed to prohibit ownership of the Property by an entity consisting of more than one member.

c. Resource Management. To accomplish the preservation and protection of the Conservation Values in perpetuity, Grantor shall operate, manage and maintain the Property in a manner that promotes the continued viability of the natural resources on the Property while maintaining any permissible productive uses of the Property, subject to the provisions of Section 6 of this Deed. Specifically, Grantor agrees to conduct the activities listed below in a manner consistent with the Purpose. Notwithstanding the foregoing, Grantor and Grantee recognize that changes in economic conditions, in agricultural technologies, in accepted farm, ranch and forest management practices, and in the situation of Grantor may result in an evolution of agricultural, silvicultural, and other uses of the Property, and such uses are permitted if they are consistent with the Purpose.

(1) Habitat Management. Grantor may conduct any activities to create, maintain, restore, or enhance wildlife habitat and native biological communities on the Property, provided that such activities do not have more than a limited, short-term adverse effect on the Conservation Values.

(i) Weed/Pest Management. Management of land to control erosion, growth of weeds and brush, rodents, pests, insects and pathogens, fire danger and other threats is permitted consistent with applicable laws and regulations and in keeping with maintenance of the Conservation Values of the Property, and in accordance with the Land Management Plan described in Section 6 below. The Grantor agrees to manage noxious weeds in accordance with the requirements of Larimer County, the State of Colorado and other applicable agencies.

(ii) Maintenance/Restoration. Maintenance, stabilization, replacement, or restoration of existing croplands, springs, ditches and pastureland, are permitted. Wetland pond restoration and creation are permitted if and to the extent consistent with the Purpose and the terms of this Deed.

(iii) Prescribed Fire. Igniting outdoor prescribed fires for agricultural or ecological purposes shall be allowed on the Property, provided that such activity is conducted in accordance with accepted prescribed burn practices, all applicable laws or regulations, and the Land Management Plan described in Section 6 below.
(2) **Agriculture.** Grantor reserves the right to use the Property for grazing livestock. Grantor shall conduct all agricultural activities using stewardship and management methods that preserve the natural resources upon which agriculture is based. Long-term stewardship and management goals include preserving soil productivity, maintaining natural stream channels, preventing soil erosion, minimizing invasive species, avoiding unsustainable livestock grazing practices, and minimizing loss of vegetative cover.

   (i) **Grazing.** Livestock grazing is permitted in accordance with sound stewardship and management practices, and shall be managed so that the overall condition of the Property is preserved at its baseline condition and in no event in less than “fair” condition (as defined by an applicable U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS) Technical Guide). For the purposes of this Deed “livestock” shall mean cattle, horses, sheep, goats, llamas, alpaca, and bison. The raising of other livestock and/or game animals shall not be permitted unless specifically approved by the Grantee and described in the Land Management Plan. The Grantor shall comply with and have responsibility for compliance of the Property with the Colorado Noxious Weed Act and any other governmental noxious weed control regulations.

   (ii) **Other Agricultural Uses.** Gardening, beekeeping, and an orchard, all solely for consumption by the onsite residents, is allowed within in an area less than one acre in size.

(3) **Timber Management.** Trees may be cut to control insects and disease, to control invasive non-native species, to prevent personal injury and property damage, to promote forest health, and for fire mitigation purposes including limited and localized tree and vegetation thinning and the creation of defensible space for permitted improvements. Collecting of firewood from dead or downed trees, or the use of trees cut as part of forest health management for firewood is permitted. In addition, trimming brush and trees to create a vehicular throughway to accomplish land management is permitted. Any large-scale fire mitigation activities or commercial timber harvesting on the Property shall be conducted on a sustainable yield basis and in substantial accordance with a forest management plan prepared by a competent professional forester. Any large-scale fire mitigation activities or timber harvesting shall be conducted in a manner that is consistent with the Purpose. A copy of the forest management plan shall be approved by Grantee prior to any large-scale fire mitigation activities or commercial timber harvesting.
d. **Recreational Activities.** Grantor reserves the right to engage in and permit the public to engage in non-commercial, non-motorized passive recreational activities, such as horseback riding, hiking, cross-country skiing, snowshoeing, and other similar low-impact recreational uses on the Property. Construction of recreational trails and trailhead for public use on the Property is permitted in accordance with 4.f(3) of this Deed.

e. **Hunting.** No hunting, shooting, or trapping of any animals shall be permitted on the Property with the following exceptions:

   (1) live-trapping of prairie dogs for relocation pursuant to Section 4.l. herein;
   (2) trapping of small mammals for rodent control within the Building Envelope;
   (3) live-trapping for research purposes.
   (4) for protection of human health and safety and protection of the conservation values of the property, pursuant to Section 4.l. herein.

No public, commercial or recreational use of the Property for hunting, shooting or trapping of any animals, is allowed.

f. **Improvements.**

   (1) **Residential and Non-Residential Improvements.** No residential structures exist on the Property and no new residential structures are permitted. Non-Residential Improvements, defined below, existing as of the Effective Date are permitted, and the Grantor may maintain, repair, replace and reasonably enlarge such improvements in their current locations without Grantee’s approval. Grantor reserves the right to construct or place additional Non-Residential Improvements, and shall provide prior notice of such construction to Grantee in accordance with Section 7 of this Deed. Any new Non-Residential Improvement requiring a building permit or exceeding 800 square feet in total floor area and not expressly provided for in the Land Management Plan described in Section 6 below shall require prior written approval by the Grantee, in its reasonable discretion. Once constructed, the Grantor may maintain, repair, replace and reasonably enlarge such new improvements in their initially constructed locations without Grantee’s approval.

   (2) **Building Envelope.** Grantor and Grantee agree to mutually work together in the future to designate a building envelope ("Building Envelope") of no more than four (4) acres on the Property. New Non-Residential Improvements may be built within the Building Envelope subject to the following limitations:

   (i) Improvements will be grouped together to the extent practicable (Ex: Vault restrooms, storage building, kiosk and parking lot in one general location.)
   (ii) Maximum square footage of a structure or building shall not exceed 1,000 square feet.
(iii) Maximum height of any structure shall be 15 feet.

(3) “Non-Residential Improvements” shall mean all covered or uncovered recreational, agricultural and other improvements that are not intended for human habitation, including but not limited to well houses, outhouses, gazebos, picnic areas, trailhead parking areas (including vault toilets, trash receptacles, shelters, and kiosks), loafing sheds, corrals, hayracks, cisterns, stock tanks, stock ponds, troughs, fenced hay stacks, livestock feeding stations, hunting blinds, and wildlife viewing platforms. Notwithstanding the foregoing, trail markers, interpretive signs, information kiosks, site signs, fences (subject to the terms of Section 4.f of this Deed), sprinklers, water lines, water wells and ditches may be constructed outside of the Building Envelope.

(4) Setbacks/Requirements for Improvements. In no case shall any structure be built within one hundred (100) feet of any stream, spring, or improvement, as identified in the Baseline Documentation or as may subsequently develop or be determined to exist on the Property, with the exception of water facilities described in paragraph 4.j below. Except for structures permitted within the Building Envelope, as shown on Exhibit B, no structure shall exceed twenty-five (25) feet in height, as measured from the average elevation of the finished grade to the highest point on a structure, unless approved by the Grantee. All development and construction must comply with local, state, and federal requirements.

g. Roads and Trails. Maintenance of existing Roads and Trails is permitted. “Roads” shall mean any road that is graded, improved or maintained, including seasonal unimproved roads and two-track roads. “Trails” shall mean any unimproved or improved path, or paved or unpaved trail constructed or established by human use, but shall not include game trails established and used by wildlife only. Prior to the construction or establishment of any Road or Trail, Grantor shall provide notice to Grantee in accordance with Section 7 of this Deed.

(1) Grantor shall not construct or establish Roads except those existing Roads depicted on Exhibit B, an access road in an easement across Parcel B as permitted in paragraph 4.b. above, or such other Roads as Grantee determines are consistent with the Purpose. Grantor shall not construct or establish any Road wider than necessary to provide access for all permitted uses or to meet local codes for width of access to improvements permitted by this Deed. Grantor shall not pave or otherwise surface a Road with any impervious surface, except if Grantee determines the paving of the Road is consistent with the Purpose.

(2) Grantor shall not construct or establish any new Trail on the Property unless Grantee determines a new Trail is consistent with the Purpose. Grantor may construct approved Trails, and trail head access roads and parking for appropriate, public trail recreation including hiking, wildlife watching, horseback riding, and mountain biking. However, trailhead parking may not be constructed on the Property before 2024. Trail
recreation shall be non-motorized except as required for compliance with the Americans with Disabilities Act or other applicable laws.

h. **Fences.** Existing fences may be maintained, repaired and replaced, and new fences may be built anywhere on the Property. The location and design of any fencing shall facilitate and be compatible with the movement of wildlife across the Property and otherwise consistent with the Purpose and in accordance with Section 7 of this deed.

i. **Water Facilities.** Maintenance, development and construction of water facilities such as water wells, livestock watering wells, windmills, springs, water storage tanks, hydrants, pumps and/or well houses and similar minor agricultural infrastructure that are solely for use on the Property in conjunction with those activities on the Property permitted by this Deed, including providing drinking water for users and livestock on the Property, for use by the Grantor, Grantor’s lessees and/or invitees, are permitted. Any facilities pursuant to this paragraph shall be sited and constructed or placed so as not to substantially diminish or impair the Conservation Values of the Property and may be considered exempt from the setback requirement described in Section 4.f.(4) above.

j. **Utility Improvements.** Any energy generation or transmission infrastructure and other utility improvements on the Property that already exist on the Property pursuant to an easement or other instrument recorded on or prior to the Effective Date, or later approved by Grantor after notice to Grantee in accordance with Section 7 of this Deed, may be repaired or replaced with an improvement of similar size and type at their current locations on the Property without further permission from Grantee. Utility improvements include but are not limited to: (i) natural gas distribution pipelines, electric power poles, transformers, and lines; (ii) telephone and communications towers, poles, and lines; (iii) water wells, domestic water storage and delivery systems; and (v) renewable energy generation systems including but not limited to wind, solar, geothermal, or hydroelectric for use on the Property (“Utility Improvements”). Any new or expanded Utility Improvements must be consistent with the Purpose, and Grantor shall not enlarge or construct any additional Utility Improvements without Grantee’s approval. However, Grantor reserves the right to construct Utility Improvements solely to provide utility services to the improvements permitted by this Deed, provided that no Utility Improvement exceeds 35 feet in height. Utility Improvements shall be located underground to the extent practicable.

(1) **Additional Requirements.** Prior to the enlargement or construction of any Utility Improvements on the Property, Grantor shall provide notice to Grantee in accordance with Section 7 of this Deed. Following the repair, replacement, enlargement or construction of any Utility Improvements, Grantor shall promptly restore any disturbed area to a condition consistent with the Purpose.

(2) **Alternative Energy.**

(i) Wind, solar, and hydroelectric generation facilities that are primarily for the generation of energy for use on the Property in conjunction with those
activities permitted by this Deed (collectively “Alternative Energy Generation Facilities”) may be constructed in accordance with this Section 4.j(2). Notwithstanding the foregoing, no approval of Grantee shall be required if the Alternative Energy Generation Facilities permitted by this Section 4.j(2) are located within a Building Envelope. Any other Alternative Energy Generation Facilities may only be constructed with the prior written approval of Grantee in Grantee’s sole discretion. Without limiting Grantee’s right to withhold such approval in its sole discretion, factors that Grantee may consider in determining whether to grant such approval shall include but not be limited to (a) whether the installation and siting would substantially diminish or impair the Conservation Values, (b) the physical impact of the proposed facility on the Conservation Values, (c) the feasibility of less impactful alternatives, and (d) such other factors as Grantee may determine are relevant to the decision. The construction of Alternative Energy Generation Facilities that are not for use primarily in conjunction with those activities permitted by this Deed are prohibited anywhere on the Property. Nothing in this Section 4.j(2) shall be construed as permitting the construction or establishment of a wind farm or commercial solar energy production facility.

(ii) Any energy generated by Alternative Energy Generation Facilities constructed in accordance with this Section 4.j(2) that is incidentally in excess of Grantor’s consumption may be sold, conveyed, or credited to a provider of retail electric service to the extent permitted by Colorado law.

(iii) In the event of technological changes or legal changes that make “expanded” Alternative Energy Generation Facilities more compatible with I.R.C. Section 170(h) or any applicable successor law, Grantee in its sole discretion may approve expanded Alternative Energy Generation Facilities that would not substantially diminish or impair the Conservation Values. For the purposes of this Section 4.j(2)(iii), the term “expanded” shall mean the development of Alternative Energy Generation Facilities to an extent that is greater than the level permitted by Sections 4.j(2)(i) and 4.j(2)(ii).

1. Animal Control. Grantor shall be allowed to control any wildlife species that becomes a threat to the purposes of this easement or to human health and safety, by any appropriate means. Control of prairie dogs and other animals but shall comply with the requirements for the use of pesticides or otherwise related to the management of prairie dogs and other animals. Grantor shall consult with Grantee in advance of taking any action to control, eradicate, or relocate prairie dogs, and any such action shall be consistent with Grantee's requirements associated with the protection of the Conservation Values of the Property or the purposes of this Easement. In any event, when using pesticides to control animal species on the Property, Grantor shall use only EPA-approved pesticides in approved amounts properly applied to appropriate habitats. Grantee encourages establishment and retention of prairie dogs on the Property. Prairie dog visual barriers may be installed to confine the prairie dog colony to a portion of the Property. Planting of native trees, shrubs, and other native plants to enhance wildlife habitat in appropriate locations on the Property are encouraged, but will be permitted only with the consent of the Grantee.
5. **Prohibited and Restricted Uses.** Any activity on or use of the Property inconsistent with the Purpose is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or restricted as set forth below:

   a. **Development Rights.** To fulfill the Purpose, Grantor conveys to Grantee all development rights, except those expressly reserved by Grantor in this Deed, deriving from, based upon or attributable to the Property in any way, including but not limited to all present and future rights to divide the Property for the purpose of development into residential, commercial or industrial lots or units or to receive density or development credits for the same for use off of the Property ("Grantee’s Development Rights"). The Parties agree that Grantee’s Development Rights shall be held by Grantee in perpetuity in order to fulfill the Purpose, and to ensure that such rights are forever released, terminated and extinguished as to Grantor, and may not be used on or transferred off of the Property to any other property or used for the purpose of calculating density credits or permissible lot yield of the Property or any other property.

   b. **Residential, Non-Residential and Minor Non-Residential Improvements.** Grantor shall not construct or place any Residential Improvements, Non-Residential Improvements or Minor Non-Residential Improvements on the Property except in accordance with Section 4.f of this Deed.

   c. **Recreational and Commercial Improvements.** Except for the trails and related facilities permitted hereunder, Grantor shall not construct or place any new recreational improvement on the Property, including but not limited to athletic fields, golf courses or ranges, race tracks, airstrips, helicopter pads, or shooting ranges. Grantor shall not construct or place any new commercial improvement on the Property.

   d. **Removal of Vegetation and Timber Harvesting.** Except as otherwise set forth in this Deed, Grantor shall not remove any vegetation, including shrubs and trees, or harvest any timber from the Property except in accordance with Section 4.c(3).

   e. **Mineral Extraction.** As of the Effective Date, Grantor owns all of the coal, oil, gas, hydrocarbons, sand, soil, gravel, rock and other minerals of any kind or description (the “Minerals”) located on, under, or in the Property or otherwise associated with the Property. This Deed expressly prohibits the mining or extraction of Minerals using any surface mining method. Notwithstanding the foregoing, Grantor and Grantee may permit mineral extraction utilizing methods other than surface mining if the method of extraction has a limited, localized impact on the Property that is not irremediably destructive of the Conservation Values. However, Grantor and Grantee agree that the following provisions shall apply to any such proposed mineral extraction by Grantor or any third party, as applicable:

      (1) **Soil, Sand, Gravel and Rock.** Grantor may extract soil, sand, gravel or rock without further permission from Grantee so long as such extraction: (i) is solely for use on the Property for non-commercial purposes; (ii) is in conjunction with activities permitted in this Deed, such as graveling roads and creating stock ponds; (iii) is accomplished in a manner consistent with the preservation and protection of the
Conservation Values; (iv) does not result in more than one half-acre of the Property being disturbed by extraction at one time, and uses methods of mining that may have a limited and localized impact on the Property but are not irremediably destructive of the Conservation Values; and (v) is reclaimed within a reasonable time by refilling or some other reasonable reclamation method for all areas disturbed. This provision shall be interpreted in a manner consistent with I.R.C. § 170(h), as amended, and the Treasury Regulations adopted pursuant thereto.\[11\]

(2) **Oil and Gas.** Grantor, or a third party permitted by Grantor, may explore for and extract oil and gas owned in full or in part by Grantor, provided Grantor ensures that such activities are conducted in a manner that does not constitute surface mining and complies with the following conditions:

(i) The exploration for or extraction of oil, gas and other hydrocarbons is conducted in accordance with a plan (the “**Oil and Gas Plan**”), prepared at Grantor’s expense and approved in advance by Grantee. The Oil and Gas Plan shall describe: (a) the specific activities proposed; (b) the specific land area to be used for well pad(s), parking, staging, drilling, and any other activities necessary for the extraction of oil and gas, and the extent of the disturbance of such land area before and after reclamation; (c) the location of facilities, equipment, roadways, pipelines and any other infrastructure to be located on the Property; (d) the method of transport of oil or gas produced from the Property; (e) the method of disposal of water, mining byproducts and hazardous chemicals produced by or used in the exploration and development of the oil or gas; (f) the proposed operation restrictions to minimize impacts on the Conservation Values, including noise and dust mitigation and any timing restrictions necessary to minimize impacts to wildlife; (g) the reclamation measures necessary to minimize disturbance to and reclaim the surface of the Property, including restoring soils to the original contours and replanting and re-establishing native vegetation using specific seed mixes and processes to ensure successful re-vegetation of the Property, including and in addition to those measures required by law; and (h) remedies for damages to the Conservation Values.

(ii) No tank batteries, refineries, secondary production facilities, compressors, gas processing plants, or other similar facilities may be located on the Property.

(iii) Areas of surface disturbance shall be mitigated promptly in accordance with the Oil and Gas Plan.

(iv) Travel for the purpose of oil or gas development shall be restricted to existing roads or to new roads approved in advance in writing by Grantee as part of the Oil and Gas Plan.

\[11\] This paragraph is only appropriate where Grantor has reserved limited development and/or road construction rights. It should be deleted if there is no reserved development on the Property.
(v) Well facilities and pipelines shall either be placed underground, or screened, or concealed from view using existing topography, existing native vegetation, newly planted but native vegetation, and/or use of natural tone coloring. Pipelines shall be located along or under existing roadways to the maximum extent possible.

(vi) Drilling equipment may be located above ground without concealment or screening, provided that such equipment shall be promptly removed after drilling is completed.

(vii) Any soil or water contamination due to the exploration for or extraction of oil or gas must be promptly remediated at the expense of Grantor.

(viii) Any water, mining byproducts or hazardous chemicals produced by or used in the exploration and development of the oil or gas shall not be stored or disposed of on the Property.

(ix) Flaring to enhance oil production is prohibited; flaring for emergencies or operational necessity is permitted.

(x) Grantee shall be released and, to the extent permitted by law, indemnified and held harmless from any liabilities, damages, or expenses resulting from any claims, demands, costs or judgments arising out of the exercise of any rights by Grantor, any lessees or other third parties relating to the exploration for or extraction of oil, gas or hydrocarbons.

(3) Third-Party Mineral Extraction. If a third party owns all, or controls some, of the Minerals, and proposes to extract Minerals from the Property, Grantor shall immediately notify Grantee in writing of any proposal or contact from a third party to explore for or develop the Minerals on the Property. Grantor shall not enter into any lease, surface use agreement, no-surface occupancy agreement, or any other instrument related to Minerals associated with the Property (each, a “Mineral Document”), with a third party subsequent to the Effective Date without providing a copy of the same to Grantee prior to its execution by Grantor for Grantee’s review and approval. Any Mineral Document shall require that Grantor provide notice to Grantee whenever notice is given to Grantor, require the consent of Grantee for any activity not specifically authorized by the instrument, and give Grantee the right, but not the obligation, to object, appeal and intervene in any action in which Grantor has such rights. Any Mineral Document must either (i) prohibit any access to the surface of the Property or (ii) must (a) limit the area(s) of disturbance to a specified area(s); (b) include provisions that ensure that the proposed activities have a limited, localized impact on the Property that is not irremediably destructive of the Conservation Values; and (c) contain a full description of the activities proposed, a description of the extent of disturbance, the location of facilities, equipment, roadways, pipelines and any other infrastructure, the

12 If there is an active oil and gas lease on the Property, you will need to consult with Grantee about drafting certain additional protections.
proposed operation restrictions to minimize impacts on the Conservation Values, reclamation measures including and in addition to those required by law, and remedies for damages to the Conservation Values. Any Mineral Document that only permits subsurface access to Minerals but prohibits any access to the surface of the Property shall also prohibit any disturbance to the subjacent and lateral support of the Property, and shall not allow any use that would materially adversely affect the Conservation Values.

(4) This Section 5.e shall be interpreted in a manner consistent with I.R.C. § 170(h) and the Treasury Regulations adopted pursuant thereto.

f. Trash. The dumping or accumulation of any kind of trash or refuse on the Property, including but not limited to household trash and hazardous chemicals, is prohibited. Limited dumping or accumulation of other agriculture-related trash and refuse produced on the Property is permitted, provided that such dumping does not substantially diminish or impair the Conservation Values and is confined within a total area less than one-quarter acre at any given time. This Section 5.f shall not be interpreted to prevent the storage of agricultural products and by-products on the Property in accordance with all applicable government laws and regulations.

g. Motorized Vehicles. Motorized vehicles may be used only in conjunction with activities permitted by this Deed and in a manner that is consistent with the Purpose. Off-road vehicle courses for snowmobiles, all-terrain vehicles, motorcycles, or other motorized vehicles are prohibited.

h. Commercial or Industrial Activity.

(1) No industrial uses shall be allowed on the Property. Commercial uses are allowed, as long as they are conducted in a manner that is consistent with I.R.C. § 170(h) and the Purpose. Without limiting other potential commercial uses that meet the foregoing criteria, the following uses are allowed:

(i) Breeding and grazing livestock, such as cattle, horses, sheep, and similar animals;

(2) The foregoing descriptions of allowed commercial uses notwithstanding, commercial feed lots and other intensive growth livestock farms, such as dairy, swine, or poultry farms, are inconsistent with the Purpose and are prohibited. For purposes of this Deed, "commercial feed lot" is defined as a permanently constructed confined area or facility within which the Property is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the commercial business of the reception and feeding of livestock.

i. Signage or Billboards. No commercial signs, billboards, awnings, or advertisements shall be displayed or placed on the Property, except for appropriate and customary ranch or pasture identification signs, “for sale” or “for lease” signs alerting the public to the availability of the Property for purchase or lease, “no trespassing” signs,
interpretive, directional, waypoint signage, and signs informing the public of the status of ownership. Any such signs shall be located and designed in a manner consistent with the Purpose.

6. **Land Management / Management Plan.** Grantor and Grantee acknowledge that the preservation and protection of the Conservation Values as contemplated under this Deed require careful and thoughtful stewardship of the Property. To facilitate periodic communication between Grantor and Grantee about management issues that may impact the Conservation Values, the Property shall be operated and managed in accordance with a “Management Plan” jointly agreed upon by Grantor and Grantee on or before the Effective Date. The Parties shall review the Management Plan at least every five years and update it if either Party determines an update is necessary.

7. **Grantor Notice and Grantee Approval.** The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the Purpose. Whenever notice is required, Grantor shall notify Grantee in writing within a reasonable period of time prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose. Where Grantee’s approval is required, Grantor shall not undertake the requested activity until Grantor has received Grantee’s approval in writing. Grantee shall grant or withhold its approval in writing within the time frame described in Paragraph 3d above, following receipt of Grantor’s written request and sufficient supporting details as described above. Grantee’s approval may be withheld only upon Grantee’s reasonable determination that the activity as proposed is not consistent with the Purpose or the express terms of this Deed, unless this Deed provides that approval for a particular request may be withheld in the sole discretion of the Grantee.

8. **Enforcement.** The Grantee shall have the right to prevent and correct or require correction of violations of the terms of this Deed and the purposes of the Easement. If Grantee finds what it believes is a violation of this Deed, Grantee shall immediately notify the Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either:

   a. Restore the Property to its condition prior to the violation; or

   b. Provide a written explanation to Grantee of the reason why the alleged violation should be permitted, in which event the Parties agree to meet as soon as possible to resolve their differences. If a resolution cannot be achieved at the meeting, the Parties may meet with a mutually acceptable mediator to attempt to resolve the dispute. Grantor shall discontinue any activity that could increase or expand the alleged violation during the mediation process. If Grantor refuses to undertake mediation in a timely manner or should mediation fail to resolve the dispute, Grantee may, at its discretion, take appropriate legal action. Notwithstanding the foregoing, when Grantee, in its sole
discretion, determines there is an ongoing or imminent violation that could irreversibly diminish or impair the Conservation Values, Grantee may, at its sole discretion, take appropriate legal action without pursuing mediation, including but not limited to seeking an injunction to stop the alleged violation temporarily or permanently or to require the Grantor to restore the Property to its prior condition.

9. **Costs of Enforcement.** Grantor shall pay any costs incurred by Grantee in enforcing the terms of this Deed against Grantor, including without limitation costs and expenses of suit, attorney fees and any costs of restoration necessitated by Grantor’s violation of the terms of this Deed. If the deciding body determines that Grantor has prevailed in any such legal action, then each Party shall pay its own costs and attorney fees. However, if the deciding body determines that Grantee’s legal action was frivolous or groundless, Grantee shall pay the Grantor’s costs and attorney fees in defending the legal action.

10. **No Waiver or Estoppel.** Enforcement of the terms of this Deed shall be in the Grantee’s discretion. If the Grantee does not exercise, or delays the exercise of, its rights under this Deed in the event of a violation of any term, such inaction or delay shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent violation of the same or any other term of this Deed or of any of Grantor’s rights under this Deed. Grantor waives any defense of laches, estoppel, or prescription, including the one-year statute of limitations for commencing an action to enforce the terms of a building restriction or to compel the removal of any building or improvement because of the violation of the same under C.R.S. § 38-41-119, et seq.

11. **Acts Beyond Grantor’s Control.** Nothing contained in this Deed shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor’s control, including without limitation fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. Notwithstanding the foregoing, Grantor shall take reasonable efforts to prevent third parties from performing, and shall not knowingly allow third parties to perform, any act on or affecting the Property that is inconsistent with the Purpose.

12. **Access.** No right of access by the general public to any portion of the Property is conveyed by this Deed.

13. **Costs and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including weed control and eradication and maintaining adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

14. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent
authority (collectively “Taxes”), including any Taxes imposed upon, or incurred as a result of, this Deed, and shall furnish Grantee with satisfactory evidence of payment upon request.

15. **Liability.** Each party is responsible for the consequences of its own negligence and that of its officers and employees. Nothing in this Deed shall be construed as giving rise to any right or ability in Grantee, nor shall Grantee have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or any similar law or regulation. Nothing herein is intended as a waiver of the provisions of the Colorado Governmental Immunity Act, Section 24-10-101 et seq. C.R.S.

16. **Real Property Interest.** The conservation easement interest created by this Deed constitutes a real property interest immediately vested in Grantee. The Parties stipulate that this conservation easement interest (which includes the value of Grantee’s Development Rights) has a fair market value equal to Forty-seven and a half percent (47.5%) of the full unencumbered fair market value of the Property (the “Easement Value Percentage”). The values at the time of this Deed shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to I.R.C. § 170(h), whether or not Grantor claims any deduction for federal income tax purposes. The Easement Value Percentage shall remain constant.

17. **Condemnation or Other Extinguishment.** If this Deed is taken, in whole or in part, by exercise of the power of eminent domain (“Condemnation”), or if circumstances arise in the future that render the Purpose impossible or impractical to accomplish, this Deed can only be terminated, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Each Party shall promptly notify the other Party in writing when it first learns of such circumstances. Grantee shall be entitled to full compensation for its interest in any portion of this Deed that is terminated as a result of Condemnation or other proceedings. Grantee’s proceeds shall be an amount at least equal to the Easement Value Percentage multiplied by the value of the unencumbered fee simple interest (excluding the value of any improvements) in the portion of the Property that will no longer be encumbered by this Deed as a result of Condemnation or termination. Grantor shall not voluntarily accept proceeds equal to less than the full fair market value of the affected Property unrestricted by this Deed without the approval of Grantee. Grantee shall use its proceeds in a manner consistent with the conservation purposes of this Deed. Grantee’s remedies described in this Section 17 shall be cumulative and shall be in addition to any and all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values as described in C.R.S. § 38-30.5-108.

18. **Assignment.**
a. This Deed is transferable, but Grantee may assign its rights and obligations under this Deed only to an organization that:

(1) is a qualified organization at the time of transfer under I.R.C. § 170(h) as amended (or any successor provision then applicable) and the applicable regulations promulgated thereunder;

(2) is authorized to acquire and hold conservation easements under Colorado law;

(3) agrees in writing to assume the responsibilities imposed on Grantee by this Deed; and

b. If Grantee desires to transfer this Deed to a qualified organization having similar purposes as Grantee but Grantor has refused to approve the transfer, Grantee may seek an order by a court with jurisdiction to transfer this Deed to another qualified organization having similar purposes that agrees to assume the responsibility imposed on Grantee by this Deed, provided that Grantor shall have adequate notice of and an opportunity to participate in the court proceeding leading to the court’s decision on the matter.

c. Upon compliance with the applicable portions of this Section 18, the Parties shall record an instrument completing the assignment in the property records of the county or counties in which the Property is located. Assignment of the Deed shall not be construed as affecting the Deed’s perpetual duration and shall not affect the Deed’s priority against any intervening liens, mortgages, easements, or other encumbrances.

19. Subsequent Transfers. Grantor shall notify the Grantee in writing at least thirty (30) days in advance of the proposed conveyance of any interest in all or any portion of the Property, including any conveyance under threat of condemnation, and shall incorporate by reference the terms and conditions of this Deed in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, except conveyance of a leasehold interest that is no longer than one year in duration or an agricultural lease, that is otherwise consistent in all respects with the terms of this Deed. The failure of Grantor to perform any act required by this Section 19 shall not impair the validity of this Deed or limit its enforceability in any way.

20. Notices. Any notice, demand, request, consent, approval, or communication that either Party is required to give to the other in writing shall be either served personally or delivered by (a) certified mail, with return receipt requested; or (b) a commercial delivery service that provides proof of delivery, addressed as follows:

To Grantor:
City of Fort Collins
Natural Areas Department
c/o John Stokes, Natural Areas Director
P.O. Box 580
To Grantee:
Larimer County
or to such other address as either Party from time to time shall designate by written notice to the other.

21. **Grantor’s Title Warranty.** Grantor warrants that Grantor has good and sufficient title to the Property and Grantor has access to the Property for the purposes granted or permitted to Grantee in this Deed, and Grantor promises to defend the same against all claims whatsoever. Grantor’s warranty of title is further subject to the encumbrances set forth on Exhibit D, attached hereto and incorporated herein by this reference.

22. **Subsequent Liens on the Property.** No provisions of this Deed shall be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any deed of trust, mortgage or lien arising from such a borrowing shall not encumber less than all of the Property, and shall be subordinate to this Deed for all purposes so that any such instrument expressly shall be deemed to have been recorded after this Deed and so that any foreclosure of such deed of trust, mortgage or lien shall not affect any provision of this Deed, including without limitation its perpetual nature, the payment of proceeds as described in Section 17 above, and the limitation of Section 5.e.

23. **Recording.** Grantee shall record this Deed in a timely fashion in the official records of each county or counties in which the Property is situated, and may re-record it at any time as may be required to preserve its rights in this Deed.

24. **Environmental Attributes.** Unless otherwise provided in this Deed, Grantor reserves all Environmental Attributes associated with the Property. “**Environmental Attributes**” shall mean any and all tax or other credits, benefits, renewable energy certificates, emissions reductions, offsets, and allowances (including but not limited to water, riparian, greenhouse gas, beneficial use, and renewable energy), generated from or attributable to the conservation, preservation and management of the Property in accordance with this Deed. Nothing in this Section 24 shall modify the restrictions imposed by this Deed or otherwise be inconsistent with the Purpose.

25. **Tax Benefits.** Grantor acknowledges that Grantor is responsible for obtaining legal and accounting counsel to advise Grantor regarding the applicability of federal or state tax benefits that might arise from the bargain sale (sale at less than fair market value) or donation of the Deed. Grantee makes no representation or warranty that Grantor will receive tax benefits for the bargain sale or donation of the Deed.

26. **Deed Correction.** The Parties shall cooperate to correct mutually acknowledged errors in this Deed (and exhibits), including typographical, spelling, or clerical errors. The Parties shall make such corrections by written agreement.
27. **Effective Date.** The Effective Date of this Deed shall be the date and year first written above.

28. **General Provisions.**

   a. **Controlling Law.** The interpretation and performance of this Deed shall be governed by the laws of the State of Colorado.

   b. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Deed shall be liberally construed in favor of the grant to effect the Purpose and the policy and purpose of C.R.S. § 38-30.5-101, *et seq.* If any provision in this Deed is found to be ambiguous, an interpretation consistent with the Purpose that would render the provision valid shall be favored over any interpretation that would render it invalid.

   c. **Severability.** If any provision of this Deed, or the application thereof to any person or circumstance, is found to be invalid, it shall be deemed severed from this Deed, and the balance of this Deed shall otherwise remain in full force and effect.

   d. **Entire Agreement.** The Recitals above are a material part of this Deed and are incorporated into this Deed. This Deed sets forth the entire agreement of the Parties with respect to the grant of a conservation easement over the Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the grant, all of which are merged in this Deed.

   e. **Joint Obligation.** The obligations imposed upon Grantor and Grantee in this Deed shall be joint and several if more than one entity or individual holds either interest at any given time. If there is more than one owner of the Property at any time, the obligations imposed by this Deed upon the owners shall be joint and several upon each of the owners of the Property.

   f. **Non-Merger.** A merger of this Deed and the fee title to the Property cannot occur by operation of law. No merger shall be deemed to have occurred hereunder or under any documents executed in the future affecting this Easement, unless the parties expressly state that they intend a merger of estates or interests to occur.

   g. **Successors.** The covenants, terms, conditions, and restrictions of this Deed shall be binding upon, and inure to the benefit of, the Parties and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

   h. **Termination of Rights and Obligations.** Provided a transfer is permitted by this Deed, a Party's rights and obligations under the Deed terminate upon transfer of the Party's interest in the Deed or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
i. **Captions.** The captions in this Deed have been inserted solely for convenience of reference and are not a part of this Deed and shall have no effect upon construction or interpretation.

j. **No Third-Party Beneficiaries.** This Deed is entered into by and between Grantor and Grantee and is solely for the benefit of Grantor and Grantee and their respective successors and assigns for the purposes set forth in this Deed. The enforcement of the terms and conditions of this Deed and all rights of action relating to such enforcement, shall be strictly reserved to the parties. Nothing contained in this Deed shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Parties that any person or entity, other than the Parties, receiving services or benefits under this Deed shall be deemed an incidental beneficiary only.

k. **Amendment.** If circumstances arise under which an amendment to or modification of this Deed or any of its exhibits would be appropriate, Grantor and Grantee may jointly amend this Deed so long as the amendment (i) is consistent with the Conservation Values and Purpose of this Deed, (ii) does not affect the perpetual duration of the restrictions contained in this Deed, (iii) does not affect the qualifications of this Deed under any applicable laws, and (iv) complies with Grantee’s procedures and standards for amendments (as such procedures and standards may be amended from time to time). Any amendment must be in writing, signed by the Parties, and recorded in the records of the Clerk and Recorder of the county in which the Property is located. In order to preserve the Deed’s priority, the Grantee may obtain subordinations of any liens, mortgages, easements, or other encumbrances, and the Grantee may require a new title policy. For the purposes of this paragraph, the term “amendment” means any instrument that purports to alter in any way any provision of or exhibit to this Deed. Nothing in this Section 28.k shall be construed as requiring Grantee to agree to any particular proposed amendment.

l. **Change of Conditions or Circumstances.** A change in the potential economic value of any use that is prohibited by or inconsistent with this Deed, or a change in any current or future uses of neighboring properties, shall not constitute a change in conditions or circumstances that make it impossible or impractical for continued use of the Property, or any portion thereof, for conservation purposes and shall not constitute grounds for terminating the Deed in whole or in part. In conveying this Deed, the Parties have considered the possibility that uses prohibited or restricted by the terms of this Deed may become more economically valuable than permitted uses, and that neighboring or nearby properties may in the future be put entirely to such prohibited or restricted uses. It is the intent of Grantor and Grantee that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Deed, in whole or in part. In addition, the inability of Grantor, or Grantor’s heirs, successors, or assigns, to conduct or implement any or all of the uses permitted under the terms of this Deed, or the unprofitability of doing so, shall not impair the validity of this Deed or be considered grounds for its termination or extinguishment, in whole or in part.

m. **Authority to Execute.** Each Party represents to the other that such Party has full power and authority to execute, deliver, and perform this Deed, that the
individual executing this Deed on behalf of each Party is fully empowered and authorized to do so, and that this Deed constitutes a valid and legally binding obligation of each Party enforceable against each Party in accordance with its terms.

n. **Obligations Subject to Annual Appropriation.** Any obligations of either Party under this Deed for fiscal years after the year of this Deed are subject to annual appropriation by such Party’s governing body, in its sole discretion, of funds sufficient and intended for such purposes.

o. **Good Faith Negotiation/Mediation.** Where this Deed requires the consent of either party, such consent shall not be unreasonably withheld, conditioned, delayed or denied. Where this Deed specifies that a decision requires the mutual agreement of the parties, the parties shall be obligated to make best efforts to negotiate in good faith to reach mutual agreement consistent with the Conservation Values and purposes of the Easement. In the event that such efforts by the parties fail to result in mutual agreement through negotiation, the parties agree to attempt to resolve their dispute through mediation. Either party may commence the mediation process by providing the other party with written notice setting forth the subject of the dispute, and the solution requested. Within ten (10) days after the receipt of the notice, the other party shall deliver a written response to the initiating party’s notice. The parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute. The initial mediation session shall be held within thirty (30) days after the initial notice, unless the selected mediator cannot accommodate the parties within that time. If the parties cannot agree upon a mediator, the Grantee will provide the Grantor with a list of at least three professional mediation organizations in the Fort Collins/Denver area that are not affiliated with the City of Fort Collins. The Grantor will select an organization from the list within ten (10) days of receipt of the list, and the selected organization will be asked to choose a mediator for the parties. The parties agree to share equally the costs and expenses of the mediation, which shall not include the expenses incurred by each party for its own legal representation in connection with the mediation. The provisions of this subparagraph may be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including reasonable attorneys’ fees and other legal costs, to be paid by the party against whom enforcement is ordered.

p. **No Waiver of Governmental Immunity.** Anything else in this Deed to the contrary notwithstanding, no term or condition of this Deed shall be construed or interpreted as a waiver, either express or implied, of any of the immunities, rights, benefits or protection of the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq., as amended or as may be amended in the future (including, without limitation, any amendments to such statute, or under any similar statute which is subsequently enacted) (“CGIA”), subject to any applicable provisions of the Colorado Constitution and applicable laws. The Parties acknowledge that liability for claims for injury to persons or property arising out of the negligence of a government entity, its members, officials, agents and employees may be controlled and/or limited by the provisions of the CGIA. The Parties agree that no provision of this Deed shall be construed in such a manner as to
reduce the extent to which the CGIA limits the liability of any governmental party, its members, officers, agents and employees.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever. IN WITNESS WHEREOF, Grantor and Grantee have executed this Deed of Conservation Easement as of the Effective Date.

GRANTOR:

CITY OF FORT COLLINS
a Colorado municipal corporation

By: __________________________
    Wade Troxell, Mayor

ATTEST:
________________________
City Clerk
________________________
Printed Name
Approved as to Form:
________________________
Senior Assistant City Attorney
________________________
Printed Name

STATE OF COLORADO ) ss.
COUNTY OF LARIMER

The foregoing instrument was acknowledged before me this _____ day of __________, 2019, by Wade Troxell, as Mayor, of the City of Fort Collins.

Witness my hand and official seal
My commission expires:

________________________
Notary Public
GRANTEE:
LARIMER COUNTY

By: ____________________________

STATE OF COLORADO  )
COUNTY OF ___________ ) ss

The foregoing instrument was acknowledged before me this _____ day of _____________, 2018, by _______________________.

Witness my hand and official seal.

My Commission expires:

________________________________
Notary Public
[Exhibits A and B to come following Minor Land Division]
AGENDA ITEM SUMMARY
July 16, 2019

STAFF

Pete Wray, Senior City Planner
Cameron Gloss, Planning Manager
Brad Yatabe, Legal

SUBJECT

Items Relating to the Fossil Creek Reservoir Area Plan-Transfer of Density Units Program Closure.

EXECUTIVE SUMMARY

A. Resolution 2019-077 Amending the Fossil Creek Reservoir Area Plan to Close the Transfer of Density Units Program.

B. Resolution 2019-078 Approving and Authorizing the Mayor to Execute Amendment Number Two to the Intergovernmental Agreement Between the City and Larimer County Regarding Cooperation on Managing Urban Development Within the Fort Collins Growth Management Area to Close the Transfer of Density Units Program and Update Certain References.

The purpose of this item is to consider closure to the Fossil Creek Reservoir Transfer of Density Units (TDU) Program, adopted September 22, 1998, by the Larimer County Board of Commissioners. The TDU Receiving Area is essentially annexed and built out, with only one remaining parcel with limited development potential. This item includes amendments to both the Fossil Creek Reservoir Area Plan and the Intergovernmental Agreement Regarding Cooperation on Managing Urban Development.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolutions.

BACKGROUND / DISCUSSION

In April 1995, the Larimer County Planning Commission, along with the Cities of Fort Collins and Loveland, adopted the Plan for the Region Between Fort Collins and Loveland. The main premise of this Plan was to maintain separation between the two developing municipalities by preserving rural land use patterns and protecting sensitive natural resources occurring throughout the Plan area.

In March 1998, the Larimer County Planning Commission, in collaboration with the City of Fort Collins, adopted the Fossil Creek Reservoir Area Plan. The intent of this Plan was to facilitate coordinated development patterns and practices in a specific area in the southeastern reaches of the Fort Collins Growth Management Area (GMA). Protection of environmental and natural resources along the shores of the Fossil Creek Reservoir was a significant feature of the Plan, which established a ¼ mile natural resource buffer around the edges of the reservoir, thus limiting development from encroaching into this sensitive natural area.

In September 1998, the Board of County Commissioners approved the Transferable Density Units for the Fossil Creek Reservoir Area Plan, which was a unique program to Larimer County. Transfer of Density Unit (TDU) programs are a growth management strategy that allows for the movement of unrealized development rights (density) from one property to another property in a specified plan area. The results of such programs
Agenda Item 11

are higher densities in the “receiving areas” where development is desired and lesser density in the “sending areas” where development is discouraged.

For more than 20 years, Larimer County and the City of Fort Collins have cooperatively implemented the land use objectives and strategies for the jointly adopted Fossil Creek Reservoir Area Plan. The County TDU program was an instrumental part of the Plan as it provided landowners in the receiving areas a way to realize significantly higher development densities than would have been achieved by existing county zoning. Furthermore, the TDU program achieved desired outcomes in the sending areas by minimizing impacts to lands identified as having important community values, which primarily included properties around the reservoir and in the separator area for Fort Collins and Loveland.

In accordance with this program, proposed developments in the Transfer Density Unit “Receiving Area” (described below) were reviewed in the County prior to consideration for annexation. The Larimer County Planning Department was the primary reviewing authority for landowners and developers with land in the Receiving Area. This process of County plan review, followed by annexation, was implemented for all projects submitted for development in the TDU receiving area, and described in the Larimer County and City of Fort Collins Intergovernmental Agreement for the Growth Management Area.

The TDU program provided landowners the means to transfer development potential from one parcel of land to another. The purpose was to guide future growth in the County toward areas designated for higher density development, and away from areas that have important community values. The TDU program established a procedure to evaluate the development potential of a parcel and translate it into tradable units, or TDUs. Land within the Fossil Creek TDU program area is located within either the “Sending Area” or the “Receiving Area. Higher residential densities required by the Plan were located in the Receiving Area, which consists of approximately 900 acres north of Fossil Creek Reservoir, anticipated for annexation by Fort Collins. (Attachment 1) The remainder of lands covered by this Plan were in the Sending Area (approximate one-mile corridor bounded by I-25 to the east, Highway 287 to the west, CO Rd 30 to south, and Carpenter Road and Fossil Creek Reservoir to north).

Details and Status of Program

- A property evaluation system resulting in a certificate disclosing the allowable number of TDUs that can be transferred from one property to another.
- Bonus TDU allowances for preservation of land that possesses important features valued by the community.
- An open market system of selling and buying TDUs allowing landowners and developers to negotiate a fair market price for TDUs.
- Since 1998, approximately 1,760 TDUs have been transferred into the Receiving Area from properties in the Sending Area.
- As a result of a series of annexations in the Fossil Creek Reservoir area over the past three years, one “receiving area” parcel remains in the Fossil Creek Reservoir Plan Area, owned by Swift Farms LLC. This 20-acre parcel contains three single family residences, a dog school, and several agricultural-related outbuildings. This property has minimal development potential.
- The TDU Program has been successful in reducing density and protecting open lands within the Fort Collins-Loveland Community Separator area and preserving important natural resource lands surrounding the Fossil Creek Reservoir area.
- As a growth management tool, the use of TDUs can be effective in reducing density and development potential for identified open lands and critical natural resource areas. The Fossil Creek Reservoir TDU Program accomplished these objectives to a certain degree for the Loveland/Fort Collins Community Separator, and Fossil Creek Reservoir Resource Management Area.
- Other growth management tools both jurisdictions have implemented have similar and often more effective results, such as conservation easements, land acquisition, cluster development, development regulations and other management plans.
Presently, the TDU Receiving Area is primarily annexed and built out, with only a few small parcels remaining, including Homestead Estates which is an existing platted subdivision. As a result, both County and City staff acknowledge the TDU Program has reached completion.

**Proposed Amendments**

**Closure to the TDU program will require the following actions by both the City and County:**

1. Amendment of the *Fossil Creek Reservoir Area Plan* to eliminate references to the TDU program.

2. Amendment of the *Larimer County and City of Fort Collins Intergovernmental Agreement Regarding Cooperation on Annexation, Growth Management and Related Issues* ("IGA") to remove specific references to the administration and implementation of Fossil Creek Reservoir Area Plan being affected by the repeal of the Transferable Density Units for the Fossil Creek Reservoir Plan. Amending the IGA will only affect the manner in which the City and County administer development review and annexation practices within the Fossil Creek Reservoir Plan Area. Additional amendments to the IGA to correct references to the Larimer County Land Use Code and internal IGA references are also proposed.

**Larimer County Action Only:**

1. Amendment to repeal the TDU Program.

2. Deletion of County Land Use Code Section 4.2.3 - Fossil Creek Reservoir TDU Overlay Zone, and renumeration of Section 4.2.4 - Cooperative Planning Area Overlay Zone.

3. Deletion of Section 15.2.2 - Supplementary Regulations for Growth Management Areas.


**BOARD / COMMISSION RECOMMENDATION**

At its May 15, 2019, meeting, the Larimer County Planning Commission voted (7-0) on the consent agenda to recommend the Board of County Commissioners approval of the items relating to closing the Fossil Creek Reservoir TDU Program.

At its May 16, 2019, meeting, the Planning and Zoning Board voted (6-0) on the consent agenda to recommend City Council approval of the items relating to closing the Fossil Creek Reservoir TDU Program.

On June 10, 2019, the Larimer County Board of Commissioners voted (3-0) on the consent agenda to close the Fossil Creek Reservoir TDU Program by amending the Fossil Creek Reservoir Area Plan, the Larimer County Land Use Code, and the IGA, all as recommended by County staff and the Larimer County Planning Commission.

**PUBLIC OUTREACH**

Prior to the June 10, 2019, Board of County Commissioners meeting, County staff provided notice to the property owner of the sole remaining TDU regarding the proposed elimination of the TDU program. County staff did not receive any objection from the property owner.

**ATTACHMENTS**

1. Transfer Density Units Receiving Area Location Map (PDF)
RESOLUTION 2019-077
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE FOSSIL CREEK RESERVOIR AREA PLAN TO CLOSE THE TRANSFER OF DENSITY UNITS PROGRAM

WHEREAS, the Fossil Creek Reservoir Area Plan (the “Plan”) is a collaborative planning document drafted and adopted by the City and Larimer County; and

WHEREAS, City Council originally adopted the Plan in 1998 by Resolution 1998-054; and

WHEREAS, the Plan has been subsequently amended by Resolution 1999-015, 1999-074, 2006-092, and 2011-023; and

WHEREAS, the City and Larimer County desire to further amend the Plan to remove references to the Transfer of Density Units Program as set forth in the attached Exhibit “A,” which is incorporated by this reference; and

WHEREAS, on May 16, 2019, Fort Collins Planning and Zoning Board unanimously recommended as part of its adopted consent agenda that City Council approve the proposed changes to the Plan; and

WHEREAS, City Council has determined that it would be in the best interests of the City to amend the Plan as set forth in Exhibit “A”.

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 City Council hereby adopts the changes to the Plan set forth in Exhibit “A” and directs City staff to make such changes to the Plan.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 16th day of July, A.D. 2019.

____________________________
Mayor

ATTEST:

____________________________
City Clerk

-1-
AMENDMENTS TO THE FOSSIL CREEK RESERVOIR AREA PLAN

Text that is struck through indicates current text to be deleted. Text that is highlighted indicates text to be added to the current text. Only the strike throughs and highlights described below will be changed and all other portions of the Fossil Creek Reservoir Area Plan shall remain unchanged except that information indicating the dates of amendments shall be updated at the beginning of the Fossil Creek Reservoir Area Plan.

1. The following change will be made to the text on page i of the Executive Summary:

This project is unique in that both jurisdictions – while operating under different land use regulations and planning environments – came together and worked through many complex issues and policy decisions, ultimately resulting in a jointly adopted Plan. The Plan is intended to balance urban development and environmental conservation by recommending a unique combination of City-County integrated implementation strategies. The key to the success of the planning effort is the formulation and adoption of a Transfer of Density Units program by Larimer County.

2. The following change will be made to the text on page ii of the Executive Summary:

A Transfer of Density Units (TDU) Program for Larimer County was initiated by establishing a program specifically for the Fossil Creek Reservoir Area. This tool, in combination with other land management strategies, provides a mechanism for establishing a community separator between Loveland, Fort Collins and Windsor. Adoption of a Transfer of Density Units (TDU) Program was not intended to occur at the time of Plan adoption, however, it is included in the proposed Implementation Action Plan.

3. The following change will be made to the text on page 4 of Chapter 1:

- A Plan for the Region between Fort Collins and Loveland (the "Corridor Plan"), designates land to be protected as open space, maintaining a permanent separation between Fort Collins and Loveland, which suggests higher urban density in the Fossil Creek Reservoir Area and calls for an investigation of the TDU Program as an important implementation tool.

4. The following change will be made to the text on page 8 of Chapter 2:

f. Provide a "Transfer of Density units" (TDU) program in which development units may be transferred from the region between Fort Collins and Loveland to the Receiving Area portion of the Fossil Creek Reservoir Area Plan, depicted on the TDU Sending and Receiving Area Map, located at the end of Chapter 6.

g. Achieve higher densities where they are appropriate and feather to lower densities as development nears Fossil Creek Reservoir.
5. The following change will be made to the text on pages 13-14 of Chapter 2:

2.2.7. Transfer of Density Units. The *Fossil Creek Reservoir Transfer of Density Units (TDU) Program*, adopted September 22, 1998, by the Larimer County Board of Commissioners, provided landowners the means to transfer development potential from one parcel of land to another. The TDU Program was discontinued in 2019 because the objectives of the TDU Program were accomplished with the annexation and development build-out of the TDU Receiving Area. The purpose is to guide future growth in the County toward areas designated for higher density development, and away from areas that have important community values. Its goals are to promote the preservation of agriculture, open space, scenic vistas, natural and environmental resources, and recreational lands.

The TDU program establishes a procedure to evaluate the development potential of a parcel and translate it into tradable units, or TDU’s. Lands within the Fossil Creek TDU program area fall within either the “Sending Area” or the “Receiving Area”. Higher residential densities required by this Plan are located in the Receiving Area, which consists of approximately 900 acres north of Fossil Creek Reservoir. The remainder of lands covered by this Plan are in the Sending Area. (See the TDU Sending/Receiving Areas Map, at the end of Chapter 6.)

**Receiving Area**

Landowners who choose to develop must either cluster residential development without using TDUs or may develop by acquiring TDUs. A landowner or developer in the Receiving Area may bargain to arrive at a fair market price for TDUs with any willing seller in the Sending Area holding a TDU certificate. To develop in the Receiving Area without using TDUs, the landowner or developer must have the County Planning Department determine an acceptable range of dwelling units allowed for the parcel, this number will be based on County zoning and site constraints. Dwelling units must be clustered to meet land use and density requirements with any remaining developable land being designated for “future development”, and developed only by transferring TDUs from Sending Areas. Larimer County Planning Department is the primary contact for landowners and developers with land in the Receiving Area.

**Sending Area**

Landowners in Sending Areas who wish to be compensated for limiting or foregoing the development of their land can sell transferable
density units to buyers in the Receiving Area. The TDU Administrator evaluates the parcel to determine the number of transferable density units, or basic allowable TDUs. Factors that may increase the number of TDUs include lands providing: significant natural resource values, important community buffers, agricultural land preservation values, recreational trails or wildlife migration routes, significant historic sites, or environmental education opportunities. Conditions that may decrease the number of TDUs include parcel size (less than 40 acres), physical or public utility limitations of the parcel which limit development potential, and distance from existing development. Sending area sites that are outside the Fossil Creek Reservoir planning area were designated separately and are not a part of the Fossil Creek Reservoir Area Plan.

For additional information on the Fossil Creek Reservoir Area Transfer of Density Units Program contact the Larimer County Planning Department.

6. The following change will be made to the text on page 16 of Chapter 2:

**FC-LUF-2 Rural Residential.** Areas currently zoned FA-1 and AP-Airport which are not designated for urban residential use are included in potential sending areas in the proposed TDU program. However, if developed they should be developed at residential densities consistent with the rural conservation development policy contained in the Larimer County Master Plan. The AP-Airport zoning south of County Road 32, adjacent to the I-25 Interstate exchange remains designated a mixed-use area as denoted in A Plan for the Region Between Fort Collins and Loveland, “The Corridor”.

**FC-LUF-3 Mixed-Use Neighborhoods.** These neighborhoods will consist of a mix of housing types near parks, schools, and a neighborhood center. For development projects south of Kechter Road, and east of Timberline Road, the density will be a minimum overall average of 3 dwelling units per net acre of residential land. The maximum density of any development plan taken as a whole will be 9 dwelling units per gross acre of residential land. The maximum density of any phase in a multiple-phase development plan or an affordable housing project shall be 12 dwelling units per gross acre of residential land if located within the TDU Receiving Area. This residential classification will require design and development standards agreed upon by both Larimer County and the City of Fort Collins. The method of calculating density is shown in Appendix A. Future development within the mixed-use neighborhood designation located outside of the TDU Receiving Area (including north of Kechter Road, and west of Timberline Road), will have an overall minimum average density of 4 dwelling units per net acre of residential land, and an overall maximum density of 9 dwelling units per gross acre of residential land. The maximum density of any phase in a multiple-phase development plan or an affordable housing project shall be 12
dwelling units per gross acre of residential land.

7. The following change will be made to the text on pages 29-30 of Chapter 4 with the subsequent subsections b. through h. on pp. 30-32 appropriately relettered:

**a. Transfer of Density Units (TDU) Program.** One of the goals of the TDU program is to promote the preservation of natural and environmental resources. Lands within the Fossil Creek TDU program area fall within either the “Sending Area” or the “Receiving Area,” as defined in Chapter 2. If a property develops at residential densities allowed by County zoning, it will be required to “cluster” the allowed number of dwelling units at Plan density and according to the new design standards for the planning area. Sending area sites that are outside the Fossil Creek Reservoir planning area will be designated separately from the adoption of the *Fossil Creek Reservoir Area Plan*.

8. The following change will be made to the text on page 33 of Chapter 4:

**4.1.4. Other Open Lands Outside of the Resource Management Area**

The *Fossil Creek Reservoir Area Plan* identifies other open lands outside of the Resource Management Area that will remain rural lands. These are lands identified in *A Plan for the Region Between Fort Collins and Loveland* and *Fort Collins City Plan* as “proposed open lands.” The intent of this category of land is for community separators between Fort Collins, Loveland, and Windsor, as well as protection of views and rural character along I-25. These lands may remain in agricultural use. Principle strategies to protect these lands will likely include conservation easements, and clustering, and utilization of the County’s TDU Program.

9. The following change will be made to the text on page 39 of Chapter 6:

**Development of a Larimer County Transfer of Density Unit Program for the Fossil Creek Reservoir Area Plan.** (Adopted September 22, 1998, by the Larimer County Board of Commissioners.)

10. The following change will be made to the text on page 40 of Chapter 6:

- Require clustered development patterns utilizing existing County FA-1 Zone densities that will allow continued development in the Fossil Creek Reservoir Area. As noted in the Implementation Action Plan the County will then continue to work toward establishment of a Transfer of Density Units program to achieve the planned densities for the residual land in the cluster development.

11. The following change will be made to the text on page 41 of Chapter 6:
FC-I-5 The balance of the planning area south of County Road 36 and east of County Road 11 shall remain under current County zoning of FA-1 Farming (TDU Receiving Area). The City will not annex these areas until development has occurred at Plan densities and standards by utilization of the proposed TDU Program. In the interim, development policies and proposal regulations shall require development proposals to meet the following standards:

**FC-I-5.1** The maximum number of units which may be developed are based on the underlying zoning and are calculated as follows: Total number of acres, less areas in designated flood ways, divided by minimum lot size for the applicable zoning classification.

**FC-I-5.2** All dwelling units must be located in clusters on the site such that the cluster is consistent with the planned densities and standards specified in the Land Use Framework Plan and development regulations for the Fossil Creek Reservoir Area. The residual area of the development not in the cluster must be designated as a future development area.

**FC-I-5.3** The designated future development area could further be developed to planned densities and standards upon adoption of a Transfer of Density Unit Program Land Regulation by Larimer County.

12. The following change will be made to the text on page 42 of Chapter 6:

The northwest and southwest corners of County Road 32 and I-25 have a statement on the Plan map indicating that when development is proposed in these areas then a unified development plan is encouraged, but not required, to be submitted for the development parcel and all other parcels in the designated areas north of County Road 32 or south of County Road 32. The objective of the overall development plan requirement is to achieve coordinated site planning of water and sewer infrastructure, internal road circulation/access to the frontage roads and potential land use relationships. The Plan should be at the concept level and would not depend upon detailed engineering. This submittal will enable the applicant, surrounding property owners and review agencies supplying infrastructure an improved opportunity to coordinate planning efforts, achieve infrastructure cost economies, and ensure efficient transportation circulation to serve potential land uses. These areas are included in the Larimer County TDU “Sending Area” and land owners are encouraged to participate in that program.

**FC-I-7** Larimer County adopted the Transfer of Density Units (TDU) program, along with supporting maps, for the Fossil Creek Reservoir planning area on September 22, 1998. The Transfer of Density Units program was discontinued in 2019. The receiving area for this program is within the Growth Management Area portion of the planning area, while the majority of the sending area sites are
located outside the planning area in the region between the cities of Fort Collins and Loveland.

13. The following change will be made to the text on page 44 of Appendix A:

**GM-3** Larimer County will use transfer of development rights as a tool to protect important County resources, where appropriate.

**GM-3-s1** Larimer County shall continue to develop a transfer of development rights program in cooperation with the municipalities of the County.

**GM-3-s2** The transfer of development rights program shall include a means to identify or define areas where transfer of development rights will be used to protect important resources, called “sending areas”.

14. The following change will be made to the text on page 67 of Appendix C:

<table>
<thead>
<tr>
<th>Fossil Creek Reservoir Area Plan Action Plan</th>
<th>Reference Documents</th>
<th>Lead Entity</th>
<th>Actions &amp; Partners</th>
<th>Area Plan</th>
<th>Time Line</th>
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</thead>
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<td>TDU Overaly Zoning District</td>
<td><em>LCMP: GM-3</em></td>
<td>Larimer County</td>
<td>City of Fort Collins, Property Owners, Developers</td>
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<tr>
<td>Amend Transportation Master Plan</td>
<td><em>LCMP: TR-1/ TR-1s1</em></td>
<td>Larimer County</td>
<td>City of Fort Collins</td>
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<td>Develop Resource Management Area Plan</td>
<td><em>LCMP: ER-4, ER-1, ER4-3</em></td>
<td>Larimer County</td>
<td>City of Fort Collins, Natural Resources Department, Colorado Division of Wildlife</td>
<td></td>
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<tr>
<td>Amend County Land Use Regulations for</td>
<td><em>LCMP: PE-1-1; p4-0, GM-3; GM-3-1; M3-2</em></td>
<td>Larimer County</td>
<td>City of Fort Collins</td>
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<tr>
<td>Development Standards and TDU Program</td>
<td></td>
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RESOLUTION 2019-078
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE
AMENDMENT NUMBER TWO TO THE INTERGOVERNMENTAL
AGREEMENT BETWEEN THE CITY AND LARIMER COUNTY REGARDING
COOPERATION ON MANAGING URBAN DEVELOPMENT WITHIN THE FORT
COLLINS GROWTH MANAGEMENT AREA TO CLOSE THE TRANSFER OF
DENSITY UNITS PROGRAM AND UPDATE CERTAIN REFERENCES

WHEREAS, pursuant to Resolution 2006-107, the City of Fort Collins ("City") entered
into that certain Intergovernmental Agreement Regarding Cooperation on Managing Urban
Development dated June 24, 2008, (the “Fort Collins-County IGA”) with Larimer County,
Colorado (the “County”), which IGA superseded all prior intergovernmental agreements entitled
“Regarding Cooperation on Managing Urban Development”; and

WHEREAS, the Fort Collins-County IGA was subsequently amended by Ordinance No.
142, 2016 to change the boundary of the City’s Growth Management Area; and

WHEREAS, the City and County wish to further amend the Fort Collins-County IGA to
remove references to the Transfer of Density Units Program and to correct references to the
Larimer County Land Use Code and internal references in substantially the same form as set
forth in Amendment Number Two To Intergovernmental Agreement (Regarding Cooperation on
Annexation, Growth Management and Related Issues) ("Amendment Number Two") attached
hereto as Exhibit “A” and incorporated by this reference; and

WHEREAS, on May 16, 2019, Fort Collins Planning and Zoning Board unanimously
recommended as part of its adopted consent agenda that City Council approve Amendment
Number Two to the Fort Collins-County IGA; and

WHEREAS, City Council has determined that it would be in the best interests of the City
to adopt Amendment Number Two to the Fort Collins-County IGA in substantially the same
form as set forth in Exhibit “A”.

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 Amendment Number Two to the
Fort Collins-County IGA and authorizes the Mayor to execute Amendment Number Two in
substantially the same form as set forth in Exhibit “A” subject to minor modifications as the City
Manager, in consultation with the City Attorney, determines 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 16th day of July, A.D. 2019.

Mayor

ATTEST:

City Clerk
AMENDMENT NUMBER TWO TO INTERGOVERNMENTAL AGREEMENT
(Regarding Cooperation on Annexation, Growth Management and Related Issues)

THIS AMENDMENT NUMBER TWO TO INTERGOVERNMENTAL AGREEMENT ("Amendment Number Two") is made and entered into this ____ day of ____________, 2019 by and between LARIMER COUNTY, COLORADO, a body politic organized under and existing by virtue of the laws of the State of Colorado ("County") and THE CITY OF FORT COLLINS, COLORADO, a Colorado home rule municipal corporation ("City").

RECITALS

WHEREAS, pursuant to Resolution 2006-107, the City entered into that certain Intergovernmental Agreement regarding Cooperation on Managing Urban Development dated June 24, 2008, (the “Fort Collins-County IGA”) with Larimer County, Colorado (the “County”); and

WHEREAS, Amendment Number One to the Fort Collins-County IGA dated January 16, 2017, (“Amendment Number One”) was adopted to adjust the Fort Collins Growth Management Area; and

WHEREAS, the County and City desire to further amend the Fort Collins-County IGA to eliminate references to the Transfer of Density Units Program and to correct certain references to the Larimer County Land Use Code and references internal to the Fort Collins-County IGA as set forth in this Amendment Number Two.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. That Section 4 of the Fort Collins-County IGA is hereby replaced in its entirety by the following:

4. Development Regulations. The City acknowledges that the County has adopted certain land use regulations to implement the prior Intergovernmental Agreement for the GMA entered into between the parties on May 5, 1998. These regulations are contained in the Larimer County Land Use Code at Section 4.2.1 (Growth Management Area Overlay Zone District) and Section 8.18 (Large Retail Development). The City acknowledges and agrees that the County through exercise of its legislative authority and discretion may amend these GMA regulations from time to time.

Notwithstanding the foregoing, the County acknowledges that its adoption of the above referenced GMA regulations in their current form was a substantial inducement and consideration for the City’s entering into this Agreement and the prior May 5, 1998, Intergovernmental Agreement. The County agrees, therefore, that it shall not legislatively amend or fail to follow the GMA regulations and any subsequently adopted agreed upon GMA regulations until it has first referred such proposed amendment or action to the City for its
recommendation. The City shall provide its written recommendation to the County within ninety (90) days of receipt of the referral for legislative amendments and within thirty (30) days of receipt of the referral for other actions, unless the parties mutually agree upon a longer or shorter time period. In determining whether or not to adopt the proposed amendment or action, the Board of County Commissioners shall give great weight to the recommendation of the City and the extent to which the proposed amendment or action promotes or impairs the purposes of this Agreement, and the various components (elements) of the City's Comprehensive Plan.

In the event the County legislatively amends or fails to follow the current or subsequently adopted agreed upon GMA regulations without the City's approval, the City Council may elect to exercise any or all of the following remedies:

A. Terminate this Intergovernmental Agreement upon giving sixty (60) days advance notice to the County.

B. Refuse to annex any lands or specific parcels of land into the City.

C. Cease to maintain any public infrastructure improvements which the City has theretofore agreed to maintain under Section 8 of this Agreement.

D. Cease to enforce or attempt to enforce reimbursement agreements for the benefit of the County.

E. Cease to collect (and remit to the County) funds as may be levied by the City for county-wide/regional improvements, including, without limitation, regional impact fees.

These remedies shall not apply to those occasions when the County modifies such GMA regulations under the provisions and criteria for "Modification of Standards" as contained in the Land Use Code.

2. That Section 5 shall be replaced in its entirety by the following:

5. Applications for Development Within the GMA Zoning District.

A. The County agrees it will not accept any development application, as defined in Section 4.2.1.D. of the Larimer County Land Use Code, for property which has any contiguity to the City limits and, thus, can be made eligible for voluntary annexation to the City whether through a series of annexations or otherwise. The owner of such property shall instead be required, prior to development, to seek annexation to the City. The County also will not accept a development application for any property in the GMA which was part of a parcel eligible for annexation as of December 18, 2000, but which is no longer eligible because of subsequent land divisions resulting in a break in contiguity, except land divisions created by court order from probate, dissolution of marriage or eminent domain proceedings.
B. If the City denies an annexation petition required to be submitted to it pursuant to above Subsection 5.A., the County may accept the application and process and rule on it in accordance with the Larimer County Land Use Code, unless the City has denied the annexation petition because it contained conditions deemed by the City to be unacceptable, in which case the County will not accept the application. If a property owner whose annexation petition was denied by the City because of unacceptable conditions contained in the annexation petition contends that the resulting inability to develop his or her property in either the City or the County constitutes an unlawful taking, the City and County shall make available to such property owner the takings determination process contained in the City's Land Use Code, which process shall be administered by the City but shall be modified to include both the County Manager and City Manager (or their designees) as the decision makers. If a review of the property owner's claim under the takings determination process results in a determination by either the City Manager or the County Manager that denial of the annexation petition, coupled with the inability to develop the property under the County's jurisdiction, would constitute an unlawful taking of the property owner's property, the County shall thereafter accept the application and process and rule on it in accordance with the Larimer County land use regulations.

C. The County and City agree that appeals, interpretations and variances from zoning provisions of the GMA District which are applied at the building permit stage shall be forwarded to the Larimer County Board of Adjustment as provided for in the Larimer County Land Use Code.

D. The County agrees that it shall refer to the City for review and comment all development applications, as defined in above Subsection 5.A., for properties located within the GMA. The City shall advise the County whether or not the proposed development complies with the City's Comprehensive Plan and the GMA regulations in the Larimer County Land Use Code. The City shall provide its comments to the County in writing within the time required for county referrals established by State Law. Except to the extent that the City notifies the County through its written comments that the development does not comply with the standards, the County may assume that the proposed development complies with all applicable standards and the County shall have no responsibility to further review the proposed development for compliance with the standards.

3. That Section 7 shall be replaced in its entirety by the following:

7. Annexations.

A. It is the City’s intent to annex properties within the GMA as expeditiously as possible consistent with the terms of this Agreement. Except as provided in below Subsection 7.B., the City agrees to consider the annexation of any parcel or parcels of land located within the GMA which are eligible for voluntary annexation pursuant to the provisions of Title 31, Article 12 Colorado Revised Statutes.

B. To the extent permitted by law, and except for properties located within the GMA boundary lying south of County Road 32, the City agrees it will not
annex property south of County Road 32 (also known as the "Fort Collins/Loveland Corridor") unless the County either requires the landowner to petition for annexation or requests that the City consider annexation. The foregoing limitations on annexation shall not apply to the annexation of publicly owned open space, trails or parklands.

C. The City agrees to annex all County Road rights-of-way, easements, etc., adjacent to a voluntary annexation in accordance with Title 31, Article 12 Colorado Revised Statutes; provided, however, that the City may decline to annex such County roads and rights-of-way if annexation of such roads and rights-of-way would impede future annexations anticipated by the City to be accomplished by the use of a "flagpole" configuration or if such County road is primarily used by County development. In the event the City declines to annex any such roads or rights-of-way, it shall provide a written explanation in the annexation impact reports provided to the County outlining the City's reasons for not annexing such roads or rights-of-way.

D. The City agrees to pursue involuntary annexation of any parcel that becomes eligible for involuntary annexation.

E. The City agrees to pursue annexation of any parcel whose owner has signed an annexation agreement.

F. The County agrees that the City, in its sole discretion, (except as provided in above Subsection 7.B. of this Agreement) may annex outside the Fort Collins GMA. The City agrees that proposed annexations outside the GMA will be sent by 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.

G. The County agrees to require a binding agreement for future annexation in the form attached as Exhibit 2 as a condition of approval of any development application requiring approval by the Larimer County Board of Commissioners, which is located within the GMA but is not, at the time of development approval, eligible for voluntary annexation to the City.

4. That Section 8 shall be replaced in its entirety by the following:

8. Improvements to and Maintenance of Public Facilities. The County agrees to require development proposals within the GMA to make improvements to County roads consistent with the Larimer County Urban Road Standards for the GMA which, to the extent reasonably feasible (as this term is defined in the Fort Collins Land Use Code), will be consistent with the multi modal and level of service standards for road improvements required by the City inside the City limits. The City agrees to provide routine maintenance and inspection of such public infrastructure improvements (whether on or off the development site) which, but for the design requirements established in Larimer County Land Use Code Section 8.18 for large retail development, would not otherwise have been required by Larimer County Urban Standards. (Examples of such improvements may include transit facilities, bicycle lanes, or parkway/median landscaping.)
The City agrees to apply its Off-Site Street Improvements Policy to any development within the City limits which has an identifiable impact on the County road system which may require the developer to make certain improvements to County roads outside the City limits. If improvements are to be made to County roads outside the City limits, the City agrees to send plans of said improvements to the Larimer County Planning Department and Larimer County Public Works Department for review and comment. The City also agrees to provide routine maintenance and inspection of all such public infrastructure improvements (whether on or off the development site) which, but for the design requirements established in Larimer County Land Use Code Section 8.18 for large retail development, would not have been required by Larimer County Urban Standards. (Examples of such improvements may include transit facilities, bicycle lanes, or parkway/median landscaping.)

5. That except as expressly modified by this Amendment Number Two, the Fort Collins-County IGA and Amendment Number One shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment Number Two to be effective as of the day and year first written above.

CITY OF FORT COLLINS, COLORADO

By: _____________________________
   Wade O. Troxell, Mayor

ATTEST:

______________________________
City Clerk

Approved as to form:

______________________________
Assistant City Attorney
LARIMER COUNTY, COLORADO

By: _____________________________

Chair, Board of County Commissioners

ATTEST:

____________________________________

Approved as to form:

____________________________________

County Attorney
AGENDA ITEM SUMMARY
July 16, 2019

STAFF

Theresa Connor, Water Engineering Field Operations Mrg
Ken Sampley, Water Systems Engineering Manager
Eric Potyondy, Legal

SUBJECT

Resolution 2019-079 Authorizing the City Manager to Execute an Agreement with Numerous Stakeholders Regarding a Joint Study of the Boxelder Creek Watershed Dams.

EXECUTIVE SUMMARY

The purpose of this item is to enter into an agreement with key stakeholders to study a series of key flood control dams upstream of Fort Collins known as the “Boxelder Creek Watershed Dams.” The stakeholders that will be parties to this agreement are: Larimer County, the Town of Wellington, the Town of Timnath, and the North Poudre Irrigation Company. The study will be used as the basis for subsequent discussions and potential agreements related to the dams, including capital improvements and long-term operations and maintenance needs and responsibilities.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

A series of flood control dams were built along Boxelder Creek upstream of Fort Collins in the 1970s and 1980s to protect agricultural lands from flooding and erosion damage. At the time, the North Poudre Irrigation Company (NPIC) acted as the local partner to build the dams with the United States Department of Agricultural Soil Conservation Service, now called the Natural Resources Conservation Service (NRCS). NPIC currently operates and maintains the dams, known as the “Boxelder Creek Watershed Dams” or the “B Dams.”

The Colorado Division of Water Resources, also known as the Colorado State Engineer’s Office (SEO), administers the design, construction and repair of dams as well as dam safety inspections. The SEO has upgraded the hazard classification of three flood control dams in the upper Boxelder Creek Watershed (B-2, B-3 and B-4 dams) due to land use changes from agricultural use to urban/suburban land use in the downstream watershed. Improvements are needed to the dam spillways as they are inadequately sized to pass major flood events to maintain their certification for flood protection purposes.

A stakeholder group consisting of the City, Larimer County, the Towns of Wellington and Timnath, and NPIC has been formed to study and ultimately form a plan to complete the needed capital improvements and ongoing maintenance needs. The Town of Windsor has been identified as an impacted party and invited to participate, but so far has not opted into this discussion. Its participation will continue to be discussed as part of this initiative.

Phase 1 of the project is to hire consulting services to assist the stakeholders with developing Phase 2 of the project that will identify how construction of improvements and the maintenance can be shared by the stakeholders.
Phase 1 of the project is to study the dams. A Phase 2 agreement is targeted to be completed in spring 2020. The study will be used as the basis for subsequent discussions and potential agreements related to the dams, including capital improvements and long-term operations and maintenance needs and responsibilities. A budget offer is expected in the 2021/2022 BFO cycle to address Fort Collins Utilities’ cost share of the improvements.

The SEO’s change in the classification of the dams requires improvements to the emergency spillways of the dams. NPIC has indicated they cannot complete these improvements and that they are not a flood protection agency, so they are looking for the local governments who do provide flood protection services to their communities to take responsibility for the dams. Upgrades to these dams to meet appropriate classifications is important to the downstream communities to protect their investment for flood protection projects in the Boxelder Creek Watershed. If these dams were to be decertified because of a lack of hazard rating, the change to the floodplain downstream would be significant. This change in floodplain would impact over 1,000 residences and businesses in Larimer County, Wellington, Timnath, Fort Collins, and Windsor.

The NRCS has a program for cost share to make these improvements. Federal funding of up to 65% of the costs of the improvements may be available if a local government agency will act as the local sponsor (35%) and maintenance provider. Larimer County has indicated that they may act as the local sponsor along with NPIC as long as the municipalities will contribute to the capital and maintenance costs of the dam improvements in a fair and equitable manner.

The stakeholder group is actively working through the issues associated with these dams to bring forward solutions and make the safety upgrades needed. The dams are located outside of the geographical jurisdiction for the Boxelder Basin Regional Stormwater Authority (BBRSA) and therefore not within the BBRSA’s authority to administer the project.

**CITY FINANCIAL IMPACTS**

The maximum City’s share of this Phase 1 agreement is $50,000. After it has been negotiated, it is anticipated that the agreement for Phase 2 will further delineate cost shares and responsibilities for each of the government sponsors as well as the ongoing maintenance of the dams. Total Phase 2 costs are likely to be significant, in the millions of dollars, though the actual amount of those costs, how they are structured, and how they may be allocated among the parties has yet to be determined or negotiated. The agreement for Phase 2 will be brought to City Council for approval after it has been negotiated.

**BOARD / COMMISSION RECOMMENDATION**

At its June 20, 2019, the Water Board recommended City Council adopt the agreement with the stakeholder of the Boxelder B-Dams to develop an approach for construction of upgrades and maintenance of the B-Dams in the upper Boxelder Watershed up to a maximum of $50,000.

**PUBLIC OUTREACH**

Initial evaluations of the B-2 and B-3 rehabilitation alternatives were presented in several public meetings hosted by NPIC and the NRCS. Several meetings with stakeholder representatives have been conducted over the last 4 months.

**ATTACHMENTS**

1. Boxelder Creek Watershed Map (February 1971) (PDF)
2. Boxelder Creek Watershed B-2 Dam 100-Year Inundation Map (PDF)
3. Water Board Minutes, June 20, 2019 (Draft) (PDF)
Boxelder B-Dams Upgrades
(Attachments available upon request)

Utilities Deputy Director Theresa Connor presented an overview of the project. The State Engineer’s Office has upgraded the hazard classification of three flood control dams in the upper Boxelder Watershed (B-2, B-3 and B-4 dams) due to land use changes from agricultural use to urban/suburban land use in the downstream watershed. Improvements are needed to the dam spillways as they are inadequately sized to pass major flood events to maintain their certification for flood protection purposes.

A stakeholder group of Larimer County, and the cities of Wellington, Timnath, and Fort Collins, and the North Poudre Irrigation Company (NPIC) has formed to develop an intergovernmental agreement (IGA) to create a plan to complete the needed capital improvements and on-going maintenance needs. NPIC’s board approved joining the IGA on June 19.

The agreement’s first phase is to hire consulting services to assist the stakeholders with developing a second phase agreement that would identify how stakeholders would share the costs for construction of improvements and maintenance. The second phase would occur in spring 2020, and a budget offer is expected in the 2021-2022 Budgeting for Outcomes (BFO) cycle to address Fort Collins Utilities’ share.

Discussion Highlights: Board members commented on and inquired about various related topics including whether the $300,000 cap was realistic for the study and consultant (Ms. Connor stated the estimate is $120,000 for the consultant for the initial study, and the City would be invoiced for one-fifth of that amount); a suggestion of lowering the cap to $200,000 and not rely on the consultant to solve the problems; Ms. Connor mentioned the time sensitivity: Natural Resources Conservation Service/United States Department of Agriculture (NRCS) could do a cost share of up to 65% of the capital improvements cost of more than $20 million if local governments respond in a timely manner (by spring 2020). This item is scheduled to go to Council on July 16, and project will start immediately afterward.
Board Member Phyllis Ortman moved that Water Board recommend City Council adopt an agreement with the stakeholders of the Boxelder B-Dams to develop an approach for construction of upgrades and maintenance of the B-Dams in the upper Boxelder Watershed up to a maximum of $50,000.

Vice Chairperson Jason Tarry seconded the motion.
Discussion on the motion: None
Vote on the Motion: it passed unanimously, 8-0
RESOLUTION 2019-079
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO EXECUTE AN
AGREEMENT WITH NUMEROUS STAKEHOLDERS REGARDING
A JOINT STUDY OF THE BOXELDER CREEK WATERSHED DAMS

WHEREAS, the watershed of Boxelder Creek includes various lands in northern Larimer County, including lands in Fort Collins and its Grown Management Area; and

WHEREAS, Boxelder Creek flows from its headwaters in northern Larimer County generally to the south and southeast, though farmlands and along the developed and developing Interstate 25 corridor through various political boundaries towards its confluence with the Cache la Poudre River in eastern Fort Collins; and

WHEREAS, Boxelder Creek is prone to potential flood risks; and

WHEREAS, to help address these flood risks, there is a series of dams upstream of Fort Collins known as the Boxelder Creek Watershed Dams (commonly referred to as the “B Dams”) which includes dams B-2, B-3, B-4, B-5, and B-6, which were constructed in or around the 1970s and 1980s, at a time when there was less development along Boxelder Creek downstream of the B Dams; and

WHEREAS, the Colorado Department of Water Resources, Dam Safety Division, has recently changed the classification of the B-2, B-3 and B-4 Dams from “significant” to “high” hazard due to the increase in development along Boxelder Creek below these B Dams, and the classification on the other dams, such as the B-5 and B-6 dams, may be changed in the future; and

WHEREAS, the change of the classification of some of the B Dams has prompted a regional conversation regarding the B Dams, including their operation and future; and

WHEREAS, the City, Larimer County, the North Poudre Irrigation Company, the Town of Timnath, and the Town of Wellington (collectively, the “Parties”) each have significant interests related to the B Dams; and

WHEREAS, the Parties are interested in funding and performing a joint study (“Study”) of the B Dams in order to, among other things, gather the data, facts, and analyses necessary to fully evaluate the B Dams and issues related to flood risks along Boxelder Creek; and

WHEREAS, the Parties intend to utilize the Study as a basis for subsequent discussions and potential agreements related to the B Dams and the associated capital improvements that are needed for these facilities; and

WHEREAS, the Parties have negotiated an agreement regarding the Study as set for the in the draft Agreement attached hereto as Exhibit “A”, and incorporated herein by reference.
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 an agreement substantially in the form of Exhibit “A”, with such modifications and 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 effectuate the purposes of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 16th day of July, A.D. 2019.

_______________________________
Mayor

ATTEST:

_______________________________
City Clerk
AGREEMENT BETWEEN NUMEROUS STAKEHOLDERS REGARDING A JOINT STUDY OF THE BOXELDER CREEK WATERSHED DAMS

This Agreement is entered into by and between the following Parties: the City of Fort Collins, Colorado, a municipal corporation ("Fort Collins"); Larimer County, Colorado, a political subdivision of the State of Colorado ("County"); the North Poudre Irrigation Company, a Colorado corporation ("North Poudre"); the Town of Timnath, Colorado, a municipal corporation ("Timnath"); and the Town of Wellington, Colorado, a municipal corporation ("Wellington").

Fort Collins, North Poudre, Timnath, and Wellington are collectively referred to as the “Non-County Parties.” The County, Fort Collins, Timnath, and Wellington are collectively referred to as the “Governmental Parties.”

RECITALS

A. The watershed of Boxelder Creek includes various lands in northern Larimer County. From the headwaters, Boxelder Creek flows generally to the south and southeast, though farmlands and along the developed and developing Interstate 25 corridor through various political boundaries (including those of some of the Parties) towards its confluence with the Cache la Poudre River in eastern Fort Collins. Water from Boxelder Creek then flows down the Cache la Poudre River generally to the east through more farmlands, developed and developing lands, and additional political boundaries (including those of some of the Parties).

B. Like all streams, Boxelder Creek is prone to potential flood risks. To help address these risks, there is a series of dams known as the Boxelder Creek Watershed Dams, and commonly referred to as the “B Dams,” which includes dams B-2, B-3, B-4, B-5, and B-6. The B Dams were constructed in or around the 1970s and 1980s, at a time when there was less development along Boxelder Creek downstream of the B Dams.

C. The Colorado Department of Water Resources, Dam Safety Division, has recently changed the classification of the B-2, B-3 and B-4 Dams from “significant” to “high” hazard, due to the increase in development along Boxelder Creek below these B Dams. The classification on the other dams, such as the B-5 and B-6 dams, may be changed in the future, but at this time there is no intention of reclassifying the hazard classifications. See Office of the State Engineer Rules and Regulations for Dam Safety and Dam Construction, 2 CCR 402-1. This has prompted a wider, regional conversation regarding B Dams, including their operation and future.

D. Each of the Parties to this Agreement has significant interests related to the B Dams and is interested in performing a joint study of the B Dams in order to, among other things, gather the data, facts, and analyses necessary to fully evaluate the B Dams and issues related to flood risks along Boxelder Creek. The Parties therefore desire a joint study of the B Dams (“Study”) as set forth in detail below. The Study will primarily focus on the B-2, B-3, and B-4 Dams based on the recent modified classification and provide insight and guidance on the potential for additional classification changes to the other B Dams. The study will also consider if land use changes
downstream of B-5 and B-6 and upstream of B-2 could trigger potential upgrades to the B-5 and B-6 dams.

E. The County intends to utilize an engineering firm that the County already has under contract ("Consultant"), to perform the Study. The Non-County Parties will reimburse the County for their portion of the Study as described below.

F. The Parties intend to utilize the Study as a basis for subsequent discussions and potential agreements related to the B Dams and the associated capital improvements that are needed for these facilities. Options for the long-term operations and maintenance needs and responsibilities will also be considered, including potential reallocation of operation and maintenance responsibilities.

G. The Governmental Parties are authorized into enter into the following intergovernmental agreement pursuant to C.R.S. §29-1-203. As a corporation organized under Colorado law, North Poudre is authorized to enter into this Agreement.

AGREEMENT

1. INCORPORATION OF RECITALS. The foregoing recitals are hereby incorporated as if fully restated in their entirety.

2. THE SCOPE. The scope of the Study ("Scope") shall include:
   • Coordination of the relevant activities of the Parties and the United States Department of Agriculture, Natural Resources Conservation Service related to improvements and funding of capital improvements and maintenance needs for the B-2, B-3 and B-4 Dams required because of the classification change;
   • An analysis of potential cost-share approaches to future capital and operation and maintenance costs of the B-2, B-3, and B-4 Dams. The Consultant will review and update available cost estimates for the B-2 and B-3 dams and develop a cost estimate for the B-4 dam. The cost estimate for the B-4 dam will be a planning level estimate based on current data available;
   • Conduct an assessment of the potential reclassification of the B-5 and B-6 dams including a high-level risk and financial implications and make recommendation(s) for potential improvements needed.
   • An assessment of the B Dams, including the liabilities and risks associated with potential future reclassification and therefore needing future improvements.
   • The Parties will meet with the Consultant to further jointly develop and modify the Scope as may be necessary. Before the Consultant begins the Study, each of the Parties shall confirm in writing (such as by email or otherwise) that any modifications to the Scope are acceptable. The total costs of the Study shall be limited to $250,000.

3. OUTCOME OF PROJECT AND SCOPE OF WORK. The intent of this scope of work is to gather data and facts to develop recommendations for a second phase agreement that will identify a methodology to fund the capital improvements of the appropriate dams. The scope
of work will also evaluate alternatives for meeting long-term operations and maintenance responsibilities between the Parties, to be part of a second phase agreement. The stakeholders will need to actively participate and shape recommendations for the second phase IGA, so that it can be supported for implementation.

4. **COOPERATION WITH THE STUDY.** The County shall be responsible for engaging the Consultant to conduct the study. The Non-County Parties agree to cooperate in good faith with the County and the Consultant for the Study, including: developing and modifying the Scope, as necessary; reviewing and providing comments on draft analyses and reports generated by the Consultant as part of the Study in its development and completion; and providing information needed to complete the Study to the Consultant, in a timely manner. The County agrees to work in good faith to ensure that the Non-County Parties have a meaningful opportunity to review and provide comments as discussed above, and to address comments.

5. **OWNERSHIP OF THE STUDY.** Each of the Parties will be an owner of the Study and all other deliverables provided by the Consultant on the Study (including, but not limited to, analyses, analytical tools, data, models, and reports and drafts thereof). The County shall provide the Non-County Parties with a copy of the draft and final reports, as well as the data, analytical tools, and all other information generated by the Consultant in association with the Study that are related to their systems within 14 days of the County’s receipt of the same, subject to the terms and conditions of this Agreement.

6. **REIMBURSEMENT TO THE COUNTY.** Each of the Non-County Parties shall pay the County 1/5th of the total cost of the Study, up to a maximum of $50,000, within 45 days of receiving an invoice from the County for the same. The County may withhold providing any of the documents identified in Paragraph 5 to any Non-County Party until payment has been made by that Non-County Party.

7. **FISCAL CONTINGENCY.** Notwithstanding any other provisions of this Agreement to the contrary, the obligations of the Governmental Parties in fiscal years after the fiscal year of this Agreement shall be subject to appropriation of funds sufficient and intended therefor, with the Party having the sole discretion to determine whether the subject funds are sufficient and intended for use under this Agreement. The failure of a Governmental Part to appropriate such funds shall be grounds for termination of this Agreement as to such Party upon written notice pursuant to Paragraph 11.

8. **REMEDIES.** If any Party fails to comply with the provisions of this Agreement, the other Parties, after providing prompt written notification to the noncomplying Party, and upon the failure of the noncomplying Party to achieve compliance within 35 days following receipt of such notice, may seek all such remedies available under Colorado law.

9. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is entered into between the Parties for the purposes set forth herein. It is the intent of the Parties that they are the only beneficiaries of this Agreement and the Parties are only benefitted to the extent provided under the express terms and conditions of this Agreement.
10. **GOVERNING LAW AND ENFORCEABILITY.** This Agreement shall be construed in accordance with the laws of the State of Colorado. The Parties recognize that the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, as well as the Parties’ respective bylaws, city charters and codes, and rules and regulations, impose certain legal constraints on each Party and that the Parties intend to carry out the terms and conditions of this Agreement subject to those constraints. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law.

11. **WAIVER.** A waiver of a breach of any of the provisions of this Agreement shall not constitute a waiver of any subsequent breach of the same or another provision of this Agreement. Nothing in this Agreement shall be construed as any waiver of governmental immunity of the Parties who are governments or any other governmental provisions of State law. Specifically, by entering into this Agreement, neither Party waives the monetary limitations on liability or any other rights, immunities, or protections provided by the Colorado Government Immunity Act, C.R.S. § 24-10-101, et seq., or any successor or similar statutes of the State of Colorado.

12. **NOTICES.** All notices or other communications hereunder shall be sufficiently given and shall be deemed given (i) when personally delivered; (ii) on the date and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the party to whom notice is given at the address specified below; (iii) on the date and at the time shown on the electronic mail if sent by electronic transmission at the e-mail addresses set forth below and receipt of such electronic mail is acknowledged by the intended recipient thereof; or (iv) after the lapse of five business days following mailing by certified mail return receipt requested, postage prepaid, addressed as follows:

**To Fort Collins:**
City Manager  
City Hall West  
300 LaPorte Avenue; P.O. Box 580  
Fort Collins, Colorado 80522-0580

With copy to:
Fort Collins City Attorney  
300 LaPorte Avenue; P.O. Box 580  
Fort Collins, Colorado 80522-0580  
E-mail: epotyondy@fcgov.com

and:
Fort Collins Utilities  
Attn: WEFS Deputy Director  
700 Wood Street; PO Box 580  
Fort Collins, Colorado 80522  
E-mail: tconnor@fcgov.com

**To County:**
County Manager  
Larimer County Courthouse Offices  
200 West Oak St, 2nd Flood; PO Box 1190  
Fort Collins, CO 80522-1190
With copy to: Larimer County Attorney’s Office
PO Box 1606
Fort Collins, CO 80522

With copy to: Larimer County Engineering Department
Attn: County Engineer
200 West Oak St., Suite 3000; PO Box 1190
Fort Collins, CO 80522-1190

To North Poudre: General Manager
Tad Moen
North Poudre Irrigation
3729 Cleveland Ave
Wellington, CO 80549

With copy to: John Justus, Shareholder
Hoskin Farina & Kampf
PO Box 40
Grand Junction, CO 81502

To Timnath: Timnath Town Manager
4750 Signal Tree
Timnath, CO 80547

With copy to: Town Attorney
White Bear Ankele Tanaka & Waldron
2154 East Commons Avenue, Suite 2000
Centennial, CO 80122

With copy to: Donald Taranto
748 Whalers Way, Suite 200
Fort Collins, CO 80525

To Wellington: Town Administrator
PO Box 127,
Wellington, CO 80549

With copy to: Wellington Public Works
Attn: Robert Gowing
PO Box 127,
Wellington, CO 80549
Email: gowingbj@wellingtoncolorado.gov

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13. CONSTRUCTION. This Agreement shall be construed according to its fair meaning as it was prepared by the Parties. Headings in this Agreement are for convenience and reference only and shall in no way define, limit, or prescribe the scope or intent of any provision of this Agreement.

14. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement of the Parties regarding the matters addressed herein. This Agreement binds and benefits the Parties and their respective successors. Covenants or representations not contained in this Agreement regarding the matters addressed herein shall not bind the Parties.

15. REPRESENTATIONS. Each Party represents to the other parties that it has the power and authority to enter into this Agreement and the individual signing below on behalf of that Party has the authority to execute this Agreement on its behalf and legally bind that Party.

16. ASSIGNMENT. No Party may assign any rights or delegate any duties under this Agreement without the written consent of all other Parties.

17. SEVERABILITY. If any provision of this Agreement shall prove to be illegal, invalid, unenforceable or impossible of performance, the remainder of this Agreement shall remain in full force and effect.

[Remainder of Page Intentionally Blank]
CITY OF FORT COLLINS, COLORADO, a municipal corporation

By: ____________________________ Date: ____________________________
    Darin A. Atteberry, City Manager

ATTEST:

By: ____________________________
    City Clerk

APPROVED AS TO LEGAL FORM:

By: ____________________________
    City Attorney’s Office
LARIMER COUNTY, COLORADO, a political subdivision of the State of Colorado

By: ____________________________ Date: ________________
NORTH POUDRE IRRIGATION COMPANY, a Colorado corporation

By: ________________________________ Date: ________________
TOWN OF TIMNATH, COLORADO, a municipal corporation

By: _______________________________          Date: _________________________
TOWN OF WELLINGTON, COLORADO, a municipal corporation

By: ________________________________  Date: ________________________________
STAFF

Ellen Martin, Visual Arts Administrator
Ingrid Decker, Legal

SUBJECT

Resolution 2019-080 Approving an Artwork to be Placed at the Poudre River Whitewater Park.

EXECUTIVE SUMMARY

The purpose of this item is to approve artwork that will be placed in the Poudre River Whitewater Park to mark the Cache la Poudre River National Heritage Area.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

City Code Section 23-208 states that the APP Board is to make recommendations to the City Council on the use of City funds over $30,000 for works of art. City Code Section 23-309 states works of art with a value of $300 or more donated to the City and placed in a public place may be accepted only with approval of the Arts in Public Places Board (APP), and all such works with a value of ten thousand dollars ($10,000) or more may be accepted only with approval of the City Council.

This unique project is a sort of hybrid between a donated artwork and a City-commissioned art piece. It is a collaboration between Art in Public Places, Park Planning and Development and donors who are contributing funds to the project. The artist developed the concept for the art with this whole team.

The proposed gateway sculpture will be created by artist John Davis who is also creating the APP sculptural shelter structure at the Poudre River Whitewater Park. This gateway artwork was developed to mark the Cache la Poudre River National Heritage Area on the Cache la Poudre River and speak to the water history of the area.

CITY FINANCIAL IMPACTS

The sculpture is valued at $68,000, which includes fabrication, contingency and maintenance.

$28,000 of the budget represents two gifts made to the Heritage Gateway Project: (1) $10,000 from the Poudre Heritage Alliance, made possible by federal funding through the National Heritage Areas Program; and (2) $18,000 from the Downtown Development Authority in continued demonstration of their historical and active support for the Poudre River Whitewater Park project.

The donated funds are a portion of the overall art budget. The remaining funds of $40,000 will be funded from the Poudre River Whitewater Project capital project account. No APP funds are being spent to create the artwork. City staff is requesting Council approval of the artwork both as an expenditure of City funds for art and as a donated artwork.
BOARD / COMMISSION RECOMMENDATION

This proposed artwork was reviewed and recommended for City Council approval by the APP Board at the Board’s May 29, 2019, meeting.

PUBLIC OUTREACH

The APP Program will promote the gift of art to the City of Fort Collins.

ATTACHMENTS

1. Description and Images of Proposed Art Donation (PDF)
2. Art in Public Places Board Minutes, May 29, 2019 (Draft) (PDF)
Heritage Gateway Artwork
by John Davis

With funds donated by the Downtown Development Authority and Poudre Heritage Alliance

View on trail looking east

This gateway artwork at the Poudre River Whitewater Park was developed with the artist and project team to mark the Cache la Poudre River National Heritage Area on the Cache la Poudre River and speak to the water history of the area. It also relates to John Davis’s sculptural shelter artwork that is also located in the Poudre River Whitewater Park.
An historic event occurred at this site associated with each of the three water themes of the Heritage Trail:

**Water for Recreation**: Site of the first in stream recreational water right, 1986

**Water for Agriculture**: Site of the Coy diversion structure, 1865

**Water for Industry**: Site of Fort Collins municipal power plant, 1936

There will be a Cache la Poudre River National Heritage Area QR Code to link to additional information.

Circular elements reference water bubbles or water pipe sections. Circular translucent resin panels speak to the water history. Sweeping verticals are created to evoke water flows, the swaying of plants on the river bank.
View through the APP sculptural shelter by John Davis to the Heritage Gateway artwork.

Matte finish stainless steel construction with resin panels
Aerial view showing south bank of the river with John Davis’ Heritage Gateway artwork (circled in red) in upper left and his sculptural shelter artwork in lower right.

Poudre River Whitewater Park site plan showing location of Heritage Gateway Sculpture.
Art in Public Places

SPECIAL MEETING

May 29, 2019, 3:30 pm
Lincoln Center Canyon West Room

1. CALL TO ORDER
   3:37 pm

2. ROLL CALL
   - Board Members Present – Miriam Chase, Sabrina Davies, Gwen Hatchette, Carol Ann Hixon, Kirsten Savage, Renee Sherman, and Michael Short
   - Board Members Absent None
   - Staff Members Present – Ellen Martin, Liz Good, Matt Day, Marisa Donegon, and Kyle Lambrecht,
   - Cultural Resources Board Liaison: Jane Folsom, not present
   - Guests – Todd Dangerfield DDA

3. AGENDA REVIEW

4. CITIZEN PARTICIPATION

5. BUSINESS, PRESENTATION, OR DISCUSSION:
   A) LINDEN STREET RENOVATION SUBMISSION REVIEW
      Ms. Martin reviewed the selection process. Kyle Lambrecht with City Engineering, Todd Dangerfield from the Downtown Development Authority, and Marisa Donegon from Purchasing were in attendance to help with the selection. There was discussion after selection about the benefits of selecting a local artist vs. someone nationally.
      Ms. Sherman moved to accept the highest ranked artist and second as an alternate
      Ms. Hixon seconded
      Unanimously approved

   B) HERITAGE TRAIL GATEWAY ART DONATION
      Matt Day Project Manager for Park Planning was in attendance and artist John Davis called in for the meeting. Matt Day gave background about the Whitewater Park project. The donation is funded by the Downtown Development Authority and the Poudre Heritage Alliance, which will fund a portion of this artwork. It is intended to be a gateway piece that marks the Heritage Trail along the Poudre River. John Davis was hired to create the artwork to tie into his existing sculptural shelter planned for the site. The general shape will represent prairie grasses with circles that represent the water history of the area.
      Ms. Hixon moved that we accept the proposed art donation by John Davis
      Ms. Hatchette seconded
      Unanimously approved
Art in Public Places
RESCHEDULED MEETING

C) GARDENS ON SPRING CREEK DESIGN REVIEW
Artist Joe McGrane presented the project that will be placed near the entrance to the Gardens Visitor's Center and outside the butterfly house. It celebrates the butterflies but also focuses on the garden. It features two elements: a sculpture with three columns with colored transparent acrylic surrounded by a cloud of Corten-steel butterflies and caterpillars, and five pre-cast concrete seats featuring various flower images created out of mosaics.

Ms. Davies moved that we accept the Garden on Spring Creek Package presented by Mr. McGrane
Ms. Sherman seconded
Unanimously approved

D) TRANSFORMER CABINET MURAL DESIGN REVIEW
Ms. Martin presented the final designs for the Maple Hill Neighborhood sponsored cabinets and Tyler Boeyink’s cabinet that will be painted at the Utilities Xeriscape Garden Party. The sponsored cabinets include designs by Jenna Allen, Ren Burke, Werner Schreiber, and Gale Whitman.

Mr. Short moved that we approve the artwork as submitted for the Transformer Cabinet Mural Project as presented, 5 designs.
Ms. Chase seconded
Unanimously approved

6. OTHER BUSINESS
Ms. Sherman asked the board to take a picture as she is moving and leaving the Board.

7. ADJOURNMENT

5:25 pm

Respectfully submitted,

Liz Good
RESOLUTION 2019-080
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING AN ARTWORK TO BE PLACED AT
THE POUDRE RIVER WHITEWATER PARK

WHEREAS, the City has nearly completed the Poudre River Whitewater Park project (the “Project”); and

WHEREAS, on December 4, 2018, the City Council, pursuant to Resolution 2018-118, approved an Art in Public Places (“APP”) project for the Project site consisting of a sculptural shelter created by artist John Davis; and

WHEREAS, City project staff and two outside donors were interested in doing an additional gateway art piece that would recognize the Cache la Poudre River National Heritage Area and speak to the water history of the area; and

WHEREAS, in consultation with the APP program, the parties decided to partner with John Davis to create the additional piece; and

WHEREAS, the proposed sculpture would include circular elements referencing water bubbles or water pipe sections, each containing a translucent resin panel speaking to the history of water and the river, and sweeping verticals evoking water flows and the swaying of plants on the riverbank (the “Artwork”); and

WHEREAS, the cost to create the Artwork is estimated at $68,000; and

WHEREAS, $28,000 of the budget for the Artwork comes from two donations: $10,000 from the Poudre Heritage Alliance and $18,000 from the Downtown Development Authority; and

WHEREAS, the remaining $40,000 for the Artwork will come from the capital project account for the Project; and

WHEREAS, installation and future maintenance of the Artwork will be funded by the APP program; and

WHEREAS, Section 23-308 of the City Code states that the APP Board shall make recommendations to the City Council concerning the use of funding in excess of $30,000 for the acquisition of works of art; and

WHEREAS, Section 23-309 of the City Code states that works of art with a value of $300 or more donated to the City and placed in a public area may be accepted only with approval of the Art in Public Places Board (“the APP Board”), and all such works with a value of $10,000 or more may be accepted only with approval of the City Council, upon review of the proposed donation and the recommendation of the APP Board; and
WHEREAS, because the Artwork is being funded in part with City funds, and partially by donations over $10,000, and the donors provided input on the design of the Artwork, City staff decided to seek Council approval of the Artwork as both a purchase of art by the City and a donation of art under Section 23-309 of the City Code; and

WHEREAS, at its regular meeting on May 29, 2019, the APP Board evaluated the proposed Artwork based on the City’s Art in Public Places Guidelines and recommended that the City Council approve it; and

WHEREAS, the City Council has determined that the Artwork meets the principal goals of the Art in Public Places program pursuant to Section 23-301 of the City Code.

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 the proposed sculpture created by artist John Davis as described herein and, to the extent it constitutes a donation of artwork to the City, approves the City’s acceptance of such donation.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 16th day of July, A.D. 2019.

_________________________________
Mayor

ATTEST:

_____________________________
City Clerk
AGENDA ITEM SUMMARY
July 16, 2019

STAFF
Jim McDonald, Cultural Services Director
Jody Hurst, Legal

SUBJECT
Resolution 2019-081 Approving Fort Fund Grant Disbursements.

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

STAFF RECOMMENDATION
Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION
The Fort Fund grant program, established in 1989, disburses lodging tax revenues deposited in the City’s Cultural Development and Programming Account and the Tourism Programming Account in accordance with the provisions of Section 25-244 of the City Code, where 25% of the revenue from the lodging tax fund is applied to the Cultural Development and Programming Account and 5% of revenue from lodging tax is dedicated to the Tourism Programming Account. Local non-profit organizations may apply to Fort Fund for cultural and/or tourism event support. The Cultural Resources Board is authorized to review grant applications based on approved guidelines and make recommendations for Fort Fund disbursements to City Council, pursuant to Section 2-203(2) of the City Code.

Fort Fund grants support arts and cultural events that enrich the creative vitality of the community, promote local heritage and diversity, provide opportunities for arts and cultural participation, help promote Fort Collins as a cultural center and tourist destination, and promote the health and well-being of all residents and visitors.

June 2019 Funding Session
At its June 26, 2019 funding session, the Cultural Resources Board reviewed 13 Project Support II applications with total requests equaling $51,000. 11 applications were found eligible and recommended for funding for $38,675.

The following table summarizes the Project Support II requests, available funds and grant award amounts:

<table>
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<tr>
<th>Grant Requests</th>
<th>Available Funds</th>
<th>Grant Awards</th>
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<tbody>
<tr>
<td>$51,000</td>
<td>$40,000</td>
<td>$38,675</td>
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The Cultural Resources Board scored each application using the funding criteria outlined in the Fort Fund Guidelines and discussed the applications at its June 26, 2019 meeting (Attachment 1). The Board is recommending disbursement of $38,675 to the eligible applicants as outlined in Exhibit A to the Resolution.

CITY FINANCIAL IMPACTS

The Fort Fund grant program, established in 1989, disburses lodging tax revenues deposited in the City’s Cultural Development and Programming Account and Tourism Programming Account in accordance with the provisions of Section 25-244 of the City Code. This Resolution distributes $38,675 from the Cultural Development and Programming Account to local non-profit organizations. Each grantee organization must provide funds to match the grant amount. These funds were budgeted and appropriated in the 2019 budget. Lodging tax is collected pursuant to Section 25-242 of the City Code.

BOARD / COMMISSION RECOMMENDATION

The Cultural Resources Board is presenting these recommendations to City Council for programs and organizations to receive funding at the recommended grant amounts from the Cultural Development and Programming Account.

Exhibit A to Resolution 2019-081 presents the allocations as recommended by the Cultural Resources Board to the City Council for Project Support II funding.

ATTACHMENTS

1. Cultural Resources Board Minutes Minutes June 26, 2019 (Draft) (PDF)
1. CALL TO ORDER: 5:05 P.M.

2. ROLL CALL
   - Board Members Present - Mr. Will Flowers, Ms. Jane Folsom, Ms. Lili Francuz, Ms. Tedi Cox, Ms. Jennifer Zidon, Mr. Jesse Solomon
   - Board Members Absent - Ms. Vicki Fogel Mykles
   - Staff Members Present - Mr. Jim McDonald, Ms. Liz Irvine, Ms. Jaime Jones, Ms. Nina Bodenhamer
   - Guests: None

3. AGENDA REVIEW
   - Ms. Katy Schneider of Visit Fort Collins was unable to attend.

4. CITIZEN PARTICIPATION
   - None

5. APPROVAL OF MINUTES
   - Consideration and approval of the minutes from May 23, 2019. Ms. Tedi Cox made a motion to accept the minutes. Mr. Jesse Solomon seconded the motion. The motion passed unanimously.

6. NEW BUSINESS
   - Ms. Nina Bodenhamer, Director, City Give, gave presentation on the City Give Program.
   - **Project Support II – Discussion and Funding Recommendations.** The Board reviewed 13 applications. The Board recommended funding to 11 organizations for a total of $38,675. Ms. Tedi Cox made a motion to accept the funding recommendations. Ms. Jane Folsom seconded the motion. The motion passed unanimously. The recommendations are listed below.
**DIRECTOR'S REPORT**

- None

**BOARD MEMBER REPORTS (EVENT ATTENDANCE, ETC.)**

- Ms. Jane Folsom attended The Lincoln Center’s Children’s Concert Series “Suitcase Fairy Tales.”

**ADJOURNMENT:** 7:14 p.m.

Respectfully submitted,
WHEREAS, providers of lodging accommodations in the City are required by Section 25-250 of the City Code to pay three percent of all revenues derived from such lodging accommodations to the City as a lodging tax; and

WHEREAS, pursuant to Section 25-244 of the City Code, twenty-five percent of those revenues are reserved for cultural development and programming, and seventy-five percent of all revenues received by the City from lodging tax are reserved for promotion of convention and visitor activities; and

WHEREAS, the Cultural Development and Programming Account was established for the purpose of funding cultural development and programming activities, and the Tourism Programming Account was established for the purpose of funding tourist-related special events; and

WHEREAS, the City disburses funds from the Cultural Development and Programming Account in accordance with Sections 2-203 and 25-244 of the City Code through its Fort Fund Program; and

WHEREAS, the City’s Cultural Resources Board reviews applications from the community for Fort Fund monies and makes recommendations to the City Council in accordance with Section 2-203(2) of the City Code, and in accordance with the administrative guidelines for the Fort Fund program (the “Fort Fund Guidelines”); and

WHEREAS, at its regular meeting on June 26, 2019, the Cultural Resources Board recommended funding for various proposals based on the criteria and considerations set forth in the Fort Fund Guidelines; and

WHEREAS, the use of lodging tax revenues will provide a public benefit to the Fort Collins community by supporting cultural development and public programming activities within the City that promote the use of public accommodations within the City; and

WHEREAS, the City Council wishes to approve Fort Fund grant disbursements as set forth in Exhibit “A,” attached hereto and incorporated by this reference.

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 finds that the distribution of funds through the Fort Fund program as set forth on Exhibit “A” serves a public purpose that benefits the community.

Section 3. That funds in the total amount of THIRTY-EIGHT THOUSAND SIX HUNDRED SEVENTY-FIVE DOLLARS ($38,675) from the City's Cultural Development and Programming Account are hereby approved for distribution as set forth in Exhibit “A”.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 16th day of July, A.D. 2019.

__________________________________________
Mayor

ATTEST:

__________________________________________
City Clerk
### FORT FUND GRANT PROGRAM
#### June 2019

<table>
<thead>
<tr>
<th>APPLICANT</th>
<th>PROPOSED EVENT/DATE</th>
<th>FUNDING REQUESTS</th>
<th>CULTURAL DEVELOPMENT &amp; PROGRAMMING</th>
<th>TOURISM PROGRAMMING</th>
<th>UNFUNDED BALANCE</th>
<th>PERCENT OF REQUEST FUNDED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brilliant Flash Fiction</td>
<td>Brilliant Flash Fiction 5-Year Anthology and Launch&lt;br&gt;October 18-26, 2019</td>
<td>$2,000</td>
<td>$0</td>
<td>$0</td>
<td>$2,000</td>
<td>0%</td>
</tr>
<tr>
<td>Colorado Bach Ensemble</td>
<td>Colorado Bach Ensemble's 2019/2020 Season&lt;br&gt;September 13, December 14, 2019</td>
<td>$5,000</td>
<td>$4,250</td>
<td>$0</td>
<td>$750</td>
<td>85%</td>
</tr>
<tr>
<td>Elderhaus Adult Day Program, Inc</td>
<td>2020 Elderhaus Senior Prom&lt;br&gt;January 17, 2020</td>
<td>$3,000</td>
<td>$2,400</td>
<td>$0</td>
<td>$600</td>
<td>80%</td>
</tr>
<tr>
<td>Fort Collins Children's Theatre</td>
<td>Fort Collins Children's Theatre Fall Program&lt;br&gt;November 15-17, 2019</td>
<td>$4,000</td>
<td>$3,400</td>
<td>$0</td>
<td>$600</td>
<td>85%</td>
</tr>
<tr>
<td>Friends of the Symphony</td>
<td>Musical Zoo 2020&lt;br&gt;March 1, 2020</td>
<td>$5,000</td>
<td>$4,250</td>
<td>$0</td>
<td>$750</td>
<td>85%</td>
</tr>
<tr>
<td>Global Village Museum of Arts &amp; Cultures</td>
<td>Dia de los Muertos&lt;br&gt;November 1-2, 2019</td>
<td>$2,500</td>
<td>$2,125</td>
<td>$0</td>
<td>$375</td>
<td>85%</td>
</tr>
<tr>
<td>High Performance Dance Theatre</td>
<td>2019/2020 Season of Dance&lt;br&gt;September 27-28, 2019</td>
<td>$5,000</td>
<td>$4,000</td>
<td>$0</td>
<td>$1,000</td>
<td>80%</td>
</tr>
<tr>
<td>IMPACT Dance Company</td>
<td>Every Voice Matters Outreach Program&lt;br&gt;September 2019 - June 2020</td>
<td>$5,000</td>
<td>$4,250</td>
<td>$0</td>
<td>$750</td>
<td>85%</td>
</tr>
<tr>
<td>International Keyboard Odyssiad/Festival</td>
<td>IKOF in the Community and Soiree Series 2019-2020</td>
<td>$5,000</td>
<td>$4,250</td>
<td>$0</td>
<td>$750</td>
<td>85%</td>
</tr>
<tr>
<td>Minnechaduza Foundation</td>
<td>Roll With It - The Rickshaw Live&lt;br&gt;July 20, 2019</td>
<td>$2,500</td>
<td>$0</td>
<td>$0</td>
<td>$2,500</td>
<td>0%</td>
</tr>
<tr>
<td>Northern Colorado Equality</td>
<td>FOCO Pride Fest&lt;br&gt;July 21, 2019</td>
<td>$2,000</td>
<td>$1,500</td>
<td>$0</td>
<td>$500</td>
<td>75%</td>
</tr>
<tr>
<td>PYCH Project Youth and Chamber Music</td>
<td>Winterfest 2020&lt;br&gt;February 2-10, 2020</td>
<td>$5,000</td>
<td>$4,250</td>
<td>$0</td>
<td>$750</td>
<td>85%</td>
</tr>
<tr>
<td>Windsor Community Playhouse</td>
<td>Fort Collins Fringe Festival&lt;br&gt;July 25-28, 2019</td>
<td>$5,000</td>
<td>$4,000</td>
<td>$0</td>
<td>$1,000</td>
<td>80%</td>
</tr>
</tbody>
</table>

**Total Funding Requested by Applicants**: $51,000

**Total Funding Recommended for disbursement by CuRB**: $38,675

**Total Unfunded Balance**: $12,325

**% of Requested Amounts Funded**: 76%

*Proposal not recommended for a grant due to low score*

Scores are based on application materials and Fort Fund's "Criteria for Funding"
AGENDA ITEM SUMMARY
City Council

STAFF
Christine Macrina, Boards and Commissions Coordinator
Judy Schmidt, Legal

SUBJECT
Resolution 2019-083 Making an Appointment to the Northern Colorado Regional Airport Commission.

EXECUTIVE SUMMARY
The purpose of this item is to reappoint Thomas Fleming to a three-year term on the Northern Colorado Regional Airport Commission.

STAFF RECOMMENDATION
Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION
On January 6, 2015, Council adopted Resolution 2015-002 adopting the Airport Strategic Plan, and Resolution 2015-003 authorizing the Mayor to Execute an Amended and Restated Intergovernmental Agreement (IGA) between the Cities of Fort Collins and Loveland as owners of the Airport.

As part of the Strategic Plan, a seven-member Commission was created. Two members of the Commission are City of Fort Collins Councilmembers or employees. The Commission also includes one “Citizen Member” appointed by the Fort Collins City Council.

The Council Airport Selection Committee (Mayor Wade Troxell and Councilmember Julie Pignataro) recommends reappointment of Mr. Thomas Fleming, who has just completed an initial four-year term on the Commission. Adoption of this Resolution reappoints Thomas Fleming to the Commission to serve as the Fort Collins Citizen member of the Commission for a three-year term from July 1, 2019, through June 30, 2022.

ATTACHMENTS
1. Application (PDF)
APPLICATION FOR BOARD OR COMMISSION MEMBERSHIP

ATTACHMENTS TO APPLICATION MUST BE LIMITED TO TWO PAGES
INCOMPLETE APPLICATIONS WILL NOT BE CONSIDERED FOR APPOINTMENT

If you have questions or need more information, contact:
City Clerk’s Office (300 LaPorte Avenue) at 970.416.2525

Eligibility Requirements
- 1 year residency within the Fort Collins Growth Management Area

Board or Commission: Northern Colorado Regional Airport Commission
Name: Thomas O. Fleming
Mailing Address: ___________________________ Zip: _______________________
Residence: ___________________________ Zip: _______________________
Home Phone: ___________ Work Phone: ___________ Cell Phone: ___________
E-Mail Address: ___________________________

Have you resided in the Fort Collins Growth Management Area for at least one year?  ☒ Yes  ☐ No

Which Council District do you live in? Outside City Limits

Current Occupation: Retired  Employer: None

Recent and/or relevant work experience (please include dates)  28-year service in the US Air Force as a pilot, commander and staff officer (1969-1997); Analyst for multiple high-level topics within the US Government (1997-2017), and consultant / facilitator for high-level problem-solving and improving organizational effectiveness (1997-2017). During this time, in both sets of work experiences, I managed or consulted on the management of,

Recent and/or relevant volunteer experience (please include dates)  Volunteer for 8th Judicial District (Larimer & Jackson Counties) District Attorney's Office (2007-2013). Homeowners' Association Board Member, Eagle Ranch Homeowners' Association (2008-2018); President 2016-2018

Are you currently serving on a City board or commission?  ☒ Yes  ☐ No
If so, which one? Northern Colorado Regional Airport Commission

Why do you want to become a member of this particular board or commission? I believe my past experience, both on this Commission, and life experiences prior to this service provide an excellent background to allow me to make a positive contribution to the effectiveness of this commission and to Northern Colorado as a whole.

Have you attended a meeting of the board or commission you are applying to or talked to anyone currently on the board?  ☒ Yes  ☐ No
If yes, please share your experience:
I have served on the airport commission since its inception in August 2015, and am currently its vice chair-person. I also serve as the Commission member on its sole sub-committee (working group), which meets once or twice monthly in addition

List any abilities, skills, certificates, specialized training, or interests you have which are applicable to this board or commission:
- 28 years of experience in planning, conducting and managing high-intensity air operations as a senior Air Force Officer-
Advanced degrees in aeronautical engineering, organizational management, strategy, and law (licensed in California, not Colorado).
- Over 4000 hours as pilot in command of high-performance jet aircraft- Interest in community development emphasizing
Briefly explain what you believe are the three most important issues facing this board or commission, and how do you believe this board or commission should address each issue?

1) Refining and executing a revised "Strategic Plan" to guide overall development in and around the airport.
   - Continue ongoing plans to achieve developmental objectives that will enhance airport and regional growth and make the airport independent of financial support from Fort Collins and Loveland. I currently serve on the Airport Commission's sole sub-committee responsible for planning and development. This group has developed a comprehensive, time-phased plan for achieving existing airport developmental priorities, and is well on its way to achieving them.

2) Facilitate the return of commercial air service to Northern Colorado.
   - Continue existing efforts to complete installation and certification of a cost-effective remote control tower (which airlines have stated is a prerequisite for resuming operations at FNL).
   - Continue to market Fort Collins and the Northern Colorado Region as a preferred destination for travel, and exploit the sizable market for commercial operations in Northern Colorado and Southern Wyoming.
   - Build community-wide support, to include financial support for offering subsidies to airlines, if necessary.

3) Focus future airport area development on "high-tech" education, training, and commerce.
   - Work closely with local educational institutions to understand their needs and refine opportunities to achieve them through airport development.
   - "Market" the airport area to technology-focused companies, educational institutions and government agencies.
   - Explore opportunities for developing a multi-modal system that integrates air, highway, and rail transportation in Northern Colorado.

Please specify any activities which might create a serious conflict of interest if you should be appointed to this board or commission:

I live within 3 miles of the airport (though this has not posed any conflicts over the past four years)

Have you ever been convicted of a crime (except for minor traffic offenses that resulted only in a fine)? □ Yes ☒
If yes, please explain in complete detail. State the nature and approximate date of the conviction, the sentence imposed, whether the sentence has been completed, and any other information you consider to be relevant

Upon application for and acceptance of appointment, board and commission members demonstrate their intention and ability to attend meetings. If appointed, frequent nonattendance may result in termination of the appointment.

By typing your name in the space provided, I submit my electronic signature and application to the City of Fort Collins and swear or affirm under penalty of perjury pursuant to the laws of the State of Colorado:

- that I meet the eligibility requirements of the position sought and
- that the information provided in this application is true and correct to the best of my knowledge.

Signature: ___________________________ Thomas O. Fleming ___________________________ Date: ___________________________ Jun-02-2019

Optional: How did you learn of a vacancy on this board or commission:

☐ Newspaper ☐ Cable 14 ☐ City News (Utility Bill Insert) ☐ Website
Other (please specify) __________________________________________ I serve on this commission
I have enjoyed my service on the Airport Commission over the past four years and would like to continue it. I believe I have been an effective contributor to the commission, and that my past experience will enhance its effectiveness. Summary bio. attached, current as of 2015.
RESOLUTION 2019-083
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING AN APPOINTMENT TO THE NORTHERN
COLORADO REGIONAL AIRPORT COMMISSION

WHEREAS, on January 6, 2015, the City Council adopted Resolution 2015-002 approving the Fort Collins-Loveland Airport Strategic Plan; and

WHEREAS, on the same date the City Council adopted Resolution 2015-003, authorizing the Mayor to execute an Amended and Restated Intergovernmental Agreement (the “IGA”) between the Cities of Fort Collins and Loveland (the “Cities”) as the owners of the Fort Collins-Loveland Municipal Airport (the “Airport”); and

WHEREAS, the IGA directs the Cities to establish an airport governance structure in the nature of a commission to be called the “Northern Colorado Regional Airport Commission (the “Commission”) and re-named the Airport as the Northern Colorado Regional Airport; and

WHEREAS, the IGA provides that the Commission shall be comprised of seven members as follows: (a) two members appointed by the Loveland City Council, who shall be City of Loveland council members or employees; (b) two members appointed by the Fort Collins City Council, who shall be City of Fort Collins council members or employees; (c) one Citizen Member appointed by the Loveland City Council; (d) one Citizen Member appointed by the Fort Collins City Council, and (e) one Joint Citizen Member appointed by both City Councils upon mutual agreement; and

WHEREAS, on March 17, 2015, Council adopted Resolution 2015-035 appointing Thomas Fleming as the Fort Collins appointed “Citizen Member” to the Northern Colorado Regional Airport Commission for a four-year term; and

WHEREAS, on June 4, 2019, City Council adopted Ordinance No. 071, 2019 on second reading, approving the Second Amendment to the IGA, which modified the terms of the Citizen Members and Jointly Appointed Citizen Member so that their terms are staggered and do not all expire on the same date, and providing that the Fort Collins appointed Citizen Member shall serve an initial term of three years commencing July 1, 2019, with each of the following terms to be four years; and

WHEREAS, the Airport Selection Committee, which was appointed by City Council, has recommended that Thomas Fleming be reappointed as the Fort Collins appointed Citizen Member appointed for a term of three years in accordance with the Second Amendment to the Airport IGA.

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 Thomas Fleming is hereby appointed to serve as a Citizen Member the Northern Colorado Regional Airport Commission for a three-year term commencing on July 1, 2019 and ending on June 30, 2022.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 16th day of July, A.D. 2019.

Mayor

ATTEST:

__________________________
City Clerk
STAFF REPORT: BUSINESS TRESPASSES & COLLEGE AVENUE TRAFFIC SAFETY

Business Trespasses & College Avenue Traffic Safety

John J. Feyen, Assistant Chief, Patrol Division

July 16, 2019
Our “Why”

**VISION**
- To Provide World-Class Municipal Services through Operational Excellence and a Culture of Innovation
- Exceptional Services for An Exceptional Community

**MISSION**
- Collaboration
- Excellence
- Integrity
- Outstanding Service
- Safety & Well-being
- Stewardship

**VALUES**
5.1 Improve community involvement, education and regional partnerships to increase the level of public trust and keep the community safe.

5.2 Meet the expected level of core and specialized police services as the community grows.

6.1 Improve safety for all modes of travel.
Project Highlights

Business Trespasses

College Avenue Traffic Safety
What are we trying to address?

Select Calls for Service

O’Reilly: 2016 - 0, 2017 - 2, 2018 - 2, 2019 - 6
Trespass Citations

HOBBY LOBBY: 24 in 2016, 46 in 2017

O'REILLY: 23 in 2018, 7 in 2019

TACO BELL: 0 in all years

STAFF REPORT: BUSINESS TRESPASSES & COLLEGE AVENUE TRAFFIC SAFETY
Traffic Citations

- Careless
- U-Turn
- Exhaust
- Red Light
- Speed Contest
- Speed Exhibition
- Weaving
- Emissions

2016:
- Careless: 63
- U-Turn: 5
- Exhaust: 0
- Red Light: 16
- Speed Contest: 0
- Speed Exhibition: 12
- Weaving: 0
- Emissions: 0

2017:
- Careless: 66
- U-Turn: 0
- Exhaust: 0
- Red Light: 11
- Speed Contest: 0
- Speed Exhibition: 48
- Weaving: 0
- Emissions: 0

2018:
- Careless: 58
- U-Turn: 0
- Exhaust: 0
- Red Light: 9
- Speed Contest: 1
- Speed Exhibition: 39
- Weaving: 0
- Emissions: 0

2019:
- Careless: 19
- U-Turn: 2
- Exhaust: 0
- Red Light: 4
- Speed Contest: 14
- Speed Exhibition: 36
- Weaving: 19
- Emissions: 11
Alignment with City Strategic Objectives

Neighborhood Livability & Social Health:

1.5 Foster positive and respectful neighbor relationships and open communication

1.6 Protect and preserve the quality of life in neighborhoods
What is the Block Party Trailer?

- The Block Party Trailer is a free neighborhood “party in a box”
- Neighbors can reserve the Block Party Trailer through the Special Events Block Party Permit
- Neighborhood Services Code Compliance staff drops off and picks up the trailer
Equity and Inclusion

The Block Party Trailer will address some equity-related obstacles to hosting events in multi-family, lower income, or traditional student neighborhoods by decreasing the need for upfront funding for materials or long-term storage space for bulky items.
By the Numbers

22 Block Party Trailer events

100% booked for 2019

$9,535 total cost of the Block Party Trailer

$9,400 block party costs in 2018
AGENDA ITEM SUMMARY
City Council
July 16, 2019

STAFF
Meaghan Overton, City Planner
Sue Beck-Ferkiss, Social Policy and Housing Program Manager
Katie Ricketts, Economic Health Analyst
Cameron Gloss, Planning Manager
Ingrid Decker, Legal

SUBJECT
Second Reading of Ordinance No. 090, 2019, Appropriating Unanticipated Grant Revenue in the General Fund for Updating Policies, Codes and Regulations Affecting the Quality and Quantity of Affordable Housing in Fort Collins.

EXECUTIVE SUMMARY
This Ordinance, adopted on First Reading on July 2, 2019 by a vote of 6-0 (Gorgol recused). Appropriates unanticipated grant revenue awarded by the Colorado Department of Public Health and Environment (CDPHE) through its Health Disparities Grant Program (HDGP) to implement critical updates to policies, codes and regulations affecting the quality and quantity of affordable housing with a specific lens on reducing health inequities in Fort Collins. This housing affordability and health equity project will use CDPHE grant funds in the amount of $795,657 in reimbursable grant funding over a two-year grant cycle (State Fiscal Year 2020-2021).

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

ATTACHMENTS
1. First Reading Agenda Item Summary, July 2, 2019 (w/o attachments) (PDF)
2. Ordinance No. 090, 2019 (PDF)
First Reading of Ordinance No. 090, 2019, Appropriating Unanticipated Grant Revenue in the General Fund for Updating Policies, Codes and Regulations Affecting the Quality and Quantity of Affordable Housing in Fort Collins.

EXECUTIVE SUMMARY

The purpose of this item is to appropriate unanticipated grant revenue awarded by the Colorado Department of Public Health and Environment (CDPHE) through its Health Disparities Grant Program (HDGP) to implement critical updates to policies, codes and regulations affecting the quality and quantity of affordable housing with a specific lens on reducing health inequities in Fort Collins. This housing affordability and health equity project will use CDPHE grant funds in the amount of $795,657 in reimbursable grant funding over a two-year grant cycle (State Fiscal Year 2020-2021).

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The objective of this housing affordability and health equity project is to implement community-led policy, code, and regulatory changes to improve housing affordability in Fort Collins, particularly for community members who struggle to afford safe, stable, high quality housing. The Centers for Disease Control, the World Health Organization, and Healthy People 2020 all state that housing affordability and quality are critical components in health outcomes, and this grant project seeks to reduce health inequities in our community by addressing housing as an “upstream” determinant of health.

Funding for this grant comes from the CDPHE Office of Health Equity’s Health Disparities Grant Program (HDGP). This grant is funded through Amendment 35 (Tobacco Tax) revenues. Attachment 1 is a memo from the Office of Health Equity, outlining the background of the Request for Applications for this grant, the review process, and the funding recommendations made to the State Board of Health in March 2019.

Amount and Timing

The City was awarded a total of $795,657 in reimbursable grant funding over a two-year grant cycle (State FY 2020-2021). The budget for each year is approximately $397,000. Year 1 (July 2019-June 2020) will focus on assessment, analysis and community engagement. Year 2 (July 2020-June 2021) will focus on code/policy writing, implementation and adoption of recommended changes. The timing of the grant funding aligns very well...
with the initial implementation of City Plan and the update of the Affordable Housing Strategic Plan beginning in 2019.

**Key Staff and Partners**

The City is the lead agency on this grant and is responsible for overall management and coordination of all grant activities, including any tasks completed with consultant support. Departments involved in this effort include:

- Planning - lead, convener, organizer, public engagement, code changes
- Finance - grant management, financial expertise, purchasing assistance
- Social Sustainability - topic area expertise, policy coordination, public engagement, code changes

The grant also requires cross-sector collaboration with outside organizations or entities who will receive funding through sub-grants with the City in approximately the amounts listed below and play a key role in the project:

- Larimer County Department of Health and Environment, Built Environment Group -- $30,000
- The Family Center/La Familia -- $5,000
- The Family Leadership Training Institute -- $46,350
- The Center for Public Deliberation at CSU -- $40,000

Each of these organizations is formally committed to the grant and has submitted a letter of collaboration to CDPHE.

One of the first tasks associated with this grant will be a stakeholder analysis. Many different sectors (e.g., businesses and employers, developers, housing agencies, property managers/owners) will need to be involved in this project in a variety of capacities. While these stakeholders will not have responsibility for coordinating or managing the grant itself, their participation will be critical to the success of the project.

**Previous related Council Actions**

Several policy documents adopted by City Council within the last six years, including the City Strategic Plan (2018) and City Plan (2019), discuss the need for more affordable housing, both subsidized and unsubsidized. Further, several plans specifically mention a need to prevent displacement of vulnerable populations. This grant would provide significant funding to implement policy direction contained in:

- Affordable Housing Redevelopment Displacement Mitigation Strategy (2013)
- Housing Affordability Policy Study (2014)
- Affordable Housing Strategic Plan (2015 with update beginning this year)
- Social Sustainability Strategic Plan (2016)
- City Strategic Plan (2018)
- City Plan (2019)

This grant is closely aligned with community, City and Council priorities, particularly in the Neighborhood Livability and Social Health Outcome Area.

**CITY FINANCIAL IMPACTS**

The City has been awarded a state-funded grant, entitled *Making Policy Together: A Community-Driven Approach to Improving Housing Affordability in Fort Collins*. This grant will be administered on a reimbursement basis; funds will be spent and reimbursed from the General Fund on a monthly basis.

The City will receive $397,828 in 2019 and $397,829 in 2020 (total grant award of $795,657).

There is no financial impact to the City of Fort Collins, as there are no matching funds required.
ATTACHMENTS

1. Office of Health Equity Funding Recommendation Memo (PDF)
2. City of Fort Collins Grant Award Press Release (PDF)
ORDINANCE NO. 090, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING UNANTICIPATED GRANT REVENUE IN THE GENERAL FUND FOR UPDATING POLICIES, CODES AND REGULATIONS AFFECTING THE QUALITY AND QUANTITY OF AFFORDABLE HOUSING IN FORT COLLINS

WHEREAS, the Colorado Department of Public Health and Environment (“CDPHE”) has awarded the City a grant through its Health Disparities Grant Program (the “Grant”) to be used to update City codes, policies and regulations affecting the quality and quantity of affordable housing in the community (the “Project”); and

WHEREAS, the Project will focus on health inequity with the goal of helping residents who may not be able to afford safe, stable, high quality housing and, as a result, are more likely to have health issues; and

WHEREAS, the total amount of the Grant is $795,657 over two years (2019-2020 and 2020-2021); and

WHEREAS, this Ordinance appropriates the Grant funds for the first year in the amount of $397,828; and

WHEREAS, the Grant does not require the City to provide matching funds; and

WHEREAS, the City will sub-grant a portion of the funding from the Grant to several outside organizations or entities that will be collaborating with the City on the Project, including Larimer County, the Family Center/La Familia, the Family Leadership Training Institute and Colorado State University; and

WHEREAS, the City Manager will enter into a grant agreement with CDPHE and sub-grant agreements with each entity receiving funds from the City for the Project; and

WHEREAS, this appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of improving access to safe, stable, affordable housing; 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

-1-
WHEREAS, the City Council supports the Project as described herein.

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 grant revenue in the General Fund the sum of THREE HUNDRED NINETY-SEVEN THOUSAND EIGHT HUNDRED TWENTY-EIGHT DOLLARS ($397,828) for expenditure in the General Fund for updating codes, policies and regulations with regards to affordable housing.

Section 3. That the City Manager shall report to Council no less frequently than annually during the life of the grant and at least once after the conclusion of the grant term regarding the status and outcome of the work completed under the grant and related projects.

Introduced, considered favorably on first reading, and ordered published this 2nd day of July, A.D. 2019, and to be presented for final passage on the 16th day of July, A.D. 2019.

_______________________________
Mayor

ATTEST:

_______________________________
City Clerk

Passed and adopted on final reading on the 16th day of July, A.D. 2019.

_______________________________
Mayor

ATTEST:

_______________________________
City Clerk
AGENDA ITEM SUMMARY
City Council
July 16, 2019

STAFF
Tom Leeson, Director, Comm Dev & Neighborhood Svrs
Brad Yatabe, Legal

SUBJECT
Resolution 2019-082 Making Findings of Fact and Conclusions of Law Regarding the Appeal of the Planning and Zoning Board’s Decision Approving the Sunshine House at Bucking Horse Major Amendment MJA190001.

EXECUTIVE SUMMARY
The purpose of this item is to make findings of fact and conclusions of law regarding the appeal of the Sunshine House at Bucking Horse Major Amendment (MJA#190001). The hearing for the appeals was held July 2, 2019.

STAFF RECOMMENDATION
Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION
On March 21, 2019, and April 18, 2019, the Planning and Zoning Board considered the application for the Sunshine House at Bucking Horse Major Amendment, a proposal to replace a working farm with a childcare facility as part of the previously approved Bucking Horse Project Development Plan (2012). The Planning and Zoning Board approved the major amendment with two conditions, based on the hearing record and findings of fact and information contained in the staff report.

An appeal was filed with the City Clerk’s Office on May 2, 2019, which was within the 14-day appeal period provided by the Land Use Code.

The appellant raised the following issues on appeal:

A. Whether the Planning and Zoning Board failed to conduct a fair hearing because it:
   1. Considered evidence relevant to its findings that was substantially false or grossly misleading;
   2. Improperly failed to receive all relevant evidence offered by the appellant; and/or
   3. Was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Board’s independence of judgment.

B. Whether the Planning and Zoning Board failed to properly interpret and apply relevant provisions of the City Code, Land Use Code, and Charter, including the following Code sections:
   1. City Code Section 10-81-Specific standards for Poudre River five-hundred-year floodplain and zone x shaded areas;
   2. Land Use Code Sections 1.2.2(M)-Purpose, Character of Existing Neighborhoods, and Section 5.1.2-Definitions; and
On July 2, 2019, City Council considered the record on appeal and testimony from the applicant, the appellant, and other parties-in-interest for the Sunshine House at Bucking Horse Major Amendment (MJA#190001). After the hearing, Council affirmed the Planning and Zoning Board’s decision and denied the appeal in its entirety.
RESOLUTION 2019-082
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING THE
APPEAL OF THE PLANNING AND ZONING BOARD’S DECISION APPROVING THE
SUNSHINE HOUSE AT BUCKING HORSE MAJOR AMENDMENT MJA190001

WHEREAS, on March 21, 2019, and April 18, 2019, the Planning and Zoning Board (the “Board”) reviewed and approved the Sunshine House at Bucking Horse Major Amendment MJA190001 (the “Amendment”) with conditions; and

WHEREAS, on May 2, 2019, Arnold Robinson (the “Appellant”) filed an appeal (the “Notice of Appeal”) of the Board approval of the Amendment with the City Clerk; and

WHEREAS, the Notice of Appeal asserted that the Board failed to conduct a fair hearing because it: (1) considered evidence relevant to its findings which was substantially false or grossly misleading; (2) improperly failed to receive all relevant evidence offered by the Appellant; and (3) was biased against the Appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Board’s independence of judgment; and

WHEREAS, the Notice of Appeal also asserted that the Board failed to properly interpret and apply Land Use Code Sections 1.2.2(M), 4.2(B)(3)(c)1, and the definition of “character” contained in Section 5.1.2, and City Code Section 10-81; and

WHEREAS, on July 2, 2019, the City Council, after notice given in accordance with Chapter 2, Article II, Division 3, of the City Code, considered the appeal, reviewed the record on appeal, received new evidence for consideration, and heard presentations from the Appellant, parties-in-interest supporting the appeal, and the Amendment applicant (the “Applicant”); and

WHEREAS, after discussion, the City Council found and concluded based on the evidence in the record and presented at the July 2, 2019, hearing that the Board did not fail to conduct a fair hearing on March 21, 2019, and April 18, 2019, because:

1. The Board did not consider evidence relevant to its findings which was substantially false or grossly misleading;

2. The Board did not improperly fail to receive all relevant evidence offered by the Appellant; and

3. The Board was not biased against the Appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Board’s independence of judgment; and

WHEREAS, after discussion, the City Council found and concluded based on the evidence in the record and presented at the July 2, 2019, hearing that the Board did not fail to
properly interpret and apply Land Use Code Sections 1.2.2(M), 4.2(B)(3)(c)1, and the definition of “character” contained in Section 5.1.2, and City Code Section 10-81; and

WHEREAS, Council finds that the Appellant’s appeal is without merit in its entirety and is denied, and that the Board’s April 18, 2019, decision on the Amendment with conditions is upheld; and

WHEREAS, City Code Section 2-55(g) provides that no later than the date of its next regular meeting after the hearing of an appeal, City Council shall adopt, by resolution, findings of fact in support of its decision on the Appeal.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that, pursuant to Section 2-55(g) of the City Code, the City Council hereby makes and adopts the following findings of fact and conclusions:

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

2. That the grounds for appeal stated in the Notice of Appeal conform to the requirements of Section 2-48 of the City Code.

3. That based on the evidence in the record and presented at the July 2, 2019, Council hearing, the Appellant’s allegation that the Board failed to conduct a fair hearing is without merit and is denied in its entirety.

4. That based on the evidence in the record and presented at the July 2, 2019, the Appellant’s allegation that the Board failed to properly interpret and apply the Land Use Code is without merit and is denied in its entirety.

5. That the Board’s April 18, 2019, decision on the Amendment with conditions is upheld.

6. That adoption of this Resolution shall constitute the final action of the City Council in accordance with City Code Section 2-55(g).

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 16th day of July, A.D. 2019.

__________________________________________
Mayor

ATTEST:

__________________________________________
City Clerk
AGENDA ITEM SUMMARY
City Council
July 16, 2019

STAFF

Cameron Gloss, Planning Manager
Brad Yatabe, Legal

SUBJECT

Resolution 2019-084 Initiating the Rezoning of the Hughes Stadium Annexation Property.

EXECUTIVE SUMMARY

The purpose of this item is to initiate the rezoning of the Hughes Stadium Annexation property that amends the City of Fort Collins Zoning Map from the current Transition (T) zone district and directs City staff to prepare a rezoning application on behalf of the City and make a recommendation to the Planning and Zoning Board (the "Board") and City Council regarding the appropriate zoning.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

This is a City Council request to initiate the rezoning of a 164.56-acre parcel located on the west side of Overland Trail and north of CR32 that formerly contained Hughes Stadium. The property would be rezoned from the Transition (T) zone district.

On October 16, 2018, the City Council adopted Ordinance No. 123, 2018, on second reading regarding the Hughes Stadium Annexation, and Ordinance No. 124, 2018, that placed the property into the Transition (T) zone district.

The surrounding zoning and land uses are as follows:

- **N:** M-M-N Existing single and multi-family residential (Westgate)
  Larimer County FA1 (Farming) existing single-family residential; pasture
- **S:** P-O-L Pineridge Natural Area
  Larimer County FA1 (Farming) existing single-family house
- **E:** M-M-N Existing single and multi-family residential (Trail West, Willow Lane, Stadium Heights)
  Larimer County FA1 (Farming) Drive-in movie theater
- **W:** P-O-L Maxwell Natural Area
  Larimer County FA1 (Farming) vacant; owned by US Bureau of Reclamation

Land Use Code Review Procedures

Land Use Code Division 2.9 states that City Council may approve a rezoning by ordinance after receiving a recommendation from the Board. All rezonings are reviewed at a public Board hearing, and such hearing must
be held either prior to City Council consideration or between the first and second reading of the ordinance regarding the rezoning. The rezoning procedural steps set forth in Land Use Code Division 2.9 are as follows (see Division 2.9 for full text):

Step 1 (Conceptual Review): Not applicable.

Step 2 (Neighborhood Meeting): Not applicable, except that, with respect to a quasi-judicial map amendments only, the Director may convene a neighborhood meeting to present and discuss a proposal of known controversy and/or significant neighborhood impacts.

Step 3 (Development Application Submittal): All items or documents required for amendments to the Zoning Map as described in the development application submittal master list must be submitted. The Director may waive or modify the foregoing submittal requirements if, given the facts and circumstances of the specific application, a particular requirement would either be irrelevant, immaterial, redundant or otherwise unnecessary for the full and complete review of the application.


Step 5 (Staff Report): Applicable.

Step 6 (Notice): Zonings or Rezonings of No More Than Six Hundred Forty (640) Acres (Quasi-judicial). Subsection 2.2.6(A) applies and such notices shall identify the proposed new zone district(s), as well as the uses permitted therein, shall indicate whether a neighborhood meeting will be held with regard to the proposed zoning or rezoning, and shall inform the recipient of the notice of the name, address and telephone number of the Director to whom questions may be referred with regard to such zoning change. Subsections 2.2.6(B), (C) and (D) shall apply, and the published notice given pursuant to subsection 2.2.6(C) shall provide the time, date and place of the hearing, the subject matter of the hearing and the nature of the proposed zoning change.

Step 7(A) (Decision Maker): Board Review applies.
Step 7(B) (Conduct of Public Hearing): Applicable.
Step 7(C) (Order of Proceedings at Public Hearing): Applicable.
Step 7(D) (Decision and Findings): Applicable, except that the Board's decision shall be in the form of a recommendation, not a decision, to Council. In making its recommendation, the Board shall consider whether the application or proposal complies with the standards contained in Step 8 of this Section.
Step 7(E) (Notification to Applicant): Not applicable.
Step 7(F) (Record of Proceedings): Applicable.
Step 7(G) (Recording of Decisions and Plats): Not applicable.

Step 8 (Standards): Applicable, as follows:

Mandatory Requirements for Quasi-Judicial Rezonings. Any amendment to the Zoning Map involving the zoning or rezoning of six hundred forty (640) acres of land or less (a quasi-judicial rezoning) shall be recommended for approval by the Board or approved by the City Council only if the proposed amendment is:

(a) consistent with the City Comprehensive Plan (City Plan); and/or

(b) warranted by changed conditions within the neighborhood surrounding and including the subject property.

Additional Considerations for Quasi-Judicial Rezonings. In determining whether to recommend approval of any such proposed amendment, the Board and City Council may consider the following additional factors:
Agenda Item 18

(a) whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land, and is the appropriate zone district for the land;

(b) whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment, including, but not limited to, water, air, noise, stormwater management, wildlife, vegetation, wetlands and natural functioning of the environment;

(c) whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.

Step 9 (Conditions of Approval): Applicable.

Step 10 (Amendments): Not applicable.

Step 11 (Lapse): Not applicable.

Step 12 (Appeals): Not applicable.

BOARD / COMMISSION RECOMMENDATION

This is a City Council initiated action.

PUBLIC OUTREACH

Although neighborhood meetings are typically not applicable to quasi-judicial rezoning requests, Section 2.9.4(B) provides that a neighborhood meeting may be convened if a proposal has “known controversy and/or significant impacts”. Since these conditions exist, staff is recommending that a neighborhood meeting be conducted that satisfies all requirements found in Section 2.2.2 of the Land Use Code.

Further, notification of the application and neighborhood meeting will satisfy all public notice requirements of Section 2.2.6 of the Land Use Code for mailed, posted and published notice. Given the size of the property, the minimum mail notice radius is expanded to a minimum of 1,000 feet from the property boundary and two signs will be posted.

ATTACHMENTS

1. PowerPoint Presentation (PDF)
Site Location and Context
Public Review Process

- City Council initiates rezone

- Neighborhood Meeting
  - All Affected Property Owners and renters within 1,000 feet are mailed neighborhood meeting notification at least 14 days prior to meeting
  - Two neighborhood meeting signs posted on the property

- Planning and Zoning Board conducts public hearing and makes a recommendation on proposed zoning

- City Council public hearing and final decision on zone district designation(s)
If Rezone initiated by City Council, Tentative Review Dates for Rezoning:

- Neighborhood Meeting – August 8
- Planning and Zoning Board hearing and recommendation – September 19
- City Council hearing and decision – October 1

Review Process for potential future Project Development Plan:

- Neighborhood Meeting
- Planning and Zoning Board hearing and decision
RESOLUTION 2019-084
OF THE COUNCIL OF THE CITY OF FORT COLLINS
INITIATING THE REZONING OF THE HUGHES STADIUM ANNEXATION PROPERTY

WHEREAS, on October 16, 2018, the City Council approved Ordinance No. 123, 2018, on Second Reading regarding the annexation of the Hughes Stadium Annexation property consisting of approximately 164.56 acres; and

WHEREAS, on October 16, 2018, the City Council approved Ordinance No. 124, 2018, on Second Reading regarding the placement of the Hughes Stadium Annexation property into the Transition (T) zone district; and

WHEREAS, Land Use Code Section 4.12(A) states that the purpose of the Transition (T) zone district is “intended for properties for which there are no specific and immediate plans for development. The only permitted uses are those existing at the date the property was placed into this District”; and

WHEREAS, the Hughes Stadium Annexation property is the former location of Hughes Stadium; and

WHEREAS, Colorado State University is under contract to sell the Hughes Stadium Annexation property so that it may be developed; and

WHEREAS, the development proposed for the Hughes Stadium Annexation property is in the conceptual stage and no formal development application has been submitted to the City; and

WHEREAS, the pending development of the Hughes Stadium Annexation property is the subject of community concern and rezoning would provide clarity regarding the ways in which the Hughes Stadium Annexation property could be developed; and

WHEREAS, the Hughes Stadium Annexation property is located adjacent to City natural areas abutting the foothills; and

WHEREAS, pursuant to Land Use Code Section 2.9.3(A), an amendment to the zoning map may be proposed by the City Council; and

WHEREAS, in consideration of the community concern over pending development of the Hughes Stadium Annexation and the clarity provided by rezoning, the location of the Hughes Stadium Annexation property adjacent to City natural areas, and the relatively large size of the Hughes Stadium Annexation property, City Council wishes to propose and initiate the rezoning of the Hughes Stadium Annexation property from the current Transition (T) zoning; and

WHEREAS, the notice requirements, procedure, and applicable standards governing the rezoning of the Hughes Stadium Annexation property are set forth in Land Use Code Division 2.9; and
WHEREAS, pursuant to Land Use Code Section 2.9.4, the Hughes Stadium Annexation property rezoning is quasi-judicial in nature, requires a Planning and Zoning Board recommendation to City Council, and must, at a minimum, be consistent with City Plan or warranted by changed conditions within the neighborhood surrounding and including the Hughes Stadium Annexation property, or both; and

WHEREAS, the City Council finds that the initiation of the rezoning of the Hughes Stadium Annexation property is in the best interests of the citizens of Fort Collins.

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 proposes the rezoning of the Hughes Stadium Annexation property pursuant to Land Use Code Section 2.9.3(A).

Section 3. That the City Council directs City staff to prepare a rezoning application on behalf of the City and make a recommendation to the Planning and Zoning Board and City Council regarding the appropriate zoning for the Hughes Stadium Annexation property, all in accordance with Land Use Code Section 2.9.4.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 16th day of July, A.D. 2019.

_________________________________
Mayor

ATTEST:

_________________________________
City Clerk
AGENDA ITEM SUMMARY
July 16, 2019

STAFF
Tom Leeson, Director, Comm Dev & Neighborhood Svrs

SUBJECT
First Reading of Ordinance No. 099, 2019 Imposing a Moratorium Until August 30, 2020, Upon Certain Development of Existing Mobile Home Parks.

EXECUTIVE SUMMARY
The purpose of this item is to impose a moratorium upon the City's acceptance of any application for development of any kind that, if granted, could result in the partial or total closing or reduction in capacity of any mobile home park in existence on the effective date of this Ordinance, and would remain in effect through the earlier of August 30, 2020, or until City Council adopts an ordinance containing regulations that address the identified issues and concerns.

STAFF RECOMMENDATION
No staff recommendation.

BACKGROUND / DISCUSSION
The Fort Collins City Council recently adopted City Plan (April 2019), the comprehensive plan for the City of Fort Collins, with specific policies related to improving access to housing that meets the needs of residents, regardless of their race, ethnicity, income, age, ability or background. Policies LIV 6.4, Permanent Supply of Affordable Housing, LIV 6.9, Prevent Displacement, and LIV 6.10, Mitigate Displacement Impacts are specifically relevant to mobile home parks.

Mobile home parks are an important source of affordable housing for lower income working families, seniors, and people with disabilities living in Fort Collins, and the redevelopment of mobile home parks can create unusual hardships if residents cannot afford to pay to move their mobile homes or belongings or cannot find affordable replacement housing. Upon redevelopment of a mobile home park, a mobile home owner must not only move their personal belongings but must also move the house itself which is complicated by issues including: lower value homes not being cost-effective to move, older homes not being able to withstand relocation, and some parks prohibiting the relocation of mobile homes constructed before 1976 because such homes predate safety standards.

In the recent legislative session, the Colorado General Assembly passed HB 19-1309 concerning the regulation of mobile home parks (“HB1309”), which acknowledges that mobile home park tenants and landlords have rights and responsibilities under the state’s Mobile Home Park Act (the “Act”) and encourages local governments to play an active role in ensuring the Act is upheld, by giving counties and municipalities the power to adopt and enforce ordinances and resolutions to provide for the safe and equitable operation of mobile home parks in their jurisdictions.

In consideration of the need to maintain and expand affordable housing in the City, the relevant policies set forth in City Plan, and the regulatory opportunities provided by HB1309, the City Council wishes to impose a moratorium on the development of existing mobile home parks where such development could result in the partial or total closing or reduction in capacity of any existing mobile home park. The moratorium period is
necessary to provide City staff and the City Council the time to research, formulate, and discuss what local ordinances it may want to enact, either alone or in coordination with Larimer County, to further City Plan principles and policies, uphold the principles of the Act, and protect the citizens of Fort Collins.

The moratorium would be imposed upon the City’s acceptance of any application for development of any kind that, if granted, could result in the partial or total closing or reduction in capacity of any mobile home park in existence on the effective date of this ordinance, and would remain in effect through August 30, 2020, or until City Council adopts an ordinance containing regulations that address the identified issues and concerns described above.

A Mobile Home is defined in the Land Use Code as “a transportable, single-family dwelling unit built on a permanent chassis with attached undercarriage consisting of springs, axles, wheels and hubs, and which is suitable for year-round occupancy and contains the same water supply, waste disposal and electrical conveniences as immobile housing. A mobile home is designed to be transported on streets to the place where it is to be occupied as a dwelling unit and may or may not be attached to a permanent foundation.”

A Mobile Home Park is defined in the Land Use Code as “a parcel of land which has been planned, improved or is currently used for the placement of mobile homes and contains more than one (1) mobile home lot.”

ATTACHMENTS

1. PowerPoint Presentation (PDF)
Moratorium on Certain Development Affecting Existing Mobile Home Parks
Tom Leeson – Director, Community Development & Neighborhood Services
Council Action Requested

Adoption on First Reading

• Imposing a Moratorium until August 30, 2020 upon Certain Development Affecting Existing Mobile Home Parks
Background

City Plan Policies

- LIV 6.4, *Permanent Supply of Affordable Housing*

- LIV 6.9, *Prevent Displacement*

- LIV 6.10, *Mitigate Displacement Impacts*
Background

Mobile Homes and Mobile Home Parks

- Important source of affordable housing for lower income working families, seniors, and people with disabilities

- Redevelopment of mobile home parks can create unusual hardships

- Upon redevelopment, a mobile home owner must not only move their personal belongings but must also move the house itself
Colorado General Assembly HB 19-1309

- Mobile home park tenants and landlords have rights and responsibilities under the state’s Mobile Home Park Act

- Encourages local governments to play an active role in ensuring the Act is upheld
Moratorium

Purpose of Moratorium

• Provide staff and Council time to research, formulate, and discuss what local ordinances it may want to enact to further City Plan principles and policies, uphold the principles of the Act, and protect the citizens of Fort Collins
Moratorium on Mobile Home Parks

• Imposed upon the City’s acceptance of applications for development that could result in the partial or total closing, or reduction in capacity, any mobile home park

• Would remain in effect through August 30, 2020 or…

• …until City Council adopts an ordinance containing regulations that address the identified issues and concerns.
Council Action Requested

Adoption on First Reading

- Imposing a Moratorium until August 30, 2020 upon Certain Development Affecting Existing Mobile Home Parks
ORDINANCE NO. 099, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
IMPOSING A MORATORIUM UNTIL AUGUST 30, 2020, UPON CERTAIN
DEVELOPMENT AFFECTING EXISTING MOBILE HOME PARKS

WHEREAS, City Plan Neighborhood Livability and Social Health Principle LIV 6 is to “[i]mprove access to housing that meets the needs of residents regardless of their race, ethnicity, income, age, ability or background”; and

WHEREAS, Principle LIV 6 is supported and advanced by the following policies related to affordable housing relevant to mobile homes: LIV 6.4, Permanent Supply of Affordable Housing, LIV 6.9, Prevent Displacement, and LIV 6.10, Mitigate Displacement Impacts; and

WHEREAS, mobile home parks are important sources of affordable housing for lower income working families, seniors, and people with disabilities living in Fort Collins; and

WHEREAS, the redevelopment of mobile home parks can create unusual hardships if residents cannot afford to pay to move their mobile homes or belongings or cannot find affordable replacement housing; and

WHEREAS, mobile homeowners are in a unique situation because they are both homeowners of their individual home and tenants of the mobile home park because they do not own the land on which their home is located; and

WHEREAS, upon redevelopment of a mobile home park, a mobile home owner must not only move their personal belongings but must also move the house itself which is complicated by issues including: lower value homes not being cost-effective to move, older homes not being able to withstand relocation, and some parks prohibiting the relocation of mobile homes constructed before 1976 because such homes predate safety standards; and

WHEREAS, in the recent legislative session, the Colorado General Assembly passed HB 19-1309 concerning the regulation of mobile home parks (“HB1309”); and

WHEREAS, HB1309 acknowledges that mobile home park tenants and landlords have rights and responsibilities under the state’s Mobile Home Park Act (the “Act”) and encourages local governments to play an active role in ensuring the Act is upheld, by giving counties and municipalities the power to adopt and enforce ordinances and resolutions to provide for the safe and equitable operation of mobile home parks in their jurisdictions; and

WHEREAS, HB1309 states that such ordinances can be enacted within the scope of the Act “and further” as the county or municipality deems necessary “to protect homeowners’ equity in and safe use and enjoyment of the mobile homes and mobile home lots;” and

WHEREAS, HB1309 also allows cities and counties to enter into intergovernmental agreements to extend the applicability of an ordinance enacted by one throughout the participating entities’ jurisdictions; and
WHEREAS, the Fort Collins Land Use Code and the City Code contain regulations regarding mobile homes and mobile home parks as such terms are defined therein; and

WHEREAS, in consideration of the need to maintain and expand affordable housing in the City, the relevant policies set forth in City Plan, and the regulatory opportunities provided by HB1309, the City Council wishes to impose a moratorium on development affecting existing mobile home parks where such development could result in the partial or total closing or reduction in capacity of any existing mobile home park (the “Moratorium”); and

WHEREAS, the Moratorium is necessary to provide City staff and the City Council the time to research, formulate, and discuss what local ordinances it may want to enact, either alone or in coordination with Larimer County, to further City Plan principles and policies, uphold the principles of the Act, and protect the citizens of Fort Collins; and

WHEREAS, the City’s power to impose this limited Moratorium is among its home rule powers granted to in Article XX of the Colorado Constitution; and

WHEREAS, the City Council has determined that said Moratorium shall continue in effect through August 30, 2020, or until the City Council adopts an ordinance containing regulations that address the issues and concerns described above; and

WHEREAS, the City Council has determined that the Moratorium is 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 a moratorium is hereby imposed upon the City’s acceptance of any application for development of any kind that if granted could result in the partial or total closing or reduction in capacity of any mobile home park in existence on the effective date of this Ordinance.

Section 3. That the Moratorium shall be effective as of the effective date of this Ordinance and remain in effect through August 30, 2020, or until City Council adopts an ordinance containing regulations that address the issues and concerns described in the recitals.

Section 4. That this Ordinance is necessary to protect the public health, safety, and welfare of the residents of the City and addresses matters of local and municipal concern.
Introduced, considered favorably on first reading, and ordered published this 16th day of July, A.D. 2019, and to be presented for final passage on the 20th day of August, A.D. 2019.

__________________________________
Mayor

ATTEST:

_______________________________
City Clerk

Passed and adopted on final reading on the 20th day of August, A.D. 2019.

__________________________________
Mayor

ATTEST:

_______________________________
City Clerk

-3-
Electric Utility Enterprise Board Meeting
July 16, 2019
(after the Regular Council Meeting, which begins at 6:00 p.m.)

• CALL MEETING TO ORDER

1. Consideration and Approval of the Minutes of the July 2, 2019 Electric Utility Enterprise Board Meeting.

The purpose of this item is to approve the minutes from the July 2, 2019 Electric Utility Enterprise Board meeting.

2. Second Reading of Ordinance No. 006, Authorizing Long-Term License Contracts for the Acquisition of Video Content Rights in Furtherance of Fort Collins Connexion’s Delivery of Telecommunication Services.

This Ordinance, unanimously adopted on First Reading on July 2, 2019, approves long-term license contracts for rights to deliver cable or other subscriber video content, programming, and streaming services from local channels, individual channels and channel families, and video content aggregators for the telecommunication services division (Connexion) to be offered to subscribers purchasing video services. Such video content is only available from certain providers under terms and conditions set forth in their standard form contracts, which in many cases may require long-term contracts. The Electric Utility Enterprise is authorized by state law, City Charter Article XII Section 7(b) and City Code Section 26-392 and Section 26-398 (being amended to appear at Section 26-572) to enter into long-term license contracts payable solely from the revenues of Fort Collins Connexion, as a division of the Electric Utility Enterprise.

• OTHER BUSINESS

• ADJOURNMENT
AGENDA ITEM SUMMARY
Electric Utility Enterprise Board

July 16, 2019

STAFF
Delynn Coldiron, City Clerk

SUBJECT
Consideration and Approval of the Minutes of the July 2, 2019 Electric Utility Enterprise Board Meeting.

EXECUTIVE SUMMARY
The purpose of this item is to approve the minutes from the July 2, 2019 Electric Utility Enterprise Board meeting.

ATTACHMENTS

1. July 2, 2019(PDF)
1. **First Reading of Ordinance No. 006, Authorizing Long-Term License Contracts for the Acquisition of Video Content Rights in Furtherance of Fort Collins Connexion's Delivery of Telecommunication Services.** (Adopted on First Reading)

   This purpose of this item is to approve long-term license contracts for rights to deliver cable or other subscriber video content, programming, and streaming services from local channels, individual channels and channel families, and video content aggregators for the telecommunication services division (“Fort Collins Connexion” or “Connexion”) to be offered to subscribers purchasing video services. Such video content is only available from certain providers under terms and conditions set forth in their standard form contracts, which in many cases may require long-term contracts. The Electric Utility Enterprise is authorized by state law, City Charter Article XII Section 7(b) and City Code Section 26-392 and Section 26-398 (being amended to appear at Section 26-572) to enter into long-term license contracts payable solely from the revenues of Fort Collins Connexion, as a division of the Electric Utility Enterprise.

   Colman Keane, Broadband Executive Director, noted this ordinance provides the authority for Fort Collins Connexion to enter into long-term video licensing agreements. The industry has standard contracts from three to ten years and many of national networks typically have five to seven year contracts. Revenue for these contracts will be generated from customer service contracts.

   Vice Chair Stephens made a motion, seconded by Boardmember Gutowsky to adopt Ordinance No. 006 on First Reading.

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<tr>
<th>RESULT:</th>
<th>ADOPTED ON FIRST READING [UNANIMOUS]</th>
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<tbody>
<tr>
<td>MOVER:</td>
<td>Kristin Stephens, District 4</td>
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<tr>
<td>SECONDER:</td>
<td>Susan Gutowsky, District 1</td>
</tr>
<tr>
<td>AYES:</td>
<td>Troxell, Cunniff, Stephens, Summers, Gutowsky, Pignataro, Gorgol</td>
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- **ADJOURNMENT**

   The meeting adjourned at 11:43 PM.
AGENDA ITEM SUMMARY
Electric Utility Enterprise Board
July 16, 2019

STAFF
Erin Shanley, Broadband Marketing Manager
Colman Keane, Broadband Director
Judy Schmidt, Legal

SUBJECT
Second Reading of Ordinance No. 006, Authorizing Long-Term License Contracts for the Acquisition of Video Content Rights in Furtherance of Fort Collins Connexion’s Delivery of Telecommunication Services.

EXECUTIVE SUMMARY
This Ordinance, unanimously adopted on First Reading on July 2, 2019, Approves long-term license contracts for rights to deliver cable or other subscriber video content, programming, and streaming services from local channels, individual channels and channel families, and video content aggregators for the telecommunication services division (“Fort Collins Connexion” or “Connexion”) to be offered to subscribers purchasing video services. Such video content is only available from certain providers under terms and conditions set forth in their standard form contracts, which in many cases may require long-term contracts. The Electric Utility Enterprise is authorized by state law, City Charter Article XII Section 7(b) and City Code Section 26-392 and Section 26-398 (being amended to appear at Section 26-572) to enter into long-term license contracts payable solely from the revenues of Fort Collins Connexion, as a division of the Electric Utility Enterprise.

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

ATTACHMENTS
1. First Reading Agenda Item Summary, July 2, 2019 (w/o attachments) (PDF)
2. Ordinance No. 006 (PDF)
AGENDA ITEM SUMMARY
Electric Utility Enterprise Board
July 2, 2019

STAFF

Erin Shanley, Broadband Marketing Manager
Colman Keane, Broadband Director
Judy Schmidt, Legal

SUBJECT

First Reading of Ordinance No. 006, Authorizing Long-Term License Contracts for the Acquisition of Video Content Rights in Furtherance of Fort Collins Connexion’s Delivery of Telecommunication Services.

EXECUTIVE SUMMARY

This purpose of this item is to approve long-term license contracts for rights to deliver cable or other subscriber video content, programming, and streaming services from local channels, individual channels and channel families, and video content aggregators for the telecommunication services division (“Fort Collins Connexion” or “Connexion”) to be offered to subscribers purchasing video services. Such video content is only available from certain providers under terms and conditions set forth in their standard form contracts, which in many cases may require long-term contracts. The Electric Utility Enterprise is authorized by state law, City Charter Article XII Section 7(b) and City Code Section 26-392 and Section 26-398 (being amended to appear at Section 26-572) to enter into long-term license contracts payable solely from the revenues of Fort Collins Connexion, as a division of the Electric Utility Enterprise.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

As part of Fort Collins Connexion providing video services, license agreements are required with local channels and national networks. Contracts with content providers require long-term license contracts that will vary per provider, but typically range from 3-7 years. These contracts are “standard” across the industry and Connexion will have little to no bargaining leverage to modify the standard terms and conditions to include annual appropriation provisions.

Considering the unique nature and practices of the video content rights market, the uniqueness and limited availability of comparable content, the limited number of suppliers, and the proprietary content restrictions imposed by such suppliers, City Council has taken two prior actions to assist Connexion in accessing necessary video content:

1. On February 19, Council adopted Resolution 2019-025 approving the purchase of video content licensing and services from the National Cable and Television Cooperative (NCTC) for Fort Collins Connexion as an exception to the competitive purchase process. This Resolution allowed Connexion, as a member of NCTC, to access licensing with hundreds of networks through NCTC’s pre-negotiated agreements and obtain access to video content cost-effectively, efficiently, and with better terms than available with bi-lateral contracting.

2. On March 19, City Council adopted Ordinance No. 051, 2019, amending City Code Section 8-161 to...
add an exception to the competitive purchasing process for purchases of video content licensing.

This ordinance proposed for adoption by the Electric Utility Enterprise Board will provide further access to video content available from the video content suppliers listed in Exhibit A to the Ordinance by approving long-term license agreements of up to 7 years (more than the 5 year limit otherwise applicable under the purchasing provisions of the City Code) as permitted by the City Charter provisions regarding telecommunication services and facilities in Article XII, Section 7. Some of the video content from suppliers listed on Exhibit A will be obtained by long term license agreements through NCTC; the remainder will be obtained by long term license agreements directly with one or more of the listed content suppliers. The party to such long term license agreements will be the Electric Utility Enterprise.

ATTACHMENTS

1. Powerpoint presentation (PDF)
ORDINANCE NO. 006
OF THE CITY OF FORT COLLINS ELECTRIC UTILITY ENTERPRISE BOARD
AUTHORIZING LONG-TERM LICENSE CONTRACTS FOR THE ACQUISITION
OF VIDEO CONTENT RIGHTS IN FURTHERANCE OF FORT COLLINS
CONNEXION’S DELIVERY OF TELECOMMUNICATION SERVICES

WHEREAS, City Code Section 26-392(a) provides that the City’s Electric Utility constitutes an enterprise of the City (the “Enterprise”) and authorizes the City Council, acting ex officio as the board of the Enterprise, (the “Enterprise Board”) to approve by ordinance financial obligations of the Enterprise payable solely from the net revenues derived from the operation of the Enterprise; and

WHEREAS, on January 16, 2018, City Council adopted Ordinance No. 011, 2018, establishing a telecommunication services division within the City’s Electric Utility (“Fort Collins Connexion”) and authorizing the Electric Utility in City Code Section 26-398 to acquire, construct, provide, fund and contract as necessary to provide telecommunication facilities and services in the City, and to take such other actions as may be necessary for the proper administration of said facilities and services; and

WHEREAS, as so authorized in the City Charter and City Code, the City has begun the acquisition and construction of telecommunications facilities in preparation for Fort Collins Connexion to begin delivering broadband internet, video, and other telecommunication services; and

WHEREAS, on April 16, 2019, City Council adopted Ordinance No. 051, 2019, amending City purchasing practices in response to the nature and practices of the video content rights market, including uniqueness and limited availability of comparable content, consolidation of supply, and proprietary content restrictions imposed by content developers on bundling and duration of licensing, to enable Fort Collins Connexion to efficiently acquire video content rights and deliver telecommunication services; and

WHEREAS, due to proprietary content restrictions imposed by video content developers on licensing periods and funding commitments, in order to obtain necessary video content for video services, Fort Collins Connexion may be required to enter into long-term license contracts; and

WHEREAS, in the exercise of authority provided under City Code Sections 26-392 and 26-398 (being amended to appear at Section 26-572) and Section 7(b) of Charter Article XII, the Enterprise is authorized to enter into long-term license contracts to acquire video content rights in furtherance of Fort Collins Connexion’s delivery of telecommunication facilities and services; and

WHEREAS, the long-term license contracts authorized under this Ordinance will permit Fort Collins Connexion to acquire video content to be offered to Fort Collins Connexion subscribers and obtained from the video content providers listed on Exhibit “A,” attached hereto and incorporated by reference, and will be payable solely from revenues of Fort Collins Connexion (the “Authorized Obligations”); and
WHEREAS, the Enterprise Board’s adoption of this Ordinance is in the exercise of its authority as described above to approve and enter into contracts like the Authorized Obligations to enable Fort Collins Connexion to offer video services to its customers.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF THE ELECTRIC UTILITY ENTERPRISE OF THE CITY OF FORT COLLINS as follows:

Section 1. That the Enterprise Board hereby makes and adopts the determinations and findings contained in the recitals set forth above. In addition, the Mayor, as the Enterprise’s president and the City Clerk, as the Enterprise’s secretary, are both authorized to sign this Ordinance in their respective capacities.

Section 2. That the Enterprise Board hereby finds it is in the best interests of the Enterprise, the Electric Utility and the City to negotiate and enter into the Authorized Obligations for rights to deliver cable or other subscriber video content, programming, and streaming services from local channels, individual channels and channel families, and video content aggregators when: (i) viable market demand supports obtaining rights to deliver specific content; and (ii) the anticipated cost to acquire such rights is reasonable based on the uniqueness of the content, region, and market.

Section 3. That the Enterprise Board hereby approves the Authorized Obligations and authorizes the Purchasing Agent to execute one or more of the Authorized Obligations, each of which shall have a term of not more than seven years and is subject to the purchasing exceptions set forth in Chapter 8 of the Fort Collins City Code for the acquisition of video content rights.

Section 4. That the Authorized Obligations shall not constitute a debt or obligation of the City and shall be payable solely from the revenues of Fort Collins Connexion.

Introduced, considered favorably on first reading, and ordered published this 2nd day of July 2019, and to be presented for final passage on the 16th day of July 2019.

____________________________________
President

ATTEST:

_______________________________
Secretary
Passed and adopted on final reading on the 16th day of July 2019.

_______________________________
President

ATTEST:

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Secretary
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**NOTE:** Some of the video content from the suppliers listed above will be obtained by long term license agreements through National Cable Television Cooperative (NCTC); the remainder will be obtained by long term license agreements directly with one or more of the listed content suppliers. The party to such long term license agreements will be the Electric Utility Enterprise.